



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

(1) WRIT PETITION (L) NO.3058 OF 2017

Shri S.K.Parmanandan,
age: 74 years, carrying on
business in the name and
style of Shri Ganesh Tyre
Services, at 381, Reay Road,
Corner of Dilima Street,
Mazgaon, Mumbai-400 001

Petitioner

Versus

01 Board of Trustees of the Port
of Mumbai, having their address
at Port Bhavan, Ballard Estate,
Shoorji Vallabhdas Marg, Fort,
Mumbai – 400 003.

02 Municipal Corporation of
Greater Mumbai, a Corporation
constituted under the Mumbai
Municipal Corporation Act,
having its Office at Mahapalika
Marg, Mumbai 400 001.

03 Union of India, through its
Office at Aaykar Bhavan,
Marine Lines,
Mumbai 400 020.

Respondents

Dr.Abhinav Chandrachud a/w Mr.Ajay Panicker and Ms.Hemali Kurne, advocates i/by M/s. Ajay Law Associates for Petitioner.
Mr.Shrihari Aney, Senior Counsel a/w Mr.Ajay Khaire, Mr.Mandar Bangale, advocates i/by M/s The Law Point for Respondent No.1.
Ms.Trupti Puranik a/w Ms.Pooja Yadav and Mr.Sagar Patil, advocates for Respondent No.2.
Mr.D.N.Mishra a/w Mr.P.S.Gujar, Ms.Richa Mishra and Ms.Gul Asnani, advocates for Respondent No.3.

WITH
(2) WRIT PETITION (L) NO.3536 OF 2017

Ebrahim Hasan Nakhawa,
age: about 46 years, Housekeeping,
Residing at 147, 21BA, D'lima Street,
Maharashtra Pragati Kendra,
Ground Floor, near dockyard road
Station, Mazgaon, Mumbai.

Petitioner

Versus

01 The Chairman and Estate Manager,
Board of Trustees of the Port
of Mumbai, having its address
at Port Bhavan, Ballard Estate,
Shoorji Vallabhdas Marg, Fort,
Mumbai – 400 003.

02 The Commissioner,
Municipal Corporation of
Greater Mumbai, having its
office at 2nd Floor, Municipal
Building, Opposite VT Station,
CST, Mahapalika Marg,
Mumbai 400 001.

03 The Union of India,
having Office at Pratishta
Bhavan,
Churchgate.

Respondents

Mr.Ashish S. Gaikwad a/w Ms.Bhavana Khichi and Mr.Abhishek Mishra, advocates for petitioner.

Mr.Milind Sathe, Senior Counsel a/w Mr.Vishal Talsania, Mr.Ajay Khaire, Mr.Mandar Bangale i/by M/s. The Law Point for Respondent No.1.

Ms.Trupti Puranik a/w Ms.Pooja Yadav and Mr.Sagar Patil, advocates for Respondent No.2.

Mr.D.N.Mishra a/w Mr.P.S.Gujar, Ms.Richa Mishra and Ms.Gul Asnani, advocates for Respondent No.3.

WITH
(3) WRIT PETITION NO.3542 OF 2017

Satyam Elakarambath,
age: 57 years, Occupation:
None, Residing at 147, 21BA,
D'lima Street,
Maharashtra Pragati Kendra,
Ground Floor,
Near Dockyard Road Station,
Mazgaon, Mumbai.

Petitioner

Versus

01 The Chairman and Estate Manager,
Board of Trustees of the Port
of Mumbai, having its address
at Port Bhavan, Ballard Estate,
Shoorji Vallabhdas Marg, Fort,
Mumbai – 400 003.

02 The Commissioner,
Municipal Corporation of
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having Office at Pratishta
Bhavan,
Churchgate.

Respondents

Mr.Ashish S. Gaikwad a/w Ms.Bhavana Khichi and Mr.Abhishek Mishra, advocates for petitioner.

Mr.Ajay Khaire, Mr.Mandar Bangale i/by M/s. The Law Point for Respondent No.1.

Ms.Trupti Puranik a/w Ms.Pooja Yadav and Mr.Sagar Patil, advocates for Respondent No.2.

Mr.D.N.Mishra a/w Mr.P.S.Gujar, Ms.Richa Mishra and Ms.Gul Asnani, advocates for Respondent No.3.

WITH
(4) WRIT PETITION NO.3540 OF 2017

Jamila Salim Shaikh,
age: about 47 years, Occupation:
Housewife, at 147, 21BA,
D'lima Street,
Maharashtra Pragati Kendra,
Ground Floor,
Near Dockyard Road Station,
Mazgaon, Mumbai.

Petitioner

Versus

01 The Chairman and Estate Manager,
Board of Trustees of the Port
of Mumbai, having its address
at Port Bhavan, Ballard Estate,
Shoorji Vallabhdas Marg, Fort,
Mumbai – 400 003.

02 The Commissioner,
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Greater Mumbai, having its
office at 2nd Floor, Municipal
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Mumbai 400 001.

03 The Union of India,
having Office at Pratishta
Bhavan,
Churchgate.

Respondents

Mr.Ashish S. Gaikwad a/w Ms.Bhavana Khichi and Mr.Abhishek Mishra, advocates for petitioner.

Mr.Ajay Khaire, Mr.Mandar Bangale i/by M/s. The Law Point for Respondent No.1.

Ms.Trupti Puranik a/w Ms.Pooja Yadav and Mr.Sagar Patil, advocates for Respondent No.2.

Mr.D.N.Mishra a/w Mr.P.S.Gujar, Ms.Richa Mishra and Ms.Gul Asnani, advocates for Respondent No.3.

WITH
(5) WRIT PETITION NO.3539 OF 2017

Ismail Hasan Nakhawa,
age: about 44 years, Occupation:
Worker, Residing at 147, 21BA,
D'lima Street,
Maharashtra Pragati Kendra,
Ground Floor,
Near Dockyard Road Station,
Mazgaon, Mumbai.

Petitioner

Versus

01 The Chairman and Estate Manager,
Board of Trustees of the Port
of Mumbai, having its address
at Port Bhavan, Ballard Estate,
Shoorji Vallabhdas Marg, Fort,
Mumbai – 400 003.

02 The Commissioner,
Municipal Corporation of
Greater Mumbai, having its
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having Office at Pratishta
Bhavan,
Churchgate.

Respondents

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Mr.Ajay Khaire, Mr.Mandar Bangale i/by M/s. The Law Point for Respondent No.1.

Ms.Trupti Puranik a/w Ms.Pooja Yadav and Mr.Sagar Patil, advocates for Respondent No.2.

Mr.D.N.Mishra a/w Mr.P.S.Gujar, Ms.Richa Mishra and Ms.Gul Asnani, advocates for Respondent No.3.

WITH
(6) WRIT PETITION NO.3538 OF 2017

Sumesh Satyan,
age: about 31 years, Occupation:
Service, Residing at 147, 21BA,
D'lima Street,
Maharashtra Pragati Kendra,
Ground Floor,
Near Dockyard Road Station,
Mazgaon, Mumbai.

Petitioner

Versus

01 The Chairman and Estate Manager,
Board of Trustees of the Port
of Mumbai, having its address
at Port Bhavan, Ballard Estate,
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02 The Commissioner,
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Building, Opposite VT Station,
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03 The Union of India,
having Office at Pratishta
Bhavan,
Churchgate.

Respondents

Mr.Ashish S. Gaikwad a/w Ms.Bhavana Khichi and Mr.Abhishek Mishra, advocates for petitioner.

Mr.Ajay Khaire, Mr.Mandar Bangale i/by M/s. The Law Point for Respondent No.1.

Ms.Trupti Puranik a/w Ms.Pooja Yadav and Mr.Sagar Patil, advocates for Respondent No.2.

Mr.D.N.Mishra a/w Mr.P.S.Gujar, Ms.Richa Mishra and Ms.Gul Asnani, advocates for Respondent No.3.

WITH
(7) WRIT PETITION NO.3537 OF 2017

Hanifa Hasan Nakhawa,
age: about 49 years, Occupation:
Housewife, Residing at 147, 21BA,
D'lima Street,
Maharashtra Pragati Kendra,
Ground Floor,
Near Dockyard Road Station,
Mazgaon, Mumbai.

Petitioner

Versus

01 The Chairman and Estate Manager,
Board of Trustees of the Port
of Mumbai, having its address
at Port Bhavan, Ballard Estate,
Shoorji Vallabhdas Marg, Fort,
Mumbai – 400 003.

02 The Commissioner,
Municipal Corporation of
Greater Mumbai, having its
office at 2nd Floor, Municipal
Building, Opposite VT Station,
CST, Mahapalika Marg,
Mumbai 400 001.

03 The Union of India,
having Office at Pratishta
Bhavan,
Churchgate.

Respondents

Mr.Ashish S. Gaikwad a/w Ms.Bhavana Khichi and Mr.Abhishek Mishra, advocates for petitioner.

Mr.Ajay Khaire, Mr.Mandar Bangale i/by M/s. The Law Point for Respondent No.1.

Ms.Trupti Puranik a/w Ms.Pooja Yadav and Mr.Sagar Patil, advocates for Respondent No.2.

Mr.D.N.Mishra a/w Mr.P.S.Gujar, Ms.Richa Mishra and Ms.Gul Asnani, advocates for Respondent No.3.

WITH
(8) NOTICE OF MOTION (WL) No.705 of 2017 in
WRIT PETITION (L) NO.3058 OF 2017

Shri S.K.Parmanandan,
age: 74 years, carrying on
business in the name and
style of Shri Ganesh Tyre
Services, at 381, Reay Road,
Corner of Dilima Street,
Mazgaon, Mumbai-400 001

Petitioner

Versus

01 Board of Trustees of the Port
of Mumbai, having their address
at Port Bhavan, Ballard Estate,
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Municipal Corporation Act,
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03 Union of India, through its
Office at Aaykar Bhavan,
Marine Lines,
Mumbai 400 020.

Respondents

Dr.Abhinav Chandrachud a/w Mr.Ajay Panicker and Ms.Hemali
Kurne, advocates i/by M/s. Ajay Law Associates for Petitioner.
Mr.Shrihari Aney, Senior Counsel a/w Mr.Ajay Khaire, Mr.Mandar
Bangale, advocates i/by M/s The Law Point for Respondent No.1.
Ms.Trupti Puranik a/w Ms.Pooja Yadav and Mr.Sagar Patil,
advocates for Respondent No.2.
Mr.D.N.Mishra a/w Mr.P.S.Gujar, Ms.Richa Mishra and Ms.Gul
Asnani, advocates for Respondent No.3.

**CORAM : R.M.BORDE AND
R.G.KETKAR, JJ.
RESERVED ON : 09th February, 2018.
PRONOUNCED ON: 27th March, 2018.**

JUDGMENT (Per R.M.Borde, J.) :

1 Heard. Rule. Rule made returnable forthwith and by consent of learned Counsel for respective parties, petitions are heard finally at the stage of admission.

2 Petitioners, in these petitions, are taking exception to the notices issued on 06.11.2017 by Respondent No.1- Port Trust, calling upon them to vacate the premises within twelve hours. Petitioners also pray for a declaration that bye-law no.9 framed by Respondent No.1 is *ultra vires* the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and/or the Major Port Trusts Act, 1963 (read with erstwhile Bombay Port Trusts Act, 1879).

3 Petitioners claim to be in occupation of structures admeasuring various dimensions situate at Reay Road, Mazgaon, Bombay. Petitioners claim to be in possession since many years anterior to 1st April, 1962, the datum line prescribed by the Municipal Corporation for tolerating commercial premises. The properties occupied by the petitioners are assessed for taxes and they are continuously paying property tax to the Mumbai Municipal Corporation.

4 Petitioners have also been issued a license under the Maharashtra Shops and Establishments Act for carrying out the

business. Most of them are also regularly paying professional tax. Petitioners contend that abruptly notices have been issued by Respondent No.1 calling upon them to vacate the premises within twelve hours, failing which, they are threatened with demolition of structures. Petitioners claim that they are in settled possession of the premises since 1963 and as such, respondents are not authorised to take action of summary eviction. It is contended that the proposed action, based on the show cause notice by dispensing with observance of principles of natural justice, is not sustainable. It is further contended that the notices are contrary to the requirements under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, which provide for a detailed procedure for eviction from the Government premises. Petitioners claim that they have been threatened with deprivation of their right to earn their livelihood and shelter by the proposed action of eviction from the business premises occupied by them since long. In substance, petitioners contend that:

[I] Bye law No.9, which authorises the Port Trust authorities to evict a person from premises with a prior notice of twelve hours is *ultra vires* the provisions of Public Premises Act;

[II] Before taking a drastic action of evicting the persons from occupation of the public premises, no prior hearing is contemplated, thereby the requirement of observance of principles of natural justice, has been breached;

[III] Bye law No.9, in itself, does not permit demolition/eviction out of the immovable properties;

5 Bye Law No.9 of the Bye Laws framed by the Bombay Port Trust, reads thus:

9 No person shall without permission in writing of the Docks Manager, the Estate Manager or his deputy or assistant or any other officer of the Board for the time being, construct or permit to be constructed any road, thoroughfare, pathway, Port Trust buildings or vacant plots, etc., in the Port Trust Estate by placing, or allowing to be placed, any goods or other articles for storage or by permitting any goods, or other articles to remain or be thereon or by causing or permitting the same to be obstructed or hindered in any other manner. Any goods, articles or other hindrances causing any obstruction to any road, thoroughfare, pathway, Port Trust buildings or vacant plots, etc., shall be liable to be removed by or under the orders of the Docks Manager, the Estate Manager, or their respective deputies or assistants or any other officer of the Board after 12 hours' notice for removal of the same, such notice being affixed at the place of such obstruction. If any such goods or articles or other hindrances so removed remain unclaimed for a period of 15 days or if the person claiming them fails to pay the reasonable expenses of such removal together with a sum equal to 10% of such expenses for the safe custody of the said goods, articles or hindrances, the same shall be liable to be sold. The expenses of the removal, safe custody and sale as also the amount of rates and charges specified in Appendix 'A' here to which might have become

due in respect of such goods in accordance with the scale of rates for the time being in force and the amount of penalty for the breach of the Bye-Law calculated at the rate hereinafter mentioned shall be payable out of the sale proceeds of the said goods, articles or other hindrances and the balance shall be paid to the person entitled to the said goods, articles or hindrances provided that claim for the same is made within three years from the date of the sale. The charges specified in Appendix 'A' herein will be levied on all goods, materials or rubbish of any kind stored on any Port Trust land or any portion of the Port Trust buildings or for making any other temporary use of any such land or building for which no scale of charges is otherwise provided (excluding premises to which the provisions of the B.P.T. Docks or Bunders Scale of Rates or the B.P.T. Railway Goods Tariff are applicable). The charge underlying Column (4) of the said Appendix shall be levied on initial detection (irrespective of the period), whilst the charge under column (5) in the said Appendix shall be levied from the date of continuance after detection. Permission granted for temporary use of premises shall not be deemed to create a tenancy or other like interest in favour of the occupant, who will be liable to be evicted at any time without notice. The Board are under no liability, whatsoever, in respect of any goods stored, or encroachments made on their premises and may remove them without incurring any liability and without prejudice to their rights to recover the charges specified in the said Appendix or any equivalent amount by way of compensation or for wrongful use and occupation of the Board's premises.

Any person infringing this By-Law shall also be liable to a fine not exceeding Rupees One hundred for each infringement or, where the infringement continues after notice to

remove the same has been affixed as aforesaid, to a fine not exceed Rupees Fifty per diem for every day the infringement continues after the affixing of the notice.

6 The bye-laws are framed under Sections 73 and 74 of the Bombay Port Trusts Act, 1879. The provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short, "Act of 1971"), are necessary to be taken into consideration. "public premises" is defined in Section 2(e) to mean:

2(e) "public premises: means-

(1) any premises belonging to, or taken on lease or requisitioned by, or on behalf of the Central Government, and includes any such premises which have been placed by that Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1860 (61 of 1980), under the control of the Secretariat of either House of Parliament for providing residential accommodation to any member of the staff of that Secretariat;

(2) any premises belonging to, or taken on lease by, or on behalf of,-

(i) any company as defined in section 3 of the Companies Act, 1956 (1 of 1956), in which not less than fifty-one per cent of the paid up share capital is held by the Central Government or any company which is a subsidiary (within the meaning of that Act) of the first-mentioned company;

(ii) any corporation (not being a company as defined in section 3 of the Companies Act, 1956 (1 of 1956) or a local authority) established by

or under a Central Act and owned or controlled by the Central Government;

(iii) any University established or incorporated by any Central Act.

(iv) any Institute incorporated by the Institutes of Technology Act, 1961 (59 of 1961);

(v) any Board of Trustees constituted under the Major Port Trusts Act, 1963 (38 of 1963);

(vi) the Bhakra Management Board constituted under section 79 of the Punjab Reorganisation Act, 1966 (31 of 1966), and that Board as and when re-named as the Bhakra-Beas Management Board under sub-section (6) of section 80 of that Act;

(vii) any State Government or the Government of any Territory situated in the National Capital Territory of Delhi or in any other Union Territory;

(viii) any Cantonment Board constituted under the Cantonments Act, 1924 (2 of 1924); and

(3) in relation to the [National Capital Territory of Delhi]-

(i) any premises belonging to the Municipal Corporation of Delhi, or any Municipal Committee or notified area committee,

(ii) any premises belonging to the Delhi Development Authority, whether such premises are in the possession of, or leased out by, the said Authority, and

() any premises belonging to, or taken on lease or requisitioned by, or on behalf of any State Government or the Government of any Union Territory;

(4) any premises of the enemy property as defined in clause © of section 2 of the Enemy Property Act, 1968.

7 “Unauthorised occupation” is defined in clause (g) of Section 2, which reads thus:

2(g) “unauthorised occupation”, in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.

8 Section 4 of the Act of 1971 authorises the Estate Officer to issue a notice in writing calling upon the persons concerned to show cause why an order of eviction should not be made. Sub-section (2) of Section 4 requires that notice shall:-

(a) specify the grounds on which the order of eviction is proposed to be made; and

(b) require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in, the public premises,-

(i) to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than seven days from the date of issue thereof; and

(ii) to appear before the estate officer on the date specified in the notice along with the evidence which they intend to produce in support of the cause shown, and also for personal hearing, if such hearing is desired.

Sub-section (3) of Section 4 provides that:

(3) The estate officer shall cause the notice to be served by having it affixed on the outer door or some other conspicuous part of the public premises, and in such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly given to all persons concerned.

9 Section 5 of the Act relates to Eviction of unauthorised occupants-

5 Eviction of unauthorised occupants--

(1) If, after considering the cause, if any, shown by any person in pursuance of a notice under section 4 and (any evidence produced by him in support of the same and after personal hearing, if any, given under clause (b) of sub-section (2) of section 4], the estate officer is satisfied that the public premises are in unauthorised occupation, the estate officer may make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated, on such date as may be specified in the order, by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises.

(2) If any person refuses or fails to comply with the order of eviction (on or before the date specified in the said order or within fifteen days of the date of its publication under sub-section (1), whichever is later,) the estate officer or any

other officer duly authorised by the estate officer in this behalf [may, after the date so specified or after the expiry of the period aforesaid, whichever is later, evict that person] from, and take possession of, the public premises and may, for that purpose, use such force as may be necessary.

10 Section 5A of the Act provides for power to removal unauthorised construction, etc, which provides thus:

5A Power to remove unauthorised constructions, etc.-

(1) No person shall--

- (a) erect or place or raise any building or any movable or immovable structure or fixture,
- (b) display or spread any goods,
- (c) bring or keep any cattle or other animal,

on, or against, or in front of, any public premises except in accordance with the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy such premises.

(2) Where any building or other immovable structure or fixture has been erected, placed or raised on any public premises in contravention of the provisions of sub-section (1), the estate officer may serve upon the person erecting such building or other structure or fixture, a notice requiring him either to remove, or to show cause why he shall not remove such building or other structure or fixture from the public premises within such period, not being less than seven days, as he may specified in the notice; and on the omission or refusal of such person either to show cause, or to remove such

building or other structure or fixture from the public premises, or where the cause shown is not, in the opinion of the estate officer, sufficient, the estate officer may, by order, remove or cause to be removed the buildings or other structure or fixture from the public premises and recover the cost of such removal from the person aforesaid as an arrear of land revenue.

(3) Where any movable structure or fixture has been erected, placed or raised, or any goods have been displayed or spread, or any cattle or other animal has been brought or kept, on any public premises, in contravention of the provisions of sub-section (1) by any person, the estate officer may, by order, remove or cause to be removed without notice, such structure, fixture, goods cattle or other animal, as the case may be, from the public premises and recover the cost of such removal from such person as an arrear of land revenue;

11 Whereas, Section 5B provides for Order of demolition of unauthorised construction. Remedy of appeal has been provided in Section 9 of the Act and it is provided that the appellate officer shall be a District Judge of the district in which the public premises are situate or such other judicial officer in that district of not less than ten years' standing as the district judge may designate in this behalf.

Section 15 of the Act provides for:

15 Bar of jurisdiction- No Court shall have jurisdiction to entertain any suit or proceeding in respect of-

(a) the eviction of any person who is in unauthorised occupation of any public premises, or

(b) the removal of any building, structure or fixture or goods, cattle or other animal from any public premises under section 5A, or

(c) the demolition of any building or other structure made, or ordered to be made, under section 5B, or

(cc) the sealing of any erection or work or of any public premises under section 5C, or

(d) the arrears of rent payable under sub-section (1) of section 7 or damages payable under sub-section (2), or interest payable under sub-section (2A), of that section, or

(e) the recovery of-

(i) costs of removal of any building, structure or fixture or goods, cattle or other animal under section 5A, or

(ii) expenses of demolition under section 5B, or

(iii) costs awarded to the Central Government or statutory authority under sub-section (5) of section 9, or

(iv) any portion of such rent, damages, costs of removal, expenses of demolition or costs awarded to the Central Government or the statutory authority.

12 It is contended that there is a complete scheme providing for eviction of unauthorised person from public premises. Bye-Law No.9, it is contended, do not provide for elaborate

procedure like or as has been provided in the Act of 1971. The form of notice contemplated under Bye-law No.9 is different and is not elaborate or specific as provided in Section 4, nor there is any provision made for affording hearing, providing an opportunity to lead evidence and substantiate case of an unauthorised person. The authority is also not expected to pass a detailed order, as has been provided in the Act of 1971 nor there is any provision made for tendering an appeal. It is, thus, contended that the procedure prescribed under Bye-law No.9 of directing eviction of a person with 12 hours' notice and without complying with basic principles of natural justice, is arbitrary and capricious. It is also contended that bye-law, in itself, do not provide for eviction out of the immovable property. The bye-law relates only to movable property and there is no authority conferred under the bye-law to evict any person in occupation of an immovable property. It is also contended that the petitioners are in settled possession over the property.

13 It is strenuously contended by Dr.Chandrachud, learned Counsel appearing for the petitioner, that bye-law no.9, which permits the Port Trust authorities to evict a person with 12 hours' prior notice is *ultra vires* the provisions of Public Premises Act, 1971. A subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition, it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. This is because subordinate legislation must yield to plenary legislation. It may also be questioned for the reason that it is

unreasonable, unreasonable not in the sense of not being a reasonable, but in the sense that it is manifestly arbitrary. (Indian Express News Paper Vs. Union of India, 1985 (1) SCC 641 para 75).

14 In paragraph no.78 of the judgment, in the matter of **Indian Express Newspapers (Bombay) Private Ltd. & others Vs Union of India and others**, (1985) 1 SCC 641, the Hon'ble Supreme Court has observed thus:

“78 That subordinate legislation cannot be questioned on the ground of violation of principles of natural justice on which administrative action may be questioned has been held by this Court in *The Tulsipur Sugar Co. Ltd. v. Notified Area Committee, Tulsipur, Rameshchandra Kachardas Porwal v. State of Maharashtra* and in *Bates v. Lord Hailsham of St. Marylebone*. A distinction must be made between delegation of a legislative function in the case of which the question of reasonableness cannot be enquired into and the investment by statute to exercise particular discretionary powers. In the latter case the question may be considered on all grounds on which administrative action may be questioned, such as, non-application of mind, taking irrelevant matters into consideration, failure to take relevant matters into consideration etc. etc. On the facts and circumstances of a case, a subordinate legislation may be struck down as arbitrary or contrary to statute, if it fails to take into account very vital facts which either expressly or by necessary implication are required to be taken into consideration by the statute or, say, the Constitution. This can only be done on the ground that it does not conform to the statutory or constitutional requirements or that it offends Article 14 or Article 19(1)(a) of

the Constitution. It cannot, no doubt, be done merely on the ground that it is not reasonable or that it has not taken into account relevant circumstances which the Court considers relevant.”

15 It is the contention of petitioners that since bye-law no.9 is repugnant to the provisions of the Public Premises Act, which lays down detailed procedure for eviction, the later legislation i.e. Act of 1971, must prevail over the bye-law which has been framed under the Bombay Port Trusts Act. It is also contended by the petitioners that there is no source or power under the Major Port Trusts Act, entitling the Port Trust to frame the bye-laws, as in the instant case, frame bye-law no.9. In short, it is contended that there is no provision entitling framing of such bye-law under the Major Port Trusts Act, which was an earlier legislation, has been repealed by the Major Port Trusts Act and as such, bye-laws framed, which are referable to the provisions of Bombay Port Trusts Act, cannot be pressed into service.

16 The petitioners contend that the Public Premises Act is a special law which provides for eviction of unauthorised occupants out of the premises owned or controlled by the Central Government, whereas, Major Port Trusts Act relates to administration of the ports and is a general law. The General Law i.e. Major Port Trusts Act, framed in earlier point of time, shall yield to the special law and as such, according to the petitioners, provisions of Public Premises Act, 1971, shall prevail over the provisions of Major Port Trusts Act. It is further contended that even if it is assumed that both laws are special laws and operate

in different field, the later special law i.e. Public Premises Act, shall prevail over in the event of any repugnancy in the provisions of both the enactments. The petitioners contend that the doctrine of repugnancy has nothing to do with the list of subjects in the Schedule to Constitution of India and the different entries, under which the legislation has been framed. However, it has to be understood that both the laws are passed by the Parliament. The special provisions relating eviction out of the public premises, incorporated in the Public Premises Act, 1971, shall prevail over bye-law no.9, which has been framed under the general law i.e. Major Port Trusts Act.

17 Reliance is placed on the judgment in the matter of **Ashoka Marketing Ltd. & another Vs. Punjab National Bank and others**, (1990) 4 SCC 406. The question before the Supreme Court was, as to whether provisions of Public Premises Act override the provisions of Delhi Rent Control Act. The expression “unauthorised occupation” is explained in paragraph 30 of the judgment. It is observed that, the definition of expression “unauthorised occupation” contained in Section 2(g) of the Public Premises Act is in two parts. In the first part, the said expression has been defined to mean the occupation by any person of the public premises without authority for such occupation. It implies occupation by a person who has entered into occupation of any public premises without lawful authority as well as occupation which was permissive at the inception but has ceased to be so. The second part of the definition is inclusive in nature and it expressly covers continuance in occupation by any person of the public premises after the authority (whether by way of grant or any

other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.

18 In the instant matter, admittedly, all the petitioners have not been inducted in the premises with any authority or any authorisation from the Port Trust authorities. The petitioners themselves claim that their occupation over the premises is referable to the Bombay Municipal Corporation and they have not been inducted with the authority, express or implied by the Port Trust.

19 So far as the aspect, whether provisions of Public Premises Act override the provisions of Rent Control Act, it is observed by the Hon'ble Supreme Court in the matter of **Ashoka Marketing** (*supra*), that the question will have to be considered in the light of the principles of statutory interpretation applicable to laws made by the same legislature. It would be appropriate to quote observations made by the Hon'ble Supreme Court in paragraphs no.50, 51, 52, 53 and 55, which read thus:

50 One such principle of statutory interpretation which is applied is contained in the latin maxim : *leges posteriores priores conterarias abrogant* (later laws abrogate earlier contrary laws). This principle is subject to the exception embodied in the maxim : *generalialia specialibus non derogant* (a general provision does not derogate from a special one.) This means that where the literal meaning of the

general enactment covers a situation for which specific provision is made by another enactment contained in the earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one (*Bennion, Statutory Interpretation* pp 433-34)

51 The rationale of this rule is thus explained by this Court in the *J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. State of Uttar Pradesh* (SCR p. 194)

"The rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and judges but springs from the common understanding of men and women that when the same person gives two directions one covering a large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier directions should have effect."

52 In *U.P. State Electricity Board v. Hari Shanker Jain*, this Court has observed : (SCR p. 366 : SCC p. 27, para 9)

"In passing a special Act, Parliament devotes its entire consideration to a particular subject. When a general Act is subsequently passed, it is logical to presume that Parliament has not repealed or modified the former special Act unless it appears that the special Act again received consideration from Parliament."

53 In *Life Insurance Corporation v. D.J. Bahadur*, Krishna Iyer, J. has pointed out : (SCR p. 1127 : SCC pp. 350-51, para 52)

"In determining whether a statute is a special or a general one, the focus must be on the principal subject matter plus the particular perspective. For certain purposes, an Act may be general and for certain other purposes it may be special and we cannot blur distinctions when dealing with finer point of law."

55 The Rent Control Act makes a departure from the general law regulating the relationship of landlord and tenant contained in the Transfer of Property Act inasmuch as it makes provision for determination of standard rent, it specifies the grounds on which a landlord can seek the eviction of a tenant, it prescribes the forum for adjudication of disputes between landlords and tenants and the procedure which has to be followed in such proceedings. The Rent Control Act can, therefore, be said to be a special statute regulating the relationship of landlord and tenant in the Union territory of Delhi. The Public Premises Act makes provision for a speedy machinery to secure eviction of unauthorised occupants from public premises. As opposed to the general law which provides for filing of a regular suit for recovery of possession of property in a competent court and for trial of such a suit in accordance with the procedure laid down in the Code of Civil Procedure, the Public Premises Act confers the power to pass an order of eviction of an unauthorised occupant in a public premises on a designated officer and prescribes the procedure to be followed by the said officer before passing such an order. Therefore, the Public Premises Act is also a special statute relating to eviction of unauthorised occupants from public premises. In other words, both the

enactments, namely, the Rent Control Act and the Public Premises Act, are special statutes in relation to the matters dealt with therein. Since, the Public Premises Act is a special statute and not a general enactment the exception contained in the principle that a subsequent general law cannot derogate from an earlier special law cannot be invoked and in accordance with the principle that the later laws abrogate earlier contrary laws, the Public Premises Act must prevail over the Rent Control Act.

20 The petitioners have relied upon the principles of “*ejusdem generis*” and “*noscitur a sociis*” to contend that the word “other hindrances” followed by “any goods, articles” in bye-law no.9, must be construed to mean and include only movable properties. The bye law provides that no person shall without permission in writing of the Docks Manager, the Estate Manager or his deputy or assistant or any other officer of the Board for the time being, construct or permit to be constructed any road, thoroughfare, pathway, Port Trust buildings or vacant plots, etc., in the Port Trust Estate by placing, or allowing to be placed, any goods or other articles for storage or by permitting any goods, or other articles to remain or be thereon or by causing or permitting the same to be obstructed or hindered in any other manner. Any goods, articles or other hindrances causing any obstruction to any road, thoroughfare, pathway, Port Trust buildings or vacant plots, etc., shall be liable to be removed by or under the orders of the Docks Manager, the Estate Manager, or their respective deputies or assistants or any other officer of the Board after 12 hours’ notice for removal of the same, such notice being affixed at the place of such obstruction. It is contended that the term “*other hindrances*

causing any obstruction" is referable to any goods or articles and does not refer to any permanent structure.

21 Reliance is placed on the judgment in the matter of **Nirma Industries Limited & another Vs. Securities and Exchange Board of India**, (2013) 8 SCC 20. In paragraphs no.63, 64, 65, 66, 68 and 69 of the judgment, the Hon'ble Apex Court has observed thus:

63 The term "*ejusdem generis*" has been defined in Black's Law Dictionary, 9th Edn. as follows :

"(1) A canon of construction holding that when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same class as those listed."

64 The meaning of the expression "*ejusdem generis*" was considered by this Court on a number of occasions and has been reiterated in *Maharashtra University of Health Sciences v. Satchikitsa Prasarak Mandal*. The principle is defined thus : (SCC p. 791, para 27)

"27. The Latin expression '*ejusdem generis*' which means 'of the same kind or nature' is a principle of construction, meaning thereby when general words in a statutory text are flanked by restricted words, the meaning of the general words are taken to be restricted by implication with the meaning of the restricted words. This is a principle which arises 'from the linguistic implication by which words having

literally a wide meaning (when taken in isolation) are treated as reduced in scope by the verbal context'. It may be regarded as an instance of ellipsis, or reliance on implication. This principle is presumed to apply unless there is some contrary indication (see Glanville Williams, 'The Origins and Logical Implications of the Eiusdem Generis Rule')."

65 Earlier also a Constitution Bench of this Court in *Kavalappara Kottarathil Kochuni v. State of Madras* construed the principle of *eiusdem generis* wherein it was observed as follows : (AIR p. 1103, para 50)

"50. The rule is that when general words follow particular and specific words of the same nature, the general words must be confined to the things of the same kind as those specified. But it is clearly laid down by decided cases that the specific words must form a distinct genus or category. it is not an inviolable rule of law, but is only permissible inference in the absence of *an indication to the contrary.*"

(emphasis supplied)

66 Again this Court in another Constitution Bench decision in *Amar Chandra Chakraborty v. Collector of Excise* observed as follows : (SCC p. 447, para 9)

"9. The *eiusdem generis* rule strives to reconcile the incompatibility between specific and general words. This doctrine applies when (i) the statute contains an enumeration of specific words; (ii) the subjects of the enumeration constitute a class or

category; (iii) that class or category is not exhausted by the enumeration; (iv) the general term follows the enumeration; and (v) *there is no indication of a different legislative intent.*"

(emphasis supplied)

68 We are unable to accept the submission of Mr. Shyam Divan that clause (d) would permit SEBI to accept the offer of withdrawal even in circumstances when it has become uneconomical for the acquirer to perform the public offer. The rule of ejusdem generis as defined by this Court in *CIT v. McDowell and Co. Ltd.* is as follows : (SCC pp. 762-63, para 20)

"20. The principle of statutory interpretation is well known and well settled that when particular words pertaining to a class, category or genus are followed by general words, the general words are construed as limited to things of the same kind as those specified. This rule is known as the rule of ejusdem generis. It applies when:

(1) the statute contains an enumeration of specific words;

(2) the subjects of enumeration constitute a class or category;

(3) that class or category is not exhausted by the enumeration;

(4) the general terms follow the enumeration ; and

(5) there is no indication of a different legislative intent."

69 Mr. Divan has sought to persuade us that clause (d) in fact carves out an exception out of the exceptions provided in clauses (b) and (c). We see no justification in moving away from the Latin maxim *noscitur a sociis*, which contemplates that a statutory term is recognised by its associated words. The Latin word "sociis" means society. It was pointed out by Viscount Simonds in *Attorney General v. Prince Ernst Augustus of Hanover* that when general words are juxtaposed with specific words, general words cannot be read in isolation. Their colour and their contents are to be derived from their context. Applying the aforesaid principle, we are unable to stretch the meaning of terms "such circumstances" from the realm of *impossibility* to the realm of *economic undesirability*. In essence, the submission made by Mr. Divan is that unless they are allowed to walk away from the public offer they would have to bear losses which would otherwise have been shared by the erstwhile shareholders of the target company. Accepting such a proposition would be contrary to the aims and objectives of the Takeover Code which is to ensure transparency in acquisition of a large percentage of shares in the target company. It would also encourage undesirable and speculative practices in the stock market. Therefore, we are unable to accept the submission of Mr. Shyam Divan. Regulation 27(1)(d) would empower SEBI to permit withdrawal of an offer merely because it has become uneconomical to perform the public offer.

22 It is, thus, contended that the general term appearing in bye-law no.9, "other hindrances" shall have to be construed to mean that the same is limited to the things of the same kind those are specified in the bye-law. It is contended that the bye-law

contains:

- (i) an enumeration of specific words;
- (ii) the subjects of the enumeration constitute a class or category;
- (iii) the class or category is not exhausted by the enumeration;
- (iv) the general terms follows the enumeration; and
- (v) there is no indication of a different legislative intent.

23 Therefore, the general term in the bye-law must be said to be referable to only instances recorded in the bye-law. It is further contended that the maxim *noscitur a sociis* contemplates that a statutory term is recognised by its associated words, as has been observed by the Hon'ble Supreme Court and the general term does not give any other meaning apart from the enumerations recorded in the bye-law. While interpreting the general term, it shall be understood with their colour and their contents are to be derived from their context. It is, thus, contended that the bye-law is to be so interpreted to mean that it applies only to movables and does not relate to immovable properties.

24 It is further contended by the learned Counsel appearing for petitioners that the petitioners are in settled possession over the properties and, therefore, they cannot be

evicted by adopting procedure established under the Public Premises Act, 1971. Reliance is placed on the judgment in the matter of **Rame Gowda (Dead) by L.Rs. Vs. M. Varadappa Naidu (Dead) by L.Rs. & another**, (2004) 1 SCC 769. The settled possession has been defined to mean that, it must be:

- (a) specific;
- (b) undisturbed;
- (c) to the knowledge of the owner or without any attempt of concealment by the trespasser.

25 It is observed in paragraph 8 of the judgment by the Hon'ble Supreme Court, thus:

8 It is thus clear that so far as Indian law is concerned, the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the right owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking the law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the later has

dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner.

26 In para 9 of the judgment, the Hon'ble Supreme Court has observed that following tests must be adopted as a working rule for determining the attributes of "settled possession":-

- (i) that the trespasser must be in actual physical possession of the property over a sufficiently long period;
- (ii) that the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of *animus possidendi*. the nature of possession of the trespasser would, however, be a matter to be decided on the facts and circumstances of each case;
- (iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner; and
- (iv) that one of the usual tests to determine the quality of settled possession, in the case of

culturable land, would be whether or not the trespasser, after having taken possession had grown any crop. If the crop had been grown by the trespasser, then even the true owner, has no right to destroy the crop grown by the trespasser and take forcible possession.

27 It is contended that the petitioners are in possession over the property since prior to 1962 and to the knowledge of the Port Trust Authorities. Since they are in settled possession over the property, they cannot be evicted by adopting a summary manner, which procedure, in itself, is arbitrary and violative of principles of natural justice.

28 It is contended on behalf of the Respondents that the bye-laws framed under Bombay Port Trusts Act cannot be held to be *ultra vires* the Public Premises Act, 1971. The subject bye-laws were framed under Section 73 of the Bombay Port Trusts Act, 1879 and are still continuing as law in view of Section 133(2D)(c) of the Major Port Trusts Act, 1963. Section 133(2D)(c) read with Section 133 (2A) of the Major Port Trusts Act, 1963, expressly saves the bye-laws, rules, regulations and other actions, taken or done, under the Bombay Port Trusts Act, 1879.

29 In the matter of **Vishwanath R. Raut & Co. Vs. The Board of Trustees of the Port of Bombay**, 1994 MhLJ 359, it is held that the bye-laws no.117 and 117(A) framed under section 133(2D)(c) of the Major Port Trusts Act, give power to the Port Trust to regulate entry into the docks; and if the Port Trust is a

statutory bailee under section 43(1)(ii) of the Act in respect of goods entrusted to it, it must follow that the Docks Manager has also the power to suspend the dock entry permit, as has been done in the said case. The bye-laws framed under Section 73 of the Bombay Port Trusts Act, 1979 are saved by Section 133(2D)(c) of the Major Port Trusts Act, 1963 and shall be deemed to have been passed under the Bombay Port Trusts Act, 1879.

30 So far as the argument of the petitioners as regards repugnancy between the Public Premises Act, 1971 and Major Port Trusts Act, 1963, it is contended that such question does not arise since the subordinate legislation made under Major Port Trusts Act, 1963 is a special law in contrast with Public Premises Act, 1971, which is a general law. It is the contention of respondents that Public Premises Act, 1971 and Major Port Trusts Act, 1963 are legislations made on two different topics and, although made by the Parliament, are passed under different lists of the Seventh Schedule of the Constitution of India and operates in completely different spheres and fields. Major Port Trusts Act, 1963 is a statute passed by the Parliament on a subject enumerated in List I and Public Premises Act, 1971 is a statute enacted by Parliament on a subject enumerated in List III, in so far as properties belonging to Bombay Port Trust are concerned. The relevant entries in the List I and List III, under which Public Premises Act, 1971, is passed, are reproduced herein:

Entry 32 of List – I (for Govt. Land):

32 Property of the Union and the revenue

there from, but as regards property situated in a State subject to legislation by the State, save in so far as Parliament by law otherwise provides.

Entry 6, 7 & 46 of List - III

6 Transfer of property other than agricultural land; registration of deeds and documents.

7 Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land.

46 Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.

31 The Major Port Trusts Act, 1963, is clearly enacted under Entry 27 of List - I, for constitution of Port Authorities and to vest the administration, control and management of such ports, to the authorities and for matters connected therewith. Whereas, the Public Premises Act, 1971 deals with eviction of unauthorised occupants from land belonging to government entities, like that of the Bombay Port Trust, is enacted under Entries 6, 7 and 46 of List - III. Both enactments, according to the Respondents, operate in different fields and, therefore, there arises no question of any

repugnancy. According to the Respondents, Major Port Trusts Act, 1963, which deals with administration, control and management of the Ports, under Entry No.27 of List – I, is a special law, whereas, for the purposes of Major Port Trusts Act, the Public Premises Act, 1971, providing for eviction of unauthorised occupants, though may be a special law with reference to Transfer of Property Act, 1882, Indian Contracts Act, 1872, however, with reference to the Major Port Trusts Act, 1963, the Public Premises Act, 1971, is a general law. According to the Respondents, since there is no conflict between the Major Port Trusts Act, 1963 and the Public Premises Act, 1971, there can no conflict of subordinate legislation between the Major Port Trusts Act, 1963, a special law with the Public Premises Act, 1971, a general law. It is contended that even if there are issues of some incidental conflict or overlap between them, the Major Port Trusts Act, 1963, being a special law, will prevail over the Public Premises Act, 1971, a general law.

32 It is contended by the Respondents that petitioners are trespassers in relation to the property belonging to the Port Trust and the Public Premises Act, which applies to public premises held or continued in unauthorised occupation, will not apply to trespassers. The premises, as defined in Section 2(c) of the Public Premises Act, means any land or building or part of the building and includes the gardens, grounds and outhouses, if any, appertaining to such building or part of a building, and any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof. “Unauthorised occupation” in relation to Public Premises, as defined in Section 2(g) of the Public Premises Act, 1971, means the occupation by any person of the public premises

without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority, whether by way of grant or any other mode of transfer, under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.

33 It is contended that the Major Port Trusts Act, 1963 and Public Premises Act, 1971, are two distinct legislations operating in different fields. However, in case of incidental conflict, the Major Port Trusts Act, 1963, being a special law, will prevail over the Public Premises Act, 1971, a general law. It is contended by the Respondents that in fact, petitioners are encroachers and they have raised structures, which is causing obstruction on roads, thoroughfares, and as such, by no stretch of imagination, it can be inferred that they are in occupation of the premises requiring eviction under Public Premises Act, 1971.

34 A distinction shall have to be made on consideration of the arguments advanced by the respondents in respect of unauthorised occupation by the trespassers of an area, which is provided for roads, thoroughfares and other amenities, which are actually required for carrying out functions of ports and the occupiers who are occupying in building or land, which is the property of the Port Trust, but may be outside the purview of actual functions of the Port. Bye-law no.9 contemplates removal of obstruction in relation to roads, thoroughfares, pathway, Port Trust Buildings or vacant plots, etc. Bye-law no.9 will obviously not apply to the persons who have been inducted by the Bombay Port

Trust authorities in the premises and their tenure is over or is terminated or are not vacating the premises and the procedure provided under the Public Premises Act, 1971, will have to be resorted to.

35 Petitioners, placing reliance on the judgment in the matter of **Ashoka Marketing** (*supra*), contend that even if assuming that the Major Port Trusts Act is a special statute, since the Public Premises Act is a special statute and not a general enactment in relation to the matters dealt with therein, the the exception contained in the principle that a subsequent general law cannot derogate from an earlier special law, cannot be invoked and in accordance with the principle that the later laws abrogate earlier contrary laws, the Public Premises Act must prevail over the Major Port Trusts Act.

36 It shall have to be understood that the Major Port Trusts Act, including bye-laws framed thereunder, are a complete Code and the Act relates to substantive rights relating to matters concerning the Ports. The Public Premises Act lays down a procedure for eviction from the Government premises. Both the Acts operate in distinct and separate spheres and are traceable to different legislative sources. Assuming that there is an overlap, the doctrine of repugnancy would be attracted if there is a direct conflict between the two provisions and if they occupy the same field. Where the provisions of two enactments, while fulfilling the objectives of their enactments, incidentally overlap each other, it would amount to incidental entrenchment or encroachment and cannot be termed to be a repugnancy inviting *ultra vires*. Reliance can be placed on the judgment in the matter of **Rajiv Sarin and**

another Vs. State of Uttarakhand and others, AIR 2011 SC 3081.

In paragraphs no.28, 29, 30 & 38 to 40, the Hon'ble Supreme Court has observed thus:

28 It is trite law that the plea of repugnancy would be attracted only if both the legislations fall under the Concurrent List of the Seventh Schedule of the Constitution. Under Article 254 of the Constitution, a State law passed in respect of a subject matter comprised in List III i.e. the Concurrent list of the Seventh Schedule of the Constitution would be invalid if its provisions are repugnant to a law passed on the same subject by the Parliament and that too only in a situation if both the laws i.e. one made by the State legislature and another made by the Parliament cannot exist together. In other words, the question of repugnancy under Article 254 of the Constitution arises when the provisions of both laws are completely inconsistent with each other or when the provisions of both laws are absolutely irreconcilable with each other and it is impossible without disturbing the other provision, or conflicting interpretations resulted into, when both the statutes covering the same field are applied to a given set of facts. That is to say, in simple words, repugnancy between the two statutes would arise if there is a direct conflict between the two provisions and the law made by the Parliament and the law made by the State Legislature occupies the same field. Hence, whenever the issue of repugnancy between the law passed by the Parliament and of State legislature are raised, it becomes quite necessary to examine as to whether the two legislations cover or relate to the same subject matter or different.

29 It is by now a well-established rule of interpretation that the entries in the list being fields of legislation must receive liberal

construction inspired by a broad and generous spirit and not a narrow or pedantic approach. This Court in the cases of Navinchandra Mafatlal v. CIT, reported in MANU/SC/0070/1954 : AIR 1955 SC 58 and State of Maharashtra v. Bharat Shanti Lal Shah, reported in MANU/SC/3789/2008 : (2008) 13 SCC 5 held that each general word should extend to all ancillary and subsidiary matters which can fairly and reasonably be comprehended within it. In those decisions it was also reiterated that there shall always be a presumption of constitutionality in favour of a statute and while construing such statute every legally permissible effort should be made to keep the statute within the competence of the State Legislature.

30 As and when there is a challenge to the legislative competence, the courts will try to ascertain the pith and substance of such enactment on a scrutiny of the Act in question. In this process, it would also be necessary for the courts to examine the true nature and character of the enactment, its object, its scope and effect to find out whether the enactment in question is genuinely referable to a field of the legislation allotted to the respective legislature under the constitutional scheme.

.....

38 For repugnancy under Article 254 of the Constitution, there is a twin requirement, which is to be fulfilled; firstly, there has to be a "repugnancy" between a Central and State Act; and secondly the Presidential assent has to be held as being non-existent. The test for determining such repugnancy is indeed to find out the dominant intention of both legislations and whether such dominant intentions of both the legislations are alike or different. To put it simply, a provision in one legislation in order to give effect to its dominant purpose may

incidentally be on the same subject as covered by the provision of the other legislation, but such partial or incidental coverage of the same area in a different context and to achieve a different purpose does not attract the doctrine of repugnancy. In nutshell, in order to attract the doctrine of repugnancy, both the legislations must be substantially on the same subject.

39 Repugnancy in the context of Article 254 of the Constitution is understood as requiring the fulfillment of a "Triple text" reiterated by the Constitutional Bench in *M. Karunanidhi v. Union of India* MANU/SC/0159/1979 : (1979) 3 SCC 431 @ page 443-444, which reads as follows :

24 It is well settled that the presumption is always in favour of the constitutionality of a statute and the onus lies on the person assailing the Act to prove that it is unconstitutional. *Prima facie*, there does not appear to us to be any inconsistency between the State Act and the Central Acts. Before any repugnancy can arise, the following conditions must be satisfied :

That there is a clear and direct inconsistency between the Central Act and the State Act.

That such an inconsistency is absolutely irreconcilable.

That the inconsistency between the provisions of the two Acts is of such nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other.

40 In other words, the two legislations must

cover the same field. This has to be examined by a reference to the doctrine of pith and substance.

37 It is observed in paragraph 50 of the judgment that, in a nutshell, whether on account of the exhaustive code doctrine or whether on account of irreconcilable conflict concept, the real test is that, would there be a room or possibility for both the Acts to apply. Repugnancy would follow only if there is no such room or possibility.

38 In the instant case, bye-law no.9 gets attracted where there is obstruction or illegal encroachment or raising of structures over the roads, pathways and the infrastructural amenities required for conducting activities of the Port. As has been recorded earlier, it must be emphasized that bye-law no.9 will not get attracted for evicting an occupant legally inducted in a building or the premises, as defined under the Public Premises Act, by the Port Trust authorities even after revocation of lease or license. Since the provisions contained in bye-laws framed under the Major Port Trusts Act shall apply, bestowed with summary power to evict the trespassers who are occupying infrastructural facilities such as public road or proposed public road, a pathway or proposed pathway, which are needed to provide basic amenities for the Port Trust.

39 In the matter of **M. Karunanidhi Vs. Union of India & another**, (1979) 3 SCC 431, it has been laid down that the presumption is always in favour of the constitutionality of a statute and the onus lies on the person assailing the Act to prove that it is

unconstitutional. Before any repugnancy can arise, following conditions must be satisfied:

(a) That there is a clear and direct inconsistency between the Central Act and the State Act.

(b) That such an inconsistency is absolutely irreconcilable.

(c) That the inconsistency between the provisions of the two Acts is of such a nature as to bring the two Acts into direct collision with each other and a situation is reached, where it is impossible to obey the one without disobeying the other.

40 Learned Counsel appearing for the petitioners contend that the inconsistency is of such a nature that it is impossible to obey the provisions of bye-law which would lead to breach of Act of 1971. As has been recorded above, it needs to be emphasized that bye-law no.9 operate in a different field and different circumstances and the inconsistency is reconcilable without declaring the provision to be repugnant. It is also permissible, as has been contended on behalf of Respondents, to relax the rigour or barrier of 12 hours' notice by extending the period. An effort has to be made to reconcile the provisions so that those do not lead to direct collision.

41 While interpreting the meaning and scope of bye-law no.9, the principles of interpretation, specially the principle of *noscitur a sociis*, the Mischief Rule and the doctrine of Harmonious Construction and the doctrine of Purposive interpretation shall apply. The words used in bye-law no.9 cannot be limited by an artificial or selective application of *noscitur a sociis*. To apply the meaning to the words “any goods or other articles” by trying to associate them to similar things using the common parlance test, would have an effect of ignoring other words of Bye-Law No.9. The object of bye-law no.9 is to remove all kinds of obstructions, which would be clear from perusal of the phrase “.... temporary use of premises shall not be deemed to create tenancy or other like interest in favour of the occupant” or “.....in respect of goods stored, or encroachments made on their premises.....”. The words used in the bye law must be understood in its natural meaning by applying doctrine of harmonious construction. The purpose of bye-law no.9 has also to be understood by application of Mischief Rule so that the object of framers of the bye-laws shall have to be achieved i.e. removal of obstruction over the dock properties.

42 It would be appropriate to refer to the judgment in the matter of **State of Bombay & others Vs. Hospital Mazdoor Sabha**, AIR 1960 2 SC 610. In paragraph 9 of the judgment, it is observed thus:

“9 It is, however, contended that, in construing the definition, we must adopt the rule of construction *noscuntur a sociis*. This rule, according to Maxwell, means that, when two or more words which are susceptible of analogous meaning are coupled together they

are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general.”

It is further observed:

“.... It must be borne in mind that *noscuntur a sociis* is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. It is only where the intention of the legislature in associating wider words with words of narrower significance is doubtful, or otherwise not clear that the present rule of construction can be usefully applied. It can also be applied where the meaning of the words of wider import is doubtful; but, where the object of the legislature in using wider words is clear and free of ambiguity, the rule of construction in question cannot be pressed into service.”

43 In the matter of **Maharashtra University of Health Sciences & others Vs. Satchikitsa Prasarak Mandal & others**, (2010) 3 SCC 786, the Hon'ble Supreme Court, while construing the principle of *ejusdem generis*, has laid down similar principle in **Kavalappara Kattarathil Kochuni Vs. State of Madras** (AIR 1960 SC 1080). In paragraph 50 of the said judgment, the Supreme Court has observed thus:

“50..... The rule is that when general words follow particular and specific words of the same nature, the general words must be confined to the things of the same kind as those specified. But it is clearly laid down by decided

cases that the specific words must form a distinct genus or category. It is not an inviolable rule of law, but is only permissible inference *in the absence of any indication to the contrary.*”

(emphasis supplied)

44 In the matter of **Grid Corporation of Orissa Limited & others Vs. Eastern Metals and Ferro Alloys & others**, (2011) 11 SCC 334, while dealing with golden rule of interpretation, prescribing that the statute shall be read and understood in its natural, ordinary and popular sense, the Hon'ble Apex Court, in paragraph 25, has observed thus:

“25 This takes us to the correct interpretation of Clause 9.1. The golden rule of interpretation is that the words of a statute have to be read and understood in their natural, ordinary and popular sense. Where however the words used are capable of bearing two or more constructions, it is necessary to adopt purposive construction, to identify the construction to be preferred, by posing the following questions: (i) What is the purpose for which the provision is made? (ii) What was the position before making the provision? (iii) Whether any of the constructions proposed would lead to an absurd result or would render any part of the provision redundant? (iv) Which of the interpretations will advance the object of the provision? The answers to these questions will enable the court to identify the purposive interpretation to be preferred while excluding others. Such an exercise involving ascertainment of the object of the provision and choosing the interpretation that will advance the object of the provision can be undertaken, only where the language of the provision is capable of more than one construction. (See

Bengal Immunity Co. Ltd. Vs. State of Bihar and Kanai Lal Sur Vs. Paramnidhi Sadhukhan and generally Justice G.P.Singh's Principles of Statutory Interpretation, 12th Edn., published by Lexis Nexis, pp.124 to 131, dealing with the rule in Heydon case.)”

45 It would also be appropriate to refer to the judgment in the matter of **Shailesh Dhairyawan Vs. Mohan Balkrishna Lulla**, (2016) 3 SCC 619, wherein, in paragraphs no.31 to 33, it is observed by the Hon'ble Supreme Court, thus:

“31 The aforesaid two reasons given by me, in addition to the reasons already indicated in the judgment of my learned Brother, would clearly demonstrate that the provisions of Section 15(2) of the Act require purposive interpretation so that the aforesaid objective/purpose of such a provision is achieved thereby. The principle of “purposive interpretation” or “purposive construction” is based on the understanding that the court is supposed to attach that meaning to the provisions which serve the “purpose” behind such a provision. The basic approach is to ascertain which is it designed to accomplish? To put it otherwise, by interpretative process the court is supposed to realise the goal that the legal text is designed to realise. As Aharon Barak puts it:

“Purposive interpretation is based on three components: language, purpose, and discretion. Language shapes the range of semantic possibilities within which the interpreter acts as a linguist. Once the interpreter defines the range, he or she chooses the legal meaning of the text from among the (express or implied) semantic possibilities. The semantic component

thus sets the limits of interpretation by restricting the interpreter to a legal meaning that the text can bear in its (public or private) language.”

32 Of the aforesaid three components, namely, language, purpose and discretion “of the court”, insofar as purposive component is concerned, this is the *ratio juris*, the purpose at the core of the text. This purpose is the values, goals, interests, policies and aims that the text is designed to actualise. It is the function that the text is designed to fulfill.

33 We may also emphasize that the statutory interpretation of a provision is never static but is always dynamic. Though the literal rule of interpretation, till some time ago, was treated as the “golden rule”, it is now the doctrine of purposive interpretation which is predominant, particularly in those cases where literal interpretation may not serve the purpose or may lead to absurdity. If it brings about an end which is at variance with the purpose of statute, that cannot be countenanced. Not only legal process thinkers such as Hart and Sacks rejected intentionalism as a grand strategy for statutory interpretation, and in its place they offered purposivism, this principle is now widely applied by the courts not only in this country but in many other legal systems as well.”

46 Considering the principles laid down in the judgments cited above, the contention of the petitioners, based upon the principle *noscitur a sociis* as well as *ejusdem generis* thAT a restrictive interpretation shall have to be applied to the words referred to in the bye-laws, is not acceptable. The purposive interpretation of the bye-laws shall have to be considered for

serving the object of legislation i.e. the authority of the Port to exploit its docks for port's purposes and removing any obstruction therefrom.

47 Assuming that there is conflict between bye-law no.9 and the provisions of Public Premises Act, bye-law no.9 may be read down to provide sufficient protection to the persons likely to be affected by granting sufficient period for their removal from the encroached portion. Petitioners do not have any enforceable legal right in relation to the property. Though there may be a damage, there is no legal injury to the petitioners since they do not have any legal right to occupy the portion, which is required for development activities like roads, pathways, etc. The principles of *injuria sine damnum and ibi jus ubi remedium* are attracted.

48 Reference is inevitable to the landmark Constitutional Bench judgment of the Hon'ble Supreme Court in the matter of **Olga Tellis and others Vs. Bombay Municipal Corporation and others**, (1985) 3 SCC 545. The case, of the petitioners in Kamraj Nagar group of cases was that over 500 hutments in this particular basti, which was built in about 1960 by persons who were employed by a Construction Company engaged in laying water pipes along the Western Express Highway. The residents of Tulsi Pipe Road hutments claimed that they have been living there since 10 to 15 years and are engaged in various trades. Initially, they approached the High Court seeking ad interim injunction, which was in force for some time. However, it is alleged that on July 23, 1981, they were huddled into State Transport buses for being deported out of Bombay. The action of the respondents was

challenged by the petitioners on the ground that it is violative of Articles 19 and 21 of the Constitution. They sought for a declaration that the provisions of Sections 312, 313 and 314 of the Bombay Municipal Corporation Act, 1888, are invalid and in violation of Articles 19 and 21 of the Constitution. While dealing with the issue, the Hon'ble Supreme Court, in paragraphs no.37 and 42 to 45 and 51, has observed thus:

“37 Two conclusions emerge from this discussion : one, that the right to life which is conferred by Article 21 includes the right to livelihood and two, that it is established that if the petitioners are evicted from their dwellings, they will be deprived of their livelihood. But the Constitution does not put an absolute embargo on the deprivation of life or personal liberty. By Article 21, such deprivation has to be according to procedure established by law. In the instant case, the law which allows the deprivation of the right conferred by Article 21 is the Bombay Municipal Corporation Act, 1888, the relevant provisions of which are contained in Sections 312(1), 313(1)(a) and 314. These sections which occur in Chapter XI entitled 'Regulation of Streets' read thus :

Section 312 *Prohibition of structures or fixtures which cause obstruction in streets-* (1) No person shall, except with the permission of the Commissioner under Section 310 or 317, erect or set up any wall, fence, rail, post, step, booth or other structure or fixture in or upon any street or upon or over any open channel, drain, well or tank in any street so as to form an obstruction to, or an encroachment upon, or a projection over, or to occupy, any portion or such street, channel,

drain, well or tank.

Section 313 *Prohibition of deposit, etc., of things in streets--* (1) No person shall, except with the written permission of the Commissioner,-

(a) place or deposit upon any street or upon any open channel, drain or well in any streets (or in any public place) any stall, chair, bench, box, ladder, bale or other thing so as to form an obstruction thereto or encroachment thereon.

Section 314 Power to remove without notice anything erected, deposited or hawked in contravention of Section 312, 313 or 313-A.-- The Commissioner may, without notice, cause to be removed--

(a) any wall, fence, rail, post, step, booth or other structure or fixture which shall be erected or set up in or upon any street, or upon or over any open channel, drain, well or tank contrary to the provisions of sub-section (1) of Section 312, after the same comes into force in the city or in the suburbs, after the date of the coming into force of the Bombay Municipal Extension of Limits) Act, 1950 or in the extended suburbs after the date of the coming into force of the Bombay Municipal Further Extension of Limits and Schedule BBA (Amendment) Act, 1956 ;

(b) any stall, chair, bench, box, ladder, bale board or shelf, or any other

thing whatever placed, deposited, projected, attached, or suspended in, upon, from or to any place in contravention of sub-section (1) of Section 313;

(c) any article whatsoever hawked or exposed for sale in any public place or in any public street in contravention of the provisions of Section 313-A and any vehicle, package, box, board, shelf or any other thing in or on which such article is placed or kept for the purpose of sale.

By Section 3(w), "street" includes a causeway, footway, passage, etc., over which the public have a right of passage or access.

42 Having given our anxious and solicitous consideration to this question, we are of the opinion that the procedure prescribed by Section 314 of the Bombay Municipal Corporation Act for removal of encroachments on the footpaths or pavements over which the public has the right of passage or access, cannot be regarded as unreasonable, unfair or unjust. There is no static measure of reasonableness which can be applied to all situations alike. Indeed, the question, "It this procedure reasonable ?" implies and postulates the inquiry as to whether the procedure prescribed is reasonable in the circumstances of the case. in *Francis Coralie Mullin*, Bhagwati, J., said at p. 524 : (SCC p. 615, para 4)

..... it is for the Court to decide in the exercise of its constitutional power of judicial review whether the deprivation of life or personal liberty in a given case is by procedure, which is reasonable, fair and just or it is otherwise.

(emphasis supplied)

43 In the first place, footpaths or pavements are public properties which are intended to serve the convenience of the general public. They are not laid for private use and indeed, their use for a private purpose frustrates the very object for which they are carved out from portions of public streets. The main reason for laying out pavements is to ensure that the pedestrians are able to go about their daily affairs with a reasonable measure of safety and security. That facility, which has matured into a right of the pedestrians, cannot be set at naught by allowing encroachments to be made on the pavements. There is no substance in the argument advanced on behalf of the petitioners that the claim of the pavement dwellers to put up constructions on pavements for passing and repassing, are competing claims and that, the former should be preferred to the latter. No one has the right to make use of a public property for a private purpose without the requisite authorisation and, therefore, it is erroneous to contend that the pavement dwellers have the right to encroach upon pavements by constructing dwellings thereon. Public streets, of which pavements form a part, are primarily dedicated for the purpose of passage and, even the pedestrians have but the limited right of using pavements for the purpose of passing and repassing. So long as a person does not transgress the limited purpose for which pavements are made his use thereof is legitimate and lawful. But, if a person puts any public property to a use for which it is not intended and is not authorised so to use it, he becomes a trespasser. The common example which is cited in some of the English cases (see, for example, *Hickman v. Maisey*) is that if a person, while using a highway for passage, sits down for a time to rest himself by the side of the road, he does not commit a trespass. But, if a persons puts up a dwelling on the pavement, whatever may be the economic compulsions behind such an act, his

user of the pavement would become unauthorised. As stated in *Hickman* it is not easy to draw an exact line between the legitimate user of a highway as a highway and the user which goes beyond the right conferred upon the public by its dedication. But, as in many other cases, it is not difficult to put cases well on one side of the line. Putting up a dwelling on the pavement is a case which is clearly on one side of the line showing that it is an act of trespass. Section 61 of the Bombay Municipal Corporation Act lays down the obligatory duties of the Corporation, under clause (d) of which, it is its duty to take measures for abatement of all nuisances. The existence of dwellings on the pavements is unquestionably a source of nuisance to the public, at least for the reason that they are denied the use of pavements for passing and repassing. They are compelled, by reason of the occupation of pavements by dwellers, to use highways and public streets as passages. The affidavit filed on behalf of the Corporation shows that the fall-out of pedestrians in large numbers on highways and streets constitutes a grave traffic hazard. Surely, pedestrians deserve consideration in the matter of their physical safety, which cannot be sacrificed in order to accommodate persons who use public properties for a private purpose, unauthorizedly. Under clause (o) of Section 61 of the B.M.C. Act, the Corporation is under an obligation to remove obstructions upon public streets and other public places. The counter-affidavit of the Corporation shows that the existence of hutments on pavements is a serious impediment in repairing the roads, pavements, drains and streets. Section 63(k), which is discretionary, empowers the Corporation to take measures to promote public safety, health or convenience not specifically provided otherwise. Since it is not possible to provide any public conveniences to the pavement dwellers on or near the pavements, they answer the nature's call on the pavements or on the streets adjoining them. These facts provide the background to the provision for removal of

encroachments on pavements and footpaths.

44 The challenge of the petitioners to the validity of the relevant provisions of the Bombay Municipal Corporation Act is directed principally at the procedure prescribed by Section 314 of that Act, which provides by clause (a) that the Commissioner may, without notice, take steps for the removal of encroachments in or upon any street, channel, drains, etc. By reason of Section 3(w), 'street' includes a causeway, footway or passage. In order to decide whether the procedure prescribed by Section 314 is fair and reasonable, we must first determine the true meaning of that section because, the meaning of the law determines its legality. If a law is found to direct the doing of an act which is forbidden by the Constitution or to compel, in the performance of an act, the adoption of a procedure which is impermissible under the Constitution, it would have to be struck down. Considered in its proper perspective, Section 314 is in the nature of an enabling provision and not of a compulsive character. It enables the Commissioner, in appropriate cases, to dispense with previous notice to persons who are likely to be affected by the proposed action. It does not require and, cannot be read to mean that, in total disregard of the relevant circumstances pertaining to a given situation, the Commissioner must cause the removal of an encroachment without issuing previous notice. The primary rule of construction is that the language of the law must receive its plain and natural meaning. What Section 314 provides is that the Commissioner may, without notice, cause an encroachment to be removed. It does not command that the Commissioner shall without notice cause an encroachment to be removed. Putting it differently, Section 314 confers on the Commissioner the discretion to cause an encroachment to be removed with or without notice. That discretion has to be exercised in a reasonable manner so as to comply with the constitutional mandate that the

procedure accompanying the performance of a public act must be fair and reasonable. We must lean in favour of this interpretation because it helps sustain the validity of the law. Reading Section 314 as containing in command not to issue notice before the removal of an encroachment will make the law invalid.

45 It must further be presumed that, while vesting in the Commissioner the power to act without notice, the Legislature intended that the power should be exercised sparingly and in cases of urgency which brook no delay. In all other cases, no departure from the audi alteram partem rule ('Hear the other side') could be presumed to have been intended. Section 314 is so designed as to exclude the principles of natural justice by way of exception and not as a general rule. there are situations which demand the exclusion of the rules of natural justice by reason of diverse factors like time, place, the apprehended danger and soon. The ordinary rule which regulates all procedure is that persons who are likely to be affected by the proposed action must be afforded an opportunity of being heard as to why that action should not be taken. The hearing may be given individually or collectively, depending upon the facts of each situation. A departure from this fundamental rule of natural justice may be presumed to have been intended by the Legislature only in circumstances which warrant it. Such circumstances must be shown to exist, when so required, the burden being upon those who affirm their existence.

51 Normally, we would have directed the Municipal Commissioner to afford an opportunity to the petitioners to show why the encroachments committed by them on pavements or footpaths should not be removed. But, the opportunity which was denied by the Commissioner was granted by us in an ample measure, both sides having made their contentions elaborately on facts as well as on law. Having considered those

contentions, we are of the opinion that the Commissioner was justified in directing the removal of the encroachments committed by the petitioners on pavements, footpaths or accessory roads. As observed in *S.L. Kapoor*, "... where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because courts do not issue futile writs". Indeed, in that case, the Court did not set aside the order of supersession in view of the factual position stated by it. But, though we do not see any justification for asking the Commissioner to hear the petitioners, we propose to pass an order which, we believe, he would or should have passed, had he granted a hearing to them and heard what we did. We are of the opinion that the petitioners should not be evicted from the pavements, footpaths or accessory roads until one month after the conclusion of the current monsoon season, that is to say, until October 31, 1985. In the meanwhile, as explained later, steps may be taken to offer alternative pitches to the pavement dwellers who were or who happened to be censused in 1976. The offer of alternative pitches to such pavement dwellers should be made good in the spirit in which it was made, though we do not propose to make it a condition precedent to the removal of the encroachments committed by them."

49 The Hon'ble Supreme Court, in clear terms, has observed that no person has right to encroach by erecting structure on footpaths for public purposes like for example a garden or playground and the provision contained in Section 314 of the Bombay Municipal Corporation Act is not unreasonable in the circumstances of the case. The State Government had given certain assurance to frame a scheme in respect of those who were

given identity cards and running numbers in 1971 census and as such were directed to provide alternate site for their settlement. There was a scheme in place with the aid of World Bank i.e. Lower Income Scheme Shelter Programme and it was directed to be implemented. The Hon'ble Supreme Court, in order to minimise the hardship involved, directed that they shall not be removed until one month after the end of ongoing monsoon season.

50 Petitioners cannot rely upon the principles of settled possession. The petitioners neither draw title to the land through Respondent – Port Trust nor through any statutory or Constitutional source. The protection is afforded where the party demanding it can trace his right to either a claim on the disputed property or to some law that gives him a right touching the property. The petitioners are trespassers so far as Port Trust is concerned, occupying the land, which is needed for infrastructural development of the Port. The peaceful and undisturbed possession of the petitioners to the knowledge of the owners is not enough. Petitioners do not have a statutory or legal right to remain in occupation of the property. The proposed eviction of the petitioners is not by force or cannot be said to be forceful dispossession, however, in accordance with provisions of Bye-law no.9 framed by the Bombay Public Trusts Act, which provides for lawful eviction. The petitioners claim to be in possession over the property since many years. However, it is not a case that any force is applied for their removal. The procedure prescribed under the bye-laws framed by the Bombay Port Trust Act is being followed. That, so far as the aspect of providing breathing time to the petitioners who are trespassers to remove themselves, appropriate

direction can be issued, which would be consistent and in furtherance of fulfilling the objective of framing bye-law no.9 i.e. lawful eviction.

51 It must be understood that eviction of the petitioners is sought in the larger public interest. Clearing of the road is necessary for undertaking important project by the Mumbai Port Trust i.e. (1) RO RO Pax Service; (2) Domestic Cruise Terminal; (3) Establishment of Marina. It is contended that clearing of the road will smoothen traffic movement on the Eastern Freeway which is otherwise causing severe bottlenecks for entry into and exit from the freeway. The project undertaken by the Bombay Port Trust involves capital expenditure of several hundred crores of rupees and the infrastructural project i.e. road to remove severe bottlenecks on the Eastern Freeway is necessary for development of domestic Cruise Terminal, RO RO Pax service and Establishment of Marina by the Port Trust.

52 In the circumstances, we find that the time frame provided in the bye law of 12 hours' prior notice is quite insufficient and causes hardship to the petitioners. The petitioners are in possession since many years. Since, they do not have any legal right to continue to occupy the Port property, we deem it appropriate that they shall be provided with sufficient time so as to relocate themselves at alternate premises, and nothing more. We asked the petitioners as to what is their entitlement and whether there is any *prima facie* material with them to demonstrate that they have been inducted in possession with authorization or consent either direct or implied by the Port Trust authorities,

however, petitioners, in spite of granting an opportunity to explain, are unable to demonstrate even *prima facie* that they have been inducted with the consent or permission either specific or implied by the Port Trust authorities. Petitioners have absolutely no defence to claim their continuance of possession over the property of Port Trust.. Even relegating the petitioners to the forum prescribed under the Public Premises Act would not serve any purpose except dragging the litigation for few years time and thereby stalling the infrastructural project, which is required to be completed within the stipulated time frame in the larger public interest. The larger public interest shall have to be weighed and shall get precedence over the alleged hardship that is likely to be caused to the petitioners. As has been stated above, there is absolutely no material with the petitioners to demonstrate that they have any valid defence to protect their possession.

53 Considering these aspects and with a view that the hardship, being caused to the petitioners by directing their removal within a few hours, to be relieved, we deem it appropriate to grant three months' time to the petitioners to vacate their unauthorised occupation over the properties belonging to the Bombay Port Trust. The petitioners shall relocate themselves and vacate their unauthorised occupation over the properties belonging to the Port Trust, within a period of three months from today. If the petitioners fail to vacate unauthorised occupation at the end of three months, it would be open for the Port Trust authorities to apply coercive means for evicting the petitioners.

54 For the reasons recorded above, these petitions fail and are dismissed.

Rule discharged. In the circumstances, there shall be no order as to costs.

55 In view of disposal of petitions, Notice of Motion (WL) No.705 of 2017 in W.P.(L) No.3058 OF 2017 does not survive and stands disposed of.

R.G.KETKAR
JUDGE

R.M.BORDE
JUDGE

adb