

Somasundaram Corporation (Pvt.) Ltd,. ... vs The Government Of Tamil Nadu ... on 30 January, 1999

Equivalent citations: 1999(2)CTC364, (2000)ILLJ340MAD, AIR 1999 MADRAS 192, (2000) 2 LAB LN 290, (2000) 1 LABLJ 340, (1999) WRITLR 319

Author: P. Sathasivam

Bench: P. Sathasivam

ORDER

1. Since the issues in all these writ petitions are inter-connected, they are disposed of by the following common order.
2. In W.P.NO. 1979 of 1988, the petitioner, namely, Somasundaram Corporation (Private Limited), owners of Somasundaram Super Spinning Mills are challenging the constitutional validity of the Somasundaram Super Spinning Mills (Acquisition and Transfer) Act (The Tamil Nadu Act 81 of 1986) as invalid and ultra vires of the Constitution of India.
3. East Ramnad District National Textile Workers Union (INTUC) have filed Writ Petition No. 13510 of 1994 challenging lay off Notice dated 1.6.1994 and the closure order dated 15.7.1994 parsed by the Tamil Nadu Textile Corporation, Coimbatore-18.
4. Ramanathapuram District Panchalai Thozhilalar Sangam has filed Writ Petition No. 20925 of 1994 seeking to issue a writ of certiorarified mandamus calling for the records in G.O.No. 287 (Handlooms, Handicrafts, Textiles and Khadi (C2) Department dated 14.10.1993 quash the same and forbear the respondents 1 to 3 therein from handing over the 4th respondent-Somasundaram Super Spinning Mills to P.S.S. Somasundaram Chettiar, Coimbatore.
5. Anna Textile Workers Union in Writ Petition No.4455 of 1996 challenges the Government Order (2D) No. 26, Handlooms, Handicrafts, Textiles and Khadi (C-2) dated 28.9.95 published on 22.11.1995 declaring the Tamil Nadu Textile Corporation as a Relief Undertaking.
6. First I will narrate the case of the petitioner in Writ Petition No. 1979 of 1988. It is stated that the said Mill was taken over by the Central Government under Section 18AA of the Industries (Development and Regulation) Act of 1951 (Central Act 65 of 1981) by Notification dated 4.11.1977 and extended from time to time upto 30.9.1986. The 2nd respondent is a company owned by first respondent. They were designated and authorised to look after the affairs of the Mills. The management of the mills vested with the Central Government continuously for 9 years from 4.11.1977 upto 30.9.86. The Government of Tamil Nadu promulgated an Ordinance, Ordinance 6 of 1996, viz., the Somasundaram Super Spinning Mills (Acquisition and Transfer) Ordinance, 1986 (hereinafter referred to as "the Ordinance") on 12.6.1986. This has subsequently been followed by

the enactment of the Somasundaram Super Spinning Mills (Acquisition and Transfer) Act 1986, Tamil Nadu Act 81 of 1986. Both the Ordinance and the Act lack legislative competence. They are illegal, void and untenable in law. It is further stated that the Mill was started in the year 1965. It is equipped with the latest textile technology and know-how and is installed with the modern machinery. Due to general slump and market conditions in or about 1976 to 1977 the Mill had to be closed. All efforts for reviving the operation of the Mill was finalised including Bank facilities in 1977. The matter was pending with the first respondent. Without regard to the existing facts and circumstances on the report of the first respondent, the Central Government by Notification dated 4.11.1977 under Section 18AA of the Act 65 of 1951, took over the management of the Mills. It transferred the same to, the first respondent for Management. In its turn, the first respondent authorised the 2nd respondent to manage the mills. The petitioners filed a writ petition, namely, W.P.No. 978 of 1978 before the Supreme Court challenging the legality of the said Notification under Section 18AA of the Act 65 of 1951. The Hon'ble Supreme Court permitted the petitioners to file an appropriate application for cancellation of the Notification dated 4.11.1977 as extended and that if any such application is made, directed it should be considered and disposed of by the Central Government on merits. The petitioners submitted such application as directed. The Government of India after receipt of the representations aforesaid did not extend its notification issued under Section 18AA of the Act 65 of 1951. However, the first respondent-Government of India promulgated the Ordinance. The petitioners herein filed W.P.Nos. 10304 and 10305 of 1986 for declaring the Ordinance as invalid and beyond Legislative competence of the Tamil Nadu State Legislature and for directing the respondents to return the Mills back to the petitioners. In spite of pendency of the litigations before this Court as well as before the Supreme Court, the first respondent passed the impugned Ordinance replaced by enactment. The Industries (Development and Regulation) Act, 1951 empowers the Central Government alone to retain absolute control of the industries mentioned in the first schedule to the Act and in Section 2 of the Act it is laid down that in public interest, Central Government alone should take under its control the industries specified in the first schedule appended to the Act. The Textile Industry enumerated as item 23 in the first schedule can be governed only by the provisions of the I.D.R. Act. The Somasundaram Super Spinning Mills owned by the petitioner Company is an Industrial undertaking that falls within the ambit of the I.D.R. Act. The legislature of the State has no legislative power to enact a law regarding the said mills as the Legislative power of the State Legislature is subject to the provisions of the Entry 52 of List-I. Likewise, the State Legislature has no legislative power to enact law either under Entry 26 of List-II or under any Entry of List III. As per the provisions of the Industries (Development and Regulation) Act and having taken over the management, the Government of India alone is competent to take any appropriate decision. The impugned Act violates fundamental rights guaranteed under Article 19(1)(g) of the Constitution of India. The impugned legislation is violative of Article 300A of the Constitution of India. It is neither fair nor equitable. It offends all principles of natural justice and equity. The provisions of the Act violate fundamental rights of the petitioners. With these averments, the petitioner prayed for declaring Tamil Nadu Act 81 of 1986 as invalid and ultra-vires the Constitution of India.

7. The first respondent-Government of Tamil Nadu has filed a counter affidavit disputing various averments made by the petitioner. It is stated that Somasundaram Super Spinning Mill was started in the year 1965 at Muthanendal, Sivaganga District with 13240 spindles by the petitioner. Due to

inefficient management, the mill incurred heavy loss and unable to pay statutory dues like Employees State Insurance, Employees Provident Fund and electricity bills. Workers were also not paid wages from 1.8.1976. Consequently the mill remained closed with effect from 8.10.1976. At the time of closure, there were around 230 employees working in the mills. M/s Somasundaram Super Spinning Mill was taken over by Government of India under Industries (Development and Regulation) Act, 1951 (Central Act LXV of 1951) and the management was vested with Tamil Nadu Textile Corporation Limited as "Authorised Person" on 7.12.1997. Later the mill was acquired by the Government of Tamil Nadu under Somasundaram Super Spinning Mill (Acquisition and Transfer) Act, 1986 and the management was vested with Tamil Nadu Textile Corporation with effect from 14.8.1986. They also explained the various steps taken by them to modernise the mill as well as other court proceedings initiated either by the workers or by the management. Regarding the legislative competence, it is stated that instructions of the President of India were obtained in pursuance of the provisions of Clause (1) of the Article 213 of the Constitution. Further, 'textiles' is in the state list; as such the Tamil Nadu Government have legislative competence to promulgate the ordinance. The State Legislature has competence to make the enactment. They also highlighted the various debts payable by the Spinning mill. It is further stated that the petitioner was not coerced legally and the acquisition of the Mills was legally made for the reasons specifically mentioned therein, more particularly, in the general interest as well as in the interest of the workers in particular, With these averments, the first respondent prayed for dismissal of the writ petition.

8. Tamil Nadu Textile Corporation, second respondent has filed a separate counter affidavit reiterating the very same stand taken by the first respondent. The State Government has powers to legislate under entry 24 of List II. Further, the State Government is fully competent enough to pass the above legislation, since the said industry also being covered under the concurrent list under Entry 33(a) of the Constitution. Apart from this, the conditions which were prevailing then viz., the poor production due to obsolete machineries and heavy loss, which were due to mis-management had prompted the Government to pass the impugned Act. In the larger interest of the public, the Act was passed and not otherwise as contended by the petitioner. The employees also form part of the general public and the contention that there are laws to regulate them and hence the mills is not to be nationalised is misleading. The compensation amount of Rs.14.5 lakhs fixed in the Act is reasonable. As per Section 27 of the Act, the Government will assume liability for the amount to be paid to the creditors mentioned upto Category III of the Schedule. The grievance of the petitioner about the insufficient compensation is unacceptable since as per Section 17 of the Act, the Commissioner of Payments to be appointed by the Government will receive the amount payable to the owner and also discharge liabilities as per Sections 20 and 21 of the Act. No claim due to the workmen or managerial staff during the period of management of the Textile Corporation would be passed on to the petitioner.

9. The third respondent has also filed a counter-affidavit with regard to their claim, and the decree as well as execution proceedings initiated by them.

10. The case of the petitioners in W.P.Nos.13510 of 1994 and 20925 of 1994 are as follows: They narrated various events which led to passing of Tamil Nadu Act 81 of 1986 and taking over Somasundaram Super Spinning Mills. As per section 14 of the Somasundaram Super Spinning Mills

(Acquisition and Transfer) Act, all the workmen employed in the Mills shall continue in the employment of Textile Corporation and other workmen shall also continue in employment until the employment is duly terminated or terms and conditions altered by the Corporation. The dues such as wages, salaries and all deductions made from wages and salaries of workers for Provident Fund, E.S.I. Contribution, L.I.C. premium and all arrears in relation to contributions thereto were given priorities for the discharge by the Tamil Nadu Textile Corporation. At the time of filing of the writ petition, 242 permanent workers and 62 temporary workmen were employed in the mills since 1990. The Mill owns about 27 acres of lands of which 5 1/2 acres are buildings. Whiles, the Government of Tamil Nadu has passed an order dated 14.10.1993 without calling for any bids decided to hand over back the Mills to the said Somasundaram Chettiar for a meagre consideration of Rs. 94.68 lakhs only with lenient conditions. The Somasundaram Super Spinning Mills and the Textile Corporation are also due to the workers a sum of Rs. 70 lakhs towards wages payable, Provident Fund, L.I.C. premium, E.S.I. contribution etc. The said amounts were already deducted from the wages or salaries of the workmen but remittances were not made to the respective organisations. The said Government Order dated 14.10.1993 to return the Mills has not made any provisions for the said payments. The action of the Tamil Nadu Textile Corporation in passing an Order on 1.6.1994 laying-off most of the workmen and also further notice of closure dated 15.7.1994 cannot be justified. The present action is not only opposed to various provisions of the Industrial Disputes Act, but those against the provisions of Tamil Nadu Act 81 of 1986. Accordingly they prayed for interference by this Court by quashing the lay-off, closure notices and also the Government Order handing over the Somasundaram Super Spinning Mill to the erstwhile owner.

11. The Tamil Nadu Textile Corporation has filed a counter-affidavit in both the writ petitions raising similar contentions, accordingly I am not referring to the same once again.

12. In W.P.No.4455 of 1996, Anna Textile Workers Union has contended that there is absolutely no warrant for passing the impugned order, namely, G.O. (2D) No. 26, Handlooms, Handicrafts, Textiles and Khadi (C2) dated 28th September, 1955 declaring the Tamil Nadu Textile Corporation as a Relief Undertaking. In view of the particulars furnished in the earlier paragraphs, I am not referring to the same once again.

13. The State of Tamil Nadu has filed a counter-affidavit in W.P.No.4455 of 1996 on the same lines as that of the one filed in W.P. 1979 of 1988. Tamil Nadu Textile Corporation, third respondent in that writ petition has filed a detailed counter-affidavit highlighting the position of the Mills, details regarding accumulated loss, steps taken by them as well as the Government of Tamil Nadu and ultimately justified in passing the impugned G.O.No. 26, Handlooms dated 28.9.1995 and prayed for dismissal of the said writ petition. It is also contended by the said Corporation that inasmuch as the said Government Order is restricted only for a period of one year and the impugned Government Order expired even on 21.11.1996, nothing survives in the said writ petition; accordingly prayed for dismissal of the same.

14. In the light of the above pleadings. I have heard the learned counsel for the petitioners and the respondents.

15. Among all the writ petitions, detailed arguments were advanced only in W.P.No.1979 of 1988 regarding the constitutional validity of Tamil Nadu Act 81 of 1986. Accordingly, at the foremost I shall consider the same in detail.

16. Mr.R. Sudhakar, learned counsel appearing for the petitioner in W.P.No. 1979 of 1988 with regard to constitutional validity of Tamil Nadu Act 81 of 1986 has raised the following contentions:

(i) The State Government has no legislative competence to enact the im-pugned Act. since the Industrial Undertaking is a textile undertaking which is included in the Schedule of the Industries (Development and Regulation) Act, 1951 (Central Act 65 of 1951). According to him, by virtue of the fact that the Textile industry is an industry which had been included under Entry 52 of the Union List the entire field is occupied by the Central Government; accordingly the State Government cannot encroach upon the field occupied by the Central Government by enacting the impugned Act which is in relation to a textile industry.

(ii) When the management and control of the industrial undertaking had already been taken over by the Central Government under the provisions of the Industries (Development and Regulation) Act, the State Govern-ment is not competent to legislate the impugned enactment;

(iii) The impugned Act is not protected by Article 31C of the Constitution of India;

(iv) The compensation payable under the impugned Act to the petitioner is illusory, inadequate and hence the impugned Act is liable to be declared as void;

(v) The impugned legislation is arbitrary and violative of Articles 14 and 19(1)(g) of the Constitution of India.

17. On the other hand, Mr. T.R. Rajagopalan, learned senior counsel for Tamil Nadu Textile Corporation, after taking me though the financial and other conditions of the Spinning Mills and various provisions of the impugned Act, would contend that irrespective of the provisions of the Industries (Development and Regulation) Act, the State Government by virtue of Entry 42 List III is competent to legislate regarding acquisition. He further contended that the provisions of the Industries (Development and Regulation) Act does not bar the acquisition of the industry after taking over the management under the said Act. He further contended that in the interest of the public and to secure the object of Article 39(b) and (c) of the Constitution of India, it was absolutely necessary to pass the legislation. He also contended that in view of the fact that the impugned legislation comes under the protective umbrella of Article 31(c) of the Constitution, the inadequacy of the compensation was irrelevant. Learned Government Advocate appearing for the State and other counsel appearing for the workers Union reiterated the same stand taken by the learned senior counsel for the Tamil Nadu Textile Corporation in respect of Tamil Nadu Act 81 of 1986.

18. I have carefully considered the rival submissions.

19. With regard to the said contentions, learned counsel for the petitioner as well as the Tamil Nadu Textile Corporation very much pressed into service the decision of the Apex Court reported in *Ishwari Khetan Sugar Mills v. State of U.P.*, . Before going into the said decision, it is better to refer the details which made the Government of Tamil Nadu to pass Somasundaram Super Spinning Mills (Acquisition and Transfer) Act of 1986 (Tamil Nadu Act 81 of 1986). The mill called Somasundaram Super Spinning Mill was started in the year 1965 at Muthanandal, Sivaganga District with 13240 Spindles by the petitioner. Due to inefficient management, the mill incurred heavy loss, accordingly it was unable to pay statutory dues like Employees State Insurance, Employees Provident Fund and electricity bills. The workers were also not paid wages from 1.8.1976. Consequently, the mill remained closed with effect from 8.10.1976. It was brought to my notice that there were about 230 employees working in the mills. In such circumstances, M/s. Somasundaram Super Spinning Mill (in short "the Mill") was taken over by the Government of India under the Industries (Development and Regulation) Act, 1951 (Central Act LXV of 1951 (hereinafter referred to as "I.D.R. Act", and the management was vested with Tamil Nadu Textile Corporation Limited as "Authorised Person" on 7.12.1977. By a Notification of the Central Government under Section 18AA of I.D.S. Act published in the Extraordinary Gazette of India dated 4.11.1977, the Tamil Nadu Textile Corporation was appointed as authorised person for a period of five years from the date of publication to take over to management of the Industrial Undertaking. Pursuant to the same, the Government of Tamil Nadu, in G.O.Ms.No.1317 dated 5.12.1977 directed the Textile Corporation to take over the Mills immediately. The Central Government issued the notification as stated above after being satisfied that the conditions for invoking the provisions of Section 18AA of the I.D.R. Act existed. It is also clear from the records that the Mills had remained closed and was not functioning from 30.7.1976 due to financial difficulties and other reasons. The trade unions were requesting the Government to re-start the mill and provide employment to the workers of the Mills. The previous management had not even cared to pay the insurance policy in respect of the Mills assets and the Tamil Nadu Industrial Investment Corporation Limited, who were the mortgagees, had to pay the premium and arrange for the insurance. The Government of Tamil Nadu in G.O.Ms. 726 Industries dated 2.6.77 had to sanction a sum of Rs.200 to each of the 200 workers as a relief and further the erstwhile management had not even cared to pay the statutory liabilities such as provident fund etc. This situation had prevailed for over 15 months which necessitated the Central Government to notify the order referred to earlier. The Mills owed a sum of Rs. 138-45 lakhs to Tamil Nadu Industrial Investment Corporation Limited, Madras, upto 31.3.1977 and the South Indian Bank Limited obtained preliminary decree from Sub court, Sivaganga, for a sum of Rs. 30.43 lakhs and further a decree obtained by Srivilliputhur Co-operative Marketing Society in 1967 for Rs. 45,576.14 were yet to be satisfied. In those circumstances, the Government of Tamil Nadu initially promulgated Ordinance No. 6 of 1986 and subsequently it was replaced by Somasundaram Super Spinning Mills (Acquisition and Transfer) Act of 1986 (Tamil Nadu Act 81 of 1986) (hereinafter referred to as "Tamil Nadu Act").

20. Now I shall consider the competency of the State Legislature in passing the impugned enactment. As stated earlier, among other decisions, the decision of the Apex Court reported in *Ishwari Khetan Sugar Mills v. State of U.P.*, is very relevant for the question in issue. The case before the Supreme Court is identical to the issue involved in this writ petition. In order to solve some serious problems created by the owners of certain sugar mills in the State of Uttar Pradesh for cane

growers and labour employed in sugar mills and with a view to ameliorating the situation posing a threat to the economy, the Government of Uttar Pradesh promulgated an Ordinance with a view to transferring and vesting sugar undertakings set out in the Schedule to the Ordinance in the U.P. State Sugar Corporation Ltd, Subsequently, by Uttar Pradesh Sugar Undertakings (Acquisition) Act, 1971, the Ordinance was repealed and was replaced. Schedule to the Act enumerates 12 sugar undertakings and by the operation of Section 3, these Scheduled Undertakings stood transferred to and vested in the Corporation from the appointed day, i.e., July 3, 1971, the date on which the Ordinance was issued. On the promulgation of the Ordinance, many writ Petitions were filed in the Allahabad High Court challenging the Constitutional validity of the Ordinance and when the Act replaced the Ordinance effective from August 27, 1971, the writ petitions were amended incorporating the challenge to the Act also, identical contentions were raised before the High Court of Uttar Pradesh. The Division Bench of the High Court, by a common judgment dated 3.5.1979, repelled the contentions on behalf of the petitioners and upheld the constitutional validity of the Act. Aggrieved by the said decisions, the owner of the scheduled undertakings filed appeals before the Supreme Court. After considering the relevant Entries in the Constitution of India, provisions of the I.D.R. Act as well as the impugned Act therein, Their Lordships in the Constitution Bench after hearing the length arguments, have concluded at page No. 1965 in the following manner:

"The IDR Act is not at all concerned with the ownership of industrial undertakings in declared industries, except to the extent of control over management of the undertaking by the owner. Owner is defined in S. 3(f) in relation to an industrial undertaking to mean the person, who or the authority which has the ultimate control over the affairs of the undertaking, and, where the said affairs are entrusted to a manager, managing director or managing agents, such manager, managing director or managing agent shall be deemed to be the owner of the undertaking. This deeming fiction enacted in respect of the concept of ownership clearly manifests the legislative intention that IDR Act treats that person to be the owner who has the ultimate control over the affairs of the undertaking and if that ultimate control is entrusted to even a manager for the purposes of the IDR Act the manager would be the owner. This must be so in the very nature of the things because the IDR Act is essentially concerned with the control over the management of the Industrial undertakings in declared industries. By the acquisition under the impugned Act and vesting of the Scheduled undertakings in the Corporation the Scheduled undertakings will nevertheless be under the control of the Central Government as exercised by the provisions of the IDR Act because the Corporation would be the owner and would be amenable to the authority and jurisdiction of the Central Government as the provisions of the IDR Act would continue to apply to the scheduled undertakings, sugar being a declared industry, and scheduled undertakings are industrial undertakings within the meaning of the IDR Act. No provision from IDR Act was pointed out to us to show that in implementing or enforcing such a provision the impugned legislation would be an impediment. Therefore, there is no conflict between the impugned legislation and the control exercised by the Central Government under the provisions of the IDR Act and there is not even a remote encroachment on the field occupied by IDR Act."

Again in para 17 it has been held as follows:

"It thus clearly transpires that the observations in Cooper's case, extracted above that power to legislate for acquisition of property is exercisable only under entry 42 of List III and not as an incident of the power to legislate in respect of a specific head of legislation in any of the three lists, in borne out from Rajamundry Electric Supply Corporation's case and Sir Kameshwar Singh's case."

Again in para 20 it has been held as follows;

"There is on the contrary a good volume of authority for the proposition that the control assumed by the Union pursuant to declaration to the extent indicated in the statute making the declaration does not comprehend the power of acquisition if it is not so specifically spelt out. In Kannan Devan Hills Produce Co., Ltd v. State of Kerala, constitutional validity of Kannan Devan Hills (Resumption of Lands) Act, 1971, was challenged on the ground of legislative competence of Kerala State Legislature to enact the legislation. It was urged . That in view of the declaration made in Section 2 of the Tea Act, 1853. Tea was a controlled industry and, therefore, the State legislature was denuded of any power to deal with the industry. It was further contended that the plantation required extensive land and that resumption of land by the impugned legislation would directly and adversely affect the control taken over by the Union and, therefore, the State legislature was incompetent to enact the impugned legislation. This contention was repelled holding that the impugned legislation was in pith and substance one under Entry 18 of List II read with Entry 42, List III. In reaching this conclusion the Court held as under:

"It seems to us clear that the State has legislative competence to legislate on entry 18, List II and entry 42, List III. This power cannot be denied on the ground that it has some effect on an industry controlled under entry 52, List I. Effect is not the same thing as subject-matter. If a State Act, otherwise valid, has effected on a matter in List I it does not cease to be a legislation with respect to an entry in List II or List III. The object of Sections 4 and 5 seems to be enable the State to acquire all the lands which do not fall within the categories (a), (b) and (c) of S. 4(1). These provisions are really incidental to the exercise of the power of acquisition. The State cannot be denied a power to ascertain what land should be acquired by it in the public interest."

Again in para 28 it has been held as follows:

"28. The impugned legislation was not enacted for taking over management or control of any industrial undertaking by the State Government. In pith and substance it was enacted to acquire the scheduled undertakings. If an attempt was made to take over management or control of any industrial undertaking in a declared industry indisputably the bar of S. 20 would inhibit exercise of such executive power. However, if pursuant to a valid legislation for acquisition of scheduled undertaking

the management stands transferred to the acquiring body it cannot be said that this would be in violation of S. 20. Section 20 forbids executive action of taken over management or control of any industrial undertaking under any law in force which authorises State Government or a local authority to do so. The inhibition of Section 20 is on exercise of executive power but if as a sequel to an acquisition of an industrial undertaking the management or control of the industrial undertaking stands transferred to the acquiring authority, S. 20 is not attracted at all. Section 20 does not preclude or forbid a State legislature exercising legislative power under an entry other than Entry 24 of List II, and if in exercise of that legislative power, to wit, acquisition of an Industrial undertaking in a declared industry the consequential transfer of management or control over the industry or undertaking follows as an incident of acquisition, such taking over of management or control pursuant to an exercise of legislative power is not within the inhibition of S. 20. Therefore, the contention that the impugned legislation violates S. 20 has no merit.

Regarding the compensation fixed in the Act is illusory, Their Lordships have observed thus:

"30. It thus appears well settled that if a legislation provides principles for determining compensation, to wit, written down value as understood in income-tax law to be the value of the used machinery, that principle could neither be said to be irrelevant for determining the compensation nor the compensation so awarded could be styled as illusory ...

35. A peep into the background leading to the acquisition of the scheduled undertakings would reveal that these scheduled undertakings had a heavy back-load of carried forward loss, that even though they were taking sugarcane from cane growers, i.e., the farmers, they failed to pay them the price of sugarcane. There was labour unrest as labour was not paid. Generally speaking, they can be styled as sick undertaking and became a drag on the economy of the area. There was no scope for ploughing back the profits to rejuvenate the machinery because there was no profit. The situation had not improved even when managements of some of the undertakings were taken over under the IDR Act and, therefore, this desperate situation called for a drastic remedy in public interest and while applying that drastic remedy of acquisition principles which are valid for determining the value of machinery were adopted. The adequacy or otherwise of compensation on the calculus made by applying the principle is beyond the judicial review. It would be a day time hallucination to call such principle irrelevant or compensation illusory. The challenge to the validity of the impugned legislation on the ground of violation of Art. 31(2) must accordingly fail."

21. It is clear that the Supreme Court in un-equivocal terms has held that the acquisition of an undertaking included in Schedule to the IDR Act by an enactment of the state Legislature is permitted. The legislation in effect deals with transfer of ownership of such undertaking and the

same, would, in no way, come in conflict with any of the provisions of the IDR Act or would not trench upon any control exercised by the Union under the various provisions of the IDR Act. It was also held that the IDR Act does not deal with the ownership of industrial undertakings in declared industries. In the Ishwari Khetan Sugar Mills case, it has been clearly laid down that the power to legislate for acquisition of property under Entry 42, List III is an independent and separate power of the State Government and the field of acquisition is not occupied by the IDR Act, 1951. The said judgment of the Supreme Court, namely, *Ishwari Khetan Sugar Mills v. State of U.P.*, has been followed in various judgments. Some of the decisions in which the said principle has been followed are:

(i) *Elizabeth Samuel Aaron v. State*, ; (ii) *Elizabeth Samuel Aaron v. State*, (FB) ; (iii) *Dalmia Industries Ltd v. State of U.P.*, ; (iv) *Indian Alluminium Co., v. Karnataka Electricity Board*, ; (v) *Mahesh Kumar Saharia v. State of Nagaland*, ; (vi) *Indore Textiles Ltd., and another v. Union of India and another*, 1998(III) M.L.J. 60 SC In view of the law laid down by the apex Court as well as other High Courts in the above referred decisions, the contention of the learned counsel for the petitioner regarding the first point is liable to be rejected.

22. With regard to the second contention, even the above referred *Ishwari Khetan Sugar Mills* case, is a direct answer to this point also. In the said decision, Their Lordships have held that Section 27 of I.D.R. Act does not bar the acquisition of the I.D.R. Act). This point was specifically answered in another judgment of the Supreme Court reported in *Indore Textiles Ltd., and another v. Union of India and another*, 1998 (III) M.L.J. 60 (SC). In para 6 of the argument was narrated and the Supreme Court answered the point on paragraphs 7 and 8 which are as follows;

"6. Even though in the writ petition the principle challenge to the Act was on the ground that neither the State Legislature nor the Governor of the State had legislative competence to promulgate the Act and the Ordinance inasmuch as the appropriate entry for the enactment of such an ordinance or Act was Entry 52 of List I of the 7th Schedule, but this contention, at the time of arguments, was not raised by Shri G.L. Sanghi, learned senior counsel for the petitioner presumably because in cases of similar enactments such a contention had been rejected by this Court in the case of *Ishwari Khetan Sugar Mills (P) Ltd., and others v. State of Uttar Pradesh and others*, ; *State of Nagaland and others*, to mention only two. It was however, submitted by Shri Sanghi that there was no existing public purpose for which the acquisition could have been made. It was contended that the object of the Act is clearly reflected in the preamble which shows that the undertaking was being acquired with a view to secure its proper management. In as much as the management of the undertaking had already been taken over by the Central Government, under the order passed under Section 18AA of the I.D.R. Act, Shri Sanghi submitted that the reason for securing proper management did not exist and, therefore, the Act could not have been passed.

7. The preamble of the Act reads as follows:

"An act to provide in public interest for the acquisition and transfer of the industrial undertaking known and the Indore Textiles Limited, Ujjain, with a view to securing the proper management of such industrial under taking so as to subserve the interest of the general public by ensuring the continuity of production of cloth which is vital to the needs of the country and for matters connected therewith or incidental thereof."

It is true that on the date when the ordinance was issued, i.e., 10th February, 1986, the management of the undertaking was still with the Central Government. The preamble of the Act does not show that the same was passed with a view only to secure the proper management of the industrial undertaking. The reading of the preamble and of the Act as a whole makes it clear that the said legislation was undertaken with a view to secure the proper management of the same "so as to subserve the interest of the general public by ensuring the continuity of production of cloth which is vital to the needs of the country and for matters connected therewith or incidental thereto". The anxiety in promulgating the ordinance and replacing it with the Act clearly was to see that the mill, which had been closed for more than three months at the time when the notification under Section 18AA of the I.D.R. Act had been issued, should continue its activity of production of cloth which was in the interest of the country. As a result of the acquisition of the undertaking it is but obvious that its management would hence forth vest with the State Government and it is for this reason that provisions with regard thereto are contained in Chapter IV of the said Adhiniyam.

8. It was faintly suggested that when the I.D.R. Act contains the power to take over the management of an undertaking there can be no acquisition by the said Act which would have the same effect, i.e., taking over of the management of the undertaking. This question is no longer res integra. There was a similar provision like the one contained in Chapter IV of the Adhiniyam which existed in the U.P. Sugar Undertaking Acquisition Act, 1971, which enabled the management of the acquired undertakings being taken over by the State Government. A contention was raised in Ishwari Khetan's case, , that the U.P. Act was violative of Section 20 of the IDR Act which provided that after the commencement of the I.D.R. Act it was not competent for any State Government or a local authority to take over the management or control of any industrial undertaking any law for the time being in force which authorises any such Government or local authority so to do. It was observed that the said Section 20 of the I.D.R. Act does not preclude or forbid a State Legislature from exercising legislative power under an Entry other than Entry 24 of List II and if in exercise of that legislative power the consequential transfer of management or control over the industry of undertaking follows as a result of incident of an acquisition of such an undertaking as an incident of acquisition then such taking over of the management or control pursuant to an exercise of legislative power is not within the inhibition of Section 20 of the I.D.R. Act. To the same effect is a recent judgment of this Court in Mahesh Kumar Saharia's case, , where a similar challenge to the Nagaland Forest Products Limited (Acquisition of Shares) Act, 1982, was repelled.

The same point has been considered in another judgment reported in Mahesh Kumar Saharia v. State of Nagaland, and negatived while upholding the Act. Accordingly, I reject the second contention as devoid of any merits.

23. Regarding the third contention raised by the learned counsel for the petitioner that the impugned Act specifically declares that the legislature intends to achieve the object of Article 39(b) and (c) of the Constitution of India, the judgment reported in *State of Tamil Nadu v. L. Abu Kavur Bai*, the Constitution Bench of the Supreme Court has elaborately dealt this issue. It has been in that judgment that the only condition for application of Article 31C is that there should be a direct and reasonable nexus between the law and the provisions of Article 39(b) and (c) and the reasonableness would be regarding the nexus rather than the law. The impugned legislation is enacted in the interest of public. The preamble of the Act and the particulars mentioned in the counter affidavit of the Government disclose that the industrial undertaking had remained closed and was not functioning for a number of years due to financial difficulties and other various constraints. A labour force of about 200 was thrown out of employment. The trade unions were requesting the Government to re-start the mill and provide employment to the workers of the Mills. The Government of Tamil Nadu as an interim relief sanctioned a sum of Rs. 200 to each of the 200 workers, and the erstwhile management had not even cared to pay the statutory liabilities such as provident fund etc. It was under these circumstances, the Mill was taken over by the Government by way of notification under I.D.R. Act. However, the various problems faced by the Mill cannot be solved merely by having control over the mill. It is in the interest of the public and to secure the objects of Article 39(b) and (c) of the Constitution of India, it was absolutely necessary to pass the legislation in the interest of public. Accordingly, the contrary contention raised by the petitioner on this point has no substance.

24. In a judgment reported in *His Holiness Sri la Sri Ambalavana Pandora Sannadhi Avergal v. The State of Tamil Nadu*, 1985 WLR (1) Supp a Division Bench of this Court had occasion to consider the validity of the legislation claiming to have protection under Article 31C of the Constitution of India. It has been observed in the said judgment at para 30, following the decision of Supreme Court in *Minerva Mills Ltd., v. Union of India*, that it is beyond the competence of the courts to determine whether the law is adequate enough to give effect to certain policy and all that is to be ascertained is whether there is a direct and reasonable nexus between the impugned law and the provisions of Article 39(b) and (c). In the said judgment, the Supreme Court also in *Minerva Mills Ltd., v. Union of India*, emphasized the facts that the reasonableness of law is not a matter of enquiry for the court and the objective "reasonable" qualifies the nexus. The judgment referred to above namely, *His Holiness Sri la Sri Ambalavana Pandara Sannadhi Avergal v. The State of Tamil Nadu*, 1985 WLR (Supp.) 1 is a judgment where the Tamil Nadu Cultivating Tenants (Payment of Fair Rent) Amendment Act 17 of 1980 called in question. The Act impugned therein does not even declare that the law enacted by the State is to give effect to the Policy of the State towards securing the principles specified in Article 39(b) or (c). This Court after going through the provisions of the Act and the intention of the Legislature" as seen from the pith and substance of the Legislation" came to the conclusion that the impugned Act challenged therein comes under the protective umbrella of Article 31C of the Constitution of India.

25. In another judgment reported in *Tinsukhia Electric Supply Co., Ltd., v. State of Assam*, a Constitution Bench of the Supreme Court considered the scope of Article 31C. The Supreme Court in the said judgment after reading the Legislation impugned therein, found that the objects of the Legislation for a direct and reasonable nexus with the objectives of Article 39(b) and (c) and hence

held that the Act is protected by Article 31C of the Constitution of India. In the present case, it cannot be disputed that the provision of the impugned Act and the object of the Act has no nexus with the objectives of Article 39(b) and (c) of the Constitution of India. In *Minerva Mitts Ltd., v. Union of India*, , the Supreme Court held that the Sick Textile Under taking (Nationalisation) Act (57 of 1974) gives effect to the policy as contemplated in Article 39(b) and (c) of the Constitution and that the Act enjoys the protective umbrella of Article 31(c). Same reasons can be applied in the present case as the provisions of the impugned Act is in pari materia with the Act 57 of 74 and the object and purpose of the Acts are one and the same. Accordingly, I reject the third contention raised by the learned counsel for the petitioner.

26. Regarding the fourth contention namely, compensation payable under the Act to the petitioner is illusory, inadequate, this has been considered by Their Lordships in *Ishwari Khetan Sugar Mills case*, AIR 1980 SC 1953 and ultimately negated the said contention. Further, in view of the fact that the Legislation comes under the protective Umbrella of Article 31C of the Constitution of India, the inadequacy of compensation is irrelevant as per the Supreme Court judgment reported in *State of Tamil Nadu v. L. Abu Kavur Bai*, . Same view is also taken in the decision reported in *Tinsukhia Electric Supply Co., Ltd., v. State of Assam*, . The same argument was also raised while challenging the Sick Textile Undertakings (Nationalisation) Act 57 of 1974 in *Panipet W and C Mills Co., Ltd., v. Union of India*, AIR 1986 SC 2082 before the Supreme Court. In para 10 of the said judgment, Their Lordships have held that "the adequacy of compensation is not a ground to challenge the provisions of the Act." In the tight of the laid down by the Apex Court and of the fact that reasonable amount has been fixed in the Act itself, the said contention is also liable to be rejected.

27. Regarding the last contention that the impugned Legislation is arbitrary and violative of Articles 14 and 19(1)(g) of the Constitution of India, in view of the fact that the Legislation, comes under the protective Umbrella of Article 31C of the Constitution, the said ground raised by the petitioner cannot stand. As a matter of fact, the perusal of the affidavit filed by the petitioner does not disclose any factual basis or reasons for substantiating their case under Article 14 and 19(1)(g) of the Constitution of India. Accordingly, I reject the said contention also as devoid of any merits.

28. Now I shall consider the relief prayed for in W.P.No. 13510 of 1994. The said writ petition is for a writ of certiorari to quash the order dated 1.6.1994 giving lay-off to 304 workmen of Somasundaram Super Spinning Mill from 1.6.1994 and the order dated 15.7.1994 declaring closure of the said Mill from 18.7.1994. Both the said orders were passed by the Tamil Nadu Textile Corporation. Mr.S. Muthuramalingam, learned counsel for the petitioner would contend that the impugned orders of lay-off and closure are in gross violation of the mandatory provisions of Section 25M(2) and (4) and Section 25G of the Industrial Disputes Act and section 14 of Act 81 of 1986. A perusal of the order dated 1.6.1994 and 15.7.1994 shows that the reasons adduced for lay-off and closure are want of working capital and inability to modernise the textile mills. These reasons are not enumerated as reasons under section 25M and 25G of the Industrial Disputes Act. The said provision expressly satisfied the reason for lay- off and closure only shortage of power or due to natural calamity. The learned counsel for the petitioner is right in saying that the reasons adduced are invalid and against express conditions stipulated under the said provisions. It is also clear that the said provisions injunct or interdict an industrial undertaking against any closure except with prior permission of the

appropriate Government or the specified authority. Such application seeking permission should be made atleast 90 days prior to intended closure. It is not brought to my notice that any such prior permission has been obtained as proved under the said provisions. Inasmuch as no prior permission has been obtained and the conditions mentioned in the said the provisions are mandatory, the consequential lay-off and closure cannot be sustained.

29. Apart from this, the Textile Mills was nationalised pursuant to notification dated 4.11.1977 under Section 18AA of the IDR Act. The said Mill was under the direct management of the Tamil Nadu Textile Corporation. The learned counsel for the petitioner-Union contended that the Textile mill is under the direct management of the Tamil Nadu Textile Corporation only from 24.7.1993 and before that it was under direct management of the Director of Handlooms and Textiles. According to him, during the management of the said authority till 24.7.1993 the Mill was running profitably and acquired machineries for Rs.15 lakhs and put up building. He also reiterated that the Mill was mismanaged only after 24.7.1993 by the Tamil Nadu Textile Corporation wilfully and against all norms of administration and against public interest. The learned counsel has also contended that the lay-off and closure are in gross violation of principle of natural justice and also contrary to the mandate contained in Articles, 38, 39(a), 41 and 43 of directive principles of Constitution of India. He also pointed out that the impugned orders contravened section 14 of the Tamil Nadu Act 81 of 1986. Even though several contentions have been raised by pointing out the mandatory provisions of the Industrial Disputes Act as well as Tamil Nadu Act 81 of 1986, it brought to my notice by the learned counsel for the Tamil Nadu Textile Corporation that the accumulated loss as on 31.3.1994 was Rs. 354.27 lakhs and Rs. 409 lakhs upto 31.3.1996. He also stated that lay-off compensation was given to the workers till 18.7.1994 after that to the workers. It is also stated that there was never any intention to order the closure and the ceizing has resulted due to the own acts of workers and erstwhile owner of the Unit. It is also brought to my notice that the workers of Somasundaram Mill have already filed C.P. No.87 and 247 of 1996 before the Labour Court claiming back-wages under section 33C of the Industrial Disputes Act. As rightly contended by the counsel for Tamil Nadu Textile Corporation, the question of validity of closure, lay-off compensation etc., are to be decided only before the Labour Court when appropriate petitions filed by the workers are pending. As stated earlier, without going into the rival contentions of the parties, in view of the pendency of appropriate proceedings before the Labour Court C.P.Nos. 87 and 247 of 1996, Madurai and of the fact that it requires more particulars in the form of evidence, I am of the view that the matter has to be agitated only in the said proceedings and not by way of the present writ petition. Accordingly, W.R.No. 13510 of 1994 is liable to be dismissed.

30. Regarding the relief prayed for in W.P.No.20925 of 1994, Mr. K. Chandru, learned senior counsel for the petitioner, would contend that after enacting appropriate legislation, namely Tamil Nadu Act 81 of 86 taking over the Mill and after spending several lakhs of public money, it is not open to the Government to hand over and restore the mill to the erstwhile owner. No doubt, by the impugned order, the Government has imposed certain conditions. In spite of the fact that certain conditions have been imposed for handing over the mill to the erstwhile owner, taking note of the objects and reasons mentioned in the Tamil Nadu Act 81 of 86, particularly to safeguard the employees of the said Mill and giving effect to the policies towards securing principles laid down in clauses (b) and (c) of Article 39 of the Constitution of India, I am of the view that the Government is

not justified in passing the impugned Order, namely, G.O.No. 287 (Handlooms, Handicrafts, Textiles and Khadi) Department dated 14.10.1993. It is true that the Government as well as Tamil Nadu Textile Corporation furnished a number of reasons for their inability to continue the Mill. However, as rightly said, after acquiring the Mill by a valid Legislation, for valid reasons, merely because there is a financial crises, it is not open to the State Government to restore it to the erst-while owner by imposing certain conditions. Having said that to safe guard the public interest and in particular the employees of the said Mill and after making categorical declaration in securing the principles laid down in Article 39(b) and (c) of the Constitution, the action of the State Government cannot be appreciated. As a matter of fact, if the contention of the Government is accepted, undoubtedly it goes against the object of the Tamil Nadu Act 81 of 86 which I have already upheld in W.P.No.1979 of 1988. In the light of what is stated above, the impugned order in G.O.No.287 (Handlooms, Handicrafts, Textiles and Khadi) Department dated 14.10.1993 is liable to be quashed.

31. In W.P.NO. 4455 of 1996, Anna Textile Workers Union challenges the Government Order No. 26, (Handlooms, Handicrafts, Textile and Khadi) Department dated 28.9.1995 published on 22.11.1995. By the impugned order, the Government have declared Tamil Nadu Textile Corporation as Relief Undertaking, accordingly some of the provisions of the Industrial Disputes Act are not applicable and all contracts and other transactions are suspended for a period of one year. It is clear from the impugned order that the said declaration, namely, Tamil Nadu Textile Corporation Limited as a relief undertaking for the purpose of Tamil Nadu Relief Undertaking Act is only for a period of one year Relief with effect from date of publication of the Notification in the Gazette. No doubt, as per the said the said Notification, Chapter VB and Section 33C of the Industrial Disputes Act are not applicable to the said undertaking, Likewise, all contracts, agreements, etc., are suspended for a period of one year from the said date. Here also the learned counsel for the petitioner has raised several contentions challenging the said Government Order. As rightly pointed out by Mr.S. Venkateswaran, learned counsel appearing for the Tamil Nadu Textile Corporation, in the said writ petition there is no challenge to Tamil Nadu Relief Undertaking (Special Provision) Act, 1969, and as such the petitioner's challenge that the first respondent, namely, the Government of Tamil Nadu has erred in declaring the third respondent- Tamil Nadu Textile Corporation as relief undertaking and was not entitled to the said declaration and the same has taken away the rights of the members of the Union is of no merit. Even though a faint argument has been made by contending that there was a mala fide in passing the impugned Government Order, there is nothing to support the said line nor was pressed into service at the time of oral argument. Mr. Venkataeswaran has also submitted that the above writ petition has become infructuous since the impugned order has already lapsed by efflux of time. As rightly contended, the one year period for which the Government Order was passed and as such nothing survives in the above writ petition. Even though it is stated that the impugned Government Order had been passed by the Government after careful consideration of the entire circumstances involved in the matter and in order to enable the Tamil Nadu Textile Corporation to continue its running as a measure of providing relief against unemployment, Inasmuch as the suspension was only for a limited period, namely, one year and having expired even on 27.9.1996, I am of the view that it is unnecessary for this Court to consider more particularly even the said Government Order was stayed by this Court by an interim order during the period of one year, no further adjudication is required and liable to be dismissed as unnecessary. Further, as rightly contended by the learned counsel for the Textile Corporation, the petitioner is under a

misconception that the rights of its members are extended by the impugned Government Order. Only the remedy is suspended and the same gets automatically revived upon the expiry of the Government Order. Further, as pointed out earlier, the workers of Somasundaram Mill have already approached the Labour Court, Madurai in C.P.Nos. 87 and 247 of 1996 claiming backwages and for other reliefs. It is further stated that those petitions are still pending with the said Court. Accordingly, there is no justification for the petitioner in continuing the present writ petition. All these factual questions relating to payment of wages, other benefits, validity of closure etc., are to be considered only before the competent Labour Court since it requires more materials in the form of evidence. Accordingly, Writ Petition No. 4455 of 1996 is liable to be dismissed for the reasons stated above.

32. In the light of what is stated above, I pass the following order:

(i) The impugned Legislation, namely, Somasundaram Super Spinning Mills (Acquisition and Transfer) Act of 1986 (Tamil Nadu Act 81 of 1986) is intra-vires of the Constitution of India and validly enacted by the state Legislature; accordingly Writ Petition No. 1979 of 1988 is dismissed.

(ii) In view of the Pendency of appropriate petitions before the Labour Court, Madurai, the relief prayed for in Writ Petition No. 13510 of 1994 cannot be granted by this Court; accordingly the same is dismissed. It is made clear that even if no such petition is pending, it is open to the aggrieved persons to approach the competent Labour Court for appropriate relief.

(iii) For the reasons stated above, G.O.No. 287 (Handlooms, Handicrafts. Textiles and Khadi) (C2) Department dated 14.10.1993 is quashed and the respondents 1 to 3 therein are restrained from handing over the fourth respondent Mill to the fifth respondent; accordingly Writ Petition No. 20925 of 1994 is allowed as prayed for.

(iv) In view of the fact that the one year period mentioned in G.O. (2D) No. 26. Handlooms, Handicrafts, Textiles and Khadi (C2) dated 28.9.1995 expired even on 27.9.1996 and in the light of the interim order by this Court during the said period, nothing survives for adjudication; accordingly Writ Petition No. 4455 of 1996 is dismissed.

(v) There shall be no order as to costs in all the writ petitions.

33. Before parting with these cases, I want to emphasize one aspect. After realising the difficulties due to financial crisis at the hands of the erstwhile owner of the Mill, the said undertaking initially was under the management of the Tamil Nadu Textile Corporation as directed by the Government of India by virtue of powers conferred under I.D.R. Act. Thereafter, on the basis of the representations, the said Mill was taken over initially by way of an Ordinance and thereafter by way of Legislation, namely, Tamil Nadu Act 81 of 1986. Having taken a decision by way of Legislation after making a declaration, declaring that the Tamil Nadu Act 81 of 1986 is for giving effect to the policy of the State

towards securing principles laid down in clause (2)(b) and (c) of Article 39 of the Constitution of India and also in the interest of all concerned and in particular to safeguard the employees of the said Mill, I am of the view that the Government of Tamil Nadu with the assistance of financial institutions should take all endeavour to keep the Mill running. It is true that at one stage, the application filed by the Tamil Nadu Textile Corporation before the B.I.F.R. has been dismissed stating that the erstwhile owner has challenged the acquisition by way of a writ petition before this Court. This court has now upheld the enactment made by the State Legislature, hence it is open to the State Government/ Tamil Nadu Textile Corporation to move B.I.F.R. for appropriate relief and also approach financial institutions in order to revive and run the Mill in the interest of workers concerned. When both the Union of India and the State Government encourage more industries by bringing forward many Schemes to help them, it is equally important to see that the existing Mills, particularly the Mill acquired by the State Government by way of valid legislation is developed and kept running on right direction. This Court also hopes that in the March of industrial development, a duty also cast on the State Government to protect its own industries/undertakings by making all efforts in running these industries including that present Mills. It is needless to mention that if such action is being taken, undoubtedly the workers have to co-operate with the State Government in order to achieve the object in enacting the Legislation.