

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.08.2016

Delivered on : 01.09.2016

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

W.P.Nos.41444 of 2002 and 25104 of 2016
and WMP.No.21496 of 2016

The Tuticorin Salt and Marine
Chemicals Ltd.,
Rep. by Managing Director M.S.Prakash,
Harbour Link Road,
Tuticorin-628 001. ..Petitioner in both W.Ps.

Vs.

- 1.The Tariff Authority of Major Ports
II Floor, Gate No.30,
Jawaharlal Nehru Stadium,
New Delhi-110 003.
- 2.The Tuticorin Port Trust,
Tuticorin-628 004.
- 3.The Deputy Salt Commissioner,
Haddows Road,
Shastri Bhavan,
Chennai-6. ..Respondents in
W.P.No.41444 of 2002

- 1.The Government of India,
Ministry of Shipping,
Rep by its Secretary,
New Delhi-110 001.

- 2.The Chairman,
V.O.Chidambaranar Port Trust,
Tuticorin-628 004.

- 3.The Chief Engineer,
Engineering Department- Civil, Estate
Management Division,
V.O.Chidambaranar Post Trust,
Tuticorin-628 004. ..Respondents in
W.P.No.25104 of 2016

Prayer in W.P.No.41444 of 2002: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the first respondent in Case No.T.A.M.P./34/2001/TPT and quash the order dated 27.08.2002 passed by the first respondent.

Prayer in W.P.No.25104 of 2016: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the tender notification issued by the 3rd respondent on 20.06.2016 in Tender cum e-Auction Notice No.EST-3/2016-17, No.E(C) 56/02/2004-EST and quash the same.

For Petitioners: Mr.S.Gomathinayagam,
in both W.Ps. Senior Counsel
assisted by
Mr.G.Hari Hara Arun Soma Sankar

For Respondents: Mr.T.S.Raja Mohan,
Addl. Central Govt. Standing Counsel
for R1 in W.P.No.41444 of 2002

Mr.C.V.Ramachandramurthy
for R1 in W.P.No.25104 of 2016

Mr.A.Kumaraguru,
Central Govt. Standing Counsel
for R3 in W.P.No.41444 of 2002

Mr.R.Yashod Varadhan, Senior Counsel
assisted by Mr.S.Yaswanth
for R2 in W.P.No.41444 of 2002
for R2 and R3 in W.P.No.25104 of 2016

C O M M O N O R D E R

Facts leading to the filing of these writ petitions are intertwined. Therefore, both the writ petitions are disposed of by this common order.

W.P.No.41444 of 2002

2.1. The deponent of the affidavit is the Managing Director of the petitioner Company and he would state among other things that the petitioner Company is a Public Limited Company incorporated under the provisions of the Companies Act, 1956, with the main object of manufacture and marketing of Salt. The second respondent, namely the Tuticorin Port Trust is the owner of vast extent of land situated in Tuticorin and could not put the lands into beneficial use and the lands did not yield any return and hence, in the year 1943, it took a decision to lease out 300 acres of land in favour of the petitioner for manufacture of salt and it was a minor port at the relevant point of time. The second

respondent, for that purpose, decided to lease out the said lands initially for a period of 20 years and accordingly, leased out the lands to an extent of 262.80 acres during the year 1943 in favour of one Shri Mannar Iyer for a period of 25 years and it was subsequently transferred in favour of the petitioner during the year 1946. The second respondent, which was a minor Port Trust at the relevant point of time, became a Port Trust Board on 01.04.1979 and the erstwhile minor Port merged with the new Port and a decision was taken to continue the lease agreement and it was extended upto 07.07.1993.

2.2. The Ministry of Surface Transport (Ports Wing), Government of India, vide communication dated 27.10.1994 had accorded permission to allot an area admeasuring to an extent of 262.80 acres in favour of the petitioner Company for production of salt on lease for a period of 20 years subject to the following terms and conditions and it is relevant to extract the same:

"(a) The lease shall be for a period of 20 years from the date of expiry of previous lease agreement and shall not be automatically renewable.

(b) The lessee shall pay lease rent @ Rs.100/- per acre per annum or the scheduled rate for such lands which may be fixed by the Port from time to time, whichever is higher.

(c) The lease rent shall be subject to an escalation @ 10 percent per annum (compoundable).

(d) The lessee shall pay a premium equivalent to one year's lease rentals to the Tuticorin Port Trust.

(e) The lessee shall deposit an amount equivalent to one year's rentals with Tuticorin Port Trust as refundable security deposit.

(f) TPT shall have an option to revise the base of least rent every five years.

(g) The lease shall be subject to lessee obtaining all necessary statutory clearances. The Port shall ensure this.

(h) All plans for development of leased area shall be got approved from the TPT Board.

(i) The area leased shall be used strictly for the purpose for which it is allotted.

(j) The area leased shall not be transferred by the lessee to any third party either by way of sub-lease, rent or any other means.

(k) The Port shall have a clause in the lease agreement that the land can be resumed at any time before the expiry of lease period if required by

the Port for its own use by giving 3 months notice or at any time for not complying with the conditions of lease.

And, all other usual terms and conditions.

2. The Port shall enter into the lease agreement with M/s.Tuticorin Salt & Marine Chemicals Limited, Tuticorin incorporating the above conditions and after getting it vetted by its Legal and Finance Departments and strictly adhering to the guidelines issued by this Ministry as per Letter No.PT-17011/55/87-PT dated 30th March, 1992.

3. A copy of the map showing the location of the land for which approval is granted is enclosed.

4.This issues with the concurrence of Finance Wing vide their U.C.No.535/FA(T)/94 dated 20.3.94."

Accordingly, a fresh lease came into being for a period of 20 years, fixing the lease rent @ Rs.100/- per acre per annum subject to the above terms and conditions and the revision of lease rate was due on and from 08.07.1998. The second respondent Port Trust had constituted a Committee for revising the lease rent as per the Government guidelines and the said Committee, after obtaining the prevailing market rate of the lands, recommended the allotment to the petitioner and suggested an annual lease rent rate of Rs.5,040/- per acre per annum and it was placed before the Tariff Authority for Major Ports [TAMP]/first respondent, which is a statutory body constituted under Section 47A of the Major Ports Trusts Act, 1963, for their approval.

2.3. The lease came to an end on 07.07.2013 and insofar as the rates fixed by the first respondent/Tariff Authority for Major Ports is concerned, the petitioner company raised an objection pointing out among other things that as per the letter of the Revenue Divisional Officer, Tuticorin dated 07.12.2000 addressed to the Chief Engineer, Tuticorin Port Trust in respect of lands in Mullakaadu Part-I and Melavattan Part-II Village, the market value was fixed as Rs.42,000/- per acre and Rs.40,325/- per acre respectively and the yield of salt was fixed at Rs.800/- per bag in respect of Mullakaadu Part-I and there is no salt production in respect of Melavattan Part-II Village and the said determination was not based on documents and also did not state the source from which the said value was arrived at and the said official did not go through the formal exercise of collection of particulars of the value mentioned in the various sale deeds executed at the relevant point of time in respect of lands situate in a similar place of a similar nature of similar extent used for a similar purpose.

2.4. The Tuticorin Chamber of Commerce and Industry, vide letter dated 03.05.2001, had also pointed out the first respondent that the features of the Salt Industry were peculiar and also pointed out the repercussions from the consumers in the event of steep increase in lease rent, which may result in increase of salt price per acre. The petitioner also pointed out that the salt is a low value commodity and expecting a return of 12% on the market value of the lands least out for the production of salt would be illusory and the production of salt is a social object and the product is used by poor and rich alike and further pointed out that the Kandla Port as well as the Salt Department are charging @ Rs.52/- and Rs.65/- per acre per annum respectively and also pointed out that the Government of Tamil Nadu leased out 5000 acres of land to the Tamil Nadu Salt Corporation which is also a Government entity @ Rs.135/- per acre per annum and therefore, prayed for reduction and so also the Indian Salt Manufacture Association, in their representation dated 11.06.2001, to the first respondent.

2.5. The first respondent had convened a joint meeting on 16.07.2001 and all stakeholders including the petitioner had also participated and after considering the objections, the said authority had passed an order dated 27.08.2002 fixing the annual lease rent at Rs.2,016/- and applied the same retrospectively with effect from 08.07.1998 and it was also directed to be notified in the Government of India Gazette. The petitioner, challenging the legality of the said proceedings of the first respondent, has filed this writ petition.

2.6. The writ petition was admitted and an order of ad-interim stay was granted subject to the condition that the petitioner shall pay 50% of the lease rent as approved by the first respondent and accordingly, the said amount is being paid by the writ petitioner. The petitioner, aggrieved by the said conditional order of interim stay, had filed W.A.No.3941 of 2003, which was disposed of on 22.10.2007 with a direction directing the petitioner to pay @ Rs.900/- per acre for the past period from 08.07.1998 to 31.10.2007 and thereafter to pay at the rate of Rs.1,000/- per acre starting from 01.11.2007 and the petitioner is complying with the said order.

2.7. Mr.S.Gomathinayagam, learned Senior Counsel assisted by Mr.G.Hari Hara Arun Soma Sankar, learned counsel appearing for the petitioner made the following submissions:

(1) The purported exercise of power by the first respondent would not come under the purview of Section 49 of the Major Port Trusts Act, 1963, but covered by Sections 33 and 34 of the said Act and therefore, the impugned proceedings based on the said exercise, is unsustainable.

(2) The lease deed dated 02.06.1995 does not provide for fixation of rent by the first respondent and therefore, such a fixation resorted to during the currency of lease is contrary to law.

(3) The fixation of lease is primarily based on the communication of the Revenue Divisional Officer, Tuticorin dated 07.12.2000 addressed to the Chief Engineer, Tuticorin Port Trust and the said letter is cryptic and it is nowhere stated as to how the market value of the land situated in Mullakaadu Part-I and Melavattan Part-II Villages per acre has been fixed and the revision of rates done by the first respondent is also contrary to law.

(4) Though the first respondent has referred to the various objections raised by various stakeholders, has fixed the lease rent @ Rs.2016/- per acre based on mere surmises and conjectures, overlooking the fact of the lease rent fixed by Kandla Port as well as the Tamil Nadu Salt Corporation and also failed to assess the impact on salt production and the rates at which the salt to be sold.

(5) The first respondent has also failed to take into consideration the peculiar nature of the salt industry, social impact on the revision of lease rent and therefore, the impugned order of the first respondent is liable to be interfered with and prayed for quashment of the same.

2.8. Mr.R.Yashod Varadan, learned Senior Counsel assisted by Mr.S.Yaswanth, learned counsel appearing for the second respondent has invited the attention of this Court to the counter affidavit and would submit that the lease deed dated 02.06.1995 was registered as Doc.No.220 of 1995 on the file of the Sub-Registrar Office-I, Tuticorin and the Clauses in the said document clearly indicate that the lease was renewed with effect from 08.07.1993 and the lease would expire on 07.07.2013 and the respondent has the option to revise the base least rent once in five years and accordingly, it has to be revised from 08.07.1998 and the basis for revision is in the policy guidelines for land and water front management communicated by the Government of India in terms of Section 49 r/w. 54 of the Major Port Trusts Act, 1963 and the first respondent is bound to adhere to the conditions prescribed by the Government in the letter dated 03.04.1995 and the petitioner subsequently executed another lease agreement on 02.06.1995 undertaking to adhere to the said conditions and it is urged by the petitioner to turn around and say something contrary

to both parties. As the revision of base lease rent is to be done once in every five years and the revision was due on 08.07.1998 and in terms of policy guidelines for land and water front management issued by the Government of India, the second respondent has constituted a Committee under the Chairmanship of Chairman, Tuticorin Port Trust with representatives from the then Ministry of Surface Transport, State Revenue Authorities and officers of Tuticorin Port Trust, for fixing the revised lease rent from 08.07.1998 and the Committee also took a decision to obtain the guideline value of the salt lands in and around Tuticorin before fixing the revised lease rent for the land allotted to the petitioner and series of discussions took place and after taking into consideration all the relevant facts and circumstances and the principles followed by the Port to fix the lease rent at 12% p.a. on market value of land and 18% annual return on development cost and further taking note of the fact that the second respondent did not make any investment for developing the land allotted for salt pans, a decision has been taken to fix Rs.5040/- per acre as annual return on market value.

2.9. The learned Senior Counsel appearing for the second respondent would further submit that various stakeholders objected to fix such rate and once again a joint meeting was convened and after eliciting the views of the concerned persons, the rate was fixed at Rs.2,016/-per acre per annum from 08.07.1998 with annual escalation of 10% contemplated in the relevant lease agreement and the rate has been fixed following the normal procedure. The learned Senior Counsel appearing for the second respondent on the legal plea made on behalf of the petitioner would submit that the lands in question are lying inside the Port area and therefore, the first respondent, in exercise of powers under Section 49 of the Major Port Trusts Act, 1963, is the competent authority to fix the lease rent and accordingly, it has done so after eliciting the views/response from all stakeholders. The first respondent has also followed a very transparent procedure and though the original decision was to fix Rs.5,040/- per acre per annum, it was reduced to Rs.2,016/- per acre, which is almost 50% of the rate proposed by the second respondent. It is the further submission of the learned Senior Counsel appearing for the second respondent that in accordance with Clauses 6 and 13(xviii) of the agreement executed between the petitioner and the second respondent as lessor, it has the right to revise the basic lease rent every 5 years apart from the annual escalation at 10% (compoundable) specified in Clause 3 of the agreement and quinquennial revision was made based on the Government guidelines only and fixation of market value was done by the jurisdictional Revenue Divisional Officer and the lease rate was fixed on the basis of his proceedings and he is the competent authority attached to the Revenue Department of the State Government to fix the market value of the land and the petitioner, as on August 2003, was

due and payable to a sum of Rs.29,76,039/- and prays for revision of lease rent. Lastly it is contended by the learned Senior Counsel appearing for the second respondent that since the petitioner is carrying on commercial activity, it has to face the fluctuations of business and the overall circumstances pointed out in the fixation of annual rent per acre @ Rs.2,016/- are perfectly in order and prays for dismissal of this writ petition.

2.10. Heard the submissions of Mr.T.S.Rajamohan, learned Additional Central Government Standing Counsel appearing for the first respondent also.

W.P.No.25104 of 2016

3.1. The Executive Director of the petitioner Company has sworn to the affidavit stating that the petitioner Company has paid the entire dues to the respondent and approached the second respondent on 25.04.2012 and requested renewal of lease for a further period of 30 years after the expiry of the current lease period and the second respondent has issued a letter dated 13.08.2013 directing the petitioner to execute the undertaking for a further period of 2 years from 07.07.2013 and the petitioner has also paid a sum of Rs.2,99,592/- in the form of Demand Draft towards the lease rent for the period from 08.07.2016 to 07.07.2017. However, the second respondent has sent a letter dated 15.06.2016 calling upon the petitioner to handover possession of the lands within 30 days from the date of receipt of the same and it was objected to by the petitioner with a request to regularize the lease for a further period of 20 years and a sum of Rs.3,02,220/- was also paid towards lease rent for the period from 08.07.2016 to 07.07.2017. However, the second respondent, without heeding to the request made by the petitioner for renewal, has issued the impugned tender notification in Hindu News Daily on 20.06.2016 fixing the tender schedule. Challenge the legality of the said Tender cum e-auction notice dated 20.06.2016, the petitioner has filed this writ petition.

3.2. Mr.S.Gomathinayagam, learned Senior Counsel assisted by Mr.G.Hari Hara Arum Soma Sankar, learned counsel appearing for the petitioner would submit that the petitioner is in possession and enjoyment of the lands in question from the year 1943 onwards and invested so far nearly Rs.45 crores by way of construction, investment in equipments, plants, by providing employment to 70 employees and also contributing towards Provident Fund. The learned Senior Counsel appearing for the petitioner has drawn the attention of this Court to the Clarifications issued on 17.07.2015 in respect of Policy Guidelines for Land Management by Major Ports, 2014 issued by the Government of India, Ministry of Shipping (Ports Wing), more particularly Clause 11.3 and would submit that as per Clause 11.3(b) "if the land is not required by the Port for its own use, the Port should then check whether the land use is consistent with the land use plan and whether the lessees

are not in default and thereafter, if it is so, the following procedure under Clause Nos.(c) to (k) to be followed and despite very many representations submitted about the long subsistence of the lease between the petitioner and the Port Trust, the impugned tender cum e-auction notice came to be issued with an oblique motive, only with a view to drive the petitioner out of the lands . It is the further submission of the learned Senior Counsel appearing for the petitioner that the adjacent lands belongs to Salt Corporation of India was also leased in favour of the petitioner, which have access through the lands, which are the subject matter of this writ petition and in fact, the Office of the Deputy Commissioner, Salt Corporation, Chennai also addressed a communication to the Salt Commissioner, Jaipur and suggested that the lands vested with the Tuticorin Port Trust used for salt manufacture by the petitioner could be considered for transfer to Salt Commissioner's Organization in lieu of salt lands transferred to Ennore Port at Chennai and therefore, requested the said official to get in touch with the second respondent to reconsider the decision of taking back the said lands, as they are having vast lands inside the port estate, lying vacant and in the light of the said recommendation by the one arm of the Government of India, another arm, namely the second respondent cannot take any contrary decision which adversely affect the salt production in general and so also the interest of the workmen employed in Salt Pans and also the interest of the petitioner Company.

3.3. Per contra, Mr.R.Yashod Varadan, learned Senior Counsel assisted by Mr.S.Yaswanth, learned counsel appearing for the respondents 2 and 3 would contend that the lease deed entered into between the petitioner and the second respondent did not provide for renewal and even as per the impugned tender notification, lands are not required by the Port for its own use, but it is interested in allotment of the same for the purpose of Salt Pans on 5 years lease basis and therefore, the petitioner cannot do otherwise. It is the further submission of the learned Senior Counsel appearing for the respondents 2 and 3 would submit that clarifications and amendments issued to the Policy Guidelines for Land Management by Major Ports, 2014 issued by the Government of India, Ministry of Shipping (Ports Wing) dated 17.07.2016 are scrupulously and strictly complied with and if the petitioner is interested in participating in the tender process, they may do so and their bid would be considered in proper perspective by taking into consideration of the fact that they are in possession of the lands in question for very many years in the capacity as lessee and therefore, prays for dismissal of this writ petition.

3.4. In response to the said submission, the learned Senior Counsel appearing for the petitioner would submit that for the purpose of establishing minor port, valuable lands have been taken possession and in lieu of the same only,

possession of the lands in question were handed over for putting up salt pan and reiterated his submission that fixing the annual lease rent of Rs.2,016/- per acre as well as the issuance of tender cum e-auction are arbitrary and unreasonable and in violation of Article 19(1)(g) of the Constitution of India and also placed reliance upon the decisions in Jayantilal Dharamsi and Others v. Board of Trustees of Port of Bombay [1991 (2) Bom CR 283] and Kasturi Lal Lakshmi Reddy v. State of Jammu and Kashmir and Another [AIR 1980 SC 1992].

4. Heard the submissions of Mr.C.V.Ramachandramurthy, learned Standing Counsel appearing for the first respondent also.

5. This Court has carefully considered the rival submissions and also perused the materials placed before it in the form of typed set of documents and the decisions relied on by the learned Senior Counsel appearing for the petitioner.

W.P.No.41441 of 2002

6. Chapter V-A of the Major Port Trusts Act, 1963 deals with Tariff Authority for Major Ports. Chapter VI deals with Imposition and Recovery of Rates at Ports. Therefore, this Court is of the view that the first respondent is vested with powers under the Statute, namely Major Port Trusts Act, 1963 to fix the revised scale of rates.

7. A perusal of the lease deed dated 02.06.1995 executed between the petitioner and the second respondent, more particularly Clause 13(xvii) would indicate that there shall be 10% increase every year over the annual lease rent as aforesaid, applicable from the commencement of each lease year till the expiry of lease and the 10% increase would be so calculated in such a way as to base it over the lease rent as prevailing at the end of each lease year. Clause 13(xviii) provides that the lessor has the right to revise the basic rent on the expiry of every 5 years to be reckoned with reference to the previous general revision of rent applicable to lands of the lessor to which the leased land belongs at the appropriate category; if such quinquennial revision charges, the 10% annual increase contemplated in Clause xvii, necessary agreement will be executed and registered for the enhanced value then and there. Clause 16 says that the basic rent reserved may at the option of the lessor to be revised on the first day of January 1997 and thereafter at the end of every five years from the said date and lessee shall pay the rent at the revised rate from the said date of revision and this Clause is subject to Clause 13(xvii) as stated above.

8. In the light of the above said Clauses coupled with the power conferred on the first respondent under the Major Port Trusts Act, 1963, it is having competency and

jurisdiction to revise the lease rent. The Schedule annexed to the above said Lease Deed would indicate that the lands in question are situate in Mullakkaadu Village totalling to an extent of 262.80 acres.

9. The first respondent, after hearing the views and suggestions of various stakeholders, has passed the impugned order dated 27.08.2002 in case No.T.A.M.P./34/2001/TPT and taking into consideration the policy guidelines for land and water front management issued by the Government, the Port constituted a Committee under the Chairmanship of Chairman of Tuticorin Port Trust with the various representatives from the then Ministry of Surface Transport, State Revenue Authorities and Officers of Tuticorin Port Trust and the Committee took a decision to obtain guideline value of the salt lands in and around Tuticorin from the District Revenue Officer (DRO), who was a member of the Committee, to revise the lease rate, before fixing the revised lease rate for the port land allotted to the petitioner and it was assigned to the District Revenue Officer, who was one of the Committee member and he furnished the present market value as on 07.12.2000 @ Rs.42,000/- per acre per annum. The first respondent has taken into consideration of the fact that the second respondent did not take any investment for developing the lands and therefore, 12% on the market value was calculated and accordingly, the annual lease rent works out to Rs.5,040/- per acre per annum with effect from 08.07.1998. The first respondent has also taken note of the fact that the statutory audit had objected to the lease rate @ Rs.100/- per acre per annum fixed during 1993 in respect of lands leased to the petitioner, being very low and the first respondent in response to the said audit objection, had informed them that at the time of next revision, will fix the lease rent for the lands in question. The important factor, namely the lands allotted to the petitioner was low yielding and the development into salt pan was done by the petitioner for production of salt - a low value commodity is to be kept in mind.

10. The first respondent in para 9, inner page 8 of the impugned order, had discussed the position that emerged in respect of the totality of the information collected during the period and it is relevant to extract the following paras:

"9....

(iv) The lease in reference is governed by a specific lease Agreement signed between the Port and the Lessee. The lease Agreement provides for an annual escalation in the lease rentals @ 10% per annum compoundable. It further allows an option to the TPT to revise the base lease rent every 5 years. Since the TSMC has signed the lease Agreement, it is not unreasonable to conclude that it was well aware of these conditions stipulated in the Agreement. Except

objecting that the annual escalation clause overrides the option available to the Port Trust to effect a quinquennial revision of the base rate, the Lessee has not raised any dispute about the enforceability of the lease Agreement. As has been pointed out by the TPT, the contention of the Lessee about the annual escalation clause and the quinquennial revision clause in the lease Agreement does not hold water. The annual escalation clause is for escalating the lease rent during the quinquennial; the other clause is for effecting change in the base rent itself after every five years. If the interpretation of the Lessee is admitted, it can also be argued that such a contradictory clauses should not have been included in the lease agreement and as the affected party the Lessee should have objected to it at the time of signing the Agreement itself. The TPT has chosen to exercise the option available to it in terms of the lease Agreement to revise the base rent after expiry of 5 years, the effective date of the lease Agreement. Having signed the Agreement with such a clause, it is not tenable for the Lessee to expect that the Lessor will not exercise the option. Any specific Lease Agreement will prevail over the general guidelines/revision of rates decided subsequently so long as they are not contradictory to the overall tariff setting principles adopted by this Authority. In the instance case, there is a specific lease Agreement which provides for revision of base rent every 5 years; and, for such a revision the Port Trust has adopted the methodology prescribed in the Government guidelines. That being so, there is no case for 'dropping' the proposal of the Port Trust on this count, as requested by the Lessee.

(v) Since the lease was granted on 8 July 1993, the first quinquennial revision falls due on 8 July 1998; the Port has proposed for such a retrospective revision. For arriving at the proposed rate, the TPT has considered the market value of salt lands furnished by the District Revenue Officer in December 2000. The ICCI has pointed out the anomaly of fixing lease rentals for the year 1998 with reference to a market value obtained in the year 2000. The TPT has subsequently informed that it had made all possible attempts to obtain the market value for the salt lands for the year 1998 from the District Revenue Authorities; but, even after a lapse of nearly one year, such an information has

not been forthcoming. The Port has requested to approve the market value adopted by it since, in its opinion, there may not be any significant difference in market value between the years 1998 and 2000.

While the objection of the ICCI deserves to be admitted, the argument of the Port to consider the same market value obtained in the year 2000 for the year 1998 does not appear logical. It will ordinarily be reasonable to assume that land value always appreciates. If reliable figures from the District Revenue Authority are not available, it is reasonable to discount the market value available for the year 2000 to arrive at an estimated market value for the year 1998. Recognising the fact that land value ordinarily only appreciates, the TPT has also included the annual escalation factor of 10% in the lease rentals. It will be logical to borrow the same escalation factor applied in the lease rentals to de-escalate the market value. Since the market value reported for the year 2000 is Rs.42,000/- per acre, the market value for the year 1998 can be deduced by allowing a discount of 20% over that. Accordingly, the market value of salt land for the purpose of this analysis is taken as Rs.33,600/- per acre.

(vi) Another important factor influencing lease rent is the annual return on the market value of land. The TPT has sought an annual return of 12%. It is noteworthy that the Government guidelines do not prescribe any formula for fixation of lease rent. There is no uniformity in this respect across the Major Ports and even some of the State Governments. The Government of Kerala is reported to consider 10% of the land value as the lease rent. The Visakhapatnam Port Trust has proposed to consider 6% of the land value as lease rent while the Cochin Port Trust in a case relating to fixing of lease rent of land at Puthuvypu adopted a figure of 3.33% of the land value.

In the case of fixing port tariffs at the Major Ports, a return on capital employed is allowed considering interest on capital (equivalent to the lending rate at which the Government loans are available to the Port Trusts) and 3% contribution to each of the two mandatory reserves for development and renewal to be maintained. It currently adds up 18.5%. For the year 1998, it was around 18% only. In the case

of salt land, since the requirement of development and renewal are not relevant, if the same analogy of ROCE is applied, the maximum permissible return at best can be 12%. In the case of capital employed, the assets are taken at historical cost; whereas in the case of land in reference the asset value has been updated with reference to market value. Excepting the same rate of return on the asset base considered at historical value and current cost cannot, possibly, be viewed as reasonable.

As has already been pointed out, there is no uniform method available in this regard. At the same time, the rate of return of 12% sought by the TPT cannot be allowed without moderation. In the absence of any guideline in this regard available on record (and developing such a guideline at this stage will involve a detailed study which will unnecessarily delay the case under adjudication), it will be reasonable to adopt the maximum return already proposed by one major port trusts i.e., Visakhapatnam Port Trust. That being so, for the purpose of this analysis the return on market value of land is limited to 6%.

(vii) Subject to the analysis given above, the modified lease rent will be Rs.2016/- per acre per annum. As has already been mentioned, as provided in the lease Agreement, this revised rate will come into effect retrospectively from 8 July 1998. Incidentally, the revised annual lease rent approved fits well in the range of Rs.2000-2500 per acre suggested by the TCCI.

(viii) The Port users elsewhere have also voiced their concern over the approach of effecting quinquennial revision in lease rent with reference to the prevailing market value of lands. It is their argument that no Lessee can reasonably project the feasibility of his business proposition if such periodic revisions are made with reference to a factor which may not be known with certainty to all concerned before a project is set up. This argument cannot be lightly brushed aside and definitely deserves serious consideration at the time of developing our own guidelines. Since the guidelines issued by the Government have been adopted and applied in all cases relating to Major Port Trust lands, a deviation only in respect of the TPT cannot be made. When our own guidelines are developed, it

will be applied prospectively at all the Major Port Trusts."

11. The first respondent, on the basis of the said conclusion/reasons, had approved the annual lease rent of Rs.2,016/- per acre per annum for the lands with retrospective effect from 08.07.1998, which is subject to annual escalation clause stipulated in the concerned lease agreement. It is very pertinent to point out at this juncture that as per Clause 9(v), the second respondent had conceded to the fact that despite very many attempts made to obtain the market value of the salt pans from the year 1998 from the District Revenue Authorities, even after lapse of one year, such an information was not forthcoming and the said plea has been taken note of and the first respondent has arrived at a decision that there may not be any significant difference in market value between the years 1998 and 2000 and accordingly, adopted the market value obtained in the year 2000, for the year 1998. In Para 9(vi) the first respondent has taken note of the fact that the Government guidelines do not prescribe any formula for fixation of fair rent and there is no uniformity in this respect across the Major Ports and even some of the State Governments and also taken note of the fact that the Government of Kerala is reported to consider 10% of the land value as the lease rent and the Vishakapatnam Port Trust has proposed to consider 6% of the land value as lease rent while the Cochin Port Trust in a case relating to fixing of lease rent of land at Pudukkottai adopted a figure of 3.33% of the land value and therefore, fixed the market value @ 6%. In Para 9(viii), the concern by Port users over the approach of effecting quinquennial revision in lease rent with reference to the prevailing market value of lands was taken note of and this argument cannot be lightly brushed aside and definitely deserves serious consideration at the time of developing own guidelines and as and when own guidelines are developed, it will be applied prospectively at all the Major Port Trusts.

12. The first respondent, in order to arrive at the market value, has taken note of the communication dated 07.12.2000 in Na.Ka.No.E5/41957/2000 sent by the District Revenue Officer, Tuticorin District to the Chief Engineer of the second respondent, wherein he has fixed the present market value in respect of salt pans and the production capacity of the salt pans which is extracted as follows:

Area	Market Value	Quantity of Salt Production
Mullakkaadu Part-I Village, S.Nos.348, 349, 350, 805, 807, 810	Rs.42,000/- per acre	800 bags per acre per annum

Area	Market Value	Quantity of Salt Production
Meelavattan -II Village, S.Nos.1731, 1733, 1734, 1735, 1736	Rs.40,385/- per acre	No production of salt

It is to be noted at this juncture that this is the only document made available with the first respondent to fix the market value and it is to be remembered at this juncture that for fixation of lease rent for the year 1998, admittedly no tenable materials are made available and the value given by the said official prevailing on December 2002 have been taken into consideration. In fact the first respondent, in the above cited paragraphs, had also observed so.

13. In the typed set of documents filed in support of this writ petition, the Lease Deed entered into between the petitioner and the Salt Department of the Central Government dated 10.08.1969 was also enclosed wherein 154.3 acres in Urani Extension situated in Mullakadu and Melavittan Village of Tuticorin District were leased out at the ground rent of Rs.308.60/- per year and the lease was for a period of 20 years commencing from 01.03.1999.

14. The communication of the office of the Deputy Salt Commissioner, Government of India in C.No.11018(650)P/1998/8 dated 01.01.2009 addressed to the Salt Commissioner, Jaipur is to be taken note of as it expressed concern as to the Notice of Termination of lease issued by the second respondent to the first respondent. A perusal of the said letter would indicate that as many as 250 casual labourers apart from 100 nos. of regular staff are engaged in various salt manufacturing activities and in addition to that, 150 labourers are engaged in allied activities such as loading, packing, refining etc., and that the petitioner Company had also invested huge amounts for laying salt works and the area is only fit for salt manufacturing and the development of Port activities may be taken up near the Port area and not at the present salt land, as it is far away from the major port. It is relevant to extract para 6 of the said communication:

"6. In view of the points described below, M/s.Tuticorin Salt and Marine Chemicals Ltd., Tuticorin should be allowed to continue in Tuticorin Port Trust land:

a) As most of the crystallisers are available in the portion of the Port Trust land and the salt works are working as single lay out, severing one part will affect the other part adversely.

b) Unlike other industries, Salt Industry cannot be established everywhere. It requires uninterrupted source of brine, favourable climatic conditions and impervious soil etc.

c) It is a labour intensive industry and many labour will be rendered unemployed, that is why the National Salt Pans Workers Union, Tuticorin vide their letter dated 12.12.2008 requested the Chairman of Tuticorin Port Trust to defer the proposal.

d) The proposal to set up any other industrial activity by closing salt works should be avoided as it poses threat to closure of salt works in Head quarter group of factories in Tuticorin. As it could be seen from the Tuticorin Port Trust letter dated 27.11.2008 that the lands are required for developing cargo traffic. The said land has already notified as Salt manufacturing area and totally non polluting industry. Our entire salt department land in Tuticorin Head quarter factors starts with adjoining to this land. If the area is taken back by the Port Trust authorities and used for Cargo Traffic or for power plant and coal handling, there would be further threat of polluting dust menace from the said area and we may also lose our salt department land for their purpose in a phased manner and the existence of Tuticorin Head Quarter factories would be vanished from the Map of Salt Industry shortly.

e) Due to rapid urbanization and industrialisation, salt industry in Tuticorin is shrinking day by day as is evident from the production figures of 2007-08 which reveals that Tamil Nadu has lost its pre-dominant 2nd position to Rajasthan. This is not only due to transfer of salt department lands to various organizations for public purpose but also due to lot of small manufacturers having closed their salt works and converted the same for godown purposes in Tuticorin area.

f) It is right time to take immediate steps to safeguard the salt lands in Tamilnadu (mainly in Tuticorin area) as it caters to the edible and industrial salt requirement of Southern states. It may not be out of place to mention here that the then Joint Secretary during his meeting with Salt Manufactures of Gujarat, Tamilnadu and Andhra Pradesh at Udyog Bhavan, New Delhi on 24.2.2003 vide point-3 that the lands vested with the Tuticorin Port Trust used for Salt manufacture by

M/s.Tuticorin Salt and Marine Chemical Ltd., could be considered for transfer to Salt Commissioner's Organization in lieu of salt lands transferred to Ennore Port at Chennai. (Please vide your letter C.No.24/1/Ad/2001/5507-98 dated 31.3.2003). A detailed report on this subject has been furnished in this office letter C.No.12032(650)P/98/7072 dated 30-04-2003 and the further development of this case not known. We have already transferred about 300 acres of salt department lands under Chemmancherry (Coveiong Factory) to Ministry of Shipping and Surface Transport for the purpose of commissioning Maritime Academy.

7. In view of the position stated above and in the interest of salt industry, it is felt that there may not be any hesitation on our part to request the Tuticorin Port Authorities to reconsider their decision of taking back of the said land as they are having vast lands inside the port estate that is lying vacant. It is also pertinent to mention here that the renewal of all the leases of nearly 16000 acres of Kandla Port Lands producing about 16 lakh tones of salt by major and small manufacturers have expired in the year 2000-2014 has been taken up through our Ministry with the Ministry of Shipping and Surface Transport and pending renewal of those leases, salt is being manufactured without any interruption. Therefore this case may also be taken up with our Ministry.

Yours faithfully,

(Dr.JAIPAL SINGH)
Deputy Salt Commissioner,
Chennai."

15. The reasons assigned in the impugned order passed by the first respondent revising the lease rent/amount in some way supports the case of the petitioner for the reason that the District Revenue Officer, Tuticorin had adopted the 2000 year market value for revision sought in the year 1998 and the second respondent has also expressed their helplessness for having failed to secure the market value of the lands from the year 1998 from the District Revenue Authorities despite they repeatedly approaching them for nearly one year. The first respondent has also taken note of the fact that the Government guidelines did not prescribe any formula for fixation of lease rent and there is no uniformity in this respect across the Major Ports and even some of the State Governments, namely the Government of Kerala is reported to consider 10% of the land value as the lease rent and the Visakhapatnam Port Trust has proposed to consider 6% of the land value as lease rent while the Cochin Port Trust in a case relating to fixing of lease

rent of land at Puthuvypu adopted a figure of 3.33% of the land value and therefore, fixed the return on the market value of land in question as 6%.

16. It is not as if there was no methods available at the time of consideration of revised lease rent by the first respondent for the reason that the Land Acquisition Act, 1894 [Central Act 1 of 1984] as amended, provides for fixation of market rate. Section 23 of the said Act speaks about Matters to be considered for determining the compensation. Sub-section (1) of Section 23 says that in determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration first, the market value of the land at the date of the publication of the notification under Section 4 (1) of the said Act. The guidelines for fixation of market value under the said Act may be taken note of by the first respondent as the second respondent did not get any cooperation from the District Revenue Officer as to the prevailing market rate for the year 1998 and the first respondent themselves had observed that the Government guidelines do not prescribe any formula for fixation of market value.

17. It is the categorical stand of the petitioner that nowhere in India, such exorbitant annual rent of Rs.2,016/- per acre per annum in respect of lands leased out by the concerned Port Trusts to the Salt Pan manufacturers, has been fixed and it is not seriously disputed by the learned Senior Counsel appearing for the respondents 1 and 2. Insofar as the quinquennial revision and the retrospective date on which the amount is sought to be revised, the lease agreement entered into between the petitioner and the second respondent provides so and therefore, the points in this regard on behalf of the petitioner, deserves rejection. However, in the light of the reasons assigned above, this Court is of the view that rate @ Rs.2,016/- per acre per annum fixed by the first respondent towards annual lease rent per acre per annum deserves reconsideration, but at the same time, in order to protect the interest of the second respondent, the lease rent amount of Rs.1,000/- being paid by the petitioner, pursuant to the judgment dated 22.10.2007 made in W.A.No.3941 of 2003, is to be maintained.

W.P.No.25104 of 2016

18. As per Clause 11.3(c) of the clarifications issued in respect of Policy Guidelines for Land Management by Major Ports, 2014 vide communication of the Ministry of Shipping (Ports Wing), Government of India in No.PD-13017/2/2014-PD.IV dated 17.07.2015, "in case of renewal of existing leases, without renewal option at the end of the lease-term, the land will be put to tender-cum-auction with the first right of refusal to be extended to the existing lessee....".

Admittedly, the said guidelines have not been put to

challenge. The said guidelines also taken care of the valuation of the constructions put up by the earlier lessee in respect of superstructure on the leased land and therefore, whatever improvement made by the petitioner in the lands in question have been taken care of.

19. It is also the stand of the petitioner that adjacent lands have been leased out to them by the Salt Corporation and access to the said lands is only through the lands in question. However, the said fact has not been pleaded but during the course of arguments, the said plea has been raised and it has been denied by the learned Senior Counsel appearing for the respondents 2 and 3. Be that as it may, if the petitioner claims easmentary right, it is for them to workout their remedy in accordance with law before the competent forum and this Court is not expressing any opinion in this regard. The impugned tender notification also says that it is also for the purpose of Salt Pan only. However, clause 11.3 of the clarifications issued in respect of Policy Guidelines for Land Management by Major Ports, 2014 would state that if the land is not required by Port for its own use, the Port should then check whether the land use is consistent with the land use plan and whether the lessees are not in default and thereafter, if it is so, the procedure under clause 11.3(c) to (k) will be adopted for renewal of lease of land outside the custom bond area. In this regard, the second respondent is directed to inform the petitioner as to whether the decision to go for tender/e-auction is preceded by exercise to be carried out in terms of Clause 11.3 (b) of the clarifications issued in respect of Policy Guidelines for Land Management by Major Ports, 2014 vide communication of the Ministry of Shipping (Ports Wing), Government of India in No.PD-13017/2/2014-PD.IV dated 17.07.2015 and till such time, shall defer further decision on tender cum e-auction.

20. In the result,

(a) W.P.No.41444 of 2002 is partly allowed and the impugned order passed by the first respondent in Case No.T.A.M.P./34/2001/TPT dated 27.08.2002 is set aside insofar as the fixation of market value for the lands in question and to arrive at the market value for the year 1998, it is once again remanded to the first respondent for fresh consideration and adjudication and the first respondent may take note of the provisions contained in Land Acquisition Act, 1894 (Central Act 1 of 1894) which was in operation in the relevant field and thereafter re-fix the market value in accordance with law and decide the lease rent per acre per annum. In all other aspects, the order of the first respondent is confirmed. The petitioner till such time, shall continue to pay lease rent @ Rs.1,000/- per acre per annum in terms of the judgment dated 22.10.2007 made in W.A.No.3941 of 2003. No costs.

(b) W.P.No.25104 of 2016 is disposed of and the second respondent is directed to send a communication/information in terms of Clause 11.3(b) of the clarifications and amendments issued in respect of Policy Guidelines for Land Management by Major Ports, 2014 vide, communication of the Ministry of Shipping (Ports Wing), Government of India in No.PD-13017/2/2014-PD.IV dated 17.07.2015, to the petitioner within a period of four weeks from the date of receipt of a copy of this order and till such time, defer further proceedings in respect of the impugned tender cum e-auction notice in No.EST-3/2016-17, No.E(C)56/02/2004-EST published in Hindu News Daily dated 20.06.2016. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

jvm
To

- 1.The Tariff Authority of Major Ports
II Floor, Gate No.30,
Jawaharlal Nehru Stadium,
New Delhi-110 003.
 - 2.The Tuticorin Port Trust,
Tuticorin-628 004.
 - 3.The Deputy Salt Commissioner,
Haddows Road,
Shastri Bhavan, Chennai-6.
 - 4.The Secretary,
The Government of India,
Ministry of Shipping, New Delhi-110 001.
 - 5.The Chairman,
V.O.Chidambaranar Port Trust,
Tuticorin-628 004.
 - 6.The Chief Engineer,
Engineering Department- Civil, Estate
Management Division,
V.O.Chidambaranar Post Trust,
Tuticorin-628 004.
- +1cc to M/s. C.V. Ramachandramurthy, Advocate, S.R.No.49518
+1cc to Mr.A. Kumaraguru, Advocate, S.R.No.49517
+2ccs to G. Hari Hara Arun, S.R.No.49726
+2ccs to M/s. S. Yashwanth, Advocate SR,49575, 49576

CTK(CO)
EU(07/09/2016

in W.P.Nos.41444 of 2002
and 25104 of 2016