IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIGINAL APPELLATE JURISDICTION

WRIT PETITION NO.3143 OF 2022
WITH
INTERIM APPLICATION (L) NO.40651 OF 2025
WITH
INTERIM APPLICATION (L) NO.41160 OF 2025
WITH
INTERIM APPLICATION NO.1271 OF 2023

Arsheesh Jamshed Wadia & Anr. .. Petitioners

Versus

The Board of Mumbai Port Authority & Ors. .. Respondents

WITH
WRIT PETITION NO.646 OF 2023

Arihant Unit Premises Co-Operative Housing Society Limited .. Petitioner

Versus

Mumbai Port Authority .. Respondents

WITH
WRIT PETITION NO.464 OF 2023

Chottalal Keshavjee & Co. .. Petitioner

Versus

Mumbai Ports Authority .. Respondents

WITH
WRIT PETITION NO.282 OF 2023

Siraj Mohamedally Calcuttawala (Acting through Constituted Attorney Huseni Asgarbhai Poonawalla) .. Petitioners

Versus

The Board of Trustees of the Port of Bombay .. Respondents

WITH

WRIT PETITION NO.749 OF 2025

Tata Communications Limited	..	Petitioner

Versus

Mumbai Port Authority (formerly known as the Board of Trustees of the Port of Mumbai)	..	Respondent

WITH

WRIT PETITION NO.305 OF 2023

Mohammed Ebrahim H. Hasham Kolsawala	..	Petitioner

Versus

Mumbai Port Authority	..	Respondent

WITH

WRIT PETITION NO.156 OF 2024

Vakil & Sons Private Limited	..	Petitioners

Versus

The Board of Mumbai Port Authority	..	Respondents

WITH

WRIT PETITION NO.2835 OF 2023

WITH

WRIT PETITION NO.587 OF 2023

WITH

WRIT PETITION NO.350 OF 2023

Mohammed Ebrahim Haji Hasaham Kolsawala	..	Petitioner

Versus

Mumbai Port Authority	..	Respondents

WITH

WRIT PETITION NO.3329 OF 2025

Bombay Sewree Chemicals Manufacturing Co.Pvt. Ltd.	..	Petitioner

Versus

The Board of Mumbai Port Authority	..	Respondent

WITH

WRIT PETITION NO.3146 OF 2022

Jairaz Nagari Seva Sahakari Sanstha Maryadit	..	Petitioner

Versus

The Board of Trustees of the Port of Bombay & Anr.	..	Respondents

WITH

WRIT PETITION NO.1228 OF 2023

Grand Hotel (Bombay) Private Limited	..	Petitioner

Versus

The Board of Mumbai Port Authority	..	Respondent

WITH

WRIT PETITION NO.629 OF 2023

Kapadia Commercial Premises Co-Operative Society Limited	..	Petitioner

Versus

Mumbai Port Authority	..	Respondent

WITH

WRIT PETITION NO.1050 OF 2023

Mustaq Ahmed Babula Khan	..	Petitioner

Versus

Mumbai Port Authority	..	Respondent

WITH

WRIT PETITION NO.809 OF 2023

WITH

WRIT PETITION NO.1129 OF 2023

Irshad Ahmed Babulla Khan	..	Petitioner

Versus

Mumbai Port Authority	..	Respondent

WITH
WRIT PETITION NO.1046 OF 2023
WITH
WRIT PETITION NO.1346 OF 2023
WITH
WRIT PETITION NO.697 OF 2023
WITH
WRIT PETITION NO.606 OF 2023
WITH
WRIT PETITION NO.1092 OF 2023

Maqbool Ahmed Babulla Khan .. Petitioner

Versus

Mumbai Port Authority .. Respondent

WITH
WRIT PETITION NO.1444 OF 2026

Sheikhali Mohammed Hussein Barodawala .. Petitioner

Versus

The Board of the Mumbai Port Authority .. Respondent

WITH
WRIT PETITION NO.991 OF 2022

Prabhat Timber Agency .. Petitioner

Versus

The Board of Trustees of The Port of Bombay & Anr. .. Respondents

WITH
WRIT PETITION NO.3306 OF 2022

Sharda Prasad Singh & Co. .. Petitioner

Versus

The Board of Trustees of the Port of Bombay & Ors. .. Respondents

WITH

WRIT PETITION NO.1212 OF 2024

Godrej Industries Limited (Vegoils Ltd.) .. Petitioner

Versus

The Board of Mumbai Port Authority .. Respondent

WITH

WRIT PETITION NO.5508 OF 2025

Britanni Industrial Limited .. Petitioner

Versus

The Board of Mumbai Port Authority .. Respondent

WITH

WRIT PETITION NO.1446 OF 2026

Broch Sadan Premises Co-Operative Society Ltd. .. Petitioner

Versus

The Board of Mumbai Port Authority .. Respondent

WITH

WRIT PETITION NO.997 OF 2024

Voltas Limited .. Petitioner

Versus

The Board of Mumbai Port Authority .. Respondent

WITH

WRIT PETITION NO.1293 OF 2025

Jaipur Golden Transport Co. Pvt. Ltd. .. Petitioner

Versus

The Board of Mumbai Port Authority .. Respondent

WITH

WRIT PETITION NO.869 OF 2023

Anita Manohar Mandhle .. Petitioner

Versus

Mumbai Port Authority .. Respondent

WITH
WRIT PETITION NO.3737 OF 2025

Aditya B. Somaiya & Ors. .. Petitioners

Versus

The Board of Mumbai Port Authority & Ors. .. Respondents

WITH
WRIT PETITION NO.135 OF 2023

The Darukhana Iron Steel and Scrap Merchants Association .. Petitioner

Versus

The Board of Mumbai Port Authority .. Respondent

WITH
WRIT PETITION NO.3256 OF 2022

Bhupinder Singh Anand .. Petitioner

Versus

The Board of Trustees of the Port of Mumbai & Ors. .. Respondents

WITH
WRIT PETITION NO.3617 OF 2022

Homy Ghandhy through Mr.Zubeen Nallaseth .. Petitioner

Versus

The Board of Trustees of the Port of Bombay & Anr. .. Respondent

WITH
WRIT PETITION NO.2883 OF 2023

Kamalbir Singh & Anr. .. Petitioners

Versus

The Board of Mumbai Port Authority & Ors. .. Respondents

WITH
WRIT PETITION NO.1237 OF 2023

Mumtaz Manzil Seva Co-Operative Society Limited .. Petitioner

Versus

Mumbai Port Authority .. Respondent

WITH
WRIT PETITION NO.3747 OF 2022

K.S.Ramachandran .. Petitioner

Versus

The Board of Trustees of the Port of Bombay & Anr. .. Respondents

WITH
WRIT PETITION NO.521 OF 2023

The Ocean View Co-Operative Housing Society Ltd. .. Petitioner

Versus

The Board of the Mumbai Port Authority & Ors. .. Respondents

WITH
WRIT PETITION NO.2415 OF 2023

Mahim Reti Bunder Tenants Association & Anr. .. Petitioners

Versus

The Board of Mumbai Port Authority & Ors. .. Respondents

WITH
WRIT PETITION NO.1177 OF 2024

Sunil Puri .. Petitioner

Versus

The Board of Mumbai Port Trust .. Respondent

WITH

WRIT PETITION NO.3363 OF 2022

Harsh J. Jain .. Petitioner

Versus

The Board of Mumbai Port Authority .. Respondent

WITH

WRIT PETITION NO.531 OF 2023

Shamji Manji Patel & Ors. .. Petitioners

Versus

The Board of Mumbai Port Authority & Ors. .. Respondents

WITH

WRIT PETITION NO.582 OF 2023

Sunil Hasmukhlal Parikh .. Petitioner

Versus

The Board of Mumbai Port Authority & Ors. .. Respondent

WITH

WRIT PETITION NO.901 OF 2024

Khatau Industries Private Limited .. Petitioner

Versus

The Board of Mumbai Port Authority .. Respondent

WITH

WRIT PETITION NO.2416 OF 2023

Anandji Haridas & Co. Pvt. Ltd. .. Petitioner

Versus

The Board of the Mumbai Port Authority & Ors. .. Respondents

WITH

WRIT PETITION NO.1129 OF 2025

Rallis India Ltd. .. Petitioner

Versus

The Board of Mumbai Port Authority .. Respondent

WITH

WRIT PETITION NO.4586 OF 2024

Ecosense Labs (I) Pvt. Ltd. .. Petitioner

Versus

Mumbai Port Authority (formerly known as the Board of Trustees of the Port of Bombay) .. Respondent

WITH

WRIT PETITION NO.1557 OF 2023

WITH

INTERIM APPLICATION NO.2121 OF 2023

WITH

INTERIM APPLICATION NO.2122 OF 2023

WITH

INTERIM APPLICATION NO.2326 OF 2023

WITH

INTERIM APPLICATION NO.2350 OF 2023

WITH

INTERIM APPLICATION NO.3146 OF 2023

WITH

INTERIM APPLICATION NO.3150 OF 2023

WITH

INTERIM APPLICATION NO.2349 OF 2023

WITH

INTERIM APPLICATION NO.2119 OF 2023

WITH

INTERIM APPLICATION NO.2388 OF 2023

WITH

INTERIM APPLICATION NO.2355 OF 2023

WITH

INTERIM APPLICATION NO.3147 OF 2023

WITH

INTERIM APPLICATION NO.3148 OF 2023

WITH

INTERIM APPLICATION NO.3149 OF 2023

WITH

INTERIM APPLICATION NO.2344 OF 2023

WITH
INTERIM APPLICATION NO.2044 OF 2023
WITH
INTERIM APPLICATION NO.2045 OF 2023
WITH
INTERIM APPLICATION NO.2120 OF 2023
WITH
INTERIM APPLICATION NO.2124 OF 2023
WITH
INTERIM APPLICATION NO.2126 OF 2023
WITH
INTERIM APPLICATION NO.2127 OF 2023
WITH
INTERIM APPLICATION NO.2325 OF 2023
WITH
INTERIM APPLICATION NO.2336 OF 2023
WITH
INTERIM APPLICATION NO.2330 OF 2023
WITH
INTERIM APPLICATION NO.2329 OF 2023
WITH
INTERIM APPLICATION NO.2345 OF 2023
WITH
INTERIM APPLICATION NO.2354 OF 2023
WITH
INTERIM APPLICATION NO.2335 OF 2023
WITH
INTERIM APPLICATION NO.2342 OF 2023
WITH
INTERIM APPLICATION NO.2352 OF 2023
WITH
INTERIM APPLICATION NO.2057 OF 2023
WITH
INTERIM APPLICATION NO.2334 OF 2023
WITH
INTERIM APPLICATION NO.2058 OF 2023
WITH
INTERIM APPLICATION NO.2060 OF 2023
WITH
INTERIM APPLICATION NO.2132 OF 2023

WITH
INTERIM APPLICATION NO.2061 OF 2023
WITH
INTERIM APPLICATION NO.2133 OF 2023
WITH
INTERIM APPLICATION NO.2331 OF 2023
WITH
INTERIM APPLICATION NO.2332 OF 2023
WITH
INTERIM APPLICATION NO.2333 OF 2023
WITH
INTERIM APPLICATION NO.2115 OF 2023
WITH
INTERIM APPLICATION NO.2154 OF 2023
WITH
INTERIM APPLICATION NO.2123 OF 2023
WITH
INTERIM APPLICATION NO.2125 OF 2023
WITH
INTERIM APPLICATION NO.2327 OF 2023
WITH
INTERIM APPLICATION NO.2118 OF 2023
WITH
INTERIM APPLICATION NO.2114 OF 2023
WITH
INTERIM APPLICATION NO.2351 OF 2023
WITH
INTERIM APPLICATION NO.2080 OF 2023
WITH
INTERIM APPLICATION NO.2346 OF 2023
WITH
INTERIM APPLICATION NO.2353 OF 2023

The Bombay Charcoal Merchants Association Ltd. through its President Haridwar Singh .. Petitioner

Versus

Mumbai Ports Authority (Formerly known as the Board of Trustees of the Port of Mumbai) .. Respondent

WITH

WRIT PETITION NO.3752 OF 2023

Shanay Priyam Jhaveri .. Petitioner

Versus

The Board of Mumbai Port Authority .. Respondent

WITH

WRIT PETITION NO.3722 OF 2025

WITH

WRIT PETITION NO.3726 OF 2025

Rallis India Ltd. .. Petitioner

Versus

The Board of Mumbai Port Authority .. Respondent

WITH

WRIT PETITION NO.1697 OF 2023

The Grain Rice Oilseeds Merchants Association .. Petitioner

Versus

The Board of the Mumbai Port Authority .. Respondent

WITH

WRIT PETITION NO. 3686 OF 2025

WITH

INTERIM APPLICATION (L) NO.25918 OF 2024

The Tata Power Company Limited .. Petitioner

Versus

Board of Mumbai Port Authority .. Respondent

WITH

WRIT PETITION NO.2500 OF 2023

WITH

INTERIM APPLICATION NO.3836 OF 2024

H.H.Shrimant Maharaja Jyotiraditya M. Scindia .. Petitioner

Versus

The Board of Mumbai Port Authority .. Respondent

WITH

WRIT PETITION NO.3530 OF 2022

Indian Vegetable Products Private Ltd. now known as IVP Limited .. Petitioner

Versus

The Board of the Mumbai Port Authority & Ors. .. Respondent

WITH

WRIT PETITION NO.2381 OF 2023

Balic Trading Company Pvt. Ltd. .. Petitioner

Versus

The Board of Mumbai Port Authority .. Respondent

WITH

WRIT PETITION NO.3625 OF 2022

The Hyder-E-Ally Manufacturing & Pressing Factory Pvt. Ltd. .. Petitioner

Versus

The Board of the Mumbai Port Authority & Ors. .. Respondents

WITH

WRIT PETITION NO.3693 OF 2025

Depe Global Shipping Agencies Pvt. Ltd. .. Petitioner

Versus

The Board of Mumbai Port Authority .. Respondent

WITH

WRIT PETITION NO.3359 OF 2022

Khandelwal Brothers Ltd. .. Petitioner

Versus

The Board of the Mumbai Port Authority & Ors. .. Respondents

WITH

WRIT PETITION NO.3558 OF 2022

Noble Fisheries Pvt. Ltd. .. Petitioner

Versus

The Board of the Mumbai Port Authority & Ors. .. Respondents

WITH

WRIT PETITION NO.668 OF 2023

Soli Shapurji Ragi .. Petitioner

Versus

The Board of the Mumbai Port Authority .. Respondent

WITH

WRIT PETITION NO.2481 OF 2023

Larsen And Toubro Limited .. Petitioner

Versus

Board of Mumbai Port Authority .. Respondent

WITH

WRIT PETITION NO.4113 OF 2024

Chottalal Keshavjee & Co. A HUF, Acting through its Karta G.D.Shah .. Petitioner

Versus

Mumbai Ports Authority (Formerly known as the Board of Trustees of the Port of Mumbai) .. Respondent

WITH

WRIT PETITION NO.1445 OF 2026

Mercantile and Industrial Development Co. Ltd. .. Petitioner

Versus

The Board of Mumbai Port Authority .. Respondent

WITH
WRIT PETITION NO.3101 OF 2023

S.F. Chemical Industries Private Limited .. Petitioner

Versus

The Board of Mumbai Port Authority .. Respondent

WITH
WRIT PETITION (L) NO.18046 OF 2025

Ramnarain Sons Private Limited .. Petitioner

Versus

The Board of Mumbai Port Authority .. Respondent

WITH
WRIT PETITION NO.3247 OF 2025

Rajiv Dharnidharka .. Petitioner

Versus

The Board of Mumbai Port Authority .. Respondent

WITH
WRIT PETITION NO.2886 OF 2023

The Treasurer of Charitable Endowments for India .. Petitioner

Versus

The Board of the Mumbai Port Authority & Ors. .. Respondents

WITH
WRIT PETITION NO.3857 OF 2025
WITH
WRIT PETITION NO.3856 OF 2025
WITH
WRIT PETITION NO.3858 OF 2025

WITH
WRIT PETITION NO.3880 OF 2025
WITH
WRIT PETITION NO.3896 OF 2025

Forbes And Company Ltd.	..	Petitioner
Versus		
The Board of Trustees of the Port of Mumbai	..	Respondent

WITH
WRIT PETITION NO.143 OF 2023

Balmer Lawrie & Co. Ltd.	..	Petitioner
Versus		
The Board of the Mumbai Port Authority & Ors.	..	Respondents

WITH
WRIT PETITION NO.315 OF 2024

Ajanta Ideal Co-Operative Housing Society Ltd.	..	Petitioner
Versus		
The Board of Mumbai Port Authority	..	Respondent

WITH
WRIT PETITION NO.69 OF 2025

Linden Cosmopolitan Co-Operative Housing Society Ltd.	..	Petitioner
Versus		
The Board of Mumbai Port Authority	..	Respondent

WITH
WRIT PETITION NO.3728 OF 2025

G. Claridge & Company Ltd.	..	Petitioner
Versus		
The Board of Mumbai Port Authority	..	Respondent

WITH

WRIT PETITION NO.2936 OF 2023

Pravin Vithaldas Doshi	..	Petitioner
Versus		
Mumbai Port Authority (Formerly known as Board of Trustees of the Port of Mumbai)	..	Respondent

WITH

WRIT PETITION NO.3664 OF 2025

Express Newspapers Private Limited	..	Petitioner
Versus		
The Board of Trustees of the Port of Mumbai	..	Respondent

WITH

WRIT PETITION NO.1850 OF 2023

Lubricants & Allied Products Manufacturing Co. Pvt. Ltd.	..	Petitioner
Versus		
The Board of the Mumbai Port Authority & Ors.	..	Respondents

WITH

WRIT PETITION NO.2892 OF 2023

D. Abraham & Sons Pvt. Ltd.	..	Petitioner
Versus		
The Board of Mumbai Port Authority & Ors.	..	Respondents

WITH

WRIT PETITION NO.3256 OF 2023

Raian Nogi Karanjawala	..	Petitioner
Versus		
The Board of Mumbai Port Authority	..	Respondent

WITH
WRIT PETITION NO.3461 OF 2025

Metro House Private Limited .. Petitioner

Versus

The Board of Mumbai Port Authority .. Respondent

WITH
WRIT PETITION NO.3859 OF 2025

Bennett Coleman & CO. Ltd. .. Petitioner

Versus

The Board of Trustees of the Port of Bombay .. Respondent

WITH
WRIT PETITION NO.2742 OF 2023

The Committee of the Financial Board Bombay Annual Conference .. Petitioner

Versus

Mumbai Port Authority .. Respondent

WITH
WRIT PETITION NO.3746 OF 2025

Anil Khanna .. Petitioner

Versus

The Board of Mumbai Port Authority .. Respondent

WITH
WRIT PETITION NO.6 OF 2023

Mukesh Gokal & Anr. .. Petitioners

Versus

The Board of the Mumbai Port Authority & Ors. .. Respondents

WITH
WRIT PETITION NO.1846 OF 2023

Cotton Association of India	..	Petitioner
Versus		
The Board of Mumbai Port Authority & Ors.	..	Respondent

WITH
WRIT PETITION NO.3608 OF 2022

H And LR Khanbhai Alibhai Charania	..	Petitioner
Versus		
The Board of Trustees of the Port of Bombay & Ors.	..	Respondents

WITH
WRIT PETITION NO.2438 OF 2024

Shyam Estates Pvt. Ltd.	..	Petitioner
Versus		
The Board of Mumbai Port Authority	..	Respondent

WITH
WRIT PETITION NO.357 OF 2023

Shah Ramniklal Tokarshi	..	Petitioner
Versus		
The Board of Trustees of Port of Bombay (Now known as Mumbai Port Authority) & Ors.	..	Respondents

WITH
WRIT PETITION NO.2792 OF 2023

Ravindra Jagjivan Gokal	..	Petitioner
Versus		
The Board of Mumbai Port Authority	..	Respondent

WITH
WRIT PETITION NO.3807 OF 2025

Aziz Esmail Dhariwala	..	Petitioner
Versus		
The Board of Mumbai Port Authority	..	Respondent

WITH
WRIT PETITION NO.3813 OF 2025

Chaitali Developers Private Limited	..	Petitioner
Versus		
The Board of Mumbai Port Authority	..	Respondent

WITH
WRIT PETITION NO.3653 OF 2022

Kishore Chndra Kanji	..	Petitioner
Versus		
The Board of Trustees of Port of Bombay & Ors.	..	Respondents

WITH
WRIT PETITION NO.3959 OF 2022

Madanlal Diwanchand through its Sole Proprietor	..	Petitioner
Versus		
The Board of Trustees of the Port of Bombay & Ors.	..	Respondents

WITH
WRIT PETITION NO.42 OF 2023

Tarachand Bhojraj Vazirani & Anr.	..	Petitioners
Versus		
The Board of the Mumbai Port Authority & Ors.	..	Respondents

WITH
WRIT PETITION NO.4099 OF 2022

Rajen Chhotalal Jani	..	Petitioner

Versus

The Board of Trustees of the Port of Bombay & Ors.	..	Respondents

WITH
WRIT PETITION NO.211 OF 2024
WITH
WRIT PETITION NO.3714 OF 2023

Suresh Maganlal Nagrecha	..	Petitioner

Versus

The Board of Mumbai Port Authority	..	Respondent

WITH
WRIT PETITION NO.4119 OF 2022

Tribhuwan Nath Singh Charcoal & Co.	..	Petitioner

Versus

The Board of Trustees of the Port of Bombay & Ors.	..	Respondents

WITH
WRIT PETITION NO.4102 OF 2022

Sabira Mohamed Ismail Molvi	..	Petitioner

Versus

The Board of Trustees of the Port of Bombay (Now known as Mumbai Port Authority) & Ors.	..	Respondents

WITH
WRIT PETITION NO.57 OF 2023

Virendra Satyadev Singh Heir of Late Satyadev Singh Ramniranjan Singh	..	Petitioner

Versus

The Board of Trustees of the Port of Bombay & Ors. .. Respondents

WITH

WRIT PETITION NO.630 OF 2024

The Timber Market Occupants Society .. Petitioner

Versus

The Board of the Mumbai Port Authority .. Respondent

WITH

WRIT PETITION NO.58 OF 2023

Habib Ebrahim & Co. .. Petitioner

Versus

The Board of Trustees of the Port of Bombay & Ors. .. Respondents

WITH

WRIT PETITION NO.5245 OF 2022

Babu Hubrajsingh Jangbahadur Singh .. Petitioner

Versus

The Board of Trustees of the Port of Bombay & Ors. .. Respondents

WITH

WRIT PETITION NO.62 OF 2023

Diwanchand Nihalchand Trading as Diwanchand & Sons .. Petitioner

Versus

The Board of Trustees of the Port of Bombay & Ors. .. Respondents

WITH

WRIT PETITION NO.5186 OF 2022

Dharmendra Pratap Singh .. Petitioner

Versus

The Board of Trustees of the Port of Bombay & Ors. .. Respondents

WITH

WRIT PETITION NO.5235 OF 2022

Bansidharsingh Kariasingh .. Petitioner

Versus

The Board of Trustees of the Port of Bombay & Ors. .. Respondents

WITH

WRIT PETITION NO.5373 OF 2022

Rakesh Kumar Singh .. Petitioner

Versus

The Board of Trustees of the Port of Bombay & Ors. .. Respondents

WITH

WRIT PETITION NO.84 OF 2023

Hidayatullah M. Shah .. Petitioner

Versus

The Board of Trustees of the Portof Bombay & Ors. .. Respondents

WITH

WRIT PETITION NO.5279 OF 2022

WITH

WRIT PETITION NO.4023 OF 2022

Aman Sanalal Shah .. Petitioner

Versus

The Board of Trustees of the Port of Bombay & Ors. .. Respondents

WITH

WRIT PETITION NO.5335 OF 2022

Bhagwanji Zaverchand Shah .. Petitioner

Versus

Mumbai Port Authority & Ors. .. Respondents

WITH
WRIT PETITION NO.5356 OF 2022

Godron & Co.	..	Petitioner
Versus		
Mumbai Port Authority & Ors.	..	Respondents

WITH
WRIT PETITION NO.577 OF 2023

Ramdeo Babunandan Acting through its C/A. Indrakumar Prahlad Singh	..	Petitioner
Versus		
Mumbai Port Authority (Formerly known as Board of Trustees of the Port of Mumbai) & Ors.	..	Respondents

WITH
WRIT PETITION NO.345 OF 2023

Nirav Naresh Thakkar	..	Petitioner
Versus		
Mumbai Ports Authority (formerly known as the Board of Trustees of the Port of Mumbai) & Ors.	..	Respondents

WITH
WRIT PETITION NO.4724 OF 2024

Maharashtra State Electricity Board	..	Petitioner
Versus		
Mumbai Port Trust	..	Respondent

WITH
WRIT PETITION NO.3273 OF 2023

Chamundeshwari Bhogilal Chinai	..	Petitioner
Versus		
The Board of Mumbai Port Authority	..	Respondent

WITH
WRIT PETITION NO.295 OF 2022

Ebrahim Aboobaker Soorya & Ors.	..	Petitioners
Versus		
The Board of Trustees of the Port of Bombay & Anr.	..	Respondents

WITH
WRIT PETITION NO.1025 OF 2025

Suresh Laxmidas Thakkar	..	Petitioner
Versus		
The Board of Mumbai Port Authority	..	Respondent

WITH
WRIT PETITION NO.1016 OF 2022

V. Jamnadas & Co.	..	Petitioner
Versus		
The Board of Trustees of the Port of Bombay & Anr.	..	Respondents

WITH
WRIT PETITION NO.3774 OF 2025

Jaikishan Dhingra	..	Petitioner
Versus		
The Board of Mumbai Port Authority	..	Respondent

WITH
WRIT PETITION NO.742 OF 2026

Gaiagen Technologies Private Limited (Erstwhile known as PEST Control (India) Pvt. Ltd.	..	Petitioner
Versus		
The Board of Mumbai Port Authority	..	Respondent

WITH
WRIT PETITION NO.5339 OF 2022

Chandrabhushan Ramshenkar Singh	..	Petitioner
Versus		
Mumbai Port Authority & Ors.	..	Respondents

WITH
WRIT PETITION NO.5019 OF 2022

Nayan Harish Pooj	..	Petitioner
Versus		
Mumbai Ports Authority (formerly known as the Board of Trustees of the Port Mumbai) & Ors.	..	Respondents

WITH
WRIT PETITION NO.79 OF 2023

Steel Garden	..	Petitioner
Versus		
Mumbai Port Authority & Ors.	..	Respondents

WITH
WRIT PETITION NO.2771 OF 2024

Amarjitsingh Nandrajog	..	Petitioner
Versus		
The Board of Mumbai Port Authority & Ors.	..	Respondents

WITH
WRIT PETITION NO.4695 OF 2025

Janak Vakharia	..	Petitioner
Versus		
The Board of Mumbai Port Authority	..	Respondent

WITH
WRIT PETITION (L) NO.35644 OF 2025

Sharrp Ventures Capital Private	..	Petitioner

Limited

Versus

The Board of Mumbai Port Authority .. Respondent

WITH
WRIT PETITION NO.3487 OF 2025

Castrol India Limited .. Petitioner

Versus

The Board of Mumbai Port Authority .. Respondent

WITH
WRIT PETITION NO.1447 OF 2026

Uranus Electro Technik Private Limited .. Petitioner

Versus

The Board of Mumbai Port Authority .. Respondent

WITH
WRIT PETITION NO.610 OF 2023

Ikbal Ebrahim L/h of Ebrahim Aboobakar .. Petitioner

Versus

Mumbai Ports Authority (formerly known as the Board of Trustees of the Port of Mumbai) .. Respondent

WITH
WRIT PETITION (L) NO.36495 OF 2025

Bharti Apoorva Desai .. Petitioner

Versus

The Board of Mumbai Port Authority .. Respondent

WITH
WRIT PETITION NO.5154 OF 2022

Fakruddin Fidalli Potia .. Petitioner

Versus

Mumbai Port Authority	..	Respondent

WITH
WRIT PETITION NO.5151 OF 2022

Santosh Musafir Singh	..	Petitioner
Versus		
Mumbai Ports Authority (Formerly known as the Board of Trustees of the Port of Mumbai)	..	Respondent

WITH
WRIT PETITION NO.5325 OF 2022

Murtuza A. Lehri	..	Petitioner
Versus		
Mumbai Port Authority (Formerly known as Board of Trustees of the Port of Mumbai)	..	Respondent

WITH
WRIT PETITION NO.2394 OF 2023

Mahindra and Mahindra Limited	..	Petitioner
Versus		
The Board of Mumbai Port Authority	..	Respondent

WITH
WRIT PETITION NO.1443 OF 2026

Colgate Palmolive (India) Limited	..	Petitioner
Versus		
The Board of Mumbai Port Authority	..	Respondent

WITH
WRIT PETITION NO.1342 OF 2023

Shashikant R. Chadha	..	Petitioner

Versus

Mumbai Port Authority (formerly known as the Board of Trustees of the Port of Mumbai)	..	Respondent

WITH

WRIT PETITION (L) NO.39869 OF 2022

Kamani Tubes Limited	..	Petitioner
Versus		
The Board of Mumbai Port Authority	..	Respondent

WITH

WRIT PETITION NO.769 OF 2023

Rayieka Gulamabbas Beharinwalla	..	Petitioner
Versus		
Mumbai Port Authority	..	Respondent

WITH

WRIT PETITION NO.139 OF 2023

Deepak Vinodchandra Shah	..	Petitioner
Versus		
Mumbai Port Authority	..	Respondent

WITH

WRIT PETITION NO.1135 OF 2023

Krishna Nagindas Mehta	..	Petitioner
Versus		
Mumbai Ports Authority (Formerly known as the Board of Trustees of the Port of Mumbai)	..	Respondent

WITH

WRIT PETITION NO.214 OF 2023

Uni Tex Products Private Limited	..	Petitioner
Versus		
The Board of Mumbai Port Authority	..	Respondent

...

Mr. Darius Khambata, Sr Adv a/w Mr. Viren Asar, Mr. Farid Karachiwala, Mr. Ahuramazda Postwala, and Ms. Krutika Mehta i/b for J. Sagar Associates, for the Petitioner in WP/3143/2022,WP/3256/2022,WP/2883/2023,WP/521/2023, WP/582/2023,WP/2146/2023,WP/1697/2023,WP/3530/2022, WP/2381/2023,WP/3359/2022,WP/3558/2022,WP/668/2023 ,WP/2886/2023,WP/1850/2023,WP/2892/2023, WP/06/2023, WP/1846/2023,WP/214/2023, WP/ 1228/2023, WP/156/2024, WP/3101/2023,WP/315/2024,WP/32/56/2023,WP/2792/2023 WP/69/2025,WP/3229/2025, WP/3247/2025, WP/3461/2025, WP(L)/3222/2024 and WP(L)/35644/2025.

Mr. Viren Asar, Mr. Tushar Hathiramani, Mrs. Nandini Joshi, Mr. Dhruv Joshi, Ms. Janavi Khant and Shrishti Shahi i/by Harish Joshi and co, Advocate for Petitioner in WP/2500/2023.

Mr. Viran Asar a/w Mr. Rahul Soman, Mr. Ayaz Bilawala and Yogesh A Gaikwad i/by M/s Bilawala & Co., for the Petitioner in WP/3857/2025,WP/3856/2025,WP/3858/2025,WP/3880/25 and WP/ 3896/2025.

Mr.Viren Asar a/w Ahuramazda Postwala and Ms. Sonali Aggarwal and Shantanu Asar i/by Dhruve Liladhar and Co, Advocate for Petitioner in WP/2394/2023 and WP/1293/2025.

Mr. Idris Balasinorwala i/by Huzefa Nasikwala, Advocate for Petitioner in WPL/18046/2025.

Mr. Jay Zaveri a/w Ms. Rhea Prakash, Ms Tavleen Saini i/by Crawford Bayley and Co, Advocate for Petitioner in WP/5508/2025 and WP/1443/2026.
Mr. Nadeem Shama a/w Hubab Sayyed and Mr. Sahil Sayyed i/by Sayyed Associates, Advocate for Petitioner in WP(L)/39869/2022.

Mr. Abhishek Bhojane i/by Mr. Shashipal Shankar, Advocate for Petitioner in WP/1446/2026

Ms. Shivali S Mhatre a/w Mr. Shankar V Mhatre, Advocate for Petitioner in WP/3273/2023.

Mr. Viren Asar a/w Mr. Rizwan Shaikh i/by Patel Associates, Advocate for Pet in WP/3714 /2023 and WP/211/2024.

Mr. Mehul Rathod a/w Dhanashree Pawaskar and Ms. Darshana Vora for Petitioner in WP/901/2024.

Mr. Vipul Raut a/w Bhavna Nirban i/by Sarthak Diwan for Petitioner in WPL/4931/2023

Mr. Shashipal Shankar a/w Mr. Abhishek Bhojane for Petitioner in WP/1146/2026

Ms. Priyanka Desai i/by Cyril Amarchand Mangaldas for the Petitioner in WP/2481/2023.

Mr. R.V.Pawar i/by Pragnya Legal for Petitioner in WP/143/2023.

Mr. Viren Asar a/w Mr. Sahil Saiyed, Mr. Ahuramazda Postvala, Mr. Somesh Pathak and Mr. Shantanu Asar , Mr. Somesh Pathak and Priyanka Singh i/b Saiyed Sahil, M. Nagamiya, for the Petitioner in WP/3737/2025, WP/1129/2025,WP/3722/2025,WP/3726/2025, WP/3693/2025, WP/3728/2025,WP/3746/2025, WP/3807/2025, WP/3813/2025, WP/3774/2025, WP(L)/35890/2025, WP(L)/36495/2025, IA(L)/ 41160/2025, IA(L)/40651/2025 in WP/3143/ 2022.

Mr. Viren Asar a/w Mujtaba Ambekar i/by A & P Partners, for Petitioner in WP/997/2024

Mr. Rubin Vakil a.w Manish Doshi and Mr. Dhaval Poriya i/by Vimadalal and Co. for the Petitioner in WP/630/2024.

Mr. Dharam Jumani a/w Mr. Mihir Nerurkar, Mr Meherasp Mistry, Ms. Ananya Krishnan and Msa. Jyoti Singh i/by Khaitan and Co. for the Petitioner in WP/749/2025.

Mr. Sharanya Sahadevan i/by Vashi and Vashi, for Petitioner in WP/1177/2024 & WP/1212/2024.

Ms. Dhrishti Bhindora i/by Manilal Kher Ambalal and Co. or Petitioner in WP/742/2026.

Ms. Amita Chaware, Advocate for the Petitioner in WP/4724/2024.

Mr. Dharam Jumani a/w Ms. Meenakshi Dhanuka-Rungta, Mihir Nerurkar and Shubham Jagtap i/by Dhanuka and Partners for Petitioner in WP/3664/2025.

Mr. Dharam Jumani a/w Mr. Mihir Nerurkar, Mr. Yohan Mehta, Harshwardhan Melonta, Ms Chandrika Prajapati, Ms. Mansi Gangurde i/by Chandrika Prajapati, for Petitioner in WP/3859/2025.

Mr. Prerak Choudhary a/w Ms. Anisha Balse, Ms. Trisha Ranka, Ms. Rucha Bhole, Mr. Sunil Shetty and Ms. Regina David i/b. Mr. Prerak Choudhary, for the Petitioners in WP/1557/2023, WP/357/2023, WP/991/2022, WP/3617/2022, WP/3608/2022, WP/3959/2022, WP/4099/2022, WP/4119/2022, WP/3653/2022, WP/84/2023, WP/4102/2022, WP/57/2023, WP/58/2023, WP/5245/2022, WP/62/2023, WP/5186/2022, WP/5235/2022, WPL/29070/2022, WP/5279/2022, WP/4023/2022, WP/5335/2022, WP/5356/2022, WP/577/2023, WP/345/2023, WP/5339/2022, WP/282/2023, WP/5019/2022, WP/79/2022, WP/5373/2022, WP/3146/2022, WP/610/2023, WP/ 5154/2022, WP/646/2023, WP/1135/2023, WP/139/2023, WP/769/2023, WP/1342/2023, WP/5325/2022, WP/5151/ 2022, WP/1092/2023, WP/606/2023, WP/1346/2023, WP/697/2023, WP/1046/2023, WP/1129/2023, WP/809/ 2023, WP/1050/2023, WP/629/2023, WP/350/2023, WP/ 587/2023, WP/2835/2023, WP/305/2023, WP/464/2023, WP/869/2023, WP/1237/2023, WP/3306/2022, WP/2936/2023, WP/2742/2023, WP/4586/2024, WP/4113/2024, WP/ 135/2023 and WP/3747/2022.

Mr. Rahul Soman a/w Aishwarya Shinde for the Petitioner in WP/1016/2022.

Mr. Nirav Barot a/w Ms. Vahista Jagirdar i/by Maneksha and Sethna for the Applicant in IA/1271/2023 in WP/3143/2022.

Mr. Sachin Mandlik a/w Mr. Tanay Musale i/by Mandlik and Partners for the Petitioner in WP/3752/2023.

Mr. Viren Asar a/w Anuj Athale, Shubham Kalbere and Rohan

Gupta i/by Legasis Partners for the Petitioner in WP/3487/2025.

Mr. Jahan Dastur a/w Dikshat Mehra and Honey Chandwani i/by Rajani and Associates for the Petitioner in WP/3686/2025.

Ms. Shoma Maitra a/w Nipeksh Jain and Ms Mihika Vakharia i/by Wadia Ghandy and Co. for the Petitioner in WP/4695/2025.

Ms. Savita Ganoo a/w Mr. D. P. Singh and Mr. N.R. Bubna, for the Union of India in WP/2892/2023, WP/6/2023, WP/1846/2023, WP/1850/2023, WP/135/2023, WP/531/2023, WP/582/ 2023, WP/2416/2023 WP/1697/2023, WP/143/2023, WP/ 2381/2023, WP/668/2023, WP/2886/2023, WP/2883/ 2023, WP/2415/2023 and WP/521/2023.

Mr. Ashutosh Mishra for the Union of India in WP/742/2026 and WPL/31364/2024.

Smt. Fatima Lakdawala, AGP for State in WP/1177/2024.

Ms. Shehnaz V. Bharucha for the Respondent No.3-Union of India in WP/997/2024, WP(L)/4701/2024 WP/2481/2023, WP/3101/2023, WP(L)/18153/2023, WP/3256/2023, WP(L)/ 22835 /2023, WP/3273/2023 and WP/315/2024.

Mr. Pranil Sonawane a/w Janhavi Jadhav for the Respondent No.3 in WP/5508/2025.

Ms. Heenal Wadhwa i/by The Law Point, for Respondent No.1 in WP/749/2025 and WP/3686/2025.

Mr. R. S. Apte, Senior Advocate a/w Mr. N. R. Bubna for the Respondent No.3-Union of India, in WP/3143/2022, WP/2792/2023, WP/3359/2022, WP/3625/ 2022, WP/3222/2024, WP/3363/2022 and WP/1177/2024.

Mr. Ramchandra Apte, Senior Advocate a/w Dhanashree Bhate i/b. Mr. Sagar Ambedkar, for Respondent No.3-UOI in WP/646/2023, WP/464/2023, WP/156/2024, WP/2835/2023, WP/587/2023, WP/350/2023, WP(L)/1878/ 2023, WP/3146/2022, WP/1228/2023, WP/629/2023, WP/

1050/2023, WP/809/2023, WP/3146/2022, WP/697/2023, WP/1129/2023, WP/606/2023,WP/1029/2023, WP/3306/ 2022, WP(L)/11801/2023, WP/2500/2023, WP(L)/13775 /2023, WP/3608/2025, `WP/357/2023, WP/3653 /2022, WP/3959/2022, WP/4099/2022, WP/211/2024, WP/3714/ 2023, WP/4119/2022, WP/4102/2022, WP/58/2023, WP/5245/2022, WP/62/2023,WP/5186/2022, WP/5235/2022, WP(L)/29070/2022, WP/5373/2022, WP/5279/2022, WP/4023/2022, WP/ 5335/2022, WP/5356/2022, WP/577/2023, WP/345/2023,WP/5339/2022, WP/5019/2022, WP/79/2023, WP/610/2023, WP/5151/2022, WP/2394/2023, WP/5325/2022,WP/1342/2023,WP/139/2023,WP/1135/2023, WP/ 1129/2025, WP/ 3752/2023, WP/2438/2024, WP/3487/2025, WP/3329/2025, WP/305/2023 and WP/3329/2025.

Mr. Virendra Tulzapurkar, Senior Advocate, Mr. Shanay Shah a/w Mr. Hamza Lakhani, Ms. Faranaaz Karbhari, Mr. Rahul Jain, Ms. Khushboo Rupani, Ms. Shrusti Dalal, Ms. Akshata Parab and Mr. Sharan Shetty i/b. HSA Advocates, for Respondent No. 1 in WP/3143/2022, a/w IA/1271/2023, WP/646/2023, WP/464/2023, WP/282/2023, WP/305/2023, WP/156/2024, WP/2835/2023, WP/587/2023, WP/350/ 2023, WP/3329/2025, WP/3146/2022, WP/1228/2023, WP/629/ 2023, WP/1050/2023, WP/809/2023, WP/1046/2023, WP/ 1346/2023,WP/697/2023, WP/1129/2023, WP/606/2023, WP/1092/2023, WP(L)/3222/2024, WP/991/2022, WP/3306/ 2022, WP(L)/4083/2025, WP(L)/42/36/2025, WP/997/2024, WP/1293/2025,WP/869/2023, WP/3737/2025, WP/135/2023, WP/3256/2022, WP/3617/2022, WP/2883/2023, WP/1237/ 2023, WP/3747/2022, WP/521/2023, WP/2415/2023, WP/1177/2024, WP/3363/2022, WP/531/2023, WP/582/2023, WP/901/2024, WP/2416/2023, WP/1129/2025, WP/1557/ 2023,WP/3722/2025 WP/3726/2025, WP/1697/2023, WP/ 2500/2023, WP/3530/2022, WP/2381/2023, WP/3693/2025, WP/3359/2022, WP/3558/2022, WP/668/2023, WP/2481/ 2023,WP(L)/18046/2025, WP/3247/2025, WP/2886/2023, WP/3857/2025, WP/3856/2025, WP/3858//2025, WP/3880/ 2025, WP/3880/2025, WP/3896/2025, WP/143/2023, WP/ 315/2024, WP/69/2025, WP/3728/2025, WP/2936/2023, WP/3664/2025, WP/1850/2023, WP/2892/2022, WP/3256/ 2022, WP/3461/2025, WP/3859/2025, WP/2742/2023, WP/3746/2025, WP/06/2023, WP/1846/2023, WP/3608/ 2022, WP/2438/2023, WP/357/2023, WP/2792/2023, WP/

3807/2023, WP/3813/2023, WP/3653/2022, WP/3959/2022, WP/42/2023,WP/4099/2022, WP/211/2024, WP/3714/2023, WP/4119/2022.WP/4102/2022, WP/57/2023, WP/630/2024, WP/58/2023, WP/5245/2022, WP/62/2023, WP/5186/2022, WP/5235/2022, WP/5373/2022, WP/84/2023, WP/5279/2022, WP/4023/2022, WP/5335/2022, WP/5356/2022,WP/577/2023, WP/345/2023, WP/4724/2024, WP/3273/2023, WP/1025/2025, WP/1016/2022, WP/3774/2025, WP(L)/31364/2024, WP/5339/2022, WP/5019/2022, WP/79/2023, WP/4695/2025, WP(L)/35644/2025, WP/3487/2025, WP(L)/35890/2025, WP/610/2023, WP(L)/36495/2025, WP/5154/2022, WP/5151/2022, WP/5325/2022, WP/2394/2023, WP(L)/39869/2022, WP/769/2023, WP/139/2023, WP/1135/2023 and WP/214/2023.

CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.

RESERVED ON : 04th MAY, 2026
PRONOUNCED ON : 25th August, 2026

...

JUDGMENT PER BHARATI DANGRE J.

1. For facilitating the analysis of the rival claims presented before us through the bunch of Writ Petitions, we have deemed it appropriate to divide our judgment into Sections with the following captions:-

TOPIC	**PARA Nos.**
A) <u>The Conspectus</u>	Para Nos. 2 to 5
(I) The Proceedings	Para Nos.6 to 7
(II) The Statutory Scheme	Para Nos. 8 to 9
(III) The Prelude	Para Nos.10 to 11

(IV) The Litigation Commenced Before the Single Judge of the Bombay High Court	Para Nos. 12 to 15
(V) The Proceedings before the Division Bench of Bombay High Court	Para Nos.16 to 18
(VI) Proceedings Before The Apex Court and Remand To High Court	Para No.19
(VII) The Judgment of Division Bench of Bombay High Court	Para Nos.20 to 24
(VIII) The Decision of the Apex Court in Jamshed Hormusji Wadia	Para Nos.25 to 27
(IX) Consequent Action by MbPT	Para Nos.28 to 30
(X) Policy Guidelines for Land Management by Major Ports (PGLM)	Para Nos.31 to 35
(XI) The Major Port Authorities Act of 2021	Para Nos.36 to 40
B) Submissions Advanced	–
(I) Submissions advanced on behalf of the Petitioners	Para Nos.41 to 57
(II)Submissions Advanced on behalf of the Bombay Port Trust	Para Nos.58 to 69.
C) Analysis of the Rival Submissions	Para No.70
(I) Nature of MbPT/MbPA	Para Nos.71 to 72
(II) Reference to TATA Consultancy	Para No.73
(III) Revision of Rents Resulting in the Litigation	Para Nos.74 to 76
(IV) The Journey of Compromise Proposal and its acceptance in Jamshed Wadia	Para Nos.77 to 84
(V) The Final Verdict in Jamshed Wadia Case	Para Nos.85 to 87
(VI) Post Wadia Scenario- Steps taken by	Para No.88

Port Trust	
(VII) Issue Estoppel/Res-Judicata	Para Nos.89 to 90
(VIII) Rack Renting	Para No. 91
(IX) Fixation of Rent/ RATES By TAMP Hit By Retrospectivity	Para Nos.92 to 110
(X) Power under PGLM 2015	Para Nos.111 to 121
D) The Aftereffect and conclusion	Para Nos.122 to 125
E) The Aftermath	Para Nos.126 to 129
F) The Order	Para No.130

(A) THE CONSPECTUS

2. A group of 145 Writ Petitions revolve around identical facts, as all of them seek direction to the Respondents namely the Board of Trustees of the Port of Bombay, a statutory corporation and the Tariff Authority for Major Ports Mazgaon, Mumbai (TAMP) in withdrawing the impugned communications addressed to individual Petitioners, thereby fixing the rent through various tariff orders. Each of the Petition is premised on the factual assertion that the Petitioner has been the tenant of the premises since considerable length of time and has been regularly paying rent and outgoing in respect of the premises which were received by it from the Port Trust but by enhancing the rent through various tariff orders, and that too by adopting an arbitrary process, clearly contrary to its resolve to implement the judgment of the Apex

Court in ***Jamshed Wadia vs. The Board of Trustees of the Port Mumbai & Anr.,***[1] and accepting the rates fixed under their own 'compromise proposal' with downward revision in the rent, and interest and to be applicable to the landed estates upto 31/03/2024, by applying the agreed annual increase. The fixation of rate as per the statement of rates declared on various dates for different phases is assailed as exorbitant and each of the Petition has questioned the same.

3. Since we have clubbed the Writ Petitions together for they being heard finally, at the request of the counsel for the Petitioners and the Respondents, we have taken the Writ Petition No. 3143 of 2022 as the lead Petition and arguments are advanced before us with reference to the facts of the said Petition, which is filed by Arsheesh Jamshed Wadia and Homee Jamshed Wadia, the joint fifteen (15) monthly lessees/tenants in respect of two Plots bearing Nos. 82 (admeasuring approximately. 582.123 sq. meters) and 86 (admeasuring approximately 550.443 sq. meters) contiguous to each other, and situated at Unit No.6, Mazgaon Tank, Bunder Estate, Mazgaon, Mumbai. The said Writ Petition, has impleadment of the following as Respondent Nos.1, 2, and 3 respectively viz, The Board of Mumbai Port Authority, The Tariff Authority for Major Ports, The Union of India, through The Ministry of Ports, Shipping, and Waterways.

The Writ Petition seeks multiple and multi-dimensional reliefs but we deem it appropriate to reproduce the primary reliefs sought therein:-

> *"A. This Hon'ble Court be pleased to issue a writ, order or direction; declaring that the rates of rent fixed under Respondent No.1's own "Compromise Proposals" as upheld by the Hon'ble Supreme Court in*

1 *(2004) 3 SCC 214*

the Petitioners' own case, viz. Jamshed Hormusji Wadia vs. The Board of Trustees of the Port of Mumbai, (2004) 3 SCC 214, are applicable to the Petitioners' said Plots – beyond 30th September 2012 upto 31st March 2024, with 4% annual increases thereon every October;

B. This Hon'ble Court be pleased to issue a writ of Mandamus, or a writ in the nature of mandamus, or any other appropriate writ, order of direction under Article 226 of the Constitution of India; directing Respondent No.1 to levy, charge and accept rates of rent and other interest, premiums, charges – based on Respondent No.1's own "Compromise Proposals" as upheld by the Hon'ble Supreme Court in Jamshed Hormusji Wadia Vs. The Board of Trustees of the Port of Mumbai, (2004) 3 SCC 214; even beyond 30th September 2021 and upto 31st March 2024, with 4% annual increases thereon every October;

C. This Hon'ble Court be pleased to issue a writ of Certiorari, or a writ in the nature of Certiorari, or any other appropriate writ, order of direction under Article 226 of the Constitution of India calling for the papers and records pertaining to the Impugned Policy Guidelines for Land Management, 2015, and after going through the legality and validity of the same; quash and set aside Clause 4(c) (later re-numbered as 4(iii)) and Clause 13 of the Impugned Policy Guidelines for Land Management by Major Ports, 2015, which prescribes fixation of SOR basis market value of land ***(viz. Exhibit "DD" hereto);***

D. This Hon'ble Court be pleased to issue a writ of Certiorari, or a writ in the nature of Certiorari, or any other appropriate writ, order of direction under Article 226 of the Constitution of India, calling for the papers and records pertaining to the Impugned Clarification No.1 of 2018, and Respondent No.3's Impugned Letter dated 27th January 2021, and after going through the legality and validity of the same; quash and set aside the Clarification 1 of Respondent No.3 to the Issue No.1 of the Impugned Clarification Circular (Land Management) No.1 of 2018 ***(viz. Exhibit "GG" hereto)*** *and Respondent No.3's Impugned Letter dated 27th January 2021* ***(viz. Exhibit "LL" hereto);***

E. This Hon'ble Court be pleased to issue a writ of Certiorari, or a writ in the nature of Certiorari, or any other appropriate writ, order of direction under Article 226 of the Constitution of India, calling for the papers and records pertaining to the Impugned Gazette Notification dated 29th October, 2021 by Respondent No.2 (viz. Exhibit "UU" hereto) – notifying the "rent Schedule" of the lease rentals retrospectively for the period form 1st October 2012 to 30th September 2017, applicable to all monthly tenants, fifteen (15) monthly leases, expired leases of non-home occupations in Township Areas of The Mumbai Port Trust for the Twenty-three (23) Ready Reckoner Zones mentioned therein; and after going through the validity and legality thereof, quash and set aside the same;

F. This Hon'ble Court be pleased to issue a writ of Certiorari, or a writ in the nature of Certiorari, or any other appropriate writ, order of direction under Article 226 of the Constitution of India, calling *for the papers and records pertaining to the Impugned Gazette Notification dated 18th December 2021 by Respondent No.2 (**viz. Exhibit "YY" hereto**) – notifying the "Speaking Order" with relation of the aforesaid Impugned Gazette Notification dated 29th October 2021; and after going through the validity and legality thereof, quash and set aside the same;*

*G. This Hon'ble Court be pleased to issue a writ of Certiorari, or a writ in the nature of Certiorari, or any other appropriate writ, order of direction under Article 226 of the Constitution of India, calling for the papers and records pertaining to the Impugned Gazette Notification dated 16th November 2021by Respondent No.2 **(viz. Exhibit "WW" hereto) –** notifying the "Rent Schedule" of the lease rentals retrospectively for the period from 1st October 2017 to 30th September 2022, applicable to all monthly tenants, fifteen (15) monthly leases, expired leases of non-home occupation in Township Areas of the Mumbai Port Trust for the seven (7) Ready Reckoner Zones mentioned therein; and after going through the validity and legality thereof, quash and set aside the same;*

*H. This Hon'ble Court be pleased to issue a writ of Certiorari, or a writ in the nature of certiorari, or any other appropriate writ, order of direction under Article 226 of the Constitution of India, calling for the papers and records of the Impugned Gazette Notification dated 10th December 2021 by Respondent No.2 **(viz. Exhibit "XX" hereto)** – notifying the "Speaking Order" with relation to the aforesaid Impugned Gazette Notification dated 16th November 2021; and after going through the validity and legality thereof, quash and set aside the same;*

*I. This Hon'ble Court be pleased to issue a writ of Certiorari, or a writ in the nature of certiorari, or any other appropriate writ, order of direction under Article 226 of the Constitution of India, calling for the papers and records of the Impugned Circular dated 11th January 2022, issued by Respondent No.1 **(viz. Exhibit "AAA" hereto)**; and after going through the validity and legality thereof, quash and set aside the same;*

J. This Hon'ble Court be pleased to issue a writ of Certiorari, or a writ in the nature of Certiorari, or any other appropriate writ, order of direction under Article 226 of the Constitution of India, calling for the papers and records of the Impugned Demand Notice dated 25th August 2022, issued by Respondent No.1 (viz. Exhibit "BBB" hereto); and after going through the validity and legality thereof, this Hon'ble Court be pleased to quash and set aside the same.

K. This Hon'ble Court be pleased to issue a writ, order or "direction; declaring that under Section 49 of the MPT Act, 1963, Respondent No.2 TAMP does not possess the power or jurisdiction to frame scale of rates of rents in respect of Respondent No.1's lands falling outside the limits of the Mumbai Port;

L. This Hon'ble Court be pleased to issue a writ of Certiorari, or a writ in the nature of Certiorari, or any other appropriate writ, order of direction under Article 226 of the Constitution of India, calling for the papers and records of Respondent No.1's Impugned Gazette Notifications dated 28.04.2022 (Exhibit "CCC"-hereto), Impugned Gazette Notification dated 14.09.2022 (Exhibit "DDD" hereto) and

Impugned Circular dated 25.10.2022 (Exhibit "EEE" hereto); and after going through the validity and legality thereof, and the Impugned Gazette Notification dated 21.03.2023 (Exhibit "GGG" hereto) this Hon'ble Court be pleased to quash and set aside the same.

M. This Hon'ble Court be scan to issue a writ of Certiorari, or a writ in the nature of Certiorari, or any other appropriate writ, order of direction under Article 226 ofthe Constitution of India, calling for the papers and records of the Impugned Demand Notice dated 31.10.2022, issued by Respondent No.1 (viz. Exhibit "FFF"hereto); and after going through the validity and legality thereof, this Hon'ble Court be pleased to quash and set aside the same.

M-1. This Hon'ble Court be pleased to issue a writ of Certiorari, or a writ in the nature of Certiorari, or any other appropriate writ, order of direction under Article 226 of the Constitution of India, calling for the papers and records of Respondent No.1's Impugned Gazette Notification dated 26th April 2023 (Exhibit "LLL" hereto); and after going through the validity and legality thereof, this Hon'ble Court be pleased to quash and set aside the same.

M-2 This Hon'ble Court be pleased to issue a writ of Certiorari, or a writ in the nature of Certiorari, or any other appropriate writ, order of direction under Article 226 of the Constitution of India, calling for the papers and records of the impugned Demand Notices from the month of June 2023 onwards issued by Respondent No.1 in terms of SOR 2022-2027; and after going through the validity and legality thereof, this Hon'ble Court be pleased to quash and set aside the same."

4. In addition to the aforesaid primary reliefs, several interim reliefs are sought since we are not concerned with the same, we do not reproduce those prayers in the Petition. Worth it to note that the Petition was permitted to be amended from time to time and as on date, before us the aforesaid reliefs, as included in the prayer clauses arise for consideration, through the Writ Petitions.

5. We have heard learned Senior Counsel Mr. Khambata for the Petitioner in the said lead Writ Petition, who is opposed by learned Senior Counsel Dr. Tulzapurkar, representing the Respondents, Mumbai Port Trust/Authority.

We will be referring to the submissions advanced before us by other counsels who represent the Petitioners and who have deemed it appropriate to advance their additional submissions but to a large extent the respective counsel had adopted the submission of Mr. Khambata in WP No. 3143 of 2022. Similarly, Dr. Tulzapurkar also has advanced common submissions by keeping Writ Petition No. 3143 of 2022 in focus.

By consent of the respective senior counsel, we have issued 'Rule' in all the Writ Petitions before us and have taken them up for final hearing.

(I) THE PROCEEDINGS

6. Since the pleadings in the Writ Petition has the narration of the precursor including the declaration of law by this Court on the grievance being presented to it by the Petitioners against the Port Trust and include the decisions from this Court as well as the Hon'ble Apex Court and even the change in the law introduced, it is more appropriate for us to first track the background events, in a sequence and then appreciate the rival contentions advanced before us.

We have also noted that the Petition No. 3143 of 2022 was amended on numerous occasions and all the while the permissions came to be granted as the amendments were found necessary for effective adjudication of the grievance.

7. To introduce the parties in the Writ Petition No.3143 of 2022, we have already stated that the Petitioners are the surviving joint (15) fifteen monthly lessees/tenants of the Board of Trustees of the Port of Mumbai (hereinafter referred to as 'MbPT') and they are the partners of M/s. B.F. Wadia and Sons carrying on wood business from the said plots. Late Shri

Jamshed Hormusji Wadia prior to his demise was also one of the joint tenants/lessee and a partner of the said firm and the bills issued by the MbPT are in the name of M/s Shri Jamshed H. Wadia and two others trading as M/s. B.F. Wadia and Sons'.

The Board of Mumbai Port Authority (hereinafter referred to as 'MbPA') is a statutory corporation constituted under Section 3 of the Major Port Authorities Act, 2021 (hereinafter referred to as 'MPA Act, 2021') and is the successor of the Board of Trustees of the Port of Mumbai ('MbPT') which was incorporated under the Major Port Trust Act, 1963 (hereinafter referred to as 'MPT Act, 1963').

The MbPA came to existence with effect from 3/11/2021, as the MPA Act, 2021 came into force repealing the existing MPT Act, 1963.

Respondent No.1, is the instrumentality of the State within the meaning of Article 12 of the Constitution of India and amenable to the writ jurisdiction of this Court.

Respondent No.2, namely Tariff Authority of Major Ports (TAMP), is a statutory authority constituted under Section 47 A of the MPT Act and in terms of Section 49, it was vested with the power /authority to frame Scale of Rates (SOR) and the statement of conditions in respect of any properties belonging to the Board in relation to the Port. However, in terms of proviso to Section 54(1) of the MPA Act, 2021 it continued to discharge the functions of Adjudicatory Board under the MPA Act, 2021 till the Central Government constituted the same under Section 54.

Respondent No.3, The Union of India through the Ministry of Ports, Shipping and Waterways is also impleaded as Respondent in the said Writ Petition.

(II) THE STATUTORY SCHEME

8. The referred events placed before us reveal that, for Bombay Port Trust (BPT), a Board of Trustees was constituted under the Major Port Trust Act, 1963, which was enacted for constitution of Port Authorities for certain major ports in India and towards the administration, control and management of such ports in such authorities.

When the statute was brought into force, there were six major ports in the country and amongst them, Calcutta, Bombay and Madras were administered by the Port Trusts, which were statutory bodies empowered to administer the ports, but subject to the control of the Central Government. As far as Bombay is concerned, it being established under the Bombay Port Trust Act, 1879, the three other major ports Vishakapatannam, Kochi and Kandla were in the charge of Port Administrative Officer appointed by the Central Government who was vested with limited powers. It was therefore deemed appropriate to bring a measure of uniformity for the governance of all major ports, and it was proposed to apply Major Port Trust Act, 1963 to all the three ports Bombay, Calcutta and Madras as the Statute governing them had outlived its life and became out of date.

From the date of coming into force of the Act, the Central Government constituted a Board of Trustees for each Port consisting of Chairman and one Deputy Chairman to be appointed by the Central Government and other persons as decided by it, to be its Members. The Board constituted under the Act is a body corporate with perpetual succession and common seal with a power to acquire, hold and dispose of the property.

As and from the appointed date, all property, assets and funds and all rights to levy rates vested in the Central Government or as the case may be, in any authority for the purposes of Port vested in the Board and all rates, fees, rent and other sums of money due to the Central Government or to any other authority were deemed to be the amount due to the Board. In terms of Act, 'rate' included any toll, dues, rent, rate, fee or charge leviable under the Act.

9. In 1997 Chapter V-A was introduced in the Act of 1963 providing for constitution and incorporation of Tariff Authority For Major Ports (TAMP), as a body corporate, with its Chair person, being appointed by the Central Government, who is or has been of the rank of Secretary or equivalent post in the Central Government. Chapter VI permitted the Authority to frame scale of rates at which and a statement of conditions under which various services prescribed shall be performed by the Board.

The Authority was also competent to frame scale of rates on payment of which and a statement of conditions under which any property belonging too or in the possession or in the occupation of the Board or any place within the limits of the Port or the port approaches may be used for various purposes which included leasing of lands or any other use of any land, building works, vessel or appliances belonging to or provided by the Board and different scales and conditions were permitted to be framed for different classes of goods and vessels.

(III) THE PRELUDE

10. The facts narrated in Petitions before us reveal that the Bombay Port Trust owns huge stretch of land from Colaba to Ravli Junction, including PIRPAU, Butcher Island, land at Titwala and other islands. Out of the total area of 720 hectares, the area under jurisdiction of the Estate Department of BPT is around 336 Hectars, on which lessees are granted for distinct tenure and this cover around 600 lessees, which were granted as on monthly or annual leases, 15 year term leases and 99 year or long term lessees; with or without a clause for renewal.

The leases entitled the tenants/lessee to hold the land but as long as the lessees were valid, they continued to pay lease rent which were revised and increased from time to time but not as a matter of some uniform policy decision but only by way of ad-hoc arrangements.

Although, time and again an exercise was taken for revision of rent for different category of leases, it was deemed appropriate to have an extensive exercise being carried out with the object that the Trust can secure fair and reasonable revenue for its estate and cater to its manifold public duties and attain its objective, as the expenditure on maintenance was gradually on rise and there existed a disparity between the realised rent and the billed rent on one hand and the expenditure incurred on maintenance of the properties, which at times was higher than its earning.

The Board by inviting proposal from consultancy firm and practicing valuers for ascertaining the market value of its land, including the lands in docks and bunders chose 'Kirloskar Consultants Limited., Pune', and entrusted the task of preparation of the estimate of the market value of its land by dividing them into convenient zones or blocks to be delineated on the Port Trust estates and having regard to the various factors relevant for regulation and the terms of reference extended to the land admeasuring about 1800 acres. The terms of reference also expected the consultant to indicate the estimated market value of land, both in vacant and occupied conditions and for different uses and an important terms of reference included laying down a general formula/ guiding principles to enable the Port Trust to arrive at land values rationally at a future date and realize the fair share of the future increase in land values periodically.

11. A draft report was submitted by the consultant and after discussions with the Estate Department and the Chairman of BPT, the final report was submitted on 25/12/1980.

On receipt of the Kirloskar report, BPT drew up a Note suggesting the rents to be enhanced to bring them in line with the recommendations made and the increase was based on the assumption that the land on which the leases stood was worth Rs. 521 Crores. On the proposals being accepted in totality the revised rents were brought into force from 1st October and the lessee were served notices terminating their tenancy and they were given option that if they intended to continue the leases, they should pay the revised rent fixed at 12%, for residential premises and 15% for commercial/industrial premises, the rates being pegged to the appreciated value of the land as computed in the Kirloskar Report.

(IV) THE LITIGATION COMMENCED BEFORE THE SINGLE JUDGE OF THE BOMBAY HIGH COURT

12. The tenants, who were not agreeable with the above, applied for reconsideration but since the grievance was not redressed, one Jayantilal Dharamsi filed a Writ Petition before this Court (WP No.35/1983) raising a challenge to the notice issued by BPT and pleading that since it is 'State' within the meaning of Article 12, it could not profit, as it had been exempted from the purview of Rent Act under Section 4 and the exemption was granted on the understanding that being an instrumentality of the State, it could not take advantage of the position in which it was placed by being the owner of large chunk of land. The Petitioner pleaded that enhancement in the rent claimed was out of proportion to the maintenance and service charges.

BPT contested the claim before the learned Single Judge and argued that its estate was not yielding adequate return having regard to the value thereof, which constrained the Trustees to raise the rent. It was also urged that BPT had to perform serval functions under the MPT Act, which are in the nature of public purpose and on receipt of the report of Kirloskar Consultants which was given a mandate to suggest a scientific and rational basis for fixing rent of different categories of lessees, the report submitted had been subjected to indepth study by the BPT authorities to conclude that the valuation of the land fixed at Rs. 521/- Crores by Kirolskar Consultants was not arbitrary or unreasonable. Based upon the said valuation, the BPT had called upon its tenants to pay rent like between 12 to 15 per cent, depending upon the user of the land and the long term leases were not touched, though as and when the period of leases was to expire, they were subjected to a gradual rise.

Thus, the BPT adopted a specific stand that it was under legal obligation to secure fair and reasonable value for its estate for attending its manifold public duties, and hence had proposed the enhancement, after carrying due exercise.

13. The learned Single Judge (Justice S.M. Daud as his Lordship then was) posed two questions for consideration in the Writ Petition before him.

> *"(i) Whether the demanded raise in rent is violative of MPT Act?*
>
> *(ii) Whether the demanded raise smacks of arbitrariness/ caprice and is therefore, violative of constitutional restraint upon the BPT as an instrumentality of the State?"*

The first question came to be answered in the background of Section 33, 34, 49 and 52 of the MPT Act and with reference to the aforesaid provisions, the contention of the Petitioner that the impugned raise falls under Chapter VI was appreciated in the backdrop of the stand of BPT, that Chapter VI applied only to rates chargeable by it in respect of temporary or transitory leases and that too in respect of property "within the limits of the port or the port approaches". As the lands figuring in the Petitions were outside the limits of the port, reliance was placed upon the declaration of limits of the port of Bombay issued under Section 5 of Indian Ports Act of 1908.

The BPT also relied upon the heading of the Chapter VI in support of its contention that it relate to rates at ports and property falling outside the port is not governed by Section 49.

Upon the contesting stands being placed, it was held by Justice Daud that in terms, Section 49 appear to govern leases of temporary and transitory character and only to the use of the property meant for such purpose and as against that Sections 33 and 34 applied to leases of land outside the port areas, where the duration of leases is month to month or 15 monthly, and it was concluded that there is no violation of provision of MPT Act in the demanded raise.

Coming to the second question, about the conformation to the standards of fairness and reasonableness, it was noted that the contention of the Petitioner that BPT was not free to devise its own way to circumvent the restrictions in regard to charging of exorbitant rent and particularly when Section 4(1) of the Rent Act exempted BPT from the restraints, it was contended that BPT could not avoid to implement concept of fairness and reasonableness.

BPT agreed that it cannot act in an arbitrary manner but it assertively pleaded that the limitations placed upon the landlords under the Rent Act will not control its power to act and the standard of reasonableness and fairness expected from an instrumentality of the State has to be matched against another expectation from such an instrumentality and since it is statutory body vested with diverse obligations, it was under an obligation to maximize its revenue so as to be in a position to discharge its responsibility under the MPT Act, to which it owed its existence.

BPT also urged that the persons like Petitioners who came upon the BPT land when there was not much demand of the sites, they got plots at cheap rates and continuance of the leases, conferred upon them un-intended advantage, which enabled them not only to deprive the BPT of its lawful dues but also confer upon them position, which worked to the detriment of others.

After referring to a catena of decisions and in particular the decision in case of ***Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay*** [2] a case which arose out of a judgment when the landlord BPT, evicted a tenant who adopted a plea that the notice to terminate its tenancy was for reasons other than which could be said to be fair and reasonable or in public interest, it was held that BPT had absolute liberty to determine the tenancy and its motive for doing so would be totally irrelevant to the legality of the action taken.

On the tenant approaching the Supreme Court, and seeking special leave, the contention of Marfatia, that BPT was subjected to constraints of fairness, reasonableness found favour and the relevant observation of the Apex Court was reproduced by the learned Single Judge and we deem it appropriate to reproduce the same as it formed the basis of the decision.

> *" When State, the local bodies and public authorities which are `State' within the meaning of* Article 12 *are exempted from purview of Rent Control legislation, the basis of exemption is that such bodies would not be actuated by any profit making motive so as to unduly enhance the rents or eject the tenants from their respective properties as private landlords are or are likely to be. They would not act for their own purpose as private landlords do, but must act for a public purpose. It, therefore, follows that the public authorities which enjoy this benefit without being hide-bound by the requirements of the Rent Act must act for public benefit. Being a*

2 (1989) 3 SCC 293

public body even in respect of its dealing with its tenant, it must act in public interest, and an infraction of that duty is amenable to examination either in civil suit or in writ jurisdiction. Every activity of a public authority especially in the background of the assumption on which such authority enjoys immunity from the rigours of the Rent Act must be informed by reason and guided by the public interest. All exercise of discretion or power by public authorities (like BPT) in respect dealing with tenants in respect of which they have been treated separately and distinctly from other landlords on the assumption that they would not act as private landlords, must be judged by that standard. If the governmental policy or action even in contractual matters fails to satisfy the test of reasonableness, it would be unconstitutional."

14. In an attempt to strike a balance, the Court observed thus:-

"35 *True, the Court did say that where the authorities constituted had taken a decision which could be said to be reasonable, the Court could not substitute that decision by another because of its view that it was a better one. It is in the light of the foregoing that the issue arising in this petition has to be resolved. What the BPT did was to appoint Consultants to draw up a report on the market value of the land owned by it. The terms of reference themselves suggested to the consultants that the BPT laboured under a belief that its lands were not yielding the proper revenue. The experts were into the subject and came out with the mystical figure of Rs. 521/- crores said to represent the value of the real estate in the possession of the tenants. The tenants did not include only people like the petitioners, who for the sake of convenience should be described as the non-service category, but also its officers and employees in the occupation of service quarters. The expenses said to be incurred by the BPT for the maintenance of its real estate was so high that it was getting a return less than the insignificant. The money factor which went into the valuation made by the Kirloskar Consultants was by applying the present market value of the land in the occupation of the service also the non-service tenants. Is the BPT entitled to adopt this method as a base for revising the rents payable by only one set of tenants ?*

I agree that any untoward increases in the licence fee or occupation charges payable by the service-tenants would have to be compensated by the BPT by an increase in the pay, allowances, and possibly perquisites admissible to them. Therefore, an increase in the fees chargeable to service licensees or tenants would be self-defeating, and, in due course rebound on the BPT itself. But the entire load of expenses cannot be shifted to the non-service tenants. When the BPT seeks to exact rent which will correspond to the present day market value of the land, it is violating the basic *assumption underlying the Rent Control legislation, Mr. Chinoy for one set of petitioners, argues, and righty so, that rent legislation has been enacted on the basis of a public policy which may be stated thus :-*

(i) The land owner/landlord is entitled to a reasonable return of his investment/cost.

(ii) The landlord/owner is not entitled to profiteer/take advantage of increase in land prices by seeking an increased return demanding higher rent computed on the basis of such increase in land prices."

15. Based on the aforesaid reasoning, the learned Single Judge noted that though the underpinnings of the Rent Act, may not apply in the strict sense to the BPT or any other local body exempted under Section 4 (1) of the Rent Act, but BPT is not expected to behave as an ordinary landlord trying to extract the best possible profit, which he can from his holding.

Justice Daud in his unrivaled style draw his conclusion and recorded his findings in the following words:-

"36. Thus, though the underpinnings of the Rent Act may not apply in the strict sense to the BPT or any other local body exempted under section 4(1) of the Rent Act, the BPT, as Marfatia says is not expected to behave as an ordinary landlord would. An ordinary landlord tries to exact the best possible profit which he can from his holding. That is why the legislature had to intervene-and this was done in the public interest-and make laws to prevent landlords from exploiting tenants by seeking exorbitant rent or else face eviction. It is not open to an ordinary landlord to claim the benefits of appreciation in prices where this be based on the getting scarce of a limited resource viz. land, in the context of demand. The BPT may be entitled to get protection against an erosion in the rental as a result of inflationary trends; but no more. The BPT may be said to be acting reasonably and in fairness, if, and when, it demands an increase in the rent provided the said increase corresponds to the inflationary spiral. But when it seeks to demand more than that, in other words, tries to take advantage of its position as the owner of a scare and limited resource, it is stepping into forbidden territory, for, it is then not acting reasonably and fairly. This would be the position despite the statutory obligations it has to fulfil. There is of course a way out and that would be for the legislature to give complete freedom to State instrumentalities from all manner of letters, whether it be in respect of rent or prices so that resources for public needs of the State can be met from out of the income generated by public enterprises inclusive of scare resources in their

possession. But democratic India governed by the Constitution of 1950 is not General Pinochet's Chile and as long as the Constitution prevails, Government and local authorities like the BPT, will have to go by the constraints underpinning standards of reasonableness and fairness inherent in rent control legislation. Regard being had to the authorities noted above, can it be said that the BPT has acted as would an instrumentality of the State enjoined to observe canons of reasonableness and fairness ? The precedents give a latitude to the State by exempting it from the full rigour of the Rent Act. This does not however permit it to act in violation of principles which led to the enactment of rent and tenancy legislations. The sprit of such legislation applies for that is what the precedents say while justifying the exemption. The exempted categories have to conform to the expected behaviour which entitled them to the exemption. It has not been shown that the rental revenue of the BPT is such as inhibit it in the performance of its duties much less maintenance of its real estate. The attempt to pass on the entire liability of the maintenance expenditure on the non-service tenants is impermissible. This is no doubt that the BPT like all local authorities and public enterprises, can do with an increase in revenue. The benefits of such an increase can be passed on to the citizenry in the shape of improved services if not a reduction in taxes - direct or indirect. That however cannot be a reason for permitting it to fix the market value of its land in terms of the law of demand and supply and based there upon, charge also-called reasonable return. Tested thus, the increases proposed by the BPT are anything, but reasonable or fair. A mere look at the figures given above and the rents chargeable would show that the increase is astronomical. That cannot be permitted, for it is clearly arbitrary and capricious being based upon an inapplicable measure. What would be the reasonable rent that the BPT to evolve and so far as the present petitions are concerned, all that is necessary to be done, is, to give a declaration that the demanded increases coupled with termination of tenancies are violative of the rights of the petitioners. For that reason, they are unenforceable. Rule in these terms made absolute, with parties being left to bear their own costs. Rent being paid by the petitioners under an interim order passed by the Court shall continue as shall the Bank Guarantees, for a period of 16 weeks as from today. "

(V) <u>THE PROCEEDINGS BEFORE THE DIVISION BENCH OF THE BOMBAY HIGH COURT</u>

16. Being aggrieved by the aforesaid decision, the Board of Trustees of the Port of Bombay challenged the said decision in Appeal No. 258 of 1991, which was clubbed along with other Appeals filed by it, challenging the common judgment dated

4/10/1990 in a group of Writ Petitions.

During the pendency of these Appeals, on a Notice of Motion being taken out for expeditious hearing, on 28/06/1991, it fell from the Court, that the matter should be put to an end and it was suggested that a cut-off date shall be fixed and the number of years at the expiry of which, the Board shall direct the tenants to pay increase in rate at certain percentage shall be decided so that permanently, at fixed intervals of years, BPT will get automatic increase in rate at the percentage fixed by it. It was also suggested that some formula be suggested so as to arrive at a percentage of rent and this formula can also be made applicable to other tenants of BPT, who are not parties in the Appeals by giving notice to them under Order 1 Rule 8 of the Code of Civil Procedure.

In light of this order, the compromise proposals was suggested in case of monthly tenants and 15 monthly leases, to the effect that the present occupants on monthly basis and monthly tenancy leases may continue on the same basis of revised norms and the cut of date for revision may be fixed as 1/10/1982. In addition, in case of 15 monthly leases the base rent may be 50% of the applicable Kirloskar rate with increase in rate by 8% per annum so as to reach the Kirloskar rate of rent on 1/10/1991 giving a spread over of 10 years.

It was also proposed that in case of monthly tenancies the applicable rates recommended were 50% more than the arrears of rent may be recovered from 1/10/1982 with 15% simple interest per annum. This proposal was put up for approval of the Board for consideration in the Board meeting held on 13/08/1991.

The proposal was finally approved on due deliberation and it was crystallized in the following:-

"a. Nature of occupations were allowed to continue on revised rent; & development may be permitted to be in accordance with the Development Plan, DCR and MbPT's master plan.

b. Letting rates for home-occupation were fixed at 20% of the letting rates for commercial occupations.

c. Letting rates for port owned structures were fixed at twice the letting rates for plots of land.

d. For the period 1.10.1982 to 30.09.1992, minimum rent of Rs. 6.33 per sqm. for FSI 0.5 came to be fixed, whether the area was built-up or not.

e. Letting rates from 1.10.1992 to 30.9.2012 for 'non-home occupation' came to be fixed at 15% rate of return on the valuation arrived at by Kirloskar Consultants (as on 1.1.1980); and were to be increased by 4% p.a. every October.

f. Arrears from 1.10.1982 up to 30.9.1991 to be recovered (irrespective of the built-up area) at a flat rate of Rs 6.33 per sqm. p.m. with simple interest at 8% p.a.

g. Fresh leases were to be granted in lieu of expired leases (with or without renewal clauses) by charging certain premiums.

h. Assignment, transfer, sub-letting, change of user & any other breaches were to be regularized on payment of certain premiums.

i. For monthly tenancies, taxes were to be borne by MbPT."

17. The proposal contained in TR No. 253 of 1991 indicated that if the proposals were not accepted, the Board reserved the right to withdraw it , as it was made without prejudice to the pending Appeals though the proposals did not *ipso facto* create any right in the tenants to the fresh tenancy/lease but continued to apply only to the rents to be charged in the event of grant of fresh tenancy/lease.

18. The Division Bench decided the Appeals filed by the Board of trustees by its judgment dated 12/03/1993, including

Appeal No. 258 of 1991 filed against the judgment in case of Jayantilal Dharamse and it set aside the Single Judge's judgment and found the Trust's compromise proposal, to be fair and reasonable. The Division Bench observed that the revised proposals submitted by Port Trust was extremely reasonable and fair and the ends of justice will be meet if the letting rates and other conditions are settled as per the proposals given by the Board which formed part of Exhibit A to the judgment. As the Judgment delivered by the learned Single Judge was set aside, it was declared that, 'the revised letting rates along with other conditions as set out in the proposals are applicable in case of properties leased out by Bombay Port Trust'.

On behalf of the Port Trust, it was also agreed that in respect of recovery of the difference for the period commencing from 1/10/1987 to 30/09/1991, if any of the Lessees seek installments, the Port Trust will be obliged to grant. It was also agreed that if any of the lessees had paid rent in excess of the letting rates as now determined, it shall be refunded. Thus, the Appeals were allowed by setting aside the judgment dated 4/10/1990 along with the declaration to the aforesaid effect.

(VI) PROCEEDINGS BEFORE THE APEX COURT AND REMAND TO HIGH COURT

19. One group of lessees, chose to approach the Apex Court, the lead Appeal being filed by Ocean view CHS raising a challenge to the Judgment of the Division Bench pleading that the BPT has submitted revised formula before the Division

Bench and sought leave for issuance of notice under Order 1 Rule 8 and the notices were duly published in Newspapers. Several lessees also thereafter filed applications for intervention and they were permitted to make submissions in respect of the "Compromise Proposal", but there was no individual hearing granted to them before considering the revised formula and create a binding effect, as the High Court did not examine individual grievance of the lessees in respect of the property held by them in regards to the adverse effect of the increase in rent on particular lessee and instead the High Court considered the compromise proposal and upheld the same.

In the wake of the submissions advanced, the Apex Court expressed that the 'Compromise Proposal' submitted by the BPT was considered by the Division Bench of the High Court in light of the reasons given by the learned Single Judge and the submissions were made by the lessees in support of the Judgment to show that the 'Compromise Proposal' suffered from vice of arbitrariness, but this question was not gone into by the Division Bench.

As a result, on 31/10/1995 the impugned Judgment of the Division Bench was set aside and the matters were remitted back to the Division Bench for reconsideration of the Appeals, in light of the submissions made by the Appellants Lessees as well as the Intervenors in regards to the Compromise Proposal.

In particular the Apex Court directed thus :

> *"While doing so the High Court would permit the lessees to submit their individual submissions to the 'Compromise Proposal' as well as justification for the 'Compromise Proposal' that are submitted by the BPT and consider the same on merits."*

(VII) THE JUDGMENT OF DIVISION BENCH OF BOMBAY HIGH COURT

20. Upon the proceedings being remanded to the High Court with a direction that reconsidering the "Compromise Proposal" by permitting the lessee to submit their individual objections to the Compromise Proposals as well as for justifications for the proposals submitted by MbPT and to consider the same on merits, on 24/6/1997, Resolution No.204 was passed, according approval to grant a fresh lease under a Compromise Proposal in case of expired leases from 1/4/1994 with 4% annual increase in the lease every October, till expiry of fresh lease. This position prevailed till, on remand, the matter was considered by the Division Bench on 1/8/2000.

During the interregnum, MbPT by passing resolutions, accorded its approval to grant fresh lease under a Compromise Proposal framed under T.R. No.253/1991. T.R.No. 534/1994 dated 12/10/1994 clarified that the rent as per letting rates specified under "Compromise Proposals" would apply from 1/4/1994 and T.R. No. 204/1997, in regards to the revision of rents under the Compromise Proposal and for determining the period of long term lease, declared thus :-

> *"As occupation in respect of lease which had expired prior to 31/3/1994 are now being regularized grant of fresh lease of 30 years from 1/4/1994, seems to be in order. The Compromise Proposals set out letting rates with 4% annual increase upto 30/9/2012.*
>
> *The question was of the increase to be affected thereafter. However, in all individual cases, sanction by the Board 30 years has been granted with 4% annual increase in rent even beyond 2012 and upto 2024, and therefore, it was proposed to grant approval to the grant of fresh lease in case of expired leases from 1/4/1994 with 4% annual increase in rents every October till expiry of fresh lease"*

21. Further, through T.R. No.152/1999, MbPT resolved as below :-

> *"All cases at any stage of litigation be settled under the Compromise Proposals, except where the possession of the premises it taken back or where the Court has passed order to break open lock. In cases where possession is taken and restored by Court, request for compromise be brought up before the Board."*

The aforesaid was indicative of the Compromise Proposal by adopting 'lock, stock and barrel approach'.

22. In the mean time, on 9/1/1997, the Tariff Authority for Major Ports (TAMP) was constituted and Section 49 of the MPT Act, 1963 was amended, empowering TAMP to frame scale of rates and conditions of use of properties belonging to the Port Trust, including MbPT, within the port limits.

The Authority was established to provide fair tariff structure at major ports private sector investors, the Major Port Trust Boards and the port users. TAMP came to be constituted under section 47A of the MPT Act, 1963 vide notification dated 10/4/1997.

MbPT filed a Writ Petition raising challenge to the TAMP's jurisdiction to frame the Scale of Rates for rent and conditions of tenancy/lease for MbPT land and estates falling outside the Port area and in Writ Petition No.1153/2000, the Division Bench passed an interim order on 2/5/2000 restraining TAMP from giving effect to its order dated 15/3/2000 to MbPT's land falling outside the port area and port approaches.

23. On remand of the matter, the Division Bench of this Court on 1/8/2000 pronounced its judgment, when it set aside the finding of the learned Judge (Justice S.M. Daud), that rent cannot be fixed on the market rate of properties, holding inter alia, that recovery of rent on the basis of market value of land cannot be faulted with. The Division Bench, however, set aside the MbPT 1982 Rent Revisions by recording that there was no justification for fixing the rent at 50% of the market value of land and that MbPT ought to have chosen a lesser rate of return. The Division Bench therefore fixed the rate of return at 6% p.a and 4% p.a (for commercial and residential properties respectively) based on the market values of land determined under the Kirloskar report.

Not only this, the Division Bench also struck down MbPT's "Compromise Proposal" by recording that it did not meet the test of fairness and reasonableness. The Division Bench expressed its conclusions in the following words:-

> *"34. This will bring up the question as to whether the market value fixed by the Board of Trustees is fair and reasonable. If it is so, obviously after resolving the controversy as to the percentage, appropriate rent can be fixed. If it is otherwise, the whole exercise may fail.*
>
> *40. As we have seen earlier, the learned single Judge while dealing with this aspect has accepted the proposition that the land owner is entitled to a fair return but he does not accept the idea of fixing the rent on the market value of the land. Going by this conclusion in our opinion fair return can never be worked out. If, for whatever purpose, by adopting scientific method fair market value of the property is worked out, by the very reasoning of the learned single Judge that should form the basis of working out the fair return. What could be the fair return in terms of percentage could be a matter of dispute to be resolved by the Court if necessary. However that is exactly what the learned single Judge decided not to do. At the time the learned single Judge has accepted the rights of the Trust to increase the rent provided it were fair and reasonable. This is where the learned single Judge links up the revision with inflation spiral.*
>
> *41. The aforesaid concept necessarily means neutralising the effect of inflation on the return. By return we mean the initial rent which was fixed by the Trust. There has been no basis for the assumption that it was based on market value of*

> *the property like subsequent increase as noted hereafter. This would be also an ad hoc rent. In fact this is the basic plea of the Trust that so far they have not gone on the basis of the market value and hence they be permitted to do so. For the reasons to be given hereafter, we agree with the Trust that they can adopt market value as basis.*
>
> *47. Thus so far as the Kirloskar Report is concerned when it has worked out the fair market rate it has been accepted to be based on a scientific method by the Port Trust. If the position of the Port Trust is to be accepted, one would ordinarily look for a justification for the adoption of 15% return. Unfortunately, there is no justification given for adopting this rate of return. In our opinion, this is where the real problem lies. Having determined the fair market rate, if the Port Trust had chosen lesser amount of return the resentment obviously would not have been as sharp and vocal as it is today. What would be reasonable return, no doubt is to be determined by the Trust but when called upon to do so they should justify that also."*

24. The Division Bench expressed its view that by its very nature, Rent Legislation covered relationship between a landlord and a tenant and it did not provide anything about creation of any tenancy, but imposes either a restriction or embargo on the rights of the landlord under the general law, relating to revision of rent and eviction.

The Rent Act also dealt with the question of charging of rent and to that extent, it encroached upon the field of general law as to creation of tenancy. It was therefore, observed that unless it is shown that in the Major Port Trust Act, there are similar provisions as to the control, regulation or revision of rent and relating to eviction, the theory and occupied field cannot have any place and recording that the appellant Trust shall stand governed by the Maharashtra Rent Control Act, 1999, it was held that to the extent permissible therein, the Trust can increase the rent periodically and the occupants of the plot on whatever terms and conditions will have to abide by the same and it cannot claim any exemption from the provisions of the Rent Act.

Since the Division Bench was of the view that the Compromise Formula did not meet with the test of fairness and reasonableness, the finding of the learned Single Judge that rent cannot be fixed on the market rate of property was set aside, though rest of the judgment was confirmed. As far as the Compromise Formula given by the appellant before the earlier Division Bench was concerned, it was held to be valid and modified at the rate at which the rent could be recovered and the market rate and Port Trust was permitted to go ahead with fixation of rent.

(VIII) THE DECISION OF APEX COURT IN JAMSHED HORMUSJI WADIA

25. Based on the aforesaid judgment, MbPT sought to charge the lessee/tenants, the rent based on prevailing open market value of land and as per the lessees, it was higher than the rent proposed in the Compromise Proposal. Several SLPs were filed challenging the judgment of the Division Bench and in the petition filed by Jamshed Hormusjee Wadia (Civil Appeal No.5559/2000 along with connected Civil Appeals, leave was granted.

The two Judge Bench of the Apex Court by tracing the history of the litigation, referred to the judgment of the learned Single Judge dated 1st/4th October 1990 and to the decision of the Division Bench dealing with an Intra Court Appeal preferred by BPT, which suggested that an end could be put to the litigation by fixing a cut-off date and number of years upto the expiry of which the lessees could be directed to pay increase in the rent at a certain percentage, so that at fixed intervals of years, BPT would get a permanent automatic increase in rent at the percentage fixed and BPT was asked to suggest some formula.

Accordingly, ‘Compromise Proposals’ were put forth before the Court and the proceedings were initiated under Order I Rule 8 of CPC, putting all the lessees of the Board on notice through publication in newspaper. Referring to the remand of the matters to the High Court and the decision delivered on 1/8/2000, when the Appeals, aggrieved by the said decision were clubbed with the cross objections filed by BPT, the following questions were determined as arising for consideration :-

> *"13. The questions arising for decision in these appeals and several intervention applications can suitably be formulated as under:*
>
> *(i) What is the status of BPT as a landlord? Is it free to charge any rent from its lessees as it pleases in view of its having been exempted from the operation of the rent control law or is it only to act in a fair and reasonable manner in the matter of dealing with its lessees and charging b rent from them?*
> *(ii) Whether the cross-objections preferred by BPT are maintainable and, if so, to what effect?*
> *(iii) Can the grievances raised by individual lessees be said to have been satisfactorily disposed of by the Division Bench of the High Court?*
> *(iv) The relief to which the parties are entitled.”*

26. The Apex Court, on due deliberation, laid down the principles of law in respect to revision of rates of rent by the State and its instrumentalities and observed that they are expected to be just, fair and reasonable in all their activities including those in the field of contracts. Observing that even while playing a role of a landlord or tenant, the State and its authorities must remain so and cannot be heard or seen, causing displeasure or discomfort to Article 14 of the Constitution of India.

Invoking the principle of law laid down in Dwarkadas Marfatia and Sons (supra), it was observed that the underlying assumption behind granting exemption from operation of the Rent Control Legislations was, that the Government would not increase rents and would not eject tenants unless it was necessary to do so in public interest and that the particular building was required for public purpose. It was held that public authorities, as noted in Dwarkadas, must act for public benefit and where they fail to do so, they rendered themselves amenable to adjudication under civil law jurisdiction of the Court.

The heart of the judgment is however found to be expressed in the following words :-

> *"18. In our opinion, in the field of contracts the State and its instrumentalities ought to so design their activities as would ensure fair competition and non-discrimination. They can augment their resources but the object should be to serve the public cause and to do public good by resorting to fair and reasonable methods. The State and its instrumentalities, as the landlords, have the liberty of revising the rates of rent so as to compensate themselves against loss caused by inflationary tendencies. They can - and rather must - also save themselves from negative balances caused by the cost of maintenance, payment of taxes and costs of administration. The State, as the landlord, need not necessarily be a benevolent and good charitable Samaritan. The felt need for expanding or stimulating its own activities or other activities in the public interest having once arisen, the State need not hold its hands from seeking eviction of its lessees. However, the State cannot be seen to be indulging in rack-renting, profiteering and indulging in whimsical or unreasonable evictions or bargains."*

27. Since the bone of contention between the parties, are these observations of the Hon'ble Apex Court, we would be referring to the relevant exposition of law in this regard but suffice it to note that BPT expressed its satisfaction with the Compromise Proposals in the prevailing circumstances and situation and the cross-objection raised by BPT came to be rejected by observing that in the second round of Appeal to the Court, it would not be permitted to urge such pleas as it would have urged in the earlier round or which was urged, but not accepted by the Court.

In conclusion of the elaborate reasoning, the Appeals came to be disposed of on 13.01.2004 by recording that the controversy as to the rates of rent applicable to the lessees shall be deemed to have been resolved for the period from 1/4/1994 to 31/4/2000. A declaration was also issued to the effect that the "Compromise Proposals" as approved by the Board of Trustees in their meeting held on 13/8/1991 are fair, just and reasonable, but they should be subject to the modification that, the revision in rent from 1/4/1994 shall be on the basis of the rates of return at 10% for non-residential use and 8% for residential use instead of 15% and 12% respectively as suggested in the "Compromise Proposals". It was declared that the Compromise Proposals so modified shall bind the parties and all the lessees even if not parties to the proceedings in the wake of the proceedings taken by the High Court under Order I Rule 8 of CPC. The rates of rent for the period upto 31/3/1994 was to remain as suggested in the "Compromise Proposals" which remain unchanged except for the modification suggested.

(IX) CONSEQUENT ACTION BY MbPT

28. The aforesaid pronouncement continue to remain the fulcrum of the argument of the petitioners before us and our attention is invited to T.R.No.31/2004 when MbPT resolved to accept and implement the judgment of the Apex Court.

The resolution clearly record the approval of the Board to accept the Supreme Court Judgment dated 31/1/2004 read with the clarifications given by the Additional Solicitor General, and what is pertinent to note is the decision to extend the applicability of the rent under the Compromise Proposals to 2024, as it was recorded that as per the Compromise Proposals, the minimum rent will be 0.5 FSI and maximum for 1.33 FSI and in case of leases, the rent will be further increased by 1.5 times for FSI 3 and above and upto five and two times for FSI 5 and above.

It was declared that the rent beyond 31/3/2000 will continue to increase by 4% every October as per Compromise Proposals upto 30/9/2012 and as decided under T.R. No.204/1997, fresh leases are granted for 30 years from 1/4/1994 with 4% annual increase in rent, thereby extending its applicability of the rent under Compromise Proposals upto 2024.

Copy of T.R.No. 31/2004 is annexed in the petition as Exhibit-M, and we would refer to the reasoning recorded therein when we deal with the contentions advanced on behalf of the Port Trust.

29. On 22/8/2006, T.R.No.127 approved a resolution, resolving thus :-

> *"(a) that the term/period of fresh leases would be only upto the year 2012, with a renewal clause for a period upto 2024 and such renewal would be based on new terms and conditions including in payment of revised rent as decided by MbPT.*
>
> *(b) that the date of 10/3/2004 be treated as the cut-off date for regularising past breaches and breaches after the cut-off date would attract application of revised rent, pro-rata to the area of breach prospectively and failure to accept the same would lead to termination of lease."*

30. It is this decision which is frowned upon by the petitioners by submitting that there is no cut-off date suggested in Wadia's judgment and though the Supreme Court had directed to settle the matter, MbPT failed to implement the Supreme Court judgment and charged higher rents on basis of 6% p.a. rate of return on land policy prescribed in the ready reckoner for 2006 with annual increase of 4% every October to the tenants who were exempted under section 3(1)(b) of the Maharashtra Rent Control Act, 1999.

Several lessees/tenants preferred representations and were granted further concession on rents fixed under Wadia's judgment with effect from 1/4/1994.

Being aggrieved, about 40 Writ Petitions came to be filed challenging MbPT's failure to implement Wadia's judgment and also challenging T.R.No.127/2006, lead Petition being Writ Petition No.2085/2009 filed by late Jamshed Wadia and while the petitions are admitted, interim orders are issued to the effect that "no coercive action be taken."

(X) POLICY GUIDELINES FOR LAND MANAGEMENT BY MAJOR PORTS (PGLM)

31. The aforesaid events were followed by a regime where the land policy formulated by the Ministry of Shipping was resolved to be adopted through T.R.No.21/2011 and sanction was accorded to adopt the policy, with Supreme Court judgment in Jamshed Wadia vs. Board of Trustees, Port of Mumbai.

The resolution took note of the jurisdiction of TAMP to fix the lease rents outside the port limit and Port approaches other than those mentioned under Section 40 to 48 and 49 of the Major Port Trust Act, 1963 and it was noted that the High Court of Bombay had taken a consistent view that the same falls outside its competence.

Writ petition No.1153/2000 which was filed by MbPT, raising a challenge to the TAMP order was already admitted and stay was granted, leading to an inference that the contracts or leases outside Port limit and Port approaches would be covered by Section 33 and 34 of the MPT Act, 1963. TAMP was of the view that for the purpose of framing Scale of Rates and statement of conditions, all cases 'irrespective of any time limitation' relating to all properties of MbPT shall fall within its jurisdiction.

The order of this Court in case of ***Board of Trustees of Port of Mumbai Vs. Jayantilal Dharamsey***,[3] declaring that TAMP can fix rates in respect of the properties within the port limits under section 49 and other relevant provisions, lead to a conclusion that the rates of properties outside the port limit can be fixed by MbPT even after the amendment constituting the authority.

In the wake of the aforesaid, Resolution No.21 was approved on 31/5/2011.

The aforesaid was followed by issuance of a Circular by MbPT revising the compensation/rent for the leases of port

3 2000 SCC Online Bom 505

trust premises from 1/10/2012.

32. On 2/1/2014, the Ministry of Shipping, Government of India issued policy guidelines for land management by Major Ports (PGLM) 2014, to ensure that land resources are put to optimum use as per the approved land used plan and optimum value is realised by licensing/leasing port land. It prescribed procedure for revision of rates to enable maximum resource generation for the ports and the methodology for regular updating of the rates in tune with the market value.

Clause 5 thereof excluded its applicability to the township area of Mumbai port by setting out that for these areas, a separate policy would be framed. The policy also prescribed the method for determining the lease rent and it prescribed for fixing of the price by taking into account highest of the five factors including the ready reckoner of land values in the area and valuation as per the valuer's report.

With reference to the said policy, the Ministry of Shipping directed MbPT to initiate steps for immediate implementation of Wadia's judgment and also directed it to seek clarification from the Apex Court.

Under T.R 224/2014, MbPT resolved to adopt PGLM 2014 and it is worth to note that the policy did not apply to the township areas of Mumbai Port.

33. The Ministry of Shipping modified PGLM 2014 and it was referred to as 'Policy Guidelines for Land Management' by major ports 2015 (PGLM 2015).

Even this policy in clause 5 expressly stated that it is not applicable to the township area of Mumbai, for which a separate policy is proposed to be framed. Clause 13 thereof had set out the procedure for fixing of market value of land and SOR and it contemplated the Land Allotment Committee/s (LAC) to determine the latest market value of the port land by taking into account the highest of the five factors viz; (i) State Government's Ready Reckoner Land Values in the area, if available for similar classification/ activities (ii) highest rate of actual relevant transactions registered in last three years in the ports vicinity with an appropriate annual escalation rate to be approved by the Port Trust Board (iii) highest accepted tender-cum-auction rate of port land for similar transactions, updated on the basis of annual escalation rate approved by the Port Trust Board. (iv) Rate arrived at by an approved valuer appointed for the purpose by the Port. (v) Any other relevant factor as may be decided by the Port.

34. Clause 13(b) of the Policy contemplated that the Reserve Price in terms of the lease rent would be the latest SOR determined in accordance with clause 13(a) and 13(c) and in no case would be less than 6% of the latest market value recommended by the Port Trust.

Clause 13(c) of the PGLM 2015 guidelines contemplated that Port Trust would make proposal as outlined in clause 13(a) to TAMP for fixing the latest SOR of the land and TAMP would notify the same after following due process of consultation with stakeholders and within 45 days of receipt of the proposal. The Port Trust was thus entitled to fix rate of annual escalation which would not be less than 2% and the SOR would be re-fixed once in every five years.

35. It is on 21/3/2017, the Ministry of Shipping formulated 'Draft Policy Guidelines for land use and Management for

Township areas of Mumbai Port, but unfortunately, they were never finalised as PGLM 2015 was made applicable to the township areas of Mumbai Port' by issuing a clarification Circular (Land Management) No.1/2018 and this did away with the exclusion clause of 2015 guidelines. Thus, the PGLM 2015 was made applicable to the township areas of Mumbai Port where the petitioner's premises are located and this was made applicable in the year 2018.

Since the MbPT had filed Writ Petition challenging TAMP's jurisdiction to frame Scale of Rates of land and conditions for tenancy/lease for its estates falling outside the port area, an understanding was reached in the wake of the subsequent events that the said Writ Petition (WP No.1153/2000) will be withdrawn and Ministry of Shipping will advise TAMP that consequent to PGLM, the SOR with effect from 1/10/2012 onwards be fixed by TAMP for all areas of Mumbai Port including its township area and this step was warranted as there was a stay granted by this Court, restraining TAMP from giving effect to its order dated 15/3/2000 in respect of the land falling outside the port area and port approaches, as TAMP had expressed that it is entitled to frame scales of rates and statement of conditions in respect of all lease cases, relating to all properties of the Trust without any discrimination.

The Writ Petition being withdrawn from this Court on 8/8/2019, on 27/1/2021, the Ministry of Shipping addressed its communication to the Chairman to all the major ports declaring that the clarification issued by the MOS had a sunset clause and it was clarified that PGLM 2015 issued on

29/4/2019 will be applicable for both the land for major port trust and to the township areas of the ports.

(XI) THE MAJOR PORT AUTHORITIES ACT OF 2021

36. The aforesaid event was followed by a new regime when the Major Port Authority Act, 2021 was published in the official gazette with an objective to provide greater autonomy, flexibility to the Major Ports and to professionalize their governance and this act repealed the Major Port Trust Act, 1963.

The Major Port Authorities Bill 2020 provided for constitution of the Board of Major Port Authority for each major port in place of the Board of Trustees, with certain powers being confirmed upon the Authority including the power to make regulations for the purpose of operations, development and planning of the major port.

Section 27 of the said Act relate to imposition of rates and the Board of each of the Major port authority or the Committee/s constituted in this behalf by the Board was entitled to frame scale of rates at which and the statement of conditions under which any service shall be provided or made available and it included the power to frame different scales, fees, rates and conditions for different classes of goods and vessels, provided the fixation and implementation of such scales, fees, rates and conditions shall be in consonance with the norms, as may be prescribed and it shall (i) not have retrospective effect (ii) not be in derogation with the rules made by, or directives of the Central Government (ii) not be inconsistent with the provisions of the Competition Act, 2002 or any other law for the time being in force.

37. Section 54 of the Act of 2021 provide for constitution of an Adjudicatory Board, to exercise the jurisdiction powers and authority conferred on it, but till it's constitution, TAMP constituted under section 47A of the Act of 1963 was allowed to discharge the functions of Adjudicatory Board, but ceased to exist immediately on its constitution.

Section 58 of the Act conferred the powers on the Adjudicatory Board to discharge various functions other than tariff setting.

The 'effective date' of the MPA Act, 2021 coming into force was declared as '3/11/2021', when 1963 Act got repealed with a saving clause provided in sub-section (2) of Section 75 to the effect that the acts done under the repealed MPT Act, would be deemed to have been saved under the New Act of 2021, so long as the actions were consistent with the provisions with the new Act.

38. Closely on the heels of the new regime coming into force, TAMP which continued to discharge the functions of Adjudicatory Board till it was constituted by the Central Government, published a notification on 25/10/2021, i.e. four days prior to the new Act coming into force stated to be issued under Section 49 of the Act of 1963, notifying its order dated 2/10/2021 fixing rent/compensation retrospectively from 1/10/2012 to 30/9/2017, in terms of its proposal dated 14/8/2021.

This notification is subjected to challenge by the petitioners on the ground that it was issued in a hurried manner when the new Act was around the corner and on the ground that TAMP had no power to fix the rent retrospectively as a new Act specifically prohibited it and from the new Act coming into force from 3/11/2021, TAMP's power to fix rent ceased to exist, as tariff setting no longer remained its function.

TAMP also published e-gazette Notification no. 552 on 16/11/2021 giving effect to its notification dated 3/11/2021 purportedly issued by invoking Section 49 of the MPT Act for fixing 'land/compensation' retrospectively from 1/10/2017 to 30/9/2022.

Further, yet another e-gazette notification no.641, TAMP published its notification dated 25/11/2021 on 10/12/2021 notifying its speaking order dated 1/11/2021 with respect to fixation of SOR for 2017-2022. Similarly, on 18/12/2021, it issued e-gazette notification no.654 inviting its speaking order dated 22/10/2021 for fixation of SOR for 2012-2017.

MbPT also published similar rent schedules and speaking order u nder section 49 of the MPT Act, 1963 after MPA Act, 2021 came into force, covering other users and areas of MbPT State.

The Board of Mumbai Port Authority (MbPA) was constituted by the Central Government in terms of Section 3 of the Act of 2021 on 31/1/2022 and as a consequence thereof, TAMP ceased to exist.

39. Worth to note that on 28/4/2022, the MbPA by issuing notification adopted the SORs fixed by TAMP and it extended the applicability of the impugned SORs for a period of six months from 1/10/2022 to 31/3/2023 by Gazette notification dated 14/9/2022 and further extended its applicability by two months by gazette notification dated 21/3/2023, thereby extending it to 31/5/2023.

Pursuant thereto, the demand notices were issued to the petitioner.

As a follow up of the aforesaid, on 25/8/2022, MbPA issued individual demand notice to the petitioners, based on the impugned SORs fixed by TAMP and sought retrospective payment of differential arrears of lease/tenancy, (along with service tax and GST) and as far as the present petitioner is concerned, the following demands were raised :

(a) Rs.1,28,04,378.62 – from 1/10/2012 to 30/9/2017

(b) Rs.6,96,49,166.18 from 1/10/2017 to 31/7/2022.

Thus, the total sum of Rs.8,24,53,544.80 is demanded. There are different demands against each of the Petitioners based on the fixation of SOR for different zones and for different period.

40. On 29/3/2023, MbPA published a notice inviting comments on its proposal for fixation of SOR from 1/10/2022 till 30/9/2027 with effect from 1/6/2023 as approved by MbPA, by applying the basis of prevailing highest market value of land, in terms of clause 13 of PGLM 2015 i.e. 6% return p.a on land value of FSI – 1 as per valuation report by the valuer appointed by MbPT in terms of PGLM with 2% annual increase every October. It is on 25/4/2023 MbPT accepted and approved the fixation of the impugned SORs for the period 2022-2027, and by issuing a gazette notification on 26/4/2023, MbPA published the SOR for the period from 1/10/2022 to 30/9/2027 effective from 1/6/2023.

MbPA continue to issue to the petitioner monthly demand notices from June 2023 claiming alleged arrears of rent/compensation in terms of impugned SOR for 2022-2027 with effect from 1/6/2023.

(B) SUBMISSIONS ADVANCED

(I) SUBMISSIONS ADVANCED ON BEHALF OF THE PETITIONERS

41. It is with this background facts which we have garnered from the lead Petition No. 3153/2023, it is the contention of the petitioners that they are upto date in the payment of monthly tax invoiced issued by MbPA towards compensation in terms of the rates as modified by the Supreme Court in Wadia's case with 4% annual increase every October. It is urged before us that MbPA also levy service charges and in case of the petitioner before us, about 9.37% of the alleged compensation every month and demand notices are issued from time to time which is the cause of action for instituting the petitions.

42. Learned senior counsel Mr. Darius Khambata who has advanced submissions in lead Petition No.3143/2022, at the outset would submit that when the Petitioner Jayantilal Dharamse took an exception to the attempt of BPT to exact rent based on the 'Kirloskar Report' a Consultancy Firm appointed to offer an estimate of the market value of its land and its report being submitted on 25/12/1980, the rents were sought to be enhanced to bring them in line with the recommendations of Kirloskar Consultant.

The increase was based on the assumption that the land which was leased was worth Rs.521 Crores. The revised rates were, thus, arrived at and made applicable from 01/10/1982 and pursuant to a Resolution being passed, the lessees were served with notices terminating their tenancies coupled with the option that they would continue, upon they agreeing to pay revised rent fixed at Rs.12% for residential premises and Rs.15% for commercial/industrial premises and the rates being pegged to the enhanced value of the land as computed in Kirloskar Report.

This resulted in increase in the rent from 1982 and the Petitioners/lessees being not agreeable called in question the fixation of rates by alleging that the BPT could not profit up because it was exempted from the purview of the Rent Act under Section 4 and this exemption was given only on the consideration that it was instrumentality of the State and it would not take advantage of the position in which it was placed, being the owner of large chunk of land. BPT defended its action on various grounds , the primary contention being that its estate was not bringing adequate returns, having regard to the value thereof and this constrained the Trustees to raise the rent. It also urged that the BPT had to perform several functions under the MPT Act, all of them being in the nature of public purpose, which warranted a regular income and that it was told by the World Bank team that the rate of return on its real estate was hopelessly inadequate and needed a review, which prompted them to undertake the exercise of revising the rent by appointing a Consultant with a mandate to suggest a scientific and rational basis for fixing rent of different categories of lessees.

43. According to Mr. Khambata, the learned Single Judge of this Court in Jayantilal Dharamsee's case decided on

01/10/1990 determined the crucial question and recorded a finding that the BPT cannot act arbitrarily and as a State instrumentality sufficient reasonableness and fairness is expected from it.

In no uncertain words it was declared that BPT or any other local body exempted under Section 4(1) of the Rent Act, is not expected to behave as an ordinary landlord would who try to seek the best possible profit which he can from his holding, but definitely BPT will be entitled to get protection against an erosion in the rental as a result of inflationary trends, but nothing more and Mr. Khambata would rely upon the highlight of the Judgment which read to the following effect :-

> *"BPT may be entitled to get protection against an erosion in the rental as a result of inflationary trends; but no more. The BPT may be said to be acting reasonably and in fairness, if and when it demands an increase in the rent provided the said increase corresponds to the inflationary spiral."*

However, noting that the figure cited and the rents chargeable indicated an increase which was astronomical, a declaration was given that the demanded increase coupled with termination of tenancies was violative of the rights of the Petitioners.

44. The learned senior counsel Mr. Khambata has taken us through the series of Judgments, following the aforesaid decision of the of the learned Single Judge and prominent amongst is the decision of the Division Bench in Appeal No.258/1991, delivered on 11/12.03.1993, when it was clearly observed that,

> *"......while determining the rent to be charged in respect of Port Trust properties, it would not be appropriate to suggest that*

addition of only that amount reflected by the inflationary rate to the subsidized rent is permissible...."

Upon the matter being remanded to the High Court from Hon'ble Apex Court vide its order dated 31/10/1995, the Division Bench of this Court, in the Judgment delivered in an Appeal filed by the BPT set aside the Judgment of the learned Single Judge and also set aside the 'Compromise Proposals' and the Bench held that recovery of rent on the basis of market value of land cannot be faulted with.

The clear verdict then came from the highest Court when several Special Leave Petitions converted into Civil Appeals were heard alongwith the Cross Objections filed by the BPT seeking restoration and sustenance of its initial action, by raising a ground that there was no bar on the BPT to charge rent which may be, if necessary, even equal to market rate as the properties vested in it are not for the benefit of its occupants, but for effective management of public properties and the rent secured is to be utilized exclusively for the statutory permissible activities and to attend the objects of the BPT.

Mr. Khambata by inviting our attention to the decision of the Apex Court in ***Jamshed Hormusji Wadia vs. The Board of Trustees of the Port of Mumbai & Anr.***[4] would submit that on the submissions advanced by MbPT through the then Additional Solicitor General , the Apex Court adverted itself to the argument, that when private landlords are making money in the commercial capital city of Bombay, there is no reason why BPT should be kept pegged down to abysmally low rates of rent which were settled decades before and also the

4 (2004) 3 SCC 214

submission that the Trust has to manage and administer a huge Port, most vital to the industrial and economic life of the nation and, therefore, it needs money for funding its activities.

However, the Apex Court reiterated the position of law in no uncertain terms, to the effect that the State and its instrumentalities have to be just, fair and reasonable in all their activities, including those in field of contracts and even while playing role of a landlord, it must maintain its character. Our attention is invited by Mr.Khambata to each of the observation therein and in specific the observation where it is noted that balance has to be struck between ensuring a fair return on investment and charging exorbitant rates based on prevailing market prices of the land , which would be of utmost relevance to any other landlord. It was also observed that the State Government in order to justify a steep increase in rent, cannot plead exploitative increases in prices in India and in particular, Mr. Khambata would heavily fall upon the observation to the effect that, " State cannot be seen to be indulging in rack-renting, profiteering and indulging in whimsical or unreasonable evictions or bargains".

According to Mr.Khambata rack-rent is defined in "Valuation by J.A. Parks" as "full rental value of a leasehold property unaffected by any legal restriction when put to its highest and best use". Reliance is also placed upon the observations of the Apex Court in ***D.G. Gose & Co. (Agents) Pvt. Ltd. vs. State of Kerala & Another*** [5] where it is held as below :

> *" Where, however, the building has been let at what is plainly a rack-rent, that rent is the best evidence of value if it has been fixed by the higgling of the market..."that is by contractual bargaining."*

5 (1980) 2 SCC 410

At the end of the elaborate discussion, according to Mr.Khambata the Apex Court permitted revision of rate/rent by MbPA in a 'fair and reasonable' manner.

45. It is the contention of Mr.Khambata that the Judgment delivered by the Apex Court in Wadia's case is binding upon the Port Authority and in particularly when the Apex Court took note of the compromise entered between the Parties on the principle of 'give and take' and BPT also expressed its concurrence with the 'Compromise Proposals' in the prevailing circumstances and situation and while rejecting its Cross Objection, the Apex Court gave a declaration that the 'Compromise Proposals' shall remain unchanged subject to the modifications in the rate of return for non residential and residential users and it was clearly declared that the 'Compromise Proposals' shall bind all the lessees. It is, therefore, the contention of Mr.Khambata that MbPA, constituted under the Act of 2021, which is the successor of MbPT is strictly bound by the findings in Wadia's case on the ground of *res judicata* as well as *issue estoppel*. He would submit that the decision delivered was not restricted only to the Petitioner Jamshed Wadia, but was made applicable to all tenants/occupants as the Court had granted leave to Jamshed Wadia under Order I Rule 8 of CPC.

It is contended by Mr.Khambata that the Port Authority accepted the Judgment in Wadia's case and resolved to implement it vide TR No. 31/2004 and also accepted that the Judgment delivered in Wadia's case, as one in rem, as it would not only bind the parties, but all other affected persons and it clearly noted to be so. It is, therefore, the contention of Mr.Khambata that the law laid down in Wadia's case is binding upon the successor of MbPT i.e. MbPA with respect to rent revision of its landed estates and it operates as *res judicata* and *issue estoppel* against it qua any contention of rent revision. He would invoke the principle laid down in ***Hope Plantations Ltd. vs. Taluk Land Board, Peermade & Anr.***[6] and in particularly the observations in Para 24 to the effect that once the matter had been determined by the Supreme Court in appeal, there was no scope for any review by the Taluk Land Board, to hold that there was a cardamom plantation existing prior to 1964 in that very area. He would rely upon the following principle of law expounded by the Hon'ble Apex Court :-

> *"26. It is settled law that the principles of estoppel and res judicata are based on public policy and justice. Doctrine of res judicata is often treated as a branch of the law of estoppel though these two doctrines differ in some essential particulars. Rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstratedly wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are "cause of action estoppel" and "issue estoppel". These two terms are of common law origin. Again, once an issue has been finally determined, parties cannot subsequently in the same suit a advance arguments or adduce further evidence directed to showing that the issue was wrongly determined. Their only remedy is to approach the higher forum if available. The determination of the issue between the parties gives rise to, as noted above, an issue estoppel. It operates in any subsequent proceedings in the same suit in which the issue had been determined. It also operates in subsequent suits between the same parties in which the same issue arises. Section 11 of the Code of Civil Procedure contains provisions of res judicata but these are not exhaustive of the general doctrine of res Judicata. Legal principles of estoppel and res judicata are equally applicable in proceedings before administrative authorities*

6 (1999) 5 SCC 590

as they are based on public policy justice and justice."

As far as the point of *issue estoppel* is concerned, he would invoke the principle of law laid down in case of ***Dr.Subramanian Swamy vs. State of Tamilnadu & Ors***.[7] and in particular the following observations :-

> *"39. The scope of application of doctrine of res judicata is in question. The literal meaning of "res" is "everything that may form an object of rights and includes an object, subject-matter or status" and "res judicata" literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgments". Res judicata pro veritate accipitur is the full maxim which has, over the years, shrunk to mere "res judicata", which means that res judicata is accepted for truth. The doctrine contains the rule of conclusiveness of the judgment which is based partly on the maxim of Roman jurisprudence interest reipublicae ut sit finis litium (it concerns the State that there be an end to law suits) and partly on the maxim nemo debet bis vexari pro una et eadem causa (no man should be vexed twice over for the same cause).*
> *40. Even an erroneous decision on a question of law attracts the doctrine of res judicata between the parties to it. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as res judicata. (Vide Sha Shivraj Gopalji v. Edappakath Ayissa Bi and Mohanlal Goenka v. Benoy Kishna Mukherjee)."*

46. It is the contention of the learned counsel that once closure has been drawn upon particular transaction, re-opening of the past and closed transactions or settled issues would create a chaotic situation bringing instability in the Society and in result causing great unrest.

It is his specific submission that after the Judgment delivered in Wadia's case, Board decided to implement it and after seeking necessary legal advice from the learned Additional Solicitor General, who opined that there was no case for seeking review and with a view to end litigation on Port Trust estates, by Resolution No.31 approval was

7 (2014) 5 SCC 75

accorded to the acceptance of the Judgment of the Hon'ble Apex Court with the clarification given by the Additional Solicitor General.

47. Inviting our attention to the Affidavits filed before the Court and in particular the first Affidavit stating that the Port was suffering losses and need money to sustain its activity and a specific stand being adopted that BPT is commercial organization and need money and that land is a very important resource which would earn the desired return by maximizing the market value, Mr.Khambata would submit that the stand adopted is specifically rejected by the Supreme Court, which clearly observed that it is not open for BPT to profit. Thus, according to him, the successor of the Port Trust is now estopped from adopting the same stand and what is attempted to be justified before this Court today and the attempt to revise the rents in utter contradiction of the directives of the Apex Court, is hit by the principle of *issue estoppel* and *res judicata*.

48. Apart from the aforesaid submission, Mr.Khambata has also focused his attention on the very nature of the Port Trust and he would rely upon the authoritative pronouncement of the Apex Court in **The Trustees of the Port of Madras vs. M/s.Aminchand Pyarelal & Ors.**[8] when it was specifically noted as below :-

> *"Port Trusts are bodies of a public representative character who are entrusted by the Legislature with authority to frame a scale of rates and statement of conditions subject to which they shall or may perform certain services. Port Trusts are not commercial organizations which carry on business for their own profit."*

Another decision in this regard which is heavily relied

8 (1976) 3 SCC 167

upon by Mr. Khambata is the one delivered by Three Judge Bench of the Apex Court in **M/s. Dwarkadas Mareatia & Sons vs. Board of Trustees of the Port of Bombay**[9] and the relevant observations, to be found in Para 13 is as regards the exemption granted from the applicability of Section 4 of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 and the pertinent observation of their Lordships to the effect that the privilege given to the Port Trust is on the assumption that it would act in public interest and would not behave like ordinary landlords.

Further it is observed that being a public body, even in respect of its dealing with its tenant, it must act in public interest, and an infraction of that duty is amenable to examination either in civil suit or in writ jurisdiction.

Thus, it is sought to be canvassed by Mr. Khambata that BPT being a public body should meet the test of reasonableness or else it's acts are liable to be declared as unconstitutional. In short, it is the submission of Mr.Khambata that all the aforesaid precedents lead to an irresistible conclusion the BPT cannot behave like private owner whose motive is to maximize profit and a balance must be struck between the two contradicting rights viz. the right of the Trust to exploit its land on one hand and the right of exploiting the occupiers on the other hand.

49. The learned senior counsel would also place heavy reliance upon the case of ***Subodh Kumar Singh Rathour vs. Chief Executive Officer & Ors***.[10] where the earlier principle laid down in case of LIC vs. Consumer Education & Research

9 (1989) 3 SCC 293
10 (2024) 15 SCC 461

Centre[11] has been reiterated to the effect that the State or its instrumentality whose action is hedged with public element cannot be called into action, because such action was in the field of private law and is no longer a good law and the observations in Para 23 of the Judgment was cited with the approval which recorded as " Every action of the public authority or the person acting in public interest or any act that gives rise to public element, should be guided by public interest. If it is shown that the exercise of the power is arbitrary, unjust and unfair, it should be no answer for the State, its instrumentality, public authority or person whose acts have the insignia of public element to say that their actions are in the field of private law and they are free to prescribe any conditions in their actions as private citizens, simpliciter in the field of private law. Its actions must be hedged by reasons."

Submitting that the action of the State must be tested on touchstone of justice, fairness and reasonableness, Mr.Khambata is extremely critical on the approach of the MbPA, classified as a public body, to canvas that its power to grant and /or offer lease to an existing sitting lessee can predicate upon pre-condition that such lessee must pay enhanced rate first for the past decade from 01/10/2012 onwards which is fixed retrospectively in the year 2021. According to him, such an action an antithetical to the concept of fairness and reasonableness. It is his categorical submission that if MBPA cannot fix and/or levy and /or recover enhanced rates retrospectively , it cannot so do it under the guise of a pre condition for offering of a lease. The

11 (1995) 5 SCC 482

submission that the levy of lease rent is based upon contract entered into mutually by and between the Parties who have agreed to pay the rend from an anterior point of time and, therefore, such fixation of rent is not retrospective, but retroactive, is the submission which cannot countenance according to Mr.Khambata.

He would submit that assuming that it is a contractual matter, but a Contract by a public authority must meet the test of fairness and reasonableness and this according to Mr.Khambata is not a mechanical mantra only to be recited, but must be followed in spirit and when the Apex Court had already concluded the issue by declaring that the rent to be fixed by the BPT, should be 'fair and reasonable' , the impugned demand notice and impugned notification fixing the rents and demanding the same from the lessee like the Petitioners according to Mr.Khambata is an action which contradicts the Judgment in Wadia's case and in the wake of the principle laid down therein.

50. It is contended by Mr.Khambata that while determining the status of MbPT as landlord and while answering the question as to whether it was free to charge any rent from its lessees as it pleads in view of it having been exempted from operation of the Rent Control Act, it is brought to our notice by Mr.Khambata that the Apex Court rejected its contention as it rejected the cross-objection on merits as well as the maintainability and made it clear that though it is open for the State and its instrumentality to revise the rents to compensate against loss caused by inflation and negative balance caused to the cost of maintenance, payment of taxes and cost of administration, it was not permissible for it ti indulge in rack-renting and /or profiteering.

While deciding the Wadia's case , the Apex Court has invoked the principle laid down in ***Ratti Palonji Kapadia & Anr. vs. State of Maharashtra & Ors.***[12] holding that exemption from provision of Rent Control Law cast an obligation on the State and its instrumentality to comply the public policy of ensuring fair return on investments without charging exorbitant rates based on prevailing market price of the land and the State, in order to justify a steep increase in rent cannot plead exploitative increase in the prices of land.

Submitting that the question of law as regards revision of rent by State and its instrumentality as declared in Wadia's case having not changed nor is it that it is interpreted differently by larger Bench of the Apex Court, he would submit that the TAMP as well as the MBPT Authority under new regime are barred from fixing and/or charging rent based on prevailing market rates. An attempt to justify the fixation of rent met its fate when the Apex Court refused to accept the stand of MBPT and, therefore, it is contended that even after the expiry of the 'Compromise Proposals' on 31/03/2024, the ratio laid down in Para 18 and 19 would continue to bind the Respondents. It is the specific contention of Mr.Khambata that what has been held in the given facts and circumstances would amount to a ratio of the decision and he would submit that the decision cannot be regarded as an Authority in regards to its conclusion alone or even in relation to what could be deduced therefrom and it is a well settled principle in law that what is binding on the Court in a

12 1992 MhLJ 1356

subsequent case is not a conclusion arrived at in a previous decision, but it is the ratio which binds as a precedent and not the conclusion.

51. The second aspect which is pressed into service by Mr.Khambata is the life of the 'Compromise Proposals' and by relying upon Resolution No.204, he would submit that the Board granted its approval to the 'Compromise Proposals' set out letting rates with 4% annual increase upto 30/09/2012 and when the question was of the increase to be effected thereafter, in all individual cases sanctioned by the Board, 30 years lease has been granted with 4% annual increase in the rent even beyond 2012 and upto 2024 and this received approval by the Board on 24/06/1997.

Mr. Khambata would place reliance upon the Affidavit filed by the BPT before the Apex Court on 19/10/1994 and in particular para 6 and 8 of the Affidavit. According to him, after Wadia's Judgment TR 31/2004 , Clause 7.3 and 7.4 clearly recorded that the rent beyond 31/03/2000 will continue to increase by 4% every October as per the 'Compromise Proposals' upto 30/09/2012 and as decided under TR No. 204/1997, fresh leases be granted for 30 years from 01/04/1994 with 4% annual increase in rent , thereby extending the applicability of the rent under the 'Compromise Proposals' to 2024. Thus, according to Mr.Khmbata, BPT passed resolutions from time to time so as to give effect to the decision in Wadia's case and this period was extended to 2024 and, therefore, his contention is that, BPT cannot prior to 2024 and that too retrospectively, fix rent and this would amount to short circuiting the 'Compromise Proposals' which were described by the Apex Court to be fair and reasonable.

52. It is the contention of the learned counsel that the rates of rent under the 'Compromise Proposals' which were upheld under Wadia's Judgment are binding beyond 30/09/2012 till 31/03/2024.

Upon the Resolution being passed, it is contended that the MbPT itself accepted the 'Compromise Proposals' which would have to be read consistent with its Resolutions which included TR No.204/1997 and that all its tenants/ lessees (whether subsisting monthly tenancies or 15 monthly leases or expired leases) were entitled for a fresh lease period of 30 years from 01/04/1994 with 4% annual increase in rent, thereby extending the applicability of rent under the 'Compromise Proposals' even beyond 01/10/2012 and right upto 31/03/2024. Therefore, according to Mr.Khambata, till the year 2024 there is no question of the Respondent Authority resiling from its stated position and framing any other SOR, much late retrospectively with effect from 01./12/2012 onwards , which amount to acting in contradiction of its own resolution and rendering the action of MBPA manifestly, arbitrary, illegal and void.

53. Another prime submission advanced by Mr. Khambata is about TAMP loosing its authority in the new regime and it is canvassed before us that under Section 24 of the Act TAMP can discharge function till the adjudicatory Board is constituted. By virtue of Section 58(1) of the Act of 2021, the Board shall discharge functions set out in sub-section (1) other than tariff setting. It it, therefore, contended by Mr.Khambata that after coming into force of the Act of 2021 TAMP has no authority to fix the scale of rates which come into effect only from date of its publication as per Section 50(c) of the 1963 Act.

Inviting our attention to the Notification published on 12/11/2021 notifying the schedule of rates/ compensation from 01/10/2017 to 30/09/2022 for home and mixed occupations in township area of MbPT, it is the submission of Mr. Khambata that the same could not have been made applicable retrospectively i.e. from the year 2017 and for the period after 2021 TAMP had not authority under the new Act to fix the schedule of rates and revision of rent/compensation and, therefore, the impugned SOR cannot apply.

Mr. Khambata would submit that Section 49 of the MPT Act mandated that SOR framed by TAMP from time to time being notified in official gazette and as per Section 50C every Notification, declaration, order and regulation of TAMP made in pursuance of MPT Act, 1963 shall be published in the official gazette.

Upon enactment of MPT Act, 2021 , TAMP continued to discharge the functions of adjudicatory board, which was not however, conferred with the power of tariff setting and, therefore, TAMP could not have discharged the functions of tariff setting upon MPA Act 2021, coming into force. While MPT Act continued to be in force, TAMP did not ensure compliance of the mandate of publishing its orders / Notifications in the official gazette so that they became effective and after coming into force of MPA Act, 2021 which repealed the MPT Act, 1963, TAMP lost all its power under the Act of 1963 and did not retain any power or function for tariff setting. Therefore, it is the contention of Mr.Khambata that by publishing the impugned gazette notification under Section 49 of the MPT Act, 1963 after the MPA Act, 2021 came into force on 03./11/.2021 TAMP has indulged in exercise of powers which it no longer possess and, therefore, it was *non est*. For this reason the impugned gazette notification publishing the rent schedule for 2017 - 2022 and the speaking orders for 2012-2017 and 2017-2022, published in e-gazette on 16/11/2021 , 10/12/2021 and 18/12/2021 are without authority and has no effect whatsoever. It is also urged that the impugned notification publishing the 'rent schedules' without notifying the speaking orders also cannot survive on their own and has no effect.

54. Yet another submission of Mr.Khambata with reference to policy guidelines of 2015/18, it is submitted that the guideline prescribed the fixation of the SORs on the basis of the prevailing highest and hypothetical market value of the land as per clause 13 of Policy Guidelines for Land Management (for short PGLM) 2015, but according to him Section 27 specifically prohibited giving retrospective effect to the SOR. On 29/10/2021, in exercise of power under Section 49 of the MPT Act, 1963, fixed and published SORs retrospectively (SOR 2012-17) under e-gazette Notification of the 521 in terms of the proposal of MPT dated 14/08/2021. The SOR with effect from 01/10/2012 was fixed at 6% return p.a. on land value for FSI-I computed as per State Government's stamp duty ready reckoner zone-wise for the year 2012 with 4% annual increase every year in October upto 30/09/2017.

On 16/09/2021 with the Act of 2021 coming into force from 03/11/2021 by repealing MPT Act, 1963 and exercise its power under Section 49 of the MPT Act, despite the fact that it had no existence in the new regime and SOR 2017-2022 was based on MBPT's proposal dated 12/08/2021, with effect from 01/10/2017, was fixed at 6% return p.a. on land value for FSI-I computed as per valuation report prepared by Valuer appointed by MBPT with 4% annual increase every year in October upto 30/09/2022.

It is contended by Mr. Khambata that both the SORs i.e. 2012-2017 and 2017-2022 are stated to be fixed by TAMP by following PGLM 2015 i.e. based on the prevailing highest and hypothetical market value of land , derived from highest of the five factors mentioned in Clause 13 thereof.

On 31/01/2022, MbPA was constituted and automatically MbPT ceased to exist. MbPA adopted the impugned retrospective SORs 2012-17 and 2017-22, which were framed and published by TAMP. Based upon the aforesaid, MbPA issued their demand notice seeking to recover the differential arrears of rent/compensation retrospectively for the period from 01/10/2012 to 30/09/2017 in terms of impugned SOR 2012-17 in one phase and differential arrears of rent /compensation retrospectively for the period from 01 / 10/2017 till 31/07/2022 in terms of SOR 2017-22.

It is urged by Mr. Khambata that even as per Section 49 of the MPT Act, the SORs for use of any property belonging to and/or in possession or occupation of MBPT could only be fixed prospectively and the Act of 1963 do not expressly or by necessary implication provide that SOR can be fixed by TAMP with retrospective effect. Even PGLM 2015 do not permit fixing SORs retrospectively.

Reliance is placed upon the well settled principle in law by Mr.Khambata to the effect that no statute shall be construed to have retrospective operation unless such a construction appears clearly from the language applied or arises by necessary and express implication. Reliance is placed upon the decision in case of Commissioner of Income Tax (Central) I, New Delhi vs. Vatika Township Private Limited [13] as well as the decision in case of ***Keshvan Madhva Menon vs. State of Bombay***[14]. In any case, it is submitted that a delegated legislation definitely cannot have a retrospective effect without there being a specific power under the parent Act and Mr.Khambata would invoke principles laid down in the case of ***Federation of Indian Mineral Industries & Ors. vs. Union of India & Anr.*** [15] as well as the decision in ***Mahabir Vegetable Oils (P) Ltd. & Anr. vs. State of Haryana & Ors.***[16].

55. Considering that fixing of statement of rents by TAMP is an administrative or executive order, it is urged that even this cannot be given effect to retrospectively.

Heavy reliance is also placed upon Section 27(1) of the MPA Act, 2021 alongwith its first proviso, which prohibit fixation and implementation of scales, fees rates and conditions with retrospective effect. It is urged that since this proviso bars retrospective fixation , it also bar retrospective

13 (2015) 1 SCC 1
14 AIR 1955 1 SC 128
15 (2017) 16 SCC 186
16 (2006) 3 SCC 620.

implementation of the SOR and upon the MPA Act come into force from 03/11/2021 , the impugned gazette notifications No.521 and 552 fixing the SORs retrospectively, by assuming the power under Section 45 of the MPT Act, is urged to be inconsistent with the provisions of Section 27 of the MPA ACT, 2021.

IT is also urged that the aforesaid notifications cannot be deemed to have been issued under corresponding provision of Section 27 of the MPA Act and they shall cease to have operation upon repeal of the MPT Act, 1963 with effect from 03/11/2021.

56. The learned counsel Mr. Asar, who is representing the Petitioners/ occupants specifically invited our attention to Para 40 of the decision of the Apex Court in Jamshed Wadia (supra) and as regards the home occupants, he would submit that the Board considered the matter and a fresh exercise was undertaken to respond to the suggestion of the Board and then it arrived at a formula in form of 'Compromise Proposal' which was approved in the meeting of the Board held on 13/08/1991 and it was submitted to the Court . The Court took note of the summary of the 'Compromise Proposals' based on detailed note submitted by the officers of the BPT for plea placed before the Board and it was clearly indicated that the occupations may be classified for the purpose of levy of rents either as 'non home occupation' or as 'home occupation' as defined in the Development Control Regulation on the basis of its actual use. As far as letting rates for non home occupation per square meter of floor space of the built up area was set out at 15% of the rate suggested, the letting rate for ‘home occupation’ was set out as 20% of the above rates, which were lesser than the rates from ‘non home occupation’.

Mr. Asar would invite our attention to the observations of the Hon’ble Apex Court to the effect that “it would be just and reasonable if the residential users are required to pay 20% of the 15% which was the initial proposal as noted in Para 6 (3) of the Judgment with the periodical increase and this was the observation made when the residential tenants association sought clarification of the direction contained in the decision dated 13/01/2004 and in particular direction No.40(ii) and it was clarified that home users will pay 20% of 15% but despite this according to Mr.Asar while fixing the SOR , MBPA did not consider this aspect.

He has furnished a chart reflecting how the home users are adversely impacted and are required to pay more. In relation to the Notification issued by TAMP on 02/11/2021 fixing the schedule of rates for residential and mixed use occupations for 2012 to 2017, Mr. Asar would submit that the home buyer at sr. NO.18 is required to pay the rental without granting the benefit of the order of the Apex Court and in any case according to him, the said Notification being issued on 02/11/2021 when TAMP ceased to exercise its authority is bad in law.

According to Mr. Asar, PGLM 2014-15 was not intended to apply to township outside port area and in fact Mumbai had much township area outside the port and this was excluded, but by issuing the clarificatory circular it was all of a sudden made applicable. In regards to the said circular it is the submission of Mr. Asar that the clarification deemed to be issued knowing noting that there are a track of existing township and the spirit of the extant policy guidelines is that no new residential /real estate development should take place in these places without a separate policy in place and considering this broad aspect it is decided that for the township area of Mumbai Port, no new residential/ real estate development including individual residential unit should be taken up PGLM 2015 except the township set out in clause A and the allotment or development of land for residential purposes to Government Ministries/ Departments their subordinate, attached offices/ organizations.

In any case it is his submission that no new policy was framed, but by offering clarifications on the policy guidelines of Land Management, 2015 it was decided that land can also be allotted by way of fresh lease to entities mentioned in Para 11.2 H on nomination basis on market value under Para 13 without any concession.

Similarly, Mr. Asar is extremely critical about the valuation report submitted by Mr.Avinash Pendse, who has not considered the high rise , but since we indicated to him that we are not getting into each and every case valuation, he did not take his argument ahead. He also urged that the the valuer did not get sale transaction of BPT as no sale was done for a long period of time, the building being old and dilapidated, but he compared it with a high rise building to determine the value and obviously the result is fixing of high SOR.

57. The learned counsel Mr. Jumani also adopted arguments of Mr.Khambata and he has cited Judgments on law being made applicable retrospectively. Rest of the counsels in respective Petitions adopted the arguments of Mr.Khambata in support of the reliefs sought in the respective Petitions.

(II) SUBMISSIONS ADVANCED ON BEHALF OF THE BOMBAY PORT TRUST

58. Learned senior counsel Dr.Tulzapurkar, who marked his appearance on behalf of the Mumbai Port Trust Authority, has contested the contentions raised on behalf of the Petitioners and has responded to the submissions advanced by learned senior counsel Mr.Khambata in the lead petition.

He has summarized the contentions advanced by Mr.Khambata, namely, (a) applicability of compromise proposals for rent was not upto 30/09/2012, but it continued upto 31/03/2024, as the compromise proposal was modified by the Apex Court in ***Jamshed Hormusji Wadia*** (supra); (b) the rent fixed for the period beyond 30/09/2012 as per PGLM, 2015 is contrary to ***Wadia*** Judgment; (c) PGLM is void and in no case, Respondent No.1 had authority to fix the rent retrospectively; and (d) the rent fixed prospectively after 2024 is also contrary to the ***Wadia*** Judgment.

In the backdrop of the reliefs sought by the Petitioners for quashing of the fixation of rent and the Gazette Notifications as well as the Demand Notices, according to Dr.Tulzapurkar, the Petitioners have sought a declaration that the Tariff Authority did not possess power or jurisdiction to frame scale of rates of rents in respect of lands of the Port Trust falling outside the limits of Mumbai Port.

59. Dr.Tulzapurkar would invite our attention to the context in which the rent revision was taken by the Port Trust. He would submit that the Mumbai Port Trust is a public body and holds lands in Mumbai within the Port area and also outside the Port and they have been leased out on rent and the fixation of rent led to litigation, which ultimately came to be decided by the Apex Court through ***Wadia's*** Judgment. According to him, the tenants of the Port Trust fell into following four categories :-

(i) Tenants who had lease deeds which did not contain a renewal clause;

(ii) Tenants with lease deeds which contained renewal clause;

(iii) Tenants with agreements for monthly tenancy; and

(iv) Tenants with agreements for tenancy for 15 months.

In addition, to the aforesaid categories, there is also a fifth category, i.e, all those where the original tenants have left and someone is inducted, without consent/knowledge of the Port Trust, and according to Dr.Tulzapurkar, such tenants are rank trespassers, who have no locus to file any writ petition, challenging fixation of rent or levy of charge for their occupation. According to him, they are complete strangers as far as the Port Authority is concerned, which is entitled to evict them and he would submit that such petitions must be thrown at the outset.

It is his contention that ***Wadia's*** Judgment fixed the rent/compensation only upto 31/03/2000 and the Board agreed to continue the rates as per the compromise proposals with 4% annual escalation upto 30/09/2012. In accordance with the specific stipulation contained in the compromise proposals, which was upheld by the Hon'ble Supreme Court permitting the Board to levy or fix the rates, the Board undertook the review of rates for category of tenants exempted under Section 3(1)(b) of the Maharashtra Rent Control Act, 1999 i.e. companies having paid up capital more than Rs.One Crore by relating it to 6% return on market value of land as per State Government Stamp Duty Ready Reckoner Rate for the year 2006 and effective from 01/09/2006 upto 30/09/2012 and this according to him, is reflected in TR 127 of 2006. According to him, the Port Authority was entitled to revise the rent subsequent to that period.

60. Dr.Tulzapurkar would place reliance upon the PGLM issued by the Central Government under Section 111 of the Major Port Trusts Act, 1963 and he would submit that the Port Authority was bound to follow the said guidelines, being the policy decisions issued by the Central Government, with the approval of Union Cabinet. It is based on these guidelines, the rents were fixed for the period subsequent to 30/10/2012 and it is his specific contention that the Port Trust Authority followed the PGLM and after appropriate valuation being carried out, the rents were fixed. It is his submission that the PGLM, which are policy guidelines, clearly provided for what factors should be taken into consideration to fix the rent and this was put to use while fixing the rent post October 2012.

61. The learned senior counsel would submit that as a Port, the core activities of Respondent No.1 are providing services for import and export of goods from the Port area and all other services as are mentioned under the Major Port Authorities

Act,2021 and the Rules thereunder. It is, therefore, contended that the Port Authority is entitled to use its assets, including the lands within the Port area and also located outside and it has, therefore, granted leases monthly or periodical basis to earn income, which can be utilised for the purpose of its core services.

It is urged that the Port needs resources to discharge the functions and, therefore, it is necessary to generate some income and this is done from grant of leases. In order to discharge the functions/services, it can generate money and our attention is drawn by Dr.Tulzapurkar to the rules framed in exercise of the powers conferred by the first proviso to sub-section (1) of Section 27 read with clause (f) of Section (2) of Section 1 of the Major Port Authorities Act, 2021, known as "Major Port Authorities (Fixation and Implementation of Scale of Rates, Fees & Conditions) Rules, 2021.

The said Rules has enlisted various services to be rendered by the Port Authority and this include transportation of passengers or goods between vessels in the major port or major port approaches, landing and shipping of passengers or goods from or to such vessels to and from any wharf, quay, jetty, pier, dock,berth, mooring, stage or erection etc. Relying upon the said Rules, it is submitted that when the services are offered by the Board, it also has power to determine the scale of rates, fees and conditions for the services rendered, they being the core services.

Reliance is placed by him upon the decision of the Apex Court in the case of ***M/s Gujarat Cypromet Ltd. Vs.Union of India***[17], which has observed that the core activities facilitate

17 (2025) 4 SCC 185

and promote international trade and attracts international shipping lines to the Port for performing trade in the national interest. Therefore, it is urged that the Port Authority, which must earn income for performing the port activities, must also possess the power to fix the rate to be paid by the person, who avail such services. Though, according to Dr.Tulzapurkar, granting of lease of land is not itself prime activity, but it is the subsidiary function, as rents are charged for availing such facility, the Port Authority is entitled to use the lands for earning income by way of rent.

According to him, the leases being granted in favour of private person, is a matter of contract and this activity is different from rendering of services in performance of the core activities. It is his specific submission that grant of leases, being contractual matter, which is different from performance of core activities of rendering services, which is statutory in nature, and moreover when it is a bilateral act between the tenant and the Port Authority, it must enjoy a greater latitude. According to him, time and again, the Port Authority is cautioned that it shall not indulge into rack renting, but he would submit that the Authority do not profiteer from this activity. It is also told that it cannot keep 'profit motive' in mind, but according to Dr.Tulzapurkar, the Authority cannot act in complete charity, as it is imperative for it to utilise its assets to whatever extent possible, though it is conscious of the restriction that it being a Government body, it shall not act as a private landlord. But, in any case, according to him, the Port Authority is not in the business of grant of licenses and it shall not indulge into rack renting, but it is not expected that while granting leases, it act in a manner detrimental to itself. Otherwise, the power and authority conferred on it by the statute to utilise its assets, including the land, which is permitted to be leased out, would result into self-destruction and defeat the very object and purpose of grant of leases, and according to him, this aspect in the Judgment in ***Wadia***, which the Apex Court noted, is glossed over by the Petitioners.

62. Inviting our attention to the specific observations of the Apex Court in paragraph 23, where the scope is narrowed from 01/10/1982 to 31/03/2000, he would submit that the controversy stood resolved for the period from 01/04/1994 to 31/03/2000, but the Apex Court did not fix the rates of rent beyond this. It is the specific contention of the learned senior counsel that the Apex Court specifically observed thus :-

> *"The State and its instrumentalities, as the landlords, have the liberty of revising the rates of rent so as to compensate themselves against loss caused by inflationary tendencies. They can-and rather must-also save themselves from negative balances caused by the cost of maintenance, payment of taxes and costs of administration. The State, as the landlord, need not necessarily be a benevolent and good charitable Samaritan. The felt need for expanding or stimulating its own activities or other activities in the public interest having once arisen, the State need not hold its hands from seeking eviction of its lessees. However, the State cannot be seen to be indulging in rack-renting, profiteering and indulging in whimsical or unreasonable evictions or bargains."*

It is the background of the aforesaid observations, according to Dr.Tulzapurkar, the contentions of the Petitioners that Port Authority was prohibited from fixing the rent from 2000 is not correct submission.

63. Dealing with the contention that the compromise proposals, as modified in ***Wadia's*** Judgment, is applicable upto to 31/03/2024, he would submit that the Apex Court had clearly set out the scope of controversy and recorded that it was confined to the period from 01/10/1982 to 31/03/2000 and this period was further divisible into three parts, namely, (i) 01/10/1982 to 31/03/1994; (ii) 01/04/1994 to 31/03/2000; and (iii) the period post 31/03/2000.

In paragraph 40 of the ***Wadia's*** Judgment, according to Dr.Tulzapurkar, the Apex Court held that by this Judgment and in these proceedings, the controversy as to the rates of rents applicable to the lessees shall be deemed to have been resolved for the period from 01/04/1994 to 31/03/2000 and that the rates of rent upto 31/03/1994 shall remain as suggested in the compromise proposals. In paragraph 40(v), it was directed that, subject to the modifications (ii) all other terms and conditions of the compromise proposal shall remain unchanged and in respect of the period post 31/03/2000, the Apex Court in paragraph 23, noted that the argument of Additional Solicitor General that the plea of applicability of Maharashtra Rent Act, 1999 is kept open for further adjudication.

According to him, ***Wadia*** Judgment covered the period upto 31/03/2000 and in the wake of the observations that the landlord like the Port Authority, has liberty of revising the rates, it was entitled to revise the rent beyond 31/03/2000. He would, however, submit that by Resolution No.31 of 2004, it was resolved that the compromise proposal as modified by the Supreme Court in ***Wadia*** Judgment would apply upto 2012 and on its own, the cut-off date was extended.

The contention advanced on behalf of the other side that by Resolution No.31 of 2004, it was resolved that the rent is fixed upto 2024 as per the compromise proposal with modifications is not a correct reading and in fact, by the annexure to Trustees Resolution (TR) No.253 of 1991 (compromise proposal), which was reproduced in ***Wadia*** Judgment and the annexure to TR No.31 of 2004,both clearly reflect that the rate of rents were fixed for the period upto 30/09/2012 and the reference to the date of 31/03/2024 is only limited to renewal of the expired leases and the period thereof, and therefore, according to Dr.Tulzapurkar, Respondent No.1 was entitled to revise the rent from 01/10/2012 onwards, and in any case, according to him, post the expiry of the validity of rates as mentioned in ***Wadia*** Judgment, it was open to the Port Authority to follow the PGLM Guidelines to revise the rent from 01/10/2012.

64. Dealing with the contention that the rent has been fixed retrospectively and, therefore, it is contrary to the Major Port Authorities Act, 2021 and in specific, Section 27 thereof, it is his submission that the lease of land, which is recognised as one of the mode of transfer of property under Section 105 of the Transfer of Property Act, 1882, has certain features, namely, the period of lease and the certainty in the period of lease and the fact that before the execution of lease, no interest passes to the lessee. According to him, it is also permissible to provide for renewal and extension of a lease and there is a succinct distinction between the two as in the case of renewal, a new lease is required, but in a case of extension, the same lease continues to be extended for an additional period by performance of the stipulated act. He would invoke the principle of law laid down in ***State of Gujarat Vs. Nirmalaben S.***

Mehta[18], which has drawn distinction between the terms "Renewal" and "Extension".

> *"28. Both the revisional authority as well as the High Court have erred in coming to the conclusion that a renewal of lease of the mining area in question is not a fresh grant and have wrongly concluded that at the time of grant of renewal of lease of the area, the State Government is not empowered to impose or enforce condition inter alia, of setting up of a captive plant by the respondents."*

Reliance is also placed upon the decision in the case of ***Provash Chandra Dalvi Vs. Biswanath Bamerjee***[19], which has set out as to what would amount to "Extension" and "Renewal" in the following words :-

> *"**14.** It is pertinent to note that the word used is "extension" and not "renewal". To extend means to enlarge, expand, lengthen, prolong to carry out further than its original limit. Extension, according to Black's Law Dictionary, means enlargement of the main body addition of something smaller than that to which it is attached; to lengthen or prolong. Thus extension ordinarily implies the continued existence of something to be extended. The distinction between "extension" and "renewal" is chiefly that in the case of renewal, a new lease is required, while in the case of extension the same lease continues in force during additional period by the performance of the stipulate act. In other words, the word "extension" when used in its proper and usual sense in connection with a lease means a prolongation of the lease. Construction of this stipulation in the lease in the above manner will also be consistent when the lease is taken as a whole. The purposes of the lease were not expected to last for only 10 years and as Mr A.K. Sen rightly pointed out the schedule specifically mentioned the lease as "for a stipulated period of 20 years". As these words are very clear, there is very little for the court to do about it."*

65. In the present case, there is no question of retrospective rent being fixed, as the leases expired on 31/03/2000 and beyond this period, it is 'renewal'. He would submit that though the Trust extended the period till 2012, from this period, there is a fresh lease and it is open for the parties to fix

18 (2016) 9 SCC 240
19 AIR 1989 SC 1834

the terms of the lease and this is what has been precisely done by the Port Authority. It is, therefore, urged that in the present case, since there are fresh leases commencing from the date of execution and the liability to pay rent arise from the commencement of leases, question of retrospectivity does not arise, as this is not applicable to lease rent and to cite an example, Dr.Tulzapurkar has urged that if lease is granted in February, but it is made applicable from January of a particular year, he would pose a question as to whether it is not permissible for the lessor to do so.

Inviting our attention to Section 34 of the Major Port Trust Act, 1963 and Section 22 of the Major Port Authorities Act, 2021, where the Board is conferred with the power to enter into contract and this power is also recognised in Rule 4 of the Major Port Authorities Rules, 2021, he would submit that the contract shall be in accordance with the policy decided by the Central Government from time to time and this is found to be contained in the PGLM. According to Dr.Tulzapurkar, the right of the Respondents to fix the rent in respect of the leases, whether monthly or periodic or for long term, is a right conferred by the statute and even recognised the ***Wadia*** Judgment. According to him, the Act makes a distinction between the rates and taxes chargeable or leviable under Section 27 of the Major Port Authorities Act, 2021 and fixation of rent in respect of leases granted by the Port Authority in performance of its subsidiary or complementary function, the primary function being the core activities mentioned above. Thus, according to him, reliance placed by the Petitioners on clause (f) of Section 27(1) and Proviso (i) is misplaced, as the proviso deals with the scale of rates for assets and services available at Major Port and sub-section (1) of Section 27 provides that Respondent No.1 may frame scale of rates (SOR) and the statement of conditions, under which any services shall be performed or are made available. Proviso (i) applies only to the rates for services performed or made available and these services are the core function of Respondent No.1. According to him, the scope of the proviso cannot be enlarged beyond the Section itself and it is not applicable to the ancillary function of granting leases and applying the proper interpretation of the Rules, according to Dr.Tulzapurkar, the proviso applies only to scales, fees, rates and conditions of different classes of goods and vessels, but grant of lease is not a service and, therefore, the proviso cannot be made applicable to the fixation of rent in respect of leases. It is also submitted that the proviso has to be confined to the scope of section and it cannot be permitted to travel beyond it, and therefore, it cannot be made applicable to fixation of rate of leases.

66. For the proposition of law that the provision has to be construed as per the law of construction, he would rely upon the following decisions :-

(i) Shah Bhojraj Kooverji Oil Mills & Ginning Factory Vs. Subhash Chandra Yograj & Sinha[20]*;*

(ii) The Commissioner of Income Tax Vs. Indo Mercantile Bank Ltd.[21]*;*

(iii) Dwarka Prasad Vs. Dwarkadas Saraf[22]*;*

(iv) Mackinnon Mackenzi & Co. Ltd. Vs.Audrey

20 AIR 1961 SC 1569
21 AIR 1959 SC 713
22 AIR 1975 SC 1763

D'Costa[23]; and

(v) M/s Mohan Meakin Breweries Ltd. Vs. The Commissioner of Excise[24]

In the wake of the aforesaid, by relying upon the aforesaid pronouncements, it is the submission of Dr.Tulzapurkar that the proviso shall be applied to the main provision, which deals with the scale of rates for assets and services available at Major Port and it cannot be made applicable to the rent payable under leases.

67. Another submission advanced by Dr.Tulzapurkar and which according to him, is of great significance is that the proviso is applied to the main provision, namely, Section 27(1)(f) which deal with scale of rates for assets and services available at Major Port and the services mentioned in the Rules are in respect of import and export of goods and the proviso cannot be interpreted in a way so that it travel beyond the services and definitely it cannot be applied to the rent payable under the leases.

According to Dr.Tulzapurkar, although section (2)(zd) defines 'rate' and it include any toll, due, rent, rate, fee or charge leviable under the Act, the word 'rent' has to be read in the context of toll, due, rate or charge leviable under the Act. The imposition of rate is a statutory function under the Act and the rent of leases is fixed under contract and the word 'rent', according to him, would cover the rent levied or charged in respect of use of any land in the Port area by the importer or exporter of the goods beyond the stipulated period and, therefore, according to him, proviso clause (i) in Section 27

23 (1987) 2 SCC 469
24 AIR 1970 SC 1171

cannot be applied to the lease rents payable in respect of leases granted by Respondent No.1. He would invoke the principle of *Ejusdem generis* and *Noscitur a Sociis* and reliance is placed by him upon the following authoritative pronouncements.

(i) The Commissioner vs. Savoy Hotel[25]

(ii) Bangeshwari Charan Singh vs. Jagannath[26]

(iii) State of Rajasthan vs. Sripal Jain[27]

(iv) D. Radhakrishna Murthy & Co. vs. Commercial Tax Officer[28]

(v) Pardeep Aggarbatti vs. State of Punjab[29]

(vi) Dr. Devendra M. Surti vs. State of Gujarat[30]

Thus, it is the specific submission of Dr.Tuljapurkar that the first proviso in Section 27 do not apply to the rent in respect of the leases granted and, therefore, there is no question of fixation of rent being challenged on the ground that it is given retrospective effect and this is prohibited under Section 27.

Dr.Tulzapurkar has also dealt with the contention advanced on behalf of the Petitioners that the fixing of rent by the Port Trust is contrary to ***Wadia*** Judgment and the PGLM and consequent fixation of rent based on it are void, being contrary to it.

Inviting our attention to the observations of the Apex Court in ***Wadia***, he would invite our attention to the specific paragraphs, where the Supreme Court noted the arguments of

25 (1966) 2 All England Reports 299.
26 AIR 1932 Privy Council 55.
27 (1964) 1 SCR 742.
28 (1997) 8 SCC 37.
29 (1997) 8 SCC 511.
30 (1969) 1 SCR 235.

the Additional Solicitor General that a good number of lessees were running into huge arrears and were not willing to pay rent, even though the rates were nominal and they indulged into subletting, encroachments, unauthorised constructions etc. It was also noted that the Port Trust and its Trustees acted reasonably and they invited quotations for providing professional service to them by inviting financial experts and valuers and the Kirloskar Consultants performed a gigantic task with the assistance of Government approved valuer. The report of Kirloskar Consultants, according to the Apex Court, was found to have scientific base and was the outcome of the methodological research, followed by recommendations for such action as logically flowed from the facts noted.

According to Dr.Tulzaurkar, the report of Kirloskar Consultants was appreciated by the Apex Court as it took into consideration the relevant historical and geographical facts, analysed them and gave due weightage and consideration for drawing deduction therefrom and rather it was noted by the Apex Court that there was nothing wrong in the procedure adopted by the Bombay Port Trust and in the decision taken on Kirloskar report and it also noted that High Court did not cast any reflection on the report of the Kirloskar Consultants. The Apex Court, according to the learned senior counsel, accepted the compromise proposals as fair, just and reasonable, but modified the rate of return from 15% to 10% for non residential users and 12% to 8% for residential premises. Therefore, according to Dr.Tuljapurkar, the contention of the Petitioners that the report is rejected by the Supreme Court, is not correct. He would also object to the sweeping comments advanced on behalf of the Petitioners on the Kirloskar Consultants' report and according to him, the Petitioners wrongly assumed that the Supreme Court rejected the said report.

He would, therefore, expect us to read the Judgment of the Apex Court carefully to deduce the ratio flowing therefrom, as it is his categorical submission that the Supreme Court has accepted the compromise proposals in ***Wadia***, but it only modified the percentage. He would submit that considering the Judgment as a whole, the fixation of rent by the Port Trust was on the basis of the return which was 6%, which could not be described as exorbitant as it was lower than the rate of return fixed in ***Wadia*** Judgment and in the wake of high inflation, which had taken place since then, the compromise rates had adopted the land values as on 01/01/1980, but the insistence of the Petitioners to continue the same and compare today's land value with that of 1980 is highly erroneous.

68. Relying upon the decision of the Apex Court in the case of ***Rohtas Industries Ltd. & Ors. Vs. Chairman, Bihar State Electricity Board & Ors.***[31] as well as the decision in the case of ***Kerala State Electricity Board Vs. M/s S.N.Govinda Prabhu & Bros. & Ors.***[32], wherein the Apex Court observed that, it may not be the function of the Board to manage its affairs to earn the maximum profit, but it does not follow that the Board may not and did not earn profits for the purpose of performing its duties and it stands to common sense that the Board must manage its affairs on sound economic principles and having ventured into the field of commerce, no public service

31 1984 Supp SCC 161
32 (1986) 4 SCC 198

undertaking can afford to say that it will ignore the basic principles which are essential to public service undertaking as commercial ventures.

Dr.Tulzapurkar has, therefore, contended that the instrumentalities of the State are subjected to same constitutional and public law, as are applicable to the Government, including the principle of law which inhibits arbitrary action by the Government and public bodies may not be driven by profiteering motive, but profit is not to be shunted completely. Public institutions, according to Dr.Tulzapurkar, may not allow its character as public utility undertaking to be changed into that of a private motivated trading house and it can expect to earn reasonable return, though it should not function purely as altruistic person.

According to Dr.Tulzapurkar, the repeated use of the phrase, 'rack renting' by the Petitioners and claiming that fixation of rent for leases by the Port Trust amount to rack renting, is an erroneous argument as rack rent is a very high excessive or extortionate rent, but in the present case, this is not the situation. He would also submit that when the rents were fixed by the Port Authority on the basis of PGLM, various valuers were appointed to ascertain the value of the land on the basis of which the return could be fixed and one such report is also placed on record. According to him, the reliance on the ready reckoner rate is a very well accepted norm and in fixing the value of the land, various factors were taken into consideration, which include the ready reckoner rate for the relevant time under the Maharashtra Stamp (Determination of True Market Value of the Property) Rules, 1995 and the mode of recognising ready reckoner rate is well accepted. Thus, according to Dr.Tulzapurkar, the proper procedure has been followed by the Port Authority as well as the PGLM and fixation of rent is not in contravention of the ***Wadia*** Judgment and the scope for interference for this Court is limited, unless and until it is found to be arbitrary or is arrived at, by applying wrong principles. According to him, the annual reports and particularly the income and expenditure accounts, which are available on the website of Respondent No.1, show that it is being consistently suffering losses and as directed by the Apex Court, the rent will have to be fixed by keeping in mind that the Government establishment do not go into the negative, and therefore, the value of the land fixed in accordance with the law and the percentage of return fixed at 6% is very reasonable and the action of Respondent No.1 in fixing the rent and the PGLM policy are in accordance with the letter and spirit of the ***Wadia*** Judgment.

69. It is in light of the aforesaid submissions advanced coupled with the affidavits filed on behalf of the Port Trust Authority, learned senior counsel Mr.Tulzapurkar requests that all the Petitions, which raise a challenge to the rates of rent fixed by Respondent No.1 and beyond 2012 as per the PGLM, being void since it violate the Judgment of the Apex Court in ***Wadia***, is completely incorrect and unless and until it is established that the rate/rent fixed is arbitrary, this Court in exercise of its writ jurisdiction, shall not interfere. He would, therefore, pray that all the Writ Petitions be dismissed.

(C) ANALYSIS OF THE RIVAL SUBMISSIONS

70. In the backdrop of the sequence of events, we have heard the rival submissions advanced on behalf of the Petitioners and the Board of Mumbai Port Authority, which is the successor of Mumbai Port Trust, constituted under the Major Port Trust Act, 1963. The contentions advanced before us deserve appreciation in light of the orders passed by this Court as well as the Apex Court and the foremost amongst the decisions being the decision of the Hon'ble Apex Court in case of Jamshed Wadia (supra), when the Hon'ble Apex Court drew curtains over the controversy on accepting the 'Compromise Proposals'. However, two sides of the said Judgment are focussed upon by the contesting Parties as the Petitioners have argued before us that the 'Compromise Proposal' though was agreed to cover the period upto 2000, the MBPT by adopting resolutions extended the applicability of the rates under the 'Compromise Proposal' upto 31/03/2024, whereas, according to Dr.Tulzapurkar, the Apex Court through its Judgment accepted the 'Compromise Proposal' crystalizing the rates of rent applicable to the lessees for the period from 01/04/1994 to 31/03/2000, however, post period 31/03/2000, the Apex Court did not fix the rent and it was open for the Port Authority to fix the rent in light of the observations recorded in the decision.

We, should, therefore first determine the aspect about the applicability of the 'Compromise Proposal' and its timeline by keeping in mind the nature of the Port Trust.

(I) NATURE OF MbPT/ MbPA

71. The history revolving around the Bombay Port reflect that after the Bombay Island was transferred by Royal Chartered East India Company in the year 1668, the Company adopted various measures to encourage trade through sea route and Bombay Port was given due importance due to its safest and spacious feature as an island containing Greater Bombay, which was originally a group of islands, which was separated by a narrow tide channel and these islands were jointed together with extensive reclamation forming a single island separated from main land by Ulhas River and Bassein creek to the North and Thane Creek and Bombay harbour to the east.

In order to minimize the monopoly of the private companies on utilizing the Port facilities, the Act No.1 of 1873 was notified constituting the Port Trust and creation of the Corporation under the name and style of 'Trustees of Port of Bombay" and vesting the management of the properties acquired by the Government and power to levy taxes in the management.

Within no span of time, the trade activities in the area surrounding city of Bombay were on the rise and the Port area was developed with addition of various docks. The trustees of BPT represented the interest of the trade, industry, labour and Central and State Government and the Board included representatives of various disciplines for protecting the divergent interest and for effectively dealing with its business.

The Bombay Port Trust covered a huge estate comprising of lands from Colaba to Raoli Junction including Piers, Pout, Bucher Island, lands at Titwala and other islands situated within the highly urbanized and densely populated metropolitan areas. Out of the total area of 720 Hectares area under the jurisdiction of Estate Department of Bombay Port Trust was around 336 Hectares, out of which 306 Hectares was occupied by the lessees holding lease rights for various tenures. The Port Trust had erected strictures on land and they were let out to large number of lessees with different tenures.

With increase in population and natural and migratory growth in the city of Bombay with the pressure on land ever increasing, it also resulted into mounting pressure on the Port of Bombay and the Trustees were required to focus their attention on permitting utilization of the facilities of Port alongwith optimum use of the limited land area available and the likely impact of development plans undertaken by the Government for increasing the facilities for Import-Export trade.

The Bombay Port Trust Act, 1879 was enacted by repealing the Bombay Act 1 of 1873, to consolidate the immovable and other property vesting in the Trustees of Port of Bombay and certain other property on or connected with the foreshore of the island of Bombay into one estate and to vest the control and management in one Public Trust. The Board of Trustees constituted under the Act was conceptualized as a body corporate with perpetual succession and a common seal, comprising of 25 members headed by a Chairman with its composition being clearly provided by the Statute.

The Board was conferred with the power to acquire and hold movable and immovable property within or out of the limits of Port of City of Bombay and was also empowered to convey lease, sale the property which was vested in or acquired by it. Under Section 43 of the said Act, the Board was entitled to frame scale of tolls, dues, rents, rates and charges to be levied for various purposes, including the permission to make use of any land or building in possession of the Board and every scale framed by the Board was to be submitted to the Central Government for sanction and upon the sanction being accorded to be published in Government Gazette to have the force of law. The Bombay trust was brought under the umberage of the Major Port Trust, Act, 1963, brought in force wef 29/2/1964.

72. With the expanded use of the Port and its property and the expenditure incurred for its maintenance, noticing that the lease rates were determined on adhoc basis without having any bearing on the reasonable return expected from the value of land , it was decided to undertake exercise of fixation of fresh rent to augment reasonable income, as the Trust was found to be involved in functions in the nature of public purpose.

As per the Trust, the World Bank advised it that rate of return on its real estate was hopelessly inadequate and need a review and even the Comptroller and Auditor General of India also also shared the opinion of World Bank in is report for the year 1979-80.

(II) REFERENCE TO TATA CONSULTANCY

73. The Trustees being cast with an obligation to secure a fair and reasonable revenue for its estate so as to enable it to efficiently discharge its manifold duties, decided to enhance the lease rate/rent and invite the proposals from consultancy firms and practicing valuers for ascertaining the market value of the land of BPT and accepted the offer of Kirloskar Consultants.

The terms of reference to the Consultancy included "To give an estimate of the market value of its property to be determined as on 01/01/1975 and 01/01/1980 and arrive at a general formula for guiding principles to enable the Port Trust to arrive at land values rationally at a future date so as to realize the fair share of the future increase in the land values periodically."

On receipt of the draft report on 18/10/1980 and Final Report being submitted on 25/12/1980, the Consultants with reference to large number of transactions involving sale transactions noted that the lands belonging to the Port Trust were given on lease on ad-hoc basis at subsidized rate and whenever the rent was revised, it was without applying any rational or logical test and that was also done on ad-hoc basis. The Consultant on a gigantic analysis of the earnings and the expenditure to be incurred expressed its opinion that it was necessary to secure proper lease rent from the lessees and grant of leases on subsidized rate cannot be continued for indefinite period. Noting that the lease rent had remained stationary for several years, wheres the cost for maintaining and servicing the estate was on the rise and lease rates though revised, did not yield adequately, the Consultant suggested that the revised rate be fixed at 12% for residential and 15% of the value of land for commercial/industrial premises. The total valuation of the land leased according to the Consultants was estimated to be worth Rs. 521 Crores.

(III) REVISION OF RENTS RESULTING IN THE LITIGATION

74. The Board of Trustees accepted the report and notices were issued to the lessees terminating the tenancy, but with an option that they would continue on the condition that they would pay the revised rent fixed in pursuance of the report submitted by the Kirloskar Consultancy.

75. As noted by us in the sequence of events, these notices were subject matter of challenge in Jamshed Wadia (supra) and on two questions being formulated , the first being whether the demanded raise in the rent is violative of MPT Act, the learned Single Judge answered it in the negative and dealt with the contention of the Petitioner that their lands were outside the limits of the Port and the raise follows under Chapter VI, but taking note of the provisions of Section 33 and 34 alongwith Section 49 and 52, it was held that Section 49 appear to govern leases of temporary and transitory character as against that Section 33 and 34 apply to leases of land outside the Port area were the duration of lease if one month or 15 monthly. The Court, therefore, did not find any violation of the MPT Act in the demanded raise.

However, answering the crucial issue as to whether the demanded raise is violative of Constitutional restrain upon the BPT as instrumentality of the State, following an in-depth analysis of the proposition revolving around the statutory body in discharge of its public functions, the precedents to the effect that State owned or public owned property is not to be dealt with an absolute discretion of the executive was pressed into service and it was held that BPT or for that matter any State instrumentality cannot be given absolute freedom in the matter of rent chargeable and eviction of tenants and particularly when bodies like Housing Board were engaged to satisfy the public need of housing accommodation and, therefore, their activity could not be actuated by any profit making motive so as to unduly enhance the rents or eject the tenants from their properties as private landlords may discharge their power.

It is in the wake of this reasoning, the learned Single Judge clearly expressed that the BPT appointed a Consultant to draw report on the market value of land owned by it and the experts came out of a mystical figure of Rs.521 Crores representing the value of property in possession of tenants which included even non service category persons as well as Officers and employees in occupation of service quarters. It was thus noted that the expenses to be incurred by BPT for the maintenance of its real estate was so high that it was getting return less than the insignificant. But a question was posed as to whether BPT is entitled to adopt this method as a base for revising the rents payable only by one set of tenants as in case of license fee or occupation charges payable by the service tenants, they would have to be compensated by BPT by an increase in the pay, allowances and possible requisites admissible to them, which would be self defeating and the entire load of expenses cannot be shifted to non service tenants.

In short, the learned Single Judge was of the clear view that though BPT may be entitled to get protection against an erosion in the rental as a result of inflationary trend, Justice Daud as his Lordship then was succinctly remarked thus :-

> "*The BPT may be entitled to get protection against an erosion in the rental as a result of inflationary trends but no more, the BPT may be said to be acting reasonably and in fairness if and when, it demands an increase in the rent provided the said increase corresponds to the inflationary spiral. But when it seeks to demand more than that in other words tries to take advantage of its position as the the scares and limited resource, it is stepping into a forbidden territory for it is then acting reasonably and fairly. This would be the position despite the statutory obligations it has to fulfill.*"

Taking note of the figures reflecting the rents chargeable, and increase being noted to be astronomical , it was held to be arbitrary and and capricious being based upon inapplicable measure and BPT was allowed to award a reasonable rate which it could charge.

76. The decision of the learned Single Judge being taken in an Appeal before the Division Bench, and on the Appeals being admitted, when a request was made for its expeditious disposal by the Trust, it was suggested that the Port Trust shall revise the decision taken for increase of lease rent and suggest a modified formula so as to reduce the burden on the lessees, which would be made applicable to all lessees irrespective of whether they have approached the Court or not and revised formula would be binding on granting leave to serve notice under Order I Rule 8 of CPC.

(IV) THE JOURNEY OF COMPROMISE PROPOSAL AND ITS ACCEPTANCE IN JAMSHED WADIA

77. In exercise thereof, the BPT took a fresh exercise and submitted a fresh proposal which was termed as 'Compromise Proposal', which was approved by the Board and the revised proposal was presented to the Court. Leave was granted on 18/11/1991 to publish the notice of the said proposal in the newspapers which resulted into filing of Civil Applications for intervention, but since there was no acceptance of proposal from the Port Trust, the Division bench proceeded to hear the matter on merit.

The Appeal filed by the Board of Trustees was allowed, setting aside the Judgment of Justice Daud and the finding rendered was substituted by a declaration that the letting rents alongwith other conditions will be applicable in respect of the lessees granted by Port Trust as the proposal submitted by the Port Trust is extremely reasonable and fair and ends of justice would meet in letting rates and other conditions are settled as per the proposal given by the Board which form part of the Judgment.

78. The Judgment of the Division Bench once again was subjected to challenge in an Appeal before the Hon'ble Apex Court, which was tagged alongwith other Appeals when when it was noted that High Court did not examine the individual grievance of the lessees in respect of the property held by them or complaint about the adverse effect of increase in rent on the particular lessee and has simply recorded the

'Compromise Proposal' submitted by the Port Trust to be fair and reasonable, but it was noted that no justification was offered by the Port Trust for the 'Compromise Proposal' and with this submissions being advanced, the Apex Court remanded the matter back to the High Court to permit the lessees to submit their individual objections and also the justification for the 'Compromise Proposal' that was submitted by the Port Trust and to consider the same on merits.

79. Upon the remand of the matter, the lead proceedings being Appeal No.258/1991, a detail affidavit was filed on 09/07/1998, on behalf of the Port Trust for reconsideration, in the wake of the justification offered for 'Compromise Proposal'.

In the said Affidavit, the Port Trust adopted a stand that they are not landlords within the meaning of Bombay Rent Act, but they are body corporate constituted under the provisions of Major Port Trust Act and they are under obligation to carry out obligations, functions and services imposed upon them and not to provide accommodation to persons. It is also stated that the Port Trust administer the Port of Mumbai subject to the control of the Central Government in respect of certain specified matters including acquisition and sale of immovable property. It is admitted in the Affidavit that it is not the objective of the Board to act as a private landlord and let out or lease its land for earning rent, but land was allotted for let out for purpose of development of the Port itself and it was given to persons who were conducting the Port activity and thus the tenancies and leases were created by the Mumbai Port Trust on monthly basis, 15 monthly basis or long term basis. It is also categorically stated in the Affidavit that on eflux of time, if 15 monthly leases were over, the lessee continued on month to month on the same terms mentioned in the 15 monthly lease, the distinction between the two types of lessees being the liability to bear the taxes.

Adopting a specific stand that the premises of the Appellants were exempted under the provisions of Bombay Rent Act and quoting the Apex Court's observations in ***Dwarkadas Marfatia & Sons*** (supra) that the privileges sprung from protection of Rent Act for the Mumbai Port Trust because of its public position and holding that its actions are amenable for judicial review only to the extent that the State must act validly a discernible reason and not for any ulterior purpose. The Affidavit offered a justification by stating that the the compromise formula is reasonable and by giving the figures of monthly tenants who accepted the formula it was suggested that it was fair and reasonable, but being conscious of the fact that it is not permissible for the Port to profiteer, it was categorically stated that in the past whenever properties were let out on the basis of public auction, the rates realized were much more than the rates being charged to occupants in the adjoining properties and the market rate of rent is much more than what is charged by the Appellant from time to time.

Reiterating that the Appellants are entitled to revise the rents and unless and until the revision is unreasonable or arbitrary, and specifically when a Consultant was appointed for assessing the value of the properties, it was stated that the compromise rates which were put before the Court were much lower than the actual rates recoverable based on prevailing market rates and the benefit was conferred on basing the return on lower valuation rate for the period from 01/10/1982 till 30/09/2012 and the action of the Port Trust was thus justified as extremely fair and reasonable and very much on the lower side.

80. One more Affidavit came to be filed on 29/06/2000 in Appeal No.258/1991 in the wake of direction of the Court to point out the circumstances which were prevailing and were taken into consideration by the Board of the Appellants at the time when the 'Compromise Proposal' was suggested. In the said Affidavit, it was stated as below :-

> *"6. I say that the rate of 6.33 per sq. mt. per month was arrived at the following manner. As mentioned hereunder Kirlokar Consultants Ltd. had divided the estates of the Port Trust into blocks. As against that the Appellants had divided it into 6 blocks based on similarities of potential, contiguity and values. In particular the Block captioned "All other estates" was clubbed together as the areas compromised herein fell in 1-3 zone under the new sanctioned Development Plan. The rate to be charged for each of the blocks it on the basis of FSI 1 based on the fair market rate suggested by Kirloskar Consultants Ltd. These rates were arrived at the Kirloskar Consultants Ltd. rates which were based on FSI of 1.33 to the rates based on FSI equal to' by pro-rata reduction. On this basis the lower rates were for the category of all other estates" which was at 12.06 per. sq. meter per month. The Appellants therefor resolved to charge on the basis of 0.5 FSI so that the applicable rate became 6.33.*
>
> *7. I say that thus lowest rate was made applicable to all six blocks for the period from 1-10-1982 upto 31-3-1994 in terms of the further liberalised proposal. I say that the term or expression all other estates" comprises of Wadala, Sewree, Coal Depot, Cotton Depot, Ghorupdeo, Darukhana, Reay Road, Lakri Bunder, Hey Bunder, Coal Bunder, Mason Road etc.*
>
> *8. I say that in so far as further increase of the rate after 1992 is concerned, the revised rates were kept constant under the original compromise proposal for a period of 9 years from 1/10/1982 30/09/1992 with a view to reduce the burden which may be felt immediately on the basis of revision. It would also enable the lessees who had put up structures which were let out by them to be able to take steps to recover the retrospective arrears at the concessional rate from their respective occupants. Since revision was being effected from 1982 but suggested only on 1991 this was done with a view to give the lessees an opportunity*

to take appropriate proceedings to be able to recover the arrears wherever they could from their respective sub-tenants or occupants. It was also open for the lessees to transfer the entire property in the name of t;he occupants and the Port Trust would then recognize the occupants as direct tenant under the compromise proposal."

81. The Affidavit also state that it would be appropriate to consider the 'Compromise Proposal' in its entirety and not by merely looking at the rent rates and nothing else, as several benefits are sought to be conferred on the lessees which they were not otherwise entitled to under the existing laws and this include the benefits stated as below :

"a)The premises which was being used for residential use, would be liable to pay only 20% of the rates as payable by the non residential leases

b)The tenants would be permitted to use the premises for any purpose as permitted under the DCR of Bombay Municipal Corporation;

c) In respect of BPT structure revision was made at the rate of 2.5 times of letting rents with a remission of 0.5 times the rents for repair and maintenance carried out by the lessee himself ;

d) The biggest advantage being the rate suggested was to remain constant from 01/10/1982 to 30/09/1992 and thereafter would increase only at the rate of 4% p.a.

e) The rate suggested for the premises was to remain constant for the period from 1-10-1982 to 30-9-1992, i.e. for 9 years and thereafter would increase only at the rate of 4% per annum compounded. Thus for 9 years the Port Trust agreed that they would not revise the rent at all. This period was further extended upto 31st March, 1994 under the liberalised compromise policy.

f) In so far as the arrears were concerned for period from 1-10-1982 the lessee and occupants were required to pay differential arrears with simple interest at 8% per annum. It is pertinent to point out at this stage that from 1982 onwards several of the occupants had stopped paying even the contractual rent, much less the higher rent demanded. I may add that even this interest would be waived if the occupants exercise the first option mentioned hereinabove under the liberalised compromise policy."

The Affidavit, therefore, assertively stated that the 'Compromise Proposal' was as per the liberalised compromise policy and ought not to be looked into as merely a proposal for revising rent, but it was a solution to the existing problem to avoid litigation and rationale uniform policy was sought to be implemented and this was looked at by the Appellant, BPT as a method by which the long drawn litigation would be avoided.

82. On remand, the Appeal filed by BPT was again adjudicated by the Division Bench on 01/08/2000 when the Judgment of the Single Judge was set aside holding that rent cannot be fixed on the market rate of the properties though rest of the Judgment was confirmed. However, the compromise formula given by the Appellant Trust before the Division Bench was varied as it had suggested 6% of the fair return, but the Board did not accept it and the Board referred to 4% upper revision on and after 01/04/1994. The Division Bench while applying the varied formula, directed thus :-

> *"70. For granting upper revision, we will divide entire period starting from 1981 to 2000 into two parts. The trust itself has divided the period into two parts in a way because in the compromise formula it has decided to levy interest on and from 1.4.1984. Accordingly, the first period will commence from the year 1981 and end with 31.3.1994.*
>
> *71. In view of the stand of the Port Trust itself before the Supreme Court in S.L.P. upto 31.3.1994 it should be permitted to apply its original norms of proper revision as it was doing right upto the year 1981, periodically, it may accordingly revise the same upto 31.3.1994.*
>
> *72. Coming to the second period. the revision will have to be on the basis of 6% of the market rate instead of 15% for non residential use. For residential use it has been pegged by the Port Trust at 12% which in our opinion cannot be sustained for the foresaid reason. In order to the maintain distinction as was done by the Board itself by keeping 15% for non residential properties and and 12 % for residential properties we hold that for residential purpose the return shall be worked out at the rate of 4% on the market value. At this rate, the Kirloskar Report has to be worked out on and from 1994 till 31.3.2000. We are fixing this date because on and after 1.4.2000 the new Maharashtra Rent Control Act. 1999 , came into force. The importance of this statutory is that that from the definition of the local authority, the Bombay Port Trust has been omitted completely. It was specifically mentioned as one of the local authorities that had been exempted under Section 4 sub section (1) in the old Rent Act. However, in the list of exempted*

local authorities, the Bombay Port Trust or the Mumbai Port Trust namely the appellant is conspicuous by its absence in the new Rent Act. Reference may be made to Section 7 sub section 6 of the said Maharashtra Rent Control Act, 1999. This has generated much debate particularly at the instance of the appellant when the learned Additional Solicitor General very seriously contended that looking to the aims and objects of the Major Port Trust Act,1963 preceded by legislative history covering the period when the Bombay Port Trust Act itself was enacted in the 19th century, the Rent Act can never cover the Bombay Port Trust' s properties. It was also with equal seriousness urged that the Major Port Trust Act and its provisions token in their totality should get the benefit of the doctrine of occupied field and by implication therefore the provisions of the Rent Act if necessary be struck down in relation to the properties of the appellant or if not then the trust properties should be treated as exempted from the provisions of the Rent Act."

83. Whatever formula in form of 'Compromise Proposal' forwarded by the Appellant and accepted by the Bombay High court subject to variation, ultimately was the subject matter of the proceedings before the Hon'ble Apex Court in Jamshed Wadia (supra) and it is this Judgment which has drawn curtains on the long drawn tussle between the parties about the revision of rent and permissibility of BPT revising the rent based upon the report of the Consultant and its entitlement for fixing the rate of rent based on the market value of the property.

The Apex Court on highlighting the terms of reference entrusting the task of preparation of the report to Kirloskar Consultant also referred to the 'Compromise Proposal' which was approved by the Board and submitted to the Court, which had fixed the letting rates for 'non home occupation' per square meter of floor space per month of built up area from 01/10/1982 to 30/09/1992 as well as their letting the rate for 'home occupation' at 20% of the 'non home occupation' rent as well as letting rates for future years from 01/10/ 1992 to 30/09/2012 for both the categories. The 'Compromise

Proposal' apart from the aforesaid also contain the following highlights :-

> *"(vii)Rents shall be increased by 4% every year over the rent in the previous year from 1-10-1992.*
> *(ix)Arrears in respect of structures would be recovered at the applicable rate from 1-10-1987 upto 30-09-1991 with simple interest at 8% per annum.*
> *(x) In case of monthly tenancies/Fifteen monthly leases where the pre-revised rent is more than the rent under above terms or where allotments have been made through auction/ tender at rates higher than the rate applicable letting rate for a year exceeds that rate of rent whereafter the rent will increase to the applicable letting rate and will further increase at 4 per cent per annum.*
> *(xi)In case of expired lease, fresh lease on new terms shall be at the sole discretion of the board. Grant of fresh lease may be considered taking into account restructuring requirements for the city's development plan, BPTs Master Plan and the Development Control Regulations. Where a fresh lease is granted, arrears may be recovered ind the form of premium at the applicable letting rate for respective use with simple interest at 15 per cent per annum from the date of expiry of lease till grant of fresh lease. In case of expired leases without a renewal clause, additional premium may be recovered at 12 months' rent at the applicable letting rate.*
> *(xvi)The above proposals are applied to properties falling outside the Port limits which is within the Board's power to sanction. For properties falling with the port limits, proposals on the above lines may be made to the Government for approval."*

Reading of the Apex Court Judgment in its entirety would reveal that their Lordships of the Apex Court noted that the Port Trust made it clear to the Division Bench that it was not insistent on levying and recovering rents as suggested by Kirloskar Consultants, but was satisfied with the revised formula placed before the Court and the Division Bench, therefore, had formed an opinion that the revised proposals submitted by the Port Trust are reasonable and fair and the document titled as 'Revision of rents of monthly tenancies/15 monthly leases - Compromise Proposals' was marked as Exhibit A and annexed to the Judgment and the Division Bench put its seal fo approval on the 'Compromise

Proposal'.

84. BPT was satisfied with the Judgment of the Division Bench, however, it is the lessees who filed the SLP and one of the Appellant being Jamshed Wadia raised three fold grievances viz. the individual lessees were not permitted to make submission before the High Court; no proper justification offered by Port Trust in support of its 'Compromise Proposal' and the Division Bench of the High Court did not consider the matter of revision of rent on the basis of report of Kirloskar Consultants on merits and there is no consideration of the reasons given by the Single Judge for setting aside the enhancement of rates by the Port trust.

Accepting the said contention, the matter was remanded back for fresh decision and once again decided by Judgment dated 01/08/2000 when the Bench was of the view that appointing consultant for determining the fair market rate of the property could not be faulted and rather the subsequent 'Compromise Proposals' were only way of softening blow to relieve the lessees of the hardship caused by revision of rent, though the Division bench directed that the rate of interest shall be confined to 6% only.

Since the Division Bench also held that Kirloskar report and action based, was already set aside by the Single Judge though the 'Compromise Proposal' did not meet the test of fairness and reasonableness, the Division Bench in its Judgment of 01/08/2000 held thus :-

> *"1. For granting upward revision, we will divide the entire period starting from 1981 to 2000 into two parts. ... the first period will commence from the year 1981 and end with 31-3-1994. The second period will start on and after 1-4-1994.*

2. In view of the stand of the Port Trust itself before the Supreme Court in SLP up to 31-3-1994, it should be permitted to apply its original norms of proper revision as it was doing right up to the year 1981, periodically. It may accordingly revise the same up to 31-3-1994.

3. As to the second period i.e. on and after 1-4-1994, the revision will have to be on the basis of 6% of the market rate instead of 15% for non- residential use and for residential purpose the return shall be worked out at the rate of 4% on the market value. At this rate Kirloskar's report has to be worked out on and from 1994 till 31-3-2000.

4. On and after 1-4-2000, the new Maharashtra Rent Control Act, 1999 has come into force. The Bombay Port Trust has been omitted from the definition of 'local authority'. The 1999 Act has received Presidential assent and the provisions of Article 254 of the Constitution of India will therefore, come into play. The appellant Trust will stand governed by the provisions of the Maharashtra Rent Control Act, 1999. To the extent permissible therein, the appellant Trust can certainly increase the rent periodically and the occupants of the plots, on whatever terms and conditions at present, will also have to abide by the same. The appellant Trust cannot claim any exemption from the provisions of the 1999 Act."

(V) THE FINAL VERDICT IN JAMSHED WADIA CASE

85. The Hon'ble Apex Court while considering the submissions advanced on behalf of the Appellant also considered the cross objections filed by the BPT as it sought initial action on the Kirloskar Consultants report and requested it to be sustained and restored. Apart from the observations which we have already reproduced about the decision of the State and its Authorities including instrumentality of the State to be just, fair and reasonable in all their activities including those in the field of contract, it was clearly observed that it is permissible to augment the resources by such functions to serve public cause and to do public good by resorting to fair and reasonable methods. The Bench expected a balance to be struck between the two extremes, viz. having been exempted from the operation of

Rent Control Legislation, the instrumentalities who are freed by legislature requiring them to rule indirectly or by analogy by the same law from which they are exempted and at the same time , since the constitution did not exempt them from honouring the constitutional obligation and being ruled by Article 14 , the action of such instrumentality shall be tested not only qua the rent legislations, but also under the Constitution. However, while evolving the aforesaid legal situation , the Apex made reference to the 'Compromise Proposal' and the court appreciated the Board for agreeing to every reasonable suggestion made by the Court and by not treating the rent as a matter of prestige or ego.

The matter between the Parties was then permitted to be resolved by treating the 'Compromise Proposal' dated 13/08/1991 as a base and then the scope of controversy was narrowed down and it was confined upto 31/03/2000 i.e. the period before the Rent Control Act became applicable and this was clearly divided in two phases viz. between 01/10/1982 to 31/03/1994 and 01/04/1994 to 31/03/2000.

The Board clearly agreed that for the first period, the original terms would continue to apply and the lessee shall give up the contest , if any, for this period. The second phase, which was considered to be the bone of contention, the lessees prepared to accept the revised rate as 10% and 8% respectively for non residential use and residential use in place of 15% and 12% suggested by the 'Compromise Proposal' and the High Court having it pegged down to 6% and 4% respectively, but mutually it was agreed that the lessees would accept the rates at 10% and 8% respectively and even the Apex Court expressed that it was fair and reasonable and BPT ought to accept the same.

The period post 31/03/2000 which was controversial, as there was a contest as to whether the provisions of the Rent Control enactment are applicable to BPT or not, the Court did not focus on the same and this question was kept open to be taken care of in appropriate proceedings.

The Appeals were, therefore, disposed of by making the decision binding on all and the cross-objection of the Port Trust is turned down.

86. The Judgment in Jamshed Wadia (supra) thus become the anchor sheet of the contention of the Petitioners who would submit that the 'Compromise Proposal' received an imprimatur from the Apex Court covering lessees from 01/04/1994 to 31/03/2000 and with the only modification that the revision in the rent from 01/04/1994 shall be on the basis of return at 10% for non residential users and 8% for residential users with a clear declaration that the 'Compromise Proposal' so modified shall bind the Parties and even those who are not Parties to the proceedings in the wake of the proceeding taken by the High Court under Order I Rule 8 of CPC.

87. The decision of the Apex Court in Wadia's case has clearly ruled that considering the status of BPT which happens to be the instrumentality of the State and also owner cum landlord, its action must be tested on the well settled parameter of it being 'just, fair and reasonable' in all its activities including those in the field of 'Contract'.

The specific submission made on behalf of the Port

Trust Authority through the learned Solicitor General did not find favour with the Apex Court, when it was sought to be argued that when private landlords are making money in commercial capital of city why should the Bombay Port Trust be kept pegged down to abysmally low rates of rent which are settled decades before and particularly when the court has to manage and administer the large area, most vital to the industrial and economic life of the nation and it needs money for its activities though every additional penny would be spent on public good, but it was urged that it would only strengthen its hands in rendering better service to the nation.

This argument received a negation when the Apex Court in no certain words observed thus :

> *"18. In our opinion, in the field of contracts the State and its instrumentalities ought to so design their activities as would ensure fair competition and non-discrimination. They can augment their resources but the object should be to serve the public cause and to do public good by resorting to fair and reasonable methods. The State and its instrumentalities, as the landlords, have the liberty of revising the rates of rent so as to compensate themselves against loss caused by inflationary tendencies. They can and rather must also save themselves from negative balances caused by the cost of maintenance, payment of taxes and costs of administration. The State, as the landlord, need not necessarily be a benevolent and good charitable Samaritan. The felt need for expanding or stimulating its own activities or other activities in the public interest having once arisen, the State need not hold its hands from seeking eviction of its lessees. However, the State cannot be seen to be indulging in rack-renting, profiteering and indulging in whimsical or unreasonable evictions or bargains."*

The Apex Court though directed that the Port Authority was not bound by the shackles of Rent Control Legislation, but its emphasis was on the proposition that it could revise rents only so as to :1) compensate itself against the loss caused by inflationary tendencies and 2) save itself from negative balances caused by the cost of maintenance from payment of taxes and cost of administration. In no uncertain words, the Apex Court observed that the Port Authority cannot indulge in 'rack-renting'. Apart from this observation on merits, what is mort important to note is the acceptance of 'Compromise Proposal' by the Division Bench of the High Court with a slight modification and the same being upheld by the Hon'ble Apex Court.

In Wadia's case, after laying down the proposition of law, the Appeals were disposed of, putting to rest the controversy of rates of rent applicable to the lessees from 01/04/1994 to 31/03/2000 in light of the 'Compromise Proposal' which received approval of the Board of Trustees of the Port of Mumbai only with a modification that the revision in rent from 01/04/1994 shall be on the basis of rates of return at 10% for non residential use and 8% for residential use.

As far as the period before 31/03/1994 is concerned, the rate of rent was to remain same as suggested in the 'Compromise Proposal' , as the 'Compromise Proposal' clearly contemplated that rents shall be increased 4% every year over the rent in the previous year from 01/10/1992 and arrears for the period from 01/10/1982 upto 03/09/1991 in case of monthly tenancies and 15 monthly leases would would be recovered at the rate of 8% per square meter per month from the previous year from 01/10/1992 and arrears in respect of structures would be recovered at the applicable rate from 01/10/1987 to 30/09/ 1991 with simple interest at 8% p.a.

(VI) POST WADIA SCENARIO – STEPS TAKEN BY PORT TRUST

88. With a declaration that the 'Compromise Proposal' with the modifications mentioned would bind all and shall remain unchanged govern the period upto 31/03/2000, after this period, it was open for BPT to revise the rates of rent, but instead the Port Trust Authority by TR No.31/2004, pursuant to the decision of the Apex Court dated 13/01/2004 , took steps to implement the said Judgment by appointing a Committee [FA &CAO, CLO & A, Secretary, Director, E & R) and Estate Manager] to examine the issues arising out of the Judgment and also to point out whether it would be advisable to review the Judgment or accept it in toto. It also made a reference to the Additional Solicitor General's view and the Resolution record the opinion, which reads thus :

> *"7.1It is seen from the judgment read with the opinion of Additional Solicitor General of India that, the rents for the period from 1.10.1982 to 31.3.1994 under the compromise proposals remain unchanged. The rate of rent from 1.4.1994 shall be based on 10% and 3% rate of return for commercial and residential uses whereas the rates for residential uses stand enhanced from 3% i.e. 20% of the non residential uses fixed under the compromise proposals. The rate of interest on arrears for the period from 1.4.94 till the date of payment is 6% p.a. giving a reduction in the rate of 'interest'. Thus the judgment gives major concession in rates of rent from 1.4.94 by 1/3rd for non residential uses and 2/3rd in the rate of interest.*
> *7.2 The rates for the different estates for the period from 1.10.82 are shown in the Statement-I to the Committees report. As per compromise proposals, the minimum rent will be for 0.5 FSI and maximum for 1.33 FSI and in case of leases the rent will further increase by 1.5 times for FSI 3 and above and upt 5 and 2 times for FSI 5 and above. The rent beyond 31.3.2000 will continue to increase by 4% every October as per the compromise proposals upto 30.9.2012. As decided under TR No.204 of 1997, fresh leases*

> *are granted for 30 years from 1.4.94 with 4% annual increase in rent, thereby extending the applicability of the rent under the compromise proposals to 2024."*

In conclusion, the Board resolved to abide by the Judgment of the Hon'ble Apex Court with the clarification above and declared that the 'Compromise Proposal' under various Resolutions including TR 204 of 1997, TR 77 of 2000 and TR 89 of 2000 shall apply. The Boards approval was sought for accepting the Supreme Court Judgment with the clarification given by the learned Solicitor General for implementation of the Judgment as drawn in the committee's report and on due deliberation Resolution No.31 came to be passed on 10/03/2004 for implementing the Judgment of the Apex Court.

In the wake of the aforesaid development, the Apex Court decision has attained finality and the Board itself through its Resolution has passed TOR No.204/1997 it also decided the rent beyond 31/03/2000 by accepting that it shall continue to increase by 4% every October as per the 'Compromise Proposal' upto 30/09/2012. By way of TR 204/1997 fresh leases granted for 30 years from 01/04/1994 with 4% annual increase in rent, extended the applicability of the rent under the 'Compromise Proposal' upto 2024.

(VII) ISSUE ESTOPPEL/RES JUDICATA

89. We must thus express that the Judgment of the Apex Court is agreed to be implemented by TR No. 31/2004, which even confirmed TR No. 204/1997, when the applicability of 'Compromise Proposal' was extended to leases renewed for 30 years from 01/04/1994 with a stipulation of 4% annual increase in rent. The understanding of the Board could also be reflected from the report of the Committee constituted by it to examine the effect of the Apex Court Judgment in general rent revision matters and on highlighting the salient features of the Judgment and operative portion, when certain clarifications were sought, there is specific clarification sought on the aspect , " whether after 31/03/2000 the 'Compromise Proposal' will continue to apply till 30/09/2012 or MBPT has liberty to charge rent on any other basis', and this received a response as below :-

> *"Although the Petitioners had succeeded before the High Court in respect of revision of rent after 31/03/2020 when the Maharashtra Rent Control Act came into force with effect from 31/03/2000 and the arguments were raised by MBPT that the Act was not applicable for the reasons urged by it, the Supreme Court had left the question open."*

In the circumstance, the rent would continue to be paid *de horse* the Maharashtra Rent Control Act and as per the compromise formula. The intention of the Supreme Court is clear that if any one is aggrieved for non application of Maharashtra Rent Control Act, the issue can be raised in any appropriate proceedings, at the appropriate stage. To an another question as to what would be the rate of rent applicable after 31/03/2000, it is stated that the answer is as above.

Thus, in the wake of the decision of the Apex Court and the Resolution passed by the MBPT, the issue has been put to rest as the revised rent shall be governed by the compromise formula upto 2024. It would also be appropriate to make a reference to TOR No.204/1997 where approval was accorded to the following Resolution :-

"Approval is accorded to grant of fresh lease under the Compromise Proposals in case of expired leases from 01/04/1994 with annual increase in rents every October till expire of fresh lease and though in the discussions before the Board of Trustees, a gray area was contemplated that whether the Court is bound by the period of 30 years with 4% annual increase in the rent even beyond 2012 and upto 2024, the same received a clarification in TOR No.31/2004 after the decision of the Apex Court and for all purposes and on all questions, the issue as regards 'Compromise Proposal' being applicable from 1994 to 2024 stand to rest.

90. Mr. Khambata has, therefore assertively submitted before us that once the issue as regards the period from 01/01/1994 to 2024 is finally concluded and in the wake of specific observation by the Apex Court as to what shall be the parameters that would be applicable in revising the statement of rents, there can be no fixation or recovery of rent contrary to it.

In ***Hope Plantations*** (*supra*) the principle of 'issue estoppel' has been clearly evolved to the effect that once the matter has been determined by the Court, there is no scope of review, as the principle is based on public policy and justice. When the proceedings have attained finality, and the parties are bound by the Judgment, and are estopped from questioning it and they are not permitted to litigate on the same cause of action nor can they litigate on the issue which was necessary for decision in the earlier litigation. The determination of the issue between the Parties give rise to issue estoppel and it comes into operation in any subsequent proceedings executed by the Parties . Similarly the well known principle of res judicata which is made applicable in India and has evolved through authoritative pronouncements, also accepted as branch of estoppel , since *res judicata* prevents the parties to a judicial determination from litigating the same question over and again even though the determination may be incorrectly done, but when the proceedings have attained finality, *res judicata* comes on the foreplay and the Parties are bound by the Judgment The only exception to the said doctrine being change in law or the provision having been interpreted in some different manner by the Highest court.

It is well settled proposition that the ratio of any decision must be understood in the in the background of the facts of the case and the case is an authority for what it decides and not what logically follows from it. In order to understand the ratio, it is necessary to refer to the background facts and the surrounding circumstances in which the law has been laid down and fortunately in this case right from the decision of the learned Single Judge till final curtains were drawn on the issue of fixation of rates of rent by the MBPT in the year 2004 by the Apex Court, all the decisions / pronouncements of law including those of the Division bench revolve around the permissibility to charge the rate of rents with an object of earning its dues from its own property, but in its very first attempt before Justice Daud, the MbPT received a snag when an attempt to exact rent corresponding to the market value of the land was frowned upon though it was held entitled to get protection against an erosion in the rental as a result of inflationary trends, but its action was expected to be reasonable and fair.

The report of the consultant based on a belief that the lands were not yielding proper revenue and mystical figure of

Rs.521 Crores to represent the value of its real estate also received negation in no uncertain words from the learned Single Judge in their first attempt to raise the rent.

The matter being going back and forth from the High Court to the Supreme Court and the Port Trust in an attempt to establish its need to earn from its own property though not by rack-renting , but as a reasonable landlord with the ordinary rights available under ordinary law of the land and its pleading that it shall not be placed in worst position than that of ordinary landlord merely because it happen to be the instrumentality of State was again dealt with and the Apex Court concluded that,

> *" Though the State as landlord have liberty of revising rate of rents to compensate themselves against the cause of inflationary tendencies and must save themselves from negative balances, caused by cost of maintenance, payment of taxes and cost of administration, the State shall not be seen to be indulged in rack-renting, profiteering and indulging in whimsical and unreasonable evictions or bargains."*

It is not that the Petitioners were not ready for any rise in rates of rent, but their demand was and even today is the rise cannot be based on the parameters that are applicable to a private landlord. It is in this figurative struggle between the two sides or what we can say in the tug of war, 'Compromise Proposal' dated 13/08/1991 was born and this was done at the time when the Appeal was pending before the High Court and it received due consideration from the Division Bench on 01/08/2000 who found proposal to be reasonable and as a fall out the period from 1982 to 2000 to be governed by the 'Compromise Proposal',. Therefore, in light of the decision of the Apex Court to be read with the resolution No. 31/2004, we are satisfied that the revision of rents is governed by the 'Compromise Proposal' and the only available course of action for the Trust is to revise the proposal 2024 onwards.

(VIII) RACK RENTING

91. At this stage, we must refer to one term which has been used by Justice Daud as well as the Hon'ble Apex Court being rack-renting in the backdrop of the nature of BPT/MbPT and now it being an Authority, which is constituted for discharge of certain services, but definitely they are not commercial organizations, although entitled to earn profit from its activity.

In **M/s.Dwarkadas Marfatia & Sons** (supra), the case relating to a tenant of a portion of land of the Board of Trustees of Port of Bombay for 40 years and who used the land to run a rice-mill and was subjected to eviction proceedings, and he knocked the doors of the Small Causes Court praying malafides in issuing 1(1) notice, the Suit was dismissed on the ground of improper notice, but the Appellant could reverse the decision upholding the validity of the notice and held that the question of malafide or arbitrariness was not relevant to the legality of eviction.

In an Appeal before the Apex Court, with a pleading that the contractual tenancy had public law character and the Trust was State within the meaning of Article 12 and subjected to Article 14 , the three Judge Bench of the Apex Court held that being a public body, even in respect of its dealing with a tenant, must act in public interest and in accordance with certain constitutional conscious.

The submission that every activity of a public authority especially in the background of the assumption on which such authority enjoys immunity from rigors of the Rent Act was held to be informed by reasons and guided by public interest and all exercise of discretion for power of public authorities, such as the Port Trust in respect of dealing with the tenants, was held to be treated separately and distinctly from other landlords from the assumption that the would not act as private landlords and must be judged by that standard.

In this context, the use of the word rack-renting by the Hon'ble Apex Court catch our attention and we find the use of this terminology in Constitution Bench decision of D.G. Gose (supra) when in Para 33 the Court observed thus :-

> *"There is, however, no rule of law as to the method of valuation to be adopted for determining the annual value of a building. Where, however, the building has been let at what is plainly a rack rent, that rent is the best evidence of value if it has been fixed by reference to the prevailing market. Therefore, where the legislature selects a method for determining the value of the building, there is neither reason nor authority for holding that such method is hypothetical or arbitrary."*

The term rack rent is defined in the 'Principles and practice of valuation by J.A. Parks' 5th Edition and the terms is defined as below :-

> *"Rack rent. It is the full rental value of a leasehold property unaffected by any legal restriction when put to the highest and best use. In other words, it is the maximum rent which the property is expected to fetch under normal market situation.*
> *The term originated with the idea that rent was in the nature of a forced payment, due to the particular circumstances of the payee, the landlord being likened to one of the extortioners in the Spanish 'Inquisition' – here the victim, the tenant, is supposed to be on the "rack" the well known instrument of torture and the exorbitant rent extorted, under the necessity of the tenant, thus came to be known as a 'Rack Rent', but during late years a gradual change has taken place in the use of the term, and the meaning is now generally accepted as representing the maximum annual rent, and no opprobrium attaches to the title."*

It is with this context, the Apex Court observed in Jamshed Wadia that the State cannot be seem to be indulging in rack-renting. This principle must continue to govern the Port Authority in all times to come when it resort to revision of rent, no matter whatever may be its compulsion as the principle of law flowing from Jamshed Wadia prevent it to do so.

(IX) FIXATION OF RENT/ RATES BY TAMP HIT BY RETROSPECTIVITY

92. In the wake of the reasoning of the Apex Court in Jamshed Wadia, TAMP published an order on 1/11/2021, when it fixed the rent scheduled for MbPT prescribing lease rentals for certain ready reckoner zones for non-home occupants in township areas, declaring the same to come into effect without waiting for notification of the speaking order.

Similar SOR is issued for two subsequent phases.

93. All the SORs fixed the rents retrospectively and the objection of the petitioners is making the rate of rents applicable retrospectively, as it is urged that there is no express or implied power under the Major Port Trust Act, 1963 for fixation of SOR with retrospective effect or making it operative from an anterior date, and in the MPA Act, 2021, there is a specific prohibition in making the rates applicable retrospectively.

94. The MPA Act 2021, came into force on 3/11/2021 and it is to be noted that on 16/11/2021, TAMP exercised its power under section 49 and under e-gazette Notification no. 552, fixed and published SOR from 1/10/2017 to 30/9/2022 in terms of the proposal of the MbPT dated 12/8/2021. The

Board of Mumbai Port Authority (MbPA) came to be constituted under section 3 of the Act on 31/1/2022 and from this date, its predecessor, the Board of Trustees of Port of Mumbai ceased to exist.

95. MbPA vide its notification dated 20/4/2022 adopted to implement SORs for 2012-2017 and 2017-2022 framed and published by TAMP.

96. It is based upon these SORs, the Port Authority then issued demand notices seeking to recover from the petitioner arrears of rent/compensation for the period from 1/10/2012 upto 2022, dividing into two different tranches. What is invoked before us is Section 27 of the Act of 2021 and the first proviso thereto, prohibits fixation and implementation of SOR with retrospective effect.

> *"27. (1) The Board of each Major Port Authority or the committee or committees constituted in this behalf by the Board in accordance with section 14, may,–*
>
> *(a) frame scale of rates at which, and a statement of conditions under which,any services shall be performed or made available;*
>
> *(b) frame scale of rates at which, and a statement of conditions under which, the access to and usage of the port assets may be allowed by the Board;*
>
> *(c) frame consolidated scale of rates for any combination of services specified in clause (a) or for any combination of such service or services with any user or permission to use or access to any port assets as specified in clause (b);*
>
> *(d) pass an order for refund of any amount overcharged by the Board in relation to the services provided to any person;*
>
> *(e) pass an order for recovery of any rate or charge which is short-levied or erroneously refunded by the Board to any person under this Act; and*
>
> *(f) frame different scales, fees, rates and conditions for different classes of goods and vessels under this section:*
>
> *Provided that the fixation and implementation of such scales, fees, rates and conditions shall be in consonance with the norms as may be prescribed and shall–*

(i) not be with retrospective effect;

(ii) not be in derogation with the rules made by or directives of the Central

Government in this behalf;

(iii) not be inconsistent with the provisions of the Competition

Act, 2002; and

(iv) not be inconsistent with the provisions of any other law for the time being in force:

Provided that in case of Public Private Partnership projects after the commencement of this Act, concessionaire shall fix the tariff based on market conditions and on such other conditions as may be notified:

Provided further that the revenue share and other conditions would be as per the provisions of the specific concession agreement between the Board and the Public Private Partnership concessionaire appointed under the Public Private Partnership project.

(2) Notwithstanding anything contained in clause (b) of sub-section (1), the Board may, by auction or by inviting tenders, lease any port asset belonging to or in its possession or occupation at a rate higher than that provided under clause (b) of sub-section (1)."

97. It is contended before us on behalf of the Port Authority that the first proviso in Section 27 does not apply to lease rent which has been fixed under Section 105 of the Transfer of Property Act and it is also canvassed that the parties agreeing a contract by mutual consent to a fresh lease, the period would commence from anterior point of time, and when they agreed to pay the rent from that point, the lease cannot be said to be retrospective in operation, as ultimately, it is the understanding of the parties that would determine a contract.

98. In the wake of the statutory scheme as contained in the Major Port Trust Act, 1963, it is apparent that the Board is competent to enter into and perform any contract necessary for discharge of the functions in the Act, and therefore, when the lease/agreement is entered between the lessee/tenant and lessor i.e. the Port Trust, the contract is governed by the statute under which the power is conferred, which initially was under Section 33 and 34 of the MPT Act, 1963 and in the new Act of 2021, it is traceable to Section 22 of the Act. The power to fix the lease rents under the Act of 1963, is to be found in Section 49. Whereas under the new enactment, the power is conferred on the Board of each Major Port Authority or the Committee or the Committees constituted in this behalf by the Board. The term ‘rate’ is defined in the Act of 1963 in Section 2(v) to include any toll, due, rent, rate, fee or charge leviable under the Act and Section 29 of the said Act which relate to transfer of assets and liabilities of the Central Government to Major Port, is indicative that all properties, assets and funds and all right to levy rates, which vested in the Central Government or any other authority for the purpose of Port would vest in the Board of the Major Port. With the TAMP being constituted under the Act of 1963, the right to fix ‘rates’ which earlier vested in MbPT, stood vested in TAMP and this is so specifically provided by sub-section(3) of Section 29 inserted with effect from 9/1/1997 which is referred to as ‘authority’, constituted under sub-section (1) of Section 47A. The ‘rate’ as understood in the Act included rent and when TAMP was introduced to fix the rates and the power was vested in the said Authority, it is conferred with the power to fix ‘rent’.

99. We have also perused the Rules framed by the Ministry of Port, Shipping and Water ways, in exercise of power conferred by first proviso to sub-section (1) of Section 27 read with clause (f) of sub-section (2) of Section 71 of the Major Port Authorities Act, 2021, being styled as “Major Port

Authorities (Fixation and Implementation of Scale of Rates, Fees and Conditions) Rules, 2021, which are declared to have come into force on the date of its publication in the Official Gazette.

The said Rules have defined ‘services’ in 2(b) and it include all services rendered by the Port Authority in its capacity as a Port, which include transhipping of passengers or goods, landing and shipping of passengers/goods as well as various other stages related to the ships as well as the goods and passengers.

Rule 3 of Rules 2021 prescribes the scale of rates ‘for assets’ and services available at Major Port and the said Rule prescribes that the Board of each Major Port Authority may, from time to time, frame scale of rates and a statement of conditions that would apply for- (a)services that shall be performed or made available by the Board at or in relation to the major port or major port approaches; (b) allowing access to or usage of port assets belonging to, or in the possession or occupation of the Board, or any place within the port limits or the major port approaches; (c) any revenue generating activity of operation at the major port or within port limits. Sub-rule (2) provide that different scales and conditions may be framed by the Board for different categories or classes within the activities specified in sub-rule (1). It is also open for the Board to frame a consolidated scale of rates for any combination of service or services with any user or permission to use any port assets belonging to or in possession or occupation of the Board.

As per the said Rules, it is competent for the Board to constitute a Committee for the purpose of determining the scale of rates, fees and conditions under Rule 3 and the Board may allow the Committee to consult such experts, professionals and other officers of the major port for determination of scale of rate and conditions of Rule 3, as the Board may specify.

Pertinently, Rule 5 of the Rules of 2021 prescribes the functions of the Committee constituted by the Board as it is expected to take into consideration various factors like; (a) guidelines or directions issued by the Central Government; (b) market conditions and competitive pricing; and (c) feedback received from stakeholders.

Upon receipt of the recommendations from the Committee or Committees under Rule 5, it is competent for the Board to approve such recommendations, with or without any change, and accordingly fix and frame the scale of rates, fees and conditions for the purposes specified in Rule 3. Rule (6) is very specific, when it has included a proviso while the Board implement the recommendations of the Committee or Committees, when the second proviso appended to Rule 6 reads thus :-

> *"Provided further that the fixation and implementation of the scale of rates, fees and conditions by the Board under these Rules shall (a) not to be with retrospective effect; (b) not in derogation with the guidelines or directions issued by the Central Government in this behalf; (c) not be inconsistent with the provisions of the Competition Act, 2002 or any other law for the time being in force, and (d) have been fixed after evaluating the market conditions, competitive pricing and feedback received from the stakeholders."*

As per the said Rule, the scale of rates, fees and conditions fixed by the Board shall come into effect from such date, as may be notified by the Board by publishing the same in the Official Gazette and shall remain valid for a period of three years from the date of their notification.

100. Corresponding to the said section, we find Section 27 in the Act of 2021, which empower the Board for each Major Port Authority or the Committee constituted for the said purpose for framing of scale of rates for services and framing of scale of rates for usage of port assets. By virtue of the said provision, the MbPA is authorised to frame scale of rates of services under sub-section (1)(a) and it is empowered to frame scale of rates with regard to the usage of port assets in terms of section 22(2) which are to be used and developed to the exclusion of any municipal, local or Government Regulation.

101. A reading of Section 27, as sought to be canvassed before us by Dr. Tulzapurkar by restricting the proviso only to clause (f) of sub-section (1) of Section 27, in our view, would be amounting to restricting the scope of the proviso, only to framing of scales, fees, rates and conditions for different classes of goods and vessels.

The cardinal rule of interpretation while construing the effect of a proviso, is clearly set out to be, that a proviso to a particular provision of a statute embraces the field which is covered by the main provision and it carves out an exception to the main provision to which it has been enacted as a proviso and to no other. The Hon'ble Apex Court, in case of ***Abdul Jawar Butt Vs. State of Jammu and Kashmir***[33], relied upon by Dr.Tulzapurkar, has ruled thus :-

> *"It is fundamental rule of construction that the proviso must be considered with relation to the principal matter to which it stands as a provision."*

33 AIR 1957 SC 281.

It is a well settled position that the function of a proviso is to qualify the generality of the main enactment by carving out an exception and taking out, as it were, from the main enactment a portion which, but for the proviso, would fall within the main enactment.

While construing a proviso, it is not to be read as providing something by way of an addendum or dealing with the subject which is alien to the main enactment and if the provision is clear, a proviso shall not expand it or limit it.

102. Applying the aforesaid principle, when we read Section 27 along with its proviso, which is the provision for fixing scale of rates for assets and services available at Major Port, and sub-section (1) empower the Board of each Major Port Authority or the Committee is constituted in this behalf by the Board to frame scale of rates and a statement of conditions under which services shall be performed or made available or access to a usage of the port assets may be allowed by the Board. The Board is also empowered to frame consolidated scale of rates for combination of services with any user or permission to use or access any port, as specified in clause (a) and (b) and it is also empowered to frame different scale, fees, rates and conditions for different classes of goods and vessels.

103. The definition of the term 'rate' under the Act of 2021 also include any toll, due, rent, rate, fee or charge leviable under the Act and since section 2(zd) shall include rent, on a plain reading of sub-section (1) with the clauses (a) to (f) with the proviso being appended, carving out an exception in respect of the fixation and implementation of the scales, fees, rates and conditions which are permitted to be determined by the Board in each of the independent situation contemplated by clause (a) to (f), in our view, the proviso serve the purpose of carving out an exception to the effect that though there is a power of fixation and implementation of scales, fees and rates by the Board of each Major Port Authority or Committees, constituted by the Board, in accordance with Section 14, such fixation of scales, fees, rates shall be in consonance with the norms as may be prescribed and it shall not be with retrospective effect.

Reading in continuity, the second proviso carve out an exception in the form, that in case of public private partnership projects, after the commencement of the Act, it is the concessionaire, who shall fix the Tariff based on market conditions and on such conditions, as may be notified.

The second proviso also carves out an exception to entire sub-section (1) and applying the rule of construction/interpretation, while interpreting a proviso, which shall not expand or limit the meaning, we are unable to persuade ourselves to accept the submission of Dr. Tulzapurkar that the proviso has the effect of only restricting the scope of clause (f) of sub-section (1) of Section 27 and we reject the said contention.

104. Since the Scale of Rates (SOR) to be fixed for the assets and services are not to have retrospective effect, the well settled principle of rule against retrospectivity is applicable in the present situation as TAMP as well MbPT are instrumentalities of State, and are public authorities which are under the obligation to act fairly, reasonable and for public purpose. Therefore, it is not permissible for them to propose and/or fix and/or demand the alleged difference in arrears of rent/compensation retrospectively.

105. In **Commissioner of Income Tax v. Vatika Township Pvt. Ltd.**[34], the Hon'ble Apex Court has elaborated the principle against retrospectivity by describing it as the principle of fairness and it is so set out in the following words :-

> *"28. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bedrock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as lex prospicit non respicit: law looks forward not backward. As was observed in Phillips v. Eyre, a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.*
>
> *29. The obvious basis of the principle against retrospectivity is the principle of "fairness", which must be the basis of every legal rule as was observed in L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co. Ltd. Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation."*

106. The impugned e-gazette notifications issued by TAMP thus fixing the SORs retrospectively with effect from 1/10/2012 and 1/10/2017 therefore, cannot be sustained and

34 (2015) 1 SCC 1.

are liable to be quashed and set aside.

107. Even on one other count, the e-gazette notification cannot sustain and we say so on appreciating the provisions of the Act of 2021, which has repealed the Act of 1963, with saving of certain acts, as prescribed in sub-section (2) of Section 75, along with a transitional provision contained in Section 76.

108. Section 49 of the MbPT Act, 1963 provide that SOR framed by TAMP constituted and incorporated under section 47A of the 1963 Act, with effect from 9/1/1997, to notify the SOR framed by it in the official gazette as provided in Section 50C of the Act.

Section 54 of the New Act of 2021 provided for constitution of an Adjudicatory Board to exercise the jurisdiction, powers and authority conferred on the Adjudicatory Board by or under the said Act. The proviso attached to the said section, however, prescribe that until constitution of the Adjudicatory Board, the Tariff Authority for Major Ports constituted under section 47A of the Major Port Trust Act, shall discharge the functions of the Adjudicatory Board but it shall cease to exist immediately after constitution of the Adjudicatory Board under the Act and upon constitution of such Board, all assets and liabilities of the Tariff Authority for Major Ports, shall transfer to and vest in the Adjudicatory Board. However, one important aspect which warrant our attention is that Section 58 which sets out the powers and functions of the Adjudicatory Board, exclude Tariff setting, thus, clearly prescribes the fixing of tariff.

109. When the 2021 Act came into force, and the Rules were framed in form of Rules 2021, Rule 7 specified that within a period of 180 days from commencement of the Act, the Board shall fix and publish the first scale of rates, fees and conditions or adopt such scale of rates, fees and conditions that were existing immediately prior to the commencement of the Act and this is what has been precisely done in the present case, when the Board chose to adopt the rates which were fixed by TAMP by relying upon PMLG 2015. At present, what is made operational are these rates, as the Authority under the 2021 Act chose to adopt the rates, which were prevailing.

It is also worth to note that in framing the scales of rates under any of the provision of the Rules, it is also competent for the Board to fix the concessional rate in the situations contemplated, namely, in case of national interest or emergency as determined by the Central Government or on the order of the State Government made in writing or if it is a matter of social importance of the State where the Major Port is situated or the concessional rate is warranted on account of the market conditions or competitive pricing.

110. TAMP which was the competent authority under the Act of 1963 for fixing the rates from the date of its constitution i.e. from 9/1/1997 and being constituted as a Tariff Authority, was authorised to frame scale of rates by notification in the official gazette and every notification, declaration or order and regulation made by the Authority required a publication in the official gazette. TAMP continued to discharge the function of fixing the rates, as long as the Act of 1963 was in force. However, once the MPT Act, 2021 came into force i.e. w.e.f.

3/11/2021, TAMP would only function as an Adjudicatory Board under Section 54 of the Act, but once the Adjudicatory Board was constituted, TAMP ceased to exist. However, even while it continued to discharge the functions of Adjudicatory Board till it was constituted, the functions of the Board under the Act of 2021 excluded Tariff Setting and only included the functions to be carried out by the erstwhile TAMP arising out of Tariff guidelines and Tariff orders issued as well as to receive and adjudicate reference on any dispute or differences or claims relating to rights and obligations of the Major Ports and public private partnership concessionaires, or to apprise, review, public private partnership projects as referred by the Central Government or the Board and to suggest measures to revive such projects. It was thus, basically a body existing in form of a mechanism for redressal of grievances but it was not conferred with the power of Tariff setting.

As a natural corollary of this, with effect of coming into force of MPA Act on 3/11/2021, TAMP did not exist as a body competent to fix the tariffs/rates and though its existence continued only as a substitute of Adjudicatory Board, till it came into existence, but definitely, it ceased to exercise its earlier jurisdiction under the 1963 Act i.e. to fix the tariff/rates.

Since we find that the statement of rates for 2012-2017 and 2017-2022 along with the reasoned orders, is published in the gazette on 16/11/2021, 10/12/2021 and 18/12/2021, in absence of an authority existing in TAMP, the same are null and void.

X POWER UNDER PGLM 2015

111. Coming to the SOR published for the period 2022-2027 by the MbPA i.e. by gazette notification of 26/4/2023, when it declared the SOR from 1/10/2022 till 30/9/2027 with effect from 1/6/2023 in terms of its proposal i.e. at 6% return p.a. on land value for FSI-1 as per valuation report by the valuer appointed by MbPT in terms of PGLM 2015 with 2% annual increase every October.

112. As far as the challenge to this SOR is concerned, it is based upon clause 13 of PGLM 2015 and we shall deal with it along with the parameters set out by PGLM 2015, as the argument advanced on behalf of the petitioners is that the procedure prescribed therein is contrary to Wadia's judgment.

113. The Ministry of Ports Shipping and Waterways (MOS) declare the policy guidelines for land management by Major Ports (PGLM 2015) setting out the procedure for fixation of statement of rates.

The said guidelines were formulated pursuant to a report being obtained from a two Member Committee comprising of the Director General (shipping) and an Advisor and the guidelines were issued by invoking section 111 of the MPT Act, 1963 which empowered the Central Government to issue directions to the Board.

114. The policy highlighted the following objectives:-

> *"4. Objectives- The main objectives of the Policy are:-*
> *a) To ensure that land resources are put to optimum use as per the approved Land Use Plan with focus on retaining /attracting port traffic;*
> *b) To ensure that optimum value is realized by licensing / leasing Port land through a transparent tender-cum-auction methodology.*

c) The policy prescribes the procedure for revision of rates to enable maximum resource generation for the Ports and the methodology for regular updating the rates in line with the market value
d) The policy also recognizes the need for special dispensation for cases relating to educational and security purposes."

115. Admittedly, the policy when declared did not apply to township areas of Kandla, Mumbai, Kolkata Ports, ,but by a clarificatory circular, the same was made applicable to Mumbai Port, the circular issued in form of Clarificatory Circular (land Management) No.1 of 2018 and there is no dispute on the fact that the same is then made applicable even to the Mumbai Port.

116. The policy guidelines formulated the land allotment policy to be operated within the frame work of MPT Act, 1963 and it authorised the port to formulate guidelines for licence of land within and outside custom bounded area in accordance with the land use plan of the port and the spirit of the land policy guidelines. It also contain the provision for fresh leases to be granted upto a maximum cumulative period of 30 years by the port with approval of the Board and provided for removal of use beyond 30 year for maximum cumulative period of 99 years after being satisfied that the same is required to be renewed and the port do not require the land for its own use. Leases are permitted to be granted through tender cum auction methodology through competitive bidding process over the reserve price of such lands which shall be the updated SOR notified by TAMP.

117. A separate procedure is set out for renewal of existing/earlier leases and the petitioners fall within the scope of this provision. Rule 13 prescribe the market value of land and SOR and the Land Allotment Committee is expected to take into account the highest of factor mentioned therein to determine the latest market value of port land and if it is not choosing the highest of the factor, then it must record reasons in writing. The five factors in clause 13 were set out as below :-

> *"(i) State Government's ready reckoner of land values in the area, if any for similar classification/activities.*
> *(ii) Highest rate of actual relevant years in the Port's vicinity (the vicinity of the Port is to be decided by the respective Port Trust Boards), with an appropriate annual escalation rate to be approved by the Port Trust Board.*
> *(iii) Highest accepted tender-cum-auction rate of Port land for similar transactions, updated on the basis of the annual escalation rate approved by the Port Trust Board.*
> *(iv) Rate arrived at by an approved valuer appointed for the purpose by the Port.*
> *(v) Any other relevant factor as may be identified by the Port"*

The PGLM 2015 further directed as under :

> *"(b) The Land Allotment Committee shall, while recommending the latest Market Value for any land would normally take into account the highest of the factors mentioned in Para 13 (a) above. Reserve Price in terms of the annual lease rent would be latest SoR determined in accordance with Para 13(a) and 13 (c) and would in no case be less than 6% of the latest market value recommended by the Port Trust.*
> *(c) The Port Trust would make a proposal as outlined in para 13(a) to TAMP for fixing the latest SoR of the land. The TAMP would notify the latest SoR of the land after following due process of consultation with stake holders within 45 days of receipt of the proposal. The Port Trust Board will fix a rate of annual escalation which would not be less than 2%. SoR would be refixed once in every 5 years by TAMP."*

118. On perusal of the factors to be taken into account for determining the SOR, we find that the highest of the rate arrived from various factors shall be taken into consideration and this includes the ready reckoner rate of the State Government, highest rate of actual relevant transactions registered in last three years in its close vicinity, highest accepted tender cum auction rate of port land for similar transactions as well as the rate arrived at by approved valuer appointed by the Port.

Deriving the highest factors amongst all the aforesaid, would result in maximization of resources, but it is urged before us that it is contrary to the test and the permissible leeway to the port authority while it charge/revise the rates/rents and the Apex Court had highlighted only two of such points and the argument is that this policy is contrary to the directives of the Supreme Court.

119. We have perused the land policy PGLM 2015 and when we juxtaposed the same against the observations of the Hon'ble Apex Court in Wadia's case, we note that the Supreme Court allowed MbPT to compensate itself against loss caused by inflationary tendencies and save itself from negative balances caused by the cost of maintenance, payment of taxes and cost of administration. It clearly discouraged any attempt of rack renting, the act of having the full rental value of leasehold property unaffected by any legal restriction, when put to the highest and best use. In ***K. Ramanujam Chettiar v. Arunachaleswarar Devastanam And Anr.***[35], rack renting is defined as 'rack renting in terms of annual value i.e. market rate'.

120. The policy guidelines 2014 which came to be modified by the MOS and declared as 'PGLM 2015' in its very opening paragraph while highlighting its objective, state thus :

> *"The policy prescribed the procedure for revision of rates to enable maximum resource generation for the Ports and the methodology for regular updating of rates in line with the market value."*

35 AIR 1978 Madras 395.

Mr.Khambata has urged that this very objective is in the teeth of Wadia's case and we are in agreement with him. Clause 13 of the said policy which has prescribed the procedure for fixation of 'market value of land and SOR, expect the Land Allotment Committee to chose one of the highest factor amongst the five factors and the Committee is expected to arrive at the highest factor to determine the latest market value of the port land and this, in our view, is an attempt to profiteer as would be arrived at, by comparing various prices as set out in the said clause, is getting a price which would be the prevailing market value of land and this is hit by the ratio of Wadia.The Apex Court in Wadia has clearly cautioned that being an instrumentality of State, the Port Authority shall not endeavour to profiteer, but it being an instrumentality of State, whose action is hedged with public element, it has to discharge its accountability of the action being fair and reasonable and every action of the State even in the matters of contract, shall be assailed on the touchstone of justness, fairness and reasonableness.

121. Despite the fact that it is vehemently urged before us on behalf of the Port Authority that it is bound by the Policy decisions of MOS and TAMP and MbPA are bound by the policy decisions, we do not say that it is not as a general principle, as in the scheme of the Act of 1963, we have noticed that there is a complete supervision and control of the Central Government over the port activities and every Board is duty bound to submit to the Central Government a detail report of the administration of the port annually and the Central Government has the power to supersede the Board and it is also empowered to issue directions to the Board in the discharge of its functions. The Board is bound by such directions as the Central Government may impart and the decision of the Central Government on whether the question is one of policy or not, is final, but this proposition of general parlance would apply in normal circumstances, but we do not accept this proposition and the submission advanced on behalf of the Port Authority by pitching it against the authoritative pronouncement of the Apex Court, which has directed that to fix the rates including the rents, the Port Trust Authority shall not indulge in profiteering as it is an instrumentality of State. That is the specific reason why the rate suggested by Kirloskar Consultancy, the Committee being appointed for determining the market value of the property, do not find favour either with the learned Single Judge at the first instance and even with the Supreme Court in the decision delivered in 2003.

(D) THE AFTEREFFECT AND CONCLUSION

122. In the wake of the crystallization of position of law in Jamshed Wadia's case, when the Supreme Court rejected the cross-objection of the Port Trust, by specifically observing that it is not open for it to re-agitate the stand concluded by the earlier order of remand passed by this Court, and the Apex Court expecting a 'give a little and take a little' position with an aim to arrive at a settlement instead of perpetuating the life of the litigation, and the scope of controversy was narrowed down. The settlement emerged by itself as the Apex Court noted that it was agreed at the bar that, in view of the Maharashtra Rent Control Act, 1999 having been brought into force with effect from 31/3/2000, the controversy amongst the parties can be safely confined to the period from 1/10/1982 to 31/03/2000, which was also divided into three phases, namely; (i) 1/10/1982 to 31/03/1994; (ii) 1/04/1994 to 31/03/2000 and (iii) post 31/03/2000.

In the 'Compromise Proposal', the BPT agreed that for the period from 1/10/1982 to 31/03/1994, the original terms would continue to apply and the lessees shall give a contest for this period.

As far as the second tranche is concerned, the compromise proposals propose 15% return for non-residential use and 12% return for residential use as the fair market rent on the estate value, but the Division Bench of the High Court capped this to 6% and 4%, respectively. It is in this context that the Apex Court observed that, instead of the Court undertaking an exercise afresh as to what would be a fair and reasonable return to the Trust, the Counsel for the parties, except the Bombay Port Trust, agreed that the lessees are prepared to accept revised rate at 10 % and 8 %, respectively, and the Court accepted to be fair and reasonable and made it imperative for the Port Trust to accept the same.

Not only this, when it was pointed out to the Court that the lands which were granted on lease suffered from several adversities, their Lordships took cognizance of the same, though expressed that factual inquiries cannot be made at this stage, but directed that a suitable mechanism would be devised to take care of such individual grievances, so that a dispute can be brought to an end.

As far as third phase, i.e. after 31/03/2000, is concerned, which appeared to the period of controversy as the Additional Solicitor General vehemently asserted that the 1999 Act did not apply to the Board and its estates, finding merit and substance in the submission, this question was kept open to be taken care of in appropriate proceedings.

123. Mr. Tulzapurkar is right in submitting that the Supreme Court fixed the rates only till 31/03/2000, but his contention that if the lessees continue to hold the leases beyond that period without fresh lease, they are liable to be evicted is not what the Apex Court ever intended.

Infact, the Apex Court expressed that the BPT was happy with the compromise proposal in the prevailing circumstances and the situation, and the Court also recorded the status of cases with leases as on 31/07/2000, as reflected in the minutes of meeting dated 14/11/2000, and this covered 2490 cases where compromise could be considered, including cases where no Suit has been filed. 1611 cases had involvement of applications received for compromise as on 31/07/2000, and eligible applications received for compromise were found to be 1574, and cases fully finally settled were 408.

It was therefore clearly noted that 487 lease holder had taken advantage of compromise proposal and the figure was encouraging and lessees themselves had joined in the stream of settlement. Very pertinently, the Apex Court took note of the observation made by the Bombay High Court in para 7 of its judgment dated 11/03/1993, where it was recorded thus:-

“It is no longer in dispute that the Port Trust does not wish to levy and recover rents as initially suggested by Kirolskar Consultants Ltd and the Port Trust desires to levy and recover rents in accordance with the revised formula"

124. The observations of the Apex Court have put to rest the discord as regards the revision of rates in respect of the leases granted by the Port Trust pertaining to its property and challenge is raised to the rates so fixed, the Apex Court, with reference to the compromise proposal placed before the Division Bench when the matters were pending before the Bombay High Court, and which extended the width of the proceedings to all the leases of the Board by taking up the proceedings under Order 1 Rule 8 of CPC, ultimately, when the matter reached before the Apex Court, upon Jamshed Hormusji Wadia seeking Special Leave along with other lessees, with a host of intervention applications, and BPT filing cross-objections seeking relief beyond the one allowed by the Division Bench of the High Court, the entire issue was put to rest. The Appeals were therefore disposed of, covering the controversy as to the rates of rent applicable to the lessees from 1/04/1994 to 31/3/2000, and therefore we agree with the counsel for the Petitioners that there is no question of opening up the issue of revision of rents after the decision of the Apex Court. The period of controversy before us is from 1/04/2000, and as we have already referred to the resolution passed by the Board implementing the decision of the Apex Court, to note that the Resolution accepted the verdict from the Highest Court and approved the Resolution to the effect that, as per compromise proposals, the minimum rent would be 0.5 FSI and maximum for 1.33 FSI, and in case of leases, the rent may be further increased by 1.5 times for FSI 3 and above and up to 5, and 2 times for FSI 5 and above.

It was also resolved that the rent beyond 31/3/2000 will continue to increase by 4% every October as per the compromise proposals upto 30/09/2012, and as decided under TR No. 204 of 1997, fresh leases are granted for 30 years from 1/04/1994 with 4% annual increase in rent, thereby extending the applicability of the rent under the compromise proposal up to 2024. Thus, the compromise proposals covered the rents up to 2024, and once this has attained finality, we do not find any reason to have reconsideration of the rents up to 2024.

125. The attempts on part of the TAMP to assume that it could exercise the power under Section 49 of the Act by framing SOR for 2012 to 2017 and 2017 to 2022, relying upon the procedure laid down in PGML 2015, i.e. by fixing the SOR based on the prevailing highest hypothetical market values of land (derived from highest of the five factors mentioned in clause 13 thereof), also do not fit into the legal framework. We have noted that the MPA Act came into force on 3/11/2021 and TAMP exercised its power under the old Act of 1963, and it issued two gazette notifications; first e-gazette notification no. 521, in terms of MbPT proposal dated 14/08/2021, and the SOR with effect from 1/10/2012 was fixed at 6% return p.a. on land value for FSI-1, computed as per State Government stamp duty ready reckoner zone-wise for the year 2013, with 4% annual increase every year in October upto 30/09/2017. The statement of rates was published when the Bill for the MPA Act, 2021 was already in circulation and when it came into force on 03/11/2021, TAMP once again exercised its power in E-Gazette Notification No.552 fixing the SOR from 01/10/2017 to 30/09/2022 in terms of the MbPT proposal dated 12/08/2021. Pertinent to note that both the proposals of MbPT attempted to revise the SOR in the wake of the power existing in TAMP at the relevant time, but when the new statute was about to be brought into force.

An argument is canvassed before us about the retrospective operation of E-Notifications fixing rate from retrospective dates, but apart from the said point, what is to be noted is that the proposal by MbPT was based on the procedure laid down by PGLM 2015 i.e. fixing of SOR based on the prevailing highest and hypothetical market value of the land.

PGLM itself had the object of determining the rates based on the market price and this attempt in the past was frowned upon by the Apex Court in Wadia by observing that Port Authority, being a Statutory Authority, shall not indulge in rack renting in terms of annual value i.e. market value and the Hon'ble Apex Court in no uncertain words, had indicated that the Port Trust can revise the rents based on what is fair and reasonable. The rates worked out by Tata Consultant, which resulted into litigation, were shot down by this Court as well as by the Hon'ble Apex Court, with a reminder that it is not open for the BPT to profiteer. Hence, the revision of rents based on the policy guidelines, which had a clear objective of arriving at the maximum fair market value of the land, was not at all a permissible mode apart from the fact that the retrospective effect of such SORs is also not permissible.

The power exercised by TAMP, being a delegate of the Central Government definitely cannot make the SOR apply with a retrospective date, as there is no specific power in that regard under the parent Act. Assuming that the fixation of SORs by TAMP is an administrative or executive order, even this cannot be given a retrospective effect, as it would amount to taking away a right accrued in an individual. In any case, it is worth to note that after the decision of the Hon'ble Apex Court on 13/01/2004, the Port Authority itself deemed it appropriate to extend the existing proposal till 2012 and on renewal of leases upto 2024 by TR No.31 of 2004, when a decision was taken to implement the directives of the Apex Court in general rent revision matters. It is only when the new Act was around the corner, TAMP sprung into action and made an attempt to revise the SOR, based upon the general guidelines of the Central Government i.e. PGLM 2015 by giving effect retrospectively.

What is attempted to canvass before us is, the Port Authority is exercising its contractual power and it is open for it to enter into fresh leases with fresh terms and conditions and ultimately it is a matter of contract between two parties, do not appeal to us, as we must note that the leases are granted of the lands belonging to the Port Authority by exercising its specific power under the Port Trust Act, 1963 and TAMP was authorised to fix the rates as it was the Authority conferred with the power to fix rents, it being introduced in the statute in the year 1997. We, therefore, find that the exercise undertaken by TAMP to fix the SORs for two periods i.e. from 2012 to 2017 and from 2017 to 2022 cannot be sustained.

As far as the fixation of statement of rates for a further period i.e. from 2022 to 2027 is concerned, this is the power exercised by the MbPA, but its genesis lies in the earlier SORs fixed by TAMP with retrospective effect and though we are of the clear opinion that the Authority constituted under the Act of 2021 is entitled to fix the rents, we must note that under the Act of 2021, it is the power of the Board of each of the Major Port Authority or the Committee or Committees to frame the scale of rates and a statement of conditions under which access to or usage of the Port asset may be allowed by the Board and this is also clearly indicated in the Major Port Authorities (Fixation and Implementation of Scale of Rates, Fees and Conditions) Rules, 2021, but when the rates are to be fixed, they cannot have the retrospective effect nor can they be inconsistent with the provisions of law for the time being in force.

The Notification formulating the Rules of 2021 also permit the scale of rates to be fixed by the Board of each Major Port Authority in regards to the services available at the Major Port as well as allowing access to or usage of Port assets belonging to or in possession or in occupation of the Board or any place within the Port limits or major port approaches as well as any other revenue generating activity or operation at the Major Port or within the Port limits.

Therefore, in light of the power under the Act of 2021 and the Rules of 2021, it is open for the Port Authority or the Committees framed for that purpose to determine the statement of rates, but by following the parameters laid down in Section 27 and as we have already interpreted that the first proviso appended to Section 27 is not only restricted to clause

(f) thereof, but it is also applicable as regards the other sub-clauses, in our view, the revision of rents can be undertaken by the MbPA under the Act of 2021 with the prospective effect as and when it frames such rates. Therefore, in our view, the Gazette Notification bearing No.43 dated 26/04/2023 published by MbPA, fixing the SOR from 01/10/2022 till 30/09/2027 effective from 01/06/2023 in terms of its proposal also cannot sustain, as the fixation is based in the same manner i.e. the basis is the prevailing highest and hypothetical market value of the land in terms of clause 13 of PGLM 2015. The Petitioners have also made a grievance that MbPA failed even to upload the valuation reports, based on which the impugned SOR 2022-2027 was recommended and approved,thereby depriving the Petitioners of their right to file an effective reply to oppose the proposed SOR for 2022-2027. Even on this count, the fixation of SOR for 2022-2027 smacks of *bona fides*.

(E) <u>THE AFTERMATH</u>

126. The learned senior counsel Mr.Khambata has placed before us a comparative chart of the valuation methodology under the Kirloskar Report and under the PGLM 2015, to find that if PGLM 2015 is applied, the valuation will be on a higher side as it has prescribed the procedure for revision of rates to enable maximum resource generation and the methodology for regular updating of rates in line with the market value. Further, clause 13(b) provide that annual lease rent would be the SOR, which could not be less than 6% of the latest market value as determined in clause 13(a) and clause 13(c) provide that the Board would fix annual escalation not to be less than

2% and the SOR would be re-fixed in every five years.

127. In another chart, comparison being given between the compromise proposals accepted before the Apex Court with PGLM 2015 is placed on record to lead to an inference that the compromise proposals contain various benefits to the MbPT leases and this was clearly set out in T.R.31 of 2004 which permitted fresh leases to be granted for a period of 30 years from 1/4/1994 to 31/3/2024 with increase in rent 4 p.a. every October.

It also permitted the user as may be permissible under the MCGM D.C. Regulations and offered huge reduction in respect of 'Home Occupation'.

128. As compared to the compromise proposals which provided lower rates of rent, based on Kirloskar Report which recognised several mitigating factors and recommended reduction of the fair market rents based thereon, PGLM 2015 directed fixation of SOR at highest market value of lands which amounts to profiteering and rack renting. We find that PGLM 205 has failed to differentiate between the nature of occupations and has prescribed blanket rate of 6% on the prevailing market value of land on all such usages, whereas concession upto 75% of market value is granted only to government schools and colleges as well as to Government departments essential to functions.

129. On a comparative analysis, we find that those who have accepted the proposal which has received the imprimatur from the Apex Court, are in advantageous position to the applicability of PGLM 2015. In any cases, as along as the compromise proposal continue to remain in operation till

2024, the Port Authority cannot deviate from the principle of law laid down therein to the effect that its action shall be tested on the touchstone of justness, fairness and reasonableness.

Hence, it is worth to note that for the period covered by the compromise proposal, the rates were permitted to be fixed in accordance with the compromise formula with a variation suggested by the High Court / the Hon'ble Apex Court and following the period where the compromise proposal was made applicable, the guiding factors laid down in Wadia's judgment shall continue to govern the fixation of rate/rent by the Board or its Committee/s under the 2021 Act. In our view, the Act of 2021 having come into force, it is open for the Board to undertake the exercise of fixation of rates/rents in an independent manner, following the parameters of the Act of 2021 as well as the Rules formulated thereunder and keeping in mind the guiding principles when the Board of the Port Trust Authority exercises its power.

As a result of the aforesaid discussion, we pass the order:-

(F) <u>ORDER</u>

130. On the aforesaid elaborate discussion and analysis of the rival claims and on consideration of the emerging legal position, we pass the following order :-

i. In the wake of the aforesaid discussion, we declare that the rates of rent fixed by the Port Authority based on "compromise proposals" which is upheld by the Apex Court in Jamshed Hormusji Wadia's case, are applicable to the petitioners upto 31/3/2024, subject to the modifications set out by the Hon'ble Apex Court.

It is declared that the said rates of rent shall govern the petitioners upto 31/3/2024.

ii. The exercise undertaken by the respondents in declaring the statement of rates in contrast to the compromise proposal as well as the decision of the Apex Court, cannot be sustained. As a result, the impugned e-gazette notification dated 29/10/2021 by fixing the rates for the period from 1/10/2012 to 30/9/2017 and further impugned Gazette Notification dated 18/12/2021, fixing SOR from 1/10/2017 to 30/9/2022 are quashed and set aside, as the said Circulars overreach the compromise proposals and the decision of the Apex Court, apart from the fact it has a retrospective effect.

iii. The impugned Gazette Notification dated 10/12/2021 issued by TAMP notifying the "Speaking Order" with relation to the impugned Gazette Notification dated 16/11/2021 is also quashed and set aside.

Similarly Speaking orders in respect of other Gazette Notifications fixing the SOR with retrospective effect are also quashed and set aside.

iv. The Gazette Notification dated 28/04/2022 and the impugned Gazette Notification dated 14/09/2022 as well as the Circular dated 25/10/2022 and e-Gazette Notifications dated 21/03/2023 alongwith the impugned demand notices served on the individual Petitioners are quashed and set aside, as it seek recovery of the revised rates fixed by the TAMP.

The impugned Gazette Notification dated 28/04/2022 issued by MBPA adopting the impugned SOR fixed by TAMP is quashed and set aside.

v. The Demand Notices served on the Petitioners, thereby, seeking retrospective payment of differential arrears of lease/ tenancy from each of the Petitioner is also quashed and set aside.

vi. It is also declared that pursuant to the expiry of the period of rates of rents, as covered by the compromise proposal and accepted by the Port Trust upto 2024, the Board of Mumbai Port Authority is at liberty to fix the rents by keeping in mind the principle laid down by the Hon'ble Apex Court in Jamshed Wadia's case that there shall be no profiteering and rack renting on its part and the rates fixed shall be fair and reasonable.

The Petitioners seek relief of quashing of the conditions included in PGLM 2015 which prescribe fixation of SOR basis market value of land. Since they are the general guidelines framed by the Central Government and directed to be made applicable by the Port Trust, we read down the clause prescribed in fixation of SOR basis market value of land qua the Port trust of the Port Authority.

Writ Petitions are made absolute in the aforesaid terms. Pending Interim Applications stand disposed of.

No order as to costs.

(MANJUSHA DESHPANDE, J.) **(BHARATI DANGRE, J.)**

Ashish/Arati/Rajshree/Manali