A STATE OF WEST BENGAL AND OTHERS

v.

CALCUTTA MINERAL SUPPLY CO. PVT. LTD.

AND ANOTHER

B

(Civil Appeal Nos. 2548 of 2006)

MAY 06, 2015

[M.Y. EQBAL AND AMITAVA ROY, JJ.]

C *West Bengal Estates Acquisition Rules, 1954 – Schedule 'F' – Clause 1A and 1B – Transfer of leasehold interest – Liability to pay salami – Held: In case of transfer of leasehold interest, the transferree shall not be liable to pay salami during the unexpired period of lease – However, after* D *the expiry of the existing period of lease the transferee shall be liable to pay salami @ Rs.15000 per hectare before the lease is further renewed – West Bengal Estates Acquisition Act, 1953.*

E *West Bengal Estates Acquisition Act, 1953: ss.6(1)(g) and 6(3) – Resumption of land as surplus – High Court set aside order of resumption – Held: Respondent at all point of time held the land within the ceiling limit – High Court rightly set aside resumption order.*

F

Disposing of the appeals, the Court

HELD: Civil Appeal No.2549 of 2006

G **1.1. Indisputably, the renewal of lease is a fresh grant where the principal lease executed between the parties containing a clause that the lease shall have to be renewed by giving a fresh grant in accordance with the said clause. In the instant case, as per clause 16(a) of** H **the earlier lease deed, the lease is to be renewed for a**

further period of 30 years but subject to the rules and the terms and conditions of the lease and also such other terms and conditions as the State Government may from time to time consider it necessary to impose and include in such renewed lease. Clause 16(a) further provides that additional terms and conditions that may be considered necessary by the State Government be included but the same shall not be inconsistent with the law renewing such lease and shall not have retrospective effect. The State Government by notification dated 1.6.1994 brought amendment in the Rules by incorporating two more conditions i.e. paragraph 1A and 1B. As per the additional condition, in case of fresh lease granted by the State in respect of tea garden, the lessee shall be liable to pay *salami* at the rate of Rs. 15,000/- per hectare of the land leased out. However, paragraph 1-B made it clear that in case of transfer of leasehold interest, the transferee shall not be liable to pay *salami* during the unexpired period of lease, but after the expiry of the existing period of lease the transferee shall be liable to pay *salami* at the rate of Rs. 15,000/- per hectare before the lease is further renewed. [Paras 29, 30] [250-B-G]

1.2. Admittedly, before the expiry of the lease in question in 1998, the respondent/transferee stepped into the shoes of the original lessee in the year 1990. In 1994, by notification dated 1.6.1994, an amendment was brought in Schedule F of the Rules, in terms of clause I-B. Therefore, the respondent shall not be liable to pay *salami* during the unexpired period of lease up to 1998. The State Government has rightly not made any claim for *salami* for the unexpired period of lease, but for the fresh renewal of lease after 1998 which is a fresh grant. The demand of *salami* by State Government for according

A sanction for renewal of lease cannot and shall not by any stretch of imagination be held to be retrospective. The respondent Darjeeling Dooars Plantations is liable to pay *salami* which is one of the conditions of the Rules for the purpose of renewal of lease. The demand made B by the Collector is fully justified. [paras 31, 35] 250-G-H; 251-A-B; 253-D]

Civil Appeal No.2548 of 2006

2. In this case, indisputably the respondent was in C possession of the land measuring about 4.54 acres comprised in a factory or mill together with structures when WBEA Act came into force in 1954. After the said Act of 1953 came into effect, the company was allowed to retain all the lands comprised in the factory by the D respondent by reason of Section 6(1)(g) read with Section 6(3) of the Act as the State Government was of the opinion that the Company required all the lands for the purpose of the factory. It is also not in dispute that at E all point of time the respondent-company was holding the land of factory within the ceiling limit as provided under the WBEA Act and West Bengal Land Reforms Act. After coming into effect of the said Act, no order was passed by the concerned authority against the F respondent since the land held by it was well within the ceiling limit. Having regard to the facts of the case of the respondent and also regard being had to the fact that the respondent at all point of time held the land within the ceiling limit, the High Court rightly set aside order G passed by the Special Secretary upholding the notice issued by the Sub-Divisional, Land and Land Reforms Officer. [paras 36 to 38] [253-G-H; 254-A-C; 255-F-G]

New Horizons Ltd. vs. Union of India (1995) 1 SCC 478: H 1994 (5) Suppl. SCR 310; *State of U.P. vs. Lalji Tandon* (2004) 1 SCC 1: 2003 (5) Suppl. SCR 77; *Gajraj Singh*

& ors. vs. State Transport Appellate Tribunal & Ors. **(1997) 1 SCC 650: 1996 (6) Suppl. SCR 172**; *M.C. Mehta vs. Union of India & Ors.* **(2004) 12 SCC 118: 2004 (3) SCR 128 – referred to.**

Case Law Reference

1994 (5) Suppl. SCR 310	**referred to.**	**Para 26**
2003 (5) Suppl. SCR 77	**referred to.**	**Para 32**
1996 (6) Suppl. SCR 172	**referred to.**	**Para 33**
2004 (3) SCR 128	**referred to.**	**Para 34**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2548 of 2006

From the Judgment and Order dated 06.10.2005 of the Calcutta High Court in W.P.L.R.T No. 180 of 2002

WITH

Civil Appeal No. 2549 of 2006

Rakesh Dwivedi, Sansriti Pathak, Saakaar Sardana, Anip Sachthey for the Appellants.

Jaideep Gupta, A. K. Ganguli, Utpal Majumdar, Dipak Kumar Jena, Minakshi Ghosh Jena, Jalandhar Das, Sanjay Bose, Sangeeta Mandal, Arijit Mazumdar, Vijay Kumar, Shantanu Bansal (for Fox Mandal & Co.) for the Respondents.

The Judgment of the Court was delivered by

M. Y. EQBAL, J. 1. These appeals by special leave are directed against the common judgment and order dated 6.10.2005 of the Calcutta High Court, whereby Division Bench of the High Court allowed the writ petitions preferred by the respondents herein against the decision of the West Bengal Land Reforms and Tenancy Tribunal (in short, 'the Tribunal')

A dismissing their original applications moved against the respective order passed by the Government of West Bengal resuming the lands held by them.

2. By the impugned judgment, the High Court has B disposed of three writ petitions primarily observing that although the facts are different there are certain communions of identity within the question to be answered and certain common principles of law are involved in the writ petitions.

C 3. In the matter of Calcutta Mineral Supply Co. Pvt. Ltd. (being Civil Appeal No.2548 of 2006), the respondent-writ petitioner held the land measuring about 4.54 acres comprised in a factory or mill together with structures even before the West Bengal Estates Acquisition Act, 1953 (in short, 'WBEA Act') D came into force. Factual matrix of this case is that as a result of notification under Section 4 and effects thereof under Section 5 of the WBEA Act all the land comprised in factory vested in the State. However, by reason of Section 6(1)(g) read with Section 6(3) of that Act, the Company was allowed E to retain all the lands comprised in factory as the State Government was of the opinion that the Company required all the lands for the purpose of the factory.

4. However, in 1996, it came to the notice of the State F Government that the Company had alienated almost half of the land and no land was being used for the purpose of the factory, which remained closed since 1993. In exercise of the power conferred on it by the proviso to Section 6(3) of the Act, the State Government by order dated 2nd April, 1996 revised G the order and resumed 3.76 acres of land as surplus as in the opinion of the State Government the company did not require the land for the purpose of running its factory. The Company challenged that order by way of a writ petition, which stood transmitted to the aforesaid Tribunal and was dismissed. H Aggrieved by the decision of the Tribunal, the Company

preferred writ petition before the High Court. The Division Bench of the High Court set aside order of the Tribunal holding that order dated 2nd April, 1996 was not a speaking order and directing the State Government to consider the matter afresh. Thereafter, Special Secretary of the State Government passed speaking order directing resumption of the land allowed to be retained by the respondent-Company. This order was challenged by the respondents, but the Tribunal dismissed their application.

5. Aggrieved by the decision of the Tribunal, Company again moved the High Court by way of a writ petition, which was allowed by the Division Bench of the High Court by the impugned judgment. The High Court quashed the order of resumption passed by the State Government as also the judgment of the Tribunal and held that the exercise of power under the WBEA Act in the instant case was without jurisdiction and that the respondents having held land within the ceiling limit had acquired the status of raiyat with heritable and transferable right and cannot be subjected to Section 14-Z of the West Bengal Land Reforms Act.

6. In the matter of Darjeeling Dooars Plantations (Tea) Ltd. (being Civil Appeal No.2549 of 2006), the tea estate known as Zurantee Tea Estate (Zurantee) was leased out by the Government of West Bengal in favour of Chulsa Tea Company (in short, 'Chulsa') being limited for a period of 30 years on 30th January, 1975. In the record of right prepared under the WBEA Act, the land was recorded to have been permitted to be retained under Section 6(3) of the WBEA Act. The original lease was granted on 1st April, 1924 and expired before the WBEA Act came into force. In 1976, Chulsa sold Zurantee to Darjeeling Dooars Plantations (Tea) Ltd. (in short, 'respondent-Company').

A 7. By an order dated 25th August, 1976, the tea estate was mutated in favour of respondent-Company. In a Company Petition of 1990, High Court had allowed a scheme of amalgamation between the respondent-Company, the transferor, and Karala Valley Tea Co. Ltd. (in short, 'Karala'), B the transferee, under which Scheme, the name of transferee Karala was changed to Darjeeling Dooars and all rights, title and interest of Darjeeling Dooars vested in it. Subsequently by an order dated 18th November, 1991, the Land Registration Collector allowed mutation of the name in respect of Zurantee C in favour of Darjeeling Dooars.

8. The Government of West Bengal issued a notification on 1st June, 1994 amending Schedule 'F' of the WBEA Rules inserting Clause 1A and 1B to be incorporated in the lease D requiring payment of *salami* of Rs.15,000/- per hectare of land leased out before further renewal of the lease in cases renewal was asked for by a transferee allowing the transferee to enjoy the balance period of the lease transferred. The respondent-Company applied for the renewal of lease of the Zurantee for E a period of 30 years on 10th March, 1998 and a deed renewing the lease was executed on 12th March, 1998 in favour of the respondent-Company. In March, 2002, the Collector demanded a sum of Rs.1,10,50,200/- as *salami* in respect of F renewal of the said lease pursuant to the amended clause, which was challenged by the respondent-Company before the Tribunal. Upon the matter being remanded by the Tribunal, the Collector again held that the respondent-Company was liable to pay *salami* and directed the Company to deposit the G same. The respondent-Company again moved before the Tribunal by way of an application, which was dismissed. The Tribunal upheld the notification imposing *salami* on transfer of tea estate. Aggrieved by the order, the respondent-Company moved the High Court by way of writ petition, which was allowed H by the Division Bench of the High Court by the impugned

judgment. Holding that the respondent-Company was entitled to renewal of the lease without payment of *salami*, the High Court quashed the order of the Tribunal as well as the order of the Collector and the letter of demand.

9. Hence, these two appeals by special leave have been preferred by the State Government and its functionaries under Article 136 of the Constitution.

10. Now we shall discuss the facts and law applicable thereto separately for better appreciation of the case of the parties.

Civil Appeal No.2549 of 2006

(Collector, Jalpaiguri and another vs. Darjeeling Dooars Plantations (Tea) Ltd. and another)

11. Admittedly in the year 1924, the appellant granted a lease of the property for a period of 30 years, which expired in 1954. The respondent continued in possession till 1974 when a fresh lease deed was executed on 30.1.1975 in favour of Chulsa Tea Company Limited in respect of Zurantee Garden. The lease was made effective from 25.3.1968. Some of the terms and conditions of the lease which are relevant in the present case, are as under:

"(4)(a) That the Lessee/Lessees shall at all times observe and conform to the relevant provisions of the West Bengal Estates Acquisition Rules for the time being in force.

(b) That in respect of land comprised in a forest the Lessee/Lessees shall be subject to the control and supervision of the State Government.

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(13) (a) That the Lessee shall not transfer, whether in full or in part, or club or amalgamate tea-gardens without the formal sanction of the Collector;

A Provided that except in cases where the provisions of the West Bengal Alienation of Land (Regulation) Act, 1960 (West Bengal Act XVI of 1960), apply, no such sanction shall be necessary for equitable mortgage of a tea-garden with a Scheduled Bank by the deposit of title
B deeds. All such equitable mortgages shall, however, be referred to the Collector immediately.

(b) That the lease-hold interest shall be heritable.

C (c) That in the case of a transfer of such lease-hold interest, whether in full or in part, the same shall be subject to the provision of any law for the time being in force and applicable thereto and also subject to prior consent of the Collector.

D

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(16) (a) That the Lessee/Lessees shall be entitled to the renewal of the lease for a further period of thirty years and to successive renewals for similar periods, subject
E to the rules and the terms and conditions of this lease and the such other terms and conditions as the State Government may from time to time consider it necessary to impose and include in such renewed lease or leases
F and subject further to such rent as may then be fixed, provided that such additional terms and conditions shall not be inconsistent with the law regulating such lease and shall not have retrospective effect."

12. From the aforementioned terms and conditions
G contained in the lease deed of 1975, it is clear that the respondent lessee shall observe and conform to the relevant provisions of the West Bengal Estates Acquisition Rules for the time being in force. Clause 13(a) further provides that the lessee shall not transfer without the formal sanction of the
H Collector and Clause 13(c) provides that the transfer shall be

subject to any law for the time being in force and also subject to prior consent of the Collector. A

13. Clause 16(a) of the lease deed contains a renewal clause according to which the lessee shall be entitled to the renewal of the lease for a further period of thirty years and to successive renewals for similar periods, subject to the rules and the terms and conditions of this lease and also such other terms and conditions as the State Government may from time to time consider it necessary to impose and include in such renewed lease or leases and subject further to such rent as may then be fixed. However, such additional terms and conditions shall not be inconsistent with the law regulating such lease and shall not have retrospective effect. B C

14. Indisputably, during the subsistence of the lease, the respondent Darjeeling Dooars Plantations (Tea) Ltd. and the Karala Valley Tea Company were amalgamated and all the properties, rights and interest stood transferred to the respondent Darjeeling Dooars Plantations (Tea) Ltd. by the order passed by the Calcutta High Court on 31.10.1990 in a Company petition. It is also not in dispute that the name of the respondent Darjeeling Dooars Plantations (Tea) Ltd. was mutated by the order of the Collector dated 28.11.1991. D E

15. Originally the lease was granted in the year 1924 for a period of 30 years. Before the expiry of the period of lease, the West Bengal Estates Acquisition Act, 1953 came into force in the State of West Bengal. According to Section 4 of the Act, all estates and the rights of every intermediary in each such estate stood vested in the State free from all encumbrances with effect from the date of notification time to time issued by the State Government. Section 5 of the said Act deals with the effect of the notification. Section 6 of the said Act lays down the provisions with regard to right of intermediary to retain certain lands. Section 6 reads as under: F G H

A "6. (1) Notwithstanding anything contained in sections 4 and 5, an intermediary shall, except in the cases mentioned in the proviso to sub-section (2) but subject to the other provisions of that sub-section, be entitled to retain with effect from the date of vesting—

B (a) xxxxxxxxxx
(b) xxxxxxxxxx
(c) xxxxxxxxxx
(d) xxxxxxxxxx
C (e) xxxxxxxxxx

(f) subject to the provisions of sub-section (3), land comprised in tea gardens or orchards or land used for the purpose of livestock breeding, poultry farming or dairy;

D (g) xxxxxxxxxx
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(2) An intermediary who is entitled to retain possession of any land under sub-section (1) shall be deemed to hold such land directly under the State from the date of
E vesting as a tenant, subject to such terms and conditions as may be prescribed and subject to payment of such rent as may be determined under the provisions of this Act and as entered in the record-of-rights finally published under Chapter V except that no rent shall be payable for
F land referred to in clause (h) or (i) :

Provided that if any tank fishery or any land comprised in a tea-garden, orchard, mill, factory or workshop was held immediately before the date of vesting under a lease,
G such lease shall be deemed to have been given by the state Government on the same terms and conditions as immediately before such date subject to such modification therein as the State Government may think fit to make.

(3) In the case of land comprised in a tea-garden, mill,
H factory or workshop the intermediary, or where the land

is held under a lease, the lessee, shall be entitled to retain only so much of such land as, in the opinion of the State Government, is required for the tea-garden, mill factory or workshop, as the case may be, and a person holding under to be an intermediary:

Provided that the State Government may, if it thinks fit so to do after reviewing the circumstances of a case and after giving the intermediary or the lessee, as the case may be, an opportunity of being heard, revise any order made by it under this sub-section specifying the land which the intermediary or the lessee shall be entitled to retain as being required by him for the tea-garden, mill, factory or workshop, as the case may be.

Explanation:—The expression "land held under a lease" includes any land held directly under the State under a lease.

Exception:-In the case of land allowed to be retained by an intermediary or lessee in respect of a tea-garden, such land may include any land comprised in a forest if, in the opinion of the State Government, the land comprised in a forest is required for the tea-garden."

16. Reading relevant provisions of Section 6, it is manifest that an intermediary, in possession of the land including tea garden, shall be entitled to retain subject to the provisions contained in sub-section (3) of Section 6 of the said Act. Sub-section 3 very clearly provides that the lessee in possession of tea garden etc. shall continue and shall be deemed to be an intermediary.

17. Section 59 of the WBEA Act empowers the State Government to frame rules for carrying out the purpose of the Act. Section 59 of the Act reads as under:

"Section 59 - Power to make rules

A (1) The State Government may, after previous publication, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or
B any of the matters which, under any provision of this Act, are required to be prescribed or to be provided for by rules."

18. In exercise of the power conferred by Section 59 of
C the Act, the West Bengal Estates Acquisition Rules, 1954 was framed and the same was published in the official Gazette vide Notification dated 28.5.1954. Rule 4 of the said Rules *inter alia* provides that the land retained by an intermediary under the provisions of sub-section (1) of Section 6 shall be
D held by him from the date of vesting on the terms and conditions specified in the Rules. So far as the tea garden is concerned, it has been specifically provided that an intermediary shall hold such land on the terms and conditions set out in Schedule F appended to the Rules. Therefore, for better appreciation,
E Schedule F and the Form-1 for the purpose of granting lease for tea garden have been reproduced here.

"SCHEDULE F

F [Rule 4]

1. Land comprised in a tea garden retained by an intermediary under sub-section (1), read with sub-section (3), of section 6 shall be deemed to be held directly under the State from the date of vesting as a tenant [until a lease
G is granted in Form I appended to this schedule, on such terms and conditions as may be specified by the Collector in a summary settlement, and thereafter, on a lease being granted in Form I appended to this schedule, on the terms and conditions specified in such lease].
H There shall be a lease in Form I in respect of each such

intermediary, and the same shall be registered and numbered in the office of the Collector.

1A xxxxxxxxxxxxxxxxxxx

1B xxxxxxxxxxxxxxxxxxx

2. The first lease shall be given from the date of the order under sub-section (3) of section 6 or from the date of the determination of the rent under section 42, whichever is later."

19. By Notification dated 1.6.1994 issued by the Government of West Bengal, Land & Land Reforms Department, an amendment has been brought in Schedule F to the said Rules discussed hereinabove. By the said notification, two sub-paragraphs being 1A and 1B were inserted, which are reproduced hereunder:

"1A. When the lease of a tea garden is determined and the tea garden is leased afresh to a new lessee, the later shall be liable to pay *salami* at the rate of Rs.15,000/- per hectare of the land leased out.

1B. In case of a transfer of the leasehold interest, except by way of inheritance, the transferee shall not be liable to pay *salami* during the unexpired period of the lease. On the expiry of the transferred lease, he shall be liable to pay *salami* at the rate of Rs.15,000/- per hectare of the land leased out before the lease is further renewed."

20. In Clause (13), sub-clause (dd) was also inserted, which is quoted hereinbelow:

"(dd) That the transferee, other than by inheritance, shall be required to enter into a fresh lease on payment of *salami* at the rate laid down in paragraph 1B of Schedule F within three months of expiry of the unexpired period of lease."

21. It is therefore manifest that when a lease of the tea garden is determined by efflux of time and a lease is granted afresh to new lessee, the latter shall be liable to pay *salami* at the rate of Rs.15,000/- per hectare of the land leased out. Clause 1B also provides that the transferee shall not be liable to pay *salami* during the unexpired period, but on the expiry of the lease, he shall be liable to pay *salami* at the rate of Rs.15,000/- per hectare of the land leased out before the lease is further renewed.

22. Admittedly, the lease of 1975, which became effective from 1968, got expired in the year 1998. The respondent then approached the Government for renewal of the lease. The Collector prepared a lease deed incorporating the terms and conditions contained in the earlier lease and referred it to the Government for final approval. The request of the respondent for grant of lease was considered by the Government and by order as contained in letter dated 5.10.2001, addressed to the District Magistrate & Collector, Jalpaiguri, informed that the Government will accord post facto approval to the renewal of the lease for a further period of 30 years on payment of *salami* of Rs.15,000/- per hectare. The letter dated 5.10.2001 is reproduced hereunder:

"Government of West Bengal

Land and Land Revenue Department

Land Reforms Branch

L.R. Bench

No.4051-LR/3T-69/04

Dated, Kolkata, the 5th October, 2001

From: The Deputy Secretary to the Govt. of West Bengal

To: The District Magistrate & Collector, Jalpaiguri, P.O. & Dist. Jalpaiguri.

Sub: Proposal for post-factor approval to the renewal of lease of the land comprised in Zurantee Tea Garden in Jalpaiguri District.

The undersigned is directed to refer to the above subject and to say that post-facto approval to the renewal of lease of the land comprised in Zurantee Tea Garden for the period of 30 years in favour of M/s. Darjeeling Dooars Plantation (Tea) Limited will be accorded after *salami* @ Rs.15,000/- per hectare and other dues, if any, are realized from the concerned Company. Till such post-facto approval is accorded, renewal accorded by him will remain inoperative.

He is, therefore, requested to realize all the dues and report compliance thereof to the Department with the certificate that there is no arrear dues from the concerned companies so as to enable the Govt. in the Land & Land Reforms Department to accord necessary post-facto approval as so proposed by him.

He is also requested to furnish the copy of relevant documents particularly the copy of the High Court's order and copy of certificate of incorporation issued by the Registrar of Companies based on which Mutation case no. IV-5 of 1991-92 was finalized and mutation was allowed.

Sd/-

Deputy Secretary to the Govt. of West Bengal"

23. In pursuance to the decision taken by the State Government, an order was passed by the Collector, Jalpaiguri dated 29.11.2002 directing the respondent to deposit Rs.15,000/- per hectare as *salami* at the time of renewal before according approval of the Land & Land Revenue Department. The order was communicated to the respondent and the same

A came to be challenged before the Land Reforms and Tenancy Tribunal. The respondent sought a declaration that the Notification dated 1.6.1994 and amendments of the Rules in Schedule F and Form 1 thereto are illegal and unconstitutional. The said application was rejected by the Tribunal. However, B by the impugned order, the High Court allowed the writ petition and quashed the order of the Tribunal.

24. We have heard Mr. Rakesh Dwivedi, learned senior counsel appearing for the appellant-State and Mr. A.K. Ganguli, C learned senior counsel appearing for the respondent-Company in Civil Appeal No.2549 of 2006.

25. Mr. Dwivedi assailed the order of the High Court as being contrary to the facts of the case and mis-appreciating D the status of the respondent by recognizing it as a lessee and not as a transferee. Mr. Dwivedi submitted that Clause 1A and 1B, as inserted by the amendment, will apply on its own course as even the inclusion of these clauses in the lease deed is not necessary. According to the learned counsel, Clause E 16(a) was already there in the previous lease and as per the said clause additional conditions to the subsequent lease can be included. Mr. Dwivedi submitted that post facto sanction by the State Government is a pre-condition for payment of *salami* and for that reason the lease deed executed by the F respondent was signed by the Collector and forwarded to the State Government for sanction. According to Mr. Dwivedi, renewal of lease is a fresh one and lessor, namely the State, is entitled to include additional terms and conditions in the said document of lease.

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26. Mr. A.K. Ganguli, learned senior counsel appearing for the respondent, on the other hand contended that the lease granted to the predecessor-in-interest of the respondent is statutory lease governed by the Act and the Rules made H thereunder and unless and until the amendments brought in by

the notification dated 1.6.1994 and incorporated in Form 1, *salami* cannot be realised. According to the learned counsel, the respondent-Company came into existence much before the transfer of the leasehold interest, by virtue of amalgamation and the order passed by the High Court in the Company Petition. According to Mr. Ganguli, the respondent is in the nature of joint venture Company. Learned senior counsel relied upon decision of this Court in the case of ***New Horizons Ltd. vs. Union of India*** (1995) 1 SCC 478 and in the case of ***State of U.P. vs. Lalji Tandon***, (2004) 1 SCC 1.

27. Perusal of the impugned order passed by the High Court would show that although the High Court took notice of clause 16(a) of the lease deed and amendment brought in the Schedule F and Form 1 of the Rules it came to the following conclusion:

> "22.1. These terms of renewal are clear and unambiguous and these are terms exactly, which is provided in Schedule "F" Form-I of the WBEA Rules. In terms of the conditions contained in Clause 16(a), the State Government/lessor was entitled to incorporate additional terms and conditions consistent with the law regulating the lease with prospective effect in the renewed lease. This lease was granted in terms of Rule 4 of the WBEA Rules in terms of Schedule "F" in Form-I. The State is entitled only to incorporate additional conditions in the renewed lease with prospective effect. Therefore, the amendment, if any, incorporated in Schedule "F" by reason of the amendment effective from 1st of June, 1994 would not be effective in respect of unexpired period of the lease to which the Darjeeling Dooars had stepped into. Therefore, under Clause 16(a) read with Schedule "F", Darjeeling Dooars was entitled to renewal of the lease on the same terms and conditions. The amendment brought about could not be given retrospective effect to affect the right of the

A lessee/transferee stepping into the shoes of the transferor-lessee to obtain further renewal of the lease for further period of 30 years and to successive renewals for similar periods. The only liberty the State Government had under the said clause is that it can impose and include
B in the said renewed lease additional terms and conditions not inconsistent with Rule 4 Schedule "F" and Form-I of the WBEA Rules without retrospective effect.

22.2. Therefore, the amendment brought about in
C Schedule "F" could be incorporated in the renewed lease and was so rightly incorporated in the 1998 lease. As such the conditions so incorporated became part of the renewed lease and would govern the terms and conditions of the renewed lease and that too
D prospectively. These additional terms and conditions incorporated in the renewed lease became effective after the lease was renewed, namely when the right to renew the lease was exercised and upon such exercise the right came to an end and the renewal of the lease being a
E fresh lease, these terms cannot operate to affect a situation prior to the renewal of the lease. In terms of these additional conditions, the *salami* is payable in consideration of the renewal after the expiry of the renewed lease containing the terms. A term, which was
F not in existence in the lease sought to be renewed within the scope of Clause 16(a), could not govern the right of the lessee to obtain renewal of the right or the State to impose conditions for renewal on the basis of Clause 16(a) of the 1975 lease, as was held in Delhi
G Development Authority v. Durga Chand Kaushish [1974] 1 SCR 535 .

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22.4. The amendment also does not provide that the
H amended clauses would have retrospective operation.

In any event, the terms of the lease cannot be substituted even by legislation. No vested right, particularly, in respect of fiscal or revenue matters already accrued could be taken away through legislation; neither any legislation in that respect could be retrospective in operation.

Conclusion:

23. In these circumstances, the additional terms contained in the renewed lease would be effective at the time of renewal of the renewed lease entitling the State of demand *salami* in terms of Clause 1B from the transferee if there is any transfer. However, *salami* can be demanded by the State under Clause 1A upon determination of the lease from the person to whom the fresh lease is granted after the 1994 Amendment of the WBEA Rules even if Clause 1A was not incorporated in the lease determined.

23.1. In these circumstances, the Government is not entitled to demand *salami* in terms of Clauses 1A or 1B incorporated in the renewed lease as a consideration for the 1998 renewal from the Darjeeling Dooars. Such a demand is inconsistent with the law regulating such lease and cannot be retrospective in effect."

28. We have given our anxious consideration to the reasoning assigned by the High Court while arriving at such conclusion. In our view, the High Court has misconstrued and misinterpreted the relevant provisions contained in the Rules viz-a-viz the condition of renewal as contained in clause 16(a) of the lease deed. The High Court has committed error of law in holding that the amendment brought about could not be given retrospective effect to affect the right of the lessee/transferee stepping into the shoes of the transferee/lessee to obtain further renewal of lease for a further period of 30 years and to successive renewals for similar periods. The High Court is

not correct in law in holding that the amended clause would have retrospective operation.

29. Indisputably, the renewal of lease is a fresh grant where the principal lease executed between the parties containing a clause that the lease shall have to be renewed by giving a fresh grant in accordance with the said clause. In the instant case, as per clause 16(a) of the earlier lease deed, the lease is to be renewed for a further period of 30 years but subject to the rules and the terms and conditions of the lease and also such other terms and conditions as the State Government may from time to time consider it necessary to impose and include in such renewed lease. Clause 16(a) further provides that additional terms and conditions that may be considered necessary by the State Government be included but the same shall not be inconsistent with the law renewing such lease and shall not have retrospective effect.

30. As noticed above, the State Government by notification dated 1.6.1994 brought amendment in the Rules by incorporating two more conditions i.e. paragraph 1A and 1B. As per the additional condition, in case of fresh lease granted by the State in respect of tea garden, the lessee shall be liable to pay *salami* at the rate of Rs. 15,000/- per hectare of the land leased out. However, paragraph 1-B made it clear that in case of transfer of leasehold interest, the transferee shall not be liable to pay *salami* during the unexpired period of lease, but after the expiry of the existing period of lease the transferee shall be liable to pay *salami* at the rate of Rs. 15,000/- per hectare before the lease is further renewed.

31. Admittedly, before the expiry of the lease in question in 1998, the respondent/transferee stepped into the shoes of the original lessee in the year 1990. In 1994, by notification dated 1.6.1994, an amendment was brought in Schedule F of the Rules, as discussed hereinabove, in terms of clause I-B.

Therefore, the respondent shall not be liable to pay *salami* during the unexpired period of lease up to 1998. The State Government has rightly not made any claim for *salami* for the unexpired period of lease, but for the fresh renewal of lease after 1998 which is a fresh grant. The demand of *salami* by State Government for according sanction for renewal of lease cannot and shall not by any stretch of imagination be held to be retrospective.

32. In the case of ***State of U.P. vs. Lalji Tandon,*** (2004) 1 SCC 1, this Court while considering the renewal clause in the lease deed observed:-

> **"13.** In India, a lease may be in perpetuity. Neither the Transfer of Property Act nor the general law abhors a lease in perpetuity. (*Mulla on the Transfer of Property Act*, 9th Edn., 1999, p. 1011.) Where a covenant for renewal exists, its exercise is, of course, a unilateral act of the lessee, and the consent of the lessor is unnecessary. (*Baker* v. *Merckel*, also Mulla, *ibid.*, p.1204.) Where the principal lease executed between the parties containing a covenant for renewal, is renewed in accordance with the said covenant, whether the renewed lease shall also contain similar clause for renewal depends on the facts and circumstances of each case, regard being had to the intention of the parties as displayed in the original covenant for renewal and the surrounding circumstances. There is a difference between an *extension of lease* in accordance with the covenant in that regard contained in the principal lease and *renewal of lease*, again in accordance with the covenant for renewal contained in the original lease. In the case of extension it is not necessary to have a fresh deed of lease executed, as the extension of lease for the term agreed upon shall be a necessary consequence of

A the clause for extension. However, option for renewal consistently with the covenant for renewal has to be exercised consistently with the terms thereof and, if exercised, a fresh deed of lease shall have to be executed between the parties. Failing the execution of a fresh deed
B of lease, another lease for a fixed term shall not come into existence though the principal lease in spite of the expiry of the term thereof may continue by holding over for year by year or month by month, as the case may be."

C 33. In the case of ***Gajraj Singh & ors. vs. State Transport Appellate Tribunal & ors.,*** (1997) 1 SCC 650, this Court while considering the term renewal of lease or licence contained in document, observed that "grant of renewal is a fresh grant though it breathes life into the operation of the
D previous lease or licence granted as per existing appropriate provisions of the Act, rules or orders or acts intra vires or as per the law in operation as on the date of renewal".

34. In the case of ***M.C. Mehta vs. Union of India & ors.,***
E (2004) 12 SCC 118, a Division Bench of this Court was considering the question as to the effect of notification in such case where the lessee claims renewal of mining lease. Some of the leases were granted for extraction of minerals. In the mean time, the notification dated 27.1.1994 was issued by
F Ministry of Environment and Forest, Government of India in exercise of power conferred by Environment (Protection) Act, 1986 putting a restriction to the grant of mining lease without the clearance of the State Government in accordance with the procedure specified in the notification. Rejecting the
G contention made by the lessee this Court observed:-

"77. We are unable to accept the contention that the notification dated 27-1-1994 would not apply to leases which come up for consideration for renewal after issue
H of the notification. The notification mandates that the

mining operation shall not be undertaken in any part of India unless environmental clearance by the Central Government has been accorded. The clearance under the notification is valid for a period of five years. In none of the leases the requirements of the notification were complied with either at the stage of initial grant of the mining lease or at the stage of renewal. Some of the leases were fresh leases granted after issue of the notification. Some were cases of renewal. No mining operation can commence without obtaining environmental impact assessment in terms of the notification."

35. Considering the entire facts of the case and the law discussed hereinabove, we are of the definite opinion that the respondent Darjeeling Dooars Plantations (Tea) Ltd. is liable to pay *salami* which is one of the conditions of the Rules for the purpose of renewal of lease. The demand made by the Collector is fully justified. The impugned order passed by the High Court, therefore, cannot be sustained in law.

Civil Appeal No.2548 of 2006

(State of West Bengal and others vs. Calcutta Mineral Supply Co. Pvt. Ltd. and another)

36. We have heard Mr. Rakesh Dwivedi, learned senior counsel appearing for the appellant-State and also Mr. Jaideep Gupta, learned senior counsel appearing for the respondent-company. In this case, indisputably the respondent was in possession of the land measuring about 4.54 acres comprised in a factory or mill together with structures when WBEA Act came into force in 1954. After the said Act of 1953 came into effect, the company was allowed to retain all the lands comprised in the factory by the respondent by reason of Section 6(1)(g) read with Section 6(3) of the Act as the State

A Government was of the opinion that the Company required all the lands for the purpose of the factory. It is also not in dispute that at all point of time the respondent-company was holding the land of factory within the ceiling limit as provided under the WBEA Act and West Bengal Land Reforms Act.

B

37. Mr. Gupta, learned senior counsel, rightly submitted that after coming into effect of the aforesaid Act no order was passed by the concerned authority against the respondent since the land held by it was well within the ceiling limit. The C High Court, while considering the case of the respondent, came to the following conclusion:

"28. Once the WBLR Act becomes effective and a person becomes a raiyat within the meaning of Section 4 thereof, D he cannot have dual characteristic, one under the WBEA Act and the other under the WBLR Act. It is not at the convenience or whims of the State that it will resort to the provisions of the one or the other Act according to its own convenience. The law is governed by the statute. E There is no scope of arbitrariness or whims or caprice in the exercise of power or discretion, left with the State to treat a raiyat in a manner that suits the State according to its own convenience. It is only Section 14Z, which governs the field and to which the State can resort to. F The whole exercise of the power under the WBEA Act in this case is wholly without jurisdiction and the exercise can no more encroach upon the field governed by Section 14Z of the WBLR Act.

G 28.1. In this case, admittedly, the writ petitioner held land comprised in mill and factory measuring about 4.54 acres, which is well within the ceiling both under the WBEA Act and WBLR Act. Therefore, retention of the land under Section 6(1) could not be subjected to Section H 6(3) of the WBEA Act, which applies in respect of land

held in excess of the ceiling. Similarly, Section 14Z(2) of the WBLR Act applies to land held by a raiyat in excess of the ceiling. Once the writ petitioner became a raiyat by virtue of operation of Section 3A read with Section 4 along with the amendment of the definition of land in Section 2(7) of the WBLR Act with heritable and transferable right in respect of land held by him within the ceiling, there is no scope for application of Section 14Z(2) of that Act.

Order:

29. Therefore, the order passed by the Deputy Secretary/ Special Secretary on 20th of July, 2001 (pp. 65-78) upholding the notice and the notice dated 10th of August, 2001 (pp. 76-77) issued by the Sub-Divisional Land and Land Reforms Officer, Barrackpore, for enquiry and possession pursuant thereto and the order dated 18th January, 2001 passed by the learned Tribunal affirming the order passed by the Deputy Secretary being subject-matter of this writ petition cannot be sustained and are hereby quashed. Let a writ of certiorari do issue accordingly."

38. Having regard to the facts of the case of the respondent and also regard being had to the fact that the respondent at all point of time held the land within the ceiling limit, the High Court rightly set aside order dated 29th July, 2011 passed by the Special Secretary upholding the notice issued by the Sub-Divisional, Land and Land Reforms Officer. Therefore, we do not find any reason to interfere with the order passed by the High Court so far this case is concerned.

39. For the reasons aforesaid, Civil Appeal No.2549 of 2006 (Collector, Jalpaiguri and another vs. Darjeeling Dooars Plantations (Tea) Ltd. and another) is allowed and the judgment

A and order passed by the High Court, in W.P.L.R.T. No.288 of 2005, is set aside. Whereas Civil Appeal No.2548 of 2006 (State of West Bengal and others vs. Calcutta Mineral Supply Co. Pvt. Ltd. and another) is dismissed. However, there shall be no order as to costs.

B

Devika Gujral Appeals disposed of.