

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: September 24, 2018

Judgment delivered on: October 01, 2018

+ W.P.(C) 5235/2018, CM No. 34109/2018
CENTRE FOR PUBLIC INTEREST LITIGATION

..... Petitioner

Through: Mr. Prashant Bhushan, Adv. with
Mr. Pranav Sachdeva, Adv.

versus

UNION OF INDIA & ORS

..... Respondent

Through: Mr. Kirtiman Singh, CGSC with
Mr. Waize Ali Noor,
Mr. Prateek Dhanda and
Mr. Vikramaditya Singh, Advs. for
UOI
Mr. A.S. Chandhiok, Sr. Adv. with Mr.
Ritesh Kumar &
Ms. Ramya Kutty, Advs. for R-2
Mr. Sandeep Sethi, Sr. Adv. with
Mr. Rishi Agarwal, Adv. for R3

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

CM No. 34109/2018 (under Section 151 CPC on behalf of respondent No.1 seeking condonation of 42 days delay in filing the affidavit and taking the same on record.

For the reasons stated in the application, the delay of 42 days in filing the affidavit is condoned. The affidavit is taken on record. Application stands disposed of.

W.P.(C) 5235/2018

1. This petition has been filed in public interest with the following prayers:-

“In the light of the submissions made hereinabove, it is most humbly prayed that this Hon’ble Court may graciously be pleased to;

a) Issue appropriate writ directing the Union of India and Kandla Port Trust to cancel the tender dated 28.03.2014 awarded to respondent No.3 in April 2015 for allotment of land of 50 acres for the purpose of liquid storage tanks Or, in the alternative to direct Respondent no.3 to pay the Port authorities Rs.207 crores along with interest;

b) Pass any other order as this Hon’ble Court may deem fit and proper.”

2. It is the case of the petitioner that the subject matter of the writ petition admeasuring 50 acres of land, is part of 1010 acres of land in Kandla Port, Gujarat allotted on lease to United Salt in 1974. On November 16, 1985, United Salt sold 1010 acres of land to the respondent No.3, Friends Salt Works & Allied Industries (‘FSWAI’ in short) for a consideration of Rs.22 lakhs despite there being no provision for selling lease rights for consideration. The initial leases were not renewable yet they

were renewed on two occasions, some of them retrospectively and without any competitive bidding and also without determining the market rate so as to compute lease rentals. The leases were renewed despite the fact that the original lease holders had transferred leases without the consent of the Central Government. It is the case of the petitioner that despite the period of many leases being over, they continued to be in possession of erstwhile leaseholders and the Union of India made no efforts to evict them.

3. It is the case of the petitioner that lease period of the Salt Firms occupying land at Kandla Port expired on March 31, 2004. Later, Deputy Chairman and Chief Vigilance Office (CVO) of the Kandla Port Trust ('Port Trust' in short) submitted report dated August 03, 2007 on the land scam to the Shipping Ministry and the Central Vigilance Commission. The report stated that the offences under Prevention of Corruption Act, 1988 and various offences like cheating, conspiracy and criminal misconduct are made out against several Senior Officials. In spite of the report, no action whatsoever was taken on the reports and no investigation was made, which forced the petitioner to file W.P.(C) No. 11550/2009 before this Court against the massive

land scam, wherein a writ of mandamus was sought against the Union of India directing it to extract appropriate damages from trespassers on that Government land. The petitioner also sought investigation into the land scam where nearly 16112 acres of land worth lacs of crores of rupees near the Kandla sea port in Gujarat had been leased out to salt manufacturing firms in 1960s and 1970s on nomination basis at negligible rent rates. According to Mr. Prashant Bhushan learned counsel for the petitioner, this Court passed various orders inter-alia directing CBI investigation, ordering eviction of trespassers and auctioning of the Port land after eviction of trespassers. He has drawn our attention to the orders passed by this Court wherein during the course of the hearing, learned Additional Solicitor General representing the Union of India stated that the leases would be put to public auction after fixing the reserved price on the basis of valuation report and also that the proceedings for eviction have been initiated against the persons, who are in unauthorized occupation of the said land area.

4. According to Mr. Bhushan, the Estate Officer directed eviction of FSWAI vide order dated March 31, 2012. After the eviction order was passed, Port Trust had written to FSWAI

calling upon them to remove the inventory, machinery and equipment from the land at its own cost, failing which the Port Trust would remove the machinery. The FSWAI instead of removing its structures, challenged the eviction order in various forums. The challenge made by FSWAI before the Gujarat High Court, this Court and the Supreme Court remained unsuccessful. In pursuance of the same, FSWAI on November 13, 2013 had signed an undertaking whereby they declared that they unconditionally relinquish and withdraw all claims of whatsoever nature with respect to 1010 acres of land.

5. On March 28, 2014, the Port Trust implemented land policy guidelines issued by the Government for all major ports and invited E-tenders cum auction for allotment of land of 50 acres on which FSWAI had constructed the liquid storage tank terminal division. Annexure A of the tender contained a clause whereby the bidders had to compensate FSWAI an amount of around 207 crores, since the said amount was the estimated value of the existing assets standing on the proposed land. Furthermore, FSWAI as a bidder was not liable to pay the abovementioned amount since FSWAI had constructed the said unit. It is the submission of Mr. Bhushan, the prospective bidders

questioned the over valuation of said structure in a pre bid meeting held on August 13, 2014 but the Port authorities dismissed the said query on the ground that the valuation of asset was done by a Government approved valuer as per the provisions of the Land Policy Guidelines, 2014. It is his submission, that the Port authorities conducted the process of valuation of structures built by FSWAI on the 50 acres of land. K.M. Thacker & Associates valued the structures at Rs.207 crores. After receipt of the final report, the Port authorities referred it to Institute of Science & Technology for Advance Studies & Research, Vallabh Vidya Nagar ('ISTAR' in short) for reviewing the same. The ISTAR reviewed the said valuation report and submitted its review report on January 23, 2015. According to Mr. Bhushan, a perusal of the review report highlights the fact that the valuation report prepared by K.M. Thacker & Associates was arbitrary and done with a view to benefit FSWAI. According to him, para 9 of the report categorically states "*the method adopted is prima facie beyond any acceptable method of valuation*"; "*we are not of the opinion of approving this method of valuation*". Further, ISTAR clearly stated in para 8.1 that consideration of land development is justified in following situations, where "*lessee has incurred the*

expenses of land development and covenants of the lease deed provide for compensating him for the same at the time of expiry of the lease and reverting the possession to the lessor”. He states that there was no such clause in the lease agreement of FSWAI. The Port authorities did not have any obligation to compensate FSWAI for the same. Despite the observations of the ISTAR against the review report, the Port authorities went ahead with the valuation of Rs.207 crores. It is his submission that the said valuation was done in collusion with FSWAI to disadvantage other bidders by Rs.207 crores. He stated that no such mandatory obligation was imposed on FSWAI when it bid for the same plot, inasmuch as the said clause was in favour of FSWAI and was introduced to ensure that FSWAI had an upper hand in the tendering process as it would be able to bid the highest and would ultimately be awarded the tender. He stated, in fact on April 17, 2015, the FSWAI was awarded the tender for the said 50 acres of land since it emerged as a highest bidder. This resolution was subsequently approved and a lease deed was entered into between Port Trust and FSWAI. This made the petitioner to file CM No. 15376/2018 in W.P.(C) No. 11550/2009 seeking similar relief prayed in this writ petition i.e cancellation of lease of 50 acres of

land awarded through sham tender to respondent No.3. However, the said application was withdrawn with liberty to file substantive writ petition as the application sought relief in regard to an independent cause of action than of W.P.(C) No. 11550/2009.

6. In substance, it is his submission that there was no mandatory clause in the lease agreement whereby the Port authorities had the contractual obligation to compensate FSWAI. Further, there was a statutory obligation on FSWAI to remove the structures on the expiry of the lease. Also in 2014, FSWAI had relinquished all its rights with respect to 1010 acres of which the concerned 50 acres falls under. Also the structure was clearly over valued given that its cost was reflected at Rs.48 crores in the balance sheet of FSWAI itself and the review report of ISTAR held that the method of valuation was unacceptable. The amount of Rs.207 crores included in the tender was the over value cost of asset of the liquid storage tank terminal division constructed by FSWAI on the said land during the previous lease. The Port authorities instead of directing FSWAI to remove the structures from the land as per the original lease agreement, valued the said structures at Rs.207 crores. Further, the said amount was over valued since the balance sheet of FSWAI, valued cost of the said

structures at Rs.48 crores. The tender contained a clause where bidders other than FSWAI had to pay an additional cost of Rs.207 crores as reimbursement to FSWAI. The introduction of the said clause in the tender is illegal and arbitrary since it was the responsibility of the FSWAI to remove the structures before the expiry of the lease. The additional burden of Rs.207 crores on other bidders put them at a significant disadvantage and ensured that the said tender would be awarded to FSWAI.

7. Mr. Sandeep Sethi, learned Senior Counsel appearing for respondent No.3 FSWAI would contend that the present petition filed by the petitioner challenging the validity of E-tender cum e-auction for allotment of land for the purpose of liquid storage tanks (hazardous / non-hazardous including structures) on 30 years lease on *as is where is basis* at Kandla issued by the respondent No.2 on March 28, 2014, is misconceived and untenable. According to him, this Court lacks territorial jurisdiction to entertain the writ petition as, the petition seeks to challenge an E-tender process, which took place in the State of Gujarat; the properties and assets upon which the subject tender took place are all situated in the State of Gujarat; the lease agreement dated August 04, 2015 entered into between the

answering respondent being the successful bidder and the respondent No.2 took place in the State of Gujarat, no action lies in the territorial jurisdiction of this Court; no relief is prayed for against any party, which falls within the territorial jurisdiction of this Court. He stated that the Subject Tender has already stood the test of law before the High Court of Gujarat in Special Civil Application No.7024/2015, wherein the High Court had dismissed the challenge of an unsuccessful bidder with exemplary costs of Rs.2,00,000/-. He has made extensive submissions on the merit of the controversy as well. He relied upon the following judgments in support of his submissions that this Court lacks territorial jurisdiction.

(i) ***M/s Sterling Agro Industries Ltd. v. Union of India & Ors ILR (2011) VI Delhi 729;***

(ii) ***Kusum Ingots & Alloys Ltd. v. Union of India and Another (2004) 6 SCC 254;***

(iii) ***Union of India and Others v. Adani Exports Ltd. and Another.***

8. Mr. A.S. Chandhiok, learned Senior Counsel appearing for the respondent No.2 has made similar submissions with regard to the maintainability of the writ petition before this Court. According to him, the subject matter in issue is, the land situated

in Gandhidham, Kutch District, Gujarat. The E-auction was conducted in Gujarat; the respondent is situated in Gujarat, all the records and files relevant for the petition are maintained in Gandhidham, Gujarat; that no part of the cause of action has arisen within the jurisdiction of this Court. According to him, merely because the respondent No.1 / UOI has been arrayed as party respondent, the same would not confer any right to the petitioner to file the writ petition before this Court. He also states that no relief has been sought against the respondent No.1. Mr. A.S. Chandhiok has also made extensive submissions on the merit of the issue in the writ petition. The rejoinder affidavit has been filed by the petitioner to the counter affidavit filed by the respondent No.2.

9. Mr. Prashant Bhushan, learned counsel for the petitioner with regard to the plea of the learned counsel for the respondents on this Court lacking territorial jurisdiction to entertain this writ petition submitted that the respondents cannot question the jurisdiction of this Court, in as much as this Court vide various orders in the W.P. (C) 11550/2009 had directed the Port Authorities to get the land vacated and to hold auction of leases of the said land. According to him, it is also pursuant to the

order dated April 20, 2018 passed by this Court in CM 15376/2018, that the petitioner has filed this petition.

10. That apart, he also draws our attention to various provisions of the Major Ports Act, 1963 like Sections 92, 93, 106, 108, 109, 110 and 111 to contend that it is the Central Government, through the Ministry of Shipping and Transport which is the Competent Authority / decision making authority with regard to all aspects relatable to the Port Trust, and as such, this Court shall have the jurisdiction. He also, in his rejoinder submissions dealt with the submissions made by Mr. Sandeep Sethi and Mr. A.S. Chandhiok on the merit of the issue raised in the writ petition.

11. Since, an issue of territorial jurisdiction has been raised by the respondents, we intend to deal with the said issue as the same goes to the root as to the maintainability of the petition in this Court.

12. We agree with the submissions made by Mr. Sandeep Sethi and Mr. A.S. Chandhiok that this Court lacks territorial jurisdiction to entertain the present writ petition. This we say so as the tender document has been issued on April 05, 2014 by the Land Section of the Port Trust based in Gandhidham (at page

121) with regard to allotment of land admeasuring 50 Acres for the purpose of liquid storage tanks based in Kandla. As per the tender, the pre-bid meeting was scheduled on April 22, 2014 at the A.O. Building, Kandla Port Trust, Gandhidham. The tender fees (clause 1.9) and EMD was payable in favour of the Kandla Port Trust at Gandhidham. The Tender fees and EMD was paid in the office of the O.S.D. (E), Kandla Port Trust. The contracting officer was also based at Gandhidham. The meetings with regard to tender were held at Gandhidham. The allotment letter was issued on April 17, 2015 from Gandhidham.

13. The plea of Mr. Prashant Bhushan is, by relying upon the statements made by the learned ASG in W.P. (C) 11550/2009.

The said statements made were only to the following effect:

“The next issue that emerges for consideration pertains to steps required to be taken in respect of grant / renewal of the lease hold rights on the salt land. Mr. A.S. Chandhiok submitted that 6500 acres of land has been demarcated by the Kandla Port Trust to be part of the Special Economic Zone. It is stated that proceedings for eviction have been initiated against persons who are in authorized occupation of the said area. The same shall be finalized with a period of three months from today.

We have been apprised that tenders were called for in respect of 10 plots to arrive at a set price. The plots were of 50 acres and 100 acres. The highest bid obtained in the auction for a 50 acres plot is approximately Rs.2.52 lacs per acre for a period of 30 years but the total payment has to be upfront. As far as 100 acres plots are concerned, the highest bid is approximately Rs.2.75 lacs for each acre for 30 years. Mr. Chandhiok has submitted that this is the price which has been obtained in the tenders and there might be negotiations with the previous lease holder.”

14. The reliance placed by Mr. Prashant Bhushan on the order passed by this Court in an application being CM No. 15376/2018 filed by the petitioner in W.P. (C) 11550/2009 is concerned, this Court in the order dated April 24, 2018 inter-alia stated that the petitioner has sought relief with regard to an independent cause of action and as such the application cannot be entertained in the said writ petition. On such observations of the Court, Mr. Prashant Bhushan has withdrawn the application with liberty to file a substantive writ petition in accordance with law. If that be so, the maintainability of the present petition and more specifically the objection that this Court lacks territorial jurisdiction has to be seen in accordance with the law as laid

down by this Court and the Supreme Court.

15. In support of his submission Mr. Sandeep Sethi has relied upon the judgment of the Supreme Court in the case of ***Union of India and Others vs. Adani Exports Ltd. And Another (2002) 1 SCC 567***. In the said case the Supreme Court was dealing with civil appeal preferred by the Union of India and others challenging the judgment and order of the High Court of Gujarat, allowing the civil applications and granting the relief to the petitioner therein. The issue involved before the High Court pertains to an entitlement of the respondents before the Supreme Court to the benefit of the Passbook Scheme found in para 54 of the Import Export Policy introduced w.e.f. April 01, 1995 in relation to certain credits to be given on export of shrimps. The Union of India challenged the jurisdiction of the High Court on the ground that it lacks of territorial jurisdiction to entertain the civil applications. It was contended on behalf of the Union of India that no part of cause of action based on which the applications were filed arose within the territorial jurisdiction of the High Court at Ahmedabad. Despite, objection being taken, the High Court had rejected the plea of jurisdiction. The Supreme Court in paras 16 to 18 has held as under:

“16. It is clear from the above constitutional provision that a High Court can exercise the jurisdiction in relation to the territories within which the cause of action, wholly or in-part, arises. This provision in the Constitution has come up for consideration in a number of cases before this Court. In this regard, it would suffice for us to refer to the observations of this Court in the case of Oil and Natural Gas Commission v. Utpal Kumar Basu and Ors. (1994 4 SCC 711 at 713) wherein it was held:

“Under Article 226 a High Court can exercise the power to issue directions, orders or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action, wholly or in part, had arisen within the territories in relation to which it exercises jurisdiction, notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories. The expression cause of action means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court.

Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. Thus the question of territorial jurisdiction must be decided on the facts pleaded in the petition, the truth or otherwise of the averments made in the petition being immaterial. (emphasis supplied)”

17. It is seen from the above that in order to confer jurisdiction on a High Court to entertain a writ petition or a special civil application as in this case, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower the court to decide a dispute which has, at least in-part, arisen within its jurisdiction. It is clear from the above judgment that each and every fact pleaded by the respondents in their application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the courts territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the

case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned. If we apply this principle then we see that none of the facts pleaded in Paragraph 16 of the petition, in our opinion, fall into the category of bundle of facts which would constitute a cause of action giving rise to a dispute which could confer territorial jurisdiction on the courts at Ahmedabad.

(Emphasis supplied)

18. As we have noticed earlier, the fact that the respondents are carrying on the business of export and import or that they are receiving the export and import orders at Ahmedabad or that their documents and payments for exports and imports are sent/made at Ahmedabad, has no connection whatsoever with the dispute that is involved in the applications. Similarly, the fact that the credit of duty claimed in respect of exports that were made from Chennai were handled by the respondents from Ahmedabad have also no connection whatsoever with the actions of the appellants impugned in the application. The non-granting and denial of credit in the pass-book having an ultimate effect, if any, on the business of the respondents at Ahmedabad would not also, in our opinion, give rise to any such cause of action to a court at Ahmedabad to adjudicate on the actions complained against the appellants.”

16. Similarly, in *Kusum Ingots & Alloys Ltd. vs. Union of India and Another* (2004) 6 SCC 254, wherein the Supreme Court while considering a similar issue, has in paras 18, 23 and 30 held as under:

“18. The facts pleaded in the writ petition must have a nexus on the basis whereof a prayer can be granted. Those facts which have nothing to do with the prayer made therein cannot be said to give rise to a cause of action which would confer jurisdiction on the Court.

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23. A writ petition, however, questioning the constitutionality of a parliamentary Act shall not be maintainable in the High Court of Delhi only because the seat of the Union of India is in Delhi.

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30. We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum convenience.”

17. Mr. Sandeep Sethi, who had also relied upon the Full

Bench judgment of this Court in *M/s Sterling Agro Industries Ltd. vs. Union of India & Ors.* ILR (2011) VI Delhi 729, this Court by referring to the judgment of the Supreme Court in *Alchemist Ltd. and Another vs. State Bank of Sikkim and Others* (2007) 11 SCC 335, wherein the Supreme Court has referred to its judgments in *Kusum Ingots & Alloys Ltd.* (*supra*) and *Oil & Natural Gas Commission vs. Utpal Kumar Basu* (1994) 4 SCC 711, has in para 20 held as under:

“20. In *Alchemist Ltd. and Anr. v. State Bank of Sikkim and ors.*, (2007) 11 SCC 335, after referring to the decisions in *A.B.C. Laminart (P) Ltd. v. A.P. Agencies*, AIR 1989 SC 1239, *Union of India v. Oswal Woollen Mills Ltd.*, (1984) 2 SCC 646, *State of Rajasthan v. Swaika Properties*, AIR 1985 SC 1289, *Oil and Natural Gas Commission v. Utpal Kumar Basu and others*, (1994) 4 SCC 711, *CBI, Anti-Corruption Branch v. Narayan Diwakar*, (1999) 4 SCC 656, *Union of India v. Adani Exports Ltd.*, (2002) 1 SCC 567, *Kusum Ingots & Alloys Ltd.* (*supra*) and *National Textile Corpn. Ltd. v. Haribox Swalram*, (2004) 9 SCC 786, the Supreme Court expressed the view as follows:

"34. In *Kusum Ingots & Alloys Ltd. v. Union of India*, (2004) 6 SCC 254 : JT (2004) Supp 1 SC 475, the appellant was a Company registered under the

Companies Act having its head office at Mumbai. It obtained a loan from the Bhopal Branch of the State Bank of India. The Bank issued a notice for repayment of loan from Bhopal under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The appellant Company filed a writ petition in the High Court of Delhi which was dismissed on the ground of lack of territorial jurisdiction. The Company approached this Court and contended that as the constitutionality of a parliamentary legislation was questioned, the High Court of Delhi had the requisite jurisdiction to entertain the writ petition.

35. Negating the contention and upholding the order passed by the High Court, this Court ruled that passing of a legislation by itself does not confer any such right to file a writ petition in any Court unless a cause of action arises therefor. The Court stated: (Kusum Ingots case, SCC p. 261, para 20) "20. A distinction between a legislation and executive action should be borne in mind while determining the said question".

*Referring to **ONGC v. Utpal Kumar Basu**, (1994) 4 SCC 711 : JT (1994) 6 SC 1, it was held that all necessary facts must form an "integral part" of the cause of action. The fact which is neither material*

nor essential nor integral part of the cause of action would not constitute a part of cause of action within the meaning of Clause (2) of Article 226 of the Constitution.

36. In National Textile Corporation Ltd. v. Haribox Swalram, (2004) 9 SCC 786 : JT (2004) 4 SC 508, referring to earlier cases, this Court stated that: (SCC p. 797, para 12.1) "12.1 ...the mere fact that the writ petitioner carries on business at Calcutta or that the reply to the correspondence made by it was received at Calcutta is not an integral part of the cause of action and, therefore, the Calcutta High Court had no jurisdiction to entertain the writ petition and the view to the contrary taken by the Division Bench cannot be sustained."

37. From the aforesaid discussion and keeping in view the ratio laid down in a catena of decisions by this Court, it is clear that for the purpose of deciding whether facts averred by the appellant- petitioner would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a material, essential, or integral part of the cause of action. It is no doubt true that even if a small fraction of the cause of action arises within the jurisdiction of the court, the court would have territorial jurisdiction to entertain the suit/petition. Nevertheless it must be a "part of cause of action",

nothing less than that.

38. In the present case, the facts which have been pleaded by the Appellant Company, in our judgment, cannot be said to be essential, integral or material facts so as to constitute a part of "cause of action" within the meaning of Article 226(2) of the Constitution. The High Court, in our opinion, therefore, was not wrong in dismissing the petition." [Emphasis added]"

18. In view of the aforesaid law, to decide whether this Court has the territorial jurisdiction to entertain the writ petition, it is necessary for the petitioner to show that at least a part of cause of action has arisen within the territorial jurisdiction of this Court. There is no dispute that the tender has been issued from Gandhidham, Gujarat. The land for which the tender has been issued is situated in Kutch, Gujarat. The tenders received were considered in Gandhidham, Gujarat. The decision-making authority is also in Gandhidham, Gujarat. The averments in the writ petition are also directed against the Kandla Port Trust and FSWAI which are situated in the State of Gujarat. In fact, there is no averment in the writ petition relating to the tender / award of the same, imputing to the respondent No.1 / Union of India. In

other words, no part of cause of action has arisen within the territorial jurisdiction of this Court. The plea of Mr. Prashant Bhushan by referring to various Sections (as referred to above), of the Major Port Trusts Act, 1963 to contend that the Central Government has role to play in the working of the Kandla Port Trust, is without any merit. The Sections which have been referred to by Mr. Prashant Bhushan primarily relates to the following:-

- (i) Section 92; Prior sanction of Central Government to charge expenditure to capital.
- (ii) Section 93; Works requiring sanction of Board or Central Government.
- (iii) Section 106; Administration report which contemplates Board to submit to the Central Government a detail report of the Administration of the port during preceding year ending 31st day of March.
- (iv) Section 108; Power of Central Government to order survey or examination of works of Board.
- (v) Section 109; Power of Central Government to restore or complete works at the cost of Board.
- (vi) Section 110; Power of Central Government to supersede Board.
- (vii) Section 111; Power of Central Government to issue directions to Board.

19. None of the sections referred by Mr. Prashant Bhushan

relates to a decision to be taken by the Ministry of Shipping and Transport (Central Government) with regard to award of tender. Rather section 94 of the Major Ports Act, 1963, which is reproduced hereunder clearly states that it is the Chairman, who has the power as to execution of works. It is not the case of Mr. Bhushan, that, it is the Central Government which has the power to award the work. Rather, we find, the allotment of lease and the lease itself has been issued and executed by the authorities in Gandhidham (Gujarat).

94. Powers of Chairman as to execution of works:

Notwithstanding anything contained in section 93, the Chairman may direct the execution of any work the cost of which does not exceed such maximum limit as may be fixed by the Central Government in this behalf, and may enter into contracts for the execution of such works but in every such case the Chairman shall, as soon as possible, make a report to the Board of any such directions given or contract entered into by him.

20. Hence, it must be held that no part of cause of action has arisen within the territorial jurisdiction of this Court and the present petition is not maintainable in this Court. Ordered accordingly.

21. The petitioner shall be at liberty to approach the appropriate forum in accordance with law.

V. KAMESWAR RAO, J

CHIEF JUSTICE

OCTOBER 01, 2018/ak/aky

