

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

WRIT PETITION NO. 2353 OF 2013

1. Sir N. P. Vakil Trust	}	
having its office at 19-DG	}	
Chambers, 1 st floor, 100-104,	}	
Nagindas Master Road,	}	
Fort, Mumbai - 400 001	}	
	}	
2. Mr. N. E. Vakil	}	
residing at Belvedere Court	}	
Oval Maidan, Churchgate	}	
Mumbai - 400 020	}	Petitioners
versus		
1. Union of India	}	
Aaykar Bhavan, New Marine	}	
Lines, Mumbai 400 020	}	
	}	
2. Mr. H. K. Sharma	}	
Estate Officer appointed by	}	
Government of India	}	
Office of the Dy. Salt	}	
Commissioner, Exchange	}	
Building, 4 th floor, Shiv	}	
Sagar Ram Ghulam Marg,	}	
Ballard Estate,	}	
Mumbai 400 001.	}	
	}	
3. Salt Commissioner,	}	
Government of India, P. B.	}	
No. 139, Jaipur, Rajasthan	}	
	}	
4. Deputy Commissioner of	}	
Salt,	}	
Exchange Building, 4 th floor	}	
Shiv Sagar Ram Ghulam	}	
Marg, Ballard Estate,	}	
Mumbai 400 001.	}	
	}	
5. Superintendent of Salt	}	
Bhayandar Circle,	}	
Bhayander District, Thane	}	Respondents

Mr. Navroze Seervai – Senior Advocate with Mr. Sharan Jagtiani, Mr. Maneck Mulla, Ms. Lara Jesani, Mr. Priyank Kapadia, Mr. Siddharth Damle i/b.M/s.Mulla and Mulla Associates for the petitioners.

Dr. G. R. Sharma with Mr. S. R. Rajguru and Ms. Jyotsna N. Pandhi i/b. Mr. Dhiren H. Shah for respondent nos. 2 to 5.

**CORAM :- S. C. DHARMADHIKARI &
DR. SHALINI PHANSALKAR-JOSHI, JJ.**

**Reserved on 21st April, 2016
Pronounced on 14th July, 2016**

JUDGMENT :- (Per S. C. Dharmadhikari, J.)

1. Since detailed arguments are canvassed based on exhaustive pleadings, we proceed to dispose of this writ petition finally with consent of parties.

2. Rule. Respondents waive service.

3. By this petition under Article 226 of the Constitution of India, the petitioners are seeking a writ of mandamus or any writ, order or direction in the nature thereof, directing the respondents to forthwith withdraw and cancel the notices impugned in the writ petition (Annexures B-1 to B-9) dated 23rd May, 2013 and not to take any steps including holding any inquiry in pursuance thereof. The first petitioner is a private trust governed by the provisions of the Indian Trusts Act, 1882. The indenture of Trust

dated 14th January, 1892 duly registered with the Sub-Registrar of Assurances, Bombay is relied upon and the petition is affirmed by the second petitioner, who is one of the trustees of the first petitioner Trust. He has been duly authorised to file this petition.

4. Annexure 'A' to the writ petition is a description of the two salt works and the lands on which they are located.

5. The first respondent Union of India through the Deputy Salt Commissioner issued the impugned notices invoking the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as “the PPE Act”). The second respondent is the Estate Officer, whereas, respondent nos. 3 to 5 are respectively the Salt Commissioner and other functionaries working with or under him. They are authorities constituted under the provisions of the Central Excise and Salt Act, 1944 and the Central Excise and Salt Rules.

6. The notices, copies of which are annexed as B-1 to B-9 refer to section 4(1) and clause (B)(ii) of sub-section 2 of section 4 of the PPE Act. The grounds on which the notices have been issued read as under:-

“GROUNDS

Land admeasuring admeasuring 240 acres 00 gunthas
and 04 annas In S. No. 123 and 294 of Village Umela and
Sondore, in the District Thane covered by Jahagir Mahal

Salt Works in Vasai Road Salt Factory of Bhyandar Circle vest in Union of India and are under the administration of this Salt Department. They had been manufacturing Salt in the salt works under a licence granted under the Central Excise and Salt Act, 1944 and Rules made there under and have been paying Ground Rent for the use of the land covered by the said Salt works for salt manufacture.

All salt manufacturers in Bombay Region were called upon to surrender their licence under Rule 111-A of Central Excise Rules, 1944 and granted a new licence in new format approved by the government under Rules 103(2) of the central Excise Rules, 1944 for a period of 25 years during 1958 in the format approved by the government and notified Gazette Notification under Salt Commissioner C. No. 6(3)P/54/7920 appeared on pages 424 & 425 (Part-III Section I) of the Gazette of India dated April 12, 1958.

Besides, the Manubhai Shah's Committee set up in January, 1959 by the government of India, recommended Uniform System of Licensing and Registration (execution of Lease Deed) of land for manufacture of Salt. Accordingly the Government of India, vide their Resolution No. 18(4)/59-Salt, dated 3rd May, 1961 and Resolution No. 16(23)/63-Salt, dated 13th December, 1969 had accepted that the Government lands will be leased out for manufacture of salt for a period of 20 years on execution of lease deed between the lessor and the lessee.

After the expiry of the validity of the licence granted for 25 years during 1958, by a Notice bearing No. S-11011(8)Salt/83/4479-4486 dt. 30/06/1983, they were requested to submit an application duly signed by all the joint licensees for renewal of the said licence. They were further requested to get substituted the names of the persons whose right for salt manufacture in licence needs devolution owing to inheritance and/or alienation due to partition from a sale, gift, exchange, etc. and in accordance with the policy of the Government as stated in preceding paras. A lease of the lands under salt manufacture was offered to the persons applying for renewal of licence on the execution of lease in the prescribed format and on payment of Ground Rent at Rs.2 per acre per annum and Assignment Fee at Re.1/= per tonne of salt produced in the said salt works subject to a minimum production of 20 tonnes per acre per annum.

The salt manufacturers of Jahgir Mahal Salt Works did not comply with the conditions of lease offered to them and did not execute lease deed with the Department.

In identical case(s) the licensees who were issued Notice for execution of lease of the Central Government Land being used by them for salt manufacture challenged the Notice of Dy. Salt Commissioner, Mumbai in various Writ Petitions in the Hon'ble High Court of Bombay. The Bombay High Court directed renewal of licence without insisting upon requisition set out in the Notice. In the appeal of the Union of India from the said Order of the Bombay High Court, the Supreme court of India in SLP No. 16065/95 and Companion Petitions has directed the Respondent (the salt manufacturers) to get their Title declared from the Competent Authorities.

In accordance with the above Court order, the salt manufacturers of Jahagir mahal salt Works were again issued Notice vide C. No.S-11011(8)Salt/83/2619-2626 dt. 05/04/2006 calling for execution of lease deed or to establish their alleged title to the lands of salt works before competent court. The salt manufacturers did not comply with the Notice and did not execute any Lease Deed with the Department. They failed to establish their alleged title to the lands of salt works before Competent Court.

Meanwhile Government of India delicensed the Salt Industry and deleted the provisions related to Salt under the Central Excise and Salt Act 1944 and Rules made thereunder under Notification No.14/96 Central Excise (NT) dated 23rd July 1996. Since then they are holding neither a licence to salt manufacture nor any lease deed executed with the Department for manufacture of salt. **Thus the salt manufacturers of Jahagir Mahal Salt Works are UNAUTHORISED OCCUPANTS OF THE SAID PUBLIC PREMISES."**

7. The petitioners replied to these notices contending that they have been acknowledged owners in uninterrupted possession since the year 1887. The notices are without jurisdiction, illegal and malafide.

8. That is on the footing that for a period of more than 125 years and more the petitioners are recognised as the owners of the subject lands. That in the year 1971, the first respondent proceeded to acquire a part of the lands under the provisions of the Land Acquisition Act, 1894 on the basis that petitioner no. 1 is owner thereof and further the ownership of the subject lands by the petitioners was for the first time put in issue in 1983 by illegally calling upon the petitioners to execute lease deeds as a precondition for renewal of the license for manufacture of salt on the subject lands. The petitioners vehemently disputed this position. No action was taken thereafter by respondent No.1 or any of the other respondents, being authorities established by it under a statute.

9. Similar Notices (to the Notices of June 1983) were issued on 17th August, 1998 and 19th August 1998, and reiterated by a Notice of 4th February, 1999. No action was taken after the issuance of these Notices to resume the land on the basis that the petitioners were in unlawful or unauthorized occupation without the execution of a lease deed with respondent No.4.

10. The petitioners thereafter received notices dated 5th May 2005. In response to the Notices of May 2005, the petitioners by their advocates' reply dated 21st May 2005 asserted the position

that they are the absolute owners of the subject lands and there was no question of executing any lease deed in respect of the same.

11. Then again, on 5th April, 2006, notices similar to the notices of June 1983 were issued calling upon the petitioners, inter alia, to execute lease deeds with Respondent No.4. Once again, the petitioners responded and opposed the said notices on the aforementioned ground.

12. On 20th June 2007, the Salt Department of respondent No. issued similar Notices, which were responded to in the aforesaid manner by the petitioners reply dated 28th June 2007. This reply of the petitioners again categorically mentioned that it had already submitted all relevant documents, establishing the title of the petitioners to the subject lands, to the Salt Department of respondent No.1 and offered another copy of the said documents if required.

13. On 2nd August 2007, the petitioners filed Writ Petition No.1683 of 2007 in the Hon'ble High Court of Bombay challenging the aforementioned Notices dated 20th June 2007 and 5th April 2006. As in the present case, that Petition proceeded, inter alia, on the basis that the petitioner No.1 was the absolute owner and

fully possessed of the subject lands and therefore the demand for execution of a lease and the threat of resumption of the lands was completely illegal and arbitrary.

14. By an order dated 18th September 2008, this Hon'ble Court disposed off Writ Petition No. 1683 of of 2007 by issuing the direction to the respondents not to resume the lands in possession of the petitioners without following due process of law.

15. After this order, despite the directions issued by the Hon'ble High Court, the Salt Department of the Union of India did not take any steps to resume the subject lands by following due process of law.

16. Considering that it was expressly contended by the petitioners in that Writ Petition that the Salt Department of the Union of India and the authorities established by the Union of India cannot take any steps for dispossessing the petitioners from the subject lands without first establishing their legal right, title and entitlement in a court of competent jurisdiction, paragraph 4 of the said order necessarily required the Salt Department of the Union of India and the authorities established by the Union of India to institute a suit on title in a civil court of competent jurisdiction.

17. In February 2011, the trustees of petitioner No.1 visited the subject lands and observed that the Salt Department of respondent No.1 had put up markers / signboards claiming that the land belongs to respondent No.1. It was also observed that respondent No.1 (through the Salt Department) was carrying on illegal construction of blocks / markers.

18. The advocate for the petitioners addressed a notice date 4th March 2011 to the Salt Department of respondent No.1 stating that this activity was illegal.

19. As no response was received to this notice, the petitioners were constrained to file Writ Petition No. 555 of 2011. The petition was withdrawn by the petitioners vide order of this Court dated 16th March 2011.

20. Thereafter, despite the directions at paragraph 4 of the aforementioned order dated 18th September, 2008, no proceedings were adopted by respondent No.1 or the Salt Department of respondent No.1 or any of the authorities joined as respondents to the present petition in respect of the subject lands to establish their title or entitlement to the subject lands. On 23rd May 2013, as already mentioned, respondent No.2 issued the impugned notices under the Public Premises Act.

21. The petitioners entitlement to the subject lands as also their right to operate salt works on the subject lands has been accepted and admitted by respondent No.1 and the Salt Department of respondent No.1 (Including various authorities that are constituents of Salt Department of respondent No.1).

22. In 1879, the Bombay Land Revenue Code, 1879 came to be enacted. This Code defined 'occupant' and conferred various rights on 'occupants' of land. In 1881, the Bombay Land Revenue Rules, 1881, came to be framed. These Rules, inter alia, authorized the Collector to grant occupancy of unoccupied / unalienated salt marsh (Khajan) land. The rules mandated that any grant of such land was required to set out the terms of such grant.

23. By a Government Resolution No., 10279 of 1885 dated 22nd December 1885, it was clarified that the power to make a grant of unoccupied salt lands was with the Collector of the Bombay Land Revenue Rules and not with the Salt Department.

24. It is pertinent to note that the position that existed at the time when the subject lands were granted to Sir Navroji Pestonji Vakil in 1887 was that the power of disposing unoccupied / unalienated lands for opening salt works was with the Collector –

Revenue Departments and rights of Salt Department was restricted to granting licences for manufacture of Salt. Thereafter, in the year 1890, there was an amendment to the Bombay Land Revenue Rules and by the introduction of Rules 7A, 7B and 7C the power for disposing lands required for opening salt works was for the first time conferred upon the Collector of Salt Revenue. The amendments of 1890 had no retrospective operation on lands that had earlier been granted by the Revenue Collector to private individuals the Salt Department did not assume any control or domain save the right to recover Salt Revenue on salt produced thereon.

25. The relevant background relating to the manner in which Sir Navroji Pestonji Vakil (the predecessor in title of Petitioner No.1 and the settlor of petitioner No.1) acquired a grant of the subject lands from the then Government of British India in 1887 is set out. Also set out is the reference to the facts and documents by which the said lands were transferred and settled upon petitioner No.1.

26. It was in the context of this framework of the Bombay Land Revenue Code and Bombay Land Revenue Rules as also connected Government Resolutions that the predecessor in the title of the petitioners, Sir Navroji Pestonji Vakil, after whom the petitioner

No.1 Trust is named has acted for 14 years as Government Agent for the sale of salt and upon the sudden abolition of his salt agencies by the Finance Committee in 1887, Sir Navroji Vakil wrote to the Salt Department for a grant of Government waste marsh lands to open new salt works in vicinity of Mumbai for utilizing his experience and capital and also for deploying his trained men, otherwise rendered jobless, to manufacture five to ten lakh maunds of salt. Annexure- "S" to the paper-book is a copy of the application letter dated 19th March 1887 by Sir Navroji Vakil to the Commissioner of Customs, Salt, Opium and Abkari for grant of waste lands.

27. The petitioners state that as Sir Navroji Vakil had a business relationship with the salt department, made an application to the Commissioner of Customs, Salt Opium and Abkari for land and permission to manufacture salt thereon. As recorded, many others had also applied to the Commissioner of Customs, Salt, Opium and Abkari, for the grant of the very same lands to manufacture salt. The Commissioner had no hesitation in choosing Sir Navroji Vakil, from amongst the many applicants, as the appropriate person to be granted the lands and give him a licence to manufacture salt thereon, as pecuniary interests of Government would be better served by securing as salt

manufacture the best (former) tenant rather than persons taking the lands only for mercantile speculation. However, as per laws and regulations prevailing prior to 1890, disposal of land could only be by the Land Revenue authorities as the Salt Revenue Collector had no dominion over the lands prior to 1890. As the Salt Commissioner did not have the powers to either grant or dispose off the lands or grant occupancy rights of any form thereupon, only the district revenue authority, namely the Collector, was empowered to do so and could dispose off land to private individuals.

28. That being pleased with the good services of Sir Navroji Vakil, the Commissioner of Customs, Salt, Opium & Abkari vide letter dated 24th March 1887 recommended Sir Navroji Vakil's application to the Secretary to Government, Revenue Department, Bombay, recording that due to the abolition of his Government Salt Agencies, Sir Navroji Vakil was now desirous of entering salt trade on his own. The Salt Commissioner had no hesitation in selecting him out of all those who had applied for the grant of certain unreclaimed salt swamp lands at Survey No. 99 of village Umelli and Survey No. 266 of village Sandore in Bassein Taluka of Thana District without putting it up to public competition on the ground of the good services he had rendered

as Government agent for the sale of salt. As per the then prevailing regulations, the Salt Commissioner recommended Sir Navroji Vakil for grant of occupancy rights for lands to the Revenue Department. The Commissioner requested the Collector of Thana and Kolaba to issue orders for disposal of Government waste lands to Sir Navroji Vakil by treating his application for the said lands, as a special case and to grant him occupancy right to the said lands without putting it up to public competition, which lands are the subject matter of the present petition. Annexure - "I" to the paper-book is a copy of the letter dated 24th March 1887 from the Commissioner of Customs, Salt, Opium and Abkari to the Secretary to Government, Revenue Department, Bombay.

29. The petitioners state that the Commissioner wrote to the Governor in Council of Bombay, soliciting the Government's advice on how the lands could be granted to Sir Navroji Vakil. In the letter, the Commissioner supported a general proposal put forth by the Collector of Thana, to the effect that the disposal of occupancy right of land wanted for extension of salt manufacture ought to vest exclusively in the Salt Department and that occupancy rights on such lands ought to be granted by the respective collector to any person nominated by the Salt Department. Further, the Commissioner of Salt also stated that if

the general proposal put by him regarding the disposal of lands be not acceptable to the Government, then an exception may be created in the case of Sir Nowrojee Vakil and land may be granted to him without putting it up for auction on the ground of the good service rendered by him.

30. The petitioners state that pursuant to the aforesaid correspondence, the Governor in Council made an absolute grant of the said land to Sir Navroji Pestanji Vakil by Government Resolution No. 3380 dated 30th May 1887. The relevant portion of the resolution is reproduced herein below.

“The case of the Mr. Navroji Pestonji is special, and in the circumstances of the case, the land applied for may be granted to him without putting it up to auction. But in making this exception the Governor in Council is unable to assent to the general rule proposed by Mr. Pritchard....

Sd
Acting Secretary to Government”

31. Annexure “U” to the paper-book is a copy of the Resolution of the Governor in Council dated 30th May 1887.

32. The petitioners state that Resolution 3380 makes it abundantly clear that the Government intended to make (and ultimately did make) an unconditional 'grant' of land to Sir Navroji Vakil. Significantly, the resolution does not even remotely suggest that the land is leased out to him. The words of

the resolution are capable of only one interpretation; that the said land was granted to him absolutely without payment of occupancy price. The petitioners state that all government authorities, including the Governor in Council, which passed the said resolution, took the view that by the said resolution the Government had made a 'grant' of the said land to Sir Navroji Vakil, as is borne out by documents enumerated herein below, thereby acknowledging the title of Sir Navroji Vakil to the said lands.

33. The petitioners state that after the grant of a larger portion of lands in the Bassein Taluka, objections were received by the Mamlatdar from the villagers. In order to assuage their difficulties, Sir Navroji Vakil conceded certain portion of the land to the villagers as he wished to keep on good terms with the villagers and resolved the matter. In recording a letter dated 15th August 1887 to the Collector of Thana in this regard, Sir Navroji Vakil stated that he had applied to the Commissioner of Salt Revenue for the lands to be given to him as compensation for his abolished salt agencies as he had no direct claim on the Revenue Department. Annexure - "W" to the paper-book is a copy of the letter dated 20th October, 1887.

34. Sir Navroji Vakil was hereafter put in possession of the said lands by the relevant Revenue authority, the Mamlatdar of Bassein under the provisions of the Bombay Land Revenue Code, 1879. The Commissioner informed Sir Nowrojee Vakil of the Collector of Thana being requested to enter the names of M/s Navroji Pestonji and Jehangirji Pestonji as the registered occupants of Umela lands granted to him by Government and informed that the licence to be granted by the salt department would be issued in their joint names as is borne out by the letter dated 1st November 1887 numbered 6044 of 1887, addressed by the Commissioner of Customs, Salt, Opium and Abkari Poona to M/s. Nowroji Pestonji & Co. Annexure - "X" to the paper-book is a copy of the letter dated 1st November, 1887.

35. The petitioners state that Government having treated the said lands as the absolute property of Sir Navroji Vakil, the Collector of Thana intimated the Commissioner of Customs vide letter dated 14th November 1887 of orders having been issued to Mamlatdarof Bassein to enter in the Government accounts the names of Messrs Nawroji Pestoji and Jehangirji Pestonji of the 'Registered Occupants' of the Umela lands. Annexure - "Y" to the paper-book is a copy of the letter dated 14th November, 1887.

36. At the relevant time the form of Licence for manufacture of salt in the Presidency, mandated that an applicant seeking a salt licence had to make arrangements to acquire possession of ground on which the applicant would then be permitted to manufacture salt, prior to making an application to the Collector of Salt Revenue for salt manufacture licence. Annexure - "Z" to the paper-book is a copy of Form No.13 being the Form No.13 being the Form of Licence provided to Sir Navroji Vakil.

37. Subsequently on 9th February 1888 the Assistant Collector, Salt Revenue, Thana Range informed the Deputy Collector, Salt Revenue of the proposed scheme for salt works received from Navroji Pestonji & Co. who had obtained 52.8 acres marshy ground in Bassein Taluk giving details of the three salt works, recommending Navroji Pestonji & Co. be given similar conditions as those enjoyed by proprietors of other neighbouring salt works like Manik Mahal and Jal Mahal, in view of their good services and testimonials from the Salt Department. Annexure - "AA" to the paper-book is a copy of the letter dated 9th February, 1888.

38. The petitioners state that after the grant of land, the Assistant Collector of Salt Revenue on 18th November 1888 in response to an application made to the Salt Department, informed Messers Navroji Pestonji & Co. that the Commissioner of Customs,

Salt, Opium and Abkari had granted permission to manufacture salt in their lands. Annexure - "BB" to the paper-book is a copy of the order dated 18th November 1888.

39. The petitioners state that during the construction of the salt pans, for operational reasons, additional land was acquired by Sir Navroji Vakil and Government ordered the Collector of Thana to grant occupancy rights for 4 acres of Keravali lands on charges of Rs.2-8 per acre and assessment levied on the same terms as on the Umela lands added to Jehangir Mahal Salt Works. The petitioners state the similarly additional lands of about 4 acres were purchased from the villagers of Umela on payment of then market price, which lands were included in the Naval Sagar Salt Works.

40. Thereafter, as per permission from the Salt Department, Sir Navroji Pestonjee and Jehangirji Pestonjee established three salt works on the said land namely Jehangir Mahal, Naval Sagar and Din-Behram Agars, named on family members and hereinafter referred to as the said salt works. The opening date recorded by the predecessors of respondents in the Jaminkharda (the record of rights as maintained by Salt Department) of Jehangir Mahal Agar is 13.3.1889 and in the Jaminkharda of Naval Sagar and Din Behram Agar is 1.4.1889. The Jaminkharda column

referring to ownership 'Whether Government, Inami or Private', reflects the agar as Private shown as "Shilhotri". Annexure - "CC1", "CC2" and "CC3" to the paper-book are copies of the Jaminkhards of Jehangir Mahal, Naval Sagar and Din Behram Agars respectively.

41. The petitioners state that on 14th January 1892, Sir Navroji Pestonji and Jehangirji Pestonjee created a private trust i.e. Sir N.P. Vakil Trust under which the Settlers settled in trust their properties including the whole of said lands together with the salt works thereon, valued at Rs.1 lakh and that stamp duty paid on the said instrument in 1892 was Rs.810/-. In terms of the Indenture of Settlement, the lawful title and ownership of the said land and the salt works thereon passed to the petitioner No.1 and to its Trustees. Annexure - "DD" to the paper-book is a copy of the Indenture of Settlement dated 14th January, 1892. Since then the petitioners have been in long, continuous and open possession of the said lands and the salt works resting thereon and have been its absolute owners, possessors and have since been manufacturing salt thereupon. The said Indenture of 1892 settling the Trust is a registered document recording title of the said lands together with salt works thereon and is within the knowledge of the respondents for 126 years.

42. The petitioners state that in addition to the above the respondents are well aware that the petitioners are the owners of the lands from various records maintained by the respondents themselves. The Salt Department maintains a Register of Buildings of the Bombay Salt Department. The said Register, apart from describing the name of the building, nature of the construction also describes the ownership of the lands under the building. It is undisputed that in the abovementioned register the said lands upon which stand the salt works are shown as belonging to the petitioners, as Shilotri's. Annexure - "EE" to the paper-book is a copy of the Register of Buildings of the Bombay Salt Department.

43. The petitioners state that the original Register of Licences of Salt works granted by the Collector of Salt Revenue under section 12 of Act II of 1890 (Salt Act), and maintained by the respondents in respect of Jehangir Mahal salt work, Naval Sagar salt work and Din Behram salt work all record the date of Licence granted as on 10th May 1894. The Register reflects the name of the Trustees of the Deed of Settlement in the column Name of Licensee. The petitioners state that the License Register unequivocally records that the petitioners, as owners, have leased out their salt works to various lessees from time to time and the

respondents have duly acknowledged the same never disputing the petitioners actions.

44. On 14th October 1898, the Survey Commissioner and Director, Land Records and Agriculture, addressed an internal memorandum to the Secretary to Government, Revenue Department, Bombay. This Memorandum discussed the feasibility of introducing a system of Record of Rights for the Bombay Presidency and proposed a scheme for the introduction of such record. The appendix to this Memorandum was a template of record of rights in land. This template entitled "Remarks" also forms part of the appendix, Column 9 of template record of rights captioned "Status of Occupation" was explained in the records in the following terms:

Column 9 - "Status of occupant - This is very important column:-

(a) except in the case mentioned below when the occupant is identical with the registered occupant his status will be entered as that of owner ("Malik") see serial number 1 of model form. The status of any occupant other than the registered occupant will be desired according to the circumstances of the particular case, as tenant (Serial nos. 3 4, 5, 6 and S) name of landlord being stated, separate sharer (Serial nos.2, 10, 11 and 13), mortgagee (Serial no. 7), vendee or the like"

45. Annexure - "FF" is a copy of the memondarum dated 14th October 1898.

46. The petitioners submit that the present format of revenue records including the Extract of 7/12, was introduced in or about 1903. From inception till date, Revenue Record of the subject lands show the lands as property of the petitioners, reflecting the names given by the Settlers to the individual Agars as borne out by the Indenture of Settlement, 1892. The word 'Salt Work' / 'Mithagar' in the 7/12 Extract is not to reflect government ownership but records the said lands and salt works thereon as named after family members of the Settlers viz., Jehangir Mahal salt work, Naval Sagar salt work and Din Behram salt works which are the names appearing in the 'Occupant / Owner' column. It is pertinent to point out that there is no reference to Government in the 7/12 Extract. Annexures - "GG1", "GG2" and "GG3" to the paper-book are copies of the recent Extracts of 7/12 Register dated 3rd September 2012.

47. The petitioners state that on 21st August 1967 upon a request made the Salt Department, the Dy. Superintendent of Salt, Bassein provided a list of all salt works in Bhayander Circle, Bassein Factory, setting out various details as per Government records, including Licence Numbers, Date of inception of Salt works and 'Whether the lands under salt manufacture is taken by the owner on lease from State Government.' The Salt Department

has categorically acknowledged at column 9 of the chart prepared that the petitioners lands shown at Licence Nos.22 23 and 24, being Naval Sagar, Jehangir Mahal and Din Behram salt works are salt works are on private land owned by Shilotri and clearly record. “No, Private land owned by Shilotri”.

48. The petitioners state that in terms of a Deed of Indenture of 30th October 1969, the petitioners No.2, along with two others, was appointed trustee of the Indenture of Settlement of 1892 and was vested with the properties of the trust including the subject land. That the respondents have at all times been aware of the Trust deeds and appointment of new Trustees as owners and possessors of the trust lands and have acknowledged the same by making necessary changes in the Licence Register of the Salt Department from time to time.

49. On 17th February 1971, an Award came to be passed in land acquisition proceedings numbered as LAQ/S/R/311 by which monetary compensation of Rs.11,021.17 was paid to Petitioner No.1 under Section 12(2) of the Land Acquisition Act, 1894 (hereinafter referred to as “the Land Acquisition Act”) as owners of the Dinbehram Agar, the acquired property. It is thus clear that respondent No.1 has at the relevant time proceeded on the basis that the subject land on which the salt work of Dinbehram

Agar was located was land owned by petitioner No.1. The Award records Din Behram Agar as the kabjedar of land and that 'there is no dispute of ownership'. This, amongst other things, amounts to an unequivocal acceptance of petitioner No.1's ownership of the subject lands. Annexure - "HH" to the paper-book is a copy of the Award in the land acquisition proceedings dated 27th January, 1871.

50. In 1988, one Mr. Bankatlal Hazarimal Garodia, filed a suit against the petitioners, being Special Civil Suit No.522 of 1988 in the Court of Civil Judge Senior Division, Thane, seeking a declaration that the title in the said lands belonged to him. The respondent Nos.1, 3 and 4 herein were impleaded as defendants in the said suit and were legally represented and filed their Written Statement in the suit making a bald claim of ownership of the said lands without providing any details thereto, whilst filing a detailed para wise reply to the Plaint. Annexure - "II" to the paper-book is a copy of the Written Statement filed on behalf of respondent Nos.1 to 3 herein.

51. The petitioners state that subsequent to filing of the Written Statement, the plaintiff sought to delete the names of defendant Nos.2 to 5 therein (including respondent Nos.1 to 3 herein) and as per order dated 23rd September 1996 passed by the Civil

Judge, the defendant Nos.2 to 5 were deleted from the array of parties. Annexure - "JJ" is a copy of the order dated 23rd September, 1996.

52. Subsequently, the suit filed by Garodia (plaintiff) was compromised in September 1996 as per Consent Terms recorded and a compromise Decree drawn recording that:

"Agreed and Declared that Defendant No.1 Sir N.P. Vakil Trust, represented by its present Trustees K.E. Lalkaka, C.E. Lalkaka, N.B. Vakil, C. Lalkaka and N.E. Vakil are the full and absolute owners of and in possession of lands bearing Survey Nos.117, 118, 123 and 294 on which stand the three salt works, namely Naval Sagar, Din-Behram and Jehangir Mahal situate at village Umela, Taluk Vasai, District....."

53. The conduct of the respondents during the pendency of the suit, and thereafter is of some significance, for, amongst other things it bears out the fact that the respondents were always aware of the petitioners ownership of the said lands and that they unequivocally accepted the same. The respondents, though not party to the said consent terms, were fully aware of the aforesaid decree and did nothing to challenge or otherwise call in question, the same. As such, the respondents knowingly acknowledged the said consent decree and, as in the past, accepted the petitioners title to the said land. In short, the Salt Department and the Union of India, once again, as they had done on several occasions for over a century accepted the absolute and undisputed title of the

petitioners to the said lands. Annexure - “KK” to the paper-book is a copy of the Consent Decree passed in Special Civil Suit No. 522 of 1988.

54. Thereafter, in Suit No.277 of 1990 filed by the petitioners against their former salt agent, i.e., the said Goradia, the suit was settled in terms of consent terms recorded between the petitioner (as plaintiff therein) and the defendant vide order dated 21.9.1996 recording the same which read as under:

“Agreed and declared that the plaintiffs as the present Trustees of Sir N.P. Vakil Trust are the full and absolute owners of and in possession of the lands bearing Survey Nos.117, 118, 123 and 294 on which stand the three salt works, namely Naval Sagar, Din-Behram and Jehangir Mahal situate at village Umela, Taluk Vasai, District Thana admeasuring about 441 Acres

55. The petitioners submit that of the Decree and orders passed by civil court of Thana, has declared the title of the petitioners to the said lands. Annexure - “LL” to the paper-book is a copy of the order passed in Special Civil Suit No.277 of 1990.

56. As mentioned in the foregoing paragraphs, there were various Notices issued commencing June 1983 and responses thereto as also prior proceedings between the parties in relation to the subject lands and the salt works operated thereon. The aforestated background and documents categorically establish

that till June 1983, respondent No.1 and the other respondents being authorities forming part of the Salt Department of respondent No.1 have never disputed the ownership and title of petitioner No.1 or its predecessors, Navroji Pestonji Vakil and Jehangirji Pestonji Vakil.

57. On a copy of the present writ petition being served on the respondents, an affidavit in reply has been filed. The affidavit is affirmed by the Assistant Salt Commissioner. He states that the petition filed by the petitioners is premature. The writ petition is filed before conclusion of the proceedings under the PPE Act. These proceedings are pending before the Eviction Officer. Even before they are concluded, this writ petition is filed. The petitioners are not precluded from raising proper contentions and resisting the eviction proceedings in accordance with the PPE Act and the Rules. If any adverse order is passed at the end of the same, then, that can be challenged in appeal before the appellate authority referred in section 9 of the PPE Act. In the face of such remedies, this writ petition need not be entertained and be dismissed as premature.

58. It is then stated that the documents relied upon by the petitioners clearly reveal that they were never granted any ownership rights in respect of the lands covered by the salt works

or that they were in absolute possession thereof. In para 4 of the reply affidavit, it has been pointed out that the land was granted as a special case without putting it in auction. The then Salt Commissioner had put up a proposal to direct the Collector to give occupancy to the salt pan land to the person named by the Salt Commissioner. Thus, as a special case and without any auction, the salt pan land came to be allotted merely on the undertaking of the petitioner to pay land revenue assessment as usual survey rate. The documents in that behalf are relied upon and the details of the same are set out in para 4 of this affidavit. Thus, there was a grant of an occupancy right and in accordance with the Government policy. Thus, the Government policies do not enable grant of any ownership rights as are claimed. The petitioners are never acknowledged as owners or as having uninterrupted possession of salt land. Thus, it is contended that the petition should not be entertained. The petitioners can very well raise all contentions and at an appropriate stage. Then, it is contended that the writ petition is not maintainable also on the ground that there is a bias alleged against the Estate Officer. All the allegations of bias are denied right up to para 18 of the affidavit in reply. The petitioners are accused of wrongfully claiming the lands inasmuch as it is urged that the 7X12 extracts do not mention the name of the petitioners as holders/tenants. There is

no lease agreement. The affidavit in reply, therefore, extensively deals with the documents and attempts to explain as to how the contents of such documents would not conclusively establish and prove the rights particularly as owners claimed by the petitioners. For all these reasons, it is submitted that the writ petition be dismissed. The argument that the respondents were obliged to file a suit on title but that being barred by limitation, they are taking recourse to the PPE Act demonstrates the lack of bonafides, is denied by pointing out that the parties have been given an opportunity to agitate their rights before an appropriate forum. It is not as if proceedings under the PPE Act are ex-facie without jurisdiction or not maintainable. For all these reasons and in an affidavit running into about 104 paragraphs, it is submitted that the petition be dismissed.

59. An affidavit in rejoinder has been filed by the petitioners reiterating the contents of the writ petition and denying whatever is contrary and inconsistent therewith. In the affidavit in rejoinder, it is stated that the proceedings initiated are completely high handed and not maintainable. The petitioners have pointed out that they are in uninterrupted and peaceful possession of the lands for 127 years and as admitted, there is also no deed of lease in respect of the lands. The long

uninterrupted possession and in the absence of a deed of lease would raise a presumption under section 110 of the Indian Evidence Act that the petitioners are owners of the lands and the onus of proving and establishing to the contrary is on the respondents. Further, the attempt of the respondents is to overcome decrees passed by the Civil Court in Civil Suit No. 522 of 1988 and Special Civil Suit No. 277 of 1990 (Civil Judge, Senior Division, Thane). There, in the decrees itself is a declaration that the petitioner Trust is an absolute owner of and in possession of land bearing Survey Nos. 117, 118, 123 and 294, on which the three salt works, namely, Naval Sagar, Din-Behram and Jehangir Mahal are standing. No action has been taken by the respondents to question the decrees. Then, it is submitted that the respondents are reluctant to prove their title in the proceedings simply because post institution of this writ petition, several facts have come to light. These would also demonstrate as to how the respondents are seeking to abuse the process of not only this court but even that under the PPE Act. The documents are referred to from para 7 onwards of this rejoinder and the annexures thereto, according to the petitioners, would support their stand that this court, while disposing of the earlier writ petition, has not permitted the respondents to invoke the PPE Act. In the circumstances, while denying each and every

assertion in the affidavit in reply, in this detailed rejoinder affidavit, the petitioners elaborated their pleas of ownership and title to the lands.

60. Mr. Seervai learned Senior Counsel appearing for the petitioners would submit that the respondents and particularly the Estate Officer has misconstrued and misinterpreted the order passed by this court in Writ Petition No. 1683 of 2007 passed on 18th September, 2008. Mr. Seervai would submit that this order would have to be read as a whole. By reading it in entirety, it is revealed that the Division Bench, on due consideration of the notices, which were impugned therein and the decisions relied upon, held that the petition need not be kept pending. The respondents were directed not to resume the lands in possession of the petitioners without following due process of law. This court once again has emphasised the requirement of following due process of law. Mr. Seervai submits that the due process of law in this case would not mean recourse to summary powers conferred by the PPE Act. These summary powers cannot be invoked to adjudicate the disputed question of title to immovable property. This is not a case where the premises are admitted to be public premises and that they are in unauthorised occupation of the petitioners. Rather, there is a serious dispute as to whether the

petitioners' assertion of ownership, which is disputed by the respondents, is worthy of acceptance or the plea to the contrary raised by the respondents. Once the contents of the documents and which are relied upon by the petitioners and the respondents will have to be proved, because their existence is established. The petitioners are relying on official documents. They emanate from the respondents themselves. Once there is a presumption about such documents and records in law, then, it is for the respondents to establish and prove that they confer no title as owner and allegedly fall short of the same. The learned Senior Counsel relies upon paras 18, 19 and 20 of the affidavit in reply of the respondents to the present petition in that behalf. On the question of their contents, the respondents would have to lead evidence. Equally, there is a right to cross examine the witness who rely on these documents. It would not be permissible in the summary proceedings to decide and rule upon the issue of title. Thus, the moot question is whether the premises can be termed as public premises and secondly, whether the petitioners can be claimed to be unauthorised occupants thereof. In the circumstances, it is not open for the respondents to initiate summary proceedings.

61. Mr. Seervai submits that in Writ Petition No. 1683 of 2007, the petitioners challenged the notices issued by the Salt Commissioner. In these notices, all salt manufacturers in Bombay Salt Region were called upon to surrender their licences under Rule 11A of the Central Excise Rules, 1944 and granted a new licence in new format provided by the Central Government under Rule 103(2) of the Central Excise Rules, 1944 for a period of 25 years from 1958 in the format approved by the Government. These were put in the Government gazette. This assertion is based on para 1 of this notice that the land covered by the salt works vests in the Union of India and is under the administration of the Salt Department. By this notice, the Government called upon the petitioners, who are stated to be manufacturing salt in the land pursuant to the above licences and paying ground rent that certain committee was set up styled as Manubhai Shah Committee. Its recommendations are referred to in the notice and eventually, a notification dated 19th July, 1996 is referred. It is claimed that there is no necessity to obtain licence from the Salt Department of Government of Maharashtra for manufacture of salt and therefore, the question of renewal of licence does not arise. Similarly, the notice refers to copies of prior office notice of 1998, by which, the Department had called upon the manufacturer to execute lease for the land under salt

manufacture in the said salt works in the prescribed format and pay the consideration set out in that notice or else the lands would be resumed.

62. The notice, therefore, states that the petitioners are still in possession of the land for the purpose of manufacture of salt, but they have not responded to the earlier notices. It is in these circumstances that they were called upon to execute the lease deed for a period of 20 years from 1st July, 2003 onwards in the prescribed format and pay the consideration as set out in the earlier notices. If they failed to do so, these lands would be resumed by the Salt Department, Government of India. The identical notices in relation to these lands and which are subject matter of this petition were received and a reply was forwarded by the first petitioner Trust thereto. Mr. Seervai refers to this reply, copy of which is at Annexure 'N' and submits that the documents which are referred therein and compiled separately for the purpose of this petition would denote as to how the petitioners cannot be said to be the trespassers or in unauthorised possession of the lands. They are owners of the same and in their own right. It is in these circumstances that Mr. Seervai would submit that there is a distortion and misreading of the order passed by this court. The respondents cannot invoke

the summary powers vested in the Estate Officer to dispossess and evict the petitioners. Hence, he would submit that the writ petition be allowed.

63. Mr. Seervai has taken us through the memo of the writ petition and all the annexures thereto in great details. He has also taken us through the compilation tendered containing the documents relied upon throughout by the petitioners. On the strength of all this, he would submit that this is a fit case where the petitioners should not be made to go through the summary eviction proceedings which are ex-facie without jurisdiction and an abuse of the process of law. He would submit that if this court does not take such a view, the PPE Act would be utilised with impunity to throw out lawful occupants and persons holding title to the land. In the face of such serious issues as are raised, Mr. Seervai would submit that the petition be allowed by quashing the impugned notices. In support of his submissions, Mr. Seervai relies upon the Resolution of the Governor-in-Council dated 30th May, 1887, the correspondence thereafter, the copy of the indenture of settlement dated 14th January, 1892, copy of the building register maintained by the respondents and copy of the Jamin Kharda of the three salt pan lands and the works. Mr. Seervai also relies upon the copies of the letter of 1957 and the

correspondence from September to November, 1957 and file noting so also certain charts to submit that these documents have been revealed during the course of information provided under the Right to Information Act, 2005. Mr. Seervai also relies upon copies of certain documents which are filed as annexures to the affidavit in rejoinder and eventually the copy of the award in the land acquisition proceedings. All this would indicate as to how, according to Mr. Seervai, the petitioners' possession can be traced to a valid authority. That authority in law is uninterrupted and un-interfered with till date. On the strength of the same and by placing reliance on the decision of the Hon'ble Supreme Court of India in the case of *Express Newspapers Pvt. Ltd. and Ors. vs. Union of India and Ors.*¹ and in the case of *Government of Andhra Pradesh vs. Thummala Krishna Rao and Anr.*², it is submitted that the writ petition be allowed.

64. On the other hand, Mr. Sharma appearing for the respondents submitted that there is no substance in any of the contentions raised by Mr. Seervai. This writ petition is premature and nothing but a futile and desperate attempt to stall and delay the eviction proceedings. The eviction proceedings are initiated in pursuance of a valid parliamentary enactment. The

1 (1986) 1 SCC 133

2 (1982) 2 SCC 134

PPE Act is held to be constitutionally valid. Once that Act is resorted to, it is evident that the respondents have abided by due process of law. They have not taken law in their hands, but have granted full opportunity to the petitioners to controvert the contents of the show cause notices. Their version would be considered by the Estate Officer and he will pass a reasoned order in accordance with law. The writ petition cannot be entertained because today no eviction order is passed against the petitioners. The petitioners have not pleaded and with relevant material that the proceedings would be conducted in such a high handed manner by the officer that he would afford no reasonable opportunity to the petitioners of being heard. Rather, the notices call upon the petitioners to answer the allegations and the grounds and thereafter bring such materials in their defence as are permissible in law. Though the proceedings are summary, the principles of natural justice would not be compromised or done away with. There is no apprehension that the petitioners would not be afforded proper and complete opportunity to establish and prove their defence or raise pleas in answer to the show cause notice. Therefore, it is not proper to interfere with the notices at this stage. He would, therefore, submit that the writ petition be dismissed.

65. Mr. Sharma further submits that the writ petition involves disputed questions of fact. The petitioners have merely set out their version in relation to the salt lands/immovable properties. Their defence or version does not raise a issue of title much less a bonafide dispute. Every unauthorised occupant claims title in himself. By this claim itself he cannot resist or stall lawful eviction proceedings. Every illegal occupant claims to be the owner. However, the lands are public premises. How they can be termed as public premises has been clearly set out in the grounds in the show cause notices. Once these are public premises, then, the jurisdiction of a Civil Court to try and determine the eviction proceedings in relation thereto is barred. He submits that the jurisdiction is ousted by section 15 of the PPE Act. Mr. Sharma would submit that the public premises which are in unauthorised occupation of the petitioners need to be resumed and retrieved. Eventually, these are public premises and the Government holds them in Trust for public. What belongs to the public must come back to the public and by lawful means. In the circumstances, neither any award in the land acquisition proceedings nor a decree of Civil Court would bind the respondents. It is well settled that an award is mere offer and compensation can be offered to even a person interested in the land. If he can claim that sum, then, it is evident that land acquisition proceedings cannot be

termed to be an adjudication as regards the right, title and interest claimed in immovable properties. Further, consent decrees, to which the respondents are not parties, in no manner bind the Union of India.

66. Alternatively and without prejudice, Mr. Sharma submits that as far as salt pans are concerned, these are lands on which salt can be manufactured. The right to manufacture it has been created and vested in parties like the petitioners subject to terms and conditions. The grant of lands must be seen in this light. It is not a conferment of title in the lands. None of the documents produced by the petitioners and relied upon can be said to be a document of title. At best they would demonstrate prolonged possession. Thus, there is no title document like a sale deed etc. in favour of the petitioners. Mere prolonged possession would not confer title, and that too in respect of public premises, in private parties like the petitioners. Once the lands belong to the Union of India, can be termed as public premises, then, the proceedings under the PPE Act are maintainable. There is jurisdiction in the Estate Officer to initiate the eviction proceedings under the PPE Act and take them to their logical conclusion. Though the Act envisages summary proceedings, but it vests powers in the Estate Officer to try and decide them in accordance with the substantive

provisions in the Act and the Rules framed thereunder. The Estate Officer is a statutory authority. He derives jurisdiction from the PPE Act. He is not a usurper nor can he be alleged to have assumed the jurisdiction illegally or unlawfully. Once the Estate Officer is a statutory functionary, then, there is no question of bias or prejudice on his part. In these circumstances, looked at in any manner, the writ petition is not maintainable and should be dismissed.

67. Reliance is placed by Mr. Sharma on a decision of a Division Bench of this court in the case of *Kaikhosrou (Chick) Kavasji Framji of Indian Inhabitant and Anr. vs. The Union of India and Anr.*³.

68. With the assistance of both counsel, we have perused the writ petition and all the annexures thereto. We have also perused the affidavit in reply and rejoinder together with the annexures to the same as well. We have perused the relevant provisions of the PPE Act and the decisions brought to our notice.

69. The grounds in the show cause notices issued under the aforementioned provisions/sections of the PPE Act are premised on the plea that certain lands and more particularly described in the Schedule to these notices covered by the salt works vest in the

3 2009 (4) AIR Bom. R. 808

Union of India and are under the administration of the Salt Department. The noticees had been manufacturing salt in the salt works under the licences granted under the Central Excise and Salt Act, 1944 and the Rules made thereunder. They have been paying ground rent for the use of the lands covered by the salt works for salt manufacture. The salt manufacturers were called upon to surrender their licences and granted the new licences in new format approved by the Government. There was a committee set up by the Central Government, which recommended uniform system by licencing registration of lands for manufacture of salt. The Government expected that the Government lands would be leased for manufacture of salt for 25 years on execution of deeds between the lessor and the lessee. After expiry of the validity of the licences granted for 25 years, the noticees were requested to submit an application duly signed by all the joint licencees for renewal of the licences. They were further requested to get their names substituted in place of those who were granted right for salt manufacture and which substitution may be on account of several causes particularly set out in the notice. Pertinently, the notice itself refers to the lease of the lands under salt manufacture and that being offered to the parties like the noticees. Then, the allegation is that the salt manufacturers in this case did not comply with the condition of lease offered to

them and did not execute lease deed with the Department. Then, there is a reference made to an order passed by this court in various writ petitions challenging the notices issued for execution of lease of the Government lands used for salt manufacture. There is a reference made to the order passed by this court, under which a direction was issued to renew the licences without insisting upon compliance with the notices. There is a reference then made to an appeal preferred by the Union of India against this order of the Bombay High Court and the directions in the order of the Hon'ble Supreme Court of India that the salt manufacturers should get their title declared from the competent authority.

70. The notice further alleges that in pursuance of the order passed by the Hon'ble Supreme Court of India, the Salt Commissioner again issued notice calling upon them to have the lease deed executed or to establish their alleged title to the lands of salt works before a competent authority. The salt manufactures did not comply with the notice and did not execute the lease deed with the Department. They failed to establish their alleged title to the lands of salt works before the competent authority. In the meanwhile, the Government of India delicensed the salt industry and deleted the provisions relating to salt from

the Central Excise Act, 1944 so also the Rules made thereunder. The notice, therefore, alleges that since the noticees are neither holding the licence to manufacture salt nor any lease deed is executed with the Department for manufacturing salt, then, their possession of the public premises is unauthorised and, therefore, they should show cause as to why an order of eviction should not be made.

71. The petitioners have submitted that they are owners of the subject lands and possess them as such. They rely on certain events. The first set of events are issuance of similar notices in the past, namely Annexures F-1, F-2 and F-3 and the reply thereto at Annexure 'G' dated 27th October, 1983. In this reply, copy of which is annexed and which is addressed to the Deputy Salt Commissioner, it is stated that the trustees have been in possession of the three Agar lands since 1892 and they have not paid any rent in respect of the same till 27th October, 1983. Reliance is placed upon the trust deed. They stated that the beneficiaries under the Trust have all along been assessed to and paid tax in respect of the said Trust. Any claim against the trustees or otherwise is time barred. It was stated in that letter that the trustees have been producing salt on part of the lands under the licence from the Salt Commissioner and which was

renewed from time to time. Despite this position and facts, if the Government maintains that the lands belong to it that it is entitled to levy ground rent, the Deputy Commissioner was requested to produce the documents to substantiate the claim. It is stated that after such a reply, no steps were taken by the respondents nor they initiated any legal action.

72. Similar notices were issued on 17th August, 1998 and 19th August, 1998 reiterated by further notice dated 4th February, 1999. No action was taken even after these notices for resumption of the lands on the footing that the petitioners were in unlawful or unauthorised occupation thereof. Annexures 'H', 'I' and 'J' are copies of these notices.

73. Then, another set of notices received in May, 2005 were replied to vide annexure 'L' by the petitioners' Advocate. In that as well, the petitioners asserted their ownership by pointing out that they are owners of the lands beneath the salt works. The petitioners alleged that the Salt Commissioner mischievously addressed notices despite knowing that these are private lands.

74. It is alleged that similar notices were issued on 5th April, 2006 and they were opposed by the petitioners. They replied to these notices issued on 5th April, 2006 and a copy of that

letter/reply is at Annexure 'N' to the petition. In that reply, after repeating their assertion of absolute ownership, attributing malafides to the Salt Commissioner, the petitioners stated that their legal ownership dates back to the year 1887. The lands were acquired by Nawroji Pestonji under a grant from the Government in the year 1887. The lands were granted under Government Resolution issued in terms of Chapter IV of the Bombay Land Revenue Code, 1879 with special reference to sections 60 to 68 thereof. Despite such legal ownership, the Department is calling upon the petitioners to execute the lease agreement in respect of the said lands, which is absolutely illegal and bad in law. They stated that it is incorrect to state that the land beneath the salt works vests in the Union of India and is under the administration of the Salt Department of the Government of India. They rely upon a trust deed dated 14th January, 1892, which, according to them, vested the lands with the Trust. They stated that only the salt manufacturing licence format was modified and it had no reference to the lands beneath the salt works. Then, a reference is made to the notices of 1983 and the payment of assignment fees since then, under protest. Thus, the ground rent was paid, which is nothing but a land revenue assessment. That was collected on behalf of the land revenue authority as per the relevant Government notification.

Then, they refer to a notification of 2003, which, according to them, makes no reference to collection of ground rent by the salt commissionerate. They stated that the Manubhai Shah Committee's recommendations have no application to private lands, on which salt works are situated. They would apply only to the lands vesting in the Government. Since the lands are privately owned by petitioner no. 1 Trust, there is no requirement of having lease deed executed. The petitioners made a clear distinction between the licence required to manufacture salt and the said requirement having nothing to do with the land beneath the salt works. The land beneath continuous to be held privately according to the petitioners. It is in these circumstances that they called upon the respondents to withdraw the notices. The petitioners having set up a title in themselves and throughout that Mr. Seervai would submit that the respondents rightly did not invoke the provisions of the PPE Act or the summary powers of the Estate Officer thereunder.

75. When they again issued such notices, the petitioner had to knock the doors of this court, according to Mr. Seervai. Prior thereto, the petitioners replied to the letter dated 20th June, 2007 of the Deputy Salt Commissioner, Mumbai by their letter dated 28th June, 2007. The petitioners stated that for the past 120

years, the lands are with them. The lands were given under grant of occupancy rights to the settlers of the Trust and if the Department has, in its possession, any lease agreement executed between the Government and the Trust in respect of these salt works, then, they be provided with the copy of the same.

76. It is in such circumstances that Writ Petition No. 1683 of 2007 was filed and this court, after hearing both sides, passed the following order:-

“1. Heard.

2. The petitioner has approached this court seeking a writ of this court to declare that the attempted resumption of the said lands by the respondents is ultra vires Article 246 read with Entry 18 of List II to the Seventh Schedule to the Constitution of India and Article 300A of the Constitution of India, contrary to law, and wholly without jurisdiction and therefore, this court should prohibit the respondents, by themselves, their servants, agents, officers and subordinates, from resuming the said lands, acting under the impugned notices or at all, and/or in any manner dispossessing the petitioners from the said lands except by the due process of law, and in any event, not without first establishing their legal right, title and entitlement to do so in a court of competent jurisdiction and for other ancillary reliefs like withdrawing the impugned notices which have been issued by the respondents to the petitioners annexed as Exhibits EE and CC1 to CC3.

3. Our attention has also been drawn to the decisions of the Division Benches of this court in the case of Abdul Samad Abdul Kadir Thakur vs. the Union of India and Ors. in Writ Petition No. 176 of 1983 decided on 9.10.91 and the other in the case of Shri Vinayak Yadneshwar Sathe vs. Union of India & Ors. in Writ Petition No. 7916 of 2003 decided on 6.5.08 and the decision of the Supreme Court rendered in the case of Union of India through Deputy Salt Commissioner vs. Shri Puranmal

Lalchand Mundra and anr. reported in AIR 1996 SC 3195.

4. After giving our anxious consideration to the decisions which have relied upon by the parties and going through the impugned notices, we are of the view that the petition can be disposed of with a direction to the respondents not to resume the land in possession of the Petition without following due process of law.

5. We may reiterate that the emphasis is on due process of law and it will be open for the parties to agitate their rights at appropriate forum.

6. Petition stands disposed of accordingly.”

77. Then, the petitioners objected to the placing of a signage on the lands belonging to the Trust. They stated that these are incorrect and illegal and putting up of the same amounts to trespassing on the petitioners' lands. Therefore, the petitioners states that when this court granted liberty to the respondents to dispossess the petitioners by due process of law or to resume the lands by following due process of law, that due process of law does not mean invoking the PPE Act.

78. Mr. Seervai also relied upon the documents which are in possession of the respondents and dating back to 1887 in order to buttress the above submission.

79. We would make a brief reference to these documents and which are placed before us in a compilation. Prior thereto, we would refer to the Advanced Law Lexicon by P. Ramanatha Aiyar,

3rd Edition Reprint 2007 to understand as to what is meant by “due process of law”. The “due process of law” is understood thus:-

“DUE PROCESS OF LAW in each particular case means such an exercise of the powers of the government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs. A course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the enforcement and protection of private rights. To give such proceedings any validity, there must be a tribunal competent by its constitution—that is, by the law of its creation—to pass upon the subject-matter of the suit; and, if that involves merely a determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process within the state, or his voluntary appearance. *Pennoyer v. Neff*, 95 US 733, 24 L Ed 565. Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property, in its most comprehensive sense; to be heard by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, this is not due process of law.”

80. Mr. Seervai relies upon the principle that if any question of fact or liability has to be conclusively presumed against someone, it is not due process of law. According to him, the notices proceed on the basis that the lands beneath the salt works belong to and vest in the Government and the petitioners having failed to renew the licence to manufacture salt and execute a lease deed for the

land beneath their possession and occupation thereof is unauthorised. This, according to Mr. Seervai, is belied by the contents of the documents and records, in respect of these lands, and in force since 1887.

81. To appreciate the correctness of this submission, we would now make a brief reference to the documents and stated to be in possession and control of the Central Government. This is in order to find out as to whether there is a real and bonafide dispute with the Government and if the Government desires to prove its case as set out in the notices, is it necessary for it to approach a competent Civil Court or the recourse to the summary jurisdiction is permissible in the facts and circumstances of the case.

82. A grant was made to Mr. Navroji Pestonji of licence to manufacture salt on certain unreclaimed salt swamps in the villages in Bassein Taluka in Thane District as a special case. That Grant No. 3380 of the Revenue Department, Bombay Castle dated 30th May, 1887 refers to several applications received for issue of licence to manufacture salt on certain unreclaimed salt swamps, but among the applications received, the one from Navroji Pestonji, who acted for many years as Government agent for the sale of certain salt to the entire satisfaction of Department concerned and who had lately closed the business came to be

selected as the best tenant and salt manufacturer. Accordingly, for disposal of the occupancy rights of land wanted for extension of salt manufacture and vested exclusively in the Salt Department, there was a suggestion that these occupancy rights in Government land cannot by law be conferred except by the action of the district revenue authorities, the Collectors of Thane and Colaba. Therefore, the district revenue authority was informed that the occupancy rights should not be disposed of without consulting the Salt Department. If the preamble and the contents of the letter dated May, 1887 are read, prima facie, it is apparent that the revenue authorities were directed to grant occupancy right in the land to the person named by the Commissioner of Salt and if these general proposals from the Department do not meet the approval of the Government, then, Mr. Navroji Pestonji's case/application be treated as a special case and the occupancy rights be granted to him without a public competition. That was on the ground of good service rendered as Government agent for the sale of salt. Mr. Seervai does not rest the case only at this recital or preamble, but relies on the following resolution:-

“Resolution – The case of Mr. Navroji Pestonji is special, and in the circumstances of the case the land applied for may be granted to him without putting it up to auction. But in making this exception the Governor in Council is unable to assent to the general rule proposed by

Mr.Pritchard, and the present Acting Commissioner, Mr.Moore, should be requested to submit proposals to give effect to the orders contained in Government Resolution No. 2423, dated 29th November, 1886.”

83. Next document relied upon is the proposal prior to the said grant. That proposal was put up by none other than the Commissioner of Customs, Salt, Opium and Abkari one C. B. Pritchard. That proposal to the extent relevant reads thus:-

“6. If these general proposals should not meet with the approval of government, I would request that government may be pleased to treat Mr. Nawroji Pestonji application for the Umeli and Sandar land as a special case and to grant him the occupancy right without putting of up to public competition on the ground of the good revenue he has rendered as govt. agent for the sale of salt.”

84. These proposals of the Collector were sanctioned and that is also evident from the document dated 21st October, 1887.

85. Then, reliance is placed upon the indenture of settlement and prior thereto, the intimation to the Mamlatdar of Bassein to enter in the Government accounts names of M/s. Nawroji Pestonji and Hehangir Pestonji as the registered occupants of the Umela land.

86. The deed of settlement records a grant from Nawroji Pestonji to one Kothawala, Vania and Dinshaw Jijibhoy and their heirs. Prior thereto, reliance is also placed on the entries in Jaminkharda of Jehangir Mahal Salt Work and Din-Behram Salt

Work so also Navalsagar Salt Work. Then, reliance is placed on the building register maintained by the respondents.

87. Mr. Seervai places reliance on the insertion of the word “shilotri”. Mr. Seervai would submit that this word itself would denote as to how the occupation and possession is understood. This is not suggestive of any unauthorised occupation in the least. At best, it is a nomenclature given to the nature of the occupancy or the right created. He would rely upon the Maharashtra Land Revenue Code, 1879 and its predecessor law. It is submitted that occupancy rights are creatures of statutes or to be precise the creatures of customs adopted by statutes in the sense that acquisition of such rights by ryots etc. does not depend upon bounty or gift of the landlord, but they can be acquired against his will. Our attention is also invited to section 29 of the existing Maharashtra land Revenue Code, 1966, which enlists the occupancy rights and categories them Class - I and Class - II. Class - I occupant can transfer the Government land allotted to him without permission of the Government, but Class - II occupant has to obtain it prior to effecting a transfer in favour of a third party.

88. Mr. Seervai has then invited our attention to the letter at pages 453 to 456 of the rejoinder (at pages 82 to 85 of the

compilation) to submit that as early as on 31st August, 1957, the Salt Commissioner, Delhi was informed as under:-

“DEPARTMENT/OFFICE

Letter
Draft

Serial No.
File No.

No.2(52)Salt(B)/57 Dated the 31st August, 1957.

To,
The Salt Commissioner
New Delhi
Sir,

Sub:- 'Jehangir Mahal' ' Naval Sagar' and
'Dinbehram' Salt Works in Bassein Factory -
Leave of for a further period of 5 years from
1.7.1958 to 30.06.1963

I have the honour to State that the three Salt Works viz. (1) Jehangir Mahal, (2) Naval Sagar (3) Dinbehram in Bassein Salt Factory, stand in the joint names of the trustees and Shilotries viz. (1) Shri B. S. Lalkaka (2) Shri B. H. Vakil, (3) Shri J. R. Vakil, (4) Shri R. D. Vakil and (5) Dr. K. A. Lalkaka. These three salt works had already been allowed to be leased to Shri Bankatlal Hazarimal for a period of 5 years from 1.7.1953 to 30.6.1958 under this office order No. 2(101) Salt (B)/53 dated the 29th January 1954.

2. In his application dated the 8th July 1957, Shri B. S. Lalkaka, the Managing trustee of three abovesaid three Salt Works, now requests permission to lease these three Salt Works for a further period of five years from 1.7.1958 to 30.6.1963 to Shri Bankatlal Hazarimal of Bhayandar, the present lessee. The latter has given his consent to the said transaction and the A. S. C. Thana has recommended his request.

3. The land covered by these three Salt Works does not belong to the Central Govt, and I see no objection to the applicant's request being granted.

Yours Faithfully,
O/c
D. S. C. (B)

Sd/- Sd/- Sd/-
 30.8.57 30.8.057 30.8.57
 “Supplied under R. T. I. Act, 2005.”
 VMA/SK
 31/8”

89. He emphasises the words appearing in para 3 reproduced above.

90. Then, Mr. Seervai has relied upon the Deputy Salt Commissioner's notes in the file, which reveal as to how the abovequoted letter has been understood. The Assistant Salt Commissioner, Thane recommended the request, but while sanctioning it, it was sanctioned with the above endorsement and clarification. Then, what is relied upon is the letter from Assistant Salt Commissioner, Thane to the Salt Commissioner, Bombay, in which it is stated that the surviving trustees of the Jehangir Mahal, Naval Sagar and Din-Behram salt works of Vasai factory have requested for inserting the name of Mr. K. E. Lalkaka as trustee vice Mr. T. R. Vakil since deceased. Though this application has not been signed by one of the trustees Mr. B. S. Lalkaka, who is reported to be ill, it is confirmed in this letter that the Solicitors for the Trust have clarified that the request of the other trustee about the appointment of new trustee in place of the deceased would be confirmed in writing by Mr. B. S. Lalkaka. That is how the Assistant Salt Commissioner was requested to grant the permission. Thereafter, Mr. Seervai relies upon the file

notings, copies of which are to be found at pages 97 to 100 and it is stated that the request as made has been sanctioned. Mr. Seervai has also relied upon the further file noting to be found at page 102. That pertains to the complaint made to the Revenue Department for carrying out a survey. That was to identify any encroachment on the land. The clarification was sought as to whether anybody from the Department, namely, the Salt Commissionerate should remain present at the time of such survey. The clarification is that the salt work is a private one. The Department, therefore, does not find it necessary to remain present at the time of survey by the Revenue Department. The dispute is between the Revenue Department and the Shilotris.

91. Mr. Seervai then relies upon a copy of the chart furnished by the Deputy Superintendent of Salt, Vasai under cover letter dated 22nd July, 1967. That informs the Superintendent of Salt and the factory officer about the lands held by Salt Department, payment of land assessment to the State Government. Therefore, information was sought so that from the details it could ascertain whether the land in column 5 of the chart is placed for disposal by the Department and it shows the date thereof and whether the land under salt manufacture is taken by the owners on lease from the State Government.

92. Mr. Seervai submits that above correspondence, together with the copy of the opinion dated 3rd/10th October, 2008 at pages 520 to 524 of the rejoinder and pages 183 and 187 of the compilation would indicate that the opinion was sought regarding further action to be taken by the Salt Commissionerate in pursuance of the order dated 18th September, 2008 of the Division Bench of this court in Writ Petition No. 1683 of 2007. In that opinion, according to Mr. Seervai, reliance was placed on the earlier correspondence and the stand of the petitioners that they are owners of the entire land, they and their predecessors have been in possession since last century. Thus, it was claimed to be a private property and therefore, no rent is payable. They stated that the land can be used for any purpose. That is how the trustees were called upon to produce documentary evidence to show the origin of their alleged title to the land. The opinion also refers to the reply to this notice and the production by the trustees of a trust deed dated 14th January, 1892. That confers ownership, according to the petitioners/trustees and the possession of the Agar lands since 1892. Then, this opinion states that though the trustees did not execute any lease deed with the Department, the licence for manufacture of the salt was renewed. The correspondence would reveal that the Salt Department called upon the petitioners to obtain a licence and to execute lease deed,

but the stand of the petitioners was that they have not found any such document. Then the opinion states that much prior to the notice of Salt Department, the salt works were leased out by the trustees to one Mr. Bankatlal Hazarimal Garodia for work of salt. A suit was filed by the said Bankatlal being Special Civil Suit No. 522 of 1988 in the court of Civil Judge, Senior Division against the Trust, Union of India and others. The opinion also refers to the outcome of the suit, namely, the consent terms, by which, the suit was compromised between the plaintiffs and the defendants. An application was again made by the plaintiffs informing that they do not want to prosecute the suit against the Union of India nor they want to claim any relief against the Union of India and therefore, prayed to delete their name and others from the suit, which was granted by the Civil Court on 23rd September, 1996. Thus, the Department was not aware about the application for consent terms. The consent terms indicated that the trust was in full and absolute ownership and possession of the land in which, the three salt works are standing and that is how a reference was made to the Law Branch Secretariat, Mumbai on 26th August, 1999 seeking an opinion from them as to whether the suit as compromised by the parties needs to be restored and if yes, the procedure to be followed. The Law Branch Secretariat, on 8th September, 1999 endorsed to the Salt Commissioner that the

limitation to set aside the ex-parte order is over long back and the Department will have to file a separate suit to challenge the decree. The suit was not filed because of the reasons explained in the opinion. These reasons are read out by Mr. Seervai in details and what appears from this opinion is that the consent decree dated 23rd September, 1996 still stands, the Union of India is yet to file a suit as advised earlier by the Law Ministry in terms of para 12 of this opinion and the High Court order dated 18th September, 2008 restrains the Department from taking possession of the lands without following due process of law.

93. Then, Mr. Seervai relies upon letter dated 1st January, 2001 addressed by the Deputy Salt Commissioner to the Additional Legal Adviser, Law Branch Secretariat, Mumbai seeking the Law Ministry's opinion as to whether the PPE Act can be invoked in the above circumstances or a substantive suit should be filed challenging the decree. A doubt was expressed and according to Mr. Seervai, throughout that the PPE Act cannot be invoked if there are litigations pending. Though the litigations are pending, there is a consent decree, by which, the claim of the Trust as owners appears to be established.

94. Finally, Mr. Seervai submits that if a "Shilotri" is a person to whom occupancy rights are granted and based on that

compensation has been awarded to the petitioners under an award passed by the Collector/Land Acquisition Officer invoking the Land Acquisition Act, 1894, then, it is apparent that the proceedings for acquisition can be initiated only for acquisition of lands not belonging to the State Government or central Government or private lands. If the lands vest in the Central Government, then, there was no need to acquire them by invoking this Act. That means, the Government has admitted that the lands are of private ownership.

95. Mr. Sharma appearing for the Revenue does not deny that these documents are from the official files and records of the Salt Commissionerate and the Government itself. These documents do indicate that such doubts were expressed as are extensively referred by Mr. Seervai. These documents would also show that there were proceedings of the nature referred above. By that, Mr.Sharma would submit it does not mean that the PPE Act cannot be invoked. Even if the PPE Act is invoked, that abides the order passed by the Division Bench in Writ Petition No. 1683 of 2007. Meaning thereby, this is due process of law.

96. We are unable to accept Mr. Sharma's submissions. In the present facts and circumstances, which are indeed peculiar, we do not see how the Government/Union of India could have taken recourse to any summary proceedings. The documents referred

by us above create sufficient doubt in the mind of respondents themselves. The doubt may not be about title of the lands as projected by Mr. Seervai, but it is definitely about the remedy they must resort to so as to recover possession of the lands from the petitioners before us. Even if they are termed as unauthorised occupants, then, from the notices issued under the PPE Act, what we find is that the contents of the same and the documents are inconsistent with and contradict each other. The notices proceed on the footing that the lands vest in the Central Government, but are termed as salt lands, because these lands have been allowed to be utilized for manufacture of salt by private manufacturers of parties. The notice proceeds on the footing that for the purpose of manufacturing salt, licences were issued under the then Central Excise and Salt Act, 1944 and such licences were obtained/renewed till a certain period. Thereafter, the licencees though in possession, have not come forward to obtain the licences or to seek the renewal of the same. They have failed to obtain or renew the lease of the land beneath the salt works. They having not taken such steps, their occupation and possession of the land is unauthorised. Therefore, they can be evicted under the PPE Act. We find from the Government records themselves that certain documents were traced out and they reveal the consistent stand of the Salt Commissionerate. The

consistent stand is that allotment of land is made in favour of Navroji Pestonji as a special case without inviting bids or a public competition, the prolonged and continued possession of the lands by the Trust/trustees of the private Trust, the trustees being permitted to induct third parties for operating the salt works, the dispute between the third parties and the petitioners/trustees which was subject matter of a civil suit in the court of competent jurisdiction at Thane, the consent terms filed therein after deleting the Union of India from the array of parties, but at the same time such terms acknowledging the ownership rights of the present petitioners, such terms having been accepted on record by the Civil Court and the suit decreed on the basis thereof, the resumption notices being not pursued and similarly, though pursued resulting in a writ petition being filed in this court with the above order and direction coupled with the land acquisition proceedings create not only a doubt about the remedy to be adopted against the petitioners in the mind of the Central Government/Union of India, but the basis thereof prime facie is a title dispute. That relates to the properties/lands in question. In the circumstances, this is not a case where it is the petitioners who in defence of some proceedings instituted by the Central Government or Union of India contending that they are full owners and not having any limited occupancy rights, but it is the

Central Government's opinion and view that it may have to move a competent Civil Court to establish its title and seek possession of the lands. In the face of such opinions, remarks in official documents and records, it is really surprising that the respondents resort to summary remedies and shortcuts.

97. We find that Mr. Seervai's reliance on the decision of the Hon'ble Supreme Court of India in the case of *Express Newspapers Pvt. Ltd.* (supra) to be well placed. The Hon'ble Supreme Court of India clarifies that there may be a ambiguity in the expression "due process of law", but in the facts and circumstances before it, the Hon'ble Supreme Court of India desired a clear answer to it and whether it mandates institution of a suit in a competent Civil Court. In para 85, the Hon'ble Supreme Court, speaking through His Lordship Mr. Justice A. P. Sen (as His Lordship then was) held that once there was a grant and in favour of *Express Newspapers Private limited*, then, the possession of the said lands by that entity coupled with the construction carried out would reveal that they were not unauthorised occupants as understood by the PPE Act and therefore, recourse to the summary proceedings was not permissible. In that case, "due process of law" would imply filing of a suit by the Union of India.

98. This aspect has also been very succinctly pointed out in an earlier decision of the Hon'ble Supreme Court of India in the case of *Thummala Krishna Rao and Anr.* (supra). Mr. Seervai rightly places reliance on paras 6, 8, 9 and 10 of this judgment.

99. Once the summary procedure under the Act in that case, namely, the A. P. Act styled as A. P. Land Encroachment Act, 1905 was not permissible because the facts squarely raised an issue of title or a dispute in nature thereof, then, to our mind, disregarding this settled principle, the respondents in this case could not have resorted to the PPE Act.

100. The respondents' act of resorting to the same is in the face of the order passed by this court and the principle of "due process of law". The impugned action is clearly arbitrary and violative of the mandate of Article 14 of the Constitution of India. The principle of equality before law and equal protection of law in this case implies that whether it is the Union of India or a private party, the moment there is a dispute about title, then, the remedy of a regular civil suit in a competent Civil Court must be resorted to. Any departure from the same or bypassing it would violate the mandate of Article 14 of the Constitution of India and make a mockery of the principle enshrined therein of equality before law. Looked at from this angle and in the light of the peculiar facts and

circumstances of this case, it will have to be held that the impugned eviction notices and the proceedings in pursuance thereof are ex-facie without jurisdiction. The eviction officer under the PPE Act has usurped the jurisdiction without any legal foundation. Once this conclusion is reached, the petitioners cannot be compelled to appear before him and defend the notices or submit to his power and authority under the Act. The Act itself is incapable of being invoked and applied to the petitioners herein. The matter before us is squarely covered by the principles laid down in the case of *Whirlpol Corporation vs. Registrar of Trade Marks, Mumbai*⁴

101. As a result of the above discussion and without multiplying this judgment with more authorities and rulings, we quash and set aside the impugned notices. Rule is made absolute in terms of prayer clauses (a) (ii) and (iii). In the circumstances, there would be no order as to costs.

102. However, our judgment and order in this writ petition shall not, in any manner, be construed or interpreted as an opinion on the question of title to the lands covered by the salt pans. The issue of title shall be decided uninfluenced by the outcome of the present petition. Equally, no court or tribunal shall be influenced

4 AIR 1999 SC 22

by our observations above. All the more, our judgment and order does not hold that the petitioners are owners of the property.

(DR. SHALINI PHANSALKAR-JOSHI, J.) (S.C.DHARMADHIKARI, J.)