



THE SPECIAL ECONOMIC ZONES ACT, 2005 AND JUDICIAL RESPONSE

Abstract

SEZ is an engine to economic growth, promoting exports and employment akin to the Chinese model. The SEZs Act came into force along with its rules in 2006 offering tax benefits besides land allotment. Hundreds of proposals were approved for the formation of SEZs, many in private sector. Huge land masses including cultivable lands have been acquired by the state for the SEZs despite resistance *inter alia* from the peasants. The decision on constitutional validity of the SEZs Act is long pending before the Supreme Court. The analysis led to a conclusion that the judicial response to SEZs Act has been towards upholding the policy of the government.

Introduction

INDUSTRIALIZATION IS considered as a must for development. It cannot be attained by agriculture alone. Amartya Sen, opined that there cannot be a developed country that has reached 'there' focusing solely on agriculture.¹ According to the experts, for a jump in growth, industrialization is necessary. Mohd. Yunus,² opines that special economic zone (SEZ) policy is definitely sustainable for India.³ If India wants to command respect in the comity of nations, it must rapidly industrialize the country. India must be transformed into a powerful, modern, highly industrialized nation.⁴

A SEZ is conceived of as an engine to economic growth of the country. It is meant to attract investment into the country. It generates foreign exchange through export of goods and services. It is expected to provide huge employment opportunities. For that the government is to provide hassle free environment and easy clearances besides land allotment. Asia's first export processing zone [EPZ] was established in Kandla, India in 1965. But, China has shown much advancement through SEZs. The Commerce and Industries Minister of India visited the Chinese SEZ. Consequently, the Export -Import Policy, 2000 introduced the concept of SEZ in India.

1. Amartya Sen, 'The Concept of Enclosed Space as Amartya Sen Viewed?' Available at: www.allvoices.com/contributed-news/1079324-tata-motors.

2. Nobel Laureate, the founder of Bangla Grameen Bank, (the largest women's bank of Asia).

3. Available at: www.tribuneindia.com/2007/20070131/biz.htm 'SEZ Policy Sustainable'. New Delhi, visited on January, 30 2007.

4. Markandey Katju, J (along with Ahok Bhan J) in *Reliance Industries Ltd. v. Designated Authority*, 2006 (6) Suppl. SCR 1.

The Special Economic Zones Act, 2005 (SEZ Act) came into force along with its rules w.e.f. 10th February 2006. In this paper, an attempt is made to analyse the provisions of SEZs Act, 2005 and also analyse the decisions of the courts in the interpretation of the provisions of the Act.

Objectives of the SEZ

The prime objectives of the SEZ Act are: (a) generation of additional economic activity; (b) promotion of exports of goods and services; (c) promotion of investment from domestic and foreign sources; (d) creation of employment opportunities; and (e) development of infrastructure facilities. The objective of the SEZ is to make available goods and services free of taxes and duties supported by integrated infrastructure for export production, expeditious and single window approval mechanism and a package of incentives to attract foreign and domestic investments with a view to promoting exported growth. Mere allotment of land is not, therefore, sufficient to attain that objective. The developer has to create a whole range of infrastructure.⁵

In the process of liberalization tax benefits are offered under the SEZ Act in a big way besides land allotment.

Salient features of the Indian SEZ initiative

The SEZ Act offers a highly attractive fiscal incentive package, which ensures:

- a) Exemption from custom duties, central excise duties, service tax, central sales taxes and securities transaction tax to both the developers and the units;
- b) Tax holidays for 15 years (currently the units enjoy a seven year tax holiday), *i.e.*, 100 per cent tax exemption for five years, 50 per cent for the next five years, and 50 per cent of the ploughed back export profits for the next five years; and
- c) 100 per cent income tax exemption for 10 years⁶ in a block period of 15 years for SEZ developers.

The initiative further includes-

100 % FDI permitted for all investments in SEZs, except for activities included in the negative list.

SEZ units are required to be positive net foreign-exchange earners and are not subject to any minimum value addition norms or export obligations.

5. *Mohan Lal Sharma v. Union of India*, AIR 2007 Raj 244.

6. See also *Ms. Swayam Consultancy Pvt., v. The Income Tax Officer*, decided by V.V.S. Rao J of the Andhra Pradesh High Court (2011) 336 ITR 189 (AP).

Goods flowing into the SEZ area from a domestic tariff area (DTA) are treated as exports, while goods coming from the SEZ into a DTA are treated as imports.

In addition to the duty exemptions, the units in the Indian SEZs do not have to pay any income tax for the first five years and only pay half their tax liability for the next two years. The exemptions from service tax payable under chapter-V of the Finance Act, 1994 on taxable services provided to a developer or unit to carry on the authorized operations.⁷ The Central Government may prescribe, the manner, in which, and, the terms and conditions subject to which exemptions, concessions, drawback or other benefits can be granted to a developer or entrepreneur.⁸

Incentives for SEZ developers

SEZ developers also enjoy a 10-year “tax holiday”. The SEZ policy also provides enterprises and developers with a favourable and attractive range of incentives which are mentioned hereunder:

- a) the SEZ may retain 100 per cent foreign-exchange receipts in Exchange Earners’ Foreign Currency Accounts.
- b) 100 per cent FDI is permitted for SEZ franchisees in providing basic telephone services in SEZs.
- c) No cap on foreign investment for small-scale-sector reserved items which are otherwise restricted.
- d) Exemption from industrial licensing requirements for items reserved for the small-scale-industries sector.
- e) No import licence requirements.
- f) Exemption from customs duties on the import of capital goods, raw materials, consumables, spares, *etc.*
- g) Exemption from central excise duties on procurement of capital goods, raw materials, consumable spares, *etc.* from the domestic market.
- h) No routine examinations by customs for export and import cargo.
- i) Facility to realize and repatriate export proceeds within 12 months.
- j) Profits allowed to be repatriated without any dividend-balancing requirement.
- k) Exemption from central sales tax and service tax.

The incentives for developers of SEZ include:

- a) Exemption from duties on import/procurement of goods for the

7. Within the meaning of s. 26(1)(e) of the SEZ Act, 2005 can be claimed subject to sub-s. (2) of s. 26 of the Act.

8. *Jamshedpur Utilities v. The State of Maharashtra* decided by Mumbai High Court on 27 April, 2010, available at: www.indiankanoon.org/doc/633882.

development, operation and maintenance of SEZ.

- b) Income tax exemption for a block of 10 years in 15 years.
- c) Exemption from service tax
- d) FDI to develop townships within SEZ with residential, educational, health-care and recreational facilities permitted on a case-by-case basis.⁹

In *Mohan Lal Sharma v. Union of India*,¹⁰ it was observed that the Parliament has, keeping in view the international competitive environment for exports and for attracting substantial investments for promoting export-led growth, simplified the procedure. *Muthoot Technopolis v. The Tabazildar, Kanayannur Taluk*¹¹ is another case wherein the Kerala High Court in a review petition held that the co-developer in Cochin SEZ is not eligible for the benefit of exemption under the provisions of Kerala Building Tax Act. Thus, exemptions are only provided from payment of taxes, duties or cess for almost of all the products of agriculture, coffee, tea, rubber, mica, coal, marine, jute products, tobacco, oil, textiles, medicinal/toilet preparations even the research and development for the units of SEZs and the developers.

In *Reliance Industries Ltd v. Designated Authority*,¹² the apex court observed that the SEZs are given several relaxations of customs and other duties including anti dumping duty. In another case *Alabbai v. State*,¹³ the state resumed nearly 1000 acres of *gauchar* land (useful for cattle grazing) allotted to the village *panchayat*. It was decided to grant the land for the purpose of setting up of SEZ. The resumption and ultimate allocation of land for developing SEZ was in question before the court. The court while dismissing the petition recommended that the state government shall examine whether out of wasteland available with the government, area to the extent of *gauchar* land resumed from the *panchayat*, could be allotted to Zarpara Gram Panchayat.

Establishment of SEZ

Section 3 of the SEZ Act, 2005 provides that SEZ may be established under the said Act, either jointly or severally by the Central Government, state government, or any person for manufacture of goods or rendering services or

9. Jona Aravind Dohrmann, "Special Economic Zones in India—An Introduction," *ASIEN* 106 (January 2008), S. 60-80.

10. *Supra* note 5.

11. Judgment delivered by Kerala High Court on 17 June, 2008. *Available at:* <http://indiankanoon.org/search/?formInput=judgments+on+SEZs>. (visited on 20th June, 2011)

12. 2006 (10) 3 SCC 368.

13. The case was decided by the S.J. Mukhopadhyay and Akil Kureshi J on 22 June, 2011. *Available at:* <http://www.indiankanoon.org/doc/1230836/>.

for free trade and warehousing zone. Section 3(2) provides that any person, who intends to set up a SEZ, may, after identifying the area, make a proposal to the state government concerned for that purpose.¹⁴

In *Mohan Lal Sharma*,¹⁵ the court observed that any person who intends to set up SEZ, after identifying the area is entitled to make a proposal to the state government concerned for the purpose of setting up SEZ. On receipt of such a proposal, the state government has to consider the question as to whether the proposal put forth was viable or not. The validity of allotment of land for a SEZ was also in question before the high court.¹⁶ The court found that the SEZ was a public-private partnership concern, *viz.*, M/s. Mahindra World City (Jaipur) Limited. The Government of Rajasthan was holding 26% of its share capital. The government, in lieu therefore, made available the land in question, to the SEZ. The court found that the decision to allot the land was taken in the public interest. So also the notification issued under section 4(1) of the Land Acquisition Act, 1894 was for public purpose. Therefore, the court declined to stall the development project of national public importance.

Thus, section 3 of the SEZ Act, 2005 opened the field wider for any person to come forward and make a proposal for setting up the SEZ directly. The proposal may be made either to the state government or to the board of approval constituted under the SEZ Act. Consequently, as many as 388 proposals of SEZ have been made within 194 days after the Act came into effect. As of December 2008, 552 SEZ have been approved by the Central Government in 19 different states. Among them only 272 were notified. The formal approvals as on 26th February 2010 were 574 of which 350 were notified. Seven of them were of the Central Government. Twelve of them were of state governments or private SEZ. A total number of 105 SEZ have been operationalized as at 31st December 2009. Further, over Rs.1, 76,148.41 crores have been invested in the SEZ and direct employment of the order of 6,20,824 persons has been generated in the SEZs.

The Andhra Pradesh High Court in *Parke-Davis Employees Union, v. The A.P. Industrial Infrastructure Corporation Limited*,¹⁷ observed that before a parcel of land is declared as a SEZ, weighty considerations are required to be bestowed by

14. S. 3(3) provides that “notwithstanding anything contained in Sub-section (2), any person, who intends to set up SEZ, may, after identifying the area, at his option, make a proposal directly to the Board of Approval for the purpose of setting up the SEZ. Where such proposal has been received directly from a person under this sub-section, the Board may grant approval and after receipt of such approval, that person concerned shall obtain the concurrence of the State Government within the prescribed period.”

15. *Supra* note 5

16. *Ibid.*

17. Available at: www.indiankanoon.org/doc/989239/.

the state. Only upon the state being satisfied that it is essentially a fit case, the same is to be declared as a SEZ. The court held that the power available under section 4 (1) has been used after careful consideration of all relevant factors.¹⁸

In *Sasikumar P. v. State of Kerala*,¹⁹ the question was whether possession of the minimum required extent of 25 acres of land is a condition precedent for making an application under the SEZ Act. The Kerala High Court observed that under the provisions of the SEZ Act, although minimum extent of land has been prescribed in rule 3 of the SEZ Rules, 2006, possession of the property does not appear to be a condition precedent to make a proposal for establishing a SEZ.

In *Agasthya Bio –Pharm India Ltd v. Union of India*,²⁰ the High Court of Kerala observed, ‘... the SEZ Rules, 2006 framed by the Central Government under the provisions of the SEZ Act, 2005. It is opined from Chapter-2 of the said Rules, laying down the procedure for establishment of SEZ, the recommendation of the 4th respondent (Principal Secretary to Govt. of Kerala) is a necessary requirement.’²¹ Therefore, the secretary was ordered to consider the proposal submitted by the petitioner for the establishment of the biotechnology park [SEZ] and pass orders thereon in the manner as laid down in the SEZ, 2006.

*Essar Steel v. Union of India*²² is another case decided by the High Court of Gujarat wherein the court held that SEZ are ‘territories within India’. Allowing a batch of writ petitions challenging the levy of export duty on goods supplied by domestic Indian units to unit situated in SEZ wherein the taxation department argued that SEZ being “deemed to be a territory outside the customs territory of India, levy of export duty on a domestic tariff area unit, which supply goods into SEZ cannot be claimed to be outside the scope, authority and jurisdiction to levy export duty on a unit in Domestic Tariff Area’. The high court observed that SEZs are a part of India. Therefore, levy of export duty on the goods supplied from DTA to SEZ was not justified.

The question before the High Court of Kerala in *Girnar Industries v. CIT*²³ was whether ‘blending of tea’ is a ‘manufacturing activity’ for the

18. *Ibid.*

19. Decided by Kerala High Court on 23 February, 2010. *Available at:* <http://www.indiankanoon.org/doc/69531/>

20. W.P.(C).No. 2144 of 2009(E). *Available at:* www.indiankanoon.org/doc/1992787/.

21. *Ibid.*

22. AIT-2009-460-HC.

23 *Available at:* <http://www.itatonline.org/forum/index.php?action=profile;u=1330;sa=s> how Posts, High Court of Kerala, ITA No. 100 of 2009 decided by Ramachandran Nair J on 17th Aug. 2009.

purposes of SEZ Act. The court held that the definition of manufacture contained in section 2(r) of the SEZ Act includes 'blending' and therefore it is manufacturing activity.

Development commissioner

An all in one development commissioner has been appointed to oversee the establishment and to monitor the functioning of the SEZs at the state level. In *Ahmed Ehtesham Kawkab v. The Government of India*,²⁴ the validity of appointment of development commissioner under the SEZ Act was in question before the High Court of Andhra Pradesh. It was held that the Director, Software Technology Parks of India (STPI), Hyderabad, could not be equated to an officer not below the rank of deputy secretary. Therefore, the appointment the Director, STPI as development commissioner was held invalid in the public interest litigation case.²⁵ Chapter V of the SEZ Act deals with the single window clearance. Matters that itself fall within the purview of single window clearance *viz.*, setting up of unit in SEZ, cancellation of letter of approval to entrepreneur, setting up and operation of offshore banking unit, setting up of international financial services center, single application form, return *etc.* It also includes agency to inspect, single enforcement officer or agency for notified offences, investigation inspection search or seizure, designated courts to try suits and notified offences, appeal to high court and offences by companies.²⁶

In *Bhavik K. Shah v. Union of India*,²⁷ the petitioner was a director of a company by the name of Technomach India Pvt.Ltd. (TIPL) which is a manufacturing unit based in the SEZ at Surat. The unit was allowed duty free import of precious metal solutions and certain jewellery making machines. The unit being based in an SEZ, the goods imported were not subject to inspection/examination by customs and were cleared on the basis of declarations made by the unit. The unit was importing plating solutions from foreign suppliers under a claim of exemption of customs duty under the SEZ scheme. These imports were supposed to be made for export of authorised products. Based on investigations which revealed that the petitioner had unauthorizedly sold the duty free materials in the local market in contravention of the scheme, the Development Commissioner of the Surat SEZ suspended the letter of

²⁴ Available at: www.indiankanoon.org/doc/1362599/ WP No. 2741 of 2009 decided by Anil R. Dave CJ, AP. High Court on 18th Sep. 2009.

²⁵ *Ibid.*

²⁶ Ss. 13-25 of the SEZ Act, 2005.

²⁷ The case was decided on 11 July, 2011 in writ Petition (Lodging) No. 1168 of 2011. Available at: <http://www.indiankanoon.org/doc/831706/> (visited on 15th Nov. 2011).

approval issued to the unit. The High Court of Bombay speaking through D.V. Chandrachud J approved the action of the development commissioner.

Industrial dispute in SEZ

In *Dhabji Meghji Maheshwari. v. Hindustan Lever Limited*,²⁸ the services of the petitioners were terminated in the year 2004, therefore, they raised industrial disputes under section 2(A) of the Industrial Disputes Act, 1947.²⁹ Assistant commissioner of labour had been authorised by the development commissioner to act on their behalf and discharge all the duties and functions related to the respective Acts in so far as they related to labour and industrial operations of Kandla Special Economic Zone. The Gujarat High Court, remanded the matter back to the Labour Court, Gandhidham to decide it on merits being a legal and valid references made by assistant commissioner of labour after giving reasonable opportunity of hearing to both the parties as early as possible within a period of one year from the date of receiving the copy of the said order.

In view of the above case, it may be understood that the development commissioner might empower the assistant commissioner of labour and maintain the spirit of the SEZ Act which seeks to maintain *status quo* relating to the implementation of the labour laws. As per the National Rural Labour Commission, an average agricultural worker gets 159 days of work in a year; and as per the National Sample Survey Organization (NSSO), 2005, the average daily wage of agricultural labour in rural areas is around Rs.51. Considering this, the estimated 82,000 agricultural labourers' households will lose Rs. 67-crore in wages. And put together, the total loss of income to the farming and the farm worker families would be to the tune of Rs. 212-crore a year. For the marginalized, the loss of income, even if it hovers around the poverty line has disastrous implications. After all, the small piece of land is his only economic security.³⁰

Land acquisition for SEZ

The Supreme Court in *Sagunthala (Dead) through Lrs. v. Special Tehsildar (L.A.)*³¹ decided on 3rd January, 2010 ruled that the purpose for which land is being acquired will be one of the most important factors in determining its

28 (2008) 1 GLR 124

29 See S. 2 (A) Industrial Disputes Act, 1947.

30 "Rural Labour Enquiry Report on General Characteristics of Rural Labour Households" Available at: <http://labourbureau.nic.in/RLE992k%20GenChar%20Chap%201.htm>. (visited on 30th March, 2002).

31 Supreme Court case decided by a bench comprising G. S. Singhvi and Ashok Kumar Ganguly JJ on 3rd Jan. 2010; AIR 2010 SC 984.

market value as well as award of compensation. While announcing enhancement of the compensation to the land owners from Rs 75,000/- per acre, awarded by the Madras High Court, to Rs 1,75,000/- per acre, the court noted, 'the purpose for which the acquisition is being made is an important factor.'

An extent of 196 acres of lands were acquired for the purpose of expansion of Tamil Nadu Magnesite Limited, a state owned company. Various notifications under section 4 (1) of the Land Acquisition Act, 1894 were issued in the month of February, March and May 1984. In connection with giving compensation for that acquisition, the land acquisition officer had fixed the market value at the rate of Rs.18,000/- per acre for irrigated dry land and Rs.15,000/- per acre for unirrigated dry land in award Nos. 1 to 9 and 11 of 1986. As the claimants felt aggrieved by and dissatisfied with the awards, they asked for reference under section 18 of the Land Acquisition Act. The reference court, *i.e.* the Court of Subordinate Judge Salem, after considering the documentary and oral evidence, treated the lands as potential house sites and fixed the market value at Rs.1,75,000/- per acre.

With this judgement the apex court by implication has held that special economic zone land is acquired for a 'commercial purpose' and therefore the market value of such land has to be determined accordingly. The land acquired for public purpose may have a different market value.

Land acquisition for SEZ and the Supreme Court suggestions

In *Bondu Ramaswamy v. Bangalore Development Authority*,³² the Supreme Court emphasized the need for revisiting the century old Land Acquisition Act. The Supreme Court held:³³

Our suggestions and observations are intended to draw attention of the government and development Authorities to some probable solutions to the vexed problems associated with land acquisition, existence of which can neither be denied nor disputed, and to alleviate the hardships of the land owners. It may be possible for the government and development authorities to come up with better solutions.

The apex court also observed:³⁴

Where the acquisition is for industrial or business houses (for setting-up industries or special economic zones etc.), the Government should play not only the role of a land acquirer but also the role of

32 (2010) 7 SCC 129.

33 Consequently, the UPA government in power has constituted the National Advisory Committee headed by Sonia Gandhi for that purpose and drafted the amendment bill. The NAC has completed its task and the Land Acquisition Amendment Bill, 2012 was introduced in the Parliament to be enacted into a comprehensive law.

34 *Supra* note 32.

the protector of the land-losers. As most of the agriculturists/small holders who lose their land, do not have the expertise or the capacity for a negotiated settlement, the state should act as a benevolent trustee and safeguard their interests. The Land Acquisition Collectors should also become Grievance Settlement Authorities. The various alternatives including providing employment, providing equity participation, providing annuity benefits ensuring a regular income for life, providing rehabilitation in the form of housing or new businesses, should be considered and whichever is found feasible or suitable, should be made an integral process of the scheme of such acquisitions. If the government or Development Authorities act merely as facilitators for industrial or business houses, mining companies and developers or colonisers, to acquire large extent of land ignoring the legitimate rights of land-owners, it leads to resistance, resentment and hostility towards acquisition process.

Constitutional validity of the SEZ Act

The constitutional validity of the SEZ Act, has been pending consideration before the Supreme Court in *Kuldeep Bishnoi v. Union of India*.³⁵ In the public interest litigation challenging the acquisition of cultivable land from farmers under the guise of public purpose for developing SEZs, the Supreme Court issued notices to the Union Government, states and union territories. Petitioner *Kuldip Bishnoi's* main plank before a bench comprising K.G. Balakrishnan and D K Jain JJ was that the Centre under article 252 of the Constitution has taken upon itself the right to legislate on National Capital Region (NCR), comprising Delhi and areas from three states, *i.e.*, Haryana, Rajasthan and Uttar Pradesh including agricultural land. The petitioners questioned the constitutional validity of sections 3 (f), 4 and 6 of the Land Acquisition Act, 1894 that authorized the governments to acquire agricultural land for 'public purpose' for builders, developers and industrialists denuding poor farmers and cultivators of their land and livelihood, forcing them to commit suicides. The petitioners said "economic growth is required but not by impoverishing people. That is what is happening because most displaced persons who lack the skills required for industrial jobs and other benefits are impoverished to the benefit of another class."³⁶ Several writ petitions filed before several high courts and even the Supreme Court have been tagged to the *Kuldeep Bishnoi* case.

The above cases *inter alia* include *Karnataka Landless Farmers Association v. Union of India*, challenged the acquisition of cultivable land under the guise of

35 W.P.(Civil) No. 537 of 2006 Supreme Court of India (pending).

36 *Ibid*.

public purpose for developing SEZs. The constitutional validity of section 3 (f) 4 and 6 of the Land Acquisition Act 1894 that authorizes the governments from acquiring farm land for public purpose for builders developers and industrialists. They claimed that it deprived farmers and cultivators of their land and livelihood and forcing them to commit mass suicide.

It has been alleged that the SEZ Act, 2005 effectively deprives workers in SEZ of the protection and equality in wages and service conditions available to workers outside SEZ'.³⁷ However, it is desirable that the Supreme Court must have decided on the constitutional validity of the SEZ Act, 2005 especially when there are as many 16 writ petitions are filed in different high courts and before the Supreme Court itself. There is no meaning in keeping the case pending transferring all the cases before Supreme Court and keep it undecided for years together when the first case was filed in 2006 itself.

Fears of Ministry of Defense

In *J. K. Industries Ltd. v. Union of India*³⁸ the Supreme Court observed:³⁹

In the backdrop of globalization and liberalization the world has become an economic village. Today, the capital market all over the world knows no barriers. Fiscal distances and barriers have been removed by developments in transport, communication and e-commerce.

Incidentally, the Ministry of Defense has cautioned against giving clearances to foreign direct investment in SEZs. It insists that a national security exception clause be introduced to regulate overseas investment. It has also been made clear to commerce ministry that nationality of persons working in SEZs should be considered while giving clearances. In many cases, SEZ operators are bringing in staff from 'countries of concern' to get their projects off the ground, the sources said. Armed forces have asked the government to keep SEZs at least 10 km away from the country's borders and 20 km from sensitive installations like airfields, radars and communication nodes for security reasons. The defense ministry, which is represented on the board of approvals, has suggested that SEZs in coastal areas should be cleared only after taking the

37. See www.indianrealtynews.com/...india/sc-decision-can-turn-things-around-for-sezs.html. See also *Reliance Venture Ltd v. M/s O. D. Properties P. Ltd* Transfer Petition (C) No. 406 Of 2008 transfer of Civil Writ Petition No. 4417 of 2006 (M/s O. D. Properties Pvt. Ltd. v. State of Haryana.) now pending before the High Court of Punjab and Haryana at Chandigarh to this court on the ground that on similar issues, namely, Writ Petition (C) No. 537 of 2006 (*Kuldeep Singh Bishnoi v. Union of India*) is pending decision before the Court under Article 32 of the Constitution of India. The apex court has ordered for transfer of the case.

38. [2007] 65 Taxman 323 (SC).

39. *Ibid.*

view of the armed forces.⁴⁰

The Andhra Pradesh State Human Rights Commission headed by B Subhashan Reddy J has directed the East Godavari District Collector and Superintendent of Police to consider withdrawal of all criminal prosecutions launched against the farmers in connection with the Kakinada Special Economic Zone (KSEZ) lands. In its order dated November 7, the commission directed the district administration not to view the acts of the KSEZ affected farmers during agitation, as trespassing into the acquired lands and obstructing the government officers on duty, as regular crimes under the Indian Penal Code but view the matters with compassion. It also directed the petitioners KSEZ Vyatireka Porata Committee and other farmers not to indulge in violence.⁴¹

Conclusion

The apex court has played an active role in *Bondu Ramaswamy v. Bangalore Development Authority*.⁴² The court has aptly categorized the land acquisition for SEZ as 'commercial' at par with the land acquisition for companies. In such cases, the court held, the land acquisition officer shall act as a liaison officer between the SEZ developer and the land losers. The officer shall further play the role of welfare officer in the rehabilitation and resettlement process. The court has also suggested to revisit the century old land acquisition laws. Consequently, the Government of India has taken up the reformative process through the National Advisory Committee.

But, on the other hand, in *Kuldeep Bisnoi*⁴³ case, the apex court has kept the question of constitutional validity of the SEZ Act -still undecided. It has tagged all the writ petitions from all the high courts by transfer to *Kuldeep Bisnoi* case. It was filed soon after the Act came into operation, during 2006 itself. In all, there are as many as 17 writ petitions. Keeping the cases undecided shows the apex court's 'inactivism' and rather indifferent attitude 'inapt' for its stature. Significantly, the pending questions relate to the constitutional validity of the SEZ Act and the pursuant acquisition of huge land masses including cultivable land. If the apex court, on verification of the SEZ Act, after the lapse of so many years of the Act in operation since 2006 and find some of the provisions of SEZ Act, repugnant to the supreme law, the situation would be so absurd and will have far reaching consequences. Such a decision may

40. 'Defense Ministry Wants Security Clause on FDI in SEZs', *The Economic Times*, New Delhi, July 23, 2007.

41. See reports in the newspapers, *The Hindu* Sunday, Apr. 1, 2007

42. *Supra* note 32.

43. WP (Civil) No. 537 of 2006 (pending before the Supreme Court).



adversely affect either the lives of the poor peasants who lost the source of livelihoods or the companies which have had invested crores of rupees for the development of infrastructure in the processing and non processing areas of the SEZ. The court is expected to cut short the delay in dealing with the questions of public importance expeditiously as justice delayed would be justice denied!

In the analysis of the provisions of the SEZ Act, 2005 and in the light of the decisions of the above cases in interpreting the provisions of the Act, it may be construed that the judicial response to SEZ Act, has been substantially towards upholding the policy of the government.

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