REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 8201 OF 2010
(Arising out of Special Leave Petition (C) No.6556/09

Mumbai International Airport Pvt. Ltd. ...Appellant(s)

- Versus -

M/s Golden Chariot Airport & Anr. ...Respondent(s)

WITH
CIVIL APPEAL No. 8200 OF 2010
(Arising out of Special Leave Petition (C) No.11663/09

Airport Authority of India ...Appellant(s)

- Versus -

M/s Golden Chariot Airport & Anr. ...Respondent(s)

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J U D G M E N T

GANGULY, J.

1. Leave granted.

2. These two appeals, one by Mumbai International Airport Pvt. Ltd. and another

by Airport Authority of India, seek to impugn the judgment of the High Court dated March 4, 2009.

3. The relevant facts of the case are that M/s Golden Chariot Airport (hereinafter referred to as "the contesting respondent") succeeded in a tendering process for running a deluxe grade-I restaurant, covering a space of about 5000 sq. ft., in the car park zone in front of Terminal 1A of the Mumbai Airport. Pursuant to the said bid of the contesting respondent, a Licence Agreement dated 16.1.96, was entered into between the Airport Authority of India (hereinafter AAI) and the contesting respondent.

4. Some of the clauses of the said Licence Agreement are relevant as one of the arguments advanced by the contesting

respondent, before the Estate Officer, the High Court and this Court is that the licence is irrevocable. It has also been urged by the contesting respondent, that apart from the Licence Agreement, there has been an oral extension of the licence and the contesting respondent was assured that it is irrevocable, and on the basis of such assurance, it has invested considerable money in building the restaurant.

5. From the first clause of the Licence Agreement it is clear that the licence is valid for a period of three years, from 27.11.95 to 26.11.98. Apart from the first clause, there are several other clauses in the licence, like clauses 23, 24, 26, 27 and 29 in the General Terms and Conditions, which are a part of the Licence Agreement. The aforesaid clauses are set out:

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"23. In the event of the Licensee being prohibited from selling one or more articles in the premises because of Government Laws/Rules/Regulations/Orders, the Authority shall not be liable for any loss suffered by the Licensee in such an event the Licensee shall not be entitled to any reduction in the fees payable to the Authority or permission for sale of additional items.

24. The Licensee shall deposit duplicate keys of the premises with the Authority whenever the Airport Director demands and permit the Authority to make use of the keys during the emergency. The Licensee shall not remove or replace the lock on the outdoor or change the locking device on the said outer door of the shop.

25. xxx

26. On expiry of the period or on termination of the licence by the Authority on account of any breach on the part of the Licensee, the Licensee shall deliver the possession of the premises in good condition and peaceful manner along with furniture, fittings, equipments and installations, if any, provided by the Authority. Further, Licensee shall remove his/their goods and other materials from the premises immediately, failing which Authority reserves its right to remove such goods/materials at the cost and risk of the Licensee and demand payment for such removal. If such payment is not made within 10 days, Authority shall be at liberty to dispose off the goods/materials of the Licensee by

public auction to recover the cost. The Licensee shall not be entitled to raise any objection in such an eventuality.

27. The licence herewith granted shall not be construed in any way as giving or creating any other right or interst in the said space building(s)/land/garden/tank/ premises to or in favour of the Licensee but shall be construed to be only as a licence in terms and conditions herein contained.

28. xxx

29. The provision of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and the rules framed thereunder which are now in force or which may hereafter came into force shall be applicable for all matters provided in the said Act."

6. It is clear from what is extracted above that the licence is not irrevocable. Apart from that it is clear that the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and the Rules framed thereunder have been made applicable to the Licence Agreement. It is not in dispute that after the initial grant

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of the said licence, the same was, under request of the contesting respondent, extended upto 26.5.2000. Before the extended period could expire, a notice dated 4.5.2000 was sent by the Senior Commercial Manager on behalf of AAI to the contesting respondent, requesting it to vacate and hand over physical possession of the licensed premises on expiry of the extended licence on 26.5.2000.

7. Instead of doing so, the contesting respondent filed, on 15.5.2000, a suit in the Bombay City Civil Court being suit No. 3050/2000, praying for canceling the notice dated 4.5.2000 and for permanent injunction restraining AAI from evicting, demolishing, or removing the restaurant premises of the contesting respondent without adopting the due process of law. In the said suit, the contesting respondent prayed for a declaration that the AAI has granted an

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irrevocable licence and AAI has no right to terminate, cancel or revoke the licence. The exact prayer to the aforesaid effect is as under:

> (a) "For a declaration of this Hon'ble Court thereby declaring that the defendants have granted an irrevocable licence in favour of the plaintiffs in respect of the said restaurant business situated at the car park of Terminal 1A of Santa Cruz Airport Mumbai, and that the same is subsisting valid and in full force and effect and further that the defendants have no right to terminate, revoke and/or cancel the same and/or interfere with the peaceful running of the said business of the plaintiffs at least till such time as the said land, beneath the said restaurant is not required for Airport related development purpose."

8. On such suit being filed, the Bombay City Civil Court returned the plaint under Order VII Rule 10 of Civil Procedure Code (for short "CPC"), inter alia, on the ground that the City Civil Court does not have the pecuniary jurisdiction to hear the case in view of the declaration prayed for.

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9. Aggrieved by the said Order, the contesting respondent preferred an appeal before the Bombay High Court. When the said appeal came up for hearing on 12.7.01, it was represented by the contesting respondent that they will drop the prayer in Clause (a) of the plaint, which is the prayer for the declaration that the licence is irrevocable. On such stand being taken by the contesting respondent before the Bombay High Court, there was a consensus between the parties, and the High Court was pleased to pass the following Order:

> "……the impugned order is set aside without examining the merits or demerits of the impugned order and the matter is question is remitted back to the City Civil Court, Bombay granting liberty to the Plaintiff to move proper application for amendment of the plaint so as to enable him to delete prayer clause (a), and other pleadings raised in support thereof in the plaint…….

10. In view of the aforesaid Order of the High Court, the matter was remanded to the

Bombay City Civil Court. The City Civil Court decreed the suit by a judgment dated 11.2.04. In the said judgment, the Bombay City Civil Court held that on a reading of clauses 16, 29 and 30 of the Licence Agreement it was clear that both parties had agreed to submit themselves to the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to as the 1971 Act) and Rules framed thereunder. The Court thus held that the AAI were bound to follow the due process of law for evicting the contesting respondent from the suit premises, as given under the 1971 Act.

11. Accordingly, proceedings were initiated before the Estate Officer on 27.09.04 and notices were issued by the Estate Officer under Sections 4, 5, 5A, 5B and 7 of the 1971 Act to the contesting respondent.

Hearings were conducted on 26.10.04 and 8.11.04.

12. On 13.11.04, the contesting respondent addressed a letter to AAI for extension of licence with respect to the licensed premises till AAI required it for airport development purposes. Further hearings before Estate Officer were conducted and on 12.01.05, after completion of the hearing and closing of the summary proceedings, the contesting respondent addressed a letter contending that the hearing of the matter be deferred until AAI communicated its decision on the letter dated 13.11.04. The contesting respondent once again addressed a letter dated 11.02.05 to the Estate Officer reiterating the same request and urged the Estate Officer to reopen the case to enable the contesting respondent to lead evidence in the matter. On 18.03.05, the

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Estate Officer heard the case of the contesting respondent and rejected the same.

13. Aggrieved, the contesting respondent filed a writ petition (No. 2900/2005) before the Bombay High Court. On 30.06.05, the Bombay High Court dismissed the writ petition by passing the following order:

> "Allowed to withdraw the liberty to make a fresh application which shall be decided, in accordance with law. All questions, including the questions of tenability, are left open."

14. Meanwhile, the Estate Officer Mr. V.K. Monga was transferred and a new Estate Officer Mr. Narinder Kaushal was appointed. Mr. Kaushal forwarded a copy of the record of proceedings to Mr. Monga by a letter dated 11.08.05. Mr. Monga, by letter dated 12.09.05, forwarded a draft summary of the proceedings.

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15. Even after withdrawal of the writ petition, a letter dated 28.12.05 was written by the advocate of the contesting respondent referring to the withdrawn writ petition, and requesting the Estate Officer for an adjournment of proceedings in view of its previous letter dated 13.11.04.

16. On 7.3.06, the Estate Officer passed a detailed Order in EO Case No.6/2004, holding inter alia that the contesting respondent was in unauthorized occupation of the licensed premises, which was a public premises and it was liable to be evicted from the said premises under Section 5 of the 1971 Act with effect from 27.05.2000.

17. Aggrieved thereby, the contesting respondent filed an appeal under Section 9 of the 1971 Act before the Bombay City

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Civil Court (M.A. No. 39/2006), which was dismissed by the Bombay City Civil Court on 24.7.2008.

18. It may be mentioned here that between 2003 to 2006, Union of India, through its Ministry of Civil Aviation, came out with a policy for privatization of airports. Resultantly, the Airports Authority of India Act, 1991 was amended by the Airports Authority of India (Amendment) Act, 2003. Accordingly, Mumbai International Airport Private Ltd. (MIA) was incorporated on 2.03.06 with the object of operating, maintaining, developing, designing, constructing, upgrading, modernizing and managing the Mumbai Airport and to enter into contracts with third parties for the said purpose.

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19. On 4.04.06, MIA entered into an Operation, Management and Development Agreement (OMDA) whereby AAI granted MIA the exclusive right and authority (for 30 years commencing from 3.05.06) to undertake some of the functions of the AAI such as operation, maintenance, development, design, construction, upgradation, modernization, finance and management of the Mumbai Airport.

20. Pursuant to the OMDA, AAI entered into a Lease Agreement dated 26.04.06, by which most of the immovable properties of AAI at the Mumbai Airport, including the licensed premises, were leased to the MIA.

21. In 2007, MIA took out a Chamber Summons before the Bombay City Civil Court for impleading itself as a party in the appeal filed by the contesting respondent (Appeal No.39/2006). The appeal of the contesting

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respondent and the Chamber Summons of MIA were heard by the Bombay City Civil Court. By its Order dated 24.07.08, the Bombay City Civil Court dismissed the appeal of the contesting respondent and allowed the Chamber Summons of MIA.

22. After the dismissal of its appeal by the City Civil Court, the contesting respondent filed a writ petition (No. 5591/2008) in the Bombay High Court, without making MIA a party. On 26.07.08, the Bombay High Court passed an ex-parte ad-interim Order directing the parties to maintain status quo. On 28.07.08, MIA filed a civil application for impleadment in the writ proceedings before the High Court and on 6.08.08 the High Court allowed the same.

23. The Bombay High Court passed the impugned Order on 4.03.09 whereby it allowed the

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writ petition and set aside the judgment of the Bombay City Civil Court dated 24.07.08. The High Court held that the order of the Estate Officer Mr. Kaushal was null and void for his failure to consider the case himself as he had verbatim reproduced the entire order of Mr. Monga with a few cosmetic changes. The High Court thus remanded the matter to the Estate Officer for a fresh decision in accordance with law.

24. After the impugned Order of the High Court dated 4.3.09, whereby the matter was remanded to the Estate Officer, hearing took place on 14.5.09 by the new Estate Officer Mr. Y. Kumaraswamy. Hearings before Mr. Kumaraswamy were adjourned as by 17.3.09, challenging the order of the High Court dated 4.3.09, an SLP (6556/2009) was filed by MIA, and soon thereafter, another

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SLP challenging the same order of the High Court was filed by AAI on 28.3.09.

25. In view of such SLPs being filed before this Court, hearing before Mr. Kumaraswamy stood adjourned.

26. Both the aforesaid SLPs, now converted into appeals, were tagged by an order of this Court dated 8.5.09, passed in SLP No. 11663/2009 and thereafter were heard together. In the meantime, Mr. Kumaraswamy retired and one Mr. Keshav Sharma, General Manager (Communication & Land Management) was appointed the new Estate Officer.

27. Subsequently, during the pendency of the proceedings before this Court, it transpires on a representation made before this Court on 29.1.10, that there was no Estate Officer for hearing the matter. This

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Court, therefore, directed AAI by its Order of the same date to appoint an Estate Officer under the provisions of the Act of 1971, within a period of 10 days and directed the matter to be posted for further hearing on 11.2.10.

28. On 11.2.10, this Court was informed that Mr. K.K Gupta, Deputy General Manager (Land Management) has been appointed the Estate Officer under Section 3 of the 1971 Act, to hear the case of the contesting respondent in place of Mr. Keshav Sharma. In view of such representation being made before this Court, this Court directed the parties to appear before the Estate Officer on 17.2.10, with a request that the Estate Officer was to fix a date of hearing and then to hear the parties and pass an appropriate Order in accordance with law on or before 30.4.10. It was also made clear

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that the Order of the Estate Officer would be made available to the parties within the next two days. The parties were given liberty, if so advised, to challenge or support the Order of the Estate Officer in the pending proceeding before this Court and which was posted before this Court on 7.5.10.

29. It appears that on 29.4.10, the Estate Officer, after hearing the parties, passed a final order directing the contesting respondent to vacate the premises. It also directed the contesting respondent to pay damages for unauthorized occupation of the premises by payment of compensation and municipal taxes.

30. Aggrieved by the said Order, the contesting respondent filed a miscellaneous appeal before the Bombay City Civil Court,

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challenging the abovementioned Order of the Estate Officer.

31. The matter was placed before this Court on 11.5.10 and on that date learned Counsel for the contesting respondent took a stand that the pending proceedings before this Court arising out of the two SLPs had become infructuous. The impugned Order of the Bombay High Court dated 4.3.09 was no longer holding the field. Instead of that, the present Order dated 29.4.10 of the Estate Officer is the operative order and against that already an appeal has been filed by the contesting respondent before the Bombay City Civil Court.

32. Counsel for both AAI and MIA opposed the aforesaid stand and contended that the proceedings before this Court had not become infructuous and as this Court has

retained its seisin over the matter as this Court directed the Estate Officer to decide the proceedings under the 1971 Act within a time frame but kept the proceedings before it pending.

33. This Court further gave liberty to the parties in its Order dated 11.2.10, to challenge the ultimate Order of the Estate Officer in the pending proceedings before this Court.

34. The Court after hearing the parties, held that the proceedings before this Court had not become infructuous. Since the order of this Court dated 11.5.10 has a bearing on the issues, the same is set out:

"Heard learned counsel for the parties.

Today when the matters were taken up before this Court, this Court was informed by Mr.Mukul Rohtagi, learned senior counsel for the petitioners that pursuant to the order of this Court dated 11.02.2010 the

Estate Officer has decided the matter and passed an order dated 29.04.2010. Impugning the said order, the respondents have filed an appeal under Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 before the Principal Judge, Bombay City Civil Court, Mumbai. Mr.Rohtagi submitted that such filing of appeal before the aforesaid judicial authority in view of the directions contained in that order amounts to an act of contempt. He further submitted that in any event, the said filing of appeal circumvented the order of this Court dated 11.02.2010. Mr.Shyam Divan, learned senior counsel appearing on behalf of the respondents, on the other hand, contended that his client has filed the said appeal in view of the statute made by the Parliament and his client has exercised that right. According to him, such right of appeal cannot be taken away by any order of this Court. In support of his argument, he cited several decisions of this Court.

Mr.Rohtagi, learned senior counsel also in support of his submission cited several decisions and submitted that this Court passed the order in order to prevent conflict of decisions and also considering the facts and circumstances and the question of public interest involved in this case namely the urgency of expanding Bombay Airport and the right of the respondents to run their restaurant in the said Airport.

This Court, however, by balancing the equity had passed the said order and the said order does not decide the questions that are raised in the SLPs which are pending and over which this Court retains

its seisin. We are of the view that by the order which has been passed namely the order dated 11.02.2010, the right of the respondents to file an appeal has not been taken away. This Court preserved the right of the respondents and also permitted them to challenge the order that may be passed by the Estate Officer by filing an appropriate additional affidavit before this Court.

In view of the above, this Court directs that the appeal which has been filed by the respondents (Misc.Appeal No.50 of 2010) before the Principal Judge, City Civil Court, Mumbai be transferred to this Court. The record of the said appeal may form part of these SLPs. The petitioners are at liberty to file any additional affidavit in answer to the appeal filed by the respondents. The respondents may also file reply to the same. Such filing must be completed by the parties by 09.07.2010.

The matter may be placed for further consideration before this Court on 14.07.2010."

35. Then the matter was taken up before this Court on 29.7.10 and the learned Counsel for the contesting respondent submitted that Mr. K.K Gupta was not authorized to discharge the functions of an Estate Officer in accordance with Section 3(a) of the 1971 Act. To respond to such a stand,

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the learned Counsel for AAI took some time to produce the necessary notifications showing the appointment of the Estate Officer.

36. Thereafter, the matter was heard. Before this Court, the learned Counsel for the contesting respondent, apart from raising the aforesaid contention that Mr. K.K Gupta was not validly appointed as an Estate Officer, raised various other contentions.

37. It was first contended that there was an oral assurance for an extension of the licence to the extent that it will be an irrevocable licence. Relying on such oral extension, the contesting respondent made substantial investment for constructing the restaurant. The second contention was that the licence was irrevocable. The third contention was that the Estate Officer did

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not give the contesting respondent a proper hearing.

38. Learned Counsel of both AAI and MIA strongly opposed the aforesaid contentions raised on behalf of the contesting respondent.

39. This Court unfortunately is unable to uphold the contentions raised by the contesting respondent in view of the following reasons.

40. The case of the contesting respondent before all the forums is that though the licence period commenced on and from 27.11.95, the restaurant was made operational on 1.1.97. The initial period of licence was upto 26.11.98. Therefore, on its own showing, the contesting respondent completed the construction of the

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restaurant by 1.1.97, which was well within the initial licence period, which was upto 26.11.98. Admittedly thereafter, there have been two extensions of the licence period upto 26.5.2000. Therefore, the construction having been completed and the restaurant being operational by 1.1.97, there is no occasion for the contesting respondent to urge that it invested money in the construction of the restaurant on the oral assurance by the officers of the AAI about extension of the licence so as to make it irrevocable.

41. In fact no oral assurance of extension of licence is contemplated in the facts of this case. Such a contention is wholly misconceived.

42. The AAI is a statutory body constituted under Section 3 of the Airport Authority of

India Act, 1994 (AAI Act). Under Section 3(2) of the AAI Act, it is a body corporate with power to hold and dispose of both movable and immovable property and to contract.

43. The power of the AAI to enter into contracts has been conferred under Section 20 read with Section 21 of AAI Act. As per Section 20, the AAI is competent to enter into contracts (subject to the provisions of Section 21) which may be necessary to discharge its functions under the AAI Act.

44. Section 21 of AAI Act lays down the mode of executing contracts on behalf of AAI. The Section requires that every contract on behalf of AAI is to be made by the Chairperson or any other member/officer who has been empowered to do so. Further, the contracts, which have been specified in the

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Regulations, have to be sealed with the common seal of AAI.

45. Sub-section (2) of Section 21 of AAI Act provides that the form and manner of the contract shall be such as may be specified by the Regulations.

46. The relevant Regulations have been framed by the AAI with the previous approval of the Central Government and in exercise of the power conferred on it under Section 42(1) read with Section 42(2)(e) and (4), read with Section 21 of the AAI Act, 1994 and the regulations are called the Airports Authority of India (Contract) Regulations 2003. Obviously the regulations are statutory.

47. The said Regulations specify that contracts by AAI are required to be sealed with the

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common seal of AAI. They further provide that contracts are to be made with the previous approval of the Central Government and AAI.

48. Regulation 3(2) also state that all contracts shall be finalized by the execution of a Deed of Agreement, Deed of Licence, Indenture or like instrument, duly signed by AAI and the party concerned, and the said instruments or deeds are to be executed on non-judicial paper of appropriate stamp value when necessary.

49. Having regard to the aforesaid statutory framework, the case of the contesting respondent that it was orally assured of extension of licence by some officer of AAI is of no legal consequence. No such assurance has been proved, even if it is proved, such assurance does not and cannot

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bind the AAI. Being a statutory corporation, it is totally bound by the Act and the Regulations framed under the Act.

50. The very idea of a licence being irrevocable is a bit of a contradiction in terms. From the clauses of the licence referred to above, it is clear that by its terms the licence is revocable. It is well known that a mere licence does not create any estate or interest in the property with which it is concerned. Normally a licence confers legality to an act, which would otherwise be unlawful. A licence can be purely personal, gratuitous or contractual. Whether a contractual licence is revocable or not, would obviously depend on the express terms of the contract. A contractual licence is normally revocable, except in certain circumstances that are

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expressly provided for in the Indian Easement Act, 1882.

51. A licence has been defined in Section 52 of the Indian Easement Act, 1882 as a right to do or continue to do in or upon the immovable property of the grantor something, which, in the absence of such right, could be unlawful, but such right does not amount an easement or an interest in the property. [See **Muskett** vs. **Hill** (1839) 5 Bing (NC) 694, p.707 and **Heap** vs. **Hartley** (1889) 42 Ch. Div. 461, p.468 (CA)].

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52. Following the aforesaid principles and the clauses in the licence agreement, this Court holds that the licence by its very term is revocable. The stand of the contesting respondent that its licence is irrevocable as it has invested money in the

premises and made construction is directly contrary to the stand which it took before the Bombay High Court and which was recorded in the High Court's Order dated 12.7.01. It may be noted that when the City Civil Court returned the plaint filed by the contesting respondent it came up in appeal against the said Order before the Bombay High Court, it expressly gave up its claim of irrevocable licence in order to revive the suit. On such stand being taken, the High Court remanded the suit for trial before the City Civil Court. It is therefore clear that the contesting respondent has taken a stand before a Court of Law and also got the benefit as a result of taking such stand in as much as it got the suit revived and tried and got the benefit of an interim order in the said proceedings. As a result of the aforesaid stand being taken, the suit of the

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contesting respondent went on before the Bombay City Civil Court from 2001 to 2004 and in view of the interim protection, the contesting respondent ran the restaurant during that period.

53. Now the question is whether the contesting respondent on a complete volte-face of its previous stand can urge its case of irrevocable licence before the Estate Officer and now before this Court?

54. The answer has to be firmly in the negative. Is an action at law a game of chess? Can a litigant change and choose its stand to suit its convenience and prolong a civil litigation on such prevaricated pleas?

55. The common law doctrine prohibiting approbation and reprobation is a facet of

the law of estoppel and well established in our jurisprudence also.

56. The doctrine of election was discussed by Lord Blackburn in the decision of the House of Lords in **Benjamin Scarf** vs. **Alfred George Jardine** [(1881-82) 7 Appeal Cases 345], wherein the learned Lord formulated "…a party in his own mind has thought that he would choose one of two remedies, even though he has written it down on a memorandum or has indicated it in some other way, that alone will not bind him; but so soon as he has not only determined to follow one of his remedies but has communicated it to the other side in such a way as to lead the opposite party to believe that he has made that choice, he has completed his election and can go no further; and whether he intended it or not, if he has done an unequivocal act…the fact

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of his having done that unequivocal act to the knowledge of the persons concerned is an election."

57. In **Tinkler** vs. **Hilder** (1849) 4 Exch 187, Parke, B., stated that where a party had received a benefit under an Order, it could not claim that it was valid for one purpose and invalid for another. (See page 190)

58. In **Clough** vs. **London and North Western Rail Co.** [(1861-73) All ER, Reprint, 646] the Court referred to Comyn's Digest, wherein it has been stated:- "If a man once determines his election, it shall be determined forever." In the said case, the question was whether in a contract of fraud, whether the person on whom the fraud was practiced had elected to avoid the contract or not. The Court held that as long as such party made no election, it

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retained the right to determine it either way, subject to the fact that an innocent third party must not have acquired an interest in the property while the former party is deliberating. If a third party has acquired such an interest, the party who was deliberating will lose its right to rescind the contract. Once such party makes its election, it is bound to its election forever. (See page 652)

59. In **Harrison** vs. **Wells**, 1966 (3) All ER 524, Salmon LJ, in the Court of Appeal, observed that the rule of estoppel was founded on the well-known principle that one cannot approbate and reprobate. The doctrine was further explained by Lord Justice Salmon by holding "it is founded also on this consideration, that it would be unjust to allow the man who has taken full advantage of a lease to come forward and seek to

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evade his obligations under the lease by denying that the purported landlord was the landlord". (See page 530)

60. In **Kok Hoong** vs. **Leong Cheong Kweng Mines Ltd.**, (1964 Appeal Cases 993), the Privy Council held that "a litigant may be shown to have acted positively in the face of the court, making an election and procuring from it an order affecting others apart from himself, in such circumstances the court has no option but to hold him to his conduct and refuse to start again on the basis that he has abandoned." (See page 1018)

61. Justice Ashutosh Mookerjee speaking for the Division Bench of Calcutta High Court in **Dwijendra Narain Roy** vs. **Joges Chandra De**,(AIR 1924 Cal 600), held that it is an elementary rule that a party litigant

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cannot be permitted to assume inconsistent positions in Court, to play fast and loose, to blow hot and cold, to approbate and reprobate to the detriment of his opponent. This wholesome doctrine, the learned Judge held, applies not only to successive stages of the same suit, but also to another suit than the one in which the position was taken up, provided the second suit grows out of the judgment in the first.

62. It may be mentioned in this connection that all the proceedings pursued by the contesting respondent in which it took the plea of irrevocable licence was virtually in clear contradiction of its stand which it took before the Bombay High Court on 12.7.01 where it had given up the plea of 'irrevocable licence'. It is on this plea that its suit again became triable by the Bombay City Civil Court and all subsequent

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proceedings pursued by the contesting respondent followed thereafter.

63. This Court has also applied the doctrine of election in **C. Beepathumma & Ors.** vs. **V.S. Kadambolithaya & Ors.**, 1964 (5) SCR 836, wherein this Court relied on Maitland as saying: "That he who accepts a benefit under a deed or will or other instrument must adopt the whole contents of that instrument, must conform to all its provisions and renounce all rights that are inconsistent with it." (Maitlands Lectures on Equity, Lecture 18). This Court also took note of the principle stated in White & Tudor's Leading Case in Equity volume 18th edition at p.444 – wherein it is stated, "Election is the obligation imposed upon a party by Courts of equity to choose between two inconsistent or alternative rights or claims in cases where there is clear

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intention of the person from whom he derives one that he should not enjoy both… That he who accepts a benefit under a deed or will must adopt the whole contents of the instrument."

64. In **M/s New Bihar Biri Leaves Co. & Ors.** vs. **State of Bihar & Ors.**, (1981) 1 SCC 537, this Court observed that it is a fundamental principle of general application that if a person of his own accord, accepts a contract on certain terms and works out the contract, he cannot be allowed to adhere to and abide by some of the terms of the contract which proved advantageous to him and repudiate the other terms of the same contract which might be disadvantageous to him. The maxim, *qui approbat non reprobat* (one who approbates cannot reprobate), applies in our laws too.

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65. Therefore the conduct of the contesting respondent in view of its inconsistent pleas is far from satisfactory. By taking such pleas, the contesting respondent has succeeded in enjoying the possession of the premises for the last 10 years even after the expiry of its licence on 26.5.2000.

66. The complaint of the contesting respondent that Mr. K.K. Gupta, while acting as Estate Officer and deciding the proceedings, failed to observe the principles of natural justice, by not summoning the officers of AAI, is without any substance. The Estate Officer has given adequate reasons for not summoning the officers of AAI by holding that beyond 26.5.2000, there is no written extension of the licence period. The Estate Officer held, and in our view rightly, that when written documents are there, any oral assurance, which purports to contradict the

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written documents need not be considered. Apart from that, this Court has already recorded that in the facts of the case and in the context of the statutory dispensation discussed above, there is no scope for an oral extension of licence. Therefore, the reasoning given by the Estate Officer, for not calling the officers of AAI to prove the case of oral extension of licence of the contesting respondent, is sound and does not call for any interference by this Court even when it acts as an appellate authority.

67. The Estate Officer also declined to issue directions for inspection of documents, as prayed for by the contesting respondent on valid grounds. The Estate Officer held that it has to decide whether the contesting respondent is in unauthorized occupation of the public premises within the meaning of the 1971 Act. That being the sole purpose

of his enquiry, the Estate Officer thought, and rightly so, that its enquiry cannot be widened by including a plea of discrimination under Article 14 raised by the contesting respondent.

68. Apart from that, this Court also does not find any merit in the plea of discrimination raised by the contesting respondent, by contending that cases of other licensees have been extended whereas in its case, the licence has not been extended. Such a plea is not factually correct in as much as the licence of the contesting respondent was also extended twice. In any event, a plea of discrimination can only be raised in aid of a right. If a person has a right in law, to be treated in a particular way, but that treatment is denied to him, whereas others

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are given the same treatment, a plea of discrimination can be made out.

69. We have already discussed that the contesting respondent has no right in law, to get its licence extended. Therefore, one cannot have a plea of negative equality under Article 14. There may be very many administrative reasons for extending the period of licence of other licensees, but that does not give rise to a valid plea of discrimination, when admittedly the contesting respondent has no right in law to get an extension.

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70. Now the last point that remains is the authority of Mr. K.K Gupta to function as an Estate Officer. This is a point more of desperation than of substance.

71. Under Section 3 of the 1971 Act, the Central Government's power to appoint an Estate Officer is provided.

72. From the compilation of notifications that have been filed in this case by the learned Attorney General, appearing for AAI, it transpires that the Ministry of Civil Aviation and Tourism, Department of Civil Aviation, issued a notification dated 1.7.97, appointing several persons as Estate Officers for the purpose of the 1971 Act. That notification was published in the Official Gazette. By a further notification dated 15.5.07, published in the Official Gazette, Central Government amended its previous notification and for the words 'Airport Director', the words 'Deputy General Manager (Land Management)' were substituted.

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73. It has not been argued by the learned Counsel for the contesting respondent that while issuing a notification under Section 3, the Central Government will have to name a person or an individual as an Estate Officer. The appointment of such Estate Officer is by designation only. It is not in dispute that Mr. K.K. Gupta, who functioned as an Estate Officer and decided the case of the contesting respondent, was promoted and brought to Mumbai as Deputy General Manager (Land Management). This is admitted in the affidavit of the contesting respondent. Therefore, Mr. K.K. Gupta by virtue of his designation as Deputy General Manager (Land Management) discharged his function as a valid Estate Officer. There can be no dispute about his authority to do so since by the subsequent notification dated 15.5.07, the words 'Airport Director' have been substituted for words 'Deputy

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General Manager (Land Management)'. Hence, there is no substance in these contentions of the contesting respondent.

74. This Court even acting as an Appellate Authority does not discern any error in the Order dated 29.4.10 of the Estate Officer. The appeal filed by the contesting respondent before the City Civil Court, Mumbai and transferred to this Court is therefore dismissed.

75. However, from the facts discussed above, it is amply demonstrated that the contesting respondent has blown hot and cold by taking inconsistent stand, and has therefore prolonged several proceedings for more than a decade. This Court is constrained to hold that it did not pursue its proceedings honestly in different fora. Therefore, the appeal, being Misc. Appeal No. 50 of 2010, filed by the contesting respondent before the Principal Judge, City Civil Court,

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Mumbai, which was transferred to this Court by this Court's order dated 11.05.2010 and formed part of these appeals, is dismissed with costs assessed at Rs.5,00,000/- to be paid by the contesting respondent in favour of the Supreme Court Mediation Center within a period of two months from date.

76. The civil appeals filed by Airport Authority of India and Mumbai International Airport are allowed. All interim orders are vacated.

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.....J.
(G.S. SINGHVI)

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.....J.
(ASOK KUMAR GANGULY)

New Delhi
September 22, 2010