IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 1172 OF 2005

Vikas Kamlakar Walawalkar
an Indian Inhabitant, having his
address at Parijat, Gokhale Road (North),
Dadar, Mumbai – 400 028. } ***..Plaintiff***

: Versus :

1. The Deputy Salt Commissioner
4th floor, Exchange Building,
Sir Shivsagar Ramgulam Marg,
Ballard, Estate, Mumbai – 400 001.

2. Union of India
Ministry of Law & Justice
Department of Legal Affairs
Branch Secretariat, 2nd floor,
Aaykar Bhavan annexe, Mumbai – 20.

3. Mumbai Municipal Corporation
Mahapalika Marg, Fort, Mumbai – 01.

4. The State of Maharashtra
Through Urban Development Department
Mantralaya, Mumbai – 400 032 } ***..Defendants***

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WITH
NOTICE OF MOTION NO. 243 OF 2018
IN
SUIT NO. 1172 OF 2005

Municipal Corporation of Greater Mumbai
Mahapalika Marg, Fort, Mumbai – 01. } ***..Applicant***
(Org. Defendant No. 3)

IN THE MATTER BETWEEN

Vikas Kamalkar Walawalkar } ***..Plaintiff***

: Versus :

1. The Deputy Salt Commissioner
2. Union of India
3. Mumbai Municipal Corporation
4. The State of Maharashtra } ***..Defendants***

Mr. Vineet Naik, *Senior Advocate and* ***Mr. Zal Andhyarujina,*** *Senior Advocate with Mr. Kunal Dwarkadas, Mr. Anirudh Hariani, Mr. Sumanth Anchan, Mr. Danish Qureshi, Ms. Serena Jethmalani and Ms. Sharanya Mahimtura i/b Mahimtura & Co., for the Plaintiff.*

Mr. R. V. Govilkar, *Senior Advocate with* ***Mr. Gauraj Shah****, Mr. Mihir Govilkar and Ms. Shaba Khan i/b Mr. Rahul Tiwari, for Defendant Nos. 1 and 2.*

Mr. P. G. Lad *with Ms. Sheetal Metakari and Ms. Shreya Shah i/b Mr. Sunil Sonawane, for MCGM, Defendant No.3.*

Mr. Ram Apte, *Senior Advocate with Ms. Sheetal Metakari i/b Mr. Sunil Sonawane, for Applicant in NMS/ 243/ 2018.*

Mr. Mohit Jadhav, *Addl. GP for State, Respondent No.4.*

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CORAM : SANDEEP V. MARNE, J.

Judgment Reserved on : *15 April 2024.*

Judgment Pronounced on : *8 May 2024.*

JUDGMENT :

1) Plaintiff has filed this suit challenging the Order dated 1 April 2005 passed by the Deputy Salt Commissioner terminating the lease of salt lands leased out to Plaintiff. Plaintiff has sought a declaration that the lease/grant in terms of Supplementary Lease-Deed read with Original Deeds of Lease is valid, subsisting and binding upon the Defendants. Plaintiff has further sought a declaration that upon expiration of the term of lease/grant of the salt lands on 14 October 2016, Plaintiff is entitled to renewal and/or extension for a like term of 99 years on same terms, including a term for further renewal. Plaintiff has accordingly sought a direction against Defendant Nos.1 and 2 for execution of Lease-Deed of the Salt Lands for renewed term commencing from 15 October 2016. Plaintiff has also challenged Notification dated 9 October 2013 issued by Government of India and letter dated 11 July 2016 of Deputy Secretary, Government of India. So far as Municipal Corporation for Greater Mumbai is concerned, Plaintiff has sought direction requiring it to make drains and sewers to prevent the sewage water and industrial effluents flowing into the two inlets in Plaintiff's salt lands.

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A. FACTUAL MATRIX

2) It would be necessary to capture brief factual background for better understanding of issues involved in the suit. The suit concerns two salt lands named '*Battiwala Salt Works*' and '*Jamasp Salt Works*' located within the villages of Mulund, Bhandup and Nahur of Mumbai Suburban District. Battiwala Salt Works is designated as '*Plot No.V*' and admeasures 432 Acres 16 Gunthas 1 Anna whereas Jamasp Salt Works, designated as '*Plot No.VII*' admeasures 350 Acres and 30 Gunthas 8 Annas. Both Jamasp Salt Works and Battiwala Salt Works are referred to in the Plaint together as '*the Salt Lands*'. The exact description of the Battiwala and Jamasp Salt Works is given in Exhibit-B to the Plaint.

3) By three separate Indentures executed on 22 December 1921, the Secretary of State for India in Council referred to therein as '*Lessor*' granted lease in respect of the three salt lands as under :

> *(i) Plot No.V comprising of Battiwala Salt Works admeasuring 376 acres.*
> *(ii) Plot No.VII comprising of Jamasp Salt Works admeasuring 350 acres.*
> *(iii) Plot No.VI comprising of Jamasp Salt Works admeasuring 276 acres.*

4) The leases were executed in favour of Jamasji Dadabhoy Rumwalla, Framji Edulji Battiwala, Jamshedji Edulji Battiwala and Rustomji Ardeshi Dubhash. By the said Lease-Deeds, lease in respect of the said salt lands was granted in favour of the lessees for a period of 99 years on various terms

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including a term for further renewal. The leases were granted for manufacturing salt on the demised lands.

5) In the year 1927, the original Lessees effected mortgage of Jamasp and Battiwala Salt Works in favour of Mr. Dorabji Tata. By Deed of Assignment dated 21 December 1943, the legal representatives of the estate of Mr. Dorabji Tata assigned the interest in Jamasp and Battiwala Salt Works to Bankatlal Gopikishan. This is how, Bankatlal Gopikishan in his capacity as Karta of Hindu Undivided Family held interest in the demised salt lands. After Bankatlal's death, his son Madanlal Bankatlal held the same on behalf of HUF.

6) After construction of Eastern Express Highway, Battiwala and Jamasp Salt Works came to be bisected with substantial portion falling on the eastern side of the highway, whereas smaller portion remaining on the western side of the highway. Eastern portion of salt lands are fed sea water by the creek. Plaintiff pleads that after construction of the highway, two inlets have been maintained by bridging them upon, which allow the hightide sea water into the western portion of lands of Jamasp and Battiwala Salt Works. According to the Plaintiff, some portions of Jamasp and Battiwala Salt Works have been acquired by the Government for various purposes from time to time. As a result of such acquisition, the area of the salt lands now remain as 350 Acres 30 Gunthas 8 Annas for *Jamasp Salt Works* and 432 Acres 16 Gunthas 1 Anna for *Battiwala Salt Works*.

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7) Plaintiff and his father were working at both the salt works and used to manufacture salt on behalf of Mr. Madanlal Bankatlal. Plaintiff desired assignment of leasehold rights in his favour. A Supplementary Lease-Deed dated 27 July 1994 was executed between Union of India, Plaintiff and Madanlal Bankatlal acting as Karta of HUF, whereby the rights in the demised premises conferred under the three Deeds dated 22 December 1921 were assigned to the Plaintiff. According to the Plaintiff, all the covenants and conditions in the three Indentures of Lease dated 22 December 1921 continued to operate even under the Supplementary Lease Deed, save as altered or amended therein.

8) In pursuance of the Supplementary Lease-Deed dated 27 July 1994, Plaintiff continued to manufacture salt in *Jamasp Salt Works* and *Battiwala Salt Works.*

9) According to Plaintiff, slums, hutments and factories proliferated in the areas around Bhandup and Mulund, located at a little distance from the western boundary of the salt works and extended up to the range of small hillocks located at a far distance from that boundary. According to the Plaintiff, the portion of salt works located on eastern side of the Eastern Express Highway is fed directly by sea water through watercourse which lie North of *Jamasp Salt Works* and that watercourse through which Nahur Creek flows, makes it possible to produce salt on the said eastern portion of the salt lands. That, however, the Western portion of the salt works is fed by sea water only through the two inlets underneath the bridges of Eastern Express Highway during hightide. According to Plaintiff,

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on account of proliferation of slums, hutments and factories beyond western boundary of the salt lands, sewage water and industrial effluents flow into *Nanepada Nalla* and *Bombay Oxygen Nalla Systems* and contaminate the said two inlets which are the only two sources available to Plaintiff for obtaining brine (sea water) on the western portion of the Salt Lands. Plaintiff accuses Defendants for their failure to construct drains and sewers for draining sewage water and industrial effluents which has resulted in substantial reduction of flow of brine water for feeding Western portion of the Salt Lands.

10) On 16 April 2002, two Show Cause Notices were issued to Madanlal Bankatlal alleging that substantial portion of the leased premises were not used for manufacture of salt and was kept fallow for long time. It was also alleged that grass was being grown and that Lessees were selling the same. Similar Show Cause Notices were also issued to Plaintiff on 21 May 2002. The Deputy Salt Commissioner called upon Plaintiff to show cause as to why the lease should not be terminated and the land be resumed to the Government of India.

11) On 10 May 2002, Plaintiff replied to the Show Cause Notices, *inter-alia* stating that on account of flow of sewage water into Nallas and consequent spread of the same into the Salt Lands, the said portion of the Salt Lands was rendered unproductive for salt production and had resulted in growth of grass. Plaintiff requested Defendant Nos.1 and 2 to direct Defendant No.3 to take effective steps to stop flow of waste water into the salt lands.

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12) After considering his replies, further Notices were issued by the Deputy Salt Commissioner to Plaintiff on 4 February 2004 in respect of *Jamasp* and *Battiwala Salt Works* stating that Plaintiff's replies were not found satisfactory. It was stated that that grass growth was not spontaneous but a systematic cultivation by diversion of industrial flow of Nalla water to the lands for grass cultivation alleging that the Plaintiff failed to use whole of the leased land for salt manufacturing activity and that he was using the same partly for grass cultivation. Plaintiff was called upon to explain why lease of the entire land should not be terminated and land be not resumed to the Salt Department. Plaintiff claims that he replied the Notices vide replies dated 15 March 2004.

13) By two separate Orders dated 12 March 2004, Deputy Salt Commissioner terminated the lease in respect of *Jamasp and Batttiwala Salt Works* holding that no reply was filed to the second Show Cause Notices issued in February 2004. According to Plaintiff the said Orders dated 12 March 2004 were received on 24 March 2004 and that the said Orders were passed without considering his replies submitted on 15 March 2004.

14) Plaintiff filed two Appeals before the Salt Commissioner, Jaipur on 2 April 2004 challenging the Orders dated 12 March 2004. The Salt Commissioner passed Orders dated 31 May 2004 directing Deputy Salt Commissioner to grant opportunity of personal hearing to Plaintiff and thereafter pass a reasoned order. In pursuance of Orders passed by the Salt Commissioner, Plaintiff was granted hearing by the Deputy Salt Commissioner. At Plaintiff's instance, a joint inspection was conducted on 9

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July 2004 in presence of Deputy Salt Commissioner, other officers in his office and the Plaintiff. However, according to Plaintiff report of the joint inspection was not prepared by the first Defendant. Plaintiff therefore addressed letter dated 20 July 2004 recording his version of the observations in the joint inspection. On 27 July 2004, a hearing was held before the Deputy Salt Commissioner during which time Plaintiff allegedly learnt that a Report was prepared by Committee in respect of earlier site visit. Upon Plaintiff's request, report of the Committee, which had allegedly visited the Salt Works in December 2003, was made available to Plaintiff. Plaintiff objected to observations in the Report of the Committee by his letter dated 31 August 2004.

15) Plaintiff filed Writ Petition No. 8079 of 2004 seeking disclosure of documents referred to in the Committee's report which came to be dismissed by Order dated 14 October 2004. Plaintiffs' SLP Civil No. 22523 of 2004 came to be disposed of by the Supreme Court by Order dated 16 November 2004 without granting him any relief.

16) In the above background, first Defendant issued impugned Order dated 1 April 2005 terminating the leases of land of *Jamasp Salt Works and Battiwala Salt Works* and directing handing over of possession of lands of both the Salt Works to the Factory Officer, Bhandup.

17) Plaintiff has filed the present suit challenging the termination Order dated 1 April 2005 and seeking a declaration that the lease in respect of the Salt Lands is valid, subsisting and binding upon the Defendants. Plaintiff

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has also sought a prayer seeking declaration that upon expiration of the lease on 14 October 2016, he is entitled to renewal and/or extension of the lease for a term of 99 years on same terms, including term for further renewal. Plaintiff has also sought a direction against Defendant No.3-M.C.G.M. to make drains and sewers for preventing the sewage water and industrial effluents flowing into the two inlets of Plaintiff's salt land. During pendency of the Suit, the tenure of lease expired on 14 October 2016. The plaint has been amended by incorporating prayer clause (c)(i), by which Plaintiff has sought a direction against Defendant Nos.1 and 2 for execution of Lease-Deed for renewed term commencing from 15 October 2016. During pendency of the Suit, Deputy Secretary, Ministry of Commerce and Industry, Government of India issued Statutory Order No. 2031 dated 9 October 2013 directing that Central Government land would be leased out for salt manufacturing only for a period of 20 years by invitation of tenders and that no renewal of leases would be done. By amending the Plaint, Plaintiff has challenged the said Statutory Order dated 9 October 2013. Plaintiff has also challenged letter dated 11 July 2016 by which Salt Commissioner has been directed by the Deputy Secretary not to renew or grant any lease till cabinet took a decision on the subject matter.

18) Plaintiff filed Notice of Motion No. 1247 of 2005 seeking interim injunction. By Order dated 5 June 2006, this Court passed an order of temporary injunction restraining Defendant Nos.1 and 2, from acting in furtherance of termination Order dated 1 April 2005 and from entering the suit lands. Defendant Nos.1 and 2 filed Appeal No. 534 of 2006 challenging

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the Order of interim injunction. The Appeal came to be dismissed by Order dated 22 August 2019.

19) Defendant Nos. 1 and 2 have filed Written Statement contesting Plaintiff's claim and justifying the Order of termination of Leases in respect of *Jamasp* and *Battiwala Salt Works*. It is contended by Defendant Nos.1 and 2 that Plaintiff has violated the terms of Lease by not manufacturing salt on substantial portion of the demised lands. They have contended that provisions of Transfer of Property Act, 1882 are not applicable to the Leases involved in the suit. They have further contended that Plaintiff is not entitled to automatic renewal of the tenure of lease. After amendment of the Plaint, Defendant Nos. 1 and 2 have filed Supplementary Written Statement. Defendant No.3-M.C.G.M. has also filed Written Statement *inter-alia* contending that M.C.G.M. is not under obligation to maintain sewers and drains in the leased land and that Plaintiff has no cause of action against Defendant No.3. It has also contended that *Keshar Baug Nalla, Bombay Oxygen Nalla and Nanepada Nalla* are being maintained by it by carrying out distilling work every year.

B. ISSUES

20) Based on pleadings filed by rival parties, this Court has framed following issues :

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(a) Whether the Plaintiff proves that termination of the lease of lands described in Exhibit "B" to the plaint, vide Order dated 1st April, 2005 (Exhibit W to the Plaint) is illegal, wrongful and contrary to law ?

(b) Does the Plaintiff prove that he is entitled to renewal/ extension of lease for a like term of 99 years on the same terms, (including a term for further renewals) as per Supplemental Deed of Lease (Exhibit E to the plaint) read with Deeds of Lease referred to in para 5 of the plaint ?

(b-i) If the answer to issue (b) is in the affirmative, whether the plaintiff proves that he has exercised the right of renewal vide letter dated 12th April, 2016 (Exhibit 'X' to the plaint) ?

(b-ii) Whether the defendant proves that the plaintiff is not entitled to renewal of lease as contended in paragraphs 3, 6, 7, 9 and 12 of the supplementary written statement ?

(c) Whether the Defendant Nos. 2 and 3 prove that Defendant No.3 are required to make drains and sewers, to prevent sewage water and industrial effluent from flowing into the two inlets of the Plaintiff's salt lands ?

(c-i) Whether the [first] amendment carried out by the Plaintiff is barred by the Law of Limitation?

(d) What order ?

21) During the course of hearing of the suit, this Court has recast Issue No.(c) as under :

(c) Whether the Plaintiff proves that Defendant No.3 are required to make drains and sewers, to prevent sewage water and industrial effluent from flowing into the two inlets of the Plaintiff's salt lands ?

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22) During the course of trial of the suit, Plaintiff has examined three witnesses viz. Plaintiff himself as P.W.1, Mr. Sanjay Shinde (P.W.2) draughtsman instructed by Plaintiff to prepare a plan of the suit property as well as Mr. Krishna Ramu Chaudhary (P.W.3), a photographer engaged by Plaintiff to take photographs of the suit property. On behalf of Defendant Nos. 1 and 2, Mr. C. Raghu (DW.1) who is Assistant Salt Commissioner, Chennai holding additional charge of the office of Deputy Salt Commissioner, Mumbai is examined. The third Defendant-M.C.G.M. has led the evidence of Mr. Rajendra R. Bawiskar (D.W.3) Executive Engineer (S.W.D), ES.

C. SUBMISSIONS

23) Mr. Vineet Naik and Mr. Zal Andhyarujina, the learned senior advocates have appeared on behalf of Plaintiff. Mr. Naik has canvassed submissions on the issues relating to termination of leases, whereas Mr. Andhyarujina has canvassed submissions on issues relating Plaintiff's right to seek renewal of the leases.

24) Mr. Naik would submit that the very reason of non-production of salt by Plaintiff in the impugned termination order is factually incorrect. He would take me through the evidence of Plaintiff's witness as well as documents on record to prove manufacture of salt, payment of assignment fee and ground rent and acceptance of same by Defendant No.1. He would submit that the activity of salt manufacturing in the suit lands over the years

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is thus conclusively proved by the evidence on record. He would submit that the impugned order of termination travels beyond the Show Cause Notice. That in the Show Cause Notice, the purported ground of failure to manufacture minimum quantity of salt was not mentioned. That thus, Plaintiff did not have any opportunity to deal with the said allegation of failure to manufacture minimum quantity of salt which is added in the termination order. That first Defendant has predetermined the decision to terminate the leases and that issuance of Show Cause Notices and conduct of hearing was a mere farcical show. That the decision of termination of lease was already taken on 12 March 2004 and grant of opportunity of hearing on subsequent occasions in pursuance of Order passed by the Salt Commissioner was mere formality. That the Order dated 12 March 2004 itself was antedated as the same was served on Plaintiff on 24 March 2004. That the said Order dated 12 March 2004 is passed without considering Plaintiff's reply dated 15 March 2004. That the first Defendant has erroneously relied upon the so-called Committee Report of December 2003 which was prepared on the basis of alleged site visit which was conducted behind Plaintiff's back. The visit being *ex-parte* and without notice to Plaintiff, Report of such visit cannot form basis for taking impugned decision. That despite repeated requests by Plaintiff to prepare a report of joint inspection conducted on 9 July 2004, Defendants deliberately avoided to prepare such report and chose to rely upon Report of *ex-parte* visit prepared in December 2004, findings of which are factually incorrect and disputed by Plaintiff. He would submit that in any case, the said Committee Report of December 2003 has not been proved as its authors were not examined and that therefore the same cannot be read in evidence. That D.W. 1 was not

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party to the site inspection nor an author of the said report. That in absence of any personal knowledge, the report remained unproved.

25) Mr. Naik would further submit that Plaintiff's inability to manufacture salt on western portion of *Jamasp and Battiwala* Salt Lands is for reasons not attributable to and beyond his control. That mushrooming of slums, factories etc. beyond Western boundary of Salt Lands and continuous flow of sewage water into the two inlets from such hutments and factories prevent brine water from entering into western portion of Salt Lands. That the only source of brine water to the western portion of Salt Lands is through the two inlets which pass beneath the Eastern Express Highway as construction of the Highway does not permit flow of sea water from eastern to western portions of the Salt Lands except through the two inlets, which are bridged upon for construction of the Highway. That it has come in evidence that the slums and factories beyond western boundary of the Salt Lands are located at higher gradient than Salt Lands, on account of which the sewage water flows into *Nanepada and Bombay Oxygen Nalla* systems thereby flooding the western portion of the Salt Lands with sweet water, thereby not only making manufacture of Salt impossible but also contributes to growth of grass. That Defendant No.3 is responsible for failure to construct sewage and drainage lines and for not stopping the flow of sewage water into the two Nallas. That despite repeatedly requesting Defendant Nos.1 and 2, they did not take any steps to direct M.C.G.M. for controlling and preventing flow of sewage water into the two inlets.

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26) Mr. Naik would take me through various covenants of Deeds of Lease dated 22 December 1921 as well as the Supplementary Lease-Deed executed with Plaintiff on 27 July 1994. He would submit that Plaintiff has not committed beach of any of the conditions of lease and that therefore there was no occasion for Defendant Nos.1 and 2 to resort to termination of the leases.

27) Mr. Naik would further submit that the impugned termination order suffers from vice of non-application of mind as the same records an erroneous finding that Plaintiff is growing grass in the substantial portion of the lease land. That factually it is proved that salt is being manufactured in more than 80% of the Salt Lands continuously for several years in the past. He would invite my attention to Annexure-IV of the *ex-parte* report of December 2003 and submit that even going by figures indicated in the chart annexed to the said Report, it is seen that substantial portion (62.5%) of *Jamasp and Battiwala* Salt Works is under salt manufacture.

28) Mr. Naik would then deal with the issue of alleged failure on Plaintiff's part to manufacture minimum quantity of salt. Firstly, he would submit that there is no covenant in the Lease-Deed which requires the Lessee to manufacture minimum quantity of salt of 20 M.T. per year. Inviting my attention to the relevant recitals and covenants of the Supplementary Lease-Deed dated 27 July 1994, Mr. Naik would submit that the covenant referring to minimum production of 20 tonnes per acre per annum is referable to the payment of amount of assignment fee and not a minimum production target to be achieved. Without prejudice, he would submit that the production

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figures in both the Salt Works substantially increased from the year 2002 onwards and that the same was highest (Jamasp 16.13 M.T. per acre and Battiwala 12.64 M.T. per acre) in the year 2004 when decision was taken to terminate the Leases. Mr. Naik would therefore pray that the Order of termination dated 1 April 2005 be set aside.

29) Mr. Andhyarujina would supplement the submissions of Mr. Naik by dealing with the issue of Plaintiff's right to secure renewal of the lease. Inviting my attention to the renewal clause of the Deeds of Lease dated 22 December 1921, he would submit that the term used in the said clause is '*shall*'. That thus, subject to performance of covenants of the Lease by the Lessee, he has a right to get the Lease-Deed renewed. That Plaintiff has issued notice dated 12 April 2016 for renewal of the Lease and therefore he is entitled to renewal thereof, in terms of covenants of the original Lease dated 22 December 1921 read with the covenants of the Supplemental Lease-Deed dated 27 July 1994. He would submit that during the course of negotiations, Defendant No.2 had initially suggested execution of fresh Lease-Deed without renewal clause, the said Condition No. 4 came to be deleted by Defendant No.2 by letter dated 18 March 1994. That therefore deletion of Condition No. 4 in letter dated 9 November 1993 shows unequivocal acceptance of Plaintiff's right to seek renewal of the lease upon expiry of the earlier tenure thereof.

30) That on the plain reading of the Supplementary Lease-Deed dated 27 July 1994, it is evident that there is no condition restricting the applicability of the provision for renewal contained in Clause-VI(2) of the three Deeds of

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Lease dated 22 December 1921. That therefore Plaintiff is entitled to be benefit of provision for renewal.

31) Mr. Andhyarujina would further submit that Defendant Nos. 1 and 2 cannot unilaterally erode the contract entered into with the Plaintiff on the basis of an alleged change in policy. That relationship between parties arises out of a contract which cannot be unilaterally altered or eroded by a change in Government Policy. That subsequent change of policy can stand in the way of Lessees only if no right was created in their favour. That in any case intention to alter and modify the terms of contract ought to have been brought to Plaintiff's notice. That the purported Government Resolution is not backed by any statute. That Government Policy not to renew any leases cannot be retrospectively applied to leases which have already commenced and which have a contractual right to renew. That State Government as a lessor cannot take recourse to policy decision to override the right of renewal vested in a Lessee. By alteration of such a term, which action, besides being onerous and prejudicial to the Lessee, is also loaded heavily in favour of the Lessor. In support of his contentions about change in policy not affecting Plaintiff's right to seek renewal of Lease, Mr. Andhyarujina would rely upon following judgments:

(i) ***Khas Mahal Citizen Welfare Society V/s. The State of Bihar and Ors.***[1], alongwith judgments of the Division Bench and Order of the Apex Court.

(ii) ***DDA V/s. Joint Action Committee, Allotee of SFS Flats***[2]

1 MANU/BH/0869/2015

2 (2008) 2 SCC 672

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(iii) ***Jaikumari Amarbahadursingh and Ors. V/s. State of Maharashtra and Anr.***[3],

(iv) ***Sharayu d/o Ashok Gokhale and others V/s. Nagpur Municipal Corporation and others***[4]

(v) ***Purshottani Dass Tandon and Ors. V./s. State of U.P., Lucknow and Ors.***[5] as affirmed by Apex Court in ***State of U.P. and Ors. V/s. Purshottam Das Tandon & others***[6].

32) Relying on judgment of the Apex Court in ***State of U.P. and Ors. V/s. Lalji Tandon***[7], Mr. Andhyarujina would contend that where a covenant for renewal exists, the same needs to be renewed on unilateral act of Lessee and that consent of the Lessor is not necessary. In support of the contention that renewal has to be on same terms and conditions, he would also rely upon ***Secretary of State for India in Council V/s. A. H. Forbes***[8] and ***Lani Mia V/s. Muhammad Easin Mia and others***[9].

33) *Per-contra*, Mr. Govilkar, the learned senior advocate assisted by Mr. Gauraj Shah, the learned counsel would appear on behalf of Defendant Nos. 1 and 2 and would submit that Defendant No.1 has rightly terminated the lease of Plaintiff after being satisfied that there was breach of covenants of the Supplementary Lease Deed dated 27 July 1994. He would submit that the relationship between the parties is governed by the covenants of Supplementary Lease Deed dated 27 July 1994 as the land itself has undergone change from time to time during the period from 1991 to 1994.

3 (2009) 2 Bom CR 407
4 2023(2) Mh.L.J. 48.
5 AIR 1986 Allahabad 56
6 1989 Supp (2) SCC 412
7 (2004) 1 SCC 1
8 1912 16 IC 217
9 AIR 1917 Calcutta 509

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That it would therefore be erroneous to refer to the Deeds of Lease dated 22 December 1921 to determine rights and liabilities of Plaintiff and Defendant Nos.1 and 2 in respect of the Salt Lands. He would submit that Plaintiff and his father were admittedly assisting Bankatlal Madanlal in the activities at the salt lands much prior to 1994 and that they were fully aware of the factual conditions at the site. That despite full knowledge of those conditions, Plaintiff agreed to take the Salt Lands on lease on a condition of manufacture of salt on the entire demised land. That therefore the Plaintiff cannot subsequently be permitted to cite pretexts for his admitted failure to manufacture salt in substantial portions of the Salt Lands. That the Salt Lands are handed over to Plaintiff solely for the purpose of manufacture of salt and that once the first Defendant was satisfied that salt was not being manufactured in substantial portion thereof, he is fully justified in terminating the Lease in accordance with covenants of the Supplementary Lease-Deed.

34) Mr. Govilkar would further submit that the ground of failure to manufacture salt was specifically included in the Show Cause Notices and that therefore it is erroneous on Plaintiff's part to contend that failure to manufacture minimum quantity of salt did not form part of such notices. He would submit that Plaintiff was aware of the covenant in the Supplementary Lease-Deed, which required him to manufacture minimum quantity of 20 M.T. per acre per annum and therefore the allegation in the Show Cause Notice about failure to manufacture salt was clearly relatable to failure to manufacture minimum quantity of salt as well. Without prejudice, Mr. Govilkar would contend that the order of termination is passed in respect of

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two independent grounds of (i) failure to produce minimum quantity of salt and (ii) growing grass in the salt lands. That the two grounds are independent and not interconnected and that even if one ground is sustained, mere failure to mention the other ground in the show cause notice would not render the entire order of termination illegal.

35) Mr. Govilkar would further submit that there are specific admissions in various replies and communication of Plaintiff, in the plaint as well as in evidence that he has not been manufacturing salt in substantial portion of the Salt Lands. That thus breach of covenant relating to use of the entire Salt Lands purely for the purpose of manufacture of salt is proved on Plaintiff's own admissions and that therefore the termination order cannot be found fault with.

36) The pretext cited by Plaintiff for failure to manufacture salt on substantial portion of Salt Lands, according to Mr. Govilkar, is irrelevant for deciding the issue of Lessor's entitlement to terminate the lease. That the Government of India was not supposed to take any steps for ensuring that Plaintiff was able to either protect his business or to exploit the Salt Lands to the fullest. That it is Plaintiff's responsibility to ensure that any impediment in smooth manufacture of salt was immediately removed. That various correspondence made by Plaintiff would show that he sought to blame Defendant Nos.1 and 2 as well as M.C.G.M. for his own failure to take effective steps for preventing inflow of sweet water into salt lands. That infact it has been proved that sweet water was systematically diverted into the western portion of salt lands for manufacture and sale of grass. Inviting my

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attention to Plaintiff's reply dated 15 March 2004, Mr. Govilkar would submit that Plaintiff cited the reason of '*silting*' in the creeklets for less supply of brine water into the western portion of Salt Land and this, according to Mr. Govilkar, clearly disproves the whole theory of flow of sewage water from slums and factories beyond western boundary of Salt Lands affecting manufacture of salt. That in various correspondence, Plaintiff promised taking of steps to prevent inflow of sewage water in western portion of the Salt Lands and is now expecting M.C.G.M. to take such steps. That the two inlets are maintained exclusively for the purpose of flow of brine water into the western portion of Salt Lands and it is Plaintiff's responsibility to keep the same silt-free.

37) Mr. Govilkar and Mr. Shah would then take me through the evidence on record to demonstrate that the contemporaneous correspondence pertaining to the years 1987-88 shows that there was no manufacture of salt and on the contrary, growth of grass on western portion of the Salt Lands. That several of that correspondence is signed by Plaintiff's father in his capacity as constituted attorney of previous lessee Bankatlal Madanlal. That the various Show Cause Notices were issued in the year 1992, 2000 etc. alleging failure to manufacture salt and deliberate growth of grass. That therefore non-manufacture of salt and growth of grass on western portion of the Salt Land is a phenomenon even prior to execution of Supplementary Lease-Deed dated 27 July 1994 and was in full knowledge of Plaintiff and his father. That Plaintiff has actually no intention of manufacturing of salt in the salt lands and had sought permission to put up

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hoardings thereon, which shows intention to commercially exploit the Salt Lands in violation of covenants of the Lease-Deed.

38) It is further submitted on behalf of Defendant Nos.1 and 2 that Committee Report of December 2003 has been proved, as Plaintiff called for the said document by his letter dated 29 July 2004. That the said document is referred to as relied upon by Plaintiff himself to prove manufacture of salt. That the said Report is relied upon during the course of Plaintiff's evidence as well as while cross-examining Defendants' witness. That deliberate growth of the grass on the Western portion of the salt land for intended object of its sale is proved by the fact that no other vegetation is grown in that part of the land. It is unfathomable that only grass would grow and no other plants or vegetation or trees have grown in western part of the Salt Lands.

39) So far as the issue of renewal of the lease is concerned, it is submitted on behalf of Defendant Nos.1 and 2 that 1994 Supplementary Lease-Deed does not provide for any right of renewal in Plaintiff's favour. That on the contrary it provides for opposite clause of return of possession upon expiry of lease. That therefore 1994 Lease clearly amends the provisions for renewal. That in any case, the pre-condition of renewal is not met with as admittedly more than 150 acres of land is not being used for manufacture of salt. That it is Plaintiff's own case that it is impossible to manufacture salt in the Western portion of the Salt Land. That since renewal can only be done for manufacture of salt, there is no question of renewing the entire Salt Land, substantial portion of which, according to Plaintiff's own

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case is rendered useless for manufacture of salt. It is further submitted on behalf of Defendant Nos. 1 and 2 that there is no question of continuation of same terms and conditions of 1921 Lease-Deed after execution of a fresh and Supplemental Lease-Deed dated 27 July 1994. That parties to both the Deeds are different. That the Supplemental Lease-Deed specifically provides for condition of minimum quantity of 20 M.T. per annum/acre. That the Supplementary Lease-Deed has expired on 14 October 2016. That therefore in the event of termination of Lease-Deed being found illegal, the Lease itself has otherwise come to an end on 14 October 2016.

40) Mr. Govilkar would submit that the Resolution/Statutory Order dated 9 October 2013 is in the nature of legislation as a legislation cannot be said to be confined to a statute enacted by Parliament and that the same would also include delegated legislation and subordinate legislation and even an executive order made by the Government. In support of his contention, he would rely upon judgment of the Apex Court in ***Kusum Ingots & Alloys Ltd. V/s. Union of India and another***[10]**.** In support of his contention that a fresh lease has taken birth after execution of Supplemental Lease-Deed, he would rely upon judgment of the Apex Court in ***Provash Chandra Dalui and Another V/s. Biswanath Banerjee and Another***[11]**,** of Madras High Court in ***Thulasibalan and Ors. V/s. Rajesh***[12] and ***Rasiklal M. Mehta and another V/s. The Hindustan Photo Films Manufacturing Co. Ltd.***[13] and of Calcutta High

10 (2004) 6 SCC 254
11 989 Supp(1) SCC 487
12 MANU/TN/0087/2001
13 AIR 1976 Madras 194.

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Court in ***Ansuman Mullick V/s. Mallika Investment Co. (P.) Ltd. and others***[14].

41) Mr. Govilkar would submit that public interest would prevail over the private interest of the Plaintiff to possess the Salt Lands. In support of his contention, he would rely upon judgment of the Apex Court in ***State of Haryana V/s. Eros City Developers Private Limited and others***[15] and ***D. Viswanatha Reddy and Company V/s. Government of Andhra Pradesh and Others***[16]. Mr. Govilkar would further submit that grant of Lease in respect of Salt Lands without inviting public interest can no longer be recited to. That the Courts have repeatedly frowned upon grant of Government lands and resources without inviting tenders. He would rely upon judgment of the Apex Court in ***Centre for Public Interest Litigation and Others V/s. Union of India and Others***[17] as well as Division Bench judgment of this Court in ***Harbour Water Suppliers Co. Pvt. Ltd. and another V/s. The Board of Trustees of Port of Mumbai and others***[18]**.**

42) Lastly, Mr. Govilkar would submit that Division Bench of this Court in ***Jugalkishore R. Joshi and Ors. V/s. Union of India and Ors.***[19] has imposed a specific embargo on renewal of salt pan lands in City of Mumbai and Suburbs without implementing tender process. That the Division Bench has specifically held that all existing rights of salt manufacturers would come

14 AIR 2004 Cal 316
15 (2016) 12 SCC 265
16 2002 SCC OnLine AP 444
17 (2012) 3 SCC 1
18 Writ Petition No. 2094 of 2013 decided on 24 April 2015.
19 Writ Petition No. 3742 of 2011 decided on 16 March 2018.

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to an end. That the directions issued by the Division Bench are applicable in respect of every salt pan lands in Mumbai City and Suburbs. He would also rely upon judgment of Madras High Court in ***The Salt Manufacturer's and Merchants Association, Tuticorin V/s. Union of India and others***[20]**,** in which according to Mr. Govilkar, challenge to Notification dated 9 October 2013 has been repelled. Mr. Govilkar would therefore pray for dismissal of the suit.

43) Mr. Lad, the learned senior advocate appearing for Defendant No.3-M.C.G.M. would submit that M.C.G.M. has unnecessarily been impleaded in dispute between Petitioner and Union of India, with which M.C.G.M has no concern. That it is not the responsibility of M.C.G.M. to construct sewers or drains inside the Salt Lands. That the said responsibility would lie either on Defendant Nos.1 and 2 as owners or on Plaintiff as lessees. That M.C.GM. carries out distilling work in respect of three Nallas being *Kesharbaug Nalla, Bombay Oxygen Nalla* and *Nanepada Nalla* every year. That Plaintiff has not given details of owner of land on which slums or factories have been erected. That the Plaintiff, by his actions has converted a Salt Land into a basin for collecting sewage water. That Defendant No.3 cannot be held responsible for his failure to manufacture salt.

44) Mr. Apte, the learned Senior Advocate has also appeared on behalf of M.C.GM. but in Notice of Motion No. 243 of 2018, which is filed for the purpose of seeking possession of requisite portion of land for widening of Goregaon-Mulund Link Road. In my view, the issue of acquisition of land by M.C.G.M. is not involved in the present case.

[20] Writ Petition No. 34859 of 2013 decided on 22 December 2021.

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However, Mr. Apte would submit that the Notice of Motion was required to be filed in view of interim injunction passed by this Court. He would submit that the Project is of vital importance for citizens of Mumbai City as it offers connectivity between Eastern and Western Express Highways. That M.C.G.M. is ready to pay compensation of Rs.90,48,93,410/- for acquisition of the land.

D. REASONS AND ANALYSIS

45) The suit involves issue of Plaintiff's entitlement to possess a vast tract of land in the suburbs of city of Mumbai. As observed above, *Battiwala Salt Works* is in respect of land admeasuring 432 Acres 16 Gunthas and 1 Anna and *Jamasp Salt Work*s comprises land admeasuring 350 Acres 30 Gunthas and 8 Annas. Thus, the total area of land in respect of which Plaintiff claims right is 782 odd Acres which is situated in eastern Suburbs of Mulund, Bhandup and Nahur. The Salt Lands have now been bisected by Eastern Express Highway and majority of portion of the land falls on eastern side of the highway with smaller portion of the land falling towards its western side. Thane Creek, which is located on Eastern side of the Salt Lands feeds sea water or brine water to the lands which is used for manufacture of salt. The sea water/ brine water is supplied through two creeklets which are commonly known as '*Nanepada Nalla*' and '*Bombay Oxygen Nalla*' and during hightide, sea water enters the said Nallas and brine water is fed for salt manufacturing activities. The Eastern Express Highway runs over *Nanepada Nalla* and *Bombay Oxygen Nalla*, which have been bridged upon thereby enabling the water through the said two Nallas flow

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into the western portion of the Salt Lands. Thus, even after the construction of the Eastern Express Highway, the creeklets have not been disturbed and bridges constructed on the Highway let the seawater during hightide to flow through the said two creeklets even in the western portions of the Salt Lands.

46) *Battiwala and Jamasp Salt Lands* came to be initially demised by virtue of three Deeds of Lease executed on 22 December 1921 in favour of various Lessees named in the Deeds. It appears that the land initially leased by way of three Lease-Deeds dated 22 December 1921 was much larger than what it stands in possession of the Plaintiff today. The three Deeds were in respect of two parts of *Battiwala Salt Works* admeasuring 376 Acres and in respect of *Jamasp Salt Works* admeasuring 350 Acres and 276 Acres. Thus, the total land initially demised by three Deeds dated 22 December 1921 was in respect of total land admeasuring over 1000 Acres, to be precise, 1002 Acres. There were certain assignments of leasehold rights to which reference has already been made while narrating the facts and finally by registered Deed of Assignment dated 22 December 1943, Mr. Bankatlal Gopikishan became the lessee, by which time the area of the demised land had slightly reduced to 507 acres of *Battiwala Salt Work*s and 391 Acres of *Jamasp Salt Works* (total 898 acres). Parts of demised land came to be acquired from time to time for various public infrastructure projects including construction of Eastern Express Highway and what remains today is land admeasuring 432 Acres of *Battiwala Salt Works* and 350 Acres of *Jamasp Salt Works,* which together admeasures approximately 782 acres.

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COVENANTS OF 1921 LEASES

47) By three Deeds of Lease dated 22 December 1921, lease of Salt Lands for a term of 99 years commencing from 15th day of October of 1917 was granted to the lessees on following terms:

> I The lessees shall-
>
> (a) **use the demised premises for the purpose of manufacturing common & edible salt & its by-products only.**
>
> (b) **manufacture salt on the demised premises in accordance with the terms of a license to be granted in that behalf;**
>
> (c) not make any excavation upon any part of the demised premises nor remove any stone, sand, gravel, clay or earth therefrom except for the purpose of erecting embankments for the purpose protecting the demised premises or the salt works constructed thereon from the inroads of salt water or floods;
>
> (d) not assign or underlet this lease or any part thereof or the rights and privileges hereby granted or any of them to any persons without the previous consent in writing of the Deputy Commissioner of Salt & Excise, Central Division (hereinafter referred to as the said Deputy Commissioner);
>
> (c) In addition to all duties & taxes or otherwise leviable, pay royalty on salt removed from the salt pans constructed on the demised premises at the rate of four pies per Indian Maund:
>
> (f) pay water tax to the Bombay Municipality at the rate of eight annas per one thousand gallons or such other rate as may be fixed from time to time in respect of the quantity of water consumed by the lesses or their servants or employee.
>
> (g) pay during the said term of ninety nine years all duties and taxes including municipal taxes which shall be leviable in respect of the

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demised premises or the salt and its by-products which may be manufactured or produced thereon.

II (a) **In addition on the lessees may subject to the previous written sanction of the Commissioner of Customs, Salt and Excise use the demised premises for the manufacture of any of the by-products of salt.**

(b) Such manufacture shall be subject to such terms and conditions as the Commissioner of Customs, Salt and Excise may specify from time to time.

(c) Such by-products shall be subject to the payment of royalty at such rates as government may fix from time to time.

The Lessees shall:-

(a) construct salt works on the demised premises according to plans approved by the Commissioner of Customs, Salt and Excise, Bombay and shall not deviate from the said plans without the written permission of the said Commissioner -

(b) submit to the said Commissioner for his approval a programme of the work to be done each year and shall procced with the work of construction strictly in accordance with the said programme as approved -

(c) complete the construction of the salt works before the fifteenth day of October one thousand nine hundred and twenty two-

(d) provide the trolley embankments and cart roads necessary for the carriage of salt from the salt works to the preventive station at Bhandup or Nahur if opened and when one such embankment or road serves more than one salt manufacturer shall contribute to the cost of construction of the embankment or road in proportion to the area in the lessees possession served by the road.

IV The lessees shall -

(a) after the completion of the said salt works & during the period of the lease, at the expense of the lessees and to the satisfaction of the

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said Deputy Commissioner **keep the platforms, reservoirs, salt pans, & all embankments, creeks. water ways, drains, sluices, trolley, embankments, cart roads & other works connected with the salt works in good condition and complete repair** (such complete repair to include the keeping and maintaining in good order and repair of all boundary marks whether temporary or permanent and whether erected or fixed by a surveyor appointed by the said Deputy Commissioner for the purpose or by any official of the Government of Bombay under the provisions of any enactment for the time being in force and in the case of stone boundary marks having them whitewashed twice every year during the said period and likewise shall during the said period keep the existing creeks & water ways open and in good order for the passing of water to the said works & other works in the vicinity & shall not in any way interfere with the free flow of water in the creeks;

(b) erect boundary marks of such size as may from time to time be prescribed by the said Deputy Commissioner separating the demised premises from the adjoining land;

(c) **erect strong embankments on the demised premises so that water may not pass from the said premises on to the adjoining land;**

(d) **construct reservoirs outlets and inlets for water in such a way as not to affect adversely the rights of the owners or occupants of the adjoining land;**

(e) in case they shall fail to execute and complete in the manner aforesaid the repairs & works specified in this condition, permit the said Deputy Commissioner to cause the said repairs and works to be executed & completed at the expense of the lessees and the costs & charges thereof to be recovered as arrears of land revenue in accordance with the law for the time being in force.

V If and whenever there shall be a breach of any of the conditions or covenants by the lessees hereinbefore contained or any of the conditions of the license granted under the Bombay Salt Act, 1890 in respect of the demised premises, the lessor may cancel this lease notwithstanding that the term of ninety nine years has not elapsed and may re-enter upon any part of the demised premises in the name

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of the whole and take possession of the same and of all of the buildings. roads and erections then standing thereon and thenceforth possess the same absolutely and thereupon the said term of ninety nine years shall absolutely cease & determine and the lessees shall not be entitled to any compensation whatever in respect of the said buildings, roads & erections of which possession shall have been taken so as aforesaid.

VI And it is hereby lastly agreed

(1) That the lessees complying strictly with the conditions and covenants as aforesaid and observing all the agreements hereinbefore on the lessee's part contained shall and may peaceably hold & enjoy the demised premises for the term hereby granted without any interruption or disturbance from or by the lessor or any other person or persons lawfully claiming by from or under the lessor and shall be granted a license for the manufacture of salt and its by-products on the demised, premises.

(2) **That if, at the expiration of the term hereby granted, the lessees shall have duly performed the covenants herein contained & shall be desirous of taking a renewed lease of the demised premises & shall have given notice in writing of such desire to the lessor six months previous to the expiration of the said term the lessor shall at the cost and expense of the lessee and upon the lessees executing a counterpart thereof grant to the lessees a further lease of the demised premises for such further term and on such conditions as may then be determined by the lessor.**

(3) That any notice to be given to the lessees in connection with the premises hereby demised shall be considered as duly served if the same shall have been (a) addressed to the lessees and cither delivered at or sent by registered post to the last known address of the lessees or of the last known attorneys or agents of the lessees or (b) addressed to the lessees and affixed in a conspicuous manner to any wall or fence on the demised premises or to any building or erection on the demised premises.

(emphasis supplied)

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48) Thus, under 1921 Deeds of Lease, it was agreed that the use of demised premises was to be restricted for the purpose of manufacture of common and edible salt and its by-products only. Lessees were under an obligation to manufacture salt on the demised premises. Thus, it was not open for the Lessees not to manufacture salt on the demised premises, in addition to condition of not using the demised premises for any purpose otherwise than manufacturing common and edible salt and its by-products. Thus manufacture of salt was an essential and mandatory condition for subsistence of leases.

49) The Lease-Deeds required the Lessees to construct 'salt works' on the demised premises according to the plans approved by Commissioner of Customs, Salt and Excise, Bombay and to complete such construction before 15 October 1922. After completion of the salt works and during the period of lease, it was the responsibility of the Lessees to keep the platform, reservoirs, salt pans all embankments, creeks, water ways, drains, sluices etc. in good condition at Lessee's expense and to the satisfaction of the Deputy Commissioner. It was also the responsibility of the Lessees to erect boundary marks to separate the demised premises from the adjoining land, as well as to erect strong embankments on the demised premises so that the water may not pass from the demised premises onto the adjoining land.

50) Consequences of breach of conditions and covenants by the lessees was provided for in Clause-V and it was agreed that for such breach, the Lessor may cancel the lease before expiry of the tenure, re-enter upon the demised premises and take back its possession. Clause-VI (2) of the Deeds of

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Lease dealt with renewal under which it was agreed that subject to lessees observing the terms and conditions of the lease and if lessees desired so, they could give a notice in writing upon receipt of which, the lessor was to grant lease of the demised premises for such further terms and on such conditions as may then be determined by the lessor.

COVENANTS OF SUPPLEMENTARY LEASE-DEED OF 1994

51) Plaintiff acquired the leasehold rights in respect of the salt lands vide Supplementary Lease-Deed dated 27 July 1994, relevant covenants of which are as under:

> NOW THIS INDENTURE WITNESSETH that in consideration of the sum of Rs.1,566.35 (Rupees One Thousand Five Hundred Sixty Six and Paise Thirty Five Only) deposited as ground rent for one year and the sum of Rs.78,317/- (Rupees Seventy Eight Thousand Three Hundred Seventeen Only) equivalent to the estimate amount of assignment fee for one year deposited as and by way of Security before the execution of these presents (the receipt whereof the Lessor hereby acknowledges) and of the assignment fee of Rs.78,317/- (Rupees Seventy Eight Thousand Three Hundred Seventeen Only) or such other higher amount per annum payable as hereinafter provided and of the ground rent hereinafter reserved and of the covenents and conditions on the part of the lessee hereinafter contained, **the Lessor doth hereby transfer and demise unto the Lessee the Leasehold interest** of the said Bankatlal Gopikisson (now deceased) and his successors-in-title in the demised premises hereinbefore recited, and described in the schedule hereunder written, but excluding the pieces or parcels of land which are taken various purposes as hereinbefore stated.
>
> The Lessor and the Lessee hereby covenant with each other in the manner following, that is to say;

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1. The Lessee shall:

(i) Pay assignment fee of Rs. 78,317.00 (Rupees Seventy Eight Thousand Three Hundred Seventeen Only) per annum or an amount worked out at the rate of Rupees five per tonne of on salt the quantity of salt produced and issued by the lessees whichever is higher. i.e. **subject to the assignment fee on minimum production fixed at 20 (twenty) tonnes per acre per annum**, either in lump sum payable in advance at the beginning of each year on or before the date fixed by Lessor or instalments not exceeding four in a year in as may be fixed by the Lessor along with the interest on the balance of the assignment fee due at the rate fixed by the Lessor from time to time, payable by the Lessee on account of 1 deferred payment. In case the salt produced and issued exceeds twenty tonnes per acre in any year, the differential amount of assignment fee will, however, be payable by the lessee within one month from the close of the year.

(ii) Pay Ground rent of Rs.1,566.35 per annum in lump payable in advance at the beginning of each year on or before the date fixed by the Lessor.

(iii) **Pay the Assignment fee and ground rent at enhanced rates, if any, which may be fixed by the Lessor later.**

In the event of failure to pay the assignment fee and ground rent as per agreement by the fixed date, a grace period of one month will be allowed and in the event of failure to pay the dues within the said grace period of one month the lessee will be liable to pay interest thereon at the rate, fixed by the Lessor from time to time, not exceeding eighteen percent per annum.

In default of payment of assignment fee and ground rent as aforesaid, the lease shall be liable to be terminated by service of a week's notice lessee by the Salt Commissioner on behalf of the Lessor.

2. The Lease shall be subject as herein provided be for the period ending 14th October, 2016 (fourteenth October Two thousand sixteen).

3. On expiry of the lease or its sooner determination, the Lessee shall leave the demised in such orders and condition as is consistent with

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the due performance of this lease with all works erected made thereon as they are, provided that any machinery erected by him or by his predecessor lessees may be removed; but he shall not be entitled to any compensation for any expenditure that he may have incurred in respect of the works or to any damages, if the area resumed.

4. The lessee shall utilise the demised premises exclusively for the manufacture, storage and sale of salt and for the works connected therewith and shall not erect any dwelling houses on the demised premises.

5. The covenants and conditions contained in three indentures of Lease all dated the 22nd December, 1921 recited hereinabove shall continue to operate, save as altered or amended herein.

6. Subject to the foregoing conditions, the Lessee shall continue to enjoy the demised premises undisturbed for the said term ending 14th October, 2016. In case, however, there is any breach of any of the abovementioned conditions (including those in the Indentures of Lease dated 22nd December, 1921, to the extent saved) or the Lessee delays payment of any sums due under this agreement for over two months (excepting payment in instalments of the assignment fee for which a specific provision has been mode in Clause 1 hereof) from the date of its falling due or in Case the licence granted for manufacture of salt is cancelled or forfeited, then in any of such events, the Lessor may determine the lease forthwith.

52) This is how under the Supplementary Lease-Deed dated 27 July 1994, the Government of India transferred the leasehold interest in the demised premises of Bankatlal Gopikishan and his successors-in-title onto Plaintiff.

53) Thus, even under the Supplementary Lease-Deed dated 27 July 1994, there was specific covenant in Clause-4 thereof that the Lessee shall utilise the demised premises exclusively for manufacture, storage and sale of salt

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and for works connected therein. There was a prohibition for erecting any dwelling house on the demised premises. Under Clause-V, the covenants and conditions contained in the Indentures of Lease dated 22 December 1921 as recited in the Supplemental Lease-Deed were continued during tenure of the Supplemental Lease-Deed. Thus, the obligation imposed on the original Lessees to manufacture salt in the demised premises continued with Plaintiff after execution of the Supplementary Lease-Deed.

OBLIGATION TO MANUFACTURE SALT

54) Upon combined reading of the three original Deeds of Lease dated 22 December 1921 and Supplementary Lease-Deed dated 27 July 1994, it is clear that the Plaintiff is under an obligation to manufacture salt on the demised premises coupled with another obligation not to use the same for any other purposes than for manufacture of salt and related products. Plaintiff does not really dispute his obligation to manufacture salt in the demised premises. However, Plaintiff's case is that if the lands are rendered useless for manufacture of salt due to reasons not attributable to him, failure to manufacture salt on some portion of salt lands, does not amount to breach of any covenant of the lease. Another dispute is about the minimum quantity of salt to be manufactured, about which there is a separate discussion in the latter part of the judgment. Leaving aside the eventuality that has arisen in the present case for a moment, upon combined reading of the original Deeds of Lease dated 22 December 1921 and Supplementary Lease-Deed dated 27 July 1994, it is clear that it is not open for Plaintiff not to manufacture salt on

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the demised land. Thus, mere non-production of salt on the demised land would also tantamount to breach of condition of Lease-Deed.

PLEADINGS ABOUT MANUFACTURE OF SALT IN THE PLAINT

55) In his plaint, Plaintiff has pleaded that Plaintiff and his father, Kamlakar Laxman Walawalkar were managing the salt manufacturing activities in the demised premises since 1984. That since inception till 1990, the areas around Bhandup and Mulund were relatively free from encroachments and that since 1995, there was proliferation of slums and hutments little away from the Western boundary of the Salt Lands. That the slums are located upto the range of small hillocks and while the Salt Lands are low lying, the slums and factories are located on elevated portions of land and on a higher ground. Plaintiff further pleads that since sea water is fed to the western portion of the Salt Lands through the two inlets which are bridged upon for Eastern Express Highway, the supply of sea water on western portion of the Salt Lands is affected. That Plaintiff cannot create additional inlets by digging under the Highway. He has further pleaded that till 1990-1995, even with the restricted sea water flowing in at hightide through the two inlets passing along the Highway, Plaintiff was manufacturing salt to the full capacity possible on western portion of the Salt Lands.

56) Plaintiff further pleads that while Defendant No.3-M.C.G.M. allowed proliferation of the slums on the hillocks and highlands of the western portion, it failed to construct drains and sewers for draining sewage

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water and industrial effluents discharged by slum structures and various factories. That therefore such sewage water flows into the two inlets, which is the only source for sea water for western portion of the salt lands. That western portion, which constitutes about 20% i.e. 150 acres of *Jamasp and Batiwala Salt Works,* is therefore rendered intermittently incapable of salt production. That on account of flow of sewage water, there is spontaneous growth of grass on some parts of western portion of salt lands. That since 1995, failure of Defendant No.3 in providing adequate drains and sewers for the slums and factories has seriously hampered the salt production on the Western portion. That Plaintiff cannot open up sluice gates on the western portion of the salt lands as the sea water, polluted by sewage water and industrial effluents creates a health hazard, as the flooding in the western portion causes mosquito breeding grounds.

57) Above are the pleadings, in the plaint to justify non-production/less production of salt in western portion of the demised premises, which admeasures approximately 150 acres and constitutes 20% of the total demised premises.

EVIDENCE BY PARTIES ABOUT PRODUCTION OF SALT ON WESTERN PORTION SALT LANDS

58) Plaintiff has examined himself as P.W.1. In his Affidavit of Evidence, he has repeated the statements in the plaint as to why the salt production activity is affected on the western portion of the Salt Lands. Rest of Plaintiff's evidence in the Affidavit is on proving various documents.

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Additionally, Plaintiff has deposed in his evidence that between 2012 and 2019, Defendant No.3 has constructed retaining wall alongside *Bombay Oxygen Nalla* till the point where the same enters the Salt Lands. That Defendant Nos.1 and 2 refused to grant permission to Defendant No.3 to construct retaining wall alongside *Bombay Oxygen Nalla* which passes through the salt lands, on account of which it has become a basin for collection of sewage water flowing down from the elevated areas which lie on the western boundary of the salt lands. That in some portions of salt lands, there is already some overflow of sewage water which contaminates the tidal water which flows into the salt lands. Similar evidence is given in respect of construction of retaining wall alongside of *Nalepada Nalla* only till the point of the Nalla entering the salt lands. Plaintiff has also given evidence about various payments towards ground rent, assignment fee etc. thereby showing manufacture of salt in the salt lands.

59) Plaintiff is subjected to extensive cross-examination on behalf of Defendant Nos.1 and 2 and as many as 581 questions are put in cross-examination to the Plaintiff. Mr. Naik has taken me through various answers given by Plaintiff in his cross-examination. In his cross-examination, Plaintiff has maintained a stand that it is not his responsibility to stop flow of sewage or sweet water flowing from outside the salt pan area nor does he have legal right to do so. He has further stated in cross-examination that western portion of the Salt Land has not stopped receiving brine water altogether but from the year 2000 onwards, the brine water started getting mixed up with sewage water which is released by M.C.G.M. in Nallas. Plaintiff was then cross-examined about the allegation of growing of grass on the western

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portion in the year 1987. He further stated in the cross-examination that he had requested Salt Department to stop the discharge of sewage water in the Nallas by M.C.G.M. He denied a suggestion that it was the responsibility of salt manufacturer to remove all obstacles in the salt production. He is further cross-examined on the issue of construction of sweet water flow channels and he denied such construction.

60) Defendant examined Mr. C. Raghu as its witness, who has deposed that, a Committee was constituted by the Salt Department consisting of Dr. S. Mukherjee, Assistant Salt Commissioner, Shri. Bhote, Superintendent of Salt, Shri. V. Ananda Kumar, Assistant Civil Engineer, Shri. R.N. Das, Deputy Superintendent of Salt and Shri. S.H. Chougule, Inspector of Salt and that the Committee visited the site during December 2003 and concluded that growth of grass was a systematic effort by diverting the sweet water from the Nallas into the salt fields by making passages in the Nallas at various places. He further stated that the salt production was way below the minimum prescribed limit of 20 M.T. per acre/annum. In the cross-examination, it transpired that the Defendant's witness did not have personal knowledge about Plaintiff's Salt Lands prior to October 2012 as he never worked in Mumbai till that time.

DOCUMENTARY EVIDENCE ON ASPECT OF MANUFACTURING OF SALT IN WESTERN PORTION OF SALT LANDS

61) Defendant has relied upon Notice dated 8 June 1987 issued to Mr. Madanlal Bankatlal (D-1/24) which reads thus:

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> It is observed that you are growing grass in Jamasp Salt Works in Mulund on the Northern part of the salt works unauthorisedly. You are hereby directed that the cultivation of grass in the salt works should be stopped immediately.

62) A reply was sent to Notice dated 8 June 1987 on behalf of Madanlal Bankatlal on 30 June 1987 which was signed by Mr. K. L. Walwalkar (Plaintiff's father), in his capacity as constituted attorney. As observed above, Plaintiff has admitted that he and his father were manufacturing salt in *Jamasp and Battiwala Salt Works* since 1984. This was apparently being done, on the basis of Power of Attorney. Be that as it may. Plaintiff's father denied in his reply dated 30 June 1987 that grass was being grown or cultivated in *Jamasp Salt Works* and that all wild grass grown in the Salt Works was by unauthorised persons on account of sewage and sweet water and overflow of drainage water.

63) Thus, from Notice dated 8 June 1987 and reply dated 30 June 1987, it appears that the phenomenon of growing of grass (whether by Plaintiff or by unauthorised persons) has been going on atleast since 1987. There is a clear admission in the reply dated 30 June 1987 that salt was not produced at some pieces of the salt lands. This appears to be directly contradictory to the statement of Plaintiff in his Affidavit of Evidence that '*till 1990-1995, even with restricted sea water flowing in at hightide through the two inlets passing under highway, I was manufacturing salt-**to the full capacity** possible-on the western portion of the salt lands*'. He did not plead in the Plaint that some portion of salt lands was being used for cultivation of grass by unauthorised persons,

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which had rendered manufacture of salt impossible. Plaintiff's father's admission of cultivation of wild grass by unauthorised persons belies his subsequently pleaded theory that growth of grass is 'spontaneous'.

64) Even pleadings in paras-14 and 15 of the plaint seem to suggest that the problem of flow of sewage water began from the year 1995 onwards. In para-14 of the plaint, Plaintiff has pleaded that since inception till 1990, the areas around Bhandup and Mulund were relatively free of encroachment. Thus, the pleadings and statements made in the Affidavit of Evidence of Plaintiff appears to be contradictory to the stand taken by his father in reply dated 30 June 1987 which suggests non-manufacture of salt in certain portion of salt lands right since 1987.

65) The growth of grass in salt lands is also admitted by Plaintiff in a complaint made to Tehsildar and Ward Officer on 16 December 1987 (Exhibit-D1/4).

66) Another Notice (Exhibit D-1/25) was issued to Mr. Madanlal Bankatlal on 1 January 1987 by the Superintendent of Salt, in which again there is a specific statement about diversion of sweet water in some portions of salt lands and unauthorised cultivation of grass. By that notice, the ex-lessee was requested to stop cultivation of grass.

67) It appears that since Plaintiff and his father were operating the salt lands unauthorisedly, Show Cause Notice for termination was issued on 30 January 1988 (Exhibit-D-1/29) which was replied on 28 April 1988 in which

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Mr. Madanlal Bankatlal stated that he was at Hyderabad and was unable to manage the business. There is a further admission that Samarth Development Corporation (Plaintiff's firm) was managing the Salt Works.

68) By way of Undertaking executed at the time of transfer of leasehold rights, Plaintiff submitted Undertaking (Exhibit-P/17) to the effect that the land in question will be used only for salt manufacture. This assumes importance as the Undertaking coupled with the covenants of Supplementary Lease Deed dated 27 July 1994 made Plaintiff liable to convert the land which was being used for grass cultivation to salt manufacturing by taking necessary steps.

69) After Plaintiff took over the lease of salt lands by Supplementary Lease Deed dated 27 July 1994, letter dated 1 March 2000 was addressed to him about conversion of 18 to 20 acres of *Jamasp Salt Works* into field for grass cultivation. This was followed by letters dated 12 May 2000, 4 July 2000 and 26 September 2000.

70) This is how there was continuous correspondence from Defendant Nos. 1 and 2 to Plaintiff during 1987 to 2000 repeatedly alleging cultivation of grass especially in *Jamasp Salt Works*. There is thus ample documentary evidence on record to suggest that grass was being cultivated on some portions of the salt works.

71) The correspondence finally culminated into first set of Show Cause Notices dated 16 April 2002 in respect of *Jamasp and Battiwala Salt*

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Works, in which it was alleged that Plaintiff was allowing grass to be grown on the salt lands and was selling the grass. In his replies dated 10 May 2002, Plaintiff took a stand for the first time that *'about 17 to 18 years ago, sewerage Pumping Station was created on the western side of the lands under reference and since then the B.M.C. Authorities are pumping out the sewage water inside the Nallah passing through the said lands'.* Thus, in the plaint and the Affidavit of Evidence, while Plaintiff's story was that till 1995, land beyond western boundary was relatively free of encroachments and that he was manufacturing salt '*in full capacity*', for the first time he came up with a theory that about '*17 to 18 years ago*' M.C.G.M. started pumping sewage water into the Nallas. Since reply was given on 10 May 2002, the alleged activity of pumping sewage water, according to Plaintiff must have begun sometime in the year 1984-85. Thus, the stand in the reply dated 10 May 2002 appears to be contradictory to the statements made in the Plaint and the Affidavit of Evidence. Interestingly, Plaintiff had not raised this defence of deliberate pumping of sewage water by MCGM into the Nalla in his correspondence from 1987 onwards.

72) The documentary evidence discussed above indicates inconsistent stands taken by Plaintiff in various correspondence, pleadings and evidence. What is certain is however the fact that salt was not being manufactured on some portion of salt lands and that grass was also being cultivated. Plaintiff's pleaded theory of 'spontaneous' growth of grass is also proved to be fallacious by the documentary evidence.

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COMMITTEE REPORT OF DECEMBER 2003

73) Defendant Nos.1 and 2 have strenuously relied upon Report of the Committee of December 2003, which apparently visited in addition to *Jamasp and Battiwala Salt Works*, the other Salt Works in the vicinity such as Shepherd, Shepherd Annex, Authur and Jenkins. The Report is prepared on the basis of site visits conducted by its members on 4 December 2003. Before I take into consideration the contents of the Report, first the objection raised by Plaintiff about proof of contents of the Report must be dealt with.

74) It is contended by the Plaintiff, Mr. C. Raghu, who has given evidence about the Report, was neither part of the Committee nor signatory thereto and therefore he could not depose about the contents thereof. It is contended that he took over Additional Charge of Mumbai for the first time in 2012 and therefore did not have any personal knowledge about observations made by committee members in December 2003. There is no dispute to the position that Mr. C. Raghu was neither part of the Committee nor was posted or handled charge of Mumbai salt lands at the time when the Report was prepared. However, Committee's Report is a part of official record. It is prepared by the members of the Committee during performance of their official duties since the committee was constituted by Salt Commissioner, Jaipur by his letter dated 25 November 2003. The Report is thus maintained in the office of Deputy Salt Commissioner as a part of official records. At the time when evidence was led, Mr. C. Raghu was posted as Deputy Salt Commissioner, Mumbai and has accordingly produced the Report as a part of his office records and he has led evidence about the report

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in para-9 of his Affidavit of Evidence. The report has been marked as Exhibit-D-1/28.

75) While it is settled position of law that mere marking of a document does not mean that contents thereof are to be accepted as truth for being read in evidence, at the same time, it appears that Plaintiff did not object to marking of the Committee's Report as Exhibit. Secondly, Plaintiff cannot dispute existence of the Report in view of the fact that he himself summoned production of the same by his letter dated 29 July 2004. After receipt of the Committee's report of December 2003, Plaintiff's Advocate dealt with the contents thereof by letter dated 31 August 2004 (Exhibit-P/41). Thus, existence of Committee's Report of December 2003 is proved and it has rightly been marked in evidence.

76) Full Bench of this Court in ***Hamendra Rasiklal Ghia V/s. Subodh Mody***[21] has held that if objection about a document is taken at an appropriate time, the same enables a party tendering the evidence to cure the defect and to resort to such mode of proof as would be regular. This Court has further held that the omission to object becomes fatal because by his failure, the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. In para-80 of the judgment, *Justice V.C. Daga*, speaking for the Full Bench has held as under:

> 80. In the second category of the case, the objection should be taken when the evidence is tendered. Once the document has been admit-

[21] (2008) 6 MH.L.J. 886

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ted in evidence and marked as an exhibit, the objection that it should not be admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. This proposition is rule of fair play. **The crucial test is whether an objection, if taken at the appropriate time, would enable the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object become fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof.** On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons; firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility there and then; and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence.

77) The Report is prepared by a team of Government Officials comprising of Assistant Salt Commissioner, Superintendent of Salt, Assistant Civil Engineer, Deputy Engineer of Salt, Surveying Officer of Deputy Salt Commissioner and Inspector of Salt. The said Report is prepared by the said team of officials during the course of performance of their official duties. Existence of the Report is proved. Therefore, under Section 35 of the Indian Evidence Act 1872, contents of the said Report, which is a part of public and official record, would be relevant fact and can be read in evidence.

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78) The Committee was constituted by the Salt Commissioner, Jaipur by his letter dated 25 November 2003 to ascertain the possibility of manufacture of salt, where grass was being grown and the mandate of the Committee was to submit a 'feasibility report' in that regard. The Committee was infact appointed with a view to ascertain the claim of the salt manufacturers that due to blockages of creeks, portions of the lands had become unfit for salt manufacture, resulting in growth of grass on its own. Some of the relevant recitals to the report are as under :

> It has been reported that some portions of the above lands under salt works at Bhandup, instead of being used for salt production, is being used for the growth of grass.
>
> The Deputy Salt Commissioner, Mumbai, has therefore issued show cause notices to the salt works pointing out their failure to manufacture salt in the whole area and instead using it partly for cultivation of grass and consequently calling upon them to show cause as to why the lease of lands should not be terminated and land resumed to the Government of India.
>
> In reply to show cause notices issued by the Deputy Salt Commissioner, Mumbai, the salt manufacturers have denied that they have permitted or allowed the grass to be grown on the land and further stating that grass has grown on certain portions of the land where the sea water is not able to reach due to blockages of various creeks, due to various development processes in and around the leased property. The lessees contention in all their replies is that they have not deliberately violated the lease conditions, but it is on account of factors beyond their control, that a portion of the lands have become unfit for salt manufacture, resulting in the growth of grass on its own.
>
> On the reply of salt manufacturers above, the local officers of the Salt Department at Bhandup reported that there has been a systematic growth of grass, which has been resorted by the lessees over a period

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of time, by diversion of natural flow of nalla water into the salt fields and thereby the salt lands have been converted into unauthorised grass fields, by the lessees, for their better and heavy profits.

In order to see the situation on the spot, a committee was ordered to be constituted by the Salt Commissioner, Jaipur, vide his letter No. 16 (6) P/85/VIII dated 25-11-2003, which would examine on the spot, the possibility of salt manufacture in those areas in Bhandup Salt Factory, where grass is presently being grown and consequently get a feasibility report prepared in the matter.

79) The Committee visited six Salt Works including *Jamasp* and *Battiwala Salt Works* on 4 December 2003. The findings of the committee are as under:

Except Shepherd Salt Works, salt is being produced in the other four salt works of Jamasp, Battiwalla, Jenkins & Arthur, mainly on the East of the Eastern Highway and in a very small area on the West of the Highway, in Jenkins Salt Works. The details of production is given at Annexure-2.

The committee observed that the growth of grass is spread across the west of the Eastern Express Highway ie the Development Zone in the Shepherd and Battiwalla Salt Works and across both west (Development Zone) and east (No Development. Zone) of the Eastern Express Highway in Arthur, Jenkins and Jamasp Salt Works. A Sketch showing the grass growth and salt manufacture is enclosed at Annexure-3. An eye estimate indicates that the area involved in the growth of grass is around 500 Acres approximately. The exact area has however to be ascertained after survey. The approximate details for each of the salt works is as per available data furnished in Annexures 4, 5 & 6.

It was further seen that while the drain/nallah is on the West of the Highway in the developable area, the sea-water creek is on the East of the Highway, in the No Development Zone.

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The main sweet water nallah is at a higher level than the sea-water creek, with the result that the flow of water is from the nallah side towards the creek side.

From the nallah situated parallel to the Railway track, and from the other five nallahs, sweet water is entering the various salt fields on the West of the Highway and passing on to the East of the Highway inside the same salt works under the six culverts constructed on the Eastern Express Highway.

The committee has found that the contention of the lessees/ salt manufacturers that it is not a deliberate attempt on their part to grow grass is incorrect. Instead the committee observed that the growth of grass was systematic in all the five salt works, as was evident from the following.

during high tide the seawater is allowed to enter the salt works wherever salt is desired to be manufactured by the lessees and during this time the passages and sluice gates to the areas where grass is grown is blocked, so that seawater is not mixed with the sweet water and thus does not hamper the growth of grass.

the sweet water from the nallas in the normal course is diverted into the salt fields by making passages in the nallas at various places.

once the sweet water enters the areas where grass is grown, it is spread to the entire lands through channels dug inside the grasslands.

So far as the feasibility of salt manufacture is concerned in those areas where grass is grown, the committee has been told that earlier the areas where grass is presently grown, had been under use for salt manufacture and the committee therefore does not see any reason why the salt manufacture in those areas cannot be done now. Presently even, some area in the Jenkins Salt Works on the West of the Highway, amongst the grass growing areas in the same salt works on the West, is utilised for salt manufacture. However, since the areas have totally deprived of their salinity content through passage of time, by the continuous inflow of sweet water, it would be necessary that the flow of sweet water is completely checked into those areas where grass is grown and instead seawater be again allowed in these areas, in order that the soil regains its saline nature.

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This would take time and once this is done, those areas could be developed again for salt manufacture but that preferably after one or two seasons of salt manufacture.

It is also felt that a technical report on the feasibility of salt manufacture could be got prepared, if found necessary by the Central Salt and Marine Chemicals Research Institute, Bhavnagar, who are regarded as experts in the field of salt technology.

80) The conclusions drawn by the Committee are as under:

CONCLUSION

From the above it is concluded that

- ◊ the growth of grass in the salt works land is a systematic one and not a natural growth as stated by the lessees.
- ◊ that the lands where grass is presently being grown, could be developed once again for salt manufacture, over a period of time.

81) The Committee thus concluded that growth of grass in salt works lands was a systematic one and not a natural growth. The Committee further recommended that it was possible to reconvert the lands where grass was being grown for salt manufacture by stopping flow of sewage water and allowing flow of sea water. The photographs attached to the Committee's Report shows diversion of natural course of water from its original flow and proper flow of sweet water to get better and more yield of grass crop at *Jamasp Salt Works*. The photographs also show sub channels constructed for flow of sweet water into the grass field which was being kept closed during hightide to prevent brine entry at *Jamasp Salt Works*. Similar photographs are also attached to the Report in respect of *Battiwala Salt Works.* At Annexure-4 to the report, the status of various Salt Works was indicated as under:

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Annexure - 4

Current status of lands under salt lands of Bhandup Salt Factory

(Figures rounded off approximately to nearest whole acre)

S.No.	Name of salt work	Area under salt works	Area under salt manufacture	Area lying fallow	Area under grass cultivation
1	Arthur	250	60	55	135
2	Jenkins	252	103	69	80
3	Battiwala	433	240	73	120
4	Jamasp	351	250	18	83
5	Shepherd	301	Nil	201	100
6	Shepherd Annexe	167	Nil	167	-

P.S.: Figs at Col.(4) based on 20 Tonnes per acre production for 2003
Figs. at (5) & (6) eye-estimation.

82) Thus, Report of the Committee of December 2003 indicates systematic construction of water channels for allowing sweet water for grass cultivation and for prevention of brine water to enter Salt Works in Western portion of *Jamasp and Battiwala Salt Works*.

FAILURE TO PREPARE REPORT OF JOINT INSPECTION OF 9 JULY 2004

83) It appears that at Plaintiff's instance, a joint inspection was conducted on 9 July 2004 in presence of Deputy Salt Commissioner, other officers in his office and the Plaintiff. However, according to Plaintiff, report of the joint

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inspection was not prepared by the first Defendant. Plaintiff therefore addressed letter dated 20 July 2004 recording his version of the observations in the joint inspection.

84) In my view, failure to prepare report in respect of joint inspection held on 9 July 2004 does not cause any prejudice to Plaintiff. Unlike the earlier site visit, which was conducted by officials other than the Deputy Salt Commissioner, it appears that the site inspection at Plaintiff's insistence was conducted personally by the Salt Commissioner on 9 July 2004. After such joint site inspection of 9 July 2004, hearing was conducted by the Deputy Salt Commissioner on 27 July 2004 during which Plaintiff was heard. As held in the judgement, non-manufacture of salt in western portion of the salt lands is admitted by Plaintiff and deliberate growth of grass in some portion of salt lands is also admitted by his father in reply of 1987. In my view therefore non-preparation of report of joint site inspection of 9 July 2004 has not caused any prejudice to Plaintiff.

ASSESSMENT OF PLEADINGS, EVIDENCE AND DOCUMENTS ABOUT MANUFACTURE OF SALT IN WESTERN PORTION OF SALT LANDS

85) After considering the pleadings, evidence and documents on the aspect of allegation of non-manufacture of salt in the demised premises, it is seen that there are clear admissions by Plaintiff that salt was not being manufactured in major portions of lands in the western portion. There is also a dispute about responsibility for growth of grass, which is being dealt with separately.

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86) It is borne out by various documents on record that no salt manufacturing activity was/is undertaken on the entire western portion of *Jamasp and Battiwala Salt Works*. This position is also not factually disputed by Plaintiff. He however seeks to blame Defendants for the situation, which aspect is again being dealt with separately in the judgment. Thus, it is factually proved that salt manufacturing activity is not being undertaken on the western portion of *Jamasp and Battiwala Salt Works*. Plaintiff himself has pleaded and given evidence that the Western portion of *Jamasp and Battiwala Salt Works* covers area of 150 acres or 20% of the total demised premises. Thus, non-production of salt in atleast 20% of the demised land is proved.

GROWTH OF GRASS

87) After considering the evidence, both oral as well as documentary, the factum of growth of grass is not seriously disputed. What is however contended is that the growth of grass is 'spontaneous' and that it is not deliberately cultivated. On the other hand, it is the contention of Defendant Nos.1 and 2 that cultivation of grass is systematic by diverting the flow of sweet water into salt pan lands. There is also allegation against Plaintiff that the grass is grown and sold in the market.

88) From documentary evidence it is clear that growth of grass is a phenomenon which is happening atleast since the year 1987. Even at that time, Plaintiff's father did not dispute growth of grass but sought to blame

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outsiders for growing the grass. He stated in his reply dated 30 June 1987 that '*on our part we cleared all wild grass grown in our salt works by unauthorised persons at places where salt is not produced ...*". What is admitted in this statement is that the grass is grown by unauthorised persons. This admission goes against Plaintiff's defence that the growth of grass is 'spontaneous'. Plaintiff's father thus did not dispute in reply dated 30 June 1987 that the grass was cultivated, but sought to blame unauthorised persons for such cultivation. It is thus proved in evidence that there is cultivation of grass in some portions of salt lands since the year 1987. The aspect as to who cultivated the grass becomes irrelevant because it is Plaintiff's responsibility to ensure that land is not used for any other activity except manufacture of salt. Plaintiff cannot get away from consequences of breach of covenants of lease by seeking to blame '*outsiders*' for cultivation of grass. The Committee has also found cultivation of grass in the western portions of Salt Lands.

89) The theory of 'spontaneous' growth of grass is also difficult to digest for two other reasons. Firstly, if there was natural growth of vegetation, not just grass but other vegetation in the form of shrubs, herbs, creepers, trees, etc ought to grow on the lands. However, what is admitted and observed by the Committee is growth of only grass at the lands. Secondly, growth of glass is systematically observed in selected few areas and not in all portions where there is no salt manufacturing activity. The figures of areas of land under grass cultivation and fallow land would make this position clear. In *Battiwala* Salt Works, while 120 acres of land was found to be under grass cultivation, 73 acres was found fallow. Similarly, in *Jamasp* Salt Works, 83 acres of land was found to be under grass cultivation while 18 acres was found to be fallow.

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It is thus more than apparent that growth of only grass (and no other vegetation) in select few areas of salt works cannot be natural or spontaneous as claimed by Plaintiff, but it was a deliberate activity undertaken by or on behalf of Plaintiff. Even if it is to be assumed that the cultivation of grass is by 'unauthorized persons' as claimed in Plaintiff's father's letter of 1987, Plaintiff cannot run away from consequences of use of land for purpose other than salt manufacturing.

90) In my view, therefore cultivation of grass in the Western portion of *Jamasp and Battiwala Salt Works* is proved.

RESPONSIBILITY TO ENSURE FLOW OF BRINE WATER INTO SALT LANDS

91) Plaintiff has raised a plea that the responsibility of stopping inflow of sewage water and industrial effluents into salt pan lands is on Defendants. He has attributed flow of sewage water into western portion of the salt lands to proliferation of slums and factories outside western boundary of the salt lands. The factum of growth of slums beyond western boundary of the salt lands is not seriously disputed by Defendants. Therefore, it is not necessary to undertake a factual enquiry into that aspect by assessing the evidence. According to plaintiff, the growth of slums mushroomed after the year 1995. However, as observed above, cultivation of grass in *Jamasp Salt Works* was noticed and admitted by Plaintiff's father in the year 1987 itself. It is therefore difficult to establish a direct co-relationship between proliferation of slums with stoppage of salt manufacturing activities.

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92) Also of relevance is the statement made by Plaintiff in his reply dated 15 March 2004 (Exhibit-P-28) wherein he stated that '*the flow of brine water into the western portion of our salt land is now not in adequate volume, as certain creeks and creeklets which supply brine water have been reduced on account of* ***silting***.' Thus, for the first time in 15 March 2004, Plaintiff gave additional reason of silting in the creeks due to less supply of brine water. M.C.G.M. has given evidence to prove that every year, the work of desilting is carried out in respect of all three nallas, namely *Nanepada Nalla, Bombay Oxygen Nalla* and *Kesharbaug Nalla*. Furthermore, until 2004, Plaintiff had never raised a plea that there was silting in the creeklets which was the reason for non-supply of sufficient brine water. His case was always that sewage water coming from western side beyond boundary of salt lands was the reason for non-manufacture of salt in the western portion.

93) In any case, it is Plaintiff's responsibility to ensure that adequate brine water enters the salt pan land for the purpose of manufacture of salt. The Committee in its Report of December 2003 has found that supply of brine water was infact stopped during hightide by installation obstacles. The Committee has also found systematic diversion of sweet water by creation of channels into the salt lands. Therefore, it is difficult to hold that inflow of sewage water alone is responsible for stoppage of salt manufacturing in the western portion of *Jamasp and Battiwala Salt Works*. Therefore, Plaintiff cannot seek to blame Defendants for either insufficient supply of brine water or flowing of sewage water in the salt lands.

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94) So far as the aspect of responsibility to stop flow of sewage water is concerned, relevant clauses of the original Deeds of Lease dated 22 December 1921 would indicate that it was Lessee's responsibility to ensure free flow of brine water into the salt lands. It is Lessee's responsibility to construct necessary channels, drains, sluices etc. to ensure free flow of brine water into the salt lands. The land has been leased out to Plaintiff for salt manufacturing activities. Beyond charging the ground rent and assignment fees based on quantum of salt manufactured, the Salt Department does not participate in the salt manufacturing activity with lessees. After paying the ground rent and assignment fees, it is altogether the profit-making venture for the Lessees. Therefore, it cannot be responsibility of lessor that adequate quantity of brine water enters the salt lands for Plaintiff to exploit the lands for salt production capacity to the fullest. If Plaintiff knew that adequate brine water was not being supplied for western portion of salt lands, he ought not to have secured leasehold rights in that portion of salt lands in 1994. It is has already come in evidence that salt manufacturing activity was stopped and grass cultivation had begun in certain portions of salt lands in 1987. Despite knowing this, Plaintiff submitted an Undertaking at the time of execution of Supplementary Lease Deed dated 27 July 1994 that he would use the entire portion of salt lands for manufacture of salt. He thus took upon himself, despite alleged inadequate supply brine water and alleged pumping of sewage water by MCGM in nallah, that he shall manufacture salt even on western portion of salt lands. Now he cannot blame Defendants for his inability to produce salt on western portion of salt lands.

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95) Far from ensuring that the adequate brine water enters the salt lands on the western portion, Plaintiff has apparently diverted the sweet water systematically into the salt lands and is now blaming the Defendants for inadequate supply of brine water.

96) Therefore, Plaintiff cannot seek to blame Defendant Nos.1 and 2 or shift the responsibility on them to ensure that brine water enters salt pan lands.

RESPONSIBILITY TO PRODUCE SALT @ 20 MT/ACRE/ ANNUM

97) Plaintiff has contended that there is no covenant in 1994 Supplementary Lease-Deed which mandates manufacture of minimum quantity of salt. One of the recitals of the Supplementary Lease-Deed reads thus:

> (c) The lessee shall pay the Assignment fee at the rate of Rs.5/- per tonne subject to minimum production of 20 tonnes per acre per annum.

98) The relevant covenant in the Supplementary Lease-Deed dated 27 July 1994 is as under:

> 1. The Lessee shall:
>
> (i) Pay assignment fee of Rs. 78,317.00 (Rupees Seventy Eight Thousand Three Hundred Seventeen Only) per annum or an amount worked out at the rate of Rupees five per tonne of on salt the quantity of salt produced and issued by the lessees whichever is higher. i.e. **subject to the assignment fee on minimum production fixed at 20 (twenty) tonnes per acre per annum**, either in lump sum payable in

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advance at the beginning of each year on or before the date fixed by Lessor or instalments not exceeding four in a year in as may be fixed by the Lessor along with the interest on the balance of the assignment fee due at the rate fixed by the Lessor from time to time, payable by the Lessee on account of 1 deferred payment. In case the salt produced and issued exceeds twenty tonnes per acre in any year, the differential amount of assignment fee will, however, be payable by the lessee within one month from the close of the year.

(ii) Pay Ground rent of Rs.1,566.35 per annum in lump payable in advance at the beginning of each year on or before the date fixed by the Lessor.

(iii) **Pay the Assignment fee and ground rent at enhanced rates, if any, which may be fixed by the Lessor later.**

99) It is Mr. Naik's contention that above clauses in the Supplementary Lease-Deed pertain to payment of assignment fee and does not impose any obligation on Plaintiff to produce particular quantity of salt.

100) Payment of assignment fee is linked to the quantum of salt produced. Clause-1(1) provides that the assignment fees is either Rs.78,317/- per annum or Rs.5/- per tonne of salt on quantity of salt produced and issued, whichever is higher. If the area of leased land of approximately 782 acres is taken into consideration, the rate of Rs.20 tonne per acre when applied to the entire year, comes to approximately Rs.78,100/-, which roughly matches the figure of Rs.78,317/-. Thus, the relevant clauses indicates that the minimum assignment fee Rs.78,317/- is arrived at on the basis of rate of Rs.5 per tonne for 20 tonnes per acre per annum and in the

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event of additional quantity of salt manufacture, additional fee would be payable.

101) Apart from the above clauses, there is no separate clause in the Supplementary Lease-Deed dated 27 July 1994 which seek to impose a condition on Plaintiff to manufacture any minimum quantity of salt. However, one of the reasons recorded in the termination order is failure on the part of Plaintiff to manufacture minimum quantity of salt of 20MT/acre/anum. Though there is no specific covenant in the Supplementary Lease-Deed for manufacture of any minimum quantity of salt, the figure of 20MT/acre/annum does not come from air. The fact the said figure is mentioned in the Deed for the purpose of levy of assignment fees, the same indicates that the salt department expected that in respect of the *Jamasp and Battiwala Salt Works*, atleast 20 MT salt can be manufactured per annum per acre. This is how the minimum assignment fees was arrived at. It therefore cannot be stated that Plaintiff was altogether ignorant about the salt department expecting production of 20MT/acre/annum from *Jamasp* and *Battiwala Salt Lands*. However in absence of a specific covenant in the Supplementary Lease-Deed, it is difficult to hold that failure to produce 20MT/acres/annum salt would result in termination of the lease. At the same time, the formula of 20MT/acre/annum cannot be ignored altogether for considering salt manufacturing activity. In addition to determination of assignment fees, it can also be used for gauging the capacity at which salt manufacturing can be achieved in respect of *Jamasp* and *Battiwala Salt Works* and the quantum of salt actually manufactured by Plaintiff vis-à-vis the figure

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of 20MT/acre/annum can be considered for assessing the level of salt manufacturing activity at the site.

DEFECT IN SHOW CAUSE NOTICE

102) Mr. Naik has contended that show cause notice did not include the allegation of failure to produce minimum quantity of 20 M.T. per acre per annum, but the same is treated as a ground for termination of the lease. However, since I have held that there is no obligation on the Plaintiff to manufacture 20 M.T. salt per acre per annum and since the finding in that regard in the termination order is erroneous, it is not necessary to delve deeper into the aspect of defect in the show cause notice.

VALIDITY OF TERMINATION ORDER

103) The termination Order dated 1 April 2005 is issued on twin grounds of (i) growing grass in Salt Lands and (ii) for not achieving the minimum production of common salt fixed for Maharashtra State.

104) As held above, non-production of salt in the entire portion of salt lands is virtually admitted. Salt is not being produced in land admeasuring 150 acres. Though Plaintiff seeks to blame Defendants for his inability to produce salt on western portion of salt lands, it must be borne in mid that the land is leased out solely for the purpose of manufacturing of salt. If Plaintiff finds himself difficult or impossible to manufacture salt on the land, he must vacate the same. This is not a lease for housing or factory activity. The lease

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therefore cannot be confused with other leases. The purpose of lease being purely for manufacture of salt, the moment the lessee stops the manufacturing activity at salt lands, it must be returned to the lessor. It is then for the Salt Department to decide whether the land can be allotted to some other person/entity who can manufacture salt therein or to take a further decision with regard to use of that land. If Plaintiff expects that the grant of lease in his favour is virtually perpetual, which he actually does, and that he can hold on to that land forever without manufacturing salt therein, in my view, he clearly labours under a misconception. The purpose of lease is specific and the moment salt manufacturing is stopped, the land must be returned to the lessor.

105) The condition in the original Deeds of Lease dated 22 December 1921 for renewal on written request made by lessee 6 months before expiry of tenure of lease coupled with carriage of that condition in the Supplementary Lease-Deed dated 27 July 1994, apparently creates a hope in Plaintiff's mind that he can hold on to the salt lands forever. Whether his expectation in the context of right to manufacture salt forever in *Jamasp* and *Battiwala* salt lands is something different aspect to be decided and which is being dealt with in the latter part of the judgment, his expectation that he can hold on to the lands without manufacturing salt therein is clearly misconceived.

106) When a salt land is allotted to a person for manufacture of salt, the idea is not to create any interest in lessee's favour in the land as such. But the idea is merely to permit use of the land for salt manufacturing activity. The moment manufacturing activity stops, the land must be returned. This

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would, to my mind, apply even where the reasons for non-manufacture of salt are not attributable to the lessee. Even hypothetically it is assumed that tomorrow even eastern portion of salt lands are rendered incapable of salt manufacturing activity for some reason not attributable to Plaintiff, the issue is whether he will have right to hold on to that land? The answer to the question is obviously in the negative.

107) Permitting 782 acres of land, located within Mumbai City, the commercial capital of India, where land prices are arguably the highest in the country, for salt manufacturing activity cannot be confused with creation of any vested right in the land, apart from manufacturing of salt. The allotment of 782 acres of land in Mumbai in 1994 is without payment of any lease premium and the Supplementary Lease-Deed contemplates payment of a paltry sum of Rs. 78,317.00/- (Rupees Seventy-Eight Thousand Three Hundred Seventeen Only) per annum or an amount worked out at the rate of Rupees five per tonne of the quantity of salt produced and issued. It is an admitted position that Plaintiff has never exceeded the figure of 20MT/acre/annum, which means that he has paid just Rs. 78,317.00/- per year for 782 acres of land in Mumbai City. The assignment fees appear to have been enhanced with passage of each year and even if the enhanced assignment fees of Rs. 100 per ton (fixed vide Notification dated 9 October 2013, *discussed latter*) is to be applied to minimum formula of 20MT/acre/year, the assignment fees per year for 782 acres of land would be only Rs. 15,64,000/-.

108) Allegation of growing grass in the show cause notice is also proved as held earlier.

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109) The allegation of growing grass in the Salt Lands is directly relatable to Plaintiff's failure to meet the obligation of manufacturing salt in the salt lands. I have already held that Plaintiff is under obligation to manufacture salt in the Salt Lands. He cannot keep the same un-utilised. Though the ground of not achieving the minimum production of common salt fixed for Maharashtra State is found to be erroneous on account of absence of any stipulation to that effect in the Lease-Deed, in my view, the ground of failure to manufacture salt by growing grass is proved. Failure to manufacture salt as well as to use the land for purpose other than manufacture of salt amounts to breach of conditions of lease both under the original Deeds of Lease dated 22 December 1921 as well as under the Supplementary Lease-Deed dated 27 July 1994. In my view therefore, termination of lease by Defendant No.1 is in accordance with the covenants of both the sets of Lease-Deeds and the termination Order is perfectly legal and valid.

PLAINTIFF'S RIGHT TO RENEWAL OF LEASE

110) Since termination of lease is held to be valid, the issue of Plaintiff's right to seek renewal of lease, in that sense, has been rendered academic. However, since Issue has been framed on the aspect of his right of renewal, I proceed to answer the same.

111) Grant of further lease in favour of Lessees as per clause-VI(2) of Original Lease-Deed was contingent upon Lessees duly performing all covenants of the original Deeds of Lease. Independent of termination and if

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the Defendant No. 1 was not to terminate the lease and was to wait for tenure of the lease to expire on 14 October 2016, Defendant No. 1 had right not to renew the lease on the ground of breach of conditions of conditions of original Deeds of Lease of 1921 as well as Supplementary Lease-Deed of 1994. In the present case, there is not much dispute about non-manufacture of salt on land admeasuring 150 acres on western portion of salt lands. I have already held that irrespective of whether Plaintiff is responsible for non-production of salt or not, the Government is entitled to resume the salt land the moment it is discovered that salt is not manufactured therein. In my view, since non-manufacture of salt on western portion of salt lands is virtually admitted, Defendant No. 1 was otherwise entitled not to renew the lease in Plaintiff's favour. Additionally, cultivation of grass is proved on some portion of salt lands. In my view therefore, Plaintiff did not have a right to seek renewal of lease after 14 October 2016.

112) This leaves answering the academic issue of Plaintiff's right of renewal under the original Deeds of Lease of 1921 and Supplementary Lease-Deed of 1994 if he was to comply with all the conditions of lease.

113) The original Deeds of Lease dated 22 December 1921 contained a covenant for grant of further lease to the lessee '*for such further term and on such conditions as may be determined by the lessor'*. A Supplementary Lease-Deed has been executed with Plaintiff on 27 July 1994. Before execution of the Supplemental Lease-deed, it appears that correspondence took place between the parties, on the issue of retention of the condition for renewal of the lease. Defendant No.2 addressed a letter to Madanlal Bankatlal on 9

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November 1993 expressing willingness to transfer the salt manufacturing land leasehold rights in respect of the salt lands in Plaintiff's favour subject to the following conditions:

> The undersigned is directed to refer to your representation dated 10th August, 1991, addressed to the Deputy Salt Commissioner, Bombay and forwarded to this Ministry through Shri P.K. Thungon, the then Minister of State for Heavy Industry and Public Enterprises on the above subject and to state that the Government in prepared to transfer salt manufacturing and leasehold rights in respect of Jamasp and Battiwala Salt Works at Village Nahur, Mulund, Bhandup, Bombay in favour of Shri Vikas Kamalkar, subject to the following terms and conditions:-
>
> 1. You shall give an undertaking in writing that the land in question will be used only for salt manufacture.
>
> 2. The transfer of licence and lease will be up to the year 2016 when the present lease expires.
>
> 3. You shall pay the assignment fee at the rate of Rs. 10/- per tonne per acre per annum.
>
> **4. You shall execute a fresh lease deed without renewal clause.**
>
> 5. All dues payable to the Salt Department upto the date of transfer shall be cleared.
>
> *(emphasis supplied)*

114) However, on Mandanlal Bankatlal's request, the Government of India agreed to delete Condition No. 4 mentioned in the letter dated 3 November 1993. Letter dated 18 March 1994 reads thus :

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> I am directed to refer to your letter dated the 17th January, 1994 on the subject mentioned above and to convey the approval of the Government to the deletion of condition No.4 refer to in this Department's letter of even number dated the 3rd November, 1993. Therefore, while transferring the salt manufacturing and leasehold rights in respect of Jamasp and Battiwala Salt Works at Village Nahur, Mulund, Bhandup, Bombay in favour of Shri Vikas Kamalkar, the Original Lease Deeds of 22nd December, 1921 will remain in tact and will be transferred by means of assignment as was done at the time of transferring the lease in favour of M/s. Mandanlal Bankatlal Badruka. All other conditions referred to in this Department's letter of even number dated 3rd November, 1993 as modified vide this Department's letter dated 16th December, 1993 shall remain unchanged.

115) Plaintiff accordingly submitted an undertaking for use of land only for salt manufacturing activity and thereafter Supplementary Lease-Deed came to be executed on 27 July 1994.

116) While Mr. Govilkar treats the Supplemental Lease-Deed to be a fresh lease on new terms, whereas according to Mr. Andhyarujina all conditions of original Deeds of Lease dated 22 December 1921 came to be incorporated in the Supplementary Lease-Deed including right to seek renewal.

117) I am not in agreement with Mr. Govilkar's contention that Supplementary Lease-Deed dated 22 July 1994 is a fresh Lease-Deed on fresh term and conditions without any connection with the earlier Deeds of Lease dated 22 December 1921. The Supplementary Lease-Deed merely transferred Bankatlal Gopikishan's leasehold rights in the salt land in favour of Plaintiff. The Supplementary Lease-Deed contains a specific covenant in

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clause-5 providing for operation of all covenants and conditions contained in the three Indentures of Lease dated 22 December 1921. Therefore, the condition relating to renewal in Clause-VI(2) of Lease-Deed dated 22 December 1921 would also apply in relation to Supplementary Lease-Deed.

118) However, even if it is assumed that Plaintiff had scrupulously performed all covenants of the original as well as Supplementary Lease-Deed, in my view that it is difficult to hold that Plaintiff has indefeasible right to seek further lease upon expiration of the term of the first lease. The lease is granted for limited purpose of manufacturing salt. Construction of Salt Work on the salt lands does not involve investment of large sum of money or development of the land in question by changing its nature, particularly considering the tenure of 99 years granted under the original Deeds of Lease. Therefore, what is granted by way of lease is some sort of license to manufacture salt for specified period. I am not for a moment seeking to suggest that the lease is to be compared with or treated as a license. However, considering the purpose for which the same is granted in favour of the Lessee, it is difficult to hold that the Lessees have indefeasible right to seek further lease of the demised premises.

119) Mr. Andhyarujina has strenuously submitted that grant of further lease has to be on same terms and conditions including the condition of further renewal. This would infact convert the transaction into some sort of perpetual lease. While the Apex Court in ***Lalji Tandon*** (supra) has

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recognised the concept of perpetual Lease-Deed in India, the judgment is delivered in the light of the provisions of the Transfer of Property Act, 1882. Provisions of the Transfer of Property Act are inapplicable to the transactions in question on account of the provisions of Government Grants Act, 1895. Sections 2 and 3 of the Government Grants Act, reads thus:

> **2.Transfer of Property Act, 1882, not to apply to Government grants.-**
>
> Nothing in the Transfer of Property Act, 1882, contained shall apply or deemed ever to have applied to any grant or other transfer of land or of any interest therein heretofore made or hereafter to be made by or on behalf of the Government to, or in favour of, any person whomsoever but every such grant and transfer shall be construed and take effect as if the said Act had not been passed.
>
> **3. Government grants to take effect according to their tenor.-**
>
> All provisions, restrictions, conditions and limitations over contained in any such grant or transfer as aforesaid shall be valid and the effect according to their tenor, any rule of law, statute or enactment of the Legislature to the contrary notwithstanding.

120) Both Mr. Naik and Mr. Andhyarujina have not seriously disputed applicability of provisions of Government Grants Act to the transaction in question. In that view of the matter, the judgment in ***Lalji Tandon*** would have no application to the transaction involved in the present case.

121) Defendant Nos.1 and 2 have relied upon Resolution dated 9 October 2013 of Ministry of Commerce and Industry which reads thus :

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"MINISTRY OF COMMERCE AND INDUSTRY
RESOLUTION
New Delhi, the 9th October, 2013

S. O. 2301.- The policy on the renewal of leases of Central Government land under the administrative control of Salt Commissioner leased out for manufacture of salt was considered and the President, in partial modification of the Government Resolution No. 18(4)/59-Salt (Pt. VIII) dated 7th December, 1961 and further clarified under Government Resolution No. 16(23)/63-Salt dated 19th December, 1969, is pleased to approve that:-

(a) Central Government land will be leased out for salt manufacture for a period of 20 years by invitation of tender.

(b) No renewal of lease will be done. Fresh tender for the assignment of land for salt manufacture will be called. The present leasee on expiry of the existing lease may participate along with fresh aspirants."

[No.04014/1/2012-Salt]
Sanjivani Tamhane, Dt. Secy.

122) The Resolution dated 9 October 2013 appears to be in the nature of statutory order as the same is referred to as '*SO 2301'*. Mr. Govilkar, has relied upon judgment of the Apex Court in ***Kusum Ingots & Alloys Ltd.*** (supra) in support of his contention that the said Resolution would amount to a legislation. The Apex Court has held in para-26 as under :

26. The view taken by this Court in *U.P. Rashtriya Chini Mill Adhikari Parishad* that situs of issue of an order or notification by the Government would come within the meaning of expression 'cases arising' in clause 14 of the (Amalgamation) Order is not a correct view of law for the reason hereafter stated and to that extent the said decision is overruled. In fact, a legislation, it is trite, is not confined to a statute enacted by the Parliament or Legislature of a State, which would include delegated legislation and subordinate legislation or an

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> executive order made by the Union of India, State or any other statutory authority. In a case where the field is not covered by any statutory rule, executive instruction issued in this behalf shall also come with within the purview thereof. situs of office of the Parliament, Legislature of a State or authorities empowered to make subordinate legislation would not by itself constitute any cause of action or cases arising. In other words, framing of a statute, statutory rule or issue of an executive order or instruction would not confer jurisdiction upon a court only because of the situs of the office of the maker thereof.

123) Thus, under the Resolution dated 9 October 2013, there is a prohibition on renewal of Central Government lands which are under administrative control of Salt Commissioner and which are leased out for manufactures of salt. The Deputy Secretary to the Government of India, Department of Industrial Policy and Promotion, Salt Section directed Salt Commissioner not to renew any leases until the cabinet takes decision on the subject matter. The letter dated 11 July 2016 was apparently issued on account of Note for the consideration of the Cabinet for closure of Salt Commissioner's Organisation. It is not known as to what decision is taken on the said proposal and in that sense, the letter dated 11 July 2016 was apparently a mere ad-hoc arrangement. What is relevant however is the Resolution dated 9 October 2013 which imposes prohibition on renewal of leases.

124) Mr. Govilkar has relied upon judgment of Single Judge of Madras High Court in ***The Salt Manufacturer's and Merchants Association*** (supra). Though the date of the Notification involved in the case before the Madras High Court is the same i.e. '9 October 2013' and it appears that the

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challenge before the Madras High Court was to a separate Notification relating levy of assignment fees and ground rent in respect of salt lands issued by the Central Government on the same day as that of Resolution/SO dated 9 October 2013. However, the learned Single Judge appears to have made following observations on the issue of renewal of lease of salt manufacturers in para-25 as under:

> 25. Admittedly, the lease period had expired in respect of all the petitioners and therefore, they have no locus to question the circular or seek an automatic renewal of lease period, without conducting the tender process. It is a policy decision taken by the Government of India in regulating the salt manufacturing units and such a policy decision is taken by wide consultation and by following the processes, considering the suggestions and objections of the stakeholders and thus, there is no infirmity in respect of the processes adopted from time to time and increase in charges based on the prevailing circumstances. It is not as if the Lessees can get renewal automatically, which would confer the lease rights perpetually and such a perpetual lease is unlawful and will deprive other eligible persons and also result in discrimination, which is impermissible and violative of the constitutional mandates. Thus, the procedure is transparent and is being followed by improving the system periodically and based on he recommendations of the Committees and after considering suggestions, objections etc., of the stakeholders as well as any consultation with Experts. Thus, there is no perversity with reference to the procedures adopted for forming an opinion and for issuance of the impugned order. The grounds raised regarding unreasonableness, arbitrariness are absolutely untenable and beyond any stretch of imagination.

125) The Judgment in ***The Salt Manufacturer's and Merchants Association*** is being dealt with in greater detail little latter. However, the Resolution dated 9 October 2013 has been considered by Division Bench of this Court in ***Jugalkishore R. Joshi*** (supra) in a slightly different context.

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This Court was considering petition filed by a third-party challenging order of renewal of lease in favour of a salt manufacturer without conducting auction. During the course of hearing of the petition, Resolution dated 9 October 2013 was placed before the Division Bench and the Division Bench has held in paras-10 to 13 as under :

> 10. Upon a perusal of this publication, we are of the firm opinion that at least on 9th October, 2013, there was a clear cut and defined policy. There was thus no impediment in pointing out to this court that in the light of this policy, the grievance of the petitioner would not survive. Far from stating on these lines, it was left to the petitioners to pursue the cause and in the larger interest of the public. This would clearly mean that the Salt Commissioner, the Deputy Salt Commissioner and the concerned officials in the Ministry have misled this court and from time to time. There was enough opportunity available to them to file an affidavit dealing with the contentions of the petitioners and particularly the allegation that there is an arbitrariness given the lack of defined policy in allotting the lands styled as salt pan lands for manufacturing salt. The public revenue and public interest is sacrificed and not safeguarded and protected by these public officials. We are surprised that no such stand was taken until this court impressed upon the officials through the learned Additional Solicitor General that they would take all the consequences in the event they are found to be violating the law of the land.
>
> 11. In these circumstances, while we dispose of this writ petition in terms of the above communication to the Deputy Salt Commissioner and the publication in the Gazette of India, we direct that every salt pan lands used for manufacturing salt within the Mumbai city and Suburbs as also within the vicinity have to be strictly allotted or leased in terms of this policy and which demands that by issuing a public notice, bids and offers are invited from interested parties, they are duly considered by a competent scrutiny and verification committee, fairly and transparently and thereafter, the lease or allotment of lands for manufacture of salt be made.

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> 12. We dispose of this petition by accepting the statements made by Mr. Rajguru as undertakings given to this court. It is stated that now the subject salt pan lands would be allotted after inviting bids from interested parties by a fair and transparent process, in which, all the interested parties, including the petitioners and respondent nos. 6 and 7 are free to participate. The moment the process is finalised by such tender or bid notice and in terms thereof, all existing rights of salt manufacturers qua the subject salt pan lands would come to an end. Meaning thereby, physical possession of the same would be obtained from the existing salt manufacturers and the same would be allotted to the successful bidder.
>
> 13. Since we are of the firm opinion that this court is engaged in a futile litigation and misled on more than one occasion, we direct the Secretary in the Department of Ministry of Commerce and Industry (Policy and Promotion) to initiate disciplinary proceedings against the guilty officials, including the Deputy Salt Commissioner, Mumbai. If the officer as high as holding the post of the Salt Commissioner has also not brought to this court's notice the policy or the underlying measures, then, even he should be proceeded against in terms of the Disciplinary Rules and Regulations.

126) While Mr. Govilkar interprets the Order of Division Bench in ***Jugalkishore R. Joshi*** to mean that every salt pan land in Mumbai City and Suburbs must be allotted as per Resolution dated 9 October 2013, it is sought to be contended on behalf of the Plaintiff that the order applies only to *'subject salt pan lands involved in the petition.'* While the Plaintiff may not be entirely wrong in contending so, the objective behind issuing Resolution dated 9 October 2013 and the reasons why this Court has made observations in para-12 and 13 of the judgment must be borne in mind. As observed by me above, lease of salt pan lands cannot be on perpetual basis. There cannot be any monopoly for a single individual/entity to continue to manufacture salt to the exclusion of others on Central Government lands. It is ultimately a

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resource of Government and public trust doctrine would apply while distributing the natural resources and national assets. In that regard reliance of Mr. Govilkar on judgment of Apex Court in ***Centre for Public Interest Litigation*** (supra) appears to be apposite, in which the Apex Court has held in paras-74 and 75 as under :

> **74.** At the outset, we consider it proper to observe that even though there is no universally accepted definition of natural resources, they are generally understood as elements having intrinsic utility to mankind. They may be renewable or non renewable. They are thought of as the individual elements of the natural environment that provide economic and social services to human society and are considered valuable in their relatively unmodified, natural, form. A natural resource's value rests in the amount of the material available and the demand for it. The latter is determined by its usefulness to production. Natural resources belong to the people but the State legally owns them on behalf of its people and from that point of view natural resources are considered as national assets, more so because the State benefits immensely from their value.
>
> **75.** The State is empowered to distribute natural resources. However, as they constitute public property/national asset, while distributing natural resources, the State is bound to act in consonance with the principles of equality and public trust and ensure that no action is taken which may be detrimental to public interest. Like any other State action, constitutionalism must be reflected at every stage of the distribution of natural resources. In Article 39(b) of the Constitution it has been provided that the ownership and control of the material resources of the community should be so distributed so as to best sub-serve the common good, but no comprehensive legislation has been enacted to generally define natural resources and a framework for their protection. Of course, environment laws enacted by Parliament and State legislatures deal with specific natural resources, i.e., Forest, Air, Water, Costal Zones, etc.

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127) Though the judgment in ***Centre for Public Interest Litigation*** applies to allocation of 2G spectrum, the principles enunciated by the Apex Court for distribution of natural resources and national assets must be borne in mind. Whether those principles would apply to right of renewal of lease of land whereupon a residential or commercial building or factory constructed and where nature of the land is substantially altered is something which will have to be decided in the facts of that case. However, in relation to grant of lease for manufacture of salt, it is difficult to hold that salt manufacturers can have perpetual right to remain on land and manufacture salt to the exclusion of others especially in the light of Central Government's policy decision in the form of subordinate legislation to allot salt pan lands for a tenure of 20 years that too after following tender process and not to renew current leases.

128) Reliance is placed by Plaintiff on letter dated 9 November 1993 in which Condition No.4 was '*you shall execute a fresh lease deed without renewal clause'*. Another condition in the letter dated 9 November 1993 was for payment of assignment fee at the rate of Rs.10 per tonne/acre/annum. It appears that the on Plaintiff's request made on 24 November 1993, the assigned fees were reduced to 5 per tonne/acre/ annum. Plaintiff thereafter relies on letter dated 18 March 1994 of Deputy Salt Commissioner which appears to have been written in pursuance of Plaintiff's letter dated 17 January 1994, by which condition No.4 in the letter dated 3 November 1993 came to be deleted. Plaintiff reads deletion of Condition No.4 to mean as if the renewal clause in the original Deeds of Lease dated 22 December 1921 would be applicable in respect of his Supplementary Lease-Deed dated 27 July 1994. Careful perusal of Condition No.4 in the letter dated 9 November

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1993 shows that the Government initially insisted on execution of a '*fresh Lease-Deed'* and in such fresh Lease-Deed, no renewal clause was to be stipulated. What essentially appears to be deleted is the condition for '*execution of fresh lease-deed*'. The words '*without renewal clause'* are referable to '*fresh lease-deed'*. Thus, letter dated 18 March 1994 cannot be read to mean as if Government had agreed to renew lease in favour of Plaintiff after expiry of tenure of Supplemental Lease-Deed dated 27 July 1994. Therefore, letters dated 9 November 1993 and 18 March 1994 of Deputy Salt Commissioner cannot *ipso-facto* raise a presumption of any conscious decision by the Government for renewal of the lease after expiry of tenure of Supplementary Lease-Deed dated 27 July 1994. However as held above since the conditions of Original Deeds of Lease of 1921 are incorporated in the Supplementary Lease-Deed of 1994, the renewal clause of 1921 Deed would operate in the present case.

129) Coming to the Supplementary Lease-Deed dated 27 July 1994, one of the conditions therein is to pay '*assignment fee*' which was apparently absent in the original Lease-Deeds dated 22 December 1921. The Supplementary Lease-Deed introduced the concept of payment of '*assignment fees*'. This was apparently in accordance with the policy framed by the Central Government from time to time. In the original Lease-Deeds dated 22 December 1921, the lessees were under obligation to pay royalty on salt removed from salt pans at the rate of *'four pies, per indian maund'*. The discussion in the judgment of Madras High Court in the ***Salt Manufacturer's and Merchants Association*** (supra) indicates constitution of various Committees particularly *'Manubhai Shah Committee'* and decisions

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taken from time to time on various aspects including payment of royalty and charges. It appears that by Resolution dated 3 May 1961, the concept of assignment fees was introduced and the formula for levy of assignment fee was provided by letter dated 20 June 1964. Then the assignment fees were revised from time to time. This is why apparently, the concept of payment of assignment fees came to be introduced in the Supplementary Lease-Deed dated 27 July 1994. While the Supplementary Lease-Deed fixed assignment fees at the rate of Rs.5/- per tonne subject to minimum production of 20 Tonnes per acre/annum, clause-1(iii) of the Supplementary Lease-Deed contained a stipulation fee for payment of assignment fee and ground rent 'at enhanced rate as and when fixed by the lessor later'. From judgment in ***Salt Manufacturer's and Merchants Association***, it appears that the assignment fee was revised on 27 January 2004. A further revision took place on the same day when Resolution/Statutory Order was passed banning renewal of leases and for mandatory conduct of tender process for grant of new leases on 9 October 2013. On 9 October 2013, Government of India issued a Notification revising the assignment fee at Rs.100/- per M.T./acre/year. For State of Maharashtra the minimum production per acre was fixed at Rs. 20 MT/acre/annum. The Notification dated 9 October 2013 has been culled out in paragraph-36 of ***Salt Manufacturer's and Merchants Association*** reads thus:

> In supersession of latter No. 02011/2/2003-Sult dated 27.1.2004 from the Ministry of Commerce & industry, I am directed to convey the approval of the constant authority for revision of assignment fee ground rent and rate of minimum production of state per acre as follows:-

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(a) The minimum assignment fee is liked Rs 100/- per MT/annum per subject to minimum yield per acre as fixed for State to State and salt producing centers

(b) Ground rent is fixed Rs 120/- per acre/per annum, Ground rent should be recovered in lump sum annually in advance

(c) For the purpose of levy of assignment fee minimum production of salt in terms of tones per acre per annum has been fixed at the following rates in respect of salt land owned by the Salt Commissionerate in the following States:-

State	Minimum production of salt in MT/Acre/Anum
Maharashtra	20

(d) The now rates of assignment fee and ground rent will be effective from 1 January, 2013 onwards.

2. The following procedure shall be adopted for levy of assignment fee lease money in the said States:-

a) Ground rent should be recovered in lump sum annually in advance.

b) The assignment fee may be collected in installment, not exceeding four in s year subject to the payment of simple interest fixed by the Government from time to time.

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c) The assignment fee ground rent in respect of land whose lease was renewed on payment of assignment fee/ground rent as per DIPP letter No. 0201 1/2/2003- Salt dated 27.1.2004 would stand revised to the aforesaid rate w.e.f. 1.1.2013. In case lessess are already paying assignment fee more than Rs 100/- per ton, they shall continue to pay the same amount.

d) Before the lands are formally assigned, the assignees should be required to deposit a fixed amount equal to the estimated amount of assignment fee for one year as security deposit. This would be refundable after the expiry of the successful terms of the lease. The assignment fee paid as advance shall be adjusted against outstanding dues in case the lease of land given for manufacture of salt is cancelled owing to violation of lease conditions.

e) In respect of fresh and undeveloped lands as well as salt lands lying fallow for more than 7 years, lease money/assignment fee at half of this scale should be recovered for the first three years from the assignee and for the first five years from duly registered cooperative societies. However, such condition should be incorporated in the NIT and subsequently in lease agreement.

f) In cases where the highest tender rate of assignment fee being more than Rs 100, the lessee shall pay the tendered rate.

g) In cases where the land has been allotted on lease by inviting tenders and the highest bid accepted for payment of assignment fee was less than Rs 100/- per MT, the lessees will continue to pay the assignment fee during the remaining period of lease as per their respective highest bid accepted.

h) All lessees will be required to pay ground rent at revised rate.

3. The new rates of assignment fee and ground rent will automatically increase by 10% after every three years and will be reviewed after every five years by the Committee constituted by the Government of India.

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4. This issues with the concurrence of IF Wing vide their Dy. No. 650 dated 10.7.2013

130) This Notification dated 9 October 2013 became subject matter of challenge before Single Judge of Madras High Court in the ***Salt Manufacturer's and Merchants Association*** and the same came to be upheld. Thus, simultaneously with issuance of the Resolution/Statutory Order dated 9 October 2013, the Central Government also revised assignment fee and ground rent in respect of salt lands. Though the Notification dated 9 October 2013 essentially dealt with the issue of enhancing assignment fee and ground rent, it also touched upon the existing leases and provided that in respect of existing leases, where highest tender rent rate for assignment fee was more than Rs.100/-, the licensee shall pay the tendered rate. Conversely, where the land was allotted on lease by inviting tenders and the highest bid was less than Rs.100/-, the lessees will continue to pay the assignment fee as per the bid during the remaining period of lease. Thus, if any existing lessee at bid at a particular rate of assignment fees, which was less than Rs.100/-, the same rate of assignment fee was to apply during the reminder period of the lease.

131) As observed above, the Supplementary Lease-Deed contained a stipulation for payment of assignment fees as revised and fixed by the lessor at enhanced rates. In that view of the matter, it clearly appears that the terms of the original Leases dated 22 December 1921 where substantially and materially altered at the time of execution of Supplementary Lease-Deed dated 27 July 1994. As observed above, the letters dated 9 November 1993 and 18 March 1994 cannot be read to mean as if the Government agreed for

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renewal of the lease beyond the expiry of tenure of Supplementary Lease-Deed dated 27 July 1994. Before expiry of the tenure of Supplementary Lease-Deed, Resolution dated 9 October 2013 was adopted by the Central Government under which renewal of lease of salt pan lands is now prohibited and that allotment of lands through tender process is mandatory. In such circumstances, accepting Plaintiff's contention that he is entitled to get a renewal of lease for another term of 99 years, with further clause for renewal would virtually mean a perpetual lease in Plaintiff's favour. While India is not allergic to the concept of perpetual lease, as held by the Apex Court in ***Lalji Tandon***, the said ratio is inapplicable in view of provisions of the Transfer of Property Act being inapplicable to the present lease on account of the provisions of the Government Grants Act, 1885.

132) It must be borne in mind that salt pan lands owned by Government of India are permitted to be used by persons/entities for manufacture of salt. The Government of India has taken a decision which ensures that there is no monopoly in favour of a particular person/entity and allotment of leases should be on competitive bidding process. Such bidding process ensures higher revenue to the Central Government as Notification dated 9 October 2013 contemplates bidding higher than the minimum assignment fees of Rs.100 per tonne/acre/annum. Such biding also provides opportunities to other persons/entities to use government land for manufacture of salt. In the present case, as observed above, Petitioner is unable to manufacture salt on substantial portion of the demised premises spreading across 150 Acres. There is already feasibility report on record which suggests that the said 150 Acres of land can be brought under salt

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production. The Notification dated 9 October 2013 provides for payment of only half the assignment fees in cases of salt lands lying fallow for more than 7 years. Thus as and when the Government decides to allot 150 acres of land in Plaintiff's possession, which is admittedly not being used for salt production for the last several years, the Government will have to face revenue loss.

133) Considering the unique purpose for which the Government salt pan lands are leased out, grant of perpetual lease to an individual/entity, especially against the policy decision of the Government, by interpreting clauses of the original Lease-Deeds dated 22 December 1921 in Plaintiff's favour would result in virtually granting the demised premises in Plaintiff's favour forever, whether or not he manufactures salt therein or not. In my view, the leases in respect of salt pan lands cannot be compared with other leases for construction of houses, buildings, factories etc. They are more in the nature of license to manufacture salt by payment of assignment fee to the Government calculated on the basis of quantity of salt manufactured. Such leases cannot be put on same pedestal with the other leases where lease in perpetuity is permissible and where change in Government policy does not affect rights created in favour of lessee to seek renewal of lease. For this reason, the judgments cited by Mr. Andhyarujina in ***Khas Mahal Citizens Welfare Society, Jaikumari Amarbhadhursingh, Sharayu Ashok Gokhale*** and ***Damodar Tukaram Mangalmurthi*** (supra) would have no application to the peculiar facts and circumstances of the present case. In ***Khas Mahal Citizens Welfare Society*** the leases were granted either perpetually or for tenure of 30 years with right of renewal. The leases contained right of

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transfer, construction of buildings and structures etc. and were inherited from generations to generations. The change in policy essentially pertained to fixation of excessive rates for renewal of existing leases, which was the essential grouse of Petitioners before the Patna High Court. It is in the light of these peculiar facts, Single Judge of Patna High Court held that change in the policy of the Government did not affect the rights already created in favour of lessees and that such changed policy would apply prospectively. Though the judgment in ***Khas Mahal Citizen Welfare Society*** appears to have been upheld by the Division Bench of Patna High Court and by the Apex Court, both the Division Bench and the Apex Court have upheld Single Judge's judgment without recording detailed reasons.

134) In ***Jaikumari Amarbahadursingh*** (supra), Division Bench of this Court has dealt with a case where lease conditions provided for right to transfer, alienate and inheritance in addition to renewal of lease at the expiry of lease period on the same terms and conditions. The grievance of Petitioners therein was about imposition of new conditions which included restriction on right to alienate the land while effecting renewal of the leases. The principal challenges in the petitions in ***Jaikumari Amarbahadursingh*** have been stated by the Division Bench in para-8 of the judgment as under:

> 8. At the cost of repetition, we may reiterate that the principal challenge in all these Petitions is to the power of the Revenue Authority to –
> (i) impose new condition in the subsisting lease providing for seeking prior permission of the Authority to legitimise the proposed transfer of the land in question;

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(ii) insist for inserting new condition requiring the grantee/lessee to take prior permission of the Revenue Authority before effecting transfer of the land in question at the time of renewal of the lease which has already expired or was likely to expire in the near future;
(iii) delete the existing condition in the lease which permits the lessee of free transfer or alienability and inheritance;
(iv) impose condition to claim/levy unearned charges so as to legitimise and regularise the transfer of the land by the grantee/lessee; and
(v) demand enhanced annual rent in respect of land in question which was not only ex-facie unjust and unfair but absurdly excessive.

135) Thus the main issue involved in ***Jaikumari Amarbahadursingh*** was about right of the Government to impose new conditions at the time of renewal of lease. Therefore, all the observations of the Apex Court made in the judgment are in relation to the said issue, which is not involved in the present petition. Similar is the case in ***Sharayu Ashok Gokhale*** where again challenge was to insertion of additional terms and conditions by the Municipal Corporation at the time of renewal of the lease. ***Damodar Tukaram Mangalmutri*** is relied upon by Division Bench in ***Jaikumari Amarbahadursingh*** wherein the issue was about right of lessor to determine fair and equitable enhancement of renewal at the time of grant of very renewal. Therefore, the judgment of the Apex Court in ***Damodar Tukaram Mangalmurti*** would again not be of much assistance to the present case.

136) The judgments in ***Secretary of State for India in Council*** and ***Lani Mia*** are relied upon by Mr. Andhyarujina in support of his contention that renewal of the lease must be on same terms and conditions. Since Plaintiff does not have automatic right of renewal of lease, there is no question of

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going into the issues as to whether the renewal would be on same terms and conditions. In any case, Clause-VI(2) of Deeds of Lease dated 22 December 1921 provided for determination of term of lease after renewal as well as conditions to be determined by lessor. The judgments are therefore of little assistance to the issue at hand.

RESPONSIBILITY OF MCGM TO MAKE DRAINS AND SEWERS

137) It is Plaintiff's case that it is the responsibility of Defendant No.3-M.C.G.M. to make drains and sewers to prevent sewage water and industrial effluents from flowing into the two inlets of salt lands. On the contrary, it is the contention of both Defendant Nos.1 and 2 as well as of Defendant No.3 that the said responsibility is on the Plaintiff. In respect of this issue, the responsibility would be in respect of the two locations viz. in respect of Nallas outside Plaintiff's salt lands and in respect of Nalla flowing through Plaintiffs' salt lands. So far as the responsibility of making sewers and drains in respect of constructions located outside the salt land is concerned, obviously the same would not be of Plaintiff. However, in respect of portions of Nalla which are located inside the salt lands, it would be Plaintiff's responsibility to ensure that adequate quantity of brine water enters the salt pan lands.

138) Plaintiff seeks to blame Defendant No.3-M.C.G.M. for construction of sewers and drains so as to stop flow of sewage water and industrial effluents into *Nanepada* and *Bombay Oxygen Nalla*. For the purpose of deciding the issue of termination of lease, it is not necessary to go into general duties and

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responsibilities of M.C.G.M. to construct and maintain sewage lines and drainage lines within the municipal area as a part of its statutory duty. What is important is to determine whether failure to manufacture salt on western portion of the salt lands can be attributed to the conduct of Defendant No.3. The feasibility report of the Committee prepared in December 2003 would indicate that Plaintiff was apparently preventing brine water from entering into the salt pan lands and that he had constructed channels for flow of sweet water into the salt lands for growth of grass. The Committee opined that it was possible to reconvert the land on which grass was being grown into the one for manufacture of salt. Thus, by taking necessary measures, it was possible to manufacture salt even on western portion of *Battiwala* and *Jamasp salt works*. Therefore, Plaintiff cannot be permitted to put blame on the Defendants for his inability to manufacture salt on western portion. Infact, it has come on record that grass is being systematically grown (either by plaintiff himself or by unauthorised persons, as claimed by him) atleast since the year 1987. According to Plaintiff himself, the structures proliferated beyond western boundaries of salt lands after the year 1995. This would show that in the year 1988, the alleged problem of sewage water entering the inlets either did not exist or was not rampant, but still grass was being grown on some portions of salt lands. Therefore, the release of sewage water or effluents into Nanepada Nalla and Bombay Oxygen Nalla cannot be the sole reason for failure to manufacture salt on western portion of the land. In that view of the matter, Defendant No.3 cannot be held responsible for Plaintiff's failure to produce salt on western portion of the salt lands. Issue No.3 is accordingly answered in the negative.

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139) Issue No. (c-i) is about first amendment carried out by Plaintiff being barred by limitation. It appears that by Order dated 11 January 2012, this Court permitted Plaintiff to amend the plaint by which *interalia* paragraph 15A is inserted in the plaint. In paragraph 15A of the plaint, Plaintiff has sought to put the responsibility of preventing, controlling and abating environmental pollution and to ensure that no sewage water and industrial effluents are discharged into water course flowing along Western portion of Salt Lands. Accordingly, in prayer clause (d)(i) Defendant No.2 is added while seeking decree for making drains and sewers to prevent sewage water and industrial effluents flowing into the two inlets in Plaintiff's suit lands. I do not see any reason why this amended relief can be said to be barred by limitation. Issue No. (c-i) is answered accordingly.

ANSWER TO THE ISSUES

140) On the basis of the above discussion, the issues framed in the suit are answered as follows:

	ISSUE	ANSWER
(a)	Whether the Plaintiff proves that termination of the lease of lands described in Exhibit "B" to the plaint, vide Order dated 1st April, 2005 (Exhibit W to the Plaint) is illegal, wrongful and contrary to law ?	In the Negative.
(b)	Does the Plaintiff prove that he is entitled to renewal/ extension of lease for a like term of 99 years on the same terms, (including a term for further renewals) as per Supplemental Deed of Lease (Exhibit E to the plaint) read with Deeds of Lease referred to in para 5 of the plaint ?	In the Negative.

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(b-i)	If the answer to issue (b) is in the affirmative, whether the plaintiff proves that he has exercised the right of renewal vide letter dated 12th April, 2016 (Exhibit 'X' to the plaint) ?	Does not arise in the light of Issue No. (b) being answered in the negative.
(b-ii)	Whether the defendant proves that the plaintiff is not entitled to renewal of lease as contended in paragraphs 3, 6, 7, 9 and 12 of the supplementary written statement ?	In the Affirmative
(c)	Whether the Plaintiff proves that Defendant No.3 are required to make drains and sewers, to prevent sewage water and industrial effluent from flowing into the two inlets of the Plaintiff's salt lands ?	In the Negative.
(c-i)	Whether the [first] amendment carried out by the Plaintiff is barred by the Law of Limitation ?	In the Negative.
(d)	What Order ?	

MCGM'S NOTICE OF MOTION

141) Defendant No. 3-MCGM has filed Notice of Motion No. 243 of 2018, for the purpose of seeking possession of requisite portion of land for widening of Goregaon-Mulund Link Road. Mr. Apte would submit that on account of interim order passed by this Court, MCGM is unable to take over possession of requisite land, which is wants to acquire for development of a crucial East-West link to connect Mulund and Goregaon. Since the Suit is being dismissed, it if for MCGM take appropriate steps in law for acquisition/ advance possession of the requisite portion of land.

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E. ORDER

142) After considering the entire conspectus of the case, I am of the view that Plaintiff's challenge to the termination order must fail. Since termination of lease is upheld, there is no question of renewal of the lease. However even if the termination of lease was not to be resorted to, in my view Plaintiff did not have right of renewal of lease beyond 14 October 2016, both on count of non-observance of covenants of the Lease-Deed as well as impermissibility to grant such renewal. Consequently, Plaintiff's suit deserves to be dismissed. I accordingly, proceed to pass the following Order:

(i) Plaintiff's suit is **dismissed** with costs.

(ii) Plaintiff shall hand over vacant and peaceful possession of the salt lands to Defendant No. 1 within 3 months.

(iii) Decree be drawn up accordingly.

(iv) Notice of Motion No. 243 of 2018 is disposed of.

SANDEEP V. MARNE, J.

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