

(2012) 03 SC CK 0030

In the Supreme Court Of India

Case No : Civil Appeal No's. 3107-3108 of 2012 (Arising out of SLP (C) No's. 36724-36725 of 2009)

Saroj Screens Pvt. Ltd.

APPELLANT

Vs

Ghanshyam and Others

RESPONDENT

Date of Decision : 26-03-2012

Acts Referred:

City of Nagpur Corporation Act, 1948 — Section 397(3), 411, 70, 70(2), 70(3)
Constitution of India, 1950 — Article 136, 14, 226
Transfer of Property Act, 1882 — Section 116

Citation : AIR 2012 SC 1649 : (2012) AIRSCW 2131 : (2013) 1 AJR 491 : (2012) 3 BomCR 565 : (2012) 4 SCALE 25 : (2012) 11 SCC 434

Hon'ble Judges : Sudhansu Jyoti Mukhopadhyaya, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Gagan Sanghi and Rameshwar Prasad Goyal, for the Appellant; Shekhar Naphade, Ashok Shrivastav, Manish Pitale, G.K. Sarda, Chander Shekhar Ashri, Somnath Padhan, Satyajit A. Desai and Sanjay V. Kharde, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—Leave granted.

2. These appeals are directed against judgment dated 16.10.2009 of the Bombay High Court, Nagpur Bench whereby the writ petitions filed by Respondent Nos. 1 and 2 were partly allowed, Resolution dated 28.8.1991 passed by Municipal Corporation of the City of Nagpur (for short, 'the Corporation') for renewal of lease in favour of the Appellant in respect of Plot No. 5, Circle No. 19/27, Division I, Old Sarai Road, Geeta Ground Layout, Nagpur as also sanction accorded by the State Government u/s 70(5) of the City of Nagpur Corporation Act, 1948 (for short, 'the Act') were quashed and a direction was issued to Civil Judge (Senior Division), Nagpur to decide Special Civil Suit No. 1135 of 1993 latest by 31.12.2010.

FACTS:

3. On an application made by Gopaldas Mohta (father of Respondent No. 1 - Ghanshyam Mohta and father-in-law of Respondent No. 2 - Smt. Kamla Devi), Municipal Committee of Nagpur (for short, 'the Committee') passed resolution dated 17.3.1944 for grant of lease to him in respect of the plot described herein above for a period of 30 years. In furtherance of that resolution, lease deed dated 28.10.1944 was executed in favour of Gopaldas Mohta. The tenure of lease commenced from 17.3.1944. For the sake of convenient reference, Clauses 6 and 8 of the lease deed are extracted below:

6. The lessee shall upon every assignment of the said land or any part thereof within a calendar month thereafter deliver to the lessor or to such person as he may appoint in this behalf a notice of such assignment putting forth the names and description of the parties thereto and the particulars and effect thereof.

8. The Municipal Committee i.e. the lessor will have the option to retake structure at end of the term of 30 years hereby granted by paying the then market value of the structure or to renew the lease on the revised ground rent, fair and equitable, for a further term of 30 years or more.

Provided also that every such renewed lease of the land shall contain such of the covenants provisions and conditions in these presents contained as shall be applicable and shall always contain a covenant for further renewal of the lease.

3.1 After about 3 years, Gopaldas Mohta leased out the plot to the Appellant for a period of 27 years (from 28.3.1947 to 16.3.1974). The relevant portions of deed dated 10.9.1947 executed between Gopaldas Mohta and the Appellant read as under:

THIS DEED of LEASE made on the 10th day of September, 1947, between DIWAN BAHADUR Seth Gopaldas Mohta, resident of Akola (hereinafter called the Lessor) of the ONE PART, and Messrs Saroj Screens Ltd., Amraoti, a joint stock company with limited liability, represented by Mr. Anandrao son of Yadararo, Managing Director, resident of Amraoti, Taluq and District Amraoti, (hereinafter called the Lessees) of the SECOND PART.

WITNESSETH AS FOLLOWS:

1. The Lessor holds and is in possession of a plot of land, situated in the locality popularly known as "The Geeta Ground", in Sitabuldi of Nagpur city in the Central Provinces and more particularly described in the scheduled statement herewith below, which he holds under a lease dated 17th March, 1944, granted by the Municipal Committee Nagpur, and on this plot, the Lessor has constructed a plinth for construction of a Cinema Theatre, as per plans, sanctioned and approved by the said Municipal Committee. Over this plot, certain building materials, such as sand, stones, metal and other iron and wooden material etc., belonging to the Lessor, have been collected and are lying. The Lessor hereby lessee the said plot including the plinth and above mentioned materials which

have already been delivered into the possession of the Lessees by the Lessor), to the Lessees, for a period commencing from 28.3.1947 till 16th March, 1974, which is the entire unexpired period of the Lease which the Lessor holds under the Municipal Committee, Nagpur.

The main lease in favour of the lessor, contains a clause for renewal under which the lessor shall be entitled to have the lease renewed in his favour, for a further period on the expiry of the present lease. This right of the lessor, is however, retained by the lessor, for his own benefit and the lessees shall have no claim to the interest thereby created.

PROVIDED HOWEVER, if the lessees acquire the interests of the lessor, as provided in Clause (5) below, the lessees shall be entitled to all the rights and interest of the lessor under the said clause for renewal, together with all other interests which the lessor may have under the lease before mentioned, dated 17th March, 1944 including the right of renewal, therein mentioned.

5. The lessees shall have the option to pay to the lessor a sum of Rs. 90,000/- (Rupees Ninety Thousand only) at any time during the first five years of the lease and to purchase all the rights of the Lessor under said Head Lease from the Municipal Committee, Nagpur, together with his rights over the plinth and the material and on this amount being paid as per this conditions, the lessor shall be bound to execute the necessary assignment or other assurance in favour of the lessees at the cost and expenses of the lessees. The lessees shall have also the option to acquire the said interest from the lessor at any time, on payment of the same price, namely Rs. 90,000/only during the last year before the expiry of the lease by afflux of time.

10. On expiry of the lease in due course, the lessees shall hand over the possession of the premises leased together with the structures thereon to the lessor who shall thereupon be entitled to take over the structure after valuing them in the manner hereinbefore provided. In case, he pays the value of that part of the structure which the lessees have constructed to the lessees, then the entire structure will thereafter belong to the lessor. In case, the lessor does not elect to take over the materials and in case, the lessees fail to exercise the option of acquiring the leased premises from the lessor as provided, then in that event, the lessees may remove that part of the structure which he may have constructed at his cost within reasonable time of two months and on his failure to do so, the structure shall thereafter belong to the Lessor and the lessees will have no right to the same or price thereof.

3.2 In 1959, there was a partition in the family of Gopaldas Mohta and the plot in question came to the share of his wife Smt. Gangabai. She assigned the same to Parmanand Kisandas Mundhada of Calcutta by executing deed dated 12.8.1960. Thereafter, the name of Parmanand Mundhada was entered in the records of the Committee along with that of Smt. Gangabai. After 12 years, the Appellant sent letter dated 15.1.1973 to Parmanand Mundhada indicating therein that it was

ready to pay Rs. 90,000/- and purchase the interest created in favour of Gopaldas Mohta vide lease deed dated 28.10.1944. The Appellant also requested Parmanand Mundhada to approach the Corporation, which had succeeded the Committee, for renewal of the lease after 16.3.1974.

3.3 Parmanand Mundhada submitted application dated 7.3.1974 to the Corporation for renewal of lease for a period of 30 years. However, without waiting for the Corporation's response, the Appellant filed Special Civil Suit No. 96 of 1974 against Parmanand Mundhada, Gopaldas Mohta, Gangabai and the Corporation for the specific performance of agreement dated 10.9.1947 executed by Gopaldas Mohta. During the pendency of the suit, Parmanand Mundhada died and his legal representatives were brought on record.

3.4 The suit filed by the Appellant was decreed by Civil Judge, Senior Division, Nagpur (hereinafter referred to as, 'the trial Court') vide judgment dated 28.4.1980 but the same was reversed by the High Court in First Appeal Nos. 95 of 1980 and 96 of 1980 filed by the heirs of Parmanand Mundhada and Respondent No. 2 and the Corporation respectively. The relevant portions of the High Court's judgment dated 25.7.1991 are extracted below:

20. To this letter (Exh. 98) a reminder was sent on 15th February 1974 after a gap of one year. That letter is Exh. 99. That letter is addressed to Defendant No. 1 Parmanand by the Counsel of the Plaintiff. It makes an interesting reading. It is hence extracted as a whole. It reads as under:

Dear Sir,

Under instructions of my clients M/s Saroj Screens Pvt. Ltd., I have to invite your attention to their registered letter dated 15.1.1973 received by you on 19.1.1973. My client has not received any reply so far.

2. Please let me know whether you have applied to the Municipal Corporation, Nagpur for renewal of the lease whether you want to apply for renewal of the lease. If you have applied, what is the result of your application.

3. My client has been ever ready and willing to perform his part of the contract under the Indenture dated 10.9.1947 with Diwan Bahadur Seth Gopaldas Mohta, by which you are bound.

4. Please note that if you do not send any satisfactory reply within ten days of the receipt of this letter, my client will take it that you do not want to get the lease dated 28.10.1944 renewed and to perform your part of the contract and thereby you have committed breach thereof. In that event my client will be free to take such steps as he may be advised and in the event of litigation you will be held liable for costs and consequences. Please take notice.

Yours faithfully, Sd/- Advocate Counsel for M/s. Saroj Screens Pvt. Ltd.

The letter is self explanatory. It clearly calls upon The Defendant No. 1 to get the lease renewed and on failure to perform that part of contract it would result

in breach of the contract of his part. Therefore, the readiness or willingness on the part of the Plaintiff was made subject to renewal of the lease which condition was never agreed upon. This is more glaring when we peruse the reliefs claimed in the plaint. In prayer Clause (a) the Plaintiff claimed a decree that the Defendant No. 1 do obtain from the Defendant No. 2 a renewed lease of the original (Exh. 120) on rent which is fair and equitable, and in Clause (aa) the relief claimed was that on deposit of Rs. 79,000/- in Court the defendant No. 1 do execute in favour of the plaintiff a deed of transfer of all rights in the renewed lease granted to him by the Defendant No. 2. The pleadings and the evidence are restricted to the allegations made in the two letters Exh. 98 and 99 only.

21. Therefore, no doubt is left in our mind that the plaintiff came forward seeking implementation of a different contract than the one agreed between the parties. Apparently the Plaintiff had no desire to pay the amount of Rs. 90,000/- till such time the lease is renewed. There was neither readiness or willingness on the part of the Plaintiff to implement the contract. We hence answer the point at issue in the negative. The learned Court below had completely misdirected itself in coming to a contrary conclusion not warranted by the facts on record.

(emphasis added)

3.5 During the pendency of the suit filed by the Appellant, the Corporation passed Resolution No. 162 dated 29.10.1975 for renewal of lease in favour of Parmanand Mundhada for a period of 30 years subject to the condition of payment of ground rent at the rate of Rs. 13,120/- per annum and penalty of Rs. 3,000/- for breach of the conditions embodied in lease deed dated 28.10.1944. The relevant portions of Resolution dated 29.10.1975 are reproduced below:

Resolution No. 162: The term of the 30 years lease of plot No. 5 situated on Geeta Ground, Sitabuldi, where upon Anand Talkies is situate has expired on 16.3.1974. The present owner of that plot viz Shri Parmananddas Kisandas Mundhada, resident of 55/58 Isra Street, Calcutta, having made an application on 7.3.1974 for renewal or lease for further 30 years, the house took into consideration the said request.

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With regard to the subject under consideration, the Hon'ble Members have made a request that the House should give information to them regarding the notes made by way of amendment by the Municipal Commissioner.

The Hon'ble Mayor has suggested that the Municipal Commissioner should clarify about the amended notes. Accordingly the Hon'ble Municipal Commissioner made clarification about his notes made on 17.10.1975 in details.

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After that discussion, as mentioned in the notes of the Hon'ble Municipal Commissioner dated 17.10.1975, the House has taken unanimous decision to renew the lease on other conditions for further 30 years by charging per year Rs. 13,120/as ground rent, and the previous lease having committee breach of two minor conditions, by penalizing him Rs. 1500/- for each breach, total Rs. 3000/-, as shown in the concerned file.

The term of 30 years lease of Municipal Plot No. 5 situate in Geeta Ground, Sitabuldi, on which Anand Talkies is situate, having expire on 16.3.1974 and the present owner of the plot Parmananddas having his residence at 55/58 Isra Street, Calcutta having made an application for further renewal of the plot for further 30 years, as also considering the notes prepared by the Hon'ble Municipal Commissioner dated 17.10.1975 for the case has been renewed for further 30 'sanctioned', 'sanctioned', on the following conditions.

- 1) Considering the fact that the present market price in comparison to old price, which is 10 times more, it being proper to enhance the ground rent in ratio by 10 times, it was suggested that the ground rent of that plot should be fixed at Rs. 13120/- per annum.
- 2) The previous lessee of the lease deed have committed breach of two conditions, Rs. 1500/- for each breach, total Rs. 3000/should be recovered by way of fine from him.
- 3) Other conditions will be as before.

3.6 Parmanand Mundhada is said to have filed an appeal u/s 397(3) read with Section 411 of the Act questioning the decision of the Corporation to increase the ground rent and to impose penalty. However, the pleadings filed before this Court do not show whether Parmanand Mundhada and/or his heirs pursued the appeal and the same was decided by the Competent Authority.

3.7 After the judgment of the High Court, Respondent Nos. 1 and 2 submitted application dated 1.8.1991 to the Commissioner of the Corporation for entering their names in the municipal records by asserting that the heirs of Parmanand Mundhada had assigned the leasehold rights of the plot in their favour by registered deeds dated 2.9.1985 and this fact had been brought to the notice of the Corporation vide letter dated 23.9.1985. However, instead of taking action on the request of Respondent Nos. 1 and 2, the Corporation passed Resolution No. 137 dated 28.8.1991 for renewal of lease in favour of the Appellant for a period of 30 years commencing from 16.3.1991 subject to the condition of payment of ground rent at the rate of Rs. 20,000/- per annum. That resolution reads as under:

Resolution No. 137: Since Messrs Saroj Screen Private Limited has been paying from time to time ground rent of the land and the land and building thereon are in possession of the Saroj Screen Private Limited, there should be no objection for mutation of the land in their name. Messrs Saroj Screen Private Limited, has

by written letter guaranteed to pay Rs. 15,000/- per year by way of ground rent of the land. Therefore, as by way of resolution dated 29.10.1975, bearing No. 162, the Nagpur Municipal Corporation has fixed the ground rent at Rs. 13,120/- per year and Rs. 15,000/- by way of ground rent is being paid, which is more than ground rent of Rs. 13,120/- which is fixed, there will be no kind of financial loss of the Corporation. M/s Saroj Screen Private Limited had paid the amount of ground rent of Rs. 2,12,529.60 for the period 16.3.1984 to 25.3.1991. Therefore, the House has taken into consideration the resolution renewal of lease for 30 years from 16.3.1991 at the ground rent of Rs. 15,000/- per annum and as per resolution No. 162 dated 29.10.1975 fix the ground rent at Rs. 15,000/- after making recovery of arrears according to that resolution and recommended for acceptance. It also proposed that in stead of ground rent of Rs. 13,120/- in future ground rent of Rs. 20,000/- should be recovered, which suggestion was made by Hon'ble Member Shri Atalbahadur Singh. This suggestion was unanimously sanctioned by the voice of acceptance.

3.8 In furtherance of the aforesaid resolution, lease deed dated 4.9.1991 was executed between the Commissioner of the Corporation and the Appellant.

3.9 Respondent Nos. 1 and 2 challenged the decision of the Corporation to grant lease to the Appellant in Writ Petition No. 1613 of 1992 and prayed that Resolution dated 28.8.1991 may be quashed and a direction be issued for registration of lease deed in their favour because the heirs of Parmanand Mundhada had assigned leasehold rights in their favour. They pleaded that in view of Resolution dated 29.10.1975 vide which the Corporation renewed lease in favour of Parmanand Mundhada for a period of 30 years, the subsequent resolution was liable to be declared as nullity, more so, because while deciding First Appeal Nos. 95 and 96 of 1980, the High Court had found that the Appellant was not ready and willing to perform its part of agreement dated 10.09.1947.

3.10 In the written statement filed by the Appellant, it was pleaded that Respondent Nos. 1 and 2 do not have the locus standi to challenge Resolution dated 28.8.1991 because the plot had been assigned by Smt. Gangabai to Parmanand Mundhada. It was further pleaded that the assignment deeds dated 2.9.1985 executed by the heirs of Parmanand Mundhada had no sanctity in the eyes of law because tenure of the initial lease granted to Ghanshyam Mohta had ended in 1974. Another plea taken by the Appellant was that Resolution dated 29.10.1975 passed by the Corporation for extending the term of lease in favour of Parmanand Mundhada had become infructuous because he did not pay the enhanced ground rent and penalty.

3.11 In the written statement filed on behalf of the Corporation, an objection was taken to the maintainability of the writ petition on the ground that the issues raised therein are purely contractual and the same cannot be decided by the High Court under Article 226 of the Constitution. On merits, it was pleaded that assignment deeds dated 2.9.1985 are not binding on the Corporation because it had not been apprised about the transfer of leasehold rights by the heirs of

Parmanand Mundhada in favour of Respondent Nos. 1 and 2.

3.12 At this stage, it will be appropriate to mention that during the pendency of Writ Petition No. 1613 of 1992, Respondent Nos. 1 and 2 filed Special Civil Suit No. 1135 of 1993 for eviction of the Appellant, possession of the suit property and recovery of damages by alleging that Resolution dated 28.8.1991 was illegal and without jurisdiction and lease deed dated 4.9.1991 executed in favour of the Appellant did not create any rights in its favour.

3.13 After filing the written statement in Writ Petition No. 1613 of 1992, the Corporation passed Resolution dated 22.7.1996 and cancelled the lease granted to the Appellant on the ground that previous sanction of the State Government had not been obtained as per the requirement of Section 70(5) of the Act. The Appellant questioned this action of the Corporation in Writ Petition No. 1786 of 1996. By an interim order dated 14.8.1996, the High Court directed that status quo be maintained regarding possession of the plot. After 1 year and about 8 months, the Corporation sent letter dated 27.4.1998 to the Appellant and gave an assurance for restoration of the lease subject to the condition that it shall have to withdraw the writ petition. Thereupon, the Appellant filed an application dated 6.5.1998 with a prayer that it may be allowed to withdraw the writ petition. The same remained pending till 18.10.2001, on which date the High Court dismissed Writ Petition No. 1786 of 1996 as withdrawn.

3.14 In the meanwhile, the State Government accorded sanction for grant of lease to the Appellant for a period of 30 years, i.e., from 16.3.1991 to 15.3.2021. This was communicated to the Corporation vide letter dated 12.6.2000.

3.15 On coming to know of the aforesaid decision of the State Government, Respondent Nos. 1 and 2 filed Writ Petition No. 3661 of 2001 and prayed that communication dated 12.6.2000 be quashed by contending that during the pendency of Writ Petition Nos. 1613 of 1992 and 1786 of 1996, there was no justification for according sanction u/s 70(5) of the Act. Another plea taken by Respondent Nos. 1 and 2 was that the decision of the State Government and the Corporation was violative of Article 14 of the Constitution inasmuch as public property was transferred to the Appellant without conducting auction or inviting tenders so as to enable the members of public to participate in the process of grant of lease.

3.16 In its reply, the Appellant controverted the allegation of favoritism and pleaded that Respondent Nos. 1 and 2 cannot question the sanction accorded by the State Government u/s 70(5) of the Act because their predecessor had not complied with the conditions incorporated in Resolution dated 29.10.1975. It was further pleaded that the sanction accorded by the State Government is not retrospective and the Corporation is required to execute a new lease which would be effective from 1991. Another plea taken by the Appellant was that Respondent Nos. 1 and 2 had not come to the Court with clean hands inasmuch

as they have suppressed the fact that the suit filed by them was pending before the Civil Court.

3.17 The Division Bench of the High Court overruled the preliminary objections raised by the Appellant and the Corporation to the maintainability of the writ petition by relying upon the judgments of this Court in *The D.F.O., South Kheri and Others Vs. Ram Sanehi Singh, and S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and Others*, The Division Bench held that when a public authority is said to have acted in violation of the statutory provisions, the Court can grant relief to the aggrieved person and the availability of the alternative remedy does not operate as a bar. The Division Bench further held that Respondent Nos. 1 and 2 cannot be held guilty of suppressing the factum of filing suit for eviction because the first writ petition had been instituted much before filing the suit. While dealing with the challenge to Resolution dated 28.8.1991 and the decision of the State Government to accord sanction u/s 70(5), the Division Bench opined that during the subsistence of Resolution dated 29.10.1975, the Corporation could not have granted lease in favour of the Appellant and the State Government had no right to validate such grant. However, the prayer of Respondent Nos. 1 and 2 for issue of a direction to the Corporation to implement Resolution dated 29.10.1975 was rejected on the premise that the issue was pending consideration before the trial Court.

4. Shri Gagan Sanghi, Learned Counsel for the Appellant argued that the reasons assigned by the High Court for nullifying the decision taken by the State Government and the Corporation to grant lease in favour of the Appellant are legally unsustainable and the impugned judgment is liable to be set aside because Resolution dated 29.10.1975 passed by the Corporation for renewal of lease in favour of Parmanand Mundhada had not been acted upon. Learned Counsel submitted that Respondent Nos. 1 and 2 had not produced any evidence before the High Court to substantiate their assertion that Parmanand Mundhada had filed an appeal u/s 397(3) read with Section 411 of the Act questioning Resolution dated 29.10.1975 to the extent of enhancement of ground rent and imposition of penalty and argued that even if such an appeal had been filed, the same did not entitle the beneficiary of the resolution to claim renewal of lease without fulfilling the conditions incorporated therein. Learned Counsel argued that the Corporation did not commit any illegality by passing Resolution dated 28.8.1991 and executing lease deed dated 4.9.1991 in favour of the Appellant because Parmanand Mundhada and his heirs did not come forward for the execution of lease deed in terms of Resolution dated 29.10.1975. He further argued that sanction accorded by the State Government u/s 70(5) of the Act was legally correct and the High Court committed an error by nullifying the same on the specious ground that during the subsistence of Resolution dated 29.10.1975, the Corporation could not have granted lease to the Appellant.

5. Shri Shekhar Naphade, learned senior Counsel appearing for Respondent Nos. 1 and 2 referred to Clause 8 of lease deed dated 28.10.1944 executed between

the Committee and Gopaldas Mohta and argued that the Corporation, which came to be constituted under the Act had no option but to renew the lease because the option available under that clause for resumption of the plot by paying market value of the structure had not been exercised and Parmanand Mundhada in whose favour Smt. Gangabai had executed assignment deed dated 12.8.1960 continued to enjoy the status of lessee. Learned senior Counsel relied upon Section 116 of the Transfer of Property Act and the judgment of this Court in Damodhar Tukaram Mangalmurti and Others Vs. The State of Bombay, and argued that failure of the Corporation to resume the plot after paying market value of the structure leads to an irresistible inference that the Corporation had decided to renew the lease and, as a matter of fact, Resolution dated 29.10.1975 was passed to that effect. Shri Naphade laid considerable emphasis on the fact that in terms of Clause 8 of lease deed dated 28.10.1944, the Corporation could have made fair and equitable revision of the ground rent and argued that there was no justification for 10 times increase in the ground rent necessitating filing of an appeal by Parmanand Mundhada.

6. Before dealing with the arguments of the Learned Counsel, we consider it necessary to make the following observations:

i) Although, the Appellant has not disputed that in the partition, which took place in 1959 in the family of Gopaldas Mohta, the plot in question came to the share of his wife Smt. Gangabai and that she had executed assignment deed dated 12.8.1960 in favour of Parmanand Mundhada, it has not placed on record copies of the partition deed and assignment deed so as to enable the Court to appreciate the extent and magnitude of the right acquired by Parmanand Mundhada.

ii) Before the High Court the Appellant and the Corporation pleaded that neither of them had any knowledge about assignment deeds dated 2.9.1985 executed by the heirs of Parmanand Mundhada in favour of Respondent Nos. 1 and 2 but their denial is belied by the averments contained in paragraph 3 of C.A. No. 1246 of 1991 filed by the Appellant in First Appeal No. 95 of 1980, which reads as under:

3. However, during the pendency of the present appeal, it is learnt, that the Appellants have assigned their lease hold rights in Plot No. 5 in favour of one Shri Ghayanshamdas Mohta and Smt. Kamla Devi Mohta of Akola under a registered Indenture of Transfer dated 2nd September 1985 and as such the present Appellants have no right, title or interest in the suit property. A communication dated 23.9.1985 received by the Respondent No. 2 from the said assignees is appended herewith.

That apart, what is most surprising is that neither party has produced copies of assignment deeds dated 2.9.1985.

7. With the aforesaid handicap, we shall proceed to consider whether the High Court committed an error by quashing Resolution dated 28.8.1991 passed by the Corporation and the sanction accorded by the State Government u/s 70(5) of the

Act.

8. A reading of lease deed dated 28.10.1944 shows that the Committee had leased out the plot to Gopaldas Mohta for a period of 30 years commencing from 17.3.1944 with a clear stipulation that at the end of 30 years' period it will have an option to retake the structure by paying the prevailing market value or renew the lease on revised ground rent for a further term of 30 years by incorporating the covenants, provisions and conditions contained in deed dated 28.10.1944 with a stipulation for further renewal of the lease. By lease deed dated 10.9.1947, Gopaldas Mohta transferred all the rights and interests vested in him including the one relating to renewal of the lease to the Appellant, who was also given an option to pay to the lessor, i.e. Gopaldas Mohta a sum of Rs. 90,000/- during the first five years of the lease and purchase all his rights from the Committee. An option was also given to the Appellant to acquire the interest of the lessor on payment of the same price during the last year before expiry of the lease by efflux of time. The Appellant did exercise option for renewal of lease by sending letter dated 15.1.1973 to Parmanand Mundhada subject to the condition of renewal of lease by the Corporation. After some time, the Appellant filed Special Civil Suit No. 96/1974 for specific performance, which was decreed by the trial Court vide judgment dated 28.4.1980. However, the Appellant's joy proved to be short-lived because in the appeals filed by the heirs of Parmanand Mundhada and Respondent No. 2 and the Corporation, the High Court reversed the judgment of the trial Court and dismissed the suit by observing that the Appellant could not prove its readiness or willingness to implement the contract. The Appellant did not challenge the judgment of the High Court by filing a petition under Article 136 of the Constitution. Therefore, the finding recorded by the High Court on the tenability of the Appellant's claim, which was primarily founded on Clause 5 of lease deed dated 10.9.1947, will be deemed to have become final and the Appellant cannot now rely upon the terms and conditions of lease deed dated 10.9.1947 for contending that the Corporation was bound to renew the lease in its favour for a period of 30 years.

9. The resolution passed by the Corporation for renewal of lease in favour of the Appellant and the consequential action taken for the execution of lease deed dated 4.9.1991 were ex facie illegal and the High Court did not commit any error by quashing the same because,

(i) Resolution dated 29.10.1975 passed by the Corporation for renewal of lease in favour of Parmanand Mundhada for a period of 30 years had not been cancelled or rescinded and during the subsistence of that resolution, neither the Corporation could have renewed the lease in favour of the Appellant for 30 years commencing from 16.3.1991 nor the State Government could have granted sanction u/s 70(5) of the Act for such renewal.

(ii) Before passing the resolution for renewal of the lease in favour of the Appellant for a period of 30 years, the Corporation did not obtain sanction of the State Government, which was sine qua non for any such action/decision.

(iii) It, however, appears that by taking advantage of the fact that it continued to have possession of the plot, the Appellant induced the functionaries of the Corporation to enter into a clandestine compromise for forwarding a proposal to the State Government to grant post facto sanction for renewal of the lease for 30 years from 16.3.1991 and the latter accorded sanction without realizing that alienation of any right or interest in a public property in favour of any person without following a procedure consistent with the doctrine of equality is impermissible.

10. The issue deserves to be considered from another angle. Section 70 of the Act which contains provisions governing the disposal of municipal property or property vesting in or under the management of the Corporation reads thus:

70. Provisions governing the disposal of municipal property or property vesting in or under the management of Corporation.

(1) No nazul lands, streets, public places, drains or irrigation channels shall be sold, leased or otherwise alienated, save in accordance with such rules as the State Government may make in this behalf.

(2) Subject to the provisions of Sub-section (1), -

(a) the Commissioner may, (in his discretion), grant a lease of any immovable property belonging to the Corporation including any right of fishing or of gathering and taking fruit, flowers and the like, of which the premium of rent, as the case may be, does not exceed (One Lakh) rupees for any period not exceeding twelve months at a time:

(Provided that every such lease granted by the Commissioner other than a lease of a class in respect of which the Standing Committee has by resolution exempted the Commissioner from compliance with the requirements of this proviso, shall be reported by him to the Standing Committee within fifteen days after the same has been granted;)

(b) With the sanction of the Standing Committee the Commissioner may dispose of by sale or otherwise, any such right as aforesaid, for any period not exceeding three years at a time of which the premium or rent or both, as the case may be, for any one year does not exceed (One lakh) rupees;

(c) With the sanction of the Corporation, the Commissioner may lease, sell or otherwise convey any immoveable property belonging to the Corporation.

(3) The Commissioner may

((a) ...)

(b) with the sanction of the Standing Committee, dispose of by sale or otherwise any moveable property belonging to the Corporation:

(c) with the sanction of the Corporation, sell or otherwise convey any moveable property belonging to the Corporation.

(4) The sanction of the Standing Committee or of the Corporation under Sub-section (2) or Sub-section (3) may be given either generally for any class of cases or specifically in any particular case.

(5) The foregoing provisions of this section shall apply to every disposal of property belonging to the Corporation made under, or for the purposes of this Act:

Provided that-

(i) no property vesting in the Corporation in a trust shall be leased, sold or otherwise conveyed in a manner that is likely to affect the trust subject to which such property is held;

(ii) no land exceeding (five lakh) rupees in value shall be sold, leased or otherwise conveyed without the previous sanction of the State Government and every sale, lease or other conveyance of property vesting in the Corporation shall be deemed to be subject to the conditions and limitations imposed by this Act or by any other enactment for the time being in force.

(6) Notwithstanding anything contained in this section the Commissioner may, with the sanction of the Corporation and with the approval of the State Government, grant a lease, for a period not exceeding thirty years, of a land belonging to the Corporation which is declared as a slum area under the provisions of the Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Act, 1971 to a co-operative society of slum dwellers, at such rent, which may be less than the market value of the premium, rent or other consideration, for the grant of such lease, and subject to such conditions as the Corporation may impose.

The approval of the State Government under this Sub-section may be given either generally for any class of such lands or specially in any particular case of such land:

Provided that, the Commissioner may, in like manner renew, from time to time, the lease for such period and subject to such conditions as the Corporation may determine and impose.

Though, the exercise of power by the Corporation under the aforesaid section is not hedged with any particular condition except that in a case like the present one, the alienation could not have been made without the previous sanction of the State Government, but in our constitutional scheme compliance of the doctrine of equality enshrined in Article 14 of the Constitution has to be read as a condition precedent for exercise of power by the State Government and the Corporation, more so, when it relates to alienation of public property or any right or interest therein. In this context, it is necessary to emphasis that the Corporation holds the property as a trustee of the public and any alienation of such property or any right or interest therein otherwise than by way of auction or by inviting bids would amount to breach of that trust.

11. The concept of the 'State' as it was known before the commencement of the Constitution and as it was understood for about two decades after 26.1.1950 has undergone drastic change in recent years. Today, the State cannot be conceived of simply as a coercive machinery wielding the thunderbolt of authority. Now the Government is a regulator and dispenser of special services and provides to the large public benefits including jobs, contracts, licences, quotas, mineral rights etc. The law has also recognised changing character of the governmental functions and need to protect individual interest as well as public interest. The discretion of the Government has been held to be not unlimited. The Government cannot give or withhold largesse in its arbitrary discretion or according to its sweet-will. The Government cannot now say that it will transfer the property (land etc.) or will give jobs or enter into contracts or issue permits or licences only in favour of certain individuals. In *V. Punnen Thomas Vs. State of Kerala, K.K. Mathew, J.* (as he then was) observed:

The Government is not and should not be as free as an individual in selecting recipients for its largesse. Whatever its activities, the Government is still the Government and will be subject to the restraints inherent in its position in a democratic society. A democratic Government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal.

12. The traditional view that the executive is not answerable in the matter of exercise of prerogative power has long been discarded. Prof. H.W.R. Wade in his work 'Administrative Law' 6th Edition highlighted distinction between the powers of public authorities and those of private persons in the following words:

... The common theme of all the authorities so far mentioned is that the notion of absolute or unfettered discretion is rejected. Statutory power conferred for public purposes is conferred as it were upon trust, no absolutely - that is to say, it can validly be used only in the right and proper way which Parliament when conferring it is presumed to have intended. Although the Crown's lawyers have argued in numerous cases that unrestricted permissive language confers unfettered discretion, the truth is that, in a system based on the rule of law, unfettered governmental discretion is a contradiction in terms.

The whole conception of unfettered discretion is inappropriate to a public authority, which possesses powers solely in order that it may use them for the public good.

There is nothing paradoxical in the imposition of such legal limits. It would indeed be paradoxical if they were not imposed. Nor is this principle an oddity of British or American law; it is equally prominent in French law. Nor is it a special restriction which fetters only local authorities: it applies no less to ministers of the Crown. Nor is it confined to the sphere of administration: it operates wherever discretion is given for some public purpose, for example where a judge has a discretion to order jury trial. It is only where powers are given for the personal benefit of the person empowered that the discretion is absolute. Plainly

this can have no application in public law.

For the same reasons there should in principle be no such thing as unreviewable administrative discretion, which should be just as much a contradiction in terms as unfettered discretion. The question which has to be asked is what is the scope of judicial review, and in a few special cases the scope for the review of discretionary decisions may be minimal. It remains axiomatic that all discretion is capable of abuse, and that legal limits to every power are to be found somewhere.

13. In *Padfield v. Minister of Agriculture, Fishery and Food* (1968) A.C. 997, the Court was called upon to decide whether the Minister had the prerogative not to appoint a Committee to investigate the complaint made by the members of the Milk Marketing Board that majority of the Board had fixed milk prices in a way which was unduly unfavourable to the complainants. While rejecting the theory of absolute discretion, Lord Reid observed:

Parliament must have conferred the discretion with the intention that it should be used to promote the policy and objects of the Act; the policy and objects of the Act must be determined by construing the Act as a whole and construction is always a matter of law for the court. In a matter of this kind it is not possible to draw a hard and fast line, but if the Minister, by reason of his having misconstrued the Act or for any other reasons, so uses his discretion as to thwart or run counter to the policy and objects of the Act, then our law would be very defective if persons aggrieved were not entitled to the protection of the court.

14. In *Breen v. Amalgamated Engineering Union* (1971) 2 QB 175, Lord Denning MR observed:

The discretion of a statutory body is never unfettered. It is a discretion which is to be exercised according to law. That means at least this: the statutory body must be guided by relevant considerations and not by irrelevantly. If its decision is influenced by extraneous considerations which it ought not to have taken into account, then the decision cannot stand. No matter that the statutory body may have acted in good faith; nevertheless the decision will be set aside. That is established by *Padfield v. Minister of Agriculture, Fisheries and Food* which is a landmark in modern administrative law.

15. The question whether the State and/or its agency/instrumentality can transfer the public property or interest in public property in favour of a private person by negotiations or in a like manner has been considered and answered in negative in several cases. In *Akhil Bhartiya Upbhokta Congress Vs. State of Madhya Pradesh and Others*, this Court was called upon to examine whether the Government of Madhya Pradesh could have allotted 20 acres land to Shri Kushabhau Thakre Memorial Trust under the M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 read with M.P. Nagar Tatha Gram Nivesh Vikasit Bhoomiyo, Griho, Bhavano Tatha Anya Sanrachanao K Vyayan Niyam, 1975. After noticing the provision of the Act and the Rules, as also those contained in M.P. Revenue

Book Circular and the judgments of this Court in S.G. Jaisinghani Vs. Union of India (UOI) and Others, , Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, , Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, , Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, , Common Cause A Registered Society Vs. Union of India and others, Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, LIC of India and Another Vs. Consumer Education and Research center and Others, , New India Public School and other etc. Vs. HUDA and others etc., , the Court culled out the following propositions:

What needs to be emphasised is that the State and/or its agencies/instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities and/or officers of the State. Every action/decision of the State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well-defined policy, which shall be made known to the public by publication in the Official Gazette and other recognised modes of publicity and such policy must be implemented/executed by adopting a non-discriminatory and non-arbitrary method irrespective of the class or category of persons proposed to be benefited by the policy. The distribution of largesse like allotment of land, grant of quota, permit licence, etc. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favouritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State.

We may add that there cannot be any policy, much less, a rational policy of allotting land on the basis of applications made by individuals, bodies, organisations or institutions dehors an invitation or advertisement by the State or its agency/instrumentality. By entertaining applications made by individuals, organisations or institutions for allotment of land or for grant of any other type of largesse the State cannot exclude other eligible persons from lodging competing claim. Any allotment of land or grant of other form of largesse by the State or its agencies/instrumentalities by treating the exercise as a private venture is liable to be treated as arbitrary, discriminatory and an act of favouritism and/or nepotism violating the soul of the equality clause embodied in Article 14 of the Constitution.

16. The factual matrix of this case shows that before granting 30 years' lease of the plot in favour of the Appellant, the Corporation neither issued any advertisement nor followed any procedure consistent with the doctrine of equality so as to enable the members of the public to participate in the process of alienation of public property. Therefore, the conclusion reached by the High Court, though for different reasons, that Resolution dated 28.8.1991 and the sanction accorded by the State Government vide letter dated 12.6.2000 are legally unsustainable does not call for interference by this Court.

17. We are also convinced that even though the lease granted to Gopaldas Mohta was renewed in favour of Parmanand Mundhada vide Resolution dated 29.10.1975, Respondent Nos. 1 and 2 cannot derive any benefit from the said renewal merely because the Corporation did not cancel or rescind the resolution. It was neither the pleaded case of Respondent Nos. 1 and 2 nor any material was produced by them before the High Court to show that Parmanand Mundhada had taken any action in furtherance of Resolution dated 29.10.1975 and fresh lease deed was executed in his favour. The only plea taken by them was that Parmanand Mundhada had filed an appeal u/s 397(3) read with Section 411 against increase in the ground rent and the imposition of penalty. However, nothing has been said about the fate of that appeal. If Parmanand Mundhada, his heirs or Respondent Nos. 1 and 2 felt that the disposal of the appeal has been unduly delayed then they could have filed a writ for issue of a mandamus directing the appellate authority to decide the appeal within a specified period but no such step is shown to have been taken by either of them. Therefore, we are constrained to take the view that Resolution dated 29.10.1975 had become redundant and the same can no longer be relied upon by Respondent Nos. 1 and 2 for claiming any right or interest in the plot.

18. The ratio of the judgment in *Damodhar Tukaram Mangalmurti v. State of Bombay* (supra) which has been relied upon by Shri Naphade has no bearing on this case. The question which came up for consideration in that case was whether Civil Court has the jurisdiction to decide the issue of fair and equitable enhancement of the annual rent. The facts of that case were that the then Provincial Government of the Central Provinces and Berar, Nagpur devised a scheme to extend residential accommodation by acquiring agricultural land and making it available for residential purposes. The lease granted in respect of building sites of 10,000 sq. ft. contained a renewal clause with a stipulation that the lessor can make fair and equitable increase in the amount of annual rent. At the time of renewal, the lessor increased the annual rent from Rs. 3-8-0 to Rs. 21-14-0 in accordance with Clause III of the indenture of lease. One of the preliminary issues framed by the Subordinate Judge, Nagpur was whether the Civil Court has the jurisdiction to decide as to what should be fair and equitable enhancement in the amount of annual rent. He ruled in favour of the Plaintiff and his view was confirmed by the lower appellate Court. When the matter was taken up before the High Court, the Division Bench consisting of the Chief Justice and Mudholkar, J expressed divergent views. The third Judge to whom the matter was referred agreed with the learned Chief Justice that the Civil Court did not have jurisdiction in the matter. By majority of 2:1, this Court reversed the judgment of the High Court. Speaking for the majority, S.R. Das, J made the following observations:

We consider that the words "fair and equitable" must be given their due meaning and proper effect. The question then asked is - what meaning is to be given to the words "such... as the lessor shall determine". It is indeed true that these words constitute an adjectival clause to the expression "fair and equitable

enhancement", but we consider that the meaning of the adjectival clause is merely this: the lessor must first determine what it considers to be fair and equitable enhancement; but if in fact it is not so, it is open to the lessee to ask the court to determine what is fair and equitable enhancement. We do not think that on a proper construction of the clause, the intention was to oust the jurisdiction of the court and make the determination of the enhancement by the lessor final and binding on the lessee.

19. In the present case, we are not concerned with the question whether the decision of the Corporation to increase the rent was legally correct and justified because, as mentioned above, the appeal allegedly filed by Parmanand Mundhada u/s 397(3) read with Section 411 of the Act was not pursued to its logical end and in the writ petitions filed by them, Respondent Nos. 1 and 2 did not question ten times increase in the rent payable by the lessee.

20. The argument of Shri Shekhar Naphade, learned senior Counsel for Respondent Nos. 1 and 2 that the Corporation is bound to renew the lease granted to his clients in terms of Section 116 of the Transfer of Property Act, 1882 because the plot in question remained in their possession through the Appellant also merits rejection. The reason for this conclusion is that no evidence was produced before the High Court to show that the Appellant was continuing in possession with the consent of Parmanand Mundhada, his heirs or Respondent Nos. 1 and 2. Rather, it was their pleaded case that after expiry of the period specified in lease deed dated 10.9.1947, the Appellant did not have any right to continue in possession.

21. We are also of the view that Resolution dated 29.10.1975 though passed in consonance with Clause 10 of lease dated 28.10.1944, has to satisfy the test of reasonableness, equality and fairness. Though, the initial lease was granted to Gopaldas Mohta before coming into force of the Constitution, while considering the issue of renewal of lease the Corporation was duty bound to take action and decision strictly in consonance with the constitutional principles and decision to renew the lease in favour of Parmanand Mundhada could not have been taken except after following a procedure consistent with the equality clause, which was not done.

22. In the result, the appeals are dismissed. The Appellant shall hand over possession of the plot to the Corporation within a period of three months. After taking possession of the plot, the Corporation shall alienate the same by sale, lease, or otherwise by auction or by inviting tenders and after following a procedure consistent with Article 14 of the Constitution. The Corporation shall pay market value of the structure, as obtaining on the date of the order of the High Court to the Appellant.