



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
 CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3181 OF 2014

Maharashtra Fisheries	}	
Development Corporation Ltd.,	}	
A Government of Maharashtra	}	
Undertaking, through their	}	
Divisional Manager, having office	}	
at N. K. M. International House,	}	
3rd floor, 178, Backbay	}	
Reclamation, Residing, Babubhai	}	
M. Chinai Marg, Mumbai 400 020	}	Petitioner

versus

1) The Board of Trustees of the	}	
Port of Bombay, a statutory	}	
Corporation, having its office at	}	
“Vijay Deep”, Shoorji Vallabhdas	}	
Marg, Fort, Bombay 400 038	}	
	}	
2) Union of India	}	
Through Director General,	}	
Government of India, Bombay	}	
Base, Fishery Survey of India,	}	
(formerly known as the	}	
Superintendent Engineer,	}	
Deep Sea Fishing Station) having	}	
their address at Sassoon Dock	}	
Estate, Colaba, Bombay 400 005	}	
	}	
3) The State of Maharashtra	}	
through Under Secretary	}	
Agricultural and Dairy	}	
Development and Fisheries	}	
Department, Mantralaya Annexe,	}	
5th floor, Mumbai 400 032	}	

- 4) Commissioner of Fisheries }
Administrative Building, 2nd floor }
Near Dr. Babasaheb Ambedkar }
Udyan, Government Colony, }
Bandra (W), Mumbai – 400 051 }
}
- 5) M/s. Krishna Sea Food }
}
- 6) M/s. Sonia Fisheries }
}
- 7) Shri. Nivrutti B. Pawale }
}
- 8) M/s. Lanke Sea Foods }
Suppliers }
}
- 9) Mahanagar Co-operative }
Bank Ltd. }
}
- 10) Mr. Balyogi }
}
- 11) M/s. D. P. Sea Food }
}
- 12) Darya Sagar Patpedhi }
Limited }
}
- 13) Shri Ramdas Waval }
}
- 14) United Agencies }
}
- 15) Shri Popat Patil }
}
- 16) M/s. Patil Fisheries }
Nos. 5 to 16 all at BPT Godown }
No. 1773, Situated at Sassoon }
Dock Estate, Mumbai 400 005 } Respondents

WITH
WRIT PETITION NO. 3168 OF 2014

Shri. Ramdas R. Waral, }
Adult, Indian Inhabitant, Aged }
about 59 years, Occupation: }

Business, having address at B. P. T. }
Godown No. 1773, situated at }
Sasson Dock Estate, Mumbai }
400 005 } Petitioner
versus

1) The Board of Trustees of the }
Port of Mumbai, a statutory }
Corporation, incorporated under }
the Major Port Trust Act, 1963, }
having its Administrative office at }
Vijay Deep, S. V. Marg, Fort, }
Mumbai – 400 038 }
}
2) The Maharashtra Fisheries }
Development Corporation Ltd. }
a Government of Maharashtra }
Undertaking, N.K.M. International }
House, 3rd floor, 178, Backbay }
Reclamation, Babhulbai M. Chinai }
Marg, Mumbai – 400 020 } Respondents

WITH
WRIT PETITION NO. 3169 OF 2014

M/s. Darya Sagar Pathpedhi Ltd. }
a credit society registered under }
the Maharashtra Co-operative }
Societies Act, having its address }
C/o. M/s. Patil Fisheries B.P.T.- }
Godown No. 1773, Situated at }
Sasson Dock Estate, Mumbai- }
400 005 } Petitioner

versus

1) The Board of Trustees of the }
Port of Mumbai, a statutory }
Corporation, incorporated under }
the Major Port Trust Act, 1963, }
having its Administrative office at }
Vijay Deep, S. V. Marg, Fort, }
Mumbai – 400 038 }

2) The Maharashtra Fisheries }
Development Corporation Ltd. }
a Government of Maharashtra }
Undertaking, N.K.M. International }
House, 3rd floor, 178, Backbay }
Reclamation, Babhulbai M. Chinai }
Marg, Mumbai – 400 020 } Respondents

WITH
WITH WRIT PETITION NO. 3170 OF 2014

Shri. Popat Patil, adult Indian }
Inhabitant, aged 68 years, }
Occ. Business, having his address }
at C/o. M/s. Patil Fisheries, }
B.P.T. - Godown No. 1773, situated }
at Sasson Dock Estate, }
Mumbai – 400 005 } Petitioner

versus

1) The Board of Trustees of the }
Port of Mumbai, a statutory }
Corporation, incorporated under }
the Major Port Trust Act, 1963, }
having its Administrative office at }
Vijay Deep, S. V. Marg, Fort, }
Mumbai – 400 038 }
}
2) The Maharashtra Fisheries }
Development Corporation Ltd. }
a Government of Maharashtra }
Undertaking, N.K.M. International }
House, 3rd floor, 178, Backbay }
Reclamation, Babhulbai M. Chinai }
Marg, Mumbai – 400 020 } Respondents

WITH
WRIT PETITION NO. 3210 OF 2014

M/s. United Agencies, }
A Proprietorship of Mr. Pathrose }

D'souza, Adult, Indian inhabitant }
age 55 years, Occ. Business, }
having address at B.P.T. - Godown }
No. 1773, Situated at Sasson Dock }
Estate, Mumbai – 400 005 } **Petitioner**

versus

1) The Board of Trustees of the }
Port of Mumbai, a statutory }
Corporation, incorporated under }
the Major Port Trust Act, 1963, }
having its Administrative office at }
Vijay Deep, S. V. Marg, Fort, }
Mumbai – 400 038 }
}
2) The Maharashtra Fisheries }
Development Corporation Ltd. }
a Government of Maharashtra }
Undertaking, N.K.M. International }
House, 3rd floor, 178, Backbay }
Reclamation, Babhulbai M. Chinai }
Marg, Mumbai – 400 020 } **Respondents**

WITH
WRIT PETITION NO. 3213 OF 2014

M/s. Patil Fisheries, a partnership }
firm registered under the Indian }
Partnership Act, 1932, having its }
address at B.P.T. - Godown No. }
1773, Situated at Sassoon Dock }
Estate, Mumbai – 400 005 } **Petitioner**

versus

1) The Board of Trustees of the }
Port of Mumbai, a statutory }
Corporation, incorporated under }
the Major Port Trust Act, 1963, }
having its Administrative office at }
Vijay Deep, S. V. Marg, Fort, }
Mumbai – 400 038 }

2) The Maharashtra Fisheries }
Development Corporation Ltd. }
a Government of Maharashtra }
Undertaking, N.K.M. International }
House, 3rd floor, 178, Backbay }
Reclamation, Babhulbai M. Chinai }
Marg, Mumbai – 400 020 } Respondents

WITH
WRIT PETITION NO. 3186 OF 2014

M/s. Sonia Fisheries }
A Partnership Firm, carrying on }
business from 1773, BPT Godown, }
Sassoon Dock Estate, }
Colaba, Mumbai 400 005 } Petitioner

versus

1) The Board of Trustees of the }
Port of Bombay, a statutory }
body, constituted under }
the Major Port Trust Act, 1963, }
having its registered office at }
“Vijay Deep”, Shoorji Vallabhdas }
Marg, Fort, Bombay 400 001 }
}
2) The Estate Officer of the }
Board of Trustees of the Port of }
Bombay, Appointed under the }
PPE Act, 1971; having office at }
Operation Service Centre, Auction }
Sale Hall, (East Wing), Opp. G.P.O., }
P. D'mello Rd., Bombay 400 001 }
}
3) Union of India }
Through Director General, }
Government of India, Bombay }
Base Fishery Survey of India, }
(formerly known as the }
Superintendent Engineer, }
Deep Sea Fishing Station) Sassoon }

Dock Estate, Colaba, }
Bombay 400 005 }
}
4) The State of Maharashtra }
through the Secretary Agricultural }
Dairy Development and Fisheries, }
Mantralaya, Bombay 400 051 }
}
5) Commissioner of Fisheries }
Administrative Building, 2nd floor }
Near Dr. Babasaheb Ambedkar }
Udyan, Government Colony, }
Bandra (E), Mumbai – 400 051 }
}
6) The Maharashtra Fisheries }
Development Corporation Ltd. }
a Government of Maharashtra }
Undertaking, N.K.M. International }
House, 3rd floor, 178, Backbay }
Reclamation, Babhulbai M. Chinai }
Marg, Mumbai – 400 020 } Respondents

WITH
WRIT PETITION NO. 3187 OF 2014

M/s. Lanke Seafood Suppliers }
A Partnership Firm carrying on }
business from 1773, B.P.T. Godown }
Sassoon Dock Estate, Colaba, }
Bombay 400 005 } Petitioner

versus

1) The Board of Trustees of the }
Port of Bombay, a statutory }
Corporation, constituted under }
the Major Port Trust Act, 1963, }
having its registered office at }
“Vijay Deep”, Shoorji Vallabhdas }
Marg, Fort, Bombay 400 001 }

- 2) The Estate Officer of the }
Board of Trustees of the Port of }
Bombay, Appointed under the }
PPT Act, 1971; having office at }
Operation Service Centre, Auction }
Sale Hall, (East Wing), Opp. G.P.O., }
P D'mello Rd., Bombay 400 001 }
}
3) Union of India }
Through Director General, }
Government of India, Bombay }
Base Fishery Survey of India, }
(formerly known as the }
Superintendent Engineer, }
Deep Sea Fishing Station) Sassoon }
Dock Estate, Colaba, }
Bombay 400 005 }
}
4) The State of Maharashtra }
through the Secretary Agricultural }
Dairy Development and Fisheries, }
Mantralaya, Bombay 400 051 }
}
5) Commissioner of Fisheries }
Administrative Building, 2nd floor }
Near Dr. Babasaheb Ambedkar }
Udyan, Government Colony, }
Bandra (E), Mumbai – 400 051 }
}
6) The Maharashtra Fisheries }
Development Corporation Ltd. }
a Government of Maharashtra }
Undertaking, N.K.M. International }
House, 3rd floor, 178, Backbay }
Reclamation, Babhulbai M. Chinai }
Marg, Mumbai – 400 020 } Respondents

WITH
WRIT PETITION NO. 3188 OF 2014

Nivrutti Daji Pawle }
Proprietor of M/s. N. D. Pawle }
Seafood Suppliers, Aged years }

Occupation – Business, Carrying }
on business from 1773, B.P.T. }
Godown, Sassoon Dock Estate }
Colaba, Bombay 400 005 } Petitioner

versus

- 1) The Board of Trustees of the }
Port of Bombay, a statutory }
Corporation, constituted under }
the Major Port Trust Act, 1963, }
having its registered office at }
“Vijay Deep”, Shoorji Vallabhdas }
Marg, Fort, Bombay 400 001 }
}
- 2) The Estate Officer of the }
Board of Trustees of the Port of }
Bombay, Appointed under the }
PPT Act, 1971; having office at }
Operation Service Centre, Auction }
Sale Hall, (East Wing), Opp. G.P.O., }
P D'mello Rd., Bombay 400 001 }
}
- 3) Union of India }
Through Director General, }
Government of India, Bombay }
Base Fishery Survey of India, }
(formerly known as the }
Superintendent Engineer, }
Deep Sea Fishing Station) Sassoon }
Dock Estate, Colaba, }
Bombay 400 005 }
}
- 4) The State of Maharashtra }
through the Secretary Agricultural }
Dairy Development and Fisheries, }
Mantralaya, Bombay 400 051 }
}
- 5) Commissioner of Fisheries }
Administrative Building, 2nd floor }
Near Dr. Babasaheb Ambedkar }
Udyan, Government Colony, }
Bandra (E), Mumbai – 400 051 }

6) The Maharashtra Fisheries }
Development Corporation Ltd. }
a Government of Maharashtra }
Undertaking, N.K.M. International }
House, 3rd floor, 178, Backbay }
Reclamation, Babhulbai M. Chinai }
Marg, Mumbai – 400 020 } Respondents

WITH
WRIT PETITION NO 3189 OF 2014

Krishna Nivrutti Pawle }
Proprietor of M/s. Krishna Seafood }
Suppliers, Aged - years, }
Occupation – Business, carrying }
on business from 1773, B.P.T. }
Godown, Sassoon Dock Estate, }
Colaba, Bombay 400 005 } Petitioner

versus

1) The Board of Trustees of the }
Port of Bombay, a statutory }
Corporation, constituted under }
the Major Port Trust Act, 1963, }
having its registered office at }
“Vijay Deep”, Shoorji Vallabhadas }
Marg, Fort, Bombay 400 001 }
}
2) The Estate Officer of the }
Board of Trustees of the Port of }
Bombay, Appointed under the }
PPT Act, 1971; having office at }
Operation Service Centre, Auction }
Sale Hall, (East Wing), Opp. G.P.O., }
P D'mello Rd., Bombay 400 001 }
}
3) Union of India }
Through Director General, }
Government of India, Bombay }
Base Fishery Survey of India, }
(formerly known as the }
Superintendent Engineer, }

Deep Sea Fishing Station) Sassoon }
Dock Estate, Colaba, }
Bombay 400 005 }
}
4) The State of Maharashtra }
through the Secretary Agricultural }
Dairy Development and Fisheries, }
Mantralaya, Bombay 400 051 }
}
5) Commissioner of Fisheries }
Administrative Building, 2nd floor }
Near Dr. Babasaheb Ambedkar }
Udyan, Government Colony, }
Bandra (E), Mumbai – 400 051 }
}
6) The Maharashtra Fisheries }
Development Corporation Ltd. }
a Government of Maharashtra }
Undertaking, N.K.M. International }
House, 3rd floor, 178, Backbay }
Reclamation, Babhulbai M. Chinai }
Marg, Mumbai – 400 020 } Respondents

WITH
WRIT PETITION NO. 3182 OF 2014

The Maharashtra Fisheries }
Development Corporation Ltd. }
a Government of Maharashtra }
Undertaking, N.K.M. International }
House, 3rd floor, 178, Backbay }
Reclamation, Babhulbai M. Chinai }
Marg, Mumbai – 400 020 } Petitioner

versus

1) The Board of Trustees of the }
Port of Mumbai, a statutory }
Corporation, incorporated under }
the Major Port Trust Act, 1963, }
having its Administrative office at }
Vijay Deep, S. V. Marg, Fort, }
Mumbai – 400 038 }

- 2) The State of Maharashtra }
through Under Secretary to the }
Government of Maharashtra }
Agricultural & Dairy Development }
& Fisheries Department, }
Mantralaya Annexe, 5th floor }
Mumbai – 400 032 }
}
- 3) Commissioner of Fisheries }
Administrative Building, 2nd floor }
Near Dr. Babasaheb Ambedkar }
Udyan, Government Colony, }
Bandra (E), Mumbai – 400 051 }
}
- 4) M/s. Sisons Fisheries }
}
- 5) Shri. Abdul Hassan Bary }
}
- 6) Shri. Chandrakant S. Dhanu }
}
- 7) M/s. Indian Sea Food }
Corporation }
}
- 8) M/s. Anita Sea Food Exports }
}
- 9) M/s. Ram B. Salvi }
}
- 10) M/s. Mulica Foods }
}
- 11) M/s. Bombay Sea Food }
}
- [Nos. 4 to 8 at B.P.T. Godown No. }
158, Situated ad Sassoon Dock }
Estate, Mumbai – 400 005] }
}
- 12(a) Gangadara Ponkara Shetty }
}
- 12(b) Vitthala Ponkara Shetty }
}
- 12(c) Monappa Ponkara Shetty }
[12(a) to 12(c) of: Sindhu Niwas }
Post and Village Yekkar, }
Mangalore, Karnataka] }

12(d) Shankar Ponkara Shetty }
Building No. 5, Plot No. 21, }
Kamdhenu Complex, Hari Om }
Nagar, Mulund (E), }
Mumbai – 400 081 }
}
12(e) Mrs. Sushila Seetarama }
Shetty, House No. 189/3, }
Near Premier Company }
Christian Village, Old Kurla, }
Mumbai – 400 070 }
}
12(f) Mrs. Lalitha Narayan Shetty }
Building No. 5, Plot No. 21, }
Kamdhenu Complex, Hari Om }
Nagar, Mulund (E), }
Mumbai – 400 081 }
}
12(g) Mrs. Jayanti Karunakara }
Shetty, C-207, Brindavan Society }
Y. R. Tawade Road, Near Railway }
Station, Dahisar (West), }
Mumbai – 400 068 } Respondents

WITH
WRIT PETITION NO. 3190 OF 2014

M/s. Anita Seafood Exports, }
a partnership firm duly registered }
under the provisions of the indian }
Partnership Act, 1932, carrying }
on business from 158, B.P.T. }
Godown, Sassoon Dock, Colaba, }
Bombay 400 005 } Petitioner

versus

1) The Board of Trustees of the }
Port of Bombay, a statutory }
Corporation, constituted under }
the Major Port Trust Act, 1963, }
having its registered office at }

“Vijay Deep”, Shoorji Vallabhadas }
Marg, Fort, Bombay 400 001 }

2) The Estate Officer of the }
Board of Trustees of the Port of }
Bombay, Appointed under the }
PPT Act, 1971; having office at }
Operation Service Centre, Auction }
Sale Hall, (East Wing), Opp. G.P.O., }
P. D'mello Rd., Bombay 400 001 }
}
3) The State of Maharashtra }
through the Secretary Agricultural }
Dairy Development and Fisheries, }
Mantralaya, Bombay 400 051 }
}
4) Commissioner of Fisheries }
Administrative Building, 2nd floor }
Near Dr. Babasaheb Ambedkar }
Udyan, Government Colony, }
Bandra (E), Mumbai – 400 051 }
}
5) The Maharashtra Fisheries }
Development Corporation Ltd. }
a Government of Maharashtra }
Undertaking, N.K.M. International }
House, 3rd floor, 178, Backbay }
Reclamation, Babhulbai M. Chinai }
Marg, Mumbai – 400 020 } Respondents

WITH
WRIT PETITION NO. 3191 OF 2014

Iqbal Ahmed Dedrani, }
Indian Inhabitant of Bombay }
Aged – 55 years, Occupation }
Business, Proprietor of M/s. }
Bombay Seafood carrying on }
business from 158, B.P.T. Godown }
Sassoon Dock Estate Colaba }
Bombay 400 005 } Petitioner

versus

- 1) The Board of Trustees of the }
Port of Bombay, a statutory }
body, constituted under }
the Major Port Trust Act, 1963, }
having its registered office at }
“Vijay Deep”, Shoorji Vallabhdas }
Marg, Fort, Bombay 400 001 }
}
- 2) The Estate Officer of the }
Board of Trustees of the Port of }
Bombay, Appointed under the }
PPE Act, 1971; having office at }
Operation Service Centre, Auction }
Sale Hall, (East Wing), Opp. G.P.O., }
P D'mello Rd., Bombay 400 001 }
}
- 3) The State of Maharashtra }
through the Secretary Agricultural }
Dairy Development and Fisheries, }
Mantralaya, Bombay 400 051 }
}
- 4) Commissioner of Fisheries }
Administrative Building, 2nd floor }
Near Dr. Babasaheb Ambedkar }
Udyan, Government Colony, }
Bandra (E), Mumbai – 400 051 }
}
- 5) The Maharashtra Fisheries }
Development Corporation Ltd. }
a Government of Maharashtra }
Undertaking, N.K.M. International }
House, 3rd floor, 178, Backbay }
Reclamation, Babhulbai M. Chinai }
Marg, Mumbai – 400 020 } Respondents

WITH
WRIT PETITION NO. 3192 OF 2014

Abdul Hassan Bary, }
Indian Muslim Inhabitant }
of Bombay, aged – 53 years, }

Occupation- carrying on }
business from 158, BPT Godown, }
Sassoon Dock Estate, Colaba, }
Bombay 400 005 }

versus

1) The Board of Trustees of the }
Port of Bombay, a statutory }
body, constituted under }
the Major Port Trust Act, 1963, }
having its registered office at }
“Vijay Deep”, Shoorji Vallabhdas }
Marg, Fort, Bombay 400 001 }

2) The Estate Officer of the }
Board of Trustees of the Port of }
Bombay, Appointed under the }
PPE Act, 1971; having office at }
Operation Service Centre, Auction }
Sale Hall, (East Wing), Opp. G.P.O., }
P D'mello Rd., Bombay 400 001 }

3) The State of Maharashtra }
through the Secretary Agricultural }
Dairy Development and Fisheries, }
Mantralaya, Bombay 400 051 }

4) Commissioner of Fisheries }
Administrative Building, 2nd floor }
Near Dr. Babasaheb Ambedkar }
Udyan, Government Colony, }
Bandra (E), Mumbai – 400 051 }

5) The Maharashtra Fisheries }
Development Corporation Ltd. }
a Government of Maharashtra }
Undertaking, N.K.M. International }
House, 3rd floor, 178, Backbay }
Reclamation, Babhulbai M. Chinai }
Marg, Mumbai – 400 020 }

Respondents

WITH
WRIT PETITION NO. 3193 OF 2014

Chandrakant Dhanu, }
Indian Inhabitant of Bombay, }
Aged – 70 years, Occupation }
Business, Carrying on business in }
the name and style of M/s. Danda }
Foods from 158, BPT Godown, }
Sassoon Dock Estate Colaba, }
Bombay 400 005 } Petitioner

versus

- 1) The Board of Trustees of the }
Port of Bombay, a statutory }
body, constituted under }
the Major Port Trust Act, 1963, }
having its registered office at }
“Vijay Deep”, Shoorji Vallabhdas }
Marg, Fort, Bombay 400 001 }
}
- 2) The Estate Officer of the }
Board of Trustees of the Port of }
Bombay, Appointed under the }
PPE Act, 1971; having office at }
Operation Service Centre, Auction }
Sale Hall, (East Wing), Opp. G.P.O., }
P D'mello Rd., Bombay 400 001 }
}
- 3) The State of Maharashtra }
through the Secretary Agricultural }
Dairy Development and Fisheries, }
Mantralaya, Bombay 400 051 }
}
- 4) Commissioner of Fisheries }
Administrative Building, 2nd floor }
Near Dr. Babasaheb Ambedkar }
Udyan, Government Colony, }
Bandra (E), Mumbai – 400 051 }
}
- 5) The Maharashtra Fisheries }
Development Corporation Ltd. }

a Government of Maharashtra }
Undertaking, N.K.M. International }
House, 3rd floor, 178, Backbay }
Reclamation, Babhulbai M. Chinai }
Marg, Mumbai – 400 020 } Respondents

WITH
WRIT PETITION NO. 3194 OF 2014

Ishwar Choudhary, }
Indian Inhabitant of Bombay, }
Aged – 68 years, Occupation }
Business, Proprietor of M/s. }
Sissions Fisheries carrying on }
business from 158, BPT Godown }
Sassoon Dock Estate Colaba }
Bombay 400 005 } Petitioner

versus

- 1) The Board of Trustees of the }
Port of Bombay, a statutory }
body, constituted under }
the Major Port Trust Act, 1963, }
having its registered office at }
“Vijay Deep”, Shoorji Vallabhadas }
Marg, Fort, Bombay 400 001 }
}
- 2) The Estate Officer of the }
Board of Trustees of the Port of }
Bombay, Appointed under the }
PPE Act, 1971; having office at }
Operation Service Centre, Auction }
Sale Hall, (East Wing), Opp. G.P.O., }
P D'mello Rd., Bombay 400 001 }
}
- 3) The State of Maharashtra }
through the Secretary Agricultural }
Dairy Development and Fisheries, }
Mantralaya, Bombay 400 051 }

4) Commissioner of Fisheries }
Administrative Building, 2nd floor }
Near Dr. Babasaheb Ambedkar }
Udyan, Government Colony, }
Bandra (E), Mumbai – 400 051 }
}
5) The Maharashtra Fisheries }
Development Corporation Ltd. }
a Government of Maharashtra }
Undertaking, N.K.M. International }
House, 3rd floor, 178, Backbay }
Reclamation, Babhulbai M. Chinai }
Marg, Mumbai – 400 020 } Respondents

WITH
WRIT PETITION NO. 3195 OF 2014

Intiaz Shroff, }
Indian Muslim Inhabitant of }
Bombay, Aged 51 years, }
Occupation – Business, Proprietor }
of M/s. Indian Sea Food }
Corporation, Carrying on business }
from 158, BPT Godown, Sassoon }
Dock Estate Colaba, }
Bombay 400 005 } Petitioner

versus

1) The Board of Trustees of the }
Port of Bombay, a statutory }
body, constituted under }
the Major Port Trust Act, 1963, }
having its registered office at }
“Vijay Deep”, Shoorji Vallabhdas }
Marg, Fort, Bombay 400 001 }
}
2) The Estate Officer of the }
Board of Trustees of the Port of }
Bombay, Appointed under the }
PPE Act, 1971; having office at }
Operation Service Centre, Auction }

Sale Hall, (East Wing), Opp. G.P.O., }
P D'mello Rd., Bombay 400 001 }
}
3) The State of Maharashtra }
through the Secretary Agricultural }
Dairy Development and Fisheries, }
Mantralaya, Bombay 400 051 }

4) Commissioner of Fisheries }
Administrative Building, 2nd floor }
Near Dr. Babasaheb Ambedkar }
Udyan, Government Colony, }
Bandra (E), Mumbai – 400 051 }
}
5) The Maharashtra Fisheries }
Development Corporation Ltd. }
a Government of Maharashtra }
Undertaking, N.K.M. International }
House, 3rd floor, 178, Backbay }
Reclamation, Babhulbai M. Chinai }
Marg, Mumbai – 400 020 } Respondents

Mr. Bhupesh V. Samant for the Petitioners
in WP/3181/2014 and WP/3182/2014.

Mr. P. A. Sarwankar i/b. M/s. Sarwankar
and Co. for the Petitioners in
WP/3168/2014 to WP/3170/2014,
WP/3210/2014 and WP/3213/2014.

Mr. Viren B. Ashar with Mr. Ashok K. Goel
for the Petitioners in WP/3186/2014 to
WP/3195/2014.

Mr. U. J. Makhija with Mr. Rakesh Singh
i/b. M/s. M. V. Kini and Co. for Respondent
No. 1 (B.P.T.).

Mr. R. M. Patne AGP for Respondent Nos. 3
and 4 (State).

CORAM :- R. M. SAVANT, J.
DATED :- JULY 24, 2014

ORAL JUDGMENT:-

Rule in all the Petitions, with the consent of the learned Counsel appearing for the parties, made returnable forthwith and heard.

2) The above Writ Petitions arise out of the orders both dated 3rd February, 2014, passed by the learned Judge of the City Civil Court, Mumbai.

3) The above group of Petitions are divided in to two groups of Petitions. One group consisting of 10 matters being Writ Petition No. 3181 of 2014 (lead matter) and others and the other group of 7 matters being Writ Petition No. 3182 of 2014 (lead matter) and others.

The group consisting of 10 matters concerns eviction proceedings being Case Nos. EO/E (49) (49A) (49B) (49C) in respect of premises being Godown No. 1773 being Writ Petition No. 3181 of 2014, Writ Petition Nos. 3168 of 2014 to 3170 of 2014, Writ Petition No. 3210 of 2014, Writ Petition No. 3213 of 2014, and Writ Petition Nos. 3186 of 2014 to Writ Petition No. 3189 of 2014.

The other group of 7 matters concerns eviction proceedings being Case Nos. EO/E (50) (50A) (50B) (50C) in respect of premises Godown

No. 158 being Writ Petition No. 3182 of 2014 and Writ Petition No. 3190 of 2014 to Writ Petition No. 3195 of 2014.

The Petitioners in all the above Petitions would be referred to as per their status in the Eviction Petitions namely as original Respondent Nos. 5 to 8 and 9 to 16.

Though two separate orders dated 3rd February, 2014 have been passed by the learned Judge of the City Civil Court, Mumbai, the orders are similar in content, as the facts are almost identical, in view of the fact that the proceedings are under the Public Premises (eviction of unauthorised occupants) Act, 1971 (hereinafter referred to as “the said Act” for short). By the said orders, the learned Judge of the City Civil Court has confirmed the orders passed by the Estate Officer both dated 7th December, 2009 in Case Nos. EO/E(49)(49A)(49B)(49C) of 1999 (for short “Eviction Petition No. 49 of 1999) and Case Nos. EO/E(50)(50A)(50B)(50C) of 1999 (for short “Eviction Petition No. 50 of 1999) filed by the Respondent No. 1 herein (for short “BPT”). However, insofar as Eviction Petition No. 49 of 1999 is concerned, a corrigendum came to be issued to the said order dated 7th December, 2009 on the next day i.e. 8th December, 2009, by which, a statement of the calculation of damages was incorporated in the main order. Insofar as the order passed in Petition No. 50 of 1999 is concerned, there was no such corrigendum issued.

4) By the said orders passed by the Estate Officer, the Estate Officer has ordered the eviction of the Respondent Nos. 5 to 8 and 9 to 16 from the premises in question. In the context of the challenge which is raised in the above Petitions, it would be relevant to note at this stage that insofar as the aspect of quantum of damages is concerned, the Lower Appellate Court has remanded the matter back to the Estate Officer for the limited issue of calculation of damages by following the procedure which is mentioned in the operative part of the impugned order dated 3rd February, 2014, which, for the sake of ready reference, is reproduced herein under:

“ORDER

1. The Appeal Nos. 252/09 to 255/09, 258/09 to 262/09 and 265/09 are partly allowed.
2. The order passed by the Estate Officer on 7/12/2009 in **CASE NO. EO/E(49)(49A)(49B)(49C) OF 1999** is maintained so far as the eviction, vacation and handing over of the premises of BPT is concerned.
3. However, the matters are remanded to the Estate Officer for deciding the limited point of calculation of damages.
4. The Ld. Estate Officer is directed to issue notice to both the parties and to grant opportunity to both of them afresh for hearing on the issue of calculation of damages and then to pass appropriate order of damages according to law within a period of Six months from the date of this order.
5. The Appeal Nos. 252/09, 258/09 to 262/09 and 265/09 are disposed off accordingly.”

FACTUAL MATRIX:

5) The premises in question involved in the above proceedings

are two godowns being No. 1773, which is in contention in the group of 10 Writ Petitions and godown No. 158, which is in contention in the group of 7 Petitions. The said godowns admeasure 29,277 square feet and 1184.42 square meters respectively. The Respondent No. 1 herein is a Port Trust constituted under Section 3 of the Major Port Trust Act. The Port of Bombay is the predecessor of the present BPT. The BPT, by an indenture of lease dated 24th December, 1952, executed by the Trustees of the Port of Bombay, leased out, in the Sassoon Dock Estate, an area of 29,277 square feet (concerning godown No. 1773), to the Union of India, which was the Respondent No. 1 in the Petitions before the Estate Officer. The purpose mentioned in the lease was for running an Ice Factory and Cold Storage. The covenants in the lease deed cover the relationship between the Lessor and the Lessee. The godown No. 1773 are the premises which were covered by the lease deed and the lease period initially was from 1st December, 1948 to 30th November, 1968. It appears that before the expiry of the lease, the Union of India transferred the Quick Freezing Plant, Cold Storage and the Ice Factory to the State Government, which was the Respondent No. 2 before the Estate Officer and a request was made to the BPT for assignment of the premises to the Director of Fisheries, Government of Maharashtra. However, the said assignment did not fructify, as the lease, by then, expired. It appears that the Director of Fisheries, Government of

Maharashtra applied for renewal of the lease and the BPT informed the terms of renewal. In the interregnum, it appears that on the establishment of the Maharashtra Fisheries Development Corporation (for short “the MFDC:), the activities carried out by the Director of Fisheries were transferred to the said Corporation and in view thereof, the terms and conditions, on the basis of which the lease was to be renewed, were accepted by the MFDC. The renewal was granted for a period of 21 years on the same terms and conditions as the original lease. Since the premises were transferred to the State of Maharashtra by the Union of India, the State of Maharashtra accepted the offer made by the BPT for renewal of the lease on the revised terms. It appears that though the terms for renewal were accepted, the payments were not made and therefore the BPT could not obtain the approval from its Board of Trustees. It appears that the premises came to be handed over by the Director of Fisheries to the MFDC in August, 1973 and the MFDC, in turn, without prior permission of the BPT, handed over the premises to the Maharashtra Rajya Machhimar Sahakari Sangh Ltd. (for short “the MRMSS”) on 1st November, 1976. The said MRMSS continued to be in occupation of the premises till 1985 and returned the premises to the MFDC on 1st July, 1985.

6) Insofar as the godown No. 158 is concerned, it appears that the same was let out on a monthly tenancy basis to the MFDC. Insofar as Godown No. 1773 is concerned, after the lease had come to an end, the Respondents, including the MFDC, can be said to be tenants holding over within the meaning of Transfer of Property Act. It appears that the gamut of inspecting the premises from time to time was followed by the BPT and this resulted in a notice of termination of tenancy being issued by the BPT through its Advocate on 22nd December, 1995 addressed to the original Respondent Nos. 1 to 4 that is the Union of India, State of Maharashtra, Director of Fisheries and to MFDC. The notice was founded on three fold grounds namely that the Respondent No. 4 i.e. the MFDC has caused various unauthorised constructions, has unlawfully sublet the premises to different parties and is in arrears of rent. The said notice dated 22nd December, 1995 was replied to on behalf of the MFDC vide letter dated 8th February, 1996 of its Advocate. The MFDC, in its reply, stated that the parties have been allotted the space in the godown No. 1773 and have been carrying out their work since then. The MFDC accepted the fact that it was in arrears of rent from 1st July, 1985 to 31st December, 1995. However, it was contended in the reply that after the funds are made available by the State Government to the MFDC, the MFDC would be ready and willing to pay the arrears of rent. The said notice dated 22nd December, 1995 was

followed by a subsequent notice dated 21st May, 1998. It has been mentioned in the said notice that the same has been issued without prejudice to the earlier notice.

7) Since in the aftermath of the said notice the situation did not change, the BPT filed Petitions being Petition No. 49 of 1999 in respect of godown No. 1773 and Petition No. 50 of 1999 in respect of godown No. 158. The said Petitions were for eviction and for claiming damages. The substratum of the said Petitions was the case of the BPT in the said two notices of termination namely the three grounds which were mentioned in the notices which have been adverted to in the earlier part of this order. In the said Petitions, the factum of the termination of the tenancy by the said notices was averred. It was further averred that after the expiry of the notice period, the Respondents are unauthorised occupants and the reliefs were sought in the said Petitions on the basis of the identical grounds i.e. grounds 'A' to 'C' in Petition No. 49 of 1999, which grounds were identical to the grounds mentioned in the notices. The said Petitions contain the schedule of the property in respect of which eviction was sought of the Respondents namely godown No. 1773 and godown No. 158 respectively. The Estate Officer, upon the filing of the Petitions and finding that a prima facie case for issuance of notice under the Public

Premises Eviction Act was made out, issued notice to the Respondents, who were the Union of India, the State of Maharashtra, the Director of Fisheries and the MFDC, who were arrayed as Respondent Nos. 1 to 4 to the said Petitions. The said notices were under Section 4 and Section 7 of the said Act. Insofar as the notice issued under Section 4 is concerned, the ground on which the eviction were sought were made the focus of the said notices asking the addressee to show cause against the said ground and insofar as the notice under Section 7 is concerned, the same contain the claim for damages on the basis that the respondents had become unauthorised occupants.

8) After the Petitions were filed before the Estate Officer and the notices being issued by the Estate Officer under Section 4 and Section 7 of the said Act, the original Respondent Nos. 5 to 8 before the Estate Officer i.e. the Petitioners in Writ Petition Nos. 3189 of 2014, 3186 of 2014, 3188 of 2014, 3187 of 2014 applied for their impleadment in the said Petition No. 49 of 1999. Insofar as Eviction Petition No. 50 of 1999 is concerned, the original Respondent Nos. 4 to 11 had filed applications, which were allowed and they accordingly were joined as party Respondents being 4 to 11 to the said Eviction Petition. Insofar as original Respondent Nos. 9 to 16 are concerned, they were joined at the behest of the BPT. However, out of the said

Respondents, only 5 have filed Writ Petitions, which are Writ Petition Nos. 3169 of 2014, 3168 of 2014, 3210 of 2014, 3170 of 2014 and 3213 of 2014. Insofar as the said applicants are concerned, one Sonia Fisheries can be treated as the lead applicant (Petitioner in Writ Petition No. 3186 of 2014). The applications filed by the Respondent Nos. 5 to 8 were identical. It was averred in the said applications that they are in occupation of the galas of the said BPT godown No. 1773 since the year 1977, that they have been put in possession by the Government of Maharashtra and have since being carrying out their business. Insofar as Sonia Fisheries is concerned, it has been averred by it in the application that it has been paying rent of Rs. 14837/- per month to the MFDC. It was further averred that any order that would be passed in the proceedings initiated against the Respondent Nos. 1 to 4 would prejudicially affect them and therefore the applicants should be heard before any order is passed by the Estate Officer. The said applications filed by the Respondent Nos. 5 to 8 were allowed by the Estate Officer by order dated 10th October, 2000 and the said parties were impleaded as party Respondent Nos. 5 to 8 to the Petition No. 49 of 1999. In view of the fact that the Respondent Nos. 5 to 8 were impleaded, the BPT filed applications for impleadment of the Respondent Nos. 9 to 16 before the Estate Officer. The said application of the BPT was also allowed by the Estate Officer and accordingly the Respondent Nos. 9 to

16 were impleaded as party Respondents to the Eviction Petition Nos. 49 of 1999 and 50 of 1999.

9) The MFDC filed its Written Statement in the said two Eviction Petitions, which Written Statement is dated 21st December, 1999. It is pertinent to note that the MFDC in its Written Statement accepted the fact that the Ice Factory, Cold Storage and Quick Freezing Plant were transferred to the MRMSS by the order dated 29th July, 1976 passed by the Government of Maharashtra and that the said assets were again transferred back to the MFDC by the order dated 1st July, 1985. It has further been averred by the MFDC that minor internal adjustments in the premises were made as per the business requirements. It is averred that the same has been done without structurally affecting the premises and therefore the same does not constitute an unauthorised work or construction. Insofar as the case of the BPT about arrears of rent is concerned, the MFDC has averred that it has remained in arrears from 1st July, 1985 due to its poor financial condition. It is further averred that the MFDC paid some rent in 1998 and by letter dated 26th March, 1999 expressed its readiness and willingness to pay rent in installments. Hence, the fact that some alterations were done in the leased premises was admitted by the MFDC as also the fact that the Cold Storage, Ice factory and Quick Freezing Plant were handed over to

the MRMSS as also the factum that the MFDC was in arrears was admitted.

10) Insofar as the newly added Respondents is concerned, as indicated above, the replies were identical. A reference could be made to the reply of the said Sonia Fisheries (who is the Petitioner in Writ Petition No. 3186 of 2014). The said Sonia Fisheries took a stand that the relief sought by way of possession on account of subletting is barred by limitation. It was further averred by the said Sonia Fisheries that the BPT has waived the right to claim possession. Insofar as the additions and alterations are concerned, the said allegation was sought to be dealt with by contending that the infrastructure is provided for storage of marine products and water products. It was lastly averred that the notice has not been given to the Respondent Nos. 1 to 4 under Section 80 and that no notice has been given to the Respondents meaning thereby that the proceedings have been initiated under the said Act without notice being issued to the Respondent Nos. 1 to 4 as well as the applicant. The said Sonia Fisheries reiterated that it is paying Rs.14837/- per month to the MFDC.

11) In the background of the aforesaid pleadings, the Estate Officer framed as many as 18 issues. Amongst the issues and considering the challenge which is raised in the above Petition, the core

issues, in my view, would be issue numbers 1, 3, 4, 7, 8 and 9, which, for the sake of ready reference, are reproduced herein under:-

“ISSUES

1. Do the Petitioners prove that the premises in Petition are public premises?

2.

3. Do the Petitioners prove that the Respondent No. 4 and/or 4 unlawfully sublet or unlawfully parted with the premises in Petition in favour of Maharashtra Rajya Machhimar Sahakari Sangh Ltd. without prior permission of the Petitioners as alleged in paras 7 and 16 of the Petition?

4. Do the Petitioners prove that the Respondent No. 4 unauthorisedly allowed/used freezing tunnel into peeling shed and also allowed/constructed unauthorised cabins at the first floor level without the permission of the Petitioners?

.....

7. Do the Petitioners prove that the tenancy/holding over of Respondents No. 1, 2, 3 & 4 in respect of premises in Petition has been duly terminated by service of notice dated 21st May, 1988?

8. Do the Respondents No. 5 to 16 who have been joined in the above Petition prove that they have any right of any nature whatsoever in the premises in the Petition or any part thereof?

9. Do the Respondent No. 4 prove that the provisions of Bombay Rent Act are applicable to the premises in Petition?”

12) The parties adduced evidence in assertion of their respective cases. The witnesses of the BPT were cross examined on behalf of the newly added Respondents as also the MFDC, by their learned Counsel. The Estate Officer has recorded a finding on each of the said core issues. Insofar as the issue No. 1 is concerned, the Estate

Officer has recorded a finding that it is proved that the premises in question are public premises and that the MFDC has failed to prove that the provisions of the Bombay Rent Act are applicable to the premises in question. Insofar as the issue No. 3 is concerned, the Estate Officer, on a consideration of the material on record, held that the BPT has proved that the Respondent Nos. 3 and 4 have unlawfully sublet or unlawfully parted with the premises in favour of the MRMSS Limited without prior permission of the BPT. Insofar as the issue No. 7 is concerned, the Estate Officer held that holding over of the tenancy by the Respondent Nos. 1 to 4 has been duly terminated by the notice dated 21st May, 1998. Insofar as the issue No. 8 is concerned, the Estate Officer held that the Respondent Nos. 5 to 16, who were later on joined in the said Petition have failed to prove that they have any right in the premises covered by the said Eviction Petition No. 49 of 1999 or 50 of 1999. Insofar as the issue No. 4 is concerned, the Estate Officer held that there was unauthorised conversion of the Freezing Tunnel into Peeling Shed and that the MFDC has allowed the unauthorised construction of the cabins on the first floor low level without the permission of the BPT. Since an issue of violation of principles of natural justice was sought to be put up before the Estate Officer on the ground that sufficient opportunity was not given to the added Respondents, the Estate Officer held that the principles of natural justice were followed through out the

proceedings and both the parties were given sufficient/adequate opportunity to present/prove their case. Since one of the added Respondent was a Co-operative Bank i.e. the original Respondent No. 9, the Estate Officer held that the said Respondent No. 9 is not entitled to the concession or protection in terms of the principle laid down in the case of *Jamshed H. Wadia vs. Board of Trustees, Port of Mumbai*¹ and that the Respondent No. 9 is also liable to be evicted under the provisions of the said Act. The Estate Officer accordingly passed an order of eviction against the Respondents in both the Eviction Petitions i.e. Petition No. 49 of 1999 and 50 of 1999 and also ordered the payment of damages under Section 7 of the said Act, which are mentioned in the operative part of his orders. Insofar as Petition No. 49 of 1999 is concerned, as mentioned herein above, the corrigendum to the said order was added on the next day i.e. 8th December, 2009 thereby a table of calculation of damages was incorporated in the original order dated 7th December, 2009.

13) The Respondents, aggrieved by the said orders both dated 7th December, 2009 and the corrigendum dated 8th December, 2009 issued in Petition No. 49 of 1999, filed Appeals under Section 9 of the said Act in the Bombay City Civil Court. The said Appeals were numbered as Misc. Appeal Nos. 252 of 2009, 255 of 2009, 258 of 2009,

1. AIR 2004 SC 1815

262 of 2009 and 265 of 2009 in Case No. 49 of 1999 and Misc. Appeal Nos. 27 of 2010 to 31 of 2010, 35 of 2010, 36 of 2010 and 38 of 2010 in Petition No. 50 of 1999. The said Appeals were disposed of by the learned Judge of the City Civil Court by Judgment and order dated 20th July, 2012 and an order of eviction as also payment of damages was passed. The said Judgment and order dated 20th July, 2012 passed by the learned Judge of the City Civil Court was challenged by the Petitioners herein by filing Writ Petitions in this Court. A learned Single of this Court held that the disposal of the Appeals was not in terms of the law laid down by the Apex Court in the case of *Santosh Hazari vs. Purshottam Tiwari*² and therefore, set aside the orders passed by the Appellate Court i.e. the learned Judge of the City Civil Court, Mumbai and remanded the matter back to the City Civil Court for a de-novo consideration of the said Appeals. It is on remand that the instant orders both dated 3rd February, 2014 dismissing the two sets of Appeals were passed by the learned Judge of the City Civil Court, Mumbai.

14) The Appellate Court, as can be seen from the impugned orders, had framed the following three issues, which are contained in paragraph No. 9 of its order. The same is reproduced hereinunder for the sake of ready reference:

² 2001 (2) Mh. L. J. 786

“9. From the rival pleadings of the parties, the following points arise for my consideration and determination;

- | | |
|---|-----------------------|
| 1) Do the appellants prove that the order passed by Estate Officer regarding eviction is bad in law and perverse and not enforceable? | IN THE
NEGATIVE |
| 2) Whether order passed by Estate officer regarding damages can be upheld? | IN THE
NEGATIVE |
| 3) Whether the impugned order needs to be set aside in appeal? | |
| 4) What Order? | As per final
order |

”

15) Hence, insofar as the first issue, which was framed by the Appellate Court, is concerned, the same encompasses within itself the three grounds on which the eviction of the Respondents was sought, as, undisputedly, the eviction has been passed by the Estate Officer by sustaining the three grounds on which the BPT was seeking the eviction of the Respondents. The gist of the reasoning of the Appellate Court, as can be seen from the impugned orders, is that the Estate Officer did not commit any error by arriving at a finding that the claim for damages is within limitation. Since the thrust of the challenge on behalf of the added Respondents i.e. the parties which are put in possession by the MFDC was on the violation of the principles of natural justice, which violation was sought to be buttressed by contending that a proper opportunity to cross-examine the witness was not given to the said Respondents as also the notice under Section 4 and Section 7 was not

served upon the Respondent Nos. 5 to 8. The Appellate Court negatived the said contention by observing that that said Respondent Nos. 5 to 8 had filed applications for impleadment, which applications were allowed and therefore, they were joined at their own request. The Appellate Court observed that the said Respondents had filed their Written Statements and cross-examined the witnesses of the BPT, without any objection as regards the non issuance of the said notices. The Appellate Court further observed that the Respondents had argued the matters and therefore, had fully participated in the proceedings. The Appellate Court further observed that the Respondents, by their conduct, have waived the notices and therefore, now cannot be heard to say that they have been prejudiced in any manner on account of the non issuance of the notices on them. Insofar as the said Respondent Nos. 5 to 8 and 9 to 16 are concerned, the Appellate Court further observed that the said Respondents have no privity of contract with the BPT and hence, it was not necessary to issue notice of termination of tenancy to them. The Appellate Court observed that the contention of the said Respondents that the proceeding have been vitiated for want of notices issued to them under Section 4 and Section 7 of the said Act was without any merit. The Appellate Court confirmed the findings of the Estate Officer that the Respondent Nos. 5 to 16 are in unauthorised occupation of the premises and that the Respondent Nos. 1 to 4, since

they continued to occupy the premises after the lease period is over, their possession is also unauthorised. The Appellate Court held that by converting the Freezing Tunnel into a Peeling Shed, there is a breach of the terms and conditions of the lease, that the handing over of the premises to the MRMSS was unauthorised subletting without the consent of the BPT. The Appellate Court took into consideration the evidence and the findings recorded by the Estate Officer and recorded a finding that the BPT has successfully established the case of unauthorised use of the suit premises so also the fact of material additions and alterations in the premises and that the Respondent No. 4 MFDC was in arrears of the occupation charges. The Appellate Court accordingly disposed of all the Appeals by the impugned Judgment and orders both dated 3rd February, 2014 and resultantly confirmed the orders of eviction passed by the Estate Officer.

16) Insofar as the aspect of damages is concerned, the finding of the Estate Officer that the BPT is entitled to recover damages has been confirmed by the Appellate Court, however, as indicated above, only insofar as the issue of calculation of damages is concerned, that matter has been relegated back to the Estate Officer for the said purpose. The reason for the same was that the Appellate Court found fault with the Estate Officer in sou motu modifying the monetary relief,

which was granted to the BPT. The Appellate Court also found fault with the Estate Officer in not issuing notice to the Respondents and not giving them opportunity insofar as the calculation of damages is concerned and hence, for the said limited purpose that the matter was relegated back to the Estate Officer for a de-novo consideration.

17) Heard the learned Counsel appearing for the parties i.e. Mr. Bhupesh V. Samant for the Petitioners in WP/3181/2014 and WP/3182/2014, Mr. P. A. Sarwankar for the Petitioners in WP/3168/2014 to WP/3170/2014, WP/3210/2014 and WP/3213/2014, Mr. Viren B. Ashar for the Petitioners in WP/3186/2014 to WP/3195/2014, Mr. U. J. Makhija for Respondent No. 1 (B.PT.) and Mr. R. M. Patne AGP for Respondent Nos. 3 and 4 (State). The Writ Petition Nos. 3181 of 2014, Writ Petition No. 3186 of 2014, Writ Petition No. 3168 of 2014 are treated as lead matters insofar as the submissions of the learned Counsel are concerned, as they are also appearing in the identical companion matters.

SUBMISSIONS OF SHRI. B. V. SAMANT:

18) (i) That the Appellate Court has not recorded a finding as to whether the findings or conclusions arrived at by the Estate Officer are sustainable and that the Appellate Court has not considered the material on record.

(ii) That the ground of subletting in the matter of handing over possession to the MRMSS could not be invoked as the MRMSS had handed over the premises back to MFDC in the year 1985 and the termination of tenancy was much thereafter in the year 1995.

(iii) That the Estate Officer has wrongly come to a conclusion that there were additions and alterations, when in fact minor alterations were made for business exigencies.

(iv) That the BPT in the guise of claiming damages are in fact claiming rent going back beyond three years anterior to the filing of the Eviction Petitions, which it was not entitled to do so. Reliance was sought to be placed on the Judgment of a learned Single Judge of this Court in the matter of *The Controller of Aerodrome, Nagpur Airport, Nagpur vs. Homi D. Jahangir and Anr.*³

(v) That the ground of arrears of rent is not sustainable as is well settled that the said ground is not available if the tenant deposits the rent in the Court insofar as the provisions covered by the Rent Act are concerned and in the instant case, some payment was made up to the year 1998.

(vi) That under the Public Premises Act, the State cannot seek eviction on whimsical, unreasonable or untenable grounds.

³ 1987(3) Bom. C. R. 565

Reliance is sought to be placed on the Judgment of the Apex Court in the matter of *Jamshed Hormusji Wadia vs. Board of Trustees, Port of Mumbai*⁴

SUBMISSIONS OF SHRI. V. B. ASHAR:

19) (i) That the proceedings are vitiated against the original Respondent Nos. 5 to 8, as notice under Section 4 or Section 7 has not been issued to the said Respondents. The said notice is a sine qua non for proceeding against a party, seeking its eviction under the said Act. In support of the said contention, reliance is sought to be placed on the Judgment of learned Single Judge of this Court in the matter of *Mine Manager, Manganese Ore (India) Ltd. and Anr. vs. Shyam s/o. Kunjilal Yadav*⁵ and the Judgment of the Apex Court in the case of *Wire-Netting Stores and Anr. vs. The Delhi Development Authority and Ors*⁶.

(ii) That issuance of the notice under Section 4 of the said Act is mandatory and that Section 4 and 5 of the said Act have to be read harmoniously. In support of the said contention, reliance was sought to be placed on the Judgment of the Apex Court in the matter of *Minoo Framroze Balsara vs. The Union of India*⁷ and *New India Assurance Co. Ltd. vs. Nusli Neville Wadia*⁸.

4 (2004) 3 SCC 214

5 2002(3) Mh. L. J. 917

6 1969(3) SCC 415

7 AIR 1992 Bom. 375

8 (2008) 3 SCC 279

(iii) That the Estate Officer as well as the Appellate Court have erred in recording a finding that there is waiver on the part of the said Respondent Nos. 5 to 8 in the matter of issuance of notices under Section 4 and Section 7 of the said Act when no such case has been pleaded by the BPT. In support of the said contention, reliance was sought to be placed on the Judgment of the Apex Court in the matters of *M/s. Motilal Padampat Sugar Mills Co. Ltd. vs. State of Uttar Pradesh and Ors.*⁹, *State Bank of Patiala vs. S. K. Sharma*¹⁰ and *Rajendra Singh vs. State of Madhya Pradesh*¹¹.

(iv) That the Estate Officer as well as the Appellate Court failed to appreciate that the BPT, in the guise of recovering damages, was in fact seeking to recover arrears of rent, which were barred by limitation. In support of the said contention, reliance was placed on the Judgment of the Apex Court in the matter of *New Delhi Municipal Committee vs. Kalu Ram and Anr.*¹²

SUBMISSIONS OF SHRI. P. A. SARWANKAR:

20) The learned Counsel Shri. Sarwankar adopted the submissions of both Shri. Samant and Shri. Ashar and would additionally contend that though the Respondents represented by him i.e. the Petitioners in Writ Petition Nos. 3168 of 2014 to 3170 of 2014,

9 (1979) 2 SCC 409

10 (1996) 3 SCC 364

11 1996(5) SCC 460

12 1976(3) SCC 407

3210 of 2014 and 3213 of 2014 were joined at the behest of the BPT, nevertheless notices were issued under Section 4 and Section 7 of the said Act to the said Respondents, but the same was not done insofar as the Respondent Nos. 5 and 8 are concerned. The learned Counsel would therefore contend that the said aspect would have to be considered by this Court.

(PER CONTRA)

SUBMISSIONS OF SHRI. U. J. MAKHIJA:

21) (i) That having regard to the covenants/stipulations in the lease deed dated 1952, the facts of the instant cases disclose that there is breach of the said terms and conditions of the lease deed in the matter of handing over possession to the MRMSS as well as to the Respondent Nos. 5 to 16 as also in the matter of carrying out additions and alterations in the structure of the godowns. The learned Counsel sought to place reliance on the relevant clauses of the lease deed being clause 17, 18 and Clause 7(1).

(ii) That the pleadings of the MFDC as also the Respondents, wherein the pleadings of Sonia Fisheries is treated as the lead pleadings, ex-facie disclose the admission on the part of the MFDC of handing over possession to the MRMSS, the additions and alterations being carried out in the premises by way of cabins being constructed and the Freezing Tunnel being converted into a Peeling Shed.

(iii) That there is also admission in the pleadings that the MFDC is in arrears of rent.

(iv) That the pleadings of the Respondent Nos. 5 to 16 disclose that they are in possession since 1977 of the cabins/galas, which have been created in the godowns.

(v) That the Estate Officer has recorded findings of fact on all the issues, which have been framed by the Appellate Court.

(vi) That insofar as the case of the Respondents that in the guise of seeking to recover damages in fact arrears of rent anterior to three years to the filing of the Petitions are sought to be recovered can be urged before the Estate Officer, as the matter in respect of the calculation of damages has been remanded back to the Estate Officer for a de-novo consideration.

(vii) That insofar as the violation of the principles of natural justice are concerned, the Respondent Nos. 5 to 16 have fully participated in the proceedings and have never made any grievance about the non issuance of notice to them under Section 4 and Section 7 of the said Act, that having joined and participated at their own behest and having participated in the proceedings by filing their Written Statements, cross-examining the witnesses of the BPT, the Respondent

Nos. 5 to 8 by their conduct can be said to have waived the notices under Section 4 and Section 7 of the said Act.

(viii) Insofar as the case of violation of the principles of natural justice is concerned, the test laid down by the Apex Court is as regards the “prejudice” caused to the party. The Respondents had to prove the prejudice caused to them on account of non issuance of the notices. In support of the said contention, the learned Counsel placed reliance on the Judgment of the Apex Court in the case of *Aligarh Muslim University and Ors. vs. Mansoor Ali Khan*¹³, the Judgment of the Apex Court in the case of *Haryana Financial Corporation and Anr. vs. Kailash Chandra Ahuja*¹⁴

(ix) That the tenancy of the MFDC has been validly terminated as no reasons are required to be given for termination of the tenancy under Section 106 of the Transfer of Property Act. Reliance is placed on the order passed by a Division Bench of this Court dated 23rd January, 2002 in the case of *Maharashtra Small Scale Industries Development Corporation Ltd. vs. Bombay Port Trust and Ors.*¹⁵.

(x) That the learned Counsel lastly contended that in the facts and circumstances of the case, wherein the Estate Officer has

13 (2000) 7 SCC 529

14 (2008) 9 SCC 31

15 WP/6216/2001

passed an elaborate order which has been confirmed by the Appellate Court, this Court may not exercise its Writ Jurisdiction under Article 227 of the Constitution of India.

CONSIDERATION:

22) Having heard the learned Counsel appearing for the parties, I have considered the rival contentions.

Since the proceedings are founded on the three grounds, on which the notice for termination was given in the year 1995, followed by the fresh notice issued in the year 1998, it would be relevant to refer to the clauses of the lease deed, attention to which was drawn by the learned Counsel Shri. Makhija appearing for the BPT. The said relevant clauses are as follows:

“
(17) The said Lessee shall during this demise give notice within one calendar month after execution thereof of any instrument of mortgage by the Lessee of the said premises or any part thereof whether by way of under-lease or assignment AND shall not otherwise underlet sublet or assign the said premises or any part thereof without the consent in writing of the Trustees first obtained to such underletting subletting or assignment and every instrument of mortgage or assignment as aforesaid shall within one calendar month after the date of registration thereof by the Registrar of Assurances be left at the office of the Trustees in order that the same may be registered in their books AND in case the Trustees shall deem it necessary or advisable to take legal advise as to whether such instrument should be registered then the Lessee shall forthwith on demand pay the Trustees all costs which they may incur in or about obtaining such advice as aforesaid PROVIDED ALWAYS that the registration of any instrument of mortgage as aforesaid shall not be construed as implying the

consent or approval of the Trustees to anything contained therein.

(18) At the expiration or sooner determination of the said term quietly to deliver up to the Trustees the said godowns with the interior thereof and all fixtures and fittings appurtenant thereto in good and tenantable repair and condition.

.....
(7) THE FOLLOWING ARE AGREED AND DECLARED TO BE CONDITIONS OF THE GRANT AND ENJOYMENT OF THIS LEASE:-

(1) This lease is granted upon the condition that the Lessee shall duly observe and perform all the covenants and agreements herein contained and on the part of the Lessee to be observed and performed and that if and whenever there shall be a breach of this condition so that any part of the rent hereby reserved shall be in arrears for the space of thirty days (whether the same shall have been legally or formally demanded or not) or if and whenever there shall be a breach of this condition by the Lessee so far as it relates to the observance and performance of the covenants and agreements by the Lessee herein contained whether as regards the said premises or otherwise (other than the covenant for payment of rent) or if the said premises shall become liable to be alienated by any operation of law except with the consent of the Trustees may upon the said premises or any part in the name of the whole and immediately thereupon this Lease and all rights of the Lessee hereunder shall absolutely determine PROVIDED NEVERTHELESS that such re-entry or determination shall not discharge the Lessee from liability for any arrears of rent due or accruing due at the time of such re-entry or for or on account of any previous breach of any of the covenants herein contained. **(emphasis supplied)**

.....”

23) It is in the context of the said clauses that the averments in the pleadings of the parties, especially those of the MFDC and the Respondent Nos. 5 to 16 especially of the Sonia Fisheries would have to be taken into consideration. The said averments have already been adverted to herein above. The said averments therefore ex-facie

disclose that the MFDC has in terms accepted the fact that it has handed over possession to the MRMSS in the year 1976 albeit in view of the order passed by the State Government directing it to do so. It is also an admitted fact that the possession has been returned to the MFDC in the year 1985. The MFDC has also, in its pleadings, though not directly, but can be said to have, accepted the fact that certain alterations have been carried out in the premises, which were leased out to it. The same is sought to be justified on the ground that the same were required for business exigencies. The fact that it was in arrears of rent has also been accepted by the MFDC, as there is a statement in its Written Statement that it is in dire financial straits and that it has taken up the matter with the State Government and once the State Government makes the funds available, then it would make the payment of the arrears of rent and therefore, has sought the indulgence of the BPT.

Insofar as the said Sonia Fisheries is concerned, as indicated above, it is pleaded that it is in occupation of some galas since the year 1977 and has also contended that the case of the BPT for eviction of the Respondents on the ground of subletting is barred by limitation. Implicit in the said statement is acceptance of the fact that it is in possession of the galas in the premises in question without the permission or authority of the BPT. The fact that the said Respondent Nos. 5 to 16 were in occupation of the galas/cabins is therefore

accepted. Hence, even the pleadings taken independently ex-facie disclose that the terms of the lease were breached and violated by the MFDC.

24) As indicated above, the parties led evidence before the Estate Officer, and the Respondent Nos. 5 to 16, as the record discloses, were given an opportunity to put forward their case as also the opportunity to cross-examine the witnesses of the BPT. The Estate Officer adverted to the statements which are appearing in the evidence, however, it is not necessary for this Court to advert to the said statements. Suffice it to state that it is on the basis of the material on record that the Estate Officer has recorded findings on the issues and especially the core issues which I have adverted to in the earlier part of this order. The said findings of the Estate Officer as regards the said core issues were encompassed within the issue No. 1, which was framed by the Appellate Court and the Appellate Court, as can be seen, has recorded an affirmative finding insofar as the said issue No. 1 is concerned. In so recording the finding, the Appellate Court has considered the case of the BPT as also the case of the Respondents i.e. MFDC and the Respondent Nos. 5 to 16 and has thereafter confirmed the finding of the Estate Officer. The findings which can be said to be findings of fact recorded by the Estate Officer are therefore confirmed

by the Appellate Court. Though it is well settled that before the Appellate Court the entire matter is open for consideration, but one will have to bear in mind that the instant proceedings are the proceedings under the Public Premises (eviction of unauthorised occupants) Act, 1971, adopted for eviction of unauthorised occupants. In the said context therefore the order passed by the Appellate Court, confirming the findings of the Estate Officer, cannot be said to be suffering from any illegality or infirmity. The view taken by the Appellate Court as regards the eviction of the Respondents cannot be said to be a view which could not have been taken in the facts and circumstances of the case. It therefore cannot be said that the BPT has acted unreasonably or unfairly in the matter of seeking the eviction of the Respondents or that with a view to profiteer that the BPT is seeking their eviction. This is insofar as the aspect of the eviction of the MFDC and the Respondent Nos. 5 to 16 i.e. the Petitioners herein in the above Petitions is concerned.

25) Since the impugned orders are sought to be assailed on the ground that the notices under Section 4 and Section 7 of the said Act were not issued to the Respondent Nos. 5 to 8 and the notice under Section 7 to the Respondent Nos.9 to 16, and thereby the principles of natural justice have been violated as also the proceedings having been

vitiated on the said ground, it would be necessary to address the said grievance.

As indicated above, it is an undisputed position in view of the Respondents' own statement that they have come in possession of the premises in the year 1977. At least that is the case of the said Sonia Fisheries, which has been pleaded by it in the initial application for impleadment filed by it. The Estate Officer has recorded a finding that since there is no privity of contract between the BPT and the said Respondent Nos. 5 to 8, there was no necessity to issue them a notice of termination of tenancy as contemplated by Section 106 of the Transfer of Property Act the said contention was reiterated on behalf of the Respondent Nos. 5 to 16. The Estate Officer has also recorded a finding that the said Respondent Nos. 5 to 16 are in unauthorised occupation, as they have no permission or authority from the BPT to come in possession and therefore there was no necessity to issue them the notice under Section 106 of the Transfer of Property Act.

26) Insofar as the issuance of notice under Section 4 and Section 7 of the said Act is concerned, a reference is required to be made to the averments of the Sonia Fisheries in its Written Statement. In paragraph 11 of the said Written Statement, it has been averred by the said Sonia Fisheries that a notice under Section 80 of the Civil Procedure Code was not issued to the Respondent Nos. 1 to 4 i.e. the

governmental authorities, and towards the end of the paragraph, it has been mentioned that no notice has also been issued to it. The said Sonia Fisheries has therefore not explicitly mentioned that the notices under Section 4 and Section 7 of the said Act have not been issued to it and if the earlier part of the said paragraph is read along with the later part of the said paragraph, the meaning that could be attached to the word 'notice', which is appearing in the latter part, would be that a notice prior to the filing of the Eviction Petitions before the Estate Officer and therefore cannot be referable to the notices to be issued under Section 4 and Section 7 of the said Act. Be that as it may, it is an undisputed position that it is on the individual applications of the Respondent Nos. 5 to 8 that they were impleaded in the eviction proceedings i.e. Petition Nos. 49 of 1999 and 50 of 1999. The said Respondents have filed their detailed Written Statements, wherein, the averments made in their applications for impleadment were replicated. The said Respondents have also cross-examined the witnesses of the BPT and have also led evidence in the eviction proceedings. The record does not disclose that any grievance was made as regards the fact that no notices under Section 4 and Section 7 have been issued on the said Respondent Nos. 5 to 8 (insofar as the Respondent Nos. 9 to 16 are concerned, notice under Section 4 was issued to them after they were impleaded at the behest of the BPT). The Appellate Court, as indicated

above, has recorded a finding that the said Respondent Nos. 5 to 8 have participated in the proceedings without making any grievance that the notices under Section 4 and Section 7 have not been issued and therefore there is no substance in their said grievance.

27) Now, coming to the Judgments cited by the learned Counsel appearing for the Petitioners Shri. Asher, in the matter of *Mine Manager Manganese Ore (India) Ltd. and Anr.* (supra), a learned Single Judge of this Court held that issuance of a proper notice to show cause to the occupant is mandatory requirement of statute. The learned Single Judge, in the said case found that the show cause notice was fundamentally flawed and therefore set aside the eviction proceedings.

Insofar as the Judgment in *M/s. Wire-Netting Stores and Anr.* (supra), the Apex Court held that only after the procedure under Section 4 is followed that the eviction of the unauthorised occupants under Section 5 can take place. In the said case, the Apex Court found that the Estate Officer did not follow the procedure under Section 4 nor did he give notice which would comply with its terms and that is the possible reason why the notice has not been produced before it for perusal. In the case of *Minoo Framroze Balsara vs. Union of India* (supra), the Apex Court has held that Sections 4 and 5 of the said Act have to be read together and harmoniously. The same has been

reiterated by the Apex Court in the case of *New India Assurance Co. Ltd.* (supra), where the Apex Court once again held that Sections 4 and 5 have to be read together.

Insofar as aspect of waiver is concerned, in the case of *Motilal Padampat Sugar Mills* (supra), the Apex Court held that waiver is a question of fact and must be properly pleaded and it must be shown to be a intentional act with knowledge. The Apex Court held that waiver means abandonment of a right and it may be either express or implied from conduct. Hence the Apex Court held that waiver can also be gathered from the conduct of the parties.

In the case of *State Bank of Patiala* (supra), the Apex Court held that in the case of a procedural provision which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirements either expressly or by his conduct.

In the case of *Rajendra Singh* (supra), the Apex Court reiterated that in the case of directory provision, substantial compliance would be enough unless it has resulted in loss or prejudice to the party. Insofar as a mandatory provision is concerned, if it is conceived in the interest of public, cannot be waived. If it is conceived not in the interest of public,

the question of waiver may arise, subject of-course to the pleadings of the parties. In the *Kalu Ram's* case (supra), the same concerned the recovery of damages, the Apex Court held that if the recovery of any amount is barred by the law of limitation, then it is held that the Estate Officer cannot still insist that the said amount is payable.

28) Now coming to the Judgments cited by Shri. Makhija, the learned Counsel appearing for the BPT are concerned, in the Judgment in Writ Petition No. 6216 of 2001, the Division Bench of this Court held that no reasons are required to be given for termination of tenancy under Section 106 of the Transfer of Property Act.

The next Judgment is the Judgment of the Apex Court in the case of *Aligarh Muslim University and Ors.* (supra). In the said case, it was held by the Apex Court that Rule 5(8)(i) of the Aligarh Muslim University Revised Leave Rules applied to an employee who absents himself from duty without having previously obtained leave or where he has failed to return to his duties on the expiry of leave without having previously obtained further leave. Then, Rule 5(8)(i) refers to the manner in which the employee is to be given an opportunity. If the appointing authority regards the explanation as not satisfactory, the employee concerned shall be deemed to have vacated his post, without notice, from the date of absence without leave. The Apex Court further

held that the said Rule 5(8)(i) applies to absence for a period less than five years. In the said case Mansoor Ali Khan obtained two years extraordinary leave to join a job in a foreign country. He had sought leave for further two years but was granted extension of one year and was warned that no further extension would be granted and that in case of overstaying, he would be deemed to have vacated the office. The Respondent Mansoor Ali Khan, inspite of the warning, took up a fresh two years job in a foreign country, it is on account of omission to join after the expiry of one year of leave, the University passed an order deeming him to have vacated his office. The Apex Court, in the facts of the said case, held in the said circumstances that issuance of notice to him would not have made any difference, as on admitted facts, only one view was possible. The Apex Court further held that the absence of notice caused no prejudice to him and the termination was therefore not vitiated.

In the case of *Haryana Financial Corporation and Anr.*(supra), which was also relied upon by Shri. Makhija, the Apex Court reiterated that prejudice is required to be proved to bring home the charge of violation of principles of natural justice. The Apex Court observed that the real test is “prejudice” and even in those cases where procedural requirements have not been complied with, the action has not been held

ipso facto illegal unless it is shown that non-observance had prejudicially affected the applicant. In the said case, the Apex Court held that the delinquent had to prove that the non supply of the inquiry officer's report has caused prejudice to him and the order could not be set aside merely on the ground that the hearing was not offered before taking of decision by the authority. Since in the said case, the High Court has not recorded a finding that prejudice had or had not resulted to the delinquent employee, the Apex Court therefore held that the ends of justice would be met with if it remits the matter to the High Court to decide the said question.

29) It is in the backdrop of the legal position that emerges from a reading of the Judgments (supra) that the instant case would have to be considered.

As indicated above, the fact that Respondent Nos. 5 to 16 have fully participated in the proceedings cannot be lost sight of. The Respondents were also aware of what they were litigating at, namely that they were participating in the proceedings filed for eviction under the said Act. Hence, merely because notices under Section 4 and Section 7 of the said Act were not issued to the Respondent Nos.5 to 8, it cannot not be said that the said Respondents have been prejudiced in any manner. It is well settled that the principles of natural justice are

not rigid or immutable and hence they cannot be put in a straight jacket formula and have to yield to and change with the fact situation which arises in a particular case. If there is no prejudice to the party, an action cannot be set aside merely on a technicality. The Respondents in terms of the law laid down by the Apex Court were obliged to prove the prejudice that has been caused to them on account of the notice under Section 4 not being issued to them. Hence, insofar as issuance of notice under Section 4 is concerned, in my view, the Judgments (supra) cited by Shri. Ashar have no application in the facts of the present case. In my view, the finding recorded by the Appellate Court that in the facts and circumstances of the present case, no prejudice is caused to the Respondent Nos. 5 to 8 cannot be taken exception to. Hence, insofar as the said aspect is concerned, the order passed by the Appellate Court cannot be faulted with.

Insofar as the aspect of waiver is concerned, there was no occasion for the BPT to plead waiver on the part of the Respondent Nos. 5 to 8 as the said Respondents themselves did not specifically plead that on account of non issuance of notice under Section 4, any prejudice is caused to them. As indicated above, the only mention of notice being not issued to them is in paragraph 11 of the Written Statement of Sonia Fisheries, which notice as indicated hereinabove is not referable to the

notice under Section 4 of the said Act. Hence, the Estate Officer taking into consideration the conduct of the said Respondent Nos. 5 to 8, held that they have waived the said notice, a finding which has been confirmed by the Appellate Court.

Taking an over all view of the matter, the orders passed by the Estate Officer as well as the Appellate Court cannot be said to be suffering from any illegality or infirmity for this Court to interdict in its Writ Jurisdiction under Articles 226 and 227 of the Constitution of India.

30) Since on the aspect of the calculation of damages, the matter is remitted back to the Estate Officer, hence, insofar as the contention urged on behalf of the Respondent Nos. 5 to 16 as regards the claim for damages is concerned, it would be open for the Respondent Nos. 5 to 16 to urge their contentions before the Estate Officer as regards the claim of damages made by the BPT and it is for the Estate Officer to consider the said contentions and record findings thereon. It is before the Estate officer that the Petitioners could cite the relevant Judgments including the Judgment in *Kalu Ram's* case (supra) This Court does not express any opinion as regards the said aspect, including the issue of limitation insofar as the recovery of damages is concerned. In that view of the matter, no case for exercise of the Writ

Jurisdiction of this Court under Articles 226 and 227 of the Constitution of India is made out. The Writ Petitions are accordingly dismissed. Rule discharged with parties to bear their respective costs.

31) At this stage, the learned Counsel appearing for the Petitioners i.e. the original Respondent Nos. 3 to 16 pray for continuation of the ad-interim relief which is operating in the above Petitions to enable the Respondents to approach the Apex Court, if so advised. In the facts and circumstances of the case, the said ad-interim relief is continued for a period of 12 weeks from date.

(R. M. SAVANT, J.)