

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5559 OF 2001

Jamshed Hormusji Wadia ... Appellant

Versus

Board of Trustees, Port of Mumbai & Anr. ... Respondents

WITH

C.A.No.5562/2001,
C.A.No.5561/2001,
C.A.No.5563-5564/2001,
C.A.No.5565-5566/2001,
C.A.No.5567-5568/2001,
C.A.No.209/2004
(Arising out of SLP(C)19877/2001),
C.A.No.207/2004
(Arising out of SLP(C)6064/2002),
C.A.No.3211/2002,
C.A.No.208/2004
(Arising out of SLP(C)8657/2002)

J U D G E M E N T

R.C.Lahoti, J.

Leave granted in SLP(C) Nos.19877/01, 6064/02 and 8657/02.

The Bombay Port Trust (hereinafter 'BPT', for short), presently constituted and governed by the Major Port Trust Act, 1963, and now known as The Board of Trustees of the Port of Mumbai, is an 'authority' within the meaning of Article 12 of the Constitution of India. It has been the subject matter of several legislations governing its constitution, administration, powers and duties, some of which are The Bombay Port Trust Act, 1873, The Bombay Port Trust Act, 1879 and the Major Port Trust Act, 1963. Bombay, presently known as Mumbai, continues to be the commercial capital of the country. In spite of the development of several other ports having taken place along the coasts of India, some of them being of recent origin, the Bombay Port continues to be the Gateway of India for international trade and commerce. Space is scarce in Mumbai as it is an island, and demands on its land are heavy in view of the ever-growing industrial, commercial and economic activities. Due to the availability or continuously growing modern infrastructure at Mumbai large sections of the population from throughout the country continue to migrate to Mumbai, which, with its characteristically liberal metropolitan culture, open-heartedly accommodates anyone who seeks shelter in its arms.

The Bombay Port Trust Estate, admeasuring around 720 hectares (1800 acres approx.) of land is a huge stretch from Colaba to Raoli Junction, including Pir Pau,

Butcher Island, land at Titwala and other islands. The population is highly urbanized and dense. Out of the total area of 720 hectares the area under the jurisdiction of Estate Department of the BPT is around 336 hectares. Out of these, 306 hectares of area is occupied by the lessees of BPT holding leases of various tenures. Around 720 hectares of land was under intensive use for the Board's own activities around the year 1980. There were about 600 lessees. The lessees could broadly be divided into three categories – monthly or annual lessees, 15 years' terms lessees, and 99 years' or long term lessees, with or without clauses for renewal. In case of monthly or annual leases, the municipal taxes are borne by the BPT, while in cases of 15 years term and long terms leases, the liability to pay municipal taxes is with the lessees. The BPT Estate cannot be sold; it is all held out on leases excepting for the land in the use of the Port and for Port activities i.e. for the self requirement of the BPT. Leases were created long back, some of which being around a century old. The lease rents were revised and increased from time to time not as a matter of some uniform policy decisions but only by way of adhoc arrangements. In the year 1962, the World Bank advised BPT that its rate of return on its real estate was hopelessly inadequate and needed to be reviewed. The Comptroller and Auditor General of India too, in his report of the year 1979-80, shared the opinion of the World Bank and highlighted the obligation on the part of the trustees to secure a fair and reasonable revenue for its estate so as to attend better to its manifold public duties. The trustees felt convinced that the Port Trust had to perform several functions under the law governing it which were in the nature of public duties to fulfil public objects; that the expenditure on maintenance was gradually increasing and there was disparity between realised rent and the billed rent; and that a minus rate on return was actually being secured taking into account the expenditure incurred by the Board on maintenance. All these factors persuaded the Board to undertake a massive exercise for the revision of rent as also for the revision of the terms and conditions of leases, whereunder the different categories of lessees were holding land and estates from the Board. The Board by inserting advertisements in all-India newspapers invited proposals from consultancy firms and practicing valuers for ascertaining the market value of the land of the Bombay Port Trust, including lands in docks and bunders. Out of the several offers received, the choice of BPT fell on Kirloskar Consultants Ltd., Pune, who were entrusted with the task on the following terms of reference :-

- "i) To give an estimate of market values of the Bombay Port Trust land (including the lands in the Docks and Bunders) dividing them into convenient zones or blocks to be delineated on the Port Trust estates and having regard to the various factors relevant to the valuation for the Port Trust estates ranging from Raoli Junction to Colaba, Pir Pau and Butcher Island. In all, the lands admeasure about 1800 acres and are inclusive of land at Titwala and Butcher and other islands.
- ii) The estimate of market value should indicate values of lands both in vacant and occupied conditions and for different users.
- iii) The market values should be given separately for each zone or block on two relevant dates, viz. as on 1st January 1975 and 1st January 1978 (these dates have since been modified at the time of signing the agreement as 1st January 1975 and 1st January 1980).

- iv) To lay down a general formula for the guiding principles to enable the Port Trust to arrive at land values rationally at a future date and realize a fair share of the future increase in land values periodically."

At the point of time when Kirloskar Consultants embarked upon their task, there were 764 law suits filed by BPT in several courts and another 265 were in the pipeline – proposed to be filed. Nearly 1/3rd of the land of BPT was rented out, and lessees were holding the same on rates of rent which had remained stationary for long number of years. The gigantic task entrusted to them was well performed by Kirloskar Consultants Ltd. – the experts in association with M/s.M.N.Dange & Associates, the government approved valuers. The BPT (including its trustees, officers and staff) and the several government departments – all rendered their assistance. A draft report was submitted on October 18, 1980 and after discussions with the Estate department and the Chairman of the BPT, the final report was submitted on December 25, 1980. The report runs into volumes. The experts in their report explained their approach and methodology, took into account the factors influencing land prices in Bombay, the legal aspects relevant to the land of BPT, constraints of BPT estate, blockwise fair market rates during half a decade preceding the report, future values and the factors of leasing of land viz-a-viz its need. The experts also carried out international port studies. In the meeting of BPT held on August 23, 1982, the report of the consultants was accepted, preceded by serious deliberations. Notices were issued to several lessees terminating the tenancies but with an option that the lessees would continue as lessees subject to their agreeing to pay the revised rent fixed in pursuance of the report submitted by the experts.

Some of the lessees filed writ petitions under Article 226 of the Constitution of India complaining that the BPT being an instrumentality of the State within the meaning of Article 12 of the Constitution, it was bound to be reasonable and fair in its dealing with the lessees. The increase in rent proposed by the BPT was exorbitant, for example, the rate of rent which was Rs.66.44 in the year 1948 and which gradually increased to Rs.317.11 in the year 1981, was proposed to be revised at Rs.4515.86. The petitions were disposed of by a learned single Judge (S.M.Daud, J.) vide his judgement dated 1/4.10.1990. The learned single Judge dealt with two points around which the controversy had centered. On the first point, the learned single Judge held that the proposed revision of rent and the consequent demand of rent did not breach the provisions of the Major Port Trust Act, 1963. On the second issue, the learned single Judge formed in opinion that the revision of rent by the BPT was arbitrary and capricious and therefore violative of the constitutional restraint on the Port Trust an Instrumentality of the State. In the opinion of the learned single Judge, the BPT was entitled to protect itself against erosion in the rentals as a result of inflationary trends, but excepting this no other factor could be taken into consideration and in any case the BPT could not afford to behave like a private landlord indulging into rack-renting by co-relating the rates of rent with market rates. The notices terminating the tenancies with the option for continuance subject to revision of rent based on Kirloskar Consultants report were struck down. Thus the decision of the learned single Judge had the effect of nullifying the entire exercise undertaken by the BPT through Kirloskar Consultants.

The BPT preferred an intra-court appeal which was dealt with by a Division Bench. On 28.6.1991, the matter came up for consideration before a Division Bench (consisting of Chief Justice P.D.Desai and Justice Sukumaran). The Division Bench formed an opinion and expressed it to the parties that the matter should be put to an end and suggested that they would fix a cut-off date and the number of years upto

the expiry of which they would direct the lessees to pay the increase in rent at a certain percentage to be decided by them, so that at fixed intervals of years BPT would get permanently an automatic increase in rent at the percentage fixed by them. The Division Bench called upon the BPT to suggest some formula to enable them to arrive at a percentage of rent to be fixed by them. It was also suggested that such formula could be made applicable to other lessees of the BPT who were not parties in the appeal before the High Court by giving a public notice under Order 1 Rule 8 of CPC.

The Board reconsidered the matter and a fresh exercise was undertaken by the Board so as to respond to the suggestion of the court. The Board arrived at a formula which has been termed as "compromise proposals", approved in the meeting of the Board held on August 13, 1991, and submitted to the Court. It is not necessary to deal with the exchange of views amongst the trustees which received consideration in the meeting of the Board. The summary of the "compromise proposals", which is based on a detailed note submitted by the office of the BPT for being placed before the Board, is as under :

- "(i) Nature of occupations may continue as at present on revised rents. Development may be in accordance with the Development Plan and the Development Control Regulations and BPT Master Plan including restructuring from time to time to cater for port's and city's needs.
- (ii) Occupations may be classified for the purpose of levy of rents either as 'Non-Home Occupation' or as 'Home occupation' as defined in the Development Control Regulations on the basis of actual use.
- (iii) Letting rates for 'Non-Home Occupation' per sq.metres of floor space per month of built up area (as derived from valuation by Kirloskar Consultants) shall be as under for the period 1.10.1982 to 30.9.1992.

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|-----|---|---|----------|
| (a) | Sassoon Dock Estate | : | Rs.22.03 |
| (b) | Wellington & Apollo Reclamation Estates | : | Rs.26.91 |
| (c) | Ballard and Mody Bay Estates | : | Rs.24.00 |
| (d) | Elphinstone Estates (TPS) | : | Rs.14.44 |
| (e) | Bunders South | : | |
| | Rs.21.38 | | |
| (f) | All other Estates | : | Rs.12.66 |

Letting rate for 'Home Occupation' may be at 20 per cent of the above rates.

Letting rates for future years from 1.10.1992 to 30.9.2012 for 'Non-Home Occupation' and 'Home Occupation' shall be as given in the Annexures.

Notwithstanding the fixation of letting rates for 20 years for good and sufficient reasons, Board may review and revise the letting rates.

- (iv) Minimum rent may be for built up area upto 0.5 FSI irrespective of whether the area is built up or not. Minimum rent from 1.10.1982 to 30.9.1992 for non-hazardous trade/use will be Rs.6.33 per sq.metre per month and for POL and hazardous trade/use will be Rs.8/- per

sq.metre per month or for 0.5 FSI of built up area, whichever is more. The rent will increase proportionately to the built up area but maximum rent may not exceed the rent that would have been payable on the basis of Fair market Rents recommended by Kirloskar Consultants Ltd.

- (v) In case of letting of BPT structures, the revised rate of rent per sq.metre of floor space may be at 2.5 times the letting rates. The repairs and maintenance of the structure shall be done by the tenant/lessee. For this purpose the lessee/tenant shall retain 0.5 times the rent and pay to BPT a net rent at twice the letting rates.
- (vi) Rent in respect of occupations having mixed use may be in proportion of the floor space under use for 'Home Occupation' and 'Non-Home Occupation'. In case of change of use from 'Home Occupation' to 'Non-Home Occupation' rents will be regulated at the letting rate for 'Non-Home Occupation' for the floor space so changed with effect from date of change of use.
- (vii) Rents shall be increased by 4 per cent every year over the rent in the previous year from 1.10.1992.
- (viii) Arrears for the period from 1.10.1982 upto 30.9.1991 in the case of monthly tenancies and 15 monthly lease would be recovered respective of the built up area at a flat rate of Rs.6.33 per sq.metre per month in case of non-hazardous trade/use or at a rate of Rs.8/- per sq.metre per month in case of POL and hazardous trade/use with simple interest at 8 per cent per annum.
- (ix) Arrears in respect of structures would be recovered at the applicable rate from 1.10.1987 upto 30.9.1991 with simple interest at 8 per cent per annum.
- (x) In case of monthly tenancies/15 monthly leases where the pre-revised rent is more than the rent under above terms or where allotments have been made through auction/tender at rates higher than the rate applicable under the above terms, the rents will continue at the earlier rates till the applicable letting rate for a year exceeds that rate of rent whereafter the rent will increase to the applicable letting rate and will further increase at 4 per cent annum.
- (xi) In case of expired lease, fresh lease on new terms shall be at the sole discretion of the Board. Grant of fresh lease may be considered taking into account restructuring requirements for the City's Development Plan, BPT's Master Plan and the Development Control Regulations. Where a fresh lease is granted, arrears may be recovered in the form of premium at the applicable letting rate for respective use with simple interest at 15 per cent per annum from the date of expiry of lease till grant of fresh lease. In case of expired leases without a renewal clause, additional premium may be recovered at 12 months' rent at the applicable letting rate.

- (xii) In the case of monthly tenancies the applicable rates used to be more than the above rates to cover general property taxes. However, in view of the restrictive tenure, the tax liability is to be borne by BPT.
- (xiii) In the case of subsisting leases, assignments and consequent grant of lease on new terms would be at the prevailing letting rate at the relevant time and in relation to use. However, in case of amalgamation revised rent would be at the letting rate prevailing at the time of amalgamation subject to a ceiling that the revised rent will not be more than 12 times the earlier rent. Where lessee is already paying rent at the prevailing letting rate, assignment would be permitted on levy of revised rent at 25 per cent over the applicable letting rate or on levy of premium at 12 months rent at the applicable letting rate as may be desired by the lessee/tenant.
- (xiv) Subletting, change of user, transfer, occupation through an irrevocable power of attorney and any other breaches may be regularized by levy of revised rent at the applicable letting rate at the time of such breach from the date of breach. Where lessee/tenant is already paying rent at the prevailing letting rate, such regularisation be permitted on levy of revised rent at 25 per cent over the applicable letting rate or a levy of premium at 12 months' rent at the applicable letting rate as may be desired by the lessee/tenant.
- (xv) In case of hardship where effect of the terms is harsh, such cases may be brought up before the Board for consideration on merits.
- (xvi) The above proposals are applied to properties falling outside the port limits which is within the Board's power to sanction. For properties falling within the port limits, proposals on the above lines may be made to Government for approval.

The proposals are made with deference to the suggestions by the Division Bench consisting of Hon'ble Chief Justice and Hon'ble Justice Sukumaran for acceptance of the respondents in the pending appeals. As regards the proposals which do not affect the pending appeals, the Board may, after the result of these appeals, consider extending the benefit of these proposals to the other affected tenants. If the present proposals are not accepted, the Board reserves the right to withdraw them. The proposals are without prejudice to the appeals. The proposals do not ipso facto create any right in the tenants to the fresh tenancy/lease but continue to only rents to be charged in the event of grant of fresh tenancy/lease."

Proceedings under Order 1 Rule 8 of the CPC were initiated putting all the lessees of the Board on notice through publication in newspapers. Several lessees filed applications for intervention and were permitted to make submissions in respect of the compromise proposals. It appears that inspite of the indulgence shown by the Court, the writ petitioners and the interveners were not agreeable to accept the proposals. The Division bench (M.L.Pendse and A.A.Cazi, JJ) heard the board, the writ petitioners and the interveners at length. The Division Bench rightly formed an opinion that the decision by the learned single Judge did not bring to an end the entire controversy in as much as merely striking down the action of the board based on Kirloskar Consultants' Report was not a solution to the problem. The Division

Bench, on a review of the case law, formed an opinion that if the action of the Board satisfied the test of being fair and reasonable, it was to be accepted. Leaving aside the grievances made by the lessees in respect of individual properties as in the opinion of the Division Bench it was not permissible to expand the ambit of enquiry in the proceedings pending before it and to determine whether a particular lessee was entitled to some other advantage or not, the Division Bench concentrated on the issue as to the right of the Port Trust to increase the rent and the modalities adopted by it in determining the rates at which the rent would be increased. On behalf of the Board a chart was tendered before the Division Bench indicating the rents which were paid by the lessees (who had filed petitions before the Court) prior to October 1, 1991, and the revised rent as suggested by Kirloskar Consultants and the modified rent fixed by the Port Trust in pursuance of the directions of the Division Bench with a view to demonstrate the fairness and reasonableness writ in the proposals. The chart was taken on record and annexed as exhibit 'B' to the judgement dated 11.3.1993 of the Court. The Port Trust made it clear to the Division bench that it was not insistent on levying and recovering rents as was initially suggested by Kirloskar Consultants and was satisfied with the revised formula placed before the Court. Taking an overall view of several relevant factors brought to the notice of the court on behalf of the Port Trust as also on behalf of the lessees, the Division Bench formed an opinion that in their judgement "the revised proposals submitted by the Port Trust are extremely reasonable and fair". The document entitled "revision of rents of monthly tenancies/15 monthly leases – compromise proposals" was marked as exhibit 'A' and annexed with the judgement. The Division Bench put its seal of approval on the compromise proposals.

BPT felt satisfied with the judgement of the Division Bench. However, the grievances of some of the lessees persisted and resulted in filing of a few SLPs in this court. The principal appellant before us namely Jamshed Hormusji Wadia too was one of the appellants. Mainly three grievances were raised before this Court :

- (i) That the High Court was in error in not permitting the individual lessees to make their submissions about their complaint in the matter of increase in rent in relation to their particular leases;
- (ii) That no proper justification has been offered by the Port Trust in support of the 'compromise proposals' and
- (iii) That the Division Bench of the High Court has not considered the matter of revision of rents on the basis of the report of the Kirloskar Consultants on merits and there is no consideration of the reasons that were given by the learned single Judge for setting aside the enhancement of the rates by the Port Trust on the basis of the Kirloskar Consultants' report.

A Bench of two learned Judges of this Court granted leave in all the Special Leave Petitions and disposed of the Civil Appeals by an order of remand dated 31.10.1995. The judgement of the Division Bench was set aside and the case was remanded for decision afresh in the light of the following direction made by this Court :-

"Having regard to the aforesaid submissions urged on behalf of the appellants, we are of the view that it is necessary that the 'Compromise Proposals' submitted by the Port Trust are considered by the Division bench of the High Court in the light of the reasons given by the learned single Judge and submissions that are made by the lessees in support of the said judgement to show that the said 'Compromise Proposals' for enhancement of rent suffer from the vice of arbitrariness. Since this question has not been

gone into by the Division Bench of the High Court, we consider it appropriate to set aside the impugned judgement of the Division Bench of the High Court for reconsideration of the appeals in the light of the submissions that are made by the appellant lessees as well as intervenors with regard to the 'Compromise Proposals' that are submitted by the port Trust and consider the same on merits. It will be open to the respondents in the Letters Patent Appeals before the High Court as well as the intervenors to agitate the points which were agitated before the learned single judge and which have been decided against them by the learned single Judge. If any of the appellants in these appeals had not intervened before the High Court in Letters Patent Appeals still will be open to him to move the High Court for intervention."

(emphasis supplied)

The matter reached back and has been disposed of afresh vide the Impugned Judgement dated 1.8.2000 by a Division Bench (N.J.Pandya & Dr.D.Y.Chandrachud, JJ). This time the Division Bench has formed an opinion that so far as the exercise of the Port Trust to call consultants for determining the fair market rate of that property is concerned, nothing wrong can be found with that. The subsequent compromise proposals were only by way of a softening blow to relieve the lessees of the hardship caused by revision of rent. So far as the question of interest on arrears is concerned, the Division Bench thought that the rate of interest deserved to be confined to 6% per annum only. The Division Bench also held that the Kirloskars' report and the action based thereon was already set aside by the learned single Judge and in their opinion even the so-called 'compromise proposals' did not meet with the test of fairness and reasonableness. Then the Division Bench held :-

1. For granting upwards revision, we will divide the entire period starting from 1981 to 2000 into two parts. The first period will commence from the year 1981 and end with 31.3.1994. The second period will start on and after 1.4.1994.
2. In view of the stand of the Port Trust itself before the Supreme Court in S.L.P. upto 31.3.1994 it should be permitted to apply its original norms of proper revision as it was doing right upto the year 1981, periodically. It may accordingly revise the same upto 31.3.1994.
3. As to the second period, i.e. on and after 1.4.1994, the revision will have to be on the basis of 6% of the market rate instead of 15% for non-residential use and for residential purpose the return shall be worked out at the rate of 4% on the market value. At this rate the Kirloskars' report has to be worked out on and from 1994 till 31.3.2000.
4. On and after 1.4.2000, the new Maharashtra Rent Control Act 1999 has come into force. The Bombay Port Trust has been omitted from the definition of "local authority". The 1999 Act has received Presidential assent and the provisions of Article 254 of the Constitution of India will, therefore, come into play. The appellant-Trust will stand governed by the provisions of the Maharashtra Rent Control Act, 1999. To the extent permissible therein, the appellant-Trust can certainly increase the rent periodically and the occupants of the plots, on whatever terms and conditions at present, will also have to abide by the same. The appellant-Trust cannot claim any exemption from the provisions of the 1999 Act".

5. As to the individual sub missions or as to the cases of individual hardships, the court made certain observations and formed an opinion that by and large the same were already taken care of.

At the end the Division Bench allowed the Port Trust liberty to go ahead with the fixation of rent consistently with the observations made by the court.

Feeling aggrieved by the decision of the Division Bench, Jamshed Hormusji Wadia has once again come up in the present appeal by special leave. There are other appeals by a few other lessees and a host intervention applications by other lessees.

The BPT has also filed a memo of cross-objections seeking relief beyond the one allowed by the Division Bench of the High Court. In substance, the BPT seeks its initial action based on Kirloskar Consultants' report being restored and sustained. On behalf of the appellants, not only the maintainability of cross objections in an appeal under Article 136 of the Constitution has been objected to, but it has also been submitted that the cross-objections are devoid of any merit.

We have heard the learned counsel for the parties, i.e. several appellants, the BPT is also the interveners. The matters have been argued from very many angles. On 12.11.2002, when we were almost reaching the end of the hearing, an offer for settlement was mooted on behalf of the appellants. The terms of the offer were reduced into writing and tendered "without prejudice" to the learned Addl.Solicitor General appearing for the BPT. The hearing was adjourned to enable the learned ASG to obtain instructions from the BPT who could report if it was inclined to accept the offer or offer its comments or make counter-offers. On 3.12.2002, the learned ASG filed the response of the BPT to the terms of settlement proposed on behalf of the appellants. Any mutual settlement was not possible, it was reported. Further hearing was resumed and then concluded.

The questions arising for decision in these appeals and several intervention applications can suitably be formulated as under :

- (i) What is the status of the BPT as a landlord? Is it free to charge any rent from its lessees as it pleases in view of its having been exempted from the operation of the Rent Control Law or is it only to act in a fair and reasonable manner in the matter of dealing with its lessees and charging rent from them?
- (ii) Whether the cross-objections preferred by the BPT are maintainable and, if so, to what effect?
- (iii) Can the grievances raised by individual lessees be said to have been satisfactorily disposed of by the Division Bench of the High Court?
- (iv) The relief to which the parties are entitled.

The Bombay Port Trust is an instrumentality of State and hence an 'authority' within the meaning of Article 12 of the Constitution. (see – M/s.Dwarkadas Marfatia and Sons vs. Board of Trustees of the Port of Bombay (1989) 3 SCC 293). It is amenable to writ jurisdiction of the Court. This position of law has not been disputed by either

party. The consequence which follows is that in all its actions, it must be governed by Article 14 of the Constitution. It cannot afford to act with arbitrariness or capriciousness. It must act within the four corners of the statute which has created and governs it. All its actions must be for the public good, achieving the objects for which it exists, and accompanied by reason and not whim or caprice.

It was submitted by the learned Additional Solicitor General that not only does the Bombay Port Trust happen to be an instrumentality of State, it is also an owner-cum-landlord. When the private landlords are making money in the commercial capital city of Bombay, there is no reason why the Bombay Port Trust should be kept pegged down to abysmally low rates of rent which were settled decades before and at a point of time when in Bombay the land was available for occupation more or less like just a bounty of nature and people were being persuaded and encouraged by holding out incentives to come to Bombay and settle there. He submitted that the Bombay Port Trust has to manage and administer a huge port, most vital to the industrial and economic life of the nation, and it needs money for funding its activities. Every additional penny earned by Bombay Port Trust has to be and is spent for public good and the increase in rent would augment the resources of the Bombay Port Trust and thereby strengthen its hands in rendering better service to the nation. The learned Addl. Solicitor General pointed out from facts and figures that most of the tenants were indulging in such activities as were not expected of them such as sub-letting, encroachments, unauthorised constructions and so on. They were pocketing huge sums of money by inducting sub-tenants and collecting premiums and exorbitant rents while they were not prepared to bear even with a reasonable increase of rent proposed by the Bombay Port Trust. The Bombay Port Trust was being dragged into endless litigation by the tenants. It was pointed out that as on 30.9.2002 there were 1900 cases pending in different courts at different levels all based on landlord tenant relationship. This litigation was consuming a good chunk of the Bombay Port Trust's earnings, time and energy, all going waste. The learned Addl. Solicitor General made a very passionate appeal submitting that the Bombay Port Trust did not intend to indulge in rack-renting, but at the same time the Court ought not to deny ordinary rights available to any reasonable landlord under the ordinary law of the land. The Bombay Port Trust should not be placed in a worse position than that of an ordinary landlord merely because it happened to be an instrumentality of State. Needless to say, such submission made by the learned Addl. Solicitor General was only a defensive response to the vehement attack laid on the Bombay Port Trust's proposals to enhance the rent paid by the appellants and interveners.

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. Even while playing the role of a landlord or a tenant, the State and its authorities remain so and cannot be heard or seen causing displeasure or discomfort to Article 14 of the Constitution of India.

It is common knowledge that several rent control legislations exist spread around the country, the emergence whereof was witnessed by the post world war scarcity of accommodation. Often these legislations exempt from their applicability the properties owned by the Government, semi-government or public bodies, Government-owned corporations, trusts and other instrumentalities of State. What is the purpose? Does the Legislatures intend to leave such entities absolutely unbridled and uncontrolled as landlords from the operation of the rent control legislation or do they do so with some hope and trust in such institutions? In **M/s.Dwarkadas**

Marfatia and Sons (supra) a few decisions and authorities were cited before this Court. The observations of Chief Justice Chagla (as His Lordship then was) in **Ramptrap Jaidayal vs. Deominion of India** – 1052 L.R.54 Bom.927 were quoted with approval stating that while enacting rent control legislations, the Government seeks to achieve the object of protecting the tenants and preventing the rent from being increased and people from being ejected unreasonably; then it cannot be assumed that the very Government would itself be indulging into those very activities which it was proposing to prevent by enacting such laws. The underlying assumption behind granting exemption from the operation of the rent control legislations was that the Government would not increase rents and would not eject tenants unless it was necessary to do so in public interest and a particular building was required for the public purpose. It was also pointed out that the Government or local authority or the Board would not be actuated by any profit-making motive so as to unduly enhance the rents or eject the tenants from their respective properties as private landlords are or are likely to do. This court in **Baburao Shantaram More v/s. Bombay Housing Board** – 1954 SCR 572 recognised that the basis of differentiation in favour of public authorities-like the Bombay Port Trust – was on the ground that they would not act for their own purpose as private landlords do but would act for public purposes. The court held in **Dwarkadas Mazrfatia** (supra) that the public authorities which enjoy the benefit without being hide bound by the requirements of the Rent Act, must act for public benefit and where they fail to do so they render themselves amenable to adjudication under civil review jurisdiction of the Court. A Division Bench of the Bombay High Court presided over by Mrs.Sujata Manohar, J (as Her Lordship then was) held in **Patti Palonji Kapadia & Anr. v/s. State of Maharashtra & Ors.** – 1992 Bom.L.R.1356 that the exemption from the provisions of the rent control law casts an obligation on the State and its instrumentalities and authorities to comply with the public policy of ensuring a fair return of investments without charging exorbitant rates based on the prevailing market price of the land. Thus, a balance has to be struck between ensuring a fair return on investment and charging exorbitant rates based on the prevalent market prices of land, which would be of utmost relevant to any other landlord. The State Government in order to justify a steep increase in rent, cannot plead exploitative increases in prices of lands. Reference in this connection may also be made to **Kumari Shrilekha Vidyarthi etc. etc., v/s. State of U.P. and Ors.** – (1991) 1 SCC 212, wherein this Court held that while acting in the field of contractual rights the personality of the State does not undergo such a radical change as not to require regulation of its conduct by Article 14. It is not as if the requirements of Article 14 and contractual obligations are alien concepts which cannot co-exist. Our constitution does not envisage or permit unfairness or unreasonableness in State action in any sphere of activities contrary to the professed ideals in the Preamble. Exclusion of Article 14 in contractual matters is not permissible in our constitutional scheme. In **P.J.Irani v/s. State of Madras and Anr.** – AIR 1961 SC 1731 the Constitution Bench observed that a tenant in a building owned by the State or its instrumentality is not liable to eviction solely because the tenancy has terminated. The existence of rent control legislation, though not applicable to such building, is suggestive of the State's policy of protecting tenants because of the great difficulty of their obtaining alternative accommodation.

In our opinion, in the field of contracts the State and its instrumentalities ought to so design their activities as would ensure fair competition and non-discrimination. They can augment their resources but the object should be to serve the public cause and to do public good by resorting to fair and reasonable methods. The State and its instrumentalities, as the landlords, have the liberty of revising the rates of rent so as to compensate themselves against loss caused by inflationary

tendencies. They can – and rather must – also save themselves from negative balances caused by the cost of maintenance, and payment of taxes and costs of administration. The State, as landlord, need not necessarily be a benevolent and good charitable samaritan. The felt need for expanding or stimulating its own activities or other activities in the public interest having once arisen, the State need not hold its hands from seeking eviction of its lessees. However, the State cannot be seen to be indulging in rack-rent, profiteering and indulging in whimsical or unreasonable evictions or bargains.

A balance has to be struck between the two extremes. Having been exempted from the operation of rent control legislation the courts cannot hold them tied to the same shackles from which the State and its instrumentalities have been freed by the legislature in their wisdom and thereby requiring them to be ruled indirectly or by analogy by the same law from which they are exempt. Otherwise, it would tantamount to defeating the exemption clause consciously enacted by the Legislature. At the same time the liberty given to the State and its instrumentalities by the statute enacted under the Constitution does not exempt them from honouring the Constitution itself. They continue to be ruled by Article 14. The validity of their actions in the field of landlord-tenant relationship is available to be tested not under the rent control legislation but under the Constitution. The rent control legislations are temporary, if not seasonal; the Constitution is permanent and all time law.

In the backdrop of these principles let us test what the Bombay Port Trust proposed to do. The learned Addl.Solicitor General has pointed out by filing a chart incorporating requisite facts in requisite details that a good number of lessees were running into huge arrears and were not willing to pay the rent even where the rates were nominal. Sub-letting, encroachments and unauthorised constructions were rampant. The observations made and the wise counsel tendered by the World Bank and the Comptroller and Auditor General of India could not have been ignored as the Bombay Port Trust as also its Trustees could otherwise be accused of inaction. In the aforesaid background the Port Trust and its Trustees acted very reasonably. They invited competitive quotations for providing professional service to them by inviting financial experts and valuers through an all-India public invitation. The Kirloskar Consultants Ltd., whose expertise and competency is not in question, performed the gigantic task entrusted to them with the assistance of Government approved valuers. The report submitted by Kirloskar consultants reveals a very scientific and methodical research carried out by them, followed by recommendations for such action as logically flew from the facts found by them. Relevant historical and geographical facts were collected, analysed and given due weight and consideration for drawing deductions therefrom. There was nothing wrong in the procedure adopted by the Bombay Port Trust and in the decision taken on Kirloskars' Report but for the fact that the consequence which followed from the action taken on recommendations made by Kirloskar Consultants was a sudden and exorbitant increase in rates of rent which turned out to be manifold compared to the current rates at which the rent was being paid by the lessees. Two factors weighed heavily with the 1993 Division Bench decision of the High Court. The learned judges felt that the proposals, if accepted, would result in the distinction between an ordinary private landlord and the Bombay Port Trust – a landlord yet an instrumentality of State, being lost. Secondly, accepting the current market rates of real estate and working out a return on such rates by reference to the market trends, would tantamount to indulging into profiteering. The Division Bench rightly held out the hope and trust that the Bombay Port Trust would act reasonably as also that the

lessees would be willingly prepared for a reasonable increase. Another factor which weighed heavily with the Division Bench was that the lessees whose rent was sought to be revised, were all continuing on the premises holding the property as tenants for quote some length of time, and it was not a case where the property was proposed to be let out for the first time or by way of fresh lease to aspirants bidding with each other. The Division Bench rightly put the ball in the court of Bombay Port Trust calling upon it to take the lead and respond with a reasonable proposal, and also indicated its desire to intervene and find out a solution which would be acceptable to the Bombay Port Trust as also to all the lessees and bring to an end the multiple litigation already pending in courts and to avert the likelihood of further litigation in waiting.

The proceedings of the Board reveal the Trustees having fallen on the horns of a dilemma. Any step in retreat would have a toning down effect on the voluminous exercise undertaken by them through Kirloskar Consultants and at the same time, as is writ large, the court was pressing for a settlement and as an instrumentality of State they could not afford to be indifferent to the trust and faith reposed in them by the Division Bench of the High Court. The matter came up before the Board in several meetings. There were exchanges of views and dissents. Yet the Board succeeded in arriving at a resolution shaped as 'Compromise Proposals' and submitted the same for the consideration of the Court. But the lessees would not agree. The Court found the 'Compromise Proposals' reasonable and meeting its approval. The Compromise Proposals were taken on record and made a part of the Division Bench judgement dated 11/12.3.1993.

We have set out in the earlier part of this judgement, the order of remand dated 31.10.1995 made by the Court. A careful reading of the judgement of the High Court and the order of remand passed by this Court together significantly reveals that none has cast any reflection – much less any adverse one – on the report of Kirloskar Consultants and the decision of the Board based thereon. The only consideration which prevailed with the High Court and this Court was one of reasonability and the need for striking a balance before taking a long leap in the direction of an upwards revision of rates. The stand throughout taken by the Board has to be appreciated. It has been agreeable to every reasonable suggestion made by the Court and has never treated the issue as to revision of rent as a matter of its prestige or with the ego of a landlord. This Court made a remand to the Division Bench of the High Court persuaded by the consideration that there were a few aspects of paramount significance which needed the attention of the Division Bench of the High Court. The fact remains that in the quest for an amicable, and if not so, then at least a reasonable resolution of the dispute, the Division Bench of the High Court as well as this Court have proceeded on an assumption that for the future, the settlement whether mutual or by dictum of the Court, shall centre around the Compromise Proposals. This Court wanted the Court to be assured for itself and the lessees to be satisfied for themselves that the Compromise Proposals were not just an arrow shot in the dark but were capable of being illuminated by assigning reasons. At the same time, though all the lessees were to be treated alike so far as laying down of common standards governing different classes of leases was concerned, care had also to be taken to redeem the grievances of certain individual lessees who could make out a case for further legitimate reduction in rates on account of peculiarities attaching with the land or lease held by them. Later, while delivering the 2000 judgement, which is impugned herein, the Division Bench certainly assumed a wider field of jurisdiction than the one which had been permitted by this Court and entered into examining the whole controversy afresh and as if all

the contentions of all the parties were open before it, which view of the high Court, in our opinion, cannot be countenanced on a reading as a whole of the order of remand passed by this Court alongwith the judgement of the Division Bench which was impugned then.

In our opinion, the matter between the parties has to be decided by treating the Compromise Proposals dated 13th August 1991 as the base. Any going behind would unsettle the settled issues – expressly or by necessary implication. We made this clear to the learned counsel for the parties on 12.11.2002, when we adjourned the hearing with the earnest hope that the parties would show a find gesture of “give a little and take a little” and thereby relieve the Court from the need of pronouncing its verdict in place of a mutual settlement by the parties which is always welcome. We may place on record that during the course of the hearing we suggested to the learned counsel for the parties that instead of perpetuating the life of the litigation they may advise their respective clients suitably and persuade them to arrive at a settlement using their good offices. We place on record our appreciation of the positive gesture shown by all the learned senior counsel, their assisting counsel and the other learned counsel appearing for the parties and the interveners. By discussion and exchange of views across the Bar the scope of controversy has very much narrowed down as stated hereunder :-

- (1) It was agreed at the Bar that in view of the Maharashtra Rent Control Act 1999,, having been brought into force w.e.f. 31.3.2000, the controversy among the parties can be treated safely as confined to the period from 1.10.1982 to 31.3.2000. This period is divisible into three parts i.e. (i) 1.10.1982 to 31.3.1994; (ii) 1.4.1994 to 31.3.2000 and (iii) the period post 31.3.2000. In the ‘Compromise Proposals’ the Bombay Port Trust has agreed that for the period 1.10.1982 to 31.3.1994 the original terms would continue to apply and the lessees give up their contest, if any, for this period.
- (2) The period between 1.4.1994 and 31.3.2000 is the bone of contention. The compromise proposals proposed 15% return for non-residential use and 12% return for residential use as the fair market rent on the estate value. The Division Bench of the High Court has directed these rates to be reduced to 6% and 4% respectively. Instead of our undertaking an exercise afresh as to what would be a fair and reasonable return to the Bombay Port Trust, it is sufficient to record that all the learned counsel for the parties excepting the Bombay Port Trust, have agreed that the lessees are prepared to accept the rates revised as 10% and 8% respectively.

In our opinion, (1) the rates of 10% and 8% abovesaid are very fair and reasonable and the Bombay Port Trust ought to accept the same; (2) the above said rates are of general application. Shri Fali S. Nariman, the learned senior counsel appearing for J.H. Wadia, the appellant, insisted that the piece of land held by the appellant on lease suffers from several adversities and, therefore, some exception must be carved out in favour of this appellant. Similar contentions were advanced by a few other lessees. We find some merit in the submissions so made as we would illustrate a little after. However still, we feel that we cannot enter into the factual enquiries referable to individual lessees and record any finding thereon. A suitably mechanism devised in this regard would take care of such individual grievances and would also bring the dispute to an end.

- (3) So far as the period post 31.3.2000 is concerned there is a controversy. According to the lessees the Maharashtra Rent Control Act, 1999, applies to Bombay Port Trust and its premises including land and buildings and the Act would take care of the rent we well. Shri R.N.Trivedi, the learned Addl.Solicitor General, has vehemently opposed this contention and submitted that 1999 Act does not apply to the Board and its estates. He submitted that the question is not free from difficulty and would need additional pleadings and documents which are not available on record and it would be safer if that plea is left out from adjudication in so far as the present appeals are concerned.

To appreciate the abovesaid three zones of controversy now surviving, we need to take note of some additional facts and events, part of which have occurred during the pendency of these proceedings. Excerpts from the proceedings of the meeting of the Board of Trustees of the Port of Mumbai held on 14.11.2000 are available on record. They give an indication of the number of lessees with whom the terms could be settled and were settled. The status of cases with lessees as on 31.7.2000 as reflected in the minutes of the meeting dated 14.11.2000 is as under :

- | | | |
|-------|--|------|
| (i) | Total number of cases where compromise can be considered including cases where suits have not been filed | 2490 |
| (ii) | Number of cases where applications are received for compromise as on 31.7.2000 | 1611 |
| (iii) | <u>Less:</u> Applications received but cannot be compromised due to reservations, etc. | 37 |
| (iv) | Eligible applications received for compromise | 1574 |
| (v) | Number of cases fully settled as on 31.7.2000 | 408 |
| (vi) | Number of eligible cases where parties have not approached for compromise | 916 |

It was pointed out at the Bar by the learned Addl.Solicitor General that by the time the Division Bench of the High Court pronounced its judgement, 408 lessees had accepted the Compromise Proposals mooted by the Board and also entered into new leases. Subsequent to the said judgement another 79 lessees have settled their disputes and accepted the Compromise Proposals. Thus 487 lessees have already taken advantage of the Compromise Proposals. This figure is very encouraging and shows that other lessees too should have joined in and should not at least now abstain from joining in the stream of settlements. So far as the Bombay Port Trust is concerned its stand is reflected in the following record made by the High Court, vide para 7 of its Judgement dated 11/12.3.1993 :

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

Vide para 15 of the Memo of cross objection (the maintainability whereof shall be dealt with shortly hereinafter) the Bombay Port Trust has stated :

"It is further submitted that if the impugned judgement were accepted in toto, as a package, and as it stands today, the Port Trust, would, without prejudice to its submissions and contentions in law, be willing to implement the impugned judgement and order."

The BPT is rightly happy with the Compromise Proposals, in the prevailing circumstances and situation.

So far as the individual grievances are concerned we need not make a detailed statement thereof by placing on record the cases of several individual lessees. By way of illustration it would suffice to state the grievance of only one of them, namely, J.H.Wadia, who has been vigilantly fighting his case craving for justice accompanied by sympathy and consideration for the circumstances in which the property held by him is situated. It is pointed out that a store water drain flows underground across the full length of the land leased out to him and thereon no development can take place according to the Municipal Laws. The only development which the appellant has been able to make over the property, is the construction of sheds wherein only timber business is being run. If Wadias can neither make use of the entire property nor develop it fully in the same manner as others being allowed to them. The status and nature of the land held by the Wadias, as pointed out by them, finds support from the documentary evidence available and was noticed by Kirloskar Consultants also in their report.

We will take care of the individual grievances in the operative part of the judgement by making suitable directions in that regard.

We agree with the submission of the learned Addl. Solicitor General that in the absence of adequate material being available on record the question as to the applicability of the Maharashtra Rent Control Act, 1999, to the Bombay Port Trust and its premises should not be decided in the present case and should rather be left open to be taken care of in appropriate proceedings at an appropriate point of time.

Now we digress a little to deal with the issue as to the maintainability of the cross objections. For three reasons we find the cross objection not entitled to consideration on merits : firstly , in an appeal by special leave under Article 136 of the Constitution , cross objections do not lie; secondly, the BPT having given a proposal to the court though on being prompted by the Court to do so, the Bombay Port Trust should not be permitted to beat a retreat and withdraw from the compromise proposals or lay challenge to it in the facts and circumstances of the case. The compromise proposals have been held to be fair, just and reasonable , the challenge to it is devoid of any merit; and thirdly, the issue as to compromise proposals stands implicitly circumscribed by the order of remand dated 31.10.1995 and cannot be allowed to be registered at this stage. The first of these three needs elaboration.

BPT has filed cross-objection. A question of significance arises whether a cross-objection , as contemplated by Order 41 Rule 22 of the Code of Civil Procedure, 1908, is at all maintainable in a civil appeal by special leave under Article 136 of the Constitution in this Court ? No decision by this Court squarely dealing with the point has been brought to our notice. **Alopi Nath & Ors. v/s Collector, Varanasi, 1986** (Supp) SCC 693, too is not directly on the point but comes very

near to it. A question as to the admissibility of cross objections under a local law of Uttar Pradesh arose for the consideration of this Court. The U.P. Municipal Corporations Adhiniyam, 1959, has constituted a tribunal with power and functions of the Court to deal with reference arising out of the acquisition of land for U.P. Municipal Corporation under the Land Acquisition Act 1849. The Indian Evidence Act 1872 and the Code of Civil Procedure, 1908, apply to all proceedings before the Tribunal. Its decision are final subject to appeal under Sub-Section 381 which reads and under :

"381.Appeals (1) An appeal to the High Court shall lie from a decision of the Tribunal , if

(a) The Tribunal grants a certificate that the Case is a fit one for appeal, or

(b) The High Court grants special leave to Appeal , provided that the High Court shall not grant such special leave unless the Tribunal has refused to grant a certicate under Clause (a)

XXX

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(3) Notwithstanding anything contained in the foregoing provisions, no appeal shall lie under this section unless the appellant has deposited the money which he is liable to pay under the order from which the appeal is filed.

(4) Subject to the provisions of sub-section (1), the provisions of the Code of Civil Procedure, 1908 with respect to appeals from original decrees,

shall,

so far as may be , apply to appeals under this

Act.

(5) (i) An application for the grant of a certificate under Clause (a) of subsection (1) may be made within thirty days from the date of decision of

the

Tribunal

(ii) An appeal against the decision of the

may be referred within sixty days from the date

the grant of the said certificate.

(iii) An application to the High Court for special leave to appeal under clause(b) of sub-section (1) may be made within sixty days from the date of the order of refusal of the said certificate.

Tribunal

of

A question arose whether cross-objections are maintainable before the High Court in an appeal under Section 381. This Court held that the provision of Order 41 Rule 22 of the CPC is inconsistent with the provisions of the said Act inasmuch as an appeal is admissible only by a certificate or special leave under Section 381. "It is difficult to contend that a cross-objection is anything other than an appeal as generally understood in law" The cross-objection was held to be not maintainable.

An overview of the nature of jurisdiction conferred on this Court under Article 136 of the Constitution becomes necessary. The framers of the Constitution visualized the Supreme Court as a Court having a final and appellate jurisdiction on questions relating to the constitutional validity of laws. It was to have appellate jurisdiction in all cases involving a substantial question of law as to the interpretation of the Constitution except where an appeal had come to this Court on a Certificate given by the High Court. In spite of the Certificate having been refused, this Court could grant a special leave. (The framing of India's Constitution, B.Shiva Rao, pp.483 & 488). Article 136 as framed, opens with a non-obstante clause giving it overriding effect on all other provisions contained in Chapter IV of the Constitution and confers a discretionary jurisdiction on this Court to grant special leave to appeal from any judgement, decree, determination sentence or order in any cause or matter passed or made by any Court or Tribunal in the territory of India. It is well-settled that Article 136 of the Constitution does not confer a right to appeal on any party; it confers a discretionary power on the Supreme Court to interfere in suitable cases. The very conferment of the discretionary power defies any attempt at exhaustive definition of such power. When no law confers a statutory right to appeal on a party, Article 136 cannot be called in aid to spell out such a right. (**M/s.Bengal Chemical & Pharmaceutical Works Ltd.** – 1959 Suppl.(2) SCR 136, The **State of Bombay v/s. Rusy Mistry and Anr.** – AIR 1960 SC 391 and **Basudev Hazra** – (1971) 1 SCC 433. Article 136 cannot be read as conferring a right on anyone to prefer an appeal to this Court; it only confers a right on a party to file an application seeking leave to appeal and a discretion on the Court to grant or not to grant such leave in its wisdom. The discretionary power of this Court is plenary in the sense that there are no words in Article 136 itself qualifying that power. The power is permitted to be invoked not in a routine fashion but in very exceptional circumstances as and when a question of law of general public importance arises or a decision sought to be impugned before this Court shocks its conscience. (**Arunachalam v/s. P.S.R.Sadanatham** – (1979) 2 SCC 297). This overriding and exceptional power has been vested in this Court to be exercised sparingly and only in furtherance of the cause of justice (**Subedar v/s. The State of UP** (1970) 2 SCC 445). The Constitution Bench in **Pritam Singh v/s. The State** – 1950 SCR 453 cautioned that the wide discretionary power vesting in this Court should be exercised sparingly and in exceptional cases only when special circumstances are shown to exist. In another Constitution Bench (**The Bharat Bank Ltd., Delhi** – 1950 SCR 459) Mahajan, J.(as his Lordship then was)reiterated the caution couching it in a different phraseology and said that this Court would not under Article 136 constitute itself into a Tribunal or Court just settling disputes and reduce itself into a mere Court of error. The power under Article 136 is an extraordinary power to be exercised in rare and exceptional cases and on well-known principles.

All said and done, in spite of the repeated pronouncements made by this Court declaring the law on Article 136 and repeatedly stating that this Court was a Court meant for dealing only with substantial questions of law, and in spite of the clear Constitutional overtones that the jurisdiction is intended to settle the law so as to enable the High Courts and the courts subordinate to follow the principles of law

propounded and settled by this Court and that this Court was not meant for redeeming injustice in individual cases, the experience shows that such self-imposed restrictions placed as fetters on its own discretionary power under Article 136 have not hindered the Court from leaping into resolution of individual controversies once it has been brought to its notice that the case has failed to deliver substantial justice or has perpetuated grave injustice to parties or is one which shocks the conscience of the Court or suffers on account of disregard to the form of legal process or with violation of the principles of natural justice. Often such are the cases where the judgement or decision or cause or matter brought to its notice has failed to receive the needed care, attention and approach at the hands of the Tribunal or Court below, or even the High Court at times, and the conscience of this Court pricks or its heart bleeds for imparting justice or undoing injustice. The practise and experience apart, the framers of the Constitution did design the jurisdiction of this Court to remain an extraordinary jurisdiction whether at the stage of granting leave or at the stage of deciding the appeal itself after the grant of leave. This Court has never done and would never do injustice nor allow injustice being perpetuated just for the sake of upholding technicalities.

A few decisions were brought to the notice of this Court by the learned Additional Solicitor General wherein this Court has made a reference to Order 41 Rule 22 of the CPC and permitted the respondent to support the decree or decision under appeal by laying challenge to a finding recorded or issue decided against him through the order, judgement or decree was in the end in his favour. Illustratively, see **Ramanbhai Ashabhai Patel** (1965) 1 SCR 712; **Management of Northern Railway Co-operative Society Ltd.** (1967) 2 SCR 476; **Bharat Kala Bhandar Ltd.** (1965) 3 SCR 499. The learned ASG is right. But we would like to clarify that this is done not because Order 41 Rule 22 CPC is applicable to appeals preferred under Article 136 of the Constitution; it is because of a basic principle of justice applicable to Courts of superior jurisdiction. A person who has entirely succeeded before a Court or Tribunal below cannot file an appeal solely for the sake of clearing himself from the effect of an adverse finding or an adverse decision on one of the issues as he would not be a person falling within the meaning of the words 'person aggrieved'. In an appeal or revision, as a matter of general principles, the party, who has an order in his favour, is entitled to show that even if the order was liable to be set aside on the grounds decided in his favour, yet the order could be sustained by reversing the finding on some other ground which was decided against him in the court below. This position of law is supportable on general principles without having recourse to Order 41 Rule 22 of the Code of Civil Procedure. Reference may be had to a recent decision of this Court in **Nalakath Sainuddin v/s. Koorikadam Sulaiman** – (2002) 6 SCC 1 and also **Banarsi & Ors. v/s. Ram Phal** – JT2003(5) SC 224. This Court being a Court of plenary jurisdiction, once the matter has come to it in appeal, shall have power to pass any decree and make any order which ought to have been passed or made as the facts of the case and law applicable thereto call for. Such a power is exercised by this Court by virtue of its own jurisdiction and not be having recourse to Order 41 Rule 33 of the CPC though in some of the cases observations are available to the effect that this Court can act on the principles deducible from Order 41 Rule 33 of the CPC. It may be added that this Court has jurisdiction to pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it. Such jurisdiction is conferred on this Court by Article 142 of the Constitution and this Court is not required to have recourse to any provision of CPC or any principle jurisdiction being available, this Court would not ordinarily make an order, direction or decree placing

the party appealing to it in a position more disadvantageous than in what it would have been had it not appealed.

The exercise of appellate jurisdiction under Article 136 of the Constitution is not dependent on the provisions of Order 41 of the CPC. The Court may frame rules governing its own procedure and practice. No such rule has been framed by the Court which entitles or permits a respondent to file a cross-objection.

Right to file cross-objections is the exercise of substantive right of appeal conferred by law. Cross-objections partake of the right of preferring an appeal. The procedure is different and so is the rule of limitation (See, **Municipal Corporation of Delhi & Ors. v/s. Intl. Security & Intelligence Agency Ltd.**, –JT 2003 (2) SC 103 and **Superintending Engineer & Ors. v/s. B.Subha Reddy** (1994) 4 SCC 423). Against a decision by the High Court or Tribunal which is partly in favour of one and partly in favour of the other, both the parties are aggrieved and each one of them has a right to move an application in this Court seeking leave to appeal. One who does not do so and allows the prescribed period of limitation to lapse, cannot come up by way of cross-objections on the other party coming up in appeal, though we must qualify our statement of law by reference to **Sri Babu Ram v/s. Shrimati Prasanni & Ors.** 1959 SCR 1403. In that case, in an election petition the respondent before this Court had sought to support the final conclusion of the High Court by challenging a finding recorded against her which was objected to by the appellant. This Court did not think it necessary to decide the point and observed that assuming the respondent should have preferred a petition for special leave to appeal against the finding of the high Court on the issue in question, yet the application made by the respondent for leave to urge additional ground could be converted into a petition for special leave to appeal against the said finding, and the delay made in filing the same could be condoned. Suffice it to observe that the observation so made by this Court takes care of an unusual situation where the Court feels inclined to relax the bar of limitation by taking a sympathetic view on condoning of the delay and entertains a belated prayer ex debito justitia. We cannot close the topic without referring to **Vashist Narain Sharma v/s. Dev Chandra and Ors.** – 1955(1)SCR 509(at p.519). It was an election appeal and the learned counsel for the respondent attempted to argue that he could support the decision of the Tribunal on other grounds which had been found against him and referred to the analogy of the Code of Civil Procedure which permits a respondent to take that course. The Court held – “that provision has no application under Article 136. We have no appeal before us on behalf of the respondent and we are unable to allow that question to be re-agitated”. **Vashist Narain Sharma’s** case is a three-Judges Bench decision and though available was not placed before the Court deciding **Sri Balu Ram’s** case, which again is a three-Judges Bench decision. Be that as it may, we are clearly of the opinion that in an appeal under Article 136 of the Constitution, the respondent cannot file cross-objections. If the judgement of the High Court was partly against the respondent, it was for it to have filed an application seeking leave to appeal. That right having been foregone by it and the period of limitation having expired, the cross-objections cannot be entertained. The filing of cross-objections by a respondent in this Court is an attempt at exercising the right of filing an application for special leave to appeal leave to appeal after the expiry of limitation and in a manner not contemplated by Article 136 of the Constitution. The Judgement of the High Court was delivered on 1.8.2000. Leave was granted to the appellant on 13.8.2001 in the presence of counsel for the respondent. Formal notice of lodgment of appeal was served on the respondent on 28.9.2001. The application by way of cross-objections has been filed on 31.7.2002. The only reason assigned in

the application seeking condonation of delay is that though the respondent-Trust had accepted the judgement of the High Court, it was advised and persuaded to file cross-objections because of the appellants having filed the application seeking leave to file an appeal and leave having been granted to them. We do not think such explanation, in the facts and circumstances of the case, amounts to sufficient cause for condoning the delay.

Even on merits we do not find any reason to entertain the plea sought to be urged in cross-objections. As we have already pointed out, the respondents have accepted the judgement of the High Court and also acted thereon. Merely because the other party has preferred an appeal, that cannot be a ground for the respondent also to disown that part of the judgement which was acceptable to it. Further, the issue which is now sought to be re-agitated stands concluded by the earlier order of remand passed by this Court. The respondent cannot now, in the second round of appeal to this Court, be permitted to urge such plea as it could have urged in the earlier round or which it urged and was not accepted by this Court.

The cross-objections preferred by the respondent-Trust are dismissed as not maintainable and as also being devoid of any merit.

All the appeals are directed to be disposed of in terms of the following directions :

- (i) by this judgement and in these proceedings the controversy as to the rates of rent applicable to the lessees shall be deemed to have been resolved for the period 1.4.1994 to 31.3.2000;
- (ii) the 'Compromise Proposals' as approved by the board of Trustees of the port of Mumbai in their meeting held on 13.8.1991 which are very fair, just and reasonable, subject to the modification that the revision in rent from 1.4.1994, shall be on the basis of rates of return at 10% for non-residential uses, based on Kirloskar Consultants' Report, instead of 15% and 12% respectively as was suggested in the 'Compromise proposals'. The 'Compromise Proposals' so modified shall bind the parties, and all the lessees even if not parties to these proceedings in view of the proceedings taken by the High Court under Order 1 Rule 8 of the C.P.C.;
- (iii) the rates of rent for the period upto 31.3.1994 shall remain as suggested in the 'Compromise Proposals';
- (iv) the interest chargeable by the Board of Trustees of the port of Mumbai in respect of arrears of rent for the period commencing 1.4.1994 upto the date of actual payment shall be calculated at the rate of 6% per annum;
- (v) subject to the abovesaid modifications, all other terms and conditions of 'Compromise Proposals', shall remain unchanged;
- (vi) within a period of eight weeks from today lease deeds consistently with the 'Compromise Proposals', subject to the modifications as above said, shall be executed by the lessees and even if lease deeds are not executed the terms of 'Compromise Proposals' shall bind the lessees;
- (vii) such of the tenants as may wish to contend that there are certain real and material distinguishing features to be considered for the purpose of carving

out an exception and relaxing the general terms and entitling them to reduction in the rates of rent applicable as above said, may file representations each setting out specific grounds and relevant facts precisely in that regard in the office of the Bombay Port Trust under a written acknowledgement. The Bombay Port Trust shall maintain a register of all such representations filed. No representation filed after the expiry of six weeks from today shall be received or entertained.

- (viii) We request the High Court to appoint a retired Judge, preferably (and not necessarily) of the rank of District Judge, as a Sole Adjudicator of the objections/representations filed in terms of the above decision. The High Court shall appoint a place of sitting and the amount of remuneration to be paid per case (and not on per day basis) to the Adjudicator. The fee shall be paid by each lessee filing the representation for decision. The requisite secretarial and clerical assistance shall be provided by the Bombay Port Trust or as directed by the High Court. The learned Adjudicator shall commence his proceedings on expiry of eight weeks from today and on the record of representations being made available to him and shall conclude the same within a period of 4 months thereafter. The Adjudicator shall not be bound to record evidence and may determine and dispose of the representations by summary hearing, receiving such affidavits and documents as required by him, and/or carrying out inspection of the leased properties, if he deems fit to do so. The Adjudicator shall examine and decide to what relief in the rate of rent and/or any other term of lease such representing lessee is entitled. The decision by the Adjudicator shall be final and binding on the parties. In case of any difficulty in implementing this procedure directions may be sought for from the High Court.
- (ix) The abovesaid procedure is not to be utilised as justification for withholding the payment of any arrears of rent to be calculated in terms of these directions. The payments have to be made and made regularly. Any amount becoming due for refund in terms of any relief granted by the Adjudicator shall be refunded or adjusted thereafter.
- (x) We expect the lessees to co-operate in finalisation of the disputes. We also expect the lessees to desist from preferring immaterial or frivolous objects or objections just for their sake. If anyone does so the learned Adjudicator may impose costs on him which shall be payable to and recoverable under law by the BPT as arrears of rent.
- (xi) For the purpose of appointing an Adjudicator and dealing with application, if any, seeking resolution of difficulties, in terms of the preceding direction, we request the learned Chief Justice of the High Court of Bombay at Mumbai to assign this matter for being placed before any learned judge of his Court. We, on our part, suggest in the interest of expeditious disposal, that the matter may be assigned to any one of the judges available in the High Court out of these who had earlier dealt with the matter (i.e., the learned Single Judge who passed the order dated 1/4-10-1990, the two learned Judges who passed the judgement dated 11/12-3-1993 and the two learned judges who passed the order dated 1.8.2000). His acquaintance with the facts of the case would accelerate the hearing and disposal. However, this is only a suggestion and is not in any manner intended to fetter the power of the learned Chief Justice to assign the matters for hearing in the High Court.

- (xii) The issue as to the applicability of the Maharashtra Rent Control Act, 1999, to the Port of Mumbai and the property held by it is left open to be decided in appropriate proceedings.

The appeals and all the pending applications shall stand disposed of. There shall be no order as to costs in these proceedings.

Sd/-
.....J
(R.C.Lahoti)

Sd/-
.....J
(Brijesh Kumar)

New Delhi
January 13, 2004

SUPREME COURT OF INDIA

Certified copy

Matter No.C.A.No.5559/2001

Brief Cause Title - J.H.Wadia v/s.
Board of Trustees, Port of Mumbai & Anr.

gm:zenith:sc-judgement