

(2006) 06 BOM CK 0030

In the Bombay High Court

Case No : Notice of Motion No. 1247 of 2005 in Suit No. 1172 of 2005

Vikas Kamalakar Walawalkar

APPELLANT

Vs

The Deputy Salt Commissioner and Others

RESPONDENT

Date of Decision : 05-06-2006

Acts Referred:

Citation : AIR 2006 Bom 265 : (2006) 4 ALLMR 405 : (2006) 4 BomCR 527

Hon'ble Judges : D.K. Deshmukh, J

Bench : Single Bench

Advocate : Aspi Chinoy and V.R. Dhond, instructed by Mahimtura and Co, for the Appellant; B.A. Desai, Addl. S.G. and S.R. Rajguru, for the Respondent

Judgement

D.K. Deshmukh, J.—This Notice of Motion is taken out by the Plaintiff. The Plaintiff in the suit prays for a decree of declaration that the purported termination of lease/grant in respect of salt land effected by order at Exh. W made by the Defendant No. 1 is illegal, wrongful and contrary to law. A further decree of declaration is also claimed declaring that the lease/grant of the salt land in terms of the supplemental Deed of Lease read with Deed of Lease is valid, subsisting and binding on the Defendants. The Plaintiff is also claiming a decree of permanent injunction directing the Defendant No. 3 to make drains and sewers as would prevent the sewage water and industrial effluents flowing into the two inlets in the Plaintiff's salt land.

2. By this Notice of Motion, the Plaintiff prays for a temporary injunction restraining the Defendants Nos. 1 & 2 from acting on the order dated 1st April, 2005 and disturbing possession of the land of the Plaintiff pursuant to that order.

3. For the purpose of deciding this Notice of Motion following can be taken as admitted position:-

(a) The suit pertains to two parcels of land. One admeasuring approximately 432 acres and the other approximately 350 acres leased under a Government Grant or demise of December 1921 to the Plaintiff's predecessor. These two parcels of

lands are known by the name "Jamasp Salt Works" and "Battiwala Salt Works".

(b) The lease hold interest in respect of both the parcels of salt land have come into hands of the present Plaintiff on the same terms and conditions on which the lease was granted to the predecessor-in-title of the present Plaintiff. Supplemental Lease Deed was executed and registered on 27-7-1994 in favour of the present Plaintiff for the residual period of the lease i.e. upto 14-10-2016.

(c) The salt lands have Thane creek on its eastern boundary and a range of small hillocks along the western boundary. The Eastern Express Highway bisects the lands into two parts: (i) the portion to the west admeasures approximately 150 acres whereas the remaining lands approximately 630 acres lie on the eastern side i.e. between the Highway & Thane creek.

(d) The allegation is that salt land is not being used for the purpose for which the lease was granted in relation to the lands which are to the West.

3. In April/May, 2002, show cause notices were issued in relation to both the salt lands by the Defendant No. 1 alleging that a substantial portion of the leased land is not being used for manufacture of salt and has been kept fallow for a long time. It was further alleged that the Defendant No. 1 has observed that the lessee has allowed grass to grow on the land and is selling the grass. It was stated that as per Clause (5) of the Lease Deed, if lessee commits breach of any of the terms of the lease, the lessor can cancel the lease before expiry of the term of the lease. The lessee was, therefore, called upon to show cause why the lease should not be terminated and the land should not be resumed by the Government of India.

4. The Plaintiff replied to the show cause notices. In the reply, it was not denied that some portion on the western side of the salt land is not being used for manufacturing salt. It was submitted that the Bombay Municipal Corporation had constructed a sewerage pumping station on the western side of the lands and the Municipal authorities are pumping out sewage water inside the Nalla passing through the said lands. As a result, during the high tide the sea water comes inside the nalla and due to overflowing of the nalla, this water gets spread inside the land on the western side, and therefore, the salt pans of the western side are rendered unproductive for the salt. It was stated that the Plaintiff has requested the Bombay Municipal authorities to take measures so that the sewage water does not come into the salt pans. In short, the reply was that the Plaintiff's non-user of a part of the salt land on the western side for manufacturing the salt is deliberate, but the Plaintiff cannot use a part of the salt land on the western portion for manufacturing salt for the reason beyond his control and therefore, for that reason the lease cannot be terminated.

5. After submission of the reply, nothing was done by the Defendant No. 2 during the year 2002 as also during the year 2003. Defendant No. 1 on 4-2-2004 issued two show cause notices, one in relation to Jamasp Salt works and the other in relation to Battiwala Salt works, in which earlier show cause notice dated

21-5-2002 was referred to. It was stated that the Plaintiff in violation of Condition No. 1 of the lease deed is not using a part of the land leased to him for manufacturing salt. The reply given by the Plaintiff to the show cause notice dated 21-5-2002 was also referred to and it was stated that the reply was not satisfactory. A further allegation was made that the growth of grass on the land is not spontaneous but the grass is being systematically cultivated by the Plaintiff by diversion of natural flow of nalla water to the lands for grass cultivation. It was stated that the Plaintiff is not using the land for the purpose for which it was leased to him and therefore, as per Clause 5 of the lease deed the lessor was authorised to cancel the lease agreement. The Plaintiff, was therefore, called upon to show cause why the lease should not be terminated.

6. It appears that the Plaintiff after receiving the show cause notice addressed a letter to the Defendant No. 1 requesting him to grant time up to 16-3-2004 for submitting his reply to the show cause notice. But that request was rejected by the Defendant No. 1 and by order dated 12-3-2004 the Defendant No. 1 terminated the lease of both the salt lands.

7. Feeling aggrieved by the order dated 12-3-2004, the Plaintiff filed an appeal before the Salt Commissioner. That appeal was decided by the Salt Commissioner by his order dated 31-5-2004. The Commissioner observed in his order that the Defendant No. 1 should have given an opportunity to the Plaintiff to represent his case as asked by him. It was also observed that in a similar matter in the case of Arthur & Jankins Salt Works, whose leases were also cancelled by the Defendant No. 1, the parties had approached this Court by filing Writ Petition and in that Writ Petition this Court has held that the Deputy Salt Commissioner should give personal hearing to the Petitioner and therefore, the Commissioner directed the Defendant No. 1 to give opportunity of personal hearing to the Plaintiff and then pass a reasoned order.

8. While the matter was pending before the Defendant No. 1, on 5th July, 2004 the Plaintiff made an application for joint inspection of the lands. On 9th July, 2004 the Defendant No. 1 along with the Plaintiff jointly inspected the salt lands. On 20th July, 2004, the Plaintiff communicated his impression of the inspection of the salt lands held on 9th July, 2004. According to the Plaintiff, when arguments were being heard by the Defendant No. 1, it was for the first time disclosed to the Plaintiff that the show cause notice dated 4-2-2004 was based on a report of a committee which was constituted by the Defendant No. 1. The Plaintiff, therefore, submitted an application on 29th July, 2004 for supply of copy of the report of the committee. Pursuant to that application, a copy of the report of the committee of December, 2003 was supplied to the Plaintiff. After receiving the report the Plaintiff by letter dated 31st August, 2004 placed his objection to that report on the record of the Defendant No. 1. Thereafter, the Defendant No. 1 passed the order dated 1-4-2005. By that order the Defendant No. 1 held that the Plaintiff has violated the conditions of lease and therefore, the lease of both the salt lands is terminated. The Defendant No. 1 also directed the Plaintiff to

hand over possession of the salt lands to the Factory Office, Bhandup.

9. In this suit, it is basically the order dated 1-4-2005 which is under challenge.

10. The learned Counsel appearing for the Plaintiff submits that the suit pertains to two parcels of salt lands; one admeasuring approximately 432 acres and the other approximately 350 acres leased under a Government Grant or demise of December 1921, to the Plaintiff's predecessor. The salt lands have Thane creek on its eastern boundary and a range of small hillocks along the western boundary. The Eastern Express Highway bisects the lands into two parts; the portion to the west admeasures approximately 150 acres approximately, whereas the remaining lands (approximately 630 acres) lie on the eastern side between the Highway & Thane creek. The lands to the East are used even today for the manufacture of salt: in the year 2004-2005 the salt production was the highest in the past 10 years. However the smaller portion of lands to the west have been affected by a nallah which drains sewage water from the adjoining high lands/slum settlements on to it. If salt water is allowed to enter & mix with this sewage water it results in health hazard: mosquitoes. Moreover the resultant salinity level of the mix is not adequate for salt manufacture. Despite repeated requests by the Plaintiff to the Salt Commissioners Office & the BMC no steps have been taken to prevent/divert the flow of the nullah/sewage water away from the said Western portion of the salt lands. Accordingly ingress of salt water in this portion has been blocked and this portion has not been usable for salt production for some years. The learned Counsel further submits that the show cause notice dated 4-2-2004 raised only one ground i.e. the grass growth is not spontaneous but is a systematic cultivation and the land is particularly being used by the Plaintiff for grass cultivation in violation of the lease conditions. The order dated 1st April, 2005, however, terminates the lease on two separate and distinct grounds, i.e. ground of grass cultivation which is mentioned in the show cause notice and the failure of the Plaintiff to achieve the production norms of 20 MT per acre. A ground which was not raised in the show cause notice has been referred to and relied on for the first time in the impugned order. The learned Counsel relies on a judgment of the Supreme Court in the case of The State of Maharashtra and Another Vs. B.K. Takkamore and Others, and submits that if the order is based on two or more grounds and if a ground is found to be bad, irrelevant, and non existent, then the order cannot be sustained if there is nothing to show that the authority would have passed the order on the basis of the other relevant and existing grounds. It is submitted that as the ground that the Plaintiff has failed to achieve the production norms was not mentioned in the show cause notice, termination of the lease for that reason is opposed to the principles of natural justice. According to the learned Counsel, therefore, as there is nothing on record to indicate that the Defendant No. 1 would have made the order even on the ground which is mentioned in the show cause notice, the order is invalid. It is further submitted that the order dated 1st April, 2005 is vitiated because it suffers from non-application of mind to the relevant facts on record. The impugned order does not consider the justifications which were given by the

Plaintiff for not using the part of the salt land on the western side for manufacturing the salt. The learned Counsel submits that in the order dated 1-5-2004, the Defendant No. 1 has relied on the Committee's Inspection Report of December, 2003. But the Defendant No. 1 does not consider while relying on that report the objections that were submitted by the Plaintiff to that report. It is submitted that because the report of the Committee of December, 2003 was an exparte report, in as much as, representative of the Plaintiff was not present at the time of inspection, the Defendant No. 1 agreed to have joint inspection. Accordingly, joint inspection was held on 9th July, 2004. As a result of joint inspection it was the duty of the Defendant No. 1 to prepare a joint inspection report, but the Defendant No. 1 did not prepare any such report. Therefore, the Plaintiff recorded their observations in his letter dated 20th July, 2004. The Defendant No. 1 has referred to the joint inspection on 9th July, 2004, but has not considered the observations of the Plaintiff contained in the letter dated 20th July, 2004. This shows violation of the principles of natural justice by the Defendant No. 1. It is further submitted that when the lease was terminated for the first time by order dated 12-3-2004, the Defendant No. 1 had directed the Plaintiff to hand over possession to Dy. Superintendent of Salt, Bhandup Factory. The Plaintiff did not hand over possession pursuant to the order dated 12-3-2004. He filed an appeal before the Salt Commissioner against that order. The order was set aside by the Commissioner by his order dated 31st May, 2004 and the Defendant No. 1 was directed to rehear the matter. After rehearing, the Defendant No. 1 has made the order dated 1-4-2005. The Plaintiff did not hand over possession. He filed the present suit and in this suit on 27th April, 2005 this Court granted ad-interim order. As a result of which the possession of the Plaintiff is protected. It is submitted that right through the Plaintiff has been in possession. He is manufacturing salt and even according to the order of the Defendant No. 1 dated 1-4-2005 the production of salt during the year 2004 at the two salt works has been the highest. The Plaintiff has also paid taxes on the salt that was manufactured during the year 2004 onwards up to date.

11. The principal argument on behalf of the Defendant No. 1 and the Defendant No. 2 is that after the order dated 12-3-2004, on 24-3-2004 the Defendants No. 1 & 2 have resumed the land and therefore the Defendants Nos. 1 & 2 are in possession of the land and therefore there is no question of granting interim injunction in favour of the Plaintiff. In support of the submission that because the Defendants Nos. 1 & 2 have taken possession of the land on 24-3-2004 pursuant to the order dated 12-3-2004, they are validly in possession and therefore there is no question of this Court granting any temporary injunction for protection of the possession of the Plaintiff, the Defendants Nos. 1 & 2 rely on two judgments of the Supreme Court, one in the case of Hajee S.V.M. Mohamed Jamaludeen Bros. and Co. Vs. Govt. of T.N., and other in the case of State of Orissa v. Rani Chandradev and Ors. 1964 SC 685.

12. In reply, on behalf of the Plaintiff it is submitted that even assuming that the lands were resumed by the Defendants Nos. 1 & 2 on 24-3-2004 pursuant to the

order dated 12-3-2004, then also as that order was set aside by the Appellate authority and fresh order has now been made on 1st April, 2005 and as admittedly after 1-4-2005 the Defendants Nos. 1 & 2 have not taken possession, Defendants Nos. 1 & 2 cannot claim to be in possession of the land. So far as the judgment of the Supreme Court in the case of State of Orissa v. Rani Chandradev relied on by the Defendants Nos. 1 & 2 is concerned, it is submitted that the judgment has been held to be per-incurrim by the Supreme Court by its judgment in the case of Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others, , and therefore, according to the Plaintiff, the Defendants cannot rely on that judgment. So far as reliance placed on the judgment of the Supreme Court in the case of Hajee Mohamed Jamaludeen Bros. case is concerned, it is submitted that in that case the Supreme Court was not considering the termination of a lease. In that case there was a license granted to collect chank shells from coastal sites and the terms on which the licence was granted were drastically different from the terms found in the present lease deed. The Plaintiff relies on a judgment of the Supreme Court in the case of Express Newspapers referred to above as also the judgment of the Supreme Court in the case of State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others, to contend that the Defendant No. 1 in order to get possession of the lands will have to adopt due process of law and they cannot unilaterally claim to have entered into possession. It is submitted that in any case the physical possession of the land was always with the Plaintiff and as the Plaintiff has demonstrated that the order dated 1-4-2005 terminating the lease is patently illegal, the Plaintiff is entitled to have his physical possession of the land protected.

13. So far as the ground raised by the Plaintiff that as the second reason given in the termination order was not part of the show cause notice is concerned, it is submitted by the learned Counsel for the Defendants that the second ground was not really a fresh ground, but it was a consequence of first ground. It is further submitted on behalf of the Defendants Nos. 1 & 2 that the order has been made after giving an opportunity of being heard to the Plaintiff and the entire material produced which was relevant has been taken into consideration by the Defendant No. 1. It is submitted that the Plaintiff has not been able to show that the Plaintiff is not responsible for not using the land for manufacturing the salt.

14. Now, for the purpose of deciding this Notice of Motion, the first question that has to be enquired into is whether it can be said that prima facie the order dated 1-4-2005 is a valid order. It is common ground before me that the Defendant No. 1 was obliged to observe principles of natural justice in making that order. Perusal of the lease deed shows that Condition No. 1(a) of the lease deed reads as under:- 1(a) The lessees shall use the demised premises for the purpose of manufacturing common & edible salt & its by-products only; Clause (V) of the lease deed pursuant to which the lease has been terminated reads as under:- V. If and whenever there shall be a breach of any of the conditions or covenants by the lessees hereinbefore contained or any of the conditions of the license granted

under the Bombay Salt Act, 1890 in respect of the demised premises, the lessor may cancel this lease notwithstanding that the term of ninety nine years has not elapsed and may re-enter upon any part of the demised premises in the name of the whole and take possession of the same and of all of the buildings, roads and erections then standing thereon and thenceforth possess the same absolutely and thereupon the said term of ninety nine years shall absolutely cease & determine and the lessees shall not be entitled to any compensation whatever in respect of the said buildings, roads & erections of which possession shall have been taken so as aforesaid.

15. Reading of the above quoted two clauses together shows that it is one of the conditions of the lease that the lessee uses the land for the purpose of manufacturing the salt only and for no other purpose and that the lessor can terminate the lease before expiry of the term of the lease only after the lessee commits breach any of the conditions of the lease. Therefore, for validly terminating the lease a finding that the lessee has committed breach of the condition of lease is necessary. Recording of such a finding results in termination of the lease and obviously, therefore, the Defendant No. 1 is obliged to observe the principles of natural justice in proceedings where such a finding is to be recorded. Perusal of the order dated 1-4-2005 shows that for recording the finding that a part of the land given on lease to the Plaintiff is being used by the Plaintiff for systematically growing grass, the Defendant No. 1 has solely relied on the report of the committee of December, 2003. In the order itself the Defendant No. 3 observed that copy of the report of that committee was given to the Plaintiff. In paragraph 27 of the plaint, the Plaintiff has stated that after examining the report of the committee of December, 2003 by his letter dated 31st August, 2004 the Plaintiff recorded his objections to the report of the committee and contended that the report of the committee is erroneous. Paragraph 27 of the plaint has been replied to in paragraph 54 of the affidavit in reply filed by the Defendants Nos. 1 & 2. Perusal of paragraph 54 of the affidavit in reply shows that averments made in paragraph 27 of the plaint that after receiving a copy of the report of the Committee of December, 2003, the Plaintiff placed his objections on record by letter dated 31st August, 2004 is not denied. It is obvious that when the Defendant No. 1 made the order dated 1-4-2005, it had on its record the objections raised by the Plaintiff to the committee's report of December, 2003, and therefore, the principles of natural justice required the Defendant No. 1 to take the objections raised to the report into consideration before relying on that report for recording the finding against the Plaintiff. Perusal of the order dated 1-4-2005 shows that not only that the objections which were raised by the Plaintiff in the letter dated 31st August, 2004, Exh.Q, have not been taken into consideration by the Defendant No. 1 while relying on the report of the committee of December, 2003, but even those objections have not even been referred to in the order. Without considering the objections raised to the report, reliance placed by the Defendant No. 1 on the report of the committee of December, 2003 is clearly and patently in breach of the principles

of natural justice. Because it shows that the Defendant No. 1 has excluded from its consideration the material which was relevant. It also shows that the Defendant No. 1 has relied on the report of December, 2003 without considering the point of view of the Plaintiff in relation to that report. Perusal of the order dated 1-4-2005 further shows that the Defendant No. 1 has accepted that there was a joint inspection of the salt lands on 9-7-2004. The Plaintiff has stated that during the course of hearing before the Defendant No. 1, the Plaintiff submitted an application dated 5th July, 2004 before the Defendant No. 1. Copy of that application is at Exh.M to the plaint. Perusal of that application shows that when that application was given by the Plaintiff, the Plaintiff was not aware of the report of the Committee of December, 2003. In the application it was stated that in the show cause notice an allegation that the Plaintiff is systematically growing grass on the land is made. The Plaintiff has denied that allegation. It was stated in the application that for making any order pursuant to the show cause notice, the Defendant No. 1 will have to enquire into the facts to find out whether the allegation made in the show cause notice is correct or not and record a finding of fact. Instead of both the sides relying on their own inspection reports it would be appropriate and would be in the interest of justice that a joint survey is carried out at site, so that there is no dispute or discrepancy about the factual position. In paragraph 23 of the plaint, the Plaintiff states that it is this application which was granted by the Defendant No. 1 and therefore, there was a joint inspection of the site on 9-7-2004 pursuant to the application filed by the Plaintiff dated 5th July, 2004. The Plaintiff has stated in paragraph 23 of the plaint that the Plaintiff recorded his observations of the joint inspection of the site. According to the Plaintiff joint inspection revealed that there were no violation of the terms of the lease. Paragraph 23 of the plaint has been replied to by the Defendants Nos. 1 & 2 by paragraph 52 of the reply. Paragraph 52 reads as under:-

52. By two notices in respect of salt works viz. Jamasp Slat Work and Battiwala Salt Work the Defendants recorded in the said notices that the lease hold interest was conferred upon the Plaintiff by supplementary lease dated 27th July, 1994, which was previously leased out for 99 years vide lease dated 22nd December, 1921 and that the show-cause notice dated 21st May, 2002 was issued to him for not taking steps to utilise substantial area of salt work for salt manufacture which was kept fallow resulting in violation of Condition No. 1(a) of the Lease as portion of the land was not being used for salt manufacturing activities, to which, lessees gave reply that grass had grown at certain portion of the land where sea water was not reaching due to blockage of various creeks and denied that they had not taken any steps for utilisation of substantial area of the lease premises for the purpose for which, it was leased. The said two notices dated 4th February 2004 recorded that the reply of the lessees was examined and was found not satisfactory as the grass growth was not spontaneous, but was systematic cultivation by diversion of nalla water to the lands for the grass cultivation and that the whole of leased premises was not used for salt manufacturing activities resulting in violation of Conditions of Lease and as per Clause 5 of the Lease

Deed, the Defendants became entitled to cancel the lease for violation of the Condition of the lease agreement and because of not being satisfied with the reasons, the Plaintiff was again called upon to explain as to why lease of the entire land should not be terminated and land should not be resumed to the Salt Department. Perusal of the above said reply shows that the Defendant No. 1 does not deny that the joint inspection was held pursuant to the application filed by the Plaintiff. The Defendant No. 1 does not deny that the Plaintiff sent the letter dated 20th July, 2004 recording their observations about the joint inspection and states that the finding of the earlier committee were confirmed by the joint inspection. The Defendant No. 1 nowhere claims that the Defendant No. 1 prepared a separate report of the joint inspection held on 9-7-2004. He also does not claim that what is contained in the letter dated 20th July, 2004 is incorrect.

It is clear from the record that the report of December, 2003 of the committee was on record. The Defendant No. 1 obviously felt it necessary to have the joint inspection because the inspection report of December, 2003 was an exparte report. In as much as, the representative of the Plaintiff was not present on the spot when the inspection was taken. Really speaking, therefore, the Defendant No. 1 should have prepared a report of the joint inspection. But the Defendant No. 1 for no reason has not prepared any report of the joint inspection. If the fact that the joint inspection was taken is an admitted position, then it was mandatory for the Defendant No. 1 to prepare a report about what has the inspection of the site disclosed. Without preparing the report and placing it on record, the Defendant No. 1 was not justified on relying on his finding of the inspection dated 9-7-2004. The Defendant No. 1 has observed in his order that the finding of the joint inspection dated 9-7-2004 confirmed the finding earlier recorded by the committee in its report of December, 2003. To the inspection dated 9-7-2004, the Defendant No. 1 and the Plaintiff were parties. Defendant No. 1 has not prepared any report of inspection. The Plaintiff had prepared a report of inspection and had submitted it to the Defendant No. 1 which is dated 28th July, 2004. Before recording a finding that the finding of the joint inspection dated 9-7-2004 confirmed the finding recorded by the committee in its report of December, 2003, it was necessary, in order to comply with the principles of natural justice for the Defendant No. 1 to refer to and consider what is contended by the Plaintiff in the letter dated 28th July, 2004. In other words, so far as the joint inspection of the site done on 9-7-2004 is concerned, the letter dated 20th July, 2004 was relevant and material, and therefore, that document could not have been excluded from consideration by the Defendant No. 1. Therefore, finding recorded by the Defendant No. 1 on the basis of the joint inspection dated 9-7-2004 without preparing the report and placing it on record and by excluding from consideration the letter dated 20th July, 2004 is vitiated for non-observance of principles of natural justice. In my opinion, once the Defendant No. 1 had taken joint inspection of the site, it was his duty to prepare a report of the inspection in writing, supply a copy of the same to the Plaintiff

and in case the Plaintiff raised any objection to the report, to deal with the objection while considering the report. Perusal of the order dated 1-4-2005 shows that the contentions raised by the Plaintiff on the merits of the controversy have not at all been considered independently by the Defendant No. 1. The Defendant No. 1 has rejected those contentions by relying on the report of December, 2003 and the joint inspection dated 9-7-2004. As I find that the finding recorded on the basis of the report of December, 2003 and the Joint Inspection dated 9-7-2004 are in breach of the principles of natural justice, it prima facie appears that the findings are vitiated. Perusal of the order shows that the Defendant No. 1 has given one more reason for terminating the lease i.e. salt production is not up to the mark. Admittedly, this was not the ground disclosed in the show cause notice. Therefore, the Plaintiff had no opportunity to meet this ground. Therefore, directing the termination of the lease on this ground is clearly in breach of the principles of natural justice.

16. I, thus, find that the order dated 1-4-2005 is prima facie invalid. The Plaintiff has thus been able to make out a strong prima facie case. So far as the aspect of balance of convenience and irreparable injury is concerned, it appears to be an admitted position that so far as physical possession is concerned, the lands are in physical possession of the Plaintiff. The impugned order itself shows that in the year 2004, the Plaintiff was manufacturing salt on the lands. Therefore, when the Defendants Nos. 1 & 2 say that they have taken possession of the lands, what was taken by them was not actual possession, but only paper possession. That possession was taken according to the Defendant No. 1 on 24-3-2004, obviously pursuant to the order dated 12-3-2004. The order dated 12-3-2004 was challenged in appeal by the Plaintiff. That appeal was decided by order dated 31st May, 2004. Operative part of that order reads as under:-

After considering the written submission and arguments made by the Advocates of the Appellant Mr. Walawalkar, I am of the opinion that the ex-lessee of Jamasp Salt Works should have been given opportunity to represent their case as asked by them for grant of time up to 16.3.2004 in their letter dated 24-2-2004. In a similar placed matter of Arthur & Jenkins Salt Works, Bhandup Salt factory whose leases have been cancelled and land resumed and the parties have gone in filing of WP in the Bombay High Court. The Hon'ble High Court at Mumbai has held that the Deputy Salt Commissioner, Mumbai should give personal hearing to the petitioners.

I, therefore conclude that the Deputy Salt Commissioner, Mumbai will give opportunity to Shri Vikas Kamalakar Walawalkar, ex-lessee of Jamasp Salt Works, Bhandup salt factory to be heard personally within three weeks. The Deputy Salt Commissioner, Mumbai will issue a reasoned order within two weeks time. Perusal of the above quoted order shows that for making that order the Salt Commissioner has relied on the order made by this Court in Writ Petition filed by Arthur & Jenkins Salt Works and by that order the Salt Commissioner has directed the Defendant No. 1 to follow the same course in relation to the Plaintiff,

which has been directed by this Court to be followed in relation to Arthur & Jenkins Salt Works. Writ Petition that was filed by the salt works known as "Arthur & Jenkins Salt Works" was registered as Writ Petition No. 904 of 2004 and was decided by the Division Bench of this Court by order 30th April, 2004. The operative part of that order reads as under:-

10. Hence, we pass the following order:

i) The impugned orders dated 12th March, 2004 (Exh.I & J to the petition) are quashed and set aside.

ii) The Petitioners are granted time of two weeks to file additional reply to the show cause notices dated 27th January, 2004 (Exh.F & G to the Petition). In the said additional reply the Petitioners may also deal with the documents which are annexed to the Affidavit in Reply filed by the Respondent No. 1 in this Petition. The Petitioners will also be permitted to file documents in support of their case.

iii) The Petitioners are directed to appear on 17th May, 2004 before the Respondent No. 1 for fixing the date of hearing.

iv) The Respondent No. 1 will pass the reasoned order after giving opportunity of personal hearing to the Petitioners.

v) If the order passed is adverse to the Petitioners the same will not be given effect to for the period of two weeks from the date of communication of the order.

vi) All questions on merits are kept open.

17. Perusal of the above quoted order shows that the order terminating the lease was set aside by the Court and the Defendant No. 1 was directed to rehear the parties and make a fresh order. It is, thus, clear that the consequence of the order dated 31st May, 2004 was to set aside the order dated 12-3-2004. By the order the appellate authority has directed the Defendant No. 1 to make a reasoned order. It obviously means that the Defendant No. 1 was to make a fresh order. Had the order dated 12-3-2004 not been set aside by the appellate authority, there was no need to make a fresh reasoned order. Therefore, even assuming that pursuant to that order the Defendants Nos. 1 & 2 had taken paper possession of the land, they were no more entitled to remain in possession of the land after 31st May, 2004. Perusal of the order dated 1-4-2005 passed by the Defendant No. 1 also shows that the Defendant No. 1 also understood the order dated 31-5-2004 correctly. Had the Defendant No. 1 understood the order dated 31-5-2004 as keeping the order dated 12-3-2004 intact, then he would not have by his order dated 1-4-2005 terminated the lease again. Because if the order dated 12-3-2004 was intact, the lease was already terminated by that order. But not only the Defendant No. 1 by order dated 1-4-2005 terminated the lease, but he directs the Plaintiff to hand over possession of the land to the Factory Office, Bhandup. If the Defendant No. 1 was already in possession of land, on 1-4-2005 there was no reason for the Defendant No. 1 to direct the Plaintiff to hand over possession of the land to the Factory office, Bhandup. Thus, the stand taken by

the Defendants Nos. 1 & 2 in their affidavit in reply that they are already in possession of the land as they had taken possession of the land on 24-3-2004 is an after thought and therefore is incapable of being accepted. In any case, it is apparent that the Plaintiff was in physical and actual possession of the land on 1-4-2005 and his possession was also in accordance with the law, because by that date the order terminating his lease dated 12-3-2004 was already set aside. In my opinion, as the Plaintiff is in physical possession of the land and he is using the land for manufacturing of salt, his possession of the land deserves to be protected, because he has made out a strong prima facie case. The balance of convenience, therefore, is in favour of the Plaintiff. So far as reliance placed by the Defendant No. 1 on the judgment of the Supreme Court in the case of Hajee S.V.M. and Rani Chandradev is concerned, Defendant No. 1 relies on those judgments to claim that the Defendant No. 1 was entitled to enter into possession of the land on 24-3-2004 and it was not necessary for the Defendant No. 1 to adopt due process of law for getting possession of the land from the Plaintiff, after terminating the lease of the land in favour of the Plaintiff.

In my opinion, this aspect of the matter would have been relevant, had the order dated 12-3-2004 continued to be in force. But that order, as observed above, was set aside by the appellate authority by order dated 31st May, 2004. The consequence of the appellate authority setting aside the order dated 12-3-2004 by order dated 31st May, 2004 was that the lease of the land in favour of the Plaintiff, which was terminated by order dated 12-3-2004, stood reinstated in favour of the Plaintiff and the Plaintiff became entitled to be in possession of the land. So far as the actual possession of the land is concerned, admittedly the Plaintiff never lost actual possession of the land and was in actual possession of the land on 31-5-2004 and therefore, as a consequence of the order dated 31st May, 2004, the Plaintiff became entitled to be both in actual and legal possession of the land and the Defendants Nos. 1 & 2 lost their entitlement even to the legal possession of the land after 31st May, 2004. It is not the case of the Defendants Nos. 1 & 2 that after the order dated 1-4-2005 was made, they again entered possession of the land. Thus, after 31-5-2004, the Plaintiff was in legal and physical possession of the land and it is nobody's case that his possession was disturbed by the Defendants Nos. 1 & 2 after 1-4-2005 till this Court made the ad-interim order. The effect of the ad-interim order was to protect the possession of the Plaintiff. Looking at the matter from the other point of view, even assuming the Defendant Nos. 1 & 2 to be correct in contending that they were entitled to reenter the land on 24-3-2004 and therefore they were in possession of the land from 24-3-2004, then also they will lose their entitlement to be legally in possession of the land on 31-5-2004 when the order dated 12-3-2004 was set aside, and therefore, possession of the Defendants Nos. 1 & 2 after 31-5-2004 will not be in accordance with law. The order dated 1-4-2005 does not legalise the alleged possession of the Defendant No. 1 of the land. On the contrary, it directs the Plaintiff to hand over possession of the land pursuant to the order dated 1-4-2005. In other words, the order dated 1-4-2005 does not

recognise that the Defendants Nos. 1 & 2 are in possession of the land on the date of the order. On the contrary, it recognises that it is the Plaintiff who is in possession of the land on the date of that order and therefore, he was directed to hand over possession. Thus, looking at the matter from any point of view, it is clear that the Plaintiff is in possession of the land.

18. In the result, therefore, this Notice of Motion is granted in terms of prayer Clauses (a) & (b). Notice of Motion disposed of.