

(2012) 07 GUJ CK 0027
In the Gujarat High Court

Case No : Letters Patent Appeal No. 569-600 of 2012 with Civil Application No. 3288, 3311, 3313-3320 of 2012

Urvakunj Nicotine Ltd.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 16-07-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Major Port Trusts Act, 1963 — Section 111, 2(b), 29, 33, 34
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 9
Transfer of Property Act, 1882 — Section 116

Citation : (2012) 3 GLH 301 : (2012) 3 GLR 2666

Hon'ble Judges : G.B. Shah, J;D.H. Waghela, J

Bench : Division Bench

Advocate : Asim Pandya for M/s. H.L. Patel Advocates, Mr. Mihir Thakore with Ms. Avani Thakore, Mr. Percy Kavina with Mr. Udayan Vyas and Mr. Satyajeet Desai, for the Appellant; P.S. Champaneri for Respondent No. 1, Mr. K.M. Patel and Mr. Harin Raval with Mr. Dhaval Vyas for Respondent No. 2. Mr. D.D. Vyas with Dhaval D. Vyas for Respondent No. 3 and 4, for the Respondent

Judgement

Mr. D.H. Waghela, J.—All these Letters Patent Appeals are preferred from the common oral order dated 27.02.2012 in a group of petitions which are admitted but in which interim relief as prayed in the petitions are refused by the impugned order. Broadly, the background of relevant facts is that all the original petitioners and present appellants were granted separate parcels of land on lease by Kandla Port Trust (for short, "KPT") and the period of those leases had expired in the year 2003-2004. Thereafter, pending renewal of those leases or grant of fresh leases, they continued to be in possession of the leased lands. Pursuant to and during pendency of a public interest litigation, i.e. W.P.(C) No. 11550 of 2009 in the High Court of Delhi, KPT informed the appellants that the period of lease was renewed by the Union of India upto to 31.03.2011 and also conveyed its decision not to renew/extend the term of lease and rights thereunder. Therefore, the appellants were called upon by letter dated 26.8.2011 to hand over peaceful

possession of the subject land to the Officer on Special Duty (Estate), KPT. Being aggrieved by that decision and communication, the appellants have approached this Court under Article 226 of the Constitution with the prayers, inter alia, to stay further proceeding pursuant to the eviction notice and recovery and/or adjustment of compensation bills, and such interim reliefs having been denied by the impugned order, the appellants have preferred the present appeals. It may be pertinent to note here that, after the impugned order dated 27.2.2012 and filing of the present appeals with civil applications for grant of interim relief, the appeals were taken up for admission hearing in the last week of March, 2012; and after extensive admission hearing for almost three days, the appellants had sought adjournment on the basis that transfer petitions were filed by the appellants in the Supreme Court which were coming up for hearing on 13.04.2012. Thereafter, admission hearing of the appeals was resumed in the third week of June, 2012 and intermittently continued for two weeks with the understanding that the appeals were being heard for final disposal. In the meantime, possession of all the leased lands are stated to have been taken over by KPT, even as proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 were initiated and orders of Authorized Officer under that Act were also carried in appeal before learned Additional District Judge, Gandhidham. Some of the appellants herein had even challenged before this Court the denial by learned Additional District Judge of interim relief against the orders of Authorized Officer, and those petitions are also by now dismissed. Thus, in short, the present set of appeals have practically become infructuous. But the appellants having insisted upon order on merits, dealing with their contentions, it has become necessary to deal with the contentions. The undisputed relevant facts are that the period of lease in case of each appellant had expired in the year 2003 or 2004. In some of the cases where the lease deed provided for an option to renew the lease, the lessees had applied for renewal and KPT had resolved to renew the lease subject to approval of the Central Government and revision of the rate of rent. While consideration and decision of the Central Government to renew such leases were pending, a writ petition by way of public interest litigation was presented before the Delhi High Court, seeking eviction of the persons in occupation of around 16000 acres of Government land and for direction to lease out such lands to private parties only on the basis of competitive bidding. The petitioners before the Delhi High Court also sought an independent investigation by a special investigation team into the role of officers of the Ministry of Shipping and KPT in allowing illegal occupation of Government land at KPT. On 09.09.2009, the Delhi High Court directed the Union of India not to execute/renew any lease except in accordance with the guidelines issued in the year 2004 by the Ministry of Shipping. By order dated 14.10.2009, interim order dated 09.09.2009 was ordered to be continued. In the order dated 11.11.2009, the Delhi High Court recorded :-

It is thus seen that because of inaction on the part of the Central Government, the erstwhile lessees are continuing to be in occupation of the land of the KPT for

over years (sic) without a lease and on payment of a paltry rent which was fixed in 2006 in the absence of a determination of the market value of the land.

The KPT is directed to place on record before the next date particulars of the leases of the salt lands, stated to be of approximately 16000 acres. The names of the occupants of such lands, the rent being paid by each occupant and further, whether the lease deeds in favour of such occupant contains a renewal clause. This information shall be filed in a tabular form in respect of all the lessees who are currently in occupation of the salt lands of the above extent of 16000 acres. The Central Government is also directed to file an affidavit by the next date explaining why no decision has been taken by it in respect of renewal of the leases in spite of the fact that the proposal has been pending with it since 1st April, 2004 and when there is a specific request of the KPT not to renew the lease deeds in respect of 6000 hectares of salt land as they intend to take back possession of: the same for the purposes of the proposed SEZ.....

1.1. In the successive orders, the Delhi High Court, inter alia, recorded as under :-

09.12.2009:

.....CBI is directed to inform this: Court about the progress of the investigation relating to Kandla Port Trust land. Respondent No. 3 CVC is directed to produce the records relating to the references made to the CBI on the; basis of the report of the CVO of Kandla Port Trust..

18.12.2009 :

1.....

2. The Additional Affidavit dated 02.12.2009 of the KPT shows that out of 41 cases, the lease of 37 parties have expired in 2003-04 (shown at Serial Nos. 1 to 37 of the Annexure-A to the said affidavit) and 4 (Serial Nos. 38 to 41) are expiring in 2013. As far as the 37 expired leases are concerned, the leases at serial Nos. 1 to 5 of Annexure. A contain a renewal clause. In respect of the remaining leases at serial Nos. 6 to 37, there is a clause that states that the leases will not be automatically renewed. Learned ASG points out that sub-clause (h) of Clause 5.2.1.2 of the Land Policy for Major Ports, gives a discretion to the Port to grant a fresh lease, even if there is no renewal clause provided in the existing leases without public auction/tender. Learned Additional Solicitor General states that he will propose to the Central Government that it should not take recourse to the above clause (h) and in all such cases the leases would be put to public auction after fixing the reserve price on the basis of the valuation report.

20.4.2010:

Despite our order dated 11.3.2010, the Ministry of Shipping has skirted the issues identified by us namely the following :-

1) Look into the issue of granting sanction as required by the CBI.

2) Respond to the queries raised by the CVC.

3) Take effective steps for protecting the interest of the Kandla Port Trust so that land owned by the Kandla Port Trust is not frittered away necessary steps should be taken to now protect and safeguard the interest of the Revenue including the Kandla Port Trust.....

11.8.2010:

.....At this juncture, Mr. Prashant Bhushan, learned Counsel for petitioner submitted that the Joint Secretary of Ministry of Shipping (Ports/Admn.) by communication dated 13.7.2010 has directed renewal of the lease and the said communication has been sent to the Chairman, Kandla Port Trust and to the Registrar, High Court of Gujarat, Ahmedabad despite the order passed by this Court on 09.9.2009, 18.12.2009 and 11.3.2010. It is submitted by Mr. Bhushan, if the aforesaid orders are appreciated in proper prospective, there would be (sic) shadow of doubt that the respondents could not have renewed the lease and only could put the land to public auction after fixing the reserve price on the basis of valuation report. Mr. Bhushan has invited our attention to the communication made by the Joint Secretary of the Ministry of Shipping whereby he has issued clear cut instructions that in respect of the land which was given on lease to Friends Salt Works and Allied Industries situated at Kandla steps should be taken for renewal.

That Apart, Mr. Prashant Bhushan, learned Counsel for petitioner has also invited our attention to the communication issued by Mr. R. Srinivasa Naik, Director (Port Operations) to the Chairman, Kandla Port Trust to renew all leases in 36 cases of leases of salt land.....

20.10.2010 :

.....At this juncture it is submitted by Mr. Prashant Bhushan, learned Counsel for the petitioner that the Central Bureau of Investigation (for short, CBI) had started investigating the matter with regard to the allegations made against M/s. Friends Salt Works and Allied Industries, Kandla. Mr. Vikas Pahwa, learned standing Counsel for CBI submitted that he is not in a position to state whether sanction has been granted by the competent Authority to prosecute the said Company or not. That apart, we have been apprised that despite prosecution launched by the CBI, leases are granted in favour of others. Regard being had to the aforesaid factual assertions made by Mr. Prashant Bhushan, we would like Mr. Vikas Pahwa, learned standing Counsel for CBI to file a status report with regard to progress pertaining to the prosecution launched against other companies and also the decision as regard to the sanction pertaining to M/s. Friends Salt Works and Allied Industries, Kandla, by the next date of hearing.....

15.12.2010 :

Though many a issues have been raised today by the learned Counsel for the parties yet, at present, we are only inclined to address to one issue whether

there should be renewal of lease beyond March, 2011. There has to be a long debate on this issue and on the points which have been canvassed by Mr. Prashant Bhushan with regard to non-initiation of prosecution against the officers concerned and the action required to be taken against the Joint Secretary, Ministry of Shipping. In praesenti, we only record that Mr. Chandhiok has assured this Court that before the next date of hearing, no further renewal of lease shall take place without leave of this Court.....

01.6.2011 :

.....Shri Rakesh Srivastava, Joint Secretary (Ports) & CVO, Ministry of Shipping is one of the suspects named in this PE. He has processed various files regarding renewal of leases etc. and his role is being critically examined. Continuation of this officer at the aforesaid post is likely to have an adverse impact on the on-going enquiry. A letter dated 24.01.2011 was also sent to Shri K.M. Chandrashekhar, Cabinet Secretary, Govt. of India, New Delhi recommending that Shri Rakesh Srivastava, Joint Secretary may be shifted/transferred to some other department/post, not linked with the matter in question; however, no action has been taken so far in this regard....

03.6.2011 :

It is submitted by Mr. A.S. Chandhiok, learned ASG, that Mr. Rakesh Srivastava, Joint Secretary (Ports) and CVO, Ministry of Shipping shall not handle anything related to Kandla Port Trust in the capacity of Joint Secretary (Ports) and CVO.....

12.10.2011 :

Two issues are to be addressed to in this writ petition. First pertains to the lease of land belonging to Kandla Port Trust. The petitioner had made the grievance that even when the lease in respect of land belonging to Kandla Port had expired, the lease (sic) allowed to continue. This issue has almost been resolved by various orders passed by this Court in this petition from time to time. The position which emerges is that the Kandla Port Trust Authorities are now to lease through public auction and the lease are to be granted for production of salt. The terms on which the auction takes place have also been finalized. The persons who will be the successful bidders in the auction would be given lease only for the aforesaid purpose and such a condition, as Mr. Chandhiok, learned ASG, says, has already been included in the E-Tender cum E-Auction for allotment of Plots between Village Padana and Village Chirai for production of salt on 30 years lease on as is where is basis and the same would be included in the lease deed as well quoted in terms of orders dated 4.4.2011.

Mr. Chandhiok, learned ASG, also submitted that the persons whose lease have come to an end and are in illegal occupation, in respect of some to them eviction order have already been passed by the Estate Officer and in some cases proceedings before the Estate Officer are in progress. Mr. Chandhiok, further

informs that those person against whom eviction orders have been passed have filed the appeal u/s 9 of the Public Premises (Eviction of Unauthorised Occupants) and the District Judge has passed the orders that these appeals will be decided within 2 months, though, in the meantime, status quo orders are passed. In these circumstances, we expect that all proceedings u/s 9 of the Public Premises (Eviction of Unauthorised Occupants) would be concluded within three months from today.

16.5.2012 :

... ..

CM Nos. 6329, 6331, 6334, 6336, 6338, 6340, 6342, 6344, 6346, 6348 and 6366/2012 (Impleadment).

5. These applications are filed by the lessees of Kandla Port Trust Authorities who are in occupation of the premises. Admittedly their leases have expired; however these applicants have approached Gujarat High Court by filing writ petitions claiming that they have right to get renewal of the leases and challenging refusal of renewal by Kandla Port Trust. These applicants want to be heard in the present petition as it is their submission that certain orders passed in these proceedings prejudice their interest and for this reason they should be heard.

6. Learned Counsel for the petitioner has no objection if hearing is given to these applicants though Mr. Chandhiok strongly opposes the same.

7. We are of the opinion that the applications for impleadment be allowed and applicants be heard in these matters. However, we make it clear that the impleadment of these applicants would not mean that proceedings before the Estate Officer under the Public Premises Act or the appeals which are pending against the orders of the Estate Officer before the District Judge, are not to be proceeded with. We make it clear that the Estate Officers as well as the District Judges shall be at liberty to proceed with the matters of those proceedings which are initiated on the premise that these applicants are unauthorized occupants of the premises in question.

8. We may record that the leases of these applicants have expired. Though these applicants are claiming right of renewal and the petitions in this behalf are pending in the Gujarat High Court, till date there is no determination of these issues in favour of the applicants. It is for this reason that we reiterate that the proceedings before the Estate Officers as well as the District Judges should continue. In fact on 12.10.2011, orders were passed expecting these proceedings would be over within a period of three months. These applications are disposed of in above terms.

1.2. It is clear from the above successive observations and orders of the Delhi High Court in the public interest litigation pending before it that non-renewal of leases and consequent eviction proceedings against the appellants are pursuant to and in consonance with the judicial orders of the Delhi High Court. Not only

that, but the Delhi High Court appears to be seized of larger issues related to the administration of KPT and grant of lease of lands under its administration. The attempt of some of the appellants herein to challenge before the Supreme Court the orders dated 11.11.2009, 18.12.2009, 11.3.2010, 20.4.2010, 11.8.2010, 20.10.2010, 15.12.2010, 4.4.2011, 1.6.2011, 24.8.2011, 12.10.2011 and 18.1.2012 of the Delhi High Court has ended in withdrawal on 09.4.2012 of Special Leave to Petition (Civil) Nos. 5889-5901 of 2012. Even the application for permission to file transfer petition was rejected, at that stage, by the Apex Court.

2. Even with the above backdrop of facts and elaborate discussion in the impugned order of the contentions of the appellants, it was argued by several learned Counsel appearing for the appellants that interim relief protecting possession by the appellants of the lands in question was required to be granted mainly for the reasons that the decision not to renew the leases or grant fresh leases of the lands to the appellants was arbitrary and illegal; and pending the petitions of the appellants, which have been admitted, the respondents were required to be restrained from dispossessing the appellants of the leased lands. Learned Counsel Mr. Asim Pandya, appearing for some of the appellants, submitted that the appellants as well as hundreds of their employees were sought to be deprived of their livelihood without and before affording to them an opportunity of being heard and without following the procedure established by law. He submitted that KPT and Union of India cannot abdicate their powers and discretion merely on the basis of some statements made by learned Additional Solicitor General (ASG) in the public interest litigation before the Delhi High Court. He submitted that learned single Judge has failed to examine the aspects of balance of convenience and irreparable loss that will be caused to the appellants by refusal of interim relief. He further submitted that this Court is the only appropriate forum which could give complete relief by examining the individual rights of the appellants and no other Court has the territorial jurisdiction to examine the issues raised in the petitions. Arguing on merits, he submitted that Section 49 read with Sections 33 and 34 of the Major Port Trusts Act, 1963 ("the Act", for short) and the Land Policy provided for disposal of land without auction or tender; and the Land Policy of 2004 was not under challenge before any Court. He also submitted that KPT itself had taken a stand before the Delhi High Court that it had no territorial jurisdiction and whenever demand for land was more than the supply, KPT had resorted to tendering process. KPT itself had forwarded cases of 36 leaseholders for renewal for 30 years of the leases to the Ministry and the lands in question were not so much in demand. He fairly conceded that the resolution or the proposal of KPT to renew the leases may not confer any absolute or enforceable right upon the former leaseholders; but they were relevant for the purpose of examining arbitrariness or illegality of the decision to take back possession of the land and not to renew the leases. He pointed out that KPT or Union of India had not even filed any reply-affidavit before learned single Judge and hence their stand could not have been properly appreciated at the admission stage. However, the fact remained that KPT could

not point out any urgent requirement of the land for its own use, even as thousands of acres of land were still lying idle with KPT. He also submitted that even the new plan prepared in 2010 provides that all lands are to be utilized for manufacturing of salt and hence no useful purpose would be served by refusing renewal of the leases. By virtue of the renewal clause, some of the appellants had been given an option to apply for renewal of the lease, which created legitimate expectation in view of which the lands have been developed by such appellants after investing crores of rupees. Therefore, invoking the doctrine of legitimate expectation and promissory estoppel, the leases could be directed to be renewed and pending consideration of such pleas, the appellants' possession was required to be protected. He relied upon various judgments in support of his submissions and relevant among them are discussed hereunder.

2.1. Learned senior Counsel Mr. Mihir Thakore, appearing for the appellants in LPA No. 570 of 2012, submitted that even as the earlier renewal of lease of the appellants was upto 09.04.2004, the lease deed itself contained a clause for its renewal and KPT had passed an express resolution on 16.01.2004 to extend the lease. As against that, decision was taken on 13.7.2010 to renew the lease only upto 31.3.2011 and that decision is under challenge in the main petition, which is admitted. Under such circumstances, the statement made by ASG before the Delhi High Court could not be relied upon to deny independent consideration of the resolution and proposal of KPT to renew the lease of the appellants for a further period of 30 years.

2.2. It was generally submitted for the appellants that, pending the litigations, possession of the leased lands by the appellants was not illegal or unauthorized and KPT and Union of India were required to take a reasonable view in public interest and in the interest of the industries carried on by the appellants. It was also submitted that taking over of possession of the lands in question was merely a symbolic possession by drawing an ex-parte panchnama which may not be treated as fate accompli so as to create an irreversible situation and cause incalculable hardship to the appellants.

3. Learned senior Counsel Mr. K.M. Patel, appearing with learned senior Counsel Mr. Harin Raval, for KPT, submitted that the appellants were admittedly holding the lands of which leases had expired, and hence they were in unauthorized occupation of public premises and liable to be evicted. It was made fairly clear in the order dated 12.10.2011 of the Delhi High Court in W.P.(C) No. 11550 of 2009 that the position which emerged was that KPT Authorities were now to lease through public auction and the leases were to be granted for production of salt. The terms on which the auction would take place had also been finalized and the conditions were also already included in the E-Tender cum E-Auction. Therefore, and in view of the observations of the Apex Court in Centre for Public Interest Litigation and Others Vs. Union of India (UOI) and Others, , the appellants could not claim renewal or fresh grant of any lease in their favour. Relying upon judgment of the Supreme Court in: Sucha Singh Vs. State of Punjab, and

Krishnadevi Malchand Kamathia and Others Vs. Bombay Environmental Action Group and Others, , he submitted that the. judicial orders made against KPT by the Delhi High Court were operative and binding and this fact could not be avoided on the pleas canvassed for the appellants. He further submitted that renewal clause was found only in case of four appellants and it did not create any unconditional or unqualified vested right in favour of the appellants, as renewal could only be by mutual consent and/or on such terms and conditions as may be agreed. Similarly, the resolution of KPT, relied upon by the appellants, also did not confer any right upon the appellants when it was expressly made subject to approval of the Central Government and no lease agreements were executed pursuant thereto. Learned Counsel Mr. Patel relied upon Clause 6.2.2.2 of the Land Policy For Major Ports, 2010, which expressly superseded the earlier Land Policy for Major Ports 2004. That Clause reads as under :-

6.2.2.2 Renewal of Existing Leases

- a) The port should first verify if the land is required for its own use. If it is so required, the Port shall take possession of the land on expiry of the lease.
- b) If the land is not required by the port for its own use, the port should then check whether land use is consistent with the Land Use Plan. If it is so, and if renewal is provided for in the existing lease agreement, it can be renewed for a total period not exceeding thirty years including the original lease period. The lease rent/upfront premium should not be less than prevailing SoR or on market value, whichever is higher. No compensation will be payable by the port in the event of refusal to renew the lease.
- c) If the option for renewal is not provided for in the existing lease agreement, the port at its discretion, may decide to grant a fresh lease in favour of the existing lessee at the terms to be approved by the Board, without public auction/tender. The lease rent/ upfront premium should not be lower than the SoR duly updated or the market value as the case may be.
- d) Extension/renewal of any lease for the original lessee beyond 30 years would be made only after the recommendation of the Port Trust Board, recording clearly the reasons thereof, and the approval of the Empowered Committee. Such cases will be finalized by the Ministry of Shipping.
- e) After the expiry/termination/ determination of lease and despite receiving the notice thereof, or forfeiture of lease on account of change of user, assignment etc., if the lessee continues to occupy it unauthorisedly, the lessee shall be liable to pay compensation for wrongful use and occupation at three (3) times the lease rent in accordance with the prevailing SoR till vacant possession is obtained.
- f) For existing leases, at the time of expiry/termination/determination of lease the provisions related to removal of structures will be applicable. If no such provisions exist, the lessee shall remove all structures at his own cost within three (3) months of expiry/ termination/determination failing which these will

vest with the port free from all encumbrances. If the port so decides for reasons to be recorded, it may also take over the structures on terms mutually agreed with the lease holder.

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. It was also submitted that even as successive orders of the Delhi High Court were operative, petitions for special leave to appeal from those orders were withdrawn, the appellants have by now already joined as parties in the proceeding pending before the Delhi High Court and possession of the lands in question is already taken over from the appellants. Thus, the appellants did not have any case for grant of any relief in these appeals, either in equity or in law, according to the submission. He further submitted that insistence upon an order of this Court on merits after prolonged hearing and arguments, even while the Court was not inclined to admit the appeals or grant any ad-interim relief either during hearing in March 2012 or now in June 2012, was by way of strategy of continuing agitation of various issues before different forums to anyhow retain or reclaim possession of the lands in question.

4. Learned senior Advocate Mr. D.D. Vyas, appearing for the Estate Officer of KPT, submitted that prayers for interim relief made in the original petitions no longer survived, insofar as pursuant to the impugned notices for eviction, orders have already been made by the Authorized Officer and possession of the lands is also already taken over by KPT. He pointed out from the impugned order that even while refusing to grant interim relief, the appellants were granted limited protection for the purpose of approaching appropriate forum, but such protection for limited time and purpose has not been duly utilized by the appellants. Learned Assistant Solicitor General Mr. P.S. Champaneri, appearing for the Union of India, adopted some of the above arguments and submitted that, as recorded in the impugned order, various orders passed by the Delhi High Court from time to time were complied with by the Central Government and those orders could not legally be challenged before this Court.

5. The relevant provisions of the Major Port Trusts Act, 1963 read as under :-

S. 29 Transfer of assets and liabilities of Central Government etc-

(1) As from the appointed day in relation to any port-

(a) all property, assets and funds and all rights to levy rates vested in the Central Government or, as the case may be, any other Authority for the purposes of the port immediately before such day, shall vest in the Board;.....

S. 33 Contracts by Board -

Subject to the provisions of Section 34, a Board shall be competent to enter into and perform any contract necessary for the performance of its functions under this Act.

S. 34 Mode of executing contracts on behalf of Board -

(1) Every contract shall, on behalf of a Board, be made by the Chairman, 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, authorize 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 behalf, shall be made unless it has been previously approved by the Central Government."

"Board" is defined in Sec. 2(b) of the Act as :-

"Board" in relation to a port, means the Board of Trustees constituted under this Act for that port;

And, Sec. 111 of the Act reads as under :-

S. 111 Power of Central Government to issue directions to Board-

(1) Without prejudice to the foregoing provisions of this Chapter, the Authority and every Board shall, in the discharge of its functions under this Act be bound by such directions on questions of policy as the Central Government may give in writing from time to time :--

Provided that the Authority or the Board, as the case may be, shall be given opportunity to express its views before any direction is given under this sub-Section.

(2) The decision of the Central Government whether a question is one of policy or not shall be final.

6. Among the judgments cited at the bar, Raj Restaurant and Another Vs. Municipal Corporation of Delhi, and Prakash Ratan Sinha Vs. State of Bihar and Others, were relied upon in support of the submission that where a licence is required to carry on business, refusal to give licence or revocation of licence would be visited with civil consequences and would affect the livelihood of the person. In such a situation, before either refusing to renew the licence or revoking it, an opportunity to represent one's case is a must. When administrative decision taken by an Authority was within the realm of public law, the decision ought to have been taken in a fair and reasonable manner.

Therefore, even an administrative order, which involves civil consequence, must be consistent with the rules of natural justice. *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, and *Mansukhlal Vithaldas Chauhan Vs. State of Gujarat*, were relied upon for the submission that discretion vested in the Board of KPT u/s 34 of the Act should be exercised by itself and could not be abdicated by taking cover of instructions from the Central Government or orders of the Court. Relying upon *Kiran Singh and Others Vs. Chaman Paswan and Others*, and *Chief Engineer, Hydel Project and Others Vs. Ravinder Nath and Others*, , it was also submitted that successive orders of the Delhi High Court were void and without jurisdiction and could be challenged in collateral proceedings. A defect of jurisdiction strikes at the very Authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties, according to the submission. Relying upon *Union of India (UOI) and Others Vs. Mohanlal Likumal Punjabi and Others*, , it was also submitted that a wrong concession made by a Counsel cannot bind the parties when statutory provisions clearly provided otherwise. And, any such concession would have no acceptability or relevance while determining rights and liabilities incurred or acquired in view of the axiomatic principle, without exception, that there can be no estoppel against statute.

6.1. Relying upon *Secretary to Govt., Tamil Nadu and Another Vs. K. Vinayagamurthy*, it was submitted that so far as the right of renewal is concerned, the same having been unequivocally indicated in the policy. Government could not have annulled the same by directing afresh a new procedure to be adopted by drawal of lots for settling of the privileges inasmuch as it had nothing to do with the augmentation of revenue. Relying upon *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, and *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, , it was submitted that disposal of State largess without auction is legal and permissible, particularly in the cases like the present ones where supply of land was more than the demand therefore.

6.2. It was also submitted, referring to *Nagesh Datta Shetti and Others Vs. The State of Karnataka and Others*, and *Beg Raj Singh Vs. State of U.P. and Others*, , that appeals have not become infructuous because of the subsequent decision of the Authority under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. *Bharat Petroleum Corpn. Ltd. Vs. Maddula Ratnavalli and Others*, was relied upon for the proposition that the State is enjoined with a duty to act fairly and reasonably. Just because it has been conferred with a statutory power, the same by itself would not mean that exercise thereof in any manner will meet the requirements of law. The discretion exercised by a statutory Authority must also be tested on the anvil of the constitutional scheme. Reasonableness and non-arbitrariness are the hallmarks of an action by the State. On a number of times, the Apex Court has laid emphasis on reasonable action on the part of the State even as a landlord.

6.3. Saurashtra Oil Mills Association, Gujarat Vs. State of Gujarat and Another, was relied upon for the proposition that dismissal of SLP by a non-speaking order would remain a dismissal simpliciter and would not mean declaration of law by the Supreme Court. Such dismissal of SLP by the Apex Court would not operate as a binding precedent taking away jurisdiction of a co-equal bench to adjudicate on the same point on merits in a case where leave to file the appeal has been granted.

7. Per contra, Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others, , was relied upon for the proposition that, where a person had entered into occupation legally under a valid Authority, but who continues in occupation after the Authority under which he was put in occupation has expired, or has been determined, is an unauthorized occupant. And, three-Judge bench decision of the Apex Court in Siemens Public Communication Networks Pvt. Ltd. and Another Vs. Union of India (UOI) and Others, was relied for the proposition that when the power of judicial review is invoked in the matters relating to tenders or award of contracts, certain special features have to be considered. A contract is a commercial transaction and evaluating tenders and awarding contracts are essentially commercial functions. In such cases, principles of equity and natural justice stay at distance. If the decision relating to award of contracts is bona fide and is in public interest, Courts will not exercise the power of judicial review and interfere even if it is accepted for the sake of argument that there is a procedural lacuna. Intellectuals Forum, Tirupathi Vs. State of A.P. and Others, was relied upon for the submission that natural resources are held by State as trustee of the public and can be disposed of only in the manner that is consistent with the nature of such a trust. When the State holds a resource that is freely available for the use of the public, it provides for a high degree of judicial scrutiny on any action of the Government, no matter how consistent with the existing legislations, that attempts to restrict such free use. The: Courts must make a distinction between the Government's general obligation to act for the public benefit, and the special, more demanding obligation which it may have as a trustee of certain public resources. The property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public.

7.1. Krishnadevi Malchand Kamathia and Others Vs. Bombay Environmental Action Group and Others, was relied upon to submit that even if an order/notification is void/voidable, the party aggrieved by the same cannot decide that the said order/notification is not binding upon it. It has to approach the Court for seeking such declaration. The order may be hypothetically a nullity and even if its invalidity is challenged before the Court in a given circumstance, the Court may refuse to quash the same on various grounds including the standing of the petitioner or any other legal reason. An order may be void for one purpose or for one person, it may not be so for another purpose or another person.

7.2. United India Insurance Company Limited Vs. Manubhai Dharmasinhbhai

Gajera and Others, was relied upon for the proposition that, ordinarily the writ Court would not grant specific performance of a contract even if it is found that there exists a renewal clause or there has been a breach of contract. In *Shanti Prasad Devi and Another Vs. Shankar Mahto and Others*, , it is held that on expiry of the period of lease, mere acceptance of rent for the subsequent months in which the lessee continued to occupy the lease premises cannot be said to be a conduct signifying "assent" to the continuance of the lessee even after expiry of lease period. In the facts of that case, the agreement of renewal contained in clause (7) read with clause (9) required fulfillment of two conditions: first, the exercise of option of renewal by the lessee before the expiry of original period of lease and second, fixation of terms and conditions for the renewed period of lease by mutual consent and in absence thereof through the mediation of local mukhia or panchas of the village. The aforesaid renewal clauses (7) and (9) in the agreement of lease clearly fell within the expression "agreement to the contrary" used in Section 116 of the Transfer of Property Act. The lessor had neither expressly nor impliedly agreed for renewal. In the face of specific clauses (7) and (9) for seeking renewal, there could be no implied renewal by "holding over" on mere acceptance of the rent offered by the lessee. The lessee, in such circumstance, could not claim that he was holding over as a lessee.

7.3. As recently observed in *Centre for Public Interest Litigation and Others Vs. Union of India (UOI) and Others*, , the Apex Court has repeatedly held that, wherever a contract is to be awarded or a licence is to be given, the public Authority must adopt a transparent and fair method for making selections so that all eligible persons get a fair opportunity of competition. To put it differently, the State and its agencies/instrumentalities must always adopt a rational method for disposal of public property and no attempt should be made to scuttle the claim of worthy applicants. The Court further observed in para 96 of the judgment :--

96. In our view, a duly publicized auction conducted fairly and impartially is perhaps the best method for discharging this burden and the methods like first-come-first-served when used for alienation of natural resources/public property are likely to be misused by unscrupulous people who are only interested in garnering maximum financial benefit and have no respect for the constitutional ethos and values. In other words, while transferring or alienating the natural resources, the State is duty bound to adopt the method of auction by giving wide publicity so that all eligible persons can participate in the process.

8. It has been brought to the notice of this Court that, recently in order dated 04.07.2012 in W.P.(C) No. 11550 of 2009, the Delhi High Court has observed that 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. Having regard to the stage of the proceeding before learned single Judge and before this Court, it is obvious that it would be improper and hazardous to express any final opinion on the issues involved in the petitions which are admitted and yet to be heard and finally disposed. Therefore, in short, we are called upon to record a tentative view in justification of our decision in respect of the claim for interim relief.

8.1. 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 predetermined 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. In view of recent decision of the Apex Court in *Shanti Prasad Devi (supra)* and *Centre for Public Interest Litigation (supra)*, there could be no implied renewal of leases, and public Authorities are required to adopt a transparent and fair method for disposal of public property and a largess cornered by a few businessmen could not be perpetuated in violation of the Fundamental Rights vested in others or in a manner inconsistent with the Directive Principles of State Policy. In the facts of the present cases, as was rightly pointed out by learned Counsel for the respondents, the appellants have been engaging the respondents in one after other legal battles simultaneously in at least four forums without even depositing huge amounts of compensation and fees for which bills are already raised by KPT. Therefore, we do not find any *prima facie* case in favour of the appellants, either

in law or in equity, for grant of any discretionary relief particularly when practically the claim now is for restoration rather than protection of possession of the lands in question. In absence of a reasonably good prima facie case in favour of the appellants, the issues of balance of convenience and irreparable loss pale into insignificance and irrelevance.

It was in the above context that the issue of awarding cost to the respondents was raised and in fact in one of the appeals of this group, cost of Rs. 20,000/- is already awarded when the appeal was permitted to be withdrawn after being argued. Learned Counsel for the appellants have in that regard, relied upon observations of the Apex Court in Vinod Seth Vs. Devinder Bajaj and Another, that every person has a right to approach a Court of law if he has a grievance for which law provides a remedy. However, as held in Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), , the costs have to be actual reasonable costs including the cost of the time spent by the successful party, the transportation and lodging, if any, or any other incidental costs besides payment of Court fees, lawyer's fee, typing and other costs in relation to the litigation. As it is found in the facts of the present cases that the appellants have strategically approached one after other Courts in various proceedings, taken away from other litigations considerable and disproportionate time of the Court without even an offer to deposit the amounts already due from them and all that is done at a corresponding cost to the respondents, it is necessary and in the interest of justice that the appeals are dismissed with appropriate amount of costs. These are some of the rare cases in which lurking beneath the legalese are apparent attempts at gaining or regaining an unfair advantage at any public or private costs. Accordingly, the appeals are dismissed for being wholly devoid of merits, with costs quantified in each appeal at Rs. 20,000/ which shall be paid by the appellants to KPT within a period of one month.

Civil Applications do not survive in view of this order and they stand disposed accordingly.