2025:KER:3732

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. NITIN JAMDAR

&

THE HONOURABLE MR. JUSTICE S.MANU

FRIDAY, THE 10TH DAY OF JANUARY 2025 / 20TH POUSHA, 1946

WA NO. 361 OF 2015

AGAINST THE JUDGMENT DATED 16.01.2015 IN WPC NO.22401 OF 2012 OF HIGH COURT OF KERALA

APPELLANT/S:

**M/S. MOTHERS AGRO FOODS (P) LTD.
INDUSTRIAL DEVELOPMENT AREA, ANGAMALI SOUTH-683575, REP BY ITS MANAGING DIRECTOR VARKEY PETER**

**BY ADVS.
PRAVEEN K. JOY
T.A.JOY
E.S.SANEEJ
M.P.UNNIKRISHNAN
N.ABHILASH
DEEPU RAJAGOPAL
ALBIN VARGHESE
ABISHA.E.R
FATHIMA SHALU S.**

RESPONDENT/S:

1 **GENERAL MANAGER, DISTRICT INDUSTRIES CENTRE
ERNAKULAM, PIN-682030**

2 **DIRECTOR OF INDUSTRIES AND COMMERCE
THIRUVANANTHAPURAM-PIN-695001**

3 **STATE OF KERALA
REP BY CHIEF SECRETARY TO GOVERNMENT,
SECRETARIAT, THIRUVANANTHAPURAM, PIN-695001**

2025:KER:3732

4 JEEVAN KUMAR V S
PROPRIETOR, AGRO FOODS AND SPICES & M/S.DECCAN SPICES, INDUSTRIAL DEVELOPMENT AREA, ANGAMALI SOUTH-683575

BY ADVS.
SRI.T.KRISHNANUNNI SR.
SRI.T.SIVADASAN
SMT.MEENA A.
SRI.VINOD RAVINDRANATH

OTHER PRESENT:

SRI V. TEKCHAND, SR.GP

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 10.01.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

2025:KER:3732

JUDGMENT

Dated this the 10th day of January 2025.

Nitin Jamdar, C. J.

The Appellant is the Original Petitioner, who had filed the writ petition challenging the order passed by Respondent No. 1 – the General Manager, District Industries Centre, Ernakulam, to resume the land allotted to the Petitioner in the Industrial Development Area of Angamaly. The writ petition having been dismissed, the Appellant is before us with this Appeal under Section 5 of the Kerala High Court Act, 1958.

2. The Appellant was allotted land, which had an extent of 1.46 acres, in Survey Nos. 448/1 and 448/2 of Nedumbassery Village, in the Industrial Development Area at Angamaly, Ernakulam district, by Respondent No.1 – General Manager of District Industries Centre (Referred as Department), on 23 July 2003, for establishing a unit for the manufacture of rice and rice bran. According to the Appellant, when the Appellant sought consent from the State Pollution Control Board, the Pollution Control Board, by communication dated 19 October 2006, informed the Appellant that the unit could not be allowed to be established in the absence of an effluent treatment plant. The Appellant needed two more acres of land for the effluent treatment plant and applied for additional land to erect the plant. At that time, another unit – M/s. Kancor Ingredients Ltd., from the industrial area, became defunct, and an extent of 6 Ares, which was lying unutilised by it, was resumed by the Department and out of the 6

acres, 2.5 acres were allotted to the Petitioner.

3. The Appellant received the required additional land by order dated 7 November 2007. When the Appellant started construction of the unit, Respondent No. 4, another entrepreneur, made complaints to various authorities such as the Forest Department, Industries Department, etc. The Appellant received clearance from the Forest Department by Exhibit-P18 letter dated 17 June 2010. Thereafter, Respondent No.4 made a complaint to the Industries Department and sought a prohibitory order against the Appellant. There were enquiries pursuant to the complaint. The Appellant submitted a revised plan, which was approved on 14 January 2011, with a condition to complete the construction within 26 months.

4. Respondent No. 4 filed W.P.(C) No. 33457 of 2009 stating that there are vacant unutilised lands and his priority claim for allotment has been bypassed. The learned Single Judge disposed of the writ petition directing that if there is any vacant land available, it should be allotted to Respondent No. 4, and if no such land is available for allotment, the Department will consider whether any land in the industrial area remains unutilised, then the same be allotted after the resumption. The learned Single Judge, while disposing of the writ petition by judgment dated 4 July 2012, made an observation that the Petitioner's original request was only for 3 acres and, therefore, it could not have been allotted more lands than 3 acres, which is liable to be resumed. Being aggrieved by this observation, the Appellant filed W.A. No. 1790 of 2012, which was disposed of by the Division Bench by

judgment dated 30 May 2013 (Exhibit-P31) clarifying that there is no specific finding regarding the existence of unutilised land *qua* the Appellant and it was only a passing remark in the judgment.

5. Meanwhile, on 28 July 2012, the Department issued Exhibit-P4 notice to the Appellant referring to the order passed by the learned Single Judge in W.P.(C) No. 33457 of 2009 dated 4 July 2012 stating that the High Court has directed the Department to resume the unutilised land in the industrial area and it is mentioned in the judgment that 3 acres of land allotted to the Appellant is liable to be cancelled and resumed, and since 1 acre of land is unutilised by the Appellant, the same has been sought to be resumed. The Appellant submitted Exhibit-P5 reply to the show cause notice on 6 August 2012. The Department passed an order on 23 August 2012 (Exhibit-P6) directing resumption of 146 cents of land out of 381 cents allotted to the Appellant. The Department clarified that the resumption of 146 cents of land means the land which was allotted to the Appellant in 2003 for the manufacture of rice and rice bran.

6. The Appellant challenged Exhibit-P6 order dated 23 August 2012 by way of W.P.(C) No. 22401 of 2012, praying to quash the said order and for a direction restraining the Respondents from resuming any portion of the land allotted to the Petitioner in the Industrial Development Area in Angamaly Municipality. By judgment dated 16 January 2015, the learned Single Judge dismissed the writ petition. Being aggrieved, the Appellant is before us with this appeal.

7. We have heard Mr. Praveen K. Joy, learned counsel for the

Appellant, Mr. T. Krishnanunni, learned Senior Advocate appearing for Respondent No. 4, and Mr. V. Tekchand, learned Senior Government Pleader for the official Respondents.

8. The appeal was admitted by order dated 16 February 2015, and an interim stay was granted on condition that the Appellant shall not make any construction, other improvement, or commit any act of waste in the property, pending the final hearing. Thereafter, another order was passed on 19 June 2023, on an application filed by the Appellant for the appointment of an Advocate Commissioner. By the said order, the Advocate Commissioner was directed to inspect the subject matter of the writ appeal and file a report together with photographs of the physical conditions evident at the site. In pursuance of the above-said direction, the Advocate Commissioner has submitted a report dated 31 July 2023.

9. The Kerala Allotment of Government Land in Development Areas on Hire Purchase For Industrial Purpose Rules, 1969, has been framed by the Government of Kerala in exercise of the powers conferred under Section 7 of the Kerala Government Land Assignment Act, 1960 for allotment of land in development areas for hire purchase for industrial purpose. Rule 11 of the said rules states that the Director of Industries and Commerce shall have the power to resume the land if the allottee contravenes any of the provisions of these rules or any of the provisions of the agreement executed by the allottee, or in the opinion of the Director of Industries and Commerce there is misuse of the land. As per notification in the official Gazette, G.O.(P)

No.309/2023/RD dated 11 December 2023, the Rules of 1969 have been superseded and, in exercise of the powers conferred by Sections 3 and 7 of the Kerala Government Land Assignment Act, 1960, the Government of Kerala have formulated the Kerala Government Land Allotment and Assignment of Industrial Purposes Rules, 2023 (Rules of 2023).

10. The controversy is in three parts. The first aspect is the basic foundation of Exhibit-P6 order dated 23 August 2012, which is the decision of the learned Single Judge of this Court. Secondly, whether there is any breach of conditions by the Appellant for which the part of excess land allotted to the Appellant needs to be resumed as per the provisions of the Allotment Rules. Thirdly, the equities in the matter and the object of the governing Rules.

11. The Appellant was initially allotted land to the extent of 1.46 acres on 23 July 2003. Then, the Appellant sought additional land, which was received by the Appellant on 7 November 2007. Respondent No. 4 had made complaints to various authorities against the Appellant. The Appellant alleges that a personal rivalry between the Appellant and Respondent No. 4 indicated the manner in which Respondent No. 4 had made complaints to the Forest Department and the Industries Department. Respondent No. 4 then filed W.P.(C) No. 33457 of 2009. The orders passed in this writ petition and the appeal will have to be examined carefully because they have been used as the basis for an action against the Appellant.

12. Respondent No. 4 had argued that he had submitted an

application on 1 October 2003 for 50 cents of land, and no orders have been passed. The Department had passed an order in favour of the Appellant, and the land was allotted to the Appellant, which was questioned. The Appellant filed an affidavit stating that after the allotment, the Appellant had constructed a four-storeyed building, which had been inaugurated on 1 December 2011, and a trial run of the factory had started by spending around ₹8 Crores. The Department also filed an affidavit opposing the petition. The learned Single Judge set aside the allotment concluding that the matter has not been properly considered. The learned Single Judge directed the Department to consider the allotment to Respondent No. 4 and, if no land is available for allotment, make arrangements for resuming any land that is remaining unutilised in the industrial area, and such land should be allotted depending upon the priority of the application. The learned Single Judge concluded that the Department had overlooked the priority of Respondent No. 4, having applied first. Therefore, the order of the learned Single Judge did not straight-away direct that the land of the Appellant had to be taken back. Instead, the order was to first verify whether any unutilised land remains in the industrial area and whether such land should be allotted based on the priority of applications. However, immediately on 28 July 2012, the Department issued notice to the Appellant as per the judgment dated 4 July 2012, stating why the land of the Appellant should not be resumed and why the unutilised one acre of land should not be taken over.

13. The Appellant gave a detailed representation on 6 August 2012

wherein the Appellant pointed out that if the application of the Respondent No. 4 has to be considered as to whether any land is available, and if no land is available anywhere in the industrial area, then the allotment should be considered. On 23 August 2012, the Department passed an order wherein, though the order dated 4 July 2012 was referred to that if no land is available, then unutilised land allotted in the industrial area should be regularised, there was no finding at all as to whether there is any land available. The Appellant had specifically mentioned that the learned Single Judge has only mentioned in the discussion regarding the excess land of the Appellant, and it is not part of the order.

14. The show cause notice issued to the Appellant on 28 July 2012 refers to the judgment of this Court dated 4 July 2012 in W.P.(C) No.33457 of 2009, and it states that as per this judgment, the High Court has directed to resume the unutilised land, if any, in the industrial area and allot it to Respondent No. 4 herein. Then, it refers to the judgment mentioning three acres being allotted to the Appellant, which is liable to be cancelled. Then, the show cause notice refers to the one acre of land being kept unutilised by the Appellant and as per the judgment, the Department has to resume the unutilised excess land allotted to the Appellant and the Appellant was directed to show cause.

15. The Appellant has pointed out that in the affidavit filed in W.P. (C) No. 22401 of 2012 dated 20 January 2014, the Appellant had placed on record that there is vacant land available in Survey No. 172/2AB in Angamaly Village, Aluva Taluk Block No. 11, and the

copies of the relevant extracts from tax register were placed on record. In the counter affidavit filed in W.P.(C) No. 35315 of 2007 by the Department, it was stated in paragraph (9) that when Respondent No. 4 had 50 cents of land in his possession in the Industrial Development Area, Aluva, which was unutilised, it was also stated in the same manner 21 cents of patta land procured from Kerala Finance Corporation and 21 Cents of land allotted by the Centre was lying unutilised. This was the reason given for rejecting the application of Respondent No. 4 earlier. Again, in the proceedings before the Department, dated 2 July 2014, in respect of M/s. Kancor Ingredients Ltd., the Appellant, had shown that land was available for allotment. There is no attempt made by the Department to follow the order of this Court to conduct an enquiry as regards the other available lands, and directly, an order has been issued.

16. From the tenor of the order and the manner in which the Department had proceeded solely against the land of the Appellant to be handed over to Respondent No. 4, we find merit in the contention of the Appellant that this was in furtherance of the personal vendetta of Respondent No. 4 against the Appellant. The Appellant has pointed out that the communication issued by Respondent No. 4 to the Department itself has admitted that 60 acres of land resumed from Transformers and Electricals Kerala Limited (TELK) is lying unutilised. Also, the 3.65 acres of land is permitted to be retained with M/s. Kancor Ingredients Ltd and his only grievance that the Appellant was granted allotment out of turn.

17. There is nothing in Exhibit-P6 order which indicates that there was no other land available for allotment to Respondent No. 4. Respondent No. 4, over several years, had filed different proceedings against the Appellant. Therefore, we find that the exercise conducted by the Department based on the order passed by this Court in W.P.(C) No. 33457 of 2009 dated 4 July 2012 could not have been in the exercise of *inter se* adjudication between the Appellant and Respondent No. 4, as who should get the unutilised land of the Appellant. A completely perverse approach has been adopted by the Department in misconstruing the order passed by this Court in W.P. (C) No. 33457 of 2009 dated 4 July 2012. This Court had found that the priority of Respondent No. 4 was breached even though he had applied earlier while allotting land to the Appellant, and an enquiry had to be made with respect to any other land being available and then allot the same after following priority. There was no direction to focus only on the case of the Appellant alone.

18. Furthermore, when W.A. No. 1790 of 2012 arising from an order dated 4 July 2012 in W.P.(C) No. 33457 of 2009 came up for consideration before the Division Bench, the Division Bench clarified that there is no finding that there is any existence of unutilised land by the Appellant. There has to be resumption is only a passing remark. The Division Bench clarified that the direction given by the learned Single Judge is to be considered as not following the priority principle, and the action, if any, by the Department against the Appellant would be independent thereof.

19. Therefore, the contention of the Department that the learned Single Judge in the judgment dated 4 July 2012 had directed that the land of the Appellant is to be resumed is entirely incorrect, as clarified by the Division Bench, that it was only a passing reference and not the subject matter of the proceedings. However, the Department converted this order as a direction to hold an enquiry against the Appellant.

20. The purpose of allotting the land by the State Government has to be kept in mind. The lands are allotted in the industrial area to promote industrial growth. Once the Appellant in its reply had specifically drawn attention to the order of this Court for the resumption of the unutilised land in the industrial area and not the land of the Appellant, the burden was on the Department while passing the order of resumption, to positively state that there is no unutilised land available for allotment to Respondent No. 4. This is the fundamental flaw in Exhibit-P6 order dated 23 August 2012, by which the said order is vitiated.

21. Now, we come to the second aspect regarding the allegation of breach of the terms of allotment by the Appellant by keeping the land unutilised for the purpose of allotment. The case of the Appellant is that the subject matter of dispute in the writ petition was 2.35 acres of land allotted to the Appellant, and now what is ordered to be resumed is a portion of land which is allotted to the Appellant as per the first allotment, which is not a subject matter of dispute at all. The Appellant has already put up a treatment plant, ash storage unit, a rice mill, and a portion of the wheat unit. Now, what remains to be done is only the

erection of the machinery. Therefore, according to the Appellant, it cannot be said that any portion of land, either first allotment or second allotment, is lying unutilised. According to the Appellant, though originally the application was only for setting up a rice mill, the Appellant had later sought permission to manufacture other products like atta, maida, sooji and rava. It was specifically contended on behalf of the Appellant that the Appellant had later applied for permission to set up a roller flour mill attached to the rice mill plant and that approval had been granted for manufacturing rice bran, maida, atta, sooji and boiled rice.

22. The learned Senior Government Pleader, based on the counter affidavit of Respondent Nos. 1 and 2 filed before the learned Single Judge, contended that after getting the additional land for setting up a modern rice mill, the Appellant has not so far started the said project, but started only wheat products manufacturing unit, without the permission of the Industries Department and the same is unauthorised. The unit is functioning in the 2.35 acres of additional land allotted for the project of a modern rice mill. Moreover, for the functioning of wheat products, the total extent of 3.81 acres is not necessary. If any extent of land already allotted to the Appellant remains unutilised, it is open for the Department to resume such land, and the same shall be allotted depending upon the priority of the application after considering the request of Respondent No. 4 also. The Department issued a show cause and stop memo dated 28 July 2012. Though the Appellant submitted a reply on 6 August 2012, the same was not

satisfactory. In the entire land allotted to the Appellant, no rice mill has been started to date, and, therefore, the land needs to be resumed. The property was allotted to set up a rice mill. Instead, the Appellant had set up a project of wheat products, which is against the Rules of 1969. As per Rule 11 of the Kerala Allotment of Government Land in Development Areas on Hire Purchase For Industrial Purpose Rules, 1969 (Rules of 1969), the property may be resumed if the allottee contravenes any of the provisions of these Rules. According to the learned Senior Government Pleader, the resumption of 146 cents will not in any way affect the functioning of the present wheat unit of the Appellant. Since the Appellant so far set up the modern rice mill, the Appellant's statement that the "treatment plant necessary for both the units (rice and wheat products) is also existing in 146 cents" is against the facts.

23. The learned Senior Advocate appearing for Respondent No. 4 contended that the allotment of 1.46 Ares in Sy. Nos. 448/1 and 448/2 of Nedumbassery Village, which was originally allotted to the Appellant vide proceedings dated 18 July 2003, was made for the purpose of manufacturing rice and rice bran. The said allotment was with respect to 2.35 acres of land in the same survey numbers. According to the learned Senior Advocate, Exhibit-R4(b) agreement executed by the Appellant and the Department contains the conditions under which the allotment was made. Condition Nos. 4 and 13 of the agreement show that the allottee is not entitled to use the plot allotted for any purpose other than the one for which it is allotted, and if the

allottee commits a breach of that condition, the allotted property can be resumed, and the Appellant is not conducting any unit for manufacturing rice and rice bran. The learned Senior Advocate for Respondent No. 4 also contended that the fact that the Appellant had availed loan from the financial institutions is not a reason for not taking action against the Appellant for violation of the conditions of allotment and the relevant provisions of the Rules of 1969.

24. We find no merit in the contentions of the Department and Respondent No.4. In furtherance of focusing on the Appellant alone without equity of other surplus lands, the Department proceeded to take a hyper-technical approach in the matter to somehow cancel the allotment without considering various other aspects. The certificate issued by the Department (Exhibit-P16) and the Entrepreneurs' Memorandum for setting up Micro, Small or Medium Enterprises (Exhibit-P14) mention the products being dealt with by the Appellant. The capacity of the manufacturer is also specified against such products. The certificate showed that the property falling within the aforementioned two survey numbers was consolidated into one that the Appellant had remitted the cost of the said land in full and that he is eligible for *patta* if he applies for the same after full utilisation of the land. The certificate also showed that the Department had no objection to mortgaging the land and building in favour of the State Bank of India to raise finance for running the industrial unit on the above land. These documents show that both the properties, i.e., an extent of 146 cents, which was initially allotted and an extent of 235 cents, which was

subsequently allotted, were treated together.

25. In Exhibit-P6 order dated 23 August 2012, a reference was made to the inspection carried out on 13 August 2012. During the inspection, it was revealed that the unit was engaged in wheat processing activity to manufacture atta, maida, rawa and wheat bran. It was stated that the area of 146 cents initially allotted to them is currently being used as an ash storage area, and a new shed is being constructed. The Department in Exhibit-P6 order has concluded that the Appellant had set up a wheat processing unit in the additional allotted land instead of starting a modern rice mill of 80-ton capacity and that the land to the extent of 146 cents allotted to them initially for the production of rice and rice bran had not been utilised as intended. The Appellant has pointed out that a revised plan (Exhibit-P24) was submitted to the Department, and approval was granted on 14 January 2011 by the Department. Under Rule 16 of the Allotment Rules, the Appellant got 26 months to complete the construction. Therefore, the Appellant had time upto 14 March 2013 to complete the construction and the inspection carried out on 13 August 2012, based on which the Department proceeded, was before that date. The Plan would show that the factory set up for manufacturing maida, atta, sooji bran, etc., extends to both the properties.

26. The Appellant has further pointed out that the application for allotment submitted by Respondent No. 4 was made available by the Appellant, as evidenced by Exhibits-P25 to P27, wherein it can be seen that there are three applications submitted showing different

requirements of extent and corrections. The Department had given undue consideration to process his applications and support him even against the rules of allotment and suppressed the material facts. The Appellant has further pointed out that Respondent No. 4 had even made a complaint regarding removal of soil from the allotted land, based on which the officer stopped the work of the Appellant. The Appellant has also pointed out that they had applied for a loan from the State Bank of India for the entire value of the allotted land. At that time also, Respondent No. 4 approached the Bankers and attempted to prevent them from granting the loans. The contention of the Appellant that the Department has taken a rigid approach and has proceeded against the Appellant because of the continuous opposition of Respondent No. 4 cannot be said to be without substance.

27. Rules of 1969 have been framed for allotment of land in development areas for industrial growth. Therefore, while resuming the land on the ground that it is not being utilised for the purpose it is allotted, a needless technical approach on the part of the Department is not warranted if it defeats the object behind the Rules. The concern of the Department primarily would be that the land allotted for industrial use should be utilised, and its full potential is exploited. The object behind the resumption of land also is that if the lands are kept unutilised when others are interested in carrying out industrial activities, it would defeat industrial growth. If, however, it can be reasonably shown that the land is being used for the purpose for which it is allotted and that industrial growth is being achieved, then the

Department is not expected to hold an enquiry with a magnifying glass to somehow find some ways and means to cancel the allotment and shut down a running unit generating employment and contributing to the industrial growth. Such an approach would defeat the policy of allotment, as envisaged under the Rules of 1969. Thus, we find that, from time to time, the Appellant has proceeded with permissions from the Department. Even the Development Plan has been approved by the Department. Mortgaging the property to the Bank has also been approved by the Department. Therefore, the Appellant's claim that no such breach has been reasonably established.

28. The third aspect is regarding the equities of the case. The facts and circumstances of the case would show that the action of the Department is also needlessly harsh, oppressive, and in continuation of the aspects pointed out earlier. The Appellant has stated that the entire land is given to the Bank as security to secure a loan for construction. The approval was sought from the Department to pledge the property allotted to the Appellant, and the Department granted the approval. Almost ₹6 Crores were disbursed by the State Bank of India, Angamaly Branch, to the Appellant as against the property. The land for which the entire purchase price was paid was provided as security to the Bank with the approval of the Department. The legal implications and consequences arising out of the resumption of land have not been taken note of in Exhibit-P6 proceedings when the resumption order was passed by the Department.

29. The Appellant has submitted that the Appellant achieved a

turnover of ₹19,22,19,350.26 for the year ending 31 March 2013 and a turnover of ₹36,27,68,276.40 for the year ending 31 March 2014. The Appellant has also started repaying the loan availed of from its Bankers. All efforts were made to increase production to the optimum level and, over time, achieve profitability.

30. The Appellant has asserted that the entire property is used for the rice mill project. They have constructed buildings, erected machinery, and started commercial production by utilising a major portion of the land allotted. It was stated that the construction was going on the remaining portion of approximately 40 cents. The Appellant pointed out that they are giving employment to 40 persons and 100 others indirectly, and on completion, they can give employment to 100 persons and 300 indirectly. The Appellant has further pointed out that they have a turnover of almost ₹1 Crore. The Appellant has also pointed out that at the time of allotment of 2.35 acres to the Appellant, a total of 6 acres, lying vacant for more than 40 years in their possession, were resumed from Kancor Flavours Ltd., and if the case of Respondent No. 4 was genuine, the Department would have allotted him the required land from this 3.65 acres.

31. In this Appeal, an Advocate Commissioner was appointed, who noted that 146 cents of the land allotted is the subject matter of the appeal. The boundary line of the property starts from inside the raw material godown. The raw material/rice paddy godown has a plinth area of around 3796 m^2. Inside this 20% portion of the godown, there were two lorries and rice sacks being unloaded by workers. On both

sides of this portion of the godown, rice sacks were stored. Outside the rice paddy godown, goods were packed on four lorries. Eight metres from the southern boundary wall, a rice mill is situated of approximately 21.85 metres and 19.10 metres. The photographs of the rice mill are placed on record. The rice mill has machinery such as a washer and dryer installed. The effluent treatment plant is placed on the north-western portion of the Schedule A property, and details of the effluent treatment plant have been given. As per the inspection report dated 26 February 2013, about seven structures were noted, and all seven were present when the Advocate Commissioner carried out the inspection.

32. As regards the other construction and functioning of the unit, the Commissioner placed on record that next to Schedule A property is Schedule B property, where an industrial unit, wheat processing unit and food technology lab are functioning. There is a raw material godown where many sacks filled up with rice grains and small parts of wheat grains were stored. The sorting machine is placed outside.

33. The Advocate Commissioner reported in respect of the unit area and also stated that the unit is functioning as per the allotment letter as under:-

> *"C. To report all aspects regarding unit area and the building situated in the allotted land and also to identify that the unit is functioning as per the allotment letter.*
>
> *All aspects regarding unit area and building situated in the allotted land as per Ext. R1-B and Ext. R1-E orders are explained in detail in Part A and B*

respectively of this report and for purpose of brevity is not repeated herein.

The raw materials godown situated in schedule A and B properties is very extensive and has many rice and wheat sacks piled up that serve as raw materials for the functioning of industrial unit. At the time of inspection there were about 8-10 workers engaged in loading and unloading of rice sacks from and to the lorries situated inside the godown. Inside the godown there were 3 lorries. 2 lorries lay in the schedule A property and another lorry was parked in schedule B property. There were also 2-3 staffs engaged in cleaning of the godown from time to time.

In the milling section and finished goods godown also there were about 6-8 workers engaged in packing, operating of machinery etc. The industrial unit in the schedule B property is extensive and comprehensive when compared to industrial unit functioning in the schedule A property. It has more sophisticated machinery equipped for elaborate processing of mainly wheat, wheat products, atta and Maida. The functioning of various machineries in the milling section could also be observed and the same was explained in detail by the MD of the Appellant.

The raw material mostly wheat grains are stored in 8 big tanks located in the 3rd floor. Four of these tanks were opened and shown. These tanks are longitudinally placed covering almost the height of the entire building. The unit also has a sophisticated cleaning machinery which has it funnels and tubes extending from ground floor to third floor. The sieving machine in the 1st floor ensure that barn is separated from the wheat or rice. The plant swift machine caters to filtering and sieving process as well. Due to the continuous operation of the machineries, it was hot inside and the air was filled with dust from the wheat processing. The photographs of various

machines in the industrial unit in Schedule B is produced herewith and marked as Annexure C35 series. Most of the machines were automated or semi-automated requiring very minimal human interference. As most of the machines were being operated at the time of inspection, I could not go near them due to safety concerns.

The mothers rice mill is situated in the schedule A property. As already explained in detail in Part A of this report, there are many machineries in the building for purpose of milling, cleaning, sieving and packing. At the time of inspection, I could witness the packing of finished products into packets, which was done in both sides of the wooden partition.

On the right-hand side of the rice mill there were about 7-9 women who were involved in packing of sorted, cleaned rice into small packets. In this portion of the industrial unit there were 3 machines placed. There is a destoning machine to separate the stones and other particles from rice. The sorted rice is then taken to washer and the same is connected to dryer. In the left-hand side of the rice mill about 4 migrant labourers were engaged in packing of rice product into big sacks. The packing machine was used to aid the said process. The photographs of workers engaged in packing of finished products is produced herewith and marked as Annexure C36.

At the time of inspection, I could not personally see all machines in rice mills being operated. But the machines appear to have been used recently. This is evident from the rice powder and other by products lying in the floor and inside various parts of machinery particularly the hammer mill. The photograph of the hammer mill with the product accumulated is produced herewith and marked as Annexure C37. The rice mill has total strength of 15 workers of which 13 staff were involved in

> *packing, 1 production supervisor and 1 Quality controller. The effluent treatment plant and connected tanks situated in schedule A property was also seen to be functioning except one treatment plan for filtering clean water. There were about 27 persons employed as loading workers in the unit and around 14 persons were employed in the plant. This is excluding the supervisors and quality controllers and other office staff."*

Therefore, the Advocate Commissioner has placed material on record to show that the rice mill is still being operated today. It is also clear that the contention of the Department that resumption of the part of the land will not affect the functioning of the unit is not correct. The contention of the Appellant that it will adversely affect is borne out by the report of the Advocate Commissioner.

34. Thus, Exhibit-P6 order dated 23 August 2012 issued by the Department was based on a flawed interpretation of the order passed by the learned Single Judge, which the Division Bench subsequently clarified. Respondent No. 4 has continuously filed complaints against the Appellant, and the impugned order passed by the Department based on the stray observation of the learned Single Judge is a needlessly technical approach. Respondent No. 4, upon the land being allotted to him, had sold part of its property and, therefore, the Appellant alleges that Respondent No. 4 is only pursuing the litigation out of a vendetta. The Department has not considered various factors such as sanctioning of the plans, almost 70% of the land being utilised, and the rice mill being conducted. The Appellant has taken a loan from the Bank and mortgaged the property with the consent of the

Department. Even today, the rice mill activity is being carried out, construction is in place, large-scale employment is being generated, and substantial turnover is being achieved. In the facts and circumstances, taking over the land as per Exhibit-P6 order dated 23 August 2012, thereby seriously affecting a fully functional operating unit generating employment, would be against the policy of allotment of industrial land itself. Therefore, the intervention of this Court in equity jurisdiction is necessary.

35. Accordingly, the Appeal is allowed. The judgment dated 16 January 2015 in W.P.(C) No.22401 of 2012 is set aside. The writ petition filed by the Appellant / Writ Petitioner is allowed quashing Exhibit-P6 order dated 23 August 2012 issued by the Department.

Sd/-
NITIN JAMDAR,
CHIEF JUSTICE

Sd/-
S. MANU,
JUDGE

Eb/-

APPENDIX OF WA 361/2015

PETITIONER ANNEXURES

ANNEXURE A1	**TRUE COPY OF THE LETTER DATED 14.03.2014 ISSUED BY SBI, ANGAMALI TO GENERAL MANAGER, DISTRICT INDUSTRIES CENTRE.**
ANNEXURE A2	**TRUE COPY OF THE PROCEEDINGS DATED 02.07.2014 OF THE GENERAL MANAGER, DISTRICT INDUSTRIES CENTRE, ERNAKULAM.**