Bombay High Court
Hindustan Unilever Ltd. And Anr vs The State Of Maharashtra And 3 Ors on 3 May, 2018
Bench: S.C. Dharmadhikari

Judgment.WPL.122.2018+.doc

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 122 OF 2018
WITH
NOTICE OF MOTION NO. 45 OF 2018

1. Hindustan Unilever Limited }
a company incorporated under }
the Companies Act, 1913 having }
its registered office at Unilever }
House, B. D. Sawant Marg, }
Chakala, Andheri (East), }
Mumbai - 400 099 }
}
2. Aditya Mudgal }
a citizen of India, aged about 33 }
years and having residential }
address at C-652, Sarita Vihar, }
New Delhi - 110 076 } Petitioners

versus

1. The State of Maharashtra }
through the Secretary Revenue }
and Forest Department and the }
Secretary, and the Secretary Law }
and Judiciary Department, }
Government of Maharashtra, }
Mantralaya, Mumbai - 400 021 }
represented by the Government }
Pleader having its office at the }
Bombay High Court annex }
building of Bombay High Court }
}
2. The Collector Mumbai City }
through the office of the }
Government Pleader, Bombay }
High Court, having its office at }
the Annex Building of Bombay }
High Court }
}
3. Housing Development Finance }
Corporation Limited, }
a company incorporated under }
the Companies Act, 1956 and }
having its registered office at }

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Ramon House, H. T. Parekh Marg, }
169, Backbay Reclamation, }
Churchgate, Mumbai - 400 020 }
}
4. Superintendent of Land }
Records (City Mumbai) }
through the office of the }
Government Pleader, Bombay }
High Court, having its office at }
the Annex Building of Bombay }
High Court } Respondents

WITH

WRIT PETITION NO. 137 OF 2017

Glider Buildcon Realtors Private }
Limited }
a private limited company }
incorporated under the }
provisions of Companies Act, }
1956 and having its registered }
office at 4 th floor, Piramal Tower }
Annex, Ganpatrao Kadam Marg, }
Lower Parel, Mumbai - 400 013 } Petitioner

versus

1. The Government of }
Maharashtra }
through (i) the Principal }
Secretary of Revenue and Forest }
Department and (ii) the Chief }
Secretary, Mantralaya, Madam }
Cama Road, Mumbai - 400 032 }
}
2. The Collector of Mumbai City }
Custom House, Shaheed Bhagat }
Singh Marg, Fort, }
Mumbai - 400 001 }
}
3. Mafatlal Industries Limited }
a private limited company }
registered under the provisions }
of the Companies Act, 1956 and }
having its registered office at }
Asarwa Road, Ahmedabad - }
380 016 } Respondents

J.V.Salunke,PA

WITH
WRIT PETITION NO. 111 OF 2017
WITH
NOTICE OF MOTION NO. 52 OF 2018

Mangla Hospitality Limited }
a company incorporated under }
the provisions of the Companies }
Act, 1956, having its registered }
office address at 165-C, Mittal }
Tower, Nariman Point, }
Mumbai - 400 021 } Petitioner

versus

1. The State of Maharashtra }
through its Principal Secretary }
and Forest Department, }
Mantralaya, Mumbai }
}
2. The Office of the District }
Collector, Mumbai, Old Customs }
House, Fort, Mumbai - 400 001 }
}
3. The Recovery Officer, }
Recovery of Mumbai, District }
Land Revenue for the Collector, }
Mumbai, Old Customs House, }
Fort, Mumbai - 400 001 } Respondents

WITH
WRIT PETITION NO. 513 OF 2017
WITH
NOTICE OF MOTION NO. 469 OF 2017
AND
CHAMBER SUMMONS NO. 248 OF 2017

1. Arvind Properties Pvt. Ltd. }
a company incorporated under }
the Companies Act, 1956 having }
its registered office at 201, }
Commerce House, 140, }
N. M. Road, Fort, }
Mumbai - 400 023 }
}
2. Manakchand Loonkar }
Indian Citizen of Mumbai and }

Director of Petitioner No. 1 }

J.V.Salunke,PA

having his office at 201, }
Commerce House, 140, N.M.Road, }
Fort, Mumbai - 400 023 } Petitioner

versus

1. The State of Maharashtra }
through the Principal Secretary, }
Revenue and Forest Department, }
Mantralaya, Mumbai - 400 032 }
}
2. The Collector Mumbai }
having his office Old Custom }
House, Shahid Bhagatsingh Marg, }
Fort, Mumbai - 400 001 }
}
3. The Municipal Corporation }
of Greater Mumbai, a statutory }
corporation constituted under the }
provisions of the Bombay }
Municipal Corporation Act, 1888, }
having its office at Mahapalika }
Marg, Opp. C. S. T., }
Mumbai 400 001 }
}
4. The Executive Engineer, }
Building Proposals, City, }
having his office at New }
Municipal Building, }
C. S. No. 335-B, Bhagwan Walmiki }
Chowk, Vidyalankar Marg, }
Opp. Hanuman Mandir, Salt Pan }
Road, Antop Hill, Wadala (East), }
Mumbai - 400 037 } Respondents

Mr.Virag Tulzapurkar-Senior Advocate with Dr.Birendra Saraf, Mr.Melvyn Fernandes, Mr.Amit Bhandari, Mr.Jineshkumar Gandhi and Ms.Nikita Panhalkar i/b.M/s.Vaish Associates for the petitioners in WPL/122 of 2018.

Mr. Birendra Saraf with Ms.Divyanka Kapoor and

Mr.Rupen Kanawah i/b. M/s.Wadia Ghandy and Co.
for the petitioners in WP/137/2017.

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Dr.Milind Sathe-Senior Advocate with Mr.Nishit Dhurva, Mr.Malav Virani, Mr.Rohan Agrawal i/b.M/s.MDP and Partners for the petitioners in WP/111/2017.
Mr. Sanjay V. Kadam with Mr. Mayur Khandeparkar, Ms.Apeksha Sharma, Mr.Sanjeel Kadam and Ms.Sayalee Rajpurkar i/b. M/s.Kadam & Co. for the petitioners in WP 513 of 2017.

Dr.Milind Sathe-Senior Advocate with Ms.Divyanka Kapoor, Mr.Akshit Dhedia, Ms.Jasmine Kachalia i/b.M/s.Wadia Ghandy and Co. for respondent No. 3 in WPL/122/2018.

Mr.Rafique Dada-Senior Advocate with Mr.Prasad Dhakephalkar-Senior Advocate with Mr.Ashish Kamat, Mr.Aditya Mehta, Mr.M.S.Federal, Mr.Murtuza Federal, Ms.Namrata Shah, Ms.Anchal Rohira and Ms.Paulomi Mehta i/by M/s. Federal and Rashmikant for respondent no.3 in WP/137/2017.

Mr.Ashutosh Kumbhakoni-Advocate General with Ms.Geeta Shastri-Additional Government Pleader, Mr. Abhay Patki, Additional Government Pleader, Smt.Uma Palsuledesai, A.G.P. and Mr. Kedar Dighe, A.G.P. for Respondent No.1- State of Maharashtra in WPL/122/2018, WP/137/2017, WP/513/2017 and WP/111/2017.

CORAM :- S. C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

Reserved on 7 th February, 2018 Pronounced on 3 rd May, 2018 JUDGMENT :- (Per S. C. Dharmadhikari, J.) WRIT PETITION NO. 122 OF 2018 :-

1. By this petition under Article 226 of the Constitution of India, the petitioners are claiming the following principal reliefs:- J.V.Salunke,PA Judgment.WPL.122.2018+.doc "(a)(1) That this Hon'ble Court be pleased to issue a Writ of Mandamus or Writ in the nature of Mandamus or any other appropriate Writ, order and/or direction under Article 226 of the Constitution of India declaring the amendment dated August 22, 2016 to Section 295 of the Maharashtra Land Revenue Code, 1966 as illegal, ultra vires, unconstitutional, beyond the legislative competence of the State and being violative of Article 14 and 19(1)(g) of the Constitution of India and the same be quashed and set aside;

(a) That this Hon'ble Court may be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India calling for the records of the Impugned Notice dated December 26, 2017, which is EXHIBIT A annexed hereto, and after considering the legality, validity and propriety or otherwise thereof be pleased to quash or set aside the same;

(b) that this Hon'ble Court may be pleased to issue a writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India against the Respondent No. 1 and 2 ordering and directing them to withdraw and/or cancel the Impugned Notice dated December 26, 2017;

(c) that this Hon'ble Court may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India against the Respondent No. 2 and 4 ordering and directing them to forthwith complete the mutation for the Property in the name of Housing Development Finance Corporation Limited (HDFC);

(d) that pending the hearing and final disposal of this Petition the effect, implementation and operation of the Impugned Notice dated December 26, 2017 being annexed hereto be stayed;

(e) that pending the hearing and final disposal of this Petition the Respondent No. 1 and 2 and their subordinates and agents be restrained by an order of this Hon'ble Court from taking steps in furtherance of and/or implement the Impugned Notice which is being annexed hereto as EXHIBIT A;

....."

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2. As a corollary and incidental to the main relief, the petitioners are praying for issuance of a writ of certiorari or a writ in the nature thereof or any other appropriate writ, order or direction under Article 226 of the Constitution of India to call for the records of the impugned notice dated 26 th December, 2017 (annexure 'A' to the petition) and after considering the legality, validity and propriety thereof to quash and set aside the same. By the unamended and the amended paragraphs, the essential and factual position is narrated in the following terms:-

3. The petitioner No.1 is a company registered under the Companies Act, 1913 and carrying on business of manufacturing, distribution and sale of consumer goods in India. The petitioner No.2 is a shareholder of Petitioner No.1 Company and is a necessary party. Respondent No.1 is the State of Maharashtra through its Law and Judiciary Department. The Law and Judiciary Department of Respondent No.1 is entrusted with the responsibility to formulate policies, supporting and monitoring programmes and coordinating the activities of various Ministries of the State Government and other nodal authorities insofar as they relate to law and judiciary issues in the State of Maharashtra. Respondent No.1 is a 'State' and amenable to the Writ jurisdiction of this Hon'ble Court. The Respondent No.2 is J.V.Salunke,PA Judgment.WPL.122.2018+.doc the Collector of Mumbai City having the jurisdiction over the property in question. The Respondent No.3 is HDFC and is the acquirer of the rights from the Petitioner. The Respondent No.3 is a proforma Respondent and no reliefs are claimed against Respondent No.3. The Respondent No.4 is the Superintendent of Land Records (City Mumbai), who has authority to mutate the land records for the city of Mumbai.

4. On December 29, 2014, the petitioner being fully entitled so to do, by way of registered Deed of Assignment dated December 29, 2014 registered at Serial No. BBE-5/4048/2014, assigned all its rights in the property in favour of the assignee HDFC (Respondent No.3).

5. As required in the Lease Deed by a letter dated December 29, 2014, the petitioner No.1 immediately intimated the fact of the execution of the Assignment Deed to the office of the Respondent No.2. This was acknowledged by the office of the Respondent No.2 on December 30, 2014.

6. About three months after the said sale, on March 3, 2015, a prospective amendment was brought in the Maharashtra Land Revenue Code, 1966 by introduction of section 37A therein. J.V.Salunke,PA Judgment.WPL.122.2018+.doc

7. On November 24, 2015, petitioner No.1 addressed a letter to Respondent No.2, inter alia, requesting Respondent No.2 to mutate the name of HDFC in the property card for the land. The Respondent No.2 vide its letter dated December 7, 2015 bearing reference No. CSLR/MS-1/T-2/Fort/CTS No.1601 and 1602 / transfer/2015/5410, inter alia, requested petitioner No.1 to submit certain details in respect of the property as per Form A annexed to this letter.

8. On February 16, 2016 the petitioner No.1 replied to the Respondent No.2's letter dated December 7, 2015 inter alia, providing the Respondent No.2 the requisite information as per Form A.

9. On August 22, 2016 another amendment to the 1996 Code was notified called the Maharashtra Land Revenue Code (Fourth Amendment) Act, 2016. By way of this amendment, Section 295 of the 1966 Code was purported to be amended with retrospective effect from 1966. By way of the amendment a proviso was added to the existing Section 295.

10. On April 4, 2016 petitioner No.1 replied to respondent No.2's letter dated March 22, 2016 bearing reference No.CSLR/ MS-HA-2/T-2/Fort/CS1601 and 1602/transfer/2016 and further J.V.Salunke,PA Judgment.WPL.122.2018+.doc vide letters dated February 27, 2017; March 31,

2017; April 24, 2017; May 23, 2017; and July 20, 2017 the petitioner requested Respondent No.2 to mutate the land in the name of HDFC. The petitioners state that the above letters are a select list of letters and are relevant to the subject matter of this petition. Despite receipt of correspondence from the petitioner No.1, the respondent No.2 neither mutated the land in the name of HDFC nor raised any demand on the petitioner No.1.

11. On December 26, 2017 for the first time the Respondent No.2 raised a demand by the impugned Notice dated December 26, 2017, which impugned Notice was received by the petitioner No.1 on December 29, 2017 calling upon the petitioner No.1 to pay an amount of Rs.94,24,81,005 (Rupees Ninety Four Crores Twenty Four Lakhs Eighty One Thousand Five only) as unearned income in respect of the assignment of the lease in favour of HDFC under Government Resolution No. GR 01/2014/PK.04/J-1 dated February 20, 2016 and GR 2516/P.K.16/J-2 dated June 14, 2017. The said impugned notice proceeds on an erroneous basis that the petitioner No.1 sought permission of respondent No.2 for the assignment of lease. No such permission was sought since none was required under the terms of the lease or otherwise on the date of the assignment. As set out hereinafter the impugned J.V.Salunke,PA Judgment.WPL.122.2018+.doc notice and the demand made therein is ex-facie illegal and without the authority of law and without jurisdiction.

12. The petitioners submit that the petitioner No.1 had by their letter dated January 8, 2018 replied to the impugned notice whereby the petitioner No.1 requested the respondent No.2 for a hearing.

13. Being aggrieved and dissatisfied with the above, the writ petition has been filed. The memo has been amended in order to elaborate the larger challenge and that is to be found from pages 26A to 26I of the petition.

14. On being served with the copy of the petition, an affidavit in reply has been filed on behalf of respondent nos. 2 to 4, but contending that in one of the petitions being Writ Petition No. 513 of 2017, the constitutional validity of amended section 295 of the Maharashtra Land Revenue Code, 1966 (hereinafter referred to as "the MLRC") has been challenged, in which, an affidavit has been filed by the State dated 10 th January, 2018 by one Mr. Rajendra Kshirsagar. The State adopts that affidavit. In short, the State says that it has not done anything save and except to apply the law. In that affidavit of Mr.Rajendra Kshirsagar, in reply to the constitutional challenge, the stand of the State Government is reflected as under:-

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4. I say that for the application of the City of Mumbai, a special provision vide chapter XIV of MLRC 1966 is provided. I say that Section 295 of MLRC 1966 deals with disposal of lands or foreshore vested in the State Government. I say that even before coming into force of the said Code, many parcels of land of the Government had been leased to various individuals and institutions for various purposes. In a number of cases, such leases have been transferred or assigned to other parties. I say that the Government share in the unearned income in such instances of assignment or transfer of leasehold rights in such Government lands was being levied and recovered, as per the administrative Orders issued by the State Government. In some cases, the parties concerned have challenged such

recovery by filing cases before the Courts. In order to leave no room for doubt regarding the powers of the Government to recover a share of unearned income in any instance of transfer or assignment of leasehold rights in respect of such Government lands, it was considered expedient to incorporate specific provisions in Section 295 of the said Code, requiring the lessee to seek prior permission of the Collector, before transferring or assigning his leasehold rights in any Government land, for which a share of unearned income shall be payable to the Collector at such rates as may be specified by the Government.

5. It is also considered expedient to include provision regarding regularization of the previous transactions of transfer or assignment of such leases, by levying an additional penal amount at such rate as the Government may specify, where such transfers or assignments have been effected without such permissions. In order to validate the actions taken by the Collector under the administrative orders of the Government, in the past, in terms of recovery of a share of unearned income in such cases, it was considered necessary to make these provisions applicable with retrospective effect, from the date of coming into force of the said Code and therefore, to achieve the object Bill No. XL of 2016 was passed in the State Legislature.

6. I say that, as set out in more detail hereafter, there can be no dispute as regard the legislative competence of the State Legislature in making law relating to lands which are of its ownership or within its jurisdiction. I say that this being the position, there can be no restriction on the power of the State to enact a law that affects existing J.V.Salunke,PA Judgment.WPL.122.2018+.doc contracts. I say that the moot question that is raised in the Petition is whether the existing contract between the State and the citizens can be altered and it is this alteration that is being termed as being retrospective application of law. I say that the said contention of the petitioner is wholly misplaced. I say that there is no fetter on the power of the State Legislature in enacting a law that affects contracts between citizens inter se, let alone contracts between citizens and the State. I say that the impugned provisions, even if they have the effect of altering an existing contract, do not in any manner render themselves unconstitutional. I say that it is well within the power of State Legislature and within the constitutional sphere to alter existing contracts between the parties.

7. It is also submitted without prejudice and in the alternative to the aforesaid that the amendment to Section 295, with effect from the date of coming into force of the said Code, cannot be construed to be an Act bringing into effect a retrospective law. I say that in this connection it is relevant to distinguish between an existing right and a vested right. I say that the amended provision is a statute that operates in future but it cannot be said to be retrospective merely because within the sweep of its operation all existing rights are included including that of the Petitioner, if any. I say that retrospective operation is one matter and interference with existing rights is another. In substance the amended Section 295 provides that all leases shall be deemed to be subject to a proviso to the effect that leasehold rights may be assigned only with the prior permission of the Collector on payment of premium on account of unearned income and transfer fee or charges at rates that the Government may specify and so also to another condition that in case of contravention the lessee or transferor shall be liable to pay penalty as specified from time to time. I say that this construction does not make the amended Section retrospective in operation; it merely affects in future existing rights under all leases whether executed before or after the date of the making of the

amendment.

8. I say that the State Government under Entries 18, 45 and 66 of List II of VIIth Schedule of the Constitution of India is competent to legislate on the legislative field of "land", including rights in or over the land, land tenures including relation of landlord and tenant and collection of rent, transfer and alienation of agricultural land, land improvement etc. and land revenue and fees in respect of J.V.Salunke,PA Judgment.WPL.122.2018+.doc any of the matters in List II. In exercise of power under entries 18, 45 and 66 of List II of VIIth Schedule of the Constitution of India, the State Government proposed amendment in Section 295 of the said Maharashtra Land Revenue Code (hereinafter referred to as the MLRC for the brevity) by moving Bill No. XL of 2016, so as to levy premium, on account of unearned income and transfer fees or charges for further assigning or transferring leasehold right, in respect of the properties belonging to the Government, to levy penalty, for contravention of said provision and to validate such premium or transfer fees or charges or penalty so levied or demanded, collected or any action taken in that respect, with effect from date of coming into force of the said MLRC. Hereto annexed and marked as Exhibit 1 is the copy of Bill No. XL of 2016 along with the statement of objects and reasons in respect of amendment to Section 295 of MLRC.

9. Thereafter, the Maharashtra Amendment Act No. XXIX of 2016 regarding amended Section 295 of MLRC was published in Government Gazette on 22.08.2016 when both the houses of legislature passed the said bill and the assent of Honourable Governor was obtained on 22.08.2016. Hereto annexed and marked as Exhibit 2 is the copy of the Maharashtra Amendment Act No. XXIX of 2016, amending Section 295 of MLRC, 1966.

10. I say that, the subject matter of amended Section 295 of MLRC falls in State List II of VIIth Schedule of the Constitution of India and not in the concurrent List III of Schedule VII of the Constitution of India and therefore, the assent of the President was not required. For the same aforesaid reason, the provisiion of Article 254(2) of the Constitution of India will not have any application to the case at hand. I say that State Legislature is competent to legislate on the subject matter of the Maharashtra Amendment Act No. XXIX of 2016 and therefore, had rightfully, validly and constitutionally amended Section 295 of MLRC in the year 2016."

15. Then, there is an additional affidavit of Mr. Rajendra Kshirsagar, Joint Secretary, Department of Revenue and Forest, in which, the Government says as under:-

"2) It may not be out of place to state that Section 37A has been inserted in the Maharashtra Land Revenue Code J.V.Salunke,PA Judgment.WPL.122.2018+.doc 1966 (hereinafter referred to as "the Code" for the sake of brevity) with effect from 3rd March, 2015, which deals with restrictions on sale, transfer, redevelopment, change of use etc. in relation to government land and provides for grant of permission in that regard, subject to levy and recovery of premium or charge and share of unearned income, by general or special order issued by the Government from time to time. The said provision is intended to apply to lands situate anywhere in the State.

3) Inasmuch as lands situate within the City of Mumbai are concerned, the Chapter XIV of the said Code contains special provisions in that regard. I say that vide Maharashtra Act No.XXIX of 2016, Gazetted on 22/08/2016, with effect from the date of commencement of the said Code i.e. with effect from 1 st August, 2016, to the Section 295 of the said Code, a proviso is added and is deemed to have been added, which is more particularly set out in the said amended provision, that is self-explanatory. Suffice it to say that, by virtue of the said amendment all leases granted are to be also subjected to the two conditions stipulated by the said amendment, which provide for seeking of prior permission of the Collector, for assigning or transferring the leasehold rights, on payment of premium, on account of unearned income, transfer fees or charges at such rates as may be specified by the Government by an order from time to time etc.

4) The State Government has issued three Government Resolutions dated 12/12/2012, 20/02/2016 and 14/06/2017 relating to different contingencies more particularly mentioned therein. In short, these Government Resolutions lay down as under :

(a) Government Resolution dated 12/12/2012 lays down the procedure to be followed, while considering an application for renewal of lease of land, situate in Mumbai city and Mumbai Suburban district.

(b) Government Resolution dated 20/02/2016 is issued to streamline the methodology of valuation of government lands allotted in favour of any institution, society or individuals on leasehold basis or on occupancy basis.

(c) Government Resolution dated 14/06/2017 is issued prescribing the procedure to be followed, while granting permission to transfer the leasehold rights and J.V.Salunke,PA Judgment.WPL.122.2018+.doc for regularization of the transactions wherein the leasehold rights are transferred without obtaining prior permission in Mumbai City.

5) I say that the aforesaid Government Resolutions lay down the standard methodology to be followed at the Collectorate level while processing claims made seeking permissions for assignment and/or transfer of leasehold rights etc. contemplated by Section 37A and the conditions of lease, as also various grants, including the one newly incorporated with retrospective effect vide Maharashtra Act No.XXIX of 2016.

6) I say that the aforesaid Government Resolution also prescribe the rates at which premium or charge, transfer fee and share of unearned income is to be levied while granting such permissions. The same also prescribe the rate at which penalties, if any, are to be levied. I say that the aforesaid Government Resolutions standardize not only the procedure to be followed at the Collectorate level but also the aforesaid rates to be levied and/ or charged. Thus, the element of discrimination, if any and if at all, that is likely to be caused at the hands of the Collectorate in granting such permissions and in imposing conditions subject to which such permissions are granted, is eliminated to the maximum possible extent and a uniformity in the entire approach therein is achieved.

7) However, every case on the facts and circumstances thereof has to be dealt with by the Collector, on the case-to- case basis while applying the aforesaid standardized procedure and applying the standardized rates. In dealing with each and every such case, the Collector amongst various other factual aspects, inter alia, is required to consider following factual aspects of each case and pass an appropriate order on case-to-case basis:

(a) Details and particulars of every transaction such as its date, nature thereof (whether it is a case of transmission simplicitor or transfer of rights);

(b) Whether an intimation of assignment and/or transfer was issued within the prescribed time or not. So also, whether it was received by the office of the Collector or not;

(c) The exact area covered by such assignment and/or transfer;

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(d) The Stamp Duty Ready Reckoner (SDRR) rates that are applicable to the assignment and/or transfer in issue.

(e) Correctness of calculations including arithmetical errors/mistakes, if any;

8) I say that in accordance with the factual information available and/or received by the Office of Collector, applying the standardized procedure as also the standardized rates prescribed by the aforesaid Government Resolutions, the Collector is supposed to carry out an in-house exercise and prepare a self- explanatory draft/proposed order on the basis of its prima facie findings. The Collector is expected to serve a copy thereof with a show cause notice to the concerned person(s) who are liable to pay the requisite amounts, calling upon them to show cause as to why, in terms of such a draft/proposed prima facie order a final order be not passed. The concerned person(s) are to submit their written self-explanatory reply with all the supporting documents, as and by way of response to such a show cause notice. The Collector after considering the same is expected to pass a final speaking self-explanatory order in this regard.

9) I say that the orders so passed and the decisions so taken by the Collector, being orders and/or decisions taken in terms of the Lease deed r/w the relevant legal aspect of the matter, are appealable under Section 274 of the Code, before the Maharashtra Revenue Tribunal, insofar as the properties situate in the city of Mumbai are concerned. Insofar as properties situated outside the city of Mumbai are concerned, against such decisions and/or orders passed by the collectors, an appeal shall lie under section 247 of the Code with the concerned Revenue Divisional Commissioner.

10) I say that inasmuch as the aforesaid Government Resolution dated 12.12.2012 is concerned, the Revenue Department has proposed a substantial modification in respect of some of the leases set out hereunder and to the effect set out hereunder, inasmuch as properties leased out situate in the city of Mumbai and Mumbai Suburban District are concerned :

(a) Plots admeasuring less than 500 Sq. Mt. Used for personal residential purpose : 1% J.V.Salunke,PA Judgment.WPL.122.2018+.doc

(b) Renewal of leases of lands leased out to Co- operative Housing Societies for residential purpose : 1%

(c) Renewal of leases of lands leased out for the purpose of being used for Social, Cultural, Orphanages : 0.5% However, it is made clear that such concessional rates will not be available if the property is to be redeveloped. I will hasten to add that maintenance, repairs or renovation work of the existing building will not be considered as redevelopment as such.

11) In the aforesaid regard it is made absolutely clear that the aforesaid proposal is not at all final, much less, accepted by the State Government and the same is presently pending for consideration of various Departments of the State Government, including the Finance Department, which is examining its financial implications. I say that it is very difficult, at this stage, to give any firm commitment in regard to the further course of the said proposal.

16. For these reasons, the State Government would submit that the petitions be dismissed.

17. Mr. Tulzapurkar learned senior counsel appearing for the petitioners would submit that the impugned demand is contrary to law. He submitted that there is a registered lease dated 3 rd November, 1965 executed by and between the then Governor of Maharashtra and petitioner no. 1, earlier known as Hindustan Lever Limited. The petitioner no. 1 was granted leasehold rights with respect to the said property for a period of 99 years from 5 th July, 1957. Thus, this is the effective date of the lease. Mr.Tulzapurkar would submit that there are three clauses in the J.V.Salunke,PA Judgment.WPL.122.2018+.doc lease deed, which deal with the right of assignment, namely, clauses 2(t), 2(u) and 2(v). A perusal of these clauses would reveal that there is no restriction placed on assignment of the leasehold rights. It is in these circumstances that firstly a leave and licence agreement in favour of the third respondent to the writ petition was executed in respect of the entire property. Thereafter, there was full assignment of the leasehold right in the property in favour of the Housing Development Finance Corporation Limited (HDFC) by a deed of assignment dated 29 th December, 2014. This deed of assignment was executed without any permission as that was allowed in terms of the rights created in favour of petitioner no. 1. It is only an intimation of the fact of the execution of the deed of assignment, which was given to respondent no. 2. That three months after this assignment of 3 rd March, 2015 an amendment was brought to the MLRC introducing section 37A therein. Mr. Tulzapurkar invites our attention to the proviso to section 37A and submits that the lease in favour of the present petitioner is prior to this second amendment. Section 37A is in the nature of special provision in respect of land situated in revenue division, including Mumbai city. Thereafter, another amendment was brought on 22 nd August, 2016 styled as the fourth amendment to section 295 of the MLRC. It is in these circumstances that the demand raised on J.V.Salunke,PA Judgment.WPL.122.2018+.doc the petitioner is untenable in law. Mr. Tulzapurkar would submit that no permission is required for the leasehold rights to be assigned. If in terms of the lease deed, absolute rights of the above nature are conferred on the petitioners, then, there is no obligation to share the income or pay any amount to the Government as and by way of unearned

income. Mr. Tulzapurkar submits that there is an unfettered right to transfer or assign the leasehold interest in its entirety to any Indian entity without prior permission to the Government/State. The amended provision, namely, section 295 of the MLRC has no application to the transactions concluded prior to the amendment coming into force. In any event, after having knowledge of the assignment, the second respondent did not issue any demand notice on petitioner no. 1 for almost three years, but for the first time, the second respondent issued the notice demanding the amount. On the date of the assignment, the petitioners had no knowledge of any retrospective amendment being made to the provisions of law, namely, the MLRC. Hence, there is no obligation to comply with the amended provision.

18. As far as the applicability of section 37A of the MLRC is concerned, Mr. Tulzapurkar would submit that a bare perusal thereof would indicate that in the present case, the lease deed is J.V.Salunke,PA Judgment.WPL.122.2018+.doc of the year 1965. Once the clauses or covenants in the lease deed would prevail and they permit the assignment of leasehold rights without permission of the second respondent and without requiring any premium or unearned income to be paid, then, even section 37A cannot be invoked to defeat the transaction. Mr. Tulzapurkar would submit that the proviso to section 37A is attracted to the lease deed in the present case and it has an overriding effect. Assuming without admitting that this retrospective amendment is valid in law and the obligation created is applicable to the petitioner, even then, the lease in the present case comes into effect from a prior date, namely, 5 th July, 1957. This is much prior to the MLRC being enacted. That is why when a transaction, which is executed bonafide, dependant upon the primary document and with full compliance with applicable regulations and contractual obligations then prevailing, then, such a transaction would not be hit by law. Mr. Tulzapurkar then submits that harmonious construction of sections 37A and 295 as amended by Maharashtra Act XXIX of 2016 would enable the petitioners to resist the demand in this case. Then, Mr. Tulzapurkar relies upon the settled principle that a statute cannot be made to operate retrospectively so as to create or impose any new obligation or liability or take away a vested right. In that regard, he would submit that we must not ignore these J.V.Salunke,PA Judgment.WPL.122.2018+.doc principles to give retrospective effect to the provisions of law. Mr. Tulzapurkar submits that the provisions, namely, the validating clause enacted in section 295 validates demands and recoveries from the period 1966 to 22 nd August, 2016. This clause does not apply because there was no demand or recovery in this period. There is no application made or permission sought before making the assignment in favour of the third respondent. This is not a transfer to foreigner, but a transfer of land to a non- foreigner which is permitted by the lease deed and that is not rendered invalid or illegal. Mr. Tulzapurkar, therefore submits that the 4th Amendment of 2016 is not a procedural or declaratory amendment. It is a substantive amendment creating/imposing new obligation and liabilities, and imposing a new penalty, while taking away already vested rights, which in this case have been duly and validly exercised before the amendment was enacted.

19. Section 295 of the Maharashtra Land Revenue Code as amended by the Maharashtra Act No. XXIX of 2016 on August 22, 2016 imposes a new obligation, namely, of seeking prior permission of the Collector and payment of premium on account of unearned income and transfer fees. By doing so, the amended Section 295 of the Maharashtra Land Revenue Code has taken J.V.Salunke,PA Judgment.WPL.122.2018+.doc away or impaired the existing and vested right of the Petitioner No.1.

The amendment further imposes a penalty for having failed to seek/obtain permission, when on the date of the transfer, the requirement did not exist, i.e., the amendment had not been enacted.

20. Mr. Tulzapurkar further submits that if an enactment is expressed in a language which is fairly capable of either interpretation it ought to be construed as prospective only so that the vested right which is created in favour of the Petitioner No.1 is not taken away.

21. Hence the 4th Amendment should be held to operate only prospectively in that (i) though the condition of requirement of permission and payment of premium will stand imposed even in past/old leases but (ii) only those transfers which are to be effected after the date of enactment of the amendment will fall within or be affected by the amended provision.

22. Such a construction of the amendment will save it from the vice of unconstitutionality.

23. If, on the other hand the amendment is held to affect concluded transfers, validly effected before the enactment of the J.V.Salunke,PA Judgment.WPL.122.2018+.doc amendment, then the amendment will be/is unconstitutional, illegal, invalid, bad in law, ultra vires Article 14 and 19 of the Constitution. This is because, inter alia:-

> i. the amendment imposes a new obligation and liabilities, which did not exist when the transfer was effected;
>
> ii. it also makes penal an act (i.e. the transfer) which was fully valid, legal and proper in all respects when the act (i.e. the transfer) was done and did not attract any penalty;
>
> iii. it exposes the petitioner No.1to penalty and forfeiture of the lease, without any valid reason; and for an act which when done, was perfectly valid, legal and proper;
>
> iv. it takes away a vested right of Petitioner No.1 (to effect a transfer without requiring permission or paying any amount) which it held prior to the amendment;

24. For all these reasons, he would submit that the fourth amendment is illegal and ultra vires the constitutional mandate enshrined in Articles 14 and 19(1)(g) of the Constitution of India..

25. In support of his submissions, Mr. Tulzapurkar places heavy reliance on the following judgments.

(i) Govind Das and Ors. vs. The Income Tax Officer and Anr., (1976) 1 SCC 906;

(ii) Jayam and Company vs. Assistant Commissioner and Another, (2016) 15 SCC 125.

26. On the other hand, Mr. Kumbhakoni learned Advocate General appearing for the State would submit that there is no J.V.Salunke,PA Judgment.WPL.122.2018+.doc question of the State

legislature being incompetent to enact the law. If it can enact the law, it is equally empowered to give the law a retrospective effect. If that does not make the law unconstitutional, then, there is no question of the statute being declared as such. Merely because in the sweep of the law, the terms of an existing contract are brought in and they can be altered, we must bear in mind that they are being altered or changed by a statutory provision. That statutory provision can operate retrospectively. In the present case, Mr.Kumbhakoni would submit that the constitutional entries and the provisions, which empower the State legislature to enact such law, to be found in the Constitution of India itself, would enable the State to enact the present provisions, namely, section 37A and the amendment to section 295 of the MLRC. Mr.Kumbhakoni would submit that if section 37A is perused with its marginal heading, it is evident that it is restricted to sale, transfer, development, change of use in respect of the Government or Nazul land. There is, thus, no conflict or repugnancy insofar as the State and a Parliamentary statute or as between two State enactments. Section 37A and section 295 of the MLRC, therefore, ought to be read in their proper perspective. As far as section 295 is concerned, by the amendments, it is applicable to leases granted by the State or the Collector of the land or foreshore vesting in the J.V.Salunke,PA Judgment.WPL.122.2018+.doc Government. It is in these circumstances that the proviso to section 295 stands incorporated in the lease deed. Equally, the proviso to section 37A(1) will have to be read as if the conditions are inserted with effect from 1st August, 1967. Thus, there is no merit in the argument that section 295 purports to amend section 108 of the Transfer of Property Act, 1882 and the laws insofar as referred in Entries 6 and 7 of List I of the Seventh Schedule to the Constitution. Hence, the argument that without any Presidential assent, the current amendments, particularly the proviso to section 295 of the MLRC cannot have any application, has no merit. That is an incorrect understanding of the provisions. There is no inconsistency in the provisions of the State law and the existing parliamentary law, namely, the Transfer of Property Act, 1882.

27. The learned Advocate General would submit that by the present Petition the petitioner had initially challenged the notice dated 26th December, 2017 issued by the Second Respondent calling upon the petitioner to pay an amount of Rs.94,24,81,005/- (Rupees Ninety Four Crores Twenty four Lakhs Eighty One Thousand and Five only) towards unearned income in respect of assignment of lease in favour of HDFC in terms of Government Resolution dated 14th June, 2017. The petitioner has thereafter J.V.Salunke,PA Judgment.WPL.122.2018+.doc amended the petition and has also challenged the constitutional validity of the amendment effected to Section 295 of the MLRC.

28. In so far as challenge to the notice dated 26 th December, 2017 is concerned this Respondent has filed detailed affidavit supporting the issuance of the notice as also additional affidavit clarifying various aspects of the relevant Government Resolutions issued by the State Government in pursuance of the amended Section 295 of the said Code.

29. It is far well settled principle of law that there is always a presumption of constitutionality of the Statute and the burden is upon the person who questions it to show that there has been clear transgression of Constitutional principles. This rule is based on judicially recognized and accepted assumption that the legislature understands and correctly appreciates the needs of its people and its laws are directed to problems made manifest by experience. In order to sustain the strong presumption of constitutionality, the court may take into consideration matters of common

knowledge, matters of common reports, history of times and may assume every state of facts which can be conceived as existing at the time the legislation was made. J.V.Salunke,PA Judgment.WPL.122.2018+.doc

30. The allegations regarding violation of constitutional provisions must be specific, clear and unambiguous. It must give relevant particulars and accompanied by supporting material.

31. The only grounds on which the constitutional validity of a statutory provision can be challenged are, (i) lack of legislative Competence and (ii) inconsistency with Part-III of the Constitution. Suffice it to say that the petitioner has failed to make out any of these legally permissible grounds and therefore the challenge set up by the petitioner in this regard ought to miserably fail.

32. Mr. Kumbhakoni would submit that "unearned income" means income from investment rather than from labour. It is the difference between the premium paid and the market value of the lease plot at the time of sale or assignment of the lease hold rights for the balance period of the lease.

33. The claim of the State Government regarding unearned income will fall within the definition of Section 2(19) if the said code which defines the term 'land revenue'. Essentially the claim towards unearned income to levy charge in respect of a particular property legally claimable by the Collector/Competent Authority from the Grantee or the prospective purchaser, as the case may J.V.Salunke,PA Judgment.WPL.122.2018+.doc be, in relation to the land or interest in or right exercisable over land held by or vested in him. Thus, the claim is traceable to the power of regulation and control in respect of the land and the primary purpose of the levy of charges under designation 'unearned income' is regulation and control of the Government property. The levy of unearned income being land revenue is referable to Entry 18 and 45 of List-II of Seventh Schedule to the Constitution of India and therefore, the State Legislature has legislative power to levy unearned income over the Government lands.

34. It is emphatically denied that levy of unearned income is in the nature of levy of tax and that therefore the same would be covered by Entry 82 List-1 of the Seventh Schedule of the Constitution of India. The State Legislature has authority to enact law authorizing the State Government to claim unearned income from the grantee/lessee for recognizing or approving the transfer of any Government land and is therefore within its legislative competence. This aspect is no longer res-integra inasmuch as the said issue has been discussed at length and held in favour of the State by the Hon'ble Division Bench by its judgment in the case of Jaikumari Amarbahadursingh and J.V.Salunke,PA Judgment.WPL.122.2018+.doc Ors.vs. State of Maharashtra and Anr.1 (para 12 onwards, more particularly para 17).

35. Insofar as the challenge to Section 295 on the ground of retrospectivity is concerned, it ought to be appreciated that the State Legislature is fully empowered to enact such provision giving it retrospective/retroactive operation having regard to prevalent situation and towards achieving the ultimate intention in enacting the statutory provision in issue.

36. The State Legislature has published Maharashtra Act No. XXIX of 2016 in the Official Gazette on 22 nd August, 2016 whereby Section 295 is amended and a proviso has been added and it is provided in the amending Act that the said proviso shall be deemed to have been added with effect from the date of commencement of the said Code i.e. with effect from 1 st August 1967. The proviso contemplates that all the leases granted by the State Government for whatever term, notwithstanding the conditions stipulated in such lease deeds or lease agreements, shall also be subject to the conditions which are more particularly mentioned below the said proviso. Therefore, with effect from 1 st August, 1967 all such leases shall be deemed to contain these conditions.

1 2009(2) Bom. C.R. 407 J.V.Salunke,PA Judgment.WPL.122.2018+.doc

37. It is settled position of law, more particularly settled by a five judge constitution bench of the Hon'ble Supreme Court vide its judgment in AIR 1962 SC 263 (para 22 & 24 onwards) in which it is held that it is permissible for the legislature to vary the rights of parties under a contract. It is submitted that the petitioner has no constitutional right, much less right to even contend that the terms of the document of lease in issue cannot be statutorily amended as has been done by the amendment in issue.

38. The contention that the newly added proviso of Section 295 does not apply to leases covered by Section 37-A of the Code is unsustainable in law. This is principally because by virtue of the said proviso the conditions set out thereby will have to be read in all the cases with effect from 1st August, 1967. Resultantly, the conditions contained in the said proviso will always form part of the lease with effect from 1st August, 1967. In such a case provisions of Section 37-A will have no application.

39. It is pertinent to note that the impugned amendment read with Section 37-A operates in favour of the lessees as it permits the State Government and its delegate-the Collector to grant permission to the lessee to do various acts, deeds and things which the lessee would not have been able to carry out in the J.V.Salunke,PA Judgment.WPL.122.2018+.doc absence of the said amendment and in view of the restrictive clauses of the lease deed. Therefore, it cannot be said that the present amendment, which operates retrospectively, adversely affects the larger interest of the lessee. The said amendment only regulates the rights of the lessees and makes them conditional.

40. The contention that the proviso is in conflict with the provisions of the Transfer of Property Act and Contract Act and more particularly Section 108 is wholly unsustainable. Section 108 opens with the specific language that various clauses contained therein will operate only "in the absence of a contract or local usage to the contrary". By virtue of statutory amendment 2 clauses contained in the newly added proviso will form part of the contract between the Government and its lessee. Resultantly, it cannot be said that there exists a conflict as alleged or otherwise.

41. For all these reasons, Mr. Kumbhakoni would submit that the writ petition be dismissed.

42. Mr. Kumbhakoni has relied upon the following judgments in support of the above arguments:-

(i) M/s. Raghubar Dayal vs. Union of India, AIR 1962 SC 263 (V 49 C 47);

J.V.Salunke,PA Judgment.WPL.122.2018+.doc

(ii) Jaikumari Amarbahadursingh and Ors. vs. State of Maharashtra and Anr., 2009(2) Bom. C. R. 407;

(iii) Trimbak Damodhar Raipurkar vs. Assaram Hiraman Patil and Ors., AIR 1966 SC 1758.

43. Mr. Tulzapurkar was supported by his arguments by Dr. Sathe learned senior counsel, who appears on behalf of the third respondent in Writ Petition (L) No. 122 of 2018. Dr. Sathe heavily relied upon a judgment of the Hon'ble Supreme Court in the case of Tata Motors Ltd. vs. State of Maharashtra and Ors.2 to submit that the Hon'ble Supreme Court has clarified that if there is a relief properly granted by the statute, then, withdrawal or modification with retrospective effect thereof would deprive a party of a vested statutory right. Therefore, when there was no levy at the time the transactions were concluded, then, imposing a levy with retrospective effect for the years for which there was no levy cannot be justified. Dr. Sathe would, therefore, submit that there is no reasonableness nor the action has any rationale. That is why he relied upon heavily on paragraphs 12 to 15 of this decision in Tata Motors Ltd. (supra) and supported the arguments of Mr. Tulzapurkar.

44. Finally, both of them, in their rejoinder arguments, would submit that the judgments relied upon by Mr. Kumbhakoni are 2 (2004) 5 SCC 783 J.V.Salunke,PA Judgment.WPL.122.2018+.doc distinguishable on facts. Both learned senior counsel would submit that the statute may be given a retrospective effect if it is not punitive. It is in these circumstances, the decisions relied upon by Mr. Kumbhakoni have no relevance. Thus, it is clear that even the Division Bench Judgment in the case of Jaykumari (supra) would have no application. It is then contended that the learned Advocate General's argument that there is no repugnancy in sections 37A and 295 of the MLRC has no merit. It is urged that both provisions deal with, inter alia, a sale or transfer of any kind of land or rights therein. Both the sections are to be found in the same law and are continuing in the statute book. Hence, neither can be considered to be nugatory or redundant. Both must be given effect by way of a harmonious construction. Once the harmonious construction has to be placed, then, in the instant case, the terms and conditions of the lease deed would prevail. They would get priority and precedence and hence, no permission of the State Government or payment to the State Government is contemplated. The argument of the learned Advocate General is erroneous. He erred in submitting that the proviso to section 37A is not applicable to transfer of leasehold rights but only to transfer by occupants as specified in section 29 of the MLRC. This contention is contrary to the plain language of the statute. Hence, there is no question of reading into the J.V.Salunke,PA Judgment.WPL.122.2018+.doc provision something which is not expressly stated or provided therein. It is in these circumstances that both would contend that the writ petitions be allowed.

45. For properly appreciating the rival contentions, we must firstly notice the Maharashtra Land Revenue Code, 1966 itself. That is an Act to unify and amend the law relating to land and land revenue in the State of Maharashtra. By section 1 falling in Chapter I, titled as "Preliminary", it is

firstly stated that this Act may be called the Maharashtra Land Revenue Code, 1966. By sub-section (2) of section 1, it is stated that this Code extends to the whole of the State of Maharashtra, but the provisions of Chapters III (except the provisions relating to encroachment on land), IV, V, VI, VII, VIII, IX, X, XI, XII (except section 242) and XVI (except sections 327, 329, 330, 330A, 335, 336 and 337) shall not apply to the City of Bombay. Pertinently, Chapter I is titled as "Preliminary" and contains sections 1 and 2 and sections 3 and 4. By section 3, the division of the State is made into revenue areas and by section 4, there is constitution of revenue areas. Chapter II is titled as "Revenue Officers: Their Powers and Duties". Chapter III is titled as "Of Lands". Chapter IV is titled as "Of Land Revenue". Chapter V is titled as "Revenue Surveys" and Chapter VI is titled as "Assessment and Settlement of Land J.V.Salunke,PA Judgment.WPL.122.2018+.doc Revenue of Agricultural Lands". Chapter VII deals with "Assessment and Settlement of Land Revenue of Lands Used For Non-Agricultural Purposes". Chapter VIII is titled as "Of Lands Within the State of Villages, Towns and Cities". Chapter IX is titled as "Boundary and Boundary Marks". Chapter X is titled as "Land Records", Chapter XI is titled as "Realisation of Land Revenue and Other Revenue Demands", whereas, Chapter XII sets out "Procedure of Revenue Officers", Chapter XIII provides for "Appeals, Revision and Review". Chapter XIV contains "Special Provisions for Land Revenue in the City of Bombay". Chapter XV is titled as "Maharashtra Revenue Tribunal". Chapter XVI contains "Miscellaneous" provisions. Thus, when Chapters IV to XII, except section 242 and Chapter XVI except sections 327, 329, 330, 330A, 335 and 337 shall not apply to the City of Bombay, then, we must find what applies to the City of Bombay. The provisions of Chapter III as well, except the provisions relating to encroachment on lands, are inapplicable to the City of Bombay. Chapter III is titled as "Of Lands". Section 37A falls in this Chapter. When that was inserted by Maharashtra Act 4 of 2015, though the whole Chapter III, except the provisions relating to encroachment on land are inapplicable, still, the State thought it fit to make this provision applicable to the City of Bombay. Section 37A reads as under:- J.V.Salunke,PA Judgment.WPL.122.2018+.doc "37A. (1) Every sale, transfer, redevelopment, use of additional Floor Space Index (FSI), transfer of transferable Development Rights (TDR) or change of use of any Government land in Amravati and Nagpur Revenue Divisions including the Mumbai City and Revenue Divisions in the State, which is granted for various purposes under the provisions of this Code or rules made thereunder or any law relating to land revenue, before the commencement of this Code, including the nazul lands in Amravati and Nagpur Revenue Divisions shall be subject to taking the prior permission of the State Government.

(2) The State Government shall, while granting such permission as required under sub-section (1), recover such premium or charge and share of unearned income subject to such terms and conditions as may be specified, by general or special order, issued by the government, from time to time:

Provided that, if the provisions of this section or of any such orders issued thereunder are inconsistent with the terms and conditions of the order of land grant or the lease deed executed prior to the commencement of the Maharashtra Land Revenue Code (Second Amendment) Act, 2012", the terms and conditions of such order of land grant or lease deed shall prevail:

Provided further that, in case of the nazul lands in Amravati and Nagpur Revenue Divisions, the provisions of sub-section (1) shall not be applicable with retrospective effect.

Explanation. - For the purpose of this section, -

(a) "Government land" includes the Government land or part of such land or building erected on such land or part thereof or any right or any benefit arising out of or share in relation to such land or building or part of such land or building;

(b) "nazul land" means the type of Government land used for nonagricultural purpose such as building, road, market, playground or any other public purpose or the nazul land which has potential for such use in future including such lands granted on long or short term lease or on no compensation agreement.

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46. A bare perusal of the same would indicate that every sale, transfer, redevelopment, use of additional Floor Space Index (FSI), transfer of Transferable Development Rights (TDR) or change of use of any Government land in Amravati and Nagpur Revenue Division, and including Mumbai City and the Revenue Divisions in the State and which land is granted for various purposes under the provisions of MLRC or rules made thereunder or any law relating to land revenue, before the commencement of this Code, including the nazul lands in Amravati and Nagpur Revenue Division shall be subject to taking the prior permission of the State Government. Thus, every sale, transfer etc is subject to taking the prior permission of the State Government. However, the State Government shall, while granting such permission as required under sub-section (1), recover such premium or charge and share of unearned income subject to such terms and conditions as may be specified, by general or special order, issued by the Government, from time to time and the proviso clarifies that if the provisions of this section or of any such orders issued thereunder are inconsistent with the terms and conditions of the order of land grant or the lease deed executed prior to the commencement of the Maharashtra Land Revenue Code (Second Amendment) Act, 2012, the terms and conditions of such order of land grant or lease deed shall prevail J.V.Salunke,PA Judgment.WPL.122.2018+.doc and the second proviso clarifies that in case of the nazul lands in Amravati and Nagpur Revenue Divisions, the provisions of sub- section (1) of section 37A shall not be applicable with retrospective effect. Thus, this provision places restriction on sale, transfer etc. in relation to Government land and nazul land. Once it expressly refers to the Mumbai City and revenue divisions in the State and includes any Government land therein, then, we would have to read sub-section (2) of section 1 of the MLRC accordingly. Though rest of the provisions in Chapter III, save and except those expressly made applicable by sub-section (2) of section 1 are inapplicable, we would not be able to hold that section 37A is inapplicable to the instant transactions or the property covered by the instant lease deed. In fact, to be fair, that is not the argument either.

47. Section 295 of the MLRC, prior to its amendment, reads as under:-

> "295. It shall be lawful for the Collector, with the sanction of the State Government, to dispose of any lands or foreshore vested in the State Government in such manner and subject to such conditions as he may deem fit; and in any such case, the land or foreshore so disposed of shall be held only in the manner, for the period and subject

to the conditions so prescribed."

48. This provision falls in Chapter XIV, which incorporates special provisions for land revenue in the City of Bombay. This J.V.Salunke,PA Judgment.WPL.122.2018+.doc Chapter contains sections 260 to 307. As far as the sub-heading "Government Lands and Foreshore" is concerned, sections 294 and 295 fall therein. Section 294 declares that unoccupied lands within the city of Bombay and every unoccupied portion of the foreshore below high water mark shall be deemed to be the properties of the State Government, subject always to the rights of way and all other rights of the public legally subsisting. Section 294, prior to its amendment, read as under:-

> "294. All unoccupied lands within the City of Bombay, and every unoccupied portion of the foreshore, below high water mark, shall be deemed, and are hereby declared to be, the property of the State Government, subject always to the rights of way and all other rights of the public legally subsisting.
>
> For the avoidance of doubt, it is hereby expressly declared that nothing in this section shall be taken to effect the right of the State Government to unoccupied lands declared to be the property of the State Government by any earlier law."

49. Thus, a combined reading of these provisions would enable us to conclude that there is right of Government to lands and foreshore and such lands and foreshore can be disposed of by the Collector with the sanction of the State Government. By the proviso introduced by Maharashtra Act XXIX of 2016, it has been stated as under:-

> "1. This Act may be called the Maharashtra Land Revenue Code (Fourth Amendment) Act, 2016.

2. To section 295 of the Maharashtra Land Revenue Code, 1966 (hereinafter referred to as "the said Code"), the J.V.Salunke,PA Judgment.WPL.122.2018+.doc following proviso shall be added and shall be deemed to have been added with effect from the date of commencement of the said Code, namely:-

"Provided that, all leases granted by the State Government or the Collector of the land or foreshore vested in the Government for whatever term, which were in existence on or before the date of commencement of this Code or were granted thereafter, shall notwithstanding the conditions stipulated in such lease-deeds or lease-agreements or Grant orders executed by the Collector, be also subject to the following conditions, namely:-

> (i) Leasehold rights in respect of the lands or foreshore vested in the Government given on lease may be further assigned or transferred only with the prior permission of the Collector on payment of such premium on account of unearned income and transfer fees or charges, at such rates as may be specified by the Government by an order, from time to time.

(ii) In the case of any contravention of the provisions of sub-clause (i), the lessee or transferor of such leasehold rights, shall be liable to pay penalty in addition to such premium and transfer fees or charges, at such rates as may be specified by the Government by an order, from time to time."

3. Notwithstanding anything contained in the said Code or in any rules made thereunder or in any judgment, decree or order of any court, tribunal or any other authority, any levy, demand and collection of premium on account of unearned income and transfer fees or charges or penalty by the Government during the period commencing from the date of coming into force of the said Code and ending on the date of commencement of the Maharashtra Land Revenue Code (Fourth amendment) Act, 2016 (hereinafter referred to as "the date of commencement of the amendment Act of 2016"), on further assignment or transfer of leasehold rights by the lessee or transferor of such leasehold rights in respect of the lands or permission of the Collector and any action taken by the government therefor, shall be deemed to have been validly levied, demanded, collected or taken and shall be deemed always to have been validly levied, demanded, collected or taken under the said Code, as amended by the Maharashtra land Revenue Code (Fourth amendment) Act, J.V.Salunke,PA Judgment.WPL.122.2018+.doc 2016 and, accordingly, no suit, prosecution or other legal proceedings shall lie in any court or before any tribunal or other authority on the ground that, the provisions of the said Code, prior to the date of commencement of the Amendment Act of 2016, did not provide for levy, demand and collection of such premium and transfer fees or charges or penalty or action by the Collector. No suit, prosecution or other legal proceedings shall lie or be maintained or continued in any court or before any tribunal or other authority, for the refund of any such premium and transfer fees or charges or penalty so levied, demanded, collected or for any action taken with effect from the date of coming into force of the said Code."

50. Thus, this is an introduction by the Maharashtra Land Revenue Code (Fourth Amendment) Act, 2016. Section 37A comes into the statute book by Maharashtra Act IV of 2015. The Statement of Objects and Reasons to this Amendment Act reads as under:-

"STATEMENT OF OBJECTS AND REASONS.

Large number of Government lands and nazul lands in the Amravati and Nagpur Revenue Divisions were leased for residential and various other purposes. Such lands were leased before the re-organization of the state of Maharashtra as per the provisions of the then existing laws relating to land revenue.

2 The Hon'ble High Court, Nagpur Bench, vide its common judgment in various petitions, dated 30th September, 2008, has observed that the existing provisions of law regarding grant or lease of nazul lands or Government lands in Amravati and Nagpur land Revenue divisions, do not authorizes the Revenue Authority to impose any new conditions or modify any conditions during subsistence of lease period or for that matter at the time of renewal of the lease, such as putting restrictions on the right to alienate the nazul land or Government land, making liable for taking prior approval of the competent authority and paying the unearned income for recognizing or approving the transfer of such land, in the Amravati Nagpur Revenue Divisions. It is also J.V.Salunke,PA

Judgment.WPL.122.2018+.doc observed that, though the renewal of the lease necessarily should be, on same terms and conditions as in the earlier lease except the change or revision in respect of annual lease rent, the State Legislature has authority to enact law authorizing the State Government to claim unearned income from the grantee or lessee for recognizing or approving the transfer of land granted for purposes other than industrial and commercial purposes in question. The Government, therefore, considers it expedient to amend the Maharashtra Land Revenue Code, 1966 (Mah. XLI of 1966), for authorizing the State Government to claim unearned income from the grantee or lessee for recognizing or approving the transfer of land in question and also to incorporate the provisions regarding redevelopment, use of additional floor space index, transfer of transferable development rights in respect of such land.

The Bill seeks to achieve the above objectives.

Mumbai BALASAHEB THORAT Dated the 17th July 2012. Minister for Revenue"

51. In the instant case, we will have to find out whether the factual position is at all disputed. Though the writ petition may have been amended extensively, what the basic facts denote is that the registered lease deed in favour of petitioner no. 1 is dated 3rd November, 1965. Secondly, that lease deed granted leasehold rights with respect to all that piece and parcel of land known as Plot Nos. 165 and 166 bearing City Survey Nos. 1601 and 1602 of Fourth Division in Block II of the Back Bay Reclamation Estate of the Government of Maharashtra within the City and Registration sub-District of Bombay and admeasuring 3994 square meters etc, more particularly described in the petition as "the said property". J.V.Salunke,PA Judgment.WPL.122.2018+.doc The lease was granted for a period of 99 years with effect from 5 th July, 1957. Clauses 2(t) to 2(v) of this lease deed reads as under:-

> "2 (t) Not to assign or part with the possession of any part less than the whole of the demised land or in any manner part with assign or underlet or transfer the Lessee's interest therein so to cause any division therein by metes and bounds or otherwise to alter the nature of this present demise.
>
> (u) Not to assign or transfer the demised land or any part thereof to a foreigner except domiciled in India or a foreign firm established or trading in India without the consent of the Lessor who will have full discretion to refuse such consent without assigning any reason therefor.
>
> (v) If the Lessee shall sell, assign or part with the demised premises for the then residue of the said term to deliver at the Lessee's expense within twenty days after every such assignment or assurance shall have been duly registered under the Indian Registration Act, 1908 or other amending statute notice of such assignment or assurance and if required a copy of such assignment or assurance to the Lessor such delivery to be made to the Collector or to such officer or person in Bombay on behalf of the Lessor as the Lessor shall from time to time require."

52. A perusal of these clauses would indicate as to how the assignment or parting with possession of any part less than the whole of the demised land or in any manner part with, assign or underlet or transfer the lessee's interest therein so as to cause any division therein by metes and bounds or otherwise to alter the nature of this present demise is impermissible. The other clauses placing a restraint on assignment or transfer of the demise land or any part thereof to a foreigner except domiciled in J.V.Salunke,PA Judgment.WPL.122.2018+.doc India or a foreign firm established or trading in India without the consent of the Lessor, who will have full discretion to refuse such consent without assigning any reason therefor. Based upon these clauses/ covenants, on 27th March, 2012, the petitioners addressed letters to the second respondent, inter alia, requesting the second respondent to correct the area of the land and also to mutate the new name of petitioner no. 1 in the Property Card. No action was taken by the second respondent on the letters, which were addressed to the second respondents. Then, there was this registered deed of assignment dated 29th December, 2014. There was an immediate intimation of this execution of the deed of assignment and which intimation is in writing. That is to the Collector of Mumbai City. On 3rd March, 2015, an amendment was made by introducing section 37A in the MLRC as reproduced above. On 24th November, 2015, petitioner no. 1 addressed a letter to the second respondent, inter alia, requesting the second respondent to mutate the name of HDFC in the Property Card. This letter was replied to and certain details were sought for. The reply to this letter by the first petitioner is dated 16 th February, 2016. On 22nd August, 2016, another amendment to the MLRC was notified, by which, section 295 as amended and reproduced above, has been inserted in the MLRC.

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53. The demand notice impugned in this petition is dated 26th December, 2017, which was replied to by the petitioners vide a reply, copy of which is at pages 159-165 of the paper book. An express contention was raised therein and namely that there is no question of prior permission of the State Government or prior permission of the Collector, much less requirement of payment of any premium on account of unearned income arising in this case for the simple reason that the registered deed of assignment is dated 29th December, 2014 and that gives effect to the leave and licence already effected in favour of HDFC dated 27 th March, 2012. That leave and licence agreement is also registered. The request of the petitioners was only to mutate firstly the new name of the first petitioner in the records of rights and secondly pursuant to the arrangements and transactions, the name of HDFC. It may be that the second respondent treated this communication as seeking permission for the transaction. There is no question of seeking permission for transfer of the said property. The petitioners raised a specific plea in para 11 of their reply and to the effect that they assigned the leasehold interest in the year 2014, neither there existed any contractual condition nor there existed any provision of MLRC or other statute applicable to the lease deed, which required the petitioners to take prior permission of the Government for the assignment. In J.V.Salunke,PA Judgment.WPL.122.2018+.doc para 12 of the reply, they stated that section 37A was introduced by Maharashtra Act IV of 2015. In the circumstances, there was no question of any unearned income. There is no question of any sharing of the revenue because even the Government resolutions dated 14th June, 2017 and 20th February, 2016 are inapplicable.

54. Now the Government has given a reply to this and stated that the petitioners, without consent of the second respondent, assigned the aforesaid leased property to HDFC by assignment dated 29th December, 2014, which was registered on 29th December, 2014. There was an intimation of the assignment given to the second respondent. The HDFC by letter dated 18 th May, 2015 applied for mutation of their name in the revenue records (see para 12 of the reply affidavit filed in this petition at running pages 174-175 of the paper book).

55. To our mind, there may have been correspondence on the issue of change of name of Hindustan Lever Limited to Hindustan Unilever Limited, floating up of two mobile towers without obtaining the prior permission, but everything that is set out in paras 13 to 18 of the affidavit in reply to the present petition would denote that the petitioners were called for a hearing in relation to the notice of demand. The demand was in terms of the Government Resolution dated 14th June, 2017 to pay a sum of J.V.Salunke,PA Judgment.WPL.122.2018+.doc Rs.94,24,81,005/- on account of the transfer fee payable on the assignment of the leasehold rights by the Hindustan Unilever Limited to HDFC.

56. The moot question is, whether on the date when the assignment deed was registered and assigning the leasehold interest in favour of the third respondent, was the legal position as prevailing now or was that legal provision having been inserted later, it is rightfully invoked. As noted above, paragraphs 13 to 19 of the affidavit in reply clinch the issue. These paragraphs appearing at pages 175 and 176 of the paper book read as under:-

> "13. I say that the Petitioner by their letter dated 24.11.2015 requested the Respondent No. 2 to expedite the application of the Housing Development Financial Corporation (HDFC) or mutation. The copy of said letter dated 24.11.2015 is annexed as Exhibit-G at Page 106 to the Petition. I say that the Respondent No. 2 by letter dated 07.12.2015 which is annexed at Exhibit-H at Page 109 to the Petition called upon the Hindustan Unilever Ltd. to furnish certain documents regarding construction on the land and to submit the Form-A.
>
> 14. The Hindustan Unilever Ltd. by their letter dated 16.02.2016 submitted certain documents but did not submit the entire documents.

15. I say on going through the documents it was found that record showed the name of Hindustan Lever Ltd. as lessee and assignment was by Hindustan Unilever Ltd. to HDFC, therefore by letter dated 22.03.2016 the Respondent No. 2 called upon Petitioner to inform whether as per clause 2(v) of the Lease Deed the change from Hindustan Lever Ltd. to Hindustan Unilever Ltd. has been intimated to the Respondent No. 2. The Petitioner by letter J.V.Salunke,PA Judgment.WPL.122.2018+.doc dated 04.04.2016 informed that by their letter dated 10.10.2017 the Petitioner has already informed the Respondent No. 2 of same.

16. I say that by letter dated 29.09.2017 the Respondent No. 2 therefore, fixed site inspection and on 13.10.2017 various violations of lease deed were noticed. The lessee had put up 2 mobile towers in the leased property without obtaining the prior permission and therefore, clause 2(v) had been violated by lessee. Hence, notice dated 20.12.2017 was issued to the Petitioner in respect of the

violation and documents were demanded for calculating the premium as per circular dated 13.04.2005. Hereto annexed and marked as EXHIBIT-3 to EXHIBIT -5 ARE COPIES OF THE SITE INSPECTION REPORT DATED 31.10.2017 AND NOTICE DATED 20.12.2017. The Petitioner did not reply to the said notice till date.

17. I say that the Respondent No. 2 by notice dated 26.12.2017 which is annexed as Exhibit-A at Page 38 to the Petition with English Translation at Page 43 called upon the Hindustan Unilever Ltd. in view of the letters dated 19.11.2014, 04.11.2015, 05.01.2015, 24.11.2015, 16.02.2016, 04.04.2016 and also letter dated 18.05.2015 of HDFC Bank and the Government Resolution dated 14.06.2017 to pay a sum of Rs.94,24,81,005/- on account of the transfer fee payable on the assignment of the lease hold land by Hindustan Unilever Ltd. to HDFC Bank.

18. I say the Petitioner responded to the aforesaid notice by letter dated 08.01.2017 year wrongly mentioned in the letter by the Petitioner contending that they are not liable to pay and without prejudice the calculation ought to be as per Government Resolution dated 12.12.2012 and further requested for urgent hearing. The copy of letter dated 08.01.2017 is annexed at Exhibit-L at Page 159 of the Petition. I say that the Respondent No. 2 by letter dated 09.01.2018 fixed the hearing on 18.01.2018, but the Petitioner instead of attending the hearing has filed the Petition on 11.01.2018 in the Hon'ble High Court.

19. I say that in view of the above, the Petition is premature so far the notice dated 26.12.2017 is concerned as the Respondent No. 2 has to hear the Petitioner and pass a detail Order and if any Order is passed adversely to the Petitioner then the same is appealable under Section 274 of the MLR Code as an alternate effective remedy." J.V.Salunke,PA Judgment.WPL.122.2018+.doc

57. In the subsequent paragraphs, there is reliance placed on section 295 of the MLRC read with Government Resolution dated 14th June, 2017. However, surprisingly, in para 21 of the affidavit in reply, a Government Resolution dated 12th December, 2012 is referred and it is argued that it is inapplicable to this case. That applies to renewal of expired lease. That also applies in respect of permission taken of Government before assignment. In para 21, the specific stand of the State Government is that the application of the petitioner is being considered at the same time when section 295 of the MLRC has come into operation and therefore, the same is made applicable and the procedure and percentage of calculation of unearned income laid in Government Resolution dated 14th June, 2017 is therefore applied. Surprisingly, then it is stated that even before the amendment of section 295 of the MLRC, the Government was recovering unearned income as per the Government decision. Every action and the decision of the Government, taken earlier in respect of unearned income, has been validated by section 295 of the MLRC and thus section 295 of the MLRC is deemed to be in the MLRC from the date when the MLRC came into effect, namely, 1 st August, 1967. Then, there is an additional affidavit on behalf of respondent nos. 1 to 3 referring to section 37A of the MLRC and it is stated to be inserted with effect from 3 rd March, 2015. That is J.V.Salunke,PA Judgment.WPL.122.2018+.doc an admitted date and equally the other admission is a fact that the Maharashtra Act XXIX of 2016 is gazetted on 22 nd August, 2016 and that is how the proviso to section 295 of the MLRC is added with effect form that date. In para 4 of the additional affidavit in reply reproduced above, a reference is made to three Government Resolutions dated 12th

December, 2012, 20th February, 2016 and 14th June, 2017.

58. Thus, the Government Resolutions, according to the deponent, lay down a standard methodology to be followed at the Collectorate level while processing claims seeking permission for assignment and/or transfer of leasehold rights etc contemplated by section 37A and the conditions of lease as also various grounds, including the one newly incorporated with retrospective effect vide Maharashtra Act XXIX of 2016. A bare perusal of this additional affidavit would indicate that there is no denial of the basic fact, namely, the lease deed in favour of Hindustan Lever, secondly, it giving effect to the transaction from 5 th May, 1957, thirdly, the aforequoted clauses therein, fourthly these clauses not contemplating any prior permission/approval of the State Government or payment of money to the State Government in the event of any assignment of any leasehold rights and lastly and importantly, in none of these affidavits, the existence of the J.V.Salunke,PA Judgment.WPL.122.2018+.doc clauses and covenants in the lease deed with the petitioner reproduced hereinabove, have been disputed or denied. Even the interpretation thereon placed by the petitioners is undisputed. Thus, the State Government and the Collector of the City of Mumbai have accepted the position that as on the date of registration of the deed of assignment between the petitioners and HDFC, there was no prohibition or restriction nor was there any term and condition requiring prior permission of the State Government or payment of any unearned income. When the interpretation of the above reproduced covenants in the petitioners' lease deed is undisputed and once the deed of assignment is consistent with these terms nor is any contravention of these terms and conditions as existing and appearing in the lease deed has been alleged, then, we do not see how a demand could have been raised on the petitioners.

59. The petitioners may engage the respondents in a litigation and despite the above factual position may call upon this court to consider the point of constitutional validity of the legal provisions, still, what we find is that in the peculiar facts and circumstances of the case, the question of the constitutional validity does not arise at all. The Petitioners in Writ Petition (L) No. 122 of 2018 have divested themselves of their right and J.V.Salunke,PA Judgment.WPL.122.2018+.doc interest in the land by virtue of the deed of assignment in favour of respondent no. 3. It is they who are raising a constitutional issue. The other lessee in Writ Petition No. 513 of 2017 is similarly placed. The lessee in Writ Petition No. 137 of 2017 has given away development rights.

60. We have reproduced section 37A and section 295 of the MLRC only to bring home the point that section 37A places restrictions on sale, transfer, redevelopment, change of use etc. in relation to an Government land in Amravati and Nagpur Divisions, including the Mumbai City and Revenue Divisions in the State, which is granted for various purposes under the provisions of this Code or rules made thereunder or any law relating to land revenue, before the commencement of this Code, including the nazul lands in Amravati and Nagpur Revenue Divisions, shall be subject to taking the prior permission of the State Government, still, on the own showing of the parties, this provision was brought into effect on 3rd March, 2015. It is this provision, by sub-section (2), which enables the Government while granting such permission, as is required under sub-section (1), to recover such premium or charge and share of unearned income subject to such terms and conditions, as may be specified by general or special order issued by the Government from time J.V.Salunke,PA Judgment.WPL.122.2018+.doc to time. However, the first proviso to sub-section (2) itself clarifies

that if there is an inconsistency in the provisions of section 37A or of any such orders issued thereunder with the terms and conditions of the order of land grant or the lease deed executed prior to the commencement of the Maharashtra Land Revenue Code (Second Amendment) Act, 2012, the terms and conditions of such grant or lease deed shall prevail. The Maharashtra Land Revenue Code (Second Amendment) Act, 2012 was brought into effect on 3 rd March, 2015. This is a lease deed admittedly executed prior to the commencement of the Maharashtra Land Revenue (Second Amendment) Act, 2012. Secondly, there is a clear inconsistency in the lease deed and the provisions of section 37A of the MLRC. Therefore, we do not see how respondent nos. 1 and 2 can justify the demand on the petitioners. In the teeth of the clear language of this provision, we do not see that the demand is legally tenable. It cannot be maintained on the touchstone of introduction of the proviso in section 295 for that was brought into effect on 22nd August, 2016 admittedly. That proviso says that all leases granted by the State Government or the Collector of the land or foreshore vested in the Government for whatever term, which were in existence on or before the date of commencement of this Code or were granted thereafter shall, notwithstanding the conditions stipulated in J.V.Salunke,PA Judgment.WPL.122.2018+.doc such lease deeds executed by the Collector, be also subject to the conditions referable to clause (i) of the proviso.

61. Once this provision itself is brought in on 22 nd August, 2016 and that gets introduced or inserted as a term and condition in the lease deed between the petitioners and respondent nos. 1 and 2, still, the insertion or incorporation being with effect from 22 nd August, 2016, the transaction in the present case, namely, the deed of assignment dated 29th December, 2014 is not hit by the said provision. Therefore, there is no question of any validation of a demand as the validation clause is inserted by this Fourth Amendment Act of 2016 with effect from 22 nd August, 2016. Pertinently, on that date, there was no demand raised on the petitioners. The demand, as is raised on the petitioners, is referable to section 295, but raised on the basis of the Government Resolution dated 14th June, 2017. The demand itself is raised on 26th December, 2017 and received by the petitioners on 29th December, 2017. Thus, it may have been raised after the insertion or introduction of the terms and conditions specified in the proviso, but for that to apply, what is crucial and material is the date of the deed of assignment. The deed of assignment in this case was registered on 29th December, 2014. On that date, the term and condition envisaged in the proviso was not incorporated J.V.Salunke,PA Judgment.WPL.122.2018+.doc or inserted in the lease deed. In these circumstances, we do not see how we can sustain the demand. The demand has no legal sanction. On this ground alone, this petition would succeed. WRIT PETITION NO. 137 OF 2017 :-

62. The leases dated 14th May, 1921 styled as the First Lease and 13th October, 1923 styled as the Second Lease are relied upon, under which, the land, more particularly described therein was granted. The larger land was reserved in the development plan of 1966-67 for the purpose of extension of the Veer Jijamata Bhosale Udyan. The Mafatlal Industries Limited-respondent No. 3 to the petition was operating its textile business in the larger land and in or around in the year 1997, it started to incur losses. It was declared as the sick industrial company by the Board for Industrial and Financial Reconstruction (BIFR).

63. Under an order dated 30th October, 2002, the BIFR sanctioned the scheme of rehabilitation for this Mafatlal Industries Limited. Subsequently, the Government of Maharashtra, Urban Land

Development Department issued a notification dated 10th February, 2004 retaining the reservation of 50% of the larger land for Veer Jijamata Bhosale Udyan and deleted the reservation of the balance area of 50% admeasuring 27284.36 square meters. Thereafter, on 12 th August, 2010 the J.V.Salunke,PA Judgment.WPL.122.2018+.doc Mafatlal Industries Limited was de-registered from the BIFR as net worth became positive. Then, the said industry, on 25 th October, 2010 requested the State of Maharashtra to renew the leases for a further period of 99 years from the date of expiry thereof and had also sought permission for redevelopment of the land.

64. The petitioner before us, by and under a Development Agreement dated 17th June, 2011 obtained from Mafatlal Industries Limited development rights with respect to 30915 square meters for a consideration of Rs.605,80,00,000/- and on the terms and conditions set out therein. On 8th July, 2011, the third respondent to this petition informed the second respondent that the development agreement has been made. Thereafter, on 1st March, 2012, the Government of Maharashtra took a decision that when the policy regarding the renewal of the lease would be finalised, subject to the terms and conditions thereof and to an undertaking from the lease holder that it will comply with the same and would be agreeable to deposit the amount of difference, if any, the leases would be renewed for a further period of 30 years. This is a letter of 1 st March, 2012 and on 2nd March, 2012, the second respondent recorded that the third respondent has been granted permission for redevelopment of land as well as for J.V.Salunke,PA Judgment.WPL.122.2018+.doc renewal of the lease vide the Government memo/letter dated 1 st March, 2012. That is how on 3rd March, 2012, the registered Development Agreement executed by the third respondent with the petitioner came to be forwarded and on 12th March, 2012, the third respondent was informed that an approval had been granted for renewal of the lease for a period of 30 years on the third respondent giving an undertaking on stamp paper that they would deposit the difference, if any, after the policy regarding renewal of leases was finalised. The third respondent recorded that as required by the Collector's letter of 3 rd March, 2012, payment of the requisite premium amount of Rs.9,77,72,606/- has been made by the petitioner. Then, on 9 th May, 2012, the second respondent, inter alia, granted premium for renewal of the lease subject to the third respondent, inter alia, handing over 50% of the larger property required for extension of Veer Jijamata Bhosale Udyan to the Municipal Corporation of Greater Mumbai free of cost. Thereafter, the Government of Maharashtra formulated its policy in relation to renewal of expired leases of Government lands vide Government Resolution dated 12 th December, 2012 along with corrigendum dated 17th January, 2013 as well as further directions dated 22 nd April, 2013. Since the policy has been issued, the action for executing the lease would be initiated and thereafter, the second respondent stated J.V.Salunke,PA Judgment.WPL.122.2018+.doc that respondent no. 3 is entitled to convert the leasehold land into occupancy class-II tenure by exercising the option within 15 days from the date of receipt of the notice in the format provided and in the event the third respondent desires to hold the larger property as leasehold tenure itself, it was entitled to intimate the same within 15 days. It is in these circumstances that the correspondence between the advocates for respondent no. 3 with respondent no. 2 on the lease renewal policy commenced and in the meanwhile, a Letter of Intent (LOI) for erecting a public parking scheme was also issued, pursuant to which, the petitioner sought issuance of NOC for issuance of utilisation of incentive Floor Space Index (FSI) generated from public parking scheme. However, the second respondent sought information from the Municipal Corporation of Greater Mumbai on whether the 50% premium towards the LOI has been paid by the

petitioner or not. Despite this, the Intimation of Disapproval (IOD) was issued by the Municipal Corporation of Greater Mumbai on 31st July, 2015.

65. Then, there was a permission sought by the petitioner from respondent no. 2 to excavate 12000 brass of earth quantity on the said land and it enclosed a Demand Draft of Rs.48,00,025/- on 4th July, 2016, the said permission was granted. Further, on 18 th June, 2016, the Municipal Corporation of Greater Mumbai issued a commencement certificate.

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66. On 23rd August, 2016, a further permission was sought for excavation of 11400 brass of earth on the said land. It is stated that on 15th October, 2016, the second respondent noted/confirmed that the third respondent's lease had been renewed and that it had been permitted to redevelop the land as per the terms and conditions granted in the year 7th May, 2012.

67. Even before a hearing, according to the petitioner, the first impugned notice/order dated 8th November, 2016 was issued, whereby, the third respondent was directed to make payment of the amount mentioned therein. By a letter dated 8th November, 2016 addressed by the petitioner to respondent no. 2, the petitioner made its clear stand in the matter, but on 9 th November, 2016, the second respondent, inter alia, stated that the rights of the petitioner with respect to construction on the land have not been established and therefore, the permissions for excavation of the land granted were allegedly illegal.

68. The petitioner clarified on 15th November, 2016 that the issues are not interconnected, but entirely distinct and permission for excavation has nothing to do with this aspect of the matter. It requested the authority to withdraw this communication.

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69. Thus, by Exhibit - 'O' at page 248 of the paper book, a letter dated 9th November, 2016 purports to refer to the petitioner's request to excavate 11400 brass of earth, but in this letter/order, the second respondent says that the Property Card in relation to the land carries the name of the third respondent and it is the third respondent, which is permitted to carryout the redevelopment. At that time, the third respondent did not point out any arrangement as between it and the petitioner. That is how the unearned income has not been received. The petitioner was informed that its name is not reflecting in the Property Card, its interests are also not intimated to the Collector and that is how it cannot seek any permission for excavation and the earlier permission granted to excavate 12000 brass of land stands cancelled.

70. Pertinently, at page 211 is a notice of demand and prior thereto at Exhibit - 'L' at page 203 is the communication, which clearly refers to the petitioner's arrangement with the third respondent. This communication relies upon the amended section 295 of the MLRC and seeks to demand a sum of Rs.454,35,00,000/- within 10 days from the date of receipt of this letter.

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71. It is evident, therefore, from the above facts and circumstances that to the extent the respondent Collector seeks to rely upon these communications and particularly Exhibits - 'L' and 'M' to the petition, the issues in relation thereto are concluded by our order passed in Writ Petition (L) No. 122 of 2018. WRIT PETITION NO. 111 OF 2017:-

72. In this petition, the petitioners have challenged a demand notice dated 26th October, 2016 issued by the second respondent- Collector demanding Rs.20,03,60,232/- as unearned income. The facts and circumstances of this case would indicate as to how the leases dating back to 29th April, 1940 and 23rd November, 1943 and that the original leases expired, but the legal heirs of the original lessees assigned the leasehold rights in favour of the petitioner on 15th December, 2006. On 13th March, 2007, the assignment in favour of the petitioner was intimated to the Collector and thereafter, on 16th April, 2016, by firtue of an order passed in Writ Petition No. 1059 of 2013, there is a direction to mutate the name of the petitioner in the revenue records.

73. It is in these circumstances that the demand raised on the petitioner on 26th October, 2016 and the recovery notice dated 8th November, 2016 are challenged in this petition. The petitioners have raised the following contentions:-

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74. The petitioner submits that the impugned demands are arbitrary, illegal and ultra vires the provisions of the MLRC and Maharashtra Land Revenue (Disposal of Government Lands) Rules, 1971. The original lease deed dated 29 th April, 1940 did not have any condition as to obtatining prior permission of the Collector and payment of unearned income. The petitioner, therefore, had a vested right to transfer its leasehold rights under section 108 of the Transfer of Property Act, 1882 only by giving notice to the Collector as provided by the lease. The impugned demands seeking to recover unearned income are, therefore, contrary to the provisions of the Transfer of Property Act, 1882. The demand, therefore, is without authority of law as mandated by Article 265 of the Constitution of India.

75. The original lease was executed by the State Government in 1940, which was governed by Indian Contract Act, 1872 and Transfer of Property Act, 1882. The petitioner's predecessor had a right to assign/transfer leasehold right with notice to the Collector. The MLRc came into force in 1966 and the petitioner could still transfer leasehold rights with notice to the Collector. However, proviso to section 295 inserted by Maharashtra Act XXIX of 2016 on 22nd August, 2016 seeks to introduce a new condition in all Government leases with effect from 15 th August, J.V.Salunke,PA Judgment.WPL.122.2018+.doc 1967. The Amendment Act of 2016, therefore, clearly destroys vested rights of petitioner and still purports to be retrospective rendering it arbitrary, unreasonable and violative of Article 14 of the Constitution of India.

76. The petitioner submits that the Transfer of Property Act, 1882 is a central legislation under Entry VI, List III - Concurrent List of VIIth Schedule to the Constitution of India. The 1882 Act

clearly provides that a lessee can assign/transfer his leasehold rights unless lease otherwise provides in section 108. The MLRC Amendment of 2016 inserting proviso in section 295 is directly contrary to section 108 of the Transfer of Property Act, 1882. The MLRC Amendment Act of 2016 does not have presidential assent. Thus, Maharashtra Act No. XXIX of 2016 inserting a provision in a State law (MLRC), which is in conflict with existing Central Law (the Transfer of Property Act, 1882), suffers from repugnancy under Article 254 of the Constitution of India and to that extent is, therefore, unconstitutional.

77. The petitioner submits that similarly, Indian Contract Act, 1872 is a central legislation under Entry VII, List II of VIIth Schedule of Constitution of India. Under the Contract Act, a party to a contract cannot unilaterally amend the contract as consent of each party to contract is the sine qua non for a valid and J.V.Salunke,PA Judgment.WPL.122.2018+.doc enforceable contract. However, the Maharashtra Act No. XXIX of 2016, a State law unilaterally amending contracts entered into by State Government with citizens is in direct conflict with an existing central law (the Indian Contract Act, 1872). Thus, in the absence of presidential assent, the Maharashtra Act No. XXIX of 2016 is repugnant of Indian Contract Act, 1872 and therefore, unconstitutional.

78. The amendment in section 295 introduced in 2016 is given a retrospective effect from 15th August, 1967. It has unilaterally amended contracts in favour of one party i.e. State Government. The amendment thus entitling State Government to invalidate transactions in the past for not acceding to its demand of unearned income and destroying vested rights is manifestly arbitrary, unreasonable and violative of Article 14 of the Constitution of India.

79. The Maharashtra Act No. XXIX of 2016 has been given a retrospective effect from 15th August, 1967. The validity of the 2016 Act considered as on 15th August, 1967 is in gross violation of Article 19(1)(f) and Article 31 of the Constitution of India. In any case, it is in violation of Article 300A of the Constitution of India even after deletion of right to property as a fundamental rights.

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80. In any case, the impugned Act (proviso to section 295 of the MLRC) is unreasonable, arbitrary and violative of Article 14 and 19(1)(g) of the Constitution. Besides, the existing leases constitute unequivocal promises and rights of lessees which must be considered to judge the validity of law by applying the principles of estoppel as held by the Hon'ble Supreme Court in the case of Madan Mohan Pathak vs. Union of India3.

81. The petitioner submits that assuming for the sake of arguments, unearned income is payable (which is seriously questioned and disputed), the unearned income is defined in Rule 31 of the Maharashtra Land Revenue (Disposal of Government Lands) Rules, 1971 as "an amount equal to the difference between the price realised by way of sale and the occupancy price paid to the Government at the time of the grant or as the case may be, the price at which the land was purchased immediately before such sale". It is submitted that in the present case, the proceeds realised by way of sale which is adjudicated by the stamp authorities is Rs.1.21 crores and therefore, unearned income can never be higher than the price realised by sale.

82. It is further submitted that in any event, the said price of Rs.1.21 crores is a lumpsum price of the land as well as the 3 AIR 1978 SC 803 J.V.Salunke,PA Judgment.WPL.122.2018+.doc building. As per the Government circular dated 12th December, 2012, the petitioner submits that in such a composite transaction, value ascribed to the building and land is in the ratio of 75:25. It is, therefore, submitted that the purported demand vide the impugned notices, illegally and arbitrarily, raised by the respondents, deserves to be quashed and set aside.

83. The impugned demand, based on ready reckoner i.e. Annual Statement of Rates market value of the property is baseless and misconceived. The true market value of the property is much less and therefore, Annual Statement of Rates could not have been considered for ascertaining true market value of the property and it is only a guiding factor for stamp authorities under the Bombay Stamp Act, 1958.

84. The petitioner submits that without claiming transfer fee charges from the transferor, respondent nos. 2 and 3 have arbitrarily issued a notice to the petitioner and have now sought to illegally claim an exorbitant amount of Rs.20,03,60,232/-. It is further submitted that there was no vacant space in the building. Respondent no. 2 has referred to a Government Resolution dated 20th February, 2016, wherein it is proposed to charge 50% transfer fees on ready reckoner value of plots. However, in the instant case, respondent no. 2 has charged 75% and that too on J.V.Salunke,PA Judgment.WPL.122.2018+.doc vacant plot value instead of 50% on occupied land value. It is further relevant to mention that the agreement is registered and the petitioner has paid stamp duty on the adjudicated value in the year 2006 when the lease was transferred more than 10 years ago. The land was fully occupied with the building and the building was fully occupied with protected tenants and owners staying therein. Thus, it is abundantly clear that the impugned notices issued by the respondents are arbitrary, without any application of mind and thus liable to be quashed and set aside.

85. It is further submitted that the respondents being mindful that there are serious lacunae in the exercise of the respondents levying such illegal demands towards alleged unearned income, have vide an additional affidavit dated 21st February, 2018 filed in Writ Petition No. 513 of 2017, sought to lay down a procedure to be followed by the respondents in the process of levying and charging such transfer fees/unearned income, which in any event is denied.

86. The petitioner submits that in the aforesaid circumstances, there is no manner of doubt that the impugned notices are ex- facie illegal, bad in law, arbitrary and deserves to be quashed and set aside. More so, when the reliance placed on the Notification dated 22nd August, 2016, thereby amending section 295 of the J.V.Salunke,PA Judgment.WPL.122.2018+.doc MLRC by the respondents, whilst issuing the impugned notices, is incorrect, baseless, wrong and contrary to the principles of natural justice. It is, therefore, prayed that the present petition be allowed.

87. In the order passed in Writ Petition (L) No. 122 of 2018, we have already held that even if this section 295 of the MLRC has been brought on the statute book with effect from 22 nd August, 2016, there has to be a demand raised relying upon the conditions inserted and in terms of the proviso to section 295 and particularly by virtue of the Maharashtra Act XXIX of 2016. Even if the conditions

stand incorporated or inserted in the grant or lease agreement, still, what could be validated and notwithstanding anything contained in the Code or in the rules made thereunder or in any judgment, decree or order of any court, tribunal or any other authority, a levy, demand and collection of premium on account of unearned income and transfer fees or charges or penalty by the Government during the period commencing from the date coming into force of the MLRC and ending on the date of commencement of the Maharashtra Land Revenue (Fourth Amendment) Act, 2016.

88. In the present case, we do not find any such demand having been levied and raised during the period from the commencement J.V.Salunke,PA Judgment.WPL.122.2018+.doc of the Code till the date of commencement of the Maharashtra Land Revenue Code (Fourth Amendment) Act, 2016. Hence, no reliance can be placed on the validation clause. In the event the demand is sought to be raised by Exhibit - 'F' at page 96 dated 26th October, 2016, then, that demand cannot be enforced merely by relying on the proviso, but there must be a compliance with the provisions of law. In other words, if the demand is sought to be enforced, then, it must not be merely on the issuance of a notice, at best Exhibit - 'F' is a notice demanding a sum and not demanding an amount which is held to be due and payable. There will have to be an adjudication and unless such an adjudication precedes or is held, there cannot be a recovery by coercive means. Looked at from any angle, we find that the issue raised in the petition would have to be squarely answered in terms of our judgment rendered in Writ Petition (L) No. 122 of 2018. Like the other matters, it would have to be declared that Exhibit - 'F' dated 26th October, 2016 is at best a notice demanding the sum and not a demand, which by itself cannot be enforced and executed nor recovery of the sums thereunder by coercive means is permissible. It would be open for the respondents to proceed in terms of this communication only after an adjudication of the demand. That adjudication must culminate in a speaking order, which shall be passed after prior opportunity of a personal J.V.Salunke,PA Judgment.WPL.122.2018+.doc hearing to the petitioner. More so, when the petitioner has not accepted the sum to be due and payable. Rule is made absolute in the above terms.

WRIT PETITION NO. 513 OF 2017:-

89. This writ petition seeks to challenge an order dated 26 th September, 2016, copy of which is at page 173 of the paper book. By this order, the State Government, particularly the Principal Secretary (Revenue) holds that the petitioners must pay an amount demanded as unearned income in terms of section 295 of the MLRC as amended and in the event the same has not been paid, that shall be recovered by coercive means. In respect of breaches committed by the petitioners of the terms and conditions of the lease deed and particularly the construction carried out at site, the Collector should recover penalty. It is only when the above amounts towards the unearned income and penalty are paid that the Collector should take a decision to renew the leases, but while doing so, he should take into consideration the Government Resolutions dated 12th December, 2012, 20th August, 2016 and 28th December, 2015. It is after renewal of the lease that the proposals for redevelopment of the property and the applications in that regard can be considered. J.V.Salunke,PA Judgment.WPL.122.2018+.doc

90. While passing the order impugned, the Collector was aware of the original lease deed dated 13th August, 1916. Clause 7(e) of the original lease deed dated 13th August, 1916 reads as under:-

> "7(e) If the Lessee shall assign or part with the said premises or any part thereof for the then residue of the said term the Lessee will from time to time within twenty one (21) days after every such assignment or assurance having been made, deliver at his own expense notice of such assignment or assurance and if required, a copy of such assignment or assurance to the lessor. Such delivery to be made to the Collector of Bombay or to such officer or person in Bombay on behalf of the Lessor as shall from time to time be required."

91. However, in this case, the deed of assignment was executed by the lessees assigning their leasehold rights in favour of the petitioners and that execution of this deed of assignment was intimated to the Collector on 29th July, 2000and 8th February, 2001. Thereafter, the petitioners also communicated that this deed of assignment has been registered. Though the impugned order proceeds to hold that there is a breach of the terms and conditions and particularly clause 7(e), what we find is that in the impugned order, there is no reference to any terms and conditions, which require payment of any unearned income. In that, reliance is placed on clause 7(d) and clause 8 of the original lease deed. It is in these circumstances, we find that the reliance could not have been placed on section 295 as amended of the J.V.Salunke,PA Judgment.WPL.122.2018+.doc MLRC. There is, absolutely no reference made to any of the contentions, legal issues raised by the petitioners.

92. For the reasons that we have assigned while allowing Writ Petition (L) No. 122 of 2018, we proceed to allow this writ petition by quashing and setting aside the impugned order and leaving the respondents to pursue their demand, but strictly in accordance with law.

93. In these circumstances that we have not expressed any opinion on the larger question of the constitutional validity of section 295 of the MLRC as amended. Though this position emerges from the facts and circumstances in all these matters, but as we have given liberty to the State to proceed in accordance with law that the learned senior counsel appearing in these matters would argue that we must decide the larger issue as well.

94. The petitioners' learned senior counsel apprehend that given the amendment of the two provisions, namely, section 37A and section 295 of the MLRC, we must still hold as to whether they confer unbridled, unrestricted, uncontrolled powers on the State to recover the amounts styled as unearned income in the event there is a sale, transfer, redevelopment, change of use etc in relation to Government land and despite the presence of the proviso to sub-section (2) of section 37A, the provisions of section J.V.Salunke,PA Judgment.WPL.122.2018+.doc 295 would enable the State to recover such sums. The factual position being as noticed above, the petitioners divesting themselves of the rights in the immovable property, still, the serious apprehension, according to all of them, is that the transaction may be revisited by the State. It may or may not uphold it or the State may recover huge sums by way of premium or unearned income and only then approve the deals is the apprehension voiced by all. Hence, we must either declare one of these provisions as

unconstitutional and being ultra vires Articles 14, 19(1)(g) and 300A of the Constitution of India or harmonise them to such an extent as would make the exercise of the power conferred thereunder reasonable and non-arbitrary.

95. Since extensive arguments have been canvassed and based on the liberty granted by us and the apprehensions expressed, we deem it fit and proper to go into these issues.

96. We have already reproduced the above provisions as amended. By section 37A, there is a restriction on sale, transfer, redevelopment, change of use etc in relation to Government lands and nazul lands. The restriction is that such transactions shall be subject to taking the prior permission of the State Government. We do not see how sub-sections (1) and (2) of section 37A can be faulted for they enable the Government to allow deals and J.V.Salunke,PA Judgment.WPL.122.2018+.doc transactions in relation to the Government lands and nazul lands by the holders thereof. They can, in terms of the rights created in their favour, enter into these transactions and that right is sought to be restricted. It is restricted to in the sense that the holders of such lands would have to obtain prior permission of the State Government. The section enables the State Government to grant such permission by recovering such premium or charge and share of unearned income subject to such terms and conditions, as may be specified by general or special order issued by the Government from time to time. The first proviso to sub-section (2) of section 37A is actually the proviso, which says that if the provisions of section 37A or any of the orders issued under section 37A are inconsistent with the terms and conditions of the order of grant or lease deed executed prior to the commencement of the Maharashtra Land Revenue Code (Second Amendment) Act, 2012, then, the terms and conditions of such order of grant or lease deed shall prevail. When by section 37, occupants' rights are conditional and by section 37A, restrictions are placed on the transactions amounting to transfer or of the nature set out in section 37A, then, by this proviso, there is actually protection given to the occupants/holders of land and if there is inconsistency as noted in the proviso, then, the terms and conditions of the order of grant or lease deed shall prevail. J.V.Salunke,PA Judgment.WPL.122.2018+.doc

97. In Writ Petition (L) No. 122 of 2018, it is urged that if harmonious construction of section 37A and section 295 of the MLRC is not resorted to, then, it would render the provision unconstitutional. Thus, the argument is the Second Amendment by way of section 37A was brought in is effective from 3 rd March, 2015, whereas, the Fourth Amendment by way of the Maharashtra Act XXIX of 2016, by which section 295 was amended, came into force on 22nd August, 2016. It is in these circumstances that transfers effected prior to the Fourth Amendment will be governed by section 37A. However, if section 295 as amended was to be applied, even to the concluded transactions prior to its enactment, it would lead to imposition of penalty for non compliance with the provisions, which did not even exist on the date when the transactions took place.

98. The apprehension that is expressed in the other matter argued by Dr. Sathe, namely, Writ Petition No. 111 of 2017 that section 295 inserted by the above Amendment Act with effect from 22nd August, 2016 seeks to introduce the new condition in all Government leases with effect from 15th August, 1967. Therefore, the Amendment Act destroys vested rights of the petitioners and still purports to be retrospective rendering it arbitrary, unreasonable and violative of Article 14 of the

Constitution of India. Then, the other argument is of repugnancy. J.V.Salunke,PA Judgment.WPL.122.2018+.doc

99. The reply to all of this from the learned Advocate General is that there is always a presumption of constitutionality of a statute/provision in the statute and the burden is upon the person who questions it to show that there has been clear transgression of constitutional principles. The allegations regarding violation of constitutional provision must be clear and unambiguous. There should be relevant particulars furnished with supporting material. In the instant case, the provisions are not challenged on the ground of lack of legislative competence, but that they are allegedly inconsistent with Part III of the Constitution of India. The concept of unearned income is, therefore, emphasised by the learned Advocate General.

100. In this regard, after noting the rival contentions, we agree with the learned Advocate General that section 295 as amended does not violate the constitutional mandate as enshrined in Part III of the Constitution of India, much less Article 300A thereof.

101. The reliance placed by the learned Advocate General on the decision in the case of Raghubar Dayal Jai Prakash (supra) is apposite. The Hon'ble Supreme Court therein was concerned with a challenge to the constitutional validity of the operative provisions of the Forward Contracts (Regulation) Act, 1952 and the validity of a notification issued under section 15 of that Act, J.V.Salunke,PA Judgment.WPL.122.2018+.doc by which, gur was brought within the purview of the enactment with immediate effect and the validity of another notification of the Central Government, issued simultaneously, fixing the price at which forward contract subsisting on 11th February, 1959, was directed to be settled/set aside. The arguments were noted in great details and thereafter, a reference was made by the Hon'ble Supreme Court to the provisions of the Act. In dealing with one of the contentions canvassed, namely, that section 15 was constitutionally invalid as it violated the freedom guaranteed by Article 19(1)(g) of the Constitution of India, particularly the argument that the right to the benefits accruing under a contract, which was lawful when entered into, was in the nature of property and that by section 15, which empowers a notification to be issued, that contract was rendered as illegal was thus an unreasonable restriction and secondly, the right to the benefit of a contract was a right intimately bound upon with a right to carry on a trade or business guaranteed by Article 19(1)(g) of the Constitution of India, any restrictive invalidation of that contract would not be a reasonable restriction within clause (6) of Article 19 of the Constitution of India, the Hon'ble Supreme Court held as under:-

> "24. Now to revert to the discussion, of the attack on the provision based on a violation of Art. 19(1)(f) and (g), the question is whether the giving of retrospective effect to an J.V.Salunke,PA Judgment.WPL.122.2018+.doc enactment dealing with contracts so as to modify the terms of or even put an end to subsisting contract is per se unreasonable so as to amount to a violation of the guarantee under sub-cls. (f) & (g) assuming learned Counsel is right in contending that a right to the benefit of a contract is in the nature of a right to property-an assumption as regards the correctness of which we say nothing. In support of his submission learned Counsel relied on the observations in the judgment of this Court in State of West Bengal v.

Subodh Gopal Bose and Ors. AIR 1954 SC 92, where it was observed that the fact that the statute was being given retrospective operation may properly be taken into consideration in determining the reasonableness of the restriction imposed-an observation which was cited in the decision of this Court in Express News papers Private Limited vs. Union of India, AIR 1958 SC 578. The decisions referred to and others to a like effect are authorities merely for the position that the retrospective effect of a statute would be an element to be taken into account for determining the reasonableness of the restriction imposed but these observations do not carry learned Counsel to the full extent needed to sustain the proposition he seeks to establish, viz., that the retrospective invalidation of a contract is not a permissible restriction that could be imposed by a (6) of Art. 19.

25. Learned Counsel referred us to some decisions of the Supreme Court of the United States but to these we do not consider it necessary to advert. Article I, Section 10(1) of the American Constitution lays a ban on the enactment by the States of inter alia "any ex post-facto law or low impairing the obligation of contracts, or grant any title of nobility". Our Constitution-makers while making provision against "ex post-facto laws" in Art. 20(1) and "against titles" in Art. 18(1), studiously refrained from including a guarantee regarding the impairment of obligations of contracts. There is therefore no scope for the argument that a law which affects or varies rights under a contract is for that reason constitutionally invalid as an unreasonable restriction on the right either to property or to carry on trade or business. It may be pointed out that even in the United States the recent decisions have made such inroads upon that doctrine that it had been stated by Prof. Corwin that "The protection afforded by this clause does not today go much, if at all, beyond that afforded by, Section 1 of the Fourteenth Amendment (against deprivation of life, liberty or property without due process of law)". The learned another proceeding to quote from the decision in Atlantic, J.V.Salunke,PA Judgment.WPL.122.2018+.doc Coast Line, Co. v. Goldsboro, (1913) 232 US 548, Continues:

"In the words of the Court : 'It is settled that neither the contract clause nor the due process clause has the effect of overriding the power of the State to establish all regulations that are reasonably necessary to secure the health, safety, good order, comfort, or general welfare of the community'- in short, its police power. And what is reasonably necessary for these purposes is today a question ultimately for the Supreme Court; and the present disposition of the Court is to put the burden of proof upon any person who challenges State action as not reasonably, necessary.

Adding:

"Till after the Civil War the principal source from which cases stemmed challenging the validity of State legislation, the 'obligation of contracts' clause is today of negligible importance, and might well be stricken from the Constitution. For most practical purposes, in fact, it has been." (Vide Constitution and what it means today, 12th Edn., p. 84) If that is the position in America where the Constitution contains a guarantee against the impairment of obligations arising from contracts, the position under our Constitution must a fortiori be so. Affecting a subsisting contract by modifying its terms cannot ipso jure be treated as outside the permissible limits laid by cl. (5) or (b) of Art. 19.

The "reasonableness" of the provisions of a statute are not to be judged by a priori standards unrelated to the facts and circumstances of a situation which occasioned the legislation. In an oft-quoted passage Patanjali Sastri, C. J., observed in State of Madras v. V. G. Row (AIR 1952 SC 196 at p.200):

"It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract, standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict." J.V.Salunke,PA Judgment.WPL.122.2018+.doc

102. Thus, the Hon'ble Supreme Court sums up its conclusions in para 26 by holding that one cannot say off hand and as a matter of law that every restriction, which operates with retrospective effect and affects rights obtained under the pre-existing law is unconstitutional as obnoxious to the freedom guaranteed by Article 19(1)(g) of the Constitution of India. It might be in particular cases necessary to completely efface a subsisting contract and even then it cannot be said that such restrictions are per se violative of the freedom guaranteed as above.

103. It is too well settled to require any reiteration that parties like the petitioners have no vested right of trading with the Government. They cannot insist on doing business with the Government. They cannot insist that the Government lands, which are public properties, should be allotted to them on terms and conditions determined by them. Eventually, Government is a trustee of the public in relation to the public lands/public properties. They cannot be disposed of as per the whims and fancies of the Government or a political party in power. The Government of the day cannot compromise with the constitutional values and principles as are enshrined in Article 14 of the Constitution of India. All governmental actions and while dealing with the properties will have to be fair, just, J.V.Salunke,PA Judgment.WPL.122.2018+.doc reasonable, non-discriminatory and non-arbitrary. When a public property is being dealt with and disposed of in public interest, the State must obtain the best price. The terms and conditions of allotment even to the highest bidder have to be competitive. It is not just that the highest or the best price has to be obtained while disposing of public properties, but the distribution of the public properties itself should be fair, jut, reasonable and subserving larger public interest. The public interest and public revenue cannot be sacrificed by allowing the Government lands/public properties to be used and occupied for decades together, but without any benefit or income to the State. The terms and conditions of allotment cannot be static. They can be modified or changed depending upon the market factors as well. It is not expected of the State to allow public lands and properties to be dealt with by the lessees further during the subsistence of the lease or grant thereof in their favour. That means, the full potential of the land/public property in the market would be exploited and utilised by such persons without any corresponding benefit to the Government. It means they cash on such properties, make huge profits by the disposals or dealings in relation thereto and do not pass on the benefit or share the income with the Government at all. It is that which was noticed and as set out in the statement of objects and reasons by us. J.V.Salunke,PA Judgment.WPL.122.2018+.doc

104. If it is that aspect of the matter which hitherto was unnoticed or for which unless any provision was made in the statute, the Government could not have insisted on sharing the gains, which resulted in the amendment to the statutory provision, then, it hardly lies in the mouth of the petitioners and they cannot urge that there is no obligation to share the gains or profits with the Government. Eventually, the sharing is for the benefit of the public at large. The gains are computed in terms of money and would only augment public revenue. This will ultimately benefit the public exchequer. This will enable the Government of the day to spend these monies for the benefit of urban and rural poor. This benefit will be passed on to the deserving beneficiaries. Thus, if this is a largess from the State and not an absolute privilege or right in the sense projected before us, then, we do not see how the petitioners can lay a challenge to the statute. Ultimately, it is a contract with the Government. The alteration in the terms and conditions, if unilaterally imposed, was questioned earlier and there was a litigation, in which, both parties were locked. By a stautory intervention, if the terms and conditions of the contract are altered and from a prior date, it does not mean that the contract itself is brought to an end. The grant or the lease deed continues and is subsisting. If the unoccupied lands within the city of J.V.Salunke,PA Judgment.WPL.122.2018+.doc Bombay and every unoccupied portion of the foreshore below high water mark, which are deemed and are declared to be the properties of the State Government statutorily, further making it lawful for the Collector with the sanction of the State Government to dispose of the same in such manner and subject to such conditions as he may deem fit and in any such cases, the land or portion so disposed of shall be held only in the manner, for the period and subject to the conditions so prescribed, then, subjecting that disposal to further conditions, but operative from a prior date would not make the provision arbitrary and unconstitutional. It is not a onerous or excessive provision. If one bears in mind that this is in relation to Government land or public property, then, it is but expected that if these leasehold rights, which are capable of being further assigned or transferred, that shall be done only with the prior permission of the Collector. That shall be also subject to payment of such premium on account of unearned income and transfer fees or charges, at such rates, as may be specified by the Government by an order from time to time. Thus, merely because such a condition will also stand inserted or incorporated in the order of grant or the lease deed by itself and without anything more will not invite an obligation to pay the money. The terms and conditions now inserted enable further assignment or transfer possible. Thus, a lessee or a J.V.Salunke,PA Judgment.WPL.122.2018+.doc grantee may further assign or transfer the leasehold rights vested in the Government, but for that he/she has to comply with the conditions firstly, by obtaining prior permission of the Collector and secondly, by payment of such premium on account of unearned income and transfer fees or charges, which have to be quantified. The quantification would be at such rate as may be specified by the Government by an order from time to time. If that order imposes onerous, excessive, unreasonable and unfair conditions unmindful of the market realities, then, depending upon other factors, such order can be challenged independent of the provision being held to be constitutional, legal and valid. It is only contravention of the provisions, which are now partaking the character of conditions inserted in the lease deed or order of grant that will compel the lessee or grantee to pay penalty in addition to such premium or transfer fees or charges. Even imposition of penalty cannot be unilateral for that has to be determined at such rate as may be specified by the Government by an order from time to time. Therefore, that Government order, which specifies the rate of premium/transfer fees and if at all penalty, is issued contrary to the principles of such determination, the imposition based thereon and the order of penalty are capable

of challenged on all permissible legal grounds. It is not as if mere insertion of this condition in the lease deed or J.V.Salunke,PA Judgment.WPL.122.2018+.doc order of grant would enable the Government to foist or thrust upon parties like the petitioners a demand. The demand has to precede an adjudication. We have clarified in the forgoing paragraphs as to how the constitutional challenge is really academic and should not have been pressed at all.

105. Once we issue this clarification, merely the provisions being declared as constitutional and valid does not mean that the consequences would be visited automatically, but there will have to be a compliance with all the pre-conditions or pre-requisites as are stipulated in the statute itself. All the more, therefore, we are disinclined to agree with the learned senior counsel appearing for the petitioners.

106. The statement of objects and reasons leading to the amendments to section 295 of the MLRC (the Maharashtra Act XXIX of 2016) reads as under:-

> "STATEMENT OF OBJECTS AND REASONS Special provisions for land revenue in the City of Mumbai are contained in Chapter XIV of the Maharashtra Land Revenue Code, 1966 (Mah. XLI of 1966). Section 295 therein deals with disposal of lands or foreshore vested in the State Government. Even before the coming into force of the said Code, many parcels of lands of the Government had been leased to various individuals and institutions for various purposes. In a number of cases, such leases have been transferred or assigned to other parties. Currently, the Government's share in the unearned income in such instances of assignment or transfer of leasehold rights in such Government lands is being levied and recovered as per the administrative J.V.Salunke,PA Judgment.WPL.122.2018+.doc orders issued by the State Government. In some cases, the parties concerned have challenged such recovery by filing cases before the Courts. In order to leave no room for doubt regarding the powers of the Government to recover a share of unearned income in any instance of transfer or assignment of leasehold rights in respect of such Government lands, it is considered expedient to incorporate specific permission of the Collector, before transferring or assigning his leasehold rights in any Government land, for which a share of unearned income shall be payable to the Collector at such rates as may be specified by the Government. It is also considered expedient to include a provision regarding regularisation of the previous transactions of transfer or assignment of such leases by levying an additional penal amount at such rate as the Government may specify. In order to validate the actions taken by the Collectors under the administrative orders of the Government, in the past, in terms of recovery of a share of unearned income in such cases, it is considered necessary to make these provisions applicable with retrospective effect from the date of coming into force of the said Code.
>
> 2. The Bill seeks to achieve the above objectives."

107. In the proviso to section 295 of the MLRC, there are conditions which would be read into the lease deeds or the terms and conditions of the grant, though the same were not contained initially. Now, notwithstanding any conditions, to the contrary, the lease or grant would be subjected to the conditions as are stipulated in the proviso. That would be in relation to the lands or foreshore vesting in the Government. Thus, all leases granted by the State Government or the Collector of the land or foreshore vested in the Government in the city of Bombay would be subjected to the terms and conditions as set out in the proviso to section 295.

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108. By section 37A, restrictions on sale, transfer, redevelopment, change of use etc. in relation to Government lands and nazul lands are placed or imposed. Once again, the Government was well within its rights to impose such conditions. The earlier attack was on such imposition being done by a circular or by an executive fiat or by a mere letter, but without any statutory prescription. If at all restrictions have to be imposed and amounts or sums quantified in money are to be collected as unearned income or transfer charges or fees, that will have to be done only by a legal provision and not otherwise. It is precisely for that reason that the statute has been amended and now a provision is specifically incorporated therein. Hence, section 37A puts restrictions in the sense every sale, transfer, redevelopment, use of additional FSI, TDR or change of use etc. is not prohibited, but permitted. That will have to comply with sub- section (1) of section 37A of the Code. That restriction on deals and transactions will apply to all grants of Government land in Amravati and Nagpur Revenue Division, including the Mumbai City and the Revenue Divisions in the State. These transactions and deals shall be subject to taking prior permission of the State Government. The State Government, while granting such permission, as required by sub-section (1) of section 37A, recover such premium or charge and share of unearned income subject to J.V.Salunke,PA Judgment.WPL.122.2018+.doc such terms and conditions as may be specified by general or special order issued by the Government from time to time. By the second proviso to sub-section (2) of section 37A, as clarified above, in the event of a inconsistency between the provisions of the lease deed, it is the later which has to prevail. That would be applicable to those leases or orders of grant, which are executed prior to the commencement of the Maharashtra Land Revenue Code (Second Amendment) Act, 2012. That comes into effect on 3rd March, 2015. Therefore, in the event of any inconsistency in the terms and conditions of the order of grant or lease deed executed prior to this date, namely, 3rd March, 2015, the terms and conditions of such order of grant or lease deed and not the provisions (section 37A(1) and (2)) shall prevail. It is only in the absence of inconsistency that the provison comes into play. Absent any inconsistency, the proviso to section 37(2) is inapplicable and then, the provisions of the section would apply. In other words, for the proviso to apply, there has to be an inconsistency and if such inconsistency, as is stated in the proviso is found, then, section 37A itself is inapplicable. If that is so, then, we do not see how if the State takes recourse to the amended section 295, can it override this statutory prescription and impose a restriction on sale, transfer etc. merely because in the lease deeds/agreements or order of grant the conditions J.V.Salunke,PA Judgment.WPL.122.2018+.doc stipulated in section 295 stand inserted or the lease/grant is subject to the same. In other words, wherever the case is covered by the first proviso to sub-section (2) of section 37A, the State cannot recover unearned income even if the sale, transfer etc. or the further assignment is subject to prior permission of the Collector. That may be a

term incorporated in the lease deed or order of grant, but by that itself, the Government cannot override the first proviso to sub-section (2) of section 37A. Thus, reconciling the provisions or harmonising them in this manner would take care of the apprehensions of the petitioners before us. These parties then would not be vexed or visited with the restrictions as are found in the statutory provision as amended. In these circumstances, we do not think that there can be any apprehension of the State imposing any demand for payment of unearned income unmindful of these amended provisions. To that extent, we do not see any substance in the argument of the learned Advocate General. If we accept his argument that section 295 operates irrespective of the presence of section 37A in the statute, we would be rendering that provision, namely, 37A otiose. No provision in the law should be rendered redundant and an interpretation which renders any part of the statute or provision redundant and nugatory should be avoided at all costs. To harmonise is not to destroy and that is what we intend to do. J.V.Salunke,PA Judgment.WPL.122.2018+.doc In fact, the learned Advocate General argues that by section 37A parties like the petitioners are permitted to sell, transfer, redevelop etc. the Government lands, which were hitherto not envisaged by the statute. Now, this is all permissible, but with a restriction and that is of taking prior permission of the State Government. Therefore, in cases of all those transactions, the restrictions in section 37A operate irrespective of whether the grant or the lease deed unconditionally allowing the same. However, in the event of any inconsistency, the provisions in the terms and conditions of the grant or lease deed executed prior to the commencement of the Maharashtra Land Revenue Code (Second Amendment) Act, 2012 would prevail and there would not be any restriction at all. In that event, there is no question of payment of any premium or charge and share of unearned income as well. It is only in the absence of the inconsistency that section 37A would apply. Therefore, both sections, namely, 37A and 295 allow assignment or transfer, but that is made conditional upon prior permission of the Collector on payment of such premium on account of unearned income or transfer fees or charges even in the cases of lands in the City of Bombay. That section 295 incorporates such condition in every lease deed does not mean that the first proviso to sub-section (2) of section 37A will not be attracted. In the event of inconsistency and to be J.V.Salunke,PA Judgment.WPL.122.2018+.doc found in the documents executed prior to the commencement of the Maharashtra Land Revenue Code (Second Amendment) Act, 2012, this proviso would operate and then section 37A will have no any application. To such cases, the Government cannot by back door method apply section 295.

109. The Principle that we followed can best be summarised and in the words of the Hon'ble Supreme Court itself. Whether reading down a provision or whether resorting to the rule of harmonious construction, in the opinion of the Hon'ble Supreme Court, both convey the same meaning. In that regard, In the case of Commissioner of Income Tax vs. M/s. Hindustan Bulk Carriers4, the Hon'ble Supreme Court held as under:-

> "23. A construction which reduces the statute to a futility has to be avoided. A statute or any enacting provision therein must be so construed as to make it effective and operative on the principle expressed in maxim ut res magis valeat quam pereat i.e. a liberal construction should be put upon written instruments, so as to uphold them, if possible, and carry into effect the intention of the parties. (See Broom's Legal Maxims (10th Edition), page 361, Craies on Statutes (7th Edition) page 95 and Maxwell on Statutes (11th Edition) page 221.)

24. A statute is designed to be workable and the interpretation thereof by a Court should be to secure that object unless crucial omission or clear direction makes that end unattainable. (See Whitner v. Commissioner of Inland Revenue (1926) AC 37 p. 52 referred to in Commissioner of Income Tax v. S. Teja Singh (AIR 1959 SC

352), Gursahai Saigal v. Commissioner of Income Tax, Punjab (AIR 1963) SC 1062).

4 AIR 2003 SC 3942 J.V.Salunke,PA Judgment.WPL.122.2018+.doc

25. The Courts will have to reject that construction which will defeat the plain intention of the legislature even though there may be some inexactitude in the language used. (See Salmon v. Duncombe (1886) 11 AC 627 p. 634 (PC), Curtis v. Stovin (1839) 22 CBD 513) referred to in S. Teja Singh's case (supra)

26. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation we should avoid a construction which would reduce the legislation to futility, and should rather accept the bolder construction, based on the view that Parliament would legislate only for the purpose of bringing about an effective result. (See Nokes v. Doncaster Amalgamated Collieries (1940) 3 ALL E. R. 549 (CL) referred to in Pve v. Minister for Lands for NSW (1954) 3 All ER 514 (PC). The principles indicated in the said cases were reiterated by this Court in Mohan Kumar Singhania v. Union of India (AIR 1992 SC 1).

27. The statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute.

28. The Court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare clause with other parts of the law and the setting in which the clause to be interpreted occurs. [See R. S. Raghunath v. State of Karnataka and Anr. (AIR 1992 SC

81). Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between two different sections or provisions of the same statute. It is the duty of the Court to avoid a head on clash between two sections of the same Act. (See Sultana Begum v. Prem Chand Jain (AIR 1997 SC 1006).

29. Whenever it is possible to do so, it must be done to construe the provisions which appear to conflict so that they harmonise. It should not be lightly assumed that Parliament had given with one hand what it took away with the other.

30. The provisions of one section of the statute cannot be used to defeat those of another unless it is impossible to effect reconciliation between them. Thus a construction that reduces one of the provisions to a "useless lumber" or J.V.Salunke,PA Judgment.WPL.122.2018+.doc "dead letter" is not a harmonised construction. To harmonise is not to destroy."

110. Further, in the case of Calcutta Gujrati Education Society and Anr. vs. Calcutta Municipal Corporation and Ors .5, the Hon'ble Supreme Court held as under:-

> "35. The rule of "reading down" a provision of law is now well recognised. It is a rule of harmonious construction in a different name. It is resorted to smoothen the crudities or ironing the creases found in a statute to make it workable. In the garb of "reading down", however, it is not open to read words and expressions not found in it and thus venture into a kind of judicial legislation. The rule of reading down is to be used for the limited purpose of making a particular provision workable and to bring it in harmony with other provisions of the statute. It is to be used keeping in view the scheme of the statute and to fulfill its purposes. See the following observations of this Court in the case of BR Enterprises vs. State of UP [1999(9) SCC 700]:-
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> "First attempt should be made by the courts to uphold the charged provisions and not to invalidate it merely because one of the possible interpretation leads to such a result, howsoever attractive it may be. Thus, where there are two possible interpretations, one invalidating the law and the other upholding, the latter should be adopted. For this, the courts have been endeavouring, sometimes to give restrictive or expansive meaning keeping in view the nature of legislation, may be beneficial, penal or fiscal etc. Cumulatively, it is to sub-serve the object of the legislation. Old golden rule is of respecting the wisdom of legislature, that they are aware of the law and would never have intended for an invalid legislation. This also keeps courts within their track and checks individual zeal of going wayward. Yet in spite of this, if the impugned legislation cannot be saved the courts shall not hesitate to strike it down. Similarly, for upholding any provision, if it could be saved by reading it down, it should be done, unless plain words are so clear to be in defiance of the Constitution.

These interpretations spring out because of concern of the courts to salvage a legislation to achieve its objective and not to let it fall merely because of a possible ingenious interpretation. The words are not static but dynamic. This 5 AIR 2003 SC 4278 J.V.Salunke,PA Judgment.WPL.122.2018+.doc infuses fertility in the field of interpretation. This equally helps to save an Act but also the cause of attack on the Act. Here the courts have to play a cautious role of weeding out the wild from the crop, of course, without infringing the Constitution. For doing this, the courts have taken help from the Preamble, Objects, the scheme of the act, its historical background, the purpose for enacting such a provision, the mischief, if any which existed, which is sought to be eliminated. The principle of reading down, however, will not be available where the plain and literal meaning from a bare reading of any impugned provisions clearly shows that it confers arbitrary, uncanalised or unbridled power."

111. In the case of Balram Kumawat vs. Union of India and Ors. 6, the Hon'ble Supreme Court held as under:-

> "19. Contextual reading is a well-known proposition of interpretation of statute. The clauses of a statute should be construed with reference to the context vis-a-vis the

other provisions so as to make a consistent enactment of the whole statute relating to the subject-matter. The rule of 'ex visceribus actus' should be resorted to in a situation of this nature.

.....

25. A statute must be construed as a workable instrument. Ut res magis valeat quam pereat is a well- known principle of law. In tinsukhia Electric Supply Co. Ltd. v. State of Assam [AIR 1990 SC 123], this Court stated the law thus:

"The Courts strongly lean against any construction which tends to reduce a statute to a futility. The provision of a statute must be so construed as to make it effective and operative on the principle "ut res magis valeat quam pereat". It is, no doubt, true that if a statute is absolutely vague and its language wholly intractable and absolutely meaningless, the statute could be declared void for vagueness. This is not in judicial review by testing the law for arbitrariness or unreasonableness under Article 14: but what a Court of construction, dealing with the language of a statute, does in order to ascertain from, and accord to, the statute the meaning and purpose which the 6 AIR 2003 SC 3268 J.V.Salunke,PA Judgment.WPL.122.2018+.doc legislature intended for it. In manchestar Ship Canal Co. v. Manchester Racecourse Co. (1990) 2 Ch 352, Farwell J. said:(pp. 360-61) "Unless the words were so absolutely senseless that I could do nothing at all with them, I should be bound to find some meaning and not to declare them void for uncertainty."

In Fawcett Properties Ltd. v. Buckingham County Council (1996) 3 ALL ER 503) Lord Denning approving the dictum of Farwell, J. said:

"But when a Statute has some meaning even though it is obscure, or several meanings, even though it is little to choose between them, the Courts have to say what meaning the statute to bear rather than reject it as a nullity."

It is, therefore, the Court's duty to make what it can of the statute, knowing that the statutes are meant to be operative and not inept and that nothing short of impossibility should allow a Court to declare a statute unworkable. In Whitney v. Inland Revenue Commissioners (1926) AC 37), Lord Dunedin Said:

"A statute is designed to be workable, and the interpretation thereof by a Court should be to secure that object, unless crucial omission or clear direction makes that end unattainable."

26. The Courts will therefore reject that construction which will defeat the plain intention of the Legislature even though there may be some inexactitude in the language used. [See Salmon v. Duncombe (1886) 11 AC 627 at 634]. Reducing the legislation futility shall be avoidable and in a case where the intention of the Legislature cannot be given effect to, the Courts would accept the bolder construction for the purpose of bringing about an effective result. The Courts, when rule of purposive construction is gaining momentum, should be very reluctant to hold that the parliament has achieved nothing by the language it used when it is tolerably plain what it seeks to achieve. [See

BBC Enterprises v. Hi-Tech Xtravision Ltd. (1990) 2 ALL ER 118 at 122-3]" J.V.Salunke,PA Judgment.WPL.122.2018+.doc

112. Once we read the provisions in this manner, then, it is not necessary to go into any further question of a vested right being adversely affected or taken away retrospectively. Secondly, we are then spared of even considering the question of the amended provisions violating the mandate of Article 300A of the Constitution of India, which we find otherwise is not violated. Here, no right is taken away without adherence to law. There is no deprivation of the property at all without authority of law.

113. Finally, we had the benefit of some lengthy arguments as to how a validating law or a validating clause in an enactment has to be construed and interpreted. The argument that a validating clause or a validating legislation cannot simplicitor overrule a binding judgment and that the legislature is prohibited from doing so fails to impress us. It is not because of the judgment in the case of Jaikumari (supra) and to overrule it that the validating clause is enacted. It is the basis of that judgment and to wipe it of totally that the legislation is amended to insert a validating clause. That such a validating clause operates with retrospective effect is again an argument without merit.

114. In the case of Kunwar Lal Singh vs. Central Provinces and Berar7, the Hon'ble Federal Court was considering the argument 7 AIR (31) 1944 Federal Court 62 J.V.Salunke,PA Judgment.WPL.122.2018+.doc with regard to the increase of land revenue affecting a right in or over an immovable property. The rights over the land or the rights in or over the immovable property remain exactly the same and only the liability for payment of land revenue is increased. The Hon'ble Federal Court holds that some increase in an assessment for land revenue does not involve any acquisition of the land or any rights in or over immovable property. The rights are intact and merely because there is an increase in the land revenue, does not impair the same.

115. In a decision in the case of Vijay Mills Company Limited etc. etc. vs. State of Gujarat and Ors.8, the Hon'ble Supreme Court was considering an issue of validity of 1977 Rules and particularly seeking to levy revenue on the land used for non-agricultural purposes retrospectively. That is with effect from 1 st September, 1976 without the power or authority to enact the rules retrospectively under section 214 of the Code, namely, Bombay Land Revenue Code and the Bombay Land Revenue (Gujarat Amendment and Validation) Act II of 1981. The Hon'ble Supreme Court was further dealing with an argument that this retrospective imposition of land revenue is arbitrary, unreasonable and irrational and violative of the appellants' 8 AIR 1994 SC 1114 J.V.Salunke,PA Judgment.WPL.122.2018+.doc fundamental rights guaranteed under Articles 14 and 19(1)(g) of the Constitution of India. In rejecting such an argument and relying upon its earlier judgments, the Hon'ble Supreme Court held as under:-

> "14. In Hari Singh and Ors. v. The Military Estate Officer and Anr AIR 1972 SC 2205, it was held by majority that
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> (a) in Northern India Caterers Pvt. Ltd. and Anr. v. State of Punjab and Anr AIR 1967 SC 1581, this Court held that Section 5 of the Punjab Premises and Land [Eviction

> and Rent Recovery] Act, 1959, was violative of Article 14 of Constitution on the ground that the section left it to the unguided discretion of the Collector to take action either under the ordinary law or follow the drastic procedure provided by the section. Assuming that 1958 Act is unconstitutional on the same ground it could not be contended that 1971 Act could not validate anything done under 1958 Act, because 1971 Act is effective from 16th September, 1958, and provides that the action taken under 1958 Act is deemed to be taken under 1971 Act. It is not a case of the later Act validating action taken under the earlier Act, but a case where by a deeming provision, acts or things done under an earlier Act were deemed to be done under the later Validating Act. (b) The Legislature had competence to enact 1971 Act and provide a speedy procedure only available and thus remove the vice of discrimination found in Northern India Caterers case (supra). (c) The Legislature can put out of action retrospectively one of the procedures leaving one procedure only available and thus remove the vice of discrimination found in Northern India Caterers case (supra).

15. From the above, it is clear that there are different modes of validating the provisions of the Act retrospectively, depending upon the intention of the legislature in that behalf. Where the legislature intends that the provisions of the Act themselves should be deemed to have been in existence from a particular date in the past and thus to validate the actions taken in the past as if the provisions concerned were in existence from the earlier date, the legislature makes the said intention clear by the specific language of the validating Act. It is open for the legislature to change the very basis of the provisions retrospectively and to validate the actions on the changed J.V.Salunke,PA Judgment.WPL.122.2018+.doc basis. This is exactly what has been done in the present case as is apparent from the provisions of Clauses (3) and (5) of the Amending Ordinance corresponding to Sections 2 and 4 of the Amending Act No. 2 of 1981. We have already referred to the effect of Sections 2 and 4 of the Amending Act. The effect of the two provisions, therefore, is not only to validate with retrospective effect the rules already made but also to amend the provisions of Section 214 itself to read as if the power to make rules with retrospective effect were always available under Section 214 since the said section stood amended to give such power from the time the retroactive rules were made. The legislature had thus taken care to amend the provisions of the Act itself both to give the Government the power to make the rules retrospectively as well as to validate the rules which were already made."

116. This decision of the Hon'ble Supreme Court has been subsequently referred in the case of Bakhtawar Trust and Ors. vs. M. D. Narayan and Ors.9 After summarising all the legal principles, the Hon'ble Supreme Court held in paras 25 and 26 as under:-

> "25. The decisions referred to above, manifestly show that it is open to the legislature to alter the law retrospectively, provided the alteration is made in such a manner that it would no more be possible for the Court to arrive at the same verdict. In other words, the very premise of the earlier judgment should be uprooted, thereby resulting in a fundamental change of the circumstances upon which it was founded.

26. Where a legislature validates an executive action repugnant to the statutory provisions declared by a Court of law, what the legislature is required to do is first to remove the very basis of invalidity and then validate the executive action. In order to validate an executive action or any provision of a statute, it is not sufficient for the legislature to declare that a judicial pronouncement given by a Court of law would not be binding, as the legislature does not possess that power. A decision of a Court of law has a binding effect unless the very basis upon which it is 9 AIR 2003 SC 2236 J.V.Salunke,PA Judgment.WPL.122.2018+.doc given is so altered that the said decision would not have been given in the changed circumstances."

117. As a result of the above discussion, each of these petitions are disposed of. They are disposed of with the following declarations:-

(a) The State Government has the power to recover the unearned income as that is legally known and recognised as income that is not gained by labour, service or skill. It is nothing but a rise in an asset's value resulting from increased demand (rather than in any intrinsic improvement in the asset itself) (see Law Lexicon by P.Ramanatha Iyer).

(b) The State has also the power to recover premium or transfer fees but it is at once clarified that whether all of this can be recovered together or simultaneously or at all would depend upon the facts and circumstances in each case. No general rule can be laid down in that behalf.

(c) The amount or sum in money qua each would have to be determined and decided strictly in accordance with law as explained in detail in the foregoing paragraphs. If a special order is passed in a lessee's case then the lessee or the affected party can impugn it irrespective of the conclusion reached by us regarding the power of the State. That order can be challenged by the aggrieved parties by recourse to the remedies under the MLRC or otherwise in general law.

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(d) If a general order is applied to all the leases across the board, then, even that can be impugned as above.

(e) Sections 37A and 295 of the MLRC are declared as constitutional, legal and valid in view of the detailed reasons assigned in the foregoing paragraphs and subject to the construction placed thereon by us.

(f) There would be no order as to costs.

118. In the light of the disposal of the writ petitions, the pending notices of motion and chamber summons do not survive and stand disposed of as such.

(SMT. BHARATI H. DANGRE, J.) (S.C.DHARMADHIKARI, J.) J.V.Salunke,PA