IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. OF 2022

[Against the Final Common Judgment and Order dated 06.05.2022 passed by the Hon'ble High Court of Gujarat at Ahmedabad in Letters Patent Appeal Nos. 1424/2019, 1425/2019, 1426/2019 and 1427/2019]

[WITH PRAYER FOR INTERIM RELIEF]

IN THE MATTER OF:-

IMC LIMITED (EARLIER KNOWN AS UNITED STORAGE AND TANK TERMINALS LTD.) & ANR. ETC. ETC. ...PETITIONERS

VERSUS

UNION OF INDIA & ORS. ...RESPONDENTS

PAPER BOOK

VOLUME I

(Pages A-U, 1-402)

(FOR INDEX PLEASE SEE INSIDE)

ADVOCATE FOR PETITIONERS MS. LIZ MATHEW

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PAPER BOOK

VOLUME II

(Pages 403-870)

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ADVOCATE FOR PETITIONERS MS. LIZ MATHEW

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S.L.P. (C) No. OF 2022

IN THE MATTER OF:-

IMC LIMITED (EARLIER KNOWN AS UNITED STORAGE AND TANK TERMINALS LTD.) & ANR. ETC. ETC. ...PETITIONERS

VERSUS

UNION OF INDIA & ORS. ...RESPONDENTS

OFFICE REPORT ON LIMITATION

1. The Petition is within time.
2. The Petition is barred by time and there is delay of days in filing the same against order dt. 06.05.2022 and petition for condonation of delay of days has been filed.
3. There is delay of days in re-filing the petition and petition for condonation of days delay in refilling has been filed.

Section Officer

New Delhi
20.05.2022

A1

PROFORMA FOR FIRST LISTING

SECTION - IX

Central Act : N.A

Section : N.A

Central Rule : N.A

Rule No(s) : N.A

State Act : N.A

Section : N.A

Rule No(s) : N.A

Impugned Interim Order : N.A

Impugned Final Order : 06.05.2022

High Court : High Court of Gujarat at Ahmedabad

Names of Judges : Honourable Mr. Justice J.B. Pardiwala and Honourable Ms. Justice Vaibhavi D. Nanavati

Tribunal/ Authority : N.A

1. Nature of Matter : Civil
2. (a) Petitioner/Appellant No.1: IMC Limited (Earlier known as United Storage and Tank Terminals Ltd.) and Anr. Etc Etc.
   (a) e-mail ID : N.A
   (b) Mobile No. N.A

3. (a) Respondent No. 1 : Union of India & Ors.
   (b) e-mail ID: N.A
   (c) Mobile/ Phone No. : N.A

4.
   (a) Main Category Classification : 18
   (b) Sub Classification : 1807
   (c)
5. Not to be listed before : N.A

6.
   (a) Similar Disposed of matter with citation, if any & case details : No disposed of matter.

(b) Similar Pending Matter with Case Details: No Similar matter is pending

7. **Criminal Matters:** No
   (a) Whether accused/convicted Surrendered: N.A
   (b) FIR No.: N.A, Date: N.A
   (c) Police Station : N.A
   (d) Sentence Awarded : N.A.
   (e) Sentence Undergone /Period of sentence undergone including period of Detention/Custody undergone: N.A.

8. **Land Acquisition Matters:**
   (a) Date of Section 4 notification : N.A
   (b) Date of Section 6 notification : N.A
   (c) Date of Section 17 notification : N.A
9. **Tax Matters** : State the tax effect : N.A

10. Special Category (first petitioner/appellant only)
    Senior citizen : N.A

    SC/ST : N/A

    Woman/Child: N.A

    Disabled: N.A

    Legal Aid Case : N.A

    In custody : Yes

11. Vehicle Number (in case of Motor Accident Claim matters): N.A

Date:20.05.2022 AOR for the Petitioner(s) / Appellant(s)

LIZ MATHEW

Registration No. 1623

lizmathew.law@gmail.com

SYNOPSIS

The instant Special Leave Petition raises important questions of law and of public importance as to the right of a Lessor (particularly one which is 'State' for the purposes of Art. 12 of the Constitution of India), to revise the terms of a lease while it is operational. A further question that arises is whether there are any limitations on the exercise of such a right, if a right to so revise is contained in the Lease Deed i.e., whether such a revision can be retrospective and/or such revision can be exorbitant and/or whether any such revision must be visited with reason and must be consistent with commercial realities and free from arbitrariness?

In the backdrop of the aforesaid queries and in light of the fact that the existing rent being paid by the Petitioner in respect of LPA No. 1426, 1427 and 1424 of 2019 has been arbitrarily revised in an exorbitant manner, from 2009 onward without any basis in law and/or fact, the Petitioners are constrained to file the present Special Leave Petition seeking leave to appeal against the Final Judgement and Order dated 06.05.2022 passed by a Division Bench of the Hon'ble High Court of Gujarat at Ahmedabad, *inter alia*, in Letters Patent Appeal Nos. 1424, 1425, 1426 and 1427 of 2019 ("**Impugned Order**"). By way of the Impugned Order, the Hon'ble Division Bench has affirmed the Order dated 10.05.2019 passed by the Learned Single Judge in Special Civil Applications No. 2535, 2536, 2537 and 2538 of 2017, which in turn upheld the Order dated March 25, 2011 notified *vide* Notification G. No. 106 issued by Respondent No. 2 on May 11, 2011 (the **"2011 TAMP**

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Order") and Order dated November 13, 2014 notified vide Notification G. No. 350 issued by Respondent No. 2 on December 4, 2014 (the **"2014 TAMP Order"**) whereby the Petitioners' lands were arbitrarily re-categorized from C-1/E category to G-1 category (which was newly created only for lands occupied by tenants in the same line of business as the Petitioners), leading to a sharp, exorbitant and arbitrary increase of lease rentals, including with retrospective effect.

The Petitioners [IMC Ltd. ("**IMC**") and JRE Tank Terminals Pvt Limited ("**JRE**")] are engaged in the business of port based liquid bulk terminal operations and providing storage tank farm and terminalling services. IMC and JRE have considerable expertise in handling and storage of hazardous and non-hazardous liquids including petroleum products, petrochemicals, liquefied gases and vegetable oils, which has enabled it to serve a wide range of customers including public sector companies, government companies and multinational companies.

Respondent No. 1 is the Union of India, represented by the Secretary, Ministry of Shipping. Respondent No. 2 is an authority constituted under the Major Port Trust Act, 1963 ("**the MPT Act**") and exercising powers and discharging functions, *inter alia*, with respect to the fixation of tariff for major ports in India, including Respondent No. 3. Respondent No. 3 is a Major Port in whose premises IMC and JRE are operating a common user liquid bulk tank farm(s) as more specifically set out hereinafter.

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From 1978 onwards, IMC and JRE had leased four different plots of land from Respondent No. 3, as under:

(i) Land admeasuring 48,552 sq. meters allotted to IMC [as it was then known, United Storage and Tank Terminals Ltd. ("**USTTL**")] under a letter of allotment dated October 27, 1995, valid until October 26, 2025 ("**First Lease**"). This land is the subject-matter of LPA 1426 of 2019;

(ii) Land admeasuring 19,479 sq. meters allotted to IMC (then known as USTTL) under a lease deed dated August 20, 2002 for a period of 30 years starting from March 7, 1986 till March 6, 2016 ("**Second Lease**"). This land is the subject-matter of LPA 1427 of 2019;

(iii) Land admeasuring 13,658 sq. meters allotted to JRE (then known as M/S JR Enterprises) under a lease deed dated August 21, 2002 for a period from March 5, 1986 to March 4, 2016 ("**Third Lease**"). This land is the subject-matter of LPA 1424 of 2019; and

(iv) Land admeasuring 9,980 sq. meters allotted to IMC under a lease deed dated September 17, 1984 from June 23, 1978 to June 22, 2008 ("**Fourth Lease**"). This land is the subject-matter of LPA 1424 of 2019.

Pursuant to two notifications issued by Respondent No. 2 being the 2011 TAMP Order and second, the 2014 TAMP Order, the aforesaid lands were arbitrarily re-categorized from C-1/E category to G-1 category, leading to a sharp, exorbitant and arbitrary increase of lease rentals, including with retrospective effect, which *inter alia* forms the basis of the IMC and JRE's grievance herein, as illustrated below:

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	First Lease	Second Lease	Third Lease	Fourth Lease
Lease payable at the time of the relevant lease deed	Rs.11/- per sq. mtr. per annum	Rs. 3.60 per sq. meter per annum and subsequently at Rs. 11 per sq. meter with effect from July 1, 1997	Rs. 3.60 per sq. meter per annum and subsequently at Rs. 11 per sq. meter with effect from July 1, 1997	yearly rent of Rs. 28,742/-, at Rs. 2.88 per sq. meters per annum
Lease rent payable under the 2011 TAMP Order w.e.f. January 1, 2009	Rs. 80.40 per sq. m. with annual increase by 2%.	Rs. 80.40 per sq. m. with annual increase by 2%.	Rs. 80.40 per sq. m. with annual increase by 2%.	Rs. 180.60 per sq. m. with annual increase by 2%.
Lease rent payable under	Rs. 905.17 per sq. m. with	Rs. 905.17 per sq. m. with annual	Rs. 905.17 per sq. m. with annual	Rs. 905.17 per sq. m. with

the 2014 TAMP Order w.e.f. 2014-15	annual increase by 2%.	increase by 2%.	increase by 2%.	annual increase by 2%.

IMC and JRE's lands along with all other lands were earlier categorized as per geographical location. However, pursuant to the 2011 TAMP Order and the 2014 TAMP Order, only lands occupied by tenants in the same line of business as the Petitioners came to be arbitrarily re-categorised on the basis of use, while all others continued to be categorized as per geographical location.

It appears that the sole purpose of re-categorising the Petitioners' lands was to, *inter alia*, levy exorbitant lease rentals at INR 905.17 per sq. meters, while the Petitioners' neighbouring lessees' rates were revised to INR 108 per sq. m. (C-1) or INR 350.20 per sq. m. (E), on the basis of geographical location.

Notably, there is no basis for such recategorization as will be explained hereunder. It is relevant to mention that KPT allots lands on 3 models i.e. (i) a premium only model (where the rent is Re. 1); (ii) a rent only model (where there is no premium paid upfront); and (iii) a hybrid model (where there is

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a premium paid upfront equivalent to several years' rent coupled with a nominal annual lease rental).

Insofar as the lands which the subject-matter of LPA Nos. 1426, 1427 and 1424 of 2019 are concerned, they were allotted on a hybrid model. As such, the premium constituted a significant portion of the consideration, being the aggregate of several years' rent i.e. 7.5 years' rent in LPA 1426, 5.9 years' rent for LPA 1427 and 3.95 years' rent for LPA 1424. KPT has therefore already enjoyed significant consideration in the form of upfront premium from IMC and JRE (except in the case of the Fourth Lease, which is subject matter of KPA 1425 of 2019), which is worth several years' rent. This payment formed the bedrock of the Petitioners' contracts with KPT as the rent was fixed accordingly, keeping in mind this significant expense.

However, by increasing the rent pursuant to the 2014 TAMP Order to INR 905.17 per sq. meter, this hybrid model of payment (premium-cum-lease) has essentially been undone. This model is inherently different from a lease rent only model (where no/ nominal premium is payable) or premium only model (where no/nominal rent is payable). The rate of INR 905.17 per sq. metre per annum was derived on the basis of the 2011 tender by taking 6% of premium for calculating yearly rentals, which was otherwise on a premium only model (which model has only a token rent of INR 1 per annum) and is not comparable with the Petitioners' model which is a hybrid model or premium plus nominal lease rent.

Thus after enjoying the Petitioners' premium for decades, DPA is now seeking to effectively restructure the very basis of the transaction by requiring the Petitioners to pay exorbitant rents akin to allottees who have paid no premium.

The Petitioners have entered into long term contracts with various customers, on the understanding that a certain position will continue to remain in place, including that Respondent No. 3 will abide by its contractual promises and conduct itself in a manner expected of a State instrumentality. However, the Petitioners are faced with exorbitant increase in lease rentals, both prospectively and retrospectively, along with disregard for the fundamental premise on which they entered into the lease deeds with KPT. As result, the Petitioners are now saddled with massive liability and at risk of losing their customers and livelihood.

1. In this backdrop, in addition to the questions of law set out hereinabove, the present Petition also raises the following pertinent and novel issues of public importance for the consideration of this Hon'ble Court:

   1.1 Whether the re-classification of the aforesaid lands into Category G-1 by Respondent No. 3, on the basis that the said lands were put to use for liquid storage tanks by the lessees of such lands, while retaining the classification of the remaining lands on the basis of geographical location amounts to arbitrariness and therefore is a violation of Article 14 of the Constitution?

   1.2 Whether the re-classification of the aforesaid lands into Category G-1 by Respondent No. 3, on the basis that the said lands were put to use for liquid storage tanks by the

lessees of such lands, while retaining the classification of the remaining lands on the basis of geographical location, despite all lands being situated in the vicinity of each other, fails the test of intelligible differentia and is therefore violative of Article 14 of the Constitution?

1.3 Whether the exponential increase of the Petitioners' rent to 1040% from INR 87.03 per sq. mtr., to INR 905.17 per sq. mtr., is not unreasonable, when the rent of other users within the premises of Respondent No. 3 has only increased between 25% to 292%?

1.4 Whether the Hon'ble High Court was correct in holding that 'use of land' continues to be an important factor in determining the market value under the 2014 Land Policy Guidelines, when in fact these 2014 Guidelines specifically omit clause requiring that Scale of Rates **("SOR")** should vary in accordance with the purpose of land use and that the committee should recommend such variation (on the basis of the end use reflected in the Land Use Plan) to the competent authority, which was present in the 2011 Land Policy Guidelines?

1.5 Whether TAMP was permitted to fix SOR on the basis of highest bid 'received' when 2014 Land Policy Guidelines require that the highest 'accepted' tender-cum-auction rate is to be considered for fixing SOR?

1.6 Whether the Hon'ble High Court was correct in holding that the 2011 TAMP Order fixing rent from January 1, 2009, onwards did not amount to fixing rent retrospectively, while simultaneously upholding the finding of the Ld. Single Judge to the effect that the

fixation of lease rent for the period prior to January 1, 2009 under the same TAMP Order amounts to fixing rent retrospectively?

1.7 Whether the Hon'ble High Court erred in finding that the Petitioners are not 'persons aggrieved' and had no locus to approach the Hon'ble High Court in its writ jurisdiction because they are transferees of the original lessees and are allegedly not recognized as lessees by the Respondent No. 3, despite being in use, possession and occupation of the demised lands and despite paying rent to Respondent No. 3?

LIST OF DATES AND EVENTS

DATE	PARTICULARS
17.09.1984	The Respondent No. 3 entered into a Lease Deed with the IMC and thereby demised upon IMC land admeasuring 9,980 sq. meters. As per the terms of the Letter of Allotment: (a) The term of the lease was for a duration of 30 years from June 23, 1978 to June 22, 2008. (b) The yearly rent for the demised premises was fixed at Rs. 28,742/-, calculated at Rs. 2.88 per sq. meter per annum. (c) Clause 7 of the Lease Deed states that Respondent No. 3 can revise the ground rent, as fixed under the Lease Deed, every 10 years, however, not exceeding double

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the original ground rent, and after 20 years, not exceeding thrice the ground rent;

(d) Clause 8 of the Lease Deed states that the Petitioner shall be granted at his/ her option a new lease of the demised premises by way of renewal for a further period of 30 years to commence from the date of expiry of the Lease Deed.

A true copy of the letter of allotment dated 17.09.1984 is annexed herewith and marked as **Annexure P/1 [Pages** 189 - 204**]**.

27.10.1995 Respondent No. 3 issued a Letter of Allotment in favour of USTTL/IMC and thereby demised upon USTTL/IMC land admeasuring 48,552 sq. meters. As per the terms of the Letter of Allotment:

(a) Clause (a) thereof provided that the duration of the lease was 30 years from October 25, 1995 to October 26, 2025.

(b) Clause (c) thereof provided that the Lease Rent was fixed at Rs. 11/- per sq. meter per annum. The Lessee was liable to pay lease rent at schedule rate, if fixed higher, at any point in time.

(c) Clause (d) thereof provides that the lease rent shall bear an escalation @ 10% per annum (compoundable).

(d) Clause (e) thereof provides that Respondent No. 3 will have an option to refix the lease rent every 5 years.

(e) Clause (f) thereof provides that the allottee shall pay a lumpsum amount of Rs. 40 lakhs provisionally or the average premium per sq. mtr. earned by Respondent No. 3 by allotment of 11 plots for construction of storage tanks of liquid cargo on the land adjacent to the LPG project of IOC, whichever is higher, as premium.

A true copy of the letter of allotment dated 27.10.1995 is annexed herewith and marked as **Annexure P/2 [Pages 205 - 223]**.

20.08.2002 Respondent No. 3 entered into a Lease Deed with USTTL/ IMC and thereby demised upon it land admeasuring 19,479 sq. meters. As per the terms of the Lease Deed:

(a) The term of the lease was for a duration of 30 years from March 7, 1986 to March 6, 2016.

(b) The Lessee paid a premium of Rs. 4,05,000/-.

(c) The Lease Rent was fixed at Rs. 3.60 per sq. meter per annum and subsequently at Rs. 11 per sq. meter with effect from July 1, 1997.

(d) Clause 6 thereof provides that the Lessor may revise/ enhance/ refix the ground rent every 5 years or after the first day of January as per the market value at the time of such revision. Such market value is to be determined by the Chairman of Respondent No. 3. The clause also records that the lessee shall pay the

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ground rent at the revised rates from the date of revision;

(e) Clause 10 thereof provides that the lessee shall be liable to pay lease rent at a higher rate whenever the scheduled rates are revised upwards by the competent authority; and

(f) Clause 14 thereof provides that any sub-letting or assignment of the leased property without prior approval of the authority who sanction the lease shall make the lease liable for cancellation.

A true copy of the letter of allotment dated 20.08.2002 is annexed herewith and marked as **Annexure P/3 [Pages** 224 - 243**]**.

21.08.2002 Respondent No. 3 entered into a Lease Deed with M/s. JR Enterprises/ JRE and thereby demised upon it land admeasuring 13,658 sq. meters. As per the terms of the Lease Deed:

(a) The term of the lease was for a duration of 30 years from March 5, 1986 to March 4, 2016.

(b) The Lessee paid a premium of Rs. 1,94,400/-.

(c) The Lease Rent was fixed at Rs. 3.60 per sq. meter per annum and subsequently at Rs. 11 per sq. meter with effect from July 1, 1997.

(d) Clause 6 thereof provides that the Lessor may revise/ enhance/ refix the ground rent every 5 years or after the first day of January as per the market value at the time of such revision. Such market value is to be determined by the

Chairman of Respondent No. 3. The clause also records that the lessee shall pay the ground rent at the revised rates from the date of revision;

(e) Clause 10 thereof provides that the lessee shall be liable to pay lease rent at a higher rate whenever the scheduled rates are revised upwards by the competent authority; and

(f) Clause 14 thereof provides that any sub-letting or assignment of the leased property without prior approval of the authority who sanction the lease shall make the lease liable for cancellation.

A true copy of the letter of allotment dated 21.08.2002 is annexed herewith and marked as **Annexure P/4 [Pages** 244 - 263**]**.

16.11.2004	JR Enterprises was converted to JRE under Part IX of the Companies Act, 1956
12.03.2007	JRE wrote to Respondent No. 3 about the conversion
05.05.2008	IMC applied to Respondent No. 3 for renewal of the Fourth Lease
16.05.2008	Respondent No. 3 wrote to IMC with respect to the renewal, and requested IMC to submit an undertaking.
23.05.2008	IMC submitted the above undertaking.
07.07.2010	USTTL was amalgamated into IMC Ltd. following an order of the Hon'ble Calcutta High Court

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9.01.2010 IMC Ltd. notified Respondent No. 3 as to the amalgamation of USTTL with IMC Ltd.

13.01.2011 Respondent No. 1 issued the 2010 Land Policy Guidelines for Major Ports ("**2010 Land Policy**"). In this regard:

(i) Clause 6.3(1)(a) thereof provided for determination of market value, as under:

"...

(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"

(ii) Clause 6.3(1)(e) empowered Respondent No. 2 to fix the scale of rates depending on the use of the land.

A true copy of the 2010 Land Policy Guidelines for Major Ports dated 13.01.2011 is annexed herewith and marked as **Annexure P/5 [Pages** 264 - 277**]**.

18.04.2011 The Kandla Liquid Tank and Terminal Association ("**KLTTA**") objected to the 2011 TAMP Order

11.05.2011 The 2011 TAMP Order was notified as under:

(i) For lands categorised in Category C-1, rent was fixed at Rs. 80.40 per sq. meter, with an annual increase by 2% and for lands in Category – E, rent was fixed at Rs. 180.60

per sq. meter, with an annual increase by 2%

(ii) Retrospective lease rentals were sought to be levied, in the following slabs:

(a) July 1994 to December 31, 2003;

(b) January 1, 2004 to December 31, 2008;

(c) January 1, 2009 to December 31, 2013.

A true copy of the Order dated 25.03.2011 passed by the Tariff Authority for Major Ports in Case No. TAMP/21/2010-KPT notified on 11.05.2011 vide Notification bearing G. No. 106 is annexed herewith and marked as **Annexure P/6 [Pages** 278 - 304 **]**.

08.10.2013 Respondent No. 3 claimed it required the land of the Fourth Lease for its own use

January 2014 Respondent No. 1 issued the 2014 Land Policy Guidelines for Major Ports ("**2014 Land Policy**"). In this regard:

(i) Clause 11.3(c) provides for existing lessees to be given the chance to march the H-1 bid.

(ii) Clause 11.3(i) deals with the removal of structures within three months from the tender-cum-auction, if the existing lessee if unsuccessful, after which the existing lessee is liable to pay compensation at three times the annual lease rent.

(iii) Clause 11.3(j) states that no such liability will arise if delay in renewal is attributable to the port.

(iv) Clause 13 provides the factors to be borne in mind while fixing scale of rates. In a departure from the 2010 Land Policy, use of land is no longer a criterion.

A true copy of the 2014 Land Policy Guidelines for Major Ports dated January 2014 as revised on 17th July 2015 is annexed herewith and marked as **Annexure P/7 [Pages** 305 - 324**]**.

22.07.2014 Gandhidham Chamber of Commerce and Industry ("**GCCI**") raised various objections to the proposal for the 2014 TAMP Order.

04.12.2014 The 2014 TAMP Order was notified as under:

(i) The Petitioners' lands were arbitrarily classified in Category G-1 (which was based on use), while all other categories (including category C-1, in which the Petitioners' lands were earlier classified) continued to classify lands based on geographical location. The classification on the basis of use was done despite the same not being within the contemplation of the 2014 Land Policy. Only bulk liquid storage operators' lands were classified on the basis of use.

(ii) Rent for G-1 lands was increased to Rs. 905.17 per sq. meter (from Rs. 85.32 per sq. meter demanded for the year 2012-13). At

	the same time, rent for C-1 lands (immediately in the vicinity of / adjacent to G-1 lands), was fixed at INR 108 per sq. meter.
	A true copy of the Order dated 13.11.2014 passed by the Tariff Authority for Major Ports in Case No. TAMP/24/2014-KPT notified on 04.12.2014 vide Notification bearing G. No. 350 is annexed herewith and marked as **Annexure P/8 [Pages** 325 - 400**]**.
16.03.2015	Respondent No. 3 claimed that IMC's renewal for the Fourth Lease would be considered if dues were cleared.
13/26.09. 2016	Respondent No. 3 claimed that IMC's renewal request for the Fourth Lease would not be considered as the lands were required for Respondent No. 3's use.
16.01.2017	SCA 2535/2017, SCA 2536/2017, SCA 2537/2017 and SCA 2538/2017 were filed before the Hon'ble High Court of Gujarat *inter alia* impugning the 2011 TAMP Order and the 2014 TAMP Order and the consequent demand notices.
08.04.2019	Notification was issued by Respondent No. 3 containing a reference to the fact that the issues related to exorbitant increase in lease rentals and the categorisation of lands was studied by a committee deputed by the Indian Ports Association and that a final report was awaited. Further, it was also brought to the notice of the Ministry of

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Shipping that the classification on the port lands and the fixation of SOR thereof is not uniform within and across major ports leadings to complications and disputes. A true copy of the notification dated 08.04.2019 is annexed herewith and marked as **Annexure P/9 [Pages** 401 - 402 **]**.

10.05.2019 The Ld. Single Judge of the Hon'ble Gujarat High Court partly dismissed SCA Nos. 2535 – 2538 of 2017, and affirmed *inter-alia* (i) the retrospective increases made from 2009 onwards, (ii) the re-categorization of the Petitioners' lands, (iii) the exorbitant and arbitrary increase of lease rentals and (iv) the lack of locus of IMC and JRE in the First Lease, Second Lease and Third Lease, on account of the expiry of the leases.

A true copy of the common order dated 10.05.2019 passed by the Hon'ble High Court of Gujarat at Ahmadabad in SCA Nos. 2535 – 2538 of 2017 is annexed herewith and marked as **Annexure P/10 [Pages** 403 - 675**]**.

10.07.2019 Aggrieved by the Order of the Ld. Single Judge, the Petitioners filed LPAs No. 1424 to 1427 of 2019 before the Hon'ble High Court of Gujarat. A true copy of LPA No. 1426 of 2019 in SPA No. 2535/2017 filed by the Petitioners in the Hon'ble High Court of Gujarat at Ahmadabad on 10.07.2019 is annexed herewith and marked as **Annexure P/11 [Pages** 676 - 738**]**. Petitioners crave leave of this Hon'ble Court to produce other

	LPAs if required by the Hon'ble Court at the time of hearing.
December 2021	Parties filed their written submissions in LPA Nos. 1426 of 2019 and connected matters. A true copy of the written submissions dated 21.12.2021 filed on behalf of the Petitioners before the High Court of Gujarat at Ahmadabad in LPA No. 1426/2019 in SCA No. 2535/2017 with connected matters is annexed herewith and marked as **Annexure P/12 [Pages** 739 - 849**]**. A true copy of the written submissions dated Nil filed on behalf of the Respondent Pandit Deendayal Port Authority before the High Court of Gujarat at Ahmadabad in LPA No. 1426/2019 in SCA No. 2535/2017 with connected matters is annexed herewith and marked as **Annexure P/13 [Pages** 850 - 868**]**.
06.05.2022	The Division Bench of the Hon'ble High Court of Gujarat at Ahmedabad passed the Impugned Judgment upholding the Order dated 10.05.2019 passed by the Ld. Single Judge in SCA 2535/2017, SCA 2536/2017, SCA 2537/2017 and SCA 2538/2017, and connected matters, and thereby disposed of LPAs No. 1424 to 1427 of 2019.
06.05.2022	By a separate order, the Division Bench of the Hon'ble High Court of Gujarat at Ahmedabad stayed the tender floated by KPT with respect to plots in question in LPA 1424 and 1427 of 2019. It was observed that that in view of the stay of the judgment dated 06.05.2022 in the main

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proceedings, KPT may not proceed further with respect to the tenders '*atleast for a period six (06) weeks*'. A true copy of the said order dated 06.05.2022 passed by the Hon'ble High Court of Gujarat at Ahmedabad in Civil Application (For Orders) No. 1 of 2022 and connected matters is annexed herewith and marked as **Annexure P/14 [Pages** 869 – 870**]**.

20.05.2022 Hence the present Petition.

PAGES : 134 CHARGE :758

O/11387/2022 Read By :
Prepared By : BHUMIKA HEMANT
Applied on : 07/05/2022 Examined By :
Prepared on : 11/05/2022
Notified on : 12/5/22
Delivered on : 16.5.23

HIGH COURT OF GUJARAT * AHMEDABAD * CERTIFIED COPY

Dy.S.O. Section Officer
Decree Department Decree Department

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
LETTERS PATENT APPEAL No 1425 of 2019
In SPECIAL CIVIL APPLICATION NO. 2538 of 2017

1 IMC LIMITED
NEELADRI,3RD FLOOR, NO 9, CENOTAPH ROAD,
ALWARPET,CHENNAI, TAMILNADU 60018

2 ATLURI MALLESH RAO
MANAGING DIRECTOR AND SHAREHOLDER OF -IMC LIMITED,
NEELADRI,3RD FLOOR, NO 9, CENOTAPH ROAD,
ALWARPET,CHENNAI, TAMILNADU

THE HIGH COURT OF GUJARAT

Appellant(s)

VERSUS

1 UNION OF INDIA
THRU SECRETARY, MINISTRY OF SHIPPINGNEW DELHI

2 TARIFF AUTHORITY OF INDIA FOR MAJOR PORTS
4TH FLOOR, BHANDAR BHAVAN, MUZARWAR PAKHADI
ROAD,MAZGAON, MUMBAI

2

3 BOARD OF TRUSTEES OF DEENDAYAL PORT TRUST
FORMERLY KNOWN AS KANDLA PORT TRUST
LAND SECTION, ADMINISTRATIVE OFFICE,POST BOX NO 50,
GANDHIDHAM(KUTCH)

Respondent(s)

HIGH COURT OF GUJARAT * AHMEDABAD * CERTIFIED COPY

Being LETTERS PATENT APPEAL No 1425 of 2019

Appearance on Record:
MR DHAVAL SHAH(2354) for the Appellant(s) No. 1 - 2
MR DHAVAL D VYAS(3225) for the Respondent(s) No. 3

COURT'S ORDER :

CORAM :
HONOURABLE MR. JUSTICE J.B.PARDIWALA and HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI
Date of Decision: 06/05/2022
(COPY OF CAV JUDGEMENT ATTACHED HEREWITH)

सत्यमेव जयते
THE HIGH COURT OF GUJARAT

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
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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
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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
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In
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With
R/LETTERS PATENT APPEAL NO. 1300 of 2019

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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

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

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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

IN THE SUPREME COURT OF INDIA

[ORDER XXI RULE 3 (1)(a)]

(CIVIL APPELLATE JURISDICTION)

SPECIAL LEAVE PETITION (CIVIL) NO._____ OF 2022

(WITH PRAYER FOR INTERIM RELIEF)

POSITION OF PARTIES

In LPA No. 1425 of 2019, LPA No. 1426 of 2019 and LPA No. 1427 of 2019	IN THE HON'BLE HIGH COURT	BEFORE THIS HON'BLE COURT
1. IMC Limited (formerly known as United Storage Tanks Terminals Ltd.) having its corporate office at Neeladri, 3rd Floor, No.9, Cenotaph Road, Alwarpet, Chennai – 600 018 Rep. by its Authorized Signatory Mr. M.R Lakshminarayanan	Appellant No. 1	Petitioner No. 1
2. Atluri Mallesh Rao, Managing Director and Shareholder of IMC Limited, having his office at "Neeladri", 3rd Floor, No.9	Appellant No. 2	Petitioner No. 2

Cenotaph Road, Alwarpet, Chennai – 600 018, Tamil Nadu, India.
Rep. by Mr. A. M Rao, Power of Attorney Holder.

VERSUS

1. Union of India, through the Secretary, Ministry of Shipping, Shipping and Waterways, Parivahan Bhavan, 1, Parliament Street, New Delhi. New Delhi – 110001	Respondent No. 1	Contesting Respondent No. 1
2. Tariff Authority of India for Major Ports, 4th Floor, Bhandar Bhavan, Muzawar Pakhadi Road, Mazgaon, Mumbai 400010 Rep. by its Secretary	Respondent No. 2	Contesting Respondent No. 2

3. Board of Trustees of Deendayal Port Trust (formerly knowns as Kandla Port Trust) a Major Port having its office at Land Section, Administrative Office, Post Box No. 50, Gandhidham (Kutch) 370201 Rep. by its Chairman	Respondent No. 3	Contesting Respondent No. 3

Parties are Common in all the matters

In LPA No. 1424 of 2019	IN THE HON'BLE HIGH COURT	BEFORE THIS HON'BLE COURT
1. JRE Tank Terminals Pvt Limited, having its office near IOC Foreshore Terminals, Opposite Shiva Railway Crossing, New Kandla – 370210, India Rep. by its Authorized Signatory Mr. M.R Lakshminarayanan	Appellant No. 1	Petitioner No. 1

2. Atluri Mallesh Rao, Managing Director and Shareholder of IMC Limited, having his office at "Neeladri", 3rd Floor, No.9 Cenotaph Road, Alwarpet, Chennai – 600 018, Tamil Nadu, India. Rep. by Mr. A. M Rao, Power of Attorney Holder.	Appellant No. 2	Petitioner No. 2

VERSUS

1. Union of India, through the Secretary, Ministry of Shipping, Shipping and Waterways, Parivahan Bhavan, 1, Parliament Street, New Delhi. New Delhi – 110001	Respondent No. 1	Contesting Respondent No. 1
2. Tariff Authority of India for Major Ports, 4th Floor, Bhandar Bhavan, Muzawar Pakhadi Road,	Respondent No. 2	Contesting Respondent No. 2

	Mazgaon, Mumbai 400010 Rep. by its Secretary		
3.	Board of Trustees of Deendayal Port Trust (formerly knowns as Kandla Port Trust) a Major Port having its office at Land Section, Administrative Office, Post Box No. 50, Gandhidham (Kutch) 370201 Rep. by its Chairman	Respondent No. 3	Contesting Respondent No. 3

TO
THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS COMPANION JUSTICES OF THE HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION ON BEHALF OF THE PETITIONERS ABOVE NAMED:

MOST RESPECTFULLY SHEWETH:

1. The present Special Leave Petition is being filed by the Petitioner against the final judgement and order dated 06.05.2022 passed by a Division Bench of the Hon'ble High Court of Gujarat at Ahmedabad, *inter alia*, in Letters Patent Appeal Nos. 1424, 1425, 1426 and 1427 of 2019 ("**Impugned Order**"), dismissing the aforesaid appeals filed by the Petitioners and upholding the Order dated 10.05.2019

passed by the Learned Single Judge of the Hon'ble High Court of Gujarat at Ahmedabad in Special Civil Application No. 2535, 2536, 2537 and 2538 of 2017.

2. **QUESTIONS OF LAW**

A. Whether the Respondent No. 3 ("**KPT/DPA**")**,** is 'State' for the purposes of Article 12 of the Constitution of India and is, consequently, required to act in a fair and non-arbitrary manner?

B. Whether KPT could have refixed the lease rent during the subsistence of the lease, to such an exorbitant amount so as to defeat the purpose of IMC and JRE having taken the lands on lease?

C. Whether there are any limitations on the exercise of such a right, if a right to so revise is contained in the Lease Deed and whether such a revision can be retrospective and/or whether any such revision must be visited with reason and must be consistent with commercial realities and free from arbitrariness?

D. Whether the re-classification of the aforesaid lands into Category G-1 by Respondent No. 3 on the basis that the said lands were put to use for liquid storage tanks by the lessees of such lands, while retaining the classification of the remaining lands put to use for varying purposes including dry bulk storage and godowns leased out by KPT on the basis of geographical location amounts to arbitrariness and therefore a violation of Article 14 of the Constitution?

E. Whether the re-classification of the aforesaid lands into Category G-1 by KPT, on the basis that the said lands were put to use for liquid storage tanks by the lessees of such lands, while retaining the classification of the remaining lands leased out by KPT (that are put to use for varying purposes including dry bulk storage and godowns) on the basis of geographical location, despite all the lands being in the vicinity of each other fails the test of intelligible differentia and is therefore violative of Article 14 of the Constitution?

F. Whether the exponential increase of the Petitioners' rent to 1040% from INR 87.03 per sq. mtr., to INR 905.17 per sq. mtr., was arbitrary and unreasonable, when the rent of other users within the premises of KPT only increased between 25% to 292%?

G. Whether KPT can be permitted to increase the lease rentals in disregard of the premium-cum-lease hybrid model on the basis of which the Petitioners entered into the lease deeds with KPT?

H. Whether the Hon'ble High Court was correct in holding that 'use of land' continues to be an important factor in determining the market value under the 2014 Land Policy Guidelines, when in fact the said Guidelines specifically omit the clause requiring that SOR should vary in accordance with the purpose of land use and that the committee should recommend such variation (on the basis of the end use reflected in the Land Use Plan) to the competent authority, which was present in the 2011 Land Policy Guidelines?

I. Whether TAMP was permitted to fix SOR on the basis of the highest bid 'received' when the 2014 Land Policy Guidelines require that SOR is to be fixed on the basis of the highest 'accepted' tender-cum-auction rate?

J. Whether the Hon'ble High Court was correct in holding that the 2011 TAMP Order fixing rent from January 1, 2009 onwards did not amount to fixing rent retrospectively, while simultaneously upholding the finding of the Ld. Single Judge that the fixation of lease rent for the period prior to January 1, 2009, under the same TAMP Order, amounts to fixing rent retrospectively?

K. Whether the Hon'ble High Court erred in finding that the Petitioners are not 'persons aggrieved' and had no locus to approach the Hon'ble High Court in its writ jurisdiction?

L. Whether the Petitioners, being transferees of the original lessees paying rent to KPT are entitled to be recognized as the lessees by KPT and, therefore, have locus to assail the illegal and arbitrary acts of Respondent No. 3?

3. **DECLARATION IN TERMS OF RULE 3 (2)**

The Petitioner states that the Petitioner has not filed any other Petition seeking leave to Appeal by them against the Impugned Order.

4. **DECLARATION IN TERMS OF RULE 5**

Annexures **P[1]** to **P[14]** produced along with the Special Leave Petition are true copies of the pleadings/documents. All the annexures formed part of the records of the case in the

Court below against whose order the Leave to Appeal is sought for in this Petition.

5. **GROUNDS:**

The Petitioners hereby seek Special Leave to Appeal on the following amongst other grounds which are set out hereunder without prejudice to one another, and may be read conjunctively and/or disjunctively, as the case may be:

5.1. **For that the Impugned Order suffers from non-application of mind.**

5.1.1 BECAUSE the Impugned Order demonstrates that the Hon'ble High Court has, by and large, mechanically affirmed the findings of the Ld. Single Judge, rather than independently examining the issues placed for their consideration and considering the Petitioners' arguments. The Hon'ble High Court has failed to give their independent reasoning while upholding the Ld. Single Judge's finding. This can also be gleaned from the fact that no reasoning (independent or otherwise) has been set out by the Hon'ble High Court while affirming the Ld. Single Judge's order – this can be seen by way of illustration, at paragraphs 16, 17, 72-75.

5.1.2 BECAUSE the Hon'ble High Court held that the Petitioners have not placed on record any material to show the method that ought to have been adopted to determine the value of the demised lands, and hence it cannot be held that the valuation is arbitrary and needs interference. The Petitioners have demonstrated how the valuation reports

are perverse, unreasonable and illogical. The burden of justifying valuation of public lands cannot fall at the door of the Petitioners who are private parties. The valuation assigned to the Petitioner's lands are not based on any acceptable principles. Not only that, the valuation of lands of the Petitioners were carried out with incorrect and misleading information. For instance, the lands were valued considering the development of land and infrastructure available on such lands. This is entirely contrary and *malafide* to say the least as the entire development and infrastructure in the Petitioners' lands were put up wholly by the Petitioners at its own cost and KPT did not provide any facilities / infrastructure except a marshy land when allotted for it to be valued on the basis of infrastructure advantage. No land other than that of the Petitioners were valued on the basis of infrastructure available on the land. Without having dealt with the arguments submitted by the Petitioners, the Hon'ble Court has merely observed that the Petitioners have attempted to needle-prick the valuation report and have not placed on record any alternate valuation report. The Petitioners' lands have been re-categorized as per the direction of KPT and a valuation has been fixed pursuant to such re-categorization and for this purpose the valuer had resorted to illegal and unethical basis viz. "*without reclamation with infrastructure*" though however, the infrastructure was wholly developed and maintained by the Petitioners and not by DPT.

5.1.3 BECAUSE the Hon'ble High Court has failed to consider whether KPT's claim for transfer fees at current rates is valid in view of Clause 16 of the Annexure to the Letter of Allotment in LPA 1426/2019 and Clause 2(xii) of the Lease Deed in LPA 1427/2019 which provide for payment of transfer fees at six times the lease rentals at the time of the transfer i.e. 2010. Thus, the fees are required to be payable (if at all) at six times the lease rentals at the time of the transfer i.e., 2010, and not under the rates under the 2011 TAMP Order or 2014 TAMP Order.

5.1.4 BECAUSE likewise the Hon'ble High Court has failed to consider whether the conversion in the case of JRE would entail payment of transfer fees, as it is settled law that a conversion under Part IX of the Companies Act, 1956 is not a transfer at all.

5.1.5 BECAUSE, the Hon'ble High Court has erred in holding that existing contracts with agreed-upon rates are liable to be overridden by statutory prescriptions of the SOR.

5.1.6 BECAUSE even assuming that the fixation of rents was not carried out retrospectively, no regard has been given to the admitted facts that due to a super cyclone in 1998 and an earthquake in 2001, the rates proposed by KPT were not accepted by TAMP and were not implemented. Thus, KPT cannot now make a claim when an express go-by was given.

5.1.7 BECAUSE in any event, no re-fixation of rent can be effected after such gross delay, since no revisions were made post-1999 until 2011.

5.1.8 BECAUSE the ruling of the Ld. Single Judge as affirmed by the Hon'ble High Court has resulted in KPT treating IMC and JRE as unauthorised occupants, and treating them as such under the 2014 Land Policy by charging three times rent. However, such amount can only be charged in accordance with Clause 11.3 thereof, which procedure KPT has completely ignored and which essentially would tantamount to taking advantage of its own wrong(s), and with judicial imprimatur.

5.1.9 BECAUSE the ruling of the Hon'ble High Court does not interfere with KPT's unstateable argument that transfer fees should be paid at current rates and not the contractual rates provided for in case of an "unauthorised" transfer.

5.2. **For that the 2014 TAMP Order which re-categorises the Petitioners' lands from C-1/E category to G-1 category is wrongful and arbitrary.**

5.2.1 The reclassification of IMC and JRE's lands are not based on any intelligible differentia and is therefore violative of Article 14 of the Constitution.

5.2.1.1 BECAUSE the Hon'ble High Court erred in upholding the re-classification of the Petitioners' lands into Category G-1 by KPT. The Hon'ble High Court failed to appreciate that classifying the Petitioners' lands on the basis of the nature of business and classifying other lands on the basis of geographical location lacks intelligible differentia and is therefore violative of Article 14 of the Constitution.

5.2.1.2 BECAUSE the Hon'ble High Court failed to appreciate that the Petitioners' lands were also originally classified / categorised on the basis of geographical location but that they were arbitrarily singled out and re-classified on the basis of the nature of their business whereas the other users continued to be classified on the basis of geographical location.

5.2.1.3 BECAUSE the arbitrariness in the actions of the Respondents is writ large inasmuch as the Petitioners' lands were not re-categorised pursuant to the 2011 TAMP Order whereby a new category was created for the first time only for users engaged in liquid bulk storage (i.e., users such as IMC and JRE), but the same re-categorization *viz.* from C-1/E (based on geographical location) to G-1 (created only for users engaged in liquid bulk storage), was subsequently made applicable to the Petitioners' lands, pursuant to the 2014 TAMP Order. This recategorization was done by the valuer at the instance of DPA, since DPA (by its letter dated February 17, 2014) called upon the valuer to add a '*separate category i.e., for "Liquid Tank" purpose*'.

5.2.1.4 As such, it is only IMC and JRE's lands that have been re-categorised into a new category of land based on use, which was not the basis of the existing categorization. Further, the other lands falling in the same geographical vicinity to the liquid storage lands, continue to be categorized as per geographical location. Therefore, it is evident that the Petitioners have been subjected to an

unreasonable classification merely for the purpose of claiming enhanced rents, which is further illustrated by the following chart showing the egregious increase in lease rentals over time:

Year	Lease rate per sq. mtr. per annum (for the lands which were the subject-matter of LPA 1426/2019		Total lease rent (without service tax / GST) as per category C -1 (for the lands which are the subject-matter of LPA 1426/2019)	
	As per category C1 (in Rs.)	As demanded by DPT		% increase every 5 year period from 2009
1996	11.00	11.00	5,34,072	
1997	12.10	12.10	5,87,479	
1998	13.31	13.31	6,46,227	
1999	14.64	14.64	7,10,801	
2000	16.10	16.10	7,81,687	
2001	17.71	17.71	8,59,856	
2002	19.48	19.48	9,45,793	
2003	21.43	21.43	10,40,469	
2004	23.57	23.57	11,44,371	
2005	25.93	25.93	12,58,953	
2006	28.52	28.52	13,84,703	
2007	31.37	31.37	15,23,076	

2008	34.51	34.51	16,75,530	
2009	37.96	80.40**	18,43,034	133%
2010	41.76	82.01**	20,27,532	
2011	45.94	83.65**	22,30,479	
2012	50.53	85.32**	24,53,333	
2013*	87.03	87.03	42,25,481	
2014	108	905.17***	52,43,616	940%
2015	110.16	923.27	53,48,488	
2016	112.36	941.74	54,55,303	
2017	114.61	960.57	55,64,545	
2018	116.90	979.78	56,75,729	

*this is the first time that DPT started demanding rents as per the 2011 TAMP Order.

** demanded retrospectively in 2013 as per the 2011 TAMP Order.

*** demanded retrospectively in 2015 as per the 2014 TAMP Order.

5.2.1.5 Thus, it can be seen that in 2008, IMC was paying INR 34.51 per sq. m., which increased to 80.40 in 2009. This rate then exorbitantly increased more than tenfold in 2014, from INR 87.03 per sq. m. to INR 905.17 sq. m. i.e., to 1040%, for the same property, on which the same activities were being carried out and pertinently on which no infrastructural facilities were provided by KPT. In contrast, IMC's neighbouring lessees all pay INR 108 per sq. m. (for C-1 category) which is about

24% increase over the last paid rentals and INR 350.20 per sq. m. (for E category) which is an 80% increase over the last paid rentals, on the basis of geographical location. Pertinently, IMC has (in LPA Nos. 1424, 1426 and 1427) paid large premium amounts at the time of execution of the lease deeds (hybrid lease model), and are now being unfairly equated with lessees who did not pay such premiums, and are being subjected to an exorbitant increase in lease rent – with no regard being given for the large premium amounts, which were contemporaneously paid.

5.2.1.6 BECAUSE this categorization is *ex-facie* arbitrary and in violation of Article 14 due to the hostile discrimination meted against the Petitioners, both, in terms of classification (a special category has been created only to isolate IMC and JRE's line of business) and rate-fixation (charging only them exorbitant rates by increasing the rent by over 1040%). All other lessees continue to pay as per their geographical location, which had been the case for IMC and JRE's until the 2014 TAMP Order. In contrast, the increases in the rentals for Category C-1 and E are in the range of 24.09% and 79.14% respectively. This is clear proof that DPA is engaging in rack-renting and profiteering despite being a State Authority, which has a duty to act in a fair and reasonable manner.

5.2.1.7 BECAUSE DPA has erroneously claimed that the lands allotted to the IMC and JRE have '*special advantages*'. It is IMC and JRE's pleaded case that the lands as

allotted were swampy / marshy and were developed by them at their own expense. No special advantages or infrastructural benefits were provided to IMC and JRE and none was pointed out to the Hon'ble Court in respect of these lands. This was merely accepted by the Hon'ble High Court on an *ipse dixit* made by DPA. The lands have been developed by IMC and JRE at their expense (which has also been a factor in development of port land). DPA is effectively now attempting to penalize IMC and JRE by charging exorbitant rates for infrastructure which was put in place by IMC and JRE themselves.

5.2.1.8 BECAUSE the Hon'ble High Court failed to appreciate that it is only liquid bulk handlers who are classified on the basis of use and made to pay exorbitant lease rentals. The arbitrariness becomes most distinct when considering the fact that dry bulk handlers (and all other allottees) are classified on the basis of geography as well. Therefore, even within the class of those in the storage business, liquid bulk cargo is singled out without any basis whatsoever. Even if use was a relevant factor, then all users engaged in the business of storage should have been categorised into Category G – 1.

5.2.1.9 BECAUSE the Hon'ble High Court failed to appreciate that all costs in relation to the lands were borne by the Petitioners including the costs of constructing the tanks and laying pipelines connecting the Petitioners tanks to the jetties. This can be corroborated from the 2014 Land Policy Guidelines under 16.3 (c) which states *"... In*

case of renewal of existing leases, without automatic renewal option at the end of the lease-term, the land will be put to tender-cum-auction with the first right of refusal to be extended to the existing lessee. The existing lessee should be allowed to match the H-1 bid. If any structures has been constructed by the earlier lessee on the leased land, it would be valued by a third party valuer to be agreed upon by the Port Trust and the earlier lessee and the successful bidder has to remit the value of the structures which would be passed on to the previous lessee. ..." Further, the Petitioners pay wayleave / right of way charges for running pipelines through the port lands in addition the rent for the allotted lands. Therefore, the Petitioners did not receive any special benefits as alleged by DPA. On the contrary, DPA had developed and is maintaining at their cost infrastructural facilities for storing dry bulk cargo, which continues to be categorised on the basis of geographical location.

5.2.1.10 BECAUSE the Hon'ble High Court failed to appreciate that all allottees (be it dry bulk handlers, liquid bulk handlers or containers) use the jetty facilities at the port in a similar manner (i.e., for berthing of vessels and discharge of cargo). In other words, the availability of jetty for handling vessels are common infrastructure for all types of cargo viz. for dry bulk, container and liquid bulk. DPA also charges separately for the use of the jetty (berth hire charges) and for handling each and every

cargo type at the jetty (wharfage charges) be it dry bulk, container and liquid bulk.

5.2.1.11 BECAUSE the Hon'ble High Court failed to appreciate that KPT has not placed on record any document (contemporaneous or otherwise) showing the rationale behind the re-categorisation. In fact, the only document on record is the letter dated February 17, 2014 from KPT to the valuer instructing it to add a separate category of land for "Liquid Tank" purpose– contrary to the 2014 TAMP Order, which in fact shows non-application of mind by Respondent No. 2 in simply accepting the recommendation of the valuer.

5.2.1.12 BECAUSE it is an admitted position that the lands allotted to the Petitioners were marshy and had to be developed solely by the Petitioners at their cost. Therefore, there were no special advantages conferred to the Petitioners. KPT has completely ignored the fact that the Petitioners have played a major role in the development of the Port in terms of handling liquid bulk and in the absence of the Petitioners (liquid bulk storage tank farms), KPT cannot handle liquid bulk at the Port. The Petitioners are in effect being penalised despite having contributed majorly for the development of the Port.

5.2.1.13 BECAUSE the Hon'ble High Court in the Impugned Order has upheld the Order of the Ld. Single Judge which, *inter alia,* held against the Petitioners on the issue of re-categorisation because they did not object to the re-categorisation in 2011. The Hon'ble High Court

failed to appreciate that no challenge could have been made by the Petitioners in 2011 because no re-categorisation was effected at that time. In any event, aside from being a legally incorrect finding, it is also factually incorrect because, KLTTA, of which IMC is a member, by its letter dated April 18, 2011 objected to the re-categorisation of lands. Further, if the re-categorisation of lands on the basis of use was valid, the Petitioners' lands would have been re-categorised in 2011 itself.

5.2.1.14 BECAUSE the Hon'ble High Court erred in relying upon this Hon'ble Court's decision in the case of *Deputy Collector*, Land Acquisition, Gujarat v. Madhubhai Gobarbhai, (2009) 15 SCC 125.

5.2.1.15 BECAUSE it is settled law that there must be a nexus between the classification and the object of the statute sought to be achieved through the classification. In the instant case it is clear that there is no such nexus since only those in the business of liquid bulk storage have been categorised as per use of the land in order to extort exorbitant rent. On the contrary, the classification of IMC's lands is illogical (on the basis of use), unfair and unjust (i.e., re-categorisation to G-1 and the exorbitant increase in rents) and amounts to clear discrimination. The Hon'ble High Court has not considered the precedents cited by the Petitioners in the context of hostile discrimination/Article 14 of the Constitution.

5.2.2 **Evolution of land policy guidelines for major ports – "use of land" is not a criterion under the 2014 Land Policy Guidelines**

5.2.2.1 BECAUSE under Section 111 of the MPT Act, TAMP and DPT are '*bound by such directions on questions of policy as the Central Government*' may issue.

5.2.2.2 BECAUSE under Clause 5.3 of the 2004 Land Policy Guidelines dated March 8, 2004, the market value of land and schedule of rates are to be determined by the following factors:

(i) state government's ready reckoner;

(ii) average rate of actual relevant transactions with 4% escalation per annum;

(iii) highest accepted tender;

(iv) rate arrived by an approved valuer;

(v) any other relevant factor.

5.2.2.3 The SOR is to be arrived at taking 6% of the market value of land of as rent per annum. Clause 5.3 (1) (e) provides that the SOR is <u>to vary in accordance with purpose of land use</u>.

5.2.2.4 BECAUSE identical provisions are found in Clause 6.3 of the 2010 Land Policy Guidelines for Major Ports dated January 13, 2011.

5.2.2.5 BECAUSE under the 2014 Land Policy Guidelines (under which the 2014 TAMP Order was issued), the five criteria set out above can be found at Clause 13. However, the provision directing variance in the SOR according to land use has been consciously omitted.

5.2.2.6 BECAUSE the Hon'ble High Court failed to appreciate that the term 'use' was explicitly mentioned as a factor to be borne in mind when fixing the SOR under clause 5.3 of the 2004 Land Policy Guidelines and Clause 6.3(1) of the 2010 Land Policy Guidelines. However, there is no mention of this in the 2014 Land Policy Guidelines. Therefore, it is evident that there has been a conscious departure from considering 'use of land' as a factor for fixing SOR, as a matter of policy. DPT has sought to overcome this by referring to Clause 13(a)(i) of the 2014 Land Policy Guidelines which refers to the State Government's ready reckoner if available, for similar classification/activities. However, no such ready reckoner is available.

5.2.3 **Historical increase in lease rentals**

5.2.3.1 BECAUSE the Hon'ble High Court erred in holding that no interference is required in the tariffs fixed by TAMP by way of the 2014 TAMP Order.

5.2.3.2 BECAUSE as can be seen, the rent was initially INR 11 per sq. mtr. per annum with an annual increase of 10% as per clause (d) of the letter of allotment for LPA 1426 of 2019. However, under Clause 10(ii) of the 2011 TAMP Order the lease rentals were to be escalated by 2% per annum. Accordingly, in 1995 lease rental of INR 11 was paid which was increased by 10% each year.

5.2.3.3 BECAUSE the arbitrary and exorbitant increase in lease rentals has already been demonstrated above.

5.2.4 **Land Use Plan is irrelevant**

5.2.4.1 BECAUSE the Hon'ble High Court failed to appreciate that the reference to 'land use plan' in the 2010 Land Policy Guidelines (at Clauses 5, 6, 6.2.2 and 6.2.2.3) and the 2014 Land Policy Guidelines (at Clauses 8, 9, 9.4, 11.2 and 12), by which the land shall be put to permitted use for proper port development is different from the use of land being a relevant factor for fixation of SOR.

5.2.4.2 BECAUSE a land use plan is akin to an activity of town planning and is only to ensure that no haphazard developments take place and that lands are used in a systematic manner, for their intended purposes. It is not KPT's case that the lands of IMC are not being used for their intended purposes.

5.2.4.3 BECAUSE the Hon'ble High Court has erroneously upheld the Ld. Single Judge's finding that Section 49 of the MPT Act read with the provisions of the land use plan under the 2011 and 2014 Land Policy Guidelines, empowers DPT to fix rent on the basis of use of the land.

5.2.4.4 BECAUSE the Hon'ble High Court has erroneously upheld the Ld. Single Judge's finding that use of land can be considered as "*any other relevant factor*" under Clause 13 of the 2014 Land Policy Guidelines. It is submitted that these words are not an omnibus/catch-all term. The 2014 TAMP Order has identified a rate of INR 10,523.18 per sq. meter with a 2% escalation as being the "*any other factor*" precisely under this Clause.

5.2.4.5 BECAUSE IMC has been allotted some lands as far back as in 1978 and JRE was allotted lands in 1986,

whereas the first land policy guidelines were only issued in 1997. Therefore, it is obvious that the land use plan contained in the land policy guidelines is intended to apply for allotment of land for specific use and not for fixing of rents thereof.

5.2.4.6 BECAUSE assuming that the rents were to be fixed on the basis of the land use plan, then the 2014 Land Policy Guidelines would have contained a clause akin to Clause 6.3(1)(e) of the 2010 Land Policy Guidelines (which provides that use of land is one of the factors which can influence the rent fixed by DPT). This conscious omission in the 2014 Land Policy Guidelines of a clause akin to Clause 6.3(1)(e) of the 2010 Land Policy Guidelines, itself indicates that 'land use plan' was no longer a criterion to be taken into account while determining market value of land under the 2014 Land Policy Guideline.

5.2.4.7 BECAUSE Section 49 of the MPT Act requires TAMP to frame the SOR. However, Section 49 is to be read with Section 111 of the MPT Act under which the land policy guidelines are framed, which DPA is bound to follow. In contrast to the 2010 Land Policy Guidelines, while the 2014 Land Policy Guidelines provides for a land use plan, use of land has been omitted as a factor for fixation of SOR under the 2014 Land Policy Guidelines.

5.2.5 **It is admitted that the lands do not have an increased value**

5.2.5.1 BECAUSE it is admitted that the lease rent under the 2014 TAMP Order is exorbitant, as is evident from notification dated April 8, 2019 issued by the TAMP, which refers to a letter dated February 15, 2019 addressed by DPA. The said letter *inter alia*, states that the issues related to exorbitant increase in lease rentals and the categorisation of lands were studied by a committee deputed by the Indian Ports Association and that a final report was awaited.

5.2.5.2 BECAUSE most significantly, the 2014 valuation report (which is incorporated in the 2014 TAMP Order) provides that for category C-1, there is a limited demand and there is minimal increase in the value of the lands since 2009. Therefore, it is apparent that IMC's lands were shifted from C-1 to G-1 category solely for the purpose of extracting higher monies from the Petitioners who have been carrying out their activities on such lands for several years, since the lands would not otherwise fetch higher rent.

5.2.6 **When a statute prescribes that – things are to be done in a particular manner, they must be done in that particular manner**

5.2.6.1 BECAUSE the Hon'ble High Court failed to appreciate that the Ld. Single Judge's Order considers irrelevant and extraneous factors / criteria while upholding the re-categorisation of IMC's lands. It is settled law that when a statute prescribes that - things are to be done in a particular manner, then they can be done only in that

particular manner and no other. Despite the deletion of use of land in the 2014 Land Policy as a factor for fixing SOR, the same has been considered in the 2014 TAMP Order. The precedents cited in this regard have been ignored.

5.2.7 **The Land Policies and decisions of TAMP cannot overwrite the terms of the Lease Deed.**

5.2.7.1 BECAUSE the Hon'ble High Court erred in holding that the SOR framed by TAMP and the Land Policies overwrite the terms of the Lease Deed.

5.2.7.2 BECAUSE the Hon'ble High Court failed to appreciate that TAMP could not have unilaterally rewritten the terms of the lease granted to the Petitioners particularly since the Petitioners expended monies to set up their businesses on the basis of the terms of the lease. As such, the Respondent No. 3's unilateral rewriting of the terms of the lease is unreasonable, arbitrary and completely illegal.

5.2.7.3 BECAUSE in the present case, the Petitioners have demonstrated in detail as to how their rights have been violated and how KPT has conducted in an arbitrary and irrational manner. It is also the Petitioners' case that KPT has not acted in accordance with the policy guidelines.

5.3. For that the 2014 TAMP Order resulted in an increase in rent which was exorbitant, wrongful and arbitrary

5.3.1 **The 2014 Valuation Report**

5.3.1.1 BECAUSE the Hon'ble High Court erred in upholding the valuation of the Petitioners' lands in the 2014 Valuation Report, which has been incorporated in the 2014 TAMP Order.

5.3.1.2 BECAUSE in the first instance, it should be noted that the valuation of G-1 category under the 2014 TAMP Order has been wrongly arrived at by considering the highest bid received during a 2011 tender, with an annual escalation of 2% even though the said 2011 tender did not fructify and there was no concluded contract. Notably, the 2014 Land Policy contemplates fixation of SOR on the basis of the highest "accepted" tender. Thus, there was no highest accepted tender, as no lands were actually allotted and consequently, the basis on which the price for G-1 category was fixed is unsustainable.

5.3.1.3 BECAUSE ultimately, KPT has chosen the rate of INR 14,216 per sq. meter (being the rate of the alleged "highest accepted tender cum auction" pursuant to the failed 2011 tender) and escalated the same by 2% to arrive at a "market value" of INR 15086.13. The lease rental is taken at 6% of such market value and fixed at INR 905.17. KPT has vigorously defended this methodology despite the fact that the tender failed. However, in SLP (C) No. 5346 of 2011 filed by IMC against KPT, in relation to the 2005 tender, KPT stated on oath the complete opposite and averred that it merely entered into a letter of intent with IMC and that there

was no binding or concluded contract between the parties. Therefore, there is no basis, factually or legally, on which KPT can claim that a failed auction is an accepted or concluded transaction.

5.3.1.4 BECAUSE the Hon'ble Division Bench has proceeded to accept the order of the Ld. Single Judge, which in turn upholds KPT's increased rental, on the basis that 20 plots auctioned in the same period received bids which range from INR 920 to INR 3233 per sq. mtr. However, this is *prima facie* erroneous and does not change the fact that the 2011 tender failed and the 'receipt' of bids is not the equivalent of 'accepting' a bid.

5.3.1.5 BECAUSE the Hon'ble High Court has further failed to appreciate that the bids ranging from INR 920 to INR 3233 per sq. Mtr., which were received for the 20 plots auctioned by KPT during the same period, were formulated on the basis of a lease model *viz*. a model based on an upfront one-time premium model with no annual rent/token annual rent of Re. 1/- per plot. This is the reason that the bids received were in a higher range and therefore, cannot be used as a comparison for what the lands leased to the Petitioners would have commanded.

5.3.1.6 BECAUSE the Hon'ble High Court erred in upholding KPT's argument that the fact that a willing buyer offers a substantially higher amount for a plot of land on which use of liquid storage terminal is permitted in comparison to another plot, is a relevant criterion for determining the value and thereby the lease rent of that land. It is

submitted that the Hon'ble High Court has completely failed to appreciate that the demised lands were not up for sale. On the Contrary, the leases were either subsisting or the Petitioners had a vested right of renewal under the 2014 Land Policy Guidelines, and only the rent had to be re-fixed. As such, basing the calculation of rent solely on the potential sale price of the land is arbitrary and untenable.

5.3.1.7 BECAUSE the Hon'ble High Court failed to appreciate that KPT is a State functionary, whose object is not to earn maximum revenue / profit but to develop and grow the port infrastructure in India. In fact, had the object of KPT been solely to maximise profit, it would have only leased those lands for setting up liquid storage tanks that would generate maximum revenue for it. Therefore, there is no basis whatsoever for relying on the potential sale price of the land for calculating the rent.

5.3.1.8 BECAUSE the Hon'ble High Court erred in relying upon the International Valuation Standards, 2017 insofar as the said Standards have no application to the present case. It is submitted that the object of KPT is not to sell its lands at the highest available price but to promote the development of port. The Hon'ble High Court failed to appreciate that such international standards (and principles emerging therefrom) are required to be applied uniformly by a State. A State authority cannot be seen to take a position that one set of factors is standard and applicable for one allottee, and another set of standards is applicable to other allottees.

As such, an "internationally accepted principle of valuation" cannot be made applicable only to Petitioners' plots and not to the plots next to the Petitioners. This itself shows the differential treatment and hostile discrimination being meted out to the Petitioners, in gross violation of Article 14 of the Constitution.

5.3.1.9 BECAUSE the 2014 Valuation Report is also based on irrelevant criteria that have no connection with market value of land, such as (i) traffic handled by KPT, (ii) annual GDP growth rate of India, (iii) development of Gujarat in the past five years and (iv) contribution of ports in employment generation. DPT has been unable to show as to how or why these criteria are relevant solely to IMC's lands and not to adjoining lands.

5.3.1.10 BECAUSE the Valuation Report is based on several presumptions, including *inter alia* that the accuracy of the data furnished is subject to accuracy of the referential documents, valuation derived is for freehold land only and lease rent etc. is to be decided by KPT, and the valuation is for various land use categories. This is despite the 2014 Land Policy Guidelines expressly omitting use of land as a factor for ascertaining market value and fixing the SOR.

5.3.1.11 BECAUSE the creation and alleged market valuation of lands in category G-1 is based on the adoption of a hypothetical, fictitious and imaginary series of calculations and factors which have no basis in law and/or fact and are unsupported by any documentation.

5.3.1.12 BECAUSE it is apparent that the 2014 Valuation Report is based on self-serving criteria and has been created at the behest of and under the direction of KPT, rather than on the basis of any individual/ independent assessment by the valuer.

5.3.1.13 BECAUSE the Hon'ble High Court failed to appreciate that inconsistent stands were being taken by KPT at different points in time to justify an exorbitant and unrealistic value. This is also evident from the fact that the 2014 Valuation Report annexes a letter dated February 17, 2014, whereby KPT instructs the valuer to add a separate category for ""*Liquid tank" purpose*". However, in a response to TAMP's query as to the methodology adopted towards valuation, KPT states that the categories were "*suggested by the Land Valuer*". Further, the 2014 TAMP Order also records that the categorization '*has been recommended by the LVC and has also been approved by the KPT Board*'. This in itself shows that this is nothing but a veiled attempt by KPT to arbitrarily extract more monies from the Petitioners.

5.3.1.14 BECAUSE the Hon'ble High Court failed to appreciate that the valuer incorrectly adopted a much higher value for liquid bulk storage plots on the basis of infrastructure development available on such plots whereas such infrastructure was entirely developed by the lessees. In fact, none of the infrastructure on these lands were provided by DPA.

5.3.1.15 BECAUSE the Hon'ble High Court failed to appreciate that the very fact that the development of the marshy

lands was necessary for handling the liquid bulk cannot now be used against the lessees for charging exorbitant rent once the plots have been developed by lessees for carrying out its businesses.

5.3.2 **The 2014 TAMP Order**

5.3.2.1 BECAUSE while the consultation process for the 2014 TAMP Order was underway, IMC and JRE through the GCCI raised various objections to the proposal from KPT by its letter dated July 22, 2014.

5.3.2.2 BECAUSE as explained earlier, the 2011 land auction failed and is therefore irrelevant to the present proceedings. The valuer in this case has arbitrarily used different criteria for different categories of land, for no discernible reason whatsoever and the same has been mechanically approved by TAMP. TAMP does not even appear to have been informed that the 2011 tender failed.

5.3.2.3 BECAUSE even though TAMP raised a pointed query as to the lack of correlation between the stamp duty rates referred to in page 36 of the 2014 Valuation Report and the ready reckoner rates and called upon KPT to clarify the position, instead of answering the query, KPT stated that it had considered the rates for plots in nearby villages and applied a 5% increment factor, which is wholly irrelevant.

5.3.2.4 BECAUSE the reference in the 2014 TAMP Order to adjoining private port facilities charging rent at INR 36 per sq. meter completely ignores the fact that the private

port is operated by the Adani group, which has no duty to act in a fair manner, unlike a State authority. In fact, if a private player fixes its rent at INR 36 per sq. meter, that itself is *ex- facie* evidence of the fact that the rent of INR 905.17 per sq. meter being fixed by a State instrumentality, that too, suddenly increasing it from Rs.87.03 per sq. meter is wholly arbitrary, unreasonable and impermissible.

5.3.2.5 BECAUSE the 2014 TAMP Order also discloses that TAMP has mechanically approved what was placed before it by claiming "*this Authority relied on the decision of the KPT and approved the market value of land as proposed by the KPT*". Thus, TAMP has abdicated its duty to "fix the rates" and has merely *approved* rates put before it. In this regard, it may be noted illustratively that:

i. At paragraph 9.2 of the 2014 TAMP Order, a table setting out the comparative increase (both in value and percentage) in lease rentals between the 2011 TAMP Order and the 2014 TAMP Order can be seen. As per this table, the lowest percentage of increase is for categories C1 and G-II, which had a 22% increase. The highest percentage of increase is for Categories F2, which had a 285% increase. In a deliberate attempt to mislead TAMP and to make the increase in lease rent look nominal insofar as the Appellants are concerned, KPT stated that the percentage of increase for category G1 is 85%.

However, since the Appellants who were categorized in C1 all along, including under the 2011 TAMP Order, were re-categorized into category G1 under the 2014 TAMP Order, the actual percentage of increase insofar as the Appellants are concerned is 1040%. The 2014 TAMP Order notes that the percentage increase for G1 is compared to the earlier category of G – however, the Appellants have never been categorized in G, and therefore this comparison is a red herring.

ii. Assuming that KPT's representation regarding the percentage increase (of the range of 22% to 285%), set out in the table at paragraph 9.2 was correct, the same is contradicted by the 2014 TAMP Order as regards the increase in its income for the same period. At the second table at paragraph 9.3 of the 2014 TAMP Order it is stated that the percentage increase in income for DPT between the 2011 TAMP Order and 2014 TAMP Order is 507.81% - which clearly signifies that the percentage increase in lease rentals represented by DPT, is a depressed figure, being significantly lower than the actual income increase. However, TAMP has completely failed to appreciate this fact.

iii. Further, at paragraph 11(x), TAMP notes that the percentage increase for all lands is in the rage of 24.09% to 98.78% except category F2 which

is 292.44%. TAMP however notes that the reason for the steep increase in the lease rent for category F2 has not been explained by KPT. TAMP also notes that '*there has not been any pointed objection raised by any users/lessees on the market value and reserve price proposed for this category of land*'. While acknowledging the fact that a 292% increase is steep, TAMP completely ignores the fact that as far as the Appellants are concerned, the increase is over 1000% and that the users such as the Appellants had raised objections with regard to the same, which have been completely ignored by KPT as well as TAMP.

5.3.3 BECAUSE the Hon'ble High Court erred in relying upon the decision of this Hon'ble Court in the case of *J S Luthra Academy v. State of Jammu & Kashmir*, 2018 (18) SCC 65 as the facts and circumstances under which this decision was rendered are different from the facts and circumstances of the instant case.

5.4. For that the increase in rent pursuant to the 2011 TAMP Order is *ex facie* exorbitant, wrongful and arbitrary:

5.4.1 **The 2011 Valuation Report**

5.4.1.1 BECAUSE the 2011 TAMP Order was prepared on the basis of a report by M/s. RB Shah & Associates valuing the lands of DPT as on January 1 of every year from 1990 to 2009. Simply stated, the 2011 Valuation Report is flawed for *inter alia* considering irrelevant factors,

being heavily caveated, disregarding the ready reckoner rates specified by the State Government and for ignoring the distinction between accepted tender rates and received tender rates.

5.4.2 **The 2011 TAMP Order**

5.4.2.1 BECAUSE the concerns previously raised by users (including KLTTA, in which the Petitioners are members) as to the 2011 TAMP Order remained unaddressed, as demonstrable from the table at para 5 of the 2011 TAMP Order setting KPT's responses to TAMP's queries (similar to those raised by the KLTTA). It can be seen that mostly, KPT's responses were vague / evasive or false / had no connection to the question(s) raised.

5.4.2.2 BECAUSE paragraph 10 of the 2011 TAMP Order demonstrated that TAMP has wholly relied on the valuer's *ipse dixit* and KPT's approval of the lease rentals, instead of independent application of mind.

5.4.2.3 BECAUSE Section 49 of the MPT Act requires TAMP to '*frame the scale of rates*' and not merely *approve* what KPT recommends. The above actions of TAMP show that rather than independently applying its mind and framing the scale of rates, TAMP abdicated its duty and accepted whatever rates were suggested by the valuer in consultation with KPT.

5.5. **For that the Hon'ble High Court failed to appreciate that as IMC and JRE's lease model included payment of**

a substantial premium in addition to rent, judicial interference was warranted.

5.5.1 BECAUSE the revision of rent to INR 905.17 per sq. metre per annum (besides being exorbitant) ignores the fundamental premise on which IMC and JRE were allotted the lands, as the lands which the subject-matter of LPA Nos. 1426, 1427 and 1424, on a hybrid model i.e., a model whereby lease and premium both were payable. As such, the premium constituted a significant portion of the consideration, being the aggregate of several years' rent. This model is inherently different from a lease rent only model (where no/ nominal premium is payable) or premium only model (where no/token rent is payable).

5.5.2 BECAUSE the rate of INR 905.17 per sq. meter per annum is a rent only model derived by taking 6% on the basis of the 2011 tender. The 2011 tender was on a premium only model (which model has only a token rent of INR 1 per annum). Under the "rent only model", the lessee merely pays yearly rent without payment of any premium at the time of allotment. Whereas under the "premium only model" the lessee pays the entire consideration in advance and thereafter only a token rent of INR 1 per annum is paid and therefore immunes from re-fixation of rent. This is not comparable with the Petitioners' model which is a hybrid model. No credence has been given to this fundamental facet of the Petitioners' case.

5.5.3 BECAUSE the lease models are undergoing change with passage of time. In the nascent years, major ports were predominantly following the hybrid model in which a

considerable amount of premium is paid by the lessee upfront and correspondingly much lower rent has been fixed payable yearly. With effect from early 2000, pursuant to Government policy on long term leases, Major Ports were advised to explore the possibility of collecting the entire amount as upfront premium and a token amount of Re.1/- per plot as rent. The rent in this case does not undergo any change in view of upfront collection of entire consideration in the form of upfront premium. From 2014 onwards DPA started inviting bids from parties with only rent model without seeking any premium. These three models are exclusive to one another and rent in one model cannot be compared or equated to the other model.

5.6. For that permitting retrospective levies of increased rentals: (i) w.e.f. 01.01.2009, under the order dated May 10, 2011; and (ii) w.e.f. from January 1, 2014 under the Order dated November 13, 2014, despite upholding the finding of the Ld. Single Judge that TAMP did not have the power to impose retrospective levy of rents exhibits non-application of mind.

5.6.1 BECAUSE the Hon'ble High Court erred in holding that there was no retrospectivity in application of the rates from an anterior date as the allottees were aware that the rates were to be revised every five years. The Hon'ble High Court erred in holding that the lease rent paid pending framing of the SOR by TAMP were provisional rates. However, such a finding demonstrates non application of mind as the Hon'ble High Court upheld the finding of the

Ld. Single Judge to the effect that under the 2011 TAMP Order fixation of lease rent on March 25, 2011 for the period prior to January 1, 2009 amounts to being retrospective and as such liable to be set aside. However, the Hon'ble High Court upholds the finding that on March 25, 2011 fixing the lease rent from January 1, 2009 onwards is not retrospective. It is submitted that the findings apart from being perverse are mutually contradictory and hence exhibit non-application of mind.

5.6.2 BECAUSE the Ld. Single Judge held that the MPT Act does not confer any power enabling retrospective levy of rentals, while at the same time, upholding retrospective levies. The Hon'ble High Court has exacerbated the situation because this finding has been upheld while also holding that there is no retrospective levying in the instant case.

5.6.3 BECAUSE the Hon'ble High Court upheld the finding of the Ld. Single Judge striking down the retrospective levies from 1999 to 2008. However, the levies from 01.01.2009 onwards have been permitted. While upholding this decision based on retrospectivity, the Hon'ble High Court nonetheless does not accept that the fixation of rents by KPT was done in a retrospective manner.

5.6.4 BECAUSE it is well settled that there is no power to retrospectively levy rentals in the absence of a specific provision (in this case, there is no such provision). The Hon'ble High Court ought to have followed the decision of this Hon'ble Court in Dwarkadas Marfatia v. Board of Trustees of the Port of Bombay [(1989) 3 SCC 293 @

paragraphs 15 to 29] and Bhupendra Singh Bhatia vs. State of Madhya Pradesh & Ors [(2006) 13 SCC 700 @ paragraphs 6 and 7], which clearly stipulate that every activity of a public authority must be informed by reason and guided by the public interest and that it cannot act as a private landlord.

5.6.5 BECAUSE in the 2011 TAMP Order, TAMP has explicitly recorded that it has raised a query as to whether the lease agreements contained a clause allowing retrospective revisions of lease rentals. In the 2011 TAMP Order, TAMP recorded that KPT confirmed that such provisions exist. It is based on KPT's false representation that TAMP permitted retrospective levies.

5.6.6 BECAUSE TAMP then pointedly enquired as to whether the agreements with lessees/licensees contain clauses allowing retrospective revisions of rentals, to which KPT stated that undertakings had been taken from the lessees to that effect. This is patently false. No such undertaking has been furnished by IMC.

5.6.7 BECAUSE a similar query was put to DPT in the 2014 TAMP Order, where it was recorded incorrectly that an undertaking was given by lessees which contained conditions allowing retrospective revisions. TAMP itself has recorded that it does not ordinarily resort to retrospective fixation of rates.

5.6.8 BECAUSE the reliance by the Hon'ble High Court on the decisions of the Karnataka High Court in Narendra & Co. (P) Ltd. Vs. Workmen [WP No. 41489 of 2002], Cadila Laboratories Limited vs. Union of India [2001 (1) GLR 48]

and Govt. of Maharashtra vs. Deokar's Distillery [(2003) 5 SCC 669] is misplaced as the facts and circumstances in which these decisions were rendered are different from the facts and circumstances in the present case.

5.6.9 Therefore, *arguendo* such revision was permitted, it could not be so delayed, at these exorbitant rates, much less retrospectively. Even the proposal for revision was submitted by DPA to TAMP long after the date from when the TAMP order was given effect to. It has been pointed out above that the 2011 TAMP Order and the 2014 TAMP Order both record TAMP's own submission that retrospective revisions are not usually carried out by it. It has also been pointed out above that KPT has misled TAMP by misrepresenting the terms and conditions contained in the lease deeds with respect to retrospective increases. The misrepresentation by KPT also extended to providing incorrect percentage of escalation made applicable to Petitioners' lands. Thus, it is evident that KPT has misled TAMP so as to continue engaging in rack-renting and collecting exorbitant rentals.

5.6.10 BECAUSE it can be seen that even assuming that such revision is not retrospective, the increase in slabs of five years has gone from 133% to 940% after the 2014 TAMP Order. The Petitioners were actively led to believe that no increase would be effected for past periods. Therefore, to be faced with such a sharp increase, without any notice, is expropriatory, unfair, unjust and inconsistent with the behaviour expected of and from a State instrumentality.

5.7. For that it is incorrect to hold that IMC does not have locus despite being in possession of the land and paying rent for the same (relevant to LPA Nos. 1426 and 1427).

5.7.1 The Hon'ble High Court has upheld the finding that on account of the amalgamation between USTTL (the original allottee) and IMC, its wholly owned parent company, in 2010, there has been a transfer without KPT's permission, in LPA Nos. 1426 and 1427.

5.7.2 *Ex-facie* such a ruling is unsustainable, BECAUSE admittedly IMC is in possession of the demised land and KPT has raised bills for lease rentals and is seeking to recover them from IMC. While such bills are occasionally raised in USTTL's name, both parties are aware that USTTL is a company that is no longer in existence. Therefore, it is only IMC who can make such payment(s). So also, there is no other entity or being who could raise any dispute with respect to such demands for payment. Likewise, KPT is unable to recover such monies from anyone other than IMC, of which it is aware.

5.7.3 BECAUSE as such, IMC is legally entitled to maintain and pursue the petitions and these appeals, being a "*person aggrieved*", a term which this Hon'ble Court has considered in Bar Council of Maharashtra v. M. V. Dabholkar, AIR 1975 SC 2092 and in Jasbhai Motibhai Desai v. Roshan Kumar , (1976) 1 SCC 671 @ paragraphs 28 – 30.

5.7.4 BECAUSE USTTL's amalgamation was done pursuant to the provisions of Sections 391 and 394 of the Companies Act, 1956, which culminated in an order of the Hon'ble

Calcutta High Court. Such proceeding entails a newspaper publication and consideration of objections filed by stakeholders before the amalgamation would be permitted. Therefore, these proceedings were always in the public domain.

5.7.5 BECAUSE in any event, the Scheme approved by the Hon'ble Calcutta High Court (tendered to the Hon'ble Court) indicates that the rights in the lands allotted to USTTL vested automatically by operation of law, in IMC pursuant to the order of the Hon'ble Calcutta High Court.

5.7.6 BECAUSE the contemporaneous correspondence also bears out that KPT was informed about the amalgamation in 2010, and never objected to the same until the commencement of these proceedings.

5.7.7 BECAUSE even though the Petitioners do not accept that there was a transfer in terms of the lease, to end the impasse the Petitioners have tendered on two occasions transfer fees to KPT, but on both occasions KPT returned the cheques.

5.7.8 BECAUSE the Hon'ble High Court erred in relying upon the decisions in (i) General Board and Appliances v. M.A. Khader, (1986) 2 SCC 656; (ii) Singer India Ltd. v. Chander Mohan Chadha & Ors., (2004) 7 SCC 1; (iii) U.P State Industrial Dev. Corp. Ltd. vs. Monsanto Manufacturers (P) Ltd. & Anr., (2015) 12 SCC 501; (iv) State of Rajasthan v. Gotanlime Stone Khanij Udyog Private Limited, (2016) 4 SCC 469 and State of Kerala v. Joseph & Co. [2021 SCC OnLine 658]. These decisions were rendered in facts and circumstances which are far

removed from the present case and hence have no application to the present case.

5.7.9 BECAUSE the Hon'ble High Court misapplied the decisions of this Hon'ble Court in (i) Ayaaubkhan Noorkhan Pathan vs. State of Maharashtra [(2013) 4 SCC 465]; and (ii) Jasbhai Motibhai Desai vs. Roshankumar. IMC and JRE, being persons aggrieved, were entitled to approach the Hon'ble High Court and had locus to maintain the challenge.

5.7.10 BECAUSE the Hon'ble High Court erred in equating locus with whether or not the Petitioners can claim infringement of their rights.

5.8. For that it is incorrect to hold that JRE does not have locus despite being in possession of the land and paying rent for the same (Relevant to LPA 1424)

5.8.1 *Ex-facie* such ruling is unsustainable, BECAUSE admittedly KPT has raised bills for lease rentals and is seeking to recover them from JRE. Both parties are aware that the erstwhile partnership firm is no longer in existence. Therefore, it is only JRE who can make such payment. Given that JRE is called upon to make such payment, it cannot be that JRE is disallowed to approach Courts, much less a Writ Court, to dispute exorbitant demands for the very same payment. There is no other entity or being who could raise any dispute with respect to such demands for payment. Likewise, DPA is unable to recover such monies from anyone other than JRE, of which they are aware.

5.8.2 BECAUSE M/s. J R Enterprises, a partnership firm was converted into JRE on November 16, 2004 under Part IX of the Companies Act, 1956 and it is settled law that such conversions do not amount to transfer, and therefore treating JRE as an unauthorised occupant, is legally unsustainable.

5.8.3 BECAUSE KPT was all along informed of the conversion and actively led JRE to believe that no further steps were required to be taken, which contemporaneous correspondence has been ignored by the Hon'ble Court.

5.8.4 BECAUSE the Hon'ble High Court erred in relying upon the decisions in Union of India v. M/s. Mahalaxmi Saw Mills P. Ltd. [2015 SCC Online Del 14383] and Delhi Development Authority v. Anant Raj Agencies Private Limited [(2016) 11 SCC 406], which apply in a completely different context.

5.9. For that KPT's action of not renewing the lease is wrongful (Relevant to LPA 1425)

5.9.1 BECAUSE the lease deed for the lands which are the subject-matter of LPA 1425 was for thirty years, from June 23, 1978 to June 22, 2008. Clause 8 of this lease deed contains a right of renewal exercisable at the lessee's (IMC's) option, which provides that upon expiration of the lease deed, the lessee will be granted at his/her option, a new lease for a further period of 30 years.

5.9.2 BECAUSE despite IMC exercising this right of renewal in 2008, prior to the expiry of the lease deed, the Hon'ble High Court has ignored the contemporaneous

correspondence including KPT's constantly shifting stances designed to frustrate renewal in an attempt to claim increased lease rents

5.9.3 BECAUSE the contractual terms and correspondence have all been ignored by the Hon'ble High Court which has proceeded on the basis that the lease deed does not confer a right of renewal and that KPT needed the lands for its own use.

5.10. For that the Hon'ble High Court has failed to do justice in order to balance the equities.

5.10.1 The Petitioners have carried out their business and arranged their affairs on the legitimate expectation that a given state of things will govern their affairs. This includes, *inter alia*:

(i) that the rent that will need to be paid to KPT will be reasonable and not extortionist,

(ii) that KPT will not set back the clock and charge unreasonable rents for past periods when they had expressly given a go-by for increasing rent for such periods,

(iii) that they will not treat persons who have been instrumental in developing port lands as unauthorised occupants,

(iv) that they will act in a manner consistent with the plain language of the 2014 TAMP Order,

(v) That they will not make factual misrepresentations to the TAMP, and

(vi) That they will enable growth of ports and not enrich themselves at the cost of tenants.

5.10.2 Taking into account the above factors, the Petitioners entered into long term contracts with its clients. However, KPT's action of increasing the rents exorbitantly and without any notice puts a huge financial obligation on the Petitioners, making such long-term contracts commercially unviable. Further, such drastic increase in rent (including the claim for unauthorised occupancy) would jeopardize the Petitioners' business and future, including the livelihood of its employees. IMC and JRE directly employ over 80 persons on their payrolls. Additionally, over 70 persons are employed on a contract basis and about 200 persons including tanker lorry drivers, surveyors and C & F Agents are also heavily dependent on IMC and JRE's business volumes. KPT's entire claim on the aforesaid basis would be approx. INR 221.74 crore (which includes claims that are legally unsustainable for the reasons set out above). If such claims are not set aside, the Petitioners will run out of business, impacting the livelihoods of the 350 families.

5.11. BECAUSE KPT, being State within the meaning of Article 12, even in the contractual realm, cannot act de hors fairness and reasonableness. It is no longer *res integra* that non-arbitrariness is the heartbeat of fairplay, and this rationale applies with equal, if not greater vigour, to State entities.

5.12. BECAUSE it is settled law that actions by the State must meet the tests of reason and relevance. Any action not meeting such standard would be open to interference by a Writ Court to prevent egregious violation of Article 14.

5.13. BECAUSE facets of irrationality would include a decision being partial and unequal in its operation. As demonstrated supra, different rates for contiguous lands in the name of 'categorisation' clearly falls short of exemplary conduct in commercial dealings as expected by a State entity.

5.14. BECAUSE it is no longer res integra that the doctrine of legitimate expectation can be pressed into service as a substantive and enforceable right against the State. As such, the actions of KPT warrant the interference of this Hon'ble Court. An arbitrary decision, in and by itself violates the Petitioners' legitimate expectation of fairness and equal treatment as couched within Article 14 of the Constitution.

5.15. BECAUSE failure to account for, or at the very least, consider a legitimate expectation renders the impugned actions arbitrary. The Hon'ble High Court has failed to delve into the necessary factual examination on this aspect.

5.16. BECAUSE the Impugned Order is otherwise also contrary to law, equity and good conscience and is as such liable to be set aside.

5.17. Any other ground as may be available and urged with the leave of this Hon'ble Court.

6. **GROUNDS FOR INTERIM RELIEF**

The Impugned Order is perverse, baseless and erroneous in law. It has been passed mechanically and without appreciation of the facts and documents available with the Hon'ble High Court. As set out above, the Hon'ble High Court has ignored the facts and circumstances highlighted by the Petitioners, particularly in relation to the manner in which TAMP (being a statutory body) has abdicated its duty of *fixing* tariff as required under the MPT Act and has merely *accepted* what KPT has represented to it. The Hon'ble High Court has completely ignored the contractual terms and correspondence which was placed on record by the Petitioners and has proceeded on the basis that the lease deed does not confer a right of renewal. The Petitioners are faced with a situation where the entire operations of the Petitioners are at stake in light of the highhanded and arbitrary conduct of KPT, despite the Petitioners being some instrumental to the development of the Port over past several decades. As set out above in greater detail, the Petitioners have demonstrated how the Division Bench has, without application of judicial mind, accepted the findings of the Ld. Single Judge. The Petitioners most respectfully submit that they have a good *prima facie* case in their favour, for the reasons more particularly enumerated above. Similarly, the balance of convenience is squarely tilted in their favour because in the absence of protective relief, the Petitioners' business, reputation and the livelihood of its employees is as stake. The actions of the Respondents will prejudicially affect the

Petitioners' business and in turn affect the livelihoods of over 350 families as set out above. For the same reasons, the Petitioners as well as persons / employees dependent on the Petitioners will suffer grave and irreparable injury if urgent protective relief is not granted.

It is, therefore, not only fit and proper but also in the interest of justice that the interim relief prayed for hereinabove be granted.

7. **MAIN PRAYER:**

In view of the aforesaid facts and circumstances and in the interest of justice it is most humbly prayed that this Hon'ble Court be pleased to:

A. Grant Special Leave to Appeal against the final common judgment and order dated 06.05.2022 passed by the Hon'ble High Court of Gujarat at Ahmedabad in Letters Patent Appeal Nos. 1424/2019, 1425/2019, 1426/2019 and 1427/2019;

B. pass such other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case in the interest of justice.

8. **PRAYER FOR INTERIM RELIEF**

Wherefore in light of the above, the Petitioners herein most humbly submit that pending the hearing and final disposal of the above Petition this Hon'ble Court may be pleased to:

A. Grant ad interim *ex parte* stay of the operation of the final common judgment and order dated 06.05.2022 passed by the Hon'ble High Court of Gujarat at Ahmedabad in Letters

Patent Appeal Nos. 1424/2019, 1425/2019, 1426/2019 and 1427/2019;

B. Grant ad interim *ex parte* stay of the operation of the Order dated 25.03.2011 notified vide Notification G. No. 106 on 11.05.2011, by Respondent No. 2 and the notices issued to IMC and JRE thereunder;

C. Grant ad interim *ex parte* stay of the operation of the Order dated 13.11.2014 notified vide Notification G. No. 350 on 04.12.2014, by Respondent No. 2 and the notices issued to IMC and JRE thereunder;

D. Extend the interim protection (*prohibiting KPT from proceeding with the auction further*) granted by the Hon'ble High Court by the order dated 06.05.2022 in Civil Application (For Orders) No. 1 of 2022 in LPA No. 1424/2019, and Civil Application (For Orders) No. 1 of 2022 in LPA No. 1427/2019 pending the hearing of this Petition;

E. Direct that no coercive steps be taken against the Petitioners;

F. Pass such further orders as may be deemed fit and proper by the Hon'ble Court in light of the existing facts.

AND FOR THIS ACT OF KINDNESS THE PETITIONERS SHALL AS IN DUTY BOUND EVER PRAY.

FILED BY:

Drawn on 16.05.2022
Filed on 20.05.2022

LIZ MATHEW
ADVOCATE FOR PETITIONERS

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. OF 2022

IN THE MATTER OF:-

IMC LIMITED (EARLIER KNOWN AS UNITED STORAGE AND TANK TERMINALS LTD.) & ANR. ETC. ETC. ...PETITIONERS

VERSUS

UNION OF INDIA & ORS. ...RESPONDENTS

CERTIFICATE

Certified that the Special Leave Petition is confined to the pleadings before the Court/Tribunal whose order is challenged, and the other documents relied upon in those proceedings. No additional facts, documents or grounds have been taken therein or relied upon in the Special Leave Petition. It is further certified that copies of documents/Annexures being relied upon in the Special Leave Petition are being filed and the same are necessary to answer the question of law, raised in the Special Leave Petition or to make out grounds urged in the Special Leave Petition for consideration of this Hon'ble Court. This certificate is given on the basis of the instructions given by the Petitioner/person authorized by the Petitioner whose affidavit is filed in support of the Special Leave Petition.

(Liz Mathew)

ADVOCATE FOR THE PETITIONERS

DATED: 20.05.2022

PLACE: NEW DELHI

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

S.L.P. (C) NO. _____ OF 2022

IN THE MATTER OF:

IMC Limited & Ors. ...Petitioners

Versus

Union of India & Ors. ...Respondents

AFFIDAVIT

I, M. R. Lakshminarayanan, aged about 52 years, having my residence/office at Neeladri, 3rd Floor, No. 9, Cenotaph Road, Alwarpet, Chennai – 600 018 do hereby solemnly affirm and state as under:-

1. That I am the Authorized Signatory/Representative of the Petitioner in the present Special Leave Petition and I am conversant with the facts of the case as derived from the records of the case and as such I am competent to swear this affidavit on behalf of Petitioner Nos. 1 & 2.

2. That the Synopsis and List of dates Page No. B to U, S.L.P. Para 1 to 8 at Page No. 135 to 185 and the accompanying IAs have been drawn by my advocate under my instructions. I have read and I say that the same are true and correct to my knowledge and belief as derived from the official records and I believe the same to be true

GOVT OF INDIA Exp.26-2-2025 Reg No:1033/15 Chennai City G.LAKSHMINARAYANAN

3. That the Annexure P/1 to P 14 are the true copies of respective originals.

IMC LIMITED CHENNAI

DEPONENT

Verification

I, the above named deponent, do hereby verify that the contents of Para 1 to Para 3 of above affidavit are true and correct to the best of my knowledge and belief and nothing material has been concealed therefrom.

Solemnly affirmed on this the 16th day of May, 2022

IMC LIMITED CHENNAI

DEPONENT

NOTARY G.RAJENDRAN, Chennai City Reg No:1/1033/15 Exp.26-2-2025 GOVT OF INDIA

G. RAJENDRAN, M.A., B.L.,
Advocate & Commissioner of Oaths
Notary Public, GOVT OF INDIA,
No.48/58, East Jones Road,
Saidapet, Chennai - 600 015.

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ANNEXURE – P/1

THREE THOUSAND RUPEES

GENERAL LEASE DEED

THIS INDENTURE made the 17th day of the month of September 1984 between the Board of Trustees of the Port of Kandla, a body corporate under the Major Port Trusts Act, 1963 (hereinafter called "the LESSOR") of the one part; and;

M/s INDIAN MOLASSES CO. (PVT) LTD., a Company registered under the Indian Companies Act, 1956 and having its registered office at No. 232A, Acharya Jagadish Bose Road, Calcutta and having its Chief Executive Office at No. 8 Shaheed Bhagat Singh Marg, NEW DELHI; (hereinafter referred to as "THE LESSEE" which expression shall where the context so admits include its successors and permitted assign) of the other part; WITNESSETH as under:

WHEREAS THE BOARD of trustees of the Port of Kandla has agreed to demise the plot of land hereinafter described to the Lessee in the manner hereinafter appearing.

NOW THIS INDENTURE WITNESSETH that in consideration of the ground rent hereinafter reserved and of the covenants on the part of the Lessee hereinafter contained, the Lessor doth hereby demise unto the Lessee ALL THAT PLOT of land containing by measurements 9980 Sq. Mtrs. OR THEREABOUTS situated within the Kandla Port Limits which plot of land is more particularly described in the schedule

hereunder written, and with the boundaries hereof has for greater clearness been delineated on the plan annexed to those presents, and thereon coloured red together with all rights, easements and appurtenances whatsoever to the said plot of land (hereinafter called the "Demised Premises") belonging or appertaining but subject to the reservations hereinafter mentioned.

TO HOLD THE premises hereby demised unto the Lessee for the period of THIRTY YEARS from day of 23rd June, 1978 YIELDING AND PAYING therefor the yearly rent of Rs. 28,742/- (Rupees Twenty Eight Thousand Seven Hundred Forty Two only) at the rate of Rs. 2.88 (Rupees Two and Paise Eighty Eight only) per Sq. Mtrs. per annum or such other sums as may hereafter be assessed under the covenants and conditions hereinafter contained clear of all deductions by equal yearly payment payable in advance by the 5th day of the month of June of every year at the office of the Lessor or at such places as may be notified by him for this purpose from time to time, the first such payment was made on the 23rd day of June, 1978.

Subject always to the exceptions, reservations, conditions and covenants hereafter contained.

1. The Lessor accepts and reserves unto himself all mines, minerals, coals, gold-washing earth oils and quarries in or under the demised premises, and full right and power, at all times to do all acts and things which may be necessary or expedient for the purpose of searching for, working, obtaining, removing and enjoying the same provided always that the lessor shall

reasonably compensate the lessee for all damages directly occasioned by the exercise of the rights hereby reserved or any of them.

2. The lessee covenants with the lessor as follows (that is to say):-

i) The lessee shall pay unto the lessor the yearly rent hereby reserved on the days and in the manner hereinbefore appointed.

ii) The lessee shall from time to time and at all times pay and discharge all rates, taxes, charges all assessment of every description which are now or may at any time hereafter during the continuation of this lease be assessed, charged or imposed upon or in relation to the demised premises or on any building to be erected thereupon.

iii) Within the period of six months of the date on which the possession of the demised premises has been handed over to the lessee, he shall submit his constructional plans with all specifications, sections, elevations etc., (and if of steel or reinforced concentre, calculations) duly prepared by licensed Architect to the Chairman of the Board of Trustees of the Port of Kandla (hereinafter referred to as the Chairman) or any such Officer, as may be authorized by him in that behalf, and the lessee shall further at his own expense and within a period of three years from the date on which the final approval to such constructional plans has been conveyed to him, erect upon the demised

premises, cover in and compute in a substantial and workman like manner a building to the satisfaction of the Chairman, or such Officer as may be appointed by him in this behalf, with all requisite and proper walls, sewers, drains, and other conveniences thereto of such description and design respectively as shall have been described and/or approved of/ in writing by the Chairman.

Provided that such building shall be constructed in all respects in accordance with such designs, plans and specifications, and in such situation and position and arranged in such manner as shall have been previously proposed and submitted by the lessee to the Chairman, and approved in writing by him.

And provided further that all the materials used in the said building shall be good and sound and shall have been approved by the Chairman and the timber shall be of good teak only or such other good timber as shall be sanctioned by the Chairman and provided further that all drains and sewers for the said demised premises shall be constructed, made, laid and connected to the satisfaction of the Chairman and or any statutory local authority, and in such position as shall be directed by the Chairman and/or by the said statutory local authority.

iv) No construction work on the demised premises shall be commenced unless the plans submitted as hereabove have been approved by the Chairman. The Lessee shall not make any alterations or additions to the building so approved as aforesaid either external or internal so as to effect any of the architectural or structural features originally shown by him in the approved plans unless such alterations and additions shall have been previously in like manner approved.

v) The lessee shall conform to and be bound by all the rules, regulations, and Bye-laws relating to construction, maintenance, occupation and possession of buildings, health, sanitation and drainage etc. which may be prescribed from time to time by the Chairman, and/or any local authority.

vi) The buildings during construction shall be open at all times to the inspection of the Chairman, his authorized Officer or Agents, and the lessee or any one acting under him shall afford all reasonable opportunities to them for inspection.

vii) The lessee shall use the premises primarily for construction of storage facilities of any type of non-hazardous liquid cargo including molasses and edible oil and consistently with the requirement of tankage area and shall not do or suffer to be done thereon any act or thing

whatsoever which in the opinion of the Chairman, may be an annoyance, disturbance or nuisance to the lessor or his tenants in the Kandla Port Limits.

viii) The lessee shall not without the written consent of the Chairman, or his duly authorized officer or Agent as aforesaid make any excavations in the demised premises and will at all times during the continuance of this lease maintain the demised premises and all buildings thereon in a sanitary condition to the satisfaction of the Chairman, or any duly authorized Officer or Agent aforesaid.

ix) The lessee shall at all times during the continuance of this lease keep the building to be erected on the demised premises in a good and substantial state of repair to the satisfaction of the said Chairman, or any duly Authorized Officer or Agent as aforesaid.

x) The lessee shall at all reasonable times allow for inspection access to the demised premises to the Chairman, or his duly authorized office or Agent as aforesaid or to the sanitary staff appointed for the purpose of maintaining sanitation within the Kandla Port limits.

xi) The lessee shall on the determination of the lease peaceably yield upto the lesser the said demised premises and any buildings thereto appertaining upto the lessor.

xii) a) The lessee shall not assign, sub-let, 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 authorise, 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 herein contained and be answerable therefor 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 an amount equivalent to three times the yearly ground rent, as may be recoverable hereunder, on the date of the order of transfer.

b) Notwithstanding anything contained in sub-clause 2 (xii) (a) and proviso thereto above, the lessee may, with the previous consent in writing of the Chairman, mortgage or charge the plot and the building thereon to such person/ bank / financial institution as may be approved by the Chairman in his absolute discretion without charging any fee.

Provided that in the event of the sale or foreclosure of the mortgaged or charged property, the lessor shall be entitled to claim and recover an amount equivalent to three times the yearly rent recoverable at the time of the said

foreclosure and the said recovery shall be the first charge, having priority over the said mortgage or charge.

xiii) The lessee shall register all the changes in the possession or ownership of the whole or the demised premises or of the buildings thereon whether by transfer; succession or otherwise in the register kept in the office of the Chairman, for this purpose, within two calendar months from the respective dates of such changes; and in case the lessee shall without sufficient cause neglect to register such changes in the manner aforesaid, he shall be liable to pay to the Lessor for every such neglect a penalty not exceeding Rs. 100/- as may be levied by the Chairman, in addition to any other remedies enforceable against him under these presents.

xiv) In case payment of ground rent and other dues recoverable or imposed under these presents, it is not made within the time stipulated herein or in notices of demand or imposition issued hereunder the lessee shall also be liable to pay to the Lessor interest charges at the rate of 12% per annum from the date of default upto the date of payment of dues delayed.

xv) All works of levelling/ reclamation of the site shall be carried out by the lessee at his own cost as per specifications as may be fixed or approved by the Chief Engineer of the Board of Trustees of the Port of Kandla.

3. If there shall at any time have been in the opinion of the lessor or the Chairman, whose decision shall be final, any breach by the lessee or by any person claiming through or acting under him or any of the covenants or conditions contained in Sub-clause (v), (viii) & (ix) of the Clause 2 above and if the said lessee shall neglect or fail to remedy any such breach to the satisfaction of the Chairman, within one month from the receipt of a Notice signed by the Chairman, requiring him to remedy such breach it shall be lawful for the Officers and workmen acting under the Authority and direction of the lessor to enter upon the premises hereby demised, and respectively, (a) to remove or demolish any unauthorized alterations in or additions to the buildings erected on the demised premises (b) to remove or demolish any building erected on the demised premises without the previous consent in writing of the Chairman or duly authorized officer as aforesaid and (c) to fill any excavation or carry out any repairs that may be necessary; and all such moneys and expenses as may be paid out and incurred by the lessor or by his order while acting hereunder shall be paid by the lessee; and it is hereby expressly declared that exercise of powers hereunder given to the lessor in this behalf, shall not preclude him from taking any action under clause 4.

4. The lessor may in case of any breach of any of these covenants by the lessee or by any person claiming through or under him, determine this lease, and in such case it shall be lawful for the lessor and the Chairman (by himself or by any of his

subordinates specifically authorized in this behalf) to enter on the demised premises or any part thereof in the name of the whole and retake possession of the demised premises and any structure, buildings and constructions of whatsoever nature standing thereon; and in that case the lessee shall not be entitled to any compensation by way of refund of any part of the original premium amount (if any) or any outgoings paid by him in this behalf or by way of any damages for any loss of property or business suffered by him provided however:

i) In case of any breach of the terms by the lessee relating to non-payment of ground rent or any other dues outgoings & impositions, hereunder levied or imposed, the lessor shall not take any action under this clause unless the lessee has been in arrears for a period of over two years.

ii) In case at the time of determination of this lease deed, there exists some building or structure on the demised premises, the lessor shall within reasonable time of his having taken over the same pay reasonable compensation to the lessee for the said buildings and/or structures. Such compensation shall invariably be determined by the Chairman, and will be equal to the difference between the then market value of the demised premises with or without the said buildings and/or structures.

5. No forfeiture or re-entry shall be effected except as herein provided, without the permission of the lessor or Chairman, who

shall not permit such forfeiture or re-entry until after a month of the Lessee being served with a notice in writing by the lessor;

a) Specifying the particular breach complained of and

b) Directing the same to be remedied, if the particular breach is capable of being so remedied, and the lessee fails within the period of said one month to remedy the breach if it is capable of remedy;

6. Notwithstanding anything contained in Clauses 3 & 4 hereabove, the lessor reserves absolute right to revoke any order of determination of this lease deed passed by him for any reason whatsoever and to maintain status quo within six months of the order of such determination on such terms and conditions, as he may deem fit in circumstances of each case.

7. The ground rent hereabove reserved may at the option of the lessor be revised and refixed at the end of every ten years, subject to the ground rent so refixed at the end of first ten years not exceeding double the original rent and the ground rent so refixed at the end of the second ten years not exceeding thrice the rate originally fixed.

8. The Lessee observing and performing all the agreements covenants and conditions hereof, will on expiration of the term reserved herein, be granted at his/her option, a new lease of the demised premises by way of renewal for a further period of THIRTY years to commence from the date of expiry thereof on

such terms and conditions as the lessor may in his absolute discretion then determine.

9. All notices, bills and letters of demand issued by the lessor to the lessee under these presents shall be deemed to have been duly received by him.

   i) If the same are sent by registered post to the last known address of the lessee;

   ii) Or are affixed to some conspicuous part of the demised premises or any structures thereon.

10. Subject as hereinbefore otherwise provided all notices to be given and all other actions to be taken on behalf of the lessor may be given or taken on behalf of the lessor by Estate Manager or any Officer for the time being entrusted with the functions, duties and powers of the said Estate Manager.

11. In the event of any disputes or differences arising between the parties hereto in respect of any of the matters comprised in this deed or in any way whatsoever touching or concerning this deed (except as to any matters the decision of which is hereinbefore otherwise provided for) all such disputes and differences shall be referred to the sole arbitration of any person appointed by the Lessor.

    It will be no objection to any such appointment that the person appointed is an employee of the lessor that he had to deal with the matters to which this deed relates and that in the course of

his duties as employee of the lessor he has expressed view on all/or any of the matters in disputes or difference. The award of such arbitrator shall be final and binding on the parties to this deed. It is a term of this deed that in the event of such arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason, the lessor shall appoint another person to act as arbitrator in accordance with the terms of this deed. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor. The arbitrator may with the consent of the parties, enlarge the time from time to time for making and publishing the award.

SCHEDULE

All the part and parcel of the land total area admeasuring 9980 Sq. Mtrs of the bearing plot No. A as per the boundaries dimensions, area and location of the plot as delineated on the Kandla Port Trust drawing dated 23.06.1978 duly marked red showing the area allotted to M/s INDIAN MOLASSES CO. (P) LTD., situated inside the CARGO JETTY area, within the Kandla Port Trust area at New Kandla, Taluka Anjar in the Sub-registration District of Gandhidham and Registration District of Kachchh, Gujarat State.

1. Northern Boundary: Bounded by the Kandla Port Trust area by leaving 5 (five) meters from the labour amenity centre.
2. Southern Boundary: Bounded by the Kandla Port Trust area by leaving 3 (three) Mtrs. from

		the existing Metre Guage Railway siding from its centre.
3.	Eastern Boundary:	Bounded by the Kandla Port Trust area by leaving 15 (Fifteen) Mtrs. from the Western edge of the asphalt road behind the Warehouse-B.
4.	Western Boundary:	Bounded by the Kandla Port Trust area.

IN WITNESS WHEREOF the parties to these presents have hereunto set their hands and seals this the 17th day of September, 1984 at Gandhidham-Kachchh;

Signed, sealed and delivered by the within named in the presence of:
THE INDIAN MOLASSES CO. PVT. LTD. (LESSEE)

1. Name: LAVU RAMESH
   Address: Plot No. 513, Sector 12/C,
   GANDHIDHAM (KUTCH)

2. Name: N. KISHORE
   Address: Plot No. 513, Sector 12/C
   GANDHIDHAM (KUTCH)

Signed sealed and delivered by Shri B. S. BAROT

Secretary on behalf of the Board.

Sd/- SECRETARY

KANDLA PORT TRUST

In the presence of:

1. Sd/- Estate Manager, Kandla Port Trust (Witness)
2. Sd/-Estate Inspector, Kandla Port Trust (Witness)

The common seal of the Board of Trustees of the Port of Kandla affixed in the presence of: (SEAL)

Sd/- SECRETARY

KANDLA PORT TRUST

//TRUE COPY//

Annexure P/2

KANDLA PORT TRUST

No. LW/PL/2670/560 21-7-1994

M/s. United Storage &,
Tanks Terminals Ltd.,
5 - Jamuna Building,
Near Oslo,
Gandhidham-Kutch,

Sub:- Allotment of 12 acres of land to M/s. - United Storage 8. Tanks Terminals Ltd, for the purpose of storage &. handling of hazardous &. non-hazardous liquid cargo at Kandla.

Sir ,

I am directed to refer to the correspondence resting with your letter dated 21-7-1994 and other letters on the above mentioned subject and to Inform you that a plot of land admg. 12 acres (approximately subject to actual survey & demarcation on site) situated to the South of land allotted to I.O.C. for foreshore terminal and to the East of two mile road (Jawaharlal Nehru Road) as shown in the plan duly marked is hereby offered to you on 30 years' lease basis on 'AS IS WHEPE IS CONDITION' for the purpose of storage and handling of hazardous and non-hazardous/cargo subject to the main

terms & conditions as stipulated in the enclosure and further subject to the following terms & conditions:-

a) The period of lease shall be 30 years from the date of agreement entered into between the port and the party.

b) The lease shall not be automatically renewable.

c) The allottee shall be liable to pay the lease rent @ Rs. 11/- per sq. mtr. per annum. The lessee shall be liable to pay the lease rent at schedule rate, if fixed higher, at any time.

d) The lease rent shall bear an escalation @ 10% per annum (compoundable)

e) KPT will have an option to refix the lease rent every 5 years.

f) The allottee shall pay a lumpsum amount of Rs. 40 lakhs provisionally or the average premium par sq. mtr. earned by Kandla Port Trust by allotment of II plots for construction of storage tanks of liquid cargo on the land adjacent to the LPG project of IOC, whichever is higher, as premium.

g) The allottee shall deposit an amount equivalent to one year’s lease rentals as refundable security deposit with the port which shall be maintained till the end of the lease period or shall provide art irrevocable bank guarantee for an amount equivalent to three year's lease rentals which shall remain valid for the lease period.

h) The allottee shall obtain all statutory clearance as may be required by law including Environmental dept., Explosive dept., Pollution Control Board and shall produce Risk Analysis Report.

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.

j) All plans for the development of leased property shall be got approved from the Board of Trustees.

k) The allottee shall utilise the property leased only for the purpose for which it has been allotted. In case lessee falls to do so, the lease shall be liable for termination.

l) The leased property, can be resumed at

any time before the expiry of the lease period, if required by the Port for its own use with three months notice on payment of compensation in accordance with the formulation as may be approved by the Government. If the lease is cancelled for not complying with the condition of lease no compensation shall be payable by the Port.

m) No compensation shall be payable by the Port in the event of refusal to renew the lease,

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

o) The allottee shall be governed by the provisions made under section 34 and 42 of Major Port Trusts Act, 1963.

p) The allottee shall be liable to provide a minimum guaranteed traffic to the Port at the following rate.

1st year	0.50 lacs tonnes
2nd year	1.00 lacs tonnes
3rd year	1.50 lacs tonnes

4th year 2.00 lacs tonnes per annum

q) In case the allottee fails to achieve the minimum guaranteed performance, he shall be liable to pay the wharfage charges etc. for the minimum guaranteed traffic In case the lessee improved upon the minimum guaranteed performance, he shall be liable to pay the charges as per the actuals.

r) If there are some genuine reasons like change in the government policy regarding import/export or a particular commodity as a result of which the required throughput could not be achieved in a year, suitable relaxation may be made with the approval of the Government.

s) The allottee shall be liable for termination If the lessee fails to pay the wharfage etc. for the minimum guaranteed-traffic or if he fails to achieve the minimum guaziarftead performance for three consecutive years without any genuine reasons.

t) You shall not be permitted for laying pipeline on the oil jetty and its approach but you will be permitted to share a common pipeline alongwith other lessees

in the said portion. The cost of laying, maintaining and operating the common pipeline will be share by you alongwith other lessees in the said portion.

u) It is also the specific term of the allotment of aforesaid plot that all filling, levelling etc., and reclamation of the plot wherever required thereon Will be carried out by you and other development works namely approach road, water supply, drainage, electricity etc., shall be provided and maintained by you at your cost and for the satisfaction of the Chairman, KPT or any officer authorised by him , in this regard.

v) The plot offered hereunder will be utilised for Storage and handling of hazardous and non hazardous liquid cargo.

You are requested to pay immediately the dues specified in the foregoing paragraphs and convey your acceptance to the conditions contained in the communication and also to those stipulated in the annexure enclosed, send a copy of the said annexure duly signed by you in token of your acceptance within one month of the receipt of this communication so that further action may be taken to handover possession of the plot to you after joint survey and demarcation

on site.

If the acceptance of the offer on the revised terms and conditions as stated in the preceeding paragraphs and dues referred to above are not received in this office within one month of receipt of this offer by you, the offer hereby given will automatically lapse and Kandla Port Trust shall be free to re-allot the said plot to others which please note.

TERM AND CONDITIONS OF OR ALLOTMEUT OF PLOT/LAND OTHER THAN LAND FOR SALT MANUFACTURING ON LEASE BASIS UNDER CONSTRECTION CRIENTED POLICY IF RESPECT OF KANLA PORT LAND

1. The allotment - land under this policy will in the first instance be provisional and be governed by the term and condition contains herein and in the latter of allotment. Under construction oriented policy, the provisional allotment of plot and the final allowing will commence by way of granting lease deed which will be executed and registered at the cost of the allottee only after completion of construction as per the approved plans on the said plot whithin the stipulated period as here after mentioned as

per the criteria fixed by the Board and on obtaining completion certificate from K.P.T.

2. The allotment under this policy will be deemed to have been commenced from the data of handing over of the possession of the plot to the allottee only after making payment of premium ground rent/earnest money deposit to K.P.T. which formalities will have to be completed by him within a period of two months from the date of issuance of offer of allotment.

3. Provided however in case of such allottees who require the lease deer as title for pledging the lease hold, rights as security for loans or advances from Life Insurance Corporations, Banks and other Government financial institutions for construction if building on the said plots, the lease deed will be executed aftter the allottee produces evidence that the loans & advances for undertaking construction have been sanctioned by the respective financial institutions. The No Objection Certificate and prior permission for mortgage will be issued on payment of mortgage fees at the rate of 12% of the loan amount Subject to a minimum of Rs 500/ and maximum of Rs. 7500/- or as may be fixed by KFT subject to the and terms conditions of prescribed by Port Trust.

4. The allottee shall pay to the Kandla Port Trust earnest money deposit equal to one year's rent. Thereafter he shall pay by way of deposit every year in or before the date of handing over of possession of plot an amount equal to one year’s rent till the buildings/structures have been constructed in accordance with the approved, plans and uptil the lease deed is executed and " registered whereafter the earnest money deposits equal to annual rent will be adjusted as ground rent and the lease will be deemed to have commenced in that case from the date of entry on the premises under the terms of allotment of the plot.

GROUND RENT

5. The annual ground rent will be payable at the rate of Rs. 11.00 par square metre or part thereof and per annum or part thereof.

In casa, payment of ground rent and other dues is not made within the time stipulated i.e. on or before the due date, the allottee/lessee shall also be liable to pay the lessor interest charges at the rata of 18% per annum from due date upto the actual, date of payment.

in case, the allotte failsto pay the ground rent for a of __ 3 years from due date, a notice will be issued to the allottee calling upon him to

compound the said breach committed him within a period of one month by paying the outstanding fees alongwith penal interest failing which the allotment made will be cancelled. However, if the allottee fails to compound the said breach within the stipulated period of one month, the allotment made shall be liable to be cancelled with immediate effect by issuing a notice and in such a case; all payments made for the said plot towards premium, ground rent, earnest money and other outgoings, if any shall be forfieted in favour of Kandla Port Trust.

7. However, in such case of cancellation of allotment and/or determination of lease due to non payment of outstanding dues , the plot may be restored in favour of the alloctee by the Chairman and starus quo be maincained within 3 months from the date of cancellation of allotment at the request of the allottee on payment of total arrears of dues payable by the allottee alongwith 10% interest par annum thereon In such a case, in addition to above, 3 advance annual instalments, of ground rent a period of more 3 years from the due date of payment shall also be payable by the allottees who remain defaulters for a period of mere than 3 years from the due data of payment before his request for restoration of the plot can be considered.

8. Chairman, KPT may at his absolute discretion waive or compound the breaches to the extent determined by him land may also condone fully or partially the recovery of extra dues in the form of interest, compensation under special circumstances with due Justification.

9. Revision of Ground Rent

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 be revised on the basis of market value prevailing at the time determined by Cherman KPT or any other authority empowered by final and legally binding on the allottee and not open for any dispute by allottee. The allottee shall pay the ground rent at revised rates from the date of revision.

10. Submission of plans

Tho allottee shall within a period of 6 months from the date of handling over of possession of the plot submit to the Chairman KPT for approval, the plans elevations and cross sections of the structuro which he proposes to arect on the plot together with sanitation, trench and water supply system which he proposed to be installed in the building. The site plan,

elevation and cross section etc. shall be in strict conformity with the requirements of the building rules & regulations and directions as to the architectural control proscribed by the Chairman, KPT or any other officers or authority appointed by him in this regard and until the paid plans, specification etc. are approved by competent authority in writing no construction activity of whatsoever nature shall be commenced on the said plot by the allottees.

11. Period of Construction

The allottee shell within period of 24 months in case of plots allotted for residntioal office commercial showing and thin period of 36 months in the case of the

purposes from the date of handing over of the
of tlra plnt erect and comlete in all respects structures on the site allotted to him In accordance
approved plans The allottee shall also obtain. tion certificate from KPT within a period of 24/36 months data of handing ever of possession of the plot to the provided, however, the Chairman, KPT may at his operetion for special reasons grant extension of time in for camplcting construction on the request of allottee in case the allottee fails to complete construction for the

masons beyond his control.

12. Statutory obligations

The allotted shall confirm and be bound by all the statutory construction rules, regulations and bye-law regulation the construcition, maintenance, occupation and bye-laws and possession Regulating the of building, health sanitation and drainage and those regulations of safety, anti-pollution control etc., prescribed from time to time under the provisions of any law being in force and shall obtain clearance from the concerned competent Authorities wherever required.

13. Use of plots

The lessee shall strictly use the plot, building, structure erected thereon only for the purpose for which the allotment is made. In case, the nature of the use of the plot 13 to be changed, the lessee shall prior permission in writing from Chairman showing the sufficient justifiable reasons for such change and the Chairman in such cases at for any, allottee his absolute discretion may refuse or grant permission change of use or plot on such arms and conditions, if by recovering such charges as he may deem fit. If the. lessee maxes use of the plot for purposes other than for which it is allotted without

obtaining prior permission in writing from the Chairman and/or if the lessee is dumping/ putting such material which adversely affects the soil and sub -soil condition of the plot, it shall amount to breach of terms of allotment an the allotment made will be liable to cancelled, and lease granted will be determined and all payments made for the said plot like, ground rent and premium etc. in respect the said plot will be forfeited in favour of KPT and in such case no compensation whatsoever will be payable by Port Trust.

14. Inspection of plot

The allottee shall at all reasonable time allow for inspection access to the demised plot of land to the hairman, Kandla Port Trust or his duly authorised officer or gent as aforesaid.

15 Minimum guaranteed throughput penalty for non performance

Where the land is allotted for a Port based industry, the Llotteo shall give minimum guaranteed annual fort Traffic to Kandla Port Must from the 2nd year of allotment of land, till the allotment period/lease period is completed and to this effect a rittan undertaking shall have to be given by the allottee on stamp paper of Rs. 10/- duly signed before notary Public.

In case the al1 other fails to give top minimum leranteed Port traffic to KPT and there is a shortfall in Port Charges arising from failure as export or import of commodity/condition in a year the allottee shall have to pay to KPT amount aquivalont to the extent of shortfall in Port charges calculated at the latest prevalent rate. Also the allotment made will be liable to be cancelled/lease be determined if the minimum traffic through Port is not achieved and no satisfactory explanation acceptable to the Chairman, K.P.T. is given by the allottee.

However, the Chairman may consider such oases for relaxations, if chare are some genuine reasons like change in the Government's policy regarding import/export of a particular commodity as a result of which the required through put could not bo achieved in a year.

16 Transfer of plots.

No rights under the allotment latter shall be transfer able unless and until construction is completed & lease deed is executed in favour of the allottee since the plots are being allotted, by K.P.T. under construction oriented policy.

Even after construction of building and execution of the lease-deed, the lease-hold interast/rights in respect of these plots shall not

be transferable without obtaining prior approval of Chairman, KPT in writing & lessor shall be entitled to recover transfer1 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 Port trust and no transaction of transfer will be recognized unless the transfer fee is paid on lessor by the transferor. All assignees & transfers end cha heir of the lessen shall be bound by all the convenants and conditions herein mentioned, and also lease deed and allotment letter and be answerable therefore to lessor Port Trust.

17. breach of terms and condicions

Should thero be any preach on the part of the allottee or his agent of any of the aforesaid main terms & conditions of allotment and/or terms of offer of allotment and/or terms of the lease deed including the covenants regarding construction of structures within i.he stipulated period, use of land, payment of premium, ground rent, deposit and any other charges etc. a notice will be issued to cho allottee to compound/remody the said breach committed by the allottee within a period of a month. In the event the allottee fails or neglects to compound/remedy the breach committed by him to the satisfaction of Chairman, KPT within tho

stipulated period of one month, the allotment of land mpda will'be cancelled and lease datermined by K.P.T. with immodlate effect by giving a notice of cancellation of allotment and/or determination of the lease to the party and in such an event all the payments made by the allottee for the said plot towards premium, ground rent, deposits and other outgoings if any will be forfeited in favour of KPT and the lessor shall be at full liberty to re-allot/release the plot.

The Kandla Port Trust have the right in case of as is granted within the Kandla Port limits to determine the lease, before the expiry of the term thereof by .giving I six month's notice in case the demised premises are required for tho Port Trust's own purpose or for the purpose of the Government, provided that the option herein mentioned shall not be exercised within the first five years from the commencement of lease. In the event of early determination of the lease for above reasons and purpdses the Port Trust will pay to the lessee suitable compensation for the fixed assets on the demised premises in accordance with the formulations that may be approved by the Central Govt, without in anyway being liable to the lessee for any loss of business or other damages in this behalf.

19. On expiry of lease term, the allottee shall

hand over the vacant and peaceful possession of the plot quietly on the day of expiry of the terms of lease and in case of sooner determination of lease/cancellation of allotment of plot, the allottee shall hand over vacant peaceful possession of the plot quietly within the time stipulated in the notice of cancellation of allotment by removing all the structures Sc materials etc. erected and/or lying if any on the demised premises at his cost.

However, in the event of allottee's/lessee's failure to handover tho vacant .and peaceful possession of the plot within the stipulated time, it shall be lawful for the Chairman, KIT or his subordinate officer authorised on his behalf to enter upon the demised premises and taka over possession of the- some even by preparing P \nchnama and remove material lying on tho plot andemolish bui. lding/structures erected on the said plot, fill up any excavation etc. All such moneys and expanses, as may bo paid out and incurred by Chairman, Kandla Port Trust or by his order while acting for taking over of vacant peaceful possession of the said plot shall be recover" .bio from the allottee.

In tha case of cancellation of allotment and/or determination of lease before expiry of lease period and/or completion of the terms of

lease, the lessor shall not be bound to pay any compensation, damages of whatsoever nature including for loss of business etc.

Also, in the event of lease being not renewed for fresh term or on determination or forfeiture of the lease for/any reason whatsoever and the allottees failure or neglects to deliver back the possession of the land forthwith to the Port Trust, from the date of determination of the lease and/or from the date of completion of the lease term, the allottee shall be liable, till tha actual date of delivery of possession to Port Trust, to pay damage pur month for use U enjoyment of the said land a sum not exceeding the amount of alx annual instalments of ground rent pre-aeribed for the plot and the quantSm of the said , damages so fixed shall not be open to lessee tc question and the decision of Chairman in this regard shall ba final.

It is hereby, expressly declared that exercise of power by the Chairman, Kandle Port Trust.

20. Administration of terms of allotment

Chairman, Kandla Port Trust shall administer the Main terms and conditions , terms of of fair of allotment and terms of lease deed on behalf of ‘lessor’ the Board of Trustees of Port

of Kandla, Kandla Port Trust and the Chairman, KPT or any officer etrustted with the duties and exercising for the purpose by powers of Chairman shall issue all letters, notices , approvals and other communications in connection with the plots allotted including the Notice of cancellation of allotment and/or determination of lease, notice of taking over the possession of the plot after cancellation of allotment and to take any suitable action under the said terms.

All notices fills and letters of the Port Trust posted by Regd. A.D. to the last known address of allottee/lessee and/or the plot address or are affixed on some conspicuous part of the demised premises or any structure thereon be deemed to have been duly curved on the allottee.

All rules and regulations made by Chairman, Kandla port Trust/board of Trustees of Kandla Port with regard to use and enjoyment of the demised premises shall be deemed to be part of terms and conditions of allotment U shall be binding on the allottee.

//TRUE COPY//

Annexure P/3

USTTL (GAS)
30 years lease
Till 6th March 2016

Serial No. 3668
Presented at the office of the
Sub Registrar, Gandhidham
Between the hours of 11 And 12
Dt. 17 OCT 2002
Sd/-
H. I. Desai
AUTHORISED SIGNATORY
M/S. UNITED STORAGE & TANK TERMINALS LIMITED

Sd/-
S. B. DOSHI
Sub Registrar
Gandhidham

30 YEARS GENERAL LEASE FORM

THIS INDENTURE made the 20th day of Aug 2002 between the Board of Trustees of Port of Kandla a body corporate under the Major Port Trust Act, 1963 (here in after called the "Lessor") of the one part M/s. United Storage & Tank Terminals Ltd. Company registered under the Indian Companies Act – 1956 and having its registered office at No. 58, Bajaj bhavan, Nariman point, MUMBAI. (here in after referred to as "Lessee" which expression shall where the context so admits include its successor and permitted assigns) of the other part witnessed as under:

WHEREAS THE Board of Trustees of the Port of Kandla has agreed to demise the Plot of land here in after described to the Lessee in the manner herein after appearing.

NOW THIS INDENTURE WITNESSETH that in consideration of the Premium of Rs. 4,05,000/- (Rupees Four Lac Five Thousand only) paid on or before the execution of these presents (the receipt whereof the Lessor hereby acknowledges) and of the ground rent herein after reserved and of the covenant on the part of the PLOT of land containing by measurement 19479 Sq. Meter, or THERE ABOUTS, SITUATED AT PLOT NO. 4, for handling and storage of hazardous and non-hazardous liquid Chemicals and Liquefied Gases at Old Kandla in the Sub – Registration District of Gandhidham Taluka : Gandhidham and Registration Dist. Of Kutch situated within the Kandla Port limits which plot of land is more particularly described in the schedule hereunder written, and with the boundaries thereof has for greater clearness delineated on the plan annexed to these presents, and thereon coloured red together with all rights, easements and appurtenances whatsoever to the said plot of land (hereinafter called the "demised Premises") belonging or appertaining but subject to the reservations hereinafter mentioned.

TO HOLD the premises hereby demised unto the Lessee for the period of 30 years only from the day of 07-03-1986to 06-03-2016 YIELDING AND PAYING : therefore the yearly rent of Rs. 70,125/- (Rupees Seventy Thousand One Hundred and Twenty Five only) at the rate of Rs. 03-60/- per Sq. Meter (Rupees Three and paise sixty only per Sq. Meter.) and subsequently Rs. 11/- with effect from 01-07-1997. Ground Rent Rs. 2, 14,269/- (Rupees Two Lac Fourteen Thousand

Two Hundred and Sixty nine Only) or such other sums as may hereafter be assessed under the covenants and conditions hereinafter contained clear of all deductions by equal yearly payment payable in advance by 5th day or every year at the office of the Lessor or at such places as may be notified by him for the purposes from time to time, the first such payment to be made on the 07-03-1986.

Subject always to the exceptions, reservations, conditions and covenants hereafter contained.

1. The Lessor accepts and reserves unto himself all mines, minerals, coals, gold washing, earth Oils and quarries in or under the demised premises and full right and power, at all times to do all acts and things which may be necessary or expedient for the purpose of searching for, working, obtaining, removing and enjoying the same provided always that the Lessor shall reasonably compensate the Lessee for all damages directly occasioned by the exercise of the rights hereby reserved or any of them.

2. The Lessee covenants with the Lessor as follows (that is to say) : -

   I) The Lessee shall pay unto the Lessor the yearly rent hereby reserved on the days and in manner herein before appointed.

   II) The Lessee shall from time to time and at all times pay and discharge all rates, taxes, charges all assessment of every description which are now or may at any time hereafter

during the continuation of this lease be assessed, charged or imposed upon or in relation to the demised premises or on any building to be erected thereupon.

III) The Lessee shall within the period of six months from the date of handing over of possession of the plot submit to the Chairman, Kandla Port Trust for approval, the plans elevations and cross sections of the structure which he proposes to erect on the plot together with sanitation trench and water supply system which he proposes to be installed in the building. The site plan, elevation and cross section etc. shall be in strict conformity with the requirements of the building rules and regulations and directions as to the architectural control prescribed by the chairman, Kandla Port Trust or any other officers or authority appointed by him in this regard and until the said plans, specifications etc. are approved by competent authority in writing no construction activity of whatsoever nature shall be commenced on the said plot by the allottee. The Lessee shall provide that such building shall be constructed in all respects in accordance with such designs, plans and specifications, and in such situation and position and arranged in such manner as shall have been previously proposed and submitted by the Lessee to the Chairman and approved in writing by him.

The Lessee shall within a period of 24 months in case of plots allotted for residential, office, commercial shopping and within a period of 36 months in case of the Industrial purposes from the date of handing over of the possession of the plot erect and complete in all respect building / structures on the site allotted to him in accordance with the approved plans. The Lessee shall also obtain completion certificate from Kandla Port Trust within a period of 24 / 36 months from the date of handing over of possession of the plot to the Lessee provided, however, the Chairman, Kandla Port Trust may at his discretion for special reasons grant extension of time in writing for completing construction on the request of allottee in case the Lessee fails to complete construction for the above reasons beyond his control.

And provide further that all the materials used in the said building shall be good and sound and shall have been approved by the Chairman and the timber shall be of good teak only or such other good timber as shall be approved by the Chairman and provided further that all drains and sewers for the said demised premises shall be constructed, made, laid and connected to the satisfaction of the Chairman and or any Statutory Local Authority and in such position as shall be directed by Chairman and/or by the said Statutory Local Authority.

IV) No construction work on the demised premises shall be commenced unless the plans submitted as here above have been approved by the Chairman. The Lessee shall not make any alterations or additions to the building so approved as aforesaid either external or internal so as to effect any of the architectural or structural features originally shown by him in the approved plans unless such alterations and additions shall have been previously in like manner approved.

V) The Lessee shall conform and be bound by all the statutory rules, regulations and bye-Laws regulating the construction, maintenance, occupation and possession of building, health, sanitation and drainage and those regulations of safety, anti-pollution control etc., prescribed from time to time under the provisions of any law from time to time being in force and shall obtain clearance from the concerned competent authorities wherever required.

VI) The building during construction shall be open at all times to the inspection of Chairman, his authorized official or Agents and the Lessee or ay one acting under him shall afford all reasonable opportunities to them for inspection.

VII) The Lessee shall strictly use the plot, building, structure erected thereon only for the purposes for which the allotment is made i.e. Construction of Storage Tanks. In

case, the nature of the use of the plot is to be changed, the Lessee shall seek prior permission in writing from Chairman showing the sufficient justifiable reasons for such change and the Chairman in such cases at his absolute discretion may grnt or refuse permission for change of use or plot on such terms and conditions, if any, by recovering such charges as he may deem fit. If the allottee / Lessee makes use of the plot for purpose other than for which it is allotted without obtaining prior permission in writing from the Chairman and/or if the Lessee is dumping / putting such material which adversely affects the soil and sub / soil condition of the plot, it shall amount to breach of terms of allotment and the allotment made will be liable to be cancelled and the lease granted will be determined and all payments made for the said plot like ground rent and premium etc. in respect of the said plot will be forfeited in favour of Kandla Port Trust and in such cases no compensation whatsoever will be payable by Port Trust.

VIII) The Lessee shall not without the written consent of the Chairman or his duly authorized officer or agent as aforesaid make any excavations in the demised premises and will at all times during the continuance of this lease maintain the demised premises and all building thereon in a sanitary condition to the satisfaction of the Chairman or any duly authorized officer or agent aforesaid.

IX) The Lessee shall at all times during the continuance of this lease keep the building to be erected on the demised premises in a good and substantial state of repair to the satisfaction of the said Chairman or any duly authorized officer or agent as aforesaid.

X) The Lessee shall at all reasonable times allow for inspection access to the demised premises to the Chairman, or his duly authorized officer or agent as aforesaid or to the sanitary staff appointed for the purpose of maintaining sanitation within the Kandla Port limits.

XI) The Lessee shall on the determinations of the lease peaceably yield upto the Lessor the said demised premises and any building thereto appertaining upto the Lessor.

XII) The Lessee has no rights under the terms of allotment to transfer or otherwise part with the demised premises or any part thereof unless and until construction is completed and lease deed is executed and registered in favour of the allottee by Kandla Port Trust under "Construction Oriented Policy".

Even after construction of building and execution of the lease deed, the lease hold interest / rights in respect of these plots shall not be transferable without obtaining prior approval of the Chairman, Kandla Port Trust in writing and Lessor shall be entitled to recover transfer fees equal to six times the annual ground rent payable under the lease

at the time of transfer of the said plot. No mutation or transfer will be effected in the records of Port Trust and no transaction or transfer will be recognized unless the transfer fees is paid to the Lessor by the transferor. All assignees and transferees and their heir or the Lessee shall be bound by all the covenants and conditions herein mentioned, and also lease deed and allotment letter and be answerable therefore to Lessor Port Trust.

Notwithstanding anything contained herein above the Lessee may, with the previous consent in writing of the Chairman by paying prescribed mortgage fees mortgage or charge the plot and the building thereon to such person / bank / financial institution as may be approved by the Chairman in his absolute discretion by charging fee. Providing that in the event of the sale or foreclosure of the mortgaged or charged property, the Lessor shall be entitled to claim and recover an amount equivalent to 6 times the yearly rent recoverable at the time of the said foreclosure and the said recovery shall be the first charge having priority over the said mortgage or charge.

XIII) The Lessee shall register all the changes in the possession or ownership of the whole of the demised premises or of the building thereon whether by transfer, succession or otherwise in the register kept in the office of the Chairman for this purpose within two calendar months from the

respective dates of such changes, and in case the Lessee shall without sufficient cause neglect to register such changes in the manner aforesaid, he shall be liable to pay to the Lessor for every such neglect a penalty not exceeding Rs.100/- as may be levied by the Chairman, in addition to any other remedies enforceable against him under these presents.

XIV) In case, payment of ground rent and other dues recoverable or imposed is not made within the time stipulated i.e. on or before the due date, the allottee / Lessee shall also be liable to pay the Lessor interest charges at the rate of 24% from due date upto actual date of payment of dues delayed.

In case, the Lessee fails to pay the ground rent for a period of 3 years from due date, a notice will be issued to him calling upon him to compound the said breach committed by him within a period of one month by paying the outstanding dues along with penal interest failing which the allotment made will be cancelled. However, if the Lessee fails to compound the said breach within the stipulated period of the one month, the allotment made shall be liable to be cancelled with immediate effect by issuing a notice and in such a case, all payment made for the said plot, towards premium, ground rent, earnest

money and other outgoings, if any, shall be forfeited in favour of Kandla Port Trust.

However, in such case of cancellation of allotment and / or determination of lease due to non-payment of outstanding dues, lot may be restored in fvour of the Lessee by the Chairman and status quo maintained within 3 months from the date of cancellation of allotment at the request of the Lessee on payment of total arrears of dues payable by the Lessee along with 24% interest per annum thereon. In such a case, in addition to above, 3 advance annual installments if ground rent shall also be payable by the Lessee who remain defaulters for a period of more than 3 years from the due date of payment before his request for restoration of the plot can be considered.

Chairman, KPT may at his absolute discretion waive or compound the breaches to the extent determined by him and may also condone fully or partially the recovery of extra dues in the form of interest, compensation under special circumstances with due justification.

XV) All works of levelling / reclamation of the site shall be carried out by the Lessee at his own cost as per specifications as may be fixed or approved by the Chief Engineer of the Board of Trustees of the Port of Kandla.

3. Should there be any breach in the opinion of the Chairman, KPT on the part of the Lessee or his agent of any of the aforesaid main terms and conditions of allotment and/or terms of offer of allotment and/or terms of the lease deed including the covenants regarding construction of structures within the stipulated period, use of land, payment of premium, ground rent, deposit and any other charges etc. a notice will be issued to the Lessee to compound / remedy the said breach committed by the Lessee within a period of a month. In the event the Lessee fails or neglects to compound / remedy the breach committed by him to the satisfaction of Chairman, KPT within the stipulated period of one month, the allotment of land will be cancelled and the lease determined by KPT with immediate effect by giving a notice of cancellation of allotment and/or determination of the lease to the party and in such an event all the payments made by the Lessee for the said plot towards premium, ground rent, deposits and outgoings if any, will be forfeited in favour of KPT and the Lessor shall be at full liberty to re-allot / release the plot to others.

4. On expiry of lease term, the Lessee shall hand over the vacant and peaceful possession of the plot quietly on the day of the expiry of the terms of lease and in case of sooner determination of lease / cancellation of allotment of plot, the Lessee shall hand over vacant peaceful possession of the plot quietly within the time stipulated in the notice of cancellation of allotment of plot,

by removing all the structures and materials etc. erected and/or lying if any on the demised premises at his cost.

However, in the event of Lessee's failure to handover the vacant and peaceful possession of the plot within the stipulated time, it shall be lawful for the Chairman, KPT or his subordinate officer authorised on his behalf to enter upon the demised premises and take over possession of the same and remove material lying on the plot and demolish building structures erected on the said plot, fill up any excavation etc. All such moneys and expenses, as may be paid out and incurred by Chairman, KPT or by his order while acting for taking over of vacant and peaceful possession of the aid plot shall be recoverable from the allottee.

In the case of cancellation of allot and/or determination of lease before expiry of lease period and/or completion of the terms of lease, the Lessor shall not be bound to pay any compensation, damages of whatsoever nature including for loss of business etc. Also, in the event of lease being not renewed for fresh terms or on determination or forfeiture of the lease for any reasons whatsoever and the Lessee fail or neglects to deliver back the possession of the land forthwith to the Port Trust, from the date of determination of the lease and/or from the date of completion of the lease term, the Lessee shall be liable, till the actual date of delivery of possession to Port Trust, to pay damage per month for the use and enjoyment of the said land a sum not exceeding the amount of six annual installments of ground rent prescribed

for the plot and the quantum of the said damages so fixed shall not be open to Lessee to question and the decision of Chairman in this regard shall be final.

5. It is hereby, expressly declared that exercise of power by the Chairman, Kandla Port Trust under this clause shall not preclude him from taking any action under any other relevant terms and conditions.

6. The ground rent fixed for the plot shall be revised / enhanced / refixed at option of the Lessor at the end of every five years on or after first day of January. The ground rent will be 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 a decision taken on his behalf in this regard shall be final and legally binding on the Lessee and not open for any dispute by Lessee. The Lessee shall pay the ground rent at revised rates from the date of revision.

7. All notices, bills and letters of demand issued by the Lessor to the Lessee under these presents shall be deemed to have been duly received by him.

If the same are sent by registered post to the last known address of the Lessee;

Or are affixed to come conspicuous part of the demised premises or any structures thereon.

8. The lease shall be for a period of 30 years only and shall not be automatically renewable.

9. The Lessee shall deposit an amount equivalent to one year's rentals as refundable security deposit with the port which shall be maintained till the end of lease period or shall provide an irrevocable bank guarantee for an amount equivalent to three year's lease rentals which shall remain valid for the lease period.

10. The Lessee shall be liable to pay the lease rent at higher rate whenever the scheduled rates are revised upwards by the competent authority.

11. The lease shall be governed by the provisions contained under section 34 and 42 of the Major Port Trust At – 1963.

12. The leased property can be resumed at any time before the expiry of the lease period, if required by the Government in the national interest with six months notice on payment of compensation in accordance with the formulation as may be approved by the Government. If the lease is cancelled for not complying with the conditions of lease, no compensation shall be payable by the Port Trust.

13. No compensation shall be payable by the Port in the event of refusal to renew the lease.

14. Any sub-letting, assignment without the prior approval of the authority which sanctioned the lease shall make lease liable for cancellation.

15. The Lessee shall have to follow all other usual terms and conditions of the lease in force from time to time.

16. The Lessee shall be responsible for safety and welfare of the workers directly or indirectly employed by him / her and shall follow all the rules, regulations and labour laws framed by the Government. The Lessee shall provide adequate rescue shelters with Disaster Warning Systems for benefit of the employees / workers employed by him / her and shall take suitable steps to ensure timely evacuation of such workers in case of emergencies and natural calamities.

17. The Lessee will have to plant at least 50 trees so as to maintain environment and ecology in the area.

18. Subject as herein before, otherwise provided all notices to be given and all other action to be taken on behalf of the Lessor may be given or taken for the time being entrusted with the functions, duties and powers of the said Chairman, Kandla Port Trust.

SCHEDULE

All that parts and parcel of the plot of land admeasuring 19,479 Sq. Meters in respect of Storage tanks situated to the plot no. 4 at Old Kandla allotted to M/s. United Storage & Tank Terminals Ltd. in the Sub Registration of Gandhidham, Taluka Gandhidham and Registration District of Kutch and is as per schedule of the Boundaries as detailed described below:

BOUNDARIES AND AREAS

North Boundary : By 114 Meters bounded with Open space

South Boundary : by 69 Meters bounded with Open space

East Boundary : By 84 Meters bounded with Open space, and 130 Meters bounded with Plot No. 5 allotted to M/s. Kesar Enterprises Ltd.

West Boundary : By 152.50 Meters bounded by Plot No. 3 allotted to M/s. J. R. Enterprises.

IN WITNESS WHEREOF the parties to these presents have hereunto set their hands and seals on the day and date hereinabove mentioned.

Signed, sealed and delivered by the within named

Witnesses :-

1. Sd/-
   (Manoj Gor)

2. Sd/-
   (P. Manoj Kumar)

Signed, sealed and delivered by

Secretary on behalf of the Board

In the presence of : -

1. Sd/-

2. Sd/-

Common seal of Board of Trustees of

The Port of Kandla affixed

Registered No. 3668

At pages 378 to 785

Vol. 832 Book No. 486

Date 18 OCT 2002

Sd/-
Sub-Registrar, Gandhidham
(Round Seal)

One Duplicate copy presented along with this deed under Serial No. 3668 has also been registered at Regd. No. 3668 Dated 18 OCT 2002

Sd/-

Sub-Registrar, Gandhidham

KANDLA PORT TRUST

Land Section,
A.O. Building,
Post Box No. 50,
Gandhidham (Kutch)
Pin Code – 370 201.

BY REGISTERED A.D. / U.P.C.

No. LS/PL/2158/2594 Dated : 18-2-1998

M/s. United Storage & Tanks Ltd.
5, Jamuna Building
Near Oslo, Gandhidham-Kutch
Pin 370 201

Sub:- Ground-rent for the land leased

Dear Sir / Sirs,

I have to request you to remit an amount of Rs.2,14,269/- (Rupees Two Lakhs Fourteen Thousand Two Hundred Sixty Nine Only) being the ground – rent for the land leased out to you, as under : -

AREA LEASED	PERIOD	DUE DATE	RATE	AMOUNT
19,479 Sq. mtr.	7-3-98 to 6-3-99	7th Seventh to of every year	Rs.11/- per sq. mtr. per annum	2,14,269.00

2.The amount may be paid in cash to this office or by cheque / drafts drawn in favour of the 'Kandla Port Trust' and on a Bank in Gandhidham at an early date. The interest @ of 18% shall be payable by you for the delayed payment from due date. Out station cheque should cover probable Bank Commission so as to avoid correspondence.

3.In this connection, it is to bring to your notice that the allottee, during the continuance of lease / licence period, is bound to pay the ground-rent / licence fee / facility compensation charges on or before due date whether formally / legally demanded or not by Port Trust. Non-payment of the arrears on the due date amounts to breach of terms & conditions on your part which warrants stern action including cancellation of allotment at your sole risk, cost and consequences.

Yours faithfully,
Sd/-
Asstt. Estate Manager,
Kandla Port Trust

//TRUE COPY//

Annexure P/4

30 YEARS GENERAL LEASE FORM

THIS INDENTURE made the 21 day of August 2002 between the Board of Trustees of Port of Kandla a body corporate under the Major Port Trust Act, 1963 (hereinafter after called the "**Lessor”**") of the one part M/s. J. R. ENTERPRISES carrying on business in partnership in the name and style of **M/s. J, R. ENTERPRISES** and having its office at Old Kandla (hereinafter referred to as "**Lessee**" which expression shall where the context so admits include their respective heirs, executors, administrators and legal representatives and permitted assigns) of the other part;

WHEREAS THE Board of Trustees of the Port of Kandla has agreed to demise the Plot of land here in after described to the lessee In the manner herein after appearing.

NOW THIS INDENTURE WITNESSETH that in consideration of the Premium of Rs. 1,94,400 /- Rupees One Lac Ninety four Thousand & Four Hundred only) paid on or before the execution of these presents (the receipt where of the lessor hereby acknowledges) and of the ground rent herein alter reserved and of the covenant on the part of the lessee herein after contained, the lessor do hereby demise

unto the lessee ALL THAT PLOT of land containing by measurement 13658 Sq, Meter or THERE AB0UTS, SITUATED AT PLOT NO 3, for handling and storage of hazardous and non-hazardous liquid Chemicals and liquefied Gases at Old Kandla in the Sub Registration District of Gandhidham Taluka: Gandhidham and Registration Dist of Kutch situated within the Kandla Port limits which plot of land is more particularly described in the schedule hereunder written, and with the boundaries thereof has for greater clearness delineated on the plan annexed to these presents, and thereon coloured red together with all right, easements and appurtenances whatsoever to the said plot of land (hereinafter called the "**demised Premises")** belonging or appertaining but subject to the reservations hereinafter mentioned. TO HOLD the premises here by demised unto the Lessee for the period of 30 years only from the day of 05 - 03 - 1986 to 04 - 03 - 2016 YIELDING AND PAYING therefore tire yearly rent of Rs. 49,169/- (Rupees Forty nine Thousand One Hundred and Sixty Nine only) at the rate of Rs.03=60/- per Sq. Meter (Rupees Three and paise sixty only per Sq. Meter.) and subsequently Rs. 11/- with effect from 01 - 07 - 1997. Ground Rent Rs. 1,50,238/- (Rupees One Lac Fifty Thousand Two Hundred and Thirty-Eight Only) or such other sums

as may hereafter be assessed under the covenants and conditions hereinafter contained clear of all deductions by equal yearly payment payable in advance by 5th day or every year at the office of the lessor or at such places as may be notified by him for the purposes from time to time, the first such payment to be made on the 27 - 08 -1986.

Subject always to the exceptions, reservations, conditions and covenants hereafter contained.

1. The Lessor accepts and reserves unto himself all mines, minerals, 'coals, gold washing, earth Oils and quarries in or under the demised premises and full right and power, at all times to do all acts and things which may be necessary or expedient for the purpose of searching for, working, obtaining, removing and enjoying the same provided always occasioned by the exercise of the rights hereby reserved or any of them.
2. The Lessee covenants with the Lessor as follows (that is to say)
    i) The Lessee staff pay unto the Lessor the yearly rent hereby reserved on the days and in manner herein before appointed.

ii) The Lessee shall from time to time and at all times pay and discharge all rates, taxes, charges all assessment of every description which are now or may at my time hereafter during the continuation of this lease be assessed, charged or imposed upon or in relation to the demised premise or on any building to b« erected thereupon.

iii) The lessee, shall within the period of'six months from the date of handing over of possession of the plot submit to the Chairman, Kandla PortTrust approval the plans elevations and cross sections of the structure which he proposes to erect on the plot together with sanitation trench and water supply system which he proposes to be installed in the building. The site plan, elevation and cross section etc shall be in strict conformity with the requirements of the building rules and regulations directions as to the architectural control prescribed by the Chairman, Kandla Port. Trust or any other officers or authority appointed by him in this regard and until the said plans, specifications etc. are approved by competent

authority in writing no construction activity of whatsoever nature shall be commenced on the said plot by the allottee. The Lessee shall provide that such building shall be constructed in all respects in accordance with such designs, plans and specifications, and in such situation and position and arranged in such manner as shall have been previously proposed and submitted by the Lessee to the Chairman and approved in writing by him.

The Lessee shall within a period of 24 months in case of plots allotted tor resident: office, commercial shopping and within a period of 36 months in case of the industrial purposes from the date of handing over of the possession of the plot erect and complete in all respect building / structures on the site allotted to him in accordance with the approved plans. The Lessee shall-also obtain completion. certificate from Kandla Port Trust within a period of 24 / 36 months from the date of handing over possession of the plot to the lessee provided, however, the Chairman, Kandla Port Trust may at his discretion

for special reasons grant extension of time in writing for completing construction on the request of allottee in case the Lessee rails to complete construction for the above reasons beyond his control.

And provide further that all the materials used in the said building shall- be good and sound and shall have been approved by the Chairman and the timber shall be good teak only .or such other good timber as shall be approved by the Chairman and provided further that all drains and sewers for the said demised premises shall be constructed, made, laid and connected to the satisfaction of the Chairman and or any Statutory Local Authority and in such position as shall be directed by Chairman and/or by the said Statutory Local Authority.

iv) No construction work on the demised premises shall be Commenced unless the plans .submitted as here above have been approved by the Chairman/ The Lessee, shall not make any alterations or additions to the building so approved as aforesaid either external, or internal so as to effect any of the architectural or structural features

originally shown by him in the approved plans unless such alteration;.-and additions shall have been previously in like manner approved

v) The Lessee shall conform and be bound by all the statutory-rules, regulations and bye-Laws regulating the construction, maintenance, occupation and possession. of building, health, sanitation and drainage and those regulations of safety, anti-pollution control etc, prescribed from-time to time under the provisions of any law from time to time being in force' and shall obtain clearance from the concerned competent authorities wherever required.

vi) The building during construction shall be open.at all times to the inspection of Chairman, his authorized official or Agents and the Lessee or any one acting under him shall afford all reasonable opportunities to them for Inspection.

vii) The Lessee shall strictly use the plot, building, structure erected thereon only for the purposes for which the allotment is made i.e. Construction of Storage Tanks. In

case, the nature of the use of the plot is to be changed, the Lessee shall seek prior permission in writing from Chairman showing the sufficient justifiable reasons for such change and the Chairman in such cases at his absolute discretion may grant or refuse permission for change of use or plot on such terms and conditions if any, by recovering such charges as he may deem fit. If the allottee / Lessee makes use of the plot for purpose other than for which it is allotted without obtaining prior permission in writing from the Chairman and / or if the lessee is dumping / putting such material which adversely affect the soil and -sub / soil condition of the plot, it shall amount to breach of terms of allotment and the allotment made will be liable to be cancelled and the lease granted will be determined and all payments made for the said plot like ground rent and premium etc. in respect of the said plot will be forfeited in favour of Kandla Port Trust and in such cases no compensation whatsoever will be payable by Port Trust.

viii) The Lessee shall not without the written consent of the

Chairman or his only authorized officer or agent as .aforesaid make any excavations in the demised premises and will at all times during the continuance of this lease maintain the demised premises and all building thereon in a sanitary condition to the satisfaction of the Chairman or any duly authorized officer or agent aforesaid.

ix) The Lessee shall at all times during the continuance of this lease keep the building to be erected on the demised premises in a good and substantial state of repair to the satisfaction of the said Chairman or any duly authorized officer or any duly authorized officer or agent as aforesaid.

x) The Lessee shall at all reasonable times allow for Inspection to the demised premises.to the Chairman, or his duly authorized officer or agent as aforesaid or to the sanitary staff appointed for the purpose of maintaining sanitation within the Kandla Port limits.

xi) The Lessee shall on the determinations of the lease peaceably yield upto the Lessor the said demised

premises and any building thereto appertaining upto Lessor.

xii) The lessee has no rights under the terms of allotment to transfer or otherwise part with the demised premises or any part thereof unless and until construction is completed and lease deed is executed and registered in favour of the allottee by Kandla Port Trust under Construction Oriented Policy.

Even after construction of building and execution of the lease deed, the lease-hold; interest / rights in respect of these plots shall not be transferable without obtaining prior approval of the Chairman, Kandla Port Trust in writing and lessor shall be entitled to recover transfer fees equal to six times the annual ground rent 'payable under the lease at the time of transfer of the said plot. No mutation or transfer will be acted in the records of Port Trust and no transaction or transfer will be recognized unless the transfer Fees is paid to the lessor by the transferor. All assignees and transferees and the heir or the lessee shall be bound by all the covenant and

conditions herein mentioned, and also lease deed and allotment letter and be answerable therefore to lessor Port Trust.

Notwithstanding anything contained herein above the lessee may with the previous Consent in writing of the Chairman by paying prescribed mortgage fees mortgage or charge the plot and the building thereon to such person / bank / financial institution as may be approved by the Chairman In his absolute discretion by charging fee. Providing that in the event of the sale or foreclosure of the mortgaged or charged property, the lessor shall be entitled to claim and recover an amount equivalent to 6 times the yearly rent recoverable at the time of the said foreclosure and the said recovery shall be the first charge having priority over the said mortgage or charge.

xiii) The lessee shall register all the changes in the possession or ownership of the whole of the demised premises or of the building thereon whether by transfer, succession or otherwise in the register kept in the office of the Chairman for; this purpose within too calendar months

from the respective dates of such changes, and in case the Lessee shall without sufficient cause neglect to register such changes in the manner aforesaid, he shall be liable to pay to the lessor for every such neglect a penalty not exceeding Rs. 100/- as may be levied by the Chairman, in addition to any other other remedies enforceable against him under these presents.

xiv) In case, payment of ground rent and other dues recoverable or imposed is not made within the time stipulated i.e. on or before the due date the allottee / lessee shall also be liable to pay the lessor interest charges at the rate of 24% from due date upto actual date of payment of dues delayed,

In case, the lessee fails to pay the ground rent for a period of 3 years, from due date, a notice will be Issued to him calling upon him to compound the said breach committed by him within a period of one month by paying the outstanding dues along with penal Interest falling which the allotment made will be cancelled. However, if the lessee fails to compound the said breach

within the stipulated period of the one month, the allotment made shall be liable to be cancelled with immediate, effect, by issuing a notice and in such a case, all payment made for the said plot, toward premium, ground rent, earnest money and other outgoings, if any, shall be forfeited /: in favour of Kandla Port Trust.

However, in such case of cancellation of allotment and / or determination of lease due to non-payment of outstanding dues, plot may be restored in favour of the lessee by the Chairman and status quo maintained within 3 months from the date of cancellation of allotment at the request of the lessee on payment of total arrears of dues payable by the lessee along with 24% interest per annum thereof. In such a case, in addition to above, 3 advance annual installments if ground rent shall also be payable by the lessee along with 24% interest per annum who remain defaulters for a period of more than 3 years from the due date of payment before his request for restoration of the plot can be considered.

Chairman, KPT may at his absolute discretion waive or compound the breaches to the extent determined by him and may also condone fully or partially the recovery extra dues in the form of interest, compensation under special circumstances with due justification.

xv) All works of leveling / reclamation of the site .shall be carried out by the lessee at his own cost as per specifications as may be fixed or approved by the Chief ' Engineer of the Board of Trustees of the Port of Kandla.

3. Should there be any breach in the opinion of the Chairman, KPT on the part of the lessee or his agent of any of the aforesaid main terms and conditions of allotment and / or terms of offer of allotment and / or terms of the lease deed including the covenants regarding construction of structures within the stipulated period, use of land, payment of premium, ground rent deposit and any other charges etc., a notice will be issued to the lessee to compound / remedy the said breach committed by the lessee within a period of a month. In the event the lessee fails or neglects to compound / remedy the breach committed by him to the satisfaction of Chairman. KPT within the

stipulated period of one month, the allotment of land will be cancelled and the lease determined by KPT with immediate effect by giving a notice of cancellation of allotment and / or determination of the lease to the party and in such an event all the payments made by the lessee for the said plot towards premium, ground rent, deposits and outgoings if any, will be forfeited in favour of KPT and the lessor shall be at full liberty to re-allot / release the plot to others.

4. On expiry of lease term, the lessee shell hand over the vacant and peaceful possession of the plot quietly on the day of the expiry of the terms of lease and in case of sooner determination of lease / cancellation of allotment of plot, the lessee shall hand over vacant peaceful possession of the plot quietly within the time stipulated in the notice of cancellation of allotment of plot, by removing all the: structures and materials etc. erected and / or lying if any on the demised premises at his cost.

However, in the event of lessee's failure to hand over the vacant and peaceful possession of the plot within the stipulated time, it shall be lawful for the Chairman, KPT or his subordinate officer authorized on his behalf to enter upon the demised

premises and take over possession of the same and remove material lying on the plot and demolish building structures erected on the said plot, fill up any excavation etc. All such moneys and expenses, as may be paid out and incurred by Chairman KPT by his order while acting: for taking over of vacant and peaceful possession of the said plot shall be recoverable from the allottee.

In the case of cancellation of allotment and / or determination of lease before expiry of lease period and / or completion of the terms of lease, the lessor shall not be bound to pay any compensation, damages of whatsoever nature including for loss or business etc.

5. It is hereby, expressly declared that exercise of power by the chairman, Kandla Port Trust under this clause shall not preclude him from taking any action under any other relevant terms and conditions.

6. The ground rent fixed for the plot shall be revised / enhanced / refixed at option of the Lessor at the end of every five years on or after first day of January the ground rent will be 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 a decision taken on his behalf in this regard shall be final and legally binding on the lessee and not open for any dispute by lessee. The lessee shall pay the ground rent at revised rates from the date of revision.

7. All notices, bills and letter of demand issued by the lesser to the lessee under these presents shall be deemed to have been duly received by him.

   If the same are sent by registered post to the last know address of the lessee

   Or are affixed to come conspicuous part of the demised premises or any structures thereon.

8. The lease shall be for a period of 30 years only and shall not be automatically renewable.

9. The less shall deposit an amount equivalent to one year's rentals as refundable deposit with the port which shall be maintained till the end of lease period or shall provide an irrevocable bank guarantee for an amounts equivalent to three year's lease rentals which shall remain valid for the lease

period.

10. The lessee shall be liable to pay the lease rent at higher rate whenever the scheduled rates are revised upwards by the competent authority.

11. The lease shall be governed by the provisions contained under section 34 and 42 of the Major Port Trust Act – 1983.

12. The leased property can be resumed at any time before the expiry of the lease period, if required by the Government in the national interest with six months' notice on payment of compensation in accordance with the formulation as may be approved by the Government, If the lease is cancelled for not complying with the conditions of lease, no compensation shall be payable by the Port Trust.

13. No compensation shall be payable by the Port in the event of refusal to renew the lease.

14. Any sub-letting, assignment without the prior approval of the authority which sanctioned the lease shall make lease liable for cancellation.

15. The lessee shall have to follow all other usual terms and conditions of the lease in-force from time to time.

16. The lessee shall be responsible for safety and welfare of the workers directly or indirectly employed by him/her and shall follow all the rules, regulations and labour laws framed by the Government. The lessee shall provide adequate rescue shelters with Disaster Warning Systems for benefit of the employees / workers employed by him/her and shaft take suitable steps to ensure timely evacuation of such workers in case of emergencies and natural calamities.

17. The lessee will have to plant at least 50 trees so as to maintain environment and ecology in the area.

18. Subject as herein before, otherwise-provided,, all .notices.to-be given and all other action to be taken on behalf of the lessor may be given or taken for the time being entrusted with the functions, duties and powers of the said Chairman, Kandla Port Trust.

SCHEDULE

All that parts and parcel of the plot of land admeasuring 13,656 Sq. Meters in respect of storage tanks situated to the plot No. 3 at Old Kandy allotted to M/s. J.R. ENTERPRISES in the Sub Registration of Gandhidham, Taluka Gandhidham and Registration District of Kutch

and is as per schedule of the boundaries as detailed described below:

BOUNDARIES AND AREAS

North Boundary : By 90 Meters bounded with open space.

South Boundary : By 90 Meters bounded with open space.

East Boundary : By 152.50 Meters bounded with plot no. 4 allotted to M/s. USTTL

West Boundary : By 151 Meters bounded with plot No.2 allotted to M/s.INDONIPPON.

IN WITNESS WHEREOF the parties to these presents have hereunto set their hands and seals on the day and date hereinabove mentioned.

//TRUE COPY//

Annexure P/5

PT-11033/4/2009-PT
Government of India
Ministry of Shipping

Transport Bahwan
New Delhi- 110001

Date: 13th January, 2011.

To

The Chairmen,
All Major Port Trusts.

The Chairman,
Ennore Port Ltd.

Sub: Land Policy for Major Ports.

Sir,

I am directed to intimate that the Government has approved the Land Policy for Major Ports-2010 for implementation by all Major Ports and Ennore Port Ltd., with immediate effect (copy enclosed). This Policy is in supersession of the earlier Land Policy for Major Ports-2004.

This issues with the approval of Hon'ble Minister for Shipping.

Yours faithfully,

(Vishal Gagan)
Deputy Secretary (PD-WC)
Tele. 2371 6619

LAND POLICY FOR MAJOR PORTS, 2010

BACKGROUND

1(i) Around 95% of India's foreign trade by volume and 70% by value is transported through sea. Major Ports account for 75% of the total cargo by volume handled at Indian Ports. This underlines the importance of sustaining the growth and development of the Major Ports for their contribution to the Indian economy. With this objective in mind and also the adverse impact of economic down turn and rapid growth of minor ports on the traffic at the Major Ports it was felt that there was need to review the extant policies and suggest mid-term corrections, wherever necessary, in various policies governing the Major Ports, to sustain and improve the efficiency of the Major Ports.

(ii) Keeping the above factors in view, a committee was constituted by the Department of Shipping, vide order dated 21-1-2009, under the Chairmanship of the Additional Secretary and Financial Adviser, with Chairmen of a few major ports, MD (IPA) and Joint Secretary (Ports) as members.

(iii) The above Committee was given the following mandate:-

(a) to re-look at the policies which are directly having a bearing on the functioning of the Major Ports; and

(b) to recommend various steps for increasing efficiency of the ports and encourage the private enterprise in functioning of the major ports with a view to provide efficient and economic end to end solutions to the ultimate customers.

2. The Committee reviewed a host of policies including the Land Policy for Major Ports issued in 2004. It observed that Land Policy is one of the most significant policy frameworks guiding the overall functioning of the Port Sector. In all major ports the world over, land has been leveraged for optimizing the throughput and increasing revenue of ports. It is an established practice globally for ports to allot land for carrying out economic activity including establishing industry to ensure captive cargo to the port, thereby enhancing the sustainability of that port. Port lands have also been used to set up Special Economic Zones (SEZ) aimed at encouraging industrial development in and around the port. Other than the above, ports are generally expected to utilize their land, with port related activities being given the first priority and activities incidental to the port being treated as secondary in nature. Hence, optimum utilization of land is a matter of continuing importance to all ports. The Committee submitted it's report

which has been examined and deliberated upon in the Ministry after which a 'draft Land Policy" was prepared. This draft Land Policy was put up on the web-site of the Ministry inviting comments and suggestions. A large number of responses was received by the Ministry. After considering all the aspects of the matter it has been decided that the Port Trusts shall follow the policy as enumerated in the subsequent paragraphs for allotment of port land.

3. The policy is applicable for all Major Port Trusts and Ennore Port except for land relating to Gandhidham Township of Kandla Port Trust.

4. This policy for land allotment ***wherever relevant*** would be applicable to all BOT projects also.

5. Land Use Plan

Every Major Port shall have a Land use plan covering the entire land owned and/or managed by the Port. ***Such plans shall be approved by the Board and a copy should be forwarded to the Government***. ***Any proposal for revision of land use plan shall be published on the web-site of the Port Trust inviting objections and suggestions and shall be finalized by the Board after considering the objections and suggestions received.***

6. **Land Allotment Policy**

Land can be allotted either on licence or lease basis *as per approved land use plan/zoning.*

6.1 **<u>Land inside Custom bound area</u>**

6.1.1 **Fresh allotment:**

a) Normally, land inside custom bound area shall be given on licence basis only. The licence may be granted by the Chairman. It may be granted up to a maximum period of 11 months and shall normally be in accordance with the Scale of Rates (SOR)/ rates approved by the competent authority. Any concession shall be given only with the approval of the Board. At the discretion of the Chairmen, such licence may also be given by inviting tenders. The licence can be renewed by the *Chairman twice*. ***Further renewal shall be with the approval of the Board or by the Chairman, subject to ratification by the Board***. Each renewal of licence shall be treated as a fresh licence.

b) The Chairman may also allot land inside custom bound area on medium term lease basis up to **10** years to port users for setting up of certain port related structures such as conveyors, silos, pipelines, temporary transit sheds, bagging and stitching plants, weigh-bridges but not permanent structures like tank farms, godowns and warehouses etc., with the prior approval of the Board. Such allotments may be either on tender basis or for captive use. Alternatively, ports may create such infrastructure on common user facility basis and recover charges from port users either on monthly basis or per unit basis as applicable to each facility.

c) The allotment of land in Custom bound area may be for activities directly related to Port operations or for those which are not directly port related but aid the port activities and sea trade such as for setting up of duty free shop, communication centres, parking facilities, passenger facilities like shopping centres , cyber cafes, health clubs etc. and security related activities. All such proposals should be subject to necessary statutory and administrative approvals.

6.1.2 **Renewal of existing leases:** The following procedure will be adopted for renewal of leases of land inside the custom bound area. Such leases may have been given by some ports much before the guidelines issued in 2004 came into force. The said guidelines prohibit the allotment of land in custom bound area on lease basis:

a) If there is no option for renewal in the existing lease agreement, guidelines governing fresh allotment shall apply. However, the right of refusal may be given to the present lessee subject to the condition that he is a bonafide lessee without any default. The renewal shall be subject to payment of rent at the prevailing SoR or the market value, whichever is higher.

b) If the renewal option is there in the lease agreement, the port should assess if the land is required by the port for its own use. In case it is not required by it, the port should then assess whether it is required for the purpose for which it was originally leased. If it is so required, it should be renewed for as short a period as possible and preferably in accordance with the SoR *or the* Market value, whichever is higher. Any concession shall be given only with the approval of the Board.

6.2 **Land outside Custom bound area**

6.2.1 **Licence**

Licence of land outside custom bound area may be for both port related and non port related activities, *with preference to port-related activities*. Licence of land outside custom bound area also will be governed by the same conditions as are applicable in case of land inside custom bound area. At the discretion of the Chairmen, such licence may also be given by inviting tenders. Only use and occupation of licensed land/structures will be permitted. The licence can be renewed twice by the Chairman. Further renewals shall be by the Board or by the Chairman in exigencies subject to ratification by the Board on expiry of the previous license period. Each renewal of licence shall be treated as a fresh licence.

6.2.2. **Lease**

6.2.2.1 **Fresh Lease**

a) Land should be leased only in accordance with the land use plan.

b) Land can be leased up to 30 years by the Port with the approval of the Board.

c) Cases of fresh lease above thirty years and for a maximum period of up to 99 years shall be sent with the recommendation of the Port Trust Board to the Ministry for the consideration of the Empowered Committee comprising of Secretary (Shipping), AS&FA (Shipping), a representative of Department of Expenditure and a representative of the Planning Commission**.** Such cases will be finalized by the Ministry of Shipping.

d) The Port Trusts should not entertain any proposal for allotment of land to religious institutions.

e) For social and educational purposes, allotment will be in accordance with the land use plan and conditions as applicable to such allotments as decided by the Board.

f) When entering into a joint venture for improving port connectivity, with any public *authority*, land required for such projects may be provided at nominal value.

g) Land should normally be leased through a competitive bidding process and the reserve price of such plots shall normally be 6% of the market value of the plot in accordance with the ready reckoner published by State Government or the rates obtained in recent tenders for comparable land or Scale of Rates (SOR) prescribed by TAMP. However, Port Trust Boards are empowered to reduce the rates in specific cases, depending on the circumstances and for reasons to be recorded in writing. In case the Port Trust Board feels it necessary to reduce the rates below the ceiling prescribed by TAMP, such reduced rates can be fixed as the reserve price for purposes of the competitive bidding process, after recording the reasons in writing. In case the land is allotted for captive facilities under captive use policy, the lease rentals for the land allotted should be recovered from the user at scale of rates of the ports.

h) Land can be allotted on nomination basis to Government Departments, CPSUs, SPSUs or private parties in accordance with SOR/Rates approved by the competent authority with due justification. Such allotment of land on nomination basis to Government Departments, CPSUs and SPSUs should be for exclusive use by them only and not for any joint venture, etc. entered into by them with private party/parties. Such allotments to Government Departments may be decided by the Board. All other proposals for allotment of land on nomination basis should first be evaluated by a Land Committee consisting of Dy. Chairman of the port, and a representative each of Finance, Estate and Traffic Departments. Thereafter, subject to approval of Port Trust Board, the proposals should be brought before the Empowered Committee for its *consideration*. Such cases will be finalized by the Ministry of Shipping.

i) Land can be leased by the Port with the approval of the Board of Trustees only on upfront basis. *Upfront basis would mean one time consideration amount for the lease period and a nominal lease rent to be collected every year for the currency of lease period.* In case this is not possible, this may be done on annual lease basis with the approval of the Board, after recording detailed reasons for the same. Further in case of annual lease, the Port should keep one year's rentals as security**.**

j) If land is leased on annual lease rental basis such rental should not be lower than the prevailing SOR/ rates approved by the competent authority

6.2.2.2 **Renewal of Existing Leases**

a) 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.

b) If the land is not required by the port for its own use, the port should then check whether land use is consistent with the Land Use Plan. If it is so, and if renewal is provided for in the existing lease agreement, it can be renewed for a total period not exceeding thirty years including the original lease period. The lease rent/upfront premium should not be less than prevailing SoR or on market value, whichever is higher. No compensation will be payable by the port in the event of refusal to renew the lease.

c) If the option for renewal is not provided for in the existing lease agreement, the port at its discretion, may 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. The lease rent/upfront premium should not be lower than the SoR duly updated or the market value as the case may be.

d) Extension/renewal of any lease for the original *lessee* beyond 30 years would be made only after the recommendation of the Port Trust Board, recording clearly the reasons thereof, and the approval of the Empowered Committee. Such cases will be finalized by the Ministry of Shipping.

e) After the expiry/termination/determination of lease and despite receiving the notice thereof, or forfeiture of lease on account of change of user, assignment etc., if the lessee continues to occupy it unauthorisedly, the lessee shall be liable to pay compensation for wrongful use and occupation at three (3) times the lease rent in accordance with the prevailing SoR till vacant possession is obtained.

f) For existing leases, at the time of expiry/termination/determination of lease the provisions related to removal of structures will be applicable. If no such provisions exist, the lessee shall remove all structures at his own cost within three (3) months of expiry/termination/determination failing which these will vest with the port free from all encumbrances. If the port so decides for reasons to be recorded, it may also take over the structures on terms mutually agreed with the lease holder.

6.2.2.3 **General- Applicable to existing and new leases.**

a) The lessee may be allowed to transfer the lease after obtaining prior approval of the Board of Trustees provided the transferee takes over the liability of the original lessee/ allottee. Such transfer shall be for the remaining duration of the lease and for purposes 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 on upfront basis *(rent)*, the transfer may be allowed subject to the transferee agreeing to pay

(i) 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; and

(ii) A fee equal to 50% of the difference between the current upfront premium and the original upfront premium, calculated for the balance lease period. For example, if land was originally allotted on 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), than 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 transfer may be allowed subject to the payment of

(i) The charges prescribed at 6.2.2.3 (a) above; and

(ii) upfront premium, equivalent to the NPV of the lease rent calculated in prescribed at 6.3 (3) for the remaining period calculated in accordance with the prevailing SoR/rates approved by the competent authority.

(b) The lessee may be allowed to sublet/partially sublet the leased premises to another party for the same purpose for which it was originally allotted. Such subletting shall be allowed on payment of current market rates applicable to the particular plot by the lessee for the remaining unexpired period of the lease. Also, such subletting shall be for purposes in accordance with the

Land Use Plan of the port and to allow this the port shall recover 12 months rent on prevailing SoR on pro- rata area basis, irrespective of the fact whether land was originally allotted on upfront basis or annual rental basis. It is clarified that original lessee continues to pay the full lease rent on annual rental basis, in case the original allotment was not on upfront premium basis.

(c) All proposals for transfer / subletting should be evaluated by the Land Committee and thereafter approved by the Board of Trustees.

(d) Change of use of leased land can be permitted subject to such change being in conformity with the Land Use Policy/master plan of the port. Such change of use should be subject to payment of rates for the new usage as existing in the prevailing SoR/approved by the competent authority. Proposals for change of purpose shall be considered by the Port Trust Board after evaluation by the Land Committee.

(e) NOC can be granted for mortgage of leasehold interest, along with the structures erected by the lessee thereon in favour of financial institutions/banks, subject to the Port retaining the first charge. The Board of Trustees may permit the mortgage on collection of the fee fixed by the Government. In each case, terms and conditions governing such mortgage will be finalized by the Port on a case to case basis, after due legal scrutiny. All proposals for grant of NOC for mortgage may be duly recommended by the Land Committee and approved by the Board of Trustees.

(f) Each lease agreement should specifically provide for termination of lease, if the leased land is not utilized for the purpose for which it is allotted, within two years of the allotment, or such shorter period as may be fixed at the time of approval of the lease. Similarly, each lease agreement should specifically provide for surrender of lease if the land cannot be utilized for the purpose for which it is allotted, subject to prior notice by the lessee at least 3 months in advance.

(g) After the expiry/termination/determination of lease or forfeiture of lease on account of change of user assignment, etc., if the lessee continues to occupy it unauthorisedly, the lessee shall be liable to pay compensation for wrongful use and occupation at three times the lease rent in accordance with the prevailing SoR or three times the market rate as the case may be, till vacant possession is obtained.

h) If a lessee breaches/ violates provisions of Lease Agreement , the Port Trust Board reserves the right to impose appropriate penalty on the lessee or

cancel the lease depending on the nature/ magnitude of breach/ violation. Such penalty may be imposed after giving a reasonable opportunity to the lessee to present his case.

(i) Every fresh lease agreement should henceforth provide that within three months of expiry/termination/determination of the lease the lessee shall remove all structures at his own cost, failing which these will vest with the port free of all encumbrances.

(j) The port is at liberty to prescribe MGT/ MGR (Minimum Guaranteed Revenue) conditions for fresh leases, if deemed fit**.**

(k) Licence fee for water area would be 50% of licence fee of abutting land.

(l) The Government or the Major Ports will reserve the right to resume the possession of leased land in public interest before expiry of lease period. In such cases, the lessee may be given an option to relocate his activities in another suitable location to be offered by the Port.

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***.***

(2) **Reserve Price**

The Land Allotment Committee shall, while fixing the reserve price and at the time of allotment, take into account the following factors:

(i) Prevailing SoR.

(ii) Accepted tender value of comparable port land for similar transactions.

However, Port Trust Boards are empowered under provisions of law to reduce the rates below the ceiling prescribed in specific cases, depending on the circumstances and for reasons to be recorded in writing. In case the Port Trust Board feels it necessary to reduce the rates below the ceiling prescribed by TAMP, such reduced rates can be fixed as the reserve price for purposes of the competitive bidding process, after recording the reasons in writing. In case the land is allotted for captive facilities under captive user policy, the lease rentals for the land allotted should be recovered from the user at scale of rates of the ports.

(3) **Discount Rate**

A discount rate equal to the rate of 6% plus *annual* escalation on lease rent shall be applied for arriving at upfront premium from annual rentals

(4) **Annual Lease Rental**

There shall be a specific provision in the lease agreements to be executed in future providing for escalation of rent by two percent (2%) per annum and in case of Mumbai Port Trust @ 4% escalation per annum.

6.4 **Way Leave permission**

The way-leave permission for laying pipelines from jetties to the tank farms within & outside port area shall be given on a temporary basis with approval of the Chairman. It shall neither be a lease nor a license. There shall not be any allotment of land to a party for giving way-leave permission. As far as possible, these shall be common user facilities and if the same pipeline is required by any other party, it shall be spared, on chargeable basis, by the party to whom way-leave permission is given. The party shall have to abide by conditions which are to be specified by the Port apart from paying way-leave charges. The conditions on which way-leave permission may be granted are enlisted in **Annexure-I.**

In case of way-leave permission for public utilities relevant rules applicable for such public utilities shall apply.

6.5 **Administrative Reforms**

(i) All proposals for transfer of leases, change of purpose/use, mortgage of land, way leave permission shall be validated by a Land Committee in each port consisting of Deputy Chairman, representatives of Finance, Estates & Traffic Departments. The Land Committee shall submit such proposals, along with their recommendations, to the Board through the Chairman.

(ii) Ports shall specify the time limit for processing various proposals and host the time limits on their websites.

(iii) Ports shall computerize entire land management system into GIS based system.

(iv) All the financial transactions related to land shall be made with authorized banks on-line (e-payment basis).

(v) Details of market value assessed should also be published and displayed on the websites of Ports.

5.6 Any complete proposal received with Board's approval shall be considered by the Empowered Committee ordinarily within a time limit of 90 days.

5.7 Notwithstanding anything mentioned in the above paragraphs, the Ministry has powers to exempt or relax any of the provisions mentioned herein above in public interest.

****

Annexure- 1

Broad Terms and Conditions for issuance of Way-leave Permission for laying Pipelines

1. The parties shall be allowed to lay pipelines on way-leave and on temporary basis.
2. Only permission shall be given. There shall not be any allotment of land to the party nor is to be construed to be on lease.
3. Facility Compensation or Way-leave Charges shall be paid by all the parties, irrespective of the tiers existing in one way-leave (pedestal).
4. As far as possible, the pipelines may be allowed to be laid on common-user basis under mutual aid scheme. If any other party wants to use the pipelines, they may be given access on chargeable basis. There should not be any monopoly for any party over the pipelines.
5. Supervision charges@15% on the cost of the work (cost of the pipelines and laying) shall be paid by the parties to the Port Trust.
6. The Port Trust shall ensure that the wharfage and all other charges due to be paid by the party, be paid to the Port Trust for the cargo handled through the pipelines.
7. All statutory permissions including that of explosives and fire-safety etc., shall be obtained by the parties from the respective authorities.
8. Port Trust shall reserve the right to direct the parties to remove the pipelines, modify or re-route the pipelines in the exigencies or interest of the Port and the Party shall carry out the same at their own cost.
9. The party shall indemnify the Port Trust against all kinds of damages, loss to Port property, personnel etc., caused due to laying, maintenance and operation of pipelines.
10. The party shall follow all the relevant rules of the Port Trust and other statutory authorities such Chief Controller of Explosives, Nagpur and also provisions of other relevant statues.
11. The party shall take adequate safety measures and patrolling of their pipelines round the clock at their own cost.
12. The Port Trust shall not be held responsible for any loss, damages, pilferage etc., of the products from pipelines.
13. Other usual operating conditions as relevant to the Port Trust may be incorporated by the Board.

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Annexure P/6

(Published in Part - III Section 4 of the Gazette of India, Extraordinary)

TARIFF AUTHORITY FOR MAJOR PORTS

G. No.106 **New Delhi 11th May 2011**

NOTIFICATION

In exercise of the powers conferred under Section 49 of the Major Port Trust Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby approves the proposal of Kandla Port Trust for revision of rate structure of Kandla land of Kandla Port Trust as in the Order appended hereto.

(RaniJadhav)
Chairperson

Tariff Authority for Major Ports

Case No. TAMP/21/2010-KPT

The Kandla Port Trust ---- Applicant

O R D E R

(Passed on this 25 day of March 2011)

This case relates to a proposal received from Kandla Port Trust (KPT) for revision of rate structure of the KandlaLand of the Kandla Port Trust.

2. The existing rates for Kandlaland of Kandla Port Trust (KPT) under six categories were approved by Government of India in July 1994.

3.1. KPT under letter No. FA/COST/1021 dated 19 April 2010 submitted its proposal for revision of rate structure of its Kandla Land along with valuation report prepared by an approved land valuer.

3.2. The salient features of the proposal are as under:-

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

(ii). A committee was constituted for fixing market value of land and Schedule of 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, KPT. The other members were the Deputy Chairman, Chief Engineer, FA & CAO and Secretary of the Port and the Deputy Collector, Anjar representing Government of Gujarat.

(iii). An approved land valuer was appointed as per clause 5.3(I) (a) (iv) of the land policy guidelines for assessing the market value of the landed estate. He submitted the land valuation report for 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 for Kandla land has not been revised from July, 1999, the Port has proposed to fix the rate structure of Kandla land from 5 July 1999.

3.3. The Committee based on the market value assessed by a land valuer has recommended sector wise/ sub-sector wise lease rentals for three consecutive slabs i.e. from July, 1999 to 31 December 2003, 1 January 2004 to 31 December 2008 and 1 January 2009 to 31 December 2013 as shown below.

Sr. No	Description of category	Rate per Sq. Mtrs. (`₹)	Lease Rentals @ 6% per Sq. Mtrs. per annum (₹)	Rate per Sq. Mtrs. (₹)	Lease Rentals @ 6% per Sq. Mtrs. per annum (₹)	Rate per Sq. Mtrs. (₹)	Lease Rentals @ 6% per Sq. Mtrs. per annum (₹)
		July, 1999 to 31.12.2003		01.01.2004 to 31.12.2008		01.01.2009 to 31.12.2013	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
A	Land having water front and upto half mile from the shore i.e. the west bank of Kandla creek	690.00	41.40	890.00	53.40	1840.00	110.40
B	Land within half mile from the bank of the creek and having no water front						
B1	Plots abutting on main road	560.00	33.60	720.00	43.20	1490.00	89.40
B2	Plots situated on internal roads	500.00	30.00	650.00	39.00	1340.00	80.40
C	Land beyond half a mile from the bank of the creek						
C1	Plots abutting on main road	500.00	30.00	650.00	39.00	1340.00	80.40
C2	Other plots	410.00	24.60	520.00	31.20	1080.00	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	630.00	37.80	810.00	48.60	1670.00	100.20
D2	Plots abutting on 1st 30 meter road parallel to NH-8A	560.00	33.60	720.00	43.20	1490.00	89.40
D3	Plots abutting on 2nd 30 meter road parallel to NH-8A	540.00	32.40	690.00	41.40	1420.00	85.20
E	Land within the docks	1130.00	67.80	1460.00	87.60	3010.00	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	630.00	37.80	810.00	48.60	1670.00	100.20

	Station						
F2	Plots situated on Ahmedabad side from Kandla Railway Station	600.00	36.00	770.00	46.20	1580.00	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)	2790.00	167.40	3580.00	214.80	7380.00	442.80

3.4. The Board of Trustees of KPT has also recommended the above market rate / schedule of rates and lease rentals for approval of this Authority.

4. In accordance with the consultative procedure prescribed, the proposal from KPT was forwarded to the concerned user organizations for comments. Their comments as and when received were forwarded to KPT for remarks. KPT has responded to the comments of the user organizations.

5. On a preliminary scrutiny of the proposal it was found that some additional information / clarification from KPT are required. KPT was addressed to furnish the following details vide our letter dated 7 July 2010. On 4 December 2010, KPT furnished its replies. The details called for and the replies received are tabulated below:

Sr. No.	**TAMP's Queries**	**Reply from KPT.**
1	KPT is requested to furnish the location-wise information of the total area of land covered in the port's proposal.	The location wise information is furnished. The area allotted on 30 years lease (in square metres) are as under:- **CategoryArea** (i) Residential 61,708 (ii) Commercial Salt Land 41,39,806 (iii) Service 20,313 (iv) Others 14, 391
2	KPT to furnish the cost of land and development cost, if any, incurred subsequently.	The SOR of Kandla Land has been formulated depending upon the distance of the land from waterfront and its location and not as per the usage, hence if the value of the land shown at Sr. No. 1 above is given, it will not represent the cost of the categories mentioned therein but will show the mixed values.
3	Location-wise details of rates fixed by the State Government of Gujarat for the purpose of stamp duty as applicable on 1 July 1999, 1 January 2004 and 1 January 2009.	The jantri rates in force from 1 April 2008 have been furnished by KPT. A certificate from sub-registrar, Gandhidham to the effect that the earlier rates are not available has been submitted.
4	The basic amenities like water, road, lightening, etc provided by KPT at Kandla land and the year wise expenditure incurred thereon.	Land at Kandla is being allotted to the lessees on "as-is-where-is' basis in undeveloped condition. The lessee has to develop / reclaim the land at their own cost.
5	KPT has sought approval for revised rentals from 1 July 1999. Kindly confirm that the lease agreements	The lease deeds of the land allotted in Kandla have been formulated on different lines over the years, as per the prevailing

<table>
<tr><td></td><td>entered into by KPT in the past with lessees contain a clause allowing for retrospective revision of the lease rentals</td><td>Land Policy Guidelines in vogue some of the conditions are as mentioned hereunder:

a) “The Ground Rent hereby reserved may at the option of the lessor be revised and refixed at the end of every five years on or after first day of January.”

b) “The Ground Rent hereby reserved may at the option of the lessor be revised and refixed at the end of every ten years”

c) “The annual lease rent shall be revised @ 30% at the option of Lessor every five years from the date of applicability and such decision of Lessor shall be final and binding and not open for any dispute.”

d) “The Ground Rent hereby reserved may at the option of the lessor be revised and refixed at the end of every seven years”

Hence, there are provisions for revision of rents, albeit the tenures may be different, but surely the rates can be revised.</td></tr>
<tr><td>6</td><td>Kindly furnish the location-wise lease rentals as of 30 June 1999 and the revenue per year collected during 1999 – 2000 to 2009 – 2010 from the Kandla land.</td><td>The estate rentals collected during 1999 - 2000 to 2009 – 10 are as under:

<table><tr><td>Year</td><td>₹ . In Crores</td></tr><tr><td>1999 – 2000</td><td>12.01</td></tr><tr><td>2000 – 2001</td><td>11.88</td></tr><tr><td>2001 - 2002</td><td>12.50</td></tr><tr><td>2002 – 2003</td><td>16.06</td></tr><tr><td>2003 – 2004</td><td>13.59</td></tr><tr><td>2004 – 2005</td><td>22.48</td></tr><tr><td>2005 – 2006</td><td>15.64</td></tr><tr><td>2006 - 2007</td><td>24.52</td></tr><tr><td>2007 – 2008</td><td>9.78</td></tr><tr><td>2008 – 2009</td><td>13.84</td></tr><tr><td>2009 – 2010</td><td>12.52</td></tr></table></td></tr>
<tr><td>7</td><td>The financial implications including the additional revenue that would be generated per annum on account of the proposed rate structure, location-wise, may be furnished.</td><td>As against the rent of ₹.9.69 crores collected at old rates during 2010, the lease rent at the proposed rate would be ₹ 45.64 crores.</td></tr>
<tr><td>8</td><td>As per Govt. letter dated 8 March 2004 any or all of the following factors can be taken into consideration to</td><td>The Land Valuation Committee considered all the factors stipulated in the Land Policy Guidelines ofMarch, 2004.</td></tr>
</table>

	determine the market value of the port land: (i) Land value as per State Govt's ready reckoner, (ii) Average rate of actual relevant transactions registered in last three years in the port's vicinity, adding 2% escalation per annum, (iii) Highest accepted tender of Port land for similar transactions, (iv) Rate arrived at by an approved valuer and (v) Any other relevant factor as may be identified by the port. The rates now proposed by KPT are solely based on the recommendation of a land valuer. KPT is requested to furnish the analysis of the market value assessed by it under all options given in the Government guidelines.	Looking to the facts that the rates of Kandla land in State Govt.s ready reckoner (JANTRI) are very low and there are no transactions in Kandla Land during the last three years, the Committee came to the conclusion that there is no other methodology / way to derive present market rates. Hence, the Committee decided that the rates arrived at by the approved valuer based upon the last auction (of 2005) and the methodology adopted by the Land Valuer are in order. Considering these factors the Board has also approved to recommend the rates so arrived at by the valuer to TAMP for approval.
9	The Board vide T.R. No.200 dated 10 March 2010 has interalia resolved to await the decision of the Gujarat High Court for implementing new market price now being recommended for calculation of the transfer fee as the matter is subjudiced. The details in this respect may please be provided for perusal.	The transfer fees for the Kandla land are being governed by the conditions of the Lease Deed i.e. 6 times of lease rentals or Land Policy Guidelines. The matter is pending in Gujarat High Court, is regarding the transfer fees applicable to Gandhidham Township Land
10	In the existing rate structure approved by the Government of India in July 1994, the rates of ground rent per annum fall under six categories. KPT has now proposed lease rates under 12 categories. The reason therefor may please be elaborated.	The categories approved by the Government in 1994 were very broad ones covering large areas, which did not reflect the correct land value of lands even within those categories. In order to have more realistic and specific rates for different locations, depending upon their approachability, accessibility, distance from the Highways /roads the categories approved by the Government in 1994 have been further divided into sub-categories.
11	Table I of the valuer's report provides the "latest available" jantri rates specified by the Government of Gujarat for collection of stamp duty. The period for which these rates are applicable has not been mentioned therein.	The Jantri rates mentioned in the valuer's report is of the year 2006 onwards.
12	Table IV of the valuation report interalia furnishes the average of the bids received for tank farm land during the auction held in 2005. How this average has been arrived at may be explained.	The average rate of 5005/- calculated in the Table IV of the valuer's report is the result of the total of the col. "total value" divided by the total area of the 17 plots.
13	(a) Bids were received by KPT in 2005 only for three plots abutting NH 8 and seventeen plots in the tank farm land. Considering these rates as the basic rates the valuer has derived the market rates for the entire parcels of Kandla land for the years 1990 to 2009. KPT's specific comments are solicited on the methodology adopted by the valuer in determining the market value of the	The Land Valuation Committee considered all the factors stipulated in the Land Policy Guidelines ofMarch, 2004. Looking to the facts that the rates of Kandla land in State Govt.s ready reckoner (JANTRI) are very low and there are no transactions in Kandla Land during the last three years, the Committee came to the conclusion that there is no other methodology / way to derive present

	entire parcels of Kandla land. (b) Since the market value arrived at by the valuer is predominantly based on the bids received by KPT in the auction of 2005, KPT is requested to furnish the basis on which upfront rates were fixed for the auction held in 2005. (c) In the auctions held in 2005 wide variation is visible in the premiums quoted. The reasons therefor have also to be analyzed by KPT and communicated to us. (d) KPT is requested to confirm that no action was held after 2005. (e) Port may also clarify how auction conducted in 2005 would weigh predominantly in determining the market value for the period 1999 to 2009.	market rates. Hence, the Committee decided that the rates arrived at by the approved valuer based upon the last auction (of 2005) and the methodology adopted by the Land Valuer are in order. Considering these factors the Board has also approved to recommend the rates so arrived at by the valuer to TAMP for approval.
14	For arriving out the basic rate, the valuer has discounted the highest bid received in the auction of 2005 by 15 %. KPT's specific comments on discounting the bid amount to arrive at the market value is solicited.	Same as at Sr. No. 13 above
15.	To arrive at the market rates of the land parcels, the valuer has considered the auction data of 2005 as base rate and has applied thereon a generalized index derived by giving certain weightages for factors like real estate behavior in Gujarat (5%), number of industrial units established in Kutch district (10%), industrial investment in Kutch district (12%), population growth of Kutch district (3%), traffic handled by Kandla port (13%), total income of Kandla port (12%), G.D.P growth rate of India (15%) and GDP growth rate of Gujarat (30%). KPT is requested to offer its specific comments on the methodology of arriving at a general index by the valuer as detailed herein.	Same as at Sr. No. 13 above
16.	While determining the market value, the land valuer has considered weightages for the factor of accessibility (plus 10 % for corner plot), topography (minus 15% for not developed plots), shape (minus 15% for plots of irregular shapes), and usage (plus 25 % for plots having commercial potential and minus 10% for land used for residential purpose). KPT's specific comments are sought on the methodology adopted by the	Same as at Sr. No. 13 above

	land valuer.	
17.	In para 10.14 of the report submitted by the same valuer for revision of the rate structure of the Gandhidham Township Land, he has stated that the valuation exercise is based on the data, information etc collected from the market and represents the open market condition based on the technical / logical analysis. He has also stated therein that for fixing the lease rentals, a special land pricing policy (discount/ premium) can be evolved after considering other factors such as socio economic factors causing impact on cargo business, competition with other ports, impact of land prices on other aspects of economy etc. Neither the land valuer in his present report on the rate structure of the Kandla Land nor the KPT in its proposal has considered any special land pricing policy referred to herein. KPT is requested to confirm that the other factors mentioned herein will not make any substantial impact while arriving at the market value of the Kandla land.	Same as at Sr. No. 13 above
18.	The KPT is also requested to forward a draft Scale of Rates, including the conditionalities attached thereto, for allotment of the Kandla land.	Not furnished.

6.1. A joint hearing was held on 29 July 2010 at Kandla Port Trust. The KPT and the concerned users made their submissions. At the joint hearing KPT agreed to convene a meeting of relevant users and furnish a report to this Authority.

6.2. KPT was also addressed to furnish the following details:-

(a) A comparative position of zonewise/ sectorwiseJantri rates and proposed rates for each of the three time periods for which the revision is sought.

(b) Port to communicate the action taken as regards convening a meeting of relevant users in this respect as agreed to at the joint hearing.

7. Subsequent to the joint hearing, the Kandla Liquid Tank Terminal Association (KLTAA) submitted their comments on the KPT's proposal vide letters dated 29 July 2010 and 6 January 2011. KPT furnished its remarks for both the letters.

8. On 4 December 2010 KPT furnished a copy of the gist of discussions held by it with the representative of various port users in connection with the revision of rate structure of KandlaLand.

9. The proceedings relating to consultation in this case are available on records at the office of this Authority. An excerpt of the comments received and arguments made by the concerned parties will be sent separately to the relevant parties. These details are also available at our website http://tariffauthority.gov.in

10. Considering the information collected during the proceedings of the case, the comments received from the users and the deliberations at the joint hearing, the following points emerge:

(i). The existing rates for Kandla lands under six categories were approved by Government of India in July 1994.

The rates approved in July 1994 for the Kandla Land were applicable for 5 years and a revision was due in July 1999. KPT in fact had submitted an incomplete proposal to this Authority in 1998-99. This Authority vide Order dated 23 March 1999, however, closed the case and directed the Port to classify the land after collecting the additional information and reclassify the land taking into account the purpose for which it is allotted. Since no proposal was forthcoming from the Port in this regard even after the lapse of nine years, while approving the KPT's proposal for rate revision of Gandhidham Township Land, this Authority vide para 12 (xi) of Order No. TAMP/9/2006-KPT dated 22 April 2008 directed KPT to formulate suitable revision proposal for the Kandla land. It is in this backdrop, the port on 19 April 2010 has submitted the proposal for revision of the rate structure of its Kandla Land.

(ii). For the purpose of determining lease rentals for the lands belonging to the Port Trusts, this Authority is mandated to follow the land policy guidelines issued by the Government from time to time vide clause 8 of the tariff guidelines issued by the Government in March 2005. The policy announced by the Government in March 2004 on land and water management of Major Port Trusts clearly lays down the procedure to be adopted for determining the market value and the lease rental of the port lands. The market value of land can be determined taking into consideration any or all of the factors like (i) State Government's ready reckoner value, (ii) the average rate of actual relevant transactions took place in last three years for the lands in the port's vicinity, adding 2% escalation per annum, (iii) highest accepted tender value of port lands for similar transaction, (iv) rate arrived at by an approved valuer and (v) any other relevant factors as may be identified by the port. The lease rent has to be fixed at 6% of the market value of the land so determined and the rate is to be escalated by 2% per annum till such time the rate is revised with approval of this Authority.

(iii). The Rate Revision Committee constituted by the KPT as per the Government guidelines for fixing the market value of land and SOR was headed by the Chairman of the Port and it included the Dy. Collector, Anjar, representing Government of Gujarat. In its first meeting, the Committee decided to appoint an approved valuer for ascertaining the market rate of the KandlaLand and for fixing the schedule of rates. Accordingly, KPT entrusted the valuation work to M/s. R.B. Shah and Associates, an approved land value, in June 2009.

(iv). (a). The valuer has submitted his report for Kandla land on 19 January 2010. It has been stated therein that the valuerhas adopted the market approach for the valuation of the Kandla land. According to the valuer, market approach is a comparative approach to value that considers the sales of similar or substitute properties and related market data and establishes a value estimated by processes involving comparison. It is a general way of estimating a value indication for personal property or an ownership interest in personal property using one or more methods that compare the subject to similar properties or to ownership interests in similar properties. It is noteworthy that the Land Policy guidelines of 2004 recognise determination of market value of lands by engaging land valuers but does not set out the specific methodology to be adopted by such valuer.

(b). The land valuer has claimed to have collected and analyzed the land rate from various resources including 'Jantri Rate' specified by state

Government for the collection of stamp duty, 'D.C. Rates' specified by Kandla Port Trust for the collection of lease rent (which is also used as the base price for the auction of new plots by KPT), latest available auction rate and/or highest bid for the auction by KPT etc. He has also stated that due weightages have also been given to the factors like location, width of the road on which the plot is abutting, predefined permissible use specified by KPT etc while determining the market value of the land.

(c). The valuer has stated that there is great mismatch among the 'Jantri Rates', 'D.C. Rates' and the bids received by KPT during the auction held in year 2005. According to him the bids received in 2005 are the actual transactions that has taken place and they reasonably represent the actual market conditions / behaviour. The rate considered by the valuer for the analysis is the highest bid price received in auction. According to him the highest bid price received by auction may not represent the actual market scenario as it represents the value / interest for specific person and hence cannot be considered as the market value. He has, therefore, considered an average discount of 15% over the highest bid price for considering the base rate for the purpose of the valuation exercise. Since the auction data was available for one category only, the basic rates for other category of the land parcels have been estimated by the valuer considering their location, usage, etc. This mode of estimation, i.e. arriving at the market value of many other category of land parcels based on the auction data obtained for a solitary category and applying a discount factor of 15% thereon has been accepted by the Committee and the Board of Trustees of the Kandla Port Trust.

(d). The valuation analysis, according to the land valuer, is based on the market survey, the data and information collected from various government bodies and other independent agencies and is also based on the assumption that the existing use of the assets is the highest and the best.

(e). The land valuation has been reportedly carried out on sample basis and individual parcel of land has not been verified.The valuer has stated that the mass valuation exercise carried out by him may not represent exact and accurate value for a specific plot and the market value of any specific parcel of land may be higher or lower than the guideline rate arrived at by him. The valuation of the land of tank farm situated at old Kandla (between railway siding and leading to M/s. IFFCO and M/s. IOCL) has been considered separately from other land parcels of KPT as the tank farm has some special features / facilities like pipeline for oil to the port, CISF security etc.

(f). The valuer in his report has stated that the land situated at Kandla Port Trust has special features and characteristics as compared to land outside the KPT. According to him, the value of land at KPT is highly influenced by the performance of the port, activities of the port, features of the port and economic development of the state as well as the country. In his opinion, the ordinary real estate market will also have some bearing on the value of land of KPT. Factors like traffic handled by KPT, revenue generated by KPT, number of industrial units developed in Kutch district, industrial investment in the district, population growth of the district, GDP growth rate of India, GDP growth rate of Gujarat and real estate market behavior in the surrounding area during year 1990 up to 2009 have been considered by the valuer to estimate the market rate of the land of Kandla Port Trust. Since these factors are recorded in various units of measurements, in order to bring them on a common

platform for comparison, the valuer has claimed to have converted the respective data into percentage to form a general index after assigning certain weightages to the individual index considered for finding out the trend during 1990 up to 2009. In order to estimate the general index, he has assigned weightages of (i) 5% to real estate behaviour in Gujarat, (ii), 10% to number of industrial units established in Kutch District, (iii) 12% to industrial investment in Kutch District, (iv) 3% to population growth of Kutch District (v) 13 % to traffic handled by Kandla Port (vi) 12% to total income (Operating plus Non-operating) of Kandla Port Trust (vii) 15% to GDP growth rate (India) and (viii) 30% to GDP growth rate (Gujarat). Based on the above factors the valuer has arrived at an independent generalized index considering the base year as 2005 and the market rate of Kandla land has been estimated for the years 1990 to 2009.

The independent generalized index arrived at by the valuer considering the base year as 2005 and assigning different weightages for several factors detailed above, has been accepted by the rate revision committee and the Board of Trustees of the Kandla Port Trust.

(g). In the existing rate structure approved by the Government of India, the rates of ground rent per annum fall under six categories as detailed in sub-para (i) above. Taking the auction data available for the year 2005 as the basic rates and the generalized index derived at as detailed in sub-para (f) above and also considering the usage and location of the land parcels, the valuer has derived the market rate of the land parcels of KPT as on 1 January 2009 under 12 categories, as against the existing six categories.

When requested to elaborate the reason for proposing the rates under 12 categories, the port has replied that the categories approved by the Government in 1994 were very broad covering large areas and they did not reflect the correct value of lands even within those categories and in order to have more realistic and specific rates for different locations, depending upon their approachability, accessibility and distance from the highways / roads the categories have been further divided into sub-categories.

(h). The land valuer has confirmed that the valuation report reasonably represents the market position and contains no material omissions of relevant information.

(i). The land valuer has stated that for determining the market value, he has considered weightages for the factor of accessibility (plus 10 % for corner plot), topography (minus 15% for non developed plots), shape (minus 15% for plots of irregular shapes), and usage (plus 25 % for plots having commercial potential and minus 10% for land used for residential purpose).

(j). The report of the valuer has been accepted in toto by the Rate Revision Committee headed by Chairman, KPT and the Board of Trustees of the Port. Relying on the judgment of the Committee and Board, and also bearing in mind the fact that land valuation by professional valuers is one of the approaches specified in the policy guidelines of the Government, this Authority considers the land valuation proposed by the KPT based on the valuer's report.

(v). According to the land valuer, the valuation is also based on the data, information etc. collected from the market and represents the open market condition based on the technical and logical analysis. He has, therefore, stated that in order to

attract investment, entrepreneurship and socioeconomic development of the region after considering various socio-economic factors like impact on cargo business, competition with other ports, impact of land prices on other aspects of economy etc. and its effect on the growth of the nation, impact on employment generation in Kandla region and any other factors associated with public interest, a special land pricing policy (discounts / premium) can be evolved. When the Port was specifically requested to confirm whether the other factors mentioned by the valuer will make any substantial impact while arriving at the market value of the Kandla land, KPT has stated that it has considered all the factors stipulated in the land policy guidelines and has come to the conclusion that the market value determined by the valuer is in order.

(vi). Bids were received by KPT in 2005 only for three plots abutting NH 8 and seventeen plots in the tank farm land. As stated earlier, considering these rates as the basic rates the valuer has derived the market rates for the entire parcels of Kandla land for the years 1990 to 2009. For arriving out the basic rate, the valuer has discounted the highest bid received in the auction of 2005 by 15 %. Thereafter, to arrive at the market rates of the land parcels, the valuer has applied on the basic rate a generalized index derived by giving certain weightages for factors like real estate behavior in Gujarat, number of industrial units established in Kutch district, industrial investment in Kutch district, population growth of Kutch district, traffic handled by Kandla port, total income of Kandla port, G.D.P growth rate of India and GDP growth rate of Gujarat as detailed in sub para v (e) above. KPT's specific comments were therefore sought on (i) the methodology adopted by the valuer in determining the market value of the entire parcels of Kandla land based on the few auctions held in 2005 (ii) on discounting the bid amount to arrive at the market value by 15% (iii) on the methodology of arriving at a general index by the valuer and (iv) the other factors mentioned by the valuer as detailed in sub-para (vi) above. In reply, KPT has categorically stated that the Land Valuation Committee has considered all the factors stipulated in the land policy guidelines of the Government. Looking to the fact that since the rates of Kandla land in State Govt.s ready reckoner (JANTRI) are very low and there are no transactions in Kandla Land during the last three years, the Committee has come to the conclusion that there is no other methodology / way to derive the present market rates. Hence the Committee has decided that the rates arrived at by the approved valuer, based upon the last auction (of 2005) and the methodology adopted by the valuer are in order. KPT has also stated that looking to these factors the Board of Trustees of the Port has also approved to recommend the rates so arrived at by the valuer. In this connection it is noteworthy that the Committee is empowered to take into account any or all the factors enumerated in sub-para (iii) above to determine the market value of the port land. The Committee after going through the 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 land valuer. The Government guidelines do not indicate a specific preference to any particular method. The Government guidelines also do not spell out the manner in which the rates are to be arrived at by the valuer appointed by the Port for valuation of the land. It is, therefore, presumed that the Board of Trustees of the KPT based on the recommendation of the rate revision committee headed by the Chairman, KPT and including one of its members being the representative of the Government of Gujarat (Deputy Collector, Anjar) is fully convinced with the Valuation Report while endorsing the proposed rates. Relying on the valuation report submitted by KPT and on the judgment of the Board of Trustees of the Kandla Port Trust, this Authority accords approval to the Sector wise lease rentals at 6% of the market value recommended by the port vide Column Nos. (4), (6) and (8) of the table under para 3.3 above for the period from (i) July 1999 to 31 December 2003, (ii) 1January 2004 to 31 December 2008, and (iii) 1 January 2009 to 31 December 2013 respectively.

(vii) (a). The Indian Farmers Fertiliser Co-operative Limited (IFFCO) have pleaded for continuance of the existing rate of lease rent even after the expiry of the lease period without any upward revision, as according to them the new rate should be applied to new lessees and not for IFFCO. The Kandla Liquid Tank Terminal Association (KLTTA) has also pleaded on the same lines of IFFCO and has further stated that based on an Order of the High Court of Kerala in the case of Cochin Port Trust, the annual escalation should be on base rent and not on cumulative basis. Food Corporation of India (FCI) has sought exemption from the proposed enhancement of the rates quoting a 2008 order of this Authority in Gandhidham land matter. The Gandhidham Chamber of Commerce and Industry (GCCI) has stated that KPT has not mentioned in its proposal about one special civil application before the Hon'ble High Court of Gujarat about levying of transfer fee. According to GCCI, KPT should not have made the proposal of revision of rate before this Authority as the issue of transfer fee is directly related to the SOR for Township land.

(b). As regards the contention of IFFCO the port has stated that the Agreement entered into with it contains renewal clause to the effect that on expiration of the term, the lessee be granted at his option a new lease by way of renewal for a further period of thirty years on such terms and conditions as the lessor may in its absolute discretion can determine. It is relevant to mention in this context that the guidelines issued by the Government in March 2004 prescribe for revision of base rate once in five years and hence the request of IFFCO and KLTAA for continuance of the existing rate of lease rent even after the expiry of the lease period without any upward revision cannot be acceded to as rightly pointed out by the port. When specifically sought, KPT has informed that the land allotted to FCI is on leave and license basis for eleven months only and every renewal is treated as fresh allotment. It is clarified that the rates to be prescribed in the SOR are ceiling levels. The revised rates approved are to be applied in the existing leases subject to the provisions of periodic revision of rents agreed in the surviving lease agreements.

(c). GCCI has stated that the issue of transfer fee is directly related to the SOR for township land. KPT on this issue has stated that the proposal dealt with herein relates to Kandla land and not the GandhidhamTownshipLand. However, in this connection it is clarified that as per the Government's land policy for Major Ports, subject to the fulfillment of the conditions specified therein, lessees can be permitted to transfer the lease (in case of leases granted on upfront basis) on payment of a fee to the Port equal to 50% of the difference between the current upfront premium and the original upfront premium, weighted for the balance lease period. In case of leases which were originally granted on annual lease rent basis, in addition to the charges stated above, as per Government's land policy, transfer can be allowed subject to the payment of an upfront premium, equivalent to the NPV of the lease rent calculated as prescribed in the policy document for the remaining period in accordance with the prevailing SOR / Rates approved by the competent authority. Nevertheless, on the issue of transfer fees, this Authority has already clarified under its earlier Orders dated 4 February 2000 and 31 August 2000 in case No.TAMP/10/2000-Gen that TAMP does not have the authority to approve levy of lease transfer fee/mortgage fee by the Major Ports in the absence of a specific provision in the MPT Act, 1963. In the Order dated 31 August 2000 it has also been clarified that TAMP does not have the power to disapprove such levies and the Port Trusts can take their own decision in this matter as per the policy guidelines of the Government.

(viii). The KPT has sought approval to the revised rates retrospectively w.e.f. July 1999. To a pointed query as to whether the lease agreement with the lessees contain a clause allowing for retrospective revisions of the lease rental, the port has confirmed that there are provisions for such revisions. It is also relevant to mention that the guidelines issued by the Government in March 2004 require revision of the base rate once in five years. Earlier, guidelines of the Government also maintained the 5 year period for revision of rates. In view of the clear Government guidelines in this regard, and also recognizing that the lease agreements entered by KPT reportedly provide for retrospective revision of rents, this Authority accepts the proposal of the KPT for retrospective revision of rates in respect of its Kandla land from July 1999 as detailed in para 3.3 above.

(ix). As per the Government guidelines, the lease rent fixed is subject to an automatic annual escalation at 5% till 24 February 2004 and at 2% thereafter. Though specifically requested, KPT has not submitted a draft SOR including the conditionalities attached thereto for allotment of the Kandla land. In fact, the KPT has not proposed any conditionalities to govern the application of rates of rentals of KPT land. The land policy for Major Ports prescribes clear cut guidelines relating to application of lease / license fees.While according approval to the revised rates a general note is also included to the effect that all other conditions governing the lease rentals shall be as per the guidelines issued by the Ministry of Shipping as may be amended from time to time.

11. In the result and for the reasons given above, and based on a collective application of mind, this Authority in supersession of the existing lease rates for lease of Kandla land belonging to KPT accords approval to the revised rates as per the **ANNEX** attached hereto.

(RaniJadhav)
Chairperson

ANNEX

Lease rate for lease of Kandla lands belonging to Kandla Port Trust.

Sr. No	Description of category	Lease Rentals per Sq. Mtr. per annum as on July 1993 (₹ .)	Lease Rentals per Sq. Mtr. per annum as on 1 January 2004 (₹ .)	Lease Rentals per Sq. Mtr. per annum as on 1 January 2009 (₹.)
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	41.40	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

Note:

(i) The lease rentals shall bear an escalation @ 5% (compoundable) per annum for the period July 1999 to 24 February 2004 and @ 2% thereafter.

(ii) All other conditions governing the lease rentals shall be as per the guidelines issued by the Ministry of Shipping as may be amended from time to time.

SUMMARY OF THE COMMENTS RECEIVED FROM THE PORT USERS / DIFFERENT USER ORGANISATIONS AND ARGUMENTS MADE IN THIS CASE DURING THE JOINT HEARING BEFORE THE AUTHORITY

F.No.TAMP/21/2010 – KPT - **PROPOSAL FROM KANDLA PORT TRUST (KPT) FOR REVISION OF RATE STRUCTURE FOR KANDLA LAND OF KANDLA PORT TRUST.**

1. The comments received from the port users / representative bodies of port users are summarised below:

Sr. No.	Users	Reply furnished by KPT
1.	**Indian Farmers Fertiliser Cooperative Limited**	
	The lease rates proposed by KPT at 6% of the assessed valuation of the land is very high as compared to the provisional annual ground rent of ` . 16/- per sq. meter being paid by us as approved by the KPT Board in April 2001. The leveling / reclamation of the site allotted to us was carried out by our own cost before we constructed the fertilizer factory. The land is in our possession for the last 39 / 32 years where we have invested crores of rupees in its development. Any increase in the lease rate will have adverse effect on cost of production IFFCO is a farmers co-operative society. It is unique as the owners of the IFFCO are also the customers. IFFCO had taken on lease the land on the basis of fixed annual ground rent, which was initially at Re. 0.45 per Sq metre. Clause 7 of the lease deed executed between IFFCO and Kandla Port Trust is reproduced hereunder:- "*The ground rent here above reserved may at the option of the lessor be revised and refixed at the end of every ten years, subject to the ground rent so refixed at the end of first ten years not exceeding double the original rent and the ground rent so refixed at the end of the second ten years not exceeding thrice the rate originally fixed."* Accordingly, the annual ground rent was earlier revised twice as under:-	It is not possible to accede to the request made by IFFCO as the Land Policy Guidelines for Major Ports in regard to renewal of existing leases state as under:- (i) If land is not required by port for its own use, the port should then identify whether land is required for the purpose for which it was originally leased or any other purpose consistent with the Land Use Plan. If it is so required and if renewal is provided for in the existing lease agreement, it should be renewed with the approval of the Board for a period not exceeding thirty years. The lease rent/upfront premium should not be less than the prevailing SoR/rates approved by competent authority and or market value, as the case may be. No compensation will be payable by the port in the event of refusal to renew the lease. (ii) If the option for renewal is not provided in the existing lease agreement, the Port, at its discretion, may 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. The lease rent/upfront premium should not be lower than SoR duly updated or the market value as the case may be. In addition, a premium amounting to one year's rental as per prevailing SoR shall be collected by the port. (iii) Further, in the ongoing PIL in the hon'ble High Court of Delhi, one of the issues pointed out by the Hon'ble High Court in its order dated 20/04/2010 is as under "…… necessary steps should be taken to now protect and safeguard the interest of the revenue including the Kandla Port Trust"

	Original lease rate Re. 0.45 per sq. mt. for the first ten years Revised lease rate Re. 0.90 per sq. mt. for the second slab of ten years (11th – 20th year). Revised lease rate ` 1.35 per sq. mt. for the third slab of ten years. (21st – 30th year). The above stated formula should be continued. The rates proposed by the Kandla Port Trust, can at best be applied and charged from the new lessees but not from IFFCO. The renewal of lease and revision of rates should be in accordance with the terms and conditions of the earlier lease deeds. Charging lease rental from IFFCO at commercial rates based on inflated current cost of the land is not proper and legal. The lease rate being proposed by KPT for renewal is about 8200% more than the rates that were last charged. It would be highly illogical to apply the Land Policy Guidelines which are framed in 2003 / 2004 to the renewal of lease agreements signed way back in 1971 and 1978. The annual lease rates @ 6% of the market rate as recommended by the valuer for residential land as well as commercial / industrial land is not justifiable. There should be separate lease rentals for different categories of land viz. Industry, Commercial and Residential. In view of above, we request you to kindly consider the following: 1. The proposed revision in rates should be made applicable for the new allotments of land / lease made after July, 1999. 2. The rates may be revised as (i) lease rental @ 1% per annum of the market value of land for industries and (ii) lease rental @ 3% per annum of the market value of land	The above matter was referred to the Assistant Solicitor-General of India, who has opined that "on perusal of the land policy would show that the thrust is on two aspects while disposing of land including on lease and / or license basis, namely (a) that such disposal has to be by public auction; and (b) It is to be at the current market value." In view of the above, Kandla Port Trust has got no option but to levy fees as per the Government guidelines and at the prevalent market rates (SoR). Kandla Port Trust has not violated the conditions of the lease deed of the lease period already expired, as during the entire lease period the rent was levied as per the condition provided in the Lease Deed. Since the lease is to be renewed, the fresh Land Policy Guidelines issued by the Government will come into force during the renewed period and accordingly the rates will also be as per the present market value. During the earlier lease of 30 years, the lease rent could not be increased looking to the restriction of the condition provided in the lease deed (revision of maximum 2 times that too not more than thrice of the initial rent, which was 30 years old) and now after the lapse of 30 years when the market value of land is being charged, IFFCO's contention that the rates have been increased exorbitantly is not correct as they have enjoyed the benefit of the lease deed already executed for the past 30 years and they cannot be allowed to continue to do so for an interminable period. Further, while applying for renewal of lease periods, IFFCO has given undertaking to pay the rent at revised rates, if so approved. Hence, when the rates are to be revised, IFFCO should not back out from their undertaking.

	for commercial. 3. The provisional rate of lease rent of ` 16/- per square Mt. as approved by the KPT vide its Resolution No. 147 dated 26 April, 2001, be made final in respect of all lands taken by IFFCO, as it is the prevailing rate under SOR, for the entire renewal period.	
2	**The Gandhidham Chamber of Commerce & Industry**	
	KPT's proposal does not give the fair picture of the position obtaining in this regard as no mention is made about the Special Civil Application No. 1045 of 2010 filed by Shri L.H. Mehta v/s. Kandla Port Trust, before Hon'ble High Court, Gujarat, wherein interim stay against the operation and implementation of impugned circular dated 29 October 2009 regarding levy of transfer fee by KPT is granted. While the matter is subjudice, we feel, there is no justification / logic in referring the matter to you, till the matter is finally decided by Hon'ble High Court, as the matter of transfer fee is directly related to the scale of rates for township land.	The revision is made as per the provision of Land Policy Guidelines issued by Govt. of India.
	During the course of visit of the Secretary (Shipping) at Kandla Port from 7 May to 9 May, 2010, he has stated that a new policy will soon be declared for the land under Kandla Port Trust, which is aimed at solving most of the problems. He had confirmed during his visit that the proposal by KPT to free residential lands is under the consideration of the shipping ministry. When a comprehensive policy is in offing, there is no valid reason to consider the present proposal of KPT for enhancement in scale of rates.	The present Government guidelines allow only leasing of the land through competitive bidding for 30 years. However, a proposal is being made to Government to convert all residential and residential cum commercial plots into freehold. Till the decision is not taken for conversion of land into freehold, the present revision is in order.
	It is observed that the meeting of the Committee constituted for revision of rate structure of GTL consists of only Government officials. The participation by the public and associations of users has been avoided. This is against the principle of natural justice.	No comments offered.

	The allotment of land through execution of lease deed for 99 years is itself a "deemed sale" and as such the market value fluctuations should not impact the lessees.	No comments offered.
	The decision to enhance the rates is ex-parte i.e. by Kandla Port Trust and it cannot be acceptable / implemented.	The revision is done systematically keeping the Government land policy in view. i.e as per the rates prescribed in the land policy approved by the Government of India.
	As proposed rates are too high, it will result in multiplicity of the litigations against the KPT. The disturbing the general public will not only invite anger and resentment, but it will have direct impact on the efficiency of the port.	The rate revision is done as per the prescribed land policy guidelines within the terms of lease agreement.
	The proposed scale of rates will have impact on ground rent which will be exorbitant and it will affect the general public in toto. This needs to be rationalized in a democratic way. There must not be profit motto. Similarly, proposed scale of rates will mean that huge transfer fee has to be paid by the purchaser of a plot which might have been allotted 30-40 years back at a very meagre cost.	The purpose of any rate revision, be it general rate revision or land related SOR, is to increase revenue in the national exchequer, but this has to be within the prescribed guidelines. Accordingly, KPT revised its SOR looking to the administration expenses and market value / escalation of prices of land. Not doing so will lead to loss to the national exchequer. Further, the ground rent will be revised as per the provision contained in the lease deed.
	The existing rates should be continued, as the enhanced new rate will have direct effect on the Transfer fee leading to wide repercussions.	Same as above.
	The enhanced rates structure will create an anomaly as the plots allotted by M/s. SRC Ltd., will not have any impact and it will not apply to allotments made by SRC Ltd., This will create huge difference in payment of transfer fee.	There should not be any anomaly as the revision of the SRC plot is also implemented as per the jantri rate and as per the prescribed regulations.

	The valuation report interalia says that the report is only recommendatory in nature and is neither intended nor valid for any other use. To rely solely on the report prepared in a short span of time is not reasonable. Many factors are not taken into consideration. The proposal is sent by KPT in a hurried manner. The rates shown in various tables for the years from 1990 to 2009 are imaginary in nature and are neither realistic nor convincing. This fact can be verified from the office of the Sub Registrar, Anjar / Gandhidham, from the records of various registrations made during the given period.	
	Majority of the plots were allotted on payment of Development charges only.	No comments offered.
	The proposal of Kandla Port Trust for revision of rate structure for Kandla land is pending with TAMP, and the same is yet to be decided. Despite this, Kandla Port Administration has quoted the basic price of plot – from `. 1604/- to `.1886 per sq. m.t., while inviting tenders for allotment of plots for construction of godowns / warehouses at Kandla on 30 years lease. While the new guidelines are yet to be approved by TAMP, inviting tenders at proposed revised prices is against the principles of natural justice. Similarly, the annual lease rental for each plot is stipulated @ Re. 1/- with applicable service Tax, whereas old allottees are subjected to pay ranging between ` .100/- to ` .425/-. This move will prove advantageous to the neighboring private ports like Mumbai, Pipava, Dahej, where land is free hold.	No comments offered.
	It is understood that Kandla Port Administration has commenced issuing notices for payment of difference of transfer fee at the rate, which are yet to be approved by TAMP, and pending litigation in Hon. Gujarat High Court.	No comments offered.

	This demand is made by the port administration on the basis of Land Policy guidelines dated 8 March, 2004. When the new Land Policy is in offing, as stated by the Secretary (Shipping) recently, there is no justification in demanding the transfer fee at revised rates. We request you to kindly disapprove the proposal of Kandla Port Trust for revision of rate structure as it contains may flaws and is not consistent.	
3.	**Food Corporation of India**	
	The increase in rent proposed is exorbitant for FCI being a subsidy based Govt. of India Undertaking. TAMP vide Order No. TAMP/9/2006-KPT dated 27 April 2008 has stated that "This Authority accords approval to the proposed revision of rates which will not apply to pre-1999 leases as the relevant lease agreements reportedly does not contain any provision for levying lease rent." In view of the above Order, FCI may be exempted from the proposed enhancement since the lease of FCI at Kandla is of 1982.	A plot admeasuring 136164 square meters was allotted to FCI on 13 December 1984 on leave and license basis for 11 months which has been renewed upto 12 October 2006. Since the matter of renewal was under approval stage, the monthly license fee was accepted upto 12 November 2008. Thereafter license fee was not accepted as a Competent Authority has not approved the proposal for renewal of leave and license.

2. A joint hearing in this case was held on 29 July 2010 at Kandla Port Trust. The KPT and the concerned users have made their submissions. The gist of the joint hearing held is as under:-

KPT

(1). The existing rates were fixed in 1994.

(2). We have fully followed the Government guidelines. Valuation is done based on Valuers report.

(3). Jantri Rates are very low. We have not considered them.

(4). Valuation is based on auction held in 2005. No auction was made thereafter.

(5). Government has issued a separate instruction which require to consider last auction value to assess market value.

(6). 2005 auction was in respect of warehouse and liquid tank farms. Warehouses are allotted. But tank farms are yet to be allotted because the auction value was found to be lower.

(7). The revision is warranted as Delhi High Court in a PIL directed us to revise the land rates to maximise revenue from estate. Advocate General has opined to take into account auction values and revise the rates.

GCCI

(8). The proposed rates are exorbitant. Please review.

IFFCO

(9). KPT allotted underdeveloped land. Development was made by us at huge cost. Port demanding increase in rates based on market value is not justified.

(10). We have given written submissions. Please consider our request.

3.1. Subsequent to the joint hearing, the Kandla Liquid Tank Terminal Association (KLTAA) submitted their comments on the KPT's proposal vide letter dated 29 July 2010. KPT has furnished its remarks thereon. The Association's comments and the port's reply thereto are furnished below:-

Kandla Liquid Tank Terminal Association's Comments	**Reply furnished by KPT**
We will be badly affected due to heavy enhancement in lease rent as proposed by KPT. We have invested huge sum in creating storage tanks, pipelines and other infrastructure. The initial lease rent was ` 1.80 per square meter which was enhanced to ` .3.60 after ten years and thereafter to ` . 5.40 after twenty years. Likewise the initial plots of land for which the lease had been extended, their rent has been fixed at ` .11.00 per square meter with the condition of 5% cumulative escalation per annum. The High Court of Kerala in the case of Cochin Port Trust has directed that the 5% annual escalation should be on base rent and not on cumulative basis. The proposal of KPT is very high when compared to the last TAMP approved rates during 1994. KPT is falling under the definition of State within the meaning of Article 12 and as per various directions provided from time to time by the Supreme Court KPT would not be actuated by any profit making motive and required to deal fair reasonably and in the interest of the public as well as nation.	The contentions raised therein by the Association are totally baseless as the lessees taking benefit of the restrictions of the conditions of the lease deed have been enjoying the possession of the land at rates which are almost 3 decades old. Surely the lessees are not doing their business or offering their services at the same rates which they were levying about 30 years back. There has been considerable appreciation in the value of the land, be it port land or other land and the rates have increased. Further, the Association has given vague and evasive statements in its letter and has not given any valid or legal provisions in support of its representations. In fact, if the total business done by the parties on the land allotted to them and the value of the land and its mortgage done by the parties are brought out by the Association, the picture would be totally different than that is being painted by the Association. As regards renewal of existing leases, the remarks furnished against the comments of IFFCO may please be seen. The SoR proposed by Kandla Port Trust has been framed keeping in view the land policy guidelines of Ministry and hence the contention of the Association is not acceptable.

3.2. The Kandla Liquid Tank Terminal Association by their letter dated 6 January 2011 submitted further comments. The Port has furnished its remarks thereon. Those details are tabulated below:-

Sr.No.	Kandla Liquid Tank Terminal Association's comments	Reply furnished by KPT
1	In the case of chemicals and other liquid cargoes, due to safety and other technical requirements, around 75% of land is to be developed fully and it has to be kept reserved as part of the statutory compliance as all liquid cargoes are more or less hazardous. In effect for actual utilization of 25% of land every terminal has to pay for 100% of allotted land. This fact has not been considered by the valuer when he has estimated the market price.	The Associations' contention seems to be preposterous as they have submitted no documentary evidence that they are using only 25% of the land and the rest is not being utilized. Further, every lessee has to pay the rent for 100% of land, no matter how much land the lessee is actually utilizing. Optimum utilization of the land depends upon the individual lessees.
2	Valuer has taken the market value as per the tenders invited in 2005 and subsequent evaluation / escalation of balance 4 years and has concluded the market price at very higher rate. When the tenders were invited in the year 2005 parties quoted comparatively high because of the following reasons:- (a) CRZ clearance obtained by the Port for all types of Liquid Cargoes. (b) Proper approach road has to be provided to all terminals by the Port. (c) Fully developed pipeline corridor and proper drainage / storm water facility to be provided by the Port. (d) Power connection at the nearest point of plot. (e) Fully developed parking place to be provided by the Port. (f) Guaranteed common user dockline for terminals to be ensured by the port. However, none of the above facilities were provided to any of the existing terminals. Even after five years the said transactions for the plots auction have not been completed and as such it will be incorrect to consider these for valuations.	The KLTTA has rightly pointed out the differences between the earlier and new allotments, but they have failed to recognize the fact that in the past the land was being allotted to the parties as per the requests made by the parties or the parties used to get the convenient plots transferred in their names. Whereas the situation in 2005 is totally different, as the plots at a fixed location were auctioned by Kandla Port Trust, and parties had to compete and pay the highest upfront premium, and there was no CRZ clearance available during that bidding process. Moreover, the important point is that, the issue pertains to revision of rates.
3	The Valuer has not only fixed the market value of the land for this newly considered category for the slab 2009 onwards as `. 7380/- per Sq. M, but he has also fixed the rate for this category	The categorization of land had been increased as the categories approved by the Government in 1994 were very broad covering large areas, which did not reflect the correct land value of lands even

	of land for the slabs 1999 to 2003 and 2004 to 2008, when this category was non-exist. The valuer having no regards for the proximity of the land from the water front have fixed the market value for Liquid Storage Tank Terminals category at Old Kandla at ` . 7380/- per Sq.M, whereas the value of the land within the Dock Area has been fixed at ` . 3010/- per Sq.M.	within those categories. In order to have more realistic and specific rates for different locations, depending upon their approachability, accessibility, distance from the highways / roads the categories approved by the Government in 1994 have been further divided into sub-categories. The contention of KLTTA that rates should be fixed keeping in view the proximity from waterfront is not clear as to how would the proximity of waterfront affect the liquid terminals.
4	We strongly feel that one of the major consideration for the revision of ground rent should be related to the base rent in addition to other factors like Jantri Rate, Market Value of the lot.	The revision of the rates was proposed in accordance with clause 5.3 (I) of the Land Policy Guidelines dated 8 March 2004. Further, it is not clear as to what KLTTA means by “base rent”,

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//TRUE COPY//

Annexure P/7

GOVERNMENT OF INDIA
MINISTRY OF SHIPPING
(PORTS WING)

No. PD-13017/2/2014-PD.IV Dated 17th July, 2015

To,

The Chairmen of All Major Port Trusts,
CMD, Kamarajar Port.

Subject: Policy Guidelines for Land Management 2014-clarifications reg.

The undersigned is directed to refer to the above subject and to say that the Policy Guidelines for Land Management 2014 were issued to all Major Ports for implementation. However, Indian Ports Association, an apex body of Major Ports, have highlighted certain difficulties and sought some clarifications and suggested some changes and there were also other suggestion from different stakeholders to improve the Land Policy Guidelines.

2. Accordingly, Ministry, vide order dated 8th August, 2014 constituted a two member committee comprising of DG (Shipping) and Sri R.C. Sinha, Advisor to examine those suggestions and furnish a report. As per the provisions of para 20 (vii) of the Land Policy Guidelines, 2014, in case of any ambiguity of doubt regarding any provision, Ministry of Shipping has powers to interpret and clarify within the overall framework and spirit of the guidelines. Similarly, Para 20 (viii) of the guidelines empowers the Ministry of Shipping to relax the provisions of these Guidelines, in public interest, within the overall framework and spirit of the guidelines, in case of difficulties in implementation.

3. Accordingly, some of the provisions of the Land Policy Guidelines, 2014 have been modified/ changed to provide greater clarity and to ease the implementation of the Policy guidelines by the Major Ports. The Land Policy Guidelines, 2014, thus amended are issued for implementation with immediate effect under Section 111 of MPT Act, 1963.

Yours faithfully

(A.R. Sengupta)
Under Secretary to the
Government of India
Tel No. 23311659

Policy Guidelines for Land Management by Major Ports, 2014- Clarifications and amendments- regarding

1. BACKGROUND

Land is one of the important resources with the Port Trusts to promote their business and accommodate the increasing traffic at the ports. As per the provisions contained in Sub-Section (1) of Section 34 of the Major Port Trusts Act, 1963, Ports are empowered to lease out land for a period up to 30 years and in case the period of lease is for more than 30 years, prior approval of the Central Government is necessary. The relevant portion of this Sub-Section is reproduced below:-

> *"Provided further that no contract for the acquisition or sale of immovable property or for the lease of any such property for a term exceeding thirty years and no other contract whereof the value or amount exceeds such value of amount as the Central Government may from time to time fix in this behalf, shall be made unless it has been previously approved by the Central Government."*

2. To regulate allotment of land, the Ministry of Shipping has been issuing guidelines from time to time. In the competitive environment that the ports operate, continuous review of these guidelines is imperative.

3. Accordingly, a Draft Policy for land management by Major Ports 2012 was prepared by the Ministry and circulated to various stakeholders for comments and was also put up on the website of the Ministry inviting comments and suggestions. Simultaneously, Inter-Ministerial consultations were also done. Based on the inputs received, the "Policy Guidelines for land management by Major Ports, 2014" was finalised. The said guidelines have been approved by the Union Cabinet on 02.01.2014.

These guidelines were issued to all Major Ports for implementation. However, Indian Ports Association, an apex body of Major Ports, have highlighted certain difficulties and suggested some changes and there were also suggestions from different stakeholders to improve the Land Policy Guidelines.

Thereafter, Ministry, vide Order dated 8th August, 2014 constituted a two member committee comprising of DG (Shipping) and Sri R. C. Sinha, Advisor to examine the suggestions and furnish a report. Based on the report, the revised guidelines have been framed. The Revised Land Policy Guidelines, issued under Section 111 of MPT Act, 1963 are as follows:

4. Objectives- The main objectives of the Policy are:-

   a) To ensure that land resources are put to optimum use as per the approved Land Use Plan with focus on retaining /attracting port traffic;

   b) To ensure that optimum value is realized by licensing / leasing Port land through a transparent tender-cum-auction methodology.

   c) The policy prescribes the procedure for revision of rates to enable maximum resource generation for the Ports and the methodology for regular updating of the rates in line with the market value.

   d) The policy also recognizes the need for special dispensation for cases relating to educational and security purposes.

5. Scope: The policy is applicable for all Major Ports except for the land relating to the Township areas of Kandla, Mumbai and Kolkata Ports for which separate policy will be formulated. Kamarajar Port Limited may follow the principles of this Land Policy but will not be covered by TAMP jurisdiction. These guidelines supersede all previous guidelines issued on the subject.

6. Empowered Committee Mechanism: There shall be an Empowered Committee comprising of AS&FA (Shipping), Joint Secretary (Ports), Joint Secretary of the Department of Economic Affairs, and the concerned Adviser of the Planning Commission, for discharge of such functions as are allotted to it under this policy.

7. These policy guidelines for land allotment would be applicable to all new PPP projects also. For such projects, approval of the project by the

competent authority will be taken as approval for the licence of the land component of the project.

8. Land Use Plan:

The Land Policy Guidelines are applicable for all purposes provided under MPT Act 1963. Every Major Port shall have a Land use plan covering all the land owned and/or managed by the Port. Such plans shall be approved by the Board and a copy would be forwarded to the Government. Any proposal for revision of land use plan shall be finalized by the Board only after considering the objections and suggestions received from the various stakeholders. Land use plan of major ports shall be reviewed by the Board at least once in every five years.

9. Land Allotment Policy:

Ports are empowered to lease/ licensing out land based on the approved land use plan/Zoning of the port and within the framework of MPT Act 1963.

9.1 The expression “Lease” shall have the meaning assigned to it as in Section 105 of the Transfer of Property Act, 1882. Accordingly, lease is defined as transfer of a right to enjoy immovable property, made for a certain time, expressly provided for, in consideration of a price paid or promised, or of money to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

9.2 The expression “licence” shall have the same meaning assigned to it as in Section 52 of the Indian Easements Act, 1882. Accordingly, licence is defined as a right granted to another person by the grantor, to do or continue to do upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property.

9.3 The word "Port" and "Board" wherever used in the policy directives connote "Port Administration" and 'Board of Trustees/ Directors' respectively.

9.4 Licence of Land:

Port will formulate the guidelines for License of land within and outside customs bonded Area in accordance with the land use plan of the port and the spirit of the Land Policy Guidelines and get them approved at the Board level. The Ministry of Shipping should be kept informed of the guidelines.

10. Custom Bond Area:

10.1. Fresh allotment of land:

(a) The land inside custom bond area, which is required on an immediate basis, shall be given on licence basis only and no lease may be permitted. Wherever feasible, such licence shall be issued only by inviting competitive tenders. The guidelines laying down the detailed procedure in this regard shall be framed and approved by the Board of the Port. The licence may be granted upto a maximum period of 11 months and shall be at the bid value discovered through the tender-cum-auction, wherever feasible and would be approved by the Board. In cases, where the tender-cum-auction is not possible, land can be allocated on licence basis at the latest SoR which would be the value notified under para-13(c). However, allotment of land by not resorting to tender-cum-auction methodology should be exercised as an exception.

(b) The Port may also allot land inside the Custom bond area for activities vital to Port operations or for those which clearly aid Port activities and sea trade, such as, setting up of duty free shop, communication centres, parking facilities, passenger facilities like shopping centres, cyber cafes, health clubs etc. and security related activities. The tenure of license for such land will be decided by the respective Port Trust Boards and such tenure shall

not exceed 5 years. All such proposals should, however, have the necessary statutory and/or administrative approvals. Land is to be allotted through tender-cum-auction methodology through a competitive bidding process over the reserve price of such plots which shall be the updated SoR notified by TAMP. Land can also be allotted on nomination basis to CPSUs/SPSUs for activities that are vital to Port operations or which clearly aid port activities at the latest SoR which would be the value notified under para-13(c).

10.2 Renewal of existing land leases:

Even though it would be ideal that land inside custom bond area is allotted on licence basis only, it is observed that some major Ports have allotted land on long term lease basis inside the custom bond area before the land policy guidelines issued in the year 2004 came into force and original lessees have created permanent structures on the land. The procedure outlined in Para 11.3 will also be adopted for renewal of lease of such lands inside the custom bond area.

11. Outside Custom Bond Area:

11.1 Licence of land:

Normally, land outside custom bond area shall be given on lease basis only. However, in specific cases, for reasons to be recorded in writing, land can be given on licence basis only for Port related activities. Licence of land outside custom bond area will also be governed by the same methodology and conditions as are applicable in case of land inside custom bond area, as spelt out in Para 10 above.

11.2 Fresh Leases:

(a) Land should be leased only in accordance with the land use plan.

(b) Land can be leased up to a maximum cumulative period of 30 years by the Port with the approval of the Board. Renewal of leases beyond thirty years and for a maximum cumulative period of 99

years should be recommended by the Port Trust Board after satisfying itself that the same is required to be renewed and that the Port does not require the said land for its own use. Renewals will be granted through the Empowered Committee mechanism subject to the approval of the Government and renewals will be limited to a maximum cumulative period of 99 years.

(c) In certain cases the lessee may require land for capital intensive investment like tank-farms, refineries etc. The Port, may at its option decide to fix the tenure of lease for a period which is more than 30 years. Such proposals are to be submitted with the recommendations of the Board to the Empowered Committee and Ministry for its approval. The Port in its land-use plan should identify land which can be allotted on long-term lease basis, i.e. for a tenure of 30 years and beyond.

(d) Land shall be leased through tender-cum-auction methodology through a competitive bidding process over the reserve price of such plots which shall be the updated SoR notified by TAMP. At the tender-cum-auction stage, depending upon its financial requirement, the Port may decide to invite bids either on- (i) Upfront basis, where the bidding parameter is the one-time upfront payment offered by the bidder for the lease period and a nominal lease rent of Rs. One per square metre to be collected every year for the currency of lease period, or; (ii) Premium basis, quoted by the bidder over and above the Reserve Price in terms of the annual lease rent, calculated as per the provisions of para-13(b). While leasing out land on upfront basis, the Board shall fix the Reserve Price which would be the NPV of the sum total of annual lease rentals calculated as per Para 13(b), escalated annually at the rate approved by the Board as indicated in para 13(c). The discount factor would be the longest term G-sec rate as per the latest RBI

Bulletin. In both cases, the Port shall keep equivalent of two years rentals as security deposit.

(e) A Land Allotment Committee shall be constituted by the Port Trust Board consisting of Deputy Chairman of the Port, and Heads of Departments of Finance, Estate and Traffic. The Land Allotment Committee will finalise the Reserve Price as per the methodology explained above and in Para 13(b).

(f) In respect of PPP projects, the annual lease rent based on latest SoR with the approved rate of annual escalation would be indicated to the bidders at the bidding stage itself. With respect to land allotted for captive facilities, the lease rentals for the land allotted shall be recovered from the user as per the annual lease rental based on latest SoR notified as per Para-13(c), with the approved rate of annual escalation. The lease rental, as well as the rate of annual escalation would be approved by the Port Trust Board.

(g) For establishment of common utilities by local bodies like sewage plant, Government Schools and colleges and hospitals, etc, land can be allotted by the Port Trusts on nomination basis provided allotment is in the interest of the Port Trusts. The land allotted to such entities to be used exclusively for the purpose for which it has been allotted and under no circumstances, the usage can be changed. In case the leased land is not used for the purpose it is granted, the lease to be terminated and the land so allotted to be resumed by the Port. No transfer/ sub-letting of such lease will be permitted. Concession upto 75% on the annual lease rent arrived at on the basis of updated SoR may be granted to government schools and colleges. Concession in lease rent can be provided by the Port Trust Board as provided under para 11.2 (h) for establishment of common utilities by local bodies like sewage plant, hospitals, etc. provided they are in accordance with

approved master plan of the city and the land is not required for the Port's own use.

(h) Land can also be allotted on nomination basis to Government Departments, Statutory Local Bodies, Statutory Authorities/ Autonomous Organisations under State/ Central Ministries, Central Public Sector Undertakings (CPSUs), State Public Sector Undertakings (SPSUs) and security agencies like State Police, CISF, Coast Guard and Navy, subject to the availability of land and on the basis of updated SoR. In cases where any CPSU/ SPSU/ Statutory Authority enters into Joint Ventures (JV) with private party/ parties and the said CPSU/ SPSU/ Statutory Authority is the lead promoter and has the largest share-holding in the said JV, Port Trust Board may decide to allot land to them also on nomination basis with the approval of the Port Trust Board after incorporating appropriate safeguards. Concession may be granted to security agencies and Government Departments only upto 50% of the annual lease rent. However, in respect of land to be allotted to government departments which are essential to the functioning of the Port like Customs, Electricity Department, Health Department and for core security functions, concession upto 75% of the annual lease rental can be considered by the port. But such concession can be given for only small extent of land required for core operational purposes imperative for Port functioning and not otherwise. The issue of granting concession and the quantum may be decided on a case to case basis by the Port Trust Board, after recording the reasons in writing.

(i) When entering into a joint venture for improving Port connectivity or Port development with any public authority, land required for such projects, valued at the latest SoR may constitute the equity of the Port in such joint ventures.

(j) The Port Trusts should not entertain any proposal for allotment of land to religious institutions or for religious purposes or to political institutions.

11.3 Renewal of Existing/Earlier Leases:

(a) In cases of renewal of existing/earlier leases with or without renewal option, the Port should 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 lease.

(b) If the land is not required by the Port for its own use, the Port should then check whether the land use is consistent with the land use plan and whether the lessees are not in default. Thereafter, if it is so, the following procedure will be adopted for renewal of lease of land outside the custom bond area.

(c) During the process of renewal of existing/ earlier leases, the Port is required to differentiate between those lease-agreements that provide for renewal and those that do not provide for such renewal at the end of the lease-period. In cases of renewal of existing leases, without renewal option at the end of the lease-term, the land will be put to tender-cum-auction with the first right of refusal to be extended to the existing lessee. The existing lessee should be allowed to match the H-1 bid. If any structure has been constructed by the earlier lessee on the leased land, it would be valued by a third party valuer to be agreed upon by the Port Trust and the earlier lessee and the successful bidder has to remit the value of the structures which would be passed on to the previous lessee. The bidding and auction would be only on the reserve price of the land. With a view to dissuade non-serious bids, EMD for a valid bid should be fixed at 10% of the latest SoR of the land being put on tender. If the only bidder is the existing lessee, the annual lease rental would be determined on the basis of the latest SoR notified as per Para 13(c) or the price quoted by the existing lessee in the

tender-cum-auction, whichever is higher. The provision of first right will also apply to expired lease (possession has been taken by the Port) also in addition to existing leases.

(d) In respect of lease agreements with renewal option, the lease can be renewed by the Port Trust Board by treating it as a fresh lease at the latest SoR notified as per para 13(c).

(e) No renewal clause is to be provided in the lease-agreements entered into after coming into effect of these guidelines.

(f) Any renewal of lease to the original party over and above the existing period is to be approved by the Board, provided that the cumulative lease period does not exceed 30 years.

(g) Any extension beyond 30 years and for a maximum period of 99 years has to be recommended by the Port Trust Board and the same will be examined and scrutinized by the Empowered Committee which would satisfy itself regarding the justification for such extension and competitiveness of the rate at which such extension is to be granted. Thereafter, approval will be granted by the Government.

(h) After the expiry/termination of lease and despite receiving the notice thereof, or forfeiture of lease on account of change of user, assignment etc., if the lessee continues to occupy it unauthorizedly, the lessee shall be liable to pay compensation for wrongful use and occupation at three (3) times the annual lease rent based on the latest SoR, till vacant possession is obtained by the Port. In cases of land allotted on upfront basis, the equivalent annual lease rent would be calculated on pro-rata basis.

(i) For existing leases, at the time of expiry/ termination of lease, the lessee shall remove all structures at his own cost under the following conditions:

  (a) Within three (3) months of expiry/ termination, if Port decides not to re-auction that land; or,

(b) Three months after tender-cum-auction, if the existing lessee was not successful.

Beyond this period, the lessee shall be liable to pay compensation for wrongful use and occupation at three (3) times the annual lease rent, till vacant possession is obtained. In cases of land allotted on upfront basis, the equivalent annual lease rent would be calculated on pro-rata basis. If the Port so decides, for reasons to be recorded and approved by the Port Trust Board, it may also take over the structures after third party valuation of the assets with the concurrence of the lease holder. In case removal of structures is to be carried out by the Port, it would be at the cost of the lessee.

(j) The process of renewal of existing leases should be initiated by the respective Ports well in advance, before the term of lease expires. The automatic renewal of existing leases should be preferably done within three months of receipt of such application for renewal. Liability to pay compensation for wrongful use by the lessee will not arise, if the delay in renewing such leases is wholly attributable to the Port.

(k) In respect of old leases, where the terms of lease stipulate automatic renewal at pre-determined rates, such cases are to be reviewed by the Board on a case to case basis from the point of view of the reasonability of such terms of renewal, including the rates. In such cases, the endeavour should be to migrate to lease rentals based on latest market value.

12. General- Applicable to existing and new leases:

(A) The lessee may be allowed to transfer the lease as per extant laws after obtaining prior approval of the Board of Trustees provided the transferee takes over all the liabilities of the original lessee/ allottee. Such transfer shall be for the remaining duration of the lease and in accordance with the Land Use Plan of the Port. Before allowing such transfer, the Port shall recover:-

(i) In case of leases granted on upfront basis

In case of those lands which were originally given on lease on upfront- rental basis, the transfer as per extant laws may be allowed subject to the transferee agreeing to pay the following:-

(a) An undertaking for payment of the upfront rental as calculated on pro-rata basis for the balance period; and

(b) A fee equal to 50% of the pro-rata upfront rental payable upto the time of transfer.

(ii) In case of leases granted on annual lease rent basis.

In case of leases granted on annual lease rent basis transfer may be allowed subject to:-

(a) An undertaking for payment of the annual lease rental for the balance period, and

(b) A fee equivalent to 50% of the total lease rent payable by the original lessee upto the time of transfer.

B. Subletting: The existing lease holder may be allowed to sublet/ partially sublet the leased premises to another party for the same purpose for which it was originally allotted. Also, such subletting shall be in accordance with the Land Use Plan and before allowing this, the Port shall recover 50% of the rent charged by the lessee from the sub-lessee for the entire period of sub-lease irrespective of the fact whether land was originally allotted on upfront basis or annual rental basis. It is clarified that the original lessee would continue to remain responsible for payment of lease rent and for adherence to the terms and conditions of lease. However, in respect of leases which shall be entered into after the coming into effect of these guidelines, in cases where, the lessee is not able to utilize the entire land leased to him, the portion of the lease premises not required by him should be surrendered and no

subletting shall be permitted. Port Trust shall refund proportionate lease rental when allotted on upfront premium basis. It is further clarified that leased premises also includes structures built on lease land for the purpose of recovering of subletting fee. Exemption from collecting subletting fee may be given in case of FTZ/ SEZ wherein the business model is based on subletting only.

C. All proposals for transfer / subletting should be evaluated by the Land Allotment Committee and thereafter approved by the Board of Trustees.

D. NOC can be granted for mortgage of leasehold land, along with the permissible structures erected by the lessee thereon in favour of reputed financial institutions/ scheduled banks, subject to the Port retaining the first charge on them. The Board of Trustees may permit the mortgage on collection of a nominal fee commensurate with the size and lease value of the land to be fixed by the Trust Board. All proposals for grant of NOC for mortgage may be duly recommended by the Land Allotment Committee and approved by the Chairman of the Port.

E. Each lease agreement should specifically provide for termination of lease, if the leased land is not utilized for the purpose for which it is allotted, within two years of the allotment, or such shorter period as may be fixed at the time of approval of the lease. However, this period of two years can be extended by the Board maximum upto one more year from the date of physical possession of land in respect of security/ government agencies only. Similarly, each lease agreement should specifically provide for surrender of lease, subject to prior notice by the lessee at least 6 (six) months in advance and refund of proportionate upfront premium if the land was leased on upfront basis. Even in existing leases, in cases of premature surrender of lease, proportionate

upfront premium to be refunded by the Port if the land was leased on upfront basis.

F. After the expiry/termination of lease or forfeiture of lease on account of change of user assignment, etc., if the lessee continues to occupy it unauthorized, the lessee shall be liable to pay compensation for wrongful use and occupation at three times the annual lease rent, irrespective of the fact whether land was originally allotted on up front basis or annual rent basis, till vacant possession is obtained. In cases of upfront bidding, the annual lease rent would be determined on pro-rata basis.

G. If a lessee breaches/ violates any provision of Lease Agreement, the Port Trust Board would reserve the right to impose appropriate penalty on the lessee or cancel the lease depending upon the nature/ magnitude of breach/ violation. Such penalty may be imposed after giving a reasonable opportunity to the lessee to present his case.

H. The Port would have the option to prescribe Minimum Guaranteed Traffic/ Minimum Guaranteed Revenue as conditions for fresh leases, if deemed fit.

I. Licence fee for water area would be 50% of licence fee of abutting land.

J. The Port Trust Board shall have the right to resume possession of the leased land in public interest before expiry of lease period. In such cases, subject to availability of land, the lessee may at the discretion of the Port Trust Board be given an option to relocate activities in another suitable location to be offered by the Port, as per the land use plan or refund of proportionate upfront premium if the land was leased on upfront basis.

K. The Port Trust Board shall fix objective eligibility criteria for qualification of bidders, such as net-worth, tax certifications and non-pendency of mutually admitted Port dues.

L. In respect of land situated adjoining to Defence Installations as defined in Works of Defence Act, 1903, prior concurrence of the Local Defence Authority will be required.

M. Transfer of lease should not be permitted where land has initially been allotted on nomination basis or at concessional rates of lease rent.

N. In respect of a case where the transferor extracts premium on the transfer of the lease, 50% of such premium is to be paid to the Port Trust.

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) The Port Trust would make a proposal as outlined in para 13(a) to TAMP for fixing the latest SoR of the land. The TAMP would notify the latest SoR of the land after following due process of consultation with stake holders within 45 days of receipt of the proposal. The Port Trust Board will fix a rate of annual escalation which would not be less than 2%. SoR would be refixed once in every 5 years by TAMP.

(d) Reserve Price for Auction:

The reserve be the latest SoR with due escalation for all leases within and outside the Custom Bonded Area.

14. Right of Way permission:

The Right of Way permission for laying pipelines/ conveyors etc., from jetties to the tank farms within & outside port area shall be given with approval of the Board. It shall neither be a lease nor a license. As far as possible, the pipeline should be permitted only underground. There shall not be any allotment of land to a party for giving Right of Way permission. As far as possible, these shall be laid on common user basis and if the same pipeline is required by any other party, it shall be spared, on such terms as agreed between the parties and the Port Trust Board. The parties shall have to abide by the conditions specified by the Port. An indicative list of guidelines/conditions for Right of way permission is at Annexure to this document. The Policy for giving the Right of way permission and the terms and conditions shall be formulated by the respective Port Trust Boards.

15. Transparency and Accountability Provisions:

(i) All proposals for transfer of leases, change of purpose/ use, mortgage of land, Right of Way permission etc. shall be

recommended by the Land Allotment Committee and approved by the Port Trust Board.

(ii) The allotments through tender-cum-auction shall only be done through e-tendering.

(iii) All financial transactions related to land shall be made with authorized banks on e-payment basis.

(iv) Details of latest market value assessed by Ports should be displayed on their websites. All matters relating to land bank belonging to a Port, including location and availability should be placed on their website.

(v) Any proposal for fresh lease/ licence or renewal of existing lease/licence should be placed in the public domain and reasonable time provided for inviting comments / suggestions of the public.

(vi) Any proposal for revision of the land use plan shall be published in the website of the Port Trust inviting objections and suggestions and shall be finalised by the Board after considering the objections and suggestions received.

(vii) In case of any ambiguity or doubt arising in regard to any provision, the Ministry of Shipping would have the powers to interpret and clarify the same within the overall framework and spirit of these guidelines.

(viii) In case of any difficulty arising in implementing these guidelines, the Ministry of Shipping would have the powers to relax the provisions in these Guidelines, in public interest, within the overall framework and spirit of the guidelines.

Annexure

Broad Terms and Conditions for issuance of Right of way Permission for laying Pipelines/ conveyors etc.

1. The parties shall be allowed to lay pipelines/conveyors etc., on right of way basis and on purely temporary basis.
2. Only permission shall be given. There shall not be any allotment of land to the party nor is to be construed to be a lease or licence.
3. Facility compensation or right of way charges shall be paid by all parties. For the purpose of Right of way leave charges, the area occupied by pipelines shall be calculated based on the diameter and length of those pipelines. In case of multi-layer stacks, the physical area occupied by the multilayer pipeline/ conveyor stacks shall be considered and the respective users shall be billed accordingly. As far as underground pipelines are concerned, if the users establish that the possession of surface area above the underground cross-country pipelines is not physically with them, the area occupied by such pipelines shall be considered as 50% of the diameter and length, for the purpose of levy of Right of Way charges.
4. As far as possible, the pipelines may be laid on common-user basis. If any other party wants to use the pipelines, they may be given permission on such terms as agreed to between the Parties and the Port Trust Board.
5. One time Supervision charges as a percentage of the cost of laying of pipelines/conveyors etc. in the port limits shall be paid by all the parties to the Port Trust. The charges would be applicable even if the supervision is done by a third party.
6. Each Port Trust Board would formulate and approve their own policy for one time supervision charges, MGT and additional compensation charges if any for granting way leave permission.
7. The Port Trust shall ensure that the wharfage and all other charges due to be paid by the party, shall be paid to the Port Trust for the cargo handled through the pipelines.

8. All statutory permissions including that of explosives and fire-safety etc., shall be obtained by the parties concerned from the respective authorities.
9. Port Trust shall reserve the right to direct the parties to remove the pipelines modify or re-route the pipelines in the exigencies or interest of the Port and the Party shall carry out the same at their own cost.
10. The party shall indemnify the Port Trust against all kinds of damages, loss to Port property, personnel etc., caused due to laying, maintenance and operation of pipelines.
11. The party shall follow all the relevant rules of the Port Trust and other statutory authorities such as the Chief Controller of Explosives, Nagpur and also provisions of other relevant statues etc.
12. The party shall take adequate safety measures and arrange for patrolling of their pipelines round the clock at their own cost.
13. The Port Trust shall not be held responsible for any loss, damages, pilferage etc., of the products from pipelines.
14. Other usual operating conditions as laid down by the Port Trust would apply.

//TRUE COPY//

Annexure P/8

(Published in Part - III Section 4 of the Gazette of India, Extraordinary)

TARIFF AUTHORITY FOR MAJOR PORTS

G No. 350 **New Delhi,** **4 December 2014**

NOTIFICATION

In exercise of the powers conferred under Section 49 of the Major Port Trust Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal of Kandla Port Trust for revision of rate structure of Kandla land of Kandla Port Trust as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports

Case No. TAMP/24/2014-KPT

Kandla Port Trust **- - -** **Applicant**

QUORUM:

(i). Shri. T.S. Balasubramanian, Member (Finance)
(ii). Shri. C.B. Singh, Member (Economic)

O R D E R

(Passed on this 13th day of November 2014)

This case relates to the proposal received from Kandla Port Trust for revision of rate structure of Kandla lands at Kandla for categories 'A to G' for the period from 1 January 2014 to 31 December 2018.

2.1. The lease rents for Kandla lands (categories A to G) of Kandla Port Trust (KPT) were last revised vide Order no.TAMP/21/2010-KPT dated 25 March 2011.

2.2. In the said Order, the lease rents for Kandla lands were approved for three quinquenniums viz. July 1999 to 31 December 2003, 1 January 2004 to 31 December 2008 and for the period 1 January 2009 till 31 December 2013. The revised lease rentals approved in the said Order were given retrospective effect. The validity of lease rent of Kandla lands was prescribed till 31 December 2013.

3.1. Before proceeding ahead on the current proposal filed by the KPT, it is relevant here to mention that some parties have filed Writ Petitions before the Hon'ble High Court of Gujarat mainly challenging the retrospective revision in the lease rents approved by this Authority vide its Order dated 25 March 2011. The Hon'ble High Court has, however, not stayed implementation of the said Order dated 25 March 2011.

3.2. In the meanwhile, the KPT by its letter dated 27 December 2013 had sought extension of the validity of the lease rentals of Kandla land from the date of its expiry i.e. 31 December 2013 upto 30 June 2014 on the ground that its proposal for revision of rates for Kandla land is under consideration and it will take some time for filing the proposal.

3.3. This Authority has passed an Order on 4 July 2014 extending the validity of the existing lease rentals of the Kandla lands from the date of its expiry till 30 September 2014. It is stipulated in the said Order that the lease rentals to be fixed by this Authority for the KPT lands based on the proposal filed by the KPT will have retrospective effect from 1 January 2014 as proposed by KPT. The extension of validity of SOR granted is subject to the decision of the Hon'ble High Court of Gujarat in the Writ Petitions filed by the Petitioners challenging this Authority's Order dated 25 March 2011.

4. The KPT vide its letter dated 26 June 2014 has filed its comprehensive proposal for revision of rates for Kandla land for categories 'A' to 'F' and 'G'. The main points of the proposal of KPT are summarised below:

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

(ii). As mandated, a Land Valuation Committee (LVC) was appointed for undertaking revision of rate structure of Kandla land from January 2014 to December 2018. The minutes of the meeting of LVC forwarded by KPT states that the said committee was headed by Dy. Chairman as 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 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 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 23 April 2014 decided to recommend the lease rent based on valuation of land given by the Land Valuer on "As and where basis" for all categories of land except for categories A, D1, D2, D3, E and G. In respect of these 6 categories of land, the LVC has recommended valuation of land on the following basis:

(a). Category A:
As regards 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 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

(v). To summarise, the valuation of land of various categories of Kandla Lands i.e. 'A to G' considered by LVC as seen from the copy of the minutes of the meeting dated 23 April 2014 forwarded by the KPT is reproduced below for ease of reference. The last column is inserted in the table given below indicating the value of land finally recommended by the LVC for arriving at lease rentals for Kandla lands.

(₹ per sq. mtrs.)

Category	Description of Category	Lease Rentals approved by this Authority vide Order dated 25 March 2011 as on 1.1.2009	Market Value of Kandla Lands of Kandla Port Trust						
			Jantri Rate (Gujarat Government)	Transaction registered in last 3 years	Recent Auction Rates	Land Valuation received from valuer as on 01.01.2014 (in sq. mtrs.)			Market Value of Land on 1.1.2014 as recommended by Land Valuation Committee for arriving at lease rental
		Lease Rentals per sq. mtrs. per annum as on 1.1.2009				Land Without Reclamation & with Infrastructure	Land With Reclamation & with Infrastructure	As and where basis of Land situated at Kandla	
A	Land having water front and upto half mile from the shore i.e. the west bank of Kandla creek	110.40	No Jantari Rate available for Kandla. However, the rate is ₹1050.00 m2 of nearby village for land used for commercial purpose	No transaction since last three years	--	2575.00	3350.00	2060.00	3942.00
B	**Land within half mile from the bank of the creek and having no water front**				--	--	--	--	
B1	Plots abutting on main road	89.40			--	3648.00	4560.00	3192.00	3192.00
B2	Plots situated on internal roads	80.40			--	3283.00	4140.00	2873.00	2873.00
C	**Land beyond half a mile from the bank of the creek**				--	--	--	--	
C1	Plots abutting on main road	80.40			--	2500.00	3520.00	1800.00	1800.00
C2	Other plots	64.80			--	2200.00	3000.00	1500.00	1500.00
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	100.20			₹3298.00 m2	D1-2368 m2	D1-3080 m2	D1-2131 m2	3298.00

Category	Description of Category	Lease Rentals approved by this Authority vide Order dated 25 March 2011 as on 1.1.2009	Market Value of Kandla Lands of Kandla Port Trust						
			Jantri Rate (Gujarat Government)	Transaction registered in last 3 years	Recent Auction Rates	Land Valuation received from valuer as on 01.01.2014 (in sq. mtrs.)			Market Value of Land on 1.1.2014 as recommended by Land Valuation Committee for arriving at lease rental
D2	Plots abutting on 1st 30 meter road parallel to NH-8A	89.40			₹2153.00 m2	2131.00	2770.00	1920	2153.00
D3	Plots abutting on 2nd 30 meter road parallel to NH-8A	85.20			₹3089.00 m2	2368.00	3080.00	2131	3089.00
D4	Plots abutting to KK Road near zero point and railway crossing					2250.00	2925.00	2025	2025.00
D5	Valuation of land to the west gate of NH-8Atowards salt works of land without reclamation but with infrastructure					2850.00	3705.00	2565	2565.00
E	**Land within the docks**	180.60			--	5336.00	5836.00	3080.00	5836.00
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	100.20			--	3920.00	4900.00	3430.00	3430.00
F2	Plots situated on Ahmedabad side from Kandla Railway Station	94.80			--	7680.00	9600.00	6720.00	6720.00
G	**Land of Liquid Storage Tanks situated at old kandla between Railway siding and leading to M/s.IFFCO and M/s.IOCO (LPG)-(description in last tariff order)**	442.80			--	--	--	--	--
	Land of Liquid Storage Tanks (Description in the current proposal**)-**	**No such sub-categories in the last order.**							--
G1	Land situated from Eastern Bank of Kandla Creek to Western Bank of Nakti Creek		1050	No transaction since last three years	14216	12375.00	14850.00	11138.00	15086.13

Category	Description of Category	Lease Rentals approved by this Authority vide Order dated 25 March 2011 as on 1.1.2009	Market Value of Kandla Lands of Kandla Port Trust						
			Jantri Rate (Gujarat Government)	Transaction registered in last 3 years	Recent Auction Rates	Land Valuation received from valuer as on 01.01.2014 (in sq. mtrs.)			Market Value of Land on 1.1.2014 as recommended by Land Valuation Committee for arriving at lease rental
G2	Land from West side of Nakti Creek to Kharirohar having existing Oil Terminals of IOCL, HPCL and BPCL.		1050	No transaction since last three years	---	8170.00	9804.00	7353.00	9959.89

(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:

(₹ per sq. mtr.)

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		
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 If 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

5. In accordance with the consultation process prescribed, the proposal of the KPT dated 26 June 2014 was circulated to the concerned users/ user organisations seeking their comments. The comments received from the users / user organisations were forwarded to the KPT as feedback information. The KPT has furnished its remarks on the comments of users / user organizations vide its letters dated 19 August 2014 and 10 October 2014.

6. Based on the preliminary scrutiny of the proposal, the KPT was requested to furnish additional information/clarifications on a few points vide our letter dated 1 August 2014. Subsequent to the joint hearing, the KPT vide its e-mail dated 19 August 2014 has furnished its reply. A summary of queries raised by us and the response of the KPT is brought out in the subsequent paragraphs.

7.1. A joint hearing in this case was held on 4 August 2014 at the KPT premises. The KPT made a power point presentation of its proposal. At the joint hearing, KPT and the concerned users/ organisation bodies have made their submissions.

7.2. As decided at the joint hearing, the KPT was requested vide our letter dated 8 August 2014 to take action on the following points by 19 August 2014:

(i). Furnish comments on each of the written submissions made by Bharat Petroleum Corporation Ltd. (BPCL), Hindustan Petroleum Corporation Limited (HPCL), Gandhidham Chamber of Commerce & Industry (GCCI), Indian Farmers Fertiliser Cooperative Limited (IFFCO) and Kandla Port Karmachari Sangh (KPKS) at the joint hearing. A copy each of written submission of users furnished to the KPT.

(ii). During the joint hearing, some of the users/ lessees raised issues on the land valuation. Some them were –

(a). The BPCL has pointed out that they were categorised under C1 category. But, from January 2014, they have been shifted to G2 category though there is no change in physical parameters. The lease rent proposed for G2 category is around ₹600/ sq. mtr. per annum which is very steep and unreasonable.

(b). Valuation of land considered based on the recent transactions relate to transaction 20 kms. away from the port lands which is not be relevant.

(c). Considering land valuation for freehold land and applying it for leasehold land is not be appropriate.

(d). Adjoining private port which provides more facilities charges ₹36/ sq. mtr.

Clause 18(a) of the land policy guidelines stipulates that the Land Allotment Committee (LAC) will normally take into account the highest of the five factors prescribed in the Land Policy Guidelines of 2014 at clause 18 (a) to recommend

the latest market value of land. In case the LAC does not choose the highest factor for recommending the land value, the said clause in the Land Policy Guidelines requires the reasons to be recorded in writing.

In view of the above objections and concerns raised by users/ lessees during joint hearing on the land valuation, the KPT was advised to relook at its proposal and revise, if necessary, following the provisions of the land policy guidelines of 2014 and file the same within two weeks' time, i.e. by 19 August 2014. The KPT was also advised to confirm that the valuation of land adopted for arriving at lease rental for each categories of land is realistic and representative.

(iii). Expedite furnishing response of KPT to our questionnaire dated 1 August 2014 in a two weeks' time i.e. by 19 August 2014.

8.1. With reference to point of action decided at the joint hearing brought out in para 7.2.(i) above, the KPT vide its letter dated Nil September 2014 has furnished its comments on the written submissions made by BPCL, HPCL, GCCI, IFFCO and KPKS. Subsequent to joint hearing, KPKS vide its letter dated 19 August 2014 has given further submissions.

8.2. With reference to point of action decided at the joint hearing as brought out in para 7.2. (ii) above, the KPT has not proposed any modification to its earlier proposal. The KPT has, however, furnished its comments on the issues raised by users. A summary of main issues raised by users and the reply of KPT vide its letters dated 19 August 2014 and dated 17 September 2014 is tabulated below:

Sl. No.	Action points	Reply of KPT
(a).	The BPCL has pointed out that they were categorised under C1 category. But, from January 2014, they have been shifted to G2 category though there is no change in physical parameters. The lease rent proposed for G2 category is around ₹600/ sq. mtr. per annum which is very steep and unreasonable.	As per Land Policy Guidelines 2014, the rates are to be fixed considering purpose also. So all leases, who have been allotted the land for 'Liquid Tanks' have been considered under G-I & G-2 categories irrespective of distance as earlier considered.
(b).	Valuation of land considered based on the recent transactions relate to transaction 20 kms. away from the port lands which is not relevant.	The transaction of 20 Kms away land is taken only to cross check the valuation derived from lease rent & to create an additional option to arrive at most suitable & justified valuation. However, valuation derived from lease rent has been considered as final.
(c).	Considering land valuation for freehold land and applying it for leasehold land is not appropriate.	It is clarified that since the valuation derived from lease rent, TAMP rate for inside dock area and rental agreements from various properties are higher & same has been adopted for final summary of valuation. Freehold valuation has not been considered as final.
(d).	Adjoining private port which provides more facilities charges ₹36/ sq. mtr.	The Kandla Port Trust has carried out the Rate revisions as per the provisions of the Land Policy Guidelines 2014 issued by the Ministry of Shipping, Govt. of India. Hence, the rates of private port shall not apply.

8.3. Subsequent to joint hearing, the comments were received from Shri Dusyant Arunkant Shah vide his letter dated 18 August 2014 and from Kandla Liquid Tank Terminal Association vide its letter dated 3 September 2014. The KPT has responded vide its letter dated 16 September 2014. The KPT has vide its letter dated 12 September 2014 furnished its comments on the comments of FCI which apparently seems to be received by the port directly from FCI. It is relevant to state here that we have not received any written comments from FCI nor have we forwarded the comments of FCI to KPT.

9.1. With regard to point of action brought about in para 7.2. (iii) above i.e. reply to queries raised undercover of our letter dated 1 August 2014, the KPT has responded vide its letter dated 19 August 2014. As stated earlier, on perusal of the reply furnished by KPT vide its letters dated 19 August 2014, it was observed that there are still some information gaps in the information furnished by the KPT. The KPT was, therefore, vide our letter dated 3 September 2014 requested to furnish additional information/clarification arising out of KPT letter dated 19 August 2014. The KPT vide its letter dated 17 September 2014 has furnished its reply. A summary of the queries raised by us and reply thereon furnished by KPT vide its letters dated 19 August 2014 and 17 September 2014 is tabulated below:

<table>
<tr><th>Sl. No.</th><th>Queries raised by us</th><th>Reply of KPT</th></tr>
<tr><td>(1).</td><td><u>GENERAL</u></td><td></td></tr>
<tr><td>(i).</td><td>KPT has not given the tariff filing Forms viz., Form 1, Form-2A and Form 2B prescribed in the Formats to be submitted along with the proposal for revision of Estate Rentals. The KPT to submit these forms duly filled in.</td><td>The relevant Forms viz. Form 1, Form-2A and Form 2B prescribed in the Formats are furnished.</td></tr>
<tr><td>(ii).</td><td>As per Notes 1, 2 and 3 respectively to Form - 1, KPT is required to furnish the following:</td><td></td></tr>
<tr><td>(a).</td><td>A certificate confirming that KPT’s proposal for lease rentals is in conformity with the Land policy for Major Ports-2014 approved by Government of India.</td><td>It is confirmed that the proposal for revision of the lease rentals of Kandla land is in conformity with the Land Policy for Major Ports-2014 approved by Government of India, Ministry of Shipping.</td></tr>
<tr><td>(b).</td><td>A certificate to the effect that the land leased (category wise) is as per the Ports Land use Plan.</td><td>It is certified that Land leased (Category Wise) is as per Port Land Use Plan.</td></tr>
<tr><td>(c).</td><td>Details of leases granted by the port for commercial and other purposes, category wise separately for the last three years.</td><td>The required details are furnished as under:
<table>
<tr><th>Sr. No.</th><th colspan="3">Details of lease granted in the last 3 years</th></tr>
<tr><th>year</th><th>2011-12</th><th>2012-13</th><th>2013-14</th></tr>
<tr><td></td><td>Nil</td><td>Nil</td><td>25.24 ACRE (05 NOS. OF PLOTS) OF LEASE GRANTED ON UPFRONT BASIS THROUGH TENDER FOR THE PURPOSE OF GODOWN. (ON UPFRONT PREMIUM AND ANNUAL LEASE RENTALS OF RE.1/PLOT FOR BALANCE PERIOD.</td></tr>
</table></td></tr>
<tr><td>(iii).</td><td>If on any matter the present proposal deviates from the Land Policy-2014 for Major Ports KPT to furnish the details thereof justifying the reasons for deviations.</td><td>Not Applicable.</td></tr>
<tr><td>(iv).</td><td>Forward a copy of the Resolution of the Board of Trustees of KPT dated 10 June 2014 approving the proposal of the KPT for revision of lease rent of Kandla Lands.</td><td>Copy of the Board Resolution No. 236 dated 10.06.2014 is furnished.</td></tr>
<tr><td>(v).</td><td>The KPT to furnish a comparison of the lease rent as on 1 January 2009 approved by this Authority in the Order of 25 March 2011, the existing lease rent as on 31 December 2013 after duly escalating the rates and proposed rentals along with the impact (in terms of percentage) on account of the proposed revision.</td><td>The required information is furnished by KPT. Due to paucity of space, the reply of KPT is tabulated separately as point 10.2.</td></tr>
<tr><td>(vi).</td><td>The financial implications including the revenue generated in the last revision cycle and the additional revenue that would be generated due to the proposed revision to be furnished.</td><td>The required information is furnished by KPT. Due to paucity of space, the reply of KPT is tabulated separately as point 10.2.</td></tr>
<tr><td>(2).</td><td>The KPT in its proposal has sought approval of this Authority for revision in the rate structure of KPT Land i.e. Fixing of Reserve Price/ Market</td><td>The KPT in its proposal has sought approval of this Authority for Revision in the rate structure of KPT Land i.e. Fixing of Reserve</td></tr>
</table>

	Value for categories of land "A" to "G". In this regard, it is relevant to mention that as per Section 49 (1) of the Major Port Trust Act, 1963 the mandate given to this Authority is to frame Scale of Rates and prescribe statement of conditions for use of port land and properties belonging to the Major Port Trust. The Act does not authorise this Authority to fix Reserve Price/ market value of land belonging to the Major Port Trusts. Bringing out the above position in the statute, we have vide our letter No.TAMP/8/2014-Gen dated 18 March 2014 requested the Ministry of Shipping to consider suitable amendments in the Land Policy Guidelines. Reply of the Ministry of Shipping is awaited. The KPT to, therefore, kindly note that in view of the statute position, this Authority will be in a position to approve the lease rent as per the KPT proposal and not the Reserve price/ Market value of lands until response of the MOS is received.	Price/Market Value for categories of land " A" to "G" as per the clause No. 18(c) of Land Policy Guidelines - 2014 for Major Ports.
(3).	**Valuation of Port Land**	
(i).	As per clause 18(a) of Land Policy Guidelines for Major Ports-2014 issued by the Ministry of Shipping (MOS) effective from 2 January 2014, the Land Allotment Committee (LAC) should take into account highest of the following factors to determine the latest market value of port lands viz. (a). State Government's ready reckoner of land values in the area, if available for similar classification/ activities, (b). 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 approved by the Port Trust Board, (c). 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, (d). Rate arrived at by an approved valuer appointed for the purpose by the Port and (e). Any other relevant factor as may be identified by the Port. If the highest factor is not chosen, then the reasons for the same have to be recorded in writing. Neither the valuation report nor the report of the Land Valuation Committee indicates that valuation of land is done under all the above five options prescribed in clause 18(a) of the Land Policy Guidelines of 2014 to derive the highest market value of land except for categories of land at "A" and "G". The KPT, therefore, to furnish the market value of land assessed under all the options along with recommendations of Land Valuation Committee (LVC) of the KPT in line with the provisions prescribed in the Land Policy Guidelines of 2014.	Land Valuation Committee recommended the rate as per clause No. 18 (a), (b) & (c) of Land Policy Guidelines 2014, taking into account the highest of the factor mentioned in the above policy, to determine the latest market value of port land, as per the categories, as suggested by the Land Valuer and same has also been incorporated in the minutes of the Land Valuation Committee meeting held on 10.03.2014 and 23.04.2014. The copies of the same have already been forwarded vide letter No.LW/PL/3267/351 dated 26.06.2014.

(ii).	At page 36 of the Land Valuation Report, the Valuer has given the "Reference Gujarat Government Stamp duty Rates" which mostly pertains to the period 2010. For Sr. No.1 and 2 therein the valuation is for the period 2012 and 2011 respectively. No correlation could be drawn to the land valuation given in page 36 of the Valuation Report and value of land as per State Government Ready Reckoner given at ₹1,050 per sq. mtrs. for categories 'A' and 'G'. It is also not clear as to how the Ready Reckoner rate of 2010, 2011 and 2012 can be relevant for the current exercise which is for the period post 2012 (1 January 2014). The KPT to clarify the position.	**Reply furnished vide letter dated 19.8.2014:** A copy of Land Policy Guidelines -2014 was given to Govt. Approved Valuer and Valuation has been carried out as per Guidelines/other factors. A copy of Valuation Report has already been sent to TAMP alongwith proposal. However, comments of Land Valuer is being obtained. **Subsequent reply furnished by KPT vide its letter dated 17.9.2014** Different methods of valuation for each categories have been adopted & ready reckoner is used only to arrive at other option for derivation of valuation. The highest among them is adopted and discussed as below :- 1). Valuation derived from existing base rent for different categories by adopting Rate of Capitalization and Rate of Return which is as per para 5.2.2.3 of guidelines of Ministry of Finance and it reads as under : "Rates of Capitalization as per Ministry of Finance: The Government has specified year's purchase in rule 3 of schedule III of W.T. Act of 1957. These are 12.5 for freehold, 10 & 8 for lease hold properties where the unexpired period of lease of land is 50 years or more and less than 50 years respectively." 2). Latest transaction (only for the "D" category) of plot No.18, 19, 26 are available for Kandla Port land. 3). Existing TAMP Rates have been adopted by following Capitalization method to arrive at the valuation of "E" category. It includes monthly rental of open storage yard and covered godown. 4). Since there is no transaction available for most of the Land categories, stamp duty rates of adjoining lands have been adopted of nearby villages as a reference to arrive at the present valuation of Kandla land ,after applying incremental factor of 5% per year. This incremental factor is adopted for the Annual Statement of Rates (ASR) for assessment of the calculation of stamp duty as per ASR Guidelines by the Government of Gujarat. "The provision of section 32(A) of the Bombay Stamp Act, 1958 provides that Stamp Duty Shall be recovered at the time of registration of the documents of transfer & sale of properties. With the help of market value of property and related information the first ASR (Jantri) was prepared by the government of Gujarat in the year 1984 which came into being by 1992 with

		required modifications. The last ASR (Jantri) prepared during the year 1999. Recently the state Government has taken decision to increase 50% flat to the Jantri of 1999 and 5% increase every year till any other decision". **Rental Method of Valuations:** Rental method of valuation has been adopted, wherever rental details are available, particularly for "D" & "G" category. Also, highest value from all the above options has been taken. Hence, it is to state that all the working from lease rent through rental method is considered as valuation of lease hold property. And the valuation worked out with reference to the adjoining land, the valuation worked out in that manner can be considered as valuation of freehold land. Further, deduction factor of 25% shall be applied in the aforesaid case to come at the valuation of freehold property. After going through entire valuation Report, it is derived as under : "Valuation derived for all the categories "A" to "E" by method of existing lease rent is higher than valuation derived from Freehold valuation of adjoining land". Hence final summary of valuation given is for Lease hold property. Therefore no deduction is required.
(iii).	The valuer approved by the KPT has assessed the value of land on three basis viz. (a). land without reclamation and with infrastructure (b). land with reclamation and with infrastructure; and (c). As and where basis The relevance of determining the land valuation on the above first two methods to be explained by KPT as only the value of land on "as and where" basis is considered by KPT.	Valuer has assessed the value of land on above mentioned three basis, thus detailed assessment has been made, but land was allotted or shall be allotted in future on "As and Where Basis" (except inside the docks). Land Valuation Committee recommended the same in its meeting held on 10-03-2014 and 23-04-2014 respectively.
(iv).	As regards 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 LVC. The KPT has clarified that the value of land for Category A during the last revision (₹1840 per sq. mtr.) as on 1.1.2009 was higher than the value of land at 'B1' at ₹1490/- per sq. mtr. hence the value of land for category A in the current exercise is , proportionately increased to ₹3942 per sq mtr. (i.e. 1840/1490*3192).	

	Wide variation is visible in the valuation of land for Category A and B1 done independently by the valuer appointed by KPT at ₹2060 per sq. mtr. and ₹3942 per sq. mtr. which is derived on proportionate basis. In this context, clarifications sought are as below:	
(a).	The approved valuer has already assessed the market value of land for category 'A'. That being so, the logic and rationale of such proportionate adjustments with reference to land value of B1 considered in the last revision to be explained.	Land Valuation Committee recommended the rate as per clause No. 18 (a), (b) & (c) of Land Policy Guidelines 2014, taking into account the highest of the factor mentioned in the above policy, to determine the latest market value of port land & as per the categories as suggested by the Land Valuer except for Category "A" as has been derived by considering any other factors as provided in clause 18(a)(v) of Land Policy Guidelines-2014. The market value of lands received from valuer for Category "A" is less than the Category 'B' . However, existing TAMP approved rates of Category 'A' is more than that of Category 'B". Accordingly, rates of Category 'A' has been worked out proportionately to Category "B" (Rate of 2009 for Category 'A' X B1 Category as per valuer/Category B1 of 2009). This has already been mentioned in minutes of the Land valuation committee held on 23.04.14.
(b).	Lands under category A is having water front and is located half a mile from the shore whereas under category B there are two sub categories of land viz. B1 (located abutting the main road) and B2 (on internal roads). It is, therefore, not clear from the proposal whether lands at category A are similar to lands at category B1 for such proportionate adjustments done by the KPT.	Category 'A' is land having waterfront, whereas category 'B' land has no waterfront. The proportionate rate has been considered as been clarified in reply to point (iv)(a) ' above.
(c).	In the light of the above observation, the KPT to confirm that the market land value considered by the KPT for Category A is relevant and representative enough in terms of layout, facilities, development, proximity, its commercial utilisation, etc. If the KPT is of the view that the market value considered by the KPT for Category A is not be representative then the KPT to consider to amend its proposal suitably.	After confirming all relevant factors, Land Valuation Committee has considered/ recommended the rates.
(v).(a).	The valuation of land recommended for D1, D2 and D3 is reportedly based on the highest rate received in the recent auction. The KPT to clarify to which period the auction relates to the highest auction rate received. Also, confirm whether it is in compliance with the provision of land policy guidelines of 2014 which requires the highest auction rate to be updated applying applicable annual escalation.	Auction took place in year 2011. After applying applicable annual escalation on highest rate received on Auction, the rates of Category D1, D2 and D3 were derived, which is as per Land Policy Guidelines 2014 and accordingly Land allotment Committee recommended the same.
(b).	The valuation of land for sub categories D2, D3 and D4 at Page 57 of the Land Valuation Report and the land valuation in the table presented in the copy of the minutes of the meeting of the LVC dated 23 April 2014 do not match. For ease of reference, comparative	

<table>
<tr>
<td></td>
<td>position is given below:

<u>Valuation of Land by Approved Valuer:</u>

<table>
<tr><th rowspan="2">Sr. No.</th><th rowspan="2">Category</th><th colspan="2">Land without reclamation but with infrastructure</th><th colspan="2">Land with reclamation and infrastructure</th><th colspan="2">As and where basis</th></tr>
<tr><th>As per valuation report pg-57</th><th>As tabulated in the Minutes of meeting dtd. 23.04.2014 of the Land Valuation Committee</th><th>As per valuation report pg-57</th><th>As tabulated in the Minutes of meeting dtd. 23.04.2014 of the Land Valuation Committee</th><th>As per valuation report pg-57</th><th>As tabulated in the Minutes of meeting dtd. 23.04.2014 of the Land Valuation Committee</th></tr>
<tr><td>1.</td><td>D2</td><td>2,250/-</td><td>2,131/-</td><td>2,925/-</td><td>2,770/-</td><td>2,025/-</td><td>1,920/-</td></tr>
<tr><td>2.</td><td>D3</td><td>2,131/-</td><td>2,366/-</td><td>2,770/-</td><td>3,080/-</td><td>1,920/-</td><td>2,131/-</td></tr>
<tr><td>3.</td><td>D4</td><td>2,368/-</td><td>2,250/-</td><td>3,080/-</td><td>2,925/-</td><td>2,131/-</td><td>2,025/-</td></tr>
</table>

The KPT to intimate the corrected position in respect of these sub-categories.</td>
<td>There was a difference in description of final summary of D category page 57 of Land Valuation Report and final summary as and where basis in pg. 15. The valuation at pg. 57 is correct and same has been corrected in pg. 15 and copy of it is enclosed herewith. Same shall be considered as Final Summary. Accordingly rates recommended for D4 category i.e. “Plots abutting to KK road near zero point and railways crossing, 25 acres plots and other plots” may now be considered as ₹2131/- instead of ₹2025/-.
[The KPT has not addressed on the mismatch observed in D2 and D3 category.]</td>
</tr>
<tr>
<td>(c).</td>
<td>The proposal of KPT includes lease rent for sub categories D3 and D4 which were not prevailing in the last revision of Kandla lands. Explain the circumstances for introduction of these new categorization as D3 and D4. Please also clarify whether categories of the lands at D3 and D4 were covered under some other categories under the existing arrangement and, if so, the existing lease rent applicable for the same is to be brought out.</td>
<td>As per Land use plan of July 2011, strip of property from zero point circle to KPTZ circle on south of national highway is marked as commercial institution, the property marked as D5 on south of national highway outside west gate. Since there was no reference taken in previous valuation, hence same has been marked as new D5.

D4 category is considered for land west of KK land as shown in land use plan. This D4 category earlier was considered in C2 category (other plots).

Hence, these new categories have been introduced as D4 & D5, as valuation rates are different, but purpose is same.</td>
</tr>
<tr>
<td>(vi).</td>
<td>Whilst for all the categories of land except A, D1, D2, D3 and G, the KPT has relied upon valuation of the land given by the land valuer on “as and where basis”, specific reasons for considering the valuation of land based on “land with reclamation and with infrastructure” in respect of category “E” alone to be explained. In other words, please state the reasons for not considering the valuation of land on “as and where basis” for category “E” as done for other categories of land.</td>
<td>Category 'E" is the area which comes within the docks area and developed by KPT, accordingly the rate recommended for value of "land with reclamation and with infrastructure " and has been considered by Land Valuation Committee.</td>
</tr>
<tr>
<td>(vii).
(a).</td>
<td>As regards category ‘G’ (sub categories G1 and G2), the table presented in the copy of the minutes of the meeting of the Land Valuation Committee dated 10 March 2014 under option “Others” states that the Board vide Resolution dated 16 July 2013 approved weighted average rate of ₹10,523.18 per sq. mtr. with 2% escalation every year and informed the Ministry/ Supreme Court. The KPT to elaborate and give a brief background on what context and for what purpose, the KPT Board approved weighted average rate of ₹10,523.18 per sq. mtr. with 2% escalation every year and informed the Ministry/ Supreme Court.</td>
<td>A copy of Agenda and Minutes is enclosed at Annexure – “G”. The matter was informed to Ministry only.

[The KPT has not furnished any brief background on this matter. It has only forwarded a copy of the agenda and minutes.]</td>
</tr>
</table>

(b).	It is seen that in June 2014, the KPT Board for the same G1 and G2 categories has approved land valuation at ₹15086.13 and ₹9959.89 respectively which is different from the approval accorded by KPT Board in July 2013. The KPT to confirm the land valuation approved latest by the Board in June 2014 is to be considered for revision of lease rentals of KPT land. Also, confirm that these land valuation will not in any way conflict with the land valuation reportedly communicated by the KPT to Ministry and Supreme Court in July 2013.	It is confirmed that Land Use Plan approved by Board in June 2014 should only be considered. As Supreme Court matter was over and decided it will not any way conflict with the land valuation reportedly communicated by the KPT to Ministry only. [The reply of KPT mentions about land use plan. It is, however, seen from its proposal dated 26 June 2014 that Board of KPT has approved market value of G1 and G2 at ₹15086.13 per sq. mtr. and ₹9959.89 per sq. mtr. respectively]
(c).	For G2 category, valuation of land arrived by the approved valuer is ₹8170 per sq. mtr. The LVC has recommended the value of land at ₹9959.89 lakhs by proportionately adjusting (upwards) the land valuation given by the approved valuer with reference to the valuation of land recommended for G1 category at ₹15,086.13 per sq. mtr. (based on the highest accepted tender). The minutes of the LVC and the proposal of the KPT does not explain the reasons for such upwards revision done in the land valuation of G2. The KPT is requested to confirm whether the market value of land so derived by the KPT for G2 is a realistic value and is representative enough in terms of layout, facilities, development, proximity, its commercial utilisation, etc.	It is confirmed that the market value of the land so derived by the KPT for G2 is a realistic value and is representative enough in terms of layout, facilities, development, proximity, its commercial utilization, etc.
(viii).	The proposal of the KPT does not mention the periodicity for which the revised lease rent is proposed. The Land Policy Guidelines of 2014 do not prescribe periodicity for review of the Scale of Rates of port lands approved by the TAMP. It is, however, relevant here to mention that clause 6.1.(3)(d) the Land Policy of the 2010, as well as clause 5.3(I)(d) of Land Policy guidelines of 2004 stipulate that the SOR will be revised every five years. The KPT is, therefore, to prescribe periodicity upto which the revised lease rent will apply. It is relevant to state here that the MOS has also been requested to make suitable amendment in the guidelines so as to prescribe periodicity of revision of lease rent in line with the 2004 and 2010 guidelines.	The periodicity of proposed revised lease rent is for the period 01-01- 2014 to 31-12-2018, with approved escalation per year.
(ix).	The KPT has sought approval to the revised rates retrospectively w.e.f. 1 January 2014. In this context, the KPT to confirm that the lease agreements with the lessee/ licensees contain a clause allowing for retrospective revision of rental.	The undertaking taken from lessees containing conditions allowing retrospective revision.
(4).	**Scale of Rates (SOR)**	
(i).	The proposal of the KPT does not include conditionalities governing the proposed lease rent for Kandla Lands except for one note on escalation factor. The KPT to incorporate the conditionalities governing the proposed lease rent for Kandla Lands. This Authority is	As per Land Policy Guidelines 2014 and as approved by Board, 2% escalation per year is to be considered. Earlier revision of rates as approved by TAMP vide Notification No. 106 dated 11.5.2011, also does not contain any other conditionalities except for escalation

	mandated not only to prescribe Scale of Rates but also conditionalities governing the application of rates.	clause.
(ii).	Also, examine to incorporate a note stating that all the conditions/ notes prescribed in the existing Scale of Rates/ Schedule of License Fees and Lease Rentals shall apply to the extent they are not inconsistent with the conditions prescribed in the Land Policy for Major Ports-2014 announced by the Government on January 2014. In case of disagreement, the conditions prescribed by the Government in the Land Policy for Major Ports-2014 shall prevail.	No conditionalities have been incorporated in the proposed Land Revision Proposal of Kandla Port Trust. In view of the above, conditions as prevailing in the Land Policy Guidelines - 2014 shall prevail, wherever applicable.

9.2. The comparative statement furnished by the KPT giving lease rent as on 1.1.2009 approved in the last Order, duly escalated lease rent as on 1.1.2014 (we sought the duly escalated lease rent as on 31.12.2013), proposed lease rent and its impact in terms of percentage is tabulated hereunder:

Category	Description of Category	As per last Order			Proposed rates from 01.01.14		
		Market Value considered	Lease Rentals per Sq. Mtrs per annum as on 1.1.2009	Lease rent as on 01.01.14 after taking 2% escalation p.a.	Market Value as on 01.1.14	Lease Rental per sq. mtr. p.a. as on 01.01.14 (6% of market value)	Percentage Increase over escalated lease rent
A	Land having water front and upto half mile from the shore i.e. the west bank of Kandla Creek	1840	110.4	121.9	3942	236.5	94%
B	Land within half mile from the bank of the creek and having no water front						
B1	Plots abutting on main road	1490	89.4	98.7	3192	191.5	94%
B2	Plot situated on internal roads	1340	80.4	88.8	2873	172.4	94%
C	Land beyond half a mile from the bank of the creek						
C1	Plot abutting on main road	1340	80.4	88.8	1800	108	22%
C2	Other plots	1080	64.8	71.5	1500	90	26%
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	100.2	110.6	3298	197.9	79%
D2	Plots abutting on 1st 30 meter road parallel to NH-8A	1490	89.4	98.7	2153	129.2	31%
D3	Plots abutting on 2nd 30 meter road parallel to NH-8A	1420	85.2	94.1	3089	185.3	97%
D4	Plot abutting to KK road near zero point and railway crossing 25 acres plots and other plots				2025	121.5	29%
D5	Valuation of land to the West Gate of NH-8A towards salt works of land without reclamation but infrastructure				2565	153.9	64%
E	Land with the docks	3010	180.6	199.4	5836	350.2	76%
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	100.2	110.6	3430	205.8	86%
F2	Plots situated on Ahmedabad side from Kandla Railway Station	1580	94.8	104.7	6720	403.2	285%
G	Land for Liquid Storage Tank (Description in the last tariff Order)						

Category	Description of Category	As per last Order			Proposed rates from 01.01.14		
		Market Value considered	Lease Rentals per Sq. Mtrs per annum as on 1.1.2009	Lease rent as on 01.01.14 after taking 2% escalation p.a.	Market Value as on 01.1.14	Lease Rental per sq. mtr. p.a. as on 01.01.14 (6% of market value)	Percentage Increase over escalated lease rent
	(Description in the current proposal. No such sub-categories existed in the last order. G1 and G2 sub-categories proposed in the current proposal)						
G-I	Land Situated from Eastern Bank of Kandla Creek to Western Bank of Nakti Creek	7380	442.8	488.89	15086	905.2	85%*
G-II	Land from West Side of Nakti Creek for kharirohar having existing Oil Terminal of IOCL, HPCL and BPCL				9960	597.6	22%*

[*The percentage increase of G1 and G2 is done with reference to the lease rent for G category in the last Order]

9.3. The financial implications including revenue generation in the last tariff cycle and the additional revenue that would be generated at the proposed tariff cycle forwarded by the KPT to one of our queries is tabulated below:

Sr. No.	LAND SQ. MTRS.	CATE	RATE OF 2009 (PER SQ. MTRS)	TOTAL ANNUAL LEASE RENT i.e. 2009	RATE OF 2013 (PER SQ. MTRS)	TOTAL ANNUAL LEASE RENT i.e. 2013	RATE OF 2014 (PER SQ. MTRS)	TOTAL ANNUAL LEASE RENT i.e. 2014
1	747953	**A**	110.40	82573987.00	119.50	89380358.00	236.52	176905794.00
2	4494	**B1**	89.40	401803.00	96.77	434927.00	191.52	860775.00
3	70935	**C1**	80.40	5703172.00	87.03	6173473.00	108.00	7660980.00
4	17715	**C2**	64.80	114794.00	70.14	1242530.00	90.00	1594350.00
5	63646	**D1**	100.20	6377329.00	108.46	6903045.00	197.88	12594270.00
6	3157	**E**	180.60	570155.00	195.49	617162.00	350.16	1105455.00
7	222620	**F1**	100.20	22306525.00	108.46	24145365.00	205.80	45815196.00
8	69918	**F2**	94.80	6628226.00	102.61	7174286.00	403.20	28190938.00
9	532419	**G1**	*****	66412637.00	****	71887461.00	905.17	481929942.00
10	1923439	**G2**	80.40	154644496.00	87.03	167396897.00	597.59	1149427912.00
TOTAL	3656296			346,766,264.00		375,355,504.00		1,906,085,612.00

NOTE: *****THERE ARE DIFFERENT CATEGORY UPTO 31-12-2013.

(₹ in lakhs)

INCOME AS PER PRE REVISED RATE 2009-10	3,468.00	PROPOSED INCOME AS PER PRE REVISED RATE 2014-15	19,061.00
INCOME AS PER PRE REVISED RATE 2010-11	3,537.00	PROPOSED INCOME AS PER PRE REVISED RATE 20115-16	19,442.00
INCOME AS PER PRE REVISED RATE 2011-12	3,608.00	PROPOSED INCOME AS PER PRE REVISED RATE 2016-17	19,831.00
INCOME AS PER PRE REVISED RATE 2012-13	3,680.00	PROPOSED INCOME AS PER PRE REVISED RATE 2017-18	20,228.00
INCOME AS PER PRE REVISED RATE 2013-14	3,754.00	PROPOSED INCOME AS PER PRE REVISED RATE 2018-19	20,633.00

PERCENTAGE INCREASE IN INCOME FROM RATE OF 2009 TO PROPOSED RATE OF 2014	549.67	%
PERCENTAGE INCREASE IN INCOME FROM RATE OF 2013 TO PROPOSED RATE OF 2014	507.81	%

10. The proceedings relating to consultation in this case are available on records at the office of this Authority. An excerpt of the comments received and arguments made by the concerned parties will be sent separately to the relevant parties. These details will also be made available at our website http://tariffauthority.gov.in.

11. With reference to the totality of the information collected during the processing of this case, the following position emerges:

(i). The lease rents for Kandla lands (categories A to G) of Kandla Port Trust (KPT) were last revised by this Authority vide Order No.TAMP/21/2010-KPT dated 25 March 2011. In the said Order, the lease rents for Kandla lands were approved for three quinquennium viz. July 1999 to 31 December 2003, 1 January 2004 to 31 December 2008 and for the period 1 January 2009 till 31 December 2013. The revised lease rentals approved by this Authority in the said Order were given retrospective effect. The validity of lease rent of Kandla lands was prescribed till 31 December 2013. The current proposal filed by the KPT is for revision of lease rent of Kandla Lands for categories A to G from the date of expiry of original validity i.e. from 1 January 2014.

(ii). (a). For the purpose of determining lease rentals for the lands belonging to the Port Trusts, this Authority is mandated to follow the land policy guidelines issued by the Government from time to time vide clause 8 of the tariff policy guidelines issued by the Government in March 2005 as policy direction under Section 111 of the Major Port Trusts Act, 1963. The Ministry of Shipping in the Government of India has announced Land Policy Guidelines for Major Ports, 2014 in January 2014 which came into effect from 2 January 2014. The said guidelines have been approved by the Union Cabinet. The KPT has filed its comprehensive proposal seeking approval of this Authority for revision in the rate structure of KPT Land i.e. Fixing of Reserve Price/ Market Value for categories of land “A” to “G” following the Land Policy Guidelines for Major Port Trusts, 2014.

(b). Para 18 of the Land Policy Guidelines for Major Ports, 2014 issued by the Ministry of the Shipping has provided for factors for determination of Market value of port land. The methodology for determination of market value of the port land based on the five factors prescribed in para 18(a) of the Land Policy guidelines of 2014 is similar to the provisions contained in the Land Policy guidelines of 2010. The 2014 guidelines, however, recommends that normally the highest of the five factors for determination of the latest market valuation of land should be considered. If the latest market value of land is not chosen based on highest of five factors, then the reasons are to be recorded in writing. Clause 18(b) of the guidelines stipulates that Reserve Price in terms of annual lease rent would be arrived as percentage of latest market value of land determined based on the five factors in accordance with para 18(a) and that the percentage should not be less than 6% which is to be fixed by the Port Trust Board. Further, clause 18(c) of the Land Policy Guidelines for Major Ports 2014 requires the concerned Major Port trust to file a proposal to this Authority for fixing the market value of the land and this Authority is required to notify the market value of land. Thus, as per clause 18(c) of the revised Land Policy Guidelines, this Authority is required to notify the market value of the port lands.

(c). In this regard, it is noteworthy that as per Section 49 (1) of the Major Port Trusts (MPT) Act, 1963 the mandate given to this Authority is to frame Scale of Rates (SOR) and prescribe statement of conditions for use of port land and properties belonging to the Major Port Trust. The earlier Land Policy guidelines of 2010 as well as of 2004 clearly mandated this Authority to determine the Scale of Rates of the lands of the Major Port Trust and not the market value of land. Accordingly, in the last tariff Order of March 2011, this Authority has approved lease rent (SOR) for Kandla lands. Bringing out the position in the statute, the Ministry of Shipping (MOS) has been requested vide our letter No.TAMP/8/2014-Gen dated 18 March 2014 to consider suitable amendments in the Land Policy Guidelines of 2014 in line with the statute position. The response of the

Ministry of Shipping is awaited. The above statute position was also brought to the notice of the KPT. The KPT in response has categorically stated that it seeks approval of this Authority for revision in the rate structure of KPT Lands i.e. Fixing of Reserve Price/Market Value for categories of land "A" to "G" as per the Clause No.18(c) of Land Policy Guidelines - 2014 for Major Ports. If a reference is drawn to the Clause 18 (b) of 2014 Land Policy Guidelines, the term "Reserve Price" connotes the meaning of Annual Lease Rent (SOR). It is thus seen that the KPT has sought approval of this Authority to notify both the Market value of land as well as the Reserve Price (SOR) for its Kandla lands.

As stated above, the term "Reserve Price" in para 18(b) of the Land Policy Guidelines of 2014 has been equated to the annual lease rent. Further, as per para 16.2(d) of the Land Policy Guidelines (though it relates to lease of land through tender-cum-auction methodology in a competitive bidding process) stipulates that the reserve price shall be worked out by the Land Allotment Committee (LAC) of the port, approved by the Board Trust and by this Authority. Thus, from an harmonious reading of the clauses 18(b), 18(c) and 16.2(d) of the land policy guidelines, it can be seen that the Authority is mandated to notify reserve price equated to annual lease rent as well as market value. The mandate to notify the reserve price is of course possible subject to the condition that the percentage to be applied on the market value of land (which should not be less than 6%) is approved by the Port Trust Board as per the stipulation in clause 18(b) of the Land Policy guidelines of 2014.

So far as the proposal of the KPT is concerned, it is seen from the copy of minutes of the Board meeting of the KPT forwarded by the port, that the Board of Trustees of KPT has approved the market value of land. The Board has also approved the reserve price in terms of annual lease rent applying 6% on the market value of land for G1 and G2 categories on 24 March 2014 and for other categories of land viz. A to F on 10 June 2014. That being so, as per the provisions of the Land Policy guidelines of 2014, this Authority proceeds ahead with the proposal of the KPT to notify both proposed market value of land and the Reserve Price in terms of annual lease rent.

(iii). The Gandhidham Chamber of Commerce and Industry (GCCI) and Hindustan Petroleum Corporation Limited (HPCL) have questioned the jurisdiction of this Authority to fix the lease rent for letting of port trust lands outside the port limits. In their opinion, this Authority is primarily concerned with tariff concerning port operations and that rates approved by this Authority outside port limits are not binding on port trusts/ Kandla Port Trust tenants/ lessees.

In this context, the GCCI and HPCL have also drawn reference to a case filed by the Mumbai Port Trust (MBPT) in the Honb'le High Court of Bombay challenging the tariff Order dated 15 March 2000 passed by this Authority setting out the legal position about the jurisdiction of this Authority in respect of framing Scale of Rates and statement of conditions for use of port properties. Citing the pending court case of MBPT where the Hon'ble High Court has granted stay which is not yet vacated, the GCCI and the HPCL have argued that this Authority does not have jurisdiction to fix/ approve lease rents for Kandla lands belonging to KPT outside the port limits.

The contention of GCCI and HPCL is not in line with the statutory powers conferred on this Authority. In this regard, it is relevant here to state that under Section 49(1) of the Major Port Trusts Act, this Authority is empowered to frame the Scale of Rates and the Statement of Conditions for use of the following categories of property:

(a). Property belonging to the Board or
(b). Property in possession of the Board or
(c). Property in occupation of the Board or
(d). Property in any place within the limits of the port area or port approaches specified in the sub-section (a) to (d) of Section 49(1) of the MPT Act.

Thus, as per the statue, for purpose of framing Scale of Rates and Statement of Conditions of port lands, this Authority has jurisdiction relating to all the properties of a Major Port Trust wherever located i.e. irrespective of location inside the port limits or outside the port limits. In any case, we have not received any direction from the higher judicial forum extending the stay granted by Hon'ble Bombay High Court to other Major Port Trusts restraining this Authority to fix lease rentals for properties of Major Port Trusts lying outside the port limit.

(iv). Before proceeding ahead with the analysis of the case, it is be stated that various lessees have filed Writ Petitions before the Hon'ble High Court of Gujarat mainly challenging the retrospective revision in the lease rents of Kandla lands last approved by this Authority vide its Order dated 25 March 2011, as brought out earlier.

The IFFCO has stated that aggrieved by the last tariff Order of this Authority dated 25 March 2011 it has filed a Special Civil Application (SCA) No.2607 of 2012 and 673 of 2014 in the Hon'ble High Court of Gujarat seeking for certain reliefs related to revision of rate structure.

The HPCL has stated that in view of SCA filed by it before the Hon'ble High Court of Gujarat at Ahmedabad challenging the rates approved in March 2011 Order, which is pending before the Court, fixation of new rates is not justified.

It is relevant here to state that the Hon'ble High Court has not granted any stay on the Order of this Authority dated 25 March 2011 in the Writ Petition/ SCA(s) filed by lessees/ users including IFFCO and HPCL. Further, the SCA / Writs Petitions filed by the HPCL, IFFCO and other lessees relate to the last revision of the Kandla Lands which had a validity period upto 31 December 2013. The current exercise in hand is for revision of rate structure of Kandla land beyond the expiry of its validity prescribed in the last tariff Order.

The current proposal has been filed by the KPT following the Land Policy guidelines of 2014 for the period from 1 January 2014 and onwards. As per the statute, this Authority is mandated to notify the rates and conditionalities for any property belonging to or in the possession or occupation of the concerned port trust. Further, clause 8 of the tariff policy guidelines issued by the Government in March 2005 also mandates this Authority is to follow the land policy guidelines issued by the Government from time to time for revision of lease rental of Major Port Trusts Lands. There is no direction or order from the Hon'ble Court of Gujarat in the Writ Petition/ SCAs filed by various lessee on the last Order of March 2011 restraining this Authority to undertake the statutory obligation of fixing the lease rents of Kandla Lands for the period beyond the validity prescribed in the last Order i.e. beyond 31 December 2013.

(v). (a). As per clause 18(a) read with clause 16.2(e) of the Land Policy Guidelines 2014, a Land Allotment Committee (LAC) constituted by the Port Trust Board consisting of Deputy Chairman of the Port, and Heads of Departments of Finance, Estate and Traffic shall determine the market value of land as per the methodology prescribed in clause 18(a). Accordingly, the KPT has reported that Land Valuation Committee (LVC) headed by the Dy. Chairman of the Port and the Heads of Departments of Finance, Estate and Traffic as other members was constituted. An approved land valuer was also engaged by KPT for assessing the market value of the Kandla lands as per Clause 18 (a)(iv) of Land Policy

Guidelines of 2014. The LVC after going through various aspects reported by the approved valuer and after considering the parameters provided under Clause 18(a)(i) to (v) of Land Policy Guidelines, 2014 has recommended the market value of the Kandla Land. Further, the proposal for fixing market value of land and reserve price in terms of annual lease rentals for Kandla Lands for the Categories "A" to "G" has also been approved by the Board of Trustees of KPT in its Board meeting held on 24 March 2014 (for category G) and on 10 June 2014 (for categories A to F) based on the recommendation of the LVC.

Thus, the proposal filed by the KPT which is supported with the copy each of the Valuation Report of the approved valuer, approved by the LVC constituted by the port recommending the market value of land and Reserve Price and which also has the approval of the KPT Board is found to be in compliance with the Land Policy guidelines of 2014 and, therefore, relied upon for disposing of this case.

(b). As regards the submission made by the GCCI and Bharat Petroleum Corporation Ltd. (BPCL) that approved valuer appointed by the KPT is not professionally qualified nor experienced in carrying out the valuation of gigantic and huge chunk of land and that stakeholders have not been involved for finalisation of the valuer, the KPT has clarified that a Government approved land valuer was engaged by the KPT as per clause of 18(iv) of the land Policy Guidelines for assessing the market value of the Kandla land estate. The KPT has also confirmed that M/s.K.M. Thacker & Associate is a reputed Government approved Land Valuer engaged through E-Tender after fulfilling the criteria fixed by Tender Allotment Committee. As rightly stated by the KPT, the Land Policy guidelines of 2014 do not require the concerned port trust to consult the users for finalising the approved valuer or the lease rental proposal for that matter. In any case, the concerned stakeholders have been consulted by this Authority on the subject proposal along with copy of the valuation report and other relevant documents forwarded by KPT in accordance with the consultation process prescribed in the guidelines of 2005 giving them an opportunity to express their views in the joint hearing and furnish written comments on the proposal filled by KPT.

(vi). (a). Para 18 (a) of the Land policy guidelines of January 2014 prescribes the methodology for determination of market value of the land based on the five factors as prescribed therein. In terms of the said para of the Land policy guidelines of 2014, the Land Allotment Committee will normally take into account the highest of the factors mentioned therein, viz. (i). State Government ready reckoner of land values in the area if available for similar classification/activities, (ii). Highest rate of actual relevant transactions registered in the last three years in the Port's vicinity with an appropriate annual escalation rate to be approved 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 and (v). Any other relevant factor as may be identified by the Port. The Land Policy guidelines of 2014 also stipulate that in case the LAC is not choosing the highest factor, the reasons for the same have to be recorded in writing.

(b). When asked to furnish the market value of land assessed under all the options along with recommendations of the LVC in line with the provisions prescribed in the Land Policy Guidelines of 2014, the KPT has clarified that valuation of land is done as per the parameters provided under Clause No.18(a) (i) to (v) of Land Policy Guidelines-2014 and has further clarified the position as given below:

(i). Since no Jantari Rate is available for Kandla lands, the market value of land of nearby village for land used for commercial purpose is considered.

(ii). The KPT has stated that as per the approved valuer there have been no transaction for most of the Land categories. Hence, stamp duty rates of adjoining lands have been adopted of nearby villages as a reference to arrive at the present valuation of Kandla land, after applying incremental factor of 5% per year. The incremental factor is as per the guidelines on Annual Statement of Rates (ASR) issued by the Government of Gujarat.

(iii). Highest accepted tender are available with reference to three plots relating to subcategories D2, D3 and D4 under category D as well as for lands in G1 category which has been considered as one of the factors for arriving at the valuation of land. Since auction rates for these plots related to year 2011, the market value of land as on 1 January 2014 is arrived after applying applicable annual escalation of 2% as per Land Policy Guidelines 2014.

(iv). Further, the port has engaged a Government approved valuer in February 2014 for undertaking valuation of Kandla Lands for all categories A to G and has also forwarded a copy of the Land valuation report submitted by the approved valuer in this regard.

The KPT has clarified that the valuer has derived land valuation from existing base rent for different categories by adopting Rate of Capitalization and Rate of Return. Rental method of valuation has been adopted, wherever rental details are available, particularly for “D” & “G” category. Existing Rates approved by this Authority have been adopted by following Capitalization method to arrive at the valuation of “E” category.

The approved valuer has assessed the land value for each categories of land on three basis viz. (a). land without reclamation and with infrastructure; (b). land with reclamation and with infrastructure; and (c). as and where basis. This is done for detailed assessment. But, since land is allotted or shall be allotted in future on "As and Where Basis", the land valuation on “As and Where Basis” are considered by the port while adopting this method of land valuation of approved valuer except for category “E” which is explained in subsequent paragraphs.

(v). For the two categories viz. ‘A’ and ‘G2’, the land valuation as per the last option i.e. any other relevant factor has also been considered by the KPT for reasons stated by the port which is discussed in the subsequent paragraphs.

Thus, as per clarification furnished by the port, valuation of Kandla lands is done with reference to the five factors prescribed in the land policy guidelines. As per clause 18(a) of the Land Policy guidelines of 2014, the Kandla Port Trust has proposed market value of land based on the highest of the market value of land obtained for each of the categories.

(vii). (a). Some of the organization bodies / lessees like GCCI, HPCL, etc., have raised objections on the market value of land and the reserve price proposed by the port. They are summarized below:

(i). The Gujarat Chamber of Commerce and Industry (GCCI) has contended that it is not appropriate to apply the valuation of land done for free hold land to lease hold land.

(ii). Both the GCCI and HPCL have pointed out that valuation of land considered by KPT is based on the recent transactions 20 kms away which are not be relevant for Kandla Lands.

(iii). Drawing reference to the lease rent at the adjoining private port at Mundra ₹36 per sq. mtrs., a few users/ lessees have requested for a similar lease rent for Kandla Land.

(iv). One of the major objections raised by the oil industry viz. HPCL, BPCL is that until the year 2013 the oil industry were categorized under C1. However, in current proposal a new category is created for oil terminal i.e. G 2. Such re-categorization is done without any scientific approach or logic and the increase works out very steep at 592%. They apprehend that with such a steep hike in lease rent will decline the port's business which may drift to other competing neighbouring ports.

(b). In view of the objections raised by various lessees on the proposal of the KPT, the KPT was specially advised to relook at its proposal and file a revised proposal following the provisions of the land policy guidelines of 2014. While doing so, specific reference was drawn to Clause 18(a) of the Land Policy guidelines which stipulates that the LAC will normally take into account the highest of the five factors prescribed in the guidelines to recommend the latest market value of land. But, the said clause also allows an option to the LAC to choose a market value of land which need not be the highest of the five factors for reasons to be recorded in writing.

(c). With reference to the point made by GCCI that it is not appropriate to apply the valuation of land done for free hold land to lease hold land, as clarified by the KPT, for free hold land, the land valuation is derived with reference to the adjoining land. However, as per the valuation report, for all the categories of land under "A" to "E", the market value of land as per the existing lease rental method is higher than valuation derived from freehold valuation of adjoining land. Hence, as per Land Policy guidelines of 2014 requiring to take highest of all the land valuation, the valuation of land derived for freehold land with reference to adjoining land is not finally reckoned with to propose the rate.

With reference to the point made by GCCI and HPCL that valuation of land considered based on the recent transactions relate to transaction 20 kms. away from the port lands which is not relevant, the KPT has considered the transaction of 20 kms. away land only to cross check the valuation derived from lease rent method and to create an additional option to arrive at most suitable and justified valuation. That land valuation has not been finally adopted for proposing the market value of land/ reserve price.

With reference to the observation that the lease rent of ₹36/- per sq. mtr. levied at the adjoining private port, it has to be recognised as rightly clarified by the KPT, that the rate revision of Kandla Lands is done following the provisions of the Land Policy Guidelines 2014 issued by the Ministry of Shipping, Government of India. The reference to the rates levied by private port cannot be applied to its port. As also rightly stated by the KPT, the private ports do not come under the ambit of tariff regulation of this Authority as per the statute nor are they governed by the Land Policy Guidelines of 2014 issued by the Ministry of Shipping. Both

the KPT and this Authority are governed by the Land Policy Guidelines of 2014 for fixation of market value of land and the reserve price in terms of annual lease rent.

With reference to the objection raised by users about new sub categorisation G1 and G2 under category G, proposed in the current proposal as against a single category G in the last 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 categorised under G-I & G-2 categories irrespective of distance. The KPT has reported that C1 category has now been shifted as G-2 from 01.01.2014 as per the valuation report submitted by the approved valuer appointed for valuation of Kandla Land rates for tanks terminals. This categorisation has also been recommended by the LVC and has also been approved by the KPT Board.

(d). While replying to the objection of the user organisation/ lessees the KPT has sought to maintain the market value and reserve price as per its original proposal of June 2014. It has to be recognised that the Land Policy Guidelines of 2014 recommends normally valuation of land should be done based on the highest of the five factors. The proposal of June 2014 proposed to be maintained by the KPT is found to be in compliance with the Land Policy guidelines of 2014. The KPT has also confirmed that the Government approved Valuer in the valuation report has mentioned that the valuation of land has been carried out as per the scientific method, standard norms have been taken into consideration regarding the use of land, location advantage to the business community of the port, land values adjoining to the port Estate, general guidelines and current market trends, current land rates as per KPT, Government of Gujarat, Jantri value and private market survey etc. KPT has opined that considering all the parameters realistic approach of valuation is arrived at by the approved valuer. The said valuation report has been examined by LVC constituted by the KPT as per the provisions of the Land Policy Guidelines of 2014 and the LVC has recommended the market land of value and reserve price at 6% of market value of land in terms of annual lease rent for categories G1 and G2 on 10 March 2014 and for other categories 'A' to 'F' on 23 April 2014 to be considered for arriving at the reserve Price. Then based on the recommendation of the LVC, the Board of KPT has approved the market value and the Reserve Price in terms of annual lease rent of Kandla lands on 24 March 2014 and 10 June 2014. Since the proposal filed by the KPT complies with the stipulations in the Land Policy Guidelines of 2014, this Authority is bound to rely and go ahead with the proposal filed by the port.

(viii). Market valuation for each category determined of land by the KPT is briefly discussed here under:

(a). Category A:
The land value of this category assessed by the approved valuer on "as and where basis" is ₹2060 per sq. mtr. The KPT has proposed market value of land at a higher level of ₹3942/- per sq. mtr. based on the recommendation of LVC by proportionately increasing the land value so as to maintain the ratio of land valuation between the two categories viz. A and B1 at the level approved in the last tariff Order. On seeking clarification from the port for such proportionate adjustments done by the KPT and to confirm that the market value proposed for Category A is relevant and representative enough in terms of layout, facilities, development, proximity, its commercial utilisation, etc., the KPT has clarified that the value of land for Category A during the last revision as on 1.1.2009 was ₹1840/- per sq. mtr. which was higher than the value of land

at 'B1' at ₹1490/- per sq. mtr. The KPT has confirmed that considering all relevant factors, LVC has recommended the market value of land at ₹3942 per sq. mtr. after proportionate adjustment (i.e. 1840/1490*3192). The recommendation of the LVC has been also approved by its Board. Users/ lessees have also not raised any pointed objection on this approach followed by the port. Hence, the market value of land as proposed by the KPT for this category is approved by this Authority.

(b). Sub-categories D1, D2, D3 under main Category D:
The valuation of land proposed by KPT for D1, D2 and D3 sub-categories are reportedly based on the highest valuation of land based on the auction rate received in the year 2011 and duly escalated by 2%. The land value for these sub-categories of land proposed by the KPT is based on the recommendation of the LVC and approved of the KPT Board and hence same is approved.

(c). Category E:
For this category, the market land value assessed by the approved valuer for "Land with Reclamation and with Infrastructure" has been considered at ₹5836/- per sq. mtr. It is seen that for all the other categories of land where the valuation of land as assessed by the approved valuer is proposed (except categories A, D1, D2, D3 and G), the KPT has relied upon valuation of the land given by the approved valuer on "as and where basis". When sought specific reasons for considering the valuation of land based on "land with reclamation and with infrastructure" in respect of category "E" alone, the KPT has clarified that land in this area comes within the docks area and is developed by the KPT. Hence, market value of land is recommended based on valuation of land with reclamation and with infrastructure developed by KPT. It is appropriate that land value relevant for reclaimed land with infrastructure is applied for the land developed by KPT inside docks. Keeping in view that the land value for this category is based on the recommendation of the LVC and approved by the KPT Board, the same is approved.

(d). Sub-categories G1 and G2 under Category G:

(i). In respect of Category G1, the value of land proposed by the KPT is ₹15086.13 per sq. mtr. considering the highest rate received during auction of 2011 and after 2% escalation every year to arrive at the land valuation as on 1 January 2014.

(ii). In respect of Category G-2, the market value of land assessed by the approved valuer for land without reclamation and with infrastructure at ₹8170/- per sq. mtr. is proportionately scaled upwards with reference to valuation of land recommended by LVC for 'G1' category. (i.e. the market value of land for G1 recommended by 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 land for G2 proposed by 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 Kandla lands approved by this Authority in the last Order of March 2011, the lease rent was approved for category G which reportedly covered lands of Liquid Storage Tanks situated at 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 land for liquid storage tanks. Sub

category G1 is for lands situated from Eastern Bank of Kandla Creek to Western Bank of Nakti Creek and subcategory G2 lands pertaining to lands from West side of Nakti Creek to Kharirohar having existing Oil Terminals of 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, 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. G 2. For category C1, the lease rent approved by this Authority in the last tariff Order applicable from 1 January 2009 is ₹80.40 per sq. metre (lease rent on 31.12.2013 after applying applicable escalation factor is ₹87.02 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 annual lease rent proposed by the KPT applying 6% on the market value of land for category 'C' is ₹108 per sq. mtr. Whereas, the Reserve price in terms of annual lease rent for the new subcategory G2 for IOCL, BPCL and HPCL is ₹597.59 per sq. mtr. Hence, the impact of the proposed increase works out to 586% in comparison to the lease rent being paid under category 'C1' until 31 December 2013.

(iv). With reference to the objections raised by the oil industry for their recategorisation, the KPT has stated that as per Land Policy Guidelines 2014, the rates are to be fixed considering purpose also. But, no such provision linking rates to the purpose of the land to which in it is put to use appears to have been prescribed in the Land Policy Guidelines of 2014. However, the approach adopted by KPT to consider all the lessees, who have been allotted the land for 'Liquid Tanks' under G-2 category irrespective of distance is seen to be appropriate, as brought out below. The said categorisation of 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 land and a lower market value of land for G2 is assessed in comparison to value of 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:

(**₹ per sq. mtr.**)

Sr. No.	**Description**	**Market value of land for G1 category**	**Market value of land for G2 category**
(a).	State Govt. Ready Reckoner (No rate for Kandla Port Lands are available. These rates are of surrounding villages of Kidana, Mithirohar)	₹1050/- per sq. mtr.	₹1050/- per sq. mtr (*)
(b).	Highest rate of actual relevant transactions	No Transactions in last 3 years	No Transactions in last 3 years

(c).	Highest accepted tender-cum-auction rates for similar transactions received in the year 2011 for G1 category ₹14216 per sq. mtr. with 2% escalation per year (14216*1.02*1.02*1.02) = ₹15086.13 per sq. mtr.	15,086.13	Nil
(d).	Rate arrived by approved valuer appointed by the Board	₹12,375/-	8170/-
(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.	₹10,523/-	9959.89 (derived based on valuation of land recommended for G1) [i.e. 15086.13/ 12,375 * 8,170]
(f).	**Market value of land proposed by the KPT based on the recommendation of the LVC and approved by its Board in the current proposal**	**15,086.13**	**9959.89**

[(*) *Though the report or LVC and the proposal of the Port shows the valuation of land for G2 at 1050 per sq. mtr., it is seen that at page 81 of the valuation report for this category of land, valuation of land based on Jantri rates is arrived at ₹1581 per sq. mtr.]*

(v). It is relevant here to state that for category G2, the steep increase cited by the oil industry arises mainly on account of categorisation of land by the KPT from C1 to G2. GCCI has also stated that the categorisation of land is not scientific and methodological manner and it done arbitrarily by the KPT. In this context it is relevant here to state that Para 13 of the Land Policy Guidelines of 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 stipulates that land can be allotted on the basis of the approved land use plan/ zoning. 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 Land leased (Category Wise) is as per 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 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 layout, facilities, development, proximity, its commercial utilization, etc.

Relying on the clarification furnished by KPT and recognising that the market value of land proposed for 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 categorisation, this Authority relied on the decision of the KPT and approves the market value of land as proposed by the KPT.

(vi). As regards the weighted average rate of ₹10,523.18 per sq. mtr. with 2% escalation every year informed to the Ministry of

Shipping, the KPT has clarified that the current proposal filed by it for market value of ₹15086.13 per sq. mtr. will not in any way conflict with the land valuation reportedly communicated by the KPT to Ministry. This Authority relied on the position clarified by the KPT. By way of abundant caution, this Authority will like to advise the KPT to abide by the specific direction of the Supreme Court / Ministry, if any, on the related matter.

(e). Other categories/ sub categories

Apart from the categories/ subcategories of land viz. A, D1, D2, D3, E and G, discussed above, for the other sub categories of land viz. B1, B2, C1, C2, D4, D5, F1 and F2, under category B, C, D and F the KPT has proposed market value of land as recommended by the LVC based on the market value of land assessed by the Government approved valuer on "as and where basis".

As regards subcategory D4, a discrepancy was observed in the market valuation of land given in the valuation report by approved valuer for "as is where is basis" at ₹2131 per sq. mtr. vis-à-vis the valuation of land in minutes of the meeting of the LVC dated 23 April 2014 under this method at ₹2025 per sq. mtr. The KPT has clarified that the land valuation as given in the valuation report at ₹2131 per sq. mtr. is the correct value and has requested to consider the correct market value of land for D4 category at ₹2131 per sq. mtr. instead of ₹2025 per sq. mtr. mentioned in its proposal. The mismatch observed apparently seems to arise from some typographical error. Based on of the clarification furnished by the KPT, the correct market value of D4 land at ₹2131 per sq. mtr. is considered with consequent modification in the reserve price as well.

This Authority, therefore, approves the market value of land as proposed by the port for all the categories of land subject to correction in the market value of land for subcategory D4.

A comparative statement of market value of land based on the various factors furnished by the port, market value of land proposed by the port and the market value of land approved by this Authority is attached as **Annex - I**.

(ix). As already stated earlier, the proposal of the KPT seeks approval of the market value of land and the reserve price. Clause 18 (b) of the land policy guidelines stipulates that the percentage to be applied on the market value of land subject to a minimum cap of 6% is to be fixed by the Port Trust Board. As stated earlier, the Board of Trustees of the KPT has approved the market value of land as well as the reserve price in terms of annual lease rent applying 6% on the market value of land in its meetings dated 24 March 2014 (for subcategories G1 and G2) and 10 June 2014 (for other categories of land A to F). Since the proposal of the KPT, complies with the said provision stipulated in clause 18(b) of the land policy guidelines, and in view of statutory position to authorise the KPT to apply the lease rent, this Authority approves the market value of land and reserve price in terms of annual lease rent of the KPT as proposed by the KPT.

(x). Subject to above analysis, a comparative position of the market value of land considered by this Authority in the last tariff Order of March 2011 for arriving at lease rent as of 1 January 2009, lease rent approved as of 1 January 2009, escalated lease rental applicable as on 31 December 2013, the market value of land and the reserve price in terms of annual lease rent as on 1 January 2014 as

proposed by the KPT and approved by this Authority along with impact of increase in terms of percentage is tabulated below:

(**in ₹ per sq. mtr.**)

Category	Description of Category	Market value of land and lease rent approved in the last tariff Order of 25 March 2011 and indexed lease rent as on 31.12.2013			Market value of land and Reserve Price in terms of annual lease rent proposed by KPT and approved by this Authority w.e.f. 01.01.14		Percentage increase over lease rent as on 31.12.2013
		Market value of land considered in the last tariff Order to arrive at lease rent	Lease Rent per Sq. Mtrs. per annum as on 1.1.2009	Indexed lease rent as on 31.12.2013 taking 2% escalation p.a. (***)	Market value of land	Reserve Price in terms of annual lease rent at 6% of the market value of land	
1	2	3	4	5	6	7	8
A	Land having water front and up to half mile from the shore i.e. the west bank of Kandla creek	1840	110.4	**119.50**	3942	236.5	97.91%
B	Land within half mile from the bank of the creek and having no water front						
B1	Plots abutting on main road	1490	89.4	**96.77**	3192	191.5	97.89%
B2	Plots situated on internal roads	1340	80.4	**87.03**	2873	172.4	98.09%
C	Land beyond half a mile from the bank of the creek			**0**			
C1	Plots abutting on main road	1340	80.4	**87.03**	1800	108	24.09%
C2	Other plots	1080	64.8	**70.14**	1500	90	28.31%
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	100.2	**108.46**	3298	197.9	82.46%
D2	Plots abutting on 1st 30 meter road parallel to NH-8A	1490	89.4	**96.77**	2153	129.2	33.51%
D3	Plots abutting on 2nd 30 meter road parallel to NH-8A	1420	85.2	**93.22**	3089	185.3	98.78%
D4	Plots abutting to KK road near zero point and railway crossing, 25 acres plot and other plots	-	-	-	2131	127.86	37.16%
D5	Valuation of land to west gate of NH8A towards salt works of land without reclamation but with infrastructure.	-	-	-	2565	153.9	65.09%
E	**Land within the docks**	3010	180.6	**195.49**	5836	350.2	79.14%
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	100.2	**108.46**	3430	205.8	89.74%
F2	Plots situated on Ahmedabad side from Kandla Railway Station	1580	94.8	**102.61**	6720	403.2	292.44%
G	**Land of Liquid Storage Tanks situated at old kandla between Railway siding and leading to M/s. IFFCO and M/s. IOCO (LPG)-** (Description in last tariff order)	7380	442.8	**479.30**	Two sub-categories G1 and G2		
	Land of Liquid Storage Tank (Description in the current proposal)	-	-	-			
G-I	Land situated from Eastern Bank of Kandla Creek to Western Bank of Nakti Creek	No such sub-categories in the last Order.			15086	905.2	88.86% with reference to the rate of G of the last Order
G-II	Land from West side of Nakti Creek to Kharirohar having existing Oil Terminals of IOCL, HPCL and BPCL.	No such sub-categories in the last Order.			9960	597.6	24.68% with reference to the rate of G of the last Order

(***) *The port has indexed the lease rent as on 1 January 2014. Since the original validity of the lease rent last approved by this Authority is valid till 31 December 2013, the indexed lease rent furnished by the KPT is suitably corrected and reflected as on 31 December 2013.*

From the above table, it is seen that except for category of land F2, the increase in the reserve price in terms of annual lease rent as on 1 January 2014 in comparison to the lease rent as on 31 December 2013 is in the range of 24.09% to 98.78%. For the land in category F2 the increase in reserve price in terms of lease rent as on 1 January 2014 works out to 292.44% in comparison to the lease rent as on 31 December 2013. The reason for steep increase in the lease rent in this category of land is not explained by the KPT. Incidentally, there has not been any pointed objection raised by any users/ lessees on the market value and reserve price proposed for this category of land.

(xi). At the joint hearing, Food Corporation of India (FCI) have made a request for prescription of separate concessional lease rent structure for Government organisations citing that land policy guidelines of 2014 allow allotment of land on concessional rate to Government organisation. The KPT has not proposed any concessional rate for FCI. With reference to the request of FCI, it is relevant to state that clause 16.2.(h) of the land policy guidelines of 2014, envisages concession in lease rent upto 50% to security agencies and government departments and upto 75% to government departments which are essential to the core functioning of the port like Customs, electricity department, health department and for core security functions with the approval of the Board of the concerned Port Trust. The Land Policy guidelines of 2014 does not prescribe any concessional lease rent to Government organisation involved in commercial activities. In any case, it is for Port Trust Board to decide whether the request of the FCI falls within the stipulation contained in the Land Policy Guidelines and on the quantum of concession to be allowed for reasons to be recorded in writing subject to the ceiling level prescribed therein.

(xii). As per clause 18(c) of the land policy guidelines of 2014, the Port Trust Board will fix a rate of annual escalation which should not be less that 2%. In the instant case, the Board of Trustees of the KPT vide its resolution dated 10 June 2014 while approving the market value of land and lease rent at 6% has also approved annual escalation of 2% with a provision to reset the annual escalation percentage after five years. In this context, the KPT has proposed a note under the schedule stating that the rates prescribed shall bear an escalation factor of 2% every year. Since the annual escalation rate of 2% is approved by the KPT Board as per the provision of the Land Policy guidelines of 2014, the note proposed by the KPT on annual escalation factor is prescribed in the schedule of rate structure for Kandla Lands with slight modification in the wordings. Since the KPT has sought approval of market value of land and reserve price in terms of annual lease rent, the proposed note is slightly modified to state that the reserve price in terms of annual lease rent shall bear an escalation factor of 2% every year.

(xiii). The KPT has not proposed any other conditionalities to govern application of Reserve price in terms of annual lease rent except the note proposed on annual escalation factor of 2%. When advised the port in this regard, the KPT has stated that even the earlier schedule of lease rent approved by this Authority does not contain any other conditionalities except for escalation clause. Since the KPT has not proposed any terms and conditions, a suitable note is incorporated stating that all terms and conditions governing the Market value of land/ Reserve price in terms of lease rent/ license fee shall be as per the land policy guidelines of 2014 issued by the Ministry of Shipping in the Government of India. A similar note is prescribed in the earlier rent schedule in KPT as well as in case of lease rent schedule of other Major Port Trusts referring to the applicable land policy guidelines in their respective cases.

(xiv). (a). The proposal of the KPT seeks approval of market value of land and reserve price in terms of annual lease rent with retrospective effect from 1 January 2014 for the quinquennium 1 January 2014 till 31 December 2018. There have not been any pointed objection from users in this regard as such during the current revision. As stated in the earlier

paragraphs bringing out the factual position, various users/ lessees have filed SCA(s)/ Writ Petitions before the Hon'ble High Court of Gujarat mainly challenging the retrospective revision in the lease rents approved by this Authority vide its earlier Order dated 25 March 2011 which covered three quinquenniums viz. July 1999 to 31 December 2003, 1 January 2004 to 31 December 2008 and for the period 1 January 2009 till 31 December 2013. The Hon'ble High Court has not stayed the Order of this Authority dated 25 March 2011.

Significantly, Section 49 of the Major Port Trusts Act, 1963 calls for fixation of rates from time to time. It is admitted that ordinarily as per clause 3.2.8. of the 2005 guidelines, the Scale of Rates approved by this Authority is given prospective effect. It is, however, relevant to mention here that for fixation of lease rent, as per Clause 8 of the 2005 guidelines, this Authority is bound by the Land Policy guidelines issued by the Government for arriving at the lease rental for Major Port Trusts land. This Authority in the last tariff Order approved on 25 March 2011 has prescribed the validity of the lease rent for five years. This Authority even while extending the lease rent of the Kandla Lands for the period beyond the expiry has made it clear that lease rentals to be fixed by this Authority for the KPT lands based on the proposal filed by the KPT will have retrospective effect from 1 January 2014. Thus, it cannot be denied that the position that the lease rentals for the lands of KPT will be reviewed after expiry of five years i.e. 1 January 2014 is in the knowledge of all the stakeholders.

The KPT was requested to confirm whether the lease agreements with the lessee/ licensees contain a clause allowing for retrospective revision of rental. The KPT has clarified that an undertaking is taken from lessees containing conditions allowing retrospective revision.

In view of the position brought out above, this Authority approves the proposal of the KPT seeking retrospective revision of market value of land and reserve price in terms of annual lease rent with effect from 1 January 2014 even though this Authority does not ordinarily resort to retrospective fixation of rates.

In fact, it is relevant here to mention that this approach is being followed not only in the case of the KPT but also in the other Major Port Trusts for which lease rent was approved by this Authority earlier under the then existing guidelines. In the case of the Visakhapatnam Port Trust, the lease rent approved by this Authority vide Order No.TAMP/37/2009-VPT dated 29 November 2009 for the two quinquennium 1998-2003 and 2003-2008 was given retrospective effect from 1 April 1998 and 1 April 2003 for the two quinquennium respectively as proposed by the VPT following the applicable land policy guidelines. Subsequent revision in the lease rent of the VPT lands approved vide Order No.TAMP/63/2011-VPT dated 19 June 2012 was also given retrospective effect from 1 April 2008 as proposed by the VPT. The lease rental approved in the case of New Mangalore Port Trust vide Order No.TAMP/15/2007-NMPT dated 16 June 2010 was also given retrospective effect from 20 February 2007. It is relevant here to mention that the said Order of the NMPT was challenged by some users/ lessees in the High Court of Karnataka mainly in view of retrospective effect given by this Authority. The Hon'ble High Court vide their judgment dated 28 June 2013 has dismissed all the Writ Petitions filed by the users/ lessees in this matter and has upheld the Order of this Authority for retrospective revision and has also upheld the demand made by the NMPT based on the Order of this Authority for revised lease rentals with retrospective effect. This Authority has recently vide Order No.TAMP/60/2012-NMPT dated 20 May 2014 in the case of NMPT

accorded retrospective revision of lease rent based on the proposal of the port trust. With reference to revision of lease rent of V.O. Chidambaranar Port Trust approved by this Authority vide its Order No.TAMP/6/2012-VOCPT dated 4 April 2014, which is under litigation with regard to some issues including retrospective revision given to revised rates, the Hon'ble High Court of Madras has granted interim stay to the extent of retrospective revision of rates which is being challenged by the Authority.

(b). It is also made abundantly clear that the market value of land and reserve price in terms of annual lease rent for Kandla Lands approved by this Authority with retrospective effect from 1 January 2014 will be made applicable in case of the existing lessees / licensees subject to provision for periodic revision of rates agreed in the surviving lease agreements and in those cases of renewal/ allotment only if the respective lease agreement or letter of allotment, if no lease deed is still executed, explicitly provides for revision of lease rentals during the currency of the lease period.

(xv). The land policy guidelines of 2014 does not stipulate any provision relating to periodicity of revision of the lease rent of the Port Trusts lands. It is relevant here to mention that clause 6.3.(1)(d) of the Land Policy of the 2010, as well as clause 5.3(I)(d) of Land Policy guidelines of 2004 stipulate that the SOR will be revised every five years. It has to be recognised the market value of port lands under the various options prescribed under clause 18(a) of the Land Policy Guidelines of 2014 may undergo a change. In order to ensure that the lease rental/ license fee to be collected by Major Port Trusts under Land Policy guidelines of 2014 reflect the updated market value every five years, the MOS has been requested vide our letter dated 18 March 2014 to incorporate a provision prescribing revision of the Scale of Rates of port lands every five years in line with the prescription available in the Land Policy of 2004 as well as Land Policy Guidelines of 2010. Response of the MOS is awaited. When the above position was brought to the attention of the KPT, the port has proposed the cycle of proposed rate structure for Kandla Lands for the period of five years from 1 January 2014 to 31 December 2018, with approved escalation per year. That being so, a note is introduced in the schedule to state that the Market value/ Reserve Price shall be applicable with effect from 1 January 2014 till 31 December 2018 as proposed by the KPT.

12.1. In the result, and for the reasons given above, and based on collective application of mind, this Authority approves the schedule of Market value of land and Reserve Price in terms of lease rent for lease of Kandla lands belonging to the KPT attached as **Annex - II**.

12.2. The schedule of rate structure approved for Kandla lands will be effective from 1 January 2014 and will remain valid till 31 December 2018.

(T.S. Balasubramanian)
Member (Finance)

Annex - I

Comparative Statement of Market Value of Kandla lands as proposed by KPT and approved by the Authority

(₹ per sq. mtr.)

Category	Description of Category	Market Value of Land of Kandla lands							Market value of land as on 1.1.2014 Approved by the Authority
		Jantri Rate (Gujarat Government)	Transaction registered in last 3 years	Recent Auction Rates	Rates received from valuer as on 01.01.2014		Market Value of Land on 1.1.2014 recommended by Land Valuation Committee for arriving at lease rental		
					Land Without Reclamation & with Infrastructure for Land of Kandla	Land With Reclamation & with Infrastructure for Land of Kandla	As and where basis of Land situated at Kandla		
A	Land having water front and upto half mile from the shore i.e. the west bank of Kandla creek	No Jantari Rate available for Kandla. However, the rate is 1050.00 m2 of nearby village for land for commercial purpose	No transaction since last three years	--	2575.00	3350.00	2060.00	3942.00	3942.00
B	**Land within half mile from the bank of the creek and having no water front**								
B1	Plots abutting on main road			--	3648.00	4560.00	3192.00	3192.00	3192.00
B2	Plots situated on internal roads			--	3283.00	4140.00	2873.00	2873.00	2873.00
C	**Land beyond half a mile from the bank of the creek**								
C1	Plots abutting on main road			--	2500.00	3520.00	1800.00	1800.00	1800.00
C2	Other plots			--	2200.00	3000.00	1500.00	1500.00	1500.00
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			3298.00 m2	Valuer has decided category in five parts as under: D1-2368 m2 D2-2131 m2 D3-2368 m2 D4-2250 m2 D5-2850 m2	Valuer has decided category in five parts as under: D1-3080 m2 D2-2770 m2 D3-3080 m2 D4-2925 m2 D5-3705 m2	Valuer has decided category in five parts as under: D1-2131 m2 D2-1920 m2 D3-2131 m2 D4-2025 m2 D5-2565 m2	3298.00	3298.00
D2	Plots abutting on 1st 30 meter road parallel to NH-8A			2153.00 m2			1920	2153.00	2153.00
D3	Plots abutting on 2nd 30 meter road parallel to NH-8A			3089.00 m2			2131	3089.00	3089.00
D4	Plots abutting to KK Road near zero point and railway crossing						2025	2025.00	2131.00*
D5	Valuation of land to the west gate of NH-8Atowards salt works of land without reclamation but with reclamation						2565	2565.00	2565.00
E	**Land within the docks**			--	5336.00	5836.00	3080.00	5836.00	5836.00

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			--	3920.00	4900.00	3430.00	3430.00	3430.00
F2	Plots situated on Ahmedabad side from Kandla Railway Station			--	7680.00	9600.00	6720.00	6720.00	6720.00
G	**Land of Liquid Storage Tanks**								
G1	Land situated from Eastern Bank of Kandla Creek to Western Bank of Nakti Creek	1050	No transaction since last three years	14216	12375.00	14850.00	11138.00	15086.13	15086.13
G2	Land from West side of Nakti Creek to Kharirohar having existing Oil Terminals of IOCL, HPCL and BPCL.	1050	No transaction since last three years	----`	8170.00	9804.00	7353.00	9959.89	9959.89

* The Market value of land D4 sub-category has been corrected to ₹2131 per sq. mtr. as pointed by KPT vide its letter dated 17.9.2014.

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Annex - II

Schedule of Market Value of land and reserve price for Kandla lands of Kandla Port Trust (KPT)

(₹ per sq. mtr.)

Sr. No.	Description of category	Market Value of land on 1.1.2014	Reserve price in terms of lease rent @ 6% of market value of land w.e.f. 1.1.2014
A	**Land having water front and upto half mile from the shore i.e. the west bank of Kandla creek**	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	3192.00	191.52
B2	Plots situated on internal roads	2873.00	172.38
C	**Land beyond half a mile from the bank of the creek**		
C1	Plots abutting on main road	1800.00	108.00
C2	Other plots	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	3298.00	197.88
D2	Plots abutting on 1st 30 meter road parallel to NH-8A	2153.00	129.18
D3	Plots abutting on 2nd 30 meter road parallel to NH-8A	3089.00	185.34
D4	Plots abutting to KK road near zero point and railway crossing, 25 acres plots and other plots	2131.00	127.86
D5	Valuation of land to the West Gate of NH-8A towards salt works of land without reclamation but with infrastructure	2565.00	153.90
E	**Land within the docks**	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	3430.00	205.80
F2	Plots situated on Ahmedabad side from Kandla Railway Station	6720.00	403.20
G	**Land of Liquid Storage Tanks**		
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

NOTE:

(i). The market value/ reserve price prescribed above will be effective from 1 January 2014 and remain valid till 31 December 2018.

(ii). The reserve price in terms of annual lease rent prescribed above shall bear an escalation factor of 2% every year.

(iii). The other conditions governing the lease rental / license fee shall be as per the Land Policy Guidelines of 2014 issued by the Ministry of Shipping, Government of India.

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SUMMARY OF THE COMMENTS RECEIVED FROM THE PORT USERS / DIFFERENT USER ORGANISATIONS AND ARGUMENTS MADE IN THIS CASE DURING THE JOINT HEARING BEFORE THE AUTHORITY.

TAMP/24/2014-KPT	:	**Proposal received from Kandla Port Trust for revision of rate structure of Kandla lands at Kandla Port Trust.**

1. A summary of comments received from the users / user organisations and reply of KPT thereon is given below:

<table>
<tr><th>Sl. No.</th><th>Comments of users / user organizations</th><th>Reply of KPT</th></tr>
<tr><td>1.</td><td>Indian Oil Corporation Ltd. (IOCL)</td><td></td></tr>
<tr><td>(i).</td><td>It is inappropriate on part of KPT to arbitrarily increase the rental exorbitantly for plots of land occupied by IOCL at Kandla for installations and other purposes. IOCL vehemently opposes the unilateral decision of raising the lease rentals by KPT.</td><td rowspan="4">Following plots of land were allotted to M/s. IOCL on 30-year lease basis:

<table><tr><th>Name of lessee</th><th>Land Admg. (Sq. Mtrs.)</th><th>Lease Expired/ to be expired</th></tr><tr><td rowspan="11">M/s. IOCL</td><td>15602</td><td>30.11.2012</td></tr><tr><td>55050</td><td>14.02.2020</td></tr><tr><td>837</td><td>15.01.2025</td></tr><tr><td>468103</td><td>31.01.2018</td></tr><tr><td>91</td><td>10.07.2025</td></tr><tr><td>116774</td><td>21.08.2018</td></tr><tr><td>6589</td><td>14.06.2006</td></tr><tr><td>10430</td><td>20.10.2012</td></tr><tr><td>671052</td><td>03.12.2023</td></tr><tr><td>856</td><td>25.03.2006</td></tr><tr><td>86700</td><td>30.11.2012</td></tr></table>
So far as revision of rate is concerned, same has been clarified with reference to similar comments made by HPCL.</td></tr>
<tr><td>(ii).</td><td>IOCL is a Public Sector Oil Marketing Company engaged in the business of Refining, Distribution and Marketing of various petroleum products throughout the country.

IOCL continues to contribute in achieving the objectives enshrined in various enactments including the Essential Commodities Act, 1955, the Petroleum Act, 1934 and the Petroleum Rules, 2002 inter alia other rules and enactments. So, we contribute greatly to the objectives of the central as well as various state governments.</td></tr>
<tr><td>(iii).</td><td>IOCL activities will be incapable of being completed if it fails to move the Petroleum Products which are the nation's largesse through ocean tankers and pipelines to the onshore terminals which are by and large situated in the lands belonging to the port trust in various parts of the country. Hence, availability of land at economically/commercially feasible rentals to be levied by the Port Trusts and esteemed TAMP is our legitimate expectation in order to fulfill the nation's commitment to its citizens.</td></tr>
<tr><td>(iv).</td><td>Any exorbitant levy of rentals would adversely affect the financial strength of our Corporation significantly because our pricing is controlled by the Central Govt. in respect of products such as petrol, high speed diesel oil, liquefied petroleum gas etc. Hence to cope up with the increase in land rentals by the port authorities or the TAMP such exorbitant additional burden cannot be borne by IOCL by</td></tr>
</table>

<table>
<tr><td></td><td>means of fixing/levying higher prices from the consuming public. In other words, our Corporation is strictly precluded by the Central Govt. from acting on our own in product pricing in respect of the above mentioned products.</td><td rowspan="5"></td></tr>
<tr><td>(v).</td><td>IOCL's survival is largely dependent upon due tariff and rental consideration by esteemed authorities like TAMP/Port Trusts. The TAMP/Port Trusts is under the aegis of the Central Govt. Similarly organizations like IOCL is also another organ of the very same Union Executive.</td></tr>
<tr><td>(vi).</td><td>It is pertinent to note that the subject land is situated in a faraway place and has various negative factors directly affecting the market value of the land. When the land was given on lease to IOCL, the subject lands were undeveloped and the IOCL had invested substantial amount for its development and on construction of the facilities. In respect of such undeveloped land, the increase now sought to be made is therefore wholly unjust.</td></tr>
<tr><td>(vii).</td><td>While IOCL sincerely register its protest against such exorbitant levy of rentals, however, as an extended arm of the Ministry of Petroleum and Natural Gas and in order to keep up the right spirit in conduct and for the purpose of hearing on the issues, IOCL would attend the hearing to be convened by TAMP. However, IOCL's attending such hearing is without prejudice to Corporation's rights and contentions</td></tr>
<tr><td>2.</td><td>Hindustan Petroleum Corporation Ltd (HPCL).</td><td></td></tr>
<tr><td>(i).</td><td>HPCL is a Public Sector Oil Marketing Company. The majority of shares of HPCL is also held by the Central Government. For this reason HPCL is a Government Company under Section 617 of the Companies Act -1956. The accounts, functions and events of their Company are subject to audit by the Comptroller & Auditor General of India and also subject to scrutiny by Parliamentary proceedings.

HPCL is engaged in the business of Refining, Distribution and Marketing of various petroleum products throughout the country. HPCL continues to contribute in achieving the objectives enshrined in various enactments including the Essential Commodities Act, 1955, the Petroleum Act, 1934 and the Petroleum Rules, 2002 inter alia other rules and enactments. So, HPCL contribute greatly to the objectives of the central as well as various state</td><td>In connection, it is submitted that following five plots of land were allotted to M/s. HPCL on 30 year lease basis:
<table><tr><td>Name of lessee</td><td>Land Admg. (Sq. Mtrs.)</td><td>Lease Expired/ to be expired</td></tr><tr><td rowspan="5">M/s. HPCL</td><td>78370</td><td>29.02.2020</td></tr><tr><td>50799</td><td>21.04.2020</td></tr><tr><td>2786</td><td>31.07.2014</td></tr><tr><td>128618</td><td>31.10.2014</td></tr><tr><td>91567</td><td>30.11.2013</td></tr></table>
As per Order passed by the TAMP on 25 March 2011 notified in the Gazette of India Extraordinary on 11.5.2011 vide Gazette Notification No. 106, the TAMP had approved retrospective revision of rates in respect of Kandla Lands from July 1999 in 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 lease rentals</td></tr>
</table>

	governments.	bear an escalation @5% (compoundable) per annum for the period July 1999 to 24.2.2004 and @2% thereafter. The KPT had issued demand note for annual lease rent as per the rate approved by TAMP under the category `C1' from 2012 onwards. M/s. HPCL has made the payment as per revised rate. However, they have not made payment of differential bills issued by KPT as per the above order from 1999 to 2011 and approached the Court vide SCA No.16530/2013 before the Hon'ble High Court of Judicature at Gujarat, Ahemdabad which is still pending. A committee was constituted for fixing market value of land and Schedule of Rates as per Clause 16.2 (e) of Land Policy Guidelines 2014 issued by Govt. of India. The committee was headed by the Dy. Chairman of the Port. The other members were the Heads of Departments of Finance, Estate and Traffic. An approved land valuer was appointed as per Clause 18 (a)(iv) of Land Policy Guidelines for assessing the market value of the Kandla lands. The Committee after going through various aspects and considering the parameters provided under Clause 18(a)(i) to (v) of Land Policy Guidelines, 2014 had recommended the market value of the Kandla Land. Since the rate recommended and approved by the Board as per the Govt. guidelines and there is no any provisions for relaxation to Public Sector Oil Marketing Company, the request made by HPCL cannot be acceded to.
(ii).	HPCL has reiterated the points made by IOCL at (iii) and (iv) above.	
(iii).	HPCL is undertaking and carrying out duties and responsibilities towards sub serving the common good and as an organization is a class by itself or *sui generis* in status. Therefore, it is their earnest desire that TAMP would appreciate that its survival is largely dependent upon due tariff and rental consideration by esteemed authorities like TAMP/Port Trust. The TAMP/Port Trusts being under the control of the Central Govt. as organs of the Union Executive. Similarly organizations like HPCL is also another organ of the very same Union Executive. In view of this status of their organization being identical as that of TAMP, it is their legitimate expectation that imposition of exorbitant rental as is contained in the various KPT demand notes would be rightfully reviewed by the Authority and accordingly it will be called back.	
(iv).	The HPCL have filed a Writ Petition being SCA No 16530/2013 before the Hon'ble High Court of Judicature at Gujarat, Ahmedabad wherein HPCL has agitated against the unilateral exorbitant demand of ₹80.40/- from the prevailing ₹11/- per sqm of land made by KPT from 2009, and, also on charging of differential rental & interest thereon with retrospective effect from 1993 by unilaterally devising and demanding certain increase in rental on periodical basis thereafter. The Writ Petition has been filed due to the disproportionality in demand that too without giving any opportunity of hearing extended to us by KPT defeating the principles of natural justice.	
(v).	While the averments and contentions of HPCL are *sub judice* in the said Writ Petition being SCA No. 16530/2013, however, as an extended arm of the Ministry of Petroleum and Natural Gas and in order to keep up the right spirit in conduct and for the purpose of hearing on the issues, HPCL would attend the hearing to be convened by the Authority. However, HPCL's attending such hearing is without prejudice to the Corporation's rights and contentions subsisting in the Writ Petition 16530/2014 in which esteemed Authority is also a respondent.	
(vi).	In the meantime, HPCL has reiterated its prayer and plea for kind intervention to waive the demand of the exorbitant rental sought for by KPT in their various demand	

	notes for amount ranging from ₹80.40/- to ₹87.03/- plus service tax.	
3.	**Gandhidham Chamber of Commerce & Industry (GCCI).**	
	The mainstay for the port has to be revenue generation - not from land but from the traffic / port operations. The port has to thrive on even increasing traffic of cargo at the port and this can be ensured only by means of proper utilization of the land for development of port related activity, which should be priced reasonably and modestly to be conducive to the increase in traffic on ongoing basis. If lease rentals based on the proposed prices are fixed at such high pitch, obviously the port activities will become unviable and port will start losing the traffic to other ports. The reduction in revenue will result in increasing SOR, which will be detrimental to the interest of port and its users. The high earnings from traffic augmentation should be the aim rather than indulgence in land matters.	Contentions furnished by GCCI para 1 to 3 are not right. A committee was constituted for fixing market value of land / Schedule of Rates as per clause of 16.2 (e) of Land Policy Guidelines 2014 issued by the Government of India. The committee was headed by the Deputy Chairman of the port. The other members were the Head of Departments of Finance, Estate and Traffic. An approved land valuer was appointed as per clause of 18 (iv) of the Land Policy Guidelines for assessing the market value of the landed estate. The committee after going through various aspects and considering the parameters provided under clause no. 18(a) (i) to (v) of the Land Policy Guidelines 2014 had recommended the market value of the Kandla land. The proposal for revision of the rate structure of Kandla land of KPT has been submitted to TAMP as per the clause no. 16.2 (d) and 18 (c) Land Policy Guidelines, 2014 which is reproduced as under: 16.2 (d) Land shall be leased thorough tender-cum-auction methodology through a competitive bidding process over the reserve price of such plots which shall be worked out by the Land Allotment Committee of the Port and approved by the Port Trust Board and by TAMP. 18(c) The Port Trust would make a proposal as outlined in para 18(a) to TAMP for fixing the market value of the land. The TAMP would notify the market value of the land after following due process of consultation with
(i).	TAMP has no jurisdiction to fix the lease rent for letting of port Trust lands outside the port limits, as primarily TAMP is concerned with tariff rates concerning port operations.	
(ii).	TAMP is not a quasi-judicial Authority and as such the rates fixed/approved by it are not binding on port trusts/Kandla Port Trust tenants/lessees outside port limits.	
(iii).	TAMP has no powers or jurisdiction to frame the scale of Rates and/or rents of premises belonging to Kandla Port Trust and situated outside the port limits. It is worth mentioning here that the Board of Trustees for Mumbai Port has filed a Writ Petition bearing No. 1153 of 2000 V/S TAMP and others, challenging the right of TAMP in respect of (i) and (ii) above. Hon'ble Mumbai High Court has granted a stay in the matter and hence TAMP does not fix/approve lease rents of lettings on tenancy/lease basis for lettings outside port limits, which are under the jurisdiction of the Estate Manager, Mumbai Port Trusts. TAMP has so far not been able to get this stay vacated.	

		stakeholders 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%.
(iv).	Charging of 6% return on full market rates as per valuation report of the Valuer appointed by Kandla Port Trust is not correct/in order on account of following reasons :- (a). The valuation is done for vacant lands and not in respect of occupied/let out lands of Kandla Port Trust. Valuation for freehold transfer of ownership of land cannot be applied to letting of lands, which are particularly governed by the provisions of the public premises vis-a-vis other freehold plots transaction instances. (b). When market rents based on valuation reports of consultant were imposed in Mumbai Port Trust, Writ Petitions were filed under Article 226 of The Constitution of India. Complaining that Mumbai Port Trust (Then Bombay Port Trust-BPT) being an instrumentality of the state within the meaning of Article 12 of the Constitution, it was bound to be fair in its dealing with lessees. So exorbitant rents cannot be charged by KPT also. The learned Single Judge (S.M. Daved) vide his judgment dtd. 4.10.1990 struck down the revision of rents based on Kirloskar Consultant's valuation report. (c). When Bombay Port Trust preferred appeal in Mumbai High Court, the matter was finally adjudicated by the Hon. Supreme Court by its order dtd. 13.01.2004 which also did not approve of charging market rents by the Bombay Port Trust from 1982. Bombay Port Trust had to frame "Compromise Proposal" for fixation of rents much lesser than market rents. This was in civil Appeal Nos. 5559, 5361, 5582... CAN No. 209/2004, SLP(c) 19877/2001 Appellants Jamshed Hormusji Wadia vs/. Board of Trustees of Port of Mumbai and another. The Supreme Court Judgement dtd. 13.04.2004 was by Justice R.C.Lahoti & Brijesh Kumar.	
(v).	M/s.K.M.Thacker & Associates (to whom Kandla Port Trust has appointed as valuers) are not professionally qualified nor experienced in carrying out the valuation of gigantic and huge chunk of land.	
(vi).	The users have not been given any opportunity of being heard, while deciding	

	the valuation.	
(vii).	The land is allotted to the users at relevant time with renewal clauses and after the approval of land use Policy – 2004, there is no provision of assessment of land valuer or there is no provision of arriving at market rate.	
(viii).	Kandla Port trust cannot go beyond the Land Policy Guidelines, 2014.	
(ix).	No permission for fixing the land valuation for revision of rates was sought from the Government of India to whom the land belongs.	
(x).	The Land valuer has suggested fixation of lease rentals on highest value, which is incorrect. The similar formula for fixation of market rate and its rental cannot be made applicable to all the sides of land.	
(xi).	The Board of Trustees for Kandla Port vide Resolution No.74 dated 16.07.2013, while approving land value for tanks had fixed the rate of ₹10523.18 per sq.mtr. plus with 2% escalation every year. In the present proposal, Kandla Port Trust has suggested escalation rate @ 5% which is abnormally high.	
(xii).	While suggesting the revision of rates, Kandla Port Trust has not considered and compared the rates prevalent at other major ports of the country like Mumbai, Visakhapatnam, Cochin etc. The rates of Kandla land should be much lesser than the rates fixed for above ports.	
(xiii).	For calculation purposes, the word "Highest" needs to be removed.	
(xiv).	The local Jantri rates for the land owned by Government of Gujarat for similar purposes are much less than the proposal submitted by Kandla Port Trust to TAMP.	
(xv).	If the rates proposed by Kandla Port Trust are approved by Hon'ble Authority, the same will lead to great disparity, discrimination as also resulting in various anomalies. GCCI as a representative body of all users oppose the unmindful, arbitrary and very high revision without basis of very high revision and the same requires to be scrapped and ordered to be returned for reconsideration and reappreciation.	
(xvi).	The proposed increase in tariff with port related activities within port limits and outside the port limits will lead to great financial losses to the users.	
(xvii).	Categorisation is not done in scientific and methodological manner. The plot of land where the hazardous and non-hazardous chemicals are stored, need to be categorized properly, as it appears from the classification that this aspect is not taken into consideration for the valuers.	

	(Reference Page No.27l28 of valuers' Report)	
(xviii).	The Port Trust while fixing the lease rental for G-1 category, which has been fixed at ₹905/- per sq.mtr. per annum with an escalation clause of 2% p.a. has given no regard to the distance from the water front between different parcel of land coming under the said category viz. G-1. In the past, while fixing the rates for any land, due regard has been given to the distance from the Port area and water front and as such there used to be different sub-categories. The location of the plot from the Port area would make a vital difference in the viability of the establishment thereupon and as such need to be reckoned while fixing the reserve price. Fixing only one rate for all G-1 category land upto almost 5 kms. distance from water front would not be appropriate since in case of a plot nearby port area it would have an edge over a plot farther from port area because of its getting more quicker discharge rate and also low cost on transportation and lower turnaround time etc.	
(xix).	Besides the above factor, the cost of developing a plot of say 1 or 2 lacs sq. mtr. would be far greater than that of a plot smaller in size.	
(xx).	Similarly, while inviting bids for warehouse land in respect of 25 acres of land hosted on the website recently, the reserve price for this type of land has been fixed as ₹121.50 per sq.mtr. p.a. regardless of distance from the port area. It is requested to give due weightage to this aspect while deciding on the rates for land under this category (warehousing). In addition, in the past also there were sub-categories in respect of such land depending on the size of the plot. To illustrate, in case of a small parcel of land, there would be so many buyers and developers as compared to a parcel of land which is much greater in area. It is suggested that while fixing the reserve price for any category of plots, be it land for warehouse, salt land or land for tank terminals, due consideration of the distance from the water front or port area has to be made and the size of the plot also needs to be considered.	
(xxi).	GCCI is of the considered view that the proposal of Kandla Port Trust for revision of rate structure for Kandla land of Kandla Port Trust does not merit consideration in light of the above facts and therefore the same may kindly be returned	

<table>
<tr><td></td><td>unconsidered.</td><td></td></tr>
<tr><td>4.</td><td>Indian Farmers Fertilizer Cooperative Limited (IFFCO)</td><td></td></tr>
<tr><td>(i).</td><td>The rates proposed are arbitrary, exorbitant, unjustified and against public interest.</td><td rowspan="3">In this connection, it is submitted that following three plots of land allotted to M/s. IFFCO on 30 year lease basis are as under:

<table><tr><th>Name of Lessee</th><th>Land Admg. (Sq.Mtrs.)</th><th>Lease Expired/to be expired</th></tr><tr><td rowspan="3">M/s. IFFCO</td><td>256091</td><td>30.06.2001</td></tr><tr><td>35961</td><td>18.04.2008</td></tr><tr><td>413509</td><td>07.03.2008</td></tr></table>
The rates proposed are as per provision provided in Land Policy Guidelines, 2014.

<u>Reply vide letter dated 17 September 2014</u>
IFFCO has filed SCA No. 2607/12 and 673/2014 which are still pending in the Hon'ble High Court of Gujarat. The writ petition cannot be considered as comments to the recent proposal of revision of rate structure of Kandla Land.

Oral Order dated 22/03/2013 was pronounced by Hon'ble High Court of Gujarat at Ahmedabad in SCA No. 2607 of 2012 filed by IFFCO v/s Union of India and others. Main Para of said order is re- produced as under:-

Rule. However, the interim relief is required to be granted subject to the condition that he petitioner shall pay and continue to pay at least on the basis of the rate fixed in respect of the Category “B" without prejudice to the rights and contentions of the parties. It is also clarified that it is only as and by way of interim arrangement till the issues are decided by the Court, or appropriate decision is taken by the authority, i.e. Tariff Authority for Major Port, depending upon the classification. It will not be Treated as having created any right or precedent in favour of the Petitioner in any manner and the Petitioner shall not claim any benefit on the basis of the order, which is passed only as and by way of interim measure.

Accordingly, M/s. IFFCO has made payment of compensation bill as per the above rate of B category.

Earlier, M/s. IFFCO has made same submission to TAMP while approving the rate from 1999</td></tr>
<tr><td>(ii).</td><td>IFFCO has stated that in response to letter no. TAMP/21/2010-KPT dated 29 April 2010, it had offered comments vide letter dated 25 August 2010 and has furnished the copy of the same.</td></tr>
<tr><td>(iii).</td><td>Since IFFCO requests were not considered during last revision and the rates were revised exorbitantly and unjust, IFFCO has filed a Special Civil Application (SCA) No. 2607 of 2012 and 673 of 2014 in the Hon’ble High Court of Gujarat for certain reliefs related to revision of rate structure and categorization of land allotted to IFFCO. These petitions are pending. IFFCO has requested that the submissions in these petitions may be considered as comments in response to the instant proposal.</td></tr>
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		vide letter No. 25-06-2010 and reply already given to TAMP and request made by IFFCO were not considered. The request made by M/s. IFFCO cannot be considered for reasons mentioned as under:- (i). Para-16.3 (d) of Land Policy Guidelines-2014 which provides that in respect of lease agreements with automatic renewal option, the lease can be renewed by the Port Trust Board by treating it as a fresh lease at the updated/ latest market value, notified as per Para 18(c). Hence, above revision is applicable to M/s. IFFCO also. (ii). The request made by M/s. IFFCO that the rates may be revised as (a) @1% per annum of the market value of land for industries, and (b) lease rental @3% per annum of the market value of land for commercial cannot be acceded as per para 18(b) Land Policy Guidelines – 2014 as under: "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 18 (a) above. Reserve Price In terms of the annual lease rent would be considered as a percentage of the latest market value determined in accordance with Para 18(a) above, and would in no case be less than 6% of the latest market value, to be fixed by the Port Trust Board." (iii). The Board vide Resolution No. 147 dated 02-04-2001 has approved the rate of ₹16/- provisionally based on the undertaking submitted by the M/s. IFFCO vide its letter No. KP/WEL/LAND/6/2000 dated 22/05/2000 as under. "I/We, hereby undertake that in case the lease is renewed by Kandla Port Trust after receiving approval of the Central Government, the annual ground rent at the provisional rate of ₹16/- per Sq. mtrs. or part thereof, subject to the approval of the Government shall be paid by us to Kandla Port Trust. We shall pay the final rate of annual ground rent as may be fixed by the Government. In case I/We fail to pay the final revised rate of ground rent within 30 days from the date of intimation, the Port Trust is at liberty to take over the possession of the said land. Also we agree to abide by the revised terms and conditions prescribed by KPT.

	Grounds on which both the petitions are filed by IFFCO are brought out in a summarized manner. Such summarized position is not forwarded by IFFCO in the current proposal:	So far as SCA No. 2607/12 & 673/14 is concerned, the same is related to rate structure approved and notified by TAMP in 2011, which is still pending in the Hon'ble Court of Gujarat. The writ petition cannot be considered as comments to the recent proposal of revision of rate structure of Kandla land.
(a).	**Grounds for filing SCA No. 2607 of 2012:**	
(i).	Reluctance on the part of the Central Govt. to exercise its powers as per the provisions of Section 54 of Major Port Trusts Act.	
(ii).	No opportunity was given to the land users to put forward/explain their position/version.	
(iii).	Unilateral and unfair categorisation of the lands on which the Petitioner's plant is situated.	
(iv).	KPT has been arm twisting the Petitioner by abusing their authority and dominance as they are taking undertaking from Petitioner by threatening eviction, delaying process of finalisation of rates, non-renewal of leases, obstructing construction work, charging compensation on false grounds of unauthorized occupation and withholding payments due to the Petitioner.	
(v).	Renewal of leases which was due on 1 July 2001 has been deliberately delayed by the Respondents.	
(vi).	Application of same parameters/basis and rates on which renewal of existing long term perpetual leases and on fresh leases is arbitrary. Clause 5.1 and 5.2 of Land Policy Guidelines differentiates between fresh allotment and renewal of existing leases.	
(b).	**Grounds for filing SCA No. 673 of 2014:**	
(i).	**Right of renewal:**	
	(a).KPT has deprived the petitioner of its contractual right to renew the lease as per the agreement dated 25.09.1971.	
	(b).There has been inordinate delay on the part of respondents in renewing the lease periods, though the petitioner has been proactive and repeatedly requested for renewal much prior to the end of the earlier lease period.	
(ii).	**Bills of Compensation:**	
	(a).In the absence of an explicit or implicit rejection of lease renewal KPT is accepting the lease rent paid by the petitioner. Therefore, KPT has no right to raise bill of compensation for the alleged unauthorised use and to recover rates applicable currently as per the prevailing Scale of Rates.	
	(b).Notwithstanding above, the KPT cannot deem the petitioners as unauthorised occupants.	

(iii).	**Land Policy:**	
	(a).The application for renewal of lease, which was made by the petitioner in the year 2000 cannot be made subject to the new land policy that has come into force in 2011 solely for the reason that the approval by the govt. had not been granted.	
	(b). Land Policy 2010 is bad, arbitrary and illegal as it gives flexibility to respondents to base scale of rates on factors that would prejudice lease holder by not reflecting many factors that ought to be considered.	
	(c). As the lease is in continuation and in renewal of the earlier lease, the revised rate for the new period should have been kept as per the earlier terms and formula and that the base rate must be taken as the last rate of ₹1.35 per sq.mtr.	
	(d). Land policy is not in the public interest.	
(iv).	**Valuation of Land:**	
	(a).TAMP order states that KPT have stated that the Land value as per the state government's ready reckoner (Jantri rates) has not been considered because such rates are on a very lower side. Therefore, KPT has selected the rates arbitrarily.	
	(b).The overall methodology adopted by the valuer for determining the annual lease rents and taking up bidding rates of 2005 as sole basis in exclusion of all other relevant factors and allowing discount is arbitrary and unrealistic.	
(v).	**Arbitrariness of Scale of Rates and its application to the petitioner:**	
	(a).The revised rates approved by TAMP vide order dated 25.03.2011 are high and excessive and therefore, malafide, arbitrary, unjust and unreasonable.	
	(b). the revised rates are highly disproportionate to the last lease rent charged till June 2001.	
	(c).The analogy of the respondents in applying the existing commercial rates based on the latest tendered rates obtained through bids for small chunks of land cannot be supported and applied to the renewal of existing leases of the petitioner under which the land was given on lease way back in the year 1971 and developed by the petitioner.	
(vi).	**Moral grounds:**	
	(i).There is lack of fairness and equality in conduct of the respondents.	
(c).	**Prayers made in SCA No. 673 of 2014:**	
(i).	To issue a writ or in the nature of mandamus or any other writ, order or direction requiring the respondents to retrospectively renew the lease agreement	

	dated 25.09.1971 pursuant to the application dated 16.02.2000 annexed to the present petition at the rates prevalent at the relevant time.	
(ii).	To hold or declare that the impugned Communication of Bills of Compensation dated 01.11.2013 raising an unreasonable demand at such exorbitant rates without any basis is bad and illegal in the eye of law.	
(iii).	To quash and set aside the Scale of Rates dated 25.03.2011 as being based on factors that ought not to be considered.	
(iv).	To quash and set aside the Land Policy 2010 to the extent that it grants an ambiguous and unfettered power to the Respondents to base the Scale of Rates on any of the criterion specified therein.	
(v).	To order that the determination of the Market value of the said lands should be done again, and should be based on all the factors which are available, and the rates that may be high or low, all of them may be considered.	
(vi).	To stay operation and implementation of the bills of compensation and restrain the respondents from taking any coercive measures in respect of the unfettered occupation of the lands by the petitioner.	

2. A joint hearing in this case was held on 4 August 2014 at the KPT premises. The KPT made a power point presentation of its proposal. At the joint hearing, KPT and the concerned users/ organisation bodies have made the following submissions:

Kandla Port Trust (KPT)

(i). We received Valuation Report for A to G categories of land from the approved valuer.

(ii). Land Policy Guidelines clearly says highest of the five factors prescribed in the guidelines is to be considered by the Land Allotment Committee for arriving at the latest market value of land.

(iii). Land Valuation Committee (LVC) has examined all the factors and recommended Reserve Price/ Market Value based on highest of five factors of Land Policy Guidelines.

(iv). For categories ‘A’ and ‘G2’, highest valuation of land under “any other factor” is recommended.

(v). For categories ‘B’, ‘C’, ‘D4’, ‘D5’, ‘E’ & ‘F’, the LVC has recommended land value arrived by Approved Valuer being the Highest Factor. However, for category ‘E’ i.e., land within Docks, the Committee has recommended market value of Land with reclamation and with infrastructure.

(vi). For category ‘D1’, ‘D2’, ‘D3’ & ‘G1’, “Highest Auction Rate” is the highest value of land. The same has been recommended by the Committee.

(viii). Valuer has arrived at valuation of lands allotted for tank farms based on rental method. Our auction rates are, however, higher than the valuation given by the approved valuer.

Gandhidham Chamber of Commerce and Industry (GCCI)

(i). Land valuer has taken valuation of land of adjoining areas. So, we object the market value of land derived by the valuer. All parameters are not considered. Market value of land should be representative enough.

(ii). Land value is available in acre basis. Valuer has, however, converted land value from acre into metre basis. Actual value of land will only be 50% if valuation is done on acre basis and after considering roads, etc.

(iii). Oil industries are instrumental in the port. Their rates have been revised by 592% which is steep. Kandla does not have space to store liquid terminal. Hence, reasonable increase should only be allowed.

(iv). The Judgment of the Supreme Court in Order dated 13 January 2014 in Jamshed Hormusji Wadia versus Board of Trustees of Mumbai Port Trust states that settled position of law is that the State and its authorities are instrumentalities of the State and have to be just, fair and reasonable in all their activities.

(v). Development should not be hampered in Kandla Port by fixing lease rent based on highest factors.

(vi). Kandla has vast area of land. Only 1200 acres of land is developed. Land should be used optimally.

(vii). Many private ports are developing under Gujarat Maritime Board (GMB). They received land at cheap price. Land is given by GMB at ₹1 per sq. mtr. Lease rent should be competitive to the adjoining ports. Kindly ensure reasonable rates are fixed.

(viii). We do not question the valuation report. Stakeholders should, however, have been involved for finalisation of the valuer and the system to be adopted by valuer. Our suggestion was not considered.

[KPT (Gehani): For selection of approved valuer, we have gone by tender route and have taken approved valuer who is reputed one. The valuer has considered all factors. Valuer has considered Jantri rates as given by State Government Reckoner.]

(ix). Most of lessees are port users. Port's intention should not be only to collect high lease rentals.

(x). Valuation of land based on recent transactions at 20 kms. away from the port lands may not be relevant.

(xi). Considering land valuation for freehold land and applying it for leasehold land may not be appropriate. If we have to convert leasehold land to freehold, we have to pay premium.

CRL Terminal now Vopak Terminal Kandla

(i). The Authority may determine lease rental in a fair and just manner and not in arbitrary manner.

(ii). Current proposal, if approved, by TAMP will have profound impact mainly on oil industry. It may lead to bankruptcy in various business operations. Consequently, the port's business will decline in comparison to other neighbouring ports.

(iii). Lease rent last approved by TAMP lead to 5 to 10 times increase over the pre-revised lease rent. No auction could materialise at the lease last approved by the Authority. In three years' time the KPT has filed another proposal and increase sought is around 900%.

(iv). Lease rent proposed is like in Singapore. But the development/ facilities are not comparable.

Bharat Petroleum Corporation Ltd. (BPCL)

(i). Adjoining private port (i.e. Mundra Port) which provides more facilities is charging ₹36/ sq. mtr.

(ii). Lease rent applicable to us prior to last revision at KPT was ₹11 per sq. mtr. which was increased to ₹88 per sq. mtr. in last Order. Now the lease is proposed to be increased to around ₹600/ sq. mtr.

[KPT (Gehani): Lease rents are arrived based on highest auction received in 2011 for G1 category. Land Valuation Committee has decided to recommend rate on this basis for the 2 categories G1 and G2.]

[Member (TAMP): TAMP and KPT are guided by Government guidelines for land valuation.]

(iii). Upto 2013, we were categorised under C1. From January 2014, we have been shifted to new category G2 and rate is ₹600/ sq. mtr. There is no change in physical parameters but still KPT has changed our category from C1 to G2. Hence, impact is very high and unreasonable.

(iv). As far as Jantri rate, it comes to around ₹1000/ sq. mtr. But, port has taken land valuation based on certain transaction which is 20 kms. away which is not realistic and the rate is coming very high.

Hindustan Petroleum Corporation Ltd. (HPCL)

(i). We should have been given opportunity to decide the valuer and the methodology for arriving at the land valuation.

(ii). We don't approve the proposal. Hike in lease rents must be reasonable.

(iii). KPT as instrumentality of the State should act in a reasonable and fair manner as per the judgement of the Supreme Court in Jamshed Hormusji Wadia versus Board of Trustees, Port of Mumbai.

Indian Farmers Fertilizer Cooperative Limited (IFFCO)

(i). We have represented our views vide our letter dated 25 July 2014.

(ii). Rates proposed are arbitrary, unjust and unfair. It is exorbitant.

(iii). We have filed a Writ Petition in the Hon'ble High Court of Gujarat challenging the earlier Order of TAMP.

(iv). Our points in the Writ Petition may be taken as our comments.

Kandla Port Karmachari Sangh (KPKS)

(i). The Ministry of Shipping has released Maritime agenda for 2020. Ports around Kandla port are like Major Ports. TAMP should, therefore, keep in view that non-major ports are coming up.

(ii). The KPT lands are underutilized. We do not say that the KPT has suffered loss due to non-allotment of land. Land is there with Kandla Port but not allowed to be used.

(iii). Board of Trustees of KPT has resolved the proposal. We support the proposal.

[Member (TAMP): Land Policy Guidelines allows to recommend land value based on the highest value of land on five factors. If highest valuation of land is not considered, the Land Policy Guidelines allows to give reasons therefor. Port should examine the views of concerned users and, if necessary, review and file a revised proposal].

Food Corporation of India

(i). Existing rates are high. Proposed rate are even higher.

(ii). There should be separate rate structure for Government organisations. Guidelines allow allotment of land on concessional rate to Government organisation. Allow us such concessional rates as we are Government organisation.

[Member (TAMP): Land Policy Guidelines allows concessional lease rent for Government organisations whose functions are essential to port and not for commercial purposes.]

(iii). Board Resolution passed states if the approval is lower, no refund will be given. This is not fair.

(iv). Since the last Order of TAMP revising lease rental is subjudice, no bill should be raised till the case is decided.

3. With reference to point of action decided at the joint hearing, the KPT vide its letter dated Nil September 2014 has furnished its comments on the written submissions made by BPCL, HPCL, GCCI, IFFCO and KPKS. Subsequent to joint hearing, KPKS vide its letter dated 19 August 2014 has given further submissions. Since the comments furnished by KPT are jointly on both letters of KPKS, they are brought out together. A summary of the written submissions made by users and reply furnished by KPT thereon is tabulated below:

<table>
<tr><th>Sl. No.</th><th>Written submissions of users in joint hearing</th><th>Reply of KPT</th></tr>
<tr><td>1.</td><td>Bharat Petroleum Corporation Ltd.</td><td></td></tr>
<tr><td>(i).</td><td>The petitioners, commonly called Oil Marketing Companies (OMCs) are public sector undertaking, we deal with petroleum products such as Motor Spirit commonly known as Petrol (MS), High Speed Diesel (HSD) commonly</td><td>In this connection, it is submitted that the following two plots of land were allotted to M/s. BPCL on 30-years lease basis:-
<table><tr><th>Name of Lesse</th><th>Land Admg (Sq. Mtrs.)</th><th>Lease Expired/ to be expired</th></tr></table></td></tr>
</table>

	known as Diesel, SKO commonly known as Kerosene LPG etc. which are classified as essential commodities under the Essential Commodities Act.	
(ii).	The petitioners have set ups at Kandla Port Trust (KPT), leased land for receipt, storage and distribution of Petroleum Products. OMCs since occupying the site are paying the rentals as per the TAMP rate which are revised time to time by the KPT. Last revision of TAMP rate has been made in the Year 2011.	
(iii).	KPT has proposed revision of the rate from ₹ 85.32 per sq.ft. to ₹ 597.58 per sq.ft. Which is almost equivalent to 700% increase in the lease rental. This is an abnormal high increase in the rentals.	
(iv).	As per TAMP Notification dtd. 6 May 2011, the Oil Companies were falling under "Cl - Category i.e Lands situated beyond half a mile from the bank of the Creek and abutting on the main road". In the current proposal, the land classification for Oil Company's has been changed from Cl to a new category called G-2 i.e. Land from West Side of Nakti Creek to Kharirohar having existing Oil Terminals of IOCL, BPCL and HPCL. The Valuer has not understood the existing classification of "G Category" and has expanded the scope of G category and has further bi-furcated it into G1 and G2 category. There is a contradiction in the definition of all the categories i.e. G, G1 an G2 which casts serious doubts on the valuation methodology and the credentials of the Valuer. Change of category from Cl to G2 for Oil Companies is not justified from any angle as no additional or any new facility has been provided to the petitioners.	
(v).	KPT has proposed the lease rentals to TAMP on the basis of the Land Valuation report dated 28.03.2014 made by M/s K.M Thacker & Associates. The report seems to be made on the directions of KPT. The report only justifies the rates already fixed by KPT in its meeting dtd. 24.03.2014. The report has no legal basis and has been made on some imaginary grounds away from facts. The valuer appointed by the KPT is not competent or experienced to carry out the valuation of such a large piece of land. The valuer has carried	

M/s. Bharat Petroleum Corporation Ltd.,	263107	31-July-13
	4441	31-July-13

In this connection KPT issued demand note for annual lease rent as per the rate approved by TAMP under the category “C1” from 2012 onwards. HPCL has made the payment as per the revised rate. However, they have not made payment of differential bills issued by KPT as per the above order from 1999 to 2011 amounting ₹ 27,45,00,625/-.

The category has now been shifted as “G 2” from 01.01.2014 as per the valuation report submitted by the valuer appointed for valuation of Kandla Land rates for tanks terminals approved by the Board vide BR. No. 203 dated 24.03.2014 as proposed by the LAC and Valuation Report submitted by the valuer appointed for valuation of Kandla Land.

The contention of the party that the report seems to be made on the directions of KPT is baseless and far from the truth. The land Valuer appointed as per the clause No. 18(v) Land Policy Guidelines 2014 and M/s. K.M. Thacker & Associated, Land Valuer appointed through E-Tender after the fulfilling the criteria fixed by Tender Allotment Committee.

	out the valuation without following the proper and fair procedure. The valuation has been made in a clandestine manner without consulting the petitioners nor the valuer has ever called the petitioner for their comments or for any hearing opportunity to the petitioners before finalization of the report which is against the set principles of natural justice as the petitioner is the most affected party by the said valuation report. Valuation report at page 42 under reference has mentioned specific reference from one of the petitioner M/s IOC, which has never been submitted by the petitioner. Further the valuation of land cannot be carried out so easily as is done by the present valuer as there was no physical transaction in either so called "G1 & G2" categories. The report is based on irrelevant considerations and facts, which have no bearing or relation with the present land. The land transactions mentioned in the valuation report have no correlation with existing land. The valuation shown by the valuer is exorbitantly high, without any legal basis and evidence or any set standard for measuring valuation of land. The most important factors like the local Jantri rates has not been considered by the valuer in his report, As the per the local Jantri, even the land owned by the Govt of Gujarat for similar purposes are ₹900/- for Mithirohar and ₹1000/- for Kidana.	
(vi).	The Valuer has used three options for arriving at the fair market price of the land situated in G-2 Category.	
	Option – 1 On the basis of Govt. of Gujarat guideline rates, rate arrived at is ₹ 1581 per sq.mtr which has also been calculated factoring 30% as solution charges and 5% as Stamp Duty charges which is not applicable.	
	Option-2 On the basis of the highest rate at which Govt. Of Gujarat allotted land is calculated as Rs. 5040 per sq.mtr. The land transactions used as reference for arriving at the rates pertain to Shinai, Kidana, Bharapur Villages which are nowhere in proximity to our existing lands and are Approx. 10-12 KMS away from our premises.	

	Further, while arriving at the price, Solution Charges (30%), Stamp Duty Charges (5%) and Reclamation Charges (20%) have been added which are not applicable.	
	Option-3 On the basis of Annual letting value rate has been calculated as ₹ 8170 per sq.mtr. The Valuer has used the Lease Rent of 442.80 as the base rate for "G Category" as per TAMP Notification for 2009 and accordingly worked out the current rentals considering an increment of 2% per anum. The "G Classification" is clearly described as "Land of Liquid Storage Tanks situated at Old Kandla between Rail Siding and leading to M/s IFFCO and M/s IOCL ltd".	
	None of the Oil Marketing Company (OMCs) Terminals fall under these categories. Hence, the very basis of calculation is wrong.	
(vii).	The rate fixed under the Gazette Notification no.106 dated 11.05.2011 has also been challenged by HPCL in Writ Petition no. SCA 16530/2013 before the Hon'ble High Court of Gujarat at Ahmadabad and the matter is under consideration before the court. In view of that, when even the existing rates are under challenge, fixation of new rate is not justified.	
(viii).	The Petitioners are Public Sector Undertakings and as mentioned in the para supra they are dealing in Petroleum and allied product classified essential commodities under the essential commodities Act. The prices of the product are fixed by the Government and the petitioners are bound by the price fixed by the Government. Fixation of higher rate shall adversely affect the product price which will add to the losses of the petitioners as the petitioner cannot pass the product to the ultimate consumers. The same result in increase in subsidy burden on the Government exchequer and adversely affect the national interest.	
(ix).	The KPT or TAMP are State under Art.12 of the constitution of India and are expected to act in just, fair, reasonable and transparent manner. The unilateral fixation of rate is an arbitrary and unjustified action, which cannot withstand the tests set by the Hon'ble Supreme court of India for Writ petition under Article 226 of constitution of India.	

<table>
<tr><td>(x).</td><td>KPT has provided the OMCs with barren and marshy land. Subsequently, the petitioners had developed infrastructure facility for operation at the land by incurring huge cost. The land value which reflects today is the efforts and huge cost put up by the petitioners.</td><td rowspan="4"></td></tr>
<tr><td>(xi).</td><td>The Mission of KPT is to be the most economical Modern Major Port of India. One of the key objectives of the KPT is to rendering cost effective services to their Customers and to render value for money and value added services to their customers. Proposal to fix rate at such a high level is against the basic mission and key objectives of the KPT.</td></tr>
<tr><td>(xii).</td><td>Viewed from any angle, the fixation of r a t e at such high rate is arbitrary, capricious, unfair and not acceptable to the petitioner. It is requested that the proposal be reviewed and rate be set by following fair procedure, in consultation with the petitioner.</td></tr>
<tr><td>(xiii).</td><td>As the petitioners have not been provided sufficient time to submit their representation, we are only submitting an interim representation. The petitioner may please be given further time to submit details representation and further time be given for personal hearing in the matter.</td></tr>
<tr><td>2.</td><td>Hindustan Petroleum Corporation Limited</td><td></td></tr>
<tr><td></td><td>HPCL has filed Special Civil Application Number 16530/2013 before Hon'ble High Court of Gujarat challenging the exorbitant, arbitrary and unreasonable increase of rentals by Kandla Port trust. It is a matter of fact that no reply whatsoever has been filed by Kandla Port Trust to the said Special Civil Application. As such while reserving all our rights in said Civil Application we are submitting our points and contentions as under-</td><td>In this connection, it is submitted that M/s. Hindustan Petroleum Corporation vide their dated 04-08-2014 expressed their views regarding revision of rate, formation and objective of HPCL and comparison with Mundra Adani Port.

In this connection, it has already been submitted that following five plots of land allotted to M/s. HPCL on 30-year lease basis are as under:-

<table>
<tr><th>Name of Lessee</th><th>Land Admg. (Sq. Mtrs.)</th><th>Lease Expired/ to be expired</th></tr>
<tr><td rowspan="5">M/s. Hindustan Petroleum Corporation Ltd.,</td><td>78370</td><td>29-Feb-20</td></tr>
<tr><td>50799</td><td>21-Apr-20</td></tr>
<tr><td>2786</td><td>31-Jul-14</td></tr>
<tr><td>128618</td><td>31-Oct-14</td></tr>
<tr><td>91567</td><td>30-Nov-13</td></tr>
</table>

As per the Order passed by the TAMP on 25th March, 2011 and notified in the Gazette of India Extraordinary (Part III Section 4) on 11-5-2011 vide Gazette Notification No. 106, the TAMP had approved the retrospective revision of rates in respect of Kandla Land from July-1999 in three consecutive slabs i.e., from July-1999 t o 31-12-2003, from 01-01-2004 to 31-12-2008 and from</td></tr>
</table>

		01-01-2009 to 31-12-2013 and the lease rentals shall bear an escalation @5% (compoundable) per annum for the period-July 1999 To 24-02-2004 and @2%. Kandla Port Trust issued demand note for annual lease rent as per the rate approved by TAMP under the category "C1" from 2012 onwards. M/s/ HPCL has made the payment as per the revised rate. However, they have not made payment of differential bills issued by KPT as per the above order from 1999 to 2011 and approached the Court vide SCA No. 16530/2013 before the Hon'ble High Court of Judicature at Gujarat, Ahmedabad which is still pending. A Committee was constituted for fixing market value of land and Schedule of Rates as per clause of 16.2(e) of Land Policy Guidelines 2014 issued by Government of India. The committee was headed by the Deputy Chairman of the Port. The other members were the Heads of Departments of Finance, Estate and Traffic. An approved land valuer was appointed as per clause of 18(iv) of the Land Policy Guidelines for assessing the market value of the landed estate. The Committee after going through various aspects and considering the parameters provided under clause No. 18(a) (i) to (v) of Land Policy Guidelines-2014 has recommended the market value of the Kandla land.
(i) (a)	HPCL is marketing, inter alia, highly subsidized essential commodities like diesel, LPG, kerosene etc. As such, HPCL is working for larger public Good & Serving the Nation.	Port Trusts follow the Govt. Guidelines issued by time to time. The above revision has been made as per the Land Policy Guidelines -2014 issued by Ministry of Shipping and there is no provision for relaxation of lease rental to Oil companies.
(b).	In the matter of *Jamshed Hormusji Wadia Vs Board* 0/ *Trustees, Hon'ble Supreme Court 0f India passed order dated 13.1.2004* interalia stating - The position of law is settled that the State and its authorities including instrumentalities of States have to be just, fair and reasonable in all their activities including those in the field of contracts. In HPCL opinion, in the field of contracts the State and its instrumentalities ought to so design their activities as would ensure fair competition and non-discrimination. They can augment their resources but the object should be to serve the public cause and to do public good by resorting to fair and reasonable methods. The State cannot be seen to be indulging in rack-renting, profiteering	The HPCL has furnished the reference of some Judgment. In this connection, it is submitted that KPT has not received any subsequent Guidelines/clarification from Ministry of Shipping and TAMP in connection with the above judgment. It is already clarified that the rate has been revised following the parameters provided under clause No. 18(a) (i) to (v) of Land Policy Guidelines-2014 issued by Ministry of Shipping. Land Valuation Committee (LVC) recommended the rate as per clause No. 18 (a), (b) & (c) of Land Policy Guidelines 2014 taking into account the highest of the factor mentioned in the above policy to determine the latest market value of port land as per the categories as suggested by the Land Valuer vide minutes of the Committee meeting held on 10.03.2014 and 23.04.2014.

<table>
<tr><td></td><td>and indulging in whimsical or unreasonable evictions or bargains. Copy of the said Judgment is attached</td><td></td></tr>
<tr><td>(c).</td><td>In the matter of Dwarkadas Maratlal Vs Board of trustees of Bombay Port trust, the Hon'ble Supreme Court of India passed order dated 27.4.1989 inter alia holding -
Port Trust being a public body, even in respect of its dealing with its tenants, it must act in public interest, and an infraction of that duty is amenable to examination either in civil suit or in writ jurisdiction.
The Port Trust is statutorily exempted from the operation of the Rent Act on the basis of its public/Governmental character. Every action/activity of the Bombay Port Trust which constituted "State" within Article 12 of the Constitution in respect of any right conferred or privilege granted by any statute is subject to Article 14 and must be reasonable and taken only upon lawful and relevant grounds of public interest. Copy of the said Judgment is attached.</td><td></td></tr>
<tr><td>(d).</td><td>On account of above settled legal position framed by Hon'ble Supreme Court is as under - Port trust is a 'State' under Article 12 of the Constitution.
Port trust being a state is supposed to act in public interest and do public good. Port trust being a state is supposed to act in a reasonable and fair manner. Port trust cannot indulge in rack-renting, profiteering and indulging in whimsical or unreasonable evictions or bargains.</td><td></td></tr>
<tr><td>(ii)</td><td>Mundra Adani port is a 'State of the art Port' situated around 65Kms from the Kandla Port on the western coast. Vide lease deed dated 9.1.2008, the Mundra Adani Port granted lease of land to HPCL at a rentals of ₹25 Per Sq Mtr in 2004. As per the escalation provided in said agreement the rentals for the year 2013-2014 is ₹36 per Sq Mtrs (Approx excluding service tax). Copy of the latest demand Note for rentals is attached.

A comparison of major facilities provided by Mundra Adani Port vis-a-vis facilities provided at Kandla are as follows –

<table>
<tr><th>Sr. No.</th><th>Major Facilities at Mundra Adani port</th><th>Whether available at Kandla Port</th></tr>
<tr><td>1.</td><td>Leased land approximately 10 kms situated near to the water front.</td><td>Lease land situated almost 12 kms from water front.</td></tr>
<tr><td>2.</td><td>On arrival berthing of</td><td>No, tidal Port.</td></tr>
</table>
</td><td>It is already clarified that the rate has been revised as parameters provided under clause No. 18(a) (i) to (v) of Land Policy Guidelines-2014 issued by Ministry of Shipping.</td></tr>
</table>

	vessels, all weather port.	
3.	Simultaneous berthing of more than one vessel containing different grades.	No.
4.	24" line 4 hoses for HSD giving more than 1600KL flow rate.	No.
5.	16" line and 3 hoses for Ms giving more than 1000KL flow rate.	No.
6.	Supply of fresh water for vessel directly at Jetty	No.
7.	Hose connection and disconnection carried out in minimum time as possible by the port itself.	Considerable time taken for Hose connection which is done by HPCL as Tenants.
8.	Flyovers with excellent Road infrastructure provided for ease of transportation.	Poor road condition with railway crossing causing Hindrance in Transportation.
9.	Supply of water to Terminal through dedicated pipeline (Narmada Water)	No such water supply. HPCL made its own arrangement for water.
10.	Excellent Security cover and Infrastructure with latest technology.	No

Considering the above judgment and findings given by the Hon'ble Supreme Court of India and also considering that Mundra Port as a private port with lot of important additional facilities is charging ₹ 36 per sq mtrs, as such KPT being a government body and State under Article 12 of the constitution is entitled to receive only reasonable rentals which should be much much lower than Mundra Adani Port or at best be similar to Mundra Adani Port.

(iii).	Through various leases/allotment letters vacant barren/uneven plots of land were leased to HPCL. The entire filling/leveling was done by HPCL. The initial rental of 12 Annas i.e. ₹0.75 was being charged in 1953 which was hiked from time to time and now being proposed to be ₹597. In total contrast to same there has been no worthwhile development of the area by KPT during said period of more than 60 years.	The contention of M/s. HPCL is right that earlier rate charged was ₹0.75 in 1953. Now, the rate has been revised /enhanced / refixed at the option of the lessor at the end of every 5 year as per the Govt. Guidelines issued from time to time. Accordingly, KPT acted and followed the above Guidelines.
(iv).	HPCL states that it is a matter of records and an undisputed fact that on account of HPCL's presence and occupation and usage of the premises the Kandla Port Trust is earning huge amount by way of cargo handling through vessel berthing at jetty. HPCL is one of the oldest Allotee of the Plots and may be the first Public Sector Undertaking to be granted leasehold lands by the Trust.	

<table>
<tr><td>(v).</td><td>ANOMALIES AND UNREASONABLENES IN FIXATION OF RENTALS-</td><td></td></tr>
<tr><td>(a).</td><td>RENTALS AS PER LEASE DEED/TAMP ORDER DATED 25.3.2011:

The rentals demanded are much above what is prescribed under the Lease Deed. As per the lease deed and considering even 5% escalation the revised rentals comes to ₹ 35.5 and considering 2% escalation as prescribed by TAMP vide order dated 25.3.2011 the revised rentals comes to ₹ 32.51.</td><td>There were about 5 lands allotted to above party, of which 2 leases have already expired. Since party has not executed lease deed, all Rules and Regulations made by the Board of Trustees of Port of Kandla, under the provisions of the Major Port Trust Act, 1963 with the approval of the Central Government with regard to the use and enjoyment of the demised premises, shall be deemed to be part of the lease deed and binding on the lessee.</td></tr>
<tr><td>(b).</td><td>ARBITRARY CHANGE OF CATEGORY:

Prior to the deriving revised lease rentals by land allotment committee in 2014, HPCL/IOCL/BPCL (oil terminal) were falling under the Land category of C1 till 2013, however, in current proposal a new category is developed for oil terminal i.e G 2. Such re-categorization is done without any scientific approach or logic. That rates fixed by KPT in July 2013 for category C land is ₹108 per SQM per year and just by changing the category from C to G, KPT/TAMP has revised the rates to ₹ 597.59. Such action is totally unreasonable, unjustified & arbitrary.
No additional facilities have been provided nor is any development carried out in 2014. As such change of category from C 1 to G -2 is unreasonable, unjustified & arbitrary.</td><td>As per the Land Policy Guidelines, 2014, the Land Allotment Committee shall, while recommending the latest Market Value for any land normally take into account the highest of the factors mentioned in Para 18 (a) of the Land Policy Guidelines. Reserve Price in terms of the annual lease rent would be considered as a percentage of the latest market value determined in accordance with Para 18(a), and would in no case be less than 6% of the latest market value, to be fixed by the Port Trust Board.

The rate has been revised as per the parameters provided under clause No. 18(a) (i) to (v) of Land Policy Guidelines-2014 based on the recommended market value of the Kandla land. Land Valuation Committee recommended the rate as per clause No. 18 (a), (b) & (c) of Land Policy Guidelines 2014 taking into account the highest of the factor mentioned in the above policy to determine the latest market value of port land as per the categories as suggested by the Land Valuer vide minutes of the Committee meeting held on 10.03.2014 and 23.04.2914 .

The Board of Trustees of the port of Kandla vide Board Resolutions (BR) No. 203 dated 24.03.2014 & B.R. No. 236 dated 10.06.2014 had approved the proposal for revision of rate structure of Kandla Land fixing of Reserve price/market value for lease rentals for Kandla Lands for the Categories “A” to “G”.

The Land Valuer is appointed as per the clause no. 18 (v) of Land Policy Guidelines-2014 through E-Tendering process.

M/s. K. M. Thacker & Associates, a Govt. Approved Land Valuer has mentioned in the valuation report that land categorization is done in a scientific and methodical manner & it is also approved by Land Valuation Committee and the KPT Board.</td></tr>
<tr><td>(c).</td><td>COMPARISON OF G1 AND G2:
That while fixing the rates in G category, the land has been categorized broadly under two heads i.e. G 1 & G 2. The land leased to Hindustan Petroleum Corporation Limited is falling under G 2 category. A comparative analysis of facilities given for lands falling under G 1 & G 2 category.
<table>
<tr><th>Sr. No.</th><th>Facility</th><th>G-1</th><th>G-2</th></tr>
<tr><td>1.</td><td>Proximity from Port</td><td>Within 2 Kms. Hence, receiving product from vessel thru pipelines are convenient due to lesser distance from port.</td><td>12 Kms. As a result receiving pipeline input form jetty is difficult & time consuming and costly.</td></tr>
<tr><td>2.</td><td>Accessibility through Road</td><td>Accessibility by road from Gandhidham is better than G2, as there is single railway crossing with little rail movement</td><td>Accessibility from Gandhidham is still a very critical issue because there are two railway level crossing in between with frequent rail traffic and no fly overs.</td></tr>
<tr><td>3.</td><td>Water Supply</td><td>Available</td><td>No water supply</td></tr>
<tr><td>4.</td><td>Surrounding</td><td>Excellent condition, majority</td><td>Mostly salt panes & Vacant lands</td></tr>
</table></td><td></td></tr>
</table>

	companies situated nearby.		
5.	Development	Well developed basic infrastructure, good logistic network.	Lack of basic amenities, non-availability of street lights etc.
6.	Rentals in 2013/ Proposed Rentals 2014	442.80/905.17 (2.4 times increase)	87/597 (7 times increase) The comparative increase itself confirms the unreasonableness & discriminatory attitude towards OMC's.

In accordance with Para 18(b) of the Land Policy Guidelines, lease rent would in no case be less than 6% of the latest market value, to be fixed by the Port Trust Board.

(d). MAJOR ANOMALIES IN VALUATION METHODS:

As per the valuation report and part of the report of Land Allotment Committee, there are three methods of land valuation. Comments/objections to all methods of valuation are as follows -

FIRSTMETHOD – In his method the guideline value of land is taken which is around ₹ 1000. Thereafter 30% have been levied as solution charges and 5% have been levied as stamp duty charges. Thereafter final value is arrived as ₹1581/-. Firstly, the method by taking land value as base for rental calculation is not correct as land under guideline value of Mundra Port Land is higher than Kandla Port land, however, Mundra port is charging rental of ₹36/- as compared to ₹597/- now proposed by Land Allotment Committee. Secondly, there is no justification/legal basis for levying 30% as solution charges, no development is done by Kandla Port, and even entire leveling/filling of land is done by HPCL.

SECOND METHOD - In this method the value of land allotted by Gujarat Government for certain lands is taken as base, however, as a matter of fact the said plots are far away from land allotted to HPCL. Further Solution charges (30%), Reclamation charges (20%), and development charges (10%) have been levied. As a matter of fact, no development or any reclamation is done by Kandla port trust in respect of land leased to HPCL.

THIRDMETHOD- In this method, the value of rent approved by TAMP in 2013 for G category i.e 442.80/- is taken as base. It is vital to point out that said base rate was applicable to G category in 2013 and at that point of time HPCLwasin C1 category. In fact, in 2013 the rental

	demand to HPCL as part of C 1 category was ₹87/- approx.	
(e).	Fixing of 6% rental on full market rates as per the Valuation Report obtained by Kandla Port Trust is not correct. Valuation is done in respect of vacant lands and not in respect of occupied / leased lands of Kandla Port Trust.	The KPT has not furnished any comment on this point.
(f).	The Valuer appointed by the Kandla Port Trust, namely M/S K M Thacker & Associates, are not adequately qualified or experienced to carry out valuation of huge chunks of land.	Thought the KPT has not furnished its reply to this comment here, it has furnished its reply to similar observations made by GCCI.
(g).	The users were not given any opportunity of being heard while deciding the Valuation.	The KPT has not furnished any comment on this point.
(h).	Tariff Authority for major Ports vide order dated 25.2.2011 along with the Board of trustees for Kandla Port had approved an annual escalation of 2% in rentals vide Resolution dated 17.07.2013. The Kandla Port Trust has suggested an annual escalation of 5%, which is abnormally high, unreasonable and Arbitrary.	The KPT has not furnished any comment on this point.
(i).	The local Jantri rates for the land owned by the Government of Gujarat for similar purposes are much less than the proposal submitted by the Kandla Port Trust to TAMP	
(j).	The proposed increase in rates will cause great financial losses to the users.	
(k).	The land categorization is not done in a scientific and methodical manner.	M/s. K. M. Thacker & Associates, a Govt. Approved Land Valuer has mentioned in the valuation report that land categorization is done in a scientific and methodical manner & it is also approved by Land Valuation Committee and the KPT Board.
(l).	The cost of developing a plot is directly proportional to its size, a factor which has not been considered while finalizing the revised rates of rent.	
(m).	If Percentage of land value is taken, then annual rentals should not exceed 2% of the land value as the return on investment on land is calculated by 2 methods - One is rentals that it may fetch and second is the value by which it appreciates. In the case of land, the value appreciation is very high and hence rentals should be very low. Comparatively, for a building, which has got a particular life only, the value increases but not as much as land and hence the rental returns are a slightly higher percentage.	The KPT has not furnished any comments.
(v).	**ORDER OF MUMBAI HIGH COURT** - The Board of Trustees for Mumbai Port filed a Writ Petition bearing No. 1153 of 2000 vs TAMP & others, challenging the right of TAMP to frame the lease rent of Port Trust lands outside the port limits. In the said Writ Petition it was	It is already clarified that Rate has been revised as per the Govt. Guidelines, So far as order of Mumbai High Court is concerned, it is pertaining to TAMP.

	contented that TAMP is primarily concerned with Tariff Rates related to port operations and has no jurisdiction to fix the lease rent of Port Trust lands outside the port limits. TAMP is not a quasi- judicial authority and hence the rates fixed/approved by it are not binding on Port Trusts / Kandla Port Trust tenants / lessees outside port limits. TAMP has no powers or jurisdiction to frame the Scale of Rates and / or rents of premises belonging to Kandla Port Trust and situated outside the port limits. The proposed revision of rents by land allotment Committee for land belonging to the Kandla Port Trust does not merit consideration and hence should be returned unconsidered.	
3.	**Gandhidham Chamber of Commerce & Industry**	
(i).	Any administrative Authority or instrument of the State is governed by provisions, rules, regulations policies and guidelines applicable to it and are bound to act strictly under the same. Wherever a discretion has been granted to an administrative authority, such discretion is to be exercised without any arbitrariness or unreasonableness on part of the administrative Authority or its delegate.	It is mentioned that KPT has to follow the Land Policy Guidelines 2014 issued by Government of India.
(ii).	In the given instance the TAMP, the KPT and the Land Allotment Committee (LAC) are governed by the Policy Guidelines for Land Management by Major Ports, 2014 (Policy Guidelines) and are thus bound by the provisions thereof. A challenge to the actions of the TAMP, KPT and the LAC would thus lie only if their actions are contrary to the provisions of the Policy Guidelines or that they have exercised the discretion vested in them arbitrarily or unreasonably.	
(iii).	That apart, Courts in their writ jurisdiction do not review the decision made by an Authority but review only the decision making process.	
(iv).	The point thus to be urged is that in the present case the LAC and the KPT have, in so far as the market value of land /reserve price is concerned, have acted contrary to Clause 18 (a) of the Policy Guidelines and have improperly exercised the discretion under Clause 18 (a) arbitrarily and unreasonably and thus	An approved land valuer was appointed as per clause of 18(iv) of the Land Policy Guidelines of 2014, for assessing the market value of the landed estate. The committee after going through various aspects and considering the parameters provided under clause No. 18(a) (i) to (v) of Land Policy Guidelines -2014 had recommended the market value of the Kandla land. Land Valuation Committee recommended the

	the decision making process is arbitrary and unreasonable.	rate as per Clause No. 18 (a), (b) & (c) of Land Policy Guidelines 2014 taking into account the highest of the factor mentioned in the above policy to determine the latest market value of port land as per the categories as suggested by the Land Valuer vide minute of the Committee meeting held on 10.03.2014 and 23.04.2014. The Board of Trustees of the port of Kandla vide BR No. 203 dated 24.03.2014 & BR No. 236 dated 10.06.2014 had approved the proposal for revision of rate structure of Kandla Land fixing of Reserve price/market value for lease rentals for Kandla Land and for the Category "A" to "G".
(v).	A perusal of the minutes of the LAC meetings and the KPT proposal seem to suggest severe discrepancies in their conduct and assist in reinforcing the aforesaid. The inconsistent and discrepant conduct is set out hereunder:	
(a).	As per clause 18 (a) of the Policy Guidelines it is incumbent upon the LAC to take into account the highest of the factors mentioned therein. The said clause also grants the LAC the discretion to choose the factor not being the highest thereunder, in such an event the LAC is obligated to record the reasons for exercise of such discretion in writing.	
(b).	A perusal of the minutes of the meeting of the LAC dated 10 March 2014 (1st Minutes) indicates that in respect of Category G-I, the highest factor that the LAC has opted for is under Clause 18 (a) (iii) which amounts to ₹14,216.00. Whereas, in respect of Category G - II, the LAC has exercised its discretion by opting for the highest factor as per Clause 18 (a) (v), This factor is represented by the formula i.e. Rate of the G-I category / Rate arrived by the valuer for G- I x Rate arrived by the valuer for G-II. Curiously, in this formula employed by the LAC to calculate the rate they have incorrectly used ₹15086.13/- as the rate for G-I category instead of ₹ 4216/-. This is a glaring inconsistency in the two tables of the same minutes.	The KPT has already clarified the points regarding issue regarding land valuation of Category G-1 and G-2 vide its letter No. LW/PL/3302/1159 dated 14.08.2014. [Apart from this, the KPT has not furnished its comments on other points made by GCCI.]
(c).	Further, the LAC has not provided any source, reasoning or basis for resorting to the said formula, needless to state questions may be raised in respect of the credibility and validity of the formula.	
(d).	The LAC, thereafter held a second meeting on 24 April 2014 (2nd Minutes). As per the 2nd Minutes the rate as per the highest factor i.e. clause 18 (a) (iii) is ₹15086.13. This rate is inconsistent with the highest factor as per clause 18 (a)(iii) recorded in the 1st Minutes i.e. ₹14216/- for G-I. Please, however, note that the applicable rate for G-I category that is recorded in the 2nd Minutes (while inconsistent with its reference in the first Minutes to G-I) matches its reference in the formula for arriving at the rate under clause 18 (a)(v) for	

	category G-II. Questions ought to be raised in respect of these inconsistencies in rates.	
(e).	While the minutes referred to above make it explicit that the LAC has relied upon Clauses 18 (a) (iii) and (v) for categories G-I and G-II respectively, the KPT in its proposal to the TAMP has recorded that the LAC has in its meeting on 23 April 2014 decided to recommend rates and categories as suggested by the land valuer. This is a factor contemplated under 18 (a) (iv) and does not find a mention in either the 1st or 2nd minutes. Questions certainly ought to be raised in respect of this inconsistency as well.	No comments furnished by KPT.
(vi).	It is understood that only developed land is considered for hike.in lease rentals. The Kandla Port Trust is in possession of large chunk of undeveloped land also, which is lying vacant at present. This aspect is also to be considered before arriving at any final decision.	No comments furnished by KPT.
(vii).	16% Return on investment is on exceptionally high side and needs to be moderated in port lands if taken in consideration.	No comments furnished by KPT.
(viii).	The rate structure for Kandla land should be compared with the surrounding land owned by Government of Gujarat also. The jantri rates are much lower. Assessment is required that how many plots of land has been sold yet after last revision.	No comments furnished by KPT.
(ix).	The port trusts were formed by the Govt. of India to facilitate the import /export of the cargoes /goods through the sea route which is the cheapest in terms of freight cost internationally. This port trusts are the governing body of the ports and not the corporate company whose main motto is to run the profitable organization. Main aim of the ports is to encourage the import/ export to boost the economy of the entire nation in general by way of providing the cost effective services to the importer/ exporter on which economy of the countries are largely depends and	No comments furnished by KPT.

	ultimately result in to economic health of the nation. Hence, in nut shell main motto of the port is to boost the economy. It is further informed that even if the port is to look for additional revenue generation that has to be from traffic/port operations which are being carried out at the port and not from the land. It is always suggested that the available land with the port has to be utilized /developed in planned manner so that the consistent traffic growth can be achieved which can be the main source of the revenue generation and not from lease rentals of the land.	
(x).	The TAMP is concerned with the tariff applicable for the port operations carried out within the custom notified area at water front. Accordingly, TAMP is not authorized to fix the lease rentals for the outside customs area.	No comments furnished by KPT.
(xi).	As narrated above, considering the main motto to promote the trade at the port, the land available at the port has to be offered to port users at much reasonable rate compared to nearby non port land to attract the importer/exporter and thereby their operations are more economical which in turn will boost their traffic at the port and thereby help to improve the revenue generation at the port in particular and improve the economy of country in general.	No comments furnished by KPT.
(xii).	In terms of lease land for the handling of liquid cargo is concerned, few points are very vital which requires to be considered while fixing the rates:	No comments furnished by KPT.
(a).	Distance from the water front (jetties) which will have direct impact on capital cost in terms of dockline laying cost and subsequent way leave charges.	No comments furnished by KPT.
(b).	Category of liquid cargo to be handled e.g. the chemical /petrochemical handling is concerned, requirement of the land will be much more against the capacity build (60% land has to be kept vacant to meet with the statutory norms /safety standards) and also the cost towards the installation of safety system and standards will be very high which in turn will result in too much higher capital cost compared to handling of non-hazardous/edible /non edible cargo.	No comments furnished by KPT.

(c).	Land required to be allocated nearby to the water front so that the fast evacuation of the products can be done which will help to handle the import raw material at affordable cost and in case of export higher revenue can be generated in foreign currencies which is need of hour for healthiness of the economy.	No comments furnished by KPT.
(xiii).	Hence, the categorization has to be made considering these aspects as well and it is totally unjustified to put all the terminals in the common categories and same lease rental applicable to all categories will lead to proposal unviable which will reduce the traffic at port. Over and above, Kandla Port Trust is having about 84% of the land available with the all major ports of the country and hence, there is much more scope compared to other ports for development. So, considering the land available lease rentals has to be much lower at Kandla port compared to other major ports. About 16-18 states are depending on the Kandla port for their import/export of goods. As such it is always desirable that not only land tariff but cargo handling tariff also has to be much lesser compared to other major ports for boosting the economyand exim trade. In case the proposed increase in the lease rentals is implemented, it will lead to diversion of the traffic to the nearby port which in turn will result in loss of traffic and revenue to the Government port as well as to all the port users as the operations will be unviable economically. In case the operations are continued even with the higher tariffs implemented, there will be additional burden on the import/export and finally result in to slow down the growth of the economy of country in general. It is, therefore, requested to defer the proposal submitted by KPT in the larger interest of ports users and the port in particular.	No comments furnished by KPT.
4.	**Kandla Port Karmachari Sangh**	
A.	**Written submissions dated 4 August 2014**	
(i).	INTRODUCTION:	
	It is important to note that Land	In this connection, it is mentioned that KPT has

	Policy for Major Ports has been reviewed firstly in the year 2004, 2011 and 2014. Prior to this, it is expected that there must be a Policy to regulate the allotment of land based on guidelines issued from time to time from the Ministry of Shipping. Thus, the laid down guidelines and Land Policy for Major Ports came from Govt. of India and Ministry of Shipping vide Letter No. PT-17011/55/87-PT dated 8 March 2004, PT-I1033/04/2()09-PT doted 13.01.2011 and lastly Land Policy guidelines for Major Ports - 2014, approved in January 2014. The main objective and back ground to formulate such Policy is to provide for a transparent mechanism for allotment of land in the possession of the Major Ports (a key note and background is mentioned by the Hon' ble Minister in his forward note). It is also emphasized through this Policy that such Policy guidelines will give the advantage to Major Ports and expedite the process of land allotment for various commercial activities in the Port etc. etc. a) Land vested with Kandla Port Trust is mainly classified in two ways such as Gandhidham Township Land and Kandla Land. The Govt. of Kachchh vide order dated 22/11/1954 transferred 2,20, 416 acres of land to Kandla Port and thereafter Central Government declared Kandla Port as Major Port from 08/04/1955. An additional area of 6,920 acres was acquired for developing Gandhidham Township. From above acquired land the administration could only utilize rather allotted land to the extent of about 30% only. Thus, in terms of development of land for port related activities could not be fully be utilized within last about 59 years. The quantum of income loss for not allotting land cannot be calculated in terms of money, but definitely can be imagined in terms of revenue loss to the port.	to follow the Land Policy Guidelines 2014 issued by Government of India. Accordingly, a committee was constituted for fixing market value of land and Schedule of Rates as per clause of 16.2(e) of Land Policy Guidelines 2014. The committee was headed by the Deputy Chairman of the Port. The other members were the Heads of Department of Finance, Estate and Traffic. An approved land valuer was appointed as per clause of 18(iv) of the Land Policy Guidelines, for assessing the market value of Kandla lands. The committee after going through various aspects and considering the parameters provided under clause No. 18(a) (i) to (v) of Land Policy Guidelines, 2014 had recommended the market value of the Kandla land. Land Valuation Committee recommended the rate as per clause No. 18 (a), (b) & (c) of Land Policy Guidelines, 2014 taking into account the highest of the factor mentioned in the above policy to determine the latest market value of port land as per the categories as suggested by the Land Valuer vide minute of the Committee meeting held on 10.03.2014 and 23.04.2014. The Board of Trustees of the port of Kandla vide BR No. 203 dated 24.03..2014 & BR No. 236 dated 10.06.2014 had approved the proposal for revision of rate structure of Kandla Land fixing of Reserve price/market value for lease rentals for Kandla Land and for the Category "A" to "G". There is no provision existing in the Land Policy Guidelines-2014 that the users have to be given opportunity of being heard, while deciding the valuation.
(ii).	IMPORTANCE OF REGULATORY AUTHORITY:	No comments furnished by the KPT.
	Now, the issue comes for formation of Tariff Authority for Major Ports with a view to ensure fixing of rates, revision and ensure that value of such land	

	should be affordable and reasonable. It is important to keep in view while allowing the rate within a state such as Gujarat State, it should not be lesser in Central Government or higher in Central Government for land being managed by the Kandla Port. Thus, in fixing the rates of land TAMP has to play balancing role so that land available with the Port Trust is made available for Port related activities and Industries at affordable and reasonable rates.	
(iii).	CENTRAL GOVERNEMNT LAND & STATE GOVERNENT LAND	No comments furnished by the KPT.
(a).	In this context, it is important to note that in last about 20 years the land available with Gujarat State Government for development of Water front has been given to private developers on affordable, reasonable and in profitable manner which can be noticed from development of Private operator Ports in the vicinity and surroundings of Surat, Private developed Ports like Pipavav Port, Mundra Adani Port and many small GMB controlled minor ports whereas due to unaffordable, unreasonable or not acceptable to private participants to develop land rests with Kandla Port. This is evident from last several years tenders which could not materialize due to higher rates of Kandla Port Land (eg. 19 Plots for Storage Tank, 260 residential and commercial Plots given to public and many plots for Salt land could not be allotted).	
(b).	In comparison with other ports like Kolkata, Mumbai, Chennai etc. Kandla Port is facing several litigations related to land allotment and its rates.	
(c).	Kandla Port Land is distributed between Kandla Land which includes Gandhidham Township and 2600 acres of land is leased out to Sindhu Resettlement Corporation Limited (SRC Ltd.) which is Joint Stock Company constituted under the Provisions of Indian Companies Act, 1913 and lease deed was signed between GOI and SRC Ltd. on 28/11/1955 for 99 years.	
(d).	SRC Ltd. allots land to different private individual, companies, and firms and creates sub-leases for different purposes. KPT recovers only Transfer fees for transfer of sub-leases under	

	SRC Ltd. The Land leased out by the SRC Ltd. brought huge development in an around Township, which includes Commercial, Social, Welfare, Housing, Public utilities etc. etc. and, therefore, the very purpose of lease of 2600 acres of land has been successfully achieved by the SRC Ltd.	
(e).	Kandla Land: (a). General leases 1050 acres (b).Monthly Tenancies 0.6 acres only (2430 sq. mtrs.) (c).Leave & Licence-84 acres (d).Shops & Cabins-0.37 acres (e).Salt leases – 16,112 acres From above, it can be seen that KPT could not gainfully utilize port related Land for actual development atleast from the year 2000 onwards because of the non-allotment of land, fixing the land rates non-affordable and non-reasonable etc. Records will reveal that port management could not successfully complete the tender processes though having Land Guideline Policy from 2004, 2011 and 2014.	
(iv).	Observations:	No comments furnished by the KPT.
(a).	The TAMP has revised Gandhidham Township Land rate structure vide Notification dated 17 June 2008 – previous revision was in 10/1999 – the 1999 revised rates were to be applicable to leases allotted after1/1/1999.	
(b).	TAMP vide its Notification dated 03/02/2008 has recorded that "This Authority in its earlier order dated 21/03/2002 has taken the stand that the guidelines issued and changes made after execution of Lease Agreement cannot be seen alter the Agreement unless it is violative of any Provisions in the statute and / or the basic principles adopted by this Authority in tariff setting. Henceforth, the lease deeds to be executed are to contain recovery of lease rent @6% of the Market Value". This needs to be applied on leases, which are to be executed henceforth.	
(c).	<u>The TAMP observed regarding unallotted Gandhidham Land as under:</u>	No comments furnished by the KPT.
	The vacant plots required to be identified and put on tender immediately leaving those reserved for specific purposes. The list of allottable vacant plots to be made available in website.	
(d).	<u>Reference of Maritime Agenda 2010-</u>	

	2020 published by GOI, MOS in January 2011:	
	It is important to refer such document from where it can be seen as to how much land is used by Major Ports and Non Major Ports in India. Annexures attached with this will reveal as to how much Non Major Ports are in Gujarat State and out of 41 Non Major Ports the Gujarat State Government has developed Private Operator Ports in parallel to Central Government Kandla Port with most modernized and technical up-gradation only because of very liberal land policy with affordable and reasonable land cost.	
(v).	In view of the above, and taking into consideration all aspects KPKS is of the opinion that, least utilization of Kandla land i.e. one is Port related and another is Township related has brought huge revenue loss because of indifferent Land Policy rather to say less encouraging Land Policy in comparison to Gujarat state Government. It is very important to note that Land available to Kandla Port in comparison to other Major Ports of India is huge, but could not be developed and utilized due to unrealistic Land Policy as well as rates in comparison to Gujarat State. The time has come that TAMP has to address this vital issue while approving the rates keeping in view the rates brought out by the State Government for its non- major ports.	No comments furnished by the KPT.
(vi).	With a view to bring maximum business to the Kandla Port and for that purpose revision of Land rates for Major Ports including Kandla is sought for approval from TAMP, whereas, in regard to Gujarat State, Non Major Ports, no such authority is created thereby double standards within Major Ports and Non Major Ports prevails. Thus, time has come to re-look on single Tariff Authority for the Sea Ports in India, so as to bring equality and fairness in relation to Land rates and its maximum utilization for Port based industries.	No comments furnished by the KPT.
B.	**Comments dated 16/19 August 2014.**	
(i).	The guidelines from Govt. are to be kept in mind while arriving at a decision by the Statutory Authority. But, market competition in same sector is also one of the major point to be	No comments furnished by the KPT.

	kept in view as otherwise once business is diverted from Major Port to Non-Major Port (in this case Kandla Port is facing tough competition from Non-Major Ports like Mundra Adani (40 Kms.away), Pipawa Port (300 Kms. away) and few others). Thus, fixing rate in Major Port like Kandla has to be considered based on what tariff is being charged by the Non-Major Ports.	
(ii).	Similarly, in the case of land for which rates are required to be fixed is to be taken in two ways such as Land within Port limit and being allotted on lease basis of 30 years. On other side State Land on free hold policy is available within limited distance also plays major role. Thus in that case investor may like to opt for freehold land and not 30 years lease rent or leave & license with many restrictions.	No comments furnished by the KPT.
(iii).	It is further more important that in case of land available for particular activities like POL and storage of edible oil is not being allotted and remaines un-allotted. Keeping such land un-allotted for decades leads to loss of particular commodities as well as diversion of traffic to nearby Non-Major Ports e.g. Tank Form developed by Mundra Adani, Pipawa by IMC, Hajira by Reliance,etc. etc. are glaring examples.	No comments furnished by the KPT.
(iv).	Let us come to Govt. policy to invite investor in the name of PPP or SVP with a view to bring major players in developing Port Sector in the Non-Major Ports because of the reason that the State Govt. has liberalized of its land policy with lower cost, the investor do not wish to invest in Major Port due to high cost and small period of lease policy. Thus, the investor is automatically not interested to invest in the Major Ports.	No comments furnished by the KPT.
(v).	It is also matter of fact that Private investor can allow any concession whereas Govt. Controlled Major ports can not grant any concession as being done by the Non-Major Ports.	No comments furnished by the KPT.
(vi).	It is known fact, that Govt. organization faces all type of hindrances and constrains whereas private Non-Major Ports are free to do anything and everything.	No comments furnished by the KPT.
(vii).	Market ups and down also plays major role and therefore investor are too vigilant to invest in short term lease, rental, etc. in Major Ports and they prefer to invest in Non-Major	No comments furnished by the KPT.

	Ports wherein liberal land policy and free hold land policy.	
(vii).	It is necessary, to encourage export orient development rather creating more facilities for Import.	No comments furnished by the KPT.
(ix).	Land valuation must be based on the surrounding available private, State Govt. and free land rather lease period.	No comments furnished by the KPT.
(x).	Port management / Govt. Valuer must examine as to whether traffic of Major Port will divert to adjoining non major ports because of high cost of land and 30 years lease, etc.	No comments furnished by the KPT.
(xi).	TAMP has to scrutinize as to whether rental is profitable or premium in long lease. One bid cannot be taken as base for fixing price as various factors are related in fixing price e.g. Freehold land, limited lease hold like 10, 20 or 30 years with easy renewal clauses, logistic cost in handling the respective cargo from ship to shore and to factory, rail and road connectivity, etc. Maximum utilization of available land with easy terms and reasonable / affordable will attract investors.	No comments furnished by the KPT.

4. Subsequent to joint hearing, the comments were received from Shri Dusyant Arunkant Shah vide his letter dated 18 August 2014 and from Kandla Liquid Tank Terminal Association vide its letter dated 3 September 2014. The KPT has responded vide its letter dated 16 September 2014. The summary of the comments of Shri Dusyant Arunkant Shah and reply of KPT thereon are tabulated below:

	Comments of users	**Reply of KPT**
1.	**Shri Dusyant Arunkant Shah**	
(i)	KPT has not consulted them (a stakeholder) nor discussed with the trade to arrive at consensus before finalization for the revision of SOR. Further scrutiny of the revised proposal is required because –	(i). While framing the proposal of Revision of rate structure of Kandla Lands of Kandla Port Trust, the provisions of Land Policy Guidelines, 2014 are strictly followed. As per practice in vogue, TAMP had conducted Joint hearing on 4.08.2014, wherein queries raised have since been clarified. (ii). The revision of rate structure of Kandla lands has been made as per clause No. 18 (a), (b) & (c) of Land Policy Guidelines, 2014. The other queries raised related to Civic Body Redressal. (iii). The market value has been decided as per clause No. 18 (a), (b) & (c) of Land Policy Guidelines, 2014. The other issues are relating to the dispute with KPT and not related with the issues of Revision of rate structure of Kandla land.
(a).	KPT has not called or informed or displayed detailed copy of revised proposal and valuation made by it. They came to know from newspaper report that TAMP joint hearing was scheduled.	
(b).	Land policy Guideline's main objectives is a transparent methodology and for the benefit of the stakeholder. Therefore, time may be given to put their queries before TAMP for consultation.	
(ii).	The rate structure is going to be 4.25 times higher than it was up to 31.12.2013. For this, stipulations about market valuation of land in	

<table>
<tr><td></td><td>the guidelines stated to have been complied with. Some of the main points made:</td><td rowspan="10"></td></tr>
<tr><td>(a)</td><td>Market value of plots/properties were down because GDP was down after 2008-2009. Same applies here.</td></tr>
<tr><td>(b)</td><td>Plots allotted to Shri Dusyant Arunkant Shah is East-side of NH-8 and developed Township is on West-side of NH-8. In 2012-13-14, there is new elevated high-rise 4-lane bridge, road and abutment constructed for by-pass traffic for Kandla, in middle of NH-8 living sides for service road. Therefore, front side of plot building is now detached from main city, and opposite side of street (service road) is dead wall. Because of traffic rules it is now difficult to reach / the approach road from city. Now, it is a remote plot and can't be seen from developed city side. Previously they were on NH-8 but now on service road. So, it may reduce value of their plot/building after 2013.</td></tr>
<tr><td>(c)</td><td>There is no new development in nearby area in 30 years because no plot has been allotted in this side of our plots/bldg., which reduced demand on this site.</td></tr>
<tr><td>(d)</td><td>KPT has not incurred any expenses for development of the said side of the road because this road belongs to National Highway.</td></tr>
<tr><td>(e)</td><td>Our plot bldg. is in low-lying water area. Therefore, in Monsoon it is submerged in water. So its market value downgraded than it was before.</td></tr>
<tr><td>(f)</td><td>There is no State ready-reckoner rate available for this land-area for freehold land for year after 2011 also. In Gujarat there is ready reckoner rate for lease hold land of 99 years and of 30 year lease land.</td></tr>
<tr><td>(g)</td><td>After earthquake in Kutch maximum construction of only ground floor + 2 stories is allowed with height restriction. So in their case F.S.I. is restricted max. 1.5 only. So lease-rent go very high for limited stake holder because one can't afford the increase of rental amount in business here.</td></tr>
<tr><td>(h)</td><td>There is no development in Estate business in 30 (thirty) years in nearby area for which purpose the plot is allotted.</td></tr>
<tr><td>(iii).</td><td>Previously, in deciding market value KPT has not complied with the stipulations contained in applicable land policy and lease agreement with us. In the TAMP of Notification No. 106 dated 11-05-2011 it is stated that:

Tamp query and reply of KPT in the last Order is brought out below:

<table>
<tr><th>Sr. No.</th><th>TAMP's Queries</th><th>Reply from KPT</th></tr>
<tr><td>(1).</td><td>KPT has sought approval for revised rentals from 1 July 1999. Kindly confirm that the</td><td>The lease deeds of the land allotted in Kandla have been formulated on different lines over the years, as per the prevailing</td></tr>
</table>
</td><td>No comments furnished by the KPT.</td></tr>
</table>

		lease agreements entered into by KPT in the past with lessees contain a clause allowing for retrospective revision of the lease rentals.	Land Policy Guidelines in vogue some of the conditions are as mentioned hereunder. (a). "The Ground Rent hereby reserved may at the option of the lessor be revised and refixed at the end of every five years on or after first day of January." *The Ground Rent will be 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 a decision taken on his behalf in this regard shall be final and legally binding on the lessee and not open for any dispute by lessee. The lessee shall pay the ground rent at revised rates from the date of revision.*
	Here, the KPT has suppressed full lines of rate revision (Paragraph) in their reply to TAMP Query as in our lease agreement. On the basis of such wrong/answer by KPT, TAMP ordered rate-revision on 11.5.2011. From that order dated 11.5.2011 ambiguity started regarding lease rates, it revision, its interest and amount of bill for payment of lease-rent, with Kandla Port Trust and stake holders.		
2.	**Kandla Liquid Tank Terminal Association**		
(i).	Pending fixation of Tariff, the Tender process for auctioning of the land in terms of New Land Policy Guidelines 2014 cannot be proceeded with. Owing to delay in commencing the process of E-Tender cum E-auction not only has the Port been losing revenue but the exporters/importers have also been facing difficulties owing to the shortage of storage capacity for liquid cargo. It would not be out of place to mention that already the Port is reeling under acute shortage of storage' capacity for liquid cargo which due to certain reasons drastically got reduced by around 33% coming down to around 11 lacs KL from the earlier level of 15 lacs KL. While the Port has floated certain tenders for allotment of Land under G-1 category, including for one existing installation, the progress on this front has been tardy and cannot be completed until the Tariff is fixed from your end.	Kandla Liquid Tank Terminal Association (KLTTA) vide said letter has requested TAMP to expedite fixation of tariffs. KPT has from time to time furnished reply/comments raised by TAMP on various lessees, in connection with the approval of revision of rate structure. The contention of KTTA seems to be right that pending fixation of tariff, the tender process for auctioning of land in terms of new Land Policy Guideline 2014 cannot be proceeded. The points raised by the Association are not representation towards the proposal of KPT for `Revision of rate structure of Kandla Land of KPT'.
(ii).	Due to shortage of storage capacity, the Vessels carrying liquid cargo have to wait at the Port resulting into payment of demurrage by the EXIM community which on an estimate works out to app. ₹10 crores per month i.e. ₹120 crores per annum.	
(iii).	The storage charges which were earlier hovering around ₹150/- per KL per month in the month of June, 2012 (when storage capacity of 15 lacs KL was available at the Port) have shot through the roof and are presently prevailing at	

	around ₹350/- to ₹400/- per KL. The stupendous increase in the rate for storage has resulted into the Exim community requiring to bear the extra burden of app. ₹24.75 crores per month i.e. ₹297 crores per annum which, needless to say, ultimately gets passed on the Consumer.	
(iv).	Needless to mention that in addition to the Exim Trade, the Port Trust has also suffered in the process as due to reduction in the storage capacity, the liquid cargo of app. 33% of the earlier total capacity for storage got diverted to other ports.	
(v).	Due to this magnitude of diversion of liquid cargo away from Kandla Port, the Port's revenues from handling of liquid cargo also got reduced by around 33% which on an average works out to ₹8crores per month i.e. ₹96crores per annum, which by no means is a small amount.	
(vi).	Over and above this, the Port has been losing whopping sums of money day in and day out which it can earn in the form of lease rental by expediting the process of E-Tender cum E-auctioning thus making it imperative to hasten the process of fixation of tariff to avoid any further loss of revenue to the Port and also to ameliorate the existing position of shortage of storage capacity at the Port.	

5. The KPT vide its letter dated 12 September 2014 has furnished its comments on the comments of Food Corporation of India (FCI), which apparently seems to be received by the port directly from FCI. It is relevant to state here that we have not received any written comments from FCI nor have we forwarded the comments of FCI to KPT. However, the points made by KPT on the comments of FCI (not received by us by apparently received by the port directly) are given below:

(i). On Para 1 & 2:

In this connection, it is submitted that following one plot of land allotted to M/s. FCI on 30-year lease basis which was expired on 31-08-2012 are as under:-

Name of Lessee	Land Admg. (Sq.Mtrs.)	Lease Expired.
M/s. Food Corporation of India	152070	31-08-2012

The contention of FCI is wrong, as per the main terms and conditions annexure to letter no .*LW/Pl/20131386* dated which is stipulated as under:-

(a). The allotment of plot will in the first instance be provisional and be governed by the terms and conditions contained herein and in the letter of allotment and (then agreement to lease will be executed by the intended lessee at his cost and)"

(b). All Rules and Regulations made by the Board of Trustees of Port of Kandla, under the provisions of the Major Port Trust Act, 1963 with the approval of the Central Government with regard to the use and

enjoyment of the demised premises, shall be deemed to be part of the lease deed and binding on the lessee.

(ii). As per the condition No. 06 of the Lease deed executed on 4.12.1995, which provides the Ground rent fixed for the plot shall be revised/enhanced/refixed at the option of the lessor at the end of the lease deed and binding on the lessee.

(iii). The contention of FCI is wrong, this office also issued arrears bill to CWC as per revised rate approved by TAMP from 1999.

(iv). As FCI has executed the lease deed, KPT follow the lease deed conditions, and Govt. Guidelines issued by Ministry of Shipping from time to time.

(v). The lease period was already expired, the renewal of lease and terms and conditions will be governed as per the Land Policy Guideline, 2014 and Guidelines issued by Ministry of Shipping time to time.

(vi). Since, lease period was already expired, the above bill has been issued as per the rate proposed to the TAMP by KPT for unauthorized occupation of KPT land.

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ANNEXURE – P/9

Tariff Authority for Major Ports

No. TAMP/24/2014-KPT Mumbai, 08 April 2019

NOTIFICATION

ln exercise of the powers conferred by Section 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby extends the validity of rate structure of Kandla land of Deendayal, Port Trust as in the Order appended hereto.

Sd/- (T. S. Balasubramanian)

Member (Finance)

Tariff Authority for Major Ports

Case No. TAMP/24/2014-KPT

Deendayal Port Trust Applicant

ORDER

(Passed on this 29th day of March 2019)

This case relates to a proposal filed by Deendayal Port Trust (DPT) for extension of the validity of the rate structure for Kandla lands of DPT.

2. The lease rental for the Kandla lands of DPT was last revised by this Authority vide Order No. TAMP/24/2014-KPT dated 13 November 2014. The lease rental revised by this Authority was given retrospective effect from 1 January 2014 and validity was prescribed for a period of five years, i.e. up to 31 December 2018. The DPT was requested vide our 1etter dated 05 November 2018

to expedite filing of its proposal for revision of rentals of DPT land to avoid delay in notification of rates.

3.1 In this backdrop, the DPT, vide its letter dated 15 February 2019 has responded. The response of the DPT brings out the following points:

(i) The issues related to rates and categorization of land into categories ‘A’, ‘F1’, ‘F2’, ‘G1’, ‘G2’, exorbitant increase in lease rentals of existing lessees with effect from 01 January 2014 etc. was studied by a Committee deputed by the Indian Ports Association (IPA). The final Report of the Committee is awaited.

(ii) The MOS vide letter No. PD-25021/11/2015-VOCT dated 16 October 2018 issued clarification circular (Land Management) No. 1 of 2018 on classification/ categorization of Port Land as per National Industrial Classification (NIC), 2008 and informed that it has been brought to the notice of the MOS that the present classification on the port lands and the fixation of SOR thereof is not uniform within and across the major ports leading to complications and disputes. This impacts the realization of revenue for the ports. The matter has been examined in the MOS and it has been decided that for the purpose of lease, classification/ categorization of Port Land needs to be done as per NIC, 2008. Accordingly, the MOS, has requested all Major Ports to take action accordingly. In view of the above clarifications received from the MOS, the examination and implementation the lease classification / categorization of Port Land as per NIC, 2008 shall take more time.

(iii) Therefore, filing of proposal for revision of rate of Kandla land will take some time.

3.2 Bringing out the above position, the DPT has requested this Authority to extend the validity of existing rates for 6 months i.e. till 30 June 2019 or till the date of effect of notification of revised lease rentals based on tariff proposal to be filed by DPT, whichever is earlier, with 2% escalation.

3.3 In view of the position brought out above, and since the validity of the rate structure for Kandla lands for categories 'A to G' has expired on 31 December 2018, this Authority extends the validity of the existing rate structure of the Kandla lands for categories 'A to G' from the date of its category till 30 June 2019 or the date of effect of notification of the revised lease rentals based on the tariff proposal to be filled by the DPT, whichever is earlier as sought by DPT.

4.1 The Land Policy Guidelines of 2014 issued by the Government (based on which the rate structure for Kandla lands for categories 'A to G' of DPT has been fixed in November 2014) stipulates that the lease rentals approved by this Authority shall be escalated by 2% per annum till they are revised by this Authority. The Order approved by tis Authority in November 2014 also prescribes a specific condition in this regard. This condition also prevails in the amended Land Policy Guidelines, 2014 issued by the MOS. Since the existing Rate structure already prescribes annual escalation @ 2% in the lease rentals till such time the rates are revised by the Authority and in line with the guidelines issued by the Government, the annual escalation @ 2% will continue to apply during the extended validity period of the rate structure for Kandla lands for categories 'A to G' of DPT.

4.2 However, it is to be noted in this regard that the extension of the existing lease rentals with an annual escalation of 2% is only a provisional arrangement to avoid a vacuum in the current scenario. The lease rentals to be fixed for the Kandla lands for categories ‘A to G’ based on a proposal filed by the DPT in this regard will have to be given retrospective effect, as requested by the DPT.

5. In the result, and for the reasons given above, this Authority extends the validity of the existing rate structure for Kandla lands for categories ‘A to G’ of DPT from the date of its expiry till 30 June 2019 or date of effect of notification of the revised lease rentals based on the tariff proposal to be filed by the DPT, whichever is earlier.

Sd/- (T. S. Balasubramanian)

Member (Finance)

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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 2535 of 2017
With
R/SPECIAL CIVIL APPLICATION NO. 6909 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 2607 of 2012
With
R/SPECIAL CIVIL APPLICATION NO. 673 of 2014
With
R/SPECIAL CIVIL APPLICATION NO. 13371 of 2013
With
R/SPECIAL CIVIL APPLICATION NO. 5218 of 2014
With
R/SPECIAL CIVIL APPLICATION NO. 5219 of 2014
With
R/SPECIAL CIVIL APPLICATION NO. 5222 of 2014
With
R/SPECIAL CIVIL APPLICATION NO. 5223 of 2014
With
R/SPECIAL CIVIL APPLICATION NO. 5224 of 2014
With
R/SPECIAL CIVIL APPLICATION NO. 16225 of 2013
With
R/SPECIAL CIVIL APPLICATION NO. 16530 of 2013
With
R/SPECIAL CIVIL APPLICATION NO. 13409 of 2014
With
R/SPECIAL CIVIL APPLICATION NO. 2905 of 2015
With
R/SPECIAL CIVIL APPLICATION NO. 9342 of 2015
With
R/SPECIAL CIVIL APPLICATION NO. 372 of 2016
With
R/SPECIAL CIVIL APPLICATION NO. 10306 of 2015
With
R/SPECIAL CIVIL APPLICATION NO. 10983 of 2015
With
R/SPECIAL CIVIL APPLICATION NO. 10984 of 2015
With
R/SPECIAL CIVIL APPLICATION NO. 11497 of 2015
With
R/SPECIAL CIVIL APPLICATION NO. 2536 of 2017
With

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R/SPECIAL CIVIL APPLICATION NO. 2537 of 2017
With
R/SPECIAL CIVIL APPLICATION NO. 2538 of 2017
With
R/SPECIAL CIVIL APPLICATION NO. 8538 of 2016
With
R/SPECIAL CIVIL APPLICATION NO. 10611 of 2016
With
R/SPECIAL CIVIL APPLICATION NO. 10730 of 2016
With
R/SPECIAL CIVIL APPLICATION NO. 10891 of 2016
With
R/SPECIAL CIVIL APPLICATION NO. 10892 of 2016

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS.JUSTICE BELA M. TRIVEDI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	YES
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

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IMC LIMITED & 1 other(s)
Versus
UNION OF INDIA & 2 other(s)

THE HINDUSTAN PETROLEUM CORPN LTD
Versus
UNION OF INDIA

IFFCO
Versus
UNION OF INDIA

MOTHER DAIRY FRUIT & VEGETABLE PVT LTD.

Versus

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KANDLA PORT TRUST

PSL LIMITED

Versus

UNION OF INDIA

LAXMI MOTORS

Versus

UNION OF INDIA

INDIAN OIL CORPORATION LIMITED

Versus

UNION OF INDIA

M/S.AVEAN INT. PVT. LTD.

Versus

UNION OF INDIA

OIL & NATURAL GAS CORPN. (I) LTD

Versus

BOARD OF TRUSTEE, PORT OF KANDLA

BHARAT PETROLEUM CORPN. LTD.

Versus

UNION OF INDIA

THE TANKER OWNER AND OPERATIONS ASSOCIATION

Versus

UNION OF INDIA

M/S.KESAR TERMINALS & INFRASTRUCTURE LTD

Versus

KANDLA PORT TRUST

JRE TANK TERMINALS PVT. LTD.

Versus

UNION OF INDIA

INEOS STYROLUTION INDIA LIMITED

Versus

KANDLA PORT TRUST

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Appearance:

MR SN SOPARKAR, SR. ADVOCATE WITH MR DHAVAL SHAH(2354) for the Petitioner(s) (in SCA Nos.2535/2017, 2536/2017, 2537/2017 & 2538/2017

MR SN SOPARKAR, SR. ADVOCATE for NANAVATI ASSOCIATES for the Petitioner(s) (in SCA Nos.2607/2012 & 673/2014)

MR SN SOPARKAR, SR. ADVOCATE WITH MR AMAR BHATT for the Petitioner(s) (in SCA Nos.13371/2013 & 8538/2016)

MRS SANGEETA PAHWA, ADVOCATE for the Petitioner(s) (in SCA Nos.5218/2014, 5219/2014, 5222, 5223/2014, 5224/2014, 10983/2015 and 10984/2015)

MR MIHIR THAKORE, SR. ADVOCATE WITH MR SALIL THAKORE for the Petitioner(s) (in SCA No.16225/2013)

MR SN SOPARKAR, SR. ADVOCATE WITH MS. MINOO SHAH for the Petitioner (in SCA Nos.16530/2013, 372/2016 & 6909/2012)

MR MANISH BHATT, SR. ADVOCATE for MR BHATT & CO., for the Petitioner(s) (in SCA No.13409/2014)

MR MIHIR THAKORE, SR. ADVOCATE WITH MS.ARCHANA ACHARYA for the petitioner(s) (in SCA Nos.2905/2015, 10306/2015)

MRS SUMAN KHARE WITH MR AKSHAT KHARE for the petitioner(s) (in SCA No.9342/2015)

MR BD NAIK, SR. ADVOCATE & MR SHALIN MEHTA, SR. ADVOCATE WITH MR PREMAL RACHH for the petitioner(s) (in SCA Nos.11497/2015, 10730/2016, 10891/2016, 10892/2016)

MR KS NANAVATI, SR. ADVOCATE WITH MR RAJENDRA GOLANI for the petitioner(s) (In SCA No.10611/2016)

MR DEVANG VYAS, ASG for the Respondent No.1 – Union of India
MR MIHIR JOSHI, SR. ADVOCATE WITH MR DHAVAL VYAS for M/S.VYAS ASSOCIATES(1559) for the Respondent(s) No. 2-3 (KPT)
NOTICE SERVED BY DS(5) for the Respondent(s) No. 3
SERVED BY RPAD (N)(6) for the Respondent(s) No. 1

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CORAM: **HONOURABLE MS.JUSTICE BELA M. TRIVEDI**

Date : 10/05/2019

CAV JUDGMENT

1. Though all the petitions have diversified

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facts, due to intermingling and commonality of legal issues, they were heard together with the consent of the learned Advocates for the parties and this common order is being passed.

2. The gist of the challenge in most of the petitions is the challenge to the Notification dated 11.5.2011 and the Notification dated 4.12.2014 issued by the respondent Tariff Authority for Major Ports (TAMP) constituted under Section 47A of the Major Port Trusts Act, 1963 (hereinafter referred to as "the said Act"). By the said Notifications, the TAMP has framed the scale of rates (SOR) for use of the lands belonging to the Kandla Port Trust (now Din Dayal Port Trust, but shall be referred to as 'KPT' for the sake of convenience), under Section 49 of the said Act. The consequential actions taken by the KPT on the non-payment of the lease rentals as per the scale of rates framed by the TAMP under the impugned notifications and non-payment of the compensatory bills have also been challenged in some of the petitions, whereas some have prayed

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for renewal of their respective leases.

FACTUAL MATRIX:

3. Special Civil Application No.2535 of 2017 filed by the petitioner M/s.IMC Limited being the lead matter was argued at length, and hence its facts are considered for easy comprehension.

3.1 The petitioner No.1 M/s.IMC Limited (earlier known as United Storage Tanks Terminals Ltd. - USTTL) is a company incorporated under the provisions contained in the Companies Act, 1953. The USTTL was wholly owned subsidiary of the petitioner No.1 Company and was amalgamated into the petitioner No.1 Company by a Scheme of Amalgamation approved by the Calcutta High Court by its order dated 7.7.2010. The petitioner No.2 is the Managing Director of the petitioner No.1 and is also a shareholder thereof.

3.2 The petitioner No.1 is engaged in the business of port based liquid bulk terminal operations and providing storage tank farm and terminalling services. The respondent No.2 is the Tariff Authority of Major Ports (hereinafter

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referred to as "TAMP"), the authority constituted under the Major Port Trusts Act, 1963 (hereinafter referred to as "said Act") exercising the powers and discharging functions *inter alia* with respect to the fixation of tariff for major ports including the respondent No.3 KPT. The respondent No.3 is one of the Major Port Trusts in whose premises the petitioner No.1 is operating a common user liquid bulk tank farms. The petitioner No.1 and its associate company JRE Tank Terminals Private Limited claim to be the lessees in respect of four plots in question, within the premises of the respondent No.3.

3.3 The respondent No.3 KPT had issued a letter of allotment dated 27th October, 1995 to the USTTL (predecessor of the petitioner No.1) allotting land admeasuring 12 acres (equivalent to 48552 sq. mtrs.) for a period of 30 years i.e. till October 26, 2025, on "as is where is" basis for the purpose of storage and handling of hazardous and non-hazardous liquid bulk at Kandla. According to the petitioners, the said

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land was allotted under the lease on Premium-cum-Lease rent basis. Accordingly, the USTTL paid a *lump sum* premium of Rs.40,00,000/- (Rupees forty lac only) as per Clause (f) of the letter of allotment. In addition to the premium, the USTTL was charged lease rental at the rate of Rs.11/- per sq. mtrs., in terms of Clause (c) of the said letter of allotment, which was to be compounded at 10% annually from the date of letter of allotment.

3.4 The respondent No.3 KPT had the right to revise the rent rates every five years and in July 1999, the KPT suggested revised rent rates, however, the respondent No.2 TAMP refused to revise the rent rates at that time, on account of natural calamities in the region, and directed the KPT to classify the land taking into account the distance from the creek and the purpose for which the land was allotted. Accordingly, in 1999 the land owned by the respondent No.3 was classified into following five categories:-

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	Category	Proposed Rates
a.	Land upto link road or 600 mtrs. from the bank of creek for all purpose	80
b.	Land between link road and bye pass for commercial use of liquid cargo	64
c.	Land at south and east of national highway 8-A for business and commercial use of dry cargo	59
d.	Land from the bye pass road to Kharirobar for business and commercial use of liquid cargo	48
e.	Land for residential and other miscellaneous public utility purpose.	14

3.5 Due to several natural calamities viz. Super cyclone in 1999 and earthquake in 2001 and their aftereffects in the region, the rates proposed by the respondent No.3 were not accepted by the respondent No.2 TAMP and were not implemented during the period from 1999 till 2004. In 2005, the Government issued guidelines that the Port Trusts should charge land premium upfront based on the tender along with nominal rent of Re.1/-.

3.6 In the year 2005, the respondent No.3 KPT issued a tender inviting bids for allotment of plots (adjacent to the LPG Project of OIC) for construction of liquid storage tanks for handling liquid cargo at Kandla on a 30 year

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lease. In the said tender the respondent KPT had changed the payment model from a premium-cum-lease rent structure followed earlier to single *lump sum* consideration in the form of a higher premium and token Re.1/- lease structure. However, the said tender of 2005 was subsequently cancelled by the KPT in or around December 2010.

3.7 In the meantime, the Land Policy Guidelines - 2010 was issued by the Government of India, Ministry of Shipping, in exercise of the powers conferred under Section 111 of the the said Act, in supersession of the earlier Land Policy for Major Ports - 2004, for implementation by all Major Ports and Ennore Port limited with immediate effect.

3.8 Clause 6.3 of 2010 Policy provided for the manner and method for determination of market value. Accordingly, the SoR had to be recommended to the TAMP by the KPT as per the procedure and after taking into consideration the factors mentioned therein. The SoR had to be arrived at taking 6% of the market value as rent

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per annum, and was liable to be revised every five years. It was also provided *inter alia* that the Committee of the KPT should recommend to the TAMP, varying SoR in accordance with the end use as reflected in the Land Use Plan.

3.9 The respondent KPT keeping in view the Land Policy of 2010, once again sought to revise the lease rentals with regard to the lands comprised in the port and addressed a letter dated 29.4.2010 to the respondent TAMP proposing a revision in rent structure since 1999. The respondent No.2 TAMP proposed a meeting on 29.7.2010 at Kandla for discussing the proposal from the respondent KPT. The said letter was forwarded to Gandhidham Chamber of Commerce and Industry (GCCI), an association in which the petitioner No.1 was a member. One of the members of the GCCI was a registered association representing liquid tank terminals based at the Kandla Port, being the Kandla Liquid Tank Terminal (KLTTA). The said KLTTA raised objections against the proposed increase in the lease rentals for various reasons before the

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respondent TAMP. It was also pointed out to the respondent TAMP that the respondent KPT had chosen to rely on the valuers report rather than the State Government's guidelines and that the relevant land policy at the time was brought into force in the year 2004, and therefore, the policy of 2010 could not be utilized for fixing rent from the period from July 1999 to December 31, 2003. The joint hearing had also taken place on July 29, 2010.

3.10 Thereafter, the respondent TAMP by its order dated 25.3.2011, (published by the Notification on May 11, 2011), framed the scale of rates for the lease rentals for the plots of the land in the Port area for the following consecutive slabs:-

a) July 1999 to December 31, 2003;

b) January 1, 2004 to December 31, 2008;

c) January 1, 2009 to December 31, 2013.

3.11 The 2011 TAMP order *inter alia* charged lease rentals retrospectively for C-1 lands

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(which included the petitioner No.1's lands) at the rate of Rs.30/- per sq. mtrs., for the period from July 1999 to December, 2003, Rs.39/- per sq. mtrs., for the period from January 2004 to December 31, 2008 and Rs.80.40/- per sq. mtrs., for the period from January 1, 2009 to December 31, 2013. The lease rentals were to bear an escalation of 5% (compoundable) per annum for the period from July 1999 to February 24, 2004 and at 2% thereafter. The respondent KPT thereafter issued a demand notice dated 20.5.2013 to the petitioner No.1 (USTTL) in respect of the lease and called upon the USTTL to make payment of arrears of lease rent effective from 1999 relying upon 2011 TAMP order. The petitioner No.1, therefore, vide letter dated 25.6.2013 replied to the said demand notice stating *inter alia* that the respondent KPT did not have any power to refix the base rent with retrospective effect. Thereafter, certain correspondences ensued between the parties.

3.12 In the year 2014, the respondent No.1

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issued the policy guidelines for Land Management by Major Ports revising the earlier Policy of 2010. The Clause 18 thereof provided for the manner and method of determination of market value of Port lands. Keeping in mind the said guidelines the respondent No.3 KPT again vide the letter dated 26.6.2014 filed its comprehensive proposal for revision of rate structure of lands before the respondent No.2 TAMP. The respondent TAMP after undergoing the consultative process and after conducting the joint hearing of the KPT and the stakeholders, passed the order dated 13.11.2014, which was notified vide the Notification dated 4.12.2014, by which the respondent TAMP revised and increased the annual lease rentals for the KPT's lands under the categories "A to G". The categories A to F were based on their geographical location, however, the category G was created specifically based on its use for liquid storage tanks. Two sub-categories G-1 and G-2 were also created therein, whereby the category G-1 was given to the lands situated from Eastern bank of Kandla creek to Western

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bank of Nakti creek, and the category G-2 was in respect of the lands situated from West side of Nakti creek to Kharirohar having existing oil terminals of IOCL, HPPCL and BPCL.

3.13 Thus, the lands of the petitioners were classified in G-1 category, whose lease rental was increased to Rs.905.17 per sq. mtrs., with effect from 1.1.2014 till December 31, 2018. The respondent KPT thereafter by its letter dated 15.12.2014 addressed a letter to USTTL calling upon the petitioner to make payment of Rs.49,39,777/- for the period from January 10, 2015 to January 9, 2016 at the rate of Rs.90.55 per sq. mtrs., along with previous outstanding sums of Rs.1,51,32,089/-. The respondent KPT also raised a final notice for the payment on January 12, 2015 calling for the payment of outstanding dues from USTTL. The respondent KPT once again by its letter of February 2015 called upon the USTTL to make payment of Rs.4,54,48,780/- at the rate of Rs.923.27 per sq. mtrs., for the period from 1.1.2015 to 1.1.2016, and at the rate of Rs.941.74 per sq.

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mtrs., for the period from 1.1.2016 to 9.1.2016 along with previous outstanding sums. The respondent KPT thereafter raised an invoice dated 8.5.2015 on USTTL for Rs.905.17 per sq. mtrs., effective retrospectively from 1.1.2014 and demanded lease rentals as stated in the said invoice. The petitioner No.1 had responded to the said demand notice by addressing a letter dated 3.2.2016 pointing out that such demand raised by the respondent KPT was exorbitant on account of wrongful categorization of liquid tank farm business. According to the petitioners, the petitioner No.1 made payment under protest of Rs.51,34,536/- at the rate of Rs.90.55 per sq. mtrs.

3.14 According to the petitioner it had already informed the KPT vide its letter dated 8.9.2010 that pursuant to the order dated 14.6.2010 of the High Court of Kolkatta, USTTL was amalgamated with the petitioner M/s.IMC Limited, and therefore, the name of the petitioner Company was required to be changed in the KPT's records. However, the KPT vide letter dated

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17.10.2013 had called upon the petitioner to remit the outstanding dues of the USTTL, stating that the land was allotted to USTTL and that it is not transferred in the name of M/s.IMC Limited as per the KPT's record. The KPT thereafter informed the petitioner by its letter dated 5.2.2016 that USTTL’s change in name was not finalized due to non-payment of dues by USTTL and pending Court case (filed by the petitioner No.1 in the year 2003 against the respondent KPT, in relation to the demand of premium made under the lease in question). The respondent KPT reiterated its stand and informed the petitioners that if the dues as per the demand notices for lease rent were not cleared, it would initiate action. The petitioners, therefore, filed the present petition, seeking following reliefs as prayed for in paragraph 81 of the petition:-

> “**81. a)** That this Hon’ble Court be pleased to issue a writ of certiorari/a writ in the nature of certiorari and/or any other appropriate writ, order, or direction calling for the records and proceedings relating to the implementation of the order dated March 25, 2011 notified vide Notification G. No.106 on May 11, 2011 by

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respondent No.2 (2011 TAMP order) and after considering the legality and validity thereof, be pleased to quash and set aside the same;

b) That this Hon'ble Court be pleased to issue a writ of certiorari/a writ in the nature of certiorari and/or any other appropriate writ, order, or direction calling for the records and proceedings relating to the implementation of the order dated November 13, 2014 notified vide Notification G. No.350 on December 4, 2014, by respondent No.2 (2014 TAMP order) and after considering the legality and validity thereof, be pleased to quash and set aside the same;

c) That this Hon'ble Court declare the change in the categorization of the lands demised unto petitioner No.1 on the basis of its use under the order dated November 13, 2014 notified vide Notification G. No.350 on December 4, 2014, by respondent No.2 (2014 TAMP order), as discriminatory, bad and illegal;

d) That this Hon'ble Court issue a writ of certiorari/a writ in the nature of certiorari and/or any other appropriate writ, order, or direction quashing and setting aside the notices dated May 20, 2013, December 17, 2013 and December 15, 2014 and any other notices issued by respondent No.3 to petitioner No.1 in relation to the demand for lease rent under the order dated March 25, 2011 notified vide Notification G. No.106 on May 11, 2011, by respondent No.2 (2011 TAMP order);

e) That this Hon'ble Court issue a writ of certiorari/a writ in the nature of certiorari and/or any other appropriate writ, order, or direction quashing and setting aside the notices dated May 8, 2015, February, 2015, February 5, 2016 and

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December 2, 2016 and any other notices issued by respondent No.3 to petitioner No.1 in relation to the demand for lease rent under the order dated November 13, 2014 notified vide Notification G. No.350 on December 4, 2014, by respondent No.2 (2014 TAMP order);

f) This Hon'ble Court be pleased to declare the unilateral change to the premium-cum-lease rent structure in the existing Leave of the petitioner, by respondent Nos.2 and/or 3 as illegal;"

4. The respondent KPT has resisted the petition being SCA No.2535 of 2017 by filing affidavit-in-reply raising the contentions as stated herein below:-

4.1 The petition was not maintainable as the challenge to the orders of Tariff Authority was barred by delay, laches, acquiescence and estoppal. The petition invoking the extraordinary, prerogative and discretionary writ jurisdiction may not be entertained as the petition involved disputed questions of facts, which are required to be adjudicated by interpreting contractual obligations between the parties.

4.2 The petition at the instance of the

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present petitioner challenging the order of TAMP and the notices issued by the respondent KPT to the original allottee USTTL for the parcel of land in question was not maintainable. There was a huge outstanding amount payable by the allottee.

4.3 The respondent KPT vide its letter dated 27.10.1995 had informed the allottee USTTL that the parcel of land in question was decided to be allotted to the said company on the conditions mentioned therein. However, in violation of the mandatory conditions accepted by the original allottee USTTL, the parcel of the land was transferred to the present petitioner under the Scheme of Amalgamation, though there was absolute prohibition against the transfer of the plot in question without prior permission or sanction of the respondent KPT. The KPT being not a party to the proceeding of the Scheme of Amalgamation approved by the Calcutta High Court, the same was not binding to the KPT, and the present petitioners being third party can not claim any

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right under the letter dated 27.10.1995.

4.4 In view of the provisions made in the land policy issued by the Government of India in exercise of the powers conferred under Section 111 of the said Act, a transfer of port land cannot be affected by an allottee without obtaining prior approval of the Board of Trustees, and the transfer would be subject to payment of transfer fees. The KPT, therefore, was not obliged to recognize such transferee as the allottee of the plot in question and the occupation by such transferee of the Government largess would be unauthorized.

4.5 The petitioners had suppressed the material facts that the amount of premium required under the terms of the allotment was not paid by the original allottee USTTL, and therefore, the document of lease was not executed.

4.6 By the amendment in the said Act, Chapter-VA was introduced, providing for constitution of TAMP for framing the scale of

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rates, the powers that were earlier exercised by the Board of Kandla. It was, therefore, resolved by the Board in its meeting of 23.5.1997 to recommend revision of rates to the TAMP, however, the said proposal was returned by the TAMP by the order dated 22.2.1999, requiring the Board to reclassify the lands taking into consideration the purpose for which it was allotted along with preparing proper classification, logical definition, etc.

4.7 By the report dated 16.6.1999 the Land Committee of KPT had recommended for the revision of rates upon thorough examination of land trends and collecting additional information, which was under consideration by the KPT, however, since the area of Kutchh was severely affected by cyclone in the year 1999 followed by massive earthquake in January 2001, the proposal could not be finalized.

4.8 In the meantime, land policy for major ports, 2004 was issued by the Central Government under Section 111 of the said Act, which provided for revision of scale of rates every

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five years at the rate commensurate with the prevalent market value, by arriving at annual lease rent taking 6% of market value of the lands. For determining the market value of the lands, a Committee was constituted under the chairmanship of the Chairman, KPT, which Committee by its report recommended revision of rates. The said recommendation was placed in the meeting held from time to time and in the meeting of Board on 21.1.2006 it was observed that the revision pertaining to A, B, and D categories of the general land at Kandla be finalized after the receipt of actual upfront premium from the allotment of 17 plots to the respective highest bidders for construction of storage tanks at old Kandla and as per the prevailing guidelines issued by the Government of India on 8.3.2004. With a view to avoid duplication and multiple proposals to be made to TAMP it was decided to send a combined proposal for the subject lands i.e. the lands type A, B, C, D, and E after finalization of the allotment of the said 17 plots.

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4.9 Though the bids for 17 plots were opened in the year 2006, the allotment to the bidders could not be made till 2009 because of pending permissions from the Government of India. Thereafter a Committee was appointed for fixing market value of the lands and schedule of rates as per the Land Policy. The Committee after going through various aspects and considering the parameters given in the Land Policy accepted the market value of land assessed by the approved land valuer. The KPT thereafter based on the said report had submitted the proposal to the TAMP on 19.4.2010 suggesting revision of rates for three consecutive slabs i.e. from July 1999 to 31st December 2004, 1st January 2004 to 31st December 2008 and 1st January 2009 to 31st December 2013.

4.10 On the receipt of the proposal from the KPT the TAMP following the consultative procedure had called for the objections to the revision of rates from the stakeholders, pursuant to which the Kandla Liquid Tank Terminal Association and Gandhidham Chamber of

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Commerce had offered their comments, though the petitioner had chosen neither to object nor to attend the public meeting held by the TAMP on 29.7.2010, contesting the recommendation of the revision of rates. The TAMP thereafter passed the order dated 25.3.2011 accepting the recommendations made by the KPT and approving the revision of rates to be affected in three slabs as proposed.

4.11 It is further contended by the KPT that since the proposal for framing/revising scale of rates was not approved by the TAMP at the relevant stages, the revision of rates could not be affected and the issue had remained pending. The lands vested in KPT being Government lands could not be permitted to be occupied by private entities for business purpose by paying lower rentals than market rates. Over and above the covenant of the lease, the directions of Government of India and the land policy for the major ports issued under Section 111 of the said Act required the ground rent for the lands to be revised every five

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years. The provision for arriving at the rent as provided was to be 6% of the market value at the time of revision of scale of rates. The lessees were aware that based on the market value at the time of revision of scale of rates, the ground rent would be revised for five years, and therefore, the petitioners were estopped from contending to the contrary.

4.12 The allottee was issued differential bills of rent with effect from July 1999, and escalation at the rate of 5% for the period of lease between 1994-1999, in the line with the approved scale of rates framed by the Tariff Authority in exercise of the statutory powers. The KPT being bound by the scale of rates framed under Section 49 of the Act is obliged to affect revised rates from such revised dates as provided in the scale of rates and accordingly the additional bills of lease rent were issued. The allottee was liable to pay the lease rent at a higher rate whenever the scheduled rates were revised upward by the competent authority which, owing to particular circumstances and

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calamities, was not revised periodically. The petitioner cannot take advantage of such facts and not pay the annual lease rent as per the statutory fixation. The revision of rates also could not be said to be having retrospective effect, inasmuch as the TAMP had affected the lease rentals for the relevant period for which there was no revision, being 6% of the market value at the end of every five years as required under the document of lease and the land policy. In any case, the TAMP had the jurisdiction to retrospectively revise rates and escalate the lease rentals.

4.13 It has been contended without prejudice that the duration for the tariff provided in the order dated 25.3.2011 was to endure till 31.12.2013. The KPT, therefore, had made comprehensive proposal dated 26.6.2014, recommending revision of rates to the TAMP for the period commencing from 1.1.2014. The TAMP after following the consultative process and after conducting the joint hearing of the KPT and the stakeholders, passed the order dated

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13.11.2014, which was notified vide Notification dated 4.12.2014. The KPT in its proposal had recommended the annual rent at 6% of the market value at Rs.15,086.13 for G-1 category lands, being the rate received for similar lands (Storage Tank Farms) during auction conducted in the year 2011 and after 2% escalation every year to arrive at the land valuation as on 1st January 2014. Since the petitioner had participated in the said auction of similar port lands earmarked for liquid storage usage it was aware about the market rates of the lands, and therefore, was estopped from challenging the rates determined by the TAMP. The rates applied by the KPT to the subject lands were in consonance with the guidelines of the land policy of 2014 and the orders passed by the TAMP. Therefore, the petition deserved to be dismissed.

5. The petitioner M/s. IMC Limited has also filed similar petitions being SCA No.2536 of 2017 and No.2538 of 2017 and its sister concern M/s.JRE Tank Terminals has filed SCA No.2537 of 2017 in respect of three other plots allotted to

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the original allottees. Similarly other petitioners have also filed the petitions challenging the said orders passed by the TAMP and the consequential actions taken by the KPT against them.

SUMMARY OF PETITIONS:-

6. For the sake of brevity the summary of each petition be stated as under in the tabular form:-

SCA No. 2535 of 2017

Sr. No.	Details
1. Petitioner	IMC LTD
2. Lessee/Allottee Copy of Lease Deed/Allotment Letter	Letter of Allotment WRT parcel of land admeasuring 48,552 sq.mts issued in favour of United Storage Tanks Terminal Ltd. on 27.10.1995. (Page 89-91)
3. Duration of lease/holding	27.10.1995 - 26.10.2025 (if from the date of LOA) 10/01/1996 to 09/01/2026 (30 years from date of possession)
4. Status of lessee/allottee	Term of lease has not commenced, as the lease deed has not been executed.
5. Name of original lessee/allottee	M/s. United Storage Tanks Terminal Ltd.
6. Nature of change/transfer	Vide scheme of amalgamation approved by the Calcutta High Court dated 7.7.2010 M/s. Union Storage Tanks Terminals Ltd. was amalgamated with IMC. (Page 73)
7. Date of	Vide letter dated 1/8.9.2010, IMC

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Application for transfer made to KPT.	asked for change of name of lessee on records of KPT from M/s. United Storage and Tank Terminals Ltd. to IMC Ltd. (Page 267)
8. Response by KPT to application for transfer.	Letter by Port of 17.10.2013, that the land had been allotted to M/s. United Storage and Tank Terminals, which has not been transferred to IMC, i.e. the petitioner, as per the records of KPT. (Page 269)
9. Original lease rent rate	Rs. 11 per sq.mt with 10% escalation
10. Revised lease rent rate under 2011 Tamp Order:	1999-2004 = Rs. 30/- per s.m/ annum 5% escalation 2004-2009 = Rs. 39/- per s.m/ annum 2% escalation 2009-2011= Rs. 80.4/-per s.m/ annum 2% escalation
11. Revised lease rent rate under 2014 TAMP Order	2014: Rs. 905.17 * Rate escalation @ 2% every year from 2014.
12. Whether there is change in category?	C1 as per order of 2011 G1 as per order of 2014
13. Breakup of amount due from allottee: (As per KPT's claim)	1999-2004 = Rs. 37,10,344/- 2004-2009 = Rs. 28,67,966/- 2009-2011 = Rs. 63,70,416/- 2011-2013 = Rs. 21,83,363/- 2014- 2018 = Rs. 22,24,81,912/- * Amount payable towards transfer fees & interest for delay payment have not been included.
14. Date of petition:	16.1.2017
15. Prayers	1. To quash and set aside TAMP Order dated 25.3.2011 and 13.11.2014 2. The change in categorization of lands on the basis of its use under order dated 13.11.2014 3. Setting aside the notices issued by KPT in relation to the demand of lease rent as per the orders of TAMP. 4. To declare that unilateral change

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	to the premium cum lease rent structure as per existing lease deed to be illegal. (Page 62-63)
16. Relief Granted	No interim relief.
17. Status of Public Premises Eviction proceedings	Not started due to proceedings pending before the High court of Gujarat since 2003.
18. Specific Facts:	• The lease deed as per the terms of the Letter of Allotment has not been executed. • Transfer made by USTTL in contravention of the terms of allotment. • IMC had challenged KPT's decision to cancel the 2005 tenders. (2011 2 GLH 283) • IMC has made bid(s) for land(s) earmarked for tank farms (G1 category) Pg. 457.
19. Nature of preliminary objections	• Transfer in breach of conditions of allotment letter is void; and letter of allotment vests no right in USTTL in absence of execution of lease, therefore no right is acquired by the transferee.
20. Issue of Renewal	• No clause for renewal and no reliefs sought

SCA No. 2536 of 2017

Sr. No.	Details
1. Petitioner	IMC LTD
2. Lessee/Allottee Copy of Lease Deed/ Allotment Letter.	Indenture of lease dated 20.8.2002 for the land admeasuring 19,479 sq.mtrs. (Page 90)
3. Duration of lease/holding	07.03.1986 to 06.03.2016
4. Status of lessee/allottee	Unauthorized occupant since 07.03.2016
5. Name of original lessee/allottee	M/s. United Storage Tanks Terminal Ltd.

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6. Nature of change/transfer	Vide scheme of amalgamation approved by the Calcutta High Court dated 7.7.2010 M/s. Union Storage Tanks Terminals Ltd. was amalgamated with IMC. (Page 73)
7. Date of Application for transfer made to KPT.	Vide letter dated 1/8.9.2010, IMC asked for change of name of lessee on records of KPT from M/s. United Storage and Tank Terminals Ltd. to IMC Ltd. (Page 273) * Letter pertains to land admeasuring 48,552 sq.mtrs
8. Response by KPT to application for transfer.	Letter by Port of 17.10.2013, that the land had been allotted to M/s. United Storage and Tank Terminals, which has not transferred to IMC, i.e. the petitioner as per (on) the records of KPT.(Page 275)
9. Original lease rent rate	Rs. 11 per sq.mt.
10. Revised lease rent rate under 2011 Tamp Order:	1994-1999 = Rs. 11/- per sm/annum 1999-2004 = Rs. 30/- per s.m/ annum 2% escalation 2004-2009 = Rs. 39/- per s.m/ annum 2% escalation 2009-2011= Rs. 80.4/-per s.m/ annum 2% escalation
11. Revised lease rent rate under 2014 TAMP Order	2014: Rs. 905.17 * Rate escalation @ 2% every year from 2014.
12. Whether there is change in category?	C1 as per order of 2011 G1 as per order of 2014
13. Breakup of amount due from allottee: (As per KPT's claim)	1994-1999 = Rs. 1,12,977/- 1999-2004 = Rs. 21,57,844/- 2004-2009 = Rs. 28,82,308/- 2009-2011 = Rs. 44,15,218/- 2011-2013 = Rs. 2,03,072/- 2014- 2018 = Rs. 16,10,86,619/- * Amount payable towards transfer fees & interest for delay payment have not been included. * 3 times TAMP rate charged from

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	01/04/2017.
14. Date of petition:	16.1.2017
15. Prayers/ Challenge	1. To quash and set aside TAMP Order dated 25.3.2011 and 13.11.2014 2. The change in categorization of lands on the basis of its use under order dated 13.11.2014 3. Setting aside the notices issued by KPT in relation to the demand of lease rent as per the orders of TAMP. 4. To declare that unilateral change to the premium cum lease rent structure as per existing lease deed to be illegal. (Page 61)
16. Relief Granted	No interim relief.
17. Status of Public Premises Eviction proceedings	Not started due to proceedings pending before the High court of Gujarat.
18. Specific Facts:	• Transfer made by USTTL in contravention of the terms of lease. • IMC had challenged KPT's decision to cancel the 2005 tenders. (2011 2 GLH 283) • IMC has made bid(s) for land(s) earmarked for tank farms (G1 category).
19. Nature of preliminary objections	• Transfer in breach of conditions of allotment letter is void and letter of allotment vests no right in USTTL in absence of execution of lease therefore no right is acquired by the transferee.
20. Issue of Renewal	• No clause for renewal in the lease deed and no reliefs seeking renewal sought in the petition.

SCA No. 2538 of 2017

Sr.No.		Details
1.	Petitioner	IMC LTD.

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2.	Lessee/Allottee Copy of Lease Deed/Allotment Letter	Indenture of lease dated 17.09.1984 Wrt land admeasuring 9980.(Page 87)
3.	Duration of lease/holding	23.6.1978 to 22.6.2008
4.	Status of lessee/allottee	Unauthorized occupant since 23.06.2008
5.	Name of original lessee/allottee	Indian Molasses Co. Pvt. Ltd.
6.	Nature of change/transfer	Not clarified in the petition.
7.	Date of Application for transfer made to KPT.	NA
8.	Response by KPT to application for transfer.	NA
9.	Original lease rent rate	Rs. 2.88 per sq.mt.
10.	Revised lease rent rate under 2011 Tamp Order:	1994-1999 = Rs.30/- per sm/annum 1999-2004 = Rs. 67.8/- per s.m/ annum 2% escalation 2004-2009 = Rs. 87.6/- per s.m/ annum 2% escalation 2009-2011= Rs. 180.60/-per s.m/ annum 2% escalation
11.	Revised lease rent rate under 2014 TAMP Order	2014: Rs. 905.17 * Rate escalation @ 2% every year from 2014.
12.	Whether there is change in category?	E as per order of 2011 G1 as per order of 2014
13. 14.	Breakup of amount due from allottee: (As per KPT's claim)	1994-1999 = Rs. 13,38,317/- 1999-2004 = Rs. 33,07,772/- 2004-2009 = Rs. 32,58,371/- 2009-2011 = Rs. 0.00/-

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		2011-2013 = Rs. 0.00/- 2014- 2018 = Rs. 7,68,80,931/- * Amount payable towards transfer fees & interest for delay payment have not been included.
14. 15.	Date of petition:	16.1.2017
1516.	Prayers	1. To quash and set aside TAMP Order dated 25.3.2011 and 13.11.2014 2. The change in categorization of lands on the basis of its use under order dated 13.11.2014 3. Setting aside the notices issued by KPT in relation to the demand of lease rent as per the orders of TAMP. 4. To declare that unilateral change to the premium cum lease rent structure as per existing lease deed to be illegal. 5. Seeking renewal of lease for a further period of 30 years WEF 2008.
1617.	Relief Granted	No interim relief.
1718.	Status of Public Premises Eviction proceedings	Proceedings not started by Estate Officer under the PP Act due to Court Case filed by the above party.
1819.	Specific Facts:	• Undertaking filed by petitioner to pay revised ground rent WEF 23.6.2008 as may be fixed by the competent authority Pg. 102 D • IMC had challenged KPT's decision to

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		cancel the 2005 tenders. (2011 2 GLH 283) • IMC has made bid(s) for land(s) earmarked for tank farms (G1 category) Pg. 440.
19.	Nature of preliminary objections	• In absence of details of transfer provided by the petitioner, the right is reserved.
20.	Issue of Renewal	• Clause of renewal in the lease deed and the renewal is sought vide the present petition.

SCA No. 2537 of 2017

Sr. No.		Details
1.	Petitioner	JRE TANK TERMINALS PVT LTD (a company)
2.	Lessee/Allottee Copy of Lease Deed/ Allotment Letter	Indenture of lease dated 21.8.2002 WRT land admeasuring 13,658 sq.mtrs. (Page 64)
3.	Duration of lease/holding	05.03.1986 to 04.03.2016
4.	Status of lessee/allottee	Unauthorized occupant since 05.03.2016
5.	Name of original lessee/allottee	M/s JR Enterprise – a partnership firm
6.	Nature of change/transfer	The partnership firm is allegedly converted to a company under part ix of the Companies act, 1956. (Page 63)
7.	Date of Application for transfer made to KPT.	NIL
8.	Response by KPT to application for transfer.	Notice by KPT seeking details if permission as required under clause1 (xii) of the lease deed had

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		been obtained. * Letter of KPT is replied by petitioner vide letter of 24.3.2014 @ pg. 245.
9.	Original lease rent rate	Rs. 11 per sq.mt.
10.	Revised lease rent rate under 2011 Tamp Order:	1994-1999= Rs. 11/- per sm/annum 1999-2004 = Rs. 30/- per sm/ annum 2% escalation 2004-2009 = Rs. 39/- per sm/ annum 2% escalation 2009-2011= Rs.80.4/-per sm/ annum 2% escalation
11.	Revised lease rent rate under 2014 TAMP Order	2014: Rs. 905.17 * Rate escalation @ 2% every year from 2014.
12.	Whether there is change in category?	C1 as per order of 2011 G1 as per order of 2014
13.	Breakup of amount due from allottee: (As per KPT's claim)	1994-1999 = Rs. 79,217/- 1999-2004 = Rs. 15,13,033/- 2004-2009 = Rs. 20,20,975/- 2009-2011 = Rs. 20,61,710/- 2011-2013 = Rs. 11,23,020/- 2014- 2018 = Rs. 12,84,76,188/- * Amount payable towards transfer fees & interest for delay payment have not been included. * 3 times TAMP rate charged from 17/10/2016.
14.	Date of petition:	16.1.2017
15.	Prayers	6. To quash and set aside TAMP Order dated 25.3.2011 and 13.11.2014 7. The change in categorization of lands on the basis of its use under order dated 13.11.2014 8. Setting aside the notices issued by KPT in relation to the demand of lease rent as per the orders of TAMP.

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		9. To declare that unilateral change to the premium cum lease rent structure as per existing lease deed to be illegal. (Page ...)
16.	Relief Granted	No interim relief.
17.	Status of Public Premises Eviction proceedings	Not started due to proceedings pending before the High court of Gujarat since 2017.
18.	Specific Facts:	• Transfer made by the partnership firm is in contravention of the terms of allotment. • Group Company IMC had challenged KPT's decision to cancel the 2005 tenders. (2011 2 GLH 283) • Group Company has made bid(s) for land(s) earmarked for tank farms (G1 category) Pg. 435.
19.	Nature of preliminary objections	Transfer in breach of conditions of allotment letter is void and therefore no (legal) right ensues unto the transferee company.
20.	Issue of Renewal	• No clause for renewal and no reliefs for renewal sought.

SCA No. 13371 of 2013

Sr. No.		Details
1.	Petitioner	Mother Dairy Fruit & Vegetables Pvt. Ltd.
	Lessee/Allottee Copy of Lease Deed/Allotment Letter and Important terms/clauses	Lease deed with respect to parcel of land admeasuring 27458 sq.mts. issued in favour of National Dairy Development Board executed on 28.6.2001. (Page 48-74)
3.	Duration of lease/holding	29.5.1989 to 28.5.2019

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4.	Status of lessee/allottee	Lease due to expire on 29.5.2019
5.	Name of original lessee/allottee	National Development Dairy Board.
6.	Nature of change/transfer	Order dated 13.8.2008, the Hon'ble High Court of Delhi sanctioning the amalgamation scheme between Dhara Ltd. and the petitioner.(separately given)
7.	Date of Application for transfer made to KPT.	No specific application referred in this petition
8.	Response by KPT to application for transfer.	NA
9.	Original lease rent rate	Rs. 1.80 per sq.mt. however w.e.f from 1.7.1994 the same was revised to Rs. 11 per sq.mt
10.	Revised lease rent rate under 2011 order	1994-1999 = Rs. 11/- per sm/annum 1999-2004 = Rs. 41.4/- per s.m/ annum 5% escalation 2004-2009 = Rs. 53.4/- per s.m/ annum 2% escalation 2009-2011= Rs. 110.4/-per s.m/ annum 2% escalation
11.	Revised lease rent under 2014 TAMP Order	2014: Rs. 905.17 * Rate escalation @ 2% every year from 2014.
12.	Whether any change in category ?	Category A in 2011 Category G1 in 2014.
13.	Dues under 2014 TAMP Order : Retrospective/Prospective	Jan, 2014 – Nov, 2014: = Rs. 3,42,20,585/- Nov, 2014 – Dec, 2018: = Rs. 0.00/-
14.	Breakup of amount due : (As per KPT's claim)	1994-1999 = Rs. 1,59,257/- 1999-2004 = Rs. 47,70,827/- 2004-2009 = Rs. 61,20,387/- 2009-2011 = Rs. 58,09,018/- 2011-2013 = Rs. 31,76,632/- 2014- 2018 = Rs.

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		3,42,20,585/- * Amount payable towards transfer fees amounting to Rs. 1,07,36,710/- & interest for delay payment have not been included.
15.	Date of petition :	23.7.2013
16.	Prayers	A. To declare that respondents have no right or authority to demand lease rent from petitioner retrospectively from 1994 and to quash and set aside the order dated 25.3.2011 and demand notice dated 21.5.2013 and to restrain respondents from making any coercive recovery. (Page 10)
17.	Relief Granted	Impugned notices and letters by the Port qua recovery of tariff with retrospective effect only shall remain stayed vide Order dated 9.2.2015 passed in SCA No. 16225 of 2013.
18.	Status of Public Premises Eviction proceedings	No proceedings initiated.
19.	Specific Facts :	• Transfer under the scheme of amalgamation in breach of mandatory conditions of lease and without prior permission of DPT.
20.	Nature of preliminary objections	Transfer is in breach of the conditions of the lease and without the prior permission of the DPT, therefore the transfer to the petitioner is void, therefore no interest vests in the transferee to enforce the terms of lease Wrt to the subject land
21.	Issue of renewal	No clause for renewal and no reliefs for renewal sought

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SCA No. 8538 of 2016

Sr. No.	Sr. No.	Details
1.	Petitioner	Mother Dairy Fruit & Vegetables Pvt. Ltd.
2.	Lessee/Allottee Copy of Lease Deed/Allotment Letter and Important terms/clauses	Lease deed with respect to parcel of land admeasuring 27458 sq.mts. issued in favour of National Dairy Development Board executed on 28.6.2001. (Page 101-121)
3.	Duration of lease/holding	29.5.1989 to 28.5.2019
4.	Status of lessee/allottee	Lease due to expire on 29.5.2019
5.	Name of original lessee/allottee	National Development Dairy Board.
6.	Nature of change/transfer	Order dated 13.8.2008, the Hon'ble High Court of Delhi sanctioning the amalgamation scheme between Dhara Ltd. and the petitioner. (separately given)
7.	Date of Application for transfer made to KPT.	Letters dated 8.10.2008 & others the petitioner had requested DPT to change the name from Dhara Ltd. to Mother Dairy Fruit & Vegetables Pvt. Ltd on the record of the Port. (Annexure-H as per amendment)
8.	Response by KPT to application for transfer.	Letter dated 29/06/2017 issued by the Port.
9.	Original lease rent rate	Rs. 1.80 per sq.mt. however w.e.f from 1.7.1994 the same was revised to Rs. 11 per sq.mt
10.	Revised lease rent rate under 2011 TAMP order	1994-1999 = Rs. 11/- per sm/annum 1999-2004 = Rs. 41.4/- per s.m/ annum 5% escalation 2004-2009 = Rs. 53.4/- per s.m/ annum 2% escalation 2009-2011= Rs. 110.4/-per s.m/ annum 2% escalation

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11.	Revised lease rent under 2014 TAMP Order	2014: Rs. 905.17 * Rate escalation @ 2% every year from 2014.
12.	Whether any change in category ?	Category A in 2011 Category G1 in 2014.
13.	Dues under 2014 TAMP Order: Retrospective/Prospective	Jan, 2014 – Nov, 2014: = Rs. 3,42,20,585/- Nov, 2014 – Dec, 2018: = Rs. 0.00/-
14.	Breakup of amount due: (As per KPT's claim)	1994-1999 = Rs. 1,59,257/- 1999-2004 = Rs. 47,70,827/- 2004-2009 = Rs. 61,20,387/- 2009-2011 = Rs. 58,09,018/- 2011-2013 = Rs. 31,76,632/- 2014- 2018 = Rs. 3,42,20,585/- * Amount payable towards transfer fees amounting to Rs. 1,07,36,710/- & interest for delay payment have not been included.
15.	Date of petition:	2.5.2016
16.	Prayers	1. To declare that respondents have no right to demand retrospective lease rent. 2. To quash and set aside TAMP order dated 13.11.2014. 3. To quash and set aside consequential notification dated 4.12.2014 4. To quash and set aside demand notice dated 8.5.2015 5. To restrain respondents from making any coercive recovery. 6. To quash and set aside notice dated 27/29.6.2017 issued by respondent no.1 (As per amendment). (Page 8-9)
17.	Relief Granted	Impugned notices and letters by the Port qua recovery of tariff with retrospective effect only shall remain stayed vide Order

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		dated 9.2.2015 passed in SCA No. 16225 of 2013.
18.	Status of Public Premises Eviction proceedings	No proceedings initiated.
19.	Specific Facts :	• Transfer under the scheme of amalgamation in breach of mandatory conditions of lease and without prior permission of DPT.
20.	Nature of preliminary objections	Transfer is in breach of the conditions of the lease and without the prior permission of the DPT, therefore the transfer to the petitioner is void, therefore no interest vests in the transferee to enforce the terms of lease Wrt to the subject land
21.	Issue of renewal	No clause for renewal and no reliefs for renewal sought

SCA No. 10611 of 2016

Sr. No.		Details
1.	Petitioner	Ineos Styrolution India Limited
2.	Lessee/Allottee Copy of Lease Deed/Allotment Letter	Possession note dated 6.1.1990 in favour of ABS Plastics Ltd. Wrt land admeasuring 11,695 sq.mtrs. Indenture of lease in favour of ABS Industries Ltd. dated 15.2.1997. (Page 40-41)
3.	Duration of lease/holding	06.01.1990 to 05.01.2020.
4.	Status of lessee/allottee	Unauthorized occupant since transfer by erstwhile allottee / lessee (as the transfer agreement have not been produced, the transfer date is not known)
5.	Name of original lessee/allottee	ABS Industries Ltd.
6.	Nature of change/transfer	Under Share Purchase Agreement's.

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		* Petitioner seeks change on the premise of the change of name of the company @ pg. 62/63.
7.	Date of Application for transfer made to KPT.	NA
8.	Response by KPT to application for transfer.	Show cause notice dated 18.2.2014 as to why transfer effected without previous permission, and the copies of agreement of transfer called for.(Page 66) • Reply by INEOS dated 29.4.2014 @ pg.67, however copies of the agreement not provided.
9.	Original lease rent rate	Rs. 11 per sq.mt.
10.	Revised lease rent rate under 2011 Tamp Order:	1994-1999 = Rs. 11/- per sm/annum 1999-2004 = Rs. 30/- per s.m/ annum 5% escalation 2004-2009 = Rs. 39/- per s.m/ annum 2% escalation 2009-2011= Rs. 80.4/-per s.m/ annum 2% escalation
11.	Revised lease rent rate under 2014 TAMP Order	2014: Rs. 905.17 * Rate escalation @ 2% every year from 2014.
12.	Whether there is change in category?	C1 as per order of 2011 G1 as per order of 2014.
13.	Dues under 2014 TAMP Order: Retrospective/Prospective	Jan, 2014 – Nov, 2014: = Rs. 1,08,78,434/- Nov, 2014 – Dec, 2018: = Rs. 2,49,72,212/-
14.	Breakup of amount due from allottee: (As per KPT's claim)	1994-1999 = Rs. 67,830/- 1999-2004 = Rs. 11,90,551/- 2004-2009 = Rs. 14,67,956/- 2009-2011 = Rs. 23,56,479/- 2011-2013 = Rs. 9,87,997/- 2014- 2018 = Rs. 3,58,50,646/- * Amount payable towards transfer fees & interest for delay payment have not been included.

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15. 1 13.7	Date of petition:	29.6.2016
16.	Prayers	1. To quash and set aside TAMP Order dated 25.3.2011. 2. Setting aside the notices issued by KPT in relation to the demand of lease rent as per the orders of TAMP. 3. To recognize the petitioner as the lessee of the land without payment of transfer fees. 4. Setting aside the notice dated 30.05.2016 @ pg.38.
17.	Relief Granted	Interim relief granted on the condition of deposit of 2.50 crores which is paid by the Party.
18.	Status of Public Premises Eviction proceedings	
19.	Specific Facts:	• The transfer of premises has been effected under the Share Transfer Agreement's which have not been produced by the petitioner either before DPT or this Hon'ble Court.
20.	Nature of preliminary objections	• The change of name of the company is a consequence to the change of the share holding of the company under the Share Purchase Agreement's and is a façade to cover the transfer in contravention of the conditions of deed. The transferee is not the lessee under the lease deed, and not entitled to enforcement of rights on the basis of lease.
21.	Issue of Renewal	• NA

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SCA No. 13409 of 2014

Sr. No.		Details
1.	Petitioner	Indian Oil Corporation Ltd.
2.	Lessee/Allottee Copy of Lease Deed/Allotment Letter and Important terms/clauses	Lease deed WRT parcel of land admeasuring 4,68,103 sq.mts issued in favour of Indian Oil Corporation Ltd. on 30.5.2004. Lease deed WRT parcel of land admeasuring 15,602 sq.mts issued in favour of Indian Oil Corporation Ltd. Lease deed WRT parcel of land admeasuring 55,050 sq.mts issued in favour of Indian Oil Corporation Ltd. Lease deed WRT parcel of land admeasuring 1,16,774 sq.mts issued in favour of Indian Oil Corporation Ltd. Lease deed WRT parcel of land admeasuring 86,700 sq.mts issued in favour of Indian Oil Corporation Ltd. Letter of allotment WRT parcel of land admeasuring 10,430 sq.mts issued in favour of Indian Oil Corporation Ltd. Letter of allotment WRT parcel of land admeasuring 6,589 sq.mts issued in favour of Indian Oil Corporation Ltd. Letter of allotment WRT parcel of land admeasuring 220 acres issued in favour of Indian Oil Corporation Ltd on 28/10/1993. Thereafter, M/s. IOCL surrendered the portion of land of 54.18 acres on 05/04/2002. (Page 131-B)
3.	Duration of lease/holding	1.2.1988 to 31.1.2018 for a period of 30 years for land admeasuring 4,68,103 sq.mts. 31.10.1984 to 30.11.2012 for a period of 30 years for land admeasuring 15,602 sq.mts. 15.2.1990 to 14.2.2020 for a period of 30 years for land admeasuring 55,050 sq.mts.

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		22.10.1988 to 31.1.2018 for a period of 30 years for land admeasuring 116774 sq.mts. 1.12.1982 to 30.11.2012 for a period of 30 years for land admeasuring 86,700 sq.mts. 15.9.1976 to 14.9.2006 for a period of 30 years for land admeasuring 6,589 sq.mts. 21.10.1982 to 14.9.2006 for a period of 30 years for land admeasuring 10,430 sq.mts. 04/12/1993 to 03/12/2023 for a period of 30 years for land admeasuring 165.82 acres (671078 sq. mtrs)
4.	Status of lessee/allottee	For land admeasuring 4,68,103 sq.mts the lease has expired on 31.1.2018. For land admeasuring 15,602 sq.mts the lease stands expired on 30.11.2012. For land admeasuring 55,050 sq.mts the lease is valid upto 14.2.2020 For land admeasuring 1,16,774 sq.mts the lease has expired on 31.1.2018. For land admeasuring 86,700 sq.mts the lease stands expired on 30.11.2012. For land admeasuring 6,589 sq.mts the lease stands expired on 14.9.2006. For land admeasuring 10,430 sq.mts the lease stands expired on 14.9.2006. For land admeasuring 671078 sq.mts the lease stands going to be expired on 03/12/2023.

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5.	Name of original lessee/allottee	Indian Oil Corporation Ltd.
6.	Nature of change/transfer	No change/transfer
7.	Date of Application for transfer made to KPT.	NA
8.	Response by KPT to application for transfer.	N.A.
9.	Original lease rent rate	Rs. 24 per sq. mtr/per annum in r/o land admg. 671078 sq. mtrs Rs. 11/- per sq. mtr/per annum in r/o land admg. 55050 sq. mtrs Rs. 0.90/- per sq.mtrs/per annum r/o land admg. 6589 sq. mtrs Rs. 2.70/- per sq.mtrs/per annum r/o land admg. 10430 sq. mtrs Rs. 3.60 per sq. mtrs/Per annum & Rs. 11/- per sq. mtrs/per annum from 01/07/1994 in r/o land admg. 116774 sq. mtrs., 468103 sq. mtrs, 86700 sq. mtrs & 15602 sq. mtrs.
10.	Revised lease rent rate under TAMP order 2011 :	All above lands in C1 Category 1994-1999= Rs. 24/- per sm/annum in r/o land admg. 671078 sq. mtrs 1994-1999= Rs. 11/- per sm/annum 1999-2004 = Rs. 30/- per sm/ annum 2% escalation 2004-2009 = Rs. 39/- per sm/ annum 2% escalation 2009-2013= Rs.80.4/-per sm/annum 2% escalation
11.	Revised lease rent under 2014 TAMP Order	**Land admeasuring & 671078 sq. mtrs, 86700 sq. mtrs & 15602 sq. mtrs** 2014: Rs. 905.17 * Rate escalation @ 2% every year from 2014. **Land admeasuring 116774 sq. mtrs.**

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		2014: Rs. 108 * Rate escalation @ 2% every year from 2014. **Land admeasuring 4,68,103 sq.mts. & 55050 sq. mtrs.** 2014: Rs. 597.59 * Rate escalation @ 2% every year from 2014. **Land admeasuring 10430 sq.mts. & 6589 sq. mtrs.** 2014: Rs. 108/- * Rate escalation @ 2% every year from 2014.
12.	Whether any change in category?	Land admeasuring 4,68,103 sq.mts C1 as per order of 2011 G2 as per order of 2014 Land admeasuring 6,71,078 sq.mts C1 as per order of 2011 G1 as per order of 2014 Land admeasuring 15,602 sq.mts : C1 as per order of 2011 G1 as per order of 2014 Land admeasuring 55,050 sq.mts C1 as per order of 2011 G2 as per order of 2014 Land admeasuring 1,16,774 sq.mts : No change in category. Land admeasuring 86,700 sq.mts : C1 as per order of 2011 G1 as per order of 2014 Land admeasuring 6,589 sq.mts : No change in category Land admeasuring 10,430 sq.mts :

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		No change in category.
13.	Breakup of amount due : (As per KPT's claim)	**Land admeasuring 4,68,103 sq.mts** 1994-1999 = Rs. 27,14,997/- 1999-2004 = Rs. 5,18,56,450/- 2004-2009 = Rs. 10,17,51,549/- 2009-2011 = Rs. 7,35,87,376/- 2011-2013 = Rs. 3,96,04,100/- 2014- 2018 = Rs. 109,02,95,274/- **Land admeasuring 6,71,078 sq.mts** 1994-1999 = Rs. 0.00/- 1999-2004 = Rs. 0.00/- 2004-2009 = Rs. 0.00/- 2009-2011 = Rs. 1,69,55,838/- 2011-2013 = Rs. 2,39,54,572/- 2014- 2018 = Rs. 313,68,76,853/- **Land admeasuring 116774 sq.mts** 1994-1999 = Rs. 6,77,290/- 1999-2004 = Rs. 1,29,36,224/- 2004-2009 = Rs. 1,72,79,049/- 2009-2011 = Rs. 1,75,01,552/- 2011-2013 = Rs. 95,71,342/- 2014- 2018 = Rs. 0.00 **Land admeasuring 55050 sq.mts** 1994-1999 = Rs. 0.00/- 1999-2004 = Rs. 39,38,829/- 2004-2009 = Rs. 45,52,123/- 2009-2011 = Rs. 60,95,116/- 2011-2013 = Rs. 68,87,244/- 2014- 2018 = Rs. 16,73,40,907/- **Land admeasuring 10430 sq.mts & 6589 sq. mtrs** 1994-1999 = Rs. 6,76,056/- 1999-2004 = Rs. 24,50,850/- 2004-2009 = Rs. 11,92,532/- 2009-2011 = Rs. 0.00 2011-2013 = Rs. 0.00/- 2014- 2018 = Rs. 0.00/- **Land admeasuring 86700 sq.mts & 15602 sq. mtrs** 1994-1999 = Rs. 5,93,351/- 1999-2004 = Rs. 1,13,33,015/- 2004-2009 = Rs. 1,51,37,627/- 2009-2011 = Rs. 1,55,31,344/- 2011-2013 = Rs. 84,31,645/- 2014- 2018 = Rs. 48,68,51,469/- * Amount payable towards interest for delay payment have not been included.
14.	Date of	8.09.2014

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	petition :	
15.	Prayers	A. To quash and set aside the notification dated 11.5.2011 issued by TAMP at Annexure A and further quash and set aside the demands raised by KPT at Annexure B in respect of retrospective revision of lease rents as also demand towards interest. B. To direct KPT to renew lease deeds without insisting for payment of the arbitrary demands impugned. (Page 14-15)
16.	Relief Granted	-
17.	Status of Public Premises Eviction proceedings	Not started due to proceedings pending before the High court of Gujarat.
18.	Specific Facts:	NA
19.	Nature of Preliminary Objections	NA
20.	Issue of Renewal	• No clause for renewal in the lease deed. • Prayer 6(B): Petitioner has sought renewal of lease deeds.

SCA No. 372 of 2016

Sr. No.		Details
1.	Petitioner	Bharat Petroleum Corporation Ltd.
2.	Lessee/Allottee Copy of Lease Deed/Allottment Letter and Important terms/clauses	Lease deed WRT parcel of land admeasuring 2,63,107 sq.mts issued in favour of Bharat Petroleum Corporation Ltd. on 10.1.1991 (Page 152A) Letter of Allotment WRT parcel of land admeasuring 4,441 sq.mts issued in favour of Bharat

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		Petroleum Corporation Ltd. on 23.11.1998 (Page 155)
3.	Duration of lease/holding	1.10.1983 to 31.7.2013 for a period of 30 years for land admeasuring 2,63,107 sq.mts. 23.11.1998 to 31.7.2013 co-terminus with land admg. 2,63,107 for land admeasuring 4,441 sq.mts.
4.	Status of lessee/allottee	Unauthorized occupant since 31.7.2013 for land admeasuring 2,63,107 sq.mts. and land admeasuring 4,441 sq.mts.
5.	Name of original lessee/allottee	Bharat Petroleum Corporation Ltd.
6.	Nature of change/transfer	No change/transfer
7.	Date of Application for transfer made to KPT.	NA
8.	Response by KPT to application for transfer.	N.A.
9.	Original lease rent rate	Rs. 11 per sq.mt for land admeasuring 2,63,107 sq.mts. Rs. 28 per sq.mt for land admeasuring 4,441 sq.mts.
10.	Revised lease rent rate under TAMP Order 2011	<u>For land admeasuring 2,63,107 sq.mts.</u> 1994-1999= Rs. 11/- per sm/annum 1999-2004 = Rs. 30/- per sm/ annum 5% escalation 2004-2009 = Rs. 39/- per sm/ annum 2% escalation 2009-2011= Rs.80.4/-per sm/ annum 2% escalation <u>For land admeasuring 4441 sq.mts.</u>

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		1999-2004 = Rs. 30/- per sm/ annum 5% escalation 2004-2009 = Rs. 39/- per sm/ annum 2% escalation 2009-2011= Rs.80.4/-per sm/ annum 2% escalation
11.	Revised lease rent under 2014 TAMP Order	<u>For land admeasuring 2,63,107 sq.mts.</u> 2014: Rs. 905.17 * Rate escalation @ 2% every year from 2014 <u>For land admeasuring 2,63,107 sq.mts.</u> 2014: Rs. 108/- * Rate escalation @ 2% every year from 2014
12.	Whether any change in category?	<u>For land admeasuring 2,63,107 sq.mts.</u> C1 as per order of 2011 G2 as per order of 2014 <u>For land admeasuring 4,4441 sq.mts.</u> No change in category.
13.	Breakup of amount due : (As per KPT's claim)	<u>For land admeasuring 2,63,107 sq.mts.</u> 1994-1999 = Rs.14,815/- 1999-2004 = Rs. 2,91,46,994/- 2004-2009 = Rs. 3,89,31,943/- 2009-2011 = Rs. 3,93,25,061/- 2011-2013 = Rs. 2,15,39,393/- 2014- 2018 = Rs. 86,61,91,083/- <u>For land admeasuring 4441 sq.mts.</u> 1999-2004 = Rs. 11529/- 2004-2009 = Rs. 0.00/- 2009-2011 = Rs. 3,17,648/- 2011-2013 = Rs. 1,75,295/- 2014- 2018 = Rs. 0.00 * Amount payable towards interest for delay payment have not been included.
14.	Date of petition :	18.12.2015

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15.	Prayers	To set aside the order dated 13.11.2014. b. To set aside the demand notes raising Rs. 32,49,48,581/- levied for the revised rentals raised by KPT on the basis of TAMP order. c. To direct that the amount of Rs. 1,68, 38,966/- paid under protest for period 2014-2015 and Rs. 2,34,38,600/- be adjusted with future rentals. (Page 54-55)
16.	Relief Granted	No interim relief
17.	Status of Public Premises Eviction proceedings	NA
18.	Specific Facts :	NA
19.	Nature of Preliminary Objections	NA
20.	Issue of Renewal	No renewal clause in the lease deed and no reliefs for renewal sought.

SCA No. 16530 of 2013

Sr. No.		Details
1	Petitioner	M/s. Hindustan Petroleum Corporation Ltd.
2	Lessee/Allottee Copy of Lease Deed/Allotment Letter and Important terms/clauses	Letter of Allotment WRT parcel of land admeasuring 78,370 sq.mts issued in favour of M/s. Hindustan Petroleum Corporation Ltd on 19-02-1990 Letter of Allotment WRT parcel of land admeasuring 50,799 sq.mts issued in favour of M/s. Hindustan

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		Petroleum Corporation Ltd. on 20-03-1998 Letter of Allotment WRT parcel of land admeasuring 2,786 sq.mts issued in favour of M/s. Hindustan Petroleum Corporation Ltd . Letter of Allotment WRT parcel of land admeasuring 1,28,618 sq.mts issued in favour of M/s. Hindustan Petroleum Corporation Ltd on 16/10/1984 Letter of Allotment WRT parcel of land admeasuring 91,567 sq.mts issued in favour of M/s. Hindustan Petroleum Corporation Ltd on 11-11-1983
3	Duration of lease/holding	1.3.1990 to 29.2.2020 for a period of 30 years for land admeasuring 78,370 sq.mts. 20.3.1998 to 29.2.2020 for a period of land admeasuring 50,799 sq.mts. 1.8.1984 to 31.7.2014 for a period of 30 years for land admeasuring 2,786 sq.mts. 1.11.1984 to 31.10.2014 for a period of 30 years for land admeasuring 1,28,618 sq.mts. 1.12.1983 to 30.11.2013 for a period of 30 years for land admeasuring 91,567 sq.mts.
4	Status of lessee/allottee	Petitioner has handed over possession WRT land admeasuring 1,28,618 sq.mts. With respect to land admeasuring 78,370 sq.mts and 50,799 sq.mts. the leases are due to expire in 2020. With respect to land admeasuring 91,567 sq.mts and 2,786 sq.mts. the leases stand expired as on

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		1.12.2013 and 1.8.2014 respectively.
5	Name of original lessee/allottee	M/s. Hindustan Petroleum Corporation Ltd.
6	Nature of change/transfer	N.A.
7	Date of Application for transfer made to KPT.	N.A.
8	Response by KPT to application for transfer.	N.A.
9	Original lease rent rate	(i) Land admg.1,28,618 sq.mts = Rs. 2.70 per sq. mtrs/per annum. ii) Land admg. 78,370 sq.mts = Rs. 3.60 per sq. mtrs/per annum. iii) Land admg. 91567 sq.mts = Rs. 2.70 per sq. mtrs/per annum. iv) Land admg. 50,799 sq.mts = Rs. 28/- per sq. mtrs/per annum v) Land admg. 2786 sq.mts = Rs. 11/- per sq. mtrs/per annum
10	Revised lease rent rate under TAMP Order 2011	**For land admeasuring 91,567 sq.mts & 128618 sq. mtrs..** 1994-1999 = Rs. 11/- per sm/annum 1999-2004 = Rs. 30/- per s.m/ annum 2% escalation 2004-2009 = Rs. 39/- per s.m/ annum 2% escalation 2009-2013= Rs. 80.4/-per s.m/ annum 2% escalation **For land admeasuring 78,370 sq.mts. & 50,799 & 2786 sq. mtrs.** 1994-1999 = Rs. 11/- per sm/annum 1999-2004 = Rs. 30/- per s.m/ annum 2% escalation 2004-2009 = Rs. 39/- per s.m/ annum 2% escalation 2009-2013= Rs. 80.4/-per s.m/ annum 2% escalation
11	Revised lease	For land admeasuring 91,567 sq.mts

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	rent under 2014 TAMP Order	& 128618 sq. mtrs. 2014: Rs. 597.59/- * Rate escalation @ 2% every year from 2014. For land admeasuring 78,370 sq.mts. & 50,799 & 2786 sq. mtrs. 2014: Rs. 108/- * Rate escalation @ 2% every year from 2014.
12	Whether any change in category?	For land admeasuring 91,567 sq.mts & 128618 sq. mtrs. C1 as per order of 2011 G2 as per order of 2014 For land admeasuring 78,370 sq.mts & land admeasuring 50,799 sq.mts & 2,786 sq.mts. There is no change in the category.
13	Breakup of amount due : (As per KPT's claim)	**For land admeasuring 128618 sq. mtrs.** 1994-1999 = Rs. 0.00/- 1999-2004 = Rs. 0.00/- 2004-2009 = Rs. 0.00/- 2009-2011 = Rs. 0.00/- 2011-2013 = Rs. 0.00/- 2014- 2018 = Rs. 12,17,23,960/- **For land admeasuring 91,567 sq.mts** 1994-1999 = Rs. 0.00/- 1999-2004 = Rs. 0.00/- 2004-2009 = Rs. 0.00/- 2009-2011 = Rs. 0.00/- 2011-2013 = Rs. 0.00/- 2014- 2018 = Rs. 26,49,72,483/- **For land admeasuring 78,370 sq.mts & land admeasuring 50,799 sq.mts & 2,786 sq.mts**

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		1994-1999 = Rs. 0.00/- 1999-2004 = Rs. 0.00/- 2004-2009 = Rs. 0.00/- 2009-2011 = Rs. 0.00/- 2011-2013 = Rs. 0.00/- 2014- 2018 = Rs. 0.00/- * Amount payable towards interest for delay payment have not been included.
14	Date of petition:	18.10.2013
15	Prayers	A. To admit and allow the present petition. B. To set aside the order dated 25.3.2011 of TAMP. C. To set aside the demand notes claiming amount of Rs. 32,58,74,733/- levied for the revised rentals and interest with retrospective effect by KPT on the basis of TAMP order dated 25.3.2011. D. To direct that amount of Rs. 3,28,42,389/- paid under protest for period 2012-2013 and amount of Rs. 1,26,31,037/-(for 2 plots) for year 2013-2014 be adjusted with future rentals. (Page 25-26)
16	Relief Granted	Relief granted vide order dated 4.12.2013 passed in SCA No. 16225 of 2013 observing that the impugned notices and letters issued by KPT qua the recovery of tariff with retrospective effect only shall remain stayed till then.
17	Status of Public Premises Eviction proceedings	No proceedings initiated.
18	Specific Facts :	-
19	Nature of Preliminary Objections	- -

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20	Issue of Renewal	No renewal clause in the lease deed and no reliefs sought.

SCA No. 6909 of 2018

Sr. No.		Details
1	Petitioner	M/s. Hindustan Petroleum Corporation Ltd.
2	Lessee/Allotee Copy of Lease Deed/Allottment Letter and Important terms/clauses	Letter of Allotment WRT parcel of land admeasuring 78,370 sq.mts issued in favour of M/s. Hindustan Petroleum Corporation Ltd on 19-02-1990 Letter of Allotment WRT parcel of land admeasuring 50,799 sq.mts issued in favour of M/s. Hindustan Petroleum Corporation Ltd. on 20-03-1998 Letter of Allotment WRT parcel of land admeasuring 2,786 sq.mts issued in favour of M/s. Hindustan Petroleum Corporation Ltd . Letter of Allotment WRT parcel of land admeasuring 1,28,618 sq.mts issued in favour of M/s. Hindustan Petroleum Corporation Ltd on 16/10/1984 Letter of Allotment WRT parcel of land admeasuring 91,567 sq.mts issued in favour of M/s. Hindustan Petroleum Corporation Ltd on 11-11-1983
3	Duration of lease/holding	1.3.1990 to 29.2.2020 for a period of 30 years for land admeasuring 78,370 sq.mts. 20.3.1998 to 29.2.2020 for a period of land admeasuring 50,799 sq.mts. 1.8.1984 to 31.7.2014 for a period of 30 years for land admeasuring 2,786 sq.mts.

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		1.11.1984 to 31.10.2014 for a period of 30 years for land admeasuring 1,28,618 sq.mts. 1.12.1983 to 30.11.2013 for a period of 30 years for land admeasuring 91,567 sq.mts.
4	Status of lessee/allottee	Petitioner has handed over possession WRT land admeasuring 1,28,618 sq.mts. With respect to land admeasuring 78,370 sq.mts and 50,799 sq.mts. the leases are due to expire in 2020. With respect to land admeasuring 91,567 sq.mts and 2,786 sq.mts. the leases stand expired as on 1.12.2013 and 1.8.2014 respectively.
5	Name of original lessee/allottee	M/s. Hindustan Petroleum Corporation Ltd.
6	Nature of change/transfer	N.A.
7	Date of Application for transfer made to KPT.	N.A.
8	Response by KPT to application for transfer.	N.A.
9	Original lease rent rate	i) Land admg.1,28,618 sq.mts = Rs. 2.70 per sq. mtrs/per annum. ii) Land admg. 78,370 sq.mts = Rs. 3.60 per sq. mtrs/per annum. iii) Land admg. 91567 sq.mts = Rs. 2.70 per sq. mtrs/per annum. iv) Land admg. 50,799 sq.mts = Rs. 28/- per sq. mtrs/per annum v) Land admg. 2786 sq.mts = Rs. 11/- per sq. mtrs/per annum
10	Revised lease rent rate under TAMP Order 2011	**For land admeasuring 91,567 sq.mts & 128618 sq. mtrs..** 1994-1999 = Rs. 11/- per sm/per

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		annum 1999-2004 = Rs. 30/- per s.m/per annum 2% escalation 2004-2009 = Rs. 39/- per s.m/ per annum 2% escalation 2009-2011= Rs. 80.4/-per s.m/per annum 2% escalation **For land admeasuring 78,370 sq.mts. & 50,799 & 2786 sq. mtrs.** 1994-1999 = Rs. 11/- per sm/per annum 1999-2004 = Rs. 30/- per s.m/ per annum 2% escalation 2004-2009 = Rs. 39/- per s.m/per annum 2% escalation 2009-2013= Rs. 80.4/-per s.m/per annum 2% escalation
11	Revised lease rent under 2014 TAMP Order	For land admeasuring 91,567 sq.mts & 128618 sq. mtrs. 2014: Rs. 597.59/- * Rate escalation @ 2% every year from 2014. For land admeasuring 78,370 sq.mts. & 50,799 & 2786 sq. mtrs. 2014: Rs. 108/- * Rate escalation @ 2% every year from 2014.
12	Whether any change in category?	For land admeasuring 91,567 sq.mts & 128618 sq. mtrs. C1 as per order of 2011 G2 as per order of 2014 For land admeasuring 78,370 sq.mts & land admeasuring 50,799 sq.mts & 2,786 sq.mts. There is no change in the category.
13	Breakup of amount due : (As per KPT's claim)	**For land admeasuring 128618 sq. mtrs.** 1994-1999 = Rs. 0.00/- 1999-2004 = Rs. 0.00/- 2004-2009 = Rs. 0.00/-

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		2009-2011 = Rs. 0.00/- 2011-2013 = Rs. 0.00/- 2014- 2018 = Rs. 12,17,23,960/- **<u>For land admeasuring 91,567 sq.mts</u>** 1994-1999 = Rs. 0.00/- 1999-2004 = Rs. 0.00/- 2004-2009 = Rs. 0.00/- 2009-2011 = Rs. 0.00/- 2011-2013 = Rs. 0.00/- 2014- 2018 = Rs. 26,49,72,483/- **<u>For land admeasuring 78,370 sq.mts & land admeasuring 50,799 sq.mts & 2,786 sq.mts</u>** 1994-1999 = Rs. 0.00/- 1999-2004 = Rs. 0.00/- 2004-2009 = Rs. 0.00/- 2009-2011 = Rs. 0.00/- 2011-2013 = Rs. 0.00/- 2014- 2018 = Rs. 0.00/- * Amount payable towards interest for delay payment have not been included.
14	Date of petition :	9.4.2018
15	Prayers	A. To admit and allow the present petition. B. To set aside the order dated 13.11.2014 of TAMP. C. To set aside the demand notes claiming amount of Rs. 18,49,65,895/- + interest and Rs. 13,79,92,367/- + GST levied for the revised rentals with retrospective effect by KPT on the basis of TAMP order dated 13.11.2014 for land admeasuring 91,567 and 1,28,618 sq.mts. D. To set aside the interest demanded at 18% which is exorbitant, unreasonable and

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		without any basis. E. To decide the representation dated 21.10.2015 after giving hearing to the petitioner. To direct the amount of Rs. 15,53,75,124/- and Rs. 3,28,42,388/- paid under protest for the period from 1994 to 2013 be adjusted with future rentals.(Page 46-47)
16	Relief Granted	Relief granted vide order dated 4.12.2013 passed in SCA No. 16225 of 2013 observing that the impugned notices and letters issued by KPT qua the recovery of tariff with retrospective effect only shall remain stayed till then.
17	Status of Public Premises Eviction proceedings	No proceedings initiated.
18	Specific Facts :	NA
19	Nature of Preliminary Objections	NA
20	Issue of Renewal	No renewal clause in the lease deed and no reliefs sought.

SCA No. 9342 of 2015

Sr. No.		Details
1.	Petitioner	Oil and Natural Gas Corporation Ltd. (ONGC)
2.	Lessee/Allottee Copy of Lease Deed/Allottment Letter and Important terms/clauses	Allotment letter WRT parcel of land admeasuring 7,330 sq.mts issued in favour of ONGC on 9.3.1993 for allotment of land on Leave and Licence Agreement. (Page 34)
3.	Duration of lease/holding	Last renewal was from 23.8.2006 to 22.02.2007. (Page 37)
4.	Status of lessee/allottee	Unauthorized occupant since 23.2.2007

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5.	Name of original lessee/allottee	Oil and Natural Gas Corporation Ltd. (ONGC)
6.	Nature of change/transfer	NA
7.	Date of Application for transfer made to KPT.	NA
8.	Response by KPT to application for transfer.	N.A.
9.	Original lease rent rate	Rs. 1,20,945/- (for 11 months)
10.	Revised lease rent rate under TAMP Order 2011	1994-1999 = Rs. 16/- Per sq. mtr/per annum 1999-2004 = Rs. 37.80 Per sq. mtr/per annum 2004-2009 = Rs. 48.60 Per sq. mtr/per annum 2009-2011 = Rs. 100.2 Per sq. mtr/per annum
11.	Revised lease rent under 2014 TAMP Order	2014: Rs. 205.80 per sq. mtr /per annum *Rate escalation @ 2% every year from 2014.*
12.	Whether any change in category?	There is no change in category.
13.	Breakup of amount due :	1999-2004=Rs. 7,99,116 /- 2004-2009 = Rs. 7,35,053/- 2009-2011= Rs. 6,68,518/- 2011-2013 = Rs. 12,64,152/- 2014-2018 = Rs. 45,25,542/- *Amount payable towards interest for delay payment have not been included.
14.	Date of petition :	7.5.2015
15.	Prayers	Para 29 : a. To declare that action taken by respondent authorities as bad and illegal.

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		b. To declare that in absence of any retrospective revision clause in the Leave and License Agreement, notification dated 6.5.2011 by TAMP is not applicable to petitioner inasmuch it pertains to retrospective revision of TAMP rental rates. c. To declare that KPT has wrongly claimed interest on account of its delay in submitting bills to ONGC. d. To set aside final bill of Rs. 36,71,410/- for the period upto 10.9.2008. e. To set aside the differential retrospective bill of Rs. 31,61,953/- for period from 1.7.1999 to 21.2.2007. f. To set aside the interest claimed by KPT in compensation bill for the period from 22.2.2007 to 21.2.2012. g. To set aside the order dated 19.2.2015 in PP Act Case no. 17 of 2013 to the extent of holding ONGC as unauthorized occupant and for initiating recovery proceeding for amount of Rs. 1,22,10,827/- h. To direct KPT to accept the cheques for payment of revised rentals for period from 22.2.2012 to 21.2.2013 and from 22.2.2012 to 23.12.2014. i. To direct KPT to refund Rs. 52,98,818.53/- as on 5.5.2015 inclusive of compounding interest and future 18% compound interest. <u>Para 29 :</u> To set aside show cause notice dated 23.7.2015 To set aside recovery order dated 17.3.2016 in PP Act Case no. 1 of 2015. (Page 28-31)
16.	Relief Granted	No interim relief
17.	Status of	Proceedings have been concluded

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	Public Premises Eviction proceedings	wherein the petitioner has been found to be in authorized possession.
18.	Specific Facts :	NA
19.	Nature of Preliminary Objections	NA
20.	Issue of Renewal	No clause for automatic renewal in the Leave and License Agreement and no reliefs for renewal sought.

SCA No. 16225 of 2013

Sr. No.		Details
1.	Petitioner	M/s. LAXMI MOTORS LTD
2.	Lessee/Allottee Copy of Lease Deed/Allotment Letter and Important terms/clauses	Lease deed WRT parcel of land admeasuring 2,000 sq.mts issued in favour of M/s. Laxmi Motors Ltd. on 29.11.1984 (Page 19)
3.	Duration of lease/holding	7.11.1983 to 6.11.2013 for a period of 30 years.
4.	Status of lessee/allottee	Unauthorized occupant since 7.11.2013
5.	Name of original lessee/allottee	M/s. LAXMI MOTORS LTD
6.	Nature of change/transfer	NA
7.	Date of Application for transfer made to KPT.	NA
8.	Response by KPT to application for transfer.	N.A.

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9.	Original lease rent rate	Rs. 2.70 per sq.mt./per annum
10.	Revised lease rent rate under 2011 Tamp Order:	1994-1999 = Rs. 16/- per sm/annum 1999-2004 = Rs. 36/- per s.m/ annum 5% escalation 2004-2009=Rs. 46.2/- per s.m/ annum 2% escalation 2009-2011=Rs. 94.80/-per s.m/ annum 2% escalation
11.	Revised lease rent rate under 2014 TAMP Order	2014: Rs. 403.2 * Rate escalation @ 2% every year from 2014.
12.	Whether there is change in category?	F2 as per order of 2011 F2 as per order of 2014
13.	Breakup of amount due from allottee: (As per KPT's claim)	1994-1999 = Rs. 16,820/- 1999-2004 = Rs. 2,37,845/- 2004-2009 = Rs. 3,20,854/- 2009-2011 = Rs. 3,47,048/- 2011-2013 = Rs. 1,85,578/- 2014- 2018 = Rs. 87,05,134/- ** interest for delay payment not included in the dues. * 3 times TAMP approved rate charged from 01/10/2016.
14.	Date of petition:	25.9.2013
15.	Prayers	Para 18 **(A)** i. To quash and set aside the order dated 25.3.2011 passed by TAMP & amended by corrigendum dated 17.8.2011. ii. To set aside the demand notice and/or letters issued by KPT. iii. To quash and set aside Land Policy 2004, 2010 and any other policy, order or direction prescribing fixation of lease rentals on the basis of market valuation to the extent the same prescribes fixation of lease rentals on the basis of market valuation. **(B)** i. To command respondent no.2 to

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		grant renewal of lease with respect to land admeasuring 2000 sq.mts for the period of 30 years starting from 7.11.2013. ii. To command respondent no.2 to grant refund or adjustment for lease rental amounts paid in excess by the petitioner.
16.	Relief Granted	Order dated 26.2.2015, the Hon'ble High Court has directed the respondent not to take any coercive steps.
17.	Status of Public Premises Eviction proceedings	Eviction order passed by the Estate Officer and appeal pending before the Appellate Court
18.	Specific Facts:	NA
19.	Nature of preliminary objections	NA
20.	Issue of Renewal	F. Renewal subject to conditions and terms being fulfilled and upon discretion of lessor. G. Para 18 (B)(i) of the prayer is seeking renewal of lease agreement.

SCA No. 673 of 2014

Sr. No.		Details
1.	Petitioner	Indian Farmers Fertilizer Co-operative Ltd. (IFFCO)
2.	Lessee/Allottee Copy of Lease Deed/Allotment Letter and Important terms/clauses	Lease deed WRT parcel of land admeasuring 2,54,820 sq.mts issued in favour of Indian Farmers Fertilizer Co-operative Ltd. on 25.9.1971 (Page 45/57A) Supplementary lease also executed amending the existing lease in terms of the measurement of land which stood at 2,56,091 sq.mts instead of 2,54,820 sq.mts. (Page

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		65A)
3.	Duration of lease/holding	1.7.1971 to 30.6.2001 i.e. for a period of 30 years.
4.	Status of lessee/allottee	Unauthorized occupant since 1.7.2001.
5.	Name of original lessee/allottee	Indian Farmers Fertilizer Co-operative Ltd. (IFFCO)
6.	Nature of change/transfer	No change/transfer
7.	Date of Application for transfer made to KPT.	No such application was made.
8.	Response by KPT to application for transfer.	N.A.
9.	Original lease rent rate	Rs. 1,15,240.95/- (yearly)
10.	Revised lease rent rate under TAMP Order 2011	2001-2004 = Rs. 45.64/- per s.m/ annum 5% escalation 2004-2009 = Rs. 53.4/- per s.m/ annum 2% escalation 2009-2011= Rs. 110.40/-per s.m/ annum 2% escalation * Lease expired during the year 2001.
11.	Revised lease rent under 2014 TAMP Order	2014: Rs. 236.52 (A category) * Rate escalation @ 2% every year from 2014.
12.	Whether any change in category?	“A” as per order of 2011 “A” as per order of 2014
13.	Breakup of amount due : As per KPT's claim	2001-2004 = Rs. 19,72,614/- 2004-2009 = Rs. 1,87,82,749/- 2009-2011 = Rs. 5,19,36,267/- 2011-2013 = Rs. 5,39,26,247/- 2014- 2018 = Rs. 23,56,76,229/- H. The above Outstanding dues is without interest.

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14.	Date of petition :	7.1.2014
15.	Prayers	1. To direct the respondents to retrospectively renew the lease agreement dated 25.9.1971 pursuant to the application dated 16.2.2000. 2. To declare that the bills of compensation dated 1.11.2013 raising the demand at such exorbitant rate without any basis is bad and illegal. 3. To quash and set TAMP Order dated 25.3.2011 and the notification containing Scale of Rates dated 11.5.2011. (Amended Prayer) 4. To quash and set aside Land Policy of 2010 to the extent, granting power to respondent to base the Scale of Rates on any criteria specified therein. 5. To order that the determination of market value of the said lands should be done again and should be based on all factors which are available and the rates which may be high/low. 6. To restrain respondents from taking coercive steps. (Page 25)
16.	Relief Granted	Order dated 22.1.2014, the Hon'ble Court granted relief restraining respondents from taking any co-ercive measures against petitioners with regards to the possession of the property.
17.	Status of Public Premises Eviction proceedings	Not initiated.
18.	Specific Facts :	NA
19.	Nature of Preliminary Objections	NA
20.	Issue of	• Renewal subject to conditions

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	Renewal	and terms being fulfilled and upon discretion of lessor. • Para 11 (A) of the prayer clause is with respect to renewal of lease agreement.

SCA No. 2607 of 2012

Sr. No.		Details
1.	Petitioner	Indian Farmers Fertilize Co-operative Ltd. (IFFCO)
2.	Lessee/Allottee Copy of Lease Deed/Allottment Letter and Important terms/clauses	Lease deed executed WRT parcel of land admeasuring 4,13,509 sq.mts issued in favour of IFFCO vide letter dated 4.1.1988 (Page 51) Lease deed executed WRT parcel of land admeasuring 35,961 sq.mts issued in favour of IFFCO vide letter dated 4.1.1988 (Page 68)
3.	Duration of lease/holding	8.3.1978 to 7.3.2008 with respect to land admeasuring 4,13,509 for a period of 30 years. 19.4.1978 to 18.4.2008 with respect to land admeasuring 35,961 sq.mts. for a period of 30 years.
4.	Status of lessee/ allottee	Unauthorized occupant since 8.3.2008 and 19.4.2008.
5.	Name of original lessee/allot tee	Indian Farmers Fertilize Co-operative Ltd.
6.	Nature of change/trans fer	NA
7.	Date of Application for transfer made to KPT.	NA
8.	Response by KPT to application for transfer.	N.A.

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9.	Original lease rent rate	0.45 Paisa per sq.mt with respect to land admeasuring 4,13,509 sq.mts and 35,961 sq.mts.
10.	Revised lease rent rate under TAMP Order 2011	1994-1999 = Rs. 11/- per sm/annum 1999-2004 = Rs. 41.4/- per s.m/ annum 5% escalation 2004-2009 = Rs. 53.4/- per s.m/ annum 2% escalation 2009-2011= Rs. 110.4/-per s.m/ annum 2% escalation
11.	Revised lease rent under 2014 TAMP Order	2014: Rs. 236.52 * Rate escalation @ 2% every year from 2014.
12.	Whether any change in category?	Category A in 2011 Category A in 2014.
13.	Breakup of amount due: (As per KPT's Claim)	1994-1999 = Rs. 0.00/- 1999-2004 = Rs. 0.00/- 2004-2009 = Rs. 1,34,45,606/- 2009-2011 = Rs. 1,94,48,567/- 2011-2013 = Rs. 2,02,35,139/- 2014- 2018 = Rs. 7,10,23,622/- • Diff. bill for the period from 1994 to 2008 not issued to the party due to court case pending in the High Court of Gujarat.
14.	Date of petition :	16.2.2012
15.	Prayers	C. To direct respondent no.1 to dispose off the application for renewal of lands and fixing rate commensurate and appropriate to the nature of industry of the petitioner. D. To set aside the bills of compensation issued by KPT. E. To direct respondent no.2 to exercise powers under the Act and conditionality clause available in order of TAMP dated 28.8.2003 and renew the lease at the rates commensurate and appropriate to the nature of industry of

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		the petitioner. E/1 To quash and set aside orders dated 25.3.2011 and 13.11.2014, and Notifications dated 11.5.2011 and 4.12.2014 issued by TAMP F. To Direct respondent no.2 to correctly apply category B2 to the petitioner and charge rate accordingly and recover upfront premium based on such rate for the entire period of the agreement instead of applying changes of slab. G. To direct respondent no.2 to apply the rate prevalent on the date of renewal for calculation of the upfront premium instead of as prevalent upon receipt of approval. (Page 45-46)
16.	Relief Granted	Vide order dated 22.3.2013, the interim relief was granted in terms of staying the operation of bills of compensation on a condition that petitioner shall pay and continue to pay at least on the basis of the rates fixed in respect of the category B.
17.	Status of Public Premises Eviction proceedings	Not started due to court case.
18.	Specific Facts :	• GOI has returned the recommendation of renewal of lease by DPT stating interalia, if it not possible of charge the lease rent at the commercial rates, take the possession of the land from IFFCO (Page 358) • Vide letter of 5.4.2002 by KPT, it was informed to IFFCO that, the recommendation of renewal of lease at Rs. 16 was provisional and subject to revision of rate approved by TAMP for which undertakin

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		was given by IFFCO.
19.	Nature of Preliminary Objections	NA
20.	Issue of Renewal	• Renewal subject to conditions and terms being fulfilled and upon discretion of lessor. • Para 16 (C) of the prayer clause is with respect to renewal of lease agreement.

SCA No. 5218 of 2014

Sr. No.		Details
1.	Petitioner	PSL Limited.
2.	Lessee/Allottee Copy of Lease Deed/Allottment Letter and Important terms/clauses	Leave and License agreement on temporary basis WRT parcel of land admeasuring 50,000 sq.mts issued in favour of Punj Sons Pvt. Ltd. (PSL) vide letter dated 18.11.2002 (Page 26)
3.	Duration of lease/holding	Initial allotment was from 1.11.2002 to 31.1.2003 i.e. for a period of 3 months which was further extended upto a period of 4 years i.e. upto 31.7.2007
4.	Status of lessee/allottee	Unauthorized occupant since 1.8.2007.
5.	Name of original lessee/allottee	PSL HOLDINGS LTD.
6.	Nature of change/transfer	Not available
7.	Date of Application for transfer made to KPT.	NA
8.	Response by KPT to	N.A.

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	application for transfer.	
9.	Original lease rent rate	Rs. 1.50 per sq.mt. / per month.
10.	Revised lease rent rate under TAMP Order 2011	2002-2004 = Rs. 43.76 Per sq. mtr/per annum 2004-2009 = Rs. 48.60 Per sq. mtr/per annum 2009-2011 = Rs. 100.2 Per sq. mtr/per annum
11.	Revised lease rent under 2014 TAMP Order	2014: Rs. 205.80 per sq. mtr /per annum *Rate escalation @ 2% every year from 2014.*
12.	Whether any change in category?	There is no change in category.
13.	Breakup of amount due : (As per KPT's claim)	2002-2004 = Rs. 31,43,000/- 2004-2009 = Rs. 41,84,007/- 2009-2011= Rs. 2,44,41,287/- 2011-2013 = Rs. 1,94,94,439/- 2014-2018 = Rs. 4,50,39,996/- *Amount payable towards interest for delay payment have not been included.
14.	Date of petition :	7.4.2014.
15.	Prayers	22. To admit and allow the petition. 23. To declare that bills of compensation raised are unreasonable and without any basis. 24. To declare clause 6.2.2.2(e) and clause 6.2.2.3(g) of Land Policy, 2010 being unreasonable and arbitrary. 25. To set aside Land Policy 2010 and 2014. (Page 21-22)
16.	Relief Granted	Vide order dated 22.04.2014, the Hon'ble Court granted relief staying the operation and implementation of Bills of Compensation and further

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		restraining respondents from taking coercive steps.
17.	Status of Public Premises Eviction proceedings	PP Act Case no. 2 of 2013 concluded holding the petitioner to be in unauthorized occupation of the subject premises.
18.	Specific Facts :	Possession handed back to DPT pending the petition.
19.	Nature of Preliminary Objections	N.A.
20.	Issue of Renewal	No clause for renewal in the agreement and no reliefs for renewal sought.

SCA No. 5219 of 2014

Sr. No.		Details
1	Petitioner	PSL Limited.
	Lessee/Allottee Copy of Lease Deed/Allotment Letter and Important terms/clauses	Leave and License agreement on temporary basis WRT parcel of land admeasuring 50,000 sq.mts issued in favour of Punj Sons Pvt. Ltd.(PSL) vide letter dated 27.5.2004 (Page 25)
3	Duration of lease/holding	Initial allotment was from 1.6.2004 to 30.4.2005 i.e. for a period of 11 months which was further extended upto a period of 2 years i.e. upto 31.7.2007
4	Status of lessee/allottee	Unauthorized occupant since 1.8.2008.
5	Name of original lessee/allottee	PSL HOLDINGS LTD.
6	Nature of change/transfer	No details of transfer provided.
7	Date of Application for transfer made to KPT.	NA

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8	Response by KPT to application for transfer.	N.A.
9	Original lease rent rate	Rs. 1.50 per sq.mt.
10	Revised lease rent rate under TAMP Order 2011	2004-2009 = Rs. 48.60 Per sq. mtr/per annum 2009-2011 = Rs. 100.2 Per sq. mtr/per annum
11	Revised lease rent under 2014 TAMP Order	2014: Rs. 205.80 per sq. mtr /per annum *Rate escalation @ 2% every year from 2014.*
12	Whether any change in category?	There is no change in category.
13	Breakup of amount due : (As per KPT's claim)	2002-2004 = Rs. 16,13,000/- 2004-2009 = Rs. 57,14,007/- 2009-2011= Rs. 2,21,90,787/- 2011-2013 = Rs. 1,94,94,439/- 2014-2018 = Rs. 4,50,39,996/- *Amount payable towards interest for delay payment have not been included.
14	Date of petition :	7.4.2014.
15	Prayers	To declare that bills of compensation raised are unreasonable and without any basis. To declare clause 6.2.2.2(e) and clause 6.2.2.3(g) of Land Policy, 2010 being unreasonable and arbitrary. To set aside Land Policy 2010 and 2014. (Page 20-21)
16	Relief Granted	Vide order dated 22.04.2014, the Hon'ble Court granted relief staying the operation and implementation of Bills of Compensation and further restraining respondents from taking co-ercive steps.
17	Status of Public Premises Eviction proceedings	PP Act Case no. 6 of 2013 concluded holding the petitioner to be in unauthorized occupation of the subject premises.

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18	Specific Facts :	Possession handed back to DPT pending the petition.
19	Nature of Preliminary Objections	NA
20	Issue of Renewal	No clause for renewal in the agreement and no reliefs sought.

SCA No. 5222 of 2014

Sr. No.		Details
1	Petitioner	PSL Limited.
	Lessee/Allottee Copy of Lease Deed/Allotment Letter and Important terms/clauses	Letter of Allotment WRT parcel of land admeasuring 39,934 sq.mts issued in favour of Punj Sons Pvt.Ltd.(PSL) on 18.10.1985. (Page 26)
3	Duration of lease/holding	Initial allotment was from 18.10.1985 to 31.10.1988 i.e. for a period of 3 years which was further extended for 5 years. Thereafter given for a period of 11 months - 15.10.1993 to 14.9.1994. Leave and License Agreement further extended till 31.7.2007.
4	Status of lessee/allottee	Unauthorized occupant since 1.8.2007.
5	Name of original lessee/allottee	Punj Sons Pvt. Ltd. (ON LEAVE & LICENSE BASIS)
6	Nature of change/transfer	Not Available
7	Date of Application for transfer made to KPT.	Not Available
8	Response by KPT to application for transfer.	N.A.

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9	Original lease rent rate	Rs. 2.70 per sq.mt. / per month.
10	Revised lease rent rate under TAMP Order 2011	1994-1999 = Rs. 16/- Per sq. mtr/per annum 1999-2004 = Rs. 37.80 Per sq. mtr/per annum 2004-2009 = Rs. 48.60 Per sq. mtr/per annum 2009-2011 = Rs. 100.2 Per sq. mtr/per annum
11	Revised lease rent under 2014 TAMP Order	2014: Rs. 205.80 per sq. mtr /per annum *Rate escalation @ 2% every year from 2014.*
12	Whether any change in category?	There is no change in category.
13	Break up of amount due : (As per KPT's claim)	1999-2004=Rs. 55,75,585/- 2004-2009 = Rs. 10122371/- 2009-2011= Rs. 8124573/- 2011-2013 = Rs. 2,01,85,318/- 2014-2018 = Rs. 3,59,72,529/- *Amount payable towards transfer fees amounting to Rs. & interest for delay payment have not been included.
14	Date of petition :	7.4.2014. (07.04.2013)
15	Prayers	1.To direct the respondents to renew the lease agreement dated 18.10.1985 at the rates prevalent at the relevant time. 2.To declare that bills of compensation raised are unreasonable and without any basis. 3.To declare clause 6.2.2.2(e) and clause 6.2.2.3(g) of Land Policy, 2010 being unreasonable and arbitrary. 4.To set aside Land Policy 2010 and 2014. (Page 21-22)
16	Relief Granted	Vide order dated 22.04.2014, the Hon'ble Court granted relief staying the operation and implementation of Bills of Compensation and further

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		restraining respondents from taking co-ercive steps.
17	Status of Public Premises Eviction proceedings	PP Act Case no. 5 of 2013 concluded holding the petitioner to be in unauthorized occupation of the subject premises along with direction to pay compensation for the period 2007 to 2015 Against the aforesaid, an Appeal was preferred which is pending.
18	Specific Facts :	• Possession handed over to DPT pending the petition. • Order passed u/s 5 and section 7(pg.270 of SCA 5222/14) of PP ACT. • 13.4.2007 undertaking to pay license fees if revised upwardly covering the period of license. Pg. 192
19	Nature of Preliminary Objections	NA
20	Issue of Renewal	Para 11 (B) of the prayer clause is with respect to renewal of lease agreement.

SCA No. 5223 of 2014

Sr. No.		Details
1	Petitioner	PSL Limited.
2	Lessee/Allottee Copy of Lease Deed/Allottment Letter and Important terms/clauses	Leave and License agreement on temporary basis WRT parcel of land admeasuring 51,000 sq.mts issued in favour of PSL PIPE COATERS, vide letter dated 29.05.1992. (Page 26)
3	Duration of lease/holding	Initial allotment was from the date of occupation i.e. for a period of 11 months which was further extended up to a period i.e. up to 31.7.2007

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4	Status of lessee/allottee	Unauthorized occupant since 1.8.2008.
5	Name of original lessee/allottee	PSL PIPE COATERS, (ON LEAVE & LICENSE BASIS)
6	Nature of change/transfer	No details of transfer provided.
7	Date of Application for transfer made to KPT.	NA
8	Response by KPT to application for transfer.	N.A.
9	Original lease rent rate	Rs. 1.50 per sq.mt.
10	Revised lease rent rate under TAMP Order 2011	1994-1999 = Rs. 16/- Per sq. mtr/per annum 1999-2004 = Rs. 37.80 Per sq. mtr/per annum 2004-2009 = Rs. 48.60 Per sq. mtr/per annum 2009-2011 = Rs. 100.2 Per sq. mtr/per annum
11	Revised lease rent under 2014 TAMP Order	2014: Rs. 205.80 per sq. mtr /per annum *Rate escalation @ 2% every year from 2014.*
12	Whether any change in category?	There is no change in category.
13	Breakup of amount due : (As per KPT's claim)	1999-2004 = Rs. 71,20,620/- 2004-2009 = Rs. 2,02,39,300/- 2009-2011= Rs. 39,87,562/- 2011-2013 = Rs. 2,48,55,255/- 2014-2018 = Rs. 4,59,40,796/- *Amount payable towards interest for delay payment have not been included.
14	Date of petition :	07.04.2013.
15	Prayers	1.To admit and allow the petition. 2To direct the respondents to

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		renew the lease agreement dated 18.10.1985 at the rates prevalent at the relevant time. 3To declare that bills of compensation raised are unreasonable and without any basis. 4To declare that bills of compensation raised are unreasonable and without any basis. 5To declare clause 6.2.2.2(e) and clause 6.2.2.3(g) of Land Policy, 2010 being unreasonable and arbitrary. 6To set aside Land Policy 2010 and 2014.
16	Relief Granted	Vide order dated 22.04.2014, the Hon'ble Court granted relief staying the operation and implementation of Bills of Compensation and further restraining respondents from taking co-ercive steps.
17	Status of Public Premises Eviction proceedings	PP Act Case no. 3 of 2013 concluded holding the petitioner to be in unauthorized occupation of the subject premises.
18	Specific Facts :	Possession handed back to DPT pending the petition.
19	Nature of Preliminary Objections	
20	Issue of Renewal	No clause for renewal in the agreement and no reliefs sought.

SCA No. 5224 of 2014

	Sr. No.	Details
1	Petitioner	PSL Limited.
	Lessee/Allottee Copy of Lease Deed/Allottment Letter and Important terms/clauses	Leave and License agreement on temporary basis WRT parcel of land admeasuring 50,000 sq.mts issued in favour of PSL PIPE COATERS PVT. LTD., vide letter dated 08.04.1992. (Page 26)

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3	Duration of lease/holding	Initial allotment was from 09.12.1991 to 08.11.1992 i.e. for a period of 11 months which was further extended up to a period i.e. up to 31.7.2007
4	Status of lessee/allottee	Unauthorized occupant since 1.8.2008.
5	Name of original lessee/allottee	PSL PIPE COATERS PVT. LTD., (ON LEAVE & LICENSE BASIS)
6	Nature of change/transfer	No details of transfer provided.
7	Date of Application for transfer made to KPT.	NA
8	Response by KPT to application for transfer.	N.A.
9	Original lease rent rate	Rs. 0.50 per sq.mt.
10	Revised lease rent rate under TAMP Order 2011	1994-1999 = Rs. 16/- Per sq. mtr/per annum 1999-2004 = Rs. 37.80 Per sq. mtr/per annum 2004-2009 = Rs. 48.60 Per sq. mtr/per annum 2009-2011 = Rs. 100.2 Per sq. mtr/per annum
11	Revised lease rent under 2014 TAMP Order	2014: Rs. 205.80 per sq. mtr /per annum *Rate escalation @ 2% every year from 2014.*
12	Whether any change in category?	There is no change in category.
13	Breakup of amount due : (As per KPT's claim)	1999-2004 = Rs. 69,81,000/- 2004-2009 = Rs. 94,45,537/- 2009-2011= Rs. 1,03,96,917/- 2011-2013 = Rs. 2,82,77,272/- 2014-2018 = Rs. 4,50,39,726/- *Amount payable towards interest for delay payment have not been included.

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14	Date of petition :	07.04.2013.
15	Prayers	1 To admit and allow the petition. 2 To direct the respondents to renew the lease agreement dated 18.10.1985 at the rates prevalent at the relevant time. 3 To declare that bills of compensation raised are unreasonable and without any basis. 4 To declare that bills of compensation raised are unreasonable and without any basis. 5 To declare clause 6.2.2.2(e) and clause 6.2.2.3(g) of Land Policy, 2010 being unreasonable and arbitrary. 6 To set aside Land Policy 2010 and 2014. (Page 20-21)
16	Relief Granted	Vide order dated 22.04.2014, the Hon'ble Court granted relief staying the operation and implementation of Bills of Compensation and further restraining respondents from taking co-ercive steps.
17	Status of Public Premises Eviction proceedings	PP Act Case no. 4 of 2013 concluded holding the petitioner to be in unauthorized occupation of the subject premises.
18	Specific Facts :	Possession handed back to DPT pending the petition.
19	Nature of Preliminary Objections	
20	Issue of Renewal	No clause for renewal in the agreement and no reliefs sought.

SCA No.10983 OF 2015

Sr. No.		Details
1.	Petitioner	PSL Limited.

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2.	Lessee/Allottee Copy of Lease Deed/Allottment Letter and Important terms/clauses	Leave and License agreement on temporary basis WRT parcel of land admeasuring 43695 sq.mts issued in favour of PSL LTD., vide letter dated 26.07.2004
3.	Duration of lease/holding	Initial allotment was from 26.07.2004 for a period of 11 months which was further extended from time to time up to 16.6.2007
4.	Status of lessee/allottee	Unauthorized occupant since 17.06.2007
5.	Name of original lessee/allottee	PSL LTD., (ON LEAVE & LICENSE BASIS)
6.	Nature of change/transfer	No details of transfer provided.
7.	Date of Application for transfer made to KPT.	NA
8.	Response by KPT to application for transfer.	N.A.
9.	Original lease rent rate	Rs. 2 per sq.mt./per month i.e Rs 87,390 per month
10.	Revised lease rent rate under TAMP Order 2011	17.06.2007 to 31.12.2007= Rs.6.63/- Per sq. mtr/per month 1.01.2008 to 31.12.2008 = Rs.6.77 Per sq. mtr/per month 1.01.2009 to 31.12.2009 = Rs.16.50 Per sq. mtr/per month 1.01.2010 to 31.12.2010 = Rs. 16.83 Per sq. mtr/per month. 1.01.2011 to 31.12.2011 = Rs. 17.17 Per sq. mtr/per month 1.01.2012 to 31.12.2012 = Rs. 17.51 Per sq. mtr/per month 1.01.2013 to 12.09.2013 = Rs. 17.86 Per sq. mtr/per month 13.09.2013 to 31.12.2013 = Rs. 53.58 Per sq. mtr/per month 1.01.2014 to 31.12.2014 = Rs. 54.65 Per sq. mtr/per month 1.01.2015 to 3.2.2015 = Rs.

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		55.74 Per sq. mtr/per month
11.	Revised lease rent under 2014 TAMP Order	The rates applicable with effect from 1.01.2014 have been not approved by TAMP hence the difference of rate shall be payable as per revised rate as and when approved by TAMP
12.	Whether any change in category?	NA
13.	Dues under 2014 TAMP Order : Retrospective/Prospective	As per column 11
14.	Date of petition:	03.07.2015
15.	Prayers	A.To admit and allow the petition. B.Unreasonable demand at such exorbitant rates without any basis as being illegal, unreasonable, arbitrary and violative Art 14 and 19(1)(g) of the constitution of India; C.To issue an appropriate writ, order or direction declaring clauses 6.2.2.2(e) and clause 6.2.2.3(g) of the Land Policy 2010 being unreasonable arbitrary and violative of Art.14 and 19(1)(g) of Constitution of India; D.To quash and set aside the Land Poicy 2010 and Land Policy 2014 to the extent it grants an ambiguous and unfettered power to the respondents to base the scale of rates of any of the criteria specified therein as being violative of Art 14 and 19(1)(g) of Constitution of India. E.To stay the operation and implementation of bills

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		of compensation and restrain the respondents from taking any action for recovering of compensation bills in any manner, whatsoever, pending the admission, hearing and final disposal of the present petition. F.To grant such other and further relief and/or order in the interest of justice in favour of the petitioner
16.	Status of Public Premises Eviction proceedings	PP Act Case no. 11 of 2015 concluded against petitioner to pay to the respondent a sum of Rs12,25,88,129.00 on account of Rent/damages/compensation along with interest @ 18% p.a.
17.	Specific Facts:	Possession handed back to DPT pending the petition.
18.	Nature of Preliminary Objections	
19.	Issue of Renewal	No clause for renewal in the agreement and no reliefs sought.

SCA No.10984 OF 2015

Sr. No.		Details
1.	Petitioner	PSL Limited.
2.	Lessee/Allottee Copy of Lease Deed/Allottment Letter and Important terms/clauses	Leave and License agreement on temporary basis WRT parcel of land admeasuring 44587 sq.mts issued in favour of PSL LTD., vide letter dated 26.07.2004
3.	Duration of lease/holding	Initial allotment was from 26.04.2004 for a period of 11 months which was further extended from time to time up to 16.6.2007
4.	Status of lessee/allottee	Unauthorized occupant since 17.06.2007

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5.	Name of original lessee/allottee	PSL LTD., (ON LEAVE & LICENSE BASIS)
6.	Nature of change/transfer	No details of transfer provided.
7.	Date of Application for transfer made to KPT.	NA
8.	Response by KPT to application for transfer.	N.A.
9.	Original lease rent rate	Rs. 2 per sq.mt./per month i.e Rs 89,174.00 per month
10.	Revised lease rent rate under TAMP Order 2011	17.06.2007 to 31.12.2007= Rs.6.63/- Per sq. mtr/per month 1.01.2008 to 31.12.2008 = Rs.6.77 Per sq. mtr/per month 1.01.2009 to 31.12.2009 = Rs.16.50 Per sq. mtr/per month 1.01.2010 to 31.12.2010 = Rs. 16.83 Per sq. mtr/per month. 1.01.2011 to 31.12.2011 = Rs. 17.17 Per sq. mtr/per month 1.01.2012 to 31.12.2012 = Rs. 17.51 Per sq. mtr/per month 1.01.2013 to 12.09.2013 = Rs. 17.86 Per sq. mtr/per month 13.09.2013 to 31.12.2013 = Rs. 53.58 Per sq. mtr/per month 1.01.2014 to 18.11.2014 = Rs. 54.65 Per sq. mtr/per month
11.	Revised lease rent under 2014 TAMP Order	The rates applicable with effect from 1.01.2014 have been not approved by TAMP hence the difference of rate shall be payable as per revised rate as and when approved by TAMP
12.	Whether any change in category?	NA
13.	Dues under 2014 TAMP Order : Retrospective/Prospective	As per column 11
14.	Date of petition:	03.07.2015

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15.	Prayers	A.To admit and allow the petition. B.Unreasonable demand at such exorbitant rates without any basis as being illegal, unreasonable, arbitrary and violative Art 14 and 19(1)(g) of the constitution of India; C.To issue an appropriate writ, order or direction declaring clauses 6.2.2.2(e) and clause 6.2.2.3(g) of the Land Policy 2010 being unreasonable arbitrary and violative of Art.14 and 19(1)(g) of Constitution of India; D.To quash and set aside the Land Poicy 2010 and Land Policy 2014 to the extent it grants an ambiguous and unfettered power to the respondents to base the scale of rates of any of the criteria specified therein as being violative of Art 14 and 19(1)(g) of Constitution of India. E.To stay the operation and implementation of bills of compensation and restrain the respondents from taking any action for recovering of compensation bills in any manner, whatsoever, pending the admission, hearing and final disposal of the present petition. F.To grant such other and further relief and/or order in the interest of justice in favour of the petitioner
16.	Status of Public Premises Eviction proceedings	PP Act Case no. 12 of 2015 concluded against petitioner to pay to the respondent a sum of Rs12,00,51,871.00 on account of Rent/damages/compensation along with interest @ 18% p.a.

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17.	Specific Facts:	Possession handed back to DPT pending the petition.
18.	Nature of Preliminary Objections	
19.	Issue of Renewal	No clause for renewal in the agreement and no reliefs sought.

SCA No. 11497 of 2015

Sr. No.		Details
1.	Petitioner	Kesar Terminals & Infrastructure Ltd. (Formerly known as Kesar Enterprises)
2.	Lessee/Allottee Copy of Lease Deed/Allotment Letter	Lease deed WRT parcel of land admeasuring 6878 sq.mts issued in favour of Kesar Enterprises Ltd. on 03.07.1978 (which was registered on 26.8.1986) (Page 61)
3.	Duration of lease/holding	3.7.1978 to 2.7.2008 i.e. for a period of 30 years.
4.	Status of lessee/allottee	Unauthorized occupant since 3.7.2008
5.	Name of original lessee/allottee	Kesar Enterprises Ltd.
6.	Nature of change/transfer	Scheme for arrangement under Section 391 to 394 of the Companies Act for demerger approved vide order dated 12.3.2010 passed by the Bombay High Court. (separately provided)
7.	Date of Application for transfer made to KPT.	No application was made.
8.	Response by KPT to application	N.A.

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	for transfer.	
9.	Original lease rent rate	Rs. 2.88 per sq. mt.
10.	Revised lease rent rate under 2011 Tamp Order :	1994-1999 = Rs.30/- per sm/annum 1999-2004 = Rs. 67.8/- per s.m/ annum 5% escalation 2004-2009 = Rs. 87.6/- per s.m/ annum 2% escalation 2009-2011=Rs. 180.60/-per s.m/ annum 2% escalation
11.	Revised lease rent under 2014 TAMP Order	2014: Rs. 905.17 * Rate escalation @ 2% every year from 2014.
12.	Whether any change in category?	E as per order of 2011 G1 as per order of 2014.
13.	Dues under 2014 TAMP Order : Retrospective/Prospective	Jan, 2014 – Nov, 2014= Rs. 1,86,77,278/-- Nov, 2014 – Dec, 2018: = Rs. 9,24,76,367/-
14.	Breakup of amount due : (As per KPT's claim)	1994-1999 = Rs. 9,22,341/- 1999-2004 = Rs. 22,79,644/- 2004-2009 = Rs. 22,45,598/- 2009-2011 = Rs. 69,73,952/- 2011-2013 = Rs. 98,88,431/- 2014- 2018 = Rs. 11,11,53,645/- * transfer fees & interest for delay payment not included in the dues. * 3 times TAMP approved charged from 03/07/2008
15.	Date of petition:	6.7.2015
16.	Prayers	1. To quash and set aside the bills of compensation. 2. To direct respondent authorities to renew lease agreement dated 3.7.1978 at the rates prevalent at prevalent time. 3. Quash and set aside the order dated 13.11.2014 passed by the

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	TAMP 4. To declare that the subject land leased to petitioner is covered under Category E instead of G1 and hence rental be charged accordingly. 5. To direct respondents not to take coercive steps. 6. To quash and set aside Land Policy of 2010 and 2014.
17. Relief Granted	No interim relief
18. Status of Public Premises Eviction proceedings	Proceedings initiated and pending before the Estate Officer.
19. Specific Facts :	• The transfer effected by the lessee unto the petitioning company after the term of lease was over. • The petitioning company was not the lessee and is the transferee after the period of lease was over therefore derives no right in the demised land. Therefore cannot be treated as lessee for the purpose of the renewal of lease.
20. Nature of Preliminary Objections	I. Petitioner being a transferee after the period of lease is over, therefore derives no interest in the property therefore, has no locus to maintain the petition for such reliefs.
21. Issue of Renewal	J. Renewal was subject to conditions and terms being fulfilled and upon discretion of lessor. K. Prayer (B) is with respect to renewal of lease agreement.

SCA No. 10730 of 2016

Sr. No.	Details
1. Petitioner	Kesar Terminals & Infrastructure Ltd.
2. Lessee/Allottee Copy of Lease Deed/ Allottment Letter	Letter of Allotment WRT parcel of land admeasuring 2524.530 sq.mts on temporary Leave and License Basis issued in favour of Kesar Enterprises Ltd. on 19.09.2005 (Page 31-32)

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3.	Duration of lease/holding	11 months from 1.10.2005 to 31.8.2006 Lastly extended for 11 months from 1.8.2007 to 30.6.2008.
4.	Status of lessee/allottee	Unauthorized occupant since 30.6.2008
5.	Name of original lessee/allottee	Kesar Enterprises Ltd.
6.	Nature of change/transfer	Vide scheme for arrangement under Section 391 to 394 of the Companies Act, for demerger of Distiller's Trading Corporation Division of Kesar Enterprises Ltd. into Kesar Terminals Infrastructure Ltd. as a going concern came to be approved vide order dated 12.3.2010 passed by the Bombay High Court.
7.	Date of Application for transfer made to KPT.	NA
8.	Response by KPT to application for transfer.	1 Letter dated 14.3.2012 by which payments from the petitioning company were refused as it was not the allottee. * Vide letter dated 23.3.2012 petitioning company had provided details of the order of amalgamation of companies vide a communication of 11.7.2010.
9.	Original lease rent rate	Rs. 2.50 per sq.mt.
10.	Revised lease rent rate under Tamp Order 2011	2004-2009 = Rs. 87.6/- per s.m/ annum 2% escalation 2009-2011= Rs. 180.60/-per s.m/ annum 2% escalation
11.	Revised lease rent under 2014 TAMP Order	2014: Rs. 350.16/- * Rate escalation @ 2% every year from 2014.
12.	Whether any	There is no change in the category.

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change in category?	
13. Breakup of amount due : (As per KPT's claim)	2014- 2018 = Rs.1,29,20,418 /-
14. Date of petition :	30.6.2016
15. Prayers	1. To quash and set aside impugned notices dated 3.6.2016 and 3/8.12.2014 issued by respondent no.2 and 3. 2. To direct the respondents to renew the Leave and License Agreement in respect of subject plot admeasuring 2534.530 sq.mts. at the rates prevalent at the relevant time. 3. To hold and declare the Bills of Compensation raising unreasonable demand at exorbitant rates bad and illegal. 4. To direct respondent authorities not to take any co-ercive steps and to stay the impugned notices dated 3.6.2016 and 3/8.12.2014. 5. To stay the operation and execution of compensation bills raised by respondents in respect of subject plot.
16. Relief Granted	Petitioner was granted liberty to seek adjournment in the proceedings before Estate Officer.
17. Status of Public Premises Eviction proceedings	Case No. 1072/25/2016 is pending before Estate Officer.
18. Specific Facts :	• The term of live and license has lapsed in the year 2008, the deeds were without a right of renewal. • Transfer is made after the term of license therefore no interest is created wrt to the lands in question. • No right or interest is created in the premises on the basis of the live and license agreement.

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19. Nature of Preliminary Objections	• As the transfer is after the lapse of term of live and license, no interest is transferred unto the transferee company. • No right or interest is created in the premises on the basis of the live and license agreement.
20. Issue of Renewal	Live and license agreements are without a right for renewal Prayer (C) is with respect to seeking renewal of Leave and License Agreement.

SCA No. 10891 of 2016

Sr. No.		Details
1	Petitioner	Kesar Terminals & Infrastructure Ltd.
2	Lessee/Allottee Copy of Lease Deed/ Allottment Letter and Important terms/ clauses	Letter of Allotment WRT parcel of land admeasuring 542 sq.mts on temporary Leave and License Basis issued in favour of Kesar Enterprises Ltd. on 16.1.1996. (Page 32-33)
3	Duration of lease/holding	11 months from date of taking possession i.e. from 30.1.1996 to 29.11.1996. Lastly extended for another 11 months upon request made by Kesar Enterprises Ltd. from 1.12.2007 to 31.10.2008
4	Status of lessee/allottee	Unauthorized occupant since 31.10.2008
5	Name of original lessee/allottee	Kesar Enterprises Ltd.
6	Nature of change/transfer	Vide scheme for arrangement under Section 391 to 394 of the Companies Act, for demerger of Distiller's

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		Trading Corporation Division of Kesar Enterprises Ltd. into Kesar Terminals Infrastructure Ltd. as a going concern came to be approved vide order dated 12.3.2010 passed by the Bombay High Court.
7	Date of Application for transfer made to KPT.	23.3.2012
8	Response by KPT to application for transfer.	Letter dated 14.3.2012 by which payments from the petitioning company were refused as it was not the allottee. (Page 66) * Vide letter dated 23.3.2012 petitioning company had provided details of the order of amalgamation of companies vide a communication of 11.7.2010. (Page 68)
9	Original lease rent rate	Rs. 2.50 per sq.mt.
10	Revised lease rent rate under TAMP Order 2011 :	1996-1999 = Rs.30/- per sm/annum 1999-2004 = Rs. 67.8/- per s.m/ annum 5% escalation 2004-2009 = Rs. 87.6/- per s.m/ annum 2% escalation 2009-2011= Rs. 180.60/-per s.m/ annum 2% escalation
11	Revised lease rent under 2014 TAMP Order	2014: Rs. 350.16/- * Rate escalation @ 2% every year from 2014.
12	Whether any change in category?	There is no change in the category.
13	Breakup of amount due : (As per KPT's claim)	2014- 2018 = Rs. 27,60,673/-
14	Date of petition :	30.6.2016
15	Prayers	1. To quash and set aside

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		impugned notices dated 3.6.2016 and 3/8.12.2014 issued by respondent no.2 and 3. 2. To direct the respondents to renew the Leave and License Agreement in respect of subject plot admeasuring 542 sq.mts. at the rates prevalent at the relevant time. 3. To hold and declare the Bills of Compensation raising unreasonable demand at exorbitant rates bad and illegal. 4. To direct respondent authorities not to take any co-ercive steps and to stay the impugned notices dated 3.6.2016 and 3/8.12.2014. 5. To stay the operation and execution of compensation bills raised by respondents in respect of subject plot.
16	Relief Granted	Petitioner was granted liberty to seek adjournment in the proceedings before Estate Officer.
17	Status of Public Premises Eviction proceedings	Case No. 1072/24/2016 is pending.
18	Specific Facts :	• The term of live and license has lapsed in the year 2008, the deeds were without a right of renewal. • Transfer is made after the term of license therefore no interest is created wrt to the lands in question. • No right or interest is created in the premises on the basis of the live and license agreement.
19	Nature of Preliminary Objections	• As the transfer is after the lapse of term of live and license, no interest is transferred unto the transferee company.

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		• No right or interest is created in the premises on the basis of the live and license agreement.
20	Issue of Renewal	Live and license agreements are without a right for renewal Prayer (C) is with respect to seeking renewal of Leave and License Agreement.

SCA No. 10892 of 2016

Sr. No.	Details
1. Petitioner	Kesar Terminals & Infrastructure Ltd.
2. Lessee/Allottee Copy of Lease Deed/Allottmet Letter	Letter of Allotment Wrt parcel of land admeasuring 3617.50 sq.mts on temporary Leave and License Basis issued in favour of Kesar Enterprises Ltd. on 21/22.11.2007. (Page 31-33)
3. Duration of lease/holding	11 months from date of taking over of possession. Lastly extended for 11 months from 1.12.2007 to 31.10.2008
4. Status of lessee/allottee	Unauthorized occupant since 31.10.2008
5. Name of original lessee/allottee	Kesar Enterprises Ltd.
6. Nature of change/ transfer	Vide scheme for arrangement under Section 391 to 394 of the Companies Act, for demerger of Distiller's Trading Corporation Division of Kesar Enterprises Ltd. into Kesar Terminals Infrastructure Ltd. as a going concern came to be approved vide order dated 12.3.2010 passed by the Bombay High Court.
7. Date of Application for transfer made to KPT.	NA
8. Response by KPT to application for transfer.	Letter dated 14.3.2012 by which payments from the petitioning company were refused as it was not the allottee. (Page 58)

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	* Vide letter dated 23.3.2012 petitioning company had provided details of the order of amalgamation of companies vide a communication of 11.7.2010. (Page 60)
9. Original lease rent rate	Rs. 1.50 per sq.mt.
10. Revised lease rent rate under TAMP Order 2011	2008-2009 = Rs. 42.21/- per s.m/ annum 2% escalation 2009-2011= Rs. 80.40/-per s.m/ annum 2% escalation
11. Revised lease rent under 2014 TAMP Order	2014: Rs. 108/- * Rate escalation @ 2% every year from 2014.
12. Whether any change in category?	There is no change in category.
13. Dues under 2014 TAMP Order : Retrospective/Prospective	Jan, 2014 – Nov, 2014: = Rs. 79,168/- Nov, 2014 – Dec, 2018: = Rs. 62,76,960/-
14. Breakup of amount due :	2014- 2018 = Rs. 63,56,128/-
15. Date of petition :	30.6.2016
16. Prayers	1. To quash and set aside impugned notices dated 3.6.2016 and 3/8.12.2014 issued by respondent no.2 and 3. 2. To direct the respondents to renew the Leave and License Agreement in respect of subject plot admeasuring 3617.50 sq.mts. at the rates prevalent at the relevant time. 3. To hold and declare the Bills of Compensation raising unreasonable demand at exorbitant rates bad and illegal. 4. To direct respondent authorities not to take any co-ercive steps and to stay the impugned notices dated 3.6.2016 and 3/8.12.2014 5. To stay the operation and

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	execution of compensation bills raised by respondents in respect of subject plot.
17. Relief Granted	Petitioner was granted liberty to seek adjournment in the proceedings before Estate Officer.
18. Status of Public Premises Eviction proceedings	Case NO. 1072/26/2016 is pending.
19. Specific Facts :	• The term of live and license has lapsed in the year 2008, the deeds were without a right of renewal. • Transfer is made after the term of license therefore no interest is created wrt to the lands in question. • No right or interest is created in the premises on the basis of the live and license agreement.
20. Nature of Preliminary Objections	• As the transfer is after the lapse of term of live and license, no interest is transferred unto the transferee company. • No right or interest is created in the premises on the basis of the live and license agreement.
21. Issue of Renewal	Live and license agreements are without a right for renewal Prayer (C) is with respect to seeking renewal of Leave and License Agreement.

SCA No. 10306 of 2015

Sr. No.		Details
1	Petitioner	M/s. Tanker Owner's & Operator's Associations.
2	Lessee/Allottee Copy of Lease	Letter of Allotment WRT parcel of land admeasuring 11,983 sq.mts issued in favour of M/s.

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	Deed/Allottment Letter and Important terms/clauses	Tanker Owner's & Operator's Associations dated 24.9.1982. No lease deed executed. (Page 51A)
3	Duration of lease/holding	24.1.1983 to 23.1.2013 for a period of 30 years.
4	Status of lessee/allottee	Unauthorized occupant since 24.1.2013
5	Name of original lessee/allottee	NA
6	Nature of change/transfer	NA
7	Date of Application for transfer made to KPT.	NA
8	Response by KPT to application for transfer.	N.A.
9	Original lease rent rate	Rs. 2.70 per sq.mt./per annum
10	Revised lease rent rate under 2011 Tamp Order:	1994-1999 = Rs. 16/- per sm/annum 1999-2004 = Rs. 36/- per s.m/ annum 5% escalation 2004-2009=Rs. 46.2/- per s.m/ annum 2% escalation 2009-2011=Rs. 94.80/-per s.m/ annum 2% escalation
11	Revised lease rent rate under 2014 TAMP Order	2014: Rs. 403.2 * Rate escalation @ 2% every year from 2014.

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12	Whether there is change in category?	F2 as per order of 2011 F2 as per order of 2014
13	Dues under 2014 TAMP Order: Retrospective/Prospective	Jan, 2014 – Nov, 2014: = Rs. 23,75,123/- Nov, 2014 – Dec, 2018: = Rs. 2,23,23,242/-
14	Breakup of amount due from allottee: (As per KPT's claim)	1994-1999 = Rs. 7,35,875/- 1999-2004 = Rs. 24,84,195/- 2004-2009 = Rs. 19,38,849/- 2009-2011 = Rs. 21,00,619/- 2011-2013 = Rs. 21,93,248/- 2014- 2018 = Rs. 2,46,98,365/- *interest for delay payment not included in the dues.
15	Date of petition:	23.6.2015
16	Prayers	1. To direct the respondent to forthwith renew the lease of land admeasuring 11,983 sq.mts in pursuance to the application dated 9.5.2011 at the rate prevalent at the relevant time. 2. To set aside the notice dated 18.5.2015 and 26.5.2015 issued by respondent no.2 3. To declare that the bills of compensation, raising unreasonable demand at such exorbitant rates are without any basis. 4. To declare differential bills raising unreasonable demand at such exorbitant rates are without any basis. 5. To direct respondent no.2 to refund the amount paid by the petitioner towards compensation bill. 6. To declare that the subject

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		land leased to the petitioner is covered under category D 1 and respondents be directed to charge lease rental accordingly. 7. To set aside Land Policy 2014, to the extent that it grants an ambiguous and unfettered power to the respondents to base the scale of rates on any of the criteria specified therein.
17	Relief Granted	Vide order 2.7.2015, it was directed that the respondent shall not disturb the possession of the petitioner of the plot in question on a condition that the petitioner shall pay 50% of the amount demanded under notice dated 18.5.2015.
18	Status of Public Premises Eviction proceedings	No proceedings initiated.
19	Specific Facts:	L. In absence of execution of deed of lease, no rights are vested into the petitioner, much less a right of renewal of lease. M. Second Appeal pending before High Court of Guj. Wherein interim relief is granted against payment of revised rates (pg. 61)
20	Nature of preliminary objections	In absence of execution of deed of lease, no rights are vested into the petitioner, much less a right of renewal of lease. In absence of a legal right the writ is not maintainable.
21	Issue of Renewal	22. No clause of renewal of lease, more as the deed of lease has not been executed. 23. Para 10 (A) of the prayer clause is with respect to renewal of lease agreement.

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SCA No. 2905 of 2015

Sr. No.		Details
1.	Petitioner	Avean International Pvt Ltd.
2.	Lessee/Allottee Copy of Lease Deed/Allottment Letter and Important terms/clauses	Lease deed executed WRT parcel of land admeasuring 4,646 sq.mts issued in favour of partners of Talakshi Lalji & Company on 16.9.1988. (Page 60A) Supplementary agreement dated 10.12.1999 with Avean International. (Page 80)
3.	Duration of lease/holding	24.6.1978 to 23.6.2008 with respect to land admeasuring 4,646 for a period of 30 years.
4.	Status of lessee/allottee	Unauthorized occupant since 24.6.2008.
5.	Name of original lessee/allottee	Talakshi Lalji & Company
6.	Nature of change/transfer	The original lessee i.e. Talakshi Lalji and Company had executed sale cum transfer deed on 24.4.1997 in favour of M/s. Avean International Pvt. Ltd. for a period of 30 years commencing from 24.6.1978. (Page 75A)
7.	Date of Application for transfer made to KPT.	No details on record
8.	Response by KPT to application for transfer.	No details on record.
9.	Original lease rent rate	Rs. 1.80 per sq.mt./per annum
10.	Revised lease rent rate under :	1994-1999 = Rs. 16/- per sm/annum 1999-2004 = Rs. 41.4/- per s.m/ annum 5% escalation 2004-2009 = Rs. 53.4/- per s.m/ annum 2% escalation

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		2009-2011= Rs. 110.40/-per s.m/ annum 2% escalation
11.	Revised lease rent under 2014 TAMP Order	2014: Rs. 905.17 * Rate escalation @ 2% every year from 2014.
12.	Whether any change in category?	A as per order of 2011 G1 as per order of 2014
13.	Dues under 2014 TAMP Order : Retrospective/Prospective	Jan, 2014 – Nov, 2014: = Rs. 0.00 Nov, 2014 – Dec, 2018: = Rs. 0.00/-
14.	Breakup of amount due : (As per KPT's claim)	1994-1999 = Rs. 3,18,761/- 1999-2004 = Rs. 9,37,332/- 2004-2009 = Rs. 9,22,233/- 2009-2011 = Rs. 0.00/- 2011-2013 = Rs. 0.00/- 2014- 2018 = Rs. 0.00/-
15.	Date of petition :	11.2.2015
16.	Prayers	A. To direct respondents to forthwith renew the lease agreement dated 16.9.1988 for land admeasuring 4,646 sq.mts at the rates prevalent at the relevant time. B. To set aside notice dated 12.1.2015 issued by respondent no.2. C. To declare the bills of compensation raising unreasonable demand at such exorbitant rates without any basis. D. To declare the differential bills being raising unreasonable demand at such exorbitant rates without any basis. E. To declare that land admeasuring 4,646 sq.mts. is leased to the petitioner and is covered under category D 2 and the respondents be directed to charge lease rental accordingly and also refund the amount which has been charged.

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		F. To set aside Land Policy 2010 and 2014.
17.	Relief Granted	Order dated 26.2.2015 the respondent was directed not to take any coercive action.
18.	Status of Public Premises Eviction proceedings	Not started due to proceedings pending since 2015 before the High court of Gujarat.
19.	Specific Facts :	2. Undertaking given on 22.10.2007 to pay revised ground rent and upfront fees along with escalation every year as may be fixed by the competent authority within 30 days of renewal. (pg.128 and pg 135). 3. DPT has taken a uniform policy stand to resort to public auction for allotment of property.
20.	Nature of Preliminary Objections	NA
21.	Issue of Renewal	No renewal clause in the lease deed. Para 9 (A) of the prayer clause is with respect to renewal of lease agreement.

PRELIMINARY OBJECTIONS:-

7. Learned Sr. Advocate Mr.Mihir Joshi for the respondent KPT, at the outset, had challenged the very *locus standi* of some of the petitioners i.e. M/s.IMC Ltd., M/s. JRE Tank Terminals Private Limited, M/s. Kesar Terminals & Infrastructure Ltd., M/s.Mother Dairy Fruit & Vegetable Pvt. Ltd., and M/s.INEOS Styrolution

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India Ltd.

7.1 According to Mr.Joshi, in case of the petitioner M/s.IMC Limited, the transfer was made in breach of conditions of allotment letter/lease deed executed in favour of the original allottee USTTL. Such transfer being void, no legal right had ensued on the transferee Company i.e. M/s. IMC Limited. Similarly, in case of M/s.JRE Tank Terminals a partnership firm to whom plot was allotted was sought to be converted into a Limited Company without the permission of the KPT. In case of M/s.Kesar Terminals and Infrastructure Ltd., transfer was made after the expiry of the period of lease, and therefore, such petitioner had no *locus standi* to maintain the petition. In case of M/s.Mother Dairy Fruits & Vegetable Pvt. Ltd., also the transfer was in breach of conditions of lease and without prior permission of KPT, and therefore, the transfer was void. No interest could be said to have been transferred to enforce the terms of lease. In case of M/s.INEOS Styrolution India Ltd., the change in

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the name of the Company was consequence to the change in the shareholdings of the Company under the share purchase agreement and was a facade to cover the transfer in contravention of the conditions of deed. The transferee Company M/s.INEOS Styrolution India Limited is not the lessee under the lease deed, and therefore, not entitled to the enforcement of rights on the basis of lease created in favour of the original allottee.

7.2 The basic postulate of the argument of Mr.Joshi is that the petitioners in the afore-stated petitions are the transferees and in unauthorised occupation of their respective plots in question, and therefore, they have no *locus standi* to file and maintain the petitions claiming relief against the KPT. Elaborating his submissions, Mr.Joshi submitted that there are three categories of the petitioners, who are the transferees and occupying the plots in question unauthorizedly. Firstly, the petitioners, who claim their rights under a valid subsisting lease with original allottees,

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but have no *locus standi* as the transfer itself was impermissible without prior permission of the Port Trust. They are unauthorised occupants liable for penal rates of lease rent for the period of their occupation and also liable for eviction. In this regard he has relied upon the decision of the Supreme Court in case of **State of Rajasthan and Ors. Vs. Gotan Lime Stone Khanij Udyog Pvt. Ltd. and Anr., reported in (2016) 4 SCC 469**. According to him such unauthorised occupants cannot challenge the revision of Scales of Rates (SoR) and/or the legality or validity of the land policy or seek any relief in respect thereof. The second category of petitioners are those who claim to be the transferees of lease hold rights, but the period of lease had expired before the transfer, and therefore, they also cannot maintain the petition, since the transfer of a non-existing right is void as held by the Supreme Court in case of **Delhi Development Authority Vs. Anant Raj Agencies Pvt. Ltd., reported in (2016) 11 SCC 406**. According to him, the third category of petitioners are those who are transferees

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from the original allottees, who were holding the land under the letter of allotment. Such petitioners also would not have *locus standi* to maintain the petition, as the rights under letter of allotment could not have been transferred without the execution of the lease deed as specifically stipulated in the letter of allotment itself. In absence of a lease deed, no relationship of lessor and lessee had come into being at all, and therefore, such entities cannot maintain the petition against the KPT. In this regard, he has relied upon the decision of the Supreme Court in case of **Orissa Industrial Infrastructure Development Corporation Vs. Mesco Kalinga Steel Limited & Ors., reported in (2017) 5 SCC 86**.

7.3 Mr.Joshi further submitted that any transfer itself was impermissible without the prior permission of the KPT and in any case, the petitioners had not paid the prescribed transfer fees. The contention that an agreement under the provisions of the Companies Act does not amount to transfer and that the Port Trust was

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not justified in levying the transfer charges is contrary to the legal position settled by the Supreme Court in various judgements and such contention should not be accepted by the Court. Placing reliance upon various decisions of the Supreme Court in case of **General Radio and Appliances Co. Ltd. & Ors. Vs. M. A. Khader (Dead) by LRs., (1986) 2 SCC 656**, in case of **Singer India Ltd. Vs. Chander Mohan Chadha & Ors., reported (2004) 7 SCC 1**, and in case of **U. P. State Industrial Dev. Corp. Ltd. Vs. Monsanto Manufacturers (P) Ltd. & Anr., reported in AIR 2015 SCW 1205**, he submitted that such transfer is voluntary and the company is not entitled to seek lifting of corporate veil to contend that two entities are one and the same. Placing reliance on the decision of the Delhi High Court, Mr.Joshi submitted that even conversion of partnership firm to a joint stock company under the provisions of Companies Act 1956 amounts to transfer. Since transfer could be affected only with the prior approval of KPT, the contention of the petitioners that the transfer fees ought to be computed as on the

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date of transfer was misconceived. He further submitted that in case where no lease deed was executed, the original allottee was not entitled to transfer its interest at all and such transfer cannot be recognized. Without prejudice to the contention that the transfers were unauthorised, he further submitted that the transferees being unauthorised occupants were liable for the payment of three times the lease rent for the period of their occupation and also for eviction. Mr.Joshi has also urged that some of the petitions are also barred by delay, laches and acquiescence as the orders passed by the TAMP in the year 2011 and 2014 have been sought to be challenged in the year 2017.

8. In response to the said preliminary objections raised by Mr.Joshi, the learned Advocates appearing for the respective petitioners have submitted as under:-

8.1 Learned Sr. Advocate Mr.Soparkar appearing with Mr.Dhaval Shah for the petitioners in Special Civil Application Nos.2535 of 2017, and 2536 of 2017, filed by IMC

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Limited, has vehemently submitted that the original allottee - United Storage Tanks Terminal Limited, was a wholly owned subsidiary of IMC and it was amalgamated into IMC by a scheme of amalgamation which was approved by Calcutta High Court by its order dated 7.7.2010. Consequently all the assets and liabilities of USTTL were transferred to IMC Limited with effect from the date of transfer i.e. 1.4.2009 by virtue of the scheme sanctioned under the Act. Hence, the petitioner IMC is aggrieved by the invoice issued by the KPT in the name of USTTL, as IMC would be liable to pay the alleged outstanding dues of KPT. Mr.Soparkar has placed reliance on the decision of the Supreme Court in case of **Jasbhai Motibhai Desai Vs. Roshan Kumar and Ors., reported in (1976) 1 SCC 671** for the purpose of showing that the petitioner IMC would be the "person aggrieved" within the parameters laid down by the Supreme Court in the said judgement. Even in cases where no lease deed is executed, runs the submission of Mr.Soparkar, the petitioner IMC would still be liable to pay the amount of invoices issued by

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the KPT, by virtue of the amalgamation of USTTL into IMC. Distinguishing the decisions relied upon by Mr. Mihir Joshi for the KPT, Mr.Soparkar has submitted that on an amalgamation, the properties of the erstwhile company would vest in the resultant company. If the KPT had taken any action against IMC for its alleged unauthorized occupancy over the land in question, such action would have been defended by IMC only, however, the KPT had merely ignored the transfer. He further submitted that, in any case, the issue of eviction of IMC on the ground of non-payment of the rent for an illegal occupation of the land in question, is not the issue to be decided in the present petitions. In any event, though the KPT was duly informed about the transfer in the year 2010, the KPT had not taken any action or filed any proceedings against the IMC. The KPT has not taken any decision as to whether the land should be re-auctioned or not in view of the Clause 16(3)(i) of the land policy guidelines for Major Ports issued in 2014.

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8.2 In case of the petitioner JRE Tank Terminals Pvt. Ltd (SCA No.2537 of 2017) Mr.Soparkar submitted that the JRE Tank was incorporated on November 16, 2004 under Part-IX of the Companies Act and was earlier known as M/s.JR Enterprises, a partnership firm, which was registered as a company after complying with all the requirements under Part-IX of the Companies Act. Pressing into service the provisions contained in Section 575 of the Companies Act, he submitted that on the registration of the company under Part-IX of the said Act, the erstwhile partnership firm would step into the shoes of a company and all assets and liabilities of the erstwhile firm would vest in the newly incorporated company. Such vesting being a statutory act, it could not be termed as a transfer. In this regard, he has placed reliance on the decision of the Andhra Pradesh High Court in case of **Vali Pattabhirama Rao & Anr. Vs. Sri Ramanuja Ginning and Rice Factory Pvt. Ltd. & Ors., reported in AIR 1984 AP 176**, which was considered and affirmed by the Supreme Court in **Jai Narain Parasrampuria (Dead) and**

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Ors. Vs. Pushpa Devi Saraf and Ors., reported in (2006) 7 SCC 756.

8.3 So far as Special Civil Application No.13371 of 2013 and Special Civil Application No.8538 of 2016 filed by the Mother Dairy Fruits and Vegetable are concerned, learned Sr. Advocate Mr.Soparkar appearing with Mr.Amar Bhatt for the petitioner submitted that the respondent KPT had originally allotted the land admeasuring 27458 sq. mtrs., to NDDB on 30 years' lease basis in the year 1989, however, the lease deed was executed on 28.6.2001 effective from 29.5.1989. Due to restructuring of NDDB, all the assets related to edible oil including the brand "Dhara" and other related activities such as storage tank farm were transferred to Dhara Vegetable Oil and Foods Company Limited (for short "Dhara") in April 2001 by paying a six-time lease rent and the name of "Dhara" was entered in the records of KPT. He further submitted that in August 2004, "Dhara" got amalgamated with the petitioner through a Court order passed by the High Court

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of Delhi on 13.8.2008. Hence, all the assets of "Dhara" stood vested in the petitioner Company from the date of sanctioning of the Scheme. Thus, "Dhara" is the only existing entity entitled to file the petition.

8.4 Mr.Soparkar further submitted that the petitioner had addressed several letters since 2008 till 2015 informing the respondent KPT about the said amalgamation and requesting to change the name from "Dhara" to that of the petitioner, however, the respondent on 9.11.2015 after filing of SCA No.13371 of 2013 for the first time replied to the petitioner that the application for change is under consideration. Under the circumstance, it does not lie in the mouth of KPT that the petitioner has no *locus* to file the petitions.

8.5 As regards the preliminary objections raised by the respondent KPT in SCA Nos.11497 of 2015, 10730 of 2016, 10891 of 2016 and 10892 of 2016 filed by Kesar Terminals and Infrastructure Limited, the learned Sr. Advocate Mr.B.B. Naik appearing with Mr.Premal Rachh has submitted

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that in the year 1979, Distiller Trading Corporation Ltd., was amalgamated with Kesar Sugar Work Ltd., by virtue of the order passed by the Bombay High Court on 13.6.1979 and thereafter the name of the Company i.e. Kesar Sugar Work Ltd., was changed to Kesar Enterprises Ltd., by certificate of incorporation on change of name dated 29.9.1984. The Kesar Enterprises Limited thereafter got engaged in the business of bulk liquid storage terminals at the Port of Kandla dealing in the storage of petroleum and other chemicals on behalf of the public and private sector units and also of traders. He further submitted that by a scheme of arrangement under Sections 391 to 394 of the Companies Act, 1956 for demerger of the storage undertaking known as “Distillers Trading Corporation (DTC), a division of Kesar Enterprises Ltd. (KEL) as going concern into Kesar Terminals & Infrastructure Ltd (KTIL), the resulting company” came to be proposed before the High Court of Bombay, which scheme was sanctioned by order dated 12.3.2010. The petitioner company

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thereafter vide communication dated 11.7.2010 had intimated the respondent KPT to take note of the order passed by the High Court of Bombay and give effect to the same by recognizing and amending the name of the petitioner company instead of KEL. The respondent KPT in response thereto had asked the petitioner to furnish certain documents vide the letter dated 13.8.2010, which were furnished by the petitioner vide reply dated 29.8.2010. Thereafter the petitioner had sent reminders to the respondent KPT but there was no reply. In the meantime, the petitioner had continued to pay the lease rentals as per the demand notices and compensation bills, however, the respondent KPT had issued receipts in favour of KEL only. Under the circumstance, the question of *locus* at the instance of the respondent was *mala fide* and an after-thought.

8.6 Learned Sr. Advocate Mr.Rajendra Golani for the petitioner INEOS Styrolution India Limited of the SCA No.10611 of 2016 submitted that the possession of Plot No.8 was handed over

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to the petitioner company on 6.1.1990 and at the relevant time the name of the petitioner company was ABS Plastics Limited, which was incorporated on 7.12.1973. Thereafter on 6.8.1992 the name of the company was changed from ABS Plastics Limited to ABS Industries Limited. The Registrar of Companies had issued fresh certificate of incorporation to the petitioner company accordingly. On 15.2.1997 when the name of the petitioner company was ABS Industries Limited, a lease agreement was entered into with the respondent KPT for a period of 30 years starting from 6.1.1990 till 5.1.2020. In the meantime, the name of the company was changed to Bayer ABS Limited on 1.7.1997 and again changed to Lanxess ABS Limited on 29.4.2005 after passing necessary resolution as required under the Companies Act and after obtaining permission from the Central Government. The Registrar of Companies also had issued fresh certificate. Hence, since 2005 the respondent Trust was addressing all communications in the name of Lanxess ABS Limited.

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8.7 Mr.Rajendra Golani also submitted that the name of the petitioner company was changed thrice in the year 2008, 2012 and 2016 after undergoing necessary formalities under the Companies Act and the petitioner company is paying lease rent to the respondent Trust which was being accepted without any demur or objection. According to him, even the amount of Rs.2,50,00,000/- paid by the petitioner under the order of this Court was adjusted against the outstanding amount of Lanxess ABS Limited, which is reflected in the notice dated 3.12.2016. Only the nomenclature of the company was changed, for which the permission of the respondent KPT was not required to be taken. Hence, change of name alone cannot be presumed to be a transfer and the petitioner company cannot be said to be an unauthorised occupant as sought to be submitted by the learned Advocate for the respondent KPT.

FINDINGS ON PRELIMINARY OBJECTIONS:-

9. So far as the preliminary objection raised by the learned Sr. Advocate Mr.Mihir Joshi for the respondent KPT as regards the *locus standi*

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of the petitioners M/s.IMC Limited, M/s.JRE Tank Terminals, M/s.Kesar Terminals, M/s.Mother Dairy and M/s.INEOS Styrolution India Ltd., is concerned, it would be apt to mention that the Supreme Court in case of **Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Ors., (supra)** after elaborately discussing the English decisions on "who could be said to be an aggrieved person to invoke the writ jurisdiction" in the context of Indian decisions, has observed that the scope and meaning of Article 226 depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him. It has been further observed in paragraph 34 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 in the case of some of the writs like habeas corpus or quo warranto this rule is relaxed or modified.

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> In other words, as a general rule, infringement of some legal right or prejudice to some legal interest inhering in the petitioner is necessary to give him a locus standi in the matter."

10. The afore-stated position is also reiterated by the Supreme Court in case of **Ayaaubkhan Noorkhan Pathan Vs. State of Maharashtra and Ors., reported in 2013(4) SCC 465** in which it has been observed in paragraphs 9 and 10 as under:-

> "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

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> relief prayed for must be one to enforce a legal right. In fact, 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.
>
> 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 jeopardized."

11. From the afore-stated legal position, it is clear that there must be a judicially enforceable right available to the petitioner for the enforcement, on the basis of which writ jurisdiction is resorted to. The relief prayed must be one to enforce a legal right. Such legal right must be existing in favour of the petitioner, which has been adversely affected or jeopardized, before invoking the extraordinary writ jurisdiction as an "aggrieved person". Hence, let us examine as to whether the petitioners against whom the preliminary

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objections as regards the *locus standi* have been raised, have any legally enforceable right, which has been adversely affected, so as to bring them within the category of "aggrieved person" entitled to invoke extraordinary writ jurisdiction under Article 226 of the Constitution.

12. The bone of contention raised by Mr.Joshi for the respondent KPT against M/s.IMC Limited, M/s.Kesar Terminals, and M/s.Mother Dairy is that the amalgamation under the Companies Act though with the sanction of the Court, would be a voluntary transfer and the transferee Companies who are the petitioners herein are not entitled to seek lifting the corporate veil to contend that two entities are one and the same. According to him, it being a "transfer" in the eye of law, and not permissible under the letter of allotment or lease deed executed in favour of the original allottee, the said petitioners – the transferees were the illegal and unauthorized occupants of their respective plots in question and they could not be said to have acquired any legal right on the plots in

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question. The Court finds substance in the said submission of Mr.Joshi in view of the observations made by the Supreme Court in case of **Singer India Limited Vs. Chander Mohan Chadha and Ors. (supra)**. In the said case an American Company, who was a lessee, under the direction issued to reduce its share capital to 40% in order to carry on business in India in view of Section 29 of the Foreign Exchange Regulation Act, had filed a company petition under Section 391 and Section 394 of the Companies Act for amalgamation with the Indian Company. The said scheme of amalgamation was sanctioned. In the proceedings filed by the landlord against the amalgamated company on the ground *inter alia* that the American Company without obtaining any written consent from the landlord had parted with the possession of the premises in dispute in favour of the Indian Company, and therefore, the landlord was entitled to recover possession under Section 14(1)(b) of the Delhi Rent Control Act, the Supreme Court after considering the provisions for reconstruction and amalgamation of Companies under Section 394 of the Companies

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Act, held in paragraphs 8 and 11 as under:-

> "8. In Saraswati Industrial Undertaking vs. CIT Haryana AIR 1991 SC 70 (para 6), it has been held that there can be no doubt that when two companies amalgamate and merge into one, the Transferor Company loses its identity as it ceases to have its business. However, their respective rights or liabilities are determined under the scheme of amalgamation, but the corporate identity of the Transferor Company ceases to exist with effect from the date the amalgamation is made effective. Therefore, in view of the settled legal position, the original lessee, namely, the American Company ceased to exist with effect from the Appointed Day i.e. 1.1.1982 and thereafter the Indian Company came in possession and is in occupation of the premises in dispute.
>
> 9 and 10 .....
>
> 11. These cases clearly hold that even if there is an order of a Court sanctioning the scheme of amalgamation under Sections 391 and 394 of the Companies Act whereunder the leases, rights of tenancy or occupancy of the Transferor Company get vested in and become the property of the Transferee Company, it would make no difference in so far as the applicability of Section 14(1)(b) is concerned, as the Act does not make any exception in favour of a lessee who may have adopted such a course of action in order to secure compliance of law."

13. Similar view was also taken by the Supreme Court in case of **M/s.General Radio and Appliances Co. Ltd. and Ors. Vs. M. A. Khader (dead) by LRs. (supra)**, wherein it was urged on behalf of the original tenant that the

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amalgamation of M/s. General Radio and Appliances Company Limited with M/s.National Ekco Radio and Engineering Co. Limited was an involuntary act, which had been brought into being on the basis of the order passed by the High Court under Section 391 and Section 394 of the Companies Act and that both the companies had merely blended with each other and consequently there was no sub-letting by the original lessee company. The Supreme Court negativing the said submission held *inter alia* that the order of amalgamation was made by the High Court on the basis of the petition filed by the transferor company, and therefore, it could not be said that it was an involuntary transfer affected by the order of the Court. It was also held that the transferor company i.e. the original lessee was no longer in existence in the eye of law, and it had effaced itself for all practical purposes. The Court further took the view that under the relevant Act, there was no express provision that in case of any involuntary transfer or transfer of tenancy right by virtue of scheme of amalgamation

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sanctioned by the High Court by its order under Section 391 and Section 394 of the Companies Act, such a transfer will not come into the purview of the relevant provisions of the Rent Act.

14. In view of the above, the submission of the learned Advocates for the concerned petitioners that the petitioner companies being the transferee companies having come into possession of the plots in question by view of an involuntary act i.e. by virtue of the orders of amalgamation passed by the respective High Courts, under Section 391 and Section 394 of the Companies Act, were the legal occupants of their respective plots in question appears to be absolutely fallacious. When the lease deeds/letters of allotment executed in favour of the original allottees, and the land policies prevailing at the relevant time specifically prohibited any kind of transfer, the original allottees could not have transferred any right under the said deeds without the permission of the KPT. As held by the Supreme Court in the afore-stated cases, on the amalgamation by

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virtue of the amalgamation order, the amalgamated company ceases to exist in the eye of law, and it effaces itself for all practical purposes. Such transactions of amalgamation are voluntary transactions and could not be said to be involuntary transactions even though they come in to effect by virtue of orders of the Court.

15. In case of the petitioner M/s.JRE Tank Terminals also, Mr.Soparkar had sought to submit that the earlier partnership firm known as M/s.JR enterprises having been registered as the company under Part-IX of the Companies Act, the erstwhile partnership firm had stepped into the shoes of the company and the assets and liabilities of the erstwhile firm had vested in the newly incorporated company by virtue of Section 575 of the Companies Act. According to him, such vesting being statutory could not be termed as "transfer". In this regard, Mr.Soparkar has relied upon the judgement of the High Court of Andhra Pradesh in case of **Vali Pattabhirama Rao (supra).** In the opinion of the Court, even if it is accepted that the original

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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.

16. Similarly, in case of M/s.INEOS, the change

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in the name of the company from time to time was the consequence to the change of shareholding of the company under the share purchase agreement and was a transfer in contravention of the conditions of lease deed. The transferee company i.e. M/s.INEOS could not be said to be the lessee or in authorized occupation of the plot in question, entitled to enforce any right against the respondent KPT.

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

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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

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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

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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

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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

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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

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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

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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.

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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.

COMMON SUBMISSIONS IN ALL THE PETITIONS:

23. Learned Sr. Advocate Mr.Soparkar having led the group has made following common submissions, which are applicable to the facts of almost all the petitions, and which have also been adopted by all the learned Advocates appearing for the respective petitioners.

(i) There was no delay on the part of the petitioners in challenging the action of the KPT and the Notifications issued by the Temp, on the contrary the demands raised by the KPT were hopelessly time barred. Even otherwise, the provisions of Limitation Act do not apply to the writ proceedings as held by the Supreme Court in case of **Smt. Sudama Devi Vs. Commissioner & Ors., reported in (1983) 2 SCC 1** and in case of **M.R. Gupta Vs. Union of India, reported in (1995) 5 SCC 628**.

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(ii) The respondent Port Trust constituted under the Major Port Trusts Act, 1963 is not a Government in view of the decision of the Supreme Court in case of **Board of Trustees for Visakhapatnam Port Trust Vs. State of Andhra Pradesh, reported in (1999) 6 SCC 78**, and therefore, it cannot seek to issue demand notices relating to the demands earlier than three years. In the instant cases, the KPT has sought to revise the demands going back to more than 15 years.

(iii) There is no basis justifying the KPT's demand seeking levy of lease rents with retrospective effect. None of the lease deeds/letters of allotments permitted recovery of lease rents with retrospective effect. The retrospective levies cannot be made in absence of contractual provisions as held by the Supreme Court in case of **National Sample Survey Organization Vs. Champa Properties, reported in (2009) 14 SCC 451** and in case of **Assistant Excise Commissioner & Ors Vs. ISSAC Peter, reported in (1994) 4 SCC 104**.

(iv) The TAMP also does not have any power

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to increase lease rents retrospectively as held by the Andhra Pradesh High Court in case of **Hindustan Lever Limited & Anr. Vs. Board of Trustees, Vishakhapatnam & Anr., reported in AIR 2003 AP 217**. Reliance is also placed on the decision of the Supreme Court in case of **Lala Ram (dead) through Legal Representatives and Ors. Vs. Union of India & Ors., reported in (2015) 5 SCC 813** to submit that the demand for levy of lease rents with retrospective effect deserves to be set aside.

(v) The KPT had misrepresented the contractual provisions before the TAMP when a pointed query was raised by the TAMP as to whether the lease agreement with the lessees contained a clause allowing for retrospective revisions of the lease rentals and the KPT confirmed that there were provisions for such revisions. According to the petitioners, none of the clauses of lease deeds permitted or supported the retrospective claims of the KPT.

(vi) The KPT cannot be permitted to take advantage of the devastation of Kandla Region due to natural disasters such as super-cyclone

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in 1998 and earthquake in 2001 for revising the lease rents with retrospective effect, when TAMP itself had refused to revise the lease rents for the said period between 1999 to 2004 on the ground that Kandla Region was devastated due to natural disasters.

(vii) The KPT's response to the TAMP's queries were misleading, evasive and inaccurate, and the TAMP also had taken into consideration irrelevant factors in determining the rates, without taking into consideration the specific representations made by the petitioners/association representing Liquid Tank Terminals.

(viii) After the rejection of KPT's proposal for revision of rates by the TAMP during the period of natural disasters, the KPT had consciously chosen not to take any action till 2010, and therefore, lease rentals for the past years would be hit by the law of limitation and the KPT would also be estopped from claiming such amounts.

(ix) The TAMP's order/notification of 2011 was initially valid only till December 2013 and

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thereafter was extended till June 2014 as the proposal for revising the lease rentals was not ready. However, the order passed by the TAMP on 13.11.2014 was sought to be retrospectively applied from January 1, 2014, instead of giving effect from July 1, 2014.

(x) The TAMP had abdicated its function as an adjudicator by accepting all the submissions made by the KPT with respect to retrospectivity in the impugned orders/notifications passed by the TAMP in 2011 and 2014.

(xi) Even the Major Port Trusts Act does not permit the retrospective levy of lease rentals. Relying upon the decision of the Supreme Court in case of **C.W.T. Vs. Shravan Kumar Swarup and Sons, reported in (1994) 6 SCC 623**, it is submitted that substantive law cannot be made applicable with retrospective effect, unless done so by way of statute itself.

(xii) Challenging exorbitant increase of lease rents, it is submitted that in the 2011 order the KPT had sought to justify the increase in lease rents, which were not revised for several years. Even if it is assumed *arguendo*

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that it was sustainable, the said increase was unreasonable, exorbitant and arbitrary. The 2011 order came into effect only from May 20, 2013 and it was revised again under 2014 order. The State instrumentalities cannot arbitrarily and exorbitantly increase the rents as observed by the Bombay High Court in case of **Ratti Palonji Kapadia & Ors. Vs. State of Maharashtra, reported in 1992 SC Online Bombay 197**.

(xiii) The valuation allegedly arrived at by the KPT in 2005 tender to justify the exorbitant increase, should not have been relied upon by the TAMP, as the said tender had failed. The 2010 Land Policy provided that the market value of the land was to be determined on the highest accepted bid of land, and admittedly under the 2011 order, the KPT had based its calculations on the 2005 tender which had failed. Under 2014 order also the KPT had based its calculations on the 2011 tender, which was cancelled. Hence, such incomplete bid for a single parcel of land cannot form the basis of the market value for several plots of land.

(xiv) In the decision of Madras High Court in

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case of **PSA Sical Terminals Ltd. Vs. TAMP & Ors., (Order dated 15.10.2009 in Writ Petition No.1350 of 2009)**, the Madras High Court had set aside the TAMP order on the ground that it was based on irrelevant factors. In the instant cases also the TAMP had failed to take its decision within the parameters prescribed by law.

(xv) Though it is trite that the Court will not substitute its own wisdom for those of specialized experts, at the same time a balance must be struck and the Court must intervene in case of any perversity. According to the petitioners, the valuation report relied upon by the KPT (produced in SCA No.2607 of 2012) was *ex facie* perverse and based on surmises. There was no independent verification carried out to corroborate the information given to the valuers.

(xvi) The TAMP in 2011 order should not have accepted the calculations made by the KPT erroneously relying upon 2005 tender, because the payment model under 2005 tender was changed from 'premium-cum-lease rent' structure followed

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earlier to a 'single *lump sum* consideration' in the form of a higher premium and token Re.1 lease structure.

(xvii) Clause 7 of the General Lease Deed provides that the KPT could revise the ground rent, as fixed under the lease deed, every ten years, however, not exceeding double the original ground rent for the second ten years, and after 20 years, not exceeding thrice the ground rent. The lease rentals sought to be imposed now are in violation of the said clause of the lease deed.

(xviii) The KPT's actions fall foul of the test of reasonableness laid down by the Supreme Court in case of **Dwarkadas Marfatia Vs. Board of Trustees of the Port of Bombay, reported in (1989) 3 SCC 293** and in case of **Jamshed Hormusji Wadia Vs. Board of Trustees, Port of Mumbai, reported in (2004) 3 SCC 214**.

(xix) Though there was clear understanding between the parties, at the time of execution of lease that since the lease fell under the premium-cum-lease model, the lease rentals would undergo a reasonable increase, however, the

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arbitrary and unreasonable increase of lease rentals was never contemplated, totally disregarding the high premium paid by the petitioners. In this regard, reliance is placed on the decision of he Supreme Court in case of **Bhupendra Singh Bhatia Vs. State of Madhya Pradesh & Ors., reported in (2006) 13 SCC 700**.

(xx) As regards the classification/categorization of the land it has been submitted that the lands occupied by the petitioners were originally categorized on the basis of the geographical location of such land, however, the 2014 TAMP order confirmed the arbitrary re-categorization of the lands, more particularly of liquid storage lands into new category i.e. Category G-1 (land situated from Eastern Bank of Kandla Creek to Western Bank of Nakti Creek). Such re-categorization was made only for the purpose of claiming enhanced rents.

(xxi) The re-categorization under the 2014 TAMP order is erroneous as it was done without hearing the concerned petitioners IMC and JRE and the same was also not in accordance with the Land Policy Guidelines. According to the

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petitioners, under the 2014 Land Policy Guidelines, use of the land was not a relevant factor and the only factor which could have been accepted was the highest accepted tender amount. Though the 2010 Policy Guidelines provided for "use of land as valid consideration", there was conscious departure from the earlier guidelines, in the 2014 Policy Guidelines, in which the word "use" was excluded. In this regard, the petitioners have placed reliance on the decision of the Supreme Court in case of **Chandra Kishore Jha Vs. Mahavir Prasad & Ors., reported in 1999(8) SCC 266** and in case of **J. Jayalalitha & Ors. Vs. State of Karnataka & Ors., reported in 2014(2) SCC 401**.

(xxii) Even assuming that the categorization on the basis of use of land was permissible, the KPT was required to categorize all the lands on the basis of the user, however, there was no other category of land made other than Liquid Tank Farm Terminals. The said petitioners, therefore, have been singled out and subjected to exorbitant increase in the rents more particularly on the basis of re-categorization.

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(xxiii) Once the TAMP having come to the conclusion that the guidelines did not permit/provide for re-categorization of the lands on the basis of use, it ought to have rejected KPT's proposal to re-categorize the lands. The re-categorization was not based on any intelligible differentia as the KPT and TAMP both have failed to justify such re-categorization on the basis of use. The submission made on behalf of the KPT that a new entrant would be required to match the rent paid by the petitioners, and therefore, the scale of rent was increased, should not be accepted as the contracts with new entrants would be fresh contracts regulated by the statute and the policy directions issued by the Government from time to time. The petitioners cannot be equated with the fresh lessees during the subsistence of their lease.

(xxiv) The judgements cited by the learned Sr. Advocate Mr.Joshi for the KPT on various issues have been distinguished by the learned Advocates appearing for the petitioners. The same shall be dealt with herein under at appropriate stages.

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PETITION-WISE SUBMISSIONS:

24. The respective learned Advocates appearing for the petitioners, in addition to the afore-stated common submissions, have made submissions individually also, which may be summarized as under:-

(i) Mr.Soparkar submitted that the petitioner M/s.IMC Ltd., in addition to the regular lease rentals prevailing prior to the revision of SOR had made payment of Rs.2,02,94,150/- during the period January 2014 to January 2018 so far as the subject plot of SCA No.2535 of 2017 was concerned and had made payment of Rs.84,80,655/- during January 2014 to January 2018 so far as the subject plot of SCA No.2536 of 2017 was concerned. The petitioner M/s.JRE had made payment of Rs.52,76,389/- for the subject plot of SCA No.2537 of 2017.

(ii) As regards the subject plot in SCA No.2538 of 2017, he submitted that the Clause-8 of the lease deed dated 17.9.1984 executed

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between M/s.IMC Limited and the KPT provided that the renewal shall be granted for a further period of 30 years at the lessee's i.e. petitioner's option. Therefore, the petitioner vide the letter dated 5.5.2008 had applied for the renewal of the lease deed in accordance with the said Clause 8 and the KPT had requested the petitioner to submit an undertaking in the format attached to the letter, which undertaking was provided by the petitioner to the KPT. The KPT thereafter vide the letter dated 8.10.2013 declined to renew the petitioner's lease relying on the Land Policy Guidelines of 2014 on the ground that the land was required for the purpose of its own use. Thereafter vide the letter dated 16.3.2015, the KPT informed the petitioner that the petitioner's request to renew the lease deed would be considered if all the outstanding dues are cleared. Thereafter on 28.8.2018 KPT issued an order/notice under Section 4(1) and (2) of the Public Premises (Eviction of Unauthorized Occupants), Act, 1971, claiming that on the expiry of the lease, it was decided not to renew the lease further as the

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plot was required for the purpose ports' activities. The petitioner, therefore, had filed Civil Application No.1 of 2018 in SCA No.2538 of 2017 and the Court had directed the KPT to maintain status-quo. Such an action on the part of the KPT was arbitrary and in breach of the specific term of the lease deed.

(iii) So far as SCA No.13371 of 2013 and SCA No.8538 of 2016 filed by Mother Dairy Fruits and Vegetables are concerned, it has been submitted by the learned Sr. Advocate Mr.Soparkar that despite several letters written by the petitioner informing the KPT about the amalgamation order passed by the High Court, and requesting it to change the name from 'Dhara' to that of the petitioner, the respondent KPT did not reply, however, during the pendency of the petition, for the first time on 9.11.2015 the KPT informed the petitioner that the application for change of name was not considered. Thereafter on 27th June 2017, the KPT approved the change of name, but demanded transfer fees at six times the rates revised by the TAMP order

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dated 25.3.2011. The transfer fees claimed in the said letter was arbitrary. It has also been contended that the decision to re-categorize the petitioner Mother Dairy from category A to G-1 was also arbitrary and without any authority. No notice prior to change of category was given to the petitioner and no reasons were given as to why the category of the petitioner was changed.

(iv) So far as SCA Nos.673 of 2014 and 2607 of 2012 filed by the Indian Farmers Fertilizers Cooperative Society Ltd. (IFFCO) are concerned, it has been submitted by Mr.Soparkar for M/s.Nanavati Associates that the petitioner company utilizes the land in question for the production of fertilizer, which is supplied at the de-controlled prices to the farmers of about 40000 cooperative societies. The petitioner company, therefore, would fall either under Sub-section (c) of (d) of Section 49(1) of the said Act. The petitioner has also played a major role in pushing the agricultural sector towards the next phase of green revolution. Hence, the petitioner could not be treated at par with the

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organizations, which are for profit making, and the petitioner could not be charged at the commercial rates.

(v) It is further submitted that the petitioner IFFCO had always proposed upfront payment of lease for the entire tenure of 30 years when the old lease was going to an end. The KPT itself vide its letter dated 7.9.2010 had resolved to renew the lease for Phase-II land for a period of 30 years from 9.3.2008 to 7.3.2038 on the payment of upfront premium. Even as per the stand taken by the KPT, the land policy being a legislation has to be given effect to, which policy mandates preference to be given to upfront premium method of collecting rent over the yearly rent collection. Hence, the rate at which such upfront premium would be paid would be the relevant rate at that point of time and the future rates cannot be made retroactively applicable to the petitioner, more particularly when the petitioner had chosen to make upfront payment of premium for the entire lease period.

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(vi) Mr.Soparkar further submitted that the petitioner IFFCO had made timely applications for renewal and the leases were not renewed on the ground that they were under consideration by the Union. Hence, the KPT could not claim right to charge bills of compensation while keeping the renewal applications pending. Under the circumstances, the KPT has no right to raise bills of compensation for alleging unauthorized use and that too, levying rates as per the prevailing scale of rates.

(vii) The petitioner IFFCO's application for renewal made in the year 2008 could not be made subject to the land policy that came into force in 2011 solely for the reason that approval by the Union was not granted. The land policy unjustifiably grants unfettered powers to the respondent authorities for fixation of scale of rates and under such powers the respondent authorities have increased the lease rates dehors Clause 7 of the Lease Agreement. Lastly it is submitted that the petitioner has been wrongly categorized as under Category B-1,

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instead of Category B-2, inasmuch as Category B-1 covers lands having water front, whereas the subject land granted to the petitioner does not have any water front at all.

(viii) So far as Special Civil Application No.11497 of 2015 filed by M/s.Kesar Terminals and Infrastructure Ltd is concerned, it has been submitted by the learned Sr. Advocate Mr.B. B. Naik that the contracts (leases) entered into between the KPT and the petitioner (its predecessor) in respect of the parcels of lands in question are binding to both the parties and the KPT is not entitled to increase the rent amount and demand more than what is provided in the lease agreement. The KPT had entered into separate, independent lease agreements out of which the lease in respect of 6877.97 sq. mtrs. of the land executed on 26.8.1986 for a period of 30 years with effect from 3.7.1978 had expired on 2.7.2008 and the application for its renewal is pending with the KPT. The said lease deed provided that the lease rent fixed at Rs.2.88 per sq. mtrs., could be increased at the

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end of 10 years so as not to exceed double the amount i.e. Rs.5.76 per sq. mtrs., and it can further be increased at the end of 20 years, however, the increase could not exceed three times the rent fixed i.e. Rs.8.64 per sq. mtrs.. Hence, the KPT was not entitled to claim any rent higher than what is stated during the period of lease on its own or on the basis of TAMP order. Since the renewal application is pending, it could not be said that the petitioner is an unauthorized occupant since the 2008.

(ix) Learned Sr. Advocate Mr.Naik further submitted that the TAMP could fix different schedule of rates only prospectively and not retrospectively in view of the Sections 48 and 49 of the said Act, and therefore, the order dated 25.3.2011 of the TAMP to the extent it operates retrospectively is bad. In this regard, he has relied upon the judgements of the Supreme Court in case of **Dr. Indramani Pyarelal Gupta and Ors. Vs. W. R. Natu and Ors., reported in AIR 1963 SC 274**, in case **Bakul Cashew Co. and**

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Ors. Vs. Sales Tax Officer, Quilon and Anr., reported in 1986(2) SCC 365, and in case of **Yakub Abdul Razak Memon Vs. State of Maharashtra thro. STF, CBI Mumbai, reported in (2013) 13 SCC 1**.

(x) Mr.Naik further submitted that Sections 48 and 49 provide as to for which items different rates could be determined by the TAMP and the subject lands are included in Clause (d) of Sub-section(1) of Section 49, for which there is no provision enabling the TAMP to impose different rates on the basis of use of land. Accordingly, the maxim - "e*xpressum facit cessare tacitum*" would apply, which means "when there is express mention of certain things, then anything not mentioned is excluded". He has relied upon the decisions of the Supreme Court in case of **Union of India and Anr. Vs. Tulsiram Patel, reported in (1985) 3 SCC 398**, in case of **Bharat Aluminium Company Vs. Kaiser Aluminium Technical Services Inc., reported in (2012) 9 SCC 552**, and in case of **Competition Commission of India Vs. Steel Authority of India Limited**

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and Anr., reported in (2010) 10 SCC 744 on the cardinal principle of rule of construction of statute. Relying upon the decision of the Supreme Court in case of **State of Orissa and Ors. Vs. Mangalam Timber Products Ltd., reported in (2004) 1 SCC 139** he submitted that the principle of promissory estoppel also would apply in the present cases.

(xi) Learned Sr. Advocate Mr.Shalin Mehta appearing with the learned Advocate Mr.Premal Rachh for the petitioner M/s.Kesar Terminals & Infrastructure Ltd., in Special Civil Application Nos.10730, 10891 and 10892 of 2016 submitted that the petitioner was allotted parcels of lands on leave and licence basis, which having expired, the KPT has issued notices under the Public Premises Act, which are under challenge. Though the petitioner had applied for renewal of the leave and licence agreement, there was no reply to the said letters and on the contrary, the KPT has issued compensatory bills, demanding astronomical amount. The petitioner had also tried to pay some of the

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bills, however, the same was not accepted by the KPT on the ground that the name of the petitioner Company was different. He further submitted that the original allottee having been amalgamated with the petitioner Company by virtue of the order passed by the Bombay High Court, the KPT should have accepted the amount of compensatory bills offered by the petitioner Company. He further submitted that the impugned notices issued under Section 4 of the Public Premises Act do not speak about unauthorized occupation of the petitioner, and that such notices were arbitrary and illegal.

(xii) Learned Sr. Advocate Mr. K. S. Nanavati with learned Advocate Mr.Golani appearing for the petitioner INEOS in SCA No.10611 of 2016 has submitted that the petitioner Company had taken necessary permissions from the statutory authorities before changing its name and the Registrar of Companies after being satisfied had issued fresh certificates of incorporation under the changed name of the petitioner company from time to time as per the provisions contained in

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Section 23 of the Companies Act. The respondent KPT could not levy exceptionally high lease rents and that too, with retrospective effect on the ground that the company is using the land, categorized as land for storage tanks and is generating high income by sub-letting the said land. The land of the petitioner, which is categorized as land of storage tank, is used by the petitioner to store raw-material for its own consumption and use. If the lease rents are permitted to be increased retrospectively, it would cause havoc in the organization of the petitioner as the petitioner would not be able to recover the same from its consumers by giving retrospective effect of increase in the cost of goods. New rates would be applicable to the new leases and not to the existing leases, otherwise it would tantamount to a novation of contract.

(xiii) So far as SCA No.2905 of 2015 filed by M/s.AVEAN International Pvt. Ltd. is concerned, learned Sr. Advocate Mr.Mihir Thakore appearing with Ms.Archana Acharya has submitted that the renewal of lease of plots, whose lease period

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expired prior to commencement of Land Policy of 2010, the Land Policy of 2004 prevailing at the relevant point of time should be made applicable, which provided *inter alia* that the lease in favour of the existing lessee at the terms to be approved by the Board without public auction or tender should be renewed. Merely because the KPT did not exercise its powers under the Land Policy of 2004, the petitioner lessee should not be made to suffer. As per the Land Policy Guidelines, the existing lessee has the first right and only after the existing lessee refused to renew the lease, the KPT could put the land to tender-cum-auction. There has been inordinate delay on the part of the KPT in renewing the lease and now is raising compensation bills by charging illegal and exorbitant rent charges.

(xiv) Mr.Thakore further submitted that the rate of ground rent at the time of expiry of lease in 2008 was Rs.5.40 per sq. mtrs., per annum. After the expiry of the lease agreement the KPT unilaterally fixed the ground rent at

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Rs.119.50 per sq. mtrs., per annum up to 2014, which was absolutely illegal and arbitrary. Though the subject plot allotted to the petitioner AVEAN falls under the Category D-2, the KPT has wrongly classified it under the Category A for the period from 1999 onwards, and under Category G-1 from 2014 onwards.

(xv) So far as SCA No.10306 of 2015 filed by M/s.Tanker Owner and Operations Association is concerned, learned Sr. Advocate Mr.Mihir Thakore appearing with Ms.Archana Acharya submitted that the petitioner had already made application for renewal of lease on 9.5.2011 i.e. one year prior to the expiry of its lease, and thereafter the petitioner had also sent reminder for renewal of lease on 20.11.2012, however, the respondent KPT had informed the petitioner vide the letter dated 15.12.2012 that the petitioner had not made application for renewal of lease one year before the date of expiry of lease. The respondent KPT has not renewed the lease without any justifiable reason and has kept on raising compensation bills by charging exorbitant rate

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of ground rent, which the petitioner has always paid the same. It is further submitted that the plot of the petitioner has been wrongly categorized under the Category F-2 i.e. the Category for the plots situated on Ahmedabad Side from Kandla Railway Station, though the plot of the petitioner is not situated near to Kandla Railway Station.

(xvi) Learned Advocate Mr.Akshat Khare appearing for the petitioner ONGC in SCA No.9342 of 2015 submitted that there was no provision of retroactive clause in leave and licence agreement entered into between the parties. Though no bills were raised by he KPT prior to 2011, the illegal demand has been made on the ground of unauthorized use of the plot by the ONGC. The KPT has filed eviction petition before the Estate Officer on 29.1.2013 to which the petitioner ONGC has filed detailed reply giving details of payment made till 21.2.2013. The ONGC has handed over the premises on 23.12.2014 and informed the KPT vide the letter dated 2.1.2015, however, the Estate Officer passed the eviction

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order on 19.2.2015 holding ONGC as unauthorized occupant.

(xvii) Learned Advocate Mr.Salil Thakore appearing for the petitioner Laxmi Motors in SCA No.16225 of 2013 submitted that 30 years' lease deed was executed in favour of the petitioner on 30.11.1984 and the petitioner has been paying the ground rent regularly. However, the KPT demanded Rs.2,26,068/- for the period from 7.11.2012 to 6.11.2013 at the new rate pursuant to the TAMP order of 2011. The petitioner made payment accordingly and sought renewal of the lease deed for a further period of 30 years from 7.11.2013. The KPT called upon the petitioner to submit an undertaking which was also submitted by the petitioner, however, the KPT raised new demand of Rs.21,49,067/- with respect to the lease rentals from 1994 onwards and the petitioner, therefore, raised objections. The KPT again made demand of Rs.22,60,046/- by letter dated 29.5.2013, which has been challenged by the petitioner in the petition. According to Mr.Thakore, the TAMP as a creature

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of the statute and has no power to fix scale of rents retrospectively. In this regard he has relied upon the decision of the Supreme Court in case of **Hukam Chand etc. Vs. Union of India and Ors., reported in AIR 1972 SC 2427**, in case of **Vice Chancellor, M. D. University Rohtak Vs. Jahan Singh, reported in 2007(5) SCC 77**, in case of **Mahabir Vegetable Oils (P) Ltd. and Anr. Vs. State of Haryana and Ors., reported in (2006) 3 SCC 620** and others in support of his submissions. The action taken by the KPT under the Public Premises Act is also arbitrary and illegal.

(xviii) Learned Advocate Ms.Meenu Shah appearing for the petitioner HPCL in SCA No.16530 of 2013 and SCA No.6909 of 2018 submitted that there were five parcels of lands allotted to the petitioner, however, one plot has already been surrendered on 30th October, 2015 to the KPT, the leases of two plots are due to expire in 2020 and the leases of remaining two plots have expired on 1.12.2013 and 1.8.2014 respectively. The petitioner has already paid

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all the dues up to 2013 as per the TAMP order under protest, however, she submitted that the TAMP could not have given effect of the impugned order with respective effect. In this regard, she has relied upon the decision of the Supreme Court in case of **Vice-Chancellor, M. D. University, Rohtak, reported in (2007) 5 SCC 77**.

(xix) Learned Sr. Advocate Mr.Manish Bhatt appearing for the petitioner IOC in SCA No.13409 of 2014 submitted that the petitioner was allotted parcels of lands from time to time by either executing lease deed or by letter of allotment. Though the term of lease deed/term of allotment had expired, the petitioner had requested the KPT to renew the same, however, the same was not replied to. He further submitted that the KPT had made exorbitant demand of rental charges with retrospective effect, which was not permissible. He further submitted that the TAMP, which was a statutory authority, had without application of kind abdicated its function and accepted all the

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proposals made by the KPT by passing the impugned orders. According to him, the categorization of the lands on the basis of use made by the KPT and accepted by the TAMP was also arbitrary and irrational. The land of the petitioner was categorized in Category G-1, instead of Category G without any justifiable reason.

(xx) The learned Advocate Ms.Sangeeta Pahwa for the petitioner PSL in SCA No.5218 of 2014 and others has submitted that the petitioner was in possession of five plots, however, the proceedings under the Public Premises Act having been initiated by the respondent KPT, all the lands have been surrendered by the petitioner and the respondent Port has taken over the possession of the same. However, the petitions have been filed challenging the unreasonable demand made by the respondent KPT at exorbitant rates without any basis and also challenging the compensation bills issued by the KPT. According to her such action being arbitrary and violative of Article 14 of the Constitution of India, the

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bills issued by the KPT deserve to be quashed and set aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENT KPT:-

25. The learned Sr. Advocate Mr.Mihir Joshi appearing with Mr.Dhaval Vyas for the KPT made the following submissions:-

(i) The nature/exercise of rent fixation has to be considered, keeping in view the policy of land allotment, the practice and policy of rent determination, the relevant statutory provisions, and the binding Government directions issued under Section 111 of the said Act, in view of the decision of the Supreme Court in case of **Yazdani International Private Limited Vs. Auroglobal Comtrade Private Limited and Os., reported in (2014) 2 SCC 657**.

(ii) The lease of the lands necessarily had to be by a contract as contemplated under Section 34 of the said Act. Though each contract would contain clauses for lease rent, its rates, revisions etc., the lease rent and its revisions were the issues of policies and the directions

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issued from time to time by the Central Government to ensure consistency, equality, and a level playing field for the lessees.

(iii) The determination of lease rent was being made by the Central government till 1979, thereafter by the Board of Trustees with the approval of the Central Government up to 1997, and thereafter by the TAMP as per the provisions contained in the said Act.

(iii) The first expression of policy was by the Notification of 1994, whereunder rents were revised on the basis of category of lands, which were to remain operative for a period of five years. Thereafter, the policy directions were issued under Section 111 of the said Act by the Central Government vide the Land Policy for Major Ports 2004, Policy of 2010 and Policy of 2015, which stipulated that the lease rents would be 6% of the market value of the land as revised every five years, and that it would continue to be based on the category of the land. Accordingly, the liability i.e. 6% of market value, the methodology i.e. on the basis

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of market value, and the periodicity i.e. every five years was already fixed and imposed. The only component remaining was the determination of scale of rates on the basis of market value by the TAMP after considering the views of stake-holders. Hence, the TAMP vide the impugned orders has only undertaken the exercise of quantification of the liabilities already imposed on the lessees by the Central Government Policies. Section 49 of the said Act confer *quasi legislative* powers on the Board of Trustees/TAMP for fixing the scale of rates. Therefore, the contentions regarding retrospectivity of subordinate legislation are absolutely misplaced.

(v) In any case, quantification of liability subsequent to its imposition cannot be said to be retrospective in decision as held by this Court in case of **Cadila Laboratories Limited and Ors. Vs. Union of India, reported in 2001(1) GLR 48**. The determination of market value by the TAMP in any case has to be impliedly retrospective as the same is determined after

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the circulation of proposal, hearing stake-holders etc., which would take some time and must of necessity relate back. In this regard, he has relied upon the decision of the Supreme Court in case of **Kanoria Chemicals and Industries Ltd. and Anr. Vs. State of U.P. And Ors., reported in 1992(2) SCC 124**. In the alternative, it has been submitted that once lessees are informed that the current rates would be only up to 1999, the rates are rendered provisional and the subsequent finalization thereof would naturally relate back, which could not be said to be retrospective in nature.

(vi) There was no delay in making demand at the instance of the KPT, as the lessees were always aware that they were liable to pay rates as revised from time to time as stated in the lease deeds/allotment letters. Such revision was, however, made uniform by the policy of the Government issued from time to time. Delay in quantification does not discharge the lessees from the obligation to make payment at the revised rates, more particularly when they are

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enjoying public property, and they cannot profiteer by charging current commercial rents from their customers while paying abysmally low rates fixed decades back to the KPT. The delay by some officers of the KPT may warrant disciplinary action against them but that would not discharge the lessees/petitioners from the obligations to the State.

(vii) Justifying the delay, it has been submitted that the process of revision of rents had started in 1999 well before the expiry of five-year period under the 1994 Notification, however, because of the direction of the TAMP to reclassify the lands as per the use in 1999, and thereafter earthquake having taken place in 2001, revised policy of the Government to shift the allotment of lands and fixation of lease rents on upfront premium basis in accordance with auction rates in 2000-2002 etc., and the auction having taken place finally in the year 2005 on the basis of the market value, delay in obtaining environmental clearances culminated into some delay as observed by the TAMP in its

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order. A decision was taken by the KPT on 9.2.2010 to cancel the letters of Intent and call for fresh bids in view of the increase in the market value of the lands, which was challenged by the Letters of Intent holders, including the petitioner IMC and the same was rejected up to the Supreme Court. Thereafter, the proposal was revised and updated and finally sent on 19.4.2010 to the TAMP. In this regard, Mr.Joshi has relied upon the judgement of this Court in case of **Nikhil Adhesives Ltd. thro. Dharmeshbhai Dhirajbhai Pandya Vs. Kandla Port Trust, reported in 2011(2) GLH 283**, and of the Supreme Court in case of **Rishi Kiran Logistics Pvt. Ltd. Vs. Board of Trustees of Kandla Port Trust and Ors., reported in 2015(13) SCC 233**.

(viii) The lease rent has been determined under the policy, as being 6% of the market value, which cannot be termed as arbitrary. Such fixation is a matter of policy of the Central Government as best balancing the interests of the individual lessees/allottees and the Port Trusts themselves, which have to carry on

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extensive activities in relation to Ports in the public and national interest.

(ix) On the issue as to whether the bid received by the KPT from the petitioner M/s.IMC in the year 2005 could be considered as "an accepted tender" or not, it has been submitted that the bids of 2005 had been accepted by the Port Trusts by issuing LOI, and therefore, the petitioner IMC, which had submitted the bid, cannot complain that the bids were not accepted by the Port Trusts and that the amount did not correctly reflect the market value. The contracts could not be executed for different reasons like inordinate delay in securing permissions under the environmental laws, and therefore, it could not be the bids were not accepted by the KPT.

(x) The valuation of the other classes of lands is derived by the valuer on the basis of applying various parameters and by giving due weightage to the relevant factors. A valuer's report is specifically permitted mode of determining market value. The valuation of

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property is a decision of qualified experts and the scope of judicial review is extremely limited. In this regard, reliance is placed on the decision of the Supreme Court in case of **Union of India and Ors. Vs. Cipla Limited and Anr., reported in 2017(5) SCC 262** and on the decision of this Court in case of **KPT Vs. Shri Kandla Salt Leaseholders' Welfare Association (LPA No.870 of 2013)**.

(xi) The valuation report of 2010 which is the basis of the proposal of the Port Trusts dated 19.4.2010 has recorded the process, reasons and the manner of valuation. Accordingly, the valuation of the lands is worked out for the year 1999, 2004 and 2009, which has been proposed by the KPT and accepted after consultation with all stakeholders, by the TAMP.

(xii) The valuation report of 2014 was the basis of proposal of the KPT forwarded on 26.6.2014, after seeking extension from TAMP, since the last five year period for which the rates were approved was from 1.1.2009 to

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31.12.2013. The valuation proposed by the valuer was modified in certain categories of lands by the Port Trust on the basis of the recommendations of the expert committee appointed by it and the basis and justification of the market value is set out in the TAMP order dated 13.11.2014.

(xiii) The port lands are national resources and wealth by their unique location and limited availability. It would amount to granting special privilege to the lease holders at the cost of public interest, if the KPT was compelled to accept the low rents fixed in 1994 till 2011. The petitioners had failed to demonstrate as to how the fixation of rents on the basis of 6% of the market value was unreasonable or unfair.

(xiv) The valuation of the land is also based on the use of the land. The rent could not be decided only on the basis of location, irrespective of use, as the auction of land where a commercially advantageous use is permitted would fetch a much higher amount than

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a similarly located plot where such use is not permitted.

(xv) Section 49 of the said Act pertaining to framing of the scale of rates under which the property of Trust may be used for the purpose specified thereunder, and therefore, the purpose or the use of the land is a criterion recognized by the statute itself for fixation of scale of rates. The land policy of 2004 and 2011 specifically directed that the scale of rates should vary in accordance with the purpose of land use. The 2014 policy while not adopting the same language, reiterates the principle by enumerating factors for valuation.

(xvi) It cannot be disputed that the value of the land is dependent on the use to which it could be put. The land permitted to be used for tank farms constitutes a class by itself looking to the nature of use which is peculiar to ports and interconnected with the facilities relating to a port. Hence, lands used for tank farms constitute a separate class on the basis of usage, irrespective of the location of such

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lands and carry a separate value. It is well settled that classification on the basis of use is a valid exercise permissible under the law, as held by the Supreme Court in case of **M/s.Hiralal Rattanlal Etc. etc. Vs. State of U. P. and Anr. Etc. etc., reported in 1973(1) SCC 216**.

(xvii) The categorization and sub-categorization was made for valid reasons and the same has been accepted by the TAMP after public notice and inviting all stakeholders and after considering their objections as recorded in the impugned orders. The requirements of fairness were met by the exercise undertaken by the TAMP. In this regard, reliance is placed on the decision of the Supreme Court in case of **PTC India Ltd. Vs. General Electricity Regulatory Commission, thro. Secretary, reported in (2010) 4 SCC 603**.

(xviii) The allotment/lease of lands of the port trusts is regulated by the statute and the policy directions issued by the Government from time to time and has a public law character,

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which is different from private contract between the parties. The fixation of lease rent/scale of rates is also governed by the statutory provisions and are binding to the leaseholders, and therefore, the TAMP order would be also binding on the existing lessees/allottees. In this regard, Mr.Joshi has placed reliance on the decision of the Supreme Court in case of **D. K. Trivedi & Sons and Ors. Vs. State of Gujarat and Ors., reported in 1986 (Supp) SCC 20** and in case of **APM Terminals B. V. Vs. Union of India and Anr., reported in (2011) 6 SCC 756**.

(xix) As regards renewals of leases, it has been submitted that as per the land policy for Major Ports, the renewals of leases are governed by the relevant clauses of the policy relating to lands within customs bonded area and lands falling outside such area. The renewals are not as a matter of right. The primary requirement for considering the request for renewals is the existence of a valid lease and that the lessee should not be in default. Since the basic parameters have not been satisfied, the

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petitioners can not seek extension of the lease.

(xx) Mr.Joshi has highlighted the issues of delay, conduct of the petitioners, etc., petition-wise to submit that the petitions deserve to be dismissed. Mr.Joshi has also distinguished the judgements relied upon by the learned Advocates for the petitioners.

STATUTORY PROVISIONS:-

26. Before adverting to the respective submissions made by the learned Advocates for the parties, it would be apposite to refer to certain provisions of the said Act. The said Act has been enacted to make provisions for the constitution of the Port Authorities for certain major ports in India and to vest the administrative control and management of such ports in such authorities and for matters connected therewith. The said Act at the first instance was made applicable to the major ports of Cochin, Kandla and Vishakhapatanam, which earlier were under the initial charge of port administrative officer appointed by the Central

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Government. As per the statement of objects and reasons, the Port Administrative Officer had limited powers and had to obtain the orders of the Central Government of many matters, which otherwise could have been disposed of at local level in the Port Trust. Hence, considering the fact that the other statutory Port Trust had successfully administered the three older Ports of Calcutta, Bombay and Madras for many years, it was proposed to constitute port trust at Vishakhapatanam, Cochin and Kandla. In the year 1997, the said Act was amended by incorporating Chapter VA pertaining to the constitution of Tariff Authority for Major Ports, in the said Act, and empowering the said Authority to discharge the functions as stated therein.

27. Section 34 of the said Act pertains to the mode of executing contract on behalf of the Board of Trustees. Second Proviso to the said Section prohibits making of any contract for the acquisition or sale of immovable property or for the lease of any such property for a term exceeding 30 years, without the previous

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approval of the Central Government. Section 49 of the said Act mandates the TAMP to frame the scale of rates on the payment of which any property belonging to or in possession of the Board, or any place within the limits of the port or the port approaches may be used for the purposes mentioned therein. Section 49 being relevant is reproduced as under:-

> "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,

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works, vessels or appliances belonging to or provided by the Board.

(2) Different scales and conditions may be framed for different classes of goods and vessels.

(3) Notwithstanding anything contained in sub-section (1), the Board may, by auction or by inviting tenders, lease any land or shed belonging to it or in its possession or occupation at a rate higher than that provided under subsection (1)."

28. Section 111 empowers the Central Government to issue directions to the Board of Trustees, the same reads as under:-

"111. Power of Central Government to issue directions to Board.-

(1) Without prejudice to the foregoing provisions of this Chapter, the Authority and every Board shall, in the discharge of its functions under this Act be bound by such directions on questions of policy as the Central Government may give in writing from time to time:

Provided that the Authority or the Board, as the case may be, shall be given opportunity to express its views before any direction is given under this subsection.

(2) The decision of the Central Government whether a question is one of policy or not shall be final."

29. The Ministry of Shipping, Government of India, considering the importance of the lands

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belonging to the Port Trusts and considering the provisions contained in Section 34 of the said Act, had issued the Land Policy for Major Ports in 2004 in exercise of the powers conferred under Section 111 of the said Act. Thereafter the Government of India, in supersession of the said Land Policy of 2004, issued Land Policy for Major Ports – 2010 for implementation by all Major Ports and Ennore Port Limited. Thereafter the Government of India had issued the Policy Guidelines for the land management by Major Ports 2014. However, the Indian Port Association, an Apex Body of Major Ports having highlighted certain difficulties and suggested some changes, the Ministry had constituted a Two-Member Committee to examine the suggestions and furnish a report. Based on the report, the revised guidelines were framed and issued under Section 111 of the said Act, vide communication dated 17.7.2015. The said Policies *inter alia* contained the directions/guidelines to be followed by the Port Trusts with regard to the Land Use Plan, Land Allotment Policy, Renewal of Existing Leases, determination of market value

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of port land and the scale of rates etc. Since the impugned orders have been passed by the TAMP considering the Land Policies of 2010 and 2014 issued in exercise of powers conferred under Section 111 of the said Act, some of the relevant Clauses of the said Policies are reproduced hereunder for ready reference:-

I – Clause regarding Land Use Plan under 2010 Policy:

5. Land Use Plan

Every Major Port shall have a Land use plan covering the entire land owned and/or managed by the Port. Such plans shall be approved by the Board and a copy should be forwarded to the Government. Any proposal for revision of land use plan shall be published on the web-site of the Port Trust inviting objections and suggestions and shall be finalized by the Board after considering the objections and suggestions received.

II – Clause regarding Land Use Plan under 2014 Policy:

8. Land Use Plan:

The Land Policy Guidelines are applicable for all purposes under MPT Act 1963. Every Major Port shall have a Land use plan covering all the land owned and/or managed by the Port. Such plans shall be approved by

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the Board and a copy would be forwarded to the Government. Any proposal for revision of land use plan shall be finalized by the Board only after considering the objections and suggestions received from the various stakeholders. Land use plan of major ports shall be reviewed by the Board at least once in every five years.

III- Renewal clause under the Policy of 2010:

"**6.1.2 Renewal of existing leases**: The following procedure will be adopted for renewal of leases of land inside the custom bound area. Such leases may have been given by some ports much before the guidelines issued in 2004 came into force. The said guidelines prohibit the allotment of land in custom bound area on lease basis:

a) If there is no option for renewal in the existing lease agreement, guidelines governing fresh allotment shall apply. However, the right of refusal may be given to the present lessee subject to the condition that he is a bonafide lessee without any default. The renewal shall be subject to payment of rent at the prevailing SoR or the market value, whichever is higher.

b)If the renewal option is there in the lease agreement, the port should assess if the land is required by the port for its own use. In case it is not required by it, the port should then assess whether it is required for the purpose for which it was originally leased. If it is so required, it should be renewed for as short a period as possible and preferably in accordance with the SoR or the Market value, whichever is higher. Any concession shall be given only with the approval of the Board."

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IV – Renewal Clause under the Policy of 2014:

11.3 Renewal of Existing/Earlier Leases:

(a) In cases of renewal of existing/earlier leases with or without renewal option, the Port should 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 lease.

(b) If the land is not required by the Port for its own use, the Port should then check whether the land use is consistent with the land use plan and whether the lessees are not in default. Thereafter, if it is so, the following procedure will be adopted for renewal of lease of land outside the custom bond area.

(c) During the process of renewal of existing/earlier leases, the Port is required to differentiate between those lease-agreements that provide for renewal and those that do not provide for such renewal at the end of the lease-period. In cases of renewal of existing leases, without renewal option at the end of the lease-term, the land will be put to tender-cum-auction with the first right of refusal to be extended to the existing lessee. The existing lessee should be allowed to match the H-1 bid. If any structure has been constructed by the earlier lessee on the leased land, it would be valued by a third party valuer to be agreed upon by the Pot Trust and the earlier lessee and the successful bidder has to remit the value of the structures which which would be passed on to the previous lessee. The bidding and auction would be only on the reserve price of the land. With a view to dissuade non-serious bids, EMD for a vlid bid should be fixed at 10% of the latest SoR of the land being put on tender. If the only bidder is the existing lessee, the annual lease rental

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would be determined on the basis of the latest SoR notified as per Para 13(c) or the price quoted by the existing lessee in the tender-cum-auction, whichever is higher. The provision of first right will also apply to expired lease (possession has been taken by the Port) also in addition to existing leases.

(d) In respect of lease agreements with renewal option, the lease can be renewed by the Port Trust Board by treating it as a fresh lease at the latest SoR notified as per para 13(c).

(e) No renewal clause is to be provided in the lease-agreements entered into after coming into effect of these guidelines.

(f) Any renewal of lease to the original party over and above the existing period is to be approved by the Board, provided that the cumulative lease period does not exceed 30 years.

(g) Any extension beyond 30 years and for a maximum period of 99 years has to be recommended by the Port Trust Board and the same will be examined and scrutinized by the Empowered Committee which would satisfy itself regarding the justification for such extension and competitiveness of the rate at which such extension is to be granted. Thereafter, approval will be granted by the Government.

(h) After the expiry/termination of lease and despite receiving the notice thereof, or forfeiture of lease on account of change of use, assignment etc., if the lessee continues to occupy it unauthorizedly, the lessee shall be liable to pay compensation for wrongful use and occupation at three (3) times the annual lease rent based on the latest SoR, till vacant possession is obtained by the Port. In cases of land allotted on upfront basis, the equivalent

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annual lease rent would be calculated on pro-rata basis.

(i) For existing leases, at the time of expiry/termination of lease, the lessee shall remove all structures at his own cost under the following conditions:

(a) Within three (3) months of expiry/termination, if Port decides not to re-auction that land; or,

(b) Three months after tender-cum-auction, if the existing lessee was not successful.

Beyond this period, the lessee shall be liable to pay compensation for wrongful use and occupation at three (3) times the annual lease rent, till vacant possession is obtained. In cases of land allotted on upfront basis, the equivalent annual lease rent would be calculated on pro-rata basis. If the Port so decides, for reasons to be recorded and approved by the Port Trust Board, it may also take over the structures after third party valuation of the assets with the concurrence of the lease holder. In case removal of structures is to be carried out by the Port, it would be at the cost of the lessee.

(j) The process of renewal of existing leases should be initiated by the respective Ports well in advance, before the term of lease expires. The automatic renewal of existing leases should be preferably done within three months of receipt of such application for renewal. Liability to pay compensation for wrongful use by the lessee will not arise, if the delay in renewing such leases is wholly attributable to the Port.

(k) In respect of old leases, where the

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terms of lease stipulate automatic renewal at pre-determined rates, such cases are to be reviewed by the Board on a case to case basis from the point of view of the reasonability of such terms of renewal, including the rates. In such cases, the endeavour should be to migrate to lease rentals based on latest market value."

V– Determination of Market Value under 2010 Policy:

"**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) Sate 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.

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(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 Sue 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.

VI – Determination of Market Value under 2014 Policy:

"**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 fact, 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),

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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) The Port Trust would make a proposal as outlined in para 13(a) to TAMP for fixing the latest SoR of the land. The TAMP would notify the latest SoR of the land after following due process of consultation with stake holders within 45 days of receipt of the proposal. The Port Trust Board will fix a rate of annual escalation which would not be less than 2%. SoR would be refixed once in every 5 years by TAMP."

30. The crux of the challenges made in all the petitions is the order of 2011 and order of 2014, passed by the TAMP in exercise of the powers conferred under Section 49 of the said

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Act, in the light of the Land Policies as applicable at the relevant time issued by the Ministry of Shipping, Government of India, under Section 111 of the said Act. Some of the petitioners have challenged the TAMP order of 2011, some have challenged the TAMP order of 2014, and some have challenged both the orders. Some of the petitioners have incidentally challenged the Land Policy of 2010 and the Land Policy of 2014, and have also challenged the demand notices and the compensatory bills issued by the respondent KPT alleging unauthorized occupation of the concerned petitioners. As stated herein above, the impugned orders and subsequent actions taken thereunder, as well as the validity of land policies have been challenged on multiple issues. Having regard to the submissions made by the learned Advocates for the parties in the light of the provisions of the said Act and of the Land Policies of 2010 and 2014, following broad issues arise for determination before this Court -

(a) Whether the Land Policies issued by the

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Ministry of Shipping, Government of India, in the year 2010 and in the year 2014 are legal and valid ?

(b) Whether the order dated 25.3.2011 passed by the TAMP framing SoR for the three consecutive slabs from July 1999 to 31st December 2003, 1st January 2004 to 31st December 2008 and 1st January 2009 to 31st December 2013 based on the proposal of the KPT dated 19.4.2010 is legal and valid ?

(c) Whether the order dated 13.1.2014 passed by the TAMP framing SoR for the period from 1.1.2014 to 31.12.2018 based on the proposal of KPT dated 26.6.2014 is legal and valid ?

(d) Whether the concerned petitioners are entitled to claim renewal of their respective leases ?

Re: Land Policies of 2010 and 2014:-

31. As regards challenge to the Land Policy of 2010 and the Land Policy of 2014, it may be

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stated that the petitioners PSL, Kesar Terminals and Infrastructure Pvt. Ltd., Tankers' Association and AVEAN have sought prayer to set aside the same in their respective petitions. The learned Advocates appearing for the said petitioners have assailed the said policies mainly by submitting that the said Land Policies unjustifiably granted unfettered powers to the respondent KPT to choose any of the methods, or criteria for the fixation of scale of rates amongst the many mentioned therein. According to them, such powers would give enough flexibility to the KPT to raise scale of rates on factors that would prejudice the lease holders like the petitioners, and to that extent the said Policies of 2010 and of 2014 are bad, arbitrary and illegal due to its ambiguity. Adverting to the said submissions, it may be stated that such Policies/Guidelines are issued by the Government of India, in exercise of its powers under Section 111 of the said Act, and therefore, have statutory force. As transpiring from the preamble of the Policy of 2010, considering the importance of sustaining the growth and

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development of the Major Ports for their contribution to the Indian economy, and to promote the business with the Port Trusts, the Land Policy for the Major Port of 2010 was issued by the Government of India, after considering the report submitted by the Committee specially constituted to review a host of policies including the Land Policy issued in 2004, and after deliberating upon the said report, the Ministry of Shipping had put up the draft line policy on the website of Ministry inviting comments and suggestions. After considering large number of responses received by the Ministry said Policy of 2010 was issued to all the Port Trusts for the implementation. Similarly, the policy guidelines for land management by Major Ports of 2014 was issued by the Ministry of Shipping after considering the comments and suggestions of various stakeholders and also after undergoing the inter ministerial consultations. Initially the said guidelines were approved by the Union Cabinet on 2.1.2014 and were issued to all Major Ports for implementation, however, the Indian Ports

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Association, an Apex Body for Major Ports having highlighted certain difficulties and suggested some changes, the Ministry had constituted a Two-Member Committee vide the order dated 8.8.2014 to examine the said suggestions and furnish the report. Based on the said report, the revised guidelines were framed and issued under Section 111 of the said Act, effective from 17.7.2015.

32. Both the policies have been issued by the Ministry of Shipping after undergoing systematic process of consultation and after considering the objections/suggestions of the stakeholders. In both the Policies detailed guidelines have been prescribed with regard to the fresh allotment of land, renewal of existing land leases, for determination of market value of lands and scale of rates, apart from general guidelines applicable to the existing and new leases. Merely because the land allotment Committee constituted as per the said guidelines has been empowered to take into account the highest of the applicable factors mentioned in

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the relevant clauses, to determine the latest market value of the port land, the entire policy could not be termed as ambiguous, arbitrary or illegal. It is also pertinent to note that based on the recommendations of the Land Allotment Committee, the Port Trust is required to make proposal to the TAMP for fixing the SoR and the TAMP is required to notify the latest SoR of the land after following the due process of consultation with the stakeholders, as stated in Clause 6.3 and Clause 13 of the Policies of 2010 and 2014 respectively. None of the Advocates for the petitioners was in a position to point out any element of arbitrariness in the said clauses, which would require the Court to declare the said policies as arbitrary or bad in law.

33. Even otherwise, as per the settled legal position, normally the Courts should not interfere with the Policy decisions of the Government. The Government is entitled to change its policies with the changing circumstances and to exercise discretion to alter the earlier

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policies to make them more effective. The only qualifying condition is that such policy should be free from arbitrariness, irrationality, bias, and malice, and must be in conformity with the principle of *Wednesbury* reasonableness. Beneficial reference of the decision in case of **Shimnit Utsch India Pvt. Ltd. and Anr. Vs. West Bengal Transport Infrastructure Development Corporation Ltd. and Ors., reported in 2010(6) SCC 303**, and in case of **APM Terminals B. V. Vs. Union of India and Anr., reported in (2011) 6 SCC 756** and others. In that view of the matter, the Court is of the opinion that there being no element of arbitrariness involved and there being no legal infirmity in the policies in question, the prayer of the concerned petitioners to declare the said policies as arbitrary or bad in law, deserve to be rejected.

Re: Challenge to TAMP Orders of 2011 and 2014:

34. So far as the TAMP order of 2011 is concerned, it appears that the KPT vide the letter dated 19.4.2010 had submitted its proposal for revision of the rate structure for

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its Kandla Land along with the valuation report prepared by an approved Land Valuer. Till then, the rates for Kandla Land of KPT as approved by the Government of India in July 1994 under six categories were prevailing. As transpiring from the said order of 2011, it was stated *inter alia* in the proposal dated 19.4.2010 that a Committee was constituted for fixing the market value of the land and schedule of rates as per Clause 5.3(1) of the Land Policy Guidelines 2004 issued by the Government of India. The said Committee was headed by the Chairman, KPT and other members were the Deputy Chairman, Chief Engineer, FA & CAO and Secretary of the Port and the Deputy Collector, Anjar. The said Committee had appointed approved Land Valuer as per the Policy Guidelines for assessing the market value of the landed estate. The said Committee after going through the various aspects and considering the parameters given in the Land Policy Guidelines had accepted the market value of the land assessed by the approved Valuer. The Committee thereafter recommended sector-wise/sub-sector-wise lease rentals for three

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consecutive slabs i.e. July 1999 to 31st December, 2003, 1st January 2004 to 31st December 2008 and 1st January 2009 to 31st December 2013 for the categories A to G. The Board of Trustees of KPT had also recommended the said market rate/schedule of rates and lease rentals as recommended by the Committee and forwarded the same to the TAMP for its approval. As stated by the TAMP in its order, the TAMP in accordance with the consultative procedure prescribed, had forwarded the proposal of the KPT to the concerned user associations for their comments. The comments of user association as and when received were forwarded to the KPT for its remarks and the KPT had responded to the said comments. The TAMP after preliminary scrutiny of the proposal had sought additional information/clarification from the KPT, which were furnished by the KPT, the details of which have been narrated in the Tabular Form in the TAMP order of 2011. It appears that a joint hearing of the KPT and concerned users was held by the TAMP. Subsequent to the meeting, the Kandla Liquid Tank Terminal Association (KLTAA)

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submitted their comments on the KPT's proposal and the KPT also furnished its remarks. On 4.12.2010, KPT furnished a copy of the gist of discussion held by it with the representatives of various Port users in connection with the revision of rate structure of Kandla Land. The TAMP considering the said information/material collected during the proceedings and considering the comments/submissions made by the users and the deliberations, which took place at the joint hearing, passed the order of 2011, according approval for the proposal of the KPT with regard to the revision of rate structure as per the Annexure annexed to the said order. The said lease rates approved by the TAMP are reproduced in Tabular Form as under:-

Lease rate for lease of Kandla lands belonging to Kandla Port Trust:-

Sr. No.	Description of category	Lease Rentals per sq. mtr., per annum as on July 1999 (Rs.)	Lease Rentals per sq. mtr., per annum as on 1.1.2004 (Rs.)	Lease Rentals per sq. mtr., per annum as on 1.1.2009 (Rs.)
A	Land having water front and upto half mile from the shore i.e. the	41.40	53.40	110.40

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	west bank of Kandla creek			
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	41.40	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

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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

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

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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

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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. The

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said Schedule of rates in Tabular Form is reproduced as under:-

Schedule of Market Value of land and reserve price for Kandla land of Kandla Port Trust:-

Sr. No.	Description of category	Market Value of land on 1.1.2014	Reserve price in terms of lease rent @ 6% of market value of land w.e.f. 1.1.2014
A	Land having water front and upto half mile from the shore i.e. the west bank of Kandla creek	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	3192.00	191.52
B2	Plots situated on internal roads	2873.00	172.38
C	Land beyond half a mile from the bank of the creek		
C1	Plots abutting on main road	1800.00	108.00
C2	Other plots	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	3298.00	197.88
D2	Plots abutting on 1st 30 meter road parallel to NH-8A	2153.00	129.18
D3	Plots abutting on 2nd 30 meter road parallel to NH-8A	3098.00	185.34
D4	Plots abutting to KK road near zero point and railway crossing, 25 acres plots and other plots	2131.00	127.86
D5	Valuation of land to the	2565.00	153.90

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	West Gate of NH-8A towards salt works of land without reclamation but with infrastructure		
E	Land within the docks	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	3430.00	205.80
F2	Plots situated on Ahmedabad side from Kandla Railway Station	6720.00	403.20
G	Land of Liquid Storage Tanks		
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

37. The aforesaid orders of 2011 and 2014 of the TAMP have been assailed by the learned Advocates for the petitioners on various grounds. The main grievance of the petitioners is that the determination of market value as proposed by the KPT and accepted by the TAMP was arbitrary and dehors the Land Policy Guidelines issued by the Government. The same have been assailed also on the ground that the KPT could not have proposed the categorization/re-categorization of the

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lands on the basis of use, and the TAMP should not have accepted the same in toto for the purpose of fixing the scale of rates under Section 49 of the said Act. The challenge is also made to the said orders of TAMP on the ground that the TAMP had accepted the proposal of KPT to give retrospective effect to the SoR without any application of mind, inasmuch as the SoR fixed in the order dated 25.3.2011 have been made applicable w.e.f. January 1997 and the SoR fixed in the order dated 13.11.2014 have been made applicable w.e.f. January 2014.

Re: Categorization:-

38. 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

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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

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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 its functions 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

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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. Sub-clause (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

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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 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

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raised by the TAMP, as transpiring from the order dated 25.3.2011, for proposing lease rates under 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.

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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 sub-categories 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 G-1 & G-2 categories irrespective of distance. The KPT has reported that C1 category has now been shifted as G-2 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."

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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

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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.

Re: Framing of SOR whether arbitrary ?

44. The next contention raised by the learned Advocates for the petitioners is with regard to the fixation of the market value of the port

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land. It has been emphatically submitted that the said valuation of the land and the determination of scale of rate was arbitrary and irrational. As per the policy, the market value of the land was to be determined on the basis of highest accepted bid of the land, and the KPT had based its valuation relying on the 2005 tender submitted by the petitioner IMC for the purpose of making proposal to the TAMP, however, the bids received by the KPT pursuant to the 2005 tender were not finalized and the said tender was subsequently cancelled as the payment model under the 2005 tender was changed from "premium-cum-lease rent structure", which was followed earlier to "single *lump sum* consideration in the form of a higher premium and token Re.1/- lease structure". Therefore, according to them, the said bid having not been accepted by the KPT, it could not have been treated as the highest accepted bid of the land for the purpose of making proposal to the TAMP. According to them, even under the Policy of 2014, the use of the land being not relevant factor, the only factor which could have been

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accepted was the highest accepted tender amount, and in absence of such highest accepted tender amount, the proposal of KPT could not have been accepted by the TAMP for determining the market value and in turn the SoR.

45. Apropos the said submissions, the question that falls for consideration before the Court is whether the judicial review in the matter of fixation of scale of rates by the TAMP, based on the proposals made by the KPT after considering the statutory guidelines issued by the Government of India, is permissible while exercising the writ jurisdiction under Article 226 of the Constitution of India?

46. The Supreme Court in case of **Association of Industrial Electricity Users Vs. State of Andhra Pradesh & Ors., reported in AIR 2002 SC 1361**, while considering the issue as to whether the judicial review in the matter of fixation of tariff by the Regulatory Commission constituted under the Andhra Pradesh Electricity Reforms Act, was permissible, had held that-

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> "11. We also agree with the High Court that the judicial review in a matter with regard to fixation of tariff has not to be as that of an appellate authority in exercise of its jurisdiction under Article 226 of the Constitution. All that the High Court has to be satisfied is that the Commission has followed the proper procedure and unless it can be demonstrated that its decision is on the face of it arbitrary or illegal or contrary to the Act, the Court will not interfere. Fixing a tariff and providing for cross-subsidy is essentially a matter of policy and normally a Court would refrain from interfering with a policy decision unless the power exercised is arbitrary or *ex facie* bad in law.

47. The above judgement has been followed by the Supreme Court in case of **Transmission Corporation of Andhra Pradesh Limited and Another Vs. Sai Renewable Power Pvt. Ltd., reported in (2011) 11 SCC 34**, in which similar view has been taken by the Supreme Court. It has been held as under:-

> "39. We do not consider it appropriate to go into the merit or demerit of determination of tariff rates in the appeals. Determination of tariff is a function assigned legislatively to a competent forum/authority. Whether it is by exercise of legislative or subordinate legislative power or a policy decision, if the Act so requires, but it generally falls in the domain of legislative activity and the courts refrain from adverting into this arena."

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48. The Supreme Court, similarly in case of **West Bengal Electricity Regulatory Commission Vs. CESC Limited, reported in (2002) 8 SCC 715** was dealing with the scope of judicial review in the matter of determination of tariff by the State Commission and applicability of principles of natural justice. It was held *inter alia* that price fixation is in the nature of a legislative action, and no rule of natural justice is applicable, unless statute itself provided for the same and the power of judicial review could hardly be invoked in interfering such fixation.

49. In yet one more judgement in case of **Rayalaseema Paper Mills Ltd. Vs. State of A.P., reported in 2003(1) SCC 341**, the Supreme Court while examining the scope of judicial scrutiny in the matters of price fixation governed by the statutory provisions, observed as under:-

> "15.This Court was examining 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

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> 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 the 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."

50. Following the afore-stated judgement, the Supreme Court in case of **Union of India and Ors. Vs. Cipla Limited and Anr., reported in (2017) 5 SCC 262** held *inter laia* that the fixing the price of any commodity is not only difficult but also a very tricky matter, where a bundle of factors is required to be considered and appropriate weight is required to be given to the material and the factors. The opinion of the expert is important, if not conclusive. No doubt any arbitrary action taken by the State would be subject to the scrutiny by the Courts, because arbitrariness is the very antithesis of rule of

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law, but that does not mean that the Court would act as an appellate authority over the determination of rates fixed by the authority.

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

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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

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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

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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.

53. Similar exercise appears to have been carried out by the KPT while making proposal as per the letter dated 26.6.2014 for revision of rates. As mentioned in the impugned order dated 13.11.2014 passed by of the TAMP, the said proposal was made as per the land policy guidelines of 2014 issued by the Ministry of Shipping. The Clause-13 of the said policy guidelines of 2014 contained similar provisions as contained in Clause-6 of the policy of 2010 for the determination of land and SoR. As mandated therein, a 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 and comprises of the other members like Secretary, Chief Engineer and Traffic Manager and others. The Government approved valuer was engaged by the KPT in

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February 2014, who had submitted the land valuation report recommending the land values for each categories of lands. The said report was accepted by the land valuation committee for recommendation on "as is where is basis" for all categories of lands. Based on the recommendation of the land valuation committee, the Board of Trustees of the KPT had approved the proposal for revision in the lease rentals of KPT lands, fixing the reserve price and the market value of the land w.e.f. 1.1.2014 for the Categories A to G, and accordingly the KPT had sought approval of the same from the TAMP. The summary of the recommendations of land valuation committee and the proposal of the KPT based on the said recommendations has been reproduced by the TAMP in its order dated 13.11.2014. The said proposal of the KPT has been elaborately discussed and considered, and after having been satisfied, has been accepted by the TAMP.

54. It is pertinent to note that on both the occasion, the KPT had made its proposals on the basis of the rates arrived by the approved

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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

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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

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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

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authority constituted under the Act.

56. There could not be any disagreement to the proposition of law laid down by the Supreme Court in case of **M/s.Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay, reported in (1989) 3 SCC 293** relied upon by the learned Advocates for the petitioners to the effect that the public body even while dealing with its tenants must act in public interest and an infraction of their duty is amenable to examination either in civil suit or in writ jurisdiction. Every action of the State or as instrumentality of the State, must be informed by reason and the actions uninformed by reason may be questioned as arbitrary in the proceedings under Article 226 of the Constitution of India. However, it has been further observed in the said judgement that there is always a presumption that a governmental action is reasonable and in public interest. It is for the party challenging its validity to show that the action is unreasonable, arbitrary or contrary to the

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professed norms or not informed by reasons, and the burden is a heavy one. It may be noted that in the said case, the Supreme Court was examining the frontiers of judicial review of the action of a statutory authority i.e. the Board of Trustees of the Port of Bombay in evicting its tenant and granting the land in question to another tenant. In this regard a very pertinent observations with regard to the scope of judicial review have been made in paragraph 31, which are reproduced as under:-

> "31. ... In that view of the matter even under the scope of judicial review, it was contended, whether it should have been given on joint-tenancies or not, is not a matter which could be gone into by the Court. Reliance was placed on the observations of Lord Justice Diplock in Council of Civil Service Unions v. Minister for the Civil Service, where the learned Lord Justice classified 3 grounds subject to control of judicial review, namely, illegality, irrationality and procedural impropriety. Learned Addl. Solicitor General is right, in our opinion, in that we cannot really substitute a decision reached by a fair procedure keeping the policy of the respondent in mind by a different decision only on the ground that the decision which appeals to the court, is a better one. Reliance was placed on the observations of Lord Chancellor Lord Hailsham in Chief Constable of the North Wales Police v. Evans. In our opinion, it is necessary to

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> remember that judicial review, in the words of Lord Brightman in that case, is not concerned with the decision, but with the decision making process. As observed by Prof. Dias in 'Jurisprudence' (5th Edn. at p. 91) unless the restriction on the power of the court is observed, the court would under the guise of preventing the abuse of power, be itself guilty of usurping power which does not belong to it. It is therefore necessary to bear in mind the ways and means by which the court can control or supervise the judicial action of any authority which is subject to judicial control. In this connection, it is necessary to refer to the observations of Lord Justice Templeman in re Preston v. I.R.C., and the observations of Lord Justice May in Regina v. Chief Constable of the Merseyside Police. It is not within the purview of a court to substitute a decision taken by a constituted authority simply because the decision sought to be substituted is a better one. Learned Addl. Solicitor General, in our opinion, is therefore right in contending that the appellant should not be allowed to contend that the decision of the Bombay Port Trust to allot the plot to the major holder is not one of the feasible means of achieving the objectives of development. It was not open to the appellant to contend that the Bombay Port Trust could have framed a better policy in a way in which both the goals, development and non-eviction of existing tenants, could have been achieved."

57. There is also no merit in the submission of the learned Advocate for the petitioners that during the period of lease, the landlord i.e. KPT which is an instrumentality of State, could not require the petitioners to pay the rent

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higher than what was agreed between them. As held by Supreme Court in case of **NSSO Vs. Champa Properties Limited, reported in (2009) 14 SCC 451**, where 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. It has been further observed therein that 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.

58. In the instant cases also, the lease agreements have been executed by the KPT pursuant to powers available under Section 34 of the said Act. The lease deeds specifically provided for the periodical revision of rent. The Land Policies of 2010 and 2014 applicable to the instant cases provided for the fixation of

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scale of rates for lease once in five years. The manner, method and liability to pay the revised lease rentals having already been prescribed, it does not lie in the mouth of the petitioners to say that the KPY could not have proposed the higher lease rentals to the TAMP for approval.

59. It cannot be gainsaid that the KPT undertakes the work and discharges statutory duties in the national and public interest. The port lands are the national resources and wealth by their unique location and limited availability. Though the KPT being an instrumentality of State has to act within the framework of the constitution even in the field of contracts ensuring fair competition and non-discrimination and can not be seen to be indulging in profiteering or rack-renting, or indulging in whimsical or unreasonable bargains, nonetheless, the KPT as an owner need not necessarily be a benevolent and good charitable Samaritan. The need for expanding or stimulating its own activities or other activities in the public interest, if arises the State need not

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hold its hands from seeking eviction of its lessees, as observed by Supreme Court in the case of **Jamshed Hormusji Wadia Vs. Board of Trustees, Port of Mumbai, reported in (2004) 3 SCC 214.** Mr. Joshi for the KPT has rightly submitted that the petitioners occupying the public property can not profiteer by charging current commercial rents from their customers, while paying abysmally low rents, fixed decades back to the port. The petitioners have also failed to discharge their primary onus of demonstrating the valuation as being arbitrary or illegal, whereas the KPT has been able to show that the market value of the lands was determined after following the manner and method provided under the land policies and the TAMP had rightly relied upon the said market value for framing the SoR under Section 49 of the said Act. Such fixation did not suffer from vice of arbitrariness or from procedural impropriety.

Re: Retrospectivity:-

60. This takes the Court to the next pivotal question as to whether the KPT could

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have proposed and the TAMP could have accepted the said proposal of giving retrospective effect to the SoR fixed by the TAMP i.e. making them effective for three consecutive slabs from July 1999 to 31.12.2003, 1.1.2004 to 31.12.2008, and 1.1.2009 to 31.12.2013 as per the impugned order dated 25.3.2011. The learned Sr. Advocate Mr.Mihir Joshi for the KPT, had sought to submit that the liability i.e. 6% of the market value, the methodology i.e. on the basis of the market value, and the periodicity i.e. every five years was already fixed and imposed, and the only component remaining was the determination of market value and the scale of rates by the TAMP after considering the views of stake holders. Therefore, according to him, the obligation to pay at the revised rates every five years, and not to pay as and when quantified at varying period of time, was already existing. In any case, he submitted that quantification of liability subsequent to its imposition cannot be said to be retrospective imposition as contended by the petitioners. Relying upon the affidavit-in-reply filed by the KPT, he submitted that

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though some delay had occasioned at the instance of KPT in forwarding the proposal to the TAMP, the said delay was for justifiable reasons, inasmuch as on the constitution of TAMP in the year 1997, the KPT had resolved to recommend revision of rates and the same was forwarded to the TAMP in 1997, however, the same was returned by the TAMP vide its order dated 2.2.1999, requiring the Board to reclassify the lands taking into consideration the purpose for which it was allotted. Thereafter by report dated 16.6.1999 the Land Committee of the KPT had recommended revision of rates and the same was taken into consideration by the Board of Trustees in its meeting dated 2.3.2001 and 27.6.2002, however, since the area of Kutchh was seriously affected by the cyclone in the year 1999 followed by massive earthquake in January 2001, the proposal could not be finalized. Thereafter, no final decision could be taken on the issue and in the meantime, the land policy 2004 for major ports was issued by the Central Government under Section 111 of the said Act, requiring the KPT to send proposal as per the

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directions contained therein. Some litigation also ensued in respect of the Tender issued by the KPT in 2005. Hence, according to him the proposal for revising scale of rates could not be finalized by the KPT at the relevant stages, and therefore, the KPT had proposed to revise the SoR from July 1999. Since the lessees were aware about guidelines issued in the land policies to the effect that based on the market value at the time of revision of scale of rates, the ground rent would be revised every five years, they were estopped from contending that they were not liable to pay the same as and when the liability accrued.

61. In the instant cases, it is not disputed that the lands in question were allotted to the petitioners or their predecessors as the case may be on either execution of the lease deed or by issuing the letter of allotment. It is also not disputed that the contract for the lease of the land up to 30 years was required to be entered into by the KPT by executing the lease deed as per

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Section 34 of the said Act, though in certain cases the lands have been allotted only on the letter of allotment without execution of the lease deed, as has been done in case of SCA No.2535 of 2017. In the said case the letter of allotment was issued on 27.10.1995 in favour of M/s.Unit Storage and Tankers Terminals Ltd., the predecessor of the petitioner IMC. The said allotment was subject to the terms and conditions stipulated in its annexure. One of the conditions as mentioned in Clause 9 thereof was that the ground rent fixed for plot shall be revised/enhanced/refixed at the option of the lessor at the end of every five years on or after 1st January. The ground rent will be revised on the basis of market value prevailing at the time of revision of ground rent. The allottee shall pay the ground rent at the revised rate from the date of revision. In other cases, where the lease deeds were executed like in case of SCA No.2538 of 2017 filed by IMC, the Clause 7 of the lease deed executed by the KPT in favour of M/s.Indian Molasses Company, stipulated that the ground rent at the option of

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the lessor, be revised and refixed at the end of every ten years, subject to the condition that the ground rent so refixed at the end of first ten years shall not exceed the double the original rent and the ground rent so refixed at the end of second ten years shall not exceed thrice the rent originally fixed.

62. At this juncture, it is required to be noted that Sub-clause (d) of Clause 6.3.(1) of 2010 Land Policy and Sub-clause (c) of Clause 13 of the Land Policy of 2014 issued under Section 111 of the said Act, provided that the scale of rates would be revised every five years by the TAMP. Thus, having regard to the terms and conditions contained in the letter of allotment and the lease deed on one hand and to the Section 49 of the Act and the provisions contained in the Land Policies of 2010 and 2014 on the other hand, it emerges that SoR could be framed or revised once in five years by the TAMP. The question is, could they be raised retrospectively by the TAMP, if not revised or refixed at the relevant time ?

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63. Now, Section 49 of the Act mandates the TAMP to frame the SoR on the payment of which any property belonging to or in possession of or occupation of the Board may be used for the purposes mentioned therein, including for leasing of land. It is fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the Act or arises by necessary and distinct implication. The Land Policies issued by the Government of India in exercise of powers under Section 111 of the said Act are statutory guidelines, in the nature of subordinate legislation and are binding to the TAMP. It cannot be gainsaid that the legislature has a plenary power in the matter of enactment of statutes and can itself make retrospective laws, subject of course, to the constitutional limitations, however, at the same time it is trite law that a delegatee cannot exercise the said power unless it is specifically spelled out in express words of the delegation or by compelling implications. In this regard, beneficial reference of the

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decisions of the Supreme Court in case of **Regional Transport Officer, Chittoor and Ors. Vs. Associated Transport Madras (P) Ltd., reported in 1980 (4) SCC 597** and in case of **Shree Sidhbali Steels Limited and Ors. Vs. State of Uttar Pradesh and Ors., reported in (2011) 3 SCC 193** be made. The Supreme Court in case of **Vice Chancellor, M. D. University Rohtak Vs. Jahan Singh (supra)** while examining the issue as to whether the regulations framed by the executive council of a University constituted under the Maharishi Dayanand University Act, could have given retrospective effect or retro-active operation, had held that in absence of any provision contained in the legislative Act, a delegatee cannot make a delegated legislation with retrospective effect.

64. In case of **Mahabir Vegetable Oils (P) Ltd. and Anr. Vs. State of Haryana and Ors., reported in (2006) 3 SCC 620** also it has been held that it is beyond any cavil that a subordinate legislation can be given a retrospective effect and retroactive operation,

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if any power in this behalf is contained in the main Act.

65. The Supreme Court in case of **J. Jayalalithaa and Ors. Vs. State of Karnataka and Ors., reported in (2014) 2 SCC 401**, reiterated the proposition of law that when the statute provides for a particular procedure, the authority has to follow the same and cannot be permitted to act in contravention of the same. In other words where a statute requires to do a certain thing in a certain way, the thing must be done in that way and not contrary to it at all. Other methods or mode of performance are impliedly and necessarily forbidden. The said settled legal proposition is based on a legal maxim *expressio unis est exclusio alterius*, meaning thereby, if a statute provided a thing to be done in a particular way, then it is to be done in that manner and in no other manner.

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

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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

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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

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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 the party cannot 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

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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

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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, if 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. So far as the impugned order dated 13.11.2014 notified vide the Notification dated 4.12.014 is concerned, the TAMP has rightly given effect to the said scale of rates revised by it for a period of five years with effect from 1.1.2014 till 31.12.2018, which is in consonance with the Land Policy of 2014, and therefore, no interference is called for so far as the said order is concerned.

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Re: Renewal of lease:

70. With regard to the issue of renewal of lease, it is pertinent to note that as per Section 34 of the said Act, no contract for the lease of the property of the Port for a term exceeding 30 years could be made unless it has been previously approved by the Central Government. As per the Land Policies issued by the Central Government from time to time under Section 111 of the said Act, the renewals of leases were to be governed by the relevant clauses of the said Policies, relating to the lands within the customs bonded area and the lands falling outside the customs bonded area. It is trite to say that renewal of lease cannot be claimed by the lessee as a matter of right, inasmuch as the primary requirement for considering the request for renewals would be the existence of a valid lease in favour of the lessee and that there should not be any outstanding dues payable by the lessees. Out of the petitioners herein, the petitioner IMC of SCA No.2538 of 2017, the petitioner IOC in SCA

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No.13409 of 2014, the petitioner Tankers' Association in SCA No.10306 of 2015, the petitioner Avean in SCA No.2905 of 2015, the petitioner Laxmi Motors in SCA No.16225 of 2013, the petitioner IFFCO in SCA 673 of 2014 and SCA No.2607 of 2012 and the petitioner Kesar Terminals in SCA No.11497 of 2015, No.10892 of 2016, No.10891 of 2016 and No.10730 of 2016, have prayed for the renewal of their respective leases.

71. Before examining the individual case of the petitioners for renewal, it may be noted that the port lands belong to the respondent KPT and are the public premises within the meaning of Section 2(e) of the Public Premises (Eviction of Unauthorized Occupants), Act, 1971, and are governed by the provisions of the MPT Act and by the policy guidelines issued under Section 111 of the said Act. The Clause 6.2.2.2 of 2010 Land Policy pertaining to the renewal of existing leases, *inter alia* provided that the port should first verify if the land was required for its own use. If not required, it could be renewed if

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it was consistent with the land use plan and subject to other conditions mentioned therein. Similar provision has been made in Clause 11.3 in the 2014 land policy guidelines. Hence, the KPT is required to consider the said provisions while taking decision on renewal/non-renewal of the lease. If the lease is not renewed after the expiry of lease period, the status of lessee in respect of the public premises becomes that of an unauthorized occupant liable to be evicted under the Public Premises (Eviction of unauthorized Occupants) Act. There can not be any automatic renewal of lease merely because the lessee has remained in possession of the premises. It is also well settled position of law that mere acceptance of rent by lessor for subsequent period during which the lessee continued to occupy the leased premises after the expiry of lease period cannot be said to a conduct signifying 'assent' to the continuance of the lease. In this regard, a very apt observations made by the Supreme Court in case of **Delhi Development Authority Vs. Anant Raj Agencies Private Limited, reported in (2016) 11**

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SCC 406 be made, which read as under:-

> "24. In this regard, it would be necessary for this Court to refer to the decision relied upon by the learned counsel for the appellant, in the case of Shanti Prasad Devi & Anr. v. Shankar Mahto & Ors., wherein this Court, while interpreting Section 116 of the Transfer of Property Act, 1882 with regard to its applicability and the effect of "holding over", held that it is necessary to obtain assent of the landlord for continuation of lease after the expiry of lease period and mere acceptance of rent by the lessor, in absence of agreement to the contrary, for subsequent months where lessee continues to occupy lease premises cannot be said to be conduct signifying assent on its part. The relevant paras 18 and 19 of the case are extracted below :-
>
> > "18. We fully agree with the High Court and the first appellate court below that on expiry of period of lease, mere acceptance of rent for the subsequent months in which the lessee continued to occupy the lease premises cannot be said to be a conduct signifying "assent" to the continuance of the lease even after expiry of lease period. To the legal notice seeking renewal of lease, the lessor gave no reply. The agreement of renewal contained in clause (7) read with clause (9) required fulfillment of two conditions: first, the exercise of option of renewal by the lessee before the expiry of original period of lease and second, fixation of terms and conditions for the renewed period of lease by mutual consent and in absence thereof through the mediation of local mukhia or panchas of the village. The aforesaid renewal clauses (7) and (9) in the agreement of lease clearly fell

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> within the expression "agreement to the contrary" used in Section 116 of the Transfer of Property Act. Under the aforesaid clauses option to seek renewal was to be exercised before expiry of the lease and on specified conditions.
>
> 19. The lessor in the present case had neither expressly nor impliedly agreed for renewal. The renewal as provided in the original contract was required to be obtained by following a specified procedure i.e. on mutually agreed terms or in the alternative through the mediation of Mukhias and Panchas. In the instant case, there is a renewal clause in the contract prescribing a particular period and mode of renewal which was "an agreement to the contrary" within the meaning of Section116 of the Transfer of Property Act. In the face of specific clauses (7) and (9) for seeking renewal there could be no implied renewal by "holding over" on mere acceptance of the rent offered by the lessee. In the instant case, option of renewal was exercised not in accordance with the terms of renewal clause that is before the expiry of lease. It was exercised after expiry of lease and the lessee continued to remain in use and occupation of the leased premises. The rent offered was accepted by the lessor for the period the lessee overstayed on the leased premises. The lessee, in the above circumstances, could not claim that he was "holding over" as a lessee within the meaning of Section 116 the Transfer of Property Act."

72. It has been further held in paragraph 27 as under in the light of the Public Premises

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Act -

"27. The Transfer of Property Act, 1882 is a general law governing the landlord and the tenant relationship in general. The specific Rent Control Acts are advancement over the The Transfer of Property Act, thereby providing more protection to the tenant from arbitrary increase of rent and ejectment from the rented premises by the landlord. Thus, in the light of the aforesaid case law, it can be concluded that the The Transfer of Property Act, 1882 is not applicable in respect of the public premises. The property in question is public premises by virtue of Section 2(e)(3)(ii) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, which is reproduced hereunder:

> "2(e) "public premises" means—
>
> (3) in relation to the [National Capital Territory of Delhi—
>
> (ii) any premises belonging to the Delhi Development Authority, whether such premises are in the possession of, or leased out by, the said Authority;…."

Therefore, in the instant case, as per clause III(b) of the lease deed and Sections 21 and 22 of the DD Act read with Rule 43 of the Nazul Land Rules and in the light of Shanti Prasad Devi, Sarup Singh Gupta and Ashoka Marketing Ltd. cases (supra), there cannot be an automatic renewal of lease in favour of the original lessee once it stands terminated by efflux of time and also by issuing notice terminating the lease. Merely accepting the amount towards the rent by the office of the DDA after expiry of the lease period shall not be construed as renewal of lease of the premises in question, in favour

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> of the original lessee, for another period of 20 years as contended by the respondent."

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

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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

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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 by 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

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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

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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

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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.

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79. In case of SCA No.2905 of 2015 filed by 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

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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.

FINAL CONCLUSIONS AND ORDER:-

80. The upshot of the aforesaid discussions and findings may be concluded as under:-

(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

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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

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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

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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

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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

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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.

82. Interim order in any of the petitions, if in force, shall stand vacated forthwith. It is clarified that the proceedings initiated and pending against any of the petitioners herein on the ground of they being unauthorized occupants under the Public Premises (Eviction of

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Unauthorized Occupants) Act, 1971 shall be proceeded further in accordance with law.

83. For the sake of convenience, Index is annexed to this order, which shall be treated as part of this order.

84. Before parting, the Court is constrained to observe that because of the lethargic and lackadaisical approach adopted by the officers of the KPT in not taking timely decisions in respect of the Kandla Port Land, in accordance with the provisions contained in the MPT Act and in the land policies issued by the Government of India from time to time, not only the purpose of the Act has been frustrated but has created complex issues in the management and administration of the port land, resulting into numerous litigations. It is expected that the concerned competent authority at the highest level shall look into the matter and take appropriate actions against the errant officers in accordance with law.

84. The office is directed to send a copy

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of the order to the Secretary, Ministry of Shipping (Port Wing), New Delhi.

Sd/-

(BELA M. TRIVEDI, J)

V.V.P. PODUVAL

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ANNEXURE – P/11

IN THE HIGH COURT OF JUDICATURE AT GUJARAT

DISTRICT: KUTCHH

LETTERS PATENT APPEAL NO. 1426 OF 2019

(UNDER CLAUSE 15 OF THE LETTERS PATENT)

IN

SPECIAL CIVIL APPLICATION NO. 2535 OF 2017

IMC Limited Appellants

Versus

Union of India & Ors. Respondents

SYNOPSIS

Sr No.	Date	Particulars
1.	October 27, 1995	A Letter of Allotment issued by Respondent No. 3 (a Major Port) to Appellant No. 1 (then known as United Storage Tanks Terminals Ltd.) allotting land admeasuring 12 acres (equivalent to 48,552 sq. meters) for a period of 30 years i.e. till October 26, 2025 (“Lease”), on “as is where is” basis, for the purpose of

		storage and handling of hazardous and non-hazardous liquid bulk at Kandla.
2.	2005	Respondent No. 3 issued a tender inviting bids for allotment of plots (adjacent to the LPG project of IOC) for construction of liquid storage tanks for handling liquid cargo at Kandla on a 30 year Lease (the "2005 Tender"). By and under the 2005 Tender, Respondent No. 3 changed the payment model (from a premium-cum-lease rent structure followed earlier to a higher premium and token Re. 1 lease structure) and also, arbitrarily fixed the minimum basic premium at Rs. 612/- (Rupees Six Hundred and Twenty only) per sq. mtr.
3.	April 29, 2010	Respondent No. 3 once again, sought to revise lease rentals with regard to the lands comprising in the port, and addressed a letter to Respondent No. 2 proposing a revision in rent structure since 1994 i.e., even for periods that were earlier rejected by Respondent No. 2 in 1999.

4	July 7, 2010	USTTL, a wholly owned subsidiary of Appellant No. 1, was amalgamated into Appellant No. 1 by a scheme of amalgamation, which was approved by the Calcutta High Court.
5	July 20/21, 2010	Respondent No. 2 proposed a meeting on July 29, 2010 at Kandla for inter-alia discussing the proposal from Respondent No. 3 for revision of its scale for rates. This letter was also copied to the Gandhidham Chamber of Commerce and Industry, in which Appellant No. 1 is also a member
6	August 17, 2010	The Kandla Liquid Tank Terminal Association ("KLTTA") (registered association representing liquid tank terminals based at the Kandla Port) addressed a letter to the Secretary of Respondent No. 2, formally placing on record their objection as to the proposed increase in lease rentals for various reasons, which included the fact that the proposed increase was by a quantum between 2600% to 4000%.

7.	August 19, 2010	KLTTA addressed another letter reiterating its earlier letter dated August 17, 2010.
8.	December 2010	The 2005 Tender was cancelled by Respondent No. 3.
9.	2010	Land Policy for Major Ports, 2010 issued by Respondent No. 1 ("2010 Land Policy Guidelines"), under the aegis of which 2011 TAMP Order was purportedly issued.
10	2011	A fresh tender was issued by Respondent No. 3 (the "2011 Tender"), inviting bids for plots of land, including those which were included in the 2005 Tender (in all admeasuring approximately 100 acres comprised in 19 plots) adjacent to the LPG project of IOC which were earlier the subject matter of the 2005 Tender. As in the case of the 2005 Tender, the 2011 Tender was also based on the price model whereby only a one-time lump sum payment for premium with a token lease rental (Re. 1) per plot per annum was to be paid by the successful bidders, which was different from the price model under the Lease with Appellant No. 1.

11	March 25, 2011	Respondent No. 2 by its order notified vide Notification G. No. 106 on May 11, 2011, (the "2011 TAMP Order"), retrospectively escalated the lease rentals for all plots of land in the Port area.
12	April 18, 2011	KLTTA addressed another letter to the Secretary, Respondent No. 2 once again placed its objections on record by pointing out that Respondent No. 3 had failed to appreciate the efforts made by the members of KLTTA in development of the lands allotted to them and instead sought to impose exorbitant lease rent with retrospective effect from 1999, in an arbitrary, unreasonable manner against the principles of natural justice. KLTTA inter alia pointed out that the market value of lands had been erroneously arrived at on the basis of bids received under the 2005 Tender, which was cancelled.
13	May 11, 2011	2011 TAMP Order notified.
14	May 20, 2013	Respondent No. 3 issued a demand notice to Appellant No. 1 in respect of the Lease and required payment of retrospective arrears in

		lease rent effective from 1999 (relying upon the 2011 TAMP Order).
15	June 25, 2013	Appellant No. 1 addressed letter to Respondent No. 3 stating that the Demand Notice dated May 20, 2013 sought to claim differential lease rent with retrospective effect from 1999, which was not within the terms of the Letter of Allotment and the same was untenable, onerous and devoid of merits.
16	July 6, 2013	In response to Appellant No. 1's letter added June 25, 2013, Respondent No. 3, relying upon inter alia the Land Policy- 2004 and the 2011 TAMP Order, sought to justify the Demand Notice.
17	October 17, 2013	Respondent No. 3 addressed a letter (for the first time) refusing to recognize Appellant No. 1 as the lessee of the lands comprised in the Lease, and stating that United Storage & Tanks Terminals Ltd. had not transferred the lease to Appellant No. 1. Nonetheless, and contrary to its stand, Respondent No. 3 then called on Appellant No. 1 to pay the escalated rent at the earliest.

18	January 1, 2014	Respondent No. 3 once again sought a copy of the scheme for amalgamation and set of the complete proceedings filed before the Calcutta High Court.
19	2014	The 2014 TAMP Order was issued, purportedly under the aegis of the Policy Guidelines for Land Management by Major Ports, 2014 issued by Respondent No. 1 (2014 Land Policy Guidelines").
20.	November 13, 2014	Respondent No. 2 issued Notification G. No. 350 dated December 4, 2014 in Case No. TAMP/24/2014-KPT ("2014 TAMP Order")
21	December 4, 2014	2014 TAMP Order notified.
22	January 12, 2015	Respondent No. 3 raised a final notice for payment dated calling for payment of outstanding dues from USTTL.
23	February 2015	Respondent No. 3 by its letter addressed to USTTL, called for payment of Rs. 4,54,48,780/- at the rate of Rs. 923.27 per sq. meter from the period of January 1, 2015 to January 1, 2016 and at the rate of Rs. 941.74 per sq. meter from the period of January 1,

		2016 to January 9, 2016 along with previous outstanding sums of Rs. 1,51,32,089/-.
24	May 8, 2015	Respondent No. 3 raised an invoice ("2015 Demand Notice") on USTTL for Rs. 905.17 (Rupees Nine Hundred and Five and Paise Seventeen only) effective retrospectively from January 1, 2014. Respondent No. 3 has demanded Lease Rentals at the revised figure of Rs. 905.17 (Rupees Nine Hundred and Five and Paise Seventeen only) effective from January 1, 2014.
25	February 5, 2016	Respondent No. 3 by its letter addressed to USTTL stated that USTTL's change in name had not been finalized due to non payment of dues by USTTL and pending court case (filed by Appellant No. 1 before this Hon'ble Court in 2003 against Respondent No. 3 in relation to an erroneous demand for premium under this Lease, and which is pending as on date) and on that ground arbitrarily rejected the cheques tendered to Respondent No. 3. Respondent No. 3 also reiterated its stand that the classification of the Lease into category G-

		1 was valid. Further, Respondent No. 3 stated that if the dues as per the demand notes for lease rent were not cleared, it would initiate action.
26	December 22, 2016	Respondent No. 3 by its letter to Appellant No. 1 made a demand of Rs. 5,35,16,756/- (Rupees Five Crores Thirty Five Lakhs Sixteen Thousand Seven Hundred and Fifty Six only) for the period of January 10, 2017 to January 9, 2016 at the rate of 960.57 per sq. m for the period of January 10, 2017 to December 31, 2017and at Rs. 979.78 per sq. m for the period of January 1, 2018 (wrongly stated as January 1, 2017) to January 9, 2018.
27	January 2017	Being aggrieved by the 2011 TAMP Order, 2014 TAMP Order, the demand notices issued thereunder and the highhanded and brazen conduct of KPT, the Appellants approached this Hon'ble Court by way of the Special Civil Application No. 2535 of 2017.
28	July 27, 2017	During the pendency of SCA 2535/2017, Appellant No. 1 offered to make a without-prejudice payment of the transfer fees at six

		times the annual ground rent prevailing at the time when the amalgamation took place.
29	August 5, 2017	Appellant No. 1's offer to make a without prejudice payment was rejected by Respondent No. 3.
30	May 10, 2019	Impugned order passed by the Ld. Single Judge upholding the 2011 TAMP Order and the 2014 TAMP Order (including the exorbitant increase in lease rents). The SCA was allowed to the limited extent that the 2011 TAMP Order is set aside insofar as it retrospectively increases the lease from July 1999 to December 31, 2008.
31		Hence the present Appeal.

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

DISTRICT: KUTCHH

LETTERS PATENT APPEAL NO. 1426 OF 2019

(UNDER CLAUSE 15 OF THE LETTERS PATENT)

IN

SPECIAL CIVIL APPLICATION NO. 2535 OF 2017

1. IMC Limited
(Formerly known as United Storage
Tanks Terminals Ltd.) having its
Corporate Office at Neeladri, 3rd Floor,
No. 9, Cenotaph Road, Alwarpet,
Chennai-600 018.

2. Atluri Mallesh Rao
Director and Shareholder of
IMC Limited, having his office at
"Neeladri", 3rd Floor, No. 9
Cenotaph Road, Alwarpet,
Chennai-600018,
Tamil Nadu, India Appellants

Versus

1. Union of India,
Through the Secretary,
Ministry of Shipping,
New Delhi-110001

2. Tariff Authority of India for
Major Ports, 4th Floor,
Bhandar Bhavan,
Muzawar Pakhadi Road,
Mazgaon, Mumbai-400010

3. Board of Trustees of Deendayal Port
Trust (formerly known as Kandla Port
Trust) a Major Port having its office at
Land Section, Administrative Office,
Post Box No. 50, Gandhidham
(Kutch)-370201 Respondents

Appeal under Clause 15 of the Letters Patent against the order dated 10.05.2019 passed by the Ld. Single Judge (Coram: Bela M. Trivedi, J.) in Special Civil Application No. 2535 of 2017.

To,

The Hon'ble Chief Justice and other

Hon'ble Judges of the High Court of

Gujarat, at Ahmedabad.

THE HUMBLE APPEAL OF THE APPELLANTS ABOVE NAMED.

MOST RESPECTFULLY SHEWETH:

1. By way of the present appeal under Clause 15 of the Letters Patent, the Appellants seek to quash and set aside the order dated May 10, 2019 ("Impugned Order") (to the extent set out herein below), which was passed by this Hon'ble Court in a group of Writ Petition, inter alia, challenging the notification (i) No. TAMP/21/2010-KPT dated May 11, 2011 notifying Order dated March 25, 2011 passed by Respondent No. 2 in Case No. TAMP/21/2010-KPT ("2011 TAMP Order") which was purportedly issued under the aegis of Land Policy for Major Ports, 2010 issued by Respondent No. 1 ("2010 Land Policy Guidelines"); (ii) and Notification G. No. 350 dated December 4, 2014 notifying Order dated November 13, 2014 in Case No. TAMP/24/2014-KPT ("2014 TAMP Order") which was purportedly issued under the aegis of the Policy Guidelines for Land Management by Major Ports, 2014 issued by Respondent No. 1 ("2014 Land Policy Guidelines"). The 2011 TAMP Order and the 2014 TAMP Order notified the scale of rates for use of lands at the port of Respondent No. 3.

2. In addition to the above, the Appellants, by way of their Petition (Special Civil Application No. 2535 of 2017 ("SCA")) challenged the (i) variation/ modification of the premium-cum-lease rental model payable by Appellant No. 1, during the subsistence of its lease with Respondent No. 3; (ii) increase in lease rentals payable

by Appellant No. 1 during the subsistence of its lease with Respondent No. 3; and (iii) the classification of the lands demised unto Appellant No. 1 by Respondent No. 3 during the subsistence of its lease with Respondent No. 3. The Appellants also challenged the retrospective levy of rentals by Respondent No. 2 for the period since 1999.

3. By the Impugned order, the Ld. Single Judge has the 2011 TAMP Order was set aside to the extent that it permitted the retrospective levy of lease rentals for the period from July 1999 to December 31, 2008. The impugned order fails to consider the arguments advanced/ facts pointed out by the Appellants and has upheld the 2011 TAMP Order and 2014 TAMP Order. A copy of the impugned order is annexed hereto and marked as ANNEXURE-A. Copies of the written submissions filed by the Appellants (for the preliminary objections and on the merits of the matter) before the Ld. Single Judge in the SCA as well as the written submissions filed by Respondent No. 3 are annexed hereto and marked as ANNEXURE-B Colly and ANNEXURE-C Colly respectively.

4. The 2011 TAMP Order is annexed at Annexure-J to the SCA and the 2014 TAMP Order is annexed at Annexure-X to the SCA.

PARTIES

5. Appellant No. 1 is a company incorporated on April 2, 1935, under the provisions of the Companies Act, 1913, and was

formerly known as United Storage Tanks Terminals Ltd. ("USTTL"). USTTL was a wholly owned subsidiary of Appellant No. 1 and amalgamated into Appellant No. 1 in 2010, by a scheme of amalgamation, which was approved by the Calcutta High Court, by its order dated July 7, 2010. Appellant No. 2 is the Managing Director of Appellant No. 1 and is also a shareholder thereof.

6. Appellant No. 1 is engaged in the business of port based liquid bulk terminal operations and providing storage tank farm and terminalling services. Appellant No. 1 has considerable expertise in handling and storage of hazardous and non-hazardous liquids including petroleum products, petrochemicals, liquefied gases and vegetable oils, which has enabled it to serve a wide range of customers including public sector companies, government companies and multinational companies.

7. Respondent No. 1 is the Union of India, represented by the Secretary, Ministry of Shipping. Respondent No. 2/ Tariff Authority for Major Ports ("TAMP") is an authority constituted under the Major Port Trust Act, 1963 ("the MPT Act") exercising powers and discharging functions, inter alia, with respect to the fixation of tariff for major ports including Respondent No. 3.

8. Respondent No. 3/ Kandla Port Trust ("KPT/ Respondent No. 3") is a Major Port Trust in whose premises Appellant No. 1 is

operating a common user liquid bulk tank farms as more specifically set out hereinafter.

SUMMARY OF THE DISPUTE

9. Facts germane to the present dispute are set out briefly below. The Appellants crave leave to refer to the SCA, and such other documents as may be necessary.

10. A Letter of Allotment dated October 27, 1995 was issued by Respondent No. 3 to Appellant No. 1 (then known as USTTL) allotting land admeasuring 12 acres (equivalent to 48,552 sq. meters) for a period of 30 years i.e. till October 26, 2025 ("Lease/ Letter of Allotment"), on "as is where is" basis, for the purpose of storage and handling of hazardous and non-hazardous liquid bulk at Kandla. A copy of the Letter of Allotment is annexed as ANNEXURE-B to the SCA.

11. Some of the relevant clauses of the Lease are as under:

a) Clause (a) provides that the period of lease shall be 30 years from the date of agreement entered into between Respondent No. 3 and the allotee.

b) Clause (c) provides that the allottee shall be liable to pay the lease rent @ Rs. 11/- per sq. mtr per annum. The lessee shall be liable to pay the lease rent at schedule rate, if fixed higher, at any time.

c) Clause (d) provides that the lease rent shall bear an escalation @ 10% per annum (compoundable).

d) Clause (e) provides that Respondent No. 3 will have an option to refix the lease rent every 5 years.

e) Clause (f) provides that the allottee shall pay a lumpsum amount of Rs. 40 lakhs provisionally or the average premium per sq. mtr earned by Respondent No. 3 by allotment of 11 plots for construction of storage tanks of liquid cargo on the land adjacent to the LPG project of IOC, whichever is higher, as premium.

f) Clause (g) provides that the allottee shall deposit an amount equivalent to one year's lease rentals as refundable security deposit with the Port which shall be maintained till the end of the lease period or shall provide an irrevocable bank guarantee for an amount equivalent to three year's lease rentals which shall remain valid for the lease period.

g) Clause (i) provides that 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.

h) Clause (u) provides that all filling, levelling etc. and reclamation of the plot and other development works namely

approach road, water supply, drainage, electricity etc. shall be provided and maintained by the lessee at its own cost.

Terms and Conditions of Allotment of Plot

i) Clause 4 provides that the allotee shall pay to Respondent No. 3 earnest money deposit equal to one year's rent. Thereafter he shall pay by way of deposit every year on or before the date of handing over of possession of plot an amount equal to one year's rent till the buildings/ structures have been constructed in accordance with the approved plans and until the lease deed is executed and registered, whereafter the earnest money deposits equal to annual rent will be adjusted as ground rent and the lease will be deemed to have commenced in that case from the date of entry on the premises under the terms of allotment of the plot.

j) Clause 5 provides the annual ground rent will be payable at the rate of Rs. 11.00 per square meter or part thereof and per annum or part thereof.

k) Clause 9 provides that 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 be revised on the basis of market value prevailing at the time of revision of ground rent. The market value shall be determined by Chairman, Respondent No. 3 or any other

authority empowered by him and a decision taken on his behalf in this regard shall be final and legally binding on the allottee and not open for any dispute by allottee. The allottee shall pay the ground rent at revised rates from the date of revision.

12. The land allotted under the Lease was allotted on a premium-cum-lease rent basis. As per the instructions and in agreement with Respondent No. 3, Appellant No. 1 paid a lump sum premium of Rs. 40,00,000/- (Rupees Forty Lakhs only) under Clause (f) of the Letter of Allotment. In addition to the premium, Appellant No. 1 was also charged lease rental at the rate of Rs. 11/- per square mtr in terms of Clause (c) of the Letter of Allotment, which was to be compounded at 10% annually from the date of the Letter of Allotment, as explained in detail hereunder.

13. Under Clause (e), Respondent No. 3 had the right to revise the rent rates every 5 years, and in July 1999, Respondent No. 3 suggested revised rent rates. However, in 1999, TAMP refused to revise the rent rates at the time (on account of natural calamities in the region) and directed Respondent No. 3 to classify the land taking into account the distance from the creek and the purpose for which the land was allotted. Thereafter, in 2005, the government issued guidelines that the Port trusts should charge land premium upfront based on the tender along with nominal rent of Re. 1/-. In such a case, the entire consideration is taken as upfront premium with nominal value of Rs. 1 per plot being charged as rent. Respondent

No. 3 once again proposed revised rates as below to its Board. However, Respondent No. 2 did not accept these rates, and requested Respondent No. 3 to fix revised rates for all categories listed above.

14. In or around 2005, KPT issued a tender inviting bids for allotment of plots (adjacent to the LPG project of IOC) for construction of liquid storage tanks for handling liquid cargo at Kandla on a 30 year Lease (the "2005 Tender"). By and under the 2005 Tender, Respondent No. 3 changed the payment model (from a premium-cum-lease rent structure followed earlier, when land was allotted to Appellant No. 1, to single lump sum consideration in the form of a higher premium and token Re. 1 lease structure). The 2005 Tender was cancelled by Respondent No. 3 in or around December 2010.

15. In 2010, KPT once again, sought to revise lease rentals with regard to the lands comprising in the port, and in this regard, vide letter dated April 29, 2010, addressed by Respondent No. 3 to Respondent No. 2 (the "April 29, 2010 Letter"), Respondent No. 3 proposed a revision in rent structure since 1994 i.e., even for periods that were earlier rejected by Respondent No. 2 in 1999.

16. Respondent No. 2 by its letter dated July 20/21, 2010 (Annexure E to the SCA) proposed a meeting on July 29, 2010 at Kandla for inter-alia discussing the proposal from Respondent No. 3 for

revision of its scale for rates. The said letter was forwarded inter-alia to the Gandhidham Chamber of Commerce and Industry ("GCCI"), an association in which Appellant No. 1 is a member. One of the members of the GCCI is a registered association representing liquid tank terminals based at the Kandla Port, being the Kandla Liquid Tank Terminal Association ("KLTTA").

17. The KLTTA addressed a letter dated August 17, 2010 (Annexure-F to the SCA) to the Secretary of Respondent No. 2, formally placing on record their objection as to the proposed increase in lease rentals for various reasons, which included the fact that the proposed increase was by a quantum between 2600% to 4000%. By the said letter, the KLTTA also pointed out that such an increase would adversely affect their business and that they would have to increase storage/ handling costs by 2 to 2.5 times. The sequitur thereof would be the loss of business. KLTTA also pointed out that each member had largely contributed to developing the infrastructural facility of the Kandla lands and that such a sharp increase would have cascading consequences. KLTTA further pointed out the duty of Respondent No. 3 to not act in a profit-motivated manner, and rather, act in a fair and reasonable manner in the interest of the public befitting its status as "State" under Article 12 of the Constitution.

18. The KLTTA repeated these contentions by its letter dated August 19, 2010 (Annexure-G to the SCA) addressed to the Secretary,

Respondent No. 2 and made several objections including (i) the fact that the Kandla region, its occupants and commercial enterprises have been adversely affected by a cyclone and earthquake and its after effects in the recent years, (ii) the appointment by Respondent No. 3 of a valuer was a violation of the doctrine that no man should be the judge in his own case, (iii) the revision of lease rent/ ground rent from 1999 to 2003 was an increase of approximately 1000% and was baseless, exorbitant and unreasonable, (iv) escalation in rent ought not to exceed 25% and as per the directions of the Hon'ble Kerala High Court, such escalation should be on only the base rent and not on a cumulative basis, (v) market value ought not to be applied in cases of renewal/ enhancement of rates/ charges for leases already granted. KLTTA by its letter dated November 16, 2010 (Annexure-H to the SCA) addressed to the Secretary, Respondent No. 2 reiterating the above points and responding in a para-wise manner to the April 29, 2010 Letter.

19. In 2011, a fresh tender was issued by Respondent No. 3 (the "2011 Tender"), inviting bids for plots of land, including those which were included in the 2005 Tender (in all admeasuring approximately 100 acres comprised in 19 plots) adjacent to the LPG project of IOC which were earlier the subject-matter of the 2005 Tender. As in the case of the 2005 Tender, the 2011 Tender was also based on the price model whereby only a one-time lump

sum payment for premium with a token lease rental (Re. 1) per plot per annum was to be paid by the successful bidders, which was different from the price model under the Lease with Appellant No. 1. In view of the very highly priced one-time lump-sum premium, only 42% of the total land comprised in the 2011 Tender received bids, while the balance did not. Consequently, none of the plots which were the subject-matter of these bids under the 2011 Tender were allotted.

20. The KLTTA by its letter dated April 18, 2011 (Annexure-I to the SCA) addressed to the Secretary, Respondent No. 2 once again placed its objections on record by pointing out that Respondent No. 3 had failed to appreciate the efforts made by the members of KLTTA in development of the lands allotted to them and instead sought to impose exorbitant lease rent with retrospective effect from 1999, in an arbitrary, unreasonable manner against the principles of natural justice. Respondent No. 3 was required to draft policy after considering the requirement, interest and livelihood of people affected in the region. The KLTTA also pointed out that Respondent No. 3 was proposing to arbitrarily create categories of lands for which no basis had been provided for liquid storage tank terminals only, as against the categories based on the geographical location for all other lands. KLTTA pointed out that the market value of lands had been erroneously arrived at on the basis of bids received under the 2005 Tender,

irrespective of the fact that Respondent No. 3 had cancelled the 2005 Tender process (in 2010), on account of the fact that Respondent No. 3 had not obtained necessary environmental/ CRZ clearances/ approvals till 2010. As no payment was required to be made until the environmental/ CRZ clearances were obtained by the Respondent No. 3, no payment had been made by the successful bidder to Respondent No. 3 and possession thereto was not transferred. It was also pointed out that the State Government's ready reckoner value was lower compared to the valuer's report and that Respondent No. 3 chose to conveniently rely on the valuer's report rather than the State Government's guidelines.

21. The Appellant No. 1's lands comprised in the Lease were categorized by Respondent No. 3 into Category 'C-1'- "Plots abutting on main roads" on the basis of their geographical location. The rent calculated no the said lands was on the basis of the geographical location.

22. Thereafter, without adequate consideration of the objections raised to the proposal of Respondent No. 3, Respondent No. 2 passed the 2011 TAMP Order whereby the lease rentals for plots of land in the Port area were retrospectively escalated for the following consecutive slabs:
    a) July 1999 to December 31, 2003;
    b) January 1, 2004 to December 31, 2008;

c) January 1, 2009 to December 31, 2013.

It is pertinent to note that in the TAMP in response to a specific query of Respondent No. 2 whether the lease agreements entered into by Respondent No. 3 in the past with lessees contained a clause allowing for retrospective revision of the lease rentals, Respondent No. 3 provided an inaccurate response- "There are provisions for revision of rents, albeit the tenures may be different, but surely the rates can be revised." Respondent No. 3 conveniently did not address the issue of retrospective increase in release rents. Further Respondent No. 2 listed several questions regarding methodology of the valuation of the lands. It noted that the market value arrived at by the valuer was predominantly based on the bids received by Respondent No. 3 in the 2005 Tender. Further, Respondent No. 3 provided vague and unsatisfactory responses to the queries raised by Respondent No. 2.

23. By a letter dated May 13, 2011 (Annexure-K to the SCA), Respondent No. 2 forwarded the 2011 TAMP Order along with a summary of comments which were received from Port Users and organizations during a joint hearing before Respondent No. 2. The summary forwarded by Respondent No. 2 records certain objections raised by GCCI and KLTTA, both associations of which Appellant No. 1 is a member, which objections were insufficiently/ inaccurately responded to by Respondent No. 3.

24. Thereafter, by its letter dated May 20, 2013 (Annexure L to the SCA), Respondent No. 3 suddenly issued a demand notice ("2013 Demand Notice") to Appellant No. 1 in respect of the Lease and required payment of retrospective arrears in lease rent effective from 1999 (relying upon the 2011 TAMP Order), which was arbitrary, unjustified and against the terms of the Lease.

25. On account of the arbitrary and retrospective increase proposed under the 2013 Demand Notice, Appellant No. 1 by its letter dated June 25, 2013 ("June 25, 2013 Letter") (Annexure-M to the SCA) stated that the 2013 Demand Notice sought to claim differential lease rent with retrospective effect from 1999, which was not within the terms of the Letter of Allotment and the same was untenable, onerous and devoid of merits.

26. In response to the June 25, 2013 (Annexure-N to the SCA) Letter, Respondent No. 3 replied by its letter dated July 6, 2013 ("July 6, 2013 Letter") relying upon inter alia the Land Policy- 2004 and the 2011 TAMP Order. Respondent No. 3 sought to justify the 2013 Demand Notice by stating that: (i) the allottee was liable to pay the lease rent @ Rs. 11 (Rupees Eleven) per sq. mtrs per annum and that the Lessee was liable to pay the rent at scheduled rate (sic) if fixed higher at any time, (ii) the lease rent was to be escalated at 10% per annum and (iii) Respondent No. 3 would have the option to re-fix rent every 5 years.

27. The July 6, 2013 Letter was responded to by Appellant No. 1 on October 1, 2013 (Annexure-O to the SCA) pointing out that the Ministry's letter in 1994 did not contain provisions for retrospective increases of lease rentals and that Respondent No. 3 had chosen to not revise the rates for nearly 20 years.

28. On October 17, 2013, Respondent No. 3 addressed a letter bearing reference number LW/PL/2158-IV/482 (Annexure-P to the SCA) for the first time refusing to recognize Appellant No. 1 as the lessee of the lands comprised in the Lease, and stating that United Storage & Tanks Terminals Ltd. had not transferred the lease to Appellant No. 1. Nonetheless, and contrary to its stand, Respondent No. 3 then called on Appellant No. 1 to pay the escalated rent at the earliest. In fact, Appellant No. 1 had, by its letter dated September 1, 2010 (Annexure-Q to the SCA) duly informed Respondent No. 3 of the fact that USTTL had been amalgamated into Appellant No. 1 pursuant to the order of the Calcutta High Court.

29. Respondent No. 3 by its letter dated January 1, 2014 (Annexure-S to the SCA) sought a copy of the scheme for amalgamation and a set of the complete proceedings filed before the Calcutta High Court. this information was already provided in 2010, however Appellant No. 1 provided the same once again by its letter dated March 25, 2014 (Annexure-T to the SCA).

30. Thereafter, in 2014 Respondent No. 1 issued the Policy Guidelines for Land Management by Major Ports, ("2014 Guidelines"), clause 18 whereof provides for determination of market value of land by taking into consideration the highest of the below factors:

> "(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.
>
> (i) 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.
>
> (ii) Rate arrived at by an approved valuer appointed for the purpose by the Port.
>
> (iii) Any other relevant factor as may be identified by the Port."

31. By Respondent No. 2's letter dated July 8, 2014, Respondent No. 2 forwarded a proposal from Respondent No. 3 to inter-alia, GCCI, for a revision of the rate structure of the lands in the premises of Respondent No. 3. By their letter dated July 22, 2014 ("July 22, 2014 Letter") (Annexure U to the SCA) addressed to

the Chairperson of Respondent No. 2, GCCI provided their replies/ comments to the proposal from Respondent No. 3 to revise the rate structure of the port lands. Thereafter, on August 4, 2014 Respondent No. 2 conducted a joint hearing at the premises of Respondent No. 3, with certain users/ user organizations which were given notice and were present, including the GCCI. Several objections were raised regarding the categorization of lands.

32. After a gap of almost one year, Respondent No. 3 by its letter dated August 16, 2014 (Annexure-V to the SCA) bearing reference number LW/PL/2158-IV/1142 requested Appellant No. 1 to furnish a TDS Certificate in the name of USTTL or make payment of INR 6,18,195 (Rupees Six Lakhs Eighteen Thousand One Hundred and Ninety Five only). Appellant No. 1 responded by its letter dated August 25, 2014 (Annexure-W to the SCA), bearing reference number IMC/KPT/14-15/360 addressed to Respondent No. 3, once again informed Respondent No. 3 that USTTL has ceased to exist and had merged with Appellant No. 1. Accordingly, Appellant No. 1 requested Respondent No. 3 to take on record the TDS Certificates.

33. On November 13, 2014 Respondent No. 2 passed the 2014 TAMP Order exorbitantly increasing the annual lease rentals for KPT's lands under categories "A to G". While categories A to F were classified based on their geographical location (irrespective of the use of lands), Category G was created specifically for Liquid

Storage Tanks based on use. Two sub-categories G1 and G2 were created therein- Category G1 being lands situated from Eastern Bank of Kandla Creek to Western Bank of Nakti Creek; and Category G2 beign lands situated from West side of Nakti Creek to Kharirohar having existing Oil Terminals of IOCL, HPPCL and BPCL. Appellant No. 1's lands, which were originally in category C-1, were arbitrarily classified in Category G-1, wherein the rent was increased to Rs. 905.17 per sq. meter (from Rs. 87.03 per sq. meter for the period of January 1, 2013 to January 9, 2014). Pertinently, liquid storage tank farm lands, though classified now as Categories G-1 and G-2, are within the geographic location of lands under Categories A to F.

34. Respondent No. 3 thereafter raised an invoice dated May 8, 2015("2015 Demand Notice") (Annexure-CC to the SCA) on USTTL for Rs. 905.17 (Rupees Nine Hundred and Five and Paise Seventeen only) effective retrospectively from January 1, 2014. Respondent No. 3 has demanded Lease Rentals at the revised figure of Rs. 905.17 (Rupees Nine Hundred and Five and Paise Seventeen only) effective from January 1, 2014.

35. By its letter dated February 3, 2016 (Annexure-DD to the SCA) addressed to Respondent No. 3, Appellant No. 1 responded to the 2015 Demand Notice and stated that the retrospective increase from the last paid price of Rs. 88.17 (Rupees Eighty Eight and Paise Seventeen) (from the period of January 10, 2014 to January

9, 2015) to Rs. 905.17 (Rupees Nine Hundred and Five and Paise Seventeen only) was surprising, and unwarranted, especially in light of the fact that the increase was about 62 times (approximately 6182%) as compared to the rates prevalent in 1999. Appellant No. 1 pointed out that such exorbitant lease rentals were on account of wrongful categorization of the liquid tank farm business alone, which categorization was discriminatory, harsh, unreasonable and untenable. Nonetheless, Appellant No. 1 made a payment under protest of Rs. 51,34,536/- (Rupees Fifty One Lakhs Thirty Four Thousand Five Hundred and Thirty Six only) at the rates of Rs. 90.55 per sq. meter.

36. Respondent No. 3 by its letter addressed to USTTL dated February 5, 2016 (Annexure-EE to the SCA) stated that USTTL's change in name had not been finalized due to non payment of dues by USTTL and pending court case (filed by Appellant No. 1 before this Hon'ble Court in 2003 against Respondent No. 3 in relation to an erroneous demand for premium under this Lease, and which is pending as on date) and on that ground arbitrarily rejected the cheques tendered to Respondent No. 3.

37. Respondent No. 3 by its letter dated December 22, 2016 (Annexure-GG to the SCA) made a demand of Rs. 5,35,16,756/- (Rupees Five Crores Thirty Five Lakhs Sixteen Thousand Seven Hundred and Fifty Six only) for the period of January 10, 2017 to January 9, 2018 at the rate of 960.57 per sq. m for the period of

January 10, 2017 to December 31, 2017 and at Rs. 979.78 per sq. m. for the period of January 1, 2018 (wrongly stated as January 1, 2017) to January 9, 2018.

38. During the pendency of SCA 2535/2017, Appellant No. 1 offered by its letter dated July 27, 2017 to make a without-prejudice payment of the transfer fees at six times the annual ground rent prevailing at the time when the amalgamation took place. However, this offer was rejected by KPT by its letter dated August 5, 2017. The Appellants crave leave to refer to and rely upon the said letters dated July 27, 2017 & August 5, 2017 when produced.

39. Being aggrieved by the 2011 TAMP Order, 2014 TAMP Order, the demand notices issued thereunder and the highhanded and brazen conduct of KPT, the Appellants approached this Hon'ble Court by way of the SCA. By the impugned order, the Ld. Single Judge has allowed the SCA- to the limited extent that the 2011 TAMP Order is set aside insofar as it retrospectively increases the lease from July 1999 to December 31, 2008. All other aspects of the 2011 TAMP Order and the 2014 TAMP Order have been upheld by the Ld. Single Judge – including the exorbitant increase in lease rents. The Ld. Single Judge has failed to consider the arguments advanced by the Appellants and has in a mechanical manner accepted the contentions raised by KPT. In light of the circumstances above, the Appellants being aggrieved and dissatisfied by the erroneous Impugned order have preferred the

present Appeal on the following amongst the other grounds, which are without prejudice to each other and in alternate to one another:

GROUNDS:

40. It is submitted that the impugned order is perverse, wrong, suffers from a lack of application of mind, and proceeds on premises that are contrary to the record. Without prejudice to the foregoing, the impugned order suffers from the following infirmities:

A. The Ld. Single Judge erroneously held that the Appellants do not have any locus

(I) The Ld. Single Judge's finding that Appellant No. 1 does not have any locus in this matter, is bad in law, perverse and unsustainable.

(II) The Ld. Single Judge has observed that since Appellant No. 1 is a transferee and not the original lessee, Appellant No. 1 though an occupant of the premises could not be said to be in "authorized occupation" (paragraph 12 of the impugned order). It has also been held that Appellant No. 1 cannot be considered as a "person aggrieved". Since Appellant No. 1 does not have any existing and enforceable legal right, the petition under Article 226 would not be maintainable.

(III) It is not in dispute that USTTL which was a wholly owned subsidiary of Appellant No. 1 was amalgamated into

Appellant No. 1 by a scheme of amalgamation, which was approved by the Calcutta High Court, by its order dated July 7, 2010. In light of the amalgamation, all the assets and liabilities of USTTL were transferred to Appellant No. 1. By way of this transfer, all the properties, rights and interest of USTTL as well as all liabilities, duties and obligations of USTTL stood transferred to Appellant No. 1 with effect from the Transfer Date (April 1, 2009).

(IV) The Ld. Single Judge failed to appreciate that Appellant No. 1 was a "person aggrieved" as contemplated by the Hon'ble Supreme Court. In Ayaaubkhan Noorkhan Patha Vs. State of Maharashtra & Ors. reported in 2013 (4) SCC 465, the Hon'ble Supreme Court observed that a person aggrieved would mean someone "whose right or interest has been adversely affected or jeopardized." KPT has not denied that Appellant No. 1, would have been liable to pay the amounts under the 2011 TAMP Order and/or 2014 TAMP Order. The Ld. Single Judge failed to appreciate that in the present case, Appellant No. 1 being cast with the obligation of paying amounts to KPT, was aggrieved by the invoices issued by KPT and would have been liable to pay amounts to KPT. Therefore, IMC being an aggrieved party, has the right to file the present petitions.

(V) The Ld. Single Judge failed to appreciate that when the issue is about dealing with property, whoever is denied or deprived of his right in relation to a property (Appellant No. 1 in the present case), is a "person aggrieved". Even if Appellant No. 1 was not called upon by KPT to pay the amount under the invoices issued by KPT, under law, Appellant No. 1 would be liable to pay such amounts since all the properties, rights and interest as well as obligations and liabilities of USTTL were transferred to Appellant No. 1 by the order dated July 7, 2010. If any action was initiated by KPT against the occupation of the premises by Appellant No. 1 (which admittedly was not taken as on the date of filing of SCA 2535/2017), such action would have to be defended by Appellant No. 1. Therefore, ex-facie, it cannot be said that Appellant No. 1 is not a person aggrieved.

(VI) The Ld. Single Judge has wrongly applied the ratio in the decision of Singer India Limited Vs. Chander Mohan Chadha & Ors. reported in (2004) 7 SCC 1. The Hon'ble Supreme Court while referring to the decision of Saraswati Industrial Undertaking Vs. CIT Haryana reported in AIR 1991 SC 70, observed that the rights and liabilities of the transferor and transferee companies "are determined under the scheme of amalgamation, but the corporate identity of the Transferor Company ceases to exist with effect from the

date the amalgamation is made effective." As set out above, Scheme of Amalgamation of USTTL with Appellant No. 1 provides for the transfer and vesting of all assets and liabilities of USSTL in Appellant No. 1, with effect from the Transfer Date. Since the assets of and liabilities of USTTL were transferred to Appellant No. 1, the liability to pay the lease rentals were also transferred to Appellant No. 1.

(VII) The Ld. Single Judge failed to appreciate it was only on October 17, 2013 (Annexure-Q to the SCA) that KPT refused to recognize Appellant as the lessee of the lands, though Appellant No. 1 had informed KPT of the fact that USTTL had been amalgamated into Appellant No. 1 by its letter dated September 10, 2010 (Annexure P to the SCA). It was only in 2013 that KPT raised a belated issue regarding the amalgamation of USTTL into Appellant No. 1 1 (which took place in 2010). Even while not recognizing Appellant No. 1 as the lessee, KPT called upon Appellant No. 1 to pay the lease rents under the 2011 TAMP Order.

(VIII) The Ld. Single Judge has erroneously observed that the Appellant No. 1 could not be said to be in authorized occupation of the plot since the Letter was issue in favuor of USTTL. The Ld. Single Judge has failed to consider the fact that Appellant No. 1 had promptly informed KPT of the

amalgamation and KPT for the first time refused to acknowledge the amalgamation only in 2013 clearly as an afterthought. The fact that the refusal to acknowledge the amalgamation was an afterthought is further fortified from the conduct of KPT in not taking out any proceedings for evicting Appellant No. 1 and at the same time accepting the lease rentals paid by Appellant No. 1.

(IX) The Ld. Single Judge also failed to appreciate that the amalgamation of USTTL into Appellant was not the 'transfer' which was contemplated under the Letter of Allotment, as is clear from clause (i), which provided that the leased property shall not be transferred to any third party 'by way of sub-lease, rent or any other means'.

(X) The Ld. Single Judge erred in holding that Appellant No. 1 did not have the locus to file the SCA, without considering the issue as to whether Applicant No. 1 is liable to pay transfer fee (which is an issue pending before this Hon'ble Court in SCA No. 17559 of 2003).

(XI) The Ld. Single Judge has failed to appreciate that KPT has never made a demand on Appellant No. 1 for payment of the transfer fees. This itself demonstrates that KPT did not contemporaneously consider the amalgamation between

USTTL and Appellant No. 1 as a ‘transfer’, and the same is an afterthought.

(XII) During the proceedings pending before the Ld. Single Judge, KPT offered to accept the transfer fees at the prevailing rates- despite the fact that the transfer fees had to be calculated as on the date of the ‘transfer’ and not several years later. This in and of itself demonstrates that KPT is engaging in rent-racketeering and is not behaving fairly or equitably. KPT even refused Appellant No. 1’s without-prejudice offer to make payment at the rates prevailing, which shows their failure to act reasonably.

B. The Ld. Single Judge erred in finding that Appellant No. 1 is an unauthorized occupant

(I) The Ld. Single Judge’s finding that Appellant No. 1 is an unauthorized occupant is bad in law, perverse and unsustainable.

(II) The Ld. Single Judge has incorrectly concluded that Appellant No. 1 is an unauthorized occupant on account of the amalgamation of USTTL into the Appellant No. 1 company (paragraph 12 of the impugned order). It is submitted that assuming arguendo that an amalgamation results in a “transfer”, this principle cannot be made applicable to an amalgamation between a parent company

and its wholly owned subsidiary. There is no change in management, control or personnel in such event. Further, the Companies Act itself recognizes a distinction between amalgamations between companies on the one hand, and amalgamations between a parent company and a subsidiary, on the other. As regards an amalgamation between a parent company and its wholly owned subsidiary, there is a difference in statutory treatment as regards approvals, compliances, transfers, etc. Therefore, holding that an amalgamation between USTTL and Appellant No. 1 (its parent company) results in a "transfer", is incorrect.

(III) The Ld. Single Judge has, despite recording the sequence of events (in paragraph 3.14 of the impugned order), failed to appreciate the conduct and acquiescence of KPT with respect to the fact of the said amalgamation. This is evident from the following:

(1) Appellant No. 1 had, as far back as September 1, 2010 informed KPT about the amalgamation which had been sanctioned by the Calcutta High Court.

(2) KPT did not send any response to the said letter for over three years, but continued to accept lease rentals from Appellant No. 1 without any protest.

(3) Thereafter, only on October 17, 2013 did KPT for the first time claim that the allotment of the subject land had been done in favour of USTTL and not Appellant No. 1. Despite the same, KPT addressed this letter to Appellant No. 1 (and not USTTL) and also sought payment from Appellant No. 1.

(4) After a further period of nearly three years i.e. only on February 5, 2016, KPT once again re-agitated the amalgamation issue and claimed that it could not accept the change in the allottee's name and a pending court case, and returned Appellant No. 1's cheques.

(IV) From the following it can be seen that the Ld. Single Judge has ignored the following crucial facts: (a) for a period of nearly six years, KPT has accepted payments of lease rentals from Appellant No. 1 and has not taken any action against Appellant No. 1 for the alleged unauthorized occupation, and (b) during this period, it has addressed correspondence (including payments for demand) to Appellant No. 1. Most significantly, even on February 5, 2016, KPT does not contend that it does not recognize Appellant No. 1 on account of the amalgamation but only instead rests its refusal to recognize Appellant No. 1 due to "non-payment of outstanding dues" and "pending court case".

(V) While some of Appellant No. 1's cheques sent to KPT as set out above and in SCA 2535/2017 have been returned, KPT has been availing of withholding tax credits in this regard. Thus, the Ld. Single Judge has on the one hand condoned KPT's belated refusal to recognize Appellant No. 1 as the lessee on the one hand, while availing of the benefits of Appellant No. 1 as the lessee on the other. This is an ex-facie inconsistent position and cannot be countenanced.

(VI) Therefore, the Ld. Single Judge has failed to appreciate that KPT's contention that the amalgamation is not binding on it, is an afterthought, is a stand taken only to divest Appellant No. 1 of its rights and is contrary t the contemporaneous record.

(VII) The Ld. Single Judge has failed to appreciate that Appellant No. 1's conduct is clearly against the settled norms of reasonableness and legitimate expectation.

(VIII) The Ld. Single Judge also failed to appreciate that the amalgamation of USTTL into Appellant No. 1 was not the 'transfer' which was contemplated under the Letter of Allotment, as is clear from clause (i), which provided that

the leased property shall not be transferred to any third party 'by way of sub-lease, rent or any other means'.

(IX) The fact that KPT has not issued any eviction notice to Appellant No. 1 in respect of the subject land, in and of itself speaks volumes of their acceptance of Appellant No. 1 as the lessee of the subject lands.

C. The Ld. Single Judge erred in upholding KPT's re-categorization of inter-alia Appellant No. 1's lands

(I) The Ld. Single Judge has found that by virtue of Section 49 of the MPT Act read with the provisions of the 2010 and 2014 Land Policy Guidelines, it was always open to KPT / TAMP to categorize lands on the basis of user (paragraph 39 of the impugned order). It is submitted with respect that this is a grave misreading of the provisions under discussion.

(II) While there is no dispute that TAMP was empowered to categorize lands on the basis of user under the 2010 Land Policy Guidelines this power was derived from two sources: (i) Section 49(1)(d) of the MPT Act, which is the enabling provision which sets out the powers of the TAMP in this regard and (ii) clauses 5 and 6.3 of the 2010 Land Policy Guidelines, which fixed the manner in which the scale of rates could be determined. A reading of these twin

provisions indicates that use of land is a relevant criterion for re-categorization. However, the Ld. Single Judge has erred in ignoring the fact (despite finding merit in the argument as recorded in paragraph 43 of the impugned order) that the 2014 Land Policy Guidelines (under which Appellant No. 1's lands were re-categorized0 do not provide for use of land as a criterion. There was a conscious departure from use of land as a criterion under the 2014 land policy regime. Merely because the power to consider the same under Section 49 of the MPT Act exists, does not justify ignoring its deliberate exclusion from the implemented 2014 Land Policy Guidelines. It is submitted that the interpretation adopted by the Ld. Single Judge renders otiose the plain language of the 2014 Land Policy Guidelines.

(III) The Ld. Single Judge has erred in ignored the fact that only entities engaged in the line of business of Appellant No. 1, have had their lands classified/ re-categorized on the basis of user. All other entities pay lease rentals determined on the basis of location and not on the basis of user. This is an arbitrary, unreasonable and discriminatory distinction for which KPT offers no justification or stateable case. The Ld. Single Judge has failed to address this crucial aspect in the impugned order.

(IV) The Ld. Single Judge has erred in ignoring the fact that the re-categorization of lands on the basis of user was done in a discriminatory fashion only against liquid bulk tank farm operators, while all other uses continued to be classified on the basis of its geographic location. This is despite the fact that geographically, the lands used by the Appellant is within the lands now categorized as "A" to "F", which pay significantly lower rates. This speaks to the arbitrary, unreasonable and whimsical conduct of KPT and TAMP.

(V) The Ld. Single Judge has erred in ignoring the fact that KPT has placed heavy reliance on the fact that in 1999, TAMP had allegedly directed KPT to reclassify the lands on the basis of use. It is submitted that there can be no justification as to how KPT can rely on a purported direction of 1999, in 2014 and re-classify the lands only for liquid bulk tank farm users. The same is clearly mala fide and disingenuous.

(VI) The Ld. Single Judge has erred in finding that Appellant No. 1 did not object to the classification/ categorization of lands 'at the relevant time" i.e. in or around 2010 (paragraph 40 of the impugned order). This is clear contrary to the record and with respect, displays a lack of understanding by the Ld. Single Judge of Appellant No. 1's case. First, no objection could have been raised by

Appellant No. 1 in or around 2010 simply because there had been no re-categorization/ classification of Appellant No. 1's lands at that time. Appellant No. 1's lands were re-categorized only pursuant to the 2014 TAMP Order dated December 4, 2014. It is wholly illogical to expect any person to raise an objection to any action at a point in time (i.e. 2010) when that action does not affect/ apply to them. In any event, it should be noted that without prejudice to the foregoing, Appellant No. 1 has continuously objected to the arbitrary and wrongful re-categorization by KPT. This can be easily seen from paragraph 25 of the SCA, in which it has been demonstrated that as far back as April 18, 2011 the Kandla Liquid Tank Terminals Association (in which Appellant No. 1 is a member) has objected to the arbitrary creation of categories of land for liquid storage tank terminals only, on the basis of user vis-à-vis other categories based on geographical location (though at the relevant time. Appellant No. 1's lands were not reclassified). Thereafter, even with respect to the 2014 TAMP Order Appellant No. 1 has (through its association with the Gandhidham Chamber of Commerce and Industry (GCCI)) objected to the proposed arbitrary re-categorization on July 22, 2014 (paragraph 47 of the SCA) and on August 4, 2014 (paragraph 48 of SCA 2535/2017).

Therefore, clearly the Ld. Single Judge's has given findings in utter disregard of the admitted factual position.

(VII) The Ld. Single Judge has erred in upholding the re-categorization of Appellant No. 1's lands despite the fact that same was carried out without consulting Appellant No. 1, thereby resulting in a violation of the principles of natural justice.

(VIII) The Ld. Single Judge has failed to appreciate the basic tenet that re-categorization of Appellant No. 1's lands has the effect of altering the contract between Appellant No. 1 and KPT, during the subsistence thereof. Such an act is ex-facie impermissible.

D. The Ld. Single Judge has wrongly upheld the increased rates

(I) The Ld. Single Judge has erred in upholding the increased lease rentals in respect of Appellant No. 1's lands.

(II) The Ld. Single Judge has failed to appreciate that the increase of lease rentals is shocking, arbitrary and unreasonable. The appellants have set out at length that the increase of these rentals is over 1000% (paragraph 22 of the SCA). Ex-facie such an increase is not sustainable and is against the settled principles that state instrumentalities are

to act reasonably and not engage in rent-racketeering tactics.

(III) The Ld. Single Judge has erroneously and mechanically accepted KPT's arguments that the valuation of the lands was carried out using an acceptable methodology, despite stark and incontrovertible evidence to the contrary. This applies to both, the 2011 TAMP Order and the 2014 TAMP Order.

(IV) As regards the 2011 Order, KPT has admittedly based its valuation and calculations on a tender which was floated in 2005. However, the said 2005 Tender was cancelled in 2010, on account of the fact that KPT had not obtained necessary environmental/ CRZ clearances/ approvals till 2010. As no payment was required to be made until the environmental/ CRZ clearances were obtained by KPT, no payment had been made by the successful bidder to KPT and possession thereto was not transferred. It was also pointed out that the State Government's ready reckoner value was lower compared t the valuer's report and that KPT chose to conveniently rely on the valuer's report rather than the State Government's guidelines. Therefore, any considerations under the 2005 tender are wholly irrelevant. This aspect has been totally ignored by the Ld. Single Judge.

(V) As regards the 2014 TAMP Order, KPT has admittedly based its calculations on the 2011 Tender- which was cancelled. KPT's calculations were based on 2011 tender values (which never fructified) and escalated the highest bid rate by 2% every year to arrive at 2014 values. Further, in the 2011 Tender, only 42% of lands were bid for and KPT has taken (as market value) the bid received for a single, small parcel of land- which was never even allotted (paras 52(b) and 69(b) of SCA No. 2535/2018). Accordingly, such incomplete bid for a single parcel of land cannot form the basis of "market value" for several plots of land. Further, as stated below, KPT itself has previously conceded on oath, that these incomplete bids cannot be considered, as they did not fructify into concluded contracts. These facts have all been ignored by the Ld. Single Judge in the impugned order, who instead, and contrary to the record proceeds on an incorrect premise that the market rates for "entire parcels" of the Kandla land had been considered (paragraph 54 of the Impugned order).

(VI) In its defence, KPT places reliance on a valuation report in SCA 2607/2012. Whilst it is trite that a Court will not substitute its own wisdom for those of specialized experts, at the same time a balance must be struck and the Court must intervene in the case of any perversity. It is submitted

that the report is ex-facie perverse- it is flimsy, based entirely on surmises and is heavily caveated. The report contains heavy disclaimers (pg. 243 of the said petition) and discloses that there was no independent verification carried out to corroborate the information given to the valuers (Pg. 233), and that the valuers accept no responsibility therefor (Pg. 244). Aside from the fact that the report is the product of a valuer unable to justify his own view, most egregiously, the valuer has taken into consideration the value at a certain point in time of only one category of land, and on that basis allegedly arrive at the valuation of 11 other categories for a period of 20 years (Pg. 264). None of these defects, which it is submitted, render the valuation report vulnerable and questionable, have been considered or dealt with by the Ld. Single Judge in the Impugned order.

(VII) In both of the above cases i.e. under the 2011 TAMP Order and the 2014 TAMP Order, KPT has wrongly equated "accepted" rate with "received" rate. This is incorrect since neither of the two tenders fructified. It is well established that if a statute provides for something to be done in a particular manner, then such thing can be done only in the manner prescribed by the statute. In the instant case, KPT has reverse engineered its valuations by providing fanciful and unrealistic valuations, in an attempt to justify their

exorbitant increases. This approach cannot be countenanced, as it has been by the Ld. Single Judge.

(VIII) The Ld. Single Judge has erroneously held the fact that Appellant No. 1 made a bid in the 2005 Tender as constituting a ground whereby Appellant No. 1 is estopped from questioning the market value of the lands (paragraph 55 of the Impugned order). It is submitted that this is an unsustainable and mindless finding. It cannot be said that a fresh bid made by Appellant No. 1 in respect of a bid, which is separate and distinct from its existing lease rights, would somehow bind Appellant No. 1 qua its existing lease. The 2005 Tender can have no bearing on the existing contractual arrangement between KPT and Appellant No. 1.

(IX) The Ld. Single Judge's finding also does violence to the fact that the Letter of Allotment provides for a Lease-cum-Premium structure of payment. In order to appreciate this, it must be understood that there are three models: Lease-cum-premium (as in the case of the subject lease), a premium model only and a lease rent model only. The subject lease is a lease rent and premium hybrid model, evident from the terms thereof, under which Appellant No. 1 paid a one-shot amount aggregating to 7.5 years' rent of the then prevailing rentals as a premium for the subject land. Since Appellant No. 1 had paid such a large amount

upfront, it was required to and ought to be paying minimum lease rentals. Completely ignoring this, under the 2005 Tender and the 2011 Tender, the allottees (if any) were required to pay the full commuted value of the premium upfront with a token rent of Re. 1 per plot per year (irrespective of the area). The escalation clause is of a 25% increase every 5 years and, therefore, the leaseholders effectively pay no monthly rentals or very negligible amount as rentals (for having paid the premium). By revising the rentals of Appellant No. 1 on the basis of the only premium model, KPT is attempting to collect the rentals at the market value (though disputed) disregarding the premium already paid by Appellant No. 1. Naturally, in a lease rent only structure, the rent would be higher to account for the fact that no upfront premium is paid. As such, KPT is surreptitiously seeking to disregard the premium cum rent model under which Appellant No. 1 has been occupying the land and making payment, and switch to a lease rent structure only. KPT is clearly attempting to double-dip by such actions and the Appellants are, in effect, required to pay double charge of rent (once by way of substantial premium and again on par with only rent model where there is no premium). The Ld. Single Judge failed to appreciate that the calculation of Market Value as contemplated under the 2014 Land Policy Guidelines could

only apply to fresh leases to be executed by KPT and did not apply to an existing lease for which the payment method was already fixed and agreed to, as per the terms of the Lease. This wrongdoing has gone wholly unaddressed by the Ld. Single Judge in the Impugned order.

(X) Appellant No. 1 has spent substantial time and monies in developing the plots from marshy lands. Appellant No. 1 has played a great role in the development of the port lands and consequently in the increase in market value. That being the case, the Appellants should be permitted to carry on their business in a reasonable manner. However, KPT/ TAMP has acted in a completely unreasonable manner, with no regard to the public interest and no consideration to the business prospects of the Appellants on account of exorbitant increase in rents. This is directly in contrast to the other lands where KPT have invested their pubic funds in developing the area, but are now charging much lesser rent as compared to the Appellants.

(XI) It is submitted that the Ld. Single Judge has failed to consider the plethora of decisions whereby increases of rent more than 25% and more than 50 times the original rent have been struck down by Courts as being arbitrary. In the instant case, the Ld. Single Judge has instead upheld an increase in the lease rentals by 1000%.

(XII) The Ld. Single Judge has, it is submitted, unfairly cast the burden of ascertaining the value of the lands on the Appellants. The Ld. Single Judge has stated that "the Petitioners have not placed on record any material as to what was the market value of the port land at the relevant time" (paragraph 55 of the Impugned order). It is not clear how, and why, a private party is required to undergo the exercise of appointing a valuer, determining the market value of the entire lands owned by KPT and justifying the same before a Court of law. If this were to be the case, it is not clear what role if any KPT and/or TAMP (State instrumentalities) would have aside from being mere rent collection agencies. As per the Impugned order, the duties of a State to act fairly, reasonably and in the interest of public welfare instead stand delegated to a lessee, rather than the State.

(XIII) The Ld. Single Judge has erred in holding that the increased rents under the 2011 Order and 2014 Order are within the contractual parameters as agreed to between the parties. This is evident from the grounds set out above.

(XIV) In view of the fact that the valuation relied on by KPT is spurious, speculative, unsubstantiated, and of questionable veracity and reliance, the Ld. Single Judge has erred in

holding that KPT could have proposed higher lease rentals (paragraph 58 of the Impugned order). The Ld. Single Judge has failed to appreciate the action of KPT/ TAMP in increasing the less rentals in such manner, is itself contrary to the Ld. Single Judge's observations in paragraph 59 of the Impugned order that a State instrumentality such as KPT "cannot be seen to be indulging in profiteering or rack-renting, or indulging in whimsical or unreasonable bargains…" No act of a State can be unreasonable, arbitrary or in the nature of rent racketeering. There has been no evidence led by KPT to suggest that it has increased the rents on any justifiable/ cogent/ reasonable basis. On the contrary, KPT has submitted (and the Ld. Single Judge has accepted, without application of judicious mind), a flimsy argument that KPT need not necessarily be a benevolent and good charitable Samaritan.

E. The Ld. Single Judge has erroneously permitted the retrospective levy of lease rentals to a limited extent

(I) The Ld. Single Judge has erred in permitting the retrospective levy of lease rents under the 2011 TAMP Order (from January 1, 2009) as the order was passed on May 11, 2011. The Ld. Single Judge also permitted the retrospective levy of lease rents under the 2014 TAMP Order (from January 1, 2014) thought the said order was

passed on November 13, 2014 and since TAMP had, at the request of KPT, extended the operation of the 2011 TAMP Order till June 2014.

(II) The above findings are erroneous and run contrary to the Ld. Single Judge's findings in paragraph 66 of the Impugned order that 'neither the MPT Act, not the Land Policies issued under Section 111 of the said Act permitted the TAMP to frame the scale of rates which retrospective effect' and observations in paragraph 67 that TAMP could not have given retrospective effect, in the absence of any specific provision under the MPT Act, the Rules or the Land Policies.

(III) Having come to the above conclusion, the Ld. Single Judge ought not to have permitted the retrospective levy of rents under the 2011 TAMP Order and/or the 2014 TAMP Order.

(IV) Without prejudice to the other grounds, including that the fixation of rates under the 2011 TAMP Order and the 2014 TAMP Order were illegal, the 2011 TAMP could only have been given effect to from the date it was passed- i.e. from May 11, 2011, after it was published in the Official Gazette. Similarly, the 2014 TAMP Order could only have been given effect to only from July 1, 2014 since the applicability

of the 2011 TAMP Order (which was valid till December 2013) had been extended by TAMP till June 2014.

41. It is submitted that by way of the present Appeal, the Appellants seek to challenge the Impugned order passed by the Ld. Single Judge of this Hon'ble Court, and thus, this Hon'ble Court has jurisdiction to try and entertain the present Appeal. The Appellants crave leave to add, amend or alter this Appeal and the grounds of this Appeal, if and so, required. The Appellants crave leave to submit the entire paper book filed before the Ld. Single Judge along with the present Appeal, to assist in the proceedings of this Appeal. As this Appeal is being filed hurriedly to prevent further prejudice from being caused to the Appellant, the Appellant reserves its rights to refer and/or rely upon such other documents as may be necessary.

42. It is submitted that the Impugned order suffers from grave infirmities resulting in injustice being caused to the Appellant. The Appellant has therefore, no alternative, efficacious remedy available to it under the law and the relief(s) prayed for, if granted, shall be full and complete. The Appellant has a strong prima facie case and the balance of convenience is also in its favour.

43. The Appellant has not filed any other matter before this Hon'ble Court or any other Court including the Hon'ble Supreme Court on the subject matter of this Appeal.

44. The appellant along with the present appeal has also placed on record the memo of petition along with Annexures of Special Civil Application No. 2535 of 2017 which was filed before the Ld. Single Judge.

45. The Appellants applied for a certified copy of the impugned order on April 10, 2019 itself. A certified copy was made available to the Appellants on June 24, 2019. Therefore, this appeal is brought within time and is not barred by the laws of limitation.

46. In light of the aforesaid premises, the Appellant humbly prays that:

A. This Hon'ble Court be pleased to quash and set aside the impugned order dated May 10, 2019 passed in Special Civil Application No. 2535 of 2017 insofar as the Impugned order (i) finds that the Appellants do not have locus to approach this Hon'ble Court in relation to SCA No. 2535/2017, (ii) finds that the amalgamation of United Storage Tanks and Terminals Limited into Appellant No. 1 is not binding on Respondent No. 3, (iii) upholds the 2011 TAMP Order dated March 25, 2011 notified vide Notification Go. No. 106 of 2011, (iv) upholds the 2014 TAMP Order dated November 13, 2014 notified vide Notification G. No. 350 on December 4, 2014; (v) upholds the change in the categorization of Appellant No. 1's lands pursuant to the 2014 TAMP Order dated November 13, 2014

notified vide Notification G. No. 350 on December 4, 2014, (vi) upholds the retrospective levies from 2009, and (vii) upholds the Scale of Rates under the 2011 TAMP Order dated March 25, 2011 notified vide Notification Go No. 106 of 2011 and under the 2014 TAMP Order dated November 13, 2014 notified vide Notification G. No. 350 on December 4, 2014.

B. Pending the hearing and disposal of this Appeal, this Hon'ble Court be pleased to stay the operation, implementation and enforcement of the Impugned order, except to the effect that it sets aside the retrospective levies prior to 2009;

C. Pending the hearing and disposal of this Appeal, the Respondents be directed to not take any action to evict the Appellant No. 1;

D. For cost of the present Appeal; and

E. Such further relief(s) as deemed fit may be granted to the Appellant.

AND FOR THIS ACT OF KINDNESS AND JUSTICE, THE APPELLANT SHALL IN DUTY BOUND FOREVER PRAY.

Date: Sd/- Dhavil K. Shah

Place: Advocates for the Appellant

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

DISTRICT: KUTCHH

CIVIL APPLICATION NO. 1 OF 2019

IN

LETTERS PATENT APPEAL NO. 1426 OF 2019

(UNDER CLAUSE 15 OF THE LETTERS PATENT ACT)

IN

SPECIAL CIVIL APPLICATION NO. 2535 OF 2003

1. IMC Limited
(Formerly known as United Storage
Tanks Terminals Ltd.) having its
Corporate Office at Neeladri, 3rd Floor,
No. 9, Cenotaph Road, Alwarpet,
Chennai-600 018.

2. Atluri Mallesh Rao
Director and Shareholder of
IMC Limited, having his office at
"Neeladri", 3rd Floor, No. 9
Cenotaph Road, Alwarpet,
Chennai-600018,
Tamil Nadu, India Appellants

Versus

1. Union of India,
   Through the Secretary,
   Ministry of Shipping,
   New Delhi-110001

2. Tariff Authority of India for
   Major Ports, 4th Floor,
   Bhandar Bhavan,
   Muzawar Pakhadi Road,
   Mazgaon, Mumbai-400010

3. Board of Trustees of Deendayal Port
   Trust (formerly known as Kandla Port
   Trust) a Major Port having its office at
   Land Section, Administrative Office,
   Post Box No. 50, Gandhidham
   (Kutch)-370201 Respondents

APPLICATION FOR STAY

To,

The Hon'ble Chief Justice
and the Hon'ble Puisne Judges of the
High Court of Gujarat at Ahmedabad

The humble application of the applicant above named:

MOST RESPECTFULLY SHEWETH:

1. The applicant has preferred the subject appeal, inter alia, challenging the order dated 10.05.2019 passed by this Hon'ble Court in Special Civil Application No. 2535 of 2017, on the grounds as specifically set out in the subject appeal. The contentions and averments in the subject appeal and the documents annexed thereto may be treated as a part of the present application and the same are not repeated herein for the sake of brevity.

2. The applicant herein has set out its case in the subject appeal which this Civil Application is accompanying. As is more particularly stated in the subject appeal, the impugned order is unjust, unreasonable and harsh. The effect of the impugned order is prejudicial to the applicant as it is perverse. In view of what is stated in the subject appeal, the applicant has a very strong prima facie case. The applicant states and submits that the balance of convenience is also in its favour. Irreparable injury and prejudice would be caused to the applicant if the interim relief as sought is not granted. On the other hand, no prejudice is likely to be caused to the opponents if the interim relief as prayed for is granted.

3. In the aforesaid premises, the applicant prays as under:

   A. Pending the admission, hearing and final disposal of the subject Letters Patent Appeal, this Hon'ble Court be pleased to:

      (iv) stay and suspend the operation and implementation of the order dated 10.05.2019 passed in Special Civil

Application No. 2535 of 2017 to the extent that it (i) finds that the Appellants do not have locus to approach this Hon'ble Court in relation to SCA No. 2535/2017, (ii) finds that the amalgamation of United Storage Tanks and Terminals limited into Appellant No. 1 is not binding on Respondent No. 3, (iii) upholds the 2011 TAMP order dated March 25, 2011 notified vide Notification Go. No. 106 of 2011, (iv) upholds the 2014 TAMP Order dated November 13, 2014 notified vide Notification G. No. 350 on December 4, 2014, (v) upholds the change in the categorization of Appellant No. 1's lands pursuant to the 2014 TAMP Order dated November 13, 2014 notified vide Notification G. No. 350 on December 4, 2014, (vi) upholds the retrospective levies from 2009, and (vii) upholds the Scale of Rates under the 2011 TAMP Order dated March 25, 2011 notified vide Notification Go. No. 106 of 2011 and under the 2014 TAMP Order dated November 13, 2014 notified vide Notification G. No. 350 on December 4, 2014.

(v) restrain the Respondents from issuing fresh demand notices and taking any action adverse to the applicant's interests in relation to and/or possession of, the land which is the subject matter of Special Civil Application No. 2535 of 2017.

B. Ex parte ad interim relief in terms of prayer A hereinabove be granted.

C. Such other and further reliefs as may be deemed just and expedient by this Hon'ble Court be granted.

Date: July 2019 Sd/- Dhaval K. Shah

Place: Ahmedabad Advocate for the Applicant

AFFIDAVIT

I, M. R. Lakshminarayanan, aged 48 years, Indian inhabitant, the Petitioner herein, do hereby solemnly affirm and state that what is stated in paragraph 1 is true to the best of my knowledge, what is stated in paragraph 2 (part) is true to the best of my information and belief as gathered from the record and I believe the same to be true and paragraph 2 (part) contain legal submissions which I believe to be true.

Solemnly affirmed at Ahmedabad on this 8th day of July 2019.

DEPONENT

//TRUE COPY//

Annexure P/12

HIGH COURT OF GUJARAT AT AHMADABAD

LETTERS PATENT APPEAL NO. 1426 OF 2019

IN

SPECIAL CIVIL APPLICATION NO. 2535 OF 2017

AND

LETTERS PATENT APPEAL NO. 1427 OF 2019

IN

SPECIAL CIVIL APPLICATION NO. 2536 OF 2017

AND

LETTERS PATENT APPEAL NO. 1425 OF 2019

IN

SPECIAL CIVIL APPLICATION NO. 2538 OF 2017

1. IMC Limited (earlier known as United
   Storage Tanks Terminals Ltd.)
   And having its office near IOC
   Foreshore Terminals, Opposite
   Shirva Railway Crossing,
   New Kandla – 370210, India
2. Mr. Atluri Mallesh Rao
   Managing Director and Shareholder of IMC Limited
   Male, 49 years
   Having his office at
   "Neeladri", 3rd Floor, No.9 Cenotaph Road,
   Alwarpet, Chennai – 600 018,

Tamil Nadu, India. …Applicants

(Original Appellants)

VERSUS

1. The Union of India, through the Secretary,
   Ministry of Shipping,
   New Delhi – 110001.
2. Tariff Authority of India of Major Ports,
   4th Floor, Bhandar Bhavan, Muzawar Pakhadi Road,
   Mazgaon, Mumbai 400010
3. The Kandla Port Trust,
   a Major Port having its office at
   Land Section, Administrative Office,
   Post Box No. 50, Gandhidham (Kutch) 370201.

…Opponents

(Original Respondents)

AND

LETTERS PATENT APPEAL NO. 1424 OF 2019

IN

SPECIAL CIVIL APPLICATION NO. 2537 OF 2017

1. JRE Tank Terminals Pvt Ltd
   And having its office near IOC
   Foreshore Terminals, Opposite
   Shirva Railway Crossing,

New Kandla – 370210, India

2. Mr. Atluri Mallesh Rao
Director and Shareholder of JRE Tank Terminals Private Limited
Male, 50 years
Having his office at
"Neeladri", 3rd Floor, No.9 Cenotaph Road,
Alwarpet, Chennai – 600 018,
Tamil Nadu, India. …Applicants

(Original Appellants)

VERSUS

1. The Union of India, through the Secretary,
Ministry of Shipping,
New Delhi – 110001.

2. Tariff Authority of India of Major Ports,
4th Floor, Bhandar Bhavan, Muzawar Pakhadi Road,
Mazgaon, Mumbai 400010

3. The Kandla Port Trust,
a Major Port having its office at
Land Section, Administrative Office,
Post Box No. 50, Gandhidham (Kutch) 370201.

…Opponents

(Original Respondents**)**

WRITTEN SUBMISSIONS ON BEHALF OF THE APPELLANTS IN LPA NOS. 1424 TO 1427 OF 2019

REPRESENTED BY: SAURABH SOPARKAR, SENIOR ADVOCATE, A/W DHAVAL K. SHAH, RAJENDRA BAROT, SONALI MATHUR, ASADULLA THANGAL AND PRABHAV SHROFF

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SECTION 1

ISSUES IN THE CAPTIONED APPEALS

1.1 The following appeals have been preferred by IMC Ltd. ("**IMC**") and JRE Tank Terminals Pvt. Ltd. ("**JRE**") ("**Appellants**") against Deendayal Port Trust ("**DPT/KPT**") in respect of the order of the Ld. Single Judge dated May 10, 2019 ("**Impugned Order**"):

IMC has preferred the following appeals:

(i) LPA 1426 of 2019 (from SCA 2535/2017);

(ii) LPA 1427 of 2019 (from SCA 2536/2017); and

(iii) LPA 1425 of 2019 (from SCA 2538/2017).

1.2 The following appeal has been preferred by JRE

LPA 1424 of 2019 (from SCA 2537/2017).[1]

1.3 These submissions have been divided as under:

(i) Table of issues to be determined, along-with the Ld. Single Judge's findings thereon.

(ii) Prefatory submissions

(iii) IMC and JRE's submissions on the issues

(iv) Rejoinder submissions

(v) Distinguishments of judgments cited by IMC/KPT

Table of issues

Sr. No.	Issue	Relevant to which LPA
1.	Whether the increase in rent pursuant to	All

[1] DPT has filed four appeals being LPA 1289/2019, LPA 1292/2019, LPA 1294/2019 and LPA 1293/2019, against the finding of the Ld. Single Judge partly striking down the retrospective effect of the 2011 TAMP Order. These submissions should be treated as covering this issue as well.

	TAMP's order dated March 25, 2011, notified vide Notification G. No. 106 on May 11, 2011 ("**2011 TAMP Order**") is exorbitant, wrongful and arbitrary? Finding in the Impugned Order: The Ld. Single Judge has mechanically accepted the valuation put forth by DPT on the basis that courts have a limited power of review in such matters since fixation of tariff is a State function and that due process seems to have been followed (paras 51 – 59)	
2.	Whether the order dated November 13, 2014 and notified on December 4, 2014 ("**2014 TAMP Order**")	
	(a) Which re-categorizes the appellants' lands from C-1/E category to G-1 category is wrongful and arbitrary? Finding in the Impugned Order: The Ld. Single Judge has wrongly upheld the re-categorization on the basis that TAMP was empowered to re-categorize lands as per the 2010 and 2014 Land Policy Guidelines (paras 39 and 40).	ALL (In the case of LPA 1425/2019 (from SCA 2538 of 2017)) the lands were re-categorised from E to G-1. In the other three LPAs, the lands were re-categorised from C-1 to G-

		1
	(b) Resulted in an increase in rent which was exorbitant, wrongful and arbitrary? Finding in the Impugned Order: The Ld. Single Judge has mechanically accepted the valuation put forth by DPT on the basis that courts have a limited power of review in such matters since fixation of tariff is a State function and that due process seems to have been followed (paras 51 – 59)	ALL
3.	Whether the failure to appreciate that the appellants' lease model, whereby substantial premium was paid in addition to rent, warrants judicial interference? Finding in the Impugned Order: No finding was returned on this issue.	1424/2019 (from SCA 2537/2017); 1426/2019 (from SCA 2535/2017); and 1427/2019 (from SCA 2536/2017).
4.	Whether it was permissible to permit retrospective levies of increased rentals w.e.f 2009, under the impugned order dated May 10, 2019, despite the Ld. Single Judge coming to a finding (at paragraph 67 of the Impugned Order) that TAMP did not have	All

	the power to impose retrospective levy of rents? <u>Finding in the Impugned Order</u>: Retrospective revisions from July, 1999 onwards until January 1, 2009 were struck down but retrospective revisions from January 1, 2009 onwards were upheld insofar as the 2011 TAMP Order is concerned. Similarly, the retrospective revision from January 1, 2014 has been upheld insofar as the 2014 TAMP Order is concerned (Para 69).	
5.	Whether the Ld. Single Judge was correct in holding that IMC Ltd. does not have locus to maintain the relevant writ petitions on account of the merger between United Storage and Tank Terminals Ltd. and IMC Ltd.? <u>Finding in the Impugned Order</u>: The Ld. Single Judge held that IMC Ltd. does not have locus on account of the above merger (Para 14).	1426/2019 (from SCA 2535/2017); and 1427/2019 (from SCA 2536/2017).
6.	Whether the Ld. Single Judge was correct in holding that JRE Tank Terminals Pvt. Ltd. does not have locus to maintain the	1424/2019 (from SCA 2537/2017).

	relevant writ petitions on account of its conversion from a partnership firm to a company under Part IX of the Companies Act, 1956? <u>Finding in the Impugned Order</u>: The Ld. Single Judge held that JRE does not have locus on account of the above incorporation under Part IX (Para 15).	
7.	Whether KPT's act of claiming that the lease has not been renewed is wrongful? <u>Finding in the Impugned Order</u>: The Ld. Single Judge ruled against IMC, by holding that the lease deed does not provide for automatic renewal, and that the lands were required for KPT's use (Para 73).	1425/2019 (from SCA 2538/2017).
8.	Whether the Ld. Single Judge is correct in treating the Appellants as unauthorized occupants? <u>Finding in the Impugned Order</u>: The Ld. Single Judge has held that the appellants are unauthorized occupants.	1425/2019 (from SCA 2538/2017). **<u>Note</u>**: KPT has treated all the Appellants as unauthorized occupants across all four leases.

SECTION 2

Prefatory submissions

2.1 IMC/JRE tendered daily submissions for this Hon'ble Court's reference during arguments made between August 24, 2021 and September 3, 2021. The contents of those notes have now been included in these comprehensive submissions.

2.2 Detailed submissions on each of the above issues have been made below. Briefly stated, however, the primary dispute between the Appellants and DPT concerns DPT's exorbitant increase of lease rentals payable by the Appellants owing to the arbitrary re-categorisation of the Appellants' lands by DPT.

2.3 The Appellants' lands were categorised in C-1 category or E-category (as the case may be) ever since the time of their demise (between 1978 and 2002). This was admittedly on the basis of geographical location. Since inception, all lands in DPT including the lands demised unto the Appellants have always been categorised on the basis of geographical location. Also since inception, the Appellants have been in the business of liquid bulk storage.

2.4 A snapshot of some relevant terms of the lease deeds/ letter of allotment between the appellants and DPT is below:

	LPA	LPA	LPA	LPA

	1426/2019 (from SCA 2535/2017)	1427/2019 (from SCA 2536/2017)	1424/2019 (from SCA 2537/2017)	1425/2019 (from SCA 2538/2017)
Area	48,552 sq. meters	19,479 sq. meters	13,658 sq. meters	9,980 sq. meters
Erstwhile category	C-1	C-1	C-1	E
Whether lease deed/ letter of allotment	Letter of Allotment	Lease Deed	Lease Deed	Lease Deed
Tenure of lease	October 27, 1995 till October 26, 2025	Lease Deed executed on August 20, 2002 for a period of 30 years starting from March 7, 1986 till March 6,	Lease Deed executed on August 21, 2002 for a period from March 5, 1986 to March 4, 2016	Lease Deed executed on September 17, 1984 from June 23, 1978 to June 22, 2008

		2016.		
Renewal clause whether present and exercised	N/A	No renewal clause in the lease deed. However, DPT is required to re-auction the plot and the Appellant has right to match the bid in re-auction, in accordance with Clause 11.3 of the 2014 Land Policy Guidelines	No renewal clause in the lease deed. However, DPT is required to re-auction the plot and the Appellant has right to match the bid in re-auction, in accordance with Clause 11.3 of the 2014 Land Policy Guidelines	Yes, Clause 8
Premium paid	INR 40 Lakhs	INR 4,05,000	INR 1,94,400	-

Rent amount	Clause c) provides that the allottee shall be liable to pay the lease rent at Rs. 11/- per sq. meters per annum. The lessee shall be liable to pay the lease rent at schedule rate, if fixed higher, at any time	Rs. 3.60 per sq. meter per annum and subsequently at Rs. 11 per sq. meter with effect from July 1, 1997	Rs. 3.60 per sq. meter per annum and subsequently at Rs. 11 per sq. meter with effect from July 1, 1997	The habendum clause states that the yearly rent payable was Rs. 28,742/-, at Rs. 2.88 per sq. meters per annum
Provision for increase in rent amount	Clause d) provides that the lease rent shall bear an escalation @ 10% per annum (compoundable); and Clause e) provides that	Clause 6 provides that the Lessor may revise/ enhance/ refix the ground rent every 5 years or after the	Clause 6 provides that the Lessor may revise/ enhance/ refix the ground rent every 5 years or after the	Clause 7 of the Lease Deed states that Respondent No. 3 can revise the ground rent, as

	Respondent No. 3 will have an option to refix the lease rent every 5 years.	first day of January as per the market value at the time of such revision Clause 10 provides that the lessee shall be liable to pay lease rent at a higher rate whenever the scheduled rates are revised upwards by the competent authority	first day of January as per the market value at the time of such revision Clause 10 provides that the lessee shall be liable to pay lease rent at a higher rate whenever the scheduled rates are revised upwards by the competent authority	fixed under the Lease Deed, every 10 years, however, not exceeding double the original rent, and after 20 years, not exceeding thrice the rate originally fixed
Retrospecti ve Clause	No	No	No	No

present?				

On re-categorisation and increased rents:

2.5 TAMP issued the 2011 TAMP Order, by which it had re-categorised for the first time, a new category **only** for users engaged in the line of liquid bulk storage (i.e. users such as the Appellants). This categorization has been made arbitrarily on the basis of a factor other than the geographical location of the lands. However, the Appellants' lands were not re-categorised at this time.

2.6 Thereafter, TAMP issued the 2014 TAMP Order, by which the Appellants' lands were re-categorised from C-1/E (based on geographical location) to G-1 (which was a category created only for users engaged in liquid bulk storage). This recategorization was done by the valuer at the instance of DPT, since DPT (by its letter dated February 17, 2014) called upon the valuer to add a '*separate category i.e. for "Liquid Tank" purpose*'.

2.7 Therefore, only the Appellants' lands were re-categorised into a new category of land based on use, which was not the basis of the existing categorization. Further, the other lands falling in the same geographical vicinity to the liquid storage lands, continued to be categorized as per geographical location. The Appellants have therefore been clearly subjected to an unreasonable classification merely for the purpose of claiming enhanced rents, which becomes clear

from the following chart which illustrates the egregious increase in lease rentals over time:

Year	**Lease rate per sq. mtr. per annum (in Rs.) as per category C-1 (for the lands which are the subject-matter of LPA 1426/2019)**	**Total lease rent (without service tax / GST) as per category C -1 (for the lands which are the subject-matter of LPA 1426/2019)**	**Lease rate per sq. mtr. per annum (in Rs.) demanded by DPT (for the lands which are the subject-matter of LPA 1426/2019)**
1996	11.00	5,34,072	11.00
1997	12.10	5,87,479	12.10
1998	13.31	6,46,227	13.31
1999	14.64	7,10,801	14.64
2000	16.10	7,81,687	16.10
2001	17.71	8,59,856	17.71
2002	19.48	9,45,793	19.48
2003	21.43	10,40,469	21.43
2004	23.57	11,44,371	23.57
2005	25.93	12,58,953	25.93
2006	28.52	13,84,703	28.52
2007	31.37	15,23,076	31.37

2008	34.51	16,75,530	34.51
2009	37.96	18,43,034	80.40 (demanded retrospectively in 2013 as per the 2011 TAMP Order)
2010	41.76	20,27,532	82.01 (demanded retrospectively in 2013 as per the 2011 TAMP Order)
2011	45.94	22,30,479	83.65 (demanded retrospectively in 2013 as per the 2011 TAMP Order)
2012	50.53	24,53,333	85.32 (demanded retrospectively in 2013 as per the 2011 TAMP Order)
2013*	87.03	42,25,481	87.03
2014	108	52,43,616	905.17 (demanded retrospectively in 2015 as per the

			2014 TAMP Order)
2015	110.16	53,48,488	923.27
2016	112.36	54,55,303	941.74
2017	114.61	55,64,545	960.57
2018	116.90	56,75,729	979.78

*this is the first time that DPT started demanding rents as per the 2011 TAMP Order.

2.8 Thus it can be seen that in 2008, the Appellants were paying INR 34.51 per sq. m., which increased to 80.40 in 2009. This rate then exorbitantly increased more than tenfold in 2014, from INR 87.03 per sq. m. to INR 905.17 sq. m. i.e. by 1040%, for the same property, on which the same activities were being carried out and pertinently on which no infrastructural facilities were provided by KPT. In contrast, the Appellants' neighbouring lessees all pay INR 108 per sq. m. (C-1) or INR 350.20 per sq. m. (E), on the basis geographical location. Pertinently, the Appellants have (in LPA Nos. 1424, 1426 and 1427) paid large premium amounts at the time of execution of the lease deeds (hybrid lease model), and are now being unfairly equated with lessees who did not pay such premiums, and are being subjected to an exorbitant increase in lease rent – with no regard being given for the large premium amounts, which were contemporaneously paid.

2.9 *Ex-facie* this categorization is arbitrary and in violation of Article 14 due to the hostile discrimination meted against the

Appellants, both, in terms of classification (a special category has been created only to isolate the Appellants' line of business) and rate-fixation (charging only them exorbitant rates by increasing the rent by over 1040%). All others continue to pay as per their geographical location, which had been the case for the Appellants until the 2014 TAMP Order, and in contrast the increases in the rentals for Category C-1 and E are in the range of 24.09% and 79.14%. This is clear proof that DPT is engaging in rack-renting and profiteering despite being a State authority, which is expected to act in a fair and reasonable manner.

2.10 DPT has claimed that the lands allotted to the Appellants have '*special advantages*'. It is Appellants' pleaded case that the lands as allotted were swampy / marshy and were developed by the Appellants at their own expense. No special advantages or infrastructural benefits were provided to the Appellants and none was shown to the court in respect of these lands. This was merely an empty claim by DPT. The lands have been developed by the Appellants at their expense (which has also been a factor in development of port land). DPT is now attempting to penalize the Appellants by charging exorbitant rates for putting in place infrastructure which was set up by the Appellants.

On locus:

2.11 DPT has also contended that the Appellants do not have any locus to approach this Hon'ble Court due to an amalgamation between IMC and USTTL/ conversion of JRE

under Part IX of the Companies Act, 1956. These arguments have been addressed below on merits, however, it is unjust and inequitable for KPT to admittedly demand and accept lease rent from IMC/JRE for years, after being notified of the amalgamation/ conversion on the one hand, and to then claim that they should be left remediless in respect of that very lease rent, on the other hand. No credence has been given to the well settled principle that any person who is "aggrieved" can approach High Courts in applications under Article 226 of the Constitution of India.

On renewal:

2.12 It was also held that IMC/JRE do not have any rights in respect of renewing their lease deeds. It will be borne out from the submissions hereunder that insofar as LPA 1425/2019 is concerned, the lease deed itself provides for renewal at IMC's option, which has been exercised by IMC. IMC was actively led to believe through years of continuous correspondence with DPT and collection of rent by DPT, that the lease deed had in fact been renewed. In the case of LPA 1424/2019 and LPA 1427/2019, the Land Policy Guidelines issued by the Ministry of Shipping themselves explicitly provide that on expiry of the lease period, the existing lessees should be given the option to match the highest bid during the re-auction. If the existing lessee does not match such bid, and does not remove all structures at its cost within 3 months after tender-cum-auction and continues to occupy the lands, only then they are to be

treated as unauthorized occupants and charged three times the rent. The Land Policy Guidelines also expressly provide that if the auction is delayed for any reason by the Port, then in such case, the three times rental cannot be levied. The re-auction process has intentionally not been commenced by DPT after completing the valuation of structures put up by the Appellants, and therefore no opportunity to match the highest bid has even arisen. Nonetheless, IMC/JRE are being treated as unauthorized occupants and are being charged with three times lease rentals in complete violation of the Land Policy Guidelines.

2.13 Insofar as LPA 1425/2019 is concerned, clause 8 of the lease deed provides that the lease is to be renewed for thirty years at IMC's option. This option was exercised prior to the expiry of the lease deed in 2008. From 2008 until 2016, KPT took a number of contradictory stands: (i) DPT directed IMC to submit an undertaking for the purpose of renewal; (ii) in 2013, five years after the undertaking was submitted, DPT demanded payment from IMC as an 'unauthorised occupant'; (iii) thereafter (and contrary to its own demand for an undertaking), DPT claimed that for the first time that the land was required for its own use; (iv) then contrary to the now new claim that the land was required for its own use, DPT once again claimed in 2015 that IMC's renewal request would be considered if all dues were cleared; and (v) finally in 2016, DPT once again claimed that the lands were required for its own use.

2.14 Aside from the capricious conduct and high-handed approach of DPT, it was also argued that a 30 year renewal for

a 30 year lease deed was contrary to Section 34 of the Major Port Trusts Act, 1963 ("**MPT Act**") since the aggregate period for any lease could not exceed 30 years. However, the second proviso to Section 34(1) states that:

> "*Provided further that no contract for the acquisition or sale of immovable property or for the lease of any such property for a term exceeding thirty years, and no other contract whereof the value or amount exceeds such value or amount as the Central Government may from time to time fix in this behalf, shall be made unless it has been previously approved by the Central Government"* .

2.15 This provision which mandates that no contract can be made for a period exceeding 30 years unless previously approved by the Central Government, has been in place since 1963. Thus, since the lease deed in LPA 1425/2019 was entered into in 1984, and provided for an aggregate tenure exceeding thirty years, IMC was well within its rights to presume that KPT had obtained Central Government permission when it entered into the lease deed in 1984. Any argument that no lease beyond thirty years in aggregate or otherwise, cannot be entered into is an afterthought. If DPT's case is to be accepted, then the renewal clause in the lease deed (Clause 8) would be rendered meaningless. Without prejudice to the foregoing, the renewal of lease for a further period of 30 years is also not contrary to Section 34 of the MPT Act, as a renewal would be considered fresh lease.

2.16 The above submissions have been detailed below.

SECTION 3

ISSUE NO. 1 - WHETHER THE INCREASE IN RENT PURSUANT TO THE 2011 TAMP ORDER IS EXORBITANT, WRONGFUL AND ARBITRARY?

3.1 Pursuant to the 2011 TAMP Order, the rent of the Appellants were increased to INR 80.40 per sq. m. from INR 34.51 per sq. m. (for C-1 category), and to INR 180.60 per sq. m. from 67.80 per sq. m. (for E category). Pursuant to the 2014 TAMP Order, the rent of the appellants was increased to INR 905.17 per sq. m. owing to the re-categorisation.

3.2 Insofar as the 2011 TAMP Order is concerned, the rate is fixed on the basis of the 2011 valuation report. It is the Appellants' case that the 2011 TAMP Order (based on the 2011 valuation report) is perverse, based on irrelevant criteria and liable to be struck down.

3.3 Insofar as the 2014 TAMP Order is concerned, the rate for G-1 lands is fixed on the basis of bids received (but never accepted) during the 2011 tender. Based on this, plus the infirmities in the 2014 valuation report, it is the Appellants' case that the 2014 TAMP Order is perverse, based on irrelevant criteria and liable to be struck down.

3.4 It is being clarified that if this Hon'ble Court rules in favour of the Appellants on the earlier issue of re-categorisation, the Appellants will not press for relief in respect on this issue, and are agreeable to making payments at the current rates for the lands in C-1 and E categories.

A. 2011 valuation report

3.5 The 2011 TAMP Order was prepared on the basis of a report by RB Shah & Associates valuing the lands of DPT as on January 1 of every year from 1990 to 2009 (***see Clause 10(iii) of the 2011 TAMP Order at Pg. 181 of SCA 2535 of 2017***).

3.6 The report is infirm for the following reasons:

i. The factors considered in preparation are completely irrelevant and have nothing to do with determining the market value of KPT's lands. These factors include traffic handled and revenue generated by the lessor (KPT), GDP growth of India and Gujarat as well as the population growth in the district (***see Pg. 242***). The valuer has also assigned percentage weightage to each such factor in a completely arbitrary matter (***see Pg. 260***);

ii. The assumption and limiting conditions heavily caveat the report and indicate non-application of mind by the valuer. This can be seen from the following: (a) valuation is on a sample basis and individual parcels have not been verified (***See Clause 10.2 at Pg. 243***); (b) no

guarantee is made or liability assumed for truth / accuracy (***See Clause 10.3 at Pg. 243, Clause 10.11 at Pg. 244***); and (c) a draft copy of the report was provided to KPT management who '*confirmed to the best of their knowledge and belief*' that the information in report is correct and that it reasonably represents the market scenario (***See Clause 10.9 at Pg. 244***). Therefore, the report is self-serving and is not accurate / independent; and

iii. The valuer disregarded the Jantri / ready reckoner rates specified by the State government (***See Pg. 246***). Instead the valuer relied on the bids given by 3 companies in the tender during 2005 situate in category D – 1, which was for a smaller portion of land and a bid which had admittedly failed (***See Pg. 249***). The valuer has relied on these 3 bids to calculate the value of all lands and placed them in 12 different categories, geographically situated at different places. Further, such valuation has been done for the years from 1990 to 2009 despite such bids having been made only in relation to 3 plots of land admeasuring 15,000 sq. mtrs., 7,500 sq. mtrs. and 7,500 sq. mtrs (***See Table 7 at Pg. 264 – 265)*** No explanation has even been attempted as to how a bid in a failed tender for a particular category of land could determine the value of other categories. Such an approach in fact renders otiose the rationale behind creating categories altogether.

iv. Even as per Clause 5.3(1)(iii) of the 2004 Land Policy Guidelines and Clause 6.3(1)(iii) of the 2010 Land Policy Guidelines, the SOR has to be determined as per the highest '***accepted'*** tender i.e. a tender which was accepted by the port and culminated in a concluded contract. Admittedly, the 2005 tender failed.

B. 2011 TAMP Order

3.7 The consultative process for the 2011 TAMP Order began on April 29, 2010, when KPT submitted its proposal for revision of rate structure of its lands at Kandla to TAMP, along with the valuation report prepared by RB Shah & Associates.

3.8 By a detailed letter dated August 19, 2010, the Appellants through Kandla Liquid Tank Terminal Association ("**KLTTA**") *inter alia* pointed out that the revision of lease rentals from 1999 onwards was impermissible because a conscious choice was made to not contemporaneously increase the rentals at TAMP's directions (***See para (i) at Pg. 131 at SCA 2535 of 2017***). Further, it was pointed out that the 2011 valuation report submitted by RB Shah & Associates was not prepared on the basis of any relevant criteria / factors under the 2004 Land Policy Guidelines (***See para (ii) at Pg. 131-132 at SCA 2535 of 2017***).

3.9 However, the concerns raised by users remained unaddressed as can been from the table at para 5 of the 2011 TAMP Order setting KPT's responses to TAMP's

queries (which were similar to what was raised by the KLTTA) (***at Pg. 176 of SCA 2535 of 2017***). It can be seen that in most cases, that KPT's responses were vague / evasive or false / had no connection to the question raised. In particular, reference is made to the questions at sr. no. 4, 5, 8, 13 – 16 and 18 and the corresponding responses.

3.10 Paragraph 10 of the 2011 TAMP Order demonstrated that TAMP has wholly relied on the valuer's ipse dixit and KPT's approval of the lease rentals, instead of independently applying its own mind. This is particularly evident from:

(i) clause 10(iv)(c) which discloses that the valuer has proceeded on the basis of actual transactions i.e. the bid in 2005 (***See pg. 182 of SCA 2535/2017***). This bid admittedly failed and is therefore not an 'actual transaction'. Despite this admitted position, KPT has failed to correct the presumption of the valuer that a failed/cancelled tender can be regarded as an actual transaction. TAMP in turn proceeds on the basis that such a methodology is acceptable. TAMP does not even appear to have been informed that the tender failed.

(ii) Clause 10(iv)(j) discloses that because the valuer's report was accepted in toto by KPT's committee and the board of trustees of KPT, TAMP too has accepted it (***See pg. 183 of SCA 2535/2017***).

(iii) Clause 10(vi) evinces that TAMP has "*presumed*" that KPT is "*fully convinced with the Valuation report while endorsing the proposed rates*" (***See pg. 184 of SCA 2535/2017***).

3.11 Section 49 of the MPT Act requires TAMP to '*frame the scale of rates*' and not merely *approve* what KPT recommends. The above actions of TAMP show that rather than independently applying its mind and framing the scale of rates, TAMP abdicated its duty and accepted what rates have been suggested by the valuer in consultation with KPT.

SECTION 4

ISSUE NO. 2(A) – WHETHER THE 2014 TAMP ORDER WHICH RE-CATEGORISES THE APPELLANTS' LANDS UNDER THE 2014 TAMP ORDER FROM C-1/E CATEGORY TO G-1 CATEGORY IS WRONGFUL AND ARBITRARY?

A. Evolution of land policy guidelines for major ports – use of land no longer a criterion under the 2014 Land Policy Guidelines

4.1 Under Section 111 of the MPT Act, TAMP and DPT are '*bound by such directions on questions of policy as the Central Government*' may issue.

4.2 Pursuant to Section 111 of the MPT Act, the central government issues land policy guidelines periodically.

4.3 Under Clause 5.3 of the 2004 Land Policy Guidelines dated March 8, 2004 (***See page 44 of DPT's compilation of guidelines and orders***), the market value of land and schedule of rates are to be determined by the following factors:

i. state government's ready reckoner;

ii. average rate of actual relevant transactions with 4% escalation per annum;

iii. highest accepted tender;

iv. rate arrived by an approved valuer;

v. any other relevant factor.

The Schedule of Rates ("**SOR**") is to be arrived at taking 6% of the market value of land of as rent per annum. Clause 5.3 (1) (e) (***See page 45 of DPT's compilation of guidelines and orders***) provided that the SOR is to vary in accordance with purpose of land use.

4.4 Identical provisions are found in Clause 6.3 of the 2010 Land Policy Guidelines for Major Ports dated January 13, 2011 (***See page 30 of DPT's compilation of guidelines and orders***).

4.5 Under the 2014 Land Policy Guidelines for Major Ports dated January 13, 2014, the five criteria set out in paragraph 4.3 above, can be found at Clause 13. However, the provision directing variance in the SOR according to land use has been consciously omitted (***See page 15 and 16 of DPT's compilation of guidelines and orders***).

B. Historical increase in lease rentals

4.6 As can be seen, the rent was initially INR 11 per sq. mtr. per annum with an annual increase of 10% as per clause (d) of the letter of allotment for LPA 1426 of 2019 (***see Pg. 79 of SCA 2535 of 2017***). However, under Clause 10(ii) of the 2011 TAMP Order (***See Pg. 181 of SCA 2535 of 2017***) the lease rentals were to be escalated by 2% per annum. Accordingly, in 1995 lease rental of INR 11 was paid which was increased by 10% each year.

4.7 The 2011 TAMP Order was implemented only in 2013 with retrospective effect from 2009 (as upheld by the Ld. Single Judge). At this time, rent of INR 34.51 was last paid under the letter of allotment till the year 2008. Thereafter in 2009, this amount stood increased to INR 80.40 and escalated by 2% each year. As of 2013, this amount was INR 87.03. Pursuant to the 2014 TAMP Order this amount of INR 87.03 (for C-1 category) dramatically increased to INR 905.17 (under G-1 Category). This is because until 2014, the appellants' lands had habitually been categorised under category C – 1 as per geographical location along with all other lands of KPT. On the other hand, under the 2014 TAMP Order, lands which were not re-categorised and continued to be in C-1 category had their rent increased from INR 87.03 to only INR 108.

4.8 Under the 2014 TAMP Order however, a special category of land i.e. G-1 was implemented, only for liquid tank farms and lands in G-1 were categorised on the basis of use while all other lands continued to be categorised on the basis of geographical location. All other lands from A through F2 are categorized as per location (***See Pg. 325 of SCA 2535/2017***). As described above, use was not a criterion under the 2014 Land Policy Guidelines.

4.9 Such disregard for the 2014 Land Policy Guidelines can also be seen from the 2014 TAMP Order itself which records that category G rates are fixed on the

basis of purpose (***See para 11 (vii) (d) at pg. 320 of SCA 2535/2017***). Despite being cognizant of the fact that the categorization of lands had to be in accordance with the 2014 Land Policy Guidelines (***see clause 11(viii)(v) of the 2014 TAMP Order at Pg. 323 of SCA 2535/2017***) and being aware that '*use of land*' is not a criterion for categorization of lands, TAMP chose to blindly accept the re-categorisation of lands done by KPT.

4.10 *Ex-facie*, such a categorization is discriminatory because it singles out liquid tank farms vis-à-vis all other land allottees, who pay nominal increased rent by comparison. The Appellants tendered a table demonstrating that while other lessees faced percentage increases ranging from 33.5% to 292%, the Appellants' lands rental increase was by 1040%. DPT has not placed any material on record which shows the rationale / reasoning behind the re-categorisation of lands by KPT. KPT's statement that liquid tank farms were provided *special advantages* are *ex-facie* false to the knowledge of DPT and is merely an empty statement. DPT has not placed any material before this Hon'ble Court in support of the same. This is also apparent from the fact that such averments of allegedly providing *special advantages* have not been placed even before TAMP.

4.11 It bears repeating that Category G was created only under the 2011 TAMP Order pursuant to the 2010 Land Policy Guidelines. At this time, the Appellants'

lands were not re-categorised from Category C-1 / E. This re-categorisation (into Category G-1) occurred only under the 2014 TAMP Order. Nonetheless the Ld. Single Judge in the impugned order has, *inter alia,* held against the Appellants on the issue of re-categorisation because the Appellants did not object to the re-categorisation in 2011 (***see paragraph 40 at Pg. 264 of LPA 1426***). Thus, the Ld. Single Judge failed to appreciate that no challenge could have been made by the Appellants in 2011 because they were not aggrieved by the re-categorisation in 2011. In any event, aside from being a legally incorrect finding, it is also factually incorrect because, KLTTA, of which the Appellants are members, by its letter dated April 18, 2011 objected to the re-categorisation of lands (***See Pg. 162 of SCA 2535/2017***).

C. Land Use Plan is irrelevant

4.12 The Ld. Single Judge was also misdirected by the fact that the 2010 Land Policy Guidelines and the 2014 Land Policy Guidelines contained provisions for a '*land use* plan'. In the 2010 Land Policy Guidelines, references to the land use plan can be found at Clauses 5, 6, 6.2.2 and 6.2.2.3. Similarly, under the 2014 Land Policy Guidelines references to the land use plan can be found at Clauses 8, 9, 9.4, 11.2 and 12. The Ld. Single Judge has held that Section 49 of the MPT Act read with the provisions of the land use plan under the 2011 and 2014 Land Policy Guidelines, empowers DPT to fix rent on the

basis of use of the land (***see paragraph 43 at Pg. 266 of LPA 1426***).

4.13 A land use plan is different from use of land being a relevant factor for fixation of SOR (under Clause 6.3(1)(e) of the 2011 Land Policy Guidelines). A land use plan is akin to an activity of town planning and is only to ensure that no haphazard developments take place and that lands are used in a systematic manner, for their intended purposes. For e.g. if one plot of land is used to house explosive substances, and the adjoining plot of land is used to operate a petrol pump, that may have grievous consequences. The purpose of a land use plan is to avoid such circumstances and there is no connection with the fixation of SOR. It is not KPT's case that the lands of the Appellants are not being used for their intended purposes.

4.14 The Appellants have been allotted some lands as far back as in 1978 whereas the first land policy guidelines were issued in 1997. Therefore, it is obvious that the land use plan contained in the land policy guidelines is intended to apply for allotment of land for specific use and not for fixing of rents therefor.

4.15 Assuming that the rents were to be fixed on the basis of the land use plan, the 2010 Land Policy Guidelines would not have contained Clause 6.3(1)(e), which provides that use of land is one of the factors which can influence the rent fixed by DPT. This itself indicates that the two operate in different spheres and have nothing

to do with one another. The 2010 Land Policy Guidelines contains a separate provision for land use plan (Clause 5) on the basis of which land '*can be allotted*'. As set out in detail in the earlier submissions, '*use of land*' as a factor for fixation of rent has been consciously omitted under the 2014 Land Policy Guidelines. The conclusion in paragraph 40 of the Impugned Order, that SOR could vary in accordance with the purpose of land use and that it has to be in accordance with the end use as reflected in the land use plan, is therefore erroneous. If this was the case, clause 6.3(1)(e) of the 2010 Land Policy Guidelines which specifically permits use of land as one of the factors for the fixation of SOR, would be redundant. Further, even if land use plan was a factor to be considered for fixation of SOR, it would have been applicable to all land uses and not only to the Appellants' lands.

4.16 Section 49 of the MPT Act requires TAMP to frame the SOR. However, Section 49 is to be read with Section 111 of the MPT Act under which the land policy guidelines are framed, which DPT is bound to follow. In contrast to the 2010 Land Policy Guidelines, while the 2014 Land Policy Guidelines provides for a land use plan, use of land has been omitted as a factor for fixation of SOR under the 2014 Land Policy Guidelines.

D. The argument that DPT is at liberty to consider use of land since it can consider '*any other factor'* is wrong

4.17 The Ld. Single Judge further proceeds on the erroneous presumption that DPT could always consider use of land while fixing the SOR since it was entitled to consider '*any other factor*' while fixing the SOR under the 2014 Land Policy Guidelines. However, this presumption rests on a willful ignorance of the fact that the term '*any other factor*' is not an omnibus/general term but has been assigned a specific meaning and value by DPT and TAMP. Under the 2014 TAMP Order, DPT has considered '*any other factor*' to mean a 2% escalation on a weighted average rate of INR 10,523 per sq. mtr. (***see clause (e) in the table for Category G – 1 at Pg. 299 of SC 2535 of 2017***). In view the fact that DPT and TAMP have ascribed a specific meaning and value to '*any other factor*', this term cannot be altered/ substituted with another understanding.

E. It is admitted that the lands would not have an increased value

4.18 Pertinently, even DPT acknowledges the fact that the lease rent under the 2014 TAMP Order is exorbitant, as is evident from notification dated April 8, 2019 (***tendered by the Appellants during hearing on September 1, 2021***) issued by the TAMP, which refers to a letter dated February 15, 2019 addressed by DPT. The

said letter dated February 15, 2019, *inter alia*, states that the issues related to exorbitant increase in lease rentals and the categorisation of lands was studied by a committee deputed by the Indian Ports Association and that a final report was awaited. It also states that the Ministry of Shipping issued a circular dated October 16, 2018 which records that it has been brought to the Ministry of Shipping's notice that the present classification of the port lands and the fixation of SOR is not uniform.

4.19 Most significantly, the 2014 valuation report provides that for category C-1, there is a limited demand and there is minimal increase in the value of the lands since 2009 (***see pg. 40 of the report***). Therefore, it is apparent that the Appellants' lands were shifted from C-1 to G-1 category solely for the purpose of extracting higher monies from the Appellants who have been carrying out their activities on such lands for several years, since otherwise the lands would not fetch higher rent.

F. When a statute prescribes that things are to be done in a particular manner, then they can only be done in that particular manner

4.20 The Ld. Single Judge's order considers irrelevant and extraneous factors / criteria while upholding the re-categorisation of the Appellants' lands. Section 111 of the MPT Act read with the 2014 Land Policy Guidelines, make it clear that use of land is not to be considered a

factor while determining the SOR. It is settled law that when a statute prescribes that things are to be done in a particular manner, then they can only be done in that particular manner and no other. Reliance is placed on the following decisions in this regard:

a. (1999) 8 SCC 266 – Chandrakishore Jha vs. Mahavir Prasad and Ors. (para no. 17)

b. (2014) 2 SCC 401 – J. Jayalalitha and Ors. Vs. State of Karnataka and Ors. (para nos. 34 and 35); and

c. (2005) 13 SCC 477 – Competent Authority Vs. Barangore Jute Factory (para no. 5)

4.21 As such, given the policy departure from considering use of lands by the conscious dropping of those words in the 2014 Land Policy Guidelines, the re-categorization is *ex-facie* bad.

G. The re-categorisation is violative of Article 14 and subjects the Appellants to hostile discrimination

4.22 The re-categorisation of the Appellants' lands is also violative of Article 14 because it is arbitrary, singles out the Appellants, and subjects them to hostile discrimination. This is *ex facie* evident from the fact that only the lands allotted to users engaged in the business liquid bulk storage have been re-categorised on the basis of use while all others continue to be categorised on the basis of geography.

4.23 The hostile discrimination is further evident from the fact that those engaged in the business of storing / warehousing of solid / dry bulk cargo are categorised as per geographical location. Therefore, even within the class of those in the storage business, liquid bulk cargo is singled out. If use was a relevant factor, then all users engaged in the business of storage would have been categorised into Category G.

4.24 It is settled law that any classification has to be reasonable. DPT has not provided any rationale / reason for the classification / re-categorisation of the Appellants' land. DPT has incorrectly and falsely pleaded that the lands allotted to the Appellants have infrastructural advantages and, therefore, re-categorization for higher tariff is permissible (***see Pg. 454 of SCA 2535 of 2017 at Para 29***). However, it is an admitted position that the lands allotted to the Appellants were marshy and had to be developed solely by the Appellants at their cost. Further, the costs of constructing the tanks and laying pipelines connecting the Appellants' tanks to the jetties are also borne by the Appellants. Further, the Appellants pay way-leave / right of way charges for running these pipelines through the port lands in addition the rent for the allotted lands. Thus, DPT did not provide any infrastructural facilities to the Appellants as contented. In fact, DPT developed the lands at huge costs and is maintaining at their cost infrastructural facilities for storing dry bulk

cargo. Yet dry bulk cargo handlers are paying rent as per geographical location and not on any other basis, including use of land/ infrastructure provided. In the case of Appellants, no infrastructure has ever been provided to the Appellants and they are in fact being penalized with higher tariff on account of development which was done entirely at the expense of the Appellants. Therefore, there has been an unreasonable / irrational classification by DPT.

4.25 Further, it is settled law that there must be a nexus between the classification and the object of the statute sought to be achieved through the classification. In the instant case it is clear that there is no such nexus since only those in the business of liquid bulk storage have been categorised as per use of the land. The classification of the Appellants' lands is illogical (on the basis of use), unfair and unjust (i.e. re-categorisation to G-1 and the exorbitant increase in rents).

4.26 The Appellants place reliance on the following decisions:

a. (1974) 4 SCC 638 Press Trust of India and Anr. Vs. Union of India and Ors. – paragraph 10, 13 and 15;

b. (2005) 9 SCC 248 – BEML Employees House Building Co-operative Society Ltd. Vs. State of Karnataka and Ors. – paragraphs 5 and 7;

c. (1981) 2 SCC 270 – Om Prakash Sud and Ors. Vs. State of J&K and Ors. – para 17 to 19;

d. (1983) 1 SCC 305 – D. S. Nakara and Ors. Vs. Union of India – paragraph 10 and 11;

e. (1989) 2 SCC 145 – Deepak Sibal Vs. Punjab University and Anr. – paragraph 8, 14, 20; and

f. Judgment dated August 17, 2021 of the Hon'ble Gujarat High Court in SCA No. 5301 of 2020 – Pravinsinh Indrasinh Mahida Vs. State of Gujarat – paragraph 63, 65, 67, 71, 74 – 77, 79, 81, 85, 90 & 91.

4.27 Reliance is placed on the 'common man doctrine' explained in *Pravinsinh Indrasinh Mahida Vs. State of Gujarat* i.e. whether or not an act is manifestly arbitrary is best adjudged from a common man's perspective. In the facts of this case, any common man would undoubtedly be shocked to learn that the rent for one plot of land was INR 108 per sq. metre per annum while the rent for the immediately adjoining plot of land was INR 905.17 per sq. metre per annum, more so when dry bulk handlers are charged on the basis of location, but liquid bulk users are not (*See paras 77, 96, 100 and 103*).

SECTION 5

ISSUE NO. 2(B) – WHETHER THE 2014 TAMP ORDER RESULTED IN AN INCREASE IN RENT WHICH WAS EXORBITANT, WRONGFUL AND ARBITRARY?

A. 2014 valuation report

5.1 In the first instance, it should be noted the valuation of G-1 category concerned under the 2014 TAMP Order has been arrived at by considering the highest rate received during the 2011 auction, with an annual escalation of 2% (***see para 4(iv)(d) at Pg. 298 of SCA 2535 of 2017***). It has been pointed out that the 2011 tender did not fructify and there was no concluded contract. The 2014 Land Policy contemplated consideration of the highest "accepted" tender. In this case (just as in the case of the 2005 tender), there was no highest accepted tender, as no lands were actually allotted. As such, the basis on which the price for G-1 category was fixed is unsustainable.

5.2 The other infirmities in the 2014 Valuation Report are elaborated in order to demonstrate that the report, which forms the basis of the 2014 TAMP Order, is bad in law and is unsustainable.

5.3 This report too is based on irrelevant criteria that have no connection with market value of land, such as traffic handled by KPT (***see pg. 19 of the report***), annual GDP growth rate of India (***see pg. 20 of the report***), development of Gujarat in the past five years (***see pg. 21***

of the report) and contribution of ports in employment generation (***see pg. 23 of the report***). DPT has been unable to show as to how this criteria is relevant only to the Appellants' lands and not to adjoining lands.

5.4 The report also contains several presumptions including that the accuracy of the data furnished is subject to accuracy of the referential documents, valuation derived is for freehold land only and lease rent etc. is to be decided by KPT, and the valuation is for various land use categories (***see pg. 40 of the report***). This is despite the 2014 Land Policy Guidelines expressly omitting use of land as a factor for ascertaining market value and fixing the SoR (***see Clause 13, page 21 of the compilation of documents filed by KPT***).

5.5 As regards the valuation in lands in category C-1, the report provides inter-alia that these lands have limited demand and there is minimal increase in the value of the lands since 2009 (***see pg. 40 of the report***). Therefore, it is apparent that the Appellants' lands were shifted from C-1 to G-1 category solely for the purpose of extracting higher monies from the Appellants since otherwise the lands would not fetch higher rent.

5.6 As regards the creation and valuation of lands in category G-1, the valuer has adopted a hypothetical, fictitious and imaginary series of calculations and factors to arrive at the alleged market value under one option. This includes unfounded assumptions of (i) the size of the

land, (ii) the capacity of the liquid tank to be built on the land, (iii) cost of construction of such tank. (iv) rent to be received therefrom for 26 years, (v) income, (vi) rate of return and (viii) cost of the building and land (***see pgs. 72 – 75 of the report***). The report wrongly proceeded on the basis that the development of the land and construction of liquid tank farms were carried out by DPT.

5.7 For the second option, the valuer has considered the lease rent for category G in 2009 and considered an increment of 2% annually on that value, which gives a lease rental of INR 488.88 per sq. meter, as of 2014. In order to exaggerate this figure the valuer has then included an increase factor of 25% (***see pg. 76 of the report***) to determine the market value. While rent is to ordinarily be calculated on the basis of market value, in this case the valuer has inexplicably adopted a reverse method, which is unacceptable.

5.8 Finally, the third option is calculated on the basis of the bids made in 2011 – which tender had failed and therefore is entirely irrelevant. While IMC Ltd. participated in the failed/ cancelled bid in 2005, IMC Ltd. had not even participated in the 2011 bid. This is yet another false averment made by DPT before this Hon'ble Court by giving a false impression that the Appellants had participated in the bidding process and were ready and willing to pay that price.

5.9 It is also apparent that the 2014 valuation report is based on self-serving criteria and at the direction of KPT, rather than through any individual/ independent assessment by the valuer:

(i) The 2014 valuation report discloses that the lands in C category have limited demand, and that there is minimal increase in the value of these lands since 2009 (***See pg. 55 of the 2014 valuation report***). This indicates that a fresh category of G-1 was created to extract excessive amounts of monies on the basis of use of the lands, since the lands themselves had not increased in value.

(ii) In yet another instance of bad faith conduct, the report annexes a letter dated February 17, 2014 whereby KPT instructs the valuer to add a separate category for ""*Liquid tank" purpose*" (***See the letter after page 85 in the 2014 valuation report***). However, in a response to TAMP's query as to the methodology adopted towards valuation, KPT states that the categories were "*suggested by the Land Valuer*" (***See table at para 9.1(d) at pg. 305 of SCA 2535/2017***). Further, the 2014 TAMP Order also records that the categorization '*has been recommended by the LVC and has also been approved by the KPT Board*' (***See para 11 (vii) (c) at pg. 320 of SCA 2535/2017 – unnumbered para above para (d)***). Therefore, inconsistent stands are being taken at different points in

time to justify an exorbitant and unrealistic value, by any means.

B. 2014 TAMP Order

5.10 While the consultation process for the 2014 TAMP Order was underway, the Appellants through the Gandhidham Chamber of Commerce and Industry raised various objections to the proposal from KPT by its letter dated July 22, 2014. These included: (i) the authors of the 2014 valuation report were not qualified or experienced in carrying out the valuations of huge parcels of land; (ii) the users of the Port were not given an opportunity of being heard while the valuation was decided; (iii) that the Port had not considered various factors while fixing the rent for category G-1 at INR 905 per sq. mtr. per annum including the distance from the water front between different parcel of land under this category; (iv) that the categorization was not done in a scientific and methodological manner (***see Pg. 279 – 280 of SCA 2535 of 2017***)

5.11 While KPT claimed to have applied the factors for determining market value under the 2014 Land Policy Guidelines, including clause 13(a)(v) i.e. "*any other relevant factor*", the only factor applied was the 2014 valuation report (***see table at 4(iv)(d)(i) at Pg. 279 – 280 of SCA 2535 of 2017***).

5.12 As explained earlier, the 2011 auction failed and is therefore irrelevant. Rather than using the same criteria and parameters to determine the market value of all the lands, the valuer has used different criteria for different categories of land, for no discernible reason which TAMP approves mechanically. TAMP does not even appear to have been informed that the 2011 tender failed.

5.13 TAMP raised a pointed query as to a lack of correlation between the stamp duty rates referred to in page 36 of the 2014 valuation report and the ready reckoner rates and called upon KPT to clarify the position (***see table at 3(ii) at pg. 307 of SCA 2535 of 2017***). Rather than answering the query, KPT stated that it had considered the rates for plots in nearby villages and applied a 5% increment factor (***see response at point 4) in the table at pg. 307 of SCA 2535 of 2017***). This is a wholly irrelevant factor.

5.14 TAMP then enquired why lands were assessed based on reclamation and infrastructure when the value of land on as is where is basis was considered by KPT (***see table at 3(iii) at pg. 307 of SCA 2535 of 2017***). KPT's corresponding answer does not shed any light of clarification in this regard. It is the Appellants' pleaded case that they received the lands purely on an '*as is, where is'* basis in swampy/marshy conditions and had to expend significant amounts of monies to make the land usable. In addition, the Appellants expended substantial

sums to put up the tank farm infrastructure and pipelines for several kilometers at their own cost. Despite the same, the Appellants are now being penalized with higher rent for infrastructure that they themselves put in place. This is evident from the fact that the highest accepted tender cum auction rate considered by KPT is INR 12,375 per sq. meter (***See entry (d) of the table at page 299 of SCA 2535 of 2017***). This is the very rate fixed by the valuer not for as is where is basis but for '*value of land without reclamation but with infrastructure*' (***see pg. 85 of the 2014 valuation report***).

5.15 The 2014 TAMP Order also records that adjoining private port facilities charge rent at INR 36 per sq. meter (***See paragraph 7.2 (ii) (d) of pg. 303 of SCA 2535/2017***). This is a reference to the private port being operated by the Adani group. If a private player fixes its rent at INR 36 per sq. meter, that itself is *ex- facie* evidence that rent of INR 905.17 per sq. meter being fixed by a state instrumentality, that too, suddenly increasing it from Rs.87.03 per sq. meter is nothing but arbitrary, unreasonable and impermissible under Article 14. In fact the 2014 TAMP Order also records that it had asked KPT to ensure that the valuation adopted for arriving at the lease rental for each category of land was realistic and representative (***See paragraph 7.2(ii)(d) of pg. 304 of SCA 2535/2017)***. Despite asking pointed queries, and receiving less than satisfactory responses, TAMP has

nonetheless proceeded to affirm the methods adopted by the valuer and KPT. This is most apparent from the fact that TAMP required KPT to certify that its proposal for the lease rentals was in conformity with the 2014 Land Policy, which once again, KPT mechanically did and TAMP mechanically accepted (***See table at para 9.1(d) at pg. 305 of SCA 2535/2017***).

5.16 The 2014 Land Policy Guidelines provide that KPT can take the highest of the specified factor, the last being any other factor identified by the port. KPT has identified a rate of INR 10,523.18 per sq. metre with a 2% escalation (***See entry (e) of the table at page 299 of SCA 2535 of 2017***). TAMP enquired as to the basis of this amount and the escalation rate, and has recorded that while KPT has furnished the minutes approving the amount, it has "*not furnished any brief background on this matter*" (***See entry vii(a) of the table at page 310 of SCA 2535 of 2017***).

5.17 TAMP then pointedly enquired as to whether the agreements with lessees/licensees contain clauses allowing retrospective revisions of rentals, to which KPT stated that undertakings had been taken from the lessees to that effect (***See entry (ix) of the table at page 310 of SCA 2535 of 2017)***. A similar recording can be found at ***pg. 327 of SCA 2535/2017***. This is patently false. No such undertaking has been furnished by the Appellants.

5.18 Ultimately, KPT has chosen the rate of INR 14,216 per sq. metre (being the rate of the alleged "highest accepted tender cum auction" pursuant to the failed 2011 tender) and escalated the same by 2% to arrive at a "market value" of INR 15086.13. The lease rental is taken at 6% of such market value and fixed at INR 905.17 (***See table (ii) for category G-1, at pg. 299 of SCA 2535/2017***). KPT has vigorously defended this methodology despite the fact that the tender failed. However, in SLP (c) 5346 of 2011 filed by IMC Ltd. against KPT, in relation to the 2005 tender, KPT has on oath stated the complete opposite and averred that it merely entered into a letter of intent with IMC Ltd. and that there was no binding or concluded contract between the parties (***See written submissions filed before the Ld. Single Judge by the Appellants, para 40, pg. 333 of LPA 1426/2019 read with para c of the affidavit filed by KPT before the Hon'ble Supreme Court at pg. 354 of LPA 1426/2019***).[2] Therefore, there is no basis, factually or legally, on which KPT can claim that a failed auction is an accepted or concluded transaction.

5.19 Even assuming that the above criterion and methodology are valid, TAMP even records in its findings that KPT has the option to re-fix the rent not being the highest, for reasons to be recorded. <u>It specifically records the objections made by users that the adjacent Adani-run</u>

[2] The daily note submitted to this Hon'ble Tribunal erroneously recorded that the litigation was filed in relation to the 2011 tender. The 2011 tender was not the subject-matter of litigation

ports were charging a rate of only INR 36 per sq. metre and that the sharp percentage increase for DPT's lands were on an unscientific basis. Nonetheless, the valuation of INR 905.17 has been approved in a routine fashion without addressing all objections raised by users (***See Para 11(vii)(a) – (c) of the 2014 TAMP Order***).

5.20 While KPT claimed to have applied the factors for determining market value under the 2014 Land Policy Guidelines, including clause 13(a)(v) i.e. "*any other relevant factor*", the only factor applied was the 2014 valuation report (***see table at 4(iv)(d)(i) at Pg. 279 – 280 of SCA 2535 of 2017***). As far as the valuation of G-1 category is concerned, it has been arrived at by considering the highest rate received during the 2011 auction, with an annual escalation of 2% (***see para 4(iv)(d) at Pg. 298 of SCA 2535 of 2017***).

5.21 At paragraph 9.2 of the 2014 TAMP Order (***Pg. 312 and 313 of SCA 2535 of 2017***), a table setting out the comparative increase (both in value and percentage) in lease rentals between the 2011 TAMP Order and the 2014 TAMP Order can be seen. As per this table, the lowest percentage of increase is for categories C1 and G-II, which had a 22% increase. The highest percentage of increase is for Categories F2, which had a 285% increase. In a deliberate attempt to mislead TAMP to make the increase in lease rent look nominal insofar as the Appellants are concerned, DPT stated that the percentage

of increase for category G1 is 85%. However, since the Appellants who were categorized in C1 all along including under the 2011 TAMP Order were re-categorized into category G1 under the 2014 TAMP Order, the actual percentage of increase insofar as the Appellants are concerned is 1040%. The 2014 TAMP Order notes that the percentage increase for G1 is compared to the earlier category of G – however, the Appellants have never been categorized in G, and therefore this comparison is a red herring.

5.22 Assuming that DPT's representation regarding the percentage increase (of the range of 22% to 285%), set out in the table at paragraph 9.2 is correct, the same is contradicted by the 2014 TAMP Order as regards the increase in its income for the same period. At the second table at paragraph 9.3 of the 2014 TAMP Order (***Pg. 313 of SCA 2535 of 2017***) it is stated that the percentage increase in income for DPT between the 2011 TAMP Order and 2014 TAMP Order is 507.81% - which clearly signifies that the percentage increase in lease rentals represented by DPT, is a depressed figure, being significantly lower than the actual income increase. However, TAMP has completely failed to appreciate this fact.

5.23 Further, at paragraph 11(x) (***at pg. 326 of SCA 2535 of 2017***), TAMP notes that the percentage increase for all lands is in the rage of 24.09% to 98.78% except

category F2 which is 292.44%. TAMP however notes that the reason for the steep increase in the lease rent for category F2 has not been explained by DPT. TAMP also notes that '*there has not been any pointed objection raised by any users/lessees on the market value and reserve price proposed for this category of land*'. While acknowledging the fact that a 292% increase is steep, TAMP completely ignore the fact that as far as the Appellants are concerned, the increase is over 1000% and that the users such as the Appellants had raised objections with regard to the same, which has been completely ignored by DPT as well as TAMP.

5.24 Finally, similar to the approach adopted for the 2011 TAMP Order, the 2014 TAMP Order also discloses that TAMP has mechanically approved what was placed before it by claiming "*this Authority* ***relied on the decision of the KPT and approved*** *the market value of land as proposed by the KPT*" (***See Clause 11(viii)(d)(v), pg. 323 of SCA 2535/2017***). Thus, TAMP has abdicated its duty to "fix the rates" and has merely *approved* rates put before it.

SECTION 6

ISSUE NO. 3 - WHETHER THE FAILURE TO APPRECIATE THAT THE APPELLANTS' LEASE MODEL, WHEREBY SUBSTANTIAL PREMIUM WAS PAID IN ADDITIONAL TO RENT, WARRANTS JUDICIAL INTERFERENCE?

6.1 The Appellants contended at length before the Ld. Single Judge that the revision of rent to INR 905.17 per sq. metre per annum (besides being exorbitant) also ignores the fundamental premise on which the Appellants were allotted the lands.

6.2 Insofar as the lands which the subject-matter of LPA Nos. 1426, 1427 and 1424 are concerned, these lands were allotted on a hybrid model i.e. a model whereby lease and premium were both payable. As such, the premium constituted a significant portion of the consideration, being the aggregate of several years' rent i.e. 7.5 years' rent in LPA 1426, 5.9 years' rent for LPA 1427 and 3.95 years' rent for LPA 1424. This model is inherently different from a lease rent only model (where no/ nominal premium is payable) or premium only model (where no/nominal rent is payable).

6.3 The rate of INR 905.17 per sq. metre per annum is rent only model was derived by taking 6% on the basis of the 2011 tender. The 2011 tender was on a premium only model (which model has only a token rent of INR 1 per annum). Under the "rent only model", the lessee merely pays yearly rent without payment of any premium

at the time of allotment. Whereas under the "premium only model" the lessee pays the entire consideration in advance and thereafter only a token rent of INR 1 per annum is paid and therefore immunes from re-fixation of rent. This is not comparable with the Applicants' model which is a hybrid model. The Appellants, having paid substantial amount of premium at the time of land allotment, cannot be equated with that of the rent only model. By equating Appellants with that of the rent only model, the Appellants' payment of premium is rendered nugatory. The Ld. Single Judge has recorded the Appellants' arguments at paragraphs 23 (xvi) and 23 (xix) of the Impugned Order, despite which no finding has been returned on the issue.

SECTION 7

ISSUE NO. 4 – WHETHER IT WAS PERMISSIBLE TO PERMIT RETROSPECTIVE LEVIES OF INCREASED RENTALS: (I) W.E.F 01.01.2009, UNDER THE IMPUGNED ORDER DATED MAY 10, 2011; AND (II) W.E.F FROM JANUARY 1, 2014 UNDER THE IMPUGNED ORDER DATED NOVEMBER 13, 2014, DESPITE THE LD. SINGLE JUDGE COMING TO A FINDING (AT PARAGRAPHS 67-69 OF THE IMPUGNED ORDER) THAT TAMP DID NOT HAVE THE POWER TO IMPOSE RETROSPECTIVE LEVY OF RENTS?

7.1 It should be borne in mind that the 2011 TAMP Order (which was brought into effect on May 11, 2011) sought to retrospectively revise the lease rentals from 01.01.1999 to May 10, 2011. The 2014 TAMP Order (which was brought into effect on December 4, 2014) sought to retrospectively revise lease rentals from January 01, 2014.

7.2 The Ld. Single Judge has in the Impugned Order struck down the retrospective levies from 1999 to 2008. However, the levies from 01.01.2009 onwards have been permitted, for unexplained reasons.

7.3 It is well settled that there is no power to retrospectively levy rentals in the absence of a specific provision (in this case, there is no such provision). Reliance is placed on:

(i) *Dwarkadas Marfatia v. Board of Trustees of the Port of Bombay* (1989) 3 SCC 293 – paras 15 to 29

(ii) *Bhupendra Singh Bhatia vs. State of Madhya Pradesh & Ors* (2006) 13 SCC 700 – paras 6 and 7

7.4 The above principles apply with greater force in light of the fact that the Ld. Single Judge has found in paragraph 66 of the Impugned Order that the MPT Act does not confer any power enabling retrospective levy of rentals. Thus, the Ld. Single Judge's decision is contrary to the findings delivered in the very same judgment.

7.5 In the 2011 TAMP Order, TAMP has explicitly recorded that it has raised a query as to whether the lease agreements contained a clause allowing retrospective revisions of lease rentals. In the 2011 TAMP Order, TAMP recorded that KPT confirmed that such provisions exist. It is based on KPT's false representation that TAMP permitted retrospective levies (***See paragraph 10(viii), Pg. 186, SCA 2535/2017***).

7.6 A similar query was put to DPT in the 2014 TAMP Order, where it was recorded incorrectly that an undertaking was given by lessees which contained conditions allowing retrospective revisions (***see paragraph 11(xiv)(a), Pg. 327, SCA 2535/2017***). TAMP itself has recorded that it does not ordinarily resort to retrospective fixation of rates (***see paragraph 11(xiv)(a), Pg. 327, SCA 2535/2017***).

SECTION 8

ISSUE NO. 5 (LOCUS) - WHETHER THE LD. SINGLE JUDGE WAS CORRECT IN HOLDING THAT IMC DOES NOT HAVE LOCUS TO MAINTAIN THE RELEVANT WRIT PETITIONS ON ACCOUNT OF THE MERGER BETWEEN UNITED STORAGE AND TANK TERMINALS LTD. AND IMC? (RELEVANT TO LPA NOS. 1426 AND 1427)

8.1 This issue entails two aspects: first, the aspect of the Ld. Single Judge holding that IMC does not have locus on account of the merger between it and USTTL; second the aspect as to the effect of merger itself.

Locus

8.2 The Ld. Single Judge has held that on account of the amalgamation between USTTL (the original allottee), and IMC, its wholly owned parent company, in 2010, there has been a transfer without KPT's permission, in LPA Nos. 1426 and 1427 (***See paragraphs 7.2, 108***).

8.3 *Ex-facie* such a ruling is unsustainable, because admittedly KPT has raised bills for lease rentals and is seeking to recover them from IMC. While such bills are occasionally raised in USTTL's name, both parties are aware that USTTL is a company that is no longer in existence. Therefore, it is only IMC who can make such payment. Given that IMC is called upon to make such payment, it cannot be that IMC is disallowed to approach this Hon'ble Court to dispute exorbitant demands for the very same payment. There is no other entity or being who

could raise any dispute with respect to such demands for payment. Likewise, KPT is unable to recover such monies from anyone other than IMC, of which they are aware.

8.4 As such, IMC is legally entitled to maintain and pursue the petitions and these appeals, being a "person aggrieved", a term which the Hon'ble Supreme Court has considered in *Jasbhai Motibhai Desai v. Roshan Kumar and Ors. (1976) 1 SCC 671* (paras 28 – 30). It is submitted that this term squarely covers IMC in this case.

8.5 During arguments, the issue of locus was not pressed by DPT at all.

Effect of amalgamation

8.6 USTTL's amalgamation was done pursuant to the provisions of Sections 391 and 394 of the Companies Act, 1956, which culminated in an order of the Hon'ble Calcutta High Court. Such a proceeding entails a newspaper publication and consideration of objections filed by stakeholders before the amalgamation would be permitted. Therefore, these proceedings were always in the public domain.

8.7 In any event, the Scheme approved by the Hon'ble Calcutta High Court (tendered to the Hon'ble Court) indicates that the rights in the lands allotted to USTTL vested automatically by operation of law, in IMC pursuant to the order of the Hon'ble Calcutta High Court (***See Schedule A to the said order, Clause G read with Clause 1 of Part II read with Schedule B, Part II***).

8.8 In this regard, it is important to note that Clause 16 of the Annexure to the Letter of Allotment in LPA 1426/2019 (***See pg. 86 of SCA 2535/2017***) and Clause 2(xii) of the Lease Deed in LPA 1427/2019 (***See pg. 82 of SCA 2536/2017***) provide for payment of transfer fees at six times the lease rentals at the time of the transfer i.e. 2010, and not under the rates under the 2011 TAMP Order or 2014 TAMP Order.

8.9 The contemporaneous correspondence also bears out that KPT was informed about the amalgamation in 2010, and has never objected to the same until the commencement of these proceedings:

(i) September 1, 2010 – IMC notified KPT of the amalgamation between IMC and USTTL, and forwarded the scheme of amalgamation (***See Pg. 50 of the Convenience Compilation filed by the Appellants in LPA 1426/2019***).

(ii) October 17, 2013 – More than three years later, KPT claimed that allotment had been done in favour of USTTL, but nonetheless demanded payment of outstanding dues from IMC (***See Pg. 52 of the Convenience Compilation filed by the Appellants in LPA 1426/2019***).

(iii) January 1, 2014 – Nearly four years after being notified of the amalgamation, KPT once again sought a copy of the scheme of amalgamation from IMC (***See Pg.***

53 of the Convenience Compilation filed by the Appellants in LPA 1426/2019).

(iv) March 25, 2014 – IMC once again provided a copy of the scheme documents to KPT and clarified that such documents had already been provided earlier (***See Pg. 54 of the Convenience Compilation filed by the Appellants in LPA 1426/2019***).

(v) February 5, 2016 – KPT for the first time nearly after six years claimed it could not accept payment from IMC since the allotment was done in USTTL's name (***See Pg. 55 of the Convenience Compilation filed by the Appellants in LPA 1426/2019***).

(vi) July 27, 2017 – IMC pointed out that KPT had been informed about the amalgamation as far back as 2010, and had taken no steps including demanding transfer fees. As a gesture of IMC's bona fides, IMC voluntarily offered to make payment of the transfer fees being six times the ground rent payable at the time of the transfer (***See Pg. 55 of the Convenience Compilation filed by the Appellants in LPA 1426/2019; and See Pg. 57 of the Convenience Compilation filed by the Appellants in LPA 1427/2019***).

8.10 In view of the foregoing, after leading IMC to believe that its transfer had been recognised by KPT for six years, never demanding transfer fees, and accepting rent, KPT cannot now be heard to argue that IMC's petitions are not maintainable on this count.

SECTION 9

ISSUE NO. 6 (LOCUS) - WHETHER THE LD. SINGLE JUDGE WAS CORRECT IN HOLDING THAT JRE DOES NOT HAVE LOCUS TO MAINTAIN THE RELEVANT WRIT PETITIONS ON ACCOUNT OF ITS CONVERSION FROM A PARTNERSHIP FIRM TO A LIMITED COMPANY UNDER PART IX OF THE COMPANIES ACT, 1956? (RELEVANT TO LPA 1424)

9.1 This issue entails two aspects: first, the aspect of the Ld. Single Judge holding that JRE does not have locus on account of the conversion under Part IX of the Companies Act, 1956; second the aspect as to the effect of the conversion itself.

Locus

9.2 The Ld. Single Judge has held that on account of the conversion of JRE, it has no legally enforceable right, and hence has no *locus standi* (***See paragraph 81(II)***).

9.3 *Ex-facie* such a ruling is unsustainable, because admittedly KPT has raised bills for lease rentals and is seeking to recover them from JRE. Both parties are aware that the erstwhile partnership firm is no longer in existence. Therefore, it is only JRE who can make such payment. Given that JRE is called upon to make such payment, it cannot be that JRE is disallowed to approach this Hon'ble Court to dispute exorbitant demands for the very same payment. There is no other entity or being who could raise any dispute with respect to such demands for

payment. Likewise, DPT is unable to recover such monies from anyone other than JRE, of which they are aware.

9.4 As such, JRE is legally entitled to maintain and pursue the petitions and these appeals, being a "person aggrieved", a term which the Hon'ble Supreme Court has considered in *Jasbhai Motibhai Desai v. Roshan Kumar and Ors. (1976) 1 SCC 671* (paras 28 – 30). It is submitted that this term squarely covers JRE in this case.

9.5 During arguments, the issue of locus was not pressed by DPT at all.

Effect of conversion

9.6 J R Enterprises, a partnership firm was converted into JRE on November 16, 2004 under Part IX of the Companies Act, 1956 (specifically Sections 565, 567, 574 and 575 thereof).

9.7 This conversion was regarded by KPT as a "transfer", resulting in (i) KPT claiming that since the "transfer" took place without its consent, JRE is an unauthorised occupant (***See pg. 84 of LPA 1426, entry 4 in the table under the hearing "SCA No. 2537 of 2027"***) and (ii) demanding transfer fees from JRE (***See letter dated August 7, 2015, Annexure X, pg. 408 of SCA 2537 of 2017***).

9.8 However, treating the conversion as a transfer is erroneous as a transfer inherently requires a transferor and a transferee. In the case of a conversion, there is no transfer as the entity in possession is the very same and

merely its constitution (i.e. from a partnership to a limited company) has changed. This is well settled by a catena of judgments:

(i) Vali Pattabhirama Rao & Anr. Vs. Sri Ramanuja Ginning and Rice Factory Pvt. Ltd. & Ors. AIR 1984 AP 176 – paras 6(5) & (6), 19

(ii) Jai Narain Parasrampuria (Dead) and Ors. Vs. Pushpa Devi Saraf and Ors (2006) 7 SCC 756 – para 26

(iii) Commissioner of Income-Tax v. Texspin Engg. and Mfg. Works 2003 SCC OnLine Bom 266 – paras 5, 6

(iv) CIT v Rita Mechanical Works (2012) 344 ITR 544 – paras 16, 17

(v) Income Tax v United Fish Nets (2015) 372 ITR 67 – pages 95 – 97 of the compilation of judgments tendered

(vi) Principal of Income Tax v. Ram Krishna (2019) 416 ITR 123 – paras 8, 14

(vii) Deputy Commissioner of Income Tax v. RL Kalathia [2016] 381 ITR 180 (Guj) – paras 14 – 14.2, 18 – 18.1

9.9 Thus, there has been a consistent approach across all Courts that no separate conveyance/ transfer deed is required in the case of a conversion as there is no change in entity but is merely the same entity "wearing a different cloak". The Ld. Single Judge has ignored the above well settled proposition and has instead returned a finding that

JRE is an unauthorised occupant (***See Para 19 of the Impugned Judgment***).

9.10 Further, KPT was all along informed of the conversion and actively led JRE to believe that no further steps were required to be taken:

(i) March 12, 2007 - JRE informed KPT of its conversion from a partnership firm to a company under Part IX of the Companies Act, 1956, and requested an NOC (***See Pg. 48 of convenience compilation filed with LPA 1424 0f 2019***);

(ii) April 1, 2007 - JRE once again wrote to KPT informing them about the conversion (***See Pg. 49 of convenience compilation filed with LPA 1424 0f 2019***). Thereafter, for seven years there was no response from KPT, and as such JRE had legitimately been led to believe that its name was changed and it continued to pay rent, etc.

(iii) January 10, 2014 - KPT wrote to JRE enquiring whether prior permission had been obtained (***See Pg. 49 of convenience compilation filed with LPA 1424 of 2019***).

(iv) March 24, 2014 - JRE explained by its letter dated that the conversion was not a 'transfer' (***See Pg. 52 of convenience compilation filed with LPA 1424 of 2019***).

(v) March 24, 2015 – one full year later, KPT wrote to JRE informing them that the issue of its name change was pending before the Land Allotment Committee and demanding payment of outstanding dues (***See Pg. 61 of convenience compilation filed with LPA 1424 of 2019***).

(vi) May 30, 2015 - KPT repeated its request for payment (***See Pg. 62 of convenience compilation filed with LPA 1424 of 2019***).

(vii) August 7, 2015 - KPT wrote to JRE stating that the Land Allotment Committee had agreed to the change the name to JRE on its records inter-alia on payment of transfer fees and outstanding dues (***See Pg. 63 of convenience compilation filed with LPA 1424 of 2019***).

(viii) February 5/6, 2016 - KPT by its letter rejected JRE's cheques citing the change in its name (***See Pg. 64 of convenience compilation filed with LPA 1424 of 2019***).

(ix) June 28, 2016 - KPT by its letter dated refused to change the name of JRE in its records (***See Pg. 66 of convenience compilation filed with LPA 1424 of 2019***).

SECTION 10

ISSUE NO. 6 – WHETHER KPT'S ACTION OF NOT RENEWING THE LEASE IS WRONGFUL? (RELEVANT TO LPA 1425)

10.1 The lease deed for the lands which are the subject-matter of LPA 1425 was for thirty years, from June 23, 1978 to June 22, 2008 (***See Pg. 67 of the convenience compilation in LPA 1425/2019***). Clause 8 of this lease deed contains a right of renewal exercisable at the lessee's (IMC) option (***See Pg. 74 of the convenience compilation in LPA 1425/2019***), which provides that upon expiration of the lease deed, the ***lessee will be granted at his/her option***, a new lease for a further period of 30 years.

10.2 IMC exercised this right in 2008, prior to the expiry of the lease deed. Since then, KPT has adopted a constantly shifting series of stances in an aim to frustrate IMC's renewal and to take advantage of its own errors / inactions, in an attempt to claim increased lease rents from IMC. This is borne out from the following:

(i) May 5, 2008 - IMC requested for renewal of lease (prior to the expiry of the lease) (***See Pg. 48 of the convenience compilation in LPA 1425/2019***).

(ii) KPT replied to the above letter on May 16, 2008 contending that IMC had applied for renewal late and requested IMC to submit an undertaking (***See Pg. 49 of the convenience compilation in LPA 1425/2019***).

(iii) May 23, 2008 - IMC by its letter dated submitted the undertaking as requested (***See Pg. 50 of the convenience compilation in LPA 1425/2019*****).** Since the undertaking was submitted and there was no further communication from KPT, IMC believed that its lease was renewed.

(iv) September 3, 2013 – Five years later, KPT demanded payment from IMC as an 'unauthorised occupant' (***See Pg. 53 of the convenience compilation in LPA 1425/2019*****).**

(v) September 19, 2013 - IMC reiterated that it had applied for renewal of the lease several years ago (***See Pg. 55 of the convenience compilation in LPA 1425/2019*****).**

(vi) October 8, 2013 - KPT addressed a letter to IMC claiming for the first time that the land was required for its own use (***See Pg. 58 of the convenience compilation in LPA 1425/2019***). This was wholly inconsistent with KPT's earlier stance, and no explanation was given as to why, if this were the case, KPT demanded an undertaking from IMC for the purpose of renewing the lease.

(vii) March 16, 2015 - KPT once again changed tack and stated that IMC's renewal request would be considered if all dues were cleared (***See Pg. 59 of the convenience compilation in LPA 1425/2019***).

(viii) September 13/26, 2016 – KPT stated once again that the request for renewal was not considered as the

lands were required for the port's use (***See Pg. 61 of the convenience compilation in LPA 1425/2019***).

10.3 In view of the foregoing, after leading IMC to believe that its renewal had been recognized by KPT for five years and thereafter constantly changing its position on whether the lands were required for KPT's own use, KPT has clearly acted in an arbitrary and high handed manner. KPT's affidavit-in-reply contains no meaningful response, and it has merely stated that IMC does not have a vested right of renewal (***see paras 6-8 of the reply, pgs. 428-429 of SCA 2538/2017***). This is *ex facie* false and contrary to the terms of the lease deed. In an attempt to take undue advantage of its own wrongs, KPT in its reply, contends that as a matter of policy, KPT does not consider applications for renewal of lease of allottees who have outstanding amounts and / or breached conditions of original lease and / or are not agreeable to pay the amount of rent as levied by KPT (*para 7 of the reply*). This is patently false and misleading inasmuch as there were no outstanding amounts at the time of application of renewal of lease by IMC in 2008 nor was there any breach in any condition of lease. KPT has failed to produce a single document on record to support such frivolous allegations.

10.4 The contractual terms and above correspondence have all been ignored by the Ld. Single Judge who has proceeded on the basis that the lease deed does not confer a right of renewal and that KPT needed the lands for its

own use (***See paras 75 and 80(iv) of the Impugned Order***).

SECTION 11

ISSUE NO. 7 – WHETHER THE LD. SINGLE JUDGE IS CORRECT IN TREATING THE APPELLANTS AS UNAUTHORIZED OCCUPANTS?

11.1 In the instant batch of appeals, DPT is treating IMC and JRE as unauthorized occupants across all leases:

(i) Insofar as LPA 1426/2019 (SCA 2535/2017) is concerned, the lease is subsisting, but since the Ld. Single Judge has held against IMC on the issue of locus owing to the merger between USTTL and IMC, IMC is being treated as an unauthorized occupant by DPT. It should be noted however, that the Ld. Single Judge has not in this case, characterized IMC as an unauthorised occupant in the Impugned Order insofar as this lease is concerned.

(ii) Insofar as LPA 1427/2019 (SCA 2536/2017) is concerned, the Ld. Single Judge has held against IMC on the issue of locus owing to the merger between USTTL and IMC, and IMC is being treated as an unauthorized occupant by DPT.

(iii) Insofar as LPA 1424/2019 (SCA 2537/2017) is concerned, the Ld. Single Judge has held against JRE on the issue of locus owing to the conversion of JR Enterprises to JRE under the Companies Act, 1956, JRE is being treated as an unauthorized occupant by DPT.

(iv) Insofar as LPA 1425/2019 (SCA 2538/2017) is concerned, despite having exercised its right to renew the lease deed, the Ld. Single Judge held that IMC is not entitled to renew the lease, and IMC is being treated as an unauthorized occupant by DPT.

11.2 The Ld. Single Judge has bodily reproduced at paragraph 12 of the Impugned Judgment notes tendered by DPT, in which IMC/JRE have been characterized as unauthorised occupants in all but one lease (LPA 1426). Further, the Ld. Single Judge has characterized IMC as an unauthorised occupant insofar as LPA 1425 is concerned *inter alia* on account of Public Premises (Eviction Of Unauthorised Occupants) Act, 1971 ("**Public Premises Act**") proceedings.

11.3 First, the proceedings under the Public Premises Act are under a different statute and are separate proceedings from the ones before this Hon'ble Court. Essentially, the Ld. Single Judge's order may have the effect of pre-deciding the issues under the Public Premises Act, even though the Ld. Single Judge was not called upon to give a finding on this aspect. Further and in any event, the Ld. Single Judge completely ignored the fact that the proceedings under the Public Premises Act were not initiated until 2018 (during the pendency of the SCAs). This could not have any bearing on the renewal of the lease of the Appellant in LPA 1425). The Ld. Single Judge also ignores the fact that KPT had not initiated any

proceedings against the Appellants in LPA 1424 and 1427.

11.4 Secondly, during the proceedings before this Hon'ble Court and after the Impugned Order, KPT has been treating IMC/JRE as an unauthorised occupant and demanding three times rent.

11.5 Insofar as the lease in LPA 1425 is concerned, as explained above, IMC has a right of renewal which was exercised prior to the expiry thereof. An undertaking was given to KPT to this end as demanded by it from IMC. As such, no question of levying three times rent can arise. Pertinently, the land policy guidelines also require KPT to renew leases where there is renewal clause contained in the lease deed.

11.6 Insofar as the other leases (in LPA 1424 and LPA 1427) are concerned, under the 2014 Land Policy Guidelines, three times rent is to be charged only after the lands have been put to auction and the sitting lessee has failed to match the highest bid and having failed to match the highest bid does not remove all structures at its cost three months after the tender-cum-auction enabling it to handover vacant possession:

(i) Where a lease deed does not provide for renewal, the land is to be put to tender-cum-auction, with the existing lessee being given a right of first refusal to match the highest bid. The structures erected by the existing

lessee are to be valued (***See Clause 11.3(c), pg. 10 of the compilation filed by KPT***);

(ii) The structures erected by the lessee are to be removed three months after the tender-cum-auction if the existing lessee is not successful, or within three months from expiry/ termination if the port decides not to re-auction the land. Only beyond this period, the lessee shall be liable to pay compensation for wrongful use and occupation at three (3) times the annual lease rent, till vacant possession is obtained. (***See Clause 11.3(i), pg. 10 of the compilation filed by KPT***); and

(iii) The process of renewal is to be initiated well in advance before expiry of the term of the lease. For automatic renewals, it should be done within three months of receipt of the application. This clause further states that the liability to pay compensation for wrongful use by the lessee will not arise, if the delay in renewing such leases is wholly attributable to the port (***See Clause 11.3(j), pg. 12 of the compilation filed by KPT***).

11.7 In the instant case (in LPA 1424 and LPA 1427), the valuation of IMC/JRE's structures has been completed, meaning that KPT intends to tender/auction the lands. Despite the same, KPT has till date failed to auction/tender the land, thus depriving IMC/JRE of the opportunity to match the bid. Despite the same, IMC/JRE is called upon to pay three times rent. This is not only illegal as per the 2014 Land Policy Guidelines but also

highly unjust. KPT has once again attempted to take advantage of its own wrong and highhanded conduct by treating IMC / JRE as an unauthorized occupant – despite the fact that IMC/ JRE has rights under law to match a bid and continue to occupy the lands in which the lease deeds have expired. The Ld. Single Judge has ignored these aspects.

SECTION 12

RESPONSES TO DPT'S ARGUMENTS

12.1 The Appellants will now address the arguments made by DPT.

12.2 **DPT's argument**: With respect to the Appellants' contention that DPT has had no regard for the Appellants' hybrid lease models (i.e. premium cum monthly rentals), DPT orally argued that the premium paid by the Appellants and accepted by DPT is not "upfront premium" or "premium". Therefore, this does not need to be factored into any revised lease rentals.

12.3 **The Appellants' response**:

(i) The Appellants' contentions in this regard have been set out above at paragraph 6.1 – 6.3. These were not addressed by DPT during their arguments in response to the Appellants' and submissions were only made orally during sur-rejoinder arguments, after it was pointed out by the Appellants that neither DPT, nor TAMP nor the Single Judge had dealt with the issue.

(ii) It is fallacious and self-serving for DPT to claim that the premium paid by the Appellants is not "premium". This is apparent from the terms of the agreements themselves – ***See SCA 2535/2017, pg. 80; SCA 2536/2017, Pg. 91; and SCA 2537/2017, Pg. 89***.

(iii) As regards the allegation that the premium is not "upfront premium" (i.e. where the premium is the full amount for the tenure of the lease followed by token

yearly payments of Re. 1/-), this is not disputed. In fact, the Appellants' case is that the model on which the three lands are held is a hybrid model. This does not mean a large sum of premium was not paid and accepted at the relevant time of execution of lease deeds.

(iv) It has been set out above that the premium, when paid, translated to several years' worth of annual rent. Therefore, this large sum of money was necessarily required to be borne in mind while revising the rent, because equating the Appellants' rent structure to a rent-only (i.e. no premium) structure, renders meaningless the monies paid and accepted as premium.

(v) It was orally suggested that the premium be refunded in order to overcome this issue. However, that would amount to a rewriting of the contract between the parties which is impermissible. Secondly, the premium was paid decades ago, and the quantum of money (equating to several years' worth of rent) must be considered in that contemporaneous context. It cannot be regarded at today's value. DPT has failed to frame policies keeping in mind this structure by which the Appellants make payment, and are essentially seeking to benefit from their negligence by enjoying huge sums of monies paid at the relevant time, as premium plus "*economic rent*" at today's value.

12.4 **DPT's argument**: A lease beyond a period of 30 years is not permitted without the approval of the Central Government under Section 34 of the Act. In any case the Land Policies, the first of which came in 2004, do not permit extension beyond 30 years in the aggregate, which would override any contrary condition in the lease deed/Order of allotment. (***see clause 5.2.1.2 of the 2004 Policy @ p. 40 of DPT Compilation; clause 6.2.2.2 of 2010 Policy @ p. 27 of DPT Compilation and; clause 11.3 of 2014 Policy @ p. 9 of DPT Compilation***) – paras 12 and 34 of DPT's gist of arguments note.

12.5 **The Appellants' response**:

(i) It has been explained above in paragraphs 2.14 and 2.15 that Section 34 was enacted eleven years prior to the execution of the lease deed which is the subject-matter of LPA 1425 of 2019. Hence, the renewal clause was provided by DPT after the enactment of Section 34 of the MPT Act.

(ii) Without prejudice to the above, Clause 5.2.1.2(b) of the 2004 Land Policy and Clause 6.2.2.2 (d) of the 2010 Land Policy provide that renewal of lease beyond 30 years can be made after the recommendation of the Board and approval of the Empowered Committee. Therefore, there was no prohibition against renewal for a 30-year period. When IMC exercised its renewal right in 2008, the provisions of the 2004 Land Policy were in force.

(iii) As regards Clause 11.3(f) of the 2014 Land Policy, it for the first time provides that renewal of the lease above the existing period is to be approved by the Board, provided that the **cumulative** lease period does not exceed 30 years. The word "cumulative" is absent from Section 34, the 2004 Land Policy and the 2010 Land Policy and thus cannot relate back to 2008, when IMC exercised its renewal right.

12.6 **DPT's argument**: Clause 13(b) of the 2014 Land Policy specifies that 6% of Market Value is the minimum to be considered while fixing SoR, meaning that other relevant factors including use of land could be taken into account while recommending rates. Further, "use" has been expressly permitted under Clause 13(a)(i) of the 2014 Land Policy Guidelines – paras 13 and 14 of DPT's gist of arguments note.

12.7 **The Appellants' response**:

(i) 'Use' was explicitly mentioned as a factor to be borne in mind when fixing the SoR under clause 5.3 of the 2004 Land Policy Guidelines and Clause 6.3(1) of the 2010 Land Policy Guidelines. There is no mention of this in the 2014 Land Policy.

(ii) Therefore, there has been a conscious departure from considering use as a matter of policy. This has sought to be overcome by DPT referring to Clause 13(a)(i) of the 2014 Land Policy Guidelines which refers to the State Government's ready reckoner if available, for

similar classification/activities. However, no such ready reckoner is available, and therefore reliance on this clause is meaningless. KPT cannot simply omit the words "*State Government's ready reckoner of land's values in the area, if available*", and selectively read the last three words in the clause.

(iii) In fact, in the 2011 Valuation Report the valuer has in fact wholly disregarded ready reckoner rates/ D. C. rates.

(iv) Further, the words "any other relevant factor" are not an omnibus/catch-all term, and cannot be understood subjectively on a need-to-need basis. The 2014 TAMP Order has identified a rate of INR 10,523.18 per sq. metre with a 2% escalation as being the "*any other factor*" precisely under this Clause (***See entry (e) of the table at page 299 of SCA 2535 of 2017***). In fact, TAMP enquired as to the basis of this amount and the escalation rate and has recorded that while KPT has furnished the minutes approving the amount, it has "*not furnished any brief background on this matter*" (***See entry vii(a) of the table at page 310 of SCA 2535 of 2017***).

12.8 **DPT's argument**: The Appellants' lands have special value/ advantages, which justifies the re-categorisation to G-1 from C-1/E – paras 13 – 16 of DPT's note on gist of arguments.

12.9 **The Appellants' response:**

(i) It is only liquid bulk handlers who are classified on the basis of use and made to pay exorbitant lease rentals. The arbitrariness becomes most distinct when considering the fact that dry bulk handlers (and all other allottees) are classified on the basis of geography as well. Therefore, even within the class of those in the storage business, liquid bulk cargo is singled out. If use was a relevant factor, then all users engaged in the business of storage would have been categorised into Category G.

(ii) KPT has not placed on record any document (contemporaneous or otherwise) showing the rationale behind the re-categorisation. In fact, the only document on record is the letter dated February 17, 2014 from KPT to the valuer instructing it to add a separate category of land for "Liquid Tank" purpose– contrary to the 2014 TAMP Order (***See the letter after page 85 in the 2014 valuation report***).

(iii) It is an admitted position that the lands allotted to the Appellants were marshy and had to be developed solely by the Appellants at their cost (***See para 72(i) of SCA 2535/2017***). Therefore, there were no special advantages conferred to the Appellants. KPT also conveniently ignores the fact that the Appellants have also played a major role in the development of the Port in terms of handling liquid bulk and in the absence of the Appellants (liquid bulk storage tank farms), KPT cannot handle liquid bulk at the Port.

(iv) All costs in relation to the lands are borne by the Appellants - the costs of constructing the tanks and laying pipelines connecting the Appellants' tanks to the jetties are borne by the Appellants. This can be corroborated from the 2014 Land Policy Guidelines under 16.3 (c) which states *"... In case of renewal of existing leases, without automatic renewal option at the end of the lease-term, the land will be put to tender-cum-auction with the first right of refusal to be extended to the existing lessee. The existing lessee should be allowed to match the H-1 bid. If any structures has been constructed by the earlier lessee on the leased land, it would be valued by a third party valuer to be agreed upon by the Port Trust and the earlier lessee and the successful bidder has to remit the value of the structures which would be passed on to the previous lessee. ..."* Further, the Appellants pay way-leave / right of way charges for running pipelines through the port lands in addition the rent for the allotted lands. On the contrary, DPT had developed and is maintaining at their cost infrastructural facilities for storing dry bulk cargo.

(v) All allottees (be it dry bulk handlers, liquid bulk handlers or containers) use the jetty facilities at the port in a similar manner (i.e. for berthing of vessels and discharge of cargo). In other words, the availability of jetty for handling vessels are common infrastructure for all types of cargo viz. for dry bulk, container and liquid

bulk. DPT also charges separately for the use of the jetty (berth hire charges) and for handling each and every cargo type at the jetty (wharfage charges) be it dry bulk, container and liquid bulk.

(vi) DPT provides no facility specifically to liquid bulk handlers which are in addition to, or different from what is provided to the other two cargo types. Yet dry bulk cargo handlers and container handlers are paying rent as per geographical location and not on any other basis, including use of land/ infrastructure provided. In fact, DPT expended huge capital for providing fully developed lands, godowns and common amenities inside the port area for storage and handling of dry bulk, despite which they are charged lower lease rentals.

(vii) TAMP in fact enquired why lands were assessed on the basis of reclamation and infrastructure when the value of land on '*as is where is'* basis was considered by KPT (***see table at 3(iii) at pg. 307 of SCA 2535 of 2017***). KPT's corresponding answer does not shed any light or clarification in this regard.

(viii) Essentially, DPT is penalising the Appellants by charging exorbitant rates for putting in place infrastructure which was set up at the Appellants' own expense, which in turn contributed to the development of port lands.

12.10 **DPT's argument**: DPT is entitled to "economic rent" i.e. the price that a willing buyer would pay to a willing seller. To this end, the 2014 valuation report consolidates the bid amounts offered by various persons for plots during the 2011 tender – paras 20 and 21 of DPT's gist of arguments note.

12.11 **The Appellants' response:**

(i) KPT has chosen the rate of INR 14,216 per sq. metre (being the rate of the alleged "*highest accepted tender cum auction*" pursuant to the failed 2011 tender) and escalated the same by 2% to arrive at a "market value" of INR 15,086.13 (it is clarified that the Appellants did not participate in the 2011 tender – ***see pg. 77 of the 2014 Valuation Report***);

(ii) However, in SLP (c) 5346 of 2011 filed by IMC Ltd. against KPT, in relation to the 2005 tender, KPT has on oath stated the complete opposite and averred that it merely entered into a letter of intent with IMC Ltd. and that there was no binding or concluded contract between the parties (***See written submissions filed before the Ld. Single Judge by the Appellants, para 40, pg. 333 of LPA 1426/2019 read with para c of the affidavit filed by KPT before the Hon'ble Supreme Court at pg. 354 of LPA 1426/2019***).

(iii) In the case of *Haridwar Singh v. Begum Sumbai* (1973) 3 SCC 889, the Hon'ble Supreme Court examined what constituted an "acceptance" of a bid at an auction.

The Court held that since clearance was required from the Forest Department, in the absence thereof the acceptance of the bid was **provisional**, and there was no concluded contract between parties (paras 2, 5 and 8). Since KPT has accepted that there was no concluded contract between the parties, it cannot in the same breath assert that "acceptance" was complete.

(iv) Similarly in *State of Orissa v. Harinarayan Jaiswal* (1972) 2 SCC 36, it was held that in a Government tender, "*there is no concluded contract until the bid is accepted*" (para 13). Hence, "accepted" and "concluded contract" are necessarily co-extensive terms. KPT cannot assert that the contract was not concluded but at the same time assert that the bid was accepted.

(v) Further, it is well settled that State authorities should not engage in rack-renting and profiteering – *Jamshed Hormusji Wadia v. Board of Trustees, Port of Mumbai* (2004) 3 SCC 214, paras 13 to 19. Categorisation on the basis of geography has been long in place – the Central Government notification dated July 5, 1994 itself categorises lands on the basis of geography. DPT has deliberately discriminated against liquid bulk handlers in order to claim inflated rent.

12.12 **DPT's argument**: The Appellants submitted bids offering a premium of INR 3,500 over the base price of INR 612 per sq. m. (converting to a lease rent of INR 246 @ 6% of the market value). Despite this, IMC and

JRE want to continue to pay at INR 11/30 per sq. m. alongwith a permitted increase of 2% p.a. i.e. INR 34 – para 20 of DPT's gist of arguments note.

12.13 **The Appellants' response**:

(i) It is not the Appellants' case that they should be paying **nominal rents** as low as INR 11/ INR 30 per sq. mtr. The Appellants have always been ready and willing to pay **reasonable rent**, and therefore asserting that they were unwilling to pay more than INR 34 is incorrect. In fact, the civil applications filed in the LPAs show that *ad-hoc* payments at far greater rates than INR 34 per sq. m. have been offered by the Appellants voluntarily, on a *without prejudice* basis;

(ii) DPT's argument also ignores the reality that a mere bid made for a fresh tender cannot be compared to the rates payable for existing leases, or be seen to alter the contracts for existing/ held leases;

(iii) The Appellants have also contended that their leases are of a premium-cum-rent model i.e. one time premium aggregating to several months' rentals was paid, alongwith monthly rent. Therefore, the monthly rent was bound to be fixed keeping in mind that massive premium was paid. The tender in which the Appellants bid, was admittedly a Premium only model (i.e. with no lease rent payable). Therefore, the bid offered cannot be equated to the payment being made under a whole different model on this count also.

12.14 **DPT's argument**: DPT has attempted to explain the 2011 Valuation Report and 2014 Valuation Report respectively, which have been relied upon by DPT in order to justify the 2011 TAMP Order and the 2014 TAMP Order. There is a limited scope of judicial review in respect of valuation - at paragraphs 20, 21 and 23 of DPT's gist of arguments.

12.15 **The Appellants' response**:

(i) DPT has merely explained the approach adopted in respect of the 2011 valuation report and the 2014 valuation report, rather than justifying it.

(ii) DPT has not been able to overcome the infirmities explained at paras 3.5, 3.6, and 5.1 - 5.9 above, and as such the reports are perverse and warrant judicial interference.

(iii) DPT has relied on certain literature with respect to internationally accepted principles of valuation in support of the contention that DPT is at liberty to consider the best use of the lands (which for the Appellants' lands is use), in order to maximise the value of the lands. However, such international standards (and principles emerging therefrom) are required to be applied uniformly by a State. A State authority cannot be seen to take a position that one set of factors is standard and applicable for one allottee, and another set of standards is applicable to other allottees. An "internationally accepted principle of valuation" cannot be made applicable only to

Appellants' plots and not to the plots next to the Appellants. This itself shows differential treatment and hostile discrimination.

(iv) There is no dispute on the point that courts have a limited scope of judicial review in the sphere of valuation. However, it is settled that where valuation is perverse/ on irrelevant criteria, a Writ Court can always interfere. The Appellants have in their arguments demonstrated that the valuation report is perverse as well as based on irrelevant criteria. Far from being independent, the valuation was done only to aid KPT in levying exorbitant rents.

12.16 **DPT's argument**: All plot holders were aware of obligations to pay increased rates from 1994 (retrospectivity). In fact, since the liability is imposed on the holders of the plots and only the computation or quantification is deferred, at the end of the 5th year the Rates as operating then, become provisional and would abide by the finalisation of the same by TAMP. In any event there are justifiable reasons including directions of TAMP which resulted in delay in actual determination of market value – paras 27 to 29 of DPT's gist of arguments

12.17 **The Appellants' response**:

(i) DPT has not met the argument that the Single Judge has held that the MPT Act does not allow retrospective levy of lease rents (para 66 of the Impugned Order).

(ii) Due to a super cyclone in 1998 and an earthquake in 2001, and their aftereffects in the region, the rates proposed by KPT were not accepted by TAMP and were not implemented. It does not lie in KPT's mouth to now make claim for this period, when an express go-by was given.

(iii) From 1999 onwards, no increase in lease rentals were made. In 2003, the Government of India issued notifications to various ports, in respect of Special Economic Zones therein, including the Cochin Port and the Kandla Port, stating that rate of revision of rent is subject to a maximum of 25% (***See annexure C to SCA 2535/2017***). Thereafter, TAMP passed an order dated April 22, 2008 "*taking note of the delay and the observations of the TAMP*" in the said order, DPT appointed a valuer under the 2004 Land Policy Guidelines (***See para 16 of DPT's reply to SCA 2535/2017, pg. 450 of SCA 2535/2017***). Nearly two years later, on April 19, 2010, DPT submitted its proposal for revision of rate structure to TAMP (***See para 3.1 of the 2011 TAMP Order, Pg. 174 of SCA 2535/2017***).

(iv) Therefore, even if such revision was permitted, it could not be so delayed, at these exorbitant rates, much less retrospectively. It has been pointed out above that the 2011 TAMP Order and the 2014 TAMP Order both record TAMP's own submission that retrospective revisions are not usually carried out by it. It has also been

pointed out above that DPT has misled TAMP by misrepresenting the terms and conditions contained in the lease deeds with respect to retrospective increases. Thus, it is evident that KPT has misled TAMP so as to continue engaging in rack-renting and collecting exorbitant rentals.

12.18 **DPT's argument**: Those of the Appellants who claim to be successors of the original allottees of the subject land by virtue of amalgamation or demerger of companies or conversion of partnership firm into a joint stock company, are clearly unauthorised occupants since the mode of succession amounts to a transfer which is impermissible without prior permission of the Port Trust under the lease deeds, which has admittedly not been taken – Para 32 of DPT's gist of arguments

12.19 **The Appellants' response**:

(i) There is no dispute with the fact that insofar as SCA 2525 and 2536 of 2017 are concerned, a transfer took place. However, KPT has ignored the fact that IMC notified it of the transfer contemporaneously in 2010 itself. KPT requested copies of the scheme documents on January 1, 2014 despite them being sent to KPT in 2010. Only on February 5, 2016 (six years later), itclaimed it could not accept payment from IMC. No answer as to this delay/ conduct has been offered.

(ii) Insofar as JRE (Part IX conversion) is concerned, the judgments relied upon by JRE at para 9.8 have not been distinguished by DPT.

(iii) Further, similar to IMC's matters, JRE also notified KPT contemporaneously, and despite corresponding from March 12, 2007, KPT raised an objection on account of the conversion only in February 2016, clearly as an afterthought.

12.20 **DPT's argument**: For transfer fees, case principles of regularisation would apply and the provisions as on the date of such order would need to be complied with – para 33 of DPT's gist of arguments

12.21 **The Appellants' response**:

(i) KPT has ignored the fact that Clause 16 of the Annexure to the Letter of Allotment in LPA 1426/2019 (***See pg. 86 of SCA 2535/2017***) and Clause 2(xii) of the Lease Deed in LPA 1427/2019 (***See pg. 82 of SCA 2536/2017***) provide for payment of transfer fees at six times the lease rentals at the time of the transfer i.e. 2010.

(ii) As the Part IX conversion is not a transfer, there is no question of transfer fees applicable.

SECTION 13

RESPONSE ON THE JUDGMENTS CITED BY DPT

13.1 **(2014) 2 SCC 657 – Yazdani International Private Limited Vs. Auroglobal Comtrade Pvt. Ltd.** (referred in para 10 of DPT's gist of arguments note)

This judgment is of no assistance to KPT. Paragraph 40 of the judgment, which is relied upon by KPT clearly states that '*In the matter of creating rights and/or conferring privileges such a body is required to act in public interest under some rational policy*'. While the board is bound by the policy directions, the directions nowhere permit / mandate KPT to charge such exorbitant lease rents. Further, while dismissing the appeals, the Hon'ble Supreme Court noted that except arguing that the decision of the High Court is in violation of the principles of natural justice, the appellants failed to place on record any material to establish that the decision of the Board to terminate their licence is otherwise violative of any substantive right.

In the present case, the Appellants have demonstrated in detail as to how their rights have been violated and how KPT has conducted in an arbitrary and irrational manner. It is also the Appellants' case that KPT has not acted in accordance with the policy guidelines.

In fact, this decision aids the Appellants' case inasmuch as the Hon'ble Supreme Court has also observed at paragraph 44 that *'it is well settled by a catena of*

decisions of this Court that no public body under our constitutional system is vested with such arbitrary powers, as was pointed out by this Court in Ramana Dayaram Shetty v. International Airport Authority of India. If the Board decides not to renew any license either with respect to a class of licences or with reference to a specific area of the land, normally such a decision cannot be said to be either irrational or arbitrary unless there are other compelling reasons to indicate that the decisions has no rational purpose to be achieved.'.

13.2 **2018 (18) SCC 65 – JS Luthra Academy vs. State of Jammu & Kashmir** (referred in para 10 of DPT's gist of arguments note)

KPT has relied on this decision to argue that periodic revisions of lease rents and of renewals are clearly in aid of levelling the playing field and also for securing the economic rent which could be received by the Port Trust to undertake its public functions.

It is submitted that this decision is does not further KPT's case. On the contrary, this decision supports the Appellants' case that the rents charged cannot be exorbitant. KPT has conveniently not highlighted the fact that the Hon'ble Supreme Court holds that allocation of land must not be violative of Article 14 (see para 20.2 of the judgment). The Appellants have demonstrated how the actions of KPT and TAMP are in complete disregard of and in violation of Article 14.

Even on facts, this decision is far removed from the facts of the present case. The Supreme Court was concerned with a question where some land was allotted to the Appellant (JS Luthra Academy) ***free of cost***. On the contrary, in the present case, the Appellants have at all times been ready and willing to pay reasonable lease rents. However, KPT and TAMP have singled out the Appellants and fixed lease rents which are exorbitant and amount to rack renting as opposed to reasonable compensation.

13.3 **LPA No. 870 of 2013 KPT vs. Kandla Salt Leaseholder** (referred in para 10 of DPT's gist of arguments note)

KPT has also relied on this decision in support of its argument of limited scope of judicial review in case involving TAMP Orders. It is pertinent to note that in the said decision, this Hon'ble Court has observed that '*as per the statutory provisions while determining the tariff, TAMP is required to take into consideration the guidelines / policy decision issued by the Central Government in exercise of the power under section 111 of the Act.*' It is the Appellants' case that TAMP has in fact considered the guidelines and while considering irrelevant factors, has merely accepted the recommendations of KPT, without itself adjudicating the issue. Further, even in this case, this Hon'ble Court has observed that '*Courts will not interfere with* ***unless it is shown that fixation of***

tariff was arbitrary, illegal or ultra vires' which the Appellants have been able to show.

13.4 **(2009) 14 SCC 451 National Sample Survey Organisation vs. Champa Properties Ltd.** (referred in para 10 of DPT's gist of arguments note)

Far from assisting KPT, this decision aids the Appellants. This judgment makes it clear that parties are bound by their contractual terms (see para nos. 30 to 33, 38 and 39).In the present case, KPT seeks to disregard these very terms which form the basis of the parties' relationship. KPT has only relied on a selective portion of paragraph 31 of the judgment without considering the remaining portion. Moreover, the MPT Act does not prescribe an increase in lease rent in the quantum as determined by TAMP / KPT or the manner in which it has been done. As argued by the Appellants, the action of the TAMP / KPT fall afoul of Section 111 of the MPT and the guidelines issued thereunder.

13.5 **(2009) 15 SCC 125 Deputy Collector, Land acquisition, Gujarat and another vs. Madhubhai Gobarbhai and Anr.** (referred in para 13 of DPT's gist of arguments note)

This decision has been relied upon by KPT to support its contention that property can be classified on the basis of use. This decision was delivered in the context of determining compensation for acquisition under the Land Acquisition Act. The same principle cannot be applied in

determining lease rent. Moreover, the Appellants' lands cannot be likened to agricultural land, which has been statutorily earmarked so as to prevent misuse of such lands. Further and in any event, the Appellants' lands were classified on the basis of geography until as recently as 2014. If use was a relevant criterion, the Appellants' lands would have been so demarcated much earlier. Additionally, the fact that only liquid tank farm operators' (like the Appellants') lands have been classified on the basis of use clearly shows that use was never a relevant criteria for determination of lease rent. The Appellants' lands have been so classified to arbitrarily charge exorbitant rents.

13.6 **2001 (1) GLR 48 – Cadila Laboratories Limited vs. Union of India** (referred to in paragraph 28 DPT's gist of arguments note)

This is a decision under the Essential Commodities Act in relation to the fixation of and recovery of amounts regarding certain drugs. KPT has relied on this decision in support of its arguments on the point of retrospectivity. However, this case is concerned with the recovery of additional/ increased amounts which were ascertained by the government after certain additional information was provided by the Petitioners (which was earlier withheld). This decision is therefore not applicable in the facts of the present case.

13.7 **1992 (2) SCC 124 Kanoria Chemicals vs. Kandla Port Trust** (referred to in paragraph 31 DPT's gist of arguments note)

KPT has relied upon this decision in support of its argument on retrospectivity. KPT has argued that a certain element of retrospectivity is built into the procedure to fix lease rent. However, in this case, the Hon'ble Supreme Court has in fact held that a retrospective effect to revision of rates can only be given by force of statute (as is the case of the Appellants herein) and only in a case where a provision of a statute so envisages (see para 23 and 24). There is no such provision in the MPT. Further, as amply demonstrated by the Appellants, KPT's approach to valuation and the valuation reports itself are *ex-facie* unsustainable and perverse

13.8 **2015 (13) SCC 233 Rishi Kiran Logistics vs. Board of Trustees of KPT** (referred in paragraph 22 of DPT's gist of arguments note)

KPT has relied upon this decision in support of its argument that the 2005 Tender could be considered in determining the revised lease rentals (***see para 22 of the submissions***). In this decision the Appellant had in fact challenged the cancellation of the Tender by KPT. However, the Hon'ble Supreme Court refused to interfere in the matter and observed that there was no '***concluded contract***' and that since there was a delay in obtaining the requisite clearance '*neither any final LoI could be issued,*

nor possession of the plot given or the payments received.' This in fact supports the Appellants' case that the 2005 Tender was not accepted and therefore was no binding or concluded contract, therefore, the 2005 Tender cannot be a relevant consideration in determining the lease rent. In any event, IMC filed its SLP before the Hon'ble Supreme Court as DPT failed to effectuate the 2005 tender by granting the lease. The said proceeding was withdrawn and DPT categorically took a stand that the contract was not concluded as explained in paragraph 75 above. In any event, the Appellants are not concerned with this judgment.

13.9 **2017 (5) SCC 262 Union of India vs. Cipla Ltd. & Anr.** (referred in paragraph 23 of DPT's gist of arguments note)

KPT has relied on this decision in support of its submission that the scope of judicial review in matters involving valuation is very limited. It is submitted that KPT's reliance on this decision is misplaced. The Hon'ble Supreme Court in this case was considering the fixation of price relating to drugs/ raw materials under the Drugs (Price Control) Order, 1995. It is in this context that the Supreme Court observed that '***fixing price of any commodity is not only difficult but also tricky***.' The issue before in the present Appeals pertains to the fixation of rents, which is wholly different. In any event, even the principle laid down by the Hon'ble Supreme Court cannot

be applied to the facts of the present case, since it was held that in a case of price fixation ***having its origin in non-statutory materials***, the scope of judicial scrutiny would be far less. It is the Appellants' case that in the case like the present one, rents cannot be fixed with retrospective effect unless such effect is given by force of statute. Further, the Hon'ble Supreme Court in the case of *Rayalaseema Paper Mills Ltd. vs. State of A.P* reported in (2003) 3 SCC 341 (which is cited in the case of CIPLA Limited at para no. 91) has held that *'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'*.

13.10 **(1988) 1 SCC 86 Delhi Cloth & Genral Mills Ltd. vs. Union Of India** (referred in paragraph 23 of DPT's gist of arguments note)

KPT places reliance on this decision to argue that the onus of proving that valuation is arbitrary is that of the Appellants and that the Appellants have failed to discharge this. It is submitted that the judgment relied upon by KPT does not enunciate the principle it seeks to argue. The judgment relied upon by KPT is delivered in the context of determination of freight charges by the Indian Railways under Section 28 of the Indian Railways Act, 1890, where the Hon'ble Supreme Court held that it is for the party alleging contravention of Section 28 by the railway administration to establish that there has been

preference between one party over the other. This decision does not apply in the facts of the present case. Even otherwise, on facts, the Appellants have on the basis of the material on record, demonstrated that the valuation is arbitrary, illogical and unreasonable.

13.11 **1973 (1) SCC 216 Harilal Rattanlal ETD vs. State of U.P & Anr.** (referred in para 13 of DPT's gist of arguments note)

This decision has been relied upon in support of its argument that classification of land can be done on the basis of use. It is submitted that this case is of no assistance to KPT. This judgment was delivered in the context of levy of taxes and cannot be equated with the levy of rents. Further, in this case, the source of classification in the case was a statute which was in challenge. The classification came into force on account of the amendment in the statute itself. In the present case, the MPT Act does not provide for any such classification. In any event, it is the Appellants' case that the Appellants have been singled out by being re-categorized on the basis of use of the land (while at the time of allotment the petitioners lands were categorized on the basis of its geographical location) whereas all the other plots which have been leased by KPT have not been re-categorized and are continued to be on the basis of geographical location (as were the Appellants until the re-categorization pursuant to the 2014 Order).

13.12 **2011 (6) SCC 756 APM Terminals vs. Union of India** (referred in para 10 of DPT's gist of arguments note)

KPT has relied upon this decision in support of the argument that a change in policy will result in a change in contract between the parties. However, it is submitted that the decision does not lay down the principle which is sought to be relied upon by KPT. The Hon'ble Supreme Court was considering an issue where the Central Government had adopted a policy to prevent the Port facilities from being concentrated in the hands of one private group or consortium which could have complete control over the use of the facilities of the port to the detriment of the shipping industry as a whole. It is in this context that the Hon'ble Supreme Court observed that the actions taken by the port trust was not arbitrary or unreasonable. In this case the Hon'ble Supreme Court has observed that '*normally, the Courts do not interfere with policy decisions of the Government unless they are arbitrary or offend any of the provisions of Constitution*'. On the contrary, in the present case the Appellants have made out a case as to how the actions of KPT were arbitrary, and unreasonable

13.13 **(2014) 11 SCC 307 Bhule Ram vs. Union of India** (referred in paragraph 23 of DPT's gist of arguments note)

KPT places reliance on this decision in support of its argument that the process of valuation involves a certain element of conjecture and is not a precise science. On the contrary, it is the case of the Appellants that the valuation cannot be absurd or illogical. As amply demonstrated by the Appellants, KPT's approach to valuation and the valuation reports itself are *ex-facie* unsustainable and perverse. The valuer has used criteria which is irrelevant or incorrect.

13.14 **(2003) 4 SCC 378 Shri Krishna Gyanoday Sugar vs. State of Bihar** (referred in paragraph 23 of DPT's gist of arguments note)

KPT relies on this decision to argue that since the Appellants have not placed on record an alternative valuation based on acceptable principle applicable to the facts of the present case, the Appellants objections are to be discarded. It is humbly submitted that such an argument cannot be applied in the facts of the present case. The Appellants have demonstrated how the valuation reports are perverse, unreasonable and illogical. The valuation assigned to the Appellants' lands are not based on any acceptable principles. The Appellants' lands have been re-categorized as per the direction of KPT and a valuation has been fixed pursuant to such re-categorization and for this purpose the valuer had resorted to illegal and unethical basis viz. *"without reclamation with infrastructure"* though however, the infrastructure

was wholly developed and maintained by the Appellants and not by DPT. The Hon'ble Supreme Court in this decision enunciate the principle that if an alternative methodology is not placed before the Court, the valuation arrived at, has to be and will be accepted. In the said case the contention that the valuation is improper was rejected since the Petitioner failed to show as to what other method could be adopted or ***as to how the methodology adopted does not reflect the true value***. In the present case, it is the contention of the Appellants that the value arrived at by the valuer is not the correct value of the land and that the valuation is not only improper, unreasonable, based on criteria which is irrelevant or incorrect, but also false. This is because the valuer has mischievously considered developments on the land and infrastructure built by the Appellants as if they were provided by DPT and has enhanced the valuation on this basis to justify an exorbitant and inflated market value.

13.15 **(2003) 5 SCC 669 Govt. of Maharashtra vs. Deokar's Distillery** (referred in paragraph 38 of DPT's gist of arguments note)

KPT has relied on this decision to argue that the liability to pay rent is imposed and that it is only the computation / quantification of the rent that is deferred and the rent that is fixed by TAMP later is final and has to be abided by. The decision relied upon by KPT however, does not support this contention. The judgment is

concerned with the interpretation of Section 58A of the Bombay Prohibition Act, 1949, which provides for the payment of supervision charges of the Prohibition and Excise or Police staff. It is in this context that that the Hon'ble Supreme Court observed that "*the words "the cost of such staff shall be paid to the State Government" used in Section 58A of the Prohibition Act, in our view, would include in their meaning all the costs incurred by the State Government for the purpose of disbursing pay and other allowances to the Government employees posted for supervision, whether recovered in advance or in due course the additional amounts which become recoverable on account of upward revision of pay scales with retrospective effect, because there is no limitation of any kind in Section 58A of the Prohibition Act to the effect that the costs are to be recovered only in advance, and that too only such costs as could be worked out on the date of demand or to the effect that the burden of additional amounts on account of revision of pay scales with retrospective effect should not be recovered from the liquor licensee. In our view, there exists full power under Section 58A of the Prohibition Act itself to levy and recover all costs of supervision and, therefore, no limitation can be read into the power to recover all costs present, future and past which*..." (see para 26). On the contrary, there is no such power given to TAMP under the MPT Act. KPT has failed to show how such power exists.

The Ld. Single Judge has come to the conclusion that no such power to levy retrospective rents vests in TAMP. KPT has failed to prove the contrary.

13.16 **(1986) 2 SCC 656 General Board and Appliances vs. M.A. Khader** (referred to in paragraph 32 of DPT's gist of arguments note)

(2004) 7 SCC 1 Singer India Ltd. vs. Chander Mohan Chadha & Ors. (referred to in paragraph 32 of DPT's gist of arguments note)

AIR 2015 SCW 1205 / (2015) 12 SCC 501 U.P State Industrial Dev. Corp. Ltd. vs. Monsanto Manufacturers (P) Ltd. & Anr. (referred to in paragraph 32 of DPT's gist of arguments note)

KPT has relied on the above decisions to support its argument that in the case of amalgamation of companies which was done with prior approval of KPT, was impermissible and, therefore, the Appellants in such cases are unauthorised occupants.

KPT has also argued that the dispute raised by such appellants regarding quantification of transfer fees is beside the point since in the event of their occupation being unauthorised, the Port Trust is entitled to levy penal rates. It is submitted that these judgments make it clear that on an amalgamation, the properties of the erstwhile company would vest in the resultant company. Had KPT taken any action against the Appellants for its occupancy over the land, then such action would have been defended

by such Appellants. On the contrary, KPT has merely ignored the transfer and sought to contend that KPT will not recognize Appellants' right, since IMC has not sought permission before the amalgamation. It is submitted that such argument is wholly untenable in law since it is well established that (and as set out above), the property now vests in the Appellants. KPT cannot take advantage of its own wrongs / delay and seek to penalize the Appellants. This only highlights the highhanded and arbitrary conduct on the part of KPT.

13.17 **2015 SCC Online Del 14383 Union of India & Anr. Vs. M/s. Mahalaxmi Saw Mills P. Ltd.** (referred to in para 32 of DPT's gist of arguments note)

KPT has relied upon this decision to argue that even a conversion of a partnership into a company under Section 575 of the Companies Act 1956 is an impermissible transfer insofar as KPT is concerned that that would constitute a transfer when the conversion itself in the first place was a voluntary act on the part of the erstwhile firm. It is submitted that this decision is of no assistance to KPT. In this case, the Hon'ble Delhi High Court observes that the applicability of Section 575 of the Companies Act, 1956 in the facts of that case was in doubt. Further and in any event, the decision of Vali Patabhirama Rao (which is relied upon by the Appellants) has been considered and affirmed by the Hon'ble Supreme Court.

13.18 **(2016) 11 SCC 406 Delhi Development Authority v. Anant Raj Agencies Private Limited** (referred to in para 32 of DPT's gist of arguments note)

KPT has relied on this decision in support of the argument that a transfer of rights made after the expiry of the original lease is void. In this regard, it is submitted that the issue of transfer is relevant only in SCA 2535/2017 and SCA 2536/2017 (where the erstwhile lessee was amalgamated into IMC Ltd) and in SCA 2537/ 2017 (where the lessee was converted from a partnership firm to a private limited company). However, the judgment and the principle sought to be relied on by KPT as a whole, have no applicability in the facts of the present case. As regards SCA 2535/2017 the demise by KPT is an existing one and continues until October 26, 2025. Therefore, the question of a transfer (if at all) after the expiry of the lease term is of no relevance. As regards, SCA 2537/2017, there is no transfer in this case whatsoever. In any event and without prejudice thereto, JR Enterprises was converted to a private company on November 16, 2004 i.e. during the subsistence of the term of the lease (March 5, 1986 to March 4, 2016). Similarly, the amalgamation in the case of SCA 2536/2017 also took place during the subsistence of the lease. Therefore, again the question of any transfer after the expiry of the lease term is inapplicable.

13.19 **(2011) 14 SCC 66 SMS Team Private Limited vs. Chandmari Team Company Private Limited** (referred to in paragraph 35 of DPT's gist of arguments note)

(2008) 8 SCC 564 K.B. Shah & Sons Private Limited vs. Development Consultants Limited (referred to in paragraph 35 of DPT's gist of arguments note)

KPT relies on the foresaid decisions to argue that it is impermissible to enforce the terms of the letters of allotment as an unregistered lease deed. KPT contends that that the Appellants have attempted to do so. It is submitted that this is factually incorrect. No arguments as to the Transfer of Property Act or the Registration Act were made by IMC/JRE. IMC and JRE's limited point in this regard is that locus has been held against them. However, since IMC/JRE are the entities who were paying rent as recently as a few months ago. KPT has throughout the tenure of the allotment never claimed that IMC has no rights because it does not have a lease deed (for SCA 2535/2017). It has always collected rents on the basis of the LoA for nearly 25 plus years. For KPT to now turn around and claim that IMC on this basis does not deserve to approach a Writ Court is unjust and unfair

13.20 **2021 SCCOnline SC 658 State of Kerala vs. M/s. Joseph and Company** (referred to in paragraph 36 of DPT's gist of arguments note)

The above decision, rather than assisting KPT's case, flies in the face of KPT's arguments. On facts, in the case of SCA 2538 of 2017, where the Appellant exercised its right of renewal of lease, KPT has dragged its feet and led the Appellant's to believe that the lease had been renewed. KPT belatedly and as a clear afterthought raised an argument that the lease had not been renewed and that the land was required for its own use. In the case of SCA 2536 of 2017 and SCA 2537 of 2017, KPT failed to conduct an auction of the lands as required under the Land Policy Guidelines (in which case the Appellants would have the right to match the bids). Further, KPT failed to accept the transfer fee which was offered by the Appellants as per the rates which were prevalent as on the date of transfer. Having failed to act properly, KPT has attempted to make use of its own inaction / wrongs. As a State instrumentality, such action is not permissible. In fact, this decision only assists the Appellants arguments.

DATED: December 21, 2021

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Letters Patent Appeal 1426 of 2019 In SCA 2535 of 2017

& Allied Matters

IMC Vs KPT

(KPT Group Matters)

GIST OF ARGUMENTS OF DPT

1. The appellants are the current occupants of plots belonging to the Pandit Deendayal Port Trust (DPT) situated outside customs bound area and engaged in the business of operating liquid storage tank terminals at the said plots. The nature of possession and occupation of such plots by the appellants can be broadly divided into the following:

   i. Original occupants under letters of allotment, the period of which has not expired.

   ii. Original occupants under lease deeds, the period of which has not expired.

   iii. Original occupants under letters of allotment or lease deeds whose term has expired.

   iv. Transferees from the original occupants in any of the above categories.

2. The appellants have raised the following principal contentions:

   i. The rights and obligations of the parties are governed solely by the contract between them and the appellants would be liable to pay the lease rent only in the manner and to the extent contemplated under such contracts, whether they are holders under a lease deed or letter of allotment, and that therefore the demand raised by the Port Trust on the basis of Orders of the Tariff Authority for Major Ports (TAMP) is unsustainable.

   ii. That in any case, the Orders of TAMP fixing lease rents, are unsustainable for the following reasons:

      a. TAMP has mechanically accepted the categorisation proposed by the Port Trust overlooking the fact that such classification of treating the ‘use’ of the plots for liquid storage tank terminals as a category by itself was clearly irrational, without any nexus to the object of such categorisation and in any case contrary to the Land Policy 2014 which excluded this factor from consideration.

      b. TAMP has merely adopted the valuation report of the Valuer submitted by the Port Trust, without appreciating that such a report was unscientific,

based on extraneous factors not relevant for valuation, absurd, and most importantly, based on bids offered during the process of auction/tender which had 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.

iii. Without prejudice to the above, in any event the fixation of lease rents by TAMP cannot have any retrospective operation whatsoever and can only apply on and from the date of such Orders issued by TAMP.

iv. Those of the appellants who are in occupation of the plots as transferees from the original allottees either under schemes of amalgamation, demerger or upon conversion of partnership firms into joint stock companies under the relevant provisions of the Companies Act cannot be said to be in unauthorised occupation of the subject plots since the same would not be a transfer as contemplated under the letters of allotment or lease deeds and consequently would not be a breach of any condition contained therein and the Port Trust is not entitled to recover penal Rates from them as unauthorised occupants.

v. Those of the appellants whose letters of allotment or lease deeds contain a clause of renewal, are absolutely entitled to such a renewal and the refusal of the Port Trust to consider the same is unjustified.

vi. There is no difference in the nature of rights conferred on a party either under a letter of allotment or under a lease deed and the letter of allotment should be considered to be a lease for all purposes.

3. Before proceeding to answer the submissions, it is necessary to give a brief factual overview to place the issues in context.

4. Initially, Port lands and Port Activities were being administered by the Central Government. On the coming into force of the Major Port Trusts Act, 1963 (the Act) all properties of the Central Government were vested in the Port Trusts constituted thereunder, except the power to levy Rates (which is defined to include rent) in respect of the use of such land, which power was conferred on 01/02/1975 subject to a condition however that such Rates would come into effect only after prior approval by the Central Government under S. 52 of the Act. Under lease deeds or letters of allotment executed/issued from about 1978 onwards, land came to be allotted to certain entities for the purpose of liquid storage tank terminals on terms and conditions which were not uniform or consistent.

5. Thereafter Policy directions were issued by the Central Government from time to time under S. 111 of the Act, and in 1992 a direction was issued in respect of 30

years leases (ref @ 446) providing for a rate revision every 5 years and for incorporating such a clause in the lease deeds. In consonance with such Policy, rate/rent for the period 1994–1999 was proposed by the Port Trust and approved by the Central Government by Notification dated 05/07/1994 (annexed to the 2014 Valuation Report) expressly stating that the Rates would be revised every 5 years as per the clause to be included in the lease deed. Before the said period expired, the Act came to be amended with effect from 09/01/1997 and the TAMP was constituted under the amended provisions with the power to fix the Rates on proposals being submitted to it by the Port Trusts and the Port Trust was divested of the power to fix Rates. There is a reference to policy directions by the Central Government of 2002 and 2004 in the Note submitted by the Port Trust along with its application for fixation of lease rent (p. 11 of Convenience Compilation of DPT) for proposing market value on the basis of bids received at an auction for similar plots. However, subsequently the Land Policy 2004 prescribed a completely new procedure for fixation of lease rent (@ 36 of DPT Compilation r/w S. 49 of the Major Port Trusts Act, 1963) under which the Schedule of Rates would be 6% of the market value as rent per annum, to be recommended to the TAMP for its approval (Clause 5.3 @ 44 of DPT Compilation) which would be granted after following the procedure of consultation with all stake holders (Guidelines for Regulation of Tariff 2004). The Policy also contained provisions regarding the permissible renewals of the lease deeds. (Clause 5.2.1.2 @ 40). This was followed by the Land Policies of 2010 and 2014.

6. To place the claims of the appellants in context it is necessary to categorise the appellants into further two categories namely those having letters of allotment or lease deeds prior to 1994 and those having such letters of allotment or lease deeds post 1994 though even in many cases of such lease deeds, the occupation of the plots is of a date prior to 1994.

7. Before the issuance of Policy directions of 1992 as adopted in the Notification dated 05/07/1994, containing a provision of 5 yearly revision of rents as referred to above, the letters of allotment and lease deeds executed before such date contained varying provisions for periodic revision of rents from a 5 yearly to a 10 yearly period for escalation and also in some cases providing a cap on the amount of lease rent which could be charged and also provided for a renewal of the period of lease. In all cases where letters of allotment and lease deeds are issued/executed after 1994 the clauses uniformly provide for a 5 yearly revision of rent and an obligation on the lessee/allottee to pay the rent as may be revised. Notably, lease deeds executed after 1994 and relating back to occupation of the plots under letters of allotment issued

prior to 1994 do not carry over the varying terms of escalation and renewal contained in such letters of allotment but substituted it by the provision of 5 yearly revision and an obligation to pay the revised Rates in the lease deeds and also do not contain the clause of renewal.

8. Therefore, there is one set of appellants who claim to have letters of allotment or lease deeds executed in their favour prior to 1994, who assert their contractual rights of being liable only for say a 10 yearly revision of lease rent subject to a maximum cap and also their absolute right of renewal of the lease under such documents. Within this group it needs to be noted that in cases where such letters of allotment have resulted in execution of the lease deed as contemplated in the said letter of allotment after 1994, such clauses have not been carried over in the lease deed. Therefore, similarly situated allottees claim different rights based on the fortuitous circumstance of having executed the necessary lease deeds or not. The other set of appellants who have letters of allotment or lease deeds executed post 1994 containing the term of 5 yearly revision and an obligation to pay the revised rent and no clause for renewal, contend that they are liable to pay the lease rent only on and from the date of the Order of the TAMP for the future period and that in any event such fixation of rent is illegal for the reasons summarised above.

9. This is then the factual background in which the conduct and contentions of the appellants needs to be placed in context.

WHETHER THE LAND POLICY AND TARIFF ORDERS ARE BINDING ON EXISTING PLOT HOLDERS AND WOULD OVERRIDE/MODIFY THEIR CONTRACTUAL RIGHTS

10. In the first place, a need for uniformity in the basic terms of allotment of public property and in fact a national resource, being port lands for the purpose of private profit cannot be over emphasised. The plots in dispute are property vested in a public body performing important public functions. Therefore Policy directions have been issued for this purpose from time to time by the Central Government u/s 111 of the Act inter alia by framing Land Policies. As held in (**2014) 2 SCC 657**[1]**:** *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 (para 40 r/w para*

[1] Judgement compilation Page 1

6). Moreover, such directions inter alia regarding periodic revision of lease rents, and of renewals are clearly in aid of levelling the playing field in the larger public interest and eliminating an undue advantage to the private players on account of fortuitous events, at the cost of public interest inter alia of fair competition and also of securing the economic rent which could be received by the Port Trust to undertake its public functions. In **(2018) 18 SCC 65**[2] it was held that *the State must ensure that it receives adequate compensation for the allotted resource (para 20.1). Each bit of natural resources expended must bring back a reciprocal consideration. The consideration may be in the nature of earning revenue or maybe 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 (para 30).* The 05/07/1994 Notification was clearly applicable to existing lessees since it refers to revision of rents in respect of leases of 30 years and for abundant caution mandated insertion of such clause in the lease deed but was not predicated on the same. In any case this was made evident by the Land Policy 2004 which made provisions for determination of tariff read with the relevant provisions of the Act, which would be binding on all holders of the land. In any case, this issue is no longer res integra since this Court in **LPA 870/2013**[3] has held - *Para 8.5 (iv) That the Tariff so determined would not only be binding to the existing leaseholders but would be applicable to the future lease holders and will be applicable for 5 years*.

Additionally, both aspects viz. i) lease rent and ii) renewal, are predominantly statutory rather than contractual. Even prior to the constitution of TAMP, the Rates proposed by the Port Trust had to be approved by the Central Government u/s. 52 which meant that irrespective of the contract between the parties the Central Government would have the final word. After the constitution of TAMP and the prescription of the necessary procedure for determining Schedule of Rates under the Land Policies issued from time to time, there is really no room for the appellants to contend that the terms of the contract would prevail. In (**2009) 14 SCC 451**[4] cited by the appellants, the Court has held that *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 only be by the consent of the parties (para 30).* The contention of the appellants that it is only a

[2] Judgement compilation Page 27
[3] Judgement compilation Pages 41A
[4] Judgement compilation Page 42

legislative enactment which can modify a contract, is squarely answered by (**2011) 6 SCC 756**[5] which holds that *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 the private party, if the same was in general public interest and provided the change in policy was guided by reason (para 67). 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 (para 68). 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 (para 70).* Moreover, such rights are being claimed by the set of appellants who are in possession pursuant to lease deeds or letters of allotment prior to 1994 at which time the policy of allotment was not uniform. If such a contention were to be accepted, it would reserve an undue and unintended benefit to such appellants enabling them to monopolise the business. The case of those appellants holding letters of allotment issued prior to 1994 need not even be considered since a letter of allotment grants no right whatsoever to the allottee and cannot be equated with a lease deed. Moreover in cases where letters of allotment were converted into a lease deed as required under the terms thereof, such lease deeds do not contain the referred terms of the letters of allotment, which would mean that an occupant who fails to comply with the condition of execution of lease the after the issuance of a letter of allotment, would be in a better position than the occupant who has got the lease deed executed in terms of the letter of allotment, which would be a highly irrational and unfair state of affairs.

11. Insofar as renewals are concerned S. 34 of Act clearly mandates that lease for any term exceeding 30 years would require approval of the Central Government and therefore the term of automatic renewal after the first period of 30 years was over would clearly fall foul of the said provision and in any case after the terms of permissible renewal have been provided for under the Land Policy expressly applicable to existing leases, the same would prevail over any contract.

12. Now for the common contentions for both sets of appellants.

[5] Judgement compilation Page 57

WHETHER LAND VALUATION AND CATEGORISATION COULD BE MADE ON THE BASIS OF 'USE' OF SUCH LAND AND WHETHER SUCH CLASSIFICATION IS VIOLATIVE OF ARTICLE 14

13. To say that the purpose for which a property can be put to use is an irrelevant consideration for the purpose of valuation, is to ignore established and well accepted principles for valuation of immovable property. In fact, a Valuer is bound to consider the highest and best use of the property which maximises its potential, for the purpose of valuing the same. The **International Valuation Standards 2017**[6] defines Market Value as *the estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller (30.1 p.18). The Market Value of an asset will reflect its highest and best use. The highest and best use is the use of an asset that maximises its potential and that is possible, legally permissible and financially feasible. The highest and best use may be for the continuation of an asset's 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 the price that it would be willing to bid (30.4 p. 20). A Valuer must consider the highest and best use of the real property (30.2 p. 83). Specific differences that should be considered in valuing real property interests include (d) the permitted use or zoning at each property (50.4 p. 84).* The use of the property as a basis for classification is well accepted even in municipal taxation where the Rates differ on the basis of the nature of the use and occupation of the property viz. residential, commercial, industrial etc. This differential is also adopted in the case of tariff determination for electricity supply. In the context of levy of sales tax, it was held in (**1973) 1 SCC 216**[7] that *the classification between processed or split pulses and unprocessed or unsplit pulses is a reasonable classification. It is based on the use to which those goods can be put. Hence in our opinion, the impugned classification is not violative of Article 14 (para 20).* Even in the context of determination of compensation in cases of acquisition of land it has been held in (**2009) 15 SCC 125**[8] that, *it is in our opinion wholly improper to forget the distinction between 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 (para 36). It is also trite to state that the market value of agricultural land is lower than that of land suitable for commercial purposes (para 84). The purpose for which acquisition is made is also a relevant factor for determining the market value (para 44). The judge determining the compensation*

[6] Separately circulated during hearing
[7] Judgement compilation Page 81
[8] Judgement compilation Page 93

under S. 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 that is land possessing all the advantageous features and to the same extent (para 45). Moreover, under the statutory scheme regarding fixation of lease rent u/s 49 of the Act read with the relevant clauses of the Land Policies, it is quite evident that the aspect of use is a relevant consideration and in fact the Port Trust is obliged to take that into account while proposing the market value and the Schedule of Rates for approval to that TAMP. S. 49 of the Act provides for framing of a Scale of Rates on payment of which property belonging to or in possession of the Board could be used for the specified purposes and also for any other *use* of any land of the Board. Similarly, the Land Policy 2004 (p. 36 of DPT Compilation) provides that the Schedule of Rates would be recommended to TAMP by the Port Trust after determination of the market value of the Port land inter-alia on the basis of the Rates arrived at by an approved Valuer appointed for the purpose by the Port, which would include determination of market value on the basis of best use of the property as stated above. It has been further provided that the Schedule of Rates should vary in accordance with the purpose of land use and that the committee should recommend to the competent authority varying Schedule of Rates in accordance with the end use as reflected in the land use plan (clause 5.3 (i) @ p. 44, 45). The 2010 Land Policy (p. 21 of DPT Compilation) is on similar lines (clause 6.3 (1) @ p. 30, 31) and so is the 2014 Land Policy as elaborated below. Therefore, the classification proposed by the Port Trust on the basis of use cannot be said to be arbitrary in any manner least of all where the special value of plots on which liquid storage tank terminals have been or can be set up is self-evident from the bids offered by willing buyers in various auctions.

14. The argument that ‘use’ of the land may have been a relevant consideration earlier but has been expressly excluded in the 2014 Land Policy, is completely conjectural and baseless. The 2014 Land Policy (p. 1 of DPT Compilation) while changing the phraseology of the earlier Policies, in fact expressly emphasises use of the land as a relevant factor by providing that the State Government’s ready reckoner of land values in the area for *similar classification/activities* would be relevant for determination of market value (clause 13 @ p.15,16). The rate arrived at by an approved Valuer is also continued as a relevant factor, bringing within its fold the aspect of best use of the land. The contention of the appellants is based on the deletion of ‘use’ in the clause providing for variation in the Schedule of Rates which is in fact not relevant to the provision relating to determination of market value. In any event the significant change in the 2014 Policy was that whereas earlier the Port

Trust could propose a Schedule of Rates lower than 6% of the market value depending on the land use, under the 2014 Policy such a recommendation could in no case be lower than 6%. The fact that the discretion vested with the Port Trust to recommend varying Schedule of Rates (albeit not lower than 6%) is continued, clearly implies that relevant factors including the use of land would have to be taken into account for the purpose of recommending varying Rates.

15. Since the purpose of categorisation 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 that public resource is not undervalued and transferred for private profit, 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 (maybe even adjacent thereto) where such use is not permitted, clearly constitutes a rational and relevant criteria of differentiation which has a clear nexus with the object of such classification.

16. The grievance that some of the appellants have been placed in a different category under the second TAMP Order and subjected to exorbitant increase of lease rent is quite baseless. As stated above all plots of land on which the use of liquid storage tank terminal is permitted, fall in 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, and 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, which has been approved by the Supreme Court as referred to above.

WHETHER THE VALUATION REPORTS ARE UNRELIABLE AND WHETHER THE TAMP ORDERS SUFFER FROM NON-APPLICATION OF MIND

17. The valuation reports have been assailed on various grounds. Firstly, it is contended that the Valuer has taken into account thoroughly irrelevant factors like gross domestic product, population et cetera. Secondly, that the entire exercise is wholly conjectural and absurd. Thirdly, it is contended that the Valuer has taken into account the amount offered at the 2005 auction which did not culminate into a

contract and a mere offer could not be taken into account for valuation more so when the Land Policy provided for taking into account only the highest accepted tender rate of Port land for similar transactions.

18. For answering the above contentions, it is necessary to set out the process adopted by the Valuer for preparing the Valuation Reports.

19. For reasons set out in the Note to TAMP and the affidavit in reply, referred to later, the exercise of 5 yearly revision of lease rent from July 1999 which had started from March 1999, after much back and forth, culminated in a composite application by the Port Trust in April 2010 to the TAMP backed by the valuation report dated 19/04/2010.

20. It needs to be noted at this stage that right from the year 1999 the proposal of the Land Committee of the Port Trust was always to classify land for commercial use of liquid cargo as a separate category (p. 11 of Convenience Compilation of DPT) which became Category G in the final proposal. In the valuation report under consideration, the Valuer has identified the methodology of valuation and valuation principles (p. 21 of the Report) and adopted the market approach to valuation as the base of value (p.21-25 of the Report). The Valuer has specifically stated that the valuation report is based on the assumption that the existing use of the asset is the highest and best use (10.6 @ p. 28). Since valuation was sought for the period from 1990 up to 2009, the Valuer has identified factors which would have a bearing on the movement of property valuation during that period (p. 26 of the Report). The Valuer has then undertaken valuation analysis and market rate assessment and explained why the bids received by the Port Trust during the auction held in 2005 reasonably represent the market value which needed to be discounted for adjusting the specific bidders interest factor (p. 30 of Report). Table 4 (p. 34 of Report) represents such bids. Two of the appellants (IMC & JRE) submitted their bids offering a premium of Rs. 3500 over the base price of Rs 612 per square metre that is Rs. 4112 per square metre. (This would convert to a lease rent Rs. 246 per square metre at 6% of the market value. The insistence of the appellants to pay Rs.11 or Rs.30 per square metre as fixed by Notification dated 05/07/1994 along with permitted increase of 2% per annum, that is Rs. 34 (approx.) in 2005 and even thereafter, may be considered in this context.) After discounting the average value obtained at the auction in 2005 the Valuer has fixed the value of land for liquid storage tanks at the specified location (Category G) at Rs. 4250 per square metre as of 2005 (p.34 r/w p. 49). For the purpose of assessing the movement of land prices, the Valuer has taken into account various factors including economic factors, which in his opinion would have a bearing on assessing the movement of land prices (p.35

of the Report). The Valuer has then plotted the data on charts (p. 38-43 of the Report) and assigned weightages to the respective factors (p.44 of the Report) and derived at a generalised index (p. 45 of the Report). The Valuer has then worked out in terms of percentage the movement of land prices for the period from 1990 to 2009 considering the value as 100 for the year 2005, which is treated as the base year since the market value was available for that year (p. 46 of the Report). The market value in rupees is then calculated on this basis and set out in Table 7 that is, Rs. 2790 in 1999, Rs. 3580 in 2004, Rs. 7380 in 2009 for Category G (p. 49 of the Report). The TAMP has approved the proposal of the Port Trust and determined the lease rent for the periods from 1999 to 2003, 2004 to 2008 and 2009 to 2013 by its Notification dated 11/05/2011 (p. 125 of Compilation of DPT) and the Order dated 25/03/2011 (p.126) reflects due consideration of the representations of the stakeholders and application of mind to the issues.

21. The subsequent proposal of the Port Trust for the purpose of fixation of lease rent from January 2014 onwards was supported by the valuation report dated 31/03/2014. In this report, the Valuer has noted the Land Use Plan 2020 of the Port Trust (p. 9 of Report) and has explained the rationale for sub-classification of Category G into Category G1 and G2 made by the Port Trust (p. 73 of Report). After considering alternative bases of valuation, the Valuer has adopted the bid amount offered by various persons for plots to be used for liquid storage tanks terminal in 2011 for the purpose of valuation of Category G1 lands (p. 77, 78). In the absence of any comparable instance, the valuation for Category G2 has been derived on the basis of the last determined lease rent, that is 2009-2014 vide TAMP Order dated 25/03/2011 (p. 83,84). This has been approved by TAMP vide its Order dated 13/11/2014 (p. 47 of DPT Compilation) after a detailed consideration of issues.

22. It is therefore quite evident that the challenge to the valuation reports and the Orders of TAMP is specious and without merit. The Valuer has categorised the lands on the basis of use and location and such land use plan is part of the valuation reports. The Valuer has applied the correct principles of valuation of immovable property by considering the highest and best use to which the property can be put to maximise its potential, as a basis of value of such immovable property as has been narrated in detail above. Considering the fact that there would not be comparable sales of property since these are Port lands, the Valuer has correctly taken the amount offered by bidders in a competitive bid for similar land (for the use of storage tank terminal) as a basis of its true market value as on the date of the bid. The Port Trust had in fact accepted the offer and had issued letters of intent which however could not culminate into a contract since the requisite permission under CRZ was not obtained for nearly

5 years and thereafter the Port Trust decided to revoke the letters of intent since it would be against public interest to allot land to the successful bidders when the market value had substantially increased in the interregnum. The successful bidders persisted with legal remedies to enforce their right to the allotment of the plots at the amount they had bid for (please see the narration of facts in (**2015) 13 SCC 233**[9] paras 3, 6, 8, 16, 19). This clearly indicates that the price offered as market value of comparable plots in 2005 was indicative of the price a willing buyer was offering to a willing seller and that this could clearly be considered as an offer having been given by the bidder and accepted by the Port Trust as contemplated under the land Policy. The fact that some of the appellants were themselves bidders at such auction and are now seeking to distance themselves from their own bids is indicative of the general endeavour of appellants to maximise private profit at the cost of public interest. Therefore, there is absolutely no irrationality or absurdity in adopting such amount as the basis of value on the date of the auction and working out the relevant market value in the previous years and for the future years by applying the various factors including the economic factors (which include GDP and other economic factors as has been accepted in the Article - **Factors Affecting Industrial Property Value** published in the INTERNATIONAL JOURNAL OF SCIENTIFIC & TECHNOLOGY RESEARCH VOLUME 9, ISSUE 01, JANUARY 2020)[10] identified by the Valuer as having a bearing on the movement of market value for the entire period.

SCOPE OF JUDICIAL REVIEW OF VALUATION

23. It is quite well settled that valuation involves a certain element of conjecture and a feel of the expert. In **2014 11 SCC 307**[11] the Court held that *valuation of immovable property is not an exact science, nor can it be determined like in algebraic problem, as it abounds in uncertainties and no straight 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 (para 8).* Judicial review on the aspect of valuation, particularly when it is left to experts without a statutory enumeration of relevant factors to be taken into account, is necessarily limited as stated in **(2017) 5 SCC 262**[12] which holds that *in a case of price fixation having its origin in non-statutory materials, the scope of judicial scrutiny would be far less (para 91, 93). The feel of the expert is important if not conclusive (para 95). Fixing the price of any commodity is not only difficult but also*

[9] Judgement compilation Page 134
[10] Separately circulated during hearing
[11] Judgement compilation Page 158
[12] Judgement compilation Page 167

tricky. There is material to be considered, a bundle of factors to be considered an appropriate weight is to be given to the material and the factors. This is not easy to decide and there will always be some criticism with regard to either the material utilised or the factors considered or the weight attached to the materials and factors (para 96). In the judgment of LPA 870/2013 this Court held that the Court would have limited jurisdiction in reviewing Orders of TAMP. Moreover in the present case the appellants have not discharged the onus of establishing arbitrariness (please see (**1988) 1 SCC 86**[13] *The onus to prove the alleged unreasonableness of the freight rests on the company (para 13, 15))*, nor have they advanced any alternative valuation based on acceptable principles applicable to the facts of this case. (please see (**2003) 4 SCC 378**[14] *The manner in which the value of the properties should be taken either book value or any other value cannot be examined by us because book value is one of the methods in which the values of undertakings are determined. There is no material placed before the court to show as to what other method could be adopted which would be more reasonable or as to how the book value taken does not reflect the true value of the undertakings. Therefore, it is difficult to conclude one way or the other on the basis of this contention. Hence it is rejected (para 21).*

24. TAMP has approved the valuation as being based on relevant principles and has correctly considered the procedure followed by the Port Trust of recommending the Schedule of Rates and has not substituted its wisdom for that of the expert, which is also in consonance with law. Such exercise has been undertaken after due consultation with all stakeholders and the same cannot be faulted.

WHETHER THE TAMP ORDER CAN BE SAID TO BE RETROSPECTIVE AND IF YES WHETHER SUCH RETROSPECTIVE DETERMINATION IS IMPERMISSIBLE

25. On the issue of retrospectivity both, the allottees as well as the Port Trust are in appeal since the Court has given limited retrospectivity to the Order of TAMP and thereby not fully accepted either party's contentions.

26. The case of the appellants/allottees is that the TAMP Order is clearly retrospective since it purports to fix lease rent for periods much prior to the Order and that TAMP does not have such a power under the statue since it can only determine the Scale of Rates from time to time, which necessary must operate only from the date of such fixation onwards.

27. Retrospectivity generally means a new liability or obligation imposed with effect from a date anterior to the date of the actual imposition. In this context it needs to

[13] Judgement compilation Page 229
[14] Judgement compilation Page 243

be noted that by the Notification of 05/07/1994 and the Land Policy 2004 a condition of 5 yearly revision of rent for the long-term leases and the methodology of computation was prescribed and made applicable to existing leaseholders. In any case, the lease deeds and letters of allotment after 1994 themselves contain a condition of such 5 yearly revision of lease rent and of an obligation to pay such revised Rates. Therefore, it is incorrect to contend that a liability was imposed on the appellants with retrospective effect, since such obligation has already been imposed since 1994. All the holders of the plots were very well aware that they have to pay revised lease rents on the basis of the revised market value of the lands every 5 years and there was absolutely no representation to them that the lease rents would not be increased periodically. The directions of the Central Government regarding such periodic revisions are binding on the holders of plots and the Port Trust and even on TAMP and cannot be considered as being waived under any circumstances, particularly when the facts establish that the procedure for revision had started to the knowledge of all concerned since 1999. Additionally, those appellants who hold the lands under lease deeds or letters of allotment after 1994 are anyway liable for revised rent under the very terms of the above documents and are not entitled to raise such contention at all.

28. In fact, since the liability is imposed on the holders of the plots and only the computation or quantification is deferred, at the end of the 5th year the Rates as operating then, become provisional and would abide by the finalisation of the same by TAMP. (please see **2003 5 SCC 669**[15] paras 11, 21, 29, 39). Moreover, it is not so much a right of the Port Trust to recover the revised Rates but the liability incurred by the holders to pay the Rates/lease rent as revised from time to time. In **2001 1 GLR 48**[16] in the context of the Drugs Price Control Orders it was held that *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 (para 17). If under the repealed Order a liability has already arisen on the basis of 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 (para 18).* Therefore, the contention of retrospectivity is completely misconceived and inapplicable to the facts of the case and to the extent that the Court has overlooked these contentions of the Port Trust, the judgement is erroneous and the entire Order of TAMP is required to be upheld.

[15] Judgement compilation Page 264
[16] Judgement compilation Page 299A

29. In any event there are justifiable reasons including directions of TAMP (for re-classification and revision of proposals), intervening directions of the Central Government inter-alia to propose market value on the basis of auction (which went into litigation), natural calamity etc., which resulted in delay in actual determination of market value. These are set out in extenso in the Note of the Port Trust submitted to TAMP along with its application for approval of Rates (p. 11 of Convenience Compilation of DPT) and further narrated in the reply of the Port Trust to the petitions (p. 447, 448 of Special Civil Application No. 2535/2017). The appellants/allottees cannot seek to derive any benefit out of such delay to nullify their obligation particularly when they were well aware of their liability as stated above.

30. The fixation of the Schedule of Rates/lease rent is under an entirely different statutory scheme and cannot be equated with fixation of Scale of Rates under the Act so as to adopt the phrase – from time to time, in S. 49 thereof, to invalidate determination of lease rent as of a date prior to the Order. Unlike the exercise to be undertaken by TAMP in respect of other services, the basis of the lease rent in respect of long-term leases has been fixed by the Central Government under the land Policy being 6% of the market value of the land which has to be recommended by the Port Trust and approved by TAMP, and the period of revision is also prescribed as 5 years. Therefore, the phrase – time to time, has no application in this case at all.

31. Without prejudice to the above, a certain element of retrospectivity is built into the procedure set out above. Certain principles in this behalf have been laid down in (**1992) 2 SCC 124**[17] holding that *a retrospective effect to the revision also seems to be clearly envisaged by the section. One can easily conceive a weighty reason for saying so. If the section were interpreted as conferring a power of revision only prospectively, a consumer affected can easily frustrate the effect of the provision by initiating proceedings seeking an injunction restraining the Board and the State from revising the Rates, on one ground or another and thus getting the revision deferred indefinitely. Or again the revision of Rates even if affected promptly by the Board and the State may prove infructuous for one reason or another. ..It would be a very impractical interpretation of the section to say that the revision of Rates can only be prospective (para 23).* In fact, this has been recognised in the Tariff Regulations and acknowledged as having precedent in the Order of TAMP itself dated 13/11/2014 (p. 48 @ 78 of DPT Compilation). This is even otherwise logical because the recommendation of the Port Trust will be for valuation on a particular date as determined by the Valuer and after the proposal is forwarded to TAMP, the

[17] Judgement compilation Page 300

same would be scrutinised and could also be sent back, as has happened in this very case, after which the process of consultation with stakeholders would commence which would take up an uncertain period of time. The stakeholders could also question the procedure being undertaken by TAMP as has also happened in respect of subsequent period, and this would also take up time. The determination of market value thereafter would obviously relate back. However, the appellants seek to contend that all this should be to their benefit and the determination of the amount of lease rent could only be on and from the date of the Order of TAMP and that they should be permitted to continue paying the last fixed least rent irrespective of the mandate of 5 yearly revision and escalation of market value, which is not only self-serving but contrary to the statutory scheme and impermissible in law.

WHETHER THE SUCCESSORS IN INTEREST OF ORIGINAL HOLDERS BY VIRTUE OF SCHEMES OF AMALGAMATION, DEMERGER OR CONVERSION UNDER THE COMPANIES ACT CANNOT BE CONSIDERED AS UNAUTHORISED OCCUPANTS

32. Those of the appellants who claim to be successors of the original allottees of the subject land by virtue of amalgamation or demerger of companies or conversion of partnership firm into a joint stock company, are clearly unauthorised occupants since the mode of succession amounts to a transfer which is impermissible without prior permission of the Port Trust under the lease deeds, which has admittedly not been taken. It has been held in (**1986) 2 SCC 656**[18] that *clause 4 of the rent agreement executed by the 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 interests 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 (para 14).* Dealing with an argument in a similar context of transfer of rights under a scheme of amalgamation to the effect that the court should lift the corporate veil and see who are the directors and shareholders of the transferee company and who are in real control of the affairs of the said company and that if that was done it would be evident that there was no subletting or parting with the possession by the transferor company, the Court held in (**2004) 7 SCC 1**[19] that *it has nowhere been held that such*

[18] Judgement compilation Page 325
[19] Judgement compilation Page 336

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 (para 16). Even in the case of family held companies of the same family having common directors /promoters it has been held in (**2015) 12 SCC 501**[20] that *the notice demanding transfer fee was rightly issued from each of the respondents since it was clear that by Order of the court the premises in question was transferred in favour of the other company (para 39-41).* Conversion of partnership firm into a joint stock company has also been held to be an impermissible transfer in **2015 SCC Online Del 14383**[21]**.** Some of the appellants claim to be successors in interest of original holders of letters of allotment whereunder transfer is not permitted at all and they are therefore ex-facie unauthorised occupants. There are appellants who claim to have been transferred rights even after the original lease has expired and has not been renewed, which is really no transfer of any right at all as held in (**2016) 11 SCC 406**[22] to the effect that *the sale of the property in question to give effect to the compromise decree in the 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 the execution of the 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 DDA (para 36)*.

33. The dispute raised by such appellants regarding quantification of transfer fees is really beside the point since in the event of their occupation being unauthorised, the Port Trust is entitled to levy penal Rates and post facto validation of the transfer cannot be claimed as a matter of right and that too under the pretext of indicating readiness and willingness to pay transfer fees as applicable as on the date of the transfer, which in fact puts a premium on the breach. In any case principles of regularisation would apply and the provisions as on the date of such order would need to be complied with.

WHETHER APPELLANTS WHOSE CONTRACTS PROVIDE FOR RENEWAL ARE ENTITLED AS A MATTER OF RIGHT TO THE SAME

34. None of the appellants, including those whose lease deeds contain a clause of renewal, are entitled to an automatic renewal of the lease. In the first place a lease

[20] Judgement compilation Page 350
[21] Judgement compilation Page 363
[22] Judgement compilation Page 371

beyond a period of 30 years (and an automatic extension/renewal would amount to this) is not permitted without the approval of the Central Government under S. 34 of the Act. In any case the Land Policies, the first of which came in 2004, that is prior to the stage of renewal of even the earliest lease in the present batch of cases, makes provisions for permissible renewals applicable to all leaseholders and the same inter-alia do not permit extension beyond 30 years in the aggregate, which would override any contrary condition in the lease deed/Order of allotment. (please see clause 5.2.1.2 of the 2004 Policy @ p. 40 of DPT Compilation; clause 6.2.2.2 of 2010 Policy @ p. 27 of DPT Compilation and; clause 11.3 of 2014 Policy @ p. 9 of DPT Compilation). Therefore, the claim to renewal is clearly baseless and further underlines the attempt of the appellants to hold onto the property for private profit while disputing the liability to pay.

35. The attempt of the appellants to equate letters of allotment to a lease deed is completely contrary to law and the terms of the letter of allotment itself. Under S. 107 of the Transfer of Property Act 1882, a lease of immovable property from year to year or for any term exceeding one year or reserving a yearly rent, can be made only by a registered instrument. Under S. 49 of the Registration Act, 1908 an unregistered document required to be registered could be received only as evidence of a collateral transaction and for no other purpose. The attempt of the appellants to enforce the terms of the letters of allotment as an unregistered lease deed are contrary to law. In **(2011) 14 SCC 66**[23] it has been held that *where a lease deed is for a term of 30 years and is unregistered, the terms of such a deed cannot be relied upon to claim or enforce any right under or in respect of such lease. It can be relied upon for the limited purposes of showing that the possession of the lessee is lawful possession or as evidence of some collateral transaction.* In **(2008) 8 SCC 564**[24] after detailed consideration it was held in conclusion that *if a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose (para 34).* Moreover, contrary to the contentions raised by some of the appellants, where the period of even such purported lease has expired, such an occupant is liable to be evicted without notice of termination of the purported lease or of eviction.

GENERAL

36. The appeals deserve to be dismissed with exemplary costs particularly in view of the attempt of the appellants to hold onto a public resource for their private benefit and

[23] Judgement compilation Page 389
[24] Judgement compilation Page 401

profit and of utilising the process of law and the courts to thwart recovery of revised lease rents though such liability has been imposed on and undertaken by the appellants as set out above at huge cost to the revenue of a statutory corporation undertaking functions in public interest. The appellants have attempted to monopolise a national resource for private profit and have continued to occupy the lands, in many cases, much beyond the period of the lease. The appellants are in a situation of their own making and can't claim hardships or equity (please see **2021 SCC online SC 658**[25]). The appellants have brazenly flouted the covenants of the lease deed or conditions of the letters of allotment and have invoked the jurisdiction of this Court and that too belatedly in most cases, with the sole aim of illegally and unfairly continuing their occupation of the lands.

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[25] Judgement compilation Page 658

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL APPLICATION (FOR ORDERS) NO. 1 of 2022
In R/LETTERS PATENT APPEAL NO. 1424 of 2019
In R/SPECIAL CIVIL APPLICATION NO. 2537 of 2017

With
CIVIL APPLICATION (FOR ORDERS) NO. 1 of 2022
In R/LETTERS PATENT APPEAL NO. 1427 of 2019
In R/SPECIAL CIVIL APPLICATION NO. 2536 of 2017

With
CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2022
In R/LETTERS PATENT APPEAL NO. 1428 of 2019
In R/SPECIAL CIVIL APPLICATION NO. 2537 of 2017

With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2022
In R/SPECIAL CIVIL APPLICATION NO. 11751 of 2014
In R/SPECIAL CIVIL APPLICATION NO. 2537 of 2017

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JRE TANK TERMINALS PRIVATE LIMITED
Versus
UNION OF INDIA

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Appearance:
MR SN SOPARKAR, SENIOR ADVOCATE FOR MR DHAVAL SHAH(2354) for the PETITIONER(s) No.
for the RESPONDENT(s) No.
MR DHAVAL D VYAS(3225) for the RESPONDENT(s) No.

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

Date : 06/05/2022

COMMON IA ORDER
(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1. We have heard all the learned counsel appearing for the parties. These Civil Applications have been filed by the original appellants in the wake of some developments that have taken place

pending the pronouncement of the CAV Judgment in the main matters.

2. Today, the judgment in the main matters has been pronounced. Both the set of appeals have been ordered to be dismissed. It has been brought to our notice that the Port Trust has put few plots to auction. As we have stayed the operation of our judgment for a period of *six (06) weeks*, the Port Trust may not proceed further atleast for a period of *six (06) weeks*.

3. With the aforesaid, all the Civil Applications stand disposed of.

(J. B. PARDIWALA, J)

(VAIBHAVI D. NANAVATI,J)

A. B. VAGHELA