

(2014) 01 GUJ CK 0075
In the Gujarat High Court

Case No : Special Civil Application No's. 16317 and 16322 of 2012

Board of Trustees of KPT and Another	APPELLANT
Vs	
M/s. Vijay Salt Syndicate	RESPONDENT

Date of Decision : 07-01-2014

Acts Referred:

Constitution of India, 1950 — Article 14 226 227 300A
Major Port Trusts Act, 1963 — Section 29 34 34(1)
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 2(b) 2(e)
2(g) 3 4
Special Economic Zones Act, 2005 — Section 3
Transfer of Property Act, 1882 — Section 106 107 116 53(A)

Citation : (2014) 01 GUJ CK 0075

Hon'ble Judges : G.B. Shah, J

Bench : Single Bench

Advocate : S.N. Soparkar, Mr. Dhaval D. Vyas, for the Petitioners No. 1 - 2 and Mr. D.D. Vyas, in SCA No. 16322 of 2012, for the Appellant; D.J. Bhatt, Advocate for the Respondent(s) No. 1, for the Respondent

Judgement

G.B. Shah, J.—This Special Civil Application has been filed by the petitioners-The Board of Trustees of Kandla Port Trust (for short, "KPT"), Gandhidham and the Officer on Special Duty (Estate) of KPT, Gandhidham under Articles 14, 226, 227 and 300A of the Constitution of India and under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short P.P. Act) challenging the order dated 30.11.2012 passed by learned Additional District Judge, Gandhidham (Kachchh) in Civil Misc. Application No. 22 of 2011. The subject matter of the present petition pertains to the total plot of land admeasuring 408.68 Acres, say 409 acres situated to east of Nakti Creek within the Kandla Port Tidal area, at New Kandla, Taluka Gandhidham. The land was originally leased for the manufacture of salt. This land is vested in the KPT u/s 29 of the Major Port Trusts Act, 1963 ("the Act" for short). 1st Lease Deed was entered into between the parties i.e. between the petitioner KPT and respondent No. 1 M/s. Vijay Salt Syndicate for a period of 20 years and 3 months w.e.f.

5.1.1973 which expired on 31.7.1993. This lease stipulated for a renewal clause. The second lease deed for the period from 1.8.1993 to 31.3.2004 was entered into between the parties on 20.12.2002 which did not have any renewal clause and it was stipulated that the lease shall not be automatically renewable and that no compensation shall be payable by the Port Trust in the event of refusal to renew the lease. Resolution-163 dated 16.1.2004 was passed by the Board of Trustees of the KPT recommending extension of the lease. It was sent for approval to the Central Government u/s 34 of the Act. The respondent No. 1 has accepted the said Resolution and have never challenged the same. The area which comprises the disputed property is reserved as a Port Base Special Economic Zone (for short "SEZ") for which approval is granted by the competent authority i.e. Ministry of Commerce & Industry, Government of India. On 3.7.2009 KPT requested the Ministry not to renew present leases of salt lands. On 9.9.2009, writ petition in public interest was instituted in the High Court of Delhi by the Centre for Public Interest Litigation seeking a writ of mandamus against Union of India directing it to regain possession of over 16,000 acres of precious Government Land meant for busy sea port of Kandla and seeking further directions to the effect and seek damages from trespassers on the same land. The petition also sought investigation into the role of the officers of Ministry of Shipping and KPT in allowing the illegal occupation of the government land. According to the petition, this PIL was based on the premises that most of the lessees were clandestinely held by influential persons. There were many allegations and one of the serious allegations was that despite the fact that the term of the lease had expired in the year 2004, despite which the erstwhile lessees were permitted to continue in possession of these lease hold lands. While issuing notices, the Delhi High Court in W.P. (C) 11550/2009 directed that till further orders, no lease shall be executed or renewed except in accordance with the guidelines issued by the Ministry of Shipping. On 5.11.2009, the Government of India wrote letter to the Chairman KPT to take back possession of the land where the lease has expired. It is to be noted here that the directions of the Delhi High Court were never challenged by the respondents and are thus binding upon the KPT. On 11.11.2009, the Delhi High Court observed that the erstwhile lessors continued to be in occupation of the land of KPT for over years without lease and on payment of a paltry rent which was fixed in 2006, in absence of determination of market valuation of the land. The lands in issue fall within the above area of 5000 Hectares proposed to be used of SEZ. On 8.12.2009, a communication was sent to M/s. Vijay Salt Syndicate wherein they were called upon to hand over the possession of the disputed land within 30 days therefrom. The Court directed the CVC to examine the report of the CVO of the KPT and Dy. Chairman of KPT and directed to take appropriate action in accordance with law. On 11.3.2010, the Court noticed the report of the CVO of KPT of July 2008 involving a scam of leasing 16000 acres of land. On 27.7.2010, the Director (Port Operations) conveyed its approval to renew lease upto 3.1.3.2011. However, this communication was not acted upon since there was an order of the Division Bench directing no renewal granted on 9.9.2009 and furthermore the KPT had

moved CMP No. 4516/2011 before the Delhi High Court seeking permission but the Court was not inclined to grant permission and the said application was unconditionally withdrawn. On 11.8.2010, the Court having regard to the affidavit and the investigation report filed by the CBI etc. directed the Secretary, Ministry of Shipping to clarify under what circumstances, the letter dated 13.7.2010 was issued by the Joint Secretary (Port Administration) and the letter dated 27.7.2010 was issued by the Director (Port Operations) communicating approval of the competent authority to renew the lease in question. On 24.3.2011, in partial modification of earlier notification of 1991, one Mr. Sureshkumar Balan was appointed as Estate Officer. On 4.4.2011, the Division Bench of Delhi High Court directed that the proceedings for eviction to be finalised within a period of three months from 4.4.2011. Tenders were called in respect of 10 plots of 50 Acres and 100 acres and the highest bid was approximately Rs. 2.52 lac per acre for a period of 30 years. Under the directions of the Court, to ensure the best offers are received, more plots were put to tender/auction bid after giving wide publicity. Some of the lease holders have challenged the action of non-renewal of the lease of the land of KPT as well as challenged the action of KPT to demand back the possession of the lease lands. The said petitioners have also challenged the decision dated 8.7.2011 of the Union of India to refuse to grant approval of the lease of KPT and directing the KPT not to renew the lease of the petitioners before the Gujarat High Court. Learned Single Judge of this Court observed that the Delhi High Court was monitoring the matter and had passed interim orders in respect of the land held on lease and various directions were issued by the Delhi High Court to the Central Government as well as to the KPT. On 20.7.2011 the Estate Officer passed an order holding that the respondent No. 1 herein is in unauthorised possession of the disputed land and thereby, it is required to be evicted from the said land, taking note of the fact that there is no lease that exempted or continued after its expiry in 2004 before the Delhi High Court. On 29.7.2011, appeal was filed by respondent No. 1 before the District Court u/s 9 of the P.P. Act. Vide order dated 30.9.2011, the parties were directed to maintain status-quo by the District Court. This High Court stayed the order of the District Court vide order dated 27.7.2012 and accordingly possession of the subject lands were taken by the KPT. Vide order dated 30.11.2012, learned District Court allowed the appeal filed u/s 9 of the P.P. Act against the order of the Estate Officer. The matter was pending before the Delhi High Court. While adjourning the matter, the Court directed the KPT to file report on the status of proceedings under the P.P. Act. Some applicants approached this Court claiming right of renewal. On 8.7.2012, the Union of India took a decision and communicated the said decision to the KPT. The Union of India refused to grant approval to the resolution dated 16.1.2004 of the KPT and directed the KPT not to renew the lease of the petitioners therein. Large number of Letters Patent Appeals were filed before the Division Bench being aggrieved by the judgment and order dated 27.2.2012 which were rejected by the Division Bench of this Court.

2. SLP No. 22294/2012 was filed before the Hon'ble Supreme Court challenging the order of the Division Bench dated 16.7.2012 in Letters Patent Appeal No. 569 of 2012 which arise from the judgment and order dated 27.2.2012 which was dismissed. On 30.11.2012, the District Judge allowed the appeal of the respondents and set aside the order of eviction passed by the Estate Officer on the ground that resolution dated 16.1.2004 would amount to renewal of lease and that the Estate Officer has acted in bias. Hence this petition.

3. Learned senior Advocate Mr. Saurabh Soparkar has submitted that respondent No. 1 who were initially granted lease in the year 1973 have no independent right under any statute divorced of the rights that flow from the original lease deed. According to the original lease deed they had a right of renewal. The renewal granted on expiry of the lease in 1993 was extended from 1.8.1993 to 31.3.2004 after obtaining approval of the Central Government u/s 34 of the Act. However, all these lessees had earlier right to seek renewal was curtailed inasmuch as the lease agreement dated 2.12.2002 stipulated that the lease shall not be automatically renewed. It is submitted that respondent No. 1 has entered into the contract knowing well that no compensation shall be paid by the KPT in the event renewal is not granted. That unless there is any prior permission of the Central Government, in case of lease which extended for the period beyond 30 years, there could be no valid extension. That this position is accepted by the learned Single Judge as well as the Division Bench of this court in their detailed judgments dated 22.2.2012 and 16.7.2012 respectively. These judgments were challenged before the Apex Court by filing the SLP which was dismissed on 27.7.2012 meaning thereby, as per the decision of this Court, there can be no extension of lease without prior permission of the Central Government. As the lease was expired, the Central Government, vide decision dated 5.11.2009, issued direction to the Chairman, KPT to take back possession of the land. This decision has not been challenged by respondent No. 1 and thus, according to the learned senior Advocate for the petitioners, respondent No. 1 is estopped in law as well as in fact from seeking to enforce any alleged right of renewal. That the KPT had addressed a communication to respondent No. 1 dated 8.12.2009 to hand over possession of the disputed land which is continued to be unauthorizedly occupied by respondent No. 1 after expiry of the lease on 31.3.2004 u/s 2(e) of P.P. Act. He has then submitted that the Estate Officer while conducting the proceedings of eviction does not have to decide as to what is unauthorised occupation but the Estate Officer has to only decide as to whether a person is in unauthorized occupation or not and since when. The Estate Officer/District Court is to decide as to whether respondent No. 1 who had entered the occupation of the lease premises has any authority in law to continue to occupy the premises. That once the lease is expired, the competent Estate Officer has to pass an order of eviction. Learned senior Advocate for the petitioners has urged that when the Delhi High Court has directed that there shall be no extension of lease and directed that the land shall be put to public auction, the respondent has no right in law to seek extension of lease. That the

action of the Estate Officer is lawful and the same has been illegally set aside by learned District Judge while hearing an appeal u/s 9 of the P.P. Act. He has further submitted that the resolution dated 16.1.2004 does not create any enforceable right of extension of the lease in favour of respondent No. 1 as it was only recommendatory in nature and request the Central Government to consider the question of extension and therefore, the resolution cannot be now challenged on the ground that there is no necessity to seek permission of the Central Government u/s 34 of the Act. That section 107 of the Transfer of Property Act provides that a lease of immovable property from year to year or for any term exceeding one year or reserving an yearly rent can only be made by a registered instrument and in the present case, there was no registered instrument extending the lease or granting fresh lease. Thus, respondent No. 1 is unauthorised occupant and the Estate Officer has rightly passed the order. So far as the findings of the Appellate Authority that the Estate Officer is biased, illegal, erroneous and unsustainable in law is concerned, he has submitted that there is no allegation of any personal bias or pecuniary bias against the Estate Officer. Likewise, no averments relating to bias are made in the reply to the notices issued by the Estate Officer. Regarding the affidavits filed by the Estate Officer in compliance of the orders of the Delhi High Court, he has submitted that no person of reasonable prudence would ever even reasonably believe that the Estate Officer was biased in favour of passing an order against respondent No. 1. He argued that the appellate authority has wrongly held that the Estate Officer was biased in favour of passing an order evicting respondent No. 1 and so the impugned order deserves to be quashed and set aside as the Estate Officer has no personal interest in the matter. In support of his argument, learned senior Advocate has placed reliance on the decision in the case of Union of India (UOI) and Another Vs. P.K. Roy and Others, In paragraph 11 of the said case, it has been held that the extent and application of Doctrine of Natural Justice cannot be inspired within the straight jacket and rigid formula and it depends upon the nature of jurisdiction, the rights of the person affected. The scheme of the statute and of other relevant attending circumstances of a particular case. Regarding bias, learned senior Advocate has submitted that the true meaning of bias is that anything which tends or may be regarded as tending to cause such a person to decide the case otherwise than on evidence must be held to be a bias as held by the Constitutional Bench of the Apex Court in the case of The Andhra Pradesh State Road Transport Corporation, Hyderabad and Another Vs. Sri Satyanarayana Transports (Private) Ltd., Guntur and Others, That the Appellate Court has grossly erred in holding that the Estate Officer was biased and erred in setting aside the order of eviction. It is further submitted that in absence of any allegation as regards personal or pecuniary bias at the best the case of the respondent could be tested on the principle of official or subject matter bias. He has argued that it is settled law that even an authority which advocates the policy or take decision in furtherance of a particular policy is not only on basis of such acts unable to consider the matter and take a decision. Learned senior advocate for the petitioners submitted that in the present case the procedure

followed is fair and reasonable, sufficient opportunity of hearing was granted and the officer had heard respondent No. 1 on 13.1.2011 and on his request, adjourned to 13.4.2011, 29.4.2011, 30.5.2011 and 20.6.2011. On 20.6.2011 respondent No. 1 appeared along with learned advocate and submitted reply to the show cause notice. Respondent No. 1 has also submitted affidavit sworn in by Shri Harish Chaturani on 15.7.2011 and Gangubai Aja Bhatia on 18.7.2011 and cross examination of both of them also appears to have been carried out. It further appears that summing up submissions was reiterated also on 20.7.2011 on behalf of respondent No. 1 and after considering the material and evidence had passed a detailed reasoned order directing eviction of respondent No. 1. Therefore, it cannot be said that the Estate Officer has considered issues beyond the show cause notice or that the notice was defective of particulars on which the order is passed. In support of this, learned senior advocate has placed reliance on the decision in the case of Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, as also the decision in the case of H.C. Narayanappa and Others Vs. The State of Mysore and Others, wherein it is held that an office or policy does not necessarily disqualify a person from acting as an adjudicator. He has submitted that it is well settled that if no objection is taken at the proper stage, the court will infer that such person has waived such objection and his right to challenge the proceedings on the ground that the Adjudicator was biased would be lost (1953 (2) ELR 652). Relying upon the decision in the case of Election Commission of India and another Vs. Dr. Subramanian Swamy and another, he has invited the attention of the court to the settled principle of law that if the choice is between allowing a biased person to the Act or to stifle the case altogether, the choice must fall in favour of the former as it is the only way to promoting decision making. He has argued that the appointment of an Estate Officer to conduct proceedings under the P.P. Act for evicting unauthorized occupants is made by the Central Government u/s 3 and in the case on hand, at the time when the proceedings were initiated, Shri Balan was the only Estate Officer. According to the learned senior advocate for the petitioners, the appointment of the Estate Officer had never been challenged and therefore, they are estopped in law in challenging the orders rendered by him on the ground of his being biased. He, then submitted that the District Judge has erred in holding that the respondents had a right to continue in the leased premises, that there is no independent and proper consideration of the alleged rights of the respondents to continue to occupy the leased premises or to seek extension of lease.

4. Learned senior advocate for the petitioners has submitted that in the absence of any challenge to the order dated 5.11.2009 passed by the Central Government, there is no question of the Estate Officer deciding as to whether the respondents had a right to seek renewal or otherwise, and therefore, the question of the Estate Officer being biased pales into insignificant and is rendered in consequence to be irrelevant. It is further submitted that there is no question of foundation for invocation of Principles of Promissory Estoppel or Legitimate

Expectations as the resolution is not even communicated to respondent No. 1 and thus there is no enforceable right. It is submitted that both the Union of India and KPT adopted a indiscriminatory attitude and therefore, there is no question of violation of Article 14 inasmuch as it is decided not to renew the expired lease period and to take back possession from all such lessees. That the land in question is required by the KPT for setting up a port basis SEZ, which is of national interest, as approved by the Ministry of Commerce and Industry. It is further stated that the said lands on which the respondents had originally been granted lease, are not restricted or prohibited areas under the regulations, as alleged by the respondents. Learned senior advocate has then submitted that the Division Bench of Delhi High Court has directed disposal of the subject land only by public auction. These orders were not interfered by the Hon''ble Supreme Court in the SLPs preferred to challenge the said orders. Under the circumstances, the orders of the lower appellate court is contrary to the orders of Delhi High Court directing eviction of such lessees whose lease(s) have expired including the respondent/s. He, therefore, prayed to quash and set aside the impugned order of the District Court.

4.1 Drawing attention of this Court on page Nos. 462, 476 to 490, 562 to 564, learned senior advocate for the petitioners has submitted that referring to the said evidence forthcoming on the record during the pendency of this petition, it is clear that respondent No. 1 would agree to sell, transfer, assign, convey and grant etc., the plot admeasuring 409 acres i.e. subject land, with renewal option of lease hold rights executed the registered sale document on 15.4.1998 to M/s. Arihant Salt Industry & towards sale consideration, respondent No. 1 herein has accepted Rs. 14 lacs. According to learned senior advocate for the petitioners, the above conduct of respondent No. 1 speaks a lot against him and now it could not claim restoration of possession.

5. Learned advocate Mr. D.J. Bhatt for respondent No. 1 herein has submitted that as such the hearing of this petition has always kept along with the hearing of Special Civil Application No. 16316 of 2012 and allied matters filed by the petitioners therein against respondent No. 1 therein i.e. New Kandla Salt & Chemical Private Limited and whatever the learned senior advocate Mr. Mihir Thakor has submitted in the said petition, he is adopting the same. The said submissions of learned senior advocate Mr. Mihir Thakore narrated vide paragraph Nos. 6 to 19 are also reproduced hereunder almost in verbatim with minor factual correction related to facts of this petition. Mr. Mihir Thakore, learned senior advocate with Mr. Anand Yagnik, learned advocate appearing for respondent No. 1 has submitted that in the year 2009, the Centre for Public Interest Litigation has filed public interest litigation against the Union of India, KPT and the Central Vigilance Commission before the Delhi High Court for a writ of mandamus or an appropriate writ against Union of India directing it to regain possession of over 16,000 acres of Government land near a busy sea port and for further directing them to evict and seek damages from trespassers on that land. He has submitted that first of all, the Delhi High Court does not have

territorial jurisdiction on the subject matter. The respondents have raised various objections over and above the jurisdiction part before the Delhi High Court such as, the respondent-1 company has not been joined as party and therefore, the orders passed therein are not binding upon them. That the Government of India is not in support of auctioning the land once lease is expired. It is important to note that the respondent company is one of the pioneers in the development of the KPT and has contributed a lot since 1973 towards the revenue generation of KPT. He has submitted that on application filed before the Delhi High Court for joining party, order dated 4.7.2012 was passed that individual grievances can be gone into by Gujarat High Court keeping in mind the other litigations pending in High Court of Gujarat. It is submitted that in the application of the KPT seeking formal approval of Ministry of Commerce and Industry to set up Port Based Multi Product Special Economic Zone, incorrectly states that the land admeasuring about 5000 hectares including the land given on lease to respondent No. 1 and many others. It has not been mentioned that the land is given on lease and the renewal is under consideration. By not mentioning the words "lease", "salt pan" etc. the formal approval is sought on the basis of suppression of material fact. Even wrong statement is made on affidavit. The Government of India has not granted any formal approval for developing SEZ till date. No environmental clearance under the Environment (Protection) Act, 1986 has been granted as yet. On the request of the company, Institute of Environment Study and Wetland Management, Kolkata has carried out detailed study of the location of the land given on lease to the company by the KPT. The report suggests that the land in question falls within CRZ-1(ii) where salt pan as an activity permissible subject to certain precautions. Thereafter, the KPT passed a resolution amending their original proposal for development of SEZ. It was proposed to develop SEZ in three phases - first two phases do not require land of respondent No. 1-company. He has urged that under this circumstance, to ask the land back for establishing Port Based Multi Product Special Economic Zone, which is geographically and legally not permissible, is improper, illegal and unconstitutional.

6. It is further submitted that in June, 2013, the petitioner KPT has got conditional extension for establishment of proposed SEZ under SEZ Act, 2005 by the Ministry of Commerce. However, even after 6 years, the KPT failed to establish SEZ and failed to have possession of the land upon which it proposes to establish SEZ. Except for the notional permission, the Ministry of Commerce has not granted any permission in the subject matter. He argued that if the Government of Gujarat does not grant permission, the KPT cannot establish SEZ as per SEZ Act. He has invited attention of this court to the sum and substance of the proposed SEZ in detail and the order of the learned Single Judge and the Division Bench of this court where the eviction notice was challenged. Learned senior advocate for respondent No. 1 submitted that the KPT adopted the policy issued by the Government of India in 2004 vide Board Resolution No. 76. As regards the provision for allotment of land on 11 month licence basis, the same

cannot be made applicable in a labour intensive project like salt work and therefore, the port has been correctly recommending the leases for further 30 years or above as per the policy. He has also submitted that the present policy also allows the board to grant fresh lease by way of renewal on the basis of current scale of rates. After passing Resolution No. 163, the KPT sought approval in writing of the Ministry of Shipping, Government of India u/s 34(1) of the Act for renewal of the lease in favour of the company for a period of 30 years. It is his argument that for any renewal of lease upto a period of 30 years, no prior approval is required and for calculating the period of 30 years, the period of expired lease cannot be taken into consideration as every renewal of a lease is a fresh lease which independently operates on its own terms and conditions and therefore, no interpretation can lead a conclusion whereby period of expired lease is also to be considered while considering 30 years as contemplated in section 34(1) of the Act. It is further submitted that respondent No. 1 had already made a huge investment since 1988 and after conversion of usage of construction of godown and storage tank terminal to the approval granted by the petitioner KPT for the change of use. The magnitude of investment and the establishments have already been verified by the committee constituted under the Chairmanship of Joint Secretary (Ports) and Director (PHRD) and Deputy Secretary (Finance) and given the report to renew the lease in question. Learned Single Judge of this Court, in an ex-parte order dated 27.7.2012 passed in Special Civil Application No. 10274 of 2012 stayed the order of the Appellate Authority till 13.08.2012. He has submitted that to the utter shock and surprise of the respondent company, on 24.8.2012, someone from the KPT affixed the so-called panchnama on the wall of a cyclone shelter meant for salt workers. According to him it was a malicious attempt to show on paper that possession is sought to be taken over the land in question. On this, it is submitted that no notice regarding so-called panchnama was served upon respondent No. 1, the possession was attempted to be taken over at the time when the Appellate Authority had granted stay against the order passed by the Estate Officer on 20.7.2011, that the Asstt. Estate Officer has got no right under the provisions of the P.P. Act to take over possession, that the panchnama is prepared in English and all the panchas do not know English that the panchnama does not contain signature of any one on behalf of the respondent-company. On 25.8.2012, a notice was given to respondent No. 1 that possession has been taken over of the land in question by Asstt. Estate Manager (Land) of the KPT. Notice was also published in the local newspaper on 26.8.2012. Learned senior advocate for respondent No. 1 argued that the fact of attempting to take possession of the land allotted to respondent No. 1 was not brought to the notice of the Court by the Estate Officer who had filed Special Civil Application No. 10274 of 2012. When this fact was brought to the notice of the court by the advocate for respondent No. 1 with serious objection, the court orally observed that the Estate Officer and the KPT are trying to overreach the process of the court and they were reprimanded by the learned Single Judge. During the pendency of the proceedings before the appellate authority as well as before this court, the Court

ordered to maintain status-quo by the parties. He has contended that respondent No. 1 is in factual possession and occupation of entire 2246 acres of land allotted to it by the KPT. The said land is being utilized for manufacturing salt by the respondent company, that hundreds of workers have been working on the date, the respondent company is paying the electricity bills every month for the electricity that is consumed for production and manufacturing of salt, and that the salt manufactured in the months of August, September, October and November, 2012 are being sold to the respective third parties. Chartered Accountants of the company have given their certificate on the basis of objective analysis that the salt being manufactured and produced is worth Rs. 25 crores and the by-product gypsum is worth Rs. 12 crores. Therefore, the total goods being manufactured at present on the land in question are worth Rs. 37 crores. According to learned senior advocate, the respondent company had invested Rs. 14,94,00,000/- in the land in question and they have taken a loan of Rs. 1.90 crores from Oriental Bank of Commerce and the bank has a charge equivalent to the amount of loan so extended. He has submitted that once the Ministry of Shipping has not objected the renewal and the Empowered Committee has also recommended as late as in July, 2007 that renewal of lease for a period of 30 years in favour of the respondent company, to say that between 2004 and 2009 the respondent company was in unauthorised occupation is erroneous, perverse, illegal and unlawful. That in absence of any such approval from the Government of India, the resolution is sufficient. He argued that non-execution of the lease deed does not make the respondent company an unauthorised occupant of the public premises. He further argued that non-payment of three times the rent does not give any cause for petitioner-KPT under the provisions of the P.P. Act and therefore, to make it base for notice u/s 4 is erroneous, illegal and unlawful and ultra vires. He has stated that compensation bills have no relationship with the provisions of P.P. Act and to incorporate the same as a cause for issuance of notice is ultra vires.

7. On the issue of bias on the part of the Estate Officer, learned senior advocate for respondent No. 1 addressing the Estate Officer as predetermined officer and submitted that Mr. Sureshkumar Balan has acted as an Estate Officer and also as an adjudicating authority. He has adjudicated that the respondent company is in unauthorized occupation of the land so allotted and thereafter passed the order of eviction dated 20.07.2011. The very order was later on quashed and set aside by the Appellate Authority vide order dated 30.11.2012. Mr. Sureshkumar Balan has been representing the petitioner KPT in the original PIL before High Court of Delhi. He has filed affidavit-in-reply/s and rejoinders for and on behalf of the KPT. The very affidavit-in-reply/s are appended along with the reply affidavit.

8. Mr. Sureshkumar Balan has also filed Caveat Applications for and on behalf of petitioner KPT before the competent Courts against the respondent company and others. Mr. Sureshkumar Balan has taken a stand for and on behalf of petitioner KPT against the respondent company and other allottees/lessees who are identically and similarly situated, in the affidavit-in-reply/s filed before the High

Court of Delhi in the ongoing public interest litigation in question. His views as an Estate Officer and as an Officer representing the KPT are known and determined much before the notice of eviction u/s 4 of the P.P. Act was issued to the respondent-company. He has submitted that Mr. Sureshkumar Balan, the Estate Officer, who has adjudicated that respondent company is in unauthorized occupation of the land in question under the P.P. Act, cannot act as an adjudicating authority at the time when he has been representing the petitioner KPT in the litigations on the very subject matter pending before the Delhi High Court as well as before the High Court of Gujarat and other competent Courts. In other words, he cannot be an adjudicating authority to adjudicate a claim under P.P. Act. He has further submitted that There is a conflict of duty and interest in the case of Mr. Sureshkumar Balan. On one hand he has the duty to adjudicate as an adjudicating authority under P.P. Act in the most fair, reasonable, transparent and just manner and at the same time, his interest is to protect the interest of the petitioner KPT where he serves as an employee. This conflict of interest and duty is much more grave when Mr. Sureshkumar Balan has already on oath taken a stand against the respondent company and other identically situated companies representing the KPT.

9. Therefore, the decision of the Estate Officer Mr. Sureshkumar Balan dated 20.07.2011 stands vitiated by the conflict of duty and interest. It is the submission of learned senior advocate for respondent No. 1 that Mr. Sureshkumar Balan holds a professional Bias against the respondent company in the present set of circumstances. He was already predetermined and therefore, had lost the competence to be an adjudicating authority. Keeping in mind the conflict of duty and interest, Mr. Sureshkumar Balan ought to have refrained himself from acting as adjudicating authority. He knew that he has held a view, a stand and a perception as an Estate Officer representing the petitioner KPT against the respondent company and other identically situated allottees/lessees. He knew that he would not be able to take a stand otherwise in the process of adjudication under P.P. Act being an adjudicating authority and even thereafter he chose to be an adjudicating authority, which is nothing but absolutely malafide and therefore, his decision is ultra vires. Administrative and judicial propriety required that Estate Officer Mr. Sureshkumar Balan should not have acted as adjudicating authority. Here in this case, according to learned senior advocate for respondent No. 1 Mr. Sureshkumar Balan has acted as a judge as well as a litigant and therefore, has violated the principal that "a person cannot be a judge of his own cause." Therefore, the order of Estate Officer is bad in law and on facts.

10. The proceedings under the P.P. Act are judicial in nature and the competent authority under the same exercises the quasi judicial power. In the facts and circumstances of the present case, due to conflicts of interest and duty, due to the fact that Estate Officer was already representing the petitioner KPT was Mr. Balan, therefore, he could not have acted as adjudicating authority in a quasi judicial proceedings. Even at the time of issuing notice under the P.P. Act, Mr.

Balan was much predetermined and prejudiced as he has already declared respondent company and other similarly situated companies as "unauthorized occupants" being the Estate Officer of the petitioner KPT. Mr. Sureshkumar Balan had no authority in law to initiate the proceedings under the P.P. Act inasmuch as he was not a competent person within the meaning of section 3 read with section 2(b) of the P.P. Act. This renders the entire proceedings without jurisdiction and ab-initio void.

11. That the notice u/s 4 of the P.P. Act was issued by the Estate Officer on 30.12.2010, whereas the notification as per the amended section 3 of the very Act was issued by the Government of India on 24-03-2011 authorizing as per the requirement of law Mr. Sureshkumar Balan as an Estate Officer for Kandla Land Matters. The prior notification of June 1991 is inadequate and incomplete to empower Mr. Sureshkumar Balan being Deputy Secretary to act as Estate Officer under the provision of P.P. Act. Therefore, the issuance of notice was without authority and hence the subsequent notification as a result of which stood vitiated.

12. It is stated and submitted that the initiation of eviction proceedings against the respondent company by the petitioner KPT is contrary to the guidelines framed by Government of India to prevent arbitrary use of powers to evict genuine tenants. Therefore, initiation of eviction proceeding is bad.

13. Inviting attention of this court to the Administrative Law (10th edition) by H.W.R. Wade & C.F. Forsyth: Chapter 13 - The Rule against Bias and De Smith's Judicial Review (6th edition) by Thomson Sweet & Maxwell: Chapter 10 - Procedural Fairness - Bias and Conflict of Interest - Page No. 504 - The Taste of Bias the learned Advocate asked a question to himself "Can the issue of Bias be raised at the stage of appeal when same has not been raised during the initial proceedings before the Estate Officer?". The issue of Bias is an integral part of principles of natural justice and the principles of natural justice is an integral part of Article 14 of the Constitution of India, which mandates equality of law and equal protection of law. In Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay, in the matter of M/s. Dwarkadas Marfatia & Sons Vs. Board of Trustees of the Port of Bombay, the Apex Court has opined that Ports Trust like KPT in the present case, are an agency and/or instrumentality of the State being a statutory authority and therefore, it is a "State" as defined in the Constitution of India and hence, Article 14 of the Constitution of India is applicable to them. Every action of such statutory Authority must be in public interest, must not be malafide or arbitrary or for a collateral purpose. Every action must be reasonable and taken upon lawful and relevant grounds.

14. Therefore, the issue of violation of principles of natural justice or jurisdiction being an issue of law, and no oral evidence is required to establish the same and can be established on the available documentary evidence, same can be raised even at the stage of litigation before the Supreme Court. Therefore, if the Bias is not raised before a "Biased Estate Officer", same cannot deprive the leaseholder,

in the present case the respondent No. 1, facing the proceedings under the provisions of P.P. Act, to raise the issue of law that goes to the root of the matter at the stage of appeal u/s 9 of the P.P. Act. Therefore, the submission on the part of petitioner KPT that just because the issue of Bias is not raised before the Estate Officer Mr. Sureshkumar Balan, the same cannot be raised in the appeal and thereafter, is contrary to the law laid down by the Apex Court in this regard.

15. The second question put by learned senior advocate for respondent No. 1 on the question of bias is Can the issue of "Bias" be raised without impleading the person against whom Bias is alleged? Petitioner KPT has been vehemently submitting that in order to raise the issue of Bias, the person against whom Bias is raised must be impleaded as a party and in absence of the same, the issue of Bias cannot be raised. Learned senior advocate for respondent No. 1 has then submitted that the impugned order passed by the District Court in the Appeal on 30.11.2012 being Civil Misc. Appeal No. 23 of 2011 itself shows in its cause title that the Estate Officer has been impleaded. Once the Estate Officer has been impleaded as a party-respondent in Appeal and has filed affidavit in Appeal, then the question as to whether the issue of Bias can be raised only after including the person facing the allegation of Bias in person loses the significance. In the present case, the Estate Officer had an opportunity to meet with the question of Bias by filing detailed affidavit and therefore, no prejudice is caused assuming for a while that person facing the allegation of Bias though not impleaded in person.

16. The third question put by learned senior advocate for respondent No. 1 is Can a quasi judicial and a statutory authority in the form of Estate Officer file a petition under Article 226 and/or 227 of the Constitution of India challenging the decision of Appellate Authority submitting that in appeal Appellate Authority has erred in setting aside the order of Estate Officer on Bias?

In the present instance, the Estate Officer had filed an independent petition under Article 227 of the Constitution of India bearing Special Civil Application No. 16322 of 2012. In the petition, the judgment and order of the Appellate Authority u/s 9 of the P.P. Act is challenged not only on the issue of Bias, but on several other counts with a prayer to quash and set aside and order of the Appellate Authority.

16.1 The fact that Mr. Sureshkumar Balan as an Estate Officer has filed a petition against the judgment and order passed by the Appellate Authority setting and quashing aside the order passed by the Estate Officer of eviction suggests that Mr. Sureshkumar Balan has a personal as well as professional interest in the eviction of the respondent Company and therefore, he has exceeded his jurisdiction and the judicial limit and in the process has filed the petition to defend his own order. This in itself is independently enough to indicate how Biased and predetermined the Estate Officer Mr. Sureshkumar Balan is against the respondent company and determine to evict no matter whatsoever.

17. Learned senior advocate has given the following factors why respondent

Company considers Mr. Sureshkumar Balan as being Bias and predetermined?

(i) Participation of Mr. Sureshkumar Balan between 2009 to 2013 in the PIL before the High Court of Delhi representing the KPT.

(ii) Several affidavits filed by Mr. Sureshkumar Balan, changing a position in the process, against the leaseholders including the respondent Company.

(iii) Representing KPT in all the litigations on the issue of salt pan lease in the High Court of Delhi.

(iv) Filing caveats as an Officer of the KPT before the District Court as well as High Court of Gujarat. The content of the caveat speaks for itself.

(v) Filing affidavits in the Appeal as an Estate Officer to defend ones own order.

(vi) Filing a petition in the High Court of Gujarat bearing Special Civil Application No. 16322 of 2012.

17.1 Learned advocate Mr. D.J. Bhatt for respondent No. 1, on the point of execution of registered sale document at page Nos. 476 to 490 is concerned, submitted that the property/plot admeasuring 409 acres mentioned in it is not the property of M/s. Vijay Salt Syndicate but it is leasehold right property. The document at page Nos. 476 to 490 indicates that the document was created which was registered also but it has never been implemented by the parties to the agreement, meaning thereby, no effect is given and the said transfer has never been taken place. The Estate Officer has also issued the show cause notice and demanded possession from respondent No. 1 i.e. M/s. Vijay Salt Syndicate alleging that it is in unauthorized occupation and ultimately the order dated 20.7.2011 was also passed by Estate Officer against M/s. Vijay Salt Syndicate. On this point, learned advocate for respondent No. 1 has lastly submitted that mere issuance of notice dated 18.1.2013 at pages 563 and 564 is not sufficient to revoke the power of attorney.

18. List of authorities relied upon by respondent No. 1.

(I) A.K. Kraipak and Others Vs. Union of India (UOI) and Others,

(II) Ashok Kumar Yadav and Others Vs. State of Haryana and Others,

(III) Ranjit Thakur Vs. Union of India (UOI) and Others,

(IV) Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others,

(V) Delhi Fin. Corpn. and Another Vs. Rajiv Anand and Others,

(VI) Crawford Bayley and Co. and Others Vs. Union of India (UOI) and Others,

(VII) A.U. Kureshi Vs. High Court of Gujarat and Another,

(VIII) (2010) SCC 539

(IX) State of Punjab Vs. Davinder Pal Singh Bhullar and Others etc.,
 (X) Narinder Singh Arora Vs. State (Govt. of NCT of Delhi) and Others,
 (XI) Trilok Sudhirbhai Pandya Vs. Union of India (UOI) and Others,
 (XII) Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others,
 (XIII) Crawford Bayley and Co. and Others Vs. Union of India (UOI) and Others,
 (XIV) New India Assurance Company Ltd. Vs. Nusli Neville Wadia and Another,
 (XV) CIVIL APPEAL No. 1957 OF 2003 (SUPREME COURT) JUDGMENT DATED 13.5.2011
 (XVI) Escorts Heart Institute and Research Centre Ltd. Vs. D.D.A and Another,
 (XVII) Malhotra Tyre Service Company Vs. National Capital Territory of Delhi and Others,
 (XVIII) Delhi Development Authority Vs. Durga Chand Kaushish,
 (XIX) Hindustan Petroleum Corpn. Ltd. Vs. Yashwant Gajanan Joshi and others,
 (XX) Competent Authority Vs. Barangore Jute Factory and Others,
 (XXI) AIR 1989 SC 1642 (1)
 (XXII) Jamshed Hormusji Wadia Vs. Board of Trustees, Port of Mumbai and Another,
 (XXIII) JUDGMENT DATED 21.2.2013 DELIVERED IN SPECIAL CRIMINAL APPLICATION NO. 676 2012

18(a). List of authorities relied upon by the petitioner KPT and relevant paragraphs.

(I) Manak Lal Vs. Dr. Prem Chand,
 (II) Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another,
 (III) H.C. Narayanappa and Others Vs. The State of Mysore and Others,
 (IV) Dosa Satyanarayanamurty etc. Vs. The Andhra Pradesh State Road Transport Corporation,
 (V) The Andhra Pradesh State Road Transport Corporation, Hyderabad and Another Vs. Sri Satyanarayana Transports (Private) Ltd., Guntur and Others,
 (VI) Piloo Dhunjishaw Sidhwa Vs. Municipal Corporation of The City of Poona,
 (VII) AIR 1970 SC 974
 (VIII) G. Sarana Vs. University of Lucknow and Others,

(XI) J. Mohapatra and Co. and Another Vs. State of Orissa and Another,
 (X) State of M. P. Vs. Ganekar Motghare,
 (XI) Charan Lal Sahu Vs. Union of India,
 (XII) Hindustan Petroleum Corpn. Ltd. Vs. Yashwant Gajanan Joshi and others,
 (XIII) Niaz Mohammad and others, etc. etc. Vs. State of Haryana and others,
 (XIV) Election Commission of India and another Vs. Dr. Subramanian Swamy and another,
 (XV) (2004) 4 SCC 108
 (XVI) G.N. Nayak Vs. Goa University and Others,
 (XVII) Shanti Prasad Devi and Another Vs. Shankar Mahto and Others,
 (XVIII) Union of India (UOI) and Others Vs. Vipin Kumar Jain and Others,
 (XIX) Crawford Bayley and Co. and Others Vs. Union of India (UOI) and Others,
 (XX) New India Assurance Company Ltd. Vs. Nusli Neville Wadia and Another,
 (XXI) Cantonment Board and Another Vs. Church of North India,
 (XXII) (2012) 6 SCC 3698 - Paras 25 to 27
 (XXIII) Bipromasz Bipron Trading SA Vs. Bharat Electronics Limited (BEL),

18(b). List of authorities relied upon by the petitioner - Estate Officer of Special Civil Application No. 16322 of 2012.

1. (2005) 9 SCC 49, Para 6
2. State of M. P. Vs. Ganekar Motghare,
3. Union of India (UOI) and Others Vs. Vipin Kumar Jain and Others,
4. G.N. Nayak Vs. Goa University and Others,
5. Chandra Kumar Chopra Vs. Union of India (UOI) and Others,
6. 2012 SC 1580, Para 31

19. Learned senior Advocate Mr. D.D. Vyas appearing for Estate Officer who has preferred Special Civil Application No. 16322 of 2012 has submitted that with respect to the land admeasuring 409 acres leased out to respondent No. 1, proceedings u/s 4 of the P.P. Act were initiated on the ground that they are in unauthorised occupation of the property in question, after following due procedure. Against the said decision, M/s. Vijay Salt Syndicate has filed appeal in the court of learned District and Sessions Judge, Gandhidham which was allowed by the said court and set aside the order passed in Case No. 2 of 2011 on July 20, 2011 by the said appellant authority. While deciding the said appeal, learned

Additional District Judge held that Estate Officer-Suresh Balan has acted with bias mind. In view of this finding that the Estate Officer has acted with bias, the Estate Officer had filed Special Civil Application No. 16322 of 2012. Learned senior advocate for Estate Officer has submitted at the outset that the Estate Officer has restricted his petition i.e. Special Civil Application No. 16322 of 2012 so far as the finding of personal bias given against the Estate Officer - Mr. Suresh Balan. He has submitted that during the pendency of the proceedings before the Estate Officer, respondent No. 1 had not raised any question with respect to the bias by the petitioner herein and they had participated the proceedings on merits without any objection. He has submitted that if the conduct of the inquiry/ decision is to be challenged on the basis of bias of the authority concerned, the same is required to be raised before the authority concerned or the same is required to be given with all particulars what would prove the bias on the part of the decision maker. Vague and general allegations unsupported by the requisite particulars do not provide sound basis for the court to conduct an inquiry into their veracity thereof. He has very categorically stated that as and when allegations of bias are made, the person against whom the same are levelled need to be impleaded as party in person by name to the proceedings to enable him to answer the charges levelled against him. He has submitted that in view of the fact that judicial pronouncement declaring an action to be mala fide is a serious indictment of the person concerned, that can lead to adverse civil consequences against him. The court, therefore has to be slow in drawing conclusions when it comes to holding allegations of bias to be proved. Relying upon a decision reported in 2012 SCW 5713, learned senior advocate for respondent No. 2 has submitted that the court should record a finding in the process of holding a person to be bias and it also should hear the person who was likely to be affected by such a finding. He has further submitted that in the memo of appeal filed before the District Court, no allegations of bias were made against the Estate Officer. He, therefore, contended that the findings given by the learned Additional District Judge are without jurisdiction and are wholly unjustified and are required to be quashed and set aside. He has submitted that the party has to give complete details so as to prove the bias that because of alleged bias, it has resulted in miscarriage of justice. Without prejudice to the aforesaid submission, it is submitted that learned Additional District Judge has held a bias of Mr. Suresh Balan that in view of the affidavit filed before the Delhi High Court where KPT was made party. He has further submitted that beside the fact that as an officer of the KPT he has referred to the facts as it were on record. The second aspect which has been considered is a caveat application filed in the court of Principal Senior Civil Judge, Gandhidham, Kutch which was filed by the Board of Trustees of the Port of Kandla and he being the Deputy Secretary (E) had signed the same. He has very emphatically submitted that as per the direction of the Government of India, Ministry of Shipping to take immediate possession of the land in question where the lease has expired with the respect to the present respondent No. 1 also, the Chief Engineer issued notice to respondent No. 1 where the Board of Trustees of KPT has filed caveat which was

signed by Mr. S. Balan as Dy. Secretary (Estate) as an officer. He has made it clear that the above referred caveat was signed by Mr. Suresh Balan as Deputy Secretary (E). He submitted that the proceedings u/s 4(1) of the P.P. Act cannot be said to be bad because of bias.

Without prejudice to the decisions aforesaid, he has submitted that under the provisions of section 3 of the P.P. Act, Central Government appoint even an officer of the KPT as Estate Officer for the purpose of the Act and if there is only appointment of Estate Officer and if such an authority in the given fact exercises the powers, it cannot be faulted because since out of necessity only such person who is authorised to take proceedings under the Act has initiated and decided the said proceedings and it cannot be said to be faulted on the ground of bias. He has stated that on the directions of the Delhi High Court to the Central Government and the KPT, not to renew any lease without public auction, the proceedings u/s 4 of the P.P. Act was required for taking possession from unauthorized occupants. In view of the fact that there was no renewal of lease and there was direction from the Delhi High Court, the proceedings have been initiated. In view of the fact that even in case of so-called bias, unless party proves that there is miscarriage of justice has caused to him and since there are no such allegations made, the decision of the Estate Officer could not have been faulted.

20. I have considered above referred rival submissions made by learned senior advocate for the petitioners and learned advocate for respondent No. 1. As referred hereinabove, it has been vehemently argued by learned advocate for respondent No. 1 that notice u/s 4 of the P.P. Act was issued by the Estate Officer on 30.12.2010, whereas the notification as per the amended section 3 of the very Act was issued by the Government of India on 24.3.2011 authorizing Mr. Sureshkumar Balan as Estate Officer for Kandla land matters and thus prior notification of June 1991 is inadequate and incomplete to empower Mr. Sureshkumar Balan, he being the Deputy Secretary to act as Estate Officer under the provisions of the P.P. Act. Thus, issuance of the notice dated 30.12.2010 u/s 4 of the P.P. Act was without authority and hence subsequent notification dated 24.3.2011 as a result of which stood vitiated. Thus, the order of the Estate Officer is also, therefore, ab initio void in the backdrop of initiation of the proceedings without authority of law and competency. Learned senior advocate for the petitioners has drawn attention of this Court on paragraphs 10 to 16 of the impugned order dated 30.11.2012 passed by learned Additional District Judge, Gandhidham - Kachchh and submitted that issue No. 1 framed vide paragraph 10 was to the effect, whether the appellants - respondent No. 1 herein have been able to show that show cause notice dated 27/30.12.2010 issued by the Estate Officer u/s 4 of the P.P. Act is illegal and after discussion, the finding on the said issue No. 1 was negated by learned Additional District Judge and thus, the said finding related to issue No. 1 is in favour of the present petitioners - original opponents and as respondent No. 1 - original appellant has not preferred the present petition, they should not be permitted to raise this issue

and it is not open in law now for respondent No. 1 - original appellant to challenge the said notice submitting that issuance of the notice dated 27/30.12.2010 u/s 4 of the P.P. Act was without authority and the same is ab initio void. I find myself in agreement with the above submission made by learned senior advocate for the petitioners because by not challenging the impugned order dated 30.11.2012, respondent No. 1 - original appellant has acquiesced with the same and now they are, as such, legally not permitted to raise this issue related to the notice issued u/s 4 of the P.P. Act. I have also carefully perused the findings related to issued No. 1 in light of the office order dated 23/24.3.2010 as well as the notification dated 4.6.1991 and thus, it is clear that Mr. Sureshkumar Balan, Deputy Secretary was nominated as Estate Officer u/s 3 of the P.P. Act for all the lands and premises belonging to and under the control and management of the KPT and I also find myself in agreement with the same.

21. By the present petition, the petitioners have mainly challenged affirmative findings related to issue Nos. 2 and 3 arrived at by learned Additional District Judge, Gandhidham - Kachchh vide his judgment and order dated 30.11.2012 delivered in Civil Misc. Appeal No. 22 of 2011. Said learned Additional District Judge vide his impugned order dated 30.11.2012 has allowed the said appeal filed by respondent No. 1 - original appellant u/s 9 of the P.P. Act holding, inter alia, that the Estate Officer has conducted the proceedings in bias; that the land policy would have to be interpreted to mean that there is no requirement of approval from the Government for grant/renewal of lease for further period of 30 years from its expiry. He has further held that the application dated 2.9.2006 seeking permission for establishment of Special Economic Zone (SEZ) is inherently defective and as a result, permission granting SEZ is bad and ultimately held that the action to take back possession by the petitioner i.e. KPT is vitiated and not to be legal.

Before dealing with the submissions made by learned senior advocates as referred hereinabove, certain uncontroversial facts are required to be looked into which are as under.

21.1 The subject matter of the present petition pertains to the total plot of land admeasuring 408.68 acres say 409 acres situated to east of Nakti Creek within the Kandla Port Tidal area at New Kandla, Taluka Gandhidham and the said land was originally leased for manufacturing of salt. The first lease deed was executed on 5.1.1973 between the petitioner - KPT and respondent No. 1 for a period of 20 years and 3 months and clause 9 of the said agreement stipulates for renewal clause. Second lease which was executed on 2.12.2002 between the petitioner KPT and respondent No. 1 for the period between 1.8.1993 and 31.3.2004 and thus the second lease deed does not have renewal clause, on the contrary, vide clause No. 10 of the said agreement which stipulated that lease shall not be automatically renewable. Moreover, it was further stipulated that no compensation shall be payable by the Port Trust in the event of refusal to renew

the lease. It is also not in dispute that lease deed had been renewed with retrospective effect. On 16.1.2004, the petitioner KPT passed the resolution for renewal of the lease terms of the land in question for further period of 30 years with effect from 1.4.2004 to 31.3.2034 for manufacture of salt. Resolution No. 163 reads as under.

RESOLUTION 163

Resolved to approve the renewal of lease in favour of M/s. Vijay Salt Syndicate in respect of salt land admeasuring 409 acres allotted to them for manufacture of salt for a further period of 30 (thirty) years w.e.f. 01.04.2004 to 31.03.2034 at the rate of Rs. 65.00 per acre per annum (provisional) with 5% escalation compoundable every year, subject to the approval of the Central Government u/s 34(1) of the Major Port Trusts Act, 1963 and further subject to the revision of rate of Ground Rent by the Tariff Authority for Major Ports from time to time and incorporation of Lease Conditions for acceptance of such revision and payment of dues by the Lessee without demur and simply on demand by Kandla Port Trust.

21.2 Section 34 of the Act is relevant for one of the issues involved in this petition which reads as under.

34. Mode of executing contracts on behalf of Board.--(1) Every contract shall, on behalf of a Board, be made by the Chairman 1[or by any such officer of the Board not below the rank of the Head of a department as the Chairman may, by general or special order, authorise in this behalf] and shall be sealed with the common seal of the Board:

Provided that no contract whereof the value or amount exceeds such value or amount as the Central Government may from time to time fix in this behalf shall be made unless it has been previously approved by the Board:

Provided further that no contract for the acquisition or sale of immovable property or for the lease of any such property for a term exceeding thirty years, and no other contract whereof the value or amount exceeds such value or amount as the Central Government may from time to time fix in this in this behalf, shall be made unless it has been previously approved by the Central Government.

(2) Subject to the provisions of subsection (1), the form and manner in which any contract shall be made under this Act shall be such as may be prescribed by regulations made in this behalf.

(3) No contract which is not made in accordance with the provisions of this Act and the regulations made thereunder shall be binding on the Board.

22. Learned senior advocate for the petitioners has drawn attention of this Court on the above referred resolution No. 163 and mainly submitted that it was sent for approval to the Central Government u/s 34 of the Act. It is also submitted that the said resolution was subject to the approval of the Central Government u/

s 34(1) of the Act and such other conditions which were specified in the said resolution. In fact, respondent No. 1 has also relied on the said resolution and has not challenged the said resolution. Learned senior advocate for the petitioners has also submitted that respondent No. 1 has accepted the said resolution and at no point of time, the said resolution or decision taken on the same was ever challenged by respondent No. 1 and thus, respondent No. 1 cannot be allowed to approbate and reprobate at the same time.

22.1 Learned advocate for respondent No. 1 has vehemently submitted that once the petitioner KPT has passed the resolution - 163 and resolved to renew the lease which forwarded to the Central Government for recommendation and, as such, the Government of India having not objected and special empowered committee has recommended renewal for a period of 30 years and thereby approved the resolution of the petitioner KPT referred above, and then the petitioner KPT is not entitled to evict respondent No. 1 by resorting to the provisions of the P.P. Act. He has further submitted that section 34(1) of the Act clearly states that if the lease is to be extended for a period not more than 30 years, prior permission sought for by the petitioner KPT is not required. In short, the petitioner KPT has power to renew lease upto 30 years. Learned advocate for respondent No. 1 has also submitted that bare and simple reading of section 34(1) of the Act makes it very clear that it is neither necessary nor statutory requirement to seek approval of the Union of India for renewal of lease upto 30 years and accordingly, approval and disapproval of the Union of India is of no relevance in view of the express provision u/s 34(1) of the Act. Learned advocate for respondent No. 1 has also submitted that in calculating the period of 30 years, the period of expired lease cannot be taken into consideration as very renewal of lease is fresh lease which independently operates on its own terms and conditions. He has lastly submitted on this point that any direction or instruction with regard to renewal of lease by the Union of India where the petitioner KPT passed the resolution to renew the lease upto 30 years is absolutely immaterial, irrelevant and inconsequential besides being legally untenable and on the face of it contrary to section 34(1) of the Act.

23. In light of the above submissions, I have carefully considered paragraph Nos. 21 to 30 related to above issue of the impugned order dated 30.11.2012. After referring to section 34(1) of the Act, learned Additional District Judge has observed that considering section 34(1) of the Act, previous approval or prior approval of the Central Government is required only in case of lease period is more than 30 years. Learned Additional District Judge has also observed that before Resolution-163 dated 16.1.2004, Secretary Shri B. Tiwari has put the proposal to grant renewal of lease in respect of 409 acres of salt land in favour of respondent No. 1 for further period of 30 years with effect from 1.04.2004 to 31.03.2034. It was also considered that the party i.e. respondent No. 1 has furnished necessary undertaking indicating their readiness to pay revised rate as and when approved by the TAMP from time to time. Moreover, the Estate Inspector has inspected the site and in his report dated 19.12.2003, he has

specifically mentioned that respondent No. 1 has not made any encroachment nor committed any breach. It has also been considered that as per the latest guidelines issued by the Central Government vide letter dated 14.8.2003 of the Ministry of Shipping, the said renewal proposal was examined and also considered that this land could not be used for any other purpose. Moreover, the Port Trust can resume the said leased property before expiry of the lease period if required by the Port Trust/Central Government in the national interest for its own use with six months notice on payment of compensation in accordance with formulation as may be approved by the competent authority. It has also been mentioned and considered that by cyclone which had hit the region on 9.6.1998, the said salt pan had suffered heavy loss. Learned Additional District Judge has also observed that as per the main argument of KPT i.e. present petitioner, the said Resolution-163 was forwarded for approval to the Ministry, but the Ministry has not approved the same and on the contrary, the Ministry has informed to take/resume possession of the said land vide its letter dated 5.11.2009. On the above submissions, learned Additional District Judge has gone through the letter dated 23/24.2.2004 written by the KPT addressed to the Secretary of Ministry of Shipping, Government of India for renewal of lease land related to respondent No. 1 herein and observed that the Ministry has not given any reply to the said letter dated 23.2.2004 upto 5.11.2009. Under the circumstances, learned Additional District Judge has come to the finding that in light of the provisions of section 34(1) of the Act, as observed above, previous approval of the Central Government is required only in case of lease period is more than 30 years and otherwise not and for the said reason only, the Central Government had not given any reply against the letter dated 23.2.2004 of the KPT referred hereinabove.

23.1 Learned District Judge has then observed that in light of Resolution-163, the possession of the land was with respondent No. 1 and they were manufacturing salt and under the circumstances, the provisions of section 116 of the Transfer of Property Act, 1882 would apply when lease period is completed and the said person is using the lease land. Then, learned Additional District Judge has observed that respondent No. 1 herein has kept possession of lease land with consent of the petitioners. The petitioner KPT has passed the resolution for renewal of the said lease land and received rent for use of the same. Then, learned Additional District Judge has reiterated that the letter dated 23.2.2004 written by the petitioner KPT addressed to the Central Government forwarding Resolution-163 for renewal of the lease deed has not been replied upto 5 years and thereafter, the petitioner KPT herein has sought permission for PBMPSEZ which was given by the Central Government vide its letter dated 7.5.2007 to the KPT - petitioner herein and on receiving the said consent/approval related to PBMPSEZ, the petitioner KPT has written letter dated 21.10.2009 informing the Ministry of Shipping not to renew lease related to present respondent No. 1. Learned Additional District Judge has then observed that accordingly, the Ministry of Shipping vide its order dated 5.11.2009 informed the petitioner KPT to take

possession of lease land admeasuring 409 acres related to respondent No. 1 herein. Learned Additional District Judge then found that on careful perusal of the said letters, the Central Government has not given approval to Resolution-163 of the year 2004 referred above upto 5 years and on the contrary, the decision on the letter dated 21.10.2009 had been taken vide its order dated 5.11.2009 i.e. within 15 days and thus, learned Additional District Judge has then concluded his finding that thus he believed that considering section 34(1) of the Act, prior approval of the Central Government is required only when lease period is more than 30 years and otherwise not and under the said circumstances, as per his belief, the Central Government has not taken any decision related to letter dated 23.2.2004 and accordingly, the petitioner KPT has allowed respondent No. 1 to keep possession of the lease land after collecting the rent for the said period. As per the finding of learned Additional District Judge, KPT should adopt legal procedure and if the land is required for their own use, then they ought to have issued the notice for vacating the land within six months as per the terms of the lease because the petitioner KPT has passed the resolution related to lease land of respondent No. 1 herein for a further period of 30 years and when the rent was also collected, then respondent No. 1 herein - original appellant has all the reasons to believe that lease would continue upto the year 2034. Lastly, on this issue, learned Additional District Judge has observed and concluded that though it is the fact that no renewal of lease agreement for the period between 2004 and 2034 had been produced, but when it is the fact that Resolution-163 has been passed for renewal of lease and the petitioner KPT has received rent for a period of 5 years from respondent No. 1 herein u/s 53(A) of the Transfer of Property Act, 1882 it can be said that part performance of the contract had been arrived at.

23.2 Referring to the impugned order dated 30.11.2012 and more particularly paragraph 36 of the same, it appears that while passing the said impugned order, learned Additional District Judge was very well aware with different orders passed by Delhi High Court in W.P. (C) No. 11550/2009 on different dates as well as order dated 27.2.2012 passed by learned Single Judge of this Court in Special Civil Application No. 18842 of 2011 to Special Civil Application No. 18865 of 2011 with Special Civil Application No. 18794 of 2011 to Special Civil Application No. 18797 of 2011 with Special Civil Application No. 18800 of 2011 to Special Civil Application No. 18803 of 2011 with Special Civil Application No. 136 of 2012. It further appears that it was also within the knowledge of learned Additional District Judge that the said order dated 27.2.2012 was challenged before the Division Bench of this Court vide Letters Patent Appeal No. 569 of 2012 to Letters Patent Appeal No. 609 of 2012 and the Division Bench of this Court has decided same vide order dated 16.7.2012. Moreover, the said order dated 16.7.2012 was challenged before the Apex Court vide Special Leave to Appeal (C) No. 22294/2012 and vide order dated 22.7.2012, the Apex Court had dismissed the said leave petition and leave sought for was not granted.

23.3 It is not out of place to refer certain observations on the above referred

issue made by learned Single Judge as well as by the Division Bench of this Court in the above referred proceedings which are admittedly tentative one in nature and it is also further observed by learned Single Judge that the same shall not act to the prejudice of the petitioners i.e. erstwhile lessees in any proceedings before any forum.

23.4 It is not under dispute that large number of writ petitions referred hereinabove were filed by the occupants i.e. erstwhile lessees, whose lease had expired challenging the action of non-renewal of the lease of the land by the KPT as well as challenging the action to demand back the possession of the lease lands. The said petitioners before this High Court have also challenged the decision dated 8.7.2011 of the Union of India to refuse to grant approval of the lease of KPT and directing KPT not to renew lease of the said petitioners. Moreover, the notices of eviction issued by the Estate Officer under the P.P. Act were also challenged.

23.5 The said matter was heard at length before the learned Single Judge and it was held that on meaningful reading of section 34 of the Act and it appears prima facie that the same would mean the total period of lease granted in favour of each lessee in respect of particular land and it includes the period of rightful lease, had also held that otherwise as has rightly contended by the counsel for KPT that it would circumvent the provisions of section 34 of the Act by granting successive lease each for a period not exceeding 30 years. Learned Single Judge of this Court in the judgment dated 27.2.2011 clearly observed in para 32 that the lease period in case of each of the petitioners therein had expired long time back in the year 2003-2004 and that there was no subsisting lease between the said petitioners and the KPT. Learned Single Judge of this Court also recorded in para 34 that KPT require some of the land for its own purpose and accordingly requested the Central Government not to extend the lease. It is also permitted by learned Single Judge for such protection for which lessee to approach the Delhi High Court, since the decision taken by the Central Government not to renew lease was preliminarily based on proceedings filed before the Delhi High Court in which various orders are passed. Learned Single Judge clearly noted that the PIL was entertained by the Delhi High Court which was monitoring the matter and passed interim orders in respect of land held on lease and various directions were issued by the Delhi High Court to the Central Government as well as to the KPT.

23.6 Various Letters Patent Appeals were filed by the petitioners before the Division Bench being aggrieved by the judgment and order passed by the learned Single Judge dated 27.2.2012 referred hereinabove in which the undersigned was one of the members of the said Division Bench along with Honourable Mr. Justice D.H. Waghela. These appeals were considered by the Division Bench of this Court who had on 16.7.2012 rejected the said appeals and observed as under.

..... As against the above existing and applicable policy, the appellants were

overstaying on the lands, even without tendering payment of huge amounts outstanding as compensation as on 26.8.2011. According to the data submitted by the appellants themselves, such outstanding amounts against the appellants, as on 26.8.2011, ran into Rs. 2,20,168/- for smaller 10 acre plots to Rs. 3,22,41,082/- for the largest parcel of 1611 acres

The Division Bench considered the relevant portions of the Act and held as under.

....Their Lordships were considering the matter in public interest litigation and the applicants before that court, some of whom are the appellants herein, have raised their individual grievances which can always be gone into by this Court. It was, on that basis, submitted that this Court need not feel fettered in the exercise of its discretion by the aforementioned successive orders and observations made by the Delhi High Court. On the other hand, not only the contentions of the appellants are duly dealt with and tentative findings thereon recorded in the impugned order, this court is in no way persuaded to take a different view on any of the issues raised by the appellants....

It was further held in paragraph 9.1 as under.

9.1 It is abundantly clear from the above discussion of relevant facts on record and the legal contentions that the claim of the appellants for interim relief is primarily based on their supposed right to be considered for renewal of leases which were granted to them and of which the terms have expired since long. Even the period of extension of the lease granted to the appellants at the behest of the Central Government, with retrospective effect, have expired on 01.4.2011. Now for consideration of further extension, renewal or fresh grant of leases, clause 6.2.2.2 of the Land Policy for Major Ports, 2010 has to be applied and followed. Therefore, it is impossible to hold that, as on the date of filing of the petitions, the appellants had any legal right to claim or continue possession of the lands in question, or to contend that they were not in unauthorized occupation of the premises. Therefore, even in absence of any other litigation pending in another High Court or successive orders of such court, which are binding on the respondents, it would, prima facie, be very difficult to hold that illegal occupation by the appellants of the leased lands ought to have been protected. There is nothing on record to suggest that non-renewal of leases beyond 01.04.2011 was in any way illegal or arbitrary or that KPT or Union of India was under any legal obligation to exclusively consider the cases of the appellant for grant of lease for any further period. In fact, even the renewal of leases upto 31.03.2011 appears to be the subject-matter of enquiry and investigation by the CBI. Prima facie, the original transfer of lands on lease by KPT to the appellants was a contract of which the term was expressly pre-determined and, therefore, its termination did not involve any issue of compliance with principles of natural justice and it is not even claimed by the respondents that they had a vested right to renewal of leases

23.7 SLP No. 22294/2012 was filed before the Apex Court challenging the order

of the Division Bench dated 16.7.2012 in Letters Patent Appeal No. 569 of 2012 which arise from the orders of learned Single Judge dated 27.2.2012 referred hereinabove. These SLPs were heard and dismissed. The Apex Court passed the following order.

Taken on Board.

No ground is made out for our interference with the impugned order.

The SLPs are dismissed accordingly.

23.8 At the cost of repetition, it is important to note that learned Additional District Judge has allowed the appeal of the appellant - respondent No. 1 herein vide impugned judgment dated 30.11.2012 and set aside the order passed by the Estate Officer on one of the grounds referred hereinabove that the resolution-163 dated 16.1.2004 would amount to renewal of lease.

24. I have considered the above referred issue related to Resolution-163 dated 16.1.2004 in light of the above submissions made by learned senior advocates for the parties and also in light of the above referred factual position referred at length relating to earlier proceedings in which the above issue was touched at length on merit and also decided the same by learned Single Judge as well as by the Division Bench of this Court and lastly, the same was considered by the Apex Court as referred above. I am quite aware with the fact that the observations made herein referred above in the said orders are tentative in nature, but in spite of that I am of the view that the said tentative observations made by learned Single Judge vide her order dated 27.2.2012 were, as such, tested on merit by the Division Bench of this Court and finally, it were approved by the Apex Court. Thus, the said tentative observations by way of interim order have, as such, attained tentative finality vide order dated 27.7.2012 of the Apex Court referred above. As referred hereinabove, one of the said important issues was before learned Additional District Judge who has passed the impugned order and who was quite aware with the above referred three orders passed by this Court as well as by the Apex Court. Though, it has been specifically clarified in paragraph 42 by learned Single Judge of this Court in her order dated 27.2.2012 that the observations made in the said order are tentative in nature and the same shall not act prejudice to the petitioners i.e. erstwhile lessees in any proceedings before any forum even though in my view, while deciding almost identical issue related to Resolution-163 dated 16.1.2004 passed by KPT and effect of section 34(1) of the Act by learned Additional District Judge who has not at all touched or referred in his impugned order dated 30.11.2012 regarding the said earlier proceedings except cursorily referred the same in paragraph 36 of the impugned order is unreasonable act on the part of the said learned Additional District Judge. Learned Additional District Judge is definitely empowered to take different view almost on identical issue as has been taken by him, but at the same time, when the same issue though tentatively decided by the higher forum upto the Apex Court, in my view, learned trial Court is duty bound to deal with

the same and should observe in his order as to why he is not in line of the said orders and as to how his interpretation on the same issue is different than tentative view taken by the higher forum. As referred hereinabove, referring to paragraph 36 of the impugned order dated 30.11.2012, learned Additional District Judge was quite aware and very much within the knowledge with earlier proceedings i.e. Public Interest Litigation at Delhi High Court as well as the proceedings completed before this High Court filed by erstwhile lessees and the order of amount of cost of Rs. 20,000/- to be paid to the KPT by the said erstwhile lessees even though total silent related to the said earlier orders by learned Additional District Judge, in my view, is nothing but deliberate attempt to ignore the same.

24.1 As per the submission of learned advocate for respondent No. 1 considering clarification made by learned Single Judge in paragraph 42 of her order dated 27.2.2012, it is clear that right of respondent No. 1 would not affect as it is an interim order and the observations made therein are tentative in nature. Learned advocate for respondent No. 1 has also submitted that while calculating the period of 30 years, the period of expired lease cannot be taken into consideration as every renewal of lease is a fresh lease which independently operates on its own terms and conditions. Therefore, literal or purposive any interpretation can lead to the wrong conclusion whereby the period of expired lease is also to be considered while considering 30 years as contemplated in section 34(1) of the Act. I do not find any substance and merit in the above referred submission made by learned advocate for respondent No. 1 because referring to section 34 of the Act, it is clear that section 34 requires contract. In the case on hand, there is no contract. Moreover, Resolution-163 dated 16.1.2004 is only proposal. Referring to pages 145 to 148 respectively direction dated 5.11.2009 of the Government of India, Ministry of Shipping addressed to the petitioner herein and the notice dated 8.12.2009 issued by the petitioner herein addressed to respondent No. 1, it is clear that fresh lease deed is not executed in light of Resolution-163. Clause 9 of the original lease deed stipulates for renewal clause. As referred above, second lease deed dated 20.12.2002 does not have renewal clause but on the contrary, as per clause 10, it stipulates that lease shall not automatically renewable. Thus, it is clear that all these lessees which had enjoyed the right to seek renewal earlier was as such curtailed inasmuch as it was stipulated that lease shall not automatically renewable. It would not be out of place to note that extensions from 1993 to 2004 has been done only upon approval of the Central Government u/s 34 of the Act and the said action of the petitioner - KPT was not challenged at all by respondent No. 1, on the ground that for any renewal of lease upto a period of 30 years, no prior approval of Central Government u/s 34 of the Act is required and for calculating the period of 30 years, the period of expired lease cannot be taken into consideration and thus indirectly the said action of the petitioner KPT to get the approval of Central Government for renewal of lease has been accepted also by way of implied admission. Learned senior advocate for the petitioners has submitted that in light

of the afore-mentioned clause in the agreement, right of refusal to renew the lease was implicated in the agreement and in view of the above referred agreement between the petitioners and respondent No. 1, it is clear that respondent No. 1 cannot ascertain any legal right to seek renewal. So far as Resolution-163 dated 16.1.2004 is concerned, respondent No. 1 has accepted the said resolution and has never challenged the same. The subsequent direction dated 5.11.2009 of Government of India, Ministry of Shipping and the notice dated 8.12.2009 issued by the petitioner KPT herein have also not been challenged by respondent No. 1 herein. Learned advocate for respondent No. 1 has also submitted that the subjective satisfaction of Estate Officer has not come up on record as to how he had formed the opinion that the present respondent No. 1 is unauthorized occupant because the lease which was to be expired in 2004 was in fact extended vide Resolution-163 dated 16.1.2004 and on the strength of said resolution, respondent No. 1 continued on the land in question and any subjective satisfaction on the part of the Estate Officer to the effect that respondent No. 1 is unauthorized occupant is contrary to the resolution dated 16.1.2004 because till date, in spite of these proceedings, neither the KPT nor the Central Government had cancelled or recalled the same. Thus, according to learned advocate for respondent No. 1 till the Resolution-163 dated 16.1.2004 exists, their occupation on the land in question cannot be considered as unauthorized occupancy. I am of the view that the said resolution is mere recommendation to the Central Government and it does not create any legal enforceable right in favour of respondent No. 1 and it is subject to the approval of the Central Government because it is the fact that the said above referred resolution is never communicated to respondent No. 1 or any of the lessees whose leases were proposed to be recommended for extension. It has been vehemently submitted by learned advocate for respondent No. 1 that assuming that the said above referred resolution is not communicated to respondent No. 1 company, but the same is still binding upon the petitioner KPT being its own resolution passed by the Board of Trustees in accordance with law and which is still in operation. I do not find any substance and merit in the said submission made by learned advocate for respondent No. 1 because the moment on which direction dated 5.11.2009 of Government of India referred above was received, the existence of proposed Resolution-163 has come to an end automatically and no further procedure for recalling the same is required.

24.2 As referred above, agreement of lease, more particularly, second one dated 20.12.2002, it also stipulates that no compensation shall be paid by the petitioner KPT in the event of renewal is not granted. Learned senior advocate for the petitioners has submitted that respondent No. 1 has accepted this position and has entered into the said contract. After having accepted this condition, it is now not open to seek the right beyond the right that flow from the lease deed and so, there is no unfettered right to seek renewal. For the sake of argument, if we presume that there is right of seeking renewal, then also renewal of lease is statutorily controlled by the provisions of section 34 of the Act and unless there

is any prior permission of the Central Government in case of lease which extend for a period beyond 30 years as alleged and which included terms of the original lease as well as extension sought for, there could be in law, no valid extension. I find myself in agreement with the above submission made by learned senior advocate for the petitioners because as per his further submission, there has to be meaningful reading and purposive consideration of section 34 of the Act. As observed by learned Single Judge in paragraph 32 of her order dated 27.2.2012 and as argued by learned senior advocate for the petitioners that otherwise the petitioner KPT could circumvent the provisions of section 34 of the Act by granting successive lease each for the period not exceeding 30 years and there appears merit in the said submission. It is pertinent to note at this juncture that learned advocate for respondent No. 1 has placed reliance on the decision rendered by this High Court in Special Civil Application No. 8026 of 2011 in the case of Bharat Petroleum Corporation Limited v/s. Talaja Nagarpalika and also on the decision rendered by the Hon"ble Apex Court in the case of Delhi Development Authority Vs. Durga Chand Kaushish, Learned advocate for respondent No. 1 has then submitted that from the judgment referred hereinabove, it can be seen that renewal of the lease is really the grant of fresh lease and as laid down by the Hon"ble Supreme Court, the word "renewal" is indicative of existence of prior lease, which generally speaks of renewal as of right. Otherwise, in essence, it is in fact a fresh lease. It is further laid down that if there is any ambiguity created by the words used in the lease covenant, it can be resolved resorting the interpretation, which is reasonable possible and the principle to apply would be that the interpretation favouring the grantee as against the grantor should be accepted. Learned advocate for respondent No. 1 has then submitted that in view of the above position laid down by the Hon"ble Apex Court and by this High Court, which has opined that such clause in the provision cannot be interpreted based on the questionable calculation that includes tenure of expired lease and therefore, insistence on the part of petitioner-KPT to seek prior approval of the Government of India for renewal of lease is ultra-vires. It is important to note that while deciding the above referred Special Civil Application No. 18026 of 2011, the Court has placed reliance on the decision rendered by the Apex Court in the case of Delhi Development Authority (supra).

I have carefully gone through the above referred decision rendered by the Hon"ble Apex Court and it appears that the only question argued before the Apex Court was whether the interpretation of the lease deed, dated September, 17, 1931 between the Secretary of State for India and the appellant, by the learned Judge, who tried the case and held that rent could be enhanced within the period of 90 years, was correct, or the interpretation adopted by the Division Bench, which allowed plaintiff's appeal after holding that the enhancement clause could only operate upon the grant of a fresh lease, after the expiry of the first period of 90 years under the lease, was correct. While proceeding with the merits of the said case, the Apex Court has clearly observed that the real dispute between the

parties was weather the deed, dated September, 17, 1931 under which the lease commenced from April 1, 1931, provided for an enhancement of the rent within the period of 90 years by reason of covenants numbered 9 and 10 of the lease deed, or the power of enhancement was to be exercised only on the grant of a fresh lease after the determination of the initial period of 90 years. From the above observations made by the Hon''ble Apex Court, it is clear that the main question before the Hon''ble Apex Court in the above referred decision was related to covenants Nos. 9 and 10 of the lease deed related to the said case as discussed hereinabove. In the case on hand, the interpretation of legal provision i.e. Section 34 of the Act is under consideration and the said consideration is related to the Act itself and not related to the covenants of the lease deed. This very citation was also cited before the learned Single Judge of this Court who has decided Special Civil Application No. 18842 of 2011 and allied matters vide order dated 27.2.2012. Thus, as discuss hereinabove, when we are dealing with interpretation of legal provision, and consideration thereof then there should be meaningful reading and purposive consideration of the same i.e. Section 34 of the Act is required to be done, otherwise the petitioner KPT could circumvent the provisions of Section 34 of the Act by granting successive lease, each for the period not exceeding 30 years. Moreover, as observed by Honourable Supreme Court, the word "renewal" is indicative of existence of prior lease which generally speaks of renewal as of right. In the case on hand, according to original lease deed of the year 1973, respondent No. 1 had a right of renewal. Thereafter, in subsequent lease deed dated 20.12.2002, the said right to seek renewal was curtailed and the same were also stipulated that the lease shall not automatically renewed. Moreover, though the above referred subsequent lease deed was extended ex post facto but it is the fact that same was extended after obtaining approval of the Central Government u/s 34 of the Act. Under the above circumstances, in my view, the above referred citation of the Honourable Apex Court will not render any help to respondent No. 1. Considering the above view of the undersigned of interpretation of section 34 of the Act, it is clear that the submission of learned advocate for respondent No. 1 is accordingly negated to the effect that in view of the provisions of section 34 of the Act, the petitioner KPT is not required to obtain approval of the Central Government while executing lease for a period not exceeding 30 years, inasmuch as each lease is fresh lease and accordingly, while calculating the period of 30 years as contemplated u/s 34 of the Act, the period of original lease is not required to be included. In light of the same, I do not find any legal force or merit in the observations as well as finding of learned Additional District Judge that considering section 34(1) of the Act, previous approval or prior approval of the Central Government is required only in case of lease period is more than 30 years and otherwise not and for the said reason, only the Central Government had not given any reply against the letter dated 23.2.2004 of the petitioner KPT. Under the circumstances, I am of the view that the Additional District Judge did not come/reach to correct and meaningful finding related to Section 34 of the Act, as discussed hereinabove and miserably failed to discharge his duty in not dealing with and in side tracking

and in ignoring the interim temporary decision of this Court as well as of the Apex Court almost on the identical issue and without referring the same has come to different observations. Learned Additional District Judge has also put reliance on section 116 of the Transfer of Property Act, 1882 and observed that respondent No. 1 remained in possession of the leased land with consent of the petitioner KPT who has also passed Resolution-163 for renewal of the same and also accepted yearly rent and as specified in section 106 of the Transfer of Property Act, 1882 the property is leased and so, it can only be terminated by giving six months notice. There appears no substance in the said observation made by learned Additional District Judge because under the provisions of section 107 of the Transfer of Property Act, 1882, it is provided that lease of immovable property from year to year or for any term exceeding one year or reserving yearly rent can only be made by the registered instrument. It is an admitted position that there is no registered instrument extending lease or granting fresh lease though it has been observed by learned Additional District Judge that the KPT has recovered yearly rent towards the use of leased land, but no particular data towards the same had been referred by him. Drawing the attention of this Court on the Annexure-N - pages 349 and 350, learned senior advocate for the petitioners has submitted that the petitioner KPT had never accepted rent after 31.3.2004 and what was being received and receipted by the KPT would be in the nature of compensation required from unauthorized occupant as is evident from the receipts at pages 349 and 350. I have carefully perused the same and there appears merit in the said submission made by learned senior advocate for the petitioners.

25. It is also one of the grounds that the land in question is required by the KPT for setting up port based SEZ which is of national interest as approved by the Ministry of Commerce & Industries. On this issue, learned advocate for respondent No. 1 has submitted that in the application of the KPT seeking formal approval of the Ministry of Commerce and Industries to set up Port Based Multi Products Special Economic Zone i.e. PBMPSEZ incorrectly states that the land admeasuring about 5000 hectares including the land given on lease to respondent No. 1 and many others are concerned, it has not been mentioned that the said land is given on lease and renewal of said lease is under consideration and by not mentioning the words "lease", "salt pan" etc., formal approval is sought on the basis of suppression of material facts. Moreover, no notification u/s 3 of the SEZ Act, 2005 has been issued nor permission has been granted by the Government of Gujarat and also no prior environmental clearance has been obtained under the Environmental Impact Assessment Notification, 2006. Under the CRZ Notification, 2011 for establishment of SEZ at KPT, no prior CRZ permission is obtained. On the request of respondent No. 1, the Institute of Environmental Study and Wetland Management, Kolkata has carried out detailed study of location of the land given on lease to respondent No. 1 by the KPT and the report suggests that the land in question falls within CRZ-1 (ii) where salt pan activity is permissible subject to certain precautions. Thereafter, the KPT passed the

resolution amending their original proposal for development of the SEZ and was proposed to develop SEZ in three phases and for completing the first phase, the land of respondent No. 1 was not required at all. However, even after six years, the KPT failed to establish SEZ and failed to have possession of the land upon which it proposes to establish SEZ.

25.1 On this ground related to the land in question which is required by the petitioner KPT for setting up port based SEZ, learned Additional District Judge has dealt with the said ground in paragraphs 30 to 33 of the impugned order/judgment dated 30.11.2012. Learned Additional District Judge has held that the application dated 2.9.2006 seeking permission for establishment of SEZ is inherently defective and as a consequence, permission granting SEZ is bad and the action to take possession by the KPT is vitiated and the same is not to be legal one. Learned Additional District Judge has also held that the KPT had not acted immediately to set up SEZ by taking back possession from the appellant - respondent No. 1 herein. Learned Additional District Judge has further held that SEZ could be shifted and allotted to any other portion of vacant land observing that two lacs acres of land purportedly available to the KPT.

25.2 It is not under dispute that the activity in the coastal area/zone is governed by the Environment Act as well as the policy and guidelines of the Central Government. It has been argued by respondent No. 1 that, therefore, the KPT cannot act contrary to issuance of the notification by the Central Government. The submission is that the purpose for which the land in question is demanded back and if the purpose is contrary to the statute and to the Government guidelines and the said purpose cannot be achieved, then demand fails is the submission made on behalf of respondent No. 1. On this ground, learned senior advocate for the petitioners has emphasized that this is not the subject matter of SEZ and it is not the say of someone to protect if he justifies the need for some other public purpose. This is not the land acquisition matter. It appears that while considering the above ground, learned Additional District Judge has chosen not to consider the relevant aspect that the said 2 lacs acres of land would be submerged area with creeks, that could not be utilized for any commercial purpose, particularly, for port based commercial activities. Learned senior advocate for the petitioners has then submitted that sub-merged area would be washed out and covered under the tidal water almost two times a day, i.e. for around 4 to 6 hours. It is the fact that grant of permission and grant of approval at no point of time was under challenge by the petitioners or any other before the competent authority though, it is undisputed that SEZ is proposed consideration thereof. Learned Additional District Judge was in excess of jurisdiction vested under the provisions of the P.P. Act and learned Additional District Judge on the basis of no material has come to the perverse finding is the submission made by learned senior advocate for the petitioners. It has been held that the KPT had not acted immediately to set up SEZ taking back possession from the appellant - respondent No. 1 herein. It is the fact that the issue whether respondent No. 1 would continue with the right or otherwise was pending with the competent

authority till being rejected under communication dated 5.11.2009 and accordingly, thereafter, the KPT would be told to take back possession and set up SEZ by taking over possession from unauthorized occupant of the land is the submission made by learned senior advocate for the petitioners.

26. It has also been submitted by learned advocate for respondent No. 1 that group of companies of respondent No. 1 of Special Civil Application No. 16316 of 2012 has made application to the Government of Gujarat, Department of Forest and Environment dated 9.3.2012 to ascertain whether Port Based Multi Products Special Economic Zone at Kandla and Tuna proposed by the petitioner KPT is possible under the amended CRZ Notification or not. In response thereof, the State of Gujarat has communicated that "now as per the provisions of CRZ Notification 2011, port and port related facilities are permissible activities (except in high erosion areas) as per the CRZ Notification, 2011 issued by the Ministry of Environment and Forest, Government of India, with prior approval/clearance from the competent authority as prescribed under the aforesaid notification. However, setting up of new industry and expansion of existing industry including SEZ are prohibitory activities in CRZ areas except those directly related to water front or directly needing for shore facilities and other facilities as mentioned in the said notification." In the facts and circumstances stated hereinabove, it is further stated and submitted by respondent No. 1 that demand of land of 935 acres of salt pan for establishing ancillary unit to support the proposed SEZ is too far fetched submission and contention to have possession of 935 acres of salt pan given in lease to respondent No. 1 by the petitioner KPT and, therefore, to demand possession of salt pan for establishment of proposed ancillary unit after the proposed SEZ is established is arbitrary, irrational, smacks of colourable exercise of power and mala fide.

26.1 Learned senior advocate for the petitioners has drawn attention of this Court on the affidavit dated 15.2.2013 of the Officer on Special Duty with the KPT and submitted that by the said affidavit, the petitioner KPT has placed on record material evidence that have accrued pending the proceedings. Referring to the same, it appears that the competent authority had appointed the Institute of Remote Sensing, Anna University, Chennai as Nodal Agency for preparing "Demarcation of High Tide Line for the proposed area of SEZ" bearing 3600 hectores of land at Kandla and the report which the petitioner KPT has received recently confirms the stand of the KPT that the alleged CRZ-I restriction would not apply to the subject lands and that lands would not be within "Sensitive Zone" to attract alleged restriction gets completely supported.

26.2 Considering the above submission, it is clear that at all the relevant time, prior approval/clearance from the competent authority as prescribed under the notification is required to ascertain whether Port Based Multi Products Special Economic Zone at Kandla and Tuna proposed by the petitioner KPT is possible under the amended CRZ Notification or not. Under the circumstances, it cannot be said that requirement of land for setting up SEZ is contrary to the

environmental law and, therefore, is inconsequential. Thus, finding of learned Additional District Judge that permission granted to set up SEZ is contrary to the amended CRZ Notification is accordingly not correct. It is important to note that the Ministry of Environment has not restrained or negated request for PBMPSEZ for it to be allegedly in violation of modified CRZ Notification of the year 2011. Thus, on the above ground, learned Additional District Judge, on the basis of no material, has come to the perverse finding and in my view, it is required to be set aside so far as the above ground is concerned. Learned senior advocate for the petitioners has lastly submitted on this ground that it would be beyond the scope of the proceeding under the P.P. Act to hold that permission granted under the statute by the competent authority would be vitiated on the purport that the purpose for which the land is required does not exist on the assumption that establishment of PBMPSEZ would not be geographically permissible under the CRZ Regulations. Considering the above discussed circumstances, there appears force and substance in it.

27. Issue No. 2 decided by learned Additional District Judge is related to bias and learned Additional District Judge vide impugned order dated 30.11.2012 has allowed the appeal holding, inter alia, that the Estate Officer has conducted the proceedings with a bias mind because considering the land policy, it would have to be interpreted to mean that there is no requirement of approval from the Central Government for grant/renewal of lease for further period of 30 years u/s 34 of the Act from its expiry. Moreover, it has also been held that the application dated 2.9.2006 seeking permission for establishment of SEZ is inherently defective and consequently, permission granting SEZ is bad and accordingly, action to take back possession by the KPT is vitiated and not to be legal.

27.1 Referring to paragraphs 17 to 20 of the impugned order, it appears that learned Additional District Judge found that the Estate Officer has acted with a bias mind and the said finding is based solely on the fact that the Estate Officer in his capacity of Deputy Secretary of KPT had filed the affidavit dated 4.11.2009 before the Delhi High Court in PIL proceedings. Moreover, other two affidavits were also filed respectively dated 2.12.2009 and May-2010 on behalf of the KPT by the Estate Officer in his capacity of Deputy Secretary of KPT. It is also the fact that on behalf of the KPT, Estate Officer in the capacity of Deputy Secretary of KPT has filed Caveat Applications.

27.2 Learned senior advocate for the petitioners has read out the first affidavit dated 4.11.2009 of the Estate Officer affirmed by him, before this Court, and submitted that the said affidavit on the contrary opposes the PIL filed before the Delhi High Court and supported grant of lease by the KPT to its lessees and on the basis of the said affidavit filed by the Estate Officer, Shri Balan, no person of reasonable prudence would ever even reasonably believe that the Estate Officer was bias in favour of passing an order against respondent No. 1. So far as rest of two affidavits are concerned, the same were filed in pursuance of the directions of the Division Bench of the Delhi High Court directing the KPT to place on record

certain factual information in respect of lessees who are continuing to occupy the leased land. The said information was sought for on two aspects mainly as to whether the lease deed contains renewal clause and as to whether lease stood renewal or not. Referring to the above referred two affidavits, learned senior advocate for the petitioners has submitted that filing of an affidavit in compliance with the order of the Delhi High Court cannot be treated as an element of bias because to put correct facts as existed on record that the leases stood expired and were not renewed also cannot be treated to be an element of bias. Learned senior advocate for the petitioners has then submitted that, under the circumstances, both the grounds on which learned Additional District Judge has held that the Estate Officer was bias in favour of passing the order evicting respondent No. 1 is wholly irrelevant, unsustainable and non-existing and, therefore, the order impugned in this writ petition should be quashed and set aside.

27.3 In light of the above facts related to issue of bias, I have once again gone through the submissions referred hereinabove vide Para Nos. 8 to 18 and the submissions made by the learned advocate for respondent No. 1 and the submissions made by learned senior advocate for petitioner of Special Civil Application No. 16322 of 2012 referred hereinabove vide Para 20 and also considered the ratio laid down by Hon"ble the Apex Court in various rival decisions referred by the learned advocates for the parties, as referred in Para 19 hereinabove. Moreover, the main factors why respondent No. 1 - company considers Mr. Suresh Kumar Balan as being biased and predetermined, have been narrated in Para 18 referred hereinabove. In short, according to the learned advocate for respondent No. 1, Mr. Suresh Kumar Balan, Estate Officer has participated between 2009 and 2013 in the PIL before the High Court of Delhi, taking the stand of KPT and under the circumstances, he cannot act in an impartial manner as an Estate Officer, who has functioned as quasi judicial officer. According to learned advocate for respondent No. 1, there is a basic principal that justice has to be not only done but it should be seemed to be done and that would be missing. According to the learned advocate for respondent No. 1, Mr. Balan has acted contrary to the contents of the affidavit filed by him before the High Court of Delhi. It is not under dispute that Mr. Balan has acted in two different capacities. According to learned advocate for respondent No. 1, capacity of Mr. Balan was changed but that will not change in the facts of the case and Mr. Balan cannot take one stand before the High Court of Delhi and then he cannot take somersault and say something contrary to the affidavit in adjudication of the matter.

27.4 It is the fact the during the pendency of the proceeding before Mr. S. Balan - Estate Officer, respondent No. 1 had not raised any question with respect to the bias by him. In fact, respondent No. 1 had submitted to the jurisdiction and participated in the proceedings on merits without any objection. Hence, according to learned senior advocate for the petitioners, the finding given by the learned Additional District Judge on Issue No. 2 in the impugned order, is without

jurisdiction and are wholly unjustified and is required to be quashed and set aside. At this juncture, I deem it fit to refer some of the citations on which, the learned senior advocate for the petitioners has placed reliance, which are as under:

27.4(a) Learned senior advocate for the petitioners has placed reliance on a decision in the case of G. Sarana Vs. University of Lucknow and Others, Para 15 of the same reads as under:

15. We do not, however, consider it necessary in the present case to go into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the Committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the Committee. This view gains strength from a decision of this Court in Manak Lal Vs. Dr. Prem Chand, wherein more or less similar circumstances, it was held that the failure of the appellant to take the identical plea at the earlier stage of the proceedings created an effective bar of waiver against him. The following observations made therein are worth quoting:-

It seems clear that the appellant wanted to take a chance to secure a favourable report from the tribunal which was constituted and when he found that he was confronted with an unfavourable report, he adopted the device of raising the present technical point.

(Emphasis supplied)

27.4(b) The next decision relied upon by the petitioners is in the case of Ratnagiri Gas and Power Pvt. Ltd. Vs. RDS Projects Ltd. and Others, have been read over by learned senior advocate for the petitioners. I have carefully gone through the same. With a view not to put much burden on record, only para 24 is reproduced hereunder.

24. Even otherwise the findings recorded by the High Court on the question of mala fides do not appear to us to be factually or legally sustainable. While we do not consider it necessary to delve deep into this aspect of the controversy, we may point out that allegations of mala fides are more easily made than proved. The law casts a heavy burden on the person alleging mala fides to prove the same on the basis of facts that are either admitted or satisfactorily established and/or logical inferences deducible from the same. This is particularly so when the petitioner alleges malice in fact in which event it is obligatory for the person making any such allegation to furnish particulars that would prove mala fides on the part of the decision maker. Vague and general allegations unsupported by the requisite particulars do not provide a sound basis for the court to conduct an inquiry into their veracity. The legal position in this regard is fairly well-settled by a long line of decisions of this Court. We may briefly refer to only some of them.

In State of Bihar and Another Vs. P.P. Sharma, IAS and Another, , this Court summed up the law on the subject in the following words:

50. Mala fides means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The administrative action must be said to be done in good faith, if it is in fact done honestly, whether it is done negligently or not. An act done honestly is deemed to have been done in good faith. An administrative authority must, therefore, act in a bona fide manner and should never act for an improper motive or ulterior purposes or contrary to the requirements of the statute, or the basis of the circumstances contemplated by law, or improperly exercised discretion to achieve some ulterior purpose. The determination of a plea of mala fide involves two questions, namely (i) whether there is a personal bias or an oblique motive, and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power.

51. The action taken must, therefore, be proved to have been made mala fide for such considerations. Mere assertion or a vague or bald statement is not sufficient. It must be demonstrated either by admitted or proved facts and circumstances obtainable in a given case. If it is established that the action has been taken mala fide for any such considerations or by fraud on power or colourable exercise of power, it cannot be allowed to stand.

(emphasis supplied)

27.5 It has been vehemently argued by learned advocate for respondent No. 1 that the fact that Mr. S. Balan as an Estate Officer, has filed Special Civil Application No. 16322 of 2012 against the judgment and order passed by the appellate authority quashing and setting aside the order passed by the Estate Officer of eviction, itself suggests that Mr. S. Balan has a personal as well as professional interest in the eviction of respondent No. 1 - Company and thus, it is clear that he had exceeded his jurisdiction and judicial limit and this conduct itself is independently enough to indicate how bias and predetermined the Estate Officer Mr. S. Balan against respondent No. 1. I do not find any substance and merit in the above-referred submission made by learned advocate for respondent No. 1. On one count, as referred above, the learned advocate for respondent No. 1 has argued that as the Estate Officer has been impleaded as a party - respondent in appeal before the trial Court, who has filed the affidavit in said appeal proceedings, then question loses significance, whether the issue of bias can be raised only after including the person facing the allegation of bias. Now, said respondent No. 1 who has joined Estate Officer in person in appeal proceedings as a party - respondent, cannot argue that a quasi judicial and a statutory authority in the form of Estate Officer cannot file a petition under Article 226 and/or 227 of the Constitution of India challenging the decision of the appellate authority dated 30/11/2012 i.e. the impugned order, more particularly, when the Estate Officer restricted his said petition so far as finding of personal bias has been given against Estate Officer - Shri S. Balan by the appellate

authority.

27.6 Placing reliance on the decision in the case of *Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay*, learned advocate for respondent No. 1 has submitted that, in the said case, the Hon''ble the Apex Court has opined that port trusts are an agency and/or instrumentality of the State being a statutory authority and therefore, it is a State as defined in the Constitution of India and hence, Article 14 of the Constitution of India is applicable. Every action of such statutory authority must be in public interest and it must not be mala fide or arbitrary or for collateral purpose. Every action must be reasonable and taken upon lawful and relevant grounds. Therefore, the issue of violation of principles of natural justice being an issue of law, and not oral evidence is required to establish the same and can be established on the available documentary evidence, same can be raised even at the stage of litigation before the Hon''ble the Supreme Court. Therefore, if the bias is not raised before a biased Estate Officer, same cannot deprive the lease holder, in the present case, respondent No. 1 facing the proceedings under the provisions of the P.P. Act to raise the issue of law that goes to the root of the matter at the stage of appeal u/s 9 of the P.P. Act. There appears force and substance in the submissions made by the learned advocate for respondent No. 1. Ultimately, the truth is required to be carved out and considering the said aspect, I do not find any substance and merit in the submission made by the learned senior advocate for the petitioners that just because the issue of bias is not raised before the Estate Officer Mr. S. Balan, the same cannot be raised in the appeal.

27.7 It is alleged by learned senior advocate for the petitioners that the conduct of respondent No. 1 narrated hereinabove in para 5.1 related to transfer of leasehold land in question to Arihant Salt Industry be considered, this petition should be allowed on that count only. On this issue, submissions made by learned advocate for respondent No. 1 are narrated in para 18.1 hereinabove. The explanation of respondent No. 1 is that the said document at page Nos. 476 to 490 has never been implemented by the parties of the said agreement and as per the submission of respondent No. 1 herein, land in question is not the property of M/s. Vijay Salt Syndicate, but the same is leasehold right property and considering the said explanation, in my view, to decide the issue involved in this petition related to M/s. Vijay Salt Syndicate - respondent No. 1, no further discussion is required at this stage, more particularly, when it is alleged by the petitioners that they have taken the possession of suit land and on the said question of possession as per respondent No. 1, they are in possession for which status quo has been granted by this Court.

27.8 Considering the above discussed facts emerged from the record, it appears that the Deputy Secretary is the de facto Estate Officer. It is not under dispute that to appoint Mr. S. Balan as an Estate Officer was the decision of the Central Government under the Notification and it was not the decision of KPT. At this juncture, it is also important to note that Issue No. 2 of the impugned order,

framed by the learned Additional District Judge, is to the effect that, "whether the appellants - respondent No. 1 herein, have been able to show that Estate Officer i.e. Shri Suresh Kumar Balan has acted with a biased mind"? Likewise, Issue No. 3 is to the effect that, "whether the appellants - respondent No. 1 herein have been able to show that decision has been given by the Estate Officer without considering the submissions regarding law and admitted facts"? Referring to the above Issue Nos. 2 and 3 of the impugned order dated 30/11/2012, in my view, the Issue Nos. 2 and 3 should have been considered independently and accordingly, the legal relationship between the parties is to be decided. From the above discussed facts and issues involved in the case on hand, it is clear that so far as the land policy and interpretation related to section 34 of the Act is concerned, while calculating the period of 30 years, the period of expired lease is required to be considered otherwise, the petitioner KPT could circumvent the provisions of section 34 of the Act by granting successive lease for the period not exceeding 30 years and the purpose of the said section, in my view, would be frustrated. Thus, in my view, learned Additional District Judge had not come to the correct and meaningful finding related to section 34 of the Act, as discussed hereinabove and according to this Court, learned Additional District Judge has miserably failed to discharge his duty ignoring the tentative decision of the higher forum as referred hereinabove so far as the above issue related to section 34 of the Act is concerned. It is the fact that pending the recommendation i.e. Resolution-165 made by KPT with the Competent Authority, by application dated 2.9.2006 permission was sought for by KPT to establish PBMPSEZ which would spread over approximately 5000 hectares. Thus, so far as the application dated 2.9.2006 seeking permission for establishment of Special Economic Zone is concerned, after thorough discussion referred hereinabove, I find that it cannot be said that requirement of the land for setting up SEZ is contrary to environmental law and, therefore, the same is inconsequential and thus in my view, finding of learned Additional District Judge to the effect that permission granted to set up SEZ is contrary to the amended CRZ Notification is accordingly not correct.

28. In light of the above factual position, now the role of the Estate Officer is required to be considered and findings arrived at by him are also to be considered accordingly. Before proceeding further on the above issue related to bias, ratio laid down by the Honourable Apex Court in the case of Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others, is important to be looked into. In paragraph 30 of the above referred decision, the Honourable Apex Court has observed that the definition of the expression "unauthorised occupation" contained in Section 2(g) of the Public Premises Act is, as such, in two parts. In the first part, the said expression has been defined to mean the occupation by any person of the public premises without authority for such occupation. It is further observed that it implies occupation by a person who has entered into occupation of any public premises without lawful authority as well as occupation which was permissive at the inception but has ceased to be so. In the

case on hand, it is clear that permissive use granted at the inception which was extended time and again has not been extended after 1.4.2004 or after 5.11.2009 as referred hereinabove because approval sought for u/s 34 of the Act by the petitioner KPT of the competent authority has not been approved as discussed hereinabove. In the above referred decision of the Apex Court, it is further observed that second part of definition is inclusive in nature and it expressly covers continuation in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. Meaning thereby, where a person had entered into occupation legally under the valid authority but who continued in occupation after the authority under which he was put in occupation has expired or has been determined, then Section 2(g) of the Public Premises Act would cover a case where a person has entered into occupation of the public premises legally as a tenant under a lease but whose tenancy has expired or has been determined in accordance with law. In my view, the above referred observations are squarely applicable to the facts of the case on hand. As discussed hereinabove, approval for extension of lease sought for u/s 34 of the Act was not granted in light of the direction dated 5.11.2009 referred hereinabove and the said position related to said direction dated 5.11.2009 has never been challenged by respondent No. 1 herein and accordingly, at the most on receipt of the letter dated 5.11.2009 lease of respondent No. 1 has expired and accordingly, occupation which was permissive at the inception was ceased and the same has automatically converted into unauthorized occupation of the land in question.

29. The order of eviction has been passed by the Estate Officer on 20.7.2011. The affidavit filed in the PIL was dated 4.11.2009 and so far as the Caveat Application is concerned, the same was filed on 10.5.2010. Learned senior advocate for the petitioners, on the above count, has mainly submitted that respondent No. 1 should give definite particulars regarding bias which have not been given because the affidavit and the caveat application, as such, were not filed in the recent past, but it was before long period and respondent No. 1 has also to further say that because of this situation, miscarriage of justice has occurred to respondent No. 1 and that has to be shown in the positive way and mere vague allegation itself is not sufficient and this aspect has not at all been touched by learned Additional District Judge while passing the impugned order dated 30.11.2012. Learned senior advocate for the petitioners has also put reliance on the decision in the case of Abraham Kuruvila Vs. S.C.T. Institute of Medical Science & Technology and others, reported in (2005) 9 SCC 49 wherein it has been held as under.

Bias which would mean and imply "spite or ill will" must be proved by raising requisite plea in this behalf and by adducing cogent and sufficient evidence in support thereof. In fact, bias is a state of mind and it shows predisposition. Thus, general statements would not meet the requirements of law. Certain correspondence/orders which might have been passed against the petitioner long

back would not meet the requirement of law to prove bias. Not only existence of a factual bias has to be proved, but it must also be shown that the same has resulted in miscarriage of justice. A finding of fact has been arrived at by the High Court that the petitioner had not been able to show any predisposition on the part of the respondents concerned so as to affect his chances of promotion to the post of Associate Professor. The Division Bench of the High Court assigned sufficient and cogent reasons for not agreeing with the submissions of the petitioner. The case of the petitioner was directed to be considered afresh by a Governing Body barring the members against whom bias was alleged. The grievance of the petitioner was, thus, sufficiently redressed.

30. In light of the above decision, I have considered the issue related to bias on which respondent No. 1 has put their submissions referred above. Considering the above discussed facts emerged on the record, it can be very well said that it is not under dispute that the affidavits as well as caveats were filed by Mr. S. Balan-Estate Officer on behalf of the Board of Trustees of KPT. As discussed hereinabove, correct picture on the record of the KPT has been put forth by the Estate Officer Mr. S. Balan on behalf of the KPT, while filing the above referred affidavits and caveats and in my view, whatever was averred in the same was not the opinion of the Estate Officer, but a fact that was existing on the record of the Kandla Port Trust had been placed by him and thus by no stretch of imagination, it can be said that the proceedings u/s 4(1) of the P.P. Act was conducted by the Estate Officer with a bias mind. Moreover, no allegations or proof with respect to the miscarriage of justice having been averred or proved by respondent No. 1 and so, the decision of the Estate Officer could not be faulted on that ground. It is clear that the proceedings u/s 4 of the Act is required for taking possession from unauthorized occupants. Vide letter dated 5.11.2009, the direction was given by the Central Government to KPT not to renew any lease and also further direction has been given to take immediate possession, where lease has expired. In view of the said direction dated 5.11.2009, it is clear that admittedly, there was no renewal of lease and as referred hereinabove, the said direction has never been challenged before any forum by Respondent No. 1. 32. Under the circumstances, respondent No. 1 became unauthorized occupant within the meaning of Section 2(g) of the P.P. Act. The Estate Officer, in my view, has not conducted the proceedings under the P.P. Act with bias mind. It is not the case of respondent No. 1 that the Estate Officer has put incorrect facts in the said affidavit and the caveat application. Simply to put the correct facts which are on record by way of affidavit by an employee and later on when the said employee who has filed the affidavit and caveat has discharged his duty as Estate Officer and come to some findings, it cannot be said that he has acted in predetermined way and decided the issue with bias mind. It is the fact which we cannot ignore is that respondent No. 1 herein cannot have better right than those who have come before this Court and challenged their non-renewal. Thus, I am of the view that the Lower Appellate Court in view of the issues Nos. 2 and 3 has grossly erred in holding that the Estate Officer was biased and therefore,

has clearly erred in law in setting aside the order of eviction. As discussed hereinabove, I am also of the view that Union of India and KPT adopted an indiscriminatory attitude and therefore, there is no question of violation of Article 14 of the Constitution of India. When the lease period has expired and it is decided not to renew the same and it is further decided to take back possession from all such lessees cannot be said arbitrariness or violation of equality clause in the action of Estate Officer, who has passed the order dated 20.07.2011. In my view, we cannot ignore the reality relating to the decisions and orders passed by the Division Bench of High Court of Delhi who has directed that in order to ensure best offers to be received, wide publicity should be given to put the plots of KPT under auction bid through a tender-cum-auction. Thus, it is clear that the Division Bench of the High Court of Delhi has directed the plots to be auctioned and there could not be any renewal of any of the lease. Under the circumstances, in my view, at the relevant point of time, respondent can take the benefit of the said auction bidding to be held in light of the direction given by the High Court of Delhi. Thus, considering the said fact and Article 14 of the Constitution of India, it appears that High Court of Delhi has taken the decision in public interest and the said action has been approved by the Apex Court considering the same as reasonable and lawful.

31. Under the circumstances, Special Civil Application No. 16317 of 2012 filed by the Board of Trustees of petitioner KPT is hereby allowed. Accordingly, impugned order dated 30.11.2012 passed by learned Additional District Judge, Gandhidham at Kachchh in Civil Misc. Appeal No. 22 of 2011 is hereby set aside. Likewise, Special Civil Application No. 16322 of 2012 filed by Estate Officer is also accordingly, allowed.

Further order:

32. After pronouncement of judgment, learned advocate Mr. D.J. Bhatt for respondent No. 1 requested to grant extension of earlier order dated 06/12/2012, passed by this Court, which has been extended time and again and which is yet in force, as respondent No. 1 is desirous of challenging the present order before the Honourable the Apex Court.

33. I have also heard learned senior advocate Mr. D.D. Vyas for the petitioners. He vehemently opposed the grant of extension as sought for by learned advocate for the respondent No. 1 and submitted that as the possession of the land in question is with the petitioner and as respondent No. 1 has already transferred the land in question, the extension of the earlier order, as sought for by learned advocate for the respondent No. 1, may not be granted.

34. I have gone through the earlier order dated 11/12/2012, passed by this Court below note for speaking to minutes and accordingly, also perused the order dated 06/12/2012. It is not under dispute that the above-referred order dated 06/12/2012, has been extended time and again during the course of hearing and till today, the same is in force. Considering the fact that respondent No. 1 herein

wants to challenge the present order pronounced today before the Honourable the Apex Court, in my view, the request for extension made by the learned advocate for respondent No. 1 appears just and proper and accordingly, the same is granted and order dated 06/12/2012 is ordered to be extended up to 27th January 2014.