

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 2830 OF 2016

CEAT Limited

(formerly known as Ceat Tyres
of India Ltd.)

A Company registered under the
provisions of the Companies Act, 1956
having its registered address at
463, Dr. Annie Besant Road,
Worli, Mumbai 400 030

.. Petitioner-Company

v/s.

1. The State of Maharashtra
2. The Special Land Acquisition Officer 3,
Old Custom House Building,
Shahid Bhagat Singh Road,
Mumbai 400 001.
3. The Special Land Acquisition Officer 4,
9th floor, Administrative Building,
Government Colony, Bandra (East),
Mumbai 400 052.
4. Deputy Chief Engineer,
Metropolitan Transport Project (Railways),
Basement, Below Platform No.4,
Station Building, Vashi,
Navi Mumbai, 400 703.
5. The Collector,
Mumbai Suburban District,
Administrative Building,

10th Floor, Government Colony,
Bandra (East), Mumbai 400 051.

6. City Survey Officer,
Mulund Court Road,
Topical College Compound,
Sarojini Naidu Road,
Mulund, Mumbai 400 080

..Respondents

Mr. P. S. Dani Senior Advocate with Mr. PN. Vakil, Ankush Saraf and Mr. Yunus Vakharia i/b. M/s. Mulla and Mulla and Craigie Blunt and Caroe for the Petitioner.

Ms. Jyoti Chavan, AGP for the Respondent Nos.1, 2, 3, 5 and 6.

**CORAM : A. A. SAYED &
SMT. ANUJA PRABHUDESSAI, JJ.
DATED : 16th MARCH, 2020.**

JUDGMENT (PER ANUJA PRABHUDESSAI, J.)

1. The Petitioner has invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India to issue writ of mandamus to Respondent Nos.2 and 3 herein to decide the compensation for the acquisition of 357.9 sq.mt from CTS No.354 owned by the Petitioner, and further to direct the Respondent Nos.2 and 3 to pay the said compensation to the Petitioner in accordance with the provisions of The Right to Fair Compensation and

Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, hereinafter referred to as the Right to Fair Compensation Act.

2. The Petitioner is a company engaged in manufacturing of tyres for wide range of vehicles. In the year 1950, the Petitioner-Company made an application to the erstwhile Government of Bombay for land to set up a tyre manufacturing unit at Bhandup, Bombay. Pursuant to the agreements dated 15.10.1958 and 17.01.1969 entered with the Petitioner-Company, the Government initiated acquisition proceedings and acquired the land under the provisions of the Land Acquisition Act, 1894 under two separate Awards dated 11.03.1970 and 26.10.2005. The Petitioner-Company was put in possession of the acquired land upon payment of compensation under the Award. The allotment of the acquired land was subject to the terms and conditions stipulated in Sanads dated 29.12.1969 and 23.06.1975 issued in favour of the Petitioner-Company. The land acquired under these two awards is more particularly described in the Schedule to the Sanads dated 29.12.1969 and 23.06.1975, and shall be

hereinafter referred to as the acquired land.

3. In the development plan of the Municipal Corporation, Greater Bombay, part of the acquired land admeasuring 945 sq. meters under CTS No. 354 corresponding to Survey No.220 (part), is reserved for the Railways. The said land shall be hereinafter referred to as the reserved land.

4. Sometime in the year 1964 the Government of Maharashtra initiated acquisition process to acquire 249.56 sq. yards from the reserved land for public purpose. The Petitioner-Company handed over physical possession of the said land to the Central Railways on 1.11.1964. By an Award dated 11.03.1970 the Government acquired 249.64 yards of the reserved land and paid a total compensation of Rs.861/- to the Petitioner-Company as per Clause-5 of the Sanad.

5. In the year 2003 the Assistant Executive Metropolitan Engineer, Transport Project (Railways) informed the Petitioner-Company that an area of 350.20 sq.mts. from the reserved land was required for

construction of Nahur Railway Station. The Petitioner-Company held several meetings with the concerned Authorities, and by letter dated 12.08.2003 addressed to the Addl. Collector, Bandra (East), Mumbai, offered to hand over possession of 560 sq. meters of the reserved land for the purpose of construction of Nahur Railway station.

6. By an Award No.LAQ/414/Bhandup, dated 26.10.2005 the Special Land Acquisition Officer-3, acquired land under Survey No.352 (part) and 358 (part) of village Bhandup for construction of Nahur Railway station. The Government did not acquire the reserved land admeasuring 357.90 sq. meters under the said Award dated 26.10.2005. However by Order dated 28.03.2006, the Collector, Mumbai Suburban District, directed the Petitioner-Company to hand over possession of the said land admeasuring 357.90 sq.meters to the City Survey Officer, Mumbai and to submit the claim for compensation as mentioned in Clause 5 of Sanad dated 29.12.1969 for further necessary action. In furtherance of the said Order, the Petitioner-Company handed over possession of the land admeasuring 357.9 sq. meters to the City Survey Officer, who in turn handed over

the said land to the Central Railway, Government of India. The petitioner-Company also submitted an application for fixation of compensation as per clause 5 of the Sanad dated 29.12.1969.

7. The grievance of the Petitioner-Company is that despite repeated correspondence, the concerned authorities have failed to initiate acquisition proceedings and determine compensation in respect of the land admeasuring 357.9 sq. mts. in accordance with the provisions of the Right to Fair Compensation Act. It is contended that the inaction on the part of the Respondent has caused great prejudice to the Petitioner-Company and has violated its rights guaranteed under the Constitution of India.

8. In response to the notice, Archana Vinayak Kadam, Deputy Collector (Land Acquisition) No.4, has filed affidavit-in-reply inter alia stating that the Petitioner-Company is bound by the terms and conditions of the Sanad and that the provisions of the Land Acquisition Act, either under the new or old Act, are not applicable. She has stated that the part of the reserved land was required for

construction of railway station at Nahur. Hence, in terms of Clause 5 of the Sanad, the Respondent No. 5 called upon the Petitioner-Company to hand over the land admeasuring 350.20 sq. meters in CTS No.354 (part) and to submit the claim for compensation for further necessary action. It is stated that the Petitioner-Company did not lodge the claim in accordance with Clause 5 of the Sanad, but entered into correspondence with the Respondent no.2 who was not competent to determine the compensation, as the subject land was not acquired under the provisions of the Land Acquisition Act. She stated that the Petitioner-Company can make a proper application for compensation in accordance with Clause 5 of the Sanad with the Office of the Respondent No.5 and that the same will be considered in accordance with law. She has pointed out that the previous acquisition was initiated under the provisions of the Land Acquisition Act, since the said acquisition was prior to issuance of Sanad in favour of the Petitioner-Company.

9. Shri Dani, the learned Senior Counsel for the Petitioner submits that pursuant to the application made by the Petitioner-Company, the

erstwhile Government, acquired the land under the provisions of Land Acquisition Act, 1894 and allotted the same to the Petitioner-Company to set up a tyre manufacturing unit at Bhandup, Mumbai. He submits that the Petitioner-Company has paid to the Government the cost of acquisition of the said land. The Government has allotted the land to the Petitioner-Company and issued a Sanad which clearly states that the acquired land vests in the Company subject to the provisions of the Maharashtra Land Revenue Code, 1966. Referring to the decisions of the *State of Uttar Pradesh vs. Hariram (2013) 4 SCC 280; and Satyendra Prasad Jain vs. State of Uttar Pradesh 1993 AIR SCW 3184* and drawing our attention to the meaning of the word 'vest' in Black's Law Dictionary and the Law of Lexicon, he contends that the word vest connotes transfer of title. It is urged that the Petitioner-Company being the absolute owner, the State is bound to initiate acquisition proceeding in respect of the land required for the public purpose and pay adequate compensation under the Right to Fair Compensation Act.

10. Per contra, Ms. Jyoti Chavan, the learned AGP contends that the

Petitioner-Company has been put in possession of the acquired land to set up a tyre manufacturing unit and the said allotment is subject to several restrictions including restriction to alienate the property. She contends that the Petitioner-Company is a occupant Class II under the Maharashtra Land Revenue Code. She submits that the Government being the owner of the acquired land is not enjoined to acquire its own land. She submits that as per the terms and conditions of the Sanad, the Government is entitled to call upon the Petitioner-Company to transfer the land required for public purpose. She submits that the Petitioner-Company is entitled for compensation as stipulated in Clause 5 of the Sanad and not under the provisions of the Right to Fair Compensation Act. She submits that the previous acquisition was initiated under the provisions of the Land Acquisition Act as the acquisition process had commenced prior to issuance of the Sanad.

11. We have perused the record and considered the rival submissions advanced by the learned Counsel for the respective parties. It is not in dispute that the Petitioner-Company had applied

to the erstwhile Government to allot land for setting up a tyre manufacturing unit at Bhandup. Pursuant to two separate agreements dated 15.10.1958 and 17.01.1969 entered with the Petitioner-Company, the Government acquired the land and upon payment of compensation under the Award, allotted the acquired land to the Petitioner-Company under Sanads dated 29.12.1969 and 23.6.1975. The Sanads state that the lands have been vested in the Petitioner-Company subject to the provisions of the Maharashtra Land Revenue Code. The Petitioner-Company has sought to construe the term 'vested' as transfer of ownership.

12. The word 'vest' or 'vested' has not been defined in any statute. However, in *State of Uttar Pradesh vs. Hari Ram (supra)* the Apex Court, while considering the question whether the deemed vesting of surplus land under Section 10(3) of the Urban Land (Ceiling and Regulation) Act, 1999 amounts to taking de facto possession, has considered the meaning of the word 'vest' and has held thus:

"25. The word "vest" or "vesting" has different meaning. Legal Glossary, published by Official Language (Legislative) Commission 1970 Edition at Page 302:

“Vest: 1. To give a person a legally fixed, immediate right or personal or future enjoyment of (an estate), to grant, endow, clothe with a particular authority, right of property, 2. To become legally vested; (T.P. Act.) “Vesting order: An order under statutory authority whereby property is transferred to and vested, without conveyance in some person or persons;”

26. Black’s Law Dictionary (Sixth Edition) 1990 at page 1563: “Vested: Fixed; accrued; settled; absolute; complete; Having the character or given the rights of absolute ownership; not contingent, not subject to be defeated by a condition precedent. Rights are “vested” when rights to enjoyment present or prospective has become property of some particular persons or persons as present interest; mere expectancy or future or contingent interest in property founded on anticipated continuance of existing laws does not continue “vested right” Vaughan v. Nadel; 228 Kan. 469, 618 p. 2d 778, 783. See also Accrue Vest and specific typed of vested interest infra.”

27. Webster’s Third New International Dictionary, of the English Language unabridged, Volume III S to Z at page 2547 defines the word “vest” as follow:

“vest” vest To place or give into the possession or discretion of some person or authority (the regulation of the waterways to give to a person a legally fixed immediate right of present or future enjoyment of (as an estate) (a deed that vests a title estate in the grantee and a remainder in his children), b. to grant endow, or clothe with a particular authority right or property to put (a person) in possession of land by the feudal ceremony of investiture to become legally vested (normally) title to real property vests in the holder of a property executed deed.)”

28. Vest/vested, therefore, may or may not include “transfer of possession” the meaning of which depends on the context in which it has been placed and the interpretation of various other related provisions”.

13. In **J.S.Yadav vs State Of U.P & Anr (2011) 6 SCC 570**, the Apex

Court has observed thus:-

21. The word "vest" is normally used where an immediate fixed right in present or future enjoyment in respect of a property is created. With the long usage the said word "vest" has also acquired a meaning as "an absolute or indefeasible right". It had a "legitimate" or "settled expectation" to obtain right to enjoy the property etc. Such "settled expectation" can be rendered impossible of fulfilment due to change in law by the Legislature. Besides this, such a "settled expectation" or the so-called "vested right" cannot be countenanced against public interest and convenience which are sought to be served by amendment of the law. (Vide: *Howrah Municipal Corpn. & Ors. v. Ganges Rope Co. Ltd. & Ors.*, (2004) 1 SCC 663).

22. Thus, "vested right" is a right independent of any contingency. Such a right can arise from a contract, statute or by operation of law. A vested right can be taken away only if the law specifically or by necessary implication provide for such a course."

14. In the *National Textile Corporation Ltd. vs. Nareshkumar Badrikumar Jagad and Ors* (2011) 12 SCC 69 the Apex Court has observed thus:-

"38. 'Vesting' means having obtained an absolute and indefeasible right. It refers to and is used for transfer or conveyance. 'Vesting' in the general sense, means vesting in possession. However, 'Vesting' does not necessarily and always means possession but includes vesting of interest as well. 'Vesting' may mean vesting in title, vesting in possession or vesting in a limited sense, as indicated in the context in which it is used in a particular provision of the Act. Word 'Vest' has different shades, taking colour from the context in which it is used. It does not necessarily mean absolute vesting in every situation and is capable of bearing the meaning of a limited vesting, being limited, in

title as well as duration. Thus, the word 'vest' clothes varied colours from the context and situation in which the word came to be used in the statute. The expression 'vest' is a word of ambiguous import since it has no fixed connotation and the same has to be understood in a different context under different set of circumstances. (Vide: [Fruit & Vegetable Merchants Union v. Delhi Improvement Trust](#), AIR 1957 SC 344 ; [Maharaj Singh v. State of Uttar Pradesh & Ors.](#), AIR 1976 SC 2602; [Municipal Corporation of Hyderabad v. P.N.Murthy & Ors.](#), AIR 1987 SC 802; [Vatticherukuru Village Panchayat v. Nori Venkatarama Deekshithulu & Ors.](#), 1991 Supp.

(2) SCC 228; [Dr. M. Ismail Faruqui etc. v. Union of India & Ors.](#), AIR 1995 SC 605 ; [Government of A.P. v. H.E.H. The Nizam](#), Hyderabad, (1996) 3 SCC 282 ; [K.V. Shivakumar & Anr. v. Appropriate Authority & Ors.](#), (2000) 3 SCC 485 ; [Municipal Corporation of Greater Bombay & Ors. v. Hindustan Petroleum Corporation & Anr.](#), AIR 2001 SC 3630 ; and [Sulochana Chandrakant Galande v. Pune Municipal Transport & Ors.](#), (2010) 8 SCC 467).

15. The aforesaid pronouncements make it clear that 'vesting' does not necessarily connote vesting in title but also includes vesting of interest, vesting in possession or vesting of right to enjoy the property, etc. Since the word 'vest' is of ambiguous import and has no fixed connotation, it would be necessary to refer to the relevant terms and conditions of the Sanad to understand the meaning of the word and the context in which it is used.

16. In this regard it is to be noted that the Sanads state that the

lands are vested in the Petitioner-Company and are held by the Petitioner-Company as its property to be used only in furtherance of and for the purpose for which it is acquired, namely for establishing the factory of the Petitioner-Company subject nevertheless to the payment of agricultural, non-agricultural or other assessment, if any, payable under the Maharashtra Land Revenue Code and the Rules framed thereunder. The Sanads impose restriction on the user of the land for any other purpose without prior written permission of the Government. The terms and conditions of the Sanad also stipulate that the Petitioner-Company is under an obligation to maintain lands and buildings constructed thereon in good condition, to the satisfaction of the Collector of Bombay and further to provide roads, parks and other amenities as per the directions issued by the Government from time to time. A condition is also imposed to permit the Government or any other officer authorized by the Government to inspect the lands and any works of the Petitioner-Company upon the said land whether in the course of construction or otherwise.

17. It is also stated that if the Company commits breach of any of the terms and conditions, the transfer of the land in favour of the Company would be treated as null and void and the lands would revert back to the Government with liberty to forfeit an amount not exceeding 1/4th of the amount paid by the Company towards cost of acquisition. It is stated that the Petitioner-Company is under an obligation to transfer the land to the Government when the land is required by the Government for public purpose. In lieu of such transfer the Government is liable to pay to the Petitioner-Company compensation, development charges etc. as stipulated in Clause 5 of the Sanad. It is also expressly stated in the Sanads that the Petitioner-Company would not be in any way alienate the lands or any portion thereof by way of sale, mortgage, gift, lease, exchange or otherwise except with the previous written permission of the Government.

18. A plain reading of the terms and conditions of the Sanad clearly indicate that the Government had acquired the land under the Land Acquisition Act and vested the same in favour of the Petitioner-

Company in accordance with the provisions of Maharashtra Land Revenue Code. The allotment of the land to the Petitioner-Company was for a specific purpose of setting up a tyre manufacturing unit. The Sanad restricts the user of the land and restrains the Petitioner-Company from dealing with the property or using the same for any other purpose without prior permission of the Government. The Government has also imposed absolute restraint on alienation of the land or any part thereof in any manner without prior permission of the Government. This restriction in particular clearly indicates that the Government had not vested absolute title in favour of the Petitioner-Company but had conferred on the Petitioner-Company the status of Class-II occupant. In terms of Section 2(23) r/w. Section 29 of Maharashtra Land Revenue Code, the occupant Class II is only a holder in actual possession of unalienated land in perpetuity subject to restrictions on right to transfer. The status of a Class II occupant cannot be equated with that of a owner. Hence, we are not inclined to accept the submissions of the learned Counsel for the Petitioner-Company that the Petitioner-Company is the absolute owner of the acquired land.

19. The next question is whether the Court is bound to acquire the land allotted to the Petitioner under a Sanad. In this regard, it will be advantageous to refer to the decision of the Apex Court in ***Inder Parshad vs. Union of India & Ors (1994) 5 SCC 239*** . The Appellant in this case had obtained a perpetual lease of nazul land from the Government of India which had retained its right to re-entry on breach of covenants. Subsequently the land was acquired for public purpose. The Collector had made a reference to the Civil Court for deciding the proportion for which the lessee and the Government were entitled to receive a compensation . The Civil Court had fixed the proportion as 67% and 33% respectively, which was modified by the High Court to 75% and 25% respectively. The Appellant had challenged the order of the High Court contending that the Government being the owner of the land could not acquire its own interest thereon, and that it was entitled to receive the entire compensation. The Apex Court, while upholding the judgment of the High Court has observed thus:

“5. In this case admittedly the Government being the

owner of the land, the appellant held the demised land as lessee with superstructure built thereon and was in possession and enjoyment of the same on the date of acquisition. The contents of the award extracted hereinbefore clearly indicate that the Land Acquisition Collector could not determine compensation payable towards the leasehold interest held by the appellant. Being an owner the Government is not enjoined to acquire its own interest in the land or land alone for public purpose. When its land is granted on lease in favour of a lessee its power to resume the land is subject to non-fulfillment of the terms and conditions of the lease by the lessee. So long as the lessee acts and complies with the covenants contained in the lease or the grant, the right to resumption in terms of the lease or grant would not arise. But when the land is required for public purpose, the Government should get absolute title thereof free from all encumbrances. Compensation becomes payable for the leasehold right or interest held

by the lessee or grantee when the land is acquired. The point becomes clear from the following illustrations. Take a case where the Government granted lease of agricultural land on the annual payment of rent with a covenant that the Government is entitled to resume the land when needed for public purpose or as when the Government finds that the land is required for public purpose. In terms of the covenants, the Government is entitled to exercise its option to determine the lease though the lessee has been complying with the condition of payment of annual premium or rent and resume the land in accordance with terms of the grant. In that event the need to take recourse to acquisition and to make compensation does not arise. Take a case where the Government granted the lease of the open land with, permission to the lessee to construct a building for his quiet enjoyment with appropriate covenants and the lessee with permission constructed the building and by complying with the covenants of

the lease was in quiet enjoyment. The self same property, when required for public purpose, the Government cannot unilaterally determine the lease and call upon the lessee to deliver the possession. Therefore, the Government is required to exercise the power of eminent domain by invoking the provisions under the Land Acquisition Act for getting such land. The Collector shall have to determine the compensation towards the leasehold interest held by the lessee, if assessable separately and determine the compensation. The lessee being the owner of the superstructure and the Government being the owner of the land, if compensation is determined for both the components, then the same has to be apportioned between them. At what proportion the lessor and the lessee are entitled to receive the compensation has to be determined. In the absence of any covenant in the lease for payment and in the absence of any specific data available to him, the Collector has to determine the respective shares at

which the compensation is to be apportioned between the Government and the lessee, the course open to the Land Acquisition Collector is to determine the total compensation, make an award and make a reference to the civil court under Section 30 for decision on appointment. Exactly that is the situation on the facts of this case.....”

20. In paragraph 8 of the judgment, the Apex Court after referring to the decision in ***Collector of Bombay v. Nusserwanji Rattanji Mistri*** ***AIR 1955 SC 298*** and considering the facts of the said case, has observed thus :

“...On those facts this Court held that if the Government has itself an interest in the land, it has only to acquire the other interests outstanding therein, so that it might be in a position to pass it on absolutely for public use. And the Act primarily contemplates all interests as held outside Government and directs that the entire compensation based upon the market value of the whole land must be

distributed among the claimants. When the Government possessed an interest in land which is the subject matter of acquisition, because there can be no question of Government acquiring what is its own, an investigation into the nature and value of that interest will no doubt be necessary for determining the compensation payable for the interest outstanding in the claimants but that would not make it the subject of acquisition.”

21. In the instant case, the Government has not transferred the title of the acquired land in favour of the Petitioner, but has only allotted the land to the Petitioner for setting up a tyre manufacturing factory. In normal circumstances, the Government could not have unilaterally resumed the land which was required for public purpose without invoking provisions of Land Acquisition Act and paying compensation to the Petitioner for the interest held by him or rights created in his favour in respect of such land. However the obligation on the part of the Government to acquire the land by invoking the provisions of Land Acquisition Act has been obviated by the Petitioner by accepting

the terms and conditions set out in Clause 5 of the Sanad, which reads thus:-

"If at any time or times the whole or any part of the said lands is required by Government for the purpose of making any new public road or for any purpose connected with public health, safety, utility or necessity (as to which matter the Company shall accept as final the decision of Government) the Company on being thereunto required by the Government in writing shall transfer to the Government the whole or part of the said land as the Government shall specify to be necessary for any of the aforesaid purposes and in consideration of such transfer Government shall pay to the Company a sum equal to the amount of compensation awarded under the said Act and paid by the Company in respect of land so transferred including the percentage awarded under Section 23(2) of the said Act, together with such amount as shall be estimated by the Executive Engineer, Presidency Division, whose decision in the matter shall be final as to the costs of the development of the land so transferred which shall include the value at the date of transfer of any structures standing thereon and when part of building lies on the land so transferred and part is on the adjoining land reasonable compensation for the injurious affection of the part of the building on the adjoining land."

22. A plain reading of this Clause clearly indicates that when the land or any part thereof is required for public purpose, the Petitioner-Company, on being called upon by the Government in writing, is bound to transfer such land to the Government. In consideration of

such transfer the Government is liable to pay to the Petitioner-Company a sum equal to the amount of compensation awarded under the said Act and paid by the Company in respect of land so transferred including the percentage awarded under Section 23(2) of the said Act together with costs of development, value of any structure and other components specified in clause 5 of the Sanad and as estimated by the Executive Engineer. The Petitioner-Company having accepted the allotment of the land under the Sanad is bound by the terms and conditions stipulated in the Sanad. The law in this regard is well settled. A reference in this regard can be made to the decision of the Apex Court in *New Bihar Biri Leaves Company and Ors. vs. State of Bihar and Ors.(1981) 1 SCC 537* wherein it is observed thus:-

"48. It is a fundamental principle of general application that if a person of his own accord, accepts a contract on certain terms and works out the contract, he cannot be allowed to adhere to and abide by some of the terms of the contract which proved advantageous to him and repudiate the other terms of

the same contract which might be disadvantageous to him. The maxim is qui approbat non reprobat, (one who approbates cannot reprobate). This principle, though originally borrowed from Scots Law, is now firmly embodied in English Common Law. According to it, a party to an instrument or transaction cannot take advantage of one part of a document or transaction and reject the rest. That is to say, no party can accept and reject the same instrument or transaction (Per Scrutton L.J. Verschures Creameries, Ltd. v. Hull & Netherlands Steamship Co.; See Douglas Menzies v. Umphelby; See also Stroud's Judicial Dictionary, Vol. I, page 169, 3rd Edn.).

23. In the instant case, the Petitioner-Company having voluntarily accepted the terms and conditions of the allotment as stipulated in Sanad, the State Government is not liable to acquire the land or pay the compensation to the Petitioner-Company under the provisions of the Right to Fair Compensation Act. In our considered view,

issuance of writ of mandamus would result in permitting the Petitioner-Company to wriggle out of its obligation under Clause 5 of the Sanad. Suffice it to say, the writ of mandamus cannot be issued to avoid obligation under the contract. Hence the writ of mandamus as prayed for cannot be issued.

24. It is to be noted that the Petitioner-Company has already surrendered the possession of the land admeasuring 357.9 sq.meters from CTS No.354 under possession receipt dated 30.06.2006, copy of which is annexed to the Petition at Exhibit-I. The Government was therefore bound to pay to the Petitioner-Company compensation as stipulated in clause 5 of the Sanad. It is not in dispute that the Government has not paid the compensation in respect of the said land under the premise that the Petitioner-Company had not raised its claim for compensation. Clause 5 of the Sanad does not necessitate raising of such claim but cast an obligation on the Government to quantify the compensation as stipulated therein. The Government was therefore not justified in not paying the compensation. Be that as it may, in the affidavit-in-reply, the Deputy

Collector has stated that the Petitioner-Company can file an application for compensation in accordance with clause 5 of the Sanad with the office of the Respondent No.5 and that the same will be considered in accordance with law.

25. Considering the above, we grant liberty to the Petitioner-Company to file an Application for compensation in terms of Clause 5 of the Sanad before the Respondent No.5 within a period of two weeks from the date of this order. The Respondent No.5 shall determine the compensation in accordance with Clause 5 of the Sanad and pay the compensation to the Petitioner-Company within a period of ten weeks from the date of receipt of the Application.

26. With the aforesaid directions, the Petition is dismissed. Rule is discharged.

(ANUJA PRABHUDESSAI, J.)

(A.A.SAYED, J.)