HIGH COURT OF GUJARAT

LYKA LABS LTD
Versus
UNION OF INDIA AND 2 ORS

Date of Decision: 08 July 2011

Citation: 2011 LawSuit(Guj) 966

Hon'ble Judges: Abhilasha Kumari

Eq. Citations: 2013 6 RCR(Civ) 175, 2011 3 GCD 2006, 2011 28 GHJ 274

Case Type: Civil Application; Special Civil Application

Case No: 6923 of 2011; 33 of 2011

Subject: Company

Acts Referred:
Essential Commodities Act, 1955 Sec 7A(4), Sec 7A, Sec 3
Bombay Land Revenue Code, 1879 Sec 150, Sec 166, Sec 152, Sec 165, Sec 153, Sec 200, Sec 154, Sec 211
Bombay Land Revenue Rules, 1972 R 108(6)

Final Decision: Application dismissed

Advocates: Hriday Buch, J K Shah, K S Nanavati, Kunal Nanavati, Nanavati Associates

Cases Referred in (+): 15

Abhilasha Kumari, J.

[1] Rule. Mr. Hriday Buch, learned Central Government Standing Counsel waives service of notice of Rule for Respondents Nos. 1 and 2. Mr. J.K. Shah, learned Assistant Government Pleader waives service of notice of Rule for Respondent No. 3. On the facts and in the circumstances of the case, the application is being heard and decided finally.

[2] This application has been filed by the applicant, Original-Petitioner in the writ petition, for grant of an interim mandatory injunction, pending the final hearing and decision of the petition. The prayers made in the application are as follows:

(a) the Mamlatdar, Ankleshwar and the Collector, Bharuch, be ordered and directed forthwith to deseal the Petitioner's factory situated at 4801/B and 4802/A, GIDC. Industrial Estate, Ankleshwar 393002 and to permit the Petitioner to continue to operate the same;

(b) the Respondents, their agents, servants and subordinates be restrained from interfering in any manner with the continued operation of the factory of the Petitioner situated at 4801/B and 4802/A, GIDC. Industrial Estate, Ankleshwar 393002;

(c) ad-interim relief in terms of prayers (a) and (b) above be granted; and

(d) Pass such further and other interim and adinterim orders, directions and reliefs as may be thought fit appropriate by this Hon'ble Court in the facts and circumstances of the case.

[3] The applicant is Lyka Labs Ltd., a Company registered under the provisions of the Companies Act, 1956. The brief facts that are relevant for the decision of the application, are as follows:

3.1 According to the applicant, it manufactures 250 formulations, including various life-saving drugs. Relevant to the present application and the petition is the Flucort range of formulations (Medicines manufactured from a bulk drug), manufactured by it, from an imported drug known as Fluocinolone Acetonide (FA for short). FA is a Corticosteroid, which exerts its action topically on the site of application, and is used in the manufacture of dermatological formulations. The said bulk drug has not been classified as a life-saving bulk drug.

3.2 In exercise of powers conferred by the provisions of the Essential Commodities Act, 1955, ("The Act" for short), and for the purpose of controlling the prices of Drugs, the Government of India has issued Drugs (Prices Control) Orders, ("DPCO" for short); amongst others, DPCO 1970, (repealed on 31st March 1979), DPCO 1979, (repealed on 26th August 1987), and DPCO 1987, (repealed on 7th January 1995). According to the applicant FA was not listed as one of the seven price controlled Corticosteroids enumerated in the Second Schedule at Serial Number XIX, under the Therapeutic Category "Corticosteroids" in the DPCO 1979, therefore, the applicant did not apply for price fixation of the Flucort Range of formulations and continued to sell them at the rates prevailing at that time, as fixed by the Government of India under DPCO 1970. By order dated 20th June 1984, the Government of India, in exercise of powers conferred by sub-paragraph 1 of paragraph 13 of DPCO 1979, fixed the prices of the formulations as specified in column 7 thereof, as the revised retail prices exclusive of local tax. The applicant,

vide communication dated 7th July 1984, addressed to the first Respondent, asserted that FA was not a bulk drug specified in the Second Schedule of the DPCO 1979, hence the said Respondent did not possess the power or authority to fix the retail price of its formulations. The applicant also conveyed that they would continue to market the formulations as per the price prevailing on 1st April 1979, when the DPCO 1979 came into effect. The applicant sent another communication dated 7th December 1984, reiterating its earlier contentions and sought a review under the DPCO 1979. Some communication ensued between the applicant and the first Respondent, vide which the applicant was asked to furnish details regarding the manufacture, production and overcharging of the said formulations. By order dated 10th July 1990, the first Respondent informed the applicant that, based upon the data made available by the applicant, an amount of Rs. 678.73 lakhs has been calculated as being due from the applicant under paragraph 7(2) of DPCO 1979, in respect of the bulk drug FA. In response, the applicant again reiterated the contentions raised by it earlier, by letter dated 20th July 1990. Ultimately, a demand of over rupees 18 crores, inclusive of rupees 12 crores as interest, came to be made from the applicant, by order dated 14th September 2005, in respect of the period from 1st April 1979 to 25th August 1987, in exercise of powers under paragraph 7(2) of DPCO 1979. The applicant had earlier filed a writ petition, being SCA No. 10354 of 2010, challenging the above stated demand. By order dated 14th July 2010, the Court directed the applicant to prefer a representation to the first Respondent, who was directed to consider and decide the same in accordance with law, by passing a reasoned order. The representation of the applicant dated 14th July 2010, has been rejected by order dated 10th November 2010, which order has, inter alia, been challenged in the petition (SCA No. 33 of 2011). It may be noted that the petition, after extensive hearing, has been directed to be enlisted for final hearing on 20th July 2011, by order dated 24th June 2011, of this Court. No interim relief has been granted to the applicant in the said petition. The present application has been affirmed on 27th June 2011. According to the applicant, it became necessary to urgently file the application and pray for restoration of the status quo ante as, on the morning of 25th June 2011, the third Respondent, Mamlatdar, Ankleshwar, sealed the factory of the applicant, despite protests from the representatives of the applicant.

[4] In the above background, Mr. K.S Nanavati, learned Senior Advocate, has made elaborate submissions orally, and has submitted written submissions, as well. The gist of these submissions, in essence, is as follows:

(a) The act of sealing the Factory and dispossessing the Company is, on the face of it, without authority of law, oppressive, and arbitrary, with a view to causing harm

to the applicant. The said action is lacking in bonafides and is in breach of Articles 19(1)(g) and 300A of the Constitution of India.

In support of the above submission, reliance has been placed upon Express Newspapers Pvt. Ltd. v. Union of India, 1986 1 SCC 133 (Para 76).

(b) The authorities have failed to appreciate that as a consequence, three hundred workers have been rendered jobless and goods worth more than Rupees 40 crores, belonging to the applicant and other Companies, are lying in the Factory at various stages of production, which would be damaged.

(c) Section 150(b) and Section 153 of the Bombay Land Revenue Code, 1879 ("The Code" for short) do not empower the authorities to take forcible possession and lock the Factory. The power of forfeiture of the occupancy under Section 150(b) does not empower the authorities to close down the industry and deprive the applicant of its property. The power of forfeiture has to be exercised in terms of Section 153. The proviso to Section 153 is mandatory, and the power of forfeiture cannot be exercised unless the conditions stipulated in Clauses (a) and (b) of the proviso to Section 153 are satisfied. These conditions have not been satisfied because no action as prescribed by Sections 165 and 166, has been taken.

(d) It is a settled principle of law that deprivation of property can only take place if there is a specific provision that so permits, and in the present case there is no such specific provision empowering Respondent No. 3 to seal the Factory. The action of the Respondents in dispossessing the applicant has been taken in disregard of the requirements of the rule of law.

In support of the above contentions reliance has been placed upon (1) Bishan Das v. State of Punjab, 1961 AIR(SC) 1570 (Paras 11 to 14) and (2) Meghmala v. G. Narasimha Reddy, 2010 8 SCC 383(Paras 46 to 49).

(e) The action of the first Respondent in raising the demand and sealing the Factory of the applicant is ex facie unreasonable and lacking in bonafides. The said demand was made on 10-07-1990. The applicant approached the Bombay High Court by filing Writ Petition No. 2250 of 1990 and, initially, protection was granted to it on 06-08-1990. The said petition was later withdrawn with a view to approaching the Drug Pricing Liability Review Committee("DPLRC" for short) constituted by the Central Government. While allowing withdrawal the Court made it clear that it was open to the Department to enforce the recovery. However, no action was taken by the Respondents. The proceedings before the DPLRC continued from 1996 to 2004 and the Report was supplied on 17-07-2006. The Mamlatdar, thereafter, issued

notices dated 17-12-2005, 16-01-2006, 26-09-2008 and 25-05-2010 under the Bombay Land Revenue Code,1879.

(f) The petition filed by the applicant is pending final decision. It was taken up for final hearing on 23-24/06/2011, and has been adjourned to 20-07-2011. Apprehending that some coercive measures would be taken, the applicant served letter dated 23-06-2011 upon the third Respondent. Despite the same, the said Respondent, with the help of the police, threw out the workers and employees of the applicant and sealed the Factory, even when chemically volatile goods were in the process of various stages of reaction. This action of Respondent No. 3 is illegal and arbitrary as the matter was in the process of being heard by the Court. Sealing and dispossession of the Factory was not necessary for undertaking the procedure of forfeiture of occupancy under Section 150(b) read with Section 153 of the Bombay Land Revenue Code. The said action is unprecedented, and has been taken with extreme prejudice, knowing fully well that it will result into heavy loses of the material lying in the Factory, belonging not only to the applicant but to other Companies; therefore, status-quo ante deserves to be restored, by issuing an interim mandatory injunction.

In support of this submission, reliance has been placed upon Dorab Cawasji Warden v. Coomi Sorab Warden, 1990 2 SCC 117.

(g) The entire controversy revolves around the issue whether the provisions of DPCO 1979 were applicable to the bulk drug FA, from which the applicant is manufacturing the Formulation known as Flucort. The applicant is in a position to demonstrate that the bulk drug FA has not been specified either in Schedule I or Schedule II of DPCO 1979, and, therefore, is not covered by DPCO 1979, especially paragraph 7 thereof. The price of the formulation, Flucort, was not determined under Paragraphs 10 to 13 of DPCO,1979 and the "allowed price" of the bulk drug was not informed to the applicant. The Central Government never fixed the price of bulk drug FA, therefore, no liability can arise under DPCO, 1979.

(h) Though the applicant submitted its representation and was heard by the first DPLRC, it was not granted an opportunity of hearing before the Second DPLRC made its report, on the basis of which the order of demand has been issued.

(i) Without admitting any liability, the principle amount could have been claimed only in respect of the period subsequent to 26-06-1984, being the date on which the price of Flucort was fixed and notified, therefore, the liability, though disputed, would have to be recalculated.

(j) In any case, under paragraph 7 of DPCO 1979, the authorities have discretion to proceed under paragraph 7(2)(a) or paragraph 7(2)(b) if they comes to the conclusion that the Manufacturer was able to procure the bulk drug at a price lower than the "allowed price" of the bulk drug. The Central Government has chosen to exercise powers under paragraph 7(2)(b) by fixing the price of the Formulation, by notification dated 20-06-1984. Thereafter, it is not open to direct recovery under paragraph 7(2)(a) from the year 1979. Even otherwise, after the repeal of DPCO 1979, no action under Clause 4 of DPCO 1987 was permissible as no amount had "accrued on account of any action" under DPCO 1979 and action was taken for the first time on 10-7-1990.

(k) That the applicant is not in a position to liquidate its property in view of the Undertaking given to the Bombay High Court, which is still subsisting. The applicant has also made a representation dated 02-07-2011 which contains a proposal to make payment of Rs. 5,73,49,357/- within the time schedule specified therein.

[5] The applicant has a good prima facie case, and is likely to succeed. The balance of convenience is also in favour of the applicant. No harm or prejudice would have resulted to the Respondents had the applicant been permitted to continue operating the Factory. The applicant would suffer irreparable loss and injury if status-quo ante is not restored, therefore, the interest of justice would demand that the prayers made in the application be granted.

[6] The application has been strongly resisted by Mr. Hriday Buch, learned Central Government Standing Counsel, on behalf of the first Respondent. The submissions made by him are summarised as under:

(a) The grant of relief as prayed for in the application would amount to finally allowing the Writ Petition at the interim stage. The applicant has already prayed for the same relief in the Writ Petition by amending the prayers, therefore, the very same relief, in the nature of interim relief, may not be granted.

(b) During the hearing of the main petition on 22-23/6/2011, the stand of the first Respondent was very clear and unambiguous. It was submitted, in no uncertain terms, that the interim relief granted by the High Court of Bombay vide order dated 16-12-1996, would not apply to the applicant because the liability had arisen during the subsistence of DPCO 1979 which is prior in point of time. The applicant has failed to comply with the same by not depositing the "unintended benefit" accrued in the Drug Prices Equalisation Account ("DPEA" for short). At the time of hearing of the petition the learned Counsel for the applicant did not press for grant of interim relief, and his statement has been recorded in order dated 24-06-2011.

The applicant has been served with notice dated 08-06-2011, issued by the third Respondent, intimating that the Factory would be sealed if the demand is not met. It was in the knowledge of the applicant that the Factory could be sealed even at the time of hearing the petition on 23-24/06/2011. The applicant had prior notice of the sealing but did not challenge the notice dated 08-06-2011 before the appropriate forum. It would not now be open to the applicant to pray for similar relief, which was not consciously pressed at that point of time.

(c) Initially, vide order dated 06-08-1990 of the High Court of Bombay, protection was granted to the applicant, which continued for many years. The Division Bench of the High Court of Bombay, while permitting withdrawal of the petition filed by the applicant, has vacated the interim relief and has permitted the Respondents to recover the amount, by following necessary procedure. As the demand is a very old one, and the total amount due from the applicant is almost nineteen crores, the Respondents are within their rights in effecting recovery of the said amount, as prescribed by law. The Factory of the applicant has been closed/sealed pursuant to the procedure followed for recovery of the demand. Hence, it is not open to the applicant to challenge the same before this Court, more particularly as the applicant has not preferred any Appeal or Revision, as contemplated in Chapter XIII of the Bombay Land Revenue Code, against any of the orders/notices issued by the Mamlatdar.

(d) The contention of the applicant that Respondent No. 1 has no power to dispossess and lock the Factory is erroneous, and per se contrary to the provisions of law. The demand has been raised by the first Respondent under the DPCO 1979, read with various provisions of subsequent DPC Os. Further, the DPCO is enacted by the Central Government in exercise of powers conferred upon it under Section 3 of the Essential Commodities Act, 1955 ("The Act" for short).

In view of the provisions of Section 7A of the Act, power is vested in the Central Government to recover the amount as arrears of land revenue, as per procedure prescribed under the provisions of the Bombay Land Revenue Code. As per the Scheme of the Bombay Land Revenue Code, arrears of land revenue shall be a paramount charge which can be recovered from the land or anything attached or fastened to the land by forfeiting the same and, thereafter, save the same until the levy is satisfied. Further, an arrear of land revenue may be recovered by various processes and sale of immovable properties. The procedure has been initiated in the year 2005 and has culminated in sealing of the Factory, as the applicant has not paid the amount due from it, in spite of several notices being served.

(e) The contention that the procedure, as contemplated under Section 165 of the Bombay Land Revenue Code is not followed is erroneous and misleading. In fact, the said provision provides for the procedure for effecting sale of the property and issuance of a Notification. The record of the petition clearly establishes that a Notice, as contemplated under Section 152 of the Bombay Land Revenue Code, was served upon the applicant as far back as on 17-12-2005. A bare reading of the said notice clearly reveals that if the amount mentioned therein is not paid on, or before, 23-01-2006, procedure for forfeiture and sale shall be carried out. Again, on 26-09-2008, a similar Notice was issued. The same has not been produced on the record of the petition but has been referred to in other documents annexed to the petition. On 16-07-2008 and 01-01-2009, the Collector, Bharuch has informed the Mamlatdar, Ankleshwar, to effectively and expeditiously effect the recovery proceedings from the applicant. The Mamlatdar was, therefore, specifically authorized to do the needful. Further, Notices as contemplated under Section 154 of the Bombay Land Revenue Code were issued on 09-02-2009 and on 05-09-2009, which is evident from the record of the petition. A similar notice was issued on 24-05-2010. Again on 09-03-2010 and 05-07-2010, notices as contemplated under Section 200 of the Bombay Land Revenue Code have been issued wherein it has specifically been mentioned that if the amount mentioned therein is not paid, the authority shall enter into the premises, forfeit the same and carry out the distraint sale. Lastly, on 08-06-2011 the applicant was specifically informed that the Factory is required to be sealed during the process of forfeiture and distraint sale. The applicant was, therefore, aware about the impending action. It is in furtherance of the procedure initiated for recovery of arrears of land Revenue that the Factory premises of the applicant have been locked/sealed However, the authorities had specifically permitted cold storage and other important areas of the Factory premises to continue. The same have not been disturbed in the interest of the stock stored by the applicant.

(f) As per the Major Law Lexicon by P. Ramanath Iyer, 4th Edition, 2010, forfeiture has several meanings, one of which is that "forfeiture is the divesture of specific property without compensation in consequent of some default or act forbidden by law" and "the compulsory surrender of property for fault to comply with a contract of law". The word "forfeiture" means the fact of losing or becoming liable to deprivation of goods, in consequence of a crime, offence or breach of engagement. The word "forfeiture" is used in the sense of deprivation of losing of rights or extinction of rights. Thus, during the process of recovery of the demand, wide powers of forfeiture and distraint sale are conferred upon the authorities under the Code, to recover as an arrear of land revenue; therefore, it is completely incorrect to say that there is no power to seal/lock the Factory of the applicant.

(g) The Bombay Land Revenue Code is a complete Code with regard to the arrears of land revenue and confers wide powers of forfeiture and distraint sale. By no stretch of imagination can it be said that the said power does not include the power to lock/seal and/or attach the land. If such a contention, as raised by the applicant, is accepted, the same would render the whole procedure laid down in the Bombay Land Revenue Code, redundant and unworkable.

(h) The decisions relied upon by the learned advocate for the applicant would not apply to the present case, especially when the action of the authorities is permitted by law, and such action has been taken by following the procedure and process prescribed by law.

(i) The applicant has not shown any willingness to deposit even the principle amount of Rs. 678.73 lakhs in order to show its bonafides, against its liability of more than nineteen crores. Therefore, no discretionary relief may be granted in favour of the applicant, much less interim mandatory relief.

(j) The first Respondent has no objection to opening the seal/lock applied to the Factory of the applicant if the applicant makes the deposit of the liability, which the applicant is not ready to do.

(k) The applicant has completely failed to show that there is a prima facie case in its favour for grant of interim relief, much less mandatory interim relief. The action of forfeiture and dispossessing are yet to follow and the action of sealing has taken place after about 21 years therefore, the balance of convenience does not be in favour of the applicant.

(l) The issue, today, is not whether to open the lock but whether the applicant was liable to pay the amount that is demanded from it. If the applicant pays the amount and thereafter succeeds in the petition, the said amount with 15% interest, shall be refunded to the applicant; therefore, there is no question of irreparable loss being faced by the applicant. Further, in view of the provisions of Sub-section (4) of Section 7-A of the Act, the applicant is not likely to suffer any irreparable loss.

(m) Mr. Hriday Buch, learned Central Government Standing Counsel, has relied upon Union of India v. Cynamide India Ltd., 1987 AIR(SC) 1802in order to contend that price fixation is not the function nor the forte of the Court and that Legislative action, plenary or subordinate, is not subject to rules of natural justice. It is submitted that in the present case, the applicant has been heard by the DPLRC and its representations have been considered. Notices have been issued to the applicant regarding the recovery proceedings, therefore, it cannot be said that it

was not aware regarding the procedure adopted under the Bombay Land Revenue Code.

(n) Referring to Mukesh Kishanpuria v. State of West Bengal, 2010 2 GLH 200 it is contended by Mr. Hriday Buch that the contention raised by the learned Senior Advocate for the applicant that there is no power under the Bombay Land Revenue Code to attach the Factory of the applicant, is not correct as it has been held by the Supreme Court in the said judgment that, when wider powers have been conferred, narrower powers are automatically vested in the authority and the court that has the power to grant regular bail also has the power to grant interim bail, pending final decision of the bail application.

(o) Reference has also been made to Corporation Bank v. Saraswati Abharansala, 2009 1 SCC 540 and a submission is advanced that a Statute should not be considered in a manner which would defeat its object and the principle of purposive construction should be followed to find out the object of the Act. It is contended that to hold that there are no powers of attachment under the provisions of the Bombay Land Revenue Code would amount to defeating the very object of the Statute.

(p) Distinguishing the case of Dorab Cawasji Warden v. Coomi Sorab Warden (Supra), relied upon by the learned Senior Advocate for the applicant for grant of mandatory interim injunction, it is submitted that it was a case where the parties had over-reached the process of law wherein the Supreme Court thought it fit, in the peculiar facts of the case, to grant relief of mandatory interim injunction. It is contended by Mr. Buch that the factual scenario in the present case is totally different and the demand made upon the applicant is sought to be recovered for the past 21 years, for which proceedings have been initiated, therefore, the principles of law enunciated in Dorab Cawasji Warden v. Coomi Sorab Warden (Supra), would have no application in the present case.

(q) The learned Central Government Standing Counsel, has also relied upon the principles of law enunciated in judgment dated 13-05-2010, rendered in Letters Patent Appeal No. 1166 of 2008, arising out of Civil Application No. 11373 of 2008, regarding grant of interim relief.

[7] Upon the strength of the above arguments it is urged that no relief as prayed for, be granted to the applicant and the application be dismissed, with costs.

[8] In rejoinder, Mr. K.S. Nanavati, learned Senior Advocate has largely reiterated the submissions made by him earlier, and has brought to the notice of this Court certain orders passed by the Bombay High Court and the Supreme Court in other proceedings

where interim relief has been granted to the Petitioners therein. The same have been perused by the Court and not found to be applicable to the facts obtaining in the present case.

[9] Mr. J.K. Shah, learned Assistant Government Pleader appearing for the third Respondent has submitted that the said Respondent is acting as an Agent of the first Respondent, for effecting recovery of the arrears of land revenue under the provisions of the Bombay Land Revenue Code. It is submitted that on 08-06-2011, a notice has been issued by the Mamlatdar to the applicant, intimating that the Factory of the applicant would be sealed. The said notice could have been challenged by the applicant under the provisions of Section 211 of the Bombay Land Revenue Code read with Rule 108(6). However, this has not been done. The Mamlatdar has been authorised by the Collector to exercise power for effecting recovery, in accordance with the procedure prescribed under the Bombay Land Revenue Code. The third Respondent has complied with all the provisions of the Bombay Land Revenue Code and a proposal has been sent in respect of the procedure to be carried out under the provisions of Sections 165 and 166. Chapter XII of the Bombay Land Revenue Code confers wide powers, including the power to effect recovery as arrears of land Revenue. The action of the 3rd Respondent in sealing the Factory of the applicant has been taken in full compliance with the provisions of the Bombay Land Revenue Code.

In support of the above contentions, reliance has been placed upon the following decisions:

(1) A.M. Choksi v. S.V.S. Bank Ltd., 1998 1 GLR 154

(2) R.S. Joshi v. Ajit Mills Ltd., 1977 4 SCC 98

(3) Commissioner of Income Tax v. Hindustan Bulk Carriers, 2003 3 SCC 57

(4) Chhotalal V. Kakkad v. State of Gujarat, 1973 GLR 279

(5) Union of India v. Alok Kumar, 2010 5 SCC 349

[10] I have heard learned Counsel for the respective parties at length and in great detail, perused the averments made in the application and documents on record, and considered the rival submissions advanced at the Bar.

[11] At the outset, it is necessary to make it clear that this application has been filed pending the final adjudication of the main petition, wherein similar prayers have been made. The specific prayer in the application is for grant of interim mandatory relief by restoring the status-quo ante, directing the Respondents to remove the seals applied

on the Factory of the applicant and permit the applicant to continue the process of manufacture.

[12] The main ground of challenge to the action of sealing the Factory is to the effect that the provisions of Section 150(b) and 153 of the Bombay Land Revenue Code do not empower the authorities to take forcible possession and lock the Factory. According to the learned Senior Advocate, the proviso to Section 153 is mandatory and can only be exercised if the conditions stipulated in Clause (a) and (b) of the proviso are adhered to, namely, by following the procedure envisaged under Section 165 and 166 of the Bombay Land Revenue Code. According to the learned Senior Advocate, there is no provision in the Bombay Land Revenue Code that empowers the Respondents to seal the Factory. The petition has been permitted to be amended to include a necessary ground and a prayer for issuance of a mandatory order to this effect.

[13] The submission regarding whether the Respondents have power under the Bombay Land Revenue Code to seal the Factory and whether such power has been legally exercised, is also in issue in the Writ Petition. To render any finding upon such issues at this stage, would amount to pre-judging the petition. Similarly, the legality and validity of the demand of the principle amount of Rupees 678.73 lakhs which has escalated to about nineteen crores with interest, is also the subject matter of adjudication in the petition. Being conscious of the above facts, it would not be appropriate, at this stage, to enter into the merits of the case, insofar as the core issues involved in the petition are concerned. The prayers made in the application will, therefore, be considered in accordance with the established parameters for grant of interim relief and mandatory interim relief, in the background of the legal and factual position obtaining in the case.

[14] In the case of Dorab Cawasji Warden v. Coomi Sorab Warden (Supra), the factual matrix was entirely different to the one existing in the present case. In that case, land was purchased by the parents of the Appellant and the Appellant as joint owners, and a building was constructed thereupon. By a Registered Deed of declaration, it was declared that the Appellant had an undivided share in the property as joint tenant and that the declarants had a right to sever the joint tenancy at any time. After the death of the mother of the Appellant, the Appellant and his father agreed to hold the property as tenants-incommon instead of joint tenants, each having an equal undivided share therein so as to be able to dispose of his undivided share. The Appellant's father transferred his undivided half share in the property in favour of another son, on his attaining majority. The Appellant and his brother came to hold equal undivided one half share each as tenants-in-common in respect of the said property. The brother of the Appellant was living with his father and the Appellant, and it was only after his marriage that the two brothers occupied different portions of the house with separate

kitchens. The Appellant's brother died intestate leaving behind his widow and two minor sons (Respondents Nos. 1 to 3). The sons sold their undivided half share in the property to Respondent No. 4 and his wife. The purchasers took possession of the property pursuant to the Sale Deed. The Appellant filed a Suit, praying for a perpetual injunction restraining Respondents Nos. 1 to 3 from parting with possession of the property and/or inducting any third party into it and from restraining the purchasers from entering into it or taking possession. The trial Court granted an interim mandatory injunction restraining Respondent No. 4 from remaining in possession or enjoying the suit property. In appeal, the High Court set aside the order granting injunction. Since the purchasers had occupied the disputed portion, the question for consideration was whether the Appellant was entitled to injunction in a mandatory form, directing the purchasers to vacate the premises. There was a clause in the Agreement to sell, to the effect that pending the completion of the sale if any Suit is filed by the Appellant against the vendors and an injunction is obtained restraining the vendors from selling the property, then the vendors shall have the option to keep the sale in abeyance and/or cancel and rescind the Agreement. In the above factual matrix, the Supreme Court thought it just and necessary that a direction should go to the Respondents to undo what they had done with knowledge of the Appellant's rights to compel the purchaser or to deny joint possession.

[15] In the present case, the demand of Rs. 5,73,49,357 has been made upon the applicant on 17-07-1990. As per paragraph 7(2)(a) of DPCO 1979, the applicant could have deposited the amount into the Drugs Prices Equalisation Account. Had the applicant deposited the amount, and in the event of its success in the litigation, the Respondents would have been bound to refund the said amount, with 15% interest. As the demand made by the first Respondent was not met by the applicant, proceedings under the provisions of the Bombay Land Revenue Code, to recover the amount as arrears of land revenue were initiated by issuing notice under Section 152, on 17-12-2005. It is clearly mentioned in the said notice that if the amount is not paid before 23-01-2006, procedure for forfeiture and sale shall be carried out. Thereafter, another notice has been issued on 26-09-2008. On 16-07-2008 and 01-01-2009, the Collector, Bharuch has informed the Mamlatdar, Ankleshwar to effectively and expeditiously carry out the recovery proceedings from the applicant. Notices under the provisions of Section 154 of the Bombay Land Revenue Code were issued on 09-01-2009 and on 05-09-2009. Another notice was issued on 24-05-2010. Again, on 09-03-2010 and 05-07-2010, notices under Section 200 of the Bombay Land Revenue Code have been issued, wherein it has been specifically mentioned that if the amount mentioned is not paid, the authority shall enter into the premises and forfeit and carry out the distraint sale. Thereafter, on 08-06-2011, the applicant has been specifically informed that the Factory is required to be sealed during the process of forfeiture and distraint sale. By

issuing the abovementioned notices and following the procedure envisaged under the provisions of the Bombay Land Revenue Code, stage by stage, the applicant has been informed that the Factory is likely to be sealed. This fact is very much within the knowledge of the applicant. None of the said notices have been challenged by the applicant before the appropriate forum available under the Bombay Land Revenue Code. As a consequence of the notice dated 08-06-2011, the Factory of the applicant has been sealed. In this factual background, the submission of the learned Senior Advocate that the Factory has been sealed all of a sudden with the help of Police personnel, does not inspire confidence. The notice dated 08-06-2010 has not been placed on record by the applicant, though it is admitted during the course of hearing. A copy of the same has been produced by the learned Assistant Government Pleader. A perusal thereof makes it clear that the applicant has been informed in clear terms that if it fails to pay the amount demanded, the Factory would be sealed. The applicant was aware of the impending sealing of the Factory even at the time of hearing of the petition on 23-24/06-2011.

[16] It would be fruitful, at this stage, to refer to certain judgments of the Supreme Court wherein the principles of law regarding grant of interim relief have been enunciated.

[17] In the case of Assistant Collector of Central Excise v. Dunlop India Ltd., 1985 AIR(SC) 330, relying on the earlier decisions of the Supreme Court in Titaghur Paper Mills Co. Ltd.v. State of Orissa, 1983 AIR(SC) 603 and Union of India v. Oswal Woollen Mills Ltd., 1984 AIR(SC) 1264, the Supreme Court held as under:

> 5. We repeat and deprecate the practice of granting interim order which practically give the principal relief sought in the petition for no better reason than that a prima facie case has been made out, without being concerned about the balance of convenience, the public interest and a host of other relevant considerations. Regarding the practice of some clever litigants of resorting to filing writ petitions in far-away courts having doubtful jurisdiction, we had this to observe:
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> ...Having regard to the fact that the registered office of the Company is at Ludhiana and the principal Respondents against whom the primary relief is sought are at New Delhi, one would have expected the writ petition to be filed either in the High Court of Punjab and Haryana or in the Delhi High Court. The writ Petitioners however, have chosen the Calcutta High Court as the forum perhaps because one of the interlocutory reliefs which is sought is in respect of a consignment of beef tallow which has arrived at the Calcutta Port. An inevitable result of the filing of writ petitions elsewhere than at the place where the concerned offices and the relevant records are located is to delay prompt return and contest. We do not

desire to probe further into the question whether the writ petition was filed by design or accident in the Calcutta High Court when the office of the Company is in the State of Punjab and all the principal Respondents are in Delhi. But we do feel disturbed that such writ petitions are often deliberately filed in distant High Courts, as part of a manoeuvre in a legal battle, so as to render it difficult for the officials at Delhi to move applications to vacate stay where it becomes necessary to file such applications.

In Union of India v. Jain Shudha Banaspati Ltd.(supra), Chandrachud, CJ., A.P. Sen, R. N. Misra, JJ. allowed an appeal against an interim order making the following observations:

After hearing learned Counsel for the rival parties, we are of the opinion that the interim order passed by the High Court on November 29, 1983 is not warranted since it virtually grants to the Respondents a substantial part of the relief claimed by them in their writ petition. Accordingly, we set aside the said order.

We have come across cases where the collection of public revenue has been seriously jeopardised and budgets of Governments and Local Authorities affirmatively prejudiced to the point of precariousness consequent upon interim orders made by courts. In fact, instances have come to our knowledge where Governments have been forced to explore further sources for raising revenue, sources which they would rather well leave alone in the public interest, because of the stays granted by courts. We have come across cases where an entire Service is left in a stay of flutter and unrest because of interim orders passed by courts, leaving the work they are supposed to do in a state of suspended animation. We have come across cases where buses and lorries are being run under orders of court though they were either denied permits or their permits had been cancelled or suspended by Transport Authorities. We have come across cases where liquor shops are being run under interim orders of court. We have come across cases where the collection of monthly rentals payable by Excise Contractors has been stayed with the result that at the and of the year the contractor has paid nothing but made his profits from the shop and walked out. We have come across cases where dealers in food grains and essential commodities have been allowed to take back the stocks seized from them as if to permit them to continue to indulge in the very practices which were to be prevented by the seizure. We have come across cases where land reform and important welfare legislations have been stayed by courts. Incalculable harm has been done by such interim orders. All this is not to say that interim orders may never be made against public authorities. There are, of course, cases which demand that interim orders should be made in the interests of justice. Where gross violations of the law and injustices are perpetrated or are

about to be perpetrated, it is the bounden duty of the court to intervene and give appropriate interim relief. In cases where denial of interim relief may lead to public mischief, grave irreparable private injury or shake a citizen's faith in the impartiality of public administration, a Court may well be justified in granting interim relief against public authority. But since the law presumes that public authorities function properly and bonafide with due regard to the public interest, a court must be circumspect in granting interim orders of far reaching dimensions or orders causing administrative, burdensome inconvenience or orders preventing collection of public revenue for no better reason than that the parties have come to the Court alleging prejudice, inconvenience or harm and that a prima facie case has been shown. There can be and there are no hard and fast rules. But prudence, discretion and circumspection are called for. There are several other vital considerations apart from the existence of a prima facie case. There is the question of balance of convenience. There is the question of irreparable injury. There is the question of the public interest. There are many such factors worthy of consideration. We often wonder why in the case (of) indirect taxation where the burden has already been passed on to the consumer, any interim relief should at all be given to the manufacturer, dealer and the like.

[18] The above principles of law enunciated by the Supreme Court are extremely apt and squarely apply to the facts of the present case. From the entire factual background of the case and a scrutiny of the provisions of law applicable, including those of the Bombay Land Revenue Code, prima facie, no such grave violation of law, as alleged is apparent, so as to warrant the grant of mandatory interim relief to the applicant. The amount under demand, inclusive of interest has now reached the enormous figure of about nineteen crores. The initial demand has been made on 10-07-1990, and proceedings for recovery of the demand as arrears of land revenue have been intimated on 17-12-2005, culminating in the sealing of the Factory of the applicant, pursuant to the notice dated 08-06-2011.

[19] It is pertinent to note that ever since the year 1990, the applicant has not paid even a single rupee towards the demand, pending litigation, leave alone a substantial sum or even the principle amount. During the course of hearing of the application, the applicant showed its inability to pay even the principle amount upfront and it was submitted that it has sent its own proposal to the first Respondent. The Court is not concerned with such a proposal. The fact remains, that against the total demand of about Rupees nineteen crores, not even a single rupee has been paid by the applicant. It was open to the applicant to have deposited the amount in the DPEA as provided in Paragraph 7(2)(a) of DPCO 1979. If the applicant is successful in the petition, the amount would have been refunded to it with 15% interest. Having consciously chosen

not to deposit the amount or pay the demand, the applicant can have no grouse if proceedings for recovery under the provisions of the Bombay Land Revenue Code are initiated. At no stage has the applicant challenged those proceedings before the appropriate forum. Even the notice dated 08-06-2011 remains unchallenged, though there are remedies available under the Bombay Land Revenue Code itself.

[20] It is, therefore, clear that the applicant was very well aware, all throughout, of the consequences that would follow if the demanded amount is not paid. The pendency of litigation in a court of law or filing of the petition, in which no interim relief has been granted would not, of itself, justify the non-payment of the huge and long-outstanding demand. The applicant was informed on 08-06-2011 that the Factory would be closed in the process of recovery as arrears of land revenue. If, today, 300 workers have been rendered jobless, as emphasised by the learned Senior Advocate, it is the applicant alone that is responsible for creating such a situation. The Respondents have nothing to do with the workers directly and any grievance that the workers may have can only be directed against the applicant. Similarly, if there are goods of other Companies in the factory, it was open to the applicant to remove or return them, in view of the fact that it had been informed by notice dated 08-06-2011, that the Factory would be sealed. It is not open to the applicant at this stage, to take shelter behind the plea of the workers being rendered jobless, or goods of other Companies being damaged. No equity can be claimed on these counts by the applicant. The situation that has emerged is a result of the adamance of the applicant in refusing to pay a substantial portion of the demanded amount, during the pendency of the litigation.

[21] In the above context, if mandatory interim relief as sought for by the applicant is granted, it would virtually amount to allowing the writ petition and negating the demand made by the Respondents, by rendering at naught, the entire proceedings under the provisions of the Bombay Land Revenue Code.

[22] As already made clear earlier, this Court would prefer not to enter into the merits of the case or adjudicate upon issues that have been raised in the petition. For this reason, certain specific contentions raised by the learned Counsel for the parties and judgments cited by them, are not being specifically dealt with.

[23] Normally, the factors that should exist while considering an application for grant of interim relief are, existence of a prima facie case, balance of convenience and irreparable loss to the party, if such relief is not granted. It may be noted that in matters of public revenue, the Court has to be extremely cautious while granting such relief. Much would depend on the facts of each case.

[24] In Assistant Collector of Central Excise v. Dunlop India Ltd. (Supra), the Supreme Court has held as below:

> 7. xxx Even assuming that the company had established a prima facie case, about which we do not express any opinion, we do not think that it was sufficient justification for granting the interim orders as was done by the High Court. There was no question of any balance of convenience being in favour of the Respondent-Company. The balance of convenience was certainly in favour of the Government of India. Governments are not run on mere Bank Guarantees. We notice that very often some courts act as if furnishing a Bank Guarantee would meet the ends of justice. No governmental business or for that matter no business of any kind can be run on mere Bank Guarantees. Liquid cash is necessary for the running of a Government as indeed any other enterprise. We consider that where matters of public revenue are concerned, it is of utmost importance to realise that interim orders ought not to be granted merely because a prima facie case has been shown. More is required. The balance of convenience must be clearly in favour of the making of an interim order and there should not be the slightest indication of a likelihood of prejudice to the public interest. We are very sorry to remark that these considerations have not been borne in mind by the High Court and interim order of this magnitude had been granted for the mere asking. The appeal is allowed with costs.

[25] Applying the above-quoted principles of law to the facts of the present case, in the considered view of this Court, the applicant does not succeed in establishing a prime facie case. Similarly, the balance of convenience does not tilt in its favour. In view of the fact that the applicant can deposit the demanded amount even today, which can be refunded to it with interest at the rate of 15% in case it succeeds in the petition, it cannot be said that the applicant would suffer an irreparable loss.

[26] Another aspect that cannot be ignored is that the demand is a very old one, having been made as far back as in the year 1990. The proceedings under the Bombay Land Revenue Code have been initiated in the year 2005. The total demand from the applicant, inclusive of interest, is almost Rupees nineteen crores which is, by no means, a small amount. More important, it is public money that is due to the first Respondent, unless otherwise ruled by a Court of law. Considering the above aspects which also include the amount of public interest as well, no prima facie case can be said to exist in favour of the applicant in order to grant mandatory interim relief and restore the status-quo ante.

[27] As a consequence of the above discussion, there does not exist any legal or valid ground to grant the prayers made in the application.

[28] As a culmination of the above discussion and for reasons stated hereinabove, no case is made out for grant of interim relief, much less mandatory interim relief, in favour of the applicant.

[29] The application is, therefore, dismissed. Rule is discharged. There shall be no orders as to costs.