IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 1289 of 2019
In R/SPECIAL CIVIL APPLICATION NO. 2535 of 2017
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2019
In R/LETTERS PATENT APPEAL NO. 1289 of 2019
With
R/LETTERS PATENT APPEAL NO. 1424 of 2019
In
SPECIAL CIVIL APPLICATION NO. 2537 of 2017
With
R/LETTERS PATENT APPEAL NO. 1292 of 2019
In
SPECIAL CIVIL APPLICATION NO. 2536 of 2017
With
R/LETTERS PATENT APPEAL NO. 1304 of 2019
In
SPECIAL CIVIL APPLICATION NO. 10611 of 2016
With
R/LETTERS PATENT APPEAL NO. 1306 of 2019
In
SPECIAL CIVIL APPLICATION NO. 13371 of 2013
With
R/LETTERS PATENT APPEAL NO. 1302 of 2019
In
SPECIAL CIVIL APPLICATION NO. 10730 of 2016
With
R/LETTERS PATENT APPEAL NO. 1308 of 2019
In
SPECIAL CIVIL APPLICATION NO. 10306 of 2015
With
R/LETTERS PATENT APPEAL NO. 1309 of 2019
In
SPECIAL CIVIL APPLICATION NO. 2607 of 2012
With
R/LETTERS PATENT APPEAL NO. 1310 of 2019
In
SPECIAL CIVIL APPLICATION NO. 9342 of 2015
With
R/LETTERS PATENT APPEAL NO. 1291 of 2019
In
SPECIAL CIVIL APPLICATION NO. 2905 of 2015
With
R/LETTERS PATENT APPEAL NO. 1290 of 2019
In
SPECIAL CIVIL APPLICATION NO. 673 of 2014
With
R/LETTERS PATENT APPEAL NO. 1300 of 2019

In
SPECIAL CIVIL APPLICATION NO. 10891 of 2016
With
R/LETTERS PATENT APPEAL NO. 1294 of 2019
In
SPECIAL CIVIL APPLICATION NO. 2537 of 2017
With
R/LETTERS PATENT APPEAL NO. 1305 of 2019
In
SPECIAL CIVIL APPLICATION NO. 8538 of 2016
With
R/LETTERS PATENT APPEAL NO. 1303 of 2019
In
SPECIAL CIVIL APPLICATION NO. 11497 of 2016
With
R/LETTERS PATENT APPEAL NO. 1301 of 2019
In
SPECIAL CIVIL APPLICATION NO. 10892 of 2016
With
R/LETTERS PATENT APPEAL NO. 1307 of 2019
In
SPECIAL CIVIL APPLICATION NO. 16225 of 2013
With
R/LETTERS PATENT APPEAL NO. 1293 of 2019
In
SPECIAL CIVIL APPLICATION NO. 2538 of 2017
With
R/LETTERS PATENT APPEAL NO. 1295 of 2019
In
SPECIAL CIVIL APPLICATION NO. 13409 of 2014
With
R/LETTERS PATENT APPEAL NO. 1427 of 2019
In
SPECIAL CIVIL APPLICATION NO. 2536 of 2017
With
R/LETTERS PATENT APPEAL NO. 1297 of 2019
In
SPECIAL CIVIL APPLICATION NO. 6909 of 2018
With
R/LETTERS PATENT APPEAL NO. 1428 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 11751 of 2014
With
R/LETTERS PATENT APPEAL NO. 1298 of 2019
In
SPECIAL CIVIL APPLICATION NO. 16530 of 2013
With
R/LETTERS PATENT APPEAL NO. 1299 of 2019
In
SPECIAL CIVIL APPLICATION NO. 372 of 2016

With
R/LETTERS PATENT APPEAL NO. 1424 of 2019
In
SPECIAL CIVIL APPLICATION NO. 2537 of 2017
With
R/LETTERS PATENT APPEAL NO. 629 of 2020
In
SPECIAL CIVIL APPLICATION NO. 20699 of 2018
With
R/LETTERS PATENT APPEAL NO. 1434 of 2019
In
SPECIAL CIVIL APPLICATION NO. 10611 of 2016
With
R/LETTERS PATENT APPEAL NO. 1490 of 2019
In
SPECIAL CIVIL APPLICATION NO. 13371 of 2013
With
R/LETTERS PATENT APPEAL NO. 1491 of 2019
In
SPECIAL CIVIL APPLICATION NO. 8538 of 2016
With
R/SPECIAL CIVIL APPLICATION NO. 11751 of 2014
With
R/LETTERS PATENT APPEAL NO. 1450 of 2019
In
SPECIAL CIVIL APPLICATION NO. 673 of 2014
With
R/SPECIAL CIVIL APPLICATION NO. 16908 of 2014
With
R/LETTERS PATENT APPEAL NO. 1426 of 2019
In
SPECIAL CIVIL APPLICATION NO. 2535 of 2017
With
R/LETTERS PATENT APPEAL NO. 1427 of 2019
In
SPECIAL CIVIL APPLICATION NO. 2536 of 2017
With
R/LETTERS PATENT APPEAL NO. 1425 of 2019
In
SPECIAL CIVIL APPLICATION NO. 2538 of 2017
With
R/LETTERS PATENT APPEAL NO. 1428 of 2019
With
R/LETTERS PATENT APPEAL NO. 1430 of 2019
With
R/LETTERS PATENT APPEAL NO. 1431 of 2019
With
R/LETTERS PATENT APPEAL NO. 1429 of 2019
With
R/LETTERS PATENT APPEAL NO. 1451 of 2019

With
R/LETTERS PATENT APPEAL NO. 1536 of 2019
In
SPECIAL CIVIL APPLICATION NO. 10306 of 2015
With
R/LETTERS PATENT APPEAL NO. 1537 of 2019
In
SPECIAL CIVIL APPLICATION NO. 2905 of 2015
With
R/LETTERS PATENT APPEAL NO. 1561 of 2019
In
SPECIAL CIVIL APPLICATION NO. 372 of 2016
With
R/LETTERS PATENT APPEAL NO. 1562 of 2019
In
SPECIAL CIVIL APPLICATION NO. 16530 of 2013
With
R/LETTERS PATENT APPEAL NO. 1560 of 2019
In
SPECIAL CIVIL APPLICATION NO. 6909 of 2018
With
R/LETTERS PATENT APPEAL NO. 1563 of 2019
In
SPECIAL CIVIL APPLICATION NO. 13409 of 2014
With
R/LETTERS PATENT APPEAL NO. 767 of 2021
In
SPECIAL CIVIL APPLICATION NO. 16225 of 2013
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2019
In R/LETTERS PATENT APPEAL NO. 1292 of 2019
In
SPECIAL CIVIL APPLICATION NO. 2536 of 2017
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2019
In R/LETTERS PATENT APPEAL NO. 1304 of 2019
In
SPECIAL CIVIL APPLICATION NO. 10611 of 2016
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2019
In R/LETTERS PATENT APPEAL NO. 1306 of 2019
In
SPECIAL CIVIL APPLICATION NO. 13371 of 2013
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2019
In R/LETTERS PATENT APPEAL NO. 1302 of 2019
In
SPECIAL CIVIL APPLICATION NO. 10730 of 2016
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2019

In R/LETTERS PATENT APPEAL NO. 1308 of 2019
In
SPECIAL CIVIL APPLICATION NO. 10306 of 2015
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2019
In R/LETTERS PATENT APPEAL NO. 1309 of 2019
In
SPECIAL CIVIL APPLICATION NO. 2607 of 2012
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2019
In R/LETTERS PATENT APPEAL NO. 1310 of 2019
In
SPECIAL CIVIL APPLICATION NO. 9342 of 2015
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2019
In R/LETTERS PATENT APPEAL NO. 1291 of 2019
In
SPECIAL CIVIL APPLICATION NO. 2905 of 2015
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2019
In R/LETTERS PATENT APPEAL NO. 1290 of 2019
In
SPECIAL CIVIL APPLICATION NO. 673 of 2014
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2019
In R/LETTERS PATENT APPEAL NO. 1300 of 2019
In
SPECIAL CIVIL APPLICATION NO. 10891 of 2016
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2019
In R/LETTERS PATENT APPEAL NO. 1294 of 2019
In
SPECIAL CIVIL APPLICATION NO. 2537 of 2017
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2019
In R/LETTERS PATENT APPEAL NO. 1305 of 2019
In
SPECIAL CIVIL APPLICATION NO. 8538 of 2016
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2019
In R/LETTERS PATENT APPEAL NO. 1303 of 2019
In
SPECIAL CIVIL APPLICATION NO. 11497 of 2016
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2019
In R/LETTERS PATENT APPEAL NO. 1301 of 2019
In
SPECIAL CIVIL APPLICATION NO. 10892 of 2016
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2019

In R/LETTERS PATENT APPEAL NO. 1307 of 2019
In
SPECIAL CIVIL APPLICATION NO. 16225 of 2013
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2019
In R/LETTERS PATENT APPEAL NO. 1293 of 2019
In
SPECIAL CIVIL APPLICATION NO. 2538 of 2017
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2019
In R/LETTERS PATENT APPEAL NO. 1295 of 2019
In
SPECIAL CIVIL APPLICATION NO. 13409 of 2014
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2019
In R/LETTERS PATENT APPEAL NO. 1297 of 2019
In
SPECIAL CIVIL APPLICATION NO. 6909 of 2018
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2019
In R/LETTERS PATENT APPEAL NO. 1298 of 2019
In
SPECIAL CIVIL APPLICATION NO. 16530 of 2013
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2019
In R/LETTERS PATENT APPEAL NO. 1299 of 2019
In
SPECIAL CIVIL APPLICATION NO. 372 of 2016
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2020
In R/LETTERS PATENT APPEAL NO. 629 of 2020
In
SPECIAL CIVIL APPLICATION NO. 20699 of 2018
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2019
In R/LETTERS PATENT APPEAL NO. 1434 of 2019
In
SPECIAL CIVIL APPLICATION NO. 10611 of 2016
With
CIVIL APPLICATION (FOR ORDERS) NO. 2 of 2019
In R/LETTERS PATENT APPEAL NO. 1490 of 2019
In
SPECIAL CIVIL APPLICATION NO. 13371 of 2013
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2019
In R/LETTERS PATENT APPEAL NO. 1491 of 2019
In
SPECIAL CIVIL APPLICATION NO. 8538 of 2016
With
CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2021

In R/SPECIAL CIVIL APPLICATION NO. 11751 of 2014
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2019
In R/LETTERS PATENT APPEAL NO. 1450 of 2019
In
SPECIAL CIVIL APPLICATION NO. 673 of 2014
With
CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2021
In R/SPECIAL CIVIL APPLICATION NO. 16908 of 2014
With
CIVIL APPLICATION (FOR INJUNCTION) NO. 1 of 2021
In R/LETTERS PATENT APPEAL NO. 1426 of 2019
In
SPECIAL CIVIL APPLICATION NO. 2535 of 2017
With
CIVIL APPLICATION (FOR INJUNCTION) NO. 1 of 2021
In R/LETTERS PATENT APPEAL NO. 1427 of 2019
In
SPECIAL CIVIL APPLICATION NO. 2536 of 2017
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2019
In R/LETTERS PATENT APPEAL NO. 1425 of 2019
In
SPECIAL CIVIL APPLICATION NO. 2538 of 2017
With
CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2021
In R/LETTERS PATENT APPEAL NO. 1430 of 2019
With
CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2021
In R/LETTERS PATENT APPEAL NO. 1431 of 2019
With
CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2021
In R/LETTERS PATENT APPEAL NO. 1429 of 2019
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2019
In R/LETTERS PATENT APPEAL NO. 1451 of 2019
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2019
In R/LETTERS PATENT APPEAL NO. 1536 of 2019
In
SPECIAL CIVIL APPLICATION NO. 10306 of 2015
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2019
In R/LETTERS PATENT APPEAL NO. 1537 of 2019
In
SPECIAL CIVIL APPLICATION NO. 2905 of 2015
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2019
In R/LETTERS PATENT APPEAL NO. 1561 of 2019
In

SPECIAL CIVIL APPLICATION NO. 372 of 2016
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2019
In R/LETTERS PATENT APPEAL NO. 1562 of 2019
In
SPECIAL CIVIL APPLICATION NO. 16530 of 2013
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2019
In R/LETTERS PATENT APPEAL NO. 1560 of 2019
In
SPECIAL CIVIL APPLICATION NO. 6909 of 2018
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2019
In R/LETTERS PATENT APPEAL NO. 1563 of 2019
In
SPECIAL CIVIL APPLICATION NO. 13409 of 2014
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2019
In R/LETTERS PATENT APPEAL NO. 767 of 2021
In
SPECIAL CIVIL APPLICATION NO. 16225 of 2013

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J.B.PARDIWALA Sd/-
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI Sd/-

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

==========

KANDLA POST TRUST
Versus
IMC LIMITED EARLIER KNOWN AS UNITED STORAGE TANKS TERMINAL LIMITED

==========

Appearance:
MR DHAVAL D VYAS(3225) for the Appellant(s) No. 1
MR DHAVAL SHAH(2354) for the Respondent(s) No. 1
NOTICE SERVED for the Respondent(s) No. 2,3
UNSERVED WANT OF TIM for the Respondent(s) No. 4
==========

CORAM: **HONOURABLE MR. JUSTICE J.B.PARDIWALA**
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 06/05/2022

COMMON CAV JUDGMENT
(PER : HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI)

1. Since the issues raised in all the captioned Letters Patent Appeals are interconnected and the challenge is also to the common order and judgement dated 10.05.2019 passed by a learned Single Judge of this Court, those were taken up for hearing analogously and are being disposed of by this common judgment and order.

2. The impugned order and judgement of the learned Single Judge has been challenged by the original writ-applicants as well as the Kandla Port Trust.

3. For the sake of convenience, the Letters Patent Appeal No.1426 of 2019 filed by the IMC Ltd and the Letters Patent Appeal No.1289 of 2019 filed by the Kandla Port Trust are treated as the lead matters.

4. The facts giving rise to present Appeals may be summarized as under;

4.1 Initially, the ports lands and the port activities were being administered by the Central Government. On coming into force of the Major Port Trusts Act, 1963, all the properties of the Central Government were vested in the Port Trusts constituted thereunder, except the power to levy the rate in respect of the use of such land. The power to levy the rates was conferred to the respective Port Trusts on 01.02.1975, subject to such rates would come into effect only after the prior approval by the Central Government under Section 52 of the Act.

4.2 Under the lease deeds or the letters of allotment executed/issued from about 1978 onwards, the land came to be allotted to certain entities for various purposes including for the usage of liquid storage tank terminals on the terms and conditions which were not uniform or consistent.

4.3 With a view to bring in certainty in the grant of lease, directions were issued by the Government of India in the year 1992 in respect of 13 years lease providing for a rate revision every five years and for incorporating such a clause in the lease deeds. As per the said policy, the KPT had framed the rates for the period from 1994 to 1999 which came to be approved by the Central Government by notification dated 05.07.1994, providing that the rates in 6 categories which would be revised every five years as per the clause to be included in the lease deeds.

4.4 However, by Amendment Act, 1997, Chapter VA has been added and the Tariff Authority for Major Ports has been constituted. Section 47A(4) provided for the constitution of the Tariff Authority which comprises of experts from the fields of management, functioning of the port, economists having experienced in the field of transport and trade and a person having experienced in the field of finance, to frame the rates at which any property belonging to or in the possession or occupation of the Board, may be used. Thus, by the Amendment, the TAMP has been authorized and conferred with the powers to frame/charge the rates under the statue withdrawing the same from the respective ports. Under the amended provision, the TAMP is authorized to frame the scales of rates on payment of which, and a statement of conditions under which, any property belonging to or in possession or occupation of the Board or any place within the limits of the port or the port approaches, may be used for the purposes mentioned in Sections 49(a) to (d) of the Act.

4.5 The Land Committee for the purpose of fixing up the rate to be made effective from July, 1999 had suggested a rate structure. However, the Tariff Authority for Major Ports (TAMP), vide order dated 23.03.1999, closed the case and directed the Kandla Port Trust to classify the land taking into account the purpose for which the land is allotted. Accordingly, the Committee constituted for the purpose, after taking into account not only the distance from the creek, but also for the purpose for

which the land is allotted, had classified the land into 5 categories and submitted its report in the year 1999. The proposal was placed before the Board in its meeting held on 27.08.1999 for its approval. However, the Board referred the same to a Sub Committee of 6 members headed by the Deputy Chairman, to scrutinize and critically evaluate the proposal so as to enable the Board to take decision in the matter. The Committee, after considering all the aspects of the issue, stated that the recommendations of the Committee of the Port officers classifying the Kandla land in different categories based on the use of the land as well as its location in line with the suggestion of the TAMP was acceptable. Accordingly, the Sub-Committee suggested the rate structure. The rate structure was placed before the Board in its meeting held in the year 2001 and 2002. However, due to post-earthquake scenario the revision of rate structure proposed by the Sub-Committee was not finalized by the Board. In the two successive Board meetings held in 2001 and 2002, it was kept for deliberations in the Board meeting of March, 2003.

4.6 In the meantime, the Government issued guidelines stating that in future cases where the tenders are yet to be invited, the Port Trust will charge land premium upfront based on tender. In the case of captive facilities, the premium shall not be below the commercial value of the land either obtained through tender in the vicinity or notified by the Port. The lease rental will be of nominal value of Rs 1/- per sq. mtr. The Government order dated

15.02.2000 was further modified vide letter dated 06.08.2002, wherein, it was decided that the lease rentals will be of nominal value of Rs. 1/- per sq. mtr. in addition to charging the premium upfront based on tender.

4.7 In the meanwhile, in exercise of powers u/s 111 of the Major Port Trusts Act, the Government of India promulgated the Land Policy which paved way for the uniformity in determination of the lease rentals based on the market value of the lands and the five years periodic revision of rates, providing specifically that the SoR should vary in accordance with the purpose of land use.

4.8 A new committee was constituted under the Chairmanship of the Chairman, Kandla Port Trust comprising of the Deputy Collector, Anjar; Secretary, Kandla Port Trust; FA&CAO; Chief Engineer; and Estate Manager. During the meeting held on 02.10.2005, the Committee, after detailed deliberations regarding the revision of rates for the General Land at Kandla (other than the Salt Land), made the recommendations for logical definitions and rate. It was also decided by the Committee that since the rate revision is due from 1999 and the renewal of the general leases have been sent to the Government are pending and the Government is insisting upon that the rate revision pertaining to the general land be carried out first, the rates have been recommended to be implemented from July, 1999,

worked out on the above rates with the prevailing escalation factor applicable from time to time as per the Government guidelines. However, the said Agenda Item was placed in the Board Meeting held on 17.10.2005, where the Board, vide Resolution No.186, resolved as, "Resolved to approve the recommendations of the Committee regarding revision of rates for general land at Kandla (other than salt land) as follows from July, 199 and to send the same to the TAMP for approval except for A, B and D categories". Subsequently, the Agenda Item for the revision of the rate structure pertaining to the General Land (other than salt land) leased out by the Kandla Port Trust was placed for information of the Board. In their meeting held on 08.12.2005 by correcting the earlier Board Resolution No.186 by approving the recommendation of the Committee regarding the revision of the rates for the general land at Kandla, considering the escalation clause as per the Government of India guidelines w.e.f. July, 1999 and to send the same to the TAMP for approval except for the A, B and D categories. Thereafter, the Kandla Port Trust administration sent the proposal for approval of the TAMP, which was returned by the TAMP stating that all the classifications of land (6 categories) as considered earlier in the year 1994 should be considered and again the case may be put up for approval.

4.9 Thereafter, the TAMP, vide order dated 22.04.2008, directed the KPT to formulate suitable revision proposal for the Kandla land. It is in this backdrop, the port, on

19.04.2010, had submitted the proposal for revision of the rate structure of its Kandla land. The salient features of the proposal were as under :

I. The Kandla Lands, mainly comprising submerged lands near the seashore, cover an area of 2,20,416 acres. The Kandla Port has also acquired dry land admeasuring 2172 acres at village of Kidana and Mithirohar area which is known as Kandla Land category.

II. A committee was constituted for fixing the market value of the land and schedule or rates as per clause No. 5.3 (I) of the Land Policy Guidelines issued by the Government of India. The Committee was headed by the Chairman of the KPT. The other members were the Deputy Chairman, Chief Engineer, FA & CAO and Secretary of the Port and the Deputy Collector, Anjar, representing the Government of Gujarat.

III. An approved land valuer was appointed as per Clause 5.3(I)(a)(IV) of the land policy guildelines for assessing the market value of the landed estate. He submitted the land valuation report of the Kandla land in January, 2010.

IV. The Committee, after going through various aspects and considering the parameters given in the land policy guidelines, has accepted the market value of the land as assessed by the approved valuer.

V. Since, the rates of Kandla land had not been revised from July, 1999 and the port proposed to fix the rate structure of the Kandla land from 5th July, 1999.

4.10 The Committee, based on the market value assessed by the land valuer, had recommended sectorwise/ sub-sector wise leave rentals for three consecutive slabs, i.e. from July, 1999 to 31st December 2003, 1st January 2004 to 31st December 2008 and 1st January 2009 to 31st December 2013, which was also recommended by the Board of Trustees of the KPT.

4.11 In accordance with consultative procedure prescribed, the proposal from the KPT was forwarded to the concerned user organizations for comments. Their comments were forwarded to the KPT for remarks. The KPT had responded to the comments of the user organizations. After receiving the proposal, the objections to the proposal and the commence by the KPT to the queries raised by the TAMP, a joint hearing was held on 29.07.2010. The KPT and the concerned users had made their submissions during the joint hearing. Considering the information collected during the proceedings of the case, the comments received from the users at the joint hearing, the TAMP had formulated the points for consideration and has framed the scale of rates by its order dated 25.03.2011 and has approved the revision of rates in the following manner;

Sr. No.	Description of category	Lease Rentals per Sq. Mtr. Per annum as on July 1993 (Rs.)	Lease Rentals per Sq. Mtr. Per annum as on 1 January 2004(Rs.)	Lease Rentals per Sq. Mtr. per annum as on 1 January 2009 (Rs.)
A	Land having water front and upto half mile from the shore i.e. the west bank of Kandla creek.	41.40	53.40	110.40
B	Land within half mile from the bank of the creek and having no water front			
B1	Plots abutting on main road	33.60	43.20	89.40
B2	Plots situated on internal roads	30.00	39.00	80.40
C	Land beyond half a mile from the bank of the creek			
C1	Plots abutting on main road	30.00	39.00	80.40
C2	Other plots	24.60	31.20	64.80
D	Land outside the bunder area and outside the west gate both on north as well as on the south of National Highway			
D1	Plots directly abutting on NH-8A	37.80	48.60	100.20
D2	Plots abutting on 1st 30 meter road parallel to NH-8A	33.60	43.20	89.40
D3	Plots abutting on 2nd 30 meter road parallel to NH-8A	32.40	41.10	85.20

E	Land within the docks	67.80	87.60	180.60
F	Land west of railway siding leading to Kandla Free Trade Zone and up to crossing of railway line			
F1	Plots situated on SEZ side from Kandla Railway Station	37.80	48.60	100.20
F2	Plots situated on Ahmedabad side from Kandla Railway Station	36.00	46.20	94.80
G	Land of Liquid Storage Tanks situated at Old Kandla; between railway siding and leading to M/s. IFFCO and M/s. IOCL (LPG)	167.40	214.80	442.80

4.12 The lease rents for the Kandla lands which were revised by order of 25.03.2011 was approved in 3 quinquennium's, i.e. 1999- December, 2003, 01.04.2004 to 31.12.2008 and from 01.01.2009 to 31.12.2013.

4.13 Thereafter, the KPT, by its letter dated 27.12.2013, had sought extension of the validity of the lease rentals for the Kandla land from the date of its expiry upto 30.06.2014 on the ground that its proposal for revision of the rates for the Kandla land was under consideration and was to take some time. The TAMP passed an order

dated 04.07.2014 extending the validity of the existing lease rentals of the Kandla land from the date of its expiry till 30.09.2014 clearly stipulating that the lease rentals which may be fixed by the TAMP for the Kandla lands based on the proposal which may be filed by the KPT, will have retrospective effect from 01.01.2014.

4.14 The KPT, vide its letter dated 26.06.2014, filed its comprehensive proposal for revision of the rates for the Kandla land for the categories 'A' to 'F' and 'G'.

(i) The Land Policy Guidelines, 2014, issued by the MOS have been adopted by the Kandla Port Trust on 23rd January 2014.

(ii) As mandated, a Land Valuation Committee (LVC) was appointed for undertaking the revision of the rate structure of the Kandla land from January 2014 to December 2018. The minutes of the meeting of the LVC forwarded by the KPT states that the said committee was headed by the Deputy Chairman as the Chairman of the Committee and Secretary, Chief Engineer and Traffic Manager, among the other members of the LVC.

(iii). (a). As per the direction of the LVC, a Government approved valuer was engaged by the KPT in February 2014. The port has forwarded a copy of the Land valuation report submitted by the approved valuer appointed by the KPT

(b). As per valuation report, the land valuer has recommended the land values for each categories of the land under the following options:

- land without reclamation and with infrastructure
- land with reclamation and with infrastructure; and
- as and where basis

(iv). The LVC, in its meeting held on 23rd April 2014, decided to recommend the lease rent based on the valuation of the land given by the Land Valuer on 'as and where basis' for all categories of the land except for the categories A, D1, D2, D3, E and G. In respect of these six categories of the land, the LVC has recommended valuation of land on the following basis:

(a). Category A:

As regards the Category A, the valuer has valued the land on 'as and where basis' at 2060/- per sq. mtr. As against that, the KPT has considered the value of land at 3942/- per sq. mtr. based on the recommendation of the LVC. The KPT has stated that the market value of land for category A during the last revision was more than category B1. In the current exercise, the land value for category 'A' arrived

by the valuer is, however, less than valuation of land for category 'B1'. In view of that the rates for category A has been derived by considering any other factor as provided in Clause 18(a) (v) of Land Policy Guidelines, 2014. Accordingly, the rate for category A is worked out proportionately to category B1. (Land value in 2009 for Category 'A' X Land value of B1 Category as per Valuer in 2014 / Land value of Category B1 in 2009). i.e. 1840 X 3192 / 1490 = 3942 per sq. mtr. instead of 2060 per sq. mtr. recommended by the Land valuer.

(b). Sub-categories of land of D1, D2, D3 under the main category of land D:

The lease rents for sub-categories of land under the category D1, D2 and D3 are recommended based on the highest value of land received during recent auction at 3298/- per sq. mtr., 2153/- per sq. mtr., 3089/- per sq. mtr. respectively as against land value assessed by the valuer at 2131/- per sq. mtr., 1920/- per sq.mtr. and 2131/- per sq. mtr. in the valuation report for corresponding categories of land under the option of 'as and where basis'.

(c). Category E:

For this category, the land value given by the valuer for 'Land with Reclamation and with Infrastructure' has been considered at 5836/- per sq. mtr. instead of value of land assessed on 'as and where basis' considered for categories B, C and F.

(d). Category G:

In respect of Category G1 the value of land has been arrived at by considering the highest rate received during auction of 2011 with 2% escalation every year. In respect of Category G-2 the value has been arrived at by weighted average method with reference to rate for G1 (Rate for G1xRate arrived at by Valuer for G2/ Rate arrived at by Valuer for G1 Category).

To elaborate, the LVC in its meeting dated 10 March 2014 [copy of the minutes of the meeting attached with earlier KPT letter dated 21 April 2014 has considered the valuation of land under the following five options and recommended the value of land for 'G1' category based on highest accepted tender in 2011 duly escalated by 2% per annum till 2014. The valuation of land for 'G2' category given by the valuer is proportionately updated upwards with reference to valuation of land recommended by

LVC for 'G1' category. The relevant information in this regard is tabulated below:

Category G-1:

(i). Valuation of Land considered by LVC.

(a).	State Govt. Ready Recknor (No rate for Kandla Port Lands are available. These rate are of surrounding villages of Kidana, Mithirohar)	1050/- per sq. mtrs.
(b).	Highest rate of actual relevant transactions	No Transactions in last 3 years
(c).	Highest accepted tender-cum-auction rates for similar transactions	14,216/- per sq. mtrs. auction done in 2011 at location G-I
(d).	Rate arrived by approved valuer appointed by the Board for land without reclamation and with infrastructure.	12,375/-
(e).	Any other factors: The Board vide Resolution no. 74 dated 16 July 2013 approved weighted average rate of 10,523.18 per sq. mtrs. with 2% escalations every year and accordingly informed the Ministry/ Supreme Court	10,523/- per sq. mtrs.

(ii). Valuation of land recommended by LVC and the proposed lease rent @ 6% on market value of land in the current proposal is given below:

(a).	Highest rate received during auction in the year 2011 with 2% escalation per year (14216*1.02*1.02*1.02) = 15086.13 per sq. mtr.	15086.13
(b).	Lease Rental @ 6%	905.17 per sq. mtrs.

Category G-2:

(i). Valuation of Land considered by LVC:

(a).	State Govt. Ready Recknor (No rate for Kandla port lands are available. These rate are of surrounding villages of Kidana, Mithirohar)	1050/- per sq. mtrs.
(b).	Highest rate of actual relevant transactions	No Transactions in last 3 years
(c).	Highest accepted tender-cum-auction rates for similar transactions	Nil
(d).	Rate arrived by approved valuer appointed by the Board	8,170 /- (G-II category)
(e).	Any other factors: The Board vide Resolution no. 74 dated 16 July 2013 approved weighted average rate of 10,523.18 per sq. mtrs. with 2% escalations every years and accordingly informed the Ministry/Supreme Court	9959.89 per sq. mtr. (derived based on valuation of land recommended for G1) [i.e. 15086.13/ 12,375 * 8,170]

(ii). Valuation of land recommended by LVC and the proposed lease rent @ 6% on market value of land in the current proposal is given below:

a).	Rate of G-I category / Rate arrived by valuer for G-I category X Rate arrived by valuer for G-2 category (15086.13 / 12375.00 X 8170)	9959.89
(b).	Lease rental at 6%	597.59 per sq. mtrs. per year

(vi). Based on the recommendation of the LVC, the Board of Trustees of the KPT has approved the proposal for revision in the lease rentals of KPT lands- fixing reserve price or market value of land w.e.f. 1 January 2014 for categories A to G in its meeting held on 10 June 2014. Accordingly, the KPT has sought approval of market value/Reserve price in terms of the lease rent for KPT lands as tabulated below:

No	Description of category	Lease Rent approved by this Authority vide Order No.TAMP/21/2010-KPT dated 25 March 2011 (As on 1.1.2009)		Market Value of land on 1.1.2014	Proposed Reserve price in terms of lease rent @ 6% of market value of land w.e.f. 1.1.2014
		Market Value of Land	Lease Rent approved		
A	Land having water front and upto half mile from the shore i.e. the west bank of Kandla creek	1840.00	110.40	3942.00	236.52
B	Land within half mile from the bank of the				

	creek and having no water front				
B1	Plots abutting on main road	1490.00	89.40	3192.00	191.52
B2	Plots situated on internal roads	1340.00	80.40	2873.00	172.38
C	Land beyond half a mile from the bank of the creek				
C1	Plots abutting on main road	1340.00	80.40	1800.00	108.00
C2	Other plots	1080.00	64.80	1500.00	90.00
D	Land outside the bunder area and outside the west gate both on north as well as on the south of National Highway				
D1	Plots directly abutting on NH-8A	1670.00	100.20	3298.00	197.88
D2	Plots abutting on 1st 30 meter road parallel to NH-8A	1490.00	89.40	2153.00	129.18
D3	Plots abutting on 2nd 30 meter road parallel to NH-8A	1420.00	85.20	3089.00	185.34

D4	Plots abutting to KK road near zero point and railway crossing, 25 acres plots and other plots			2025.00	121.50
D5	Valuation of land to the West Gate of NH-8A towards salt works lf land without reclamation but with infrastructure			2565.00	153.90
E	Land within the docks	3010.00	180.60	5836.00	350.16
F	Land west of railway siding leading to Kandla Free Trade Zone and up to crossing of railway line				
F1	Plots situated on SEZ side from Kandla Railway Station	1670.00	100.20	3430.00	205.80
F2	Plots situated on Ahmedabad side from Kandla Railway Station	1580.00	94.80	6720.00	403.20

Sr. No	Description of category	Lease Rent approved by this Authority vide Order No.TAMP/21/2010-KPT dated 25 March 2011 (As on 1.1.2009)		Market Value of land on 1.1.2014	Proposed Reserve price in terms of lease rent @ 6% of market value of land w.e.f. 1.1.2014
		Market Value of Land	Lease Rent approved		
G	Land of Liquid Storage Tanks		442.80		
G1	Land situated from Eastern Bank of Kandla Creek to Western Bank of Nakti Creek			15086.13	905.17
G2	Land from West side of Nakti Creek to Kharirohar having existing Oil Terminals of IOCL, HPCL and BPCL.			9959.89	597.59

4.15 The framing of the tariffs under the aforesaid two orders by the Tariff Authority Major Ports had been challenged by various writ-petitioners by preferring writ petitions

before this Court. Since, the issues raised in the petitions were intermingled and there was commonality of legal issues albeit with diversified facts, the same were heard by the learned Single Judge together and the petitions have been disposed by a common judgment and order dated 10.05.2019 by the learned Single Judge in the following terms;

"i) The Land Policies of 2010 and 2014 in respect of the Port lands issued by the Central Government under Section 111 of the MPT Act, are legal, valid and binding to the respondent KPT and the TAMP.

(ii) No interference is called for in the order dated 13.11.2014 passed by the TAMP and published vide the Notification dated 4.12.2014 under Section 49 of the said Act. The SoR framed by the TAMP shall be effective from 1.1.2014 as directed in the said order. The said order stands confirmed accordingly. The demand notices, if any issued to the petitioners based on the said order also stand confirmed accordingly.

(iii) The order dated 25.3.2011 passed by the TAMP and published vide Notification dated 11.5.2011 is partly set aside to the extent it approves the SoR with retroactive effect from July 1999. The SoR approved by the TAMP for the period from 1.1.2009 to 31.12.2013 as per the said order are confirmed. The order stands modified accordingly. The demand notices, if any issued by the KPT based on the said

order shall stand set aside. However, the KPT shall be at liberty to issue fresh demand notices as per the modified order and take actions or file proceedings against the defaulters, in accordance with law.

(iv) The Renewal of lease in respect of the port land is governed by the land policies issued by the Central Government and cannot be claimed by the lessee as a matter of right. There could not be any automatic renewal of lease on the expiry of lease period. The port land being public premises, if the lease is not renewed by the lessor KPT after the expiry of lease period, the status of lessee in respect of the subject land becomes that of an unauthorized occupant. Mere acceptance of rent by the lessor KPT for subsequent period during which the lessee has continued to occupy the public premises, could not be construed to be the conduct signifying assent on the part of lessor.

81. In view of the above, following order is passed:-

(I) Special Civil Application No.2538 of 2017 filed by M/s.IMC Limited; Special Civil Application Nos.6909 of 2018, 16530 of 2013 filed by M/s.Hindustan Petroleum Corporation Limited; Special Civil Application No.2905 of 2015 filed by M/s.Avean International Pvt. Ltd.; Special Civil Application Nos.2607 of 2012, 673 of 2014 filed by M/s.Indian Farmers Fertilizer Cooperative Limited; Special Civil Application No.13409 of 2014 filed by M/s.Indian Oil

Corporation Limited; Special Civil Application No.9342 of 2015 filed by M/s.Oil & Natural Gas Corporation (I) Limited; Special Civil Application No.372 of 2016 filed by M/s.Bharat Petroleum Corporation Limited; Special Civil Application No.16225 of 2013 filed by M/s.Laxmi Motors; and Special Civil Application No.10306 of 2015 filed by The Tanker Owners & Operations Association: The impugned order dated 25.3.2011 passed by the TAMP and published vide the Notification dated 11.5.2011 under Section 49 of the Major Port Trusts Act, is partly set aside to the extent it approves the SoR with retrospective effect from July 1999. The said order to the extent it approves the SoR for the period from 1.1.2009 to 31.12.2013 is confirmed. The demand Notices, if any, issued against the petitioners based on the said order shall stand set aside, however, the KPT shall be at liberty to issue fresh demand Notices. Rest of the prayers made in each of the petitions are rejected. The petitions stand partly allowed to the aforesaid extent.

(II) Special Civil Application Nos.2535 of 2017, 2536 of 2017 filed by M/s.IMC Limited; Special Civil Application No.2537 of 2017 filed by M/s.JRE Tank Terminals Private Limited; Special Civil Application Nos.11497 of 2015, 10730 of 2016, 10891 of 2016, 10892 of 2016 filed by M/s.Kesar Terminals and Infrastructure Limited; Special Civil Application Nos.8538 of 2016, 13371 of 2013 filed by M/s.Mother Dairy Fruits and Vegetable Private Limited; and

Special Civil Application No.10611 of 2016 filed by M/s. INEOS Styrolution India Limited:

The petitioners in these petitions have no legally enforceable right in respect of the respective subject plots held by them, and therefore, could not be said to be the "aggrieved persons", and had no locus standi to invoke extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, for seeking the prayers prayed by them in their respective petitions. However, since after considering the merits of the other cognate petitions, the order dated 25.3.2011 passed by the TAMP has been partly modified, the demand Notices if, based on the said order, issued by the KPT to the petitioners of these petitions, would also stand set aside. The KPT shall be at liberty to issue fresh demand Notices and take action against the petitioners, as may be permissible under the law. Subject to the said directions, all the petitions stand disposed of.

(III) Special Civil Application Nos.5218 of 2014, 5219 of 2014, 5222 of 2014, 5223 of 2014, 5224 of 2014, 10983 of 2015, and 10984 of 2015 filed by M/s.PSL Limited: The petitioner M/s.PSL Limited has already surrendered all the subject lands in view of the eviction proceedings initiated by KPT and the orders passed under the Public Premises (Eviction of Unauthorized Occupants), Act, 1971. Hence, the petitions are dismissed."

4.16 The learned Single Judge has bifurcated the issues raised by the parties in the following manner;

(i) Challenge to the TAMP orders of 2011 and 2014
(ii) Categorisation
(iii) Framing of SoR whether arbitrary
(iv) Retrospectivity
(v) Renewal of lease
(vi) Objection on the maintainability of the petition by some of the petitioners.

4.17 The issues nos. (i), (ii), (iii), (v) and (vi) have been held against the petitioners. Issue No. (iv) has been partly held against the KPT. Hence, both parties are in appeal before us.

5. We have heard Mr.Saurabh Soparkar, learned senior counsel, Mr.Mihir Thakore, learned senior counsel, Mr.D.C.Dave, learned senior counsel, Mr.M.R.Bhatt, learned senior counsel, Mr.Sharvil Majmudar, Mr.Salil Thakore, Ms.Archana Acharya for the private appellants. We have also heard Mr.Mihir Joshi, learned senior counsel and Mr.Devang Vyas, learned senior counsel and Mr.Dhaval Vyas, learned counsel for the KPT and the TAMP.

6. We proposed to first look into the question as regards the maintainability of the writ petition before this Court under Article 226 of the Constitution of India. The learned Single

Judge, after considering the contentions raised by the respective parties, has held thus,

> *"17. In the opinion of the Court the petitioners, who are the transferee companies cannot claim any legal right to be in occupation, relying upon the lease deeds/letters of allotment executed in favour of the original allottees, which deeds in clear terms prohibited any kind of transfers by the original allottee. Even the land policies issued by the Government from time to time under Section 111 of the said Act, specifically prohibited the transfer of lease without the permission of KPT. It is pertinent to note that in most of the cases the original period of lease had already expired when the petitions were filed. When the original allottee after the expiry of lease period could not be said to be in authorized occupation, the transferee who is in possession of the plot by virtue of voluntary transfer made by the original allottee could not be said to be in authorized possession.*
>
> *18. Now so far as the petitioner M/s.IMC is concerned, it is in possession of three plots out of which two were originally allotted to the USTTL and one plot was allotted to M/s.Indian Mollasis Company itself. Out of these three plots KPT had issued LOA in favour of USTTL in respect of one plot (subject matter of SCA No.2535 of 2017) for a period of 30 years from 1995 to 2025. In respect of other two plots lease deeds were*

executed for thirty years from 1986 to 2016 (SCA 2536 of 2017) and from 1978 to 2008 (SCA No.2538 of 2017). In case of JRE Tank (SCA No.2537 of 2017), the lease deed was executed in favour of M/s. JR Enterprise, a partnership firm, for a period of 30 years from 1986 to 2016. In case of Kesar Terminals (SCA Nos.10730 of 2016, 11497 of 2015, 10891 of 2016, and 10892 of 2016), out of four parcels of lands, KPT had issued LOA on temporary leave and licence basis in respect of three parcels of land in favour of original allottee Kesar Enterprises Limited, the term of which has already expired in 2006; and one lease deed was executed in favour of said original allottee Kesar Enterprises for a period of 30 years from 1978 to 2008. The Scheme for arrangement under Section 391 and 394 of the Companies Act for demerger was approved by the Bombay High Court on 12.3.2010 i.e. after the expiry of the term of lease/LOA. In case of the petitioner M/s. Mother Dairy (SCA No.8538 of 2016 and No.13371 of 2013) the lease deeds were executed in favour of original allottee NDDB for a period of 30 years from 1989 to 2019, however, during the intervening period the entities were changed, and lastly a scheme of amalgamation proposed by "Dhara" and M/s.Mother Dairy was sanctioned by the Delhi High Court as per the order dated 13.8.2008. In case of INEOS (SCA No.10611 of 2016), lease deed was executed in favour of original allottee ABS Industries Limited for a period of 30 years from 1990 to 2020, however, in between the name of the said company

and the share holdings were changed from time to time, and ultimately the petitioner M/s.INEOS is in possession of the subject plot.

19. As discussed earlier, the lease deeds and LOA executed in favour of the original allottees, as well the extant land policies specifically prohibited the transfer of lease, and therefore, all the transfers made by the original allottees were in flagrant breach of terms of the lease and of the land policies. Hence, such transfers, even by virtue of Court's orders pursuant to the voluntary schemes of amalgamation or demerger or arrangement, being in violation of the terms of lease by the original allottees were illegal and did not create any legal right in favour of the transferees – petitioners. Though the said petitioners are the occupiers of the subject lands, they could not be said to be in authorized occupation.

20. The term of the original lease might be subsisting on the date of filing of the petition, however, the original allottee having committed breach of terms of lease deed/LOA by transferring the lease in favour of the transferees, such transferee – petitioners would not have legal right in respect of the land in question. Similarly if the transfer is made after the expiry of such lease period, such transferee – petitioner also would not have legal right inasmuch as the transferor – original allottee itself had ceased to have any legal right to continue under the lease deed. Similarly, the

original allottee in whose favour only LOA was issued and no lease deed was executed could not have transferred the lease in favour of the transferee petitioner. As stated earlier, the very existence of legal right in favour of the petitioner is the foundation and precondition for maintaining the petition under Article 226 of the Constitution of India. The legal right that can be enforced must ordinarily be the right of the writ petitioner himself, who complains infraction of such right, as held by Supreme Court in case of Ayaaubkhan Noorkhan Pathan Vs. State of Maharashtra and Ors. (supra). The concerned petitioners being in unauthorized occupation of the plots in question, and their legal rights having not been recognized by the respondent KPT, they could not be said to be the persons, who have suffered any legal injury or the "persons aggrieved" to file the writ petition under Article 226 of the Constitution of India.

21. At this juncture, it would be apposite to mention that the Court has made the aforesaid observations only for limited purpose of examining the locus of the petitioners against whom the preliminary objections for maintaining the petitions at their instance, were raised by the respondent KPT, and has not gone into the issue of their liability to pay the transfer fees. The Court is required to make this clarification as the predecessor of the petitioner IMC Limited i.e. the USTTL, the original allottee had filed Special Civil Application No.17559 of 2003 before this Court,

challenging the action of the respondent KPT in demanding the amount of premium vide communication dated 5/6.8.2003. Pending the said petition, the said USTTL having been amalgamated with M/s.IMC by virtue of the order passed by Calcutta High Court, the petitioner M/s.IMC had filed Civil Application No.6449 of 2016 for substituting it as the petitioner in the said petition in place of USTTL. The said Civil Application was opposed by the respondent KPT on the ground that the petitioner had not paid the transfer fee. The Single Bench vide the order dated 14.7.2017 dismissed both the Special Civil Application No.17559 of 2003 as well as the Civil Application No.6449 of 2016 filed therein. M/s.IMC Limited, therefore, had filed the LPA No.1264 of 2017 before the Division Bench, which came to be disposed of vide the order dated 9.8.2017, whereby the Division Bench remanded the matter to the Single Bench for considering the points formulated therein. Hence, the issue of liability of the petitioner M/s.IMC to pay the transfer fee to the KPT is pending for consideration in the said petition. Similarly, M/s.Kesar Terminals & Infrastructure Ltd., had also filed two petitions being SCA No.11751 of 2014 challenging the action of the respondent KPT in demanding the transfer fee and the differential amount of lease rent for the period from 1994 to 2012, and had filed SCA No.16908 of 2014 challenging the order dated 5.3.2011/Notification dated 11.5.2011 issued by the Temp. It appears that the said petitioner M/s.Kesar Terminals &

Infrastructure Ltd., had also filed Civil Application being No.11998 of 2015 in SCA No.11751 of 2014 challenging the notice dated 9.10.2015 issued by the KPT demanding the outstanding dues. The said Civil Application was dismissed by the Single Bench vide the order dated 31.8.2017 against which M/s.Kesar Terminals & Infrastructure Ltd., has preferred LPA No.1492 of 2017. The said LPA is pending before the Division Bench.

22. In that view of the matter, in absence of any existing legal right in favour of the petitioners M/s.IMC Ltd., M/s.JR Tank and Terminals, M/s.Kesar Terminals, M/s. Mother Dairy and M/s.INEOS Styrolution India Ltd., they could not allege infringement of their right for posing themselves as the "aggrieved persons". They, therefore, could not be said to have any locus standi to invoke the writ jurisdiction under Article 226 of the Constitution of India. Of course, the Court had permitted the concerned Advocates appearing for these petitioners to make their submissions on merits, in view of the fact that the Court was simultaneously hearing the other petitions involving similar issues as raised by the said petitioners."

7. Mr.Soparkar and Mr.Thakore, the learned senior counsel have strenuously argued before us that the original petitioners in the writ petitions are aggrieved by the invoices issued by the KPT in the name of the erstwhile

companies, which were the original lessees of the lands at the port, as the original petitioners which are the resultant companies as per the order of merger (IMC) and demerger (KESAR), shall be liable to pay the outstanding dues to the KPT as per the scheme sanctioned by the respective High Courts. Reliance has been placed on the orders of the High Court approving the scheme to contend that the erstwhile company was a wholly owned subsidiary or a related company and therefore, the transfer under the orders of merger and/or demerger of the High Court cannot be treated as transfer of the leasehold lands. The clauses in the respective deeds / letters of allotment contending that a transfer is permissible upon payment of transfer fees which is six times the lease rental at the time of transfer, and therefore the KPT should be directed to transfer the lease on payment of transfer fees as prevailing on the date of approval of the scheme. It has been further contended that the petitioners were led to believe that the transfer had been recognized by the KPT as the transfer fees are not demanded and the rent had been accepted. Per contra, Mr.Mihir Joshi, the learned senior counsel has submitted that the original petitioners claim to be the successor of the original allottee of the subject lands by virtue of the amalgamation or demerger of the companies, which are clearly unauthorized occupants without any legal right for seeking enforcement of the terms of the respective deeds / letter of allotment since the mode of succession to the respective petitioners amounts to a transfer which is impermissible without prior permission of the Port Trust under the lease deed which has admittedly not been

taken. It has been further submitted that the petitioners are in a situation of their making and cannot claim hardships or equity. It has also been contended that the transfer of leasehold rights in the case of KESAR under the orders of demerger have been made after the lapse of the lease period and, therefore, the demerged company has acquired no right in the lands nor can the transferee company seek renewal of the rights under the original lease deeds.

8. To ascertain if the transfers were made by the allottees in violation of the terms of allotment or lease, it would be relevant to look into the conditions of allotment. The Letter of Allotment dated 27.10.1995 issued in favour of the appellant of the LPA No.1426 of 2019 carries the following conditions:

i) The leased property shall not be transferred by the lessee to any third party either by way of sub-lease, rent or any other means.

n) Any sub-letting without the prior approval of the authority which sanctioned the lease shall make lease liable for cancellation.

The relevant general condition of allotment of plot which are made applicable reads as under:

16. xxxx

"Even after construction of building and

execution of lease-deed, the lease hold interest / rights in respect of these plots shall not be transferable without obtaining prior permission of chairman, KPT in writing & lessor shall be entitled to recover transfer fees equal to 6 times the annual ground rent payable under the lease at the time of transfer of the said plot. No mutation of transfer will be effected in the records of Port Trust and no transaction of the transfer will be recognized unless the transfer fees is paid to the lessor by the transferor…"

9. Similar conditions are found in the lease deed dated 27.06.1986 of the appellant (KESAR) of LPA No.1303 of 2019, which reads as under:

xii a) The lessee shall not assign, sublet, transfer or otherwise part with the demised premises or any part thereof without prior permission in writing from the chairman or such officer or agent as the lessor may authorize, in this behalf and if such permission be given all assignees and transferees and the heirs of the lessee shall be bound by all the covenants and conditions contained and be answerable therefore to the lessor in all respects.

Provided that at the time of such transfer the lessor shall be entitled to claim and recover from the lessee effecting transfer or assignment and

amount equivalent to 3 times the yearly ground rent, as may be recoverable hereunder, on the date of the order of transfer.

10. The Land Policy, 2004, carries similar restriction for not transferring without prior permission of the Port, which reads as,

5.2.1.3: The lessee may be allowed to transfer the lease after obtaining prior approval of the port provided the transferee takes over the liability of the original licensee / allottee. Such transfer shall be for remaining duration of the lease and for purpose in accordance with the land use plan of the port. To allow this transfer, the port shall recover-

1) in case of leases granted on upfront basis:
In the case of those lands which were originally given on lease rent, the transfer may be allowed subject to the transferee agreeing to pay the revised lease rent as prevalent at the time of transfer, subject to revision from time to time in the light of provisions contained in the original lease agreement. Further,

1) A fee equal to 50% of the difference between the current upfront premium and the original upfront premium, weighted for the balance lease period. For example, if land was

originally allotted or premium (A) for 30 years and after expiry of 12 years, it is proposed to transfer the land in question and at the time of transfer if the prevalent premium for 30 years lease period is (B), then the transfer fee shall be 50% of the amount (B-A) x 18/30
OR

One (1) year's lease rentals based on present SoR, whichever is higher.

2) In case of leases which were originally granted on annual lease rent basis in addition to the charges prescribed at 5.2.1.3(a) above transfer may be allowed subject to the payment of an upfront premium equivalent to the NPV of the lease rent calculated as prescribed at 5.3(III) for the remaining period calculated in accordance with the prevailing SoR/rates approved by the competent authority.

11. The prior permission from the lessor before the transfer of the leased lands as per the lease deeds/letter of allotment and the land policy, cannot be read as a mere formality for collecting transfer fees only. The grant of permission to transfer the leased lands during the subsistence of lease is the prerogative of the lessor, however, which should be exercised based on reasonable considerations and evaluation of the requests for such transfer. The

permissions from the lessor cannot be claimed as a matter of right by the lessee. The consent from the KPT was not a formality and the transfer without consent is void. We find support of our view from the observations of the Supreme Court in the case of State of Rajasthan vs. Gotanlime Stone Khanij Udyog Private Limited reported in (2016) 4 SCC 469 wherein it has been observed as under:

> *31. ….. Thus, while discerning true nature of the entire transaction, court has not to merely see the form of the transaction which is of sale of shares but also the substance which is the private sale of mining rights avoiding legal bar against transfer of sale rights circumventing the mandatory consent of the competent authority. Consent of competent authority is not a formality and transfer without consent is void. The minerals vest in the State and mining lease can be operated strictly within the statutory framework……*

12. We proceed now to consider whether the transfer of leasehold lands under the scheme merger or demerger sanctioned by the Courts as per the Companies Act, 1956, amounts to a transfer under the lease deed. This issue is no more *res integra*. The Supreme Court in the case of General Radio and Appliances Co. Ltd. vs MA Khader reported in (1986) 2 SCC 656 has held as under:

> *14. We have already stated hereinbefore that the Appellant 1 company, the tenant, has transferred their interest in the tenanted premises to the Appellant 2*

company on the basis of the order made by the High Court of Bombay in Company Petition 4 of 1968 sanctioning the scheme submitted to it by the transferor company. We have also held that this is not an involuntary transfer by operation of law, but a transfer of the interest of the tenant company on the basis of their application made before the said High Court in the said company petition. Furthermore, we have also held that the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 which is a special Act provides specific grounds for termination of a tenancy and eviction of the tenant in Section 10(ii)(a) i.e. on the ground of subletting and/or transferring the interest of the tenant either in whole or any part of the tenanted premises to another person. Thus the Act prohibits in specific terms both subletting as well as the transfer or assignment of the interest of the tenant. Moreover clause 4 of the rent agreement executed by Appellant 1 expressly prohibits subletting of the tenanted premises without the express consent of the landlord. The transferor company in this case has undoubtedly been dissolved and the company has ceased to exist for all practical purposes in the eye of law. All the interest of the transferor company including possession in respect of the tenanted premises have been transferred to the transferee company in contravention of the provisions of the said Act as well as in contravention of the terms and conditions of the said rent agreement thereby making the transferee company liable to be evicted from the

tenanted premises.

13. This judgement was further followed by the Supreme Court in case of Singer India Ltd vs. Chander Mohan Chaddha and other reported in (2004) 7 SCC 1, wherein it has been has held as under:

> *16. However, it has nowhere been held that such a course of action is open to the company itself. It is not open to the company to ask for unveiling its own cloak and examine as to who are the directors and shareholders and who are in reality controlling the affairs of the company. This is not the case of the appellant nor could it possibly be that the corporate character is employed for the purpose of committing illegality or defrauding others. It is not open to the appellant to contend that for the purpose of FERA, the American Company has effaced itself and has ceased to exist but for the purpose of the Delhi Rent Control Act, it is still in existence. Therefore, it is not possible to hold that it is the American Company which is still in existence and is in possession of the premises in question. On the contrary, the inescapable conclusion is that it is the Indian Company which is in occupation and is carrying on business in the premises in question rendering the appellant liable for eviction.*

14. It has been further held in the case of UP State Industrial Development Corporation Limited vs. Monsanto Mfgs Pvt Ltd & others reported in (2015) 12 SCC 501 as under:

39. On the other hand, according to the learned counsel for the respondents, due to various constraints, overhead costs and financial hardship the Company became non-viable and it was not feasible to run the major production activities of the Company. In order to avoid future problem a scheme of amalgamation was prepared as per the provisions of the Companies Act, seeking amalgamation under Chapter V of the Companies Act. A joint application was filed before the Allahabad High Court. The High Court vide order dated 9-5-1997 allowed the petition for amalgamation and sanctioned the scheme of amalgamation and ordered that M/s Super Agro will be merged into M/s Super Tannery (India) Ltd.

40. In the present case it has not been denied that the respondent Company M/s Super Tannery (India) Ltd. and the other company Super Agro Tech. Ltd. are family held companies of the same family having common Directors/Promoters. Pursuant to the order of amalgamation by the High Court, the plots of land in question, namely, A-9, A-10, Industrial Area, Unnao, Site II which were allotted to Super Agro Tech. Ltd. became the asset of the respondent Company M/s Super Tannery (India) Ltd. As per amalgamation scheme, all the property, rights and power of Super Agro Tech. Ltd., having its office at 184/170, Jajmau, Kanpur was transferred without further act or deed to M/s Super Tannery (India) Ltd. Thus, it is clear that by

the order of the Court the premises in question was transferred in favour of the other company.

15. One of the group companies of the IMC, M/s. JRE has been converted from JR Enterprise, a partnership firm, under Part IX of the Companies Act, 1956. Mr. Soparkar, relying upon the judgment in case of Vali Patta Bhrima Rao vs. Shri Ramanuj Ginning & Rise Factory Private Limited and Ors reported AIR 1984 AP 176, has contended that the conversion of a partnership firm into a company by operation of law cannot be treated that the partnership as such was converted into a company and hence is a transfer of property. He has further relied upon the judgment of various other High Courts following the same view. Mr.Mihir Joshi has argued that the judgment of the Andhra Pradesh High Court which has been subsequently followed by other High Courts do not deal with the issue in respect of a lessor and lessee relationship. According to him, an identical issue arose before the Delhi High Court in the case of Union of India vs. Mahalaxmi Saw Mills Private Limited, wherein the Delhi High Court has held that conversion of a partnership firm into a company under Chapter IX of the Companies Act is a voluntary act of changing the structure of the company and, therefore, would amount to transfer of the leasehold rights. The Delhi High Court has observed as under:

18. The clauses aforesaid of the Lease Deed however entitle the lessor i.e. the appellants L&DO to unearned increase when the lessee transfers the leasehold

rights. It suggests a voluntary act of transfer on the part of the lessee and not an involuntary transfer as happens in the case of succession on death. Section 6 of the Transfer of Property Act also, though not affecting any law relating to transfer of property to or by companies, associations or bodies of individuals, defines transfer of property as an act by which a person conveys property to another person or to himself. Thus, for a transfer to incur liability for unearned increase, it has to be by a voluntary act.

19. It is not as if the vesting even if any under Section 575 of the Companies Act of the property is an involuntary act. The conversion of a partnership firm into a private limited company was a voluntary act of the partners of M/s Mahalaxmi Saw Mills and it is not the case of the respondent Company that there was any legal compulsion therefor. The vesting of leasehold rights in the property from the partners of Mahalaxmi Saw Mills (partnership firm) to the name of the company, even if under Section 575 supra was thus a voluntary act to qualify as a transfer.

20. We say that we entertain doubt as to the applicability of Section 575 supra because Section 575 is situated in Part IX of the Companies Act titled "Companies Authorised to Register under this Act". Section 565 thereunder provides for companies entitled to register and we are unable to find the word "company" therein to be including a partnership firm.

Proviso (iv) thereunder expressly provides that a company that is not a joint stock company as defined in Section 566 shall not register in pursuance of the said provision as a company limited by shares. A partnership firm is definitely not a joint stock company. To us, thus it appears that a partnership firm is not entitled to register as a company under Section 565 and once that is so, Section 575 also would have no application. The partners of a partnership firm can of course otherwise than under Part IX of the Companies Act incorporate a company and vest the assets and liabilities of the partnership in the company. However, we refrain from giving any final opinion in this respect, being not relevant for our purposes.

21. The learned Single Judge has based his judgment on Vali Pattabhirama Rao supra. The questions for adjudication in the said judgment were, whether a conveyance is necessary to vest the property of a firm when the same was converted into a company and whether such a conveyance is necessary for the company to claim title to the property. The said questions arose in a suit for eviction. It was inter alia the contention of landlord that though the lease granted was permanent and transferable but upon conversion of the tenant which was a partnership firm into a company, there was no assignment / conveyance of leasehold rights to the company and hence the company did not become a tenant under

him. It was held that the property of the firm vests in the company, which is incorporated by partners of firm and in which company all assets and liabilities of firm are vested, under Section 575 of Companies Act and no separate conveyance is necessary. It was further held that Section 5 of the Transfer of Property Act requires a transfer to be inter vivos i.e. between living persons; since a company is not a living person before its inception, vesting of property in the company at the time of its inception, is not transfer within the meaning of Section 5 and hence does not require an instrument or Conveyance Deed and is a transfer within the meaning of Section 9 of the Transfer of Property Act which is possible without an instrument or Conveyance Deed.

22. It would thus be seen that the judgment of the Division Bench of Andhra Pradesh High Court relied upon by the learned Single Judge also does not hold that vesting of property of a partnership firm into a company, to which the partnership firm converts itself, is not a transfer.

23. We will however be failing in our duty if do not mention CIT Vs. Texspin Engineering & Manufacturing Works MANU/MH/0197/2003 (DB); CIT Vs. Rita Mechanical Works MANU/PH/3828/2010 (DB); and, CIT Vs. Hansa Footwear MANU/AP/1017/2011 (DB) holding that when an erstwhile partnership firm converts to a company under Part IX of the Companies

Act, even though there is transfer of assets from firm to newly constituted company but it is not a transfer within the meaning of Section 45 of the Income Tax Act, 1961 attracting Capital Gains Tax.

24. However the said judgments proceed on the interpretation of Income Tax Act and in any case also do not hold there to be no transfer. Moreover, the Lease Deed aforesaid is a government grant and qua which not only is it statutorily provided in the Government Grants Act, 1895 but otherwise is the settled proposition of law that the grant has to be interpreted as per its own tenor and any rule of law, statute or enactment of legislature to the contrary notwithstanding. The provisions of Transfer of Property Act have been expressly made inapplicable to government grants. For this reason also, the transfer of the leasehold rights from the partners of M/s Mahalaxmi Saw Mills to the respondent Company, and who are two different persons, would constitute a transfer or assignment of leasehold rights within the meaning of Clause (b) & (c) of the Lease Deed and attract unearned increase.

25. The present, even as per Vali Pattabhirama Rao supra, is at best a case of transfer of leasehold rights of the partnership firm which was the lessee under the Lease Deed aforesaid into the respondent Company by operation of law i.e. Section 575 of Companies Act. Other instances of transfer of property by operation of

law can be found in the various Land Acquisition Laws under which also transfer is effected by operation of law and without requiring any Conveyance / Transfer Deed to be executed.

26. As far as the judgments cited by the counsels are concerned, we find no applicability thereof to the matter in hand. M/s. Vikas Pharma (India) Pvt. Ltd. supra cited by the counsel for the appellants L&DO merely affirms the judgment of the learned Single Judge without any discussion or consideration of the issues involved. A perusal of the judgment of the learned Single Judge reported as Vikas Pharma (India) Ltd. Vs. Lt. Governor of Delhi MANU/DE/1968/2002 shows that the learned Single Judge passed the judgment on the statement of the counsel for the petitioner therein agreeing to pay the unearned increase. As far as the judgments cited by the counsel for the respondent before us are concerned, (i) Malabar Fisheries Company supra merely holds that distribution of assets between erstwhile partners as a consequence of dissolution does not amount to transfer of assets within the meaning of Section 34(3)(b) read with Section 2(47) of the Income Tax Act; (ii) K.G. Electronics Pvt. Ltd. and Human Care Medical Charitable Trust supra were cases of change of shareholders / directors of a company and trustees / members respectively of the company and society respectively which were lessees and hold the same to be not constituting transfer; and thus have no application to present controversy.

16. Dealing with this issue, the learned Single Judge has not accepted the proposition canvassed by the said petitioner and has held as under:

> *15. .....In the opinion of the Court, even if it is accepted that the original partnership firm was converted into a private limited company i.e. the petitioner company under Part-IX of the Companies Act and that all properties of partnership firm had vested in the petitioner company under Section 575 of the said Act and that no conveyance deed was required to be executed separately, then also such transaction could not be said to be an involuntary transfer. The original allottee M/s.JR Enterprises, which was a partnership firm having ceased to exist, and the new company i.e. petitioner having come into existence by virtue of a voluntary act, it would be tantamount to a transfer, applying the same analogy as in case of amalgamation of two companies under the Scheme of arrangement and reconstruction under Section 391 and Section 394 of the Companies Act. When such transfer was voluntary and in breach of the conditions of allotment letter, no legal right in respect of the lease could be said to have been created in favour of the petitioner M/s.JRE Tank Terminals so far as the plot in question is concerned.*

17. We are in complete agreement with the view taken by the learned Single Judge as also the Delhi High Court in the

case of Mahalaxmi Saw Mill Private Limited (supra) and we hold that a voluntary act of transfer under Chapter IX would be a transfer of leased land in breach of conditions of the lease deed, in absence of prior permission of the competent authority.

18. In respect of KESAR Terminals and Infrastructure Limited, the lease in favour of the erstwhile lessee (Special Civil Application No.11497 of 2015) had expired on 2.7.2008, the lease in favour of the erstwhile lessee (Special Civil Application No. 10892 of 2016) has expired on 31.10.2010, the license in favour of the erstwhile lessee (Special Civil Application No.10891 of 2016) has expired on 31.10.2008 and in favour of the erstwhile lessee (Special Civil Application No. 10730 of 2016) has expired on 30.06.2008. Admittedly, there has been no extension or renewal of the said respective rights of the original allottee. Therefore, as from the date of lapse of the term of the lease or the license, as the case may be, the original allottee had no leasehold interest in the subject lands.

19. The original lessee, in absence of renewal of the lease in its favour, itself had no right, title or interest, at the time of execution of the transfer under the scheme of demerger in respect of the property in question. It is a well-settled position of law that the person having no right, title or interest in the property cannot transfer the same. Thus, the transfer of property in question by original lessee in favour of M/s.Kesar is not a valid assignment of right in respect of the same and, therefore, the transfer even

otherwise would not bind the KPT. Similar view has been taken by the Supreme Court in the case of Delhi Development Authority vs. Anantraj Agency Private Limited reported in (2016) 11 SCC 406. The relevant observation of the said judgment, which reads thus:

> *36. The High Court's order dated 03.11.2009 whereby the respondent was substituted in place of the original lessee on its application under Order 22 Rule 10 of CPC for the reason of execution of sale deed dated 14.10.1998 by the original lessee in favour of the respondent by entering into compromise between them in Suit No. 601 of 1984 is also bad in law. The sale of the property in question to give effect to the compromise decree in aforesaid suit is void ab initio in law for the reason that the original lessee, in the absence of renewal of lease in his favour himself had no right, title or interest, at the time of execution of sale deed, in respect of the property in question. It is well settled position of law that the person having no right, title or interest in the property cannot transfer the same by way of sale deed. Thus, in the instant case, the sale of the property in question by the original lessee in favour of the respondent is not a valid assignment of his right in respect of the same. For the aforesaid reasons, the sale deed is not binding on the DDA. The High Court has failed to appreciate this important factual and legal aspect of the case.*

20. In case of Ineos Stryolution India Limited, the shareholders

and promoters of the erstwhile company have transferred all their rights and shares in favour of new management which is the purchasing parties. The complete change of ownership rights in the said company has been transferred without prior approval of the lessor as per the condition of lease. In our view, while discerning the true nature of entire transaction, the Court has not merely to see the form of transaction which the sale of shares but also the substance which is the private sale of mining rights avoiding the legal bar of the leasehold rights circumventing the mandatory consent of the KPT. The purchase of share is nothing but a sale price of the lease, which was prohibited under the terms of lease.

21. In light of the aforesaid position, we hold that the transfer of leasehold rights under the scheme of amalgamation or demerger and by way of transfer of share will amount to transfer of leased lands under the lease deed and will certainly invite consequences for violation of the terms of lease. A lessee transferring the leasehold rights in violation of the terms of lease cannot be heard to say that the lessor is bound to permit the transfer of leased lands and recognize the transferee as its lessee only by afflux of time. We are fortified in our view by the observations of the Supreme Court in the case of State of Kerela vs. Joseph & Co. reported in 2021 SCC online SC 658, wherein it has been held,

> *'While applying the equitable principles, the maxim he who seeks equity must do equity cannot be lost sight*

of. It is said, a court will not assist a lessee in extricating himself or herself from the circumstances that he or she has created, in the name of equitable consideration.'

22. We, therefore, hold that the petitioners cannot claim as a matter of right to be recognized as the lessee of the leased land of the Port, nor can they invoke the terms of the lease for challenging the action of the respondent. We agree with the learned Single Judge that the transferee company cannot claim any legal right to be in occupation of the land by relying upon the lease deeds/ letter of allotment executed in the favour of original allottee.

23. The Supreme Court in the case of Ayaaubkhan Noorkhan Pathan vs. State of Maharashtra reported in (2013) 4 SCC 465 has held thus:

9. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the Authority/Court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the Authorities. Therefore, there must be a judicially enforceable right

available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that, the relief prayed for must be one to enforce a legal right. Infact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. (Vide : State of Orissa v. Madan Gopal Rungta, AIR 1952 SC 12; Saghir Ahmad & Anr. v. State of U.P., AIR 1954 SC 728; Calcutta Gas Company (Proprietary) Ltd. v. State of West Bengal & Ors., AIR 1962 SC 1044; Rajendra Singh v. State of Madhya Pradesh, AIR 1996 SC 2736; and Tamilnad Mercantile Bank Shareholders Welfare Association (2) v. S.C. Sekar & Ors., (2009) 2 SCC 784).

10. A "legal right", means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, "person aggrieved" does not include a person who suffers from a psychological or an

imaginary injury; a person aggrieved must therefore, necessarily be one, whose right or interest has been adversely affected or jeopardised. (Vide: Shanti Kumar R. Chanji v. Home Insurance Co. of New York, AIR 1974 SC 1719; and State of Rajasthan & Ors. v. Union of India & Ors., AIR 1977 SC 1361).

In Anand Sharadchandra Oka v. University of Mumbai, AIR 2008 SC 1289, a similar view was taken by this Court, observing that, if a person claiming relief is not eligible as per requirement, then he cannot be said to be a person aggrieved regarding the election or the selection of other persons.

24. In the case of Jasbhai Motibhai Desai vs. Roshankumar and Ors, the Apex Court has held as under:

"34. This Court has laid down in a number of decisions that in order to have the locus standi to invoke the extraordinary jurisdiction under Article 226, an applicant should ordinarily be one who has a personal or individual right in the subject matter of the application, though (1) the case of some of the writs like habeas corpus or quo warranto this rule is relaxed or modified. In other words, as a general rule, infringement of some legal right or prejudice to some legal interest in hearing the petitioner is necessary to give him a locus standi in the matter."

25. In light of our finding that the transferee companies

acquire no legal right under the lease deed or letter of allotment and in respect of lands in question the said petitioners cannot claim any infringement of any legal rights.

Order of TAMP dated 25.3.2011

26. The Tariff Authority for Major Ports in exercise of powers under Section 49 of the Major Port Trusts Act, 1963, has framed scale of rates for three quinquennium's i.e for a period from 1.1.2009 to 31.12.2003, 1.1.2004 to 31.12.2008 and for the period 1.1.2009 till 31.12.2013 by the order dated 25.3.2011.

27. The learned Single Judge, by the impugned judgment and order, has partly set-aside the said order to the extent it approved the SoR with retrospective effect from July 1999 and has approved the SoR for the period from 1.1.2009 to 31.12.2013. Against the said directions of the learned Single Judge, both the parties are in appeal.

28. The private appellants are aggrieved with the approval by the learned Single Judge to the SoR for the period from 1.1.2009 till 31.12.2013. The said appellants contend that the TAMP has no authority to frame SoR for the period prior to its order dated 25.3.2011 which is retrospective in nature. It has further been contended that the TAMP has merely adopted the valuation report of the valuer submitted by the Port Trust without appreciating that such report was unscientific, based on extraneous

factors not relevant for valuation, absurd and based on bids offered during the process of auction / tender which has not culminated into a binding contract and therefore, could not be considered as an accepted bid which alone could have been taken into consideration for the purpose of valuation under the Land Policies. In response, it has been argued by the KPT that some of the petitioners (appellants) themselves had made a bid in the year 2005 which was accepted by the Port and a letter of intent was issued which however could not culminate into a contract since the requisite permission under the CRZ was not obtained for a period of five years and thereafter the Port Trust decided to revoke the letters of intent since it would be against the public interest land to the successful bidders when the market value has substantially increased in the interregnum. He has further pointed out that the IMC amongst others had made a bid of Rs.3500 above the based price of Rs.612 and therefore had made bid for Rs.4112 per sq mtrs. He has further contended that the price offered as the market value of comparable plots in 2005 was indicated of the price a willing buyer was offering to a willing seller and that this could clearly consider as an offer having been given by the bidder and accepted by the Port Trust. He has further pointed out that the lease rental when calculated at 6% of the market value as per the land policy would be Rs.246 per sq mtrs. Against this, the lands of the said petitioners were categorized as C-1 category and the lease rental payable for the C-1 category lands for the period 2004 to 2008 was Rs.39 and Rs.80.40 for the period from the year 2009 to 2013 as per the SoR framed by the

TAMP. It has been further contended that the valuer has recommended the market valuation upon evaluation of the settled principle of valuation which cannot be said to be absurd.

29. The Land Policies issued by the Government of India under Section 111 of the Major Port Trusts Act, 1963 from time to time provides inter alia as under:

> *6.3 (1) Market value of land and Schedule of Rates (SoR)*
>
> *(a) SoR for land. will be recommended to the competent authority/TAMP, by a Committee as decided by the Board headed by the Chairman of the Port Trüst. The Committee may take into account the applicable factors from among those listed below to determine the market value of port land:-*
>
> *(i) State Government's ready reckoner of the land values in the area, if available.*
>
> *(ii) Average rate of actual relevant transactions registered in last three years in the port's vicinity, adding 2% escalation per annum and in case of Mumbai Port Trust @ 4% escalation per annum, as may be necessary.*
>
> *(iii) Highest accepted tender of Port land for similar transactions*

(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

(b) SOR shall be arrived at, taking 6% of market value as rent per annum.

(c) SOR shall be escalated by 2% per annum and in case of Mumbai Port Trust @ 4% escalation per annum, till such time that SoR is revised with the approval of the competent authority/TAMP.

(d) SoR will be revised every five years.

(e) SoR shoulearned vary in accordance with the purpose of land use. The Committee should recommend to the competent authority, varying SoR in accordance with the end use as reflected in the Land Use Plan.

(f) Insofar as fixing of SoR for Port land is concerned, TAMP shall have the jurisdiction for any land both within the customs bound area and outside it as long as the land is used exclusively for Port related activity. The SoR for all land of Major Ports will be fixed by TAMP.

30. As per the aforesaid conditions in the Land Policy, the KPT had appointed a land valuer for arriving at a rate for the Kandla lands. The valuer in his valuation report has proceeded for valuing the land by market approach to valuation and has based his valuation on the available auction rates / bids in the year 2005 by the KPT as indicative of price a willing buyer was offering to a willing seller. The valuer has applied the rates received in auction and then formulated the rates for different plots by given due weightages to the infrastructural factors like location, width of road of which the plot is abutting, pre-defined permissible use specified by the KPT, etc. The valuer has further noted that the valuation of the Kandla lands are highly influenced by the performance of the port, activities of the port, features of the port, economic development of the state as well as the country, Traffic handled by Kandla Port, the revenue generated by the Kandla Port, real estate behavior in the surrounding area, the number of industrial units developed in the Kutch Districts, industrial investment in the district, GDP growth rate of India, GDP growth rate of Gujarat, population growth in the district to estimate the market rate from the years 1990 upto 2009 are considered to estimate the market rate of the land of the KPT. These factors are thereafter brought on common platform for comparison by converting the respective data into percentage to form a general index after assigning appropriate weightages to individual index considered for finding out the trend during 1990 upto 2009. The valuer has taken the rates received by the KPT in auction undertake in 2005 as the base rates and has thereupon

arrived at the upward and downward valuation of the lands by taking into account the said factors for the relevant time frame and thereafter determined the market value for the Kandla lands.

31. According to the appellants the aforesaid factors taken into account by the valuer are completely erroneous and irrelevant and has further contended that the bids of year 2005 cannot be treated as accepted tender of the port as per the Land Policy.

32. Our attention has been brought to an economic article published in the International Journal of Scientific and Technology Research, Volume 9 issued on 1st January 2020 which is titled as 'Factors Affecting Industrial Property Value'. As per the said literature the property valued would be effected by micro economic factors like location, physical characteristic of the land and macro economic factors like the trends in industry, inflation and interest rate, transport and infrastructure and economy. According to the said literature, the main indicators of the economic conditions affecting the property market include the gross domestic products, per capita income and real wages etc. The economic factors are further divided into supply and demand driven economies. The factors taken into account by the valuer cannot therefore be treated as completely irrelevant. The land policy does not provide for the manner and method in which an approved valuer has to arrive at the rates for the lands and to our view the nature and the manner of valuation has been left to the

expertise of the approved valuer.

33. The valuation of the expert valuer has been accepted by the rate revision committee of the KPT and the Board of Trustees for the Port at Kandla. The valuation was thereafter formulated into a proposal which has been considered by the TAMP. The TAMP has recorded that the valuation of the Port Lands has been undertaken by taking into accounts the factors enumerated in the land policy. We notice that except for needle-pricking the valuation report the petitioners have not shown and has not placed any material on record to show as to what other method could be adopted which would be more reasonable for arriving at a market value. In absence of any other methodology which could be adopted on the basis of which it can be concluded that the rates arrived at by the valuer that has been approved by the TAMP was wholly unjust and irrational, we are not inclined to accept the argument of the petitioners that the valuation for the lands is arbitrary and is required to be interfered with.

34. It would be apposite to note that for the lands in the same zone, some of the petitioners had participated in the tenders for allotment of land by the KPT in the year 2005. The said bidders had made a bid of Rs.4112 per sq mtrs which, as per the land policy, would convert to Rs.246 per sq mtrs as the lease rent at 6% of the market value. These bids were accepted by the KPT and a letter of intent was also issued to the selected bidders. However, the acceptance of offer and issuance of letter of intent could

not culminate into a contract since the requisite permission under the CRZ could not be obtained for nearly five years. As in the interregnum the market value of the land had substantially increased and therefore, the KPT had decided to revoke the letters of intent. The price offered by the intending bidders as market value of the comparable plots in the year 2005 was certainly indicative of price a willing buyer was offering to a willing seller and the issuance of letter of intent could clearly be considered as the price offered by the intending bidder accepted by port trust as contemplated under the land policy. The said bidders had also pursued the challenge to the revocation of the letter of intent seeking the allotment of lands at the rates offered and accepted by the port trust by issuing of letter of intent. These facts are not in dispute, evidently from the litigation at the instance of the bidders including some of the petitioners which had filed petitions before this Court and the Apex Court. Therefore, it is not open for these petitioners to contend that there is any absurdity in valuing the lands.

35. Our attention has been brought to the judgment of the Apex Court in the case of Bhule Ram vs. Union of India reported in (2014)11 SCC 307 wherein it has been held thus:

> *Valuation of immoveable property is not an exact science, nor it can be determined like algebraic problem, as it abounds in uncertainties and no strait-jacket formula can be laid down for arriving at exact*

market value of the land. There is always a room for conjecture, and thus the court must act reluctantly to venture too far in this direction.

36. The contention as regard the valuation of lands by the valuer and the framing of tariffs by the TAMP has been considered by the learned Single Judge as under:

51. From the afore-stated legal position settled by the Supreme Court it is absolutely clear that the scope of judicial review or judicial scrutiny in the matter of fixation of tariff or fixation of price is extremely limited more particularly when it is governed by the statute or statutory guidelines. The Court would refrain from interfering with such fixation, unless it is ex facie found to be arbitrary or irrational. Let us, therefore, examine whether the determination of market value and scale of rates proposed by the KPT and approved by the TAMP in the impugned orders of 2011 and 2014 were arbitrary and not in consonance with the relevant land policies ?

52. It may be noted that the framing of scale of rates is a statutory function of the TAMP under Section 49 of the said Act. The TAMP has to frame the same in accordance with provision contained in Section 49 as well as in accordance with the statutory directions in the form of policies issued by the Central Government under Section 111 of the said Act. The Policy of 2010 as well as the subsequent policy of 2014 issued

under Section 111 of the said Act had laid down the factors to be taken into consideration and the procedure to be followed for the purpose of determining the market value and the scale of rates. So far as the Policy of 2010 is concerned, Clause 6.3 provided that the SoR for port land will be recommended to the TAMP by a Committee as decided by the Board headed by the Chairman of the Port Trust. The said Committee may take into account the applicable factors from amongst the factors mentioned therein to determine the market value of the port land. One of the factors mentioned therein was "the highest accepted tender" of port land for similar transactions. The other factor was the rate arrived at by an approved valuer appointed for the purpose by the port. It was stated therein that the scale of rates shall be arrived at, taking 6% of the market value as the rent per annum. It also provided that the SoR should vary in accordance with the purpose of land use. In the light of the said provisions contained in the Policy of 2010, if the proposal made by the KPT in its letter dated 19.4.2010, as referred by the TAMP in its order dated 25.3.2011, is appreciated, it transpires that the Committee was constituted by the KPT for fixing the market value of the land and schedule of rates as per the Land Policy Guidelines issued by the Government of India. The said Committee was headed by the Chairman and comprised of the other members, who were the Deputy Chairman, Chief Engineer, FA and CAO and

the Secretary of Port and the Deputy Collector. The approved Land Valuer was also appointed for assessing the market value of the land estate and considering the land valuer's report submitted in January, 2010, the said Committee had accepted the market value of the land as assessed by the approved valuer. The Committee accordingly had recommended sector-wise/sub-sector-wise lease rentals for three consecutive slabs i.e. from July 1999 to 31.12.2003, from 1.1.2004 to 31.12.2008, and from 1.1.2009 to 31.12.2013. The Board of Trustees of KPT had recommended the said schedule of rates and the lease rentals for approval to the TAMP.

54. It is pertinent to note that on both the occasions, the KPT had made its proposals on the basis of the rates arrived by the approved valuer appointed for the purpose by the port. The said reports of the valuers were approved by the land valuation committee and the Board of Trustees of KPT, as contemplated in both the policy guidelines. The said policy guidelines do not mandate a specific preference to any particular method out of the methods prescribed in the respective clauses for determination of the market value and the SoR. Hence, the KPT was absolutely justified in relying upon the rates arrived at by the approved valuers on both the occasions. As stated in the TAMP order of 2011, the approved valuer had after considering the basic rates had derived the market rates for the

entire parcels of Kandla land. The valuer had applied on the basic rate, a generalized index derived by giving certain weightages for factors like real estate market behaviour in Gujarat, number of Industrial units established in Kutchh district, population growth, traffic handled by Kandla Port, GDP growth of Gujarat and of India etc. The determination of market value is not only difficult but a very tricky matter, and the opinion of expert i.e. the approved valuer is very important. It is also pertinent to note that the petitioners and their representatives were also given sufficient opportunity of hearing by the TAMP during the consultative process and the joint hearing.

55. AT this juncture, it is pertinent to note that the petitioners have not placed on record any material to show as to what was the market value of the port land at the relevant time. They have also failed to substantiate their allegations that the said scale of rates fixed or framed by the TAMP were arbitrary or illegal. The contention raised by the learned Advocates for the petitioners that the offer made by the petitioner IMC pursuant to 2005 Tender could not be said to be "the highest bid accepted" for the purpose of determining the market value, it having been subsequently cancelled, has no merits. Apart from the fact that the said Tender was required to be cancelled as the KPT could not obtain necessary environmental permissions, the petitioner IMC having

made offer in the said tender, was estopped from contending that the offer made by it was not the market value of the land at the relevant time. The approved valuer having taken into consideration the relevant factors for determining the market value of the lands in question, and his report having been approved by the land valuation committee and by the KPT, the TAMP was absolutely justified in relying upon the said market value for the purpose of framing the scale of rates as per the provisions contained in Section 49 of the Act and as per the land policies issued by the Central Government under Section 111 of the said Act. There is no flaw or lapse pointed out by the learned Advocates for the petitioners, in the decision making process, which could be termed as procedural impropriety, requiring the Court to exercise the powers of judicial review under Article 226 of the Constitution of India. As per the settled legal position, it is not permissible for the Court to go into the minute details of the factors considered by the statutory authority and substitute its own decision in place of the decision taken by the authority constituted under the Act.

37. We are also mindful that this Court should not enter into the issue with respect to the valuation of the lands and the tariffs fixed by the expert body, as that by a court of appeal and the scope of judicial scrutiny is extremely limited. The Supreme Court in the case of Union of India vs. Cipla Limited reported in (2017) 5 SCC 262 has visited the scope

of judicial review on the aspect of valuation by the expert without statutory enumeration of relevant factors to be taken into account and has held as under:

> *91. In that context and in response to the submission made, this Court drew a distinction between price fixation governed by statutory considerations and price fixation governed by non-statutory considerations. It was held that on this basis Union of India v. Cynamide India Ltd. & Anr.[3] was distinguishable since it dealt with price fixation based on statutory considerations. In a case of price fixation having its origin on non-statutory materials the scope of judicial scrutiny would be far less. It was said in paragraph 15 of the Report as follows:*
>
> > *"This Court was examining [in Cynamide India] the scope of judicial scrutiny in the matters of price fixation where it was governed by statutory provisions. The scope of judicial scrutiny would be far less where the price fixation is not governed by the statute or a statutory order. Where the legislature has prescribed the factors which should be taken into consideration and which should guide the determination of price, the courts would examine whether the considerations for fixing the price mentioned in the statute or the statutory order have been kept in mind while fixing the price and whether these factors have guided the determination. The courts would not go*

beyond that point. In the present appeals, there is no law, or any statutory provision laying down the criteria or the principles which must be followed, or which must guide the determination of rates of royalty. No doubt, any arbitrary action taken by the State would be subject to scrutiny by the courts because arbitrariness is the very antithesis of rule of law. But this does not mean that this Court would act as an Appellate Authority over the determination of rates of royalty by the Government..... It is open to the Government to fix such price as it thinks appropriate having regard to public interest, which inter alia, may include interest of revenue, environmental, ecology, the need of mills and the requirements of other consumers. The price is not to be fixed keeping in mind the requirements of the mills alone." [emphasis supplied].

93. While learned counsel for Cipla might have serious differences of opinion with the recommendations of these particular non-statutory Reports, generally a challenge to Reports prepared by expert bodies is not easy but is subject to lesser judicial scrutiny. To rephrase what was said in Prag Ice and Oil Mills and Anr. v. Union of India, a factor here or a factor there that should have been taken into account but has been ignored should not invalidate the Reports - mere errors in the Reports are not subject to judicial review.

95. The feel of the expert is important, if not conclusive. Insofar as we are concerned, two expert Committees made their recommendations. These recommendations were then examined and considered by the Central Government and on the basis of the expert conclusions arrived at, the norms were prescribed by a notification dated 13th July, 1999 issued under Paragraph 7 of the DPCO 1995. Under the circumstances, the question of judicial scrutiny of the Reports of the Masood Committee and the Jharwal Committee and the acceptance of their recommendations by the Central Government is not only limited, but in this case it does not arise. It cannot be said that the notification dated 13th July, 1999 was based on no material or was issued without any application of mind. Learned counsel for Cipla may disagree with the contents of the materials, but cannot ignore their existence or that they were considered by the Central Government.

38. On the totality of the facts and the procedure adopted for valuation of the lands, we are not inclined to hold that the valuation of the lands is arbitrary or suffers from extraneous considerations.

39. A subset of the order of the TAMP which has been interfered by the learned Single Judge pertains to period from the year 1999 to 1.1.2009 holding that neither the Act nor the Land Policies issued under Section 111 of the Act permitted the TAMP to frame the scale of rates with retrospective effect. It is this direction that the KPT has been aggrieved and is in appeal before us.

40. Mr. Mihir Joshi, the learned senior counsel has contended before us that the framing of the SoR for the said period was not retrospective as no new liability or obligation was impose with effect from a date anterior to the date of actual imposition. He further contends that by notification dated 5.7.1994 and Land Policy 2004 a condition of 5 yearly revision of rent for long term leases and methodology of computation was prescribed and made applicable to exiting lease holders. The obligation had already been imposed on the lessees in view of the conditions of allotment and the land policies which have been issued by the Government of India from time to time. The holders of plots were aware that they have to pay revised lease rent on the basis of the revised market value of the land every five years and there was absolute no representation to them that the lease rent would not be increased periodically. He further submitted that the liability was imposed on the holders to pay the revised rent and only the quantification was deferred and therefore, the learned Single Judge was not right in holding that the SoR are retrospective in nature. Mr.Soparkar, learned Senior Advocate has argued that it is well settled that there is no power to retrospective levy rentals in absence of specific provision. It has further been contended that the TAMP was mislead by the KPT that lease agreement contained a clause allowing retrospective revision of lease rentals. Mr. Mihir Thakore, the learned senior counsel has contended that the parties are bound by the terms of the lease which cannot be modified by the SoR which has been framed by the TAMP. He has further

submitted that framing of the tariff is not a law and the lease rental, therefore, can only be revised upon culmination of the lease. He has further submitted that the revision of tariffs of the TAMP will not affect the existing leases and that the land policies would only apply to fresh leases. He has fairly conceded that once the period of lease is over, the SoR framed by the TAMP shall be applicable and persons occupying the lands shall be required to pay at the rates so prescribed.

41. We first proceed to consider the contention raised by Mr.Mihir Thakore, the learned senior counsel that the tariffs framed by the TAMP will not affect the rights under the existing leases and the parties would be continued to be bound by the terms of the lease. A Coordinate Bench of this Court in the case of Kandla Port Trust vs. Shri Kandla Salt Leaseholder Welfare Association and ors rendered in the Letters Patent Appeal No.870 of 2013 has dealt with the very issue while interpreting the powers of the TAMP as per the Major Port Trusts Act, 1963, and has held as under:

> *(iv)That the tariff so determined would not only binding to the existing leaseholders but would be applicable to the future leaseholders and will be applicable for 5 years.*

42. The Supreme Court in the case of NSSO vs. Champa Properties Limited reported in (2009) 14 SCC 451 has held

that statutory fixation of rent shall be applicable to the tenancies. The relevant observations of the Court are as under:

> *30. We are of the view that the elaborate decision in Rabindra Nath Nandi missed the core issue and ignored the relevant law governing landlords and tenants. A lease is governed by the terms of the contract (deed or agreement of lease) between the parties. If the contract prescribes a rent for the period of lease, the same being agreed rent, it is binding on the parties. If the lease provides for revision of rents periodically, and specifies the method and manner of revision, such revised rent would also be the agreed rent.*
>
> *31. Where a statute governing tenancies and/or rents provides for fixation of rent or increases in rent, and such statute is applicable to the tenancy in question, then the rent will have to be determined in accordance with the statutory provisions. Subject to the above, any increase can be only by consent of parties…..*

43. In the case of APM Terminal BV vs. Union of India reported in (2011) 6 SCC 756, the Supreme Court has held that the change in the policy by the Government can have an overriding effect over the private treaties between the Government and the private parties, if the same was in the general public interest. The relevant observations of the

Court are as under:

> *67. It has been the consistent view of this Court that a change in policy by the Government can have an overriding effect over private treaties between the Government and a private party, if the same was in the general public interest and provided such change in policy was guided by reason.Several decisions have been cited by the parties in this regard in the context of preventing private manopolisation of port activities to an extent where such private player would assume a dominant position which would enable them to control not only the berthing of ships but the tariff for use of the port facilities.*
>
> *68. In both the cases under consideration, the same set of entrepreneurs are interested in gaining control over the different container terminals to the exclusion of other players. The Central Government in its Ministry of Shipping and Transport, therefore, took a decision not to permit licensees who have been granted a licence for running one of the container terminal berths from participating in the bid process for the immediate next container terminal, with the intention of promoting healthy competition for the benefit of the shipping industry and the ports in India as well. The decision to alter its policy is based on sound reasoning and the Central Government has taken such decision for the benefit of the consumers as a whole. The changed policy would also have the effect of preventing*

cartelisation and dominant status, which could inevitably affect the ultimate pricing of consumer goods within the country.

69. xxx

70. Although, it has been urged by Ms. Chidambaram that such change in policy could be effected only by way of legislation, such a submission, if accepted, could stultify the powers of the Central Government to alter its policies with changing circumstances for the benefit of the public at large. It is not as if the right of a licensee to bid for a further container terminal berth has been excluded for the entire period of the Licence Agreement but in order to ensure proper competition and participation by all intending tenderers, the said policy has also been altered to enable such licensees to bid for the next but one tender as and when invited.

44. The Supreme Court in the case of Yazdani International Private Ltd vs. Auro Global Comtrade (P) Ltd. reported in (2014) 2 SCC 657 had the occasion to consider the binding nature of the land policy issued under Section 111of the Major Port Trusts Act, 1963. It has been observed in the said judgment as under:

6. Chapter IX of the Act contains provisions which authorise the Government of India to exercise supervisory control as specified in the various provisions of the said Chapter over the activities of the

boards constituted under the Act. Relevant in the context of the present litigation is Section 111[4] of the Act which declares that both, the authority constituted under Section 47A and the Boards constituted under the Act are bound "by such directions on questions of policy" as the Central Government may give in writing from time to time.

40. To answer the above question we examine the nature of the legal rights flowing from such allotments. The plots in dispute are property vested in a public body (statutory corporation) performing important public functions. In the matter of creating rights and/or conferring privileges such a body is required to act in public interest under some rational policy. We have already noticed that the Board is bound by the policy directions given by the Government of India under Section 111 of the Act, and that the Government of India from time to time issued policy guidelines. In the policy guidelines issued in 2004, the following were the directives: "b) No sale or lease should be permitted. Land should be given on licence basis only. The licence may be up to a maximum period of 11 months and shall normally be in accordance with the Schedule of Rates (SoR)/rates approved by the competent authority. At the discretion of the Chairman, such licence may also be given by inviting tenders. The licence can be renewed at the expiry of the previous licence period. Each renewal of licence shall be treated as fresh licence."

45. We have noticed from the various sale deeds and the allotments of the port lands executed prior to 1994 that every allotment carries different conditions for payment of the rent and its a periodic revision. The allotments which have been made prior to 1994 contain provisions for periodic revision of rents from a five year to ten years period for escalation and also in some cases the revision of rates were capped. In all cases where the allotments were made after 1994 the clauses were uniformly incorporated for five years revision of rent and an obligation on the lessee to pay the revised rent as may be revised. Therefore, similarly situated entities which have been allotted lands in different time zones claimed different rights in respect of payment of lease rents and its revisions based on the fortuitous circumstances. It appears that with a view to bring in uniformity in the manner of charging the rent and its revision for lands, as a first step the instructions of the year 1994 were issued by the Government providing for incorporating the terms for revision of rates / lease rents every five years in the lease deeds.

46. This intent seems to have been further elaborated in the 2004 Land Policy issued under Section 111 of the Act, which provides for uniformity in arriving at the market value of the similar lands based on their geographical and infrastructural advantages and the use of the lands and method for framing the lease rent based on the market value. The policy further specifically provides for revision of the rates / lease rents every five years. Thus, the policy was issued to bring uniformity of the lease rents based on

equal considerations and periodic revision of rates at every five years for all lands.

47. We have already noted the statutory scheme for levy of the rates and the lease rents for the lands of the port. As can be clearly seen from the changes which have happened in the statute and the policies under Section 111 of the Act, the rates at which the lands at a port can be leased or allotted to an allottee by a port and its uniform revision every five years has been statutorily prescribed and the ports were bound to allot the properties belonging to or in possession or occupation of the Board on payment of the rates as per the scale of rates framed by the TAMP from time to time. The rates at which the lease rents were payable by an allottee for occupation of the port lands was not a commercially negotiated rates but was as per the statutory approval by the Central Government or prescription by the TAMP, as the case may be.

48. In light of our findings and the law on the point, we do not accept the contention of Mr.Thakore that the parties are bound by the terms of the lease and by the SoR framed by the TAMP and the Land Policies issued under Section 111 of the Act cannot effect the rights of the existing lessee's under the existing contract. The statutory prescription of the SoR by the TAMP shall override the inconsistent contractual provisions and the rates framed in the SoR shall be applicable to the leases of the existing lessee's.

49. Mr. Soparkar has contended that the IMC was allotted lands on hybrid model, in which the allottee had paid premium for allotment of the lands. This contention does not merit acceptance by us in light of the provisions for payment of rent and its revision made in the letter of allotment dated 27.10.1995 which reads as under:

> *c) The allotee shall be liable to pay the lease rent @ Rs 11 per sq mtrs per annum. The lessee shall be liable to pay the lease rent at schedule rate, if fixed higher at any time.*
>
> *General Conditions of allotment provides the following terms:*
>
> *9. The ground rent fixed for the plot shall be revised / enhanced / refixed at the option of the lessor at the end of every 5 years on or after first day of January. The ground rent will revised on the basis of market value prevailing at the time of revision of ground rent. The market value shall be determined by chairman, KPT or any other authority empowered by him and or decision taken on his behalf in this regard shall be final and legally binding on the allottee and open for any dispute by allottee. The allottee shall pay the ground rent at revised rates for the date of revision.*

50. We now consider the contention of Mr.Joshi that the SoR for the period 1999 to 2009 cannot be treated as retrospective. We have already noted the procedure taken

by the KPT for revision of rent from the year 1999 and the views of the TAMP while sending back the proposals forwarded by the KPT for the period prior to 2010. It would not be correct for the petitioners to contend that the KPT had abandoned its right to periodically revise the rents, but certainty there has been a delay in having the revised rates notified every five years, at which the allottees would pay the lease rents.

51. The Land Policy of the year 2004 specifically provides periodic revision of the rents every five years. The liability to pay the revised rents every five years was statutorily imposed upon the allottees, however the computation of rates at which the rents were to be paid was differed due to delay in framing the SoR by the TAMP albeit at the end of the KPT.

52. A Division Bench of this Court in the case of Cadila Laboratories vs. UOI reported in 2001 (1) GLR 48 has held as under:

> *17. The distinction between the "rights accrued" and "liability incurred" is overlooked in the submissions made on behalf of the petitioners. It was the liability of the manufacturer of formulations to credit the amount under Paragraph 17(1)(a)(i) read with Paragraph 7(2)(a) that is in question and not the question of any right being accrued in favour of the Government under the Control Order. The power of the Government to determine the amount and recover it can be exercised*

after the events have occurred only with a view to find out or ascertain the exact extent of liability that had been incurred for the amount meant to be credited into the D.P.E. Account. Just as rights accrued cannot be taken away, the liability incurred does not get extinguished by the repeal of the Order. The liability on the part of the manufacturer of formulations that had arisen by virtue of use of bulk drug procured at a price lower than the price allowed in the retail price of the formulation, is to be enforced by exercising the power to recover the amount which entails ascertainment of the exact amount. When the power to recover the amount that has accrued into the D.P.E. Account, since it had become payable into it during the currency of the Control Order of 1979, was expressly saved by Paragraph 14 of the Control Order of 1987 and Paragraph 12 of the Control Order of 1995, the fact that the amount was required to be ascertained will not make it any the less a debt when the liability was certain and what remained was only a quantification of the amount. The exercise of power to determine and recover the amount depends upon the liability that had arisen under the opening words of Paragraph 7(2) of the Control Order of 1979 and not vice versa.

18. If under the repealed Order a liability has already arisen on the basis of the orders/notifications made and things done but in respect of which some investigation or proceeding is necessary, the liability is

then unaffected and preserved even if a process of quantification is necessary. The process of determination contemplated under Paragraph 7(2) is for finding out the extent of liability that had arisen and is not a process of deciding whether or not some liability should be imposed. It is one thing to invoke the repealed provisions for the adjudication of the liability which has already been incurred prior to repeal of that law and it is quite another matter to say that a liability which did not arise under the repealed law should be imposed after the repeal of the provisions. In other words, no new liability can be created under the provisions of law after their repeal but the liability that had already been incurred would not vanish on such repeal so as to prevent such quantification and recovery of dues that already had accrued, though not received into the D.P.E. Account as envisaged in Paragraphs 14 and 12 of the subsequent Control Orders, notwithstanding the repeal of the Control Order of 1979.

53. The Supreme Court in the case of Govt of Maharashtra vs. Deokar's Distillery reported in 2003 (5) SCC 669 has held thus:

21. In the instant case, we are concerned with regard to Section 58-A of the Prohibition Act. Before the Full Bench, the distillery Mohan Meakin contended that there is no provision under the Prohibition Act or under

any of the rules for recovery of supervision charges retrospectively and that under Condition 3, they are required to pay the cost of the staff appointed at the licensed premises in advance at the beginning of each quarter, which they have done and, therefore, they cannot now be asked to pay increased charges with retrospective effect from 5-5-1970. The petitioners, in respect of their contentions, relied on a decision of this Court in the case of ITO v. M.C. Ponnoose [(1969) 2 SCC 351 : AIR 1970 SC 385] wherein this Court has observed that while it is open to a sovereign legislature to enact laws which have retrospective operation, the courts will not ascribe retrospectivity to new laws unless by express words or necessary implication, it appears that such was the intention of the legislature. Speaking for the Bench, Ms Sujata Manohar, J., as she then was, has observed that the ratio of the said judgment has no application to the facts of the case before them and that Condition 3 of the licence requires the petitioners to pay such amount of costs as determined by the respondents in advance before the beginning of every quarter and that this condition is merely for administrative convenience. It does not prevent the State Government from recovering the cost of such staff subsequently, especially when both Section 58-A of the Prohibition Act as well as Rule 7 do not prescribe any time-limit within which such cost has to be recovered. The Full Bench further held that the demand for additional charges has been made by the State Government from the petitioners

when the charges increased and hence the increased charges which have been demanded from the petitioners are from 5-5-1970 and that under Section 58-A of the Prohibition Act and the relevant rules, there is a clear existing statutory liability on the licensees to pay the cost of the supervisory staff and there is no change in the statutory liability. The Full Bench also held that the Division Bench at Nagpur in the case of J.E. Bilimoria [(1990) 2 Mah LJ 1079 : (1990) 2 Bom CR 108] is not right when it says that the cost of the staff which is required to be paid under Section 58-A of the Prohibition Act has a reference only to the cost of the staff as obtaining for the period during which the goods are stored in the bonded warehouse.

29. In the case on hand, the licensees gave an undertaking at the time of obtaining grant or renewal of the licence in the application form itself, both under the Rules of 1966 and the Rules of 1973, that they would abide by all orders made under the Prohibition Act and the Rules. Under Rule 17(43) of the Rules of 1966 and under Rule 6(36) of the Rules of 1973, there are residuary powers of making a demand in special circumstances not foreseen in Rule 17(12) of the Rules of 1966 or Rule 6(12) of the Rules of 1973. It is seen from Rule 17(43) of the Rules of 1966 that the licensee shall abide by all the rules, regulations and orders made from time to time under the Act. A similar provision also exists under Rule 6(36) of the Rules of

1973. The object of Section 58-A of the Prohibition Act and the intention of the legislature, in our opinion, could not be anything other than that the entire cost incurred by the Government on account of pay scales paid to the government employees posted for supervision should be paid by the licensee and that this cost should not be met from the government exchequer.

39. For the aforesaid reasons, we are of the opinion that the impugned demand notice was nothing but final settlement of accounts communicated by Appellant, one contracting party to the other contracting party, the respondents, in terms of the contract executed between them, which is executed at the time of grant/renewal of the licence. The contract is executed after the licensee gives the undertaking in the application in Form PLA prescribed under the Rules of 1966 or the licence in Form CLA prescribed under the Rules of 1973, to abide by directions/orders and complies with all other requirements and when the application is accepted by the appellants by grant/ renewal of the licence. The respondent licensees, therefore, cannot wriggle out of the contractual obligation of payment of the entire cost of supervision regarding which they receive a final account or bill through the impugned demand notice and, therefore, the respondents ought to pay the amount demanded.

54. In our view, there is no retrospectivity in application of the

rates from an anterior date as the allottees were aware that as per the statutory prescription as per the land policies, the rates shall be revised every five years and the rates at which the lease rents were paid pending the framing of the SoR by the TAMP were provisional however the final rates would be payable as per the SoR framed by the TAMP.

55. Whether the revision of rates can be made applicable from an anterior date as per the SoR, has necessarily to depend on the powers of the TAMP as per Section 49 the Act, to frame the SoR retrospectively. The learned Single Judge has dealt with the issue and has held thus:

> *66. Applying the aforesaid legal position to the facts of the present cases, it clearly transpires that neither the MPT Act, nor the Land Policies issued under Section 111 of the said Act permitted the TAMP to frame the scale of rates with retrospective effect. The only leverage perpetuated under the said policies was to frame SoR once in five years. The TAMP accordingly at the best could have framed the scale of rates once in five years keeping in view the statutory guidelines, however, could not have approved the proposal of KPT to give effect of the said scale of rates retrospectively from July 1999 as given in the order of 2011. It has also been rightly pointed out by learned Advocate for the petitioners that the TAMP though had raised a query to the KPT as to whether the lease agreement with the lessees contained a clause allowing for retrospective revision of the lease rent, and the TAMP*

relied upon the reply given by the KPT that there were provisions for such revisions, without actually verifying as to whether there were any such provisions in the lease agreement or in the land policies.

67. In the opinion of the Court, the TAMP could not have revised the scale of rates giving retrospective effect in absence of any specific provision either under the Act or the Rules or the Land Policies empowering it to revise the SoR with retrospective effect. Though it is true that the legality, the methodology, and the periodicity to pay revised scale of rates was fixed and imposed on the lessees as per the directions given in the Land Policies, the quantification of the liability from time to time was required to be made by the KPT once in five years. Though the delay on the part of the KPT in not making proposal since 1999 has been sought to be justified by Mr.Mihir Joshi, the said justification is not palatable. It is observed by the TAMP in its order of 2011, that after the direction to the KPT to classify/reclassify the land taking into consideration the purpose for which it was allotted as per the order dated 23.3.1999, there was no proposal forth coming from the KPT in that regard even after the lapse of nine years, and therefore, the TAMP vide its order dated 2.4.2008 had directed the KPT to formulate suitable revision proposal for Kandla land, and in the said backdrop, the KPT on 19.4.2010 submitted the proposal for revision of rate structure.

From the said observation itself it clearly transpires that there was absolutely lethargic and a very lackadaisical approach on the part of the KPT in not sending the proposal for revision of SoR for about nine years.

68. As rightly submitted by the learned Advocates for the petitioners no party can be permitted to take undue advantage of its own wrong. At this juncture, it would apposite to refer the Latin maxim - Commodum ex injuria sua nemo habere debet meaning thereby, no party can take undue advantage of its own wrong. The Supreme Court in case of Kusheshwar Prasad Singh Vs. State of Bihar and Ors., reported in (2007) 11 SCC 447, has held that man cannot be permitted to take undue and unfair advantage of his own wrong to be favourable in the interpretation of law. He who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. Hence, if the KPT had failed to make proposal on time as required under the lease deed or under the Land Policies, which the KPT was expected to make once in five years,the KPT could not have made proposal in the year 2010 for revising the rate structure with effect from July 1999 and the TAMP also could not have revised the same with retrospective effect. As the TAMP could have revised the SoR once in five years as per the land policies, it should have revised the same only for the last slab of five years from 1.1.2009 to 31.12.2013, but in no case could have given effect

prior to 1.1.2009, much less from July 1999. When the TAMP was not vested with the power either under the Act or under the guidelines/policies issued under Section 111 of the Act, to frame the SoR with retrospective effect, the TAMP's order of 2011 ex facie suffers from illegality to the extent of making the SoR applicable with retrospective effect from July 1999.

69. In that view of the matter, the Court is of the opinion that the impugned order dated 25.3.2011 notified vide the Notification dated 11.5.2011 to the extent it has given retrospective effect to the SoR from July 1999 being without any authority of law is bad, and therefore, deserves to be set aside to the said extent. The Court, however, confirms the said order of 2011 to the extent it gives effect of SoR framed for five years i.e. the period from 1.1.2009 to 31.12.2013. The demand notices issued by the KPT to the concerned petitioners, on the basis of the said order of 25.3.2011, shall necessarily stand set aside. Of course, the KPT shall be entitled to issue fresh notices on the basis of the modified order and take action or file proceedings against the concerned defaulting petitioners in accordance with law.

56. The Supreme Court in the case of Management of Narendra & Co Pvt Ltd vs. Workman of Narendra & Co reported in (2016)3 SCC 340 has held as under:

5. Once the learned Single Judge having seen the

records had come to the conclusion that the industry was not functioning after January 1995, there is no justification in entering a different finding without any further material before the Division Bench. The Appellate Bench ought to have noticed that the statement of MW 3 is itself part of the evidence before the Labour Court. Be that as it may, in an intra-court appeal, on a finding of fact, unless the Appellate Bench reaches a conclusion that the finding of the Single Bench is perverse, it shall not disturb the same. Merely because another view or a better view is possible, there should be no interference with or disturbance of the order [Narendra & Co. (P) Ltd. v. Workmen, WP No. 41489 of 2002, decided on 14-3-2008 (KAR)] passed by the Single Judge, unless both sides agree for a fairer approach on relief.

57. In the case of National Insurance Co.Ltd. vs. Shreenath Industries this Court (where one of us J.B.Pardiwala, J. was a party) has taken a similar view which reads thus:

105 While dealing with the present appeal, one has to bear in mind that a intra-Court appeal is really not a statutory appeal preferred against the judgment and order of an inferior to the superior Court. The appeal inter se in a High Court from one Court to another is really an appeal from one coordinate Bench to another Coordinate Bench and it is for this reason that a writ cannot be issued by one Bench of the High Court to another Bench of the High Court nor can even the

Supreme Court issue writ to a High Court. Thus, unlike an appeal, in general, an intra-Court appeal is an appeal on principle and that is why, unlike an appeal, in an ordinary sense, such as a criminal appeal, where the whole evidence on record is examined afresh by the appellate Court, what is really examined, in an intra-Court appeal, is the legality and validity of the Judgment and/or Order of the Single Judge and it can be set aside or should be set aside only when there is a patent error on the face of the record or the judgment is against the established or settled principle of law. If two views are possible and a view, which is reasonable and logical, has been adopted by a Single Judge, the other view, howsoever appealing such a view may be to the Division Bench, it is the view adopted by the Single Judge, which should, normally, be allowed to prevail. Hence, the impugned judgment of the learned Single Judge should not be completely ignored and this Court has to consider the judgment and order in its proper perspective and if this Bench, sitting as an appellate Bench, is of the view that the decision has been arrived at by the learned Single Judge without any material error of fact or law, then, the judgment, in question, should be allowed to prevail.

58. In view of the limited scope in the appeal as held above, we are not inclined to interfere with the findings made by the learned Single Judge setting aside the SoR from the year 1999 to 2009.

Order of TAMP dated 13.11.2014

59. The order passed by the TAMP in the year 2014 has been challenged principally contending that the categorization of lands used for liquid storage terminals made by the KPT as a special category is completely arbitrary and as a result the petitioners are compelled to higher rates while the allottee in the vicinity, though using the lands for some other use, ends up paying lease rent at a lesser rate. The petitioners have further contended that the Land Policy of 2014 marks a change in the policy of the Government which consciously deletes the provisions for varying the SoR upon the use of land.

60. Mr.Joshi, the learned senior counsel, has contended before us that the intent in the Land Policies to value the lands as per its use has not undergone any change and the categorization of the lands is nothing but a result of the market value of the lands based on the use of the lands. He has further taken us through the Land Policies and highlighted the underlined object for the valuation of the lands based on the use of the land. He has further contended that all the plots of land on which the use of liquid storage tank terminal is permitted, fall within the category of lands under the land use categorisation prepared for the purpose of valuation, having special advantages and value for a willing buyer. It is not even remotely contended that the appellants whose category has changed are not similarly situated as others falling in the same category but the grievances raised is that such appellants are called upon to pay much higher lease rents,

which by itself is not a legal injury at all. The contention that a neighbour is not called upon to pay the higher lease rent overlooks the fact that such plot held by the neighbour is not of the same category *inter alia* regarding permissible use which has a bearing on the market value and consequently the Schedule of Rates for the subject land, therefore, cannot be said to be similarly situated. This is akin to a case of agricultural and non-agricultural land being adjacent to one another in the same village, having different market value based on the potential of use.

61. We, therefore, proceed to consider whether the use of land is a factor for determining the market value of the lands as per the land policies or the same has been consciously been omitted.

62. The 2011 Land Policy has the following provisions for framing the SoR.

6.3 (1) Market value of land and Schedule of Rates (SoR):

(a) SoR for land. will be recommended to the competent authority/ TAMP, by a Committee as decided by the Board headed by the Chairman of the Port Trust. The Committee may take into account the applicable factors from among those listed below to determine the market value of port land:-

(i) State Government's ready reckoner of the land values in the area, if available.

(ii) Average rate of actual relevant transactions registered in last three years in the port's

vicinity, adding 2% escalation per annum and in case of Mumbai Port Trust @ 4% escalation per annum, as may be necessary.

(iii) Highest accepted tender of Port land for similar transactions.

(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.

(b) SoR shall be arrived at, taking 6% of market value as rent per annum

(c) SOR shall be escalated by 2% per annum and in case of Mumbai Port Trust @ 4% escalation per annum, till such time that SoR is revised with the approval of the competent authority/ TAMP.

(d) SoR will be revised every five years.

(e) SoR should vary in accordance with the purpose of land use. The Committee should recommend to the competent authority, varying SoR in accordance with the end use as reflected in the Land Use Plan.

(f) Insofar as fixing of SoR for Port land is concerned, TAMP shall have the jurisdiction for any land both within the customs bound area and outside it as long as the land is used exclusively for Port related activity. The SoR for all land of Major Ports will be fixed by TAMP.

63. The 2014 Land Policy has the following provisions for framing the SoR.

13. Market Value of land and SoR:

(a) Land Allotment Committee may normally take into account the highest of the factors mentioned herein below to determine the latest market value of Port land. In case the land allotment committee is not choosing the highest factor, the reasons for the same have to be recorded in writing.

i State Government's ready reckoner of 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 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.

(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) 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. 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...

64. While there may be a change in the phraseology from the earlier policies, however we find that the importance of use of land in determining the market value has been retained in the 2014 policy also. Clause 13a(i) of 2014 policy provides that the Government rates of the land values in the area for similar classification/ activities would be relevant for determining the market value of lands. The land policies also have left the valuation of lands to the expertise of the land valuer and in absence of any statutory guidance in the manner in which the land valuer should

value the lands, it is certainly open for the land valuer to value the lands based on the settled principles of valuation of lands.

65. Our attention has been drawn to the International Valuation Standards, 2017, which has been published by the International Valuation Standards Council. The Valuation Standards define the market value as the estimated amount for which an asset or liability should exchange on the valuation date between willing buyer and a willing seller. The market value of an asset will reflect its highest and best use. The highest and best use is the use of an assets that maximizes its potential and that is possible, legally permissible and financial feasible. The highest and the best use may be for continuous of an assets existing use or for some alternative use. This is determined by the use that a market participant would have in mind for the asset when formulating a price that it would be willing to bid. A valuer must consider the highest and the best use of the real property. The specific difference that should be considered in valuing the real property interest include the permitted use or zoning at each property. In light of the aforesaid standards, we cannot accept the contention of the petitioners.

66. Section 49 of the Major Port Trusts Act, 1963, also prescribes the framing of the SoR on the basis of the use of land. Section 49 reads thus,

49. Scale of rates and statement of conditions for use

of property belonging to Board.—

(1) [The Authority shall from time to time, by notification in the Official Gazette, also frame a scale of rates on payment of which, and a statement of conditions under which, any property belonging to, or in the possession or occupation of, the Board, or any place within the limits of the port or the port approaches may be used for the purposes specified hereunder—]

(a) approaching or lying at or alongside any buoy, mooring, wharf, quay, pier, dock, land, building or place as aforesaid by vessels;

(b) entering upon or plying for hire at or on any wharf, quay, pier, dock, land, building, road, bridge or place as aforesaid by animals or vehicles carrying passengers or goods;

(c) leasing of land or sheds by owners of goods imported or intended for export or by steamer agents;

(d) any other use of any land, building, works, vessels or appliances belonging to or provided by the Board.

67. The valuation of the lands based on the use of the lands is not an unknown concept. The Supreme Court in the case of Deputy Collector, Land Acquisition, Gujarat vs.

Madhubhai Gobarbhai and others reported in (2009) 15 SCC 125 has held as under:

> *36. It is, in our opinion, wholly improper to forget the distinction between the agricultural land and the non-agricultural land. Even in the same area, value of the agricultural land and the non-agricultural land may be considerably different. For the said purpose, existence of the road, railway station, airport, schools, colleges, hospitals, etc. play an important role.*
>
> *45. In Basant Kumar v. Union of India [(1996) 11 SCC 542] this Court has opined that even if the entire land is of one village all the persons cannot be given same compensation, stating : (SCC p. 544, para 5)*
>
> > *"5. … It has been firmly settled law by beadroll of decisions of this Court that the Judge determining the compensation under Section 23(1) should sit in the armchair of a willing prudent purchaser in an open market and see whether he would offer the same amount proposed to be fixed as market value as a willing and prudent buyer for the same or similar land i.e. land possessing all the advantageous features and to the same extent. This test should always be kept in view and answered affirmatively, taking into consideration all relevant facts and circumstances. If feats of imagination are*

allowed to sway, he outsteps his domain of judicial decision and lands in misconduct amenable to disciplinary law."

It has categorically been held that ordinarily the entire village should not be treated as one unit as "even in the same village, no two lands command the same market value" as potentially, the fact that land abutting a national highway or road would command a higher market value vis-à-vis the land situated at a location which is not so situated.

46. Potential development and/or likelihood of development are also the factors which have been considered to be relevant by this Court in Kanwar Singh v. Union of India [(1998) 8 SCC 136] observing : (SCC pp. 140-41, para 8)

"8. So far as the first argument that the appellants ought to have been given the same rate of compensation which was given to the claimants of the adjoining village is concerned, the amount of compensation for the land acquired depends on the market value of land on the date immediately before the notification under Section 4 of the Act or when same land is acquired and offer of compensation is made through an award. Whether such an offer of compensation represents the market value of the land on the date of notification under Section 4 of the Act, has to be determined on the basis of

evidence produced before the Court. The claimants have to prove and demonstrate that the compensation offered by the Collector is not adequate and the same does not reflect the true market value of the land on the date of notification under Section 4 of the Act. This could only be done by the claimants by adducing evidence to the effect that on the relevant date, the market value of the land in question was such at which the vendor and the vendee (buyer and seller) were willing to sell or purchase the land. The consideration in terms of price received for land under bona fide transactions on the date or preceding the date of notification issued under Section 4 of the Act generally shows the market value of the acquired land and the market value of the acquired land to be assessed in terms of those transactions. Sale instances showing the price fetched for similar land with similar advantages under bona fide transaction of sale at or near about the issue of notification under Section 4 of the Act is well recognised to be the appropriate evidence for determining the market value of the acquired land."

It was opined that the amount of compensation should not be awarded based on the market value of the land determined for a neighbouring village.

40. It was also held that : (Pramod Gupta case [(2005) 12 SCC 1] , SCC p. 38, para 82)

> *"82. In V. Hanumantha Reddy v. Land Acquisition Officer & Mandal R. Officer [(2003) 12 SCC 642] the law is stated in the following terms : (SCC p. 645, para 5)*
>
> *5. … It is now a well-established principle of law that the land abutting the national highway will fetch far more higher price than the land lying interior.' "*
>
> *This Court further opined : (Pramod Gupta case [(2005) 12 SCC 1] , SCC p. 38, para 84)*
>
> *"84. It is also trite to state that the market value of agricultural land is lower than that of the land suitable for commercial purposes. (See Om Prakash v. Union of India [(2004) 10 SCC 627] .)"*
>
> *It was further opined: (Pramod Gupta case [(2005) 12 SCC 1], SCC p. 39, para 87)*
>
> *"87. The courts will also have to take into consideration the enormity of the financial implication of enhancement in view of the size of the land acquired for a particular project."*

68. The discretion vary the SoR in accordance with the usage

of the land has been retained in the present policy albeit in a differently coughed language, which required the authority to determine the annual lease rent at any rate which is not to be less than 6% of the latest market value recommended by the Port Trust. However, this is a side issue as the annual lease rentals which have to be prescribed in the SoR by the TAMP shall be computed on the basis of the market value of the land which has to be determined on the factors enumerated in the Land Policy, which clearly encompasses the use of the lands as a relevant consideration for determining the market value of the lands.

69. The TAMP has dealt with the valuation of the liquid storage tanks in its order and has held as under:

(i) In respect of the category G1, the value of the land proposed by the KPT is 715086.13 per sq. mtr. considering the highest rate received during the auction of 2011 and after 2% escalation every year to arrive at the land valuation as on 1st January 2014.

(ii) In respect of the category G-2, the market value of the land assessed by the approved valuer for the land without reclamation and with infrastructure at 88170/- per sq. mtr. is proportionately scaled upwards with reference to valuation of land recommended by the LVC for 'G1' category. (i.e. the market value of land for G1 recommended by the LVC/ market value of G1 assessed by the approved

valuer market value of land for G2 assessed by the approved valuer = 15086.13/ 12375 * 8170). Accordingly, the market value of the land for G2 proposed by the KPT is <9,959.89 per sq. mtr.

(iii) As regards these sub-categories, it is relevant here to state that in the schedule of lease rents for the Kanda lands approved by this authority in the last order of March 2011, the lease rent was approved for the category 'G' which reportedly covered the lands of Liquid Storage Tanks situated at the Old Kandla [between railway siding and leading to M/s. IFFCO and M/s. IOCL (LPG)]. In the current proposal, the KPT, based on the valuation report of the approved valuer, has proposed two sub-categories 'G1' and 'G2' under the main category 'G' relating to the land for liquid storage tanks. Sub-category 'G1' is for the lands situated from the Eastern Bank of Kandla Creek to the Western Bank of Nakti Creek and sub-category 'G2' lands pertain to the lands from West side of the Nakti Creek to Kharirohar having existing Oil Terminals of the IOCL, HPCL and BPCL.

In this context, as brought out earlier, the oil industry has raised objection that as per the proposed re-categorisation 'G' into 'G1' and 'G2', the oil industry is impacted with steep hike of 592%. This is because until the year 2013, the IOCL, BPCL and HPCL were being categorized under 'C1' (plots abutting the main road in the land beyond half a mile

from the bank of the creek). However, as per current proposal they are categorised under the new category created for oil terminal i.e. 'G2'. For the category 'C1', the lease rent approved by this authority in the last tariff order applicable from 1st January 2009 is 780.40 per sq. metre (lease rent on 31.12.2013 after applying applicable escalation factor is 787.02 per sq. metre I.e. 80.40*1.02*1.02*1.02*1.02). It is relevant here to state that the reserve price in terms of the annual lease rent proposed by the KPT applying 6% on the market value of the land for the category 'C' is 8108 per sq. mtr. Whereas, the reserve price in terms of the annual lease rent for the new sub-category 'G2' for the IOCL, BPCL and HPCL is 7597.59 per sq. mtr, Hence, the impact of the proposed increase works out to 586% in comparison to the lease rent being paid under the category 'C1' until 31st December 2013.

(iv) With reference to the objections raised by the oil industry for their recategorisation, the KPT has stated that as per the Land Policy Guidelines, 2014, the rates are to be fixed considering the purpose also. But, no such provision linking the rates to the purpose or the land to which in it is put to use appears to have been prescribed in the Land Policy Guidelines, 2014. However, the approach adopted by the KPT to consider all the lessees who have been allotted the land for 'Liquid Tanks' under 'G-2' category irrespective of the distance is seen to be appropriate, as brought out below. The said

categorisation of the land is based on the valuation report given by the Government approved Land Valuer and that the land categorization is reportedly done in a scientific and methodical manner which has also been recommended by the LVC and approved by its Board. On perusing the land valuation report, it is seen that the land valuer has justified the reasons for categorising the land as 'G1' and 'G2'. The main factors amongst others, i.e. distance of land from jetty which impacts various factors are seen to have been considered in the valuation report. The Natki Creek is decided as the divider point between 'G1' and 'G2' category of the land and a lower market value of the land for 'G2' is assessed in comparison to value of the land for 'G1'. The market value of land for 'G1' and 'G2' considered by the LVC based on the various factors and recommended by the LVC is tabulated below for ease of reference though it is already brought out in earlier paragraphs bringing out the factual position.

(v) It is relevant here to state that for category 'G2', the steep increase cited by the oil industry arises mainly on account of the categorisation of the land by the KPT from 'C1' to 'G2'. The GCCI has also stated that the categorisation of the land is not scientific and in a methodological manner and it done arbitrary by the KPT. In this context it is relevant here to state that para 13 of the Land Policy Guidelines 2014 requires the Major Port Trusts to have a land use plan for the

entire land further requiring to review the land use plan atleast once in every five years. Para 14 of the Land Policy Guidelines stipulate that the land can be allotted on the basis of the approved land use plan/ zoning. The categorisation of the Port Trust Land and its allotments is prerogative of the concerned Port Trust and it does not fall under the domain of this authority. The port has certified that the land leased (Category Wise) is as per the Port Land Use Plan. This authority does not have any mandate to categorize the lands of the Major Port Trusts which is solely under the domain of the concerned Major Port Trusts as per the Land Policy Guidelines of 2014. The lease rental approved by this authority for categories 'A' to 'G' during the last tariff order of March 2011 was also completely based on the proposal of the Port Trust. The KPT has confirmed that the market value of the land proposed for 'G2' is a realistic value and is representative enough in terms of the layout, facilities, development, proximity, its commercial utilization, etc.

Relying on the clarification furnished by the KPT and recognising that the market value of the land proposed for the sub-categories 'G1' and 'G2' is based on the recommendation of the LVC and approved by the KPT Board and also in view of the clarification furnished by the KPT, explaining the basis for the categorisation, this authority relied on the decision of the KPT and approves the market value of and as

proposed by the KPT.

70. It is true that the purpose of categorization of the land is for the determination of the market value of the land for the purpose of ensuring that the Port Trust gets its economic rent and the public resource is not undervalued and transferred for the private profit. It has been rightly pointed out by Mr.Joshi that, the fact that a willing buyer offers a substantially higher amount for a plot of land on which the use of liquid storage terminal is permitted than a comparable plot of land (may be even adjacent thereto) where such use is not permitted, clearly constitutes a rational and relevant criterion of differentiation which has a clear nexus with the object of such classification.

71. The Supreme Court in the case of JS Luthra Academy vs. State of JK reported in (2018) 18 SCC 65 has held as under :

> 20.1. Generally, when any land is intended to be *transferred by the State, or any State largesse is to be conferred, resort should be had to public auction or transfer by way of inviting tenders from the people. The State must ensure that it receives adequate compensation for the allotted resource. However, non-floating of tender or non-conducting of public auction would not be deemed in all cases to be an arbitrary exercise of executive power. The ultimate decision of the executive must be the result of a fair decision-making process.*

30. We now turn to the second question, regarding the adequacy of compensation recovered by the State. In this respect, we note the following observations made by Khehar, J. in his concurring opinion in Natural Resources Allocation, In re [Natural Resources Allocation, In re, Special Reference No. 1 of 2012, (2012) 10 SCC 1] : (SCC p. 144, para 200)

> *"200. I would, therefore, conclude by stating that no part of the natural resource can be dissipated as a matter of largesse, charity, donation or endowment, for private exploitation. Each bit of natural resource expended must bring back a reciprocal consideration. The consideration may be in the nature of earning revenue or may be to "best subserve the common good". It may well be the amalgam of the two. There cannot be a dissipation of material resources free of cost or at a consideration lower than their actual worth. One set of citizens cannot prosper at the cost of another set of citizens, for that would not be fair or reasonable."*
>
> *Thus, the impugned transaction must be probed to determine whether it leads to an adequate consideration being received by the State.*

72. The learned Single Judge has dealt with the issue of categorization of the lands in the following manner:

Now, Chapter-VA was inserted by the Amendment Act of 1997 in the said Act for constitution and incorporation of Tariff authority for major ports. Prior thereto, the scale of rates and statement of conditions for use of the properties belonging to the Board were being determined by the Board itself, with the prior sanction of the Central Government as required under Section 52 of the said Act. After the Amendment Act 15 of 1997 the Tariff authority has been constituted under Section 47A of the said Act. The said authority comprises of the members to be appointed by the Central Government i.e. the Chairman from amongst persons, who is or who has been a Secretary to the Government of India, a member from amongst economists having experience of not less than fifteen years in the field of transport or foreign trade, from amongst persons having experience of not less than fifteen years in the field of finance. Section 49 empowers the TAMP to frame a scale of rates of payment of which, and a statement of conditions under which, any property belonging to, or in the possession or occupation of, the Board or any place within the limits of the port or the port approaches may be used for the purposes specified thereunder. One of the purposes mentioned therein is leasing of land or sheds by owners of goods imported or intended for export or by steamer agents, and any other use of any land, building, works, vessels or appliances belonging to or provided by the Board. Sub-section (2) of Section 49 provides that different

scales and conditions may be framed for different classes of goods and vessels. It is pertinent to note that Section 111 of the said Act mandates that the authority and every Board shall in discharge of itsfunctions under the Act be bound by such directions on the question of policy as the State Government may give in writing from time to time.

39. At this juncture, again reference of the Policies of 2010 and 2014 issued by the Government of India in exercise of the powers conferred under Section 111 of the said Act deserves to be made. Clause-5 of 2010 Policy and Clause-8 of 2014 Policy inter alia provided that every major port shall have a land use plan covering the entire land owned and/or managed by the Port. Such plans have to be approved by the Board and a copy thereof has to be forwarded to the Government. Thus, the combined reading of the provisions contained in Section 49 of the Act and the said Clauses of the land policies, it emerges that use of the land and the purposes for which the land of the port would be used are the material considerations for the purposes of fixing scale of rates. It may be further noted that the market value of the land and the scale of rates to be recommended by the Port Trust to the TAMP have to be in consonance with the relevant directions given by the Central Government in the respective land policies. Clause 6.3(1)(e) of the Policy of 2010 provided that SoR should vary in accordance with the end use as reflected in the land use plan.

Subclause (f) of the said Clause further provided that insofar as fixing of SoR for port land is concerned, the TAMP shall have the jurisdiction for any land both within the customs bound area and outside it as long as the land is used exclusively for Port related activity. The SoR for all the land of Major Ports will be fixed by TAMP.

40. Thus, it is absolutely clear that the SoR could vary in accordance with the purpose of land use and that the same has to be in accordance with the end use as reflected in the land use plan. Ergo, the Court does not find any substance in the submissions made by the learned Advocates for the petitioners that the KPT had no authority to categorize the lands while proposing scale of rates to the TAMP and the TAMP also could not have approved such categorization made on the basis of use of land or the purpose for which the lands were to be used. As such, the petitioner IMC Limited in SCA No.2535 of 2017 has sated that the TAMP having directed the KPT to classify the land taking into account the distance from the creek and the purpose for which the land was allotted, the lands owned by the KPT were classified into five categories. It may further be noted that at the relevant time, no objections were raised by any of the petitioners against such classification/ categorization of the lands by the KPT. Thereafter, while making the proposal vide the letter dated 19.4.2010 to the TAMP, the KPT had proposed the rates, on the basis of the report of the Committee

specially constituted for fixing the market value of the land and schedule of rates, by categorizing the lands into 'A' to 'G' categories. On the specific query raised by the TAMP, as transpiring from the order dated 25.3.2011 for proposing the lease rates under the twelve categories in place of six categories approved by the Government of India in July 1994, the KPT had answered to the effect that "the categories approved by the Government in 1994 were very broad ones covering large areas which did not reflect the correct land value of the lands even within those categories. In order to have very realistic and specific rates for different locations, depending upon their approachability, accessibility, distance from the highway/roads, the categories approved by the Government in 1994 have been further divided into sub-categories." The TAMP in the impugned order dated 25.3.2011 after elaborately discussing the procedure adopted by the KPT before making the proposal, had accepted the said categorization for the purpose of framing the scale of rates. Pertinently, the said categorization proposed by the KPT and accepted by the TAMP in the 2011 order was not challenged by any of the petitioners till these petitions were filed in the years 2014-15 onwards.

41. Similar proposal was made by the KPT vide letter dated 23.4.2014 in the light of the policy of 2014. The KPT had submitted the said proposal for the valuation of land for the various categories of Kandla lands, i.e.

A to G categories considered by the Land Valuation Committee. In the said proposal, the KPT had further categorized the Category-G into subcategories G-1 and G-2, in respect of which the TAMP had raised queries and the KPT had responded to the said queries. In this regard, the TAMP in its impugned order dated 13.11.2014 has observed in Paragraph 11(viii)(c) as under:-

"11.(vii)(c)"

xxx With reference to the objection raised by users about new sub categorization G1 and G2 under category G, proposed in the current proposal as against a single category G in the land Order, the KPT has sought to clarify that the rates are to be fixed considering purpose also. So, all lessees, who have been allotted the land for "Liquid Tanks" have been categorized under G1 & G2 categories irrespective of distance. The KPT has reported that C1 category has now been shifted as G2 from 1.1.2014 as per the valuation report submitted by the approved valuer appointed for valuation of Kandla Land rates for tanks terminals This categorization has also been recommended by the LVC and has also been approved by the KPT Board."

42. The only contention raised by the learned Advocates for the petitioners in this regard was that though the land policy of 2010 specifically pertained to

the direction to fix the SoR in accordance with the purpose of land use, later Policy of 2014 omitted the said direction in Clause 13 thereof.

43. Though, prima facie some substance may be found in the said submission made by the learned Advocates for the petitioners, on close reading of 2014 Policy, it transpires that the said policy of 2014 has not adopted the same language as used in 2010 Policy, but has reiterated the principle by enumerating the factors to be taken into consideration for valuation of the Port Land. The Port Board was required to consider the land use plan covering all the lands owned and/or managed by the Port while forwarding the proposal for revision of lease rents as recommended by the Land Allotment Committee. As per Clause 13 of the said Policy of 2014, the Land Allotment Committee had to take into account the highest of the factors mentioned in the said clause to determine the latest market value of the port land, and the Committee could also consider any other relevant factor as may be identified by the Port. The Port Trust was required to make the proposal as outlined in the said Clause-13(a) to the TAMP for fixing the latest SoR of the Land. As stated earlier, the TAMP has to frame scale of rates under Section 49 of the said Act, considering the use of the land and the purposes specified in the said Section. Thus, considering the earlier classification/ categorization of the lands, the further classification of category-G has been made considering the use of the

land, more particularly of the land allotted for Liquid Tankers. Hence, it could not be said that such further categorization was not in consonance with the Land Policy or with the provisions contained in the Act.

73. The KPT had put 11 plots to auction in the year 2011 which were to be put for use as a liquid storage tanks. The KPT had received as many as 11 bids from various parties and the highest bid received was at Rs.14216. Since the bid was received in the year 2011, the same was escalated at 2% per annum as per the land policy to arrive at the land valuation as on 1.1.2014 which was Rs.15086. This rate has been taken as the relevant factor by the TAMP for framing the SoR in its order of 2014. Our attention has also been drawn to various bids placed in respect of the lands which were earmarked for liquid storage use as per the land use plan at Kandla, which has been pleaded by the KPT in its reply at page 457 in the SCA 2535 of 2017. We notice that as many as 20 plots have been auctioned in the same period where the bids received by the KPT from various parties including the IMC also, which range from Rs.920 per square meter to Rs.3233.

74. The learned Single Judge has considered the 2014 Order of the TAMP and has held as under :

35. So far as TAMP order of 2014 is concerned, the KPT vide its letter dated 26.6.2014 had made a comprehensive proposal to the TAMP for the revision of rates for Kandla Land for the categories A to F and G for approval. As transpiring from the said order of

2014, it was stated in the said proposal inter alia that the Land Policy Guidelines of 2014 so issued by the Ministry of Shipping have been adopted by the KPT on 23.1.2014. As mandated, the Land Valuation Committee was appointed for undertaking the revision of rate structure of Kandla Land from January 2014 to December 2018. The said Committee was headed by the Deputy Chairman as the Chairman of the Committee, the Secretary, the Chief Engineer and Traffic Manager amongst other members. As per the directions of the said Committee a Government approved Valuer was engaged by the KPT in February 2014, the report of approved Valuer was submitted to the Committee. The Committee after considering the said report had recommended valuation of the land as per the categories A to G mentioned therein. Based on the recommendation of the Land Valuer Committee, the Board of Trustees of the KPT had approved the proposal for revision in the lease rentals of KPT lands, fixing reserve price for market value of the land w.e.f. 1.1.2014 for categories A to G in its meeting held on 10.6.2014, and the KPT accordingly had sought approval of TAMP vide its letter dated 26.6.2014.

36. As stated by the TAMP in its order, the TAMP in accordance with the consultative process prescribed, had circulated the proposal of the KPT to the concerned users/user associations seeking their comments. The comments received were forwarded to the KPT for remarks. Based on the preliminary

scrutiny of the proposal, the TAMP had also requested the KPT to furnish additional information/clarifications on few points, which were furnished by the KPT. The said queries and remarks of KPT have been made part of the order by the TAMP. It also appears that a joint hearing was held on 4.8.2014 at the KPT premises where the KPT had made power-point presentation of its proposal and thereafter the KPT of the concerned user had made their submissions. The KPT thereafter was requested to furnish comments on the written statements made by BPCL, HPCL, GCCI, IFFCO, and KPKS. The KPT also subsequently requested to furnish comments received from Kandla Liquid Tank Terminal Association vide its letter dated 3.9.2014, which was responded by the KPT vide its letter dated 12.9.2014. The TAMP considering the totality of information/material collected during the hearing of the case, passed a detailed order on 4.12.2014 approving the schedule of market value of the land and Reserve price in terms of the lease rents for lease of Kandla lands belonging to KPT as per the Annexure-II annexed to the said order. The TAMP approved the schedule of rate structure making it effective from 1.1.2014 to 31.12.2018.

75. Considering the totality of the facts, we are not inclined to interfere with the tariffs fixed by the TAMP in its order dated 13.11.2014 and the categorization of the lands which are meant for the use of liquid storage cargo.

Renewal of Leases:

76. In some of the petitions the petitioners have sought the renewal of the leases citing the clauses of renewal in their respective leases. We have already held that in cases of transfers without the prior permissions of the KPT, the said transferee companies cannot have a right over the lands and cannot invoke the clauses of lease to claim the rights thereunder.

77. In the case of JRE i.e. sca 2538 of 2017, it is the specific case pleaded by KPT which is also found from the communications dated 08.10.2013 and 13.09.2016 that the lands allotted were required by KPT for the ports use. Clause 6.2.2.2 a) of the land policy categorically provides that before considering the renewal of lease, the port should first verify if the land is required for its own use. If it is so required, the port shall take possession of the land on expiry of the lease. In light of the aforesaid provision in the land policy we are not inclined to direct KPT to consider the renewal of the lease for the said lands.

78. In the case of KESAR, we have already held that it has not acquired any rights as a lessee in respect pursuant to the transfer under the scheme of demerger and thus it cannot seek renewal of the lease. In case of the lands which are licensed, it cannot claim any right for extension of the license which has already expired in the year 2008.

79. The learned Single Judge, while considering the issue of renewal, has made the following directions:

73. Applying the afore-stated position of law to the facts of the present cases, let us examine the individual case of the petitioners who have claimed renewal of their leases. In case of M/s.IMC in SCA No.2538 of 2017, it appears that the petitioner had requested the KPT to renew the lease deed in accordance with the Clause-8 of the lease deed by its letter dated 15.5.2008, however, the said request appears to have been declined by the KPT vide the letter dated 8th October, 2013 on the ground that the land was required for KPT's own use. Thereafter the KPT had stated vide the letter dated 16.3.2015 that the request of the petitioner to renew the lease deed would be considered only if the outstanding dues were cleared. It appears that thereafter, the KPT had issued a notice on 28.8.2018 under Section 4(1) and (2) of the Public Premises (Eviction of unauthorized occupants) Act, stating that on the expiry of the lease, it was decided by the KPT not to renew the lease further as the plot was required for the purpose of Port's activities. The petitioner, apprehending eviction therefore, had filed Civil Application No.1 of 2018 in SCA No.2538 of 2017 seeking direction against the KPT to maintain status quo during the pendency of the petition. Learned Sr.Advocate Mr.Soparkar for the petitioner IMC, therefore, submitted that since the petitioner had applied for renewal of the lease deed in accordance with Clause-8 of the lease deed executed in its favour before the expiry of 30 years, the petitioner was entitled to get the said lease renewed. It is difficult to accept the said submission of Mr.Soparkar. The lease agreement does not provide for any automatic renewal of lease. Apart from the fact that the petitioner M/s.IMC has

been treated as the unauthorized occupant on the expiry of lease period by the KPT and the action under the Public Premises Act has been initiated against the petitioner, the KPT has already replied that the said land was required by the KPT for its own purpose. As per the Land Policy 2010 the case of the petitioner to renew could have been considered only if the land was not required by the KPT and the other conditions mentioned therein were satisfied. As per the settled legal position stated herein above, on the expiry of the term of lease in respect of the public premises, the lessee becomes an unauthorized occupant liable to be evicted under the Public Premises Act. Since the KPT has already initiated the proceedings under the said Act, no such direction to renew the lease could be issued.

74. So far as the petitioner IOC in SCA No.13409 of 2014 is concerned, the prayer is made to renew the lease deed without insisting for the payment of impugned demands. In case of IOC, it may be noted that the IOC was allotted different parcels of lands at different times be executing either lease deed or letter of allotment. Hence, the request for renewal of lease deed has to be decided by the KPT considering the Land Policy as applicable to the respective leases of the petitioner. It may also be noted that the duration of the lease in respect of some of the plots has already expired, whereas the lease is still continuing and is expiring in the year 2020 and 2023 in respect of two plots. Hence, it will be open for the IOC to make necessary application for renewal of lease in respect of those two plots

whose lease period has not expired and it will be open for the KPT to decide the same in accordance with law, however, no direction to renew the lease in respect of the plots whose term has already expired, could be issued as prayed for.

75. In case of SCA No.10306 of 2015 filed by the petitioner Tankers' Association, there was no clause for renewal in the letter of allotment issued on 24.9.21982. The term of the lease has also expired in 2013. Hence, the petitioner who is unauthorized occupant after the expiry of lease period could not seek as a matter of right the direction to renew the lease.

76. In case of SCA No.16225 of 2013 filed by Laxmi Motors, it appears that the KPT had already initiated action under the Public Premises Act, treating it to be an unauthorized occupant on the expiry of lease period in 2013. The eviction order was also passed by the Estate Officer, against which the Appeal is pending. Hence, the question of renewal of lease does not arise.

77. In case of SCA No.2607 of 2012 and No.673 of 2014 filed by IFFCO, the lease period has already expired in respect of one parcel of land in 2001 and in respect of the other in 2008. The petitioner had applied for the renewal of lease, and the KPT had forwarded the same to the Government of India, however, the Government of India had

returned the recommendation for renewal of lease stating that if it was not possible to charge lease rent at the commercial rates, the possession of plots be taken away from the IFFCO. Though, it was sought to be submitted by the learned Advocate for the petitioner that renewal of lease being fresh lease, no approval of Union of India was required, the said submission can not be accepted, inasmuch as it would tantamount to circumventing the provisions contained in Section 34 of the said Act. The Government of India in the instant case having declined the request to renew the lease, if it was not possible to charge lease rent at the commercial rate, the KPT has not renewed the lease. Under the circumstances, no direction could be issued to the KPT to renew the lease of IFFCO as prayed for.

78. In case of SCA No.11497 of 2015, No.10892 of 2016, No.10891 of 2016 and No.10730 of 2016 filed by Kesar Terminals and Infra. Limited, it may be noted that as discussed earlier the original allottee had illegally transferred the plots in question in favour of the petitioner, after the expiry of the lease period. Hence, the eviction proceedings have already been initiated under the Public Premises Act, the petitioner being an unauthorized occupant and the said cases are pending before the Estate Officer. Under the circumstances, no direction could be issued to the KPT to renew the lease, as prayed for by the petitioner.

79. In case of SCA No.2905 of 2015 filed by the AVEAN International Pvt. Ltd., the lease period has expired in 2008.

Of course, the petitioner had requested to renew the lease and also given undertaking to pay the revised ground rent on the renewal of the lease, however, the KPT has not considered the said request for renewal on the ground that the KPT has taken uniform policy to resort to public auction for allotment of plots. It has been sought to be submitted by the learned Advocate for the petitioner that as per Clause 5.2.1.2 of 2004 Policy, the port was empowered to renew the lease in favour of existing lessee at terms to be approved by the Board without public auction/tender. However, the said submission can not be accepted. As per the said clause relied upon by the learned Advocate, if the option for renewal was not provided in the lease agreement, the port at its discretion could decide to grant a fresh lease in favour of the existing lessee at the terms to be approved by the Board without public auction/tender. In the instant case, there was no option in the lease deed for renewal, and as per the KPT's reply it was decided by way of policy to resort to public auction for allotment of plots. The discretionary decision of the KPT not to renew the lease being in consonance with the land policy of 2004 and later policies, no direction to renew the lease of the petitioner could be given as prayed for.

80. Having considered all the relevant aspects of the matter, we have ultimately reached to the conclusion that we should not interfere in both the sets of Appeals. We agree with the final decision taken by the learned Single Judge.

81. In view of the aforesaid, both the sets of Appeals as well as the writ-applications stand dismissed. Parties to bear their own costs. All the connected Civil Applications stand disposed of.

(J. B. PARDIWALA, J.)

(VAIBHAVI D. NANAVATI, J.)

82. After the judgment was pronounced, Mr.S.N.Soparkar, the learned senior counsel and all other learned senior counsel appearing in these matters made a fervent appeal to stay the operation of this judgment for a particular period of time.

83. We take notice of the fact that there is an interim order in operation since a long period of time. We stay the operation of our judgment and order for a period of six weeks.

(J. B. PARDIWALA, J.)

(VAIBHAVI D. NANAVATI, J.)

/MOINUDDIN