

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.482 OF 2019

Devkumar Gopaldas Aggarwal and ors. ... Petitioners
V/s.
The Board of Trustees
of The Port of Mumbai and ors. ... Respondents

WITH
WRIT PETITION NO.1439 OF 2018

Noble Fisheries Private Ltd. ... Petitioner
V/s.
The Board of Trustees
of The Port of Mumbai and anr. ... Respondents

WITH
WRIT PETITION NO.1985 OF 2018

Khandelwal Brothers Limited ... Petitioner
V/s.
The Board of Trustees
of The Port of Mumbai and anr. ... Respondents

WITH
WRIT PETITION NO.2179 OF 2018

Baltic Trading Company Private Ltd. ... Petitioner
V/s
The Board of Trustees
of The Port of Mumbai and anr. ... Respondents

WITH
WRIT PETITION NO.2351 OF 2018

J.M.Financial Asset Reconstruction Co. Limited ... Petitioner
V/s.
The Board of Trustees
of The Port of Mumbai and anr. ... Respondents

WITH
WRIT PETITION NO.2695 OF 2018

WITH
WRIT PETITION NO.2707 OF 2018
WITH
WRIT PETITION (ST.) NO.2902 OF 2018
WITH
WRIT PETITION NO.880 OF 2019
WITH
WRIT PETITION NO.881 OF 2019

Hindustan Unilever Limited ... Petitioner
(Formerly known as Hindustan Lever Limited)

V/s.

The Board of Trustees
of The Port of Mumbai and anr. ... Respondents

WITH
WRIT PETITION NO.483 OF 2019

Devkumar Gopaldas Aggarwal and ors. ... Petitioners

V/s.

The Board of Trustees
of The Port of Mumbai and ors. ... Respondents

WITH
WRIT PETITION NO.768 OF 2019

D. Abraham and sons Private Limited ... Petitioner

V/s.

The Board of Trustees
of The Port of Mumbai and ors. ... Respondents

WITH
WRIT PETITION NO.808 OF 2019

Michael Yunus Baluwala and anr. ... Petitioners

V/s.

The Board of Trustees
of The Port of Mumbai and ors. ... Respondents

WITH
WRIT PETITION NO.1438 OF 2019

Soli Shapurji Ragi and ors. ... Petitioners

V/s.

The Board of Trustees
of The Port of Mumbai and anr. ... Respondents

WITH
WRIT PETITION NO.1705 OF 2019

Mukesh Gokal and anr. ... Petitioners
V/s.

The Board of Trustees
of The Port of Mumbai and anr. ... Respondents

WITH
WRIT PETITION NO.1706 OF 2019

Khubsons and ors. ... Petitioners
V/s.

The Board of Trustees
of The Port of Mumbai and ors. ... Respondents

WITH
WRIT PETITION NO.2110 OF 2019

Dalal Brothers Freight Forwarding Pvt. Ltd. & ors.... Petitioners
V/s.

The Board of Trustees
of The Port of Mumbai and ors. ... Respondents

WITH
WRIT PETITION NO.2944 OF 2019

Fakharuddin Fidaaly Potta ... Petitioner
V/s.

The Board of Trustees
of The Port of Mumbai and anr. ... Respondents

WITH
WRIT PETITION NO.3002 OF 2019

Bhausahab Bhikaji Gunjal and anr. ... Petitioners
V/s.

The Board of Trustees
of The Port of Mumbai and anr. ... Respondents

WITH

WRIT PETITION NO.3021 OF 2019

D. Abraham and sons Private Limited ... Petitioner

V/s.

The Board of Trustees
of The Port of Mumbai and anr. ... Respondents

AND

WRIT PETITION NO.3401 OF 2019

A Jaffer and ors. ... Petitioners

V/s.

The Board of Trustees
of The Port of Mumbai and ors. ... Respondents

Mr. Viren Asar, Mr. Farid Karachiwala, Ms. Sneh Parikh, Mr. Mahek Chheda, Mr. Ahura Postwala i/by J.Sagar Associates for Petitioner in WP/1439/2018, WP/1985/2018, WP/2179/2018, WP/768/2019, WP/808/2019, WP/1438/2019, WP/1705/2019, WP/1706/2019, WP/2110/2019, WP/2944/2019, WP/3002/ 2019, WP/3021/2019 and WPL/3401/2019.

Mr. Viren Asar a/w Ms.Shweta Shah, Ms.Jyoti Arora, Mr.Gaurav Gopal, Ms.Vyomi Chande i/by M/s Wadia Ghandy and Company for Petitioner in WP/2351/2018.

Mr. Daraius Khambata, Senior Advocate i/b. Dalal & Co. for the Petitioner in WP/482/2019 and WP/483/2019.

Mr. Shyam Mehta, Senior Advocate a/w. Mr. Viren Asar, Mr. Rupesh Geek, Ms. Jyoti Arora, Ms. Sweta Shah, Mr. Shantanu Asar i/by Parinam Law Associates for Petitioner in WP/2695/2018, WP/2707/2018, WP/2902/2018, WP/880/2019 and WP/881/2019.

Mr. Shrihari Aney, Senior Advocate a/w Mr. Narendra Walawalkar, Senior Advocate a/w. Ms. Roopadaksha Basu and Mr. Harsha Asnani i/by M/s The Law Point for the Respondent Nos.1 and 2 in all the matters.

Mr. Soheb Sheikh i/by M/s Desai Carrimjee and Mulla for Respondent No.4 in WP/482/2019.

Mr. K. H. Halai a/w. Mr. Pratyush Ranjan and Mr.Yash Jain i/by M/s Halai and Co. for Respondent No.3 in WP/482/2019.

CORAM : UJJAL BHUYAN, J.
Reserved on : JANUARY 16, 2020
Pronounced on : JUNE 09, 2020

JUDGMENT AND ORDER:

This order will dispose of all the above noted writ petitions.

2. Heard Mr. Daraius Khambata and Mr. Shyam Mehta, learned senior counsel along with Mr. Viren Asar, learned counsel for the petitioners. Also heard Mr. Shrihari Aney and Mr. Narendra Walawalkar, learned senior counsel along with Mr. R. Basu and Mr. H. Asnani, learned counsel for respondent Nos.1 and 2 in all the cases; Mr. K.H. Halai, learned counsel has appeared for respondent No.3 in Writ Petition No.482 of 2019; and Mr. Soheb Sheikh, learned counsel for respondent No.4 in Writ Petition No.482 of 2019.

3. Writ Petition No.482 of 2019 was argued by learned counsel for the parties as the lead case and any decision rendered therein will cover all the remaining 20 writ petitions. Therefore, Writ Petition No.482 of 2019 is taken up as the lead case and the factual narratives and submissions would be in the context of the said writ petition.

4. By filing this petition under Article 226 of the Constitution of India, petitioners seek quashing of order dated 15.02.2018 passed by respondent No.2 in Case No.EO/E(63)(63-A) of 2001, rather quashing of all the orders passed by respondent No.2 in the said case, and further seeks quashing of proceedings in Case No.EO/E(63)(63-A) of 2001 as well. Be it stated that by the impugned order dated 15.02.2018, respondent No.2 who is the Estate Officer of Mumbai Port Trust has rejected the application of the petitioners questioning his jurisdiction to adjudicate Case No.EO/E(63)(63-A) of 2001 under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

5. It may be mentioned that the writ petition was amended pursuant to order of this Court dated 05.07.2019.

Pleadings

6. Respondent No.1 is the Board of Trustees of the Port of Mumbai, a statutory corporation constituted under the provisions of the Major Port Trusts Act, 1963. Originally predecessor in title of respondent No.1 i.e., the Secretary of State for India in Council had granted leasehold right of seven contiguous plots of land together admeasuring about 29,434.75 square metres or thereabouts, all situated at Reay Road, Darukhana, Mumbai by way of seven separate indentures of lease to Mazgaon Manufacturing Company Limited and Framji Petit Spinning & Manufacturing Company Limited together with buildings, godowns etc. standing thereon. Particulars of the seven leases have been provided by the petitioners in the following two tabular formats:-

Sr. No.	Plot No.	Area (Sq.Mtrs.) (Approx.)	Documents of Lease
1	122	18,922.48	Indenture of Lease dated 18.03.1880
2	122		Indenture of Lease dated 24.10.1882
3	145	919.74	Indenture of Lease dated 10.02.1881
4	333	2,839.40	Indenture of Lease dated 08.07.1885
5	412	2,244.53	Indenture of Lease dated 08.07.1885
6	413	3,702.00	Indenture of Lease dated 08.07.1885
7	581	806.58	Indenture of Lease dated 18.08.1891

Sr. No.	Plot (Old R. No.)	Document	Period	Lessees
(i)	122	Indenture of Lease dated 18.03.1880	99 years from 10.12.1879	Mazgaon Manufacturing Co. Ltd.
(ii)	122	Indenture of Lease dated 24.10.1882	97 years and 6 months from 10.06.1881	Framji Petit Spinning and Manufacturing Co. Ltd.
(iii)	145	Indenture of Lease dated 10.02.1881	99 years from 10.12.1879	Mazgaon Manufacturing Co. Ltd.
(iv)	333	Indenture of Lease dated 08.07.1885	93 years and 6 months from 10.06.1885	Framji Petit Spinning and Manufacturing Co. Ltd.

(v)	412	Indenture of Lease dated 08.07.1885	93 years and 6 months from 10.06.1885	Framji Petit Spinning and Manufacturing Co. Ltd.
(vi)	413	Indenture of Lease dated 08.07.1885	93 years and 6 months from 10.06.1885	Framji Petit Spinning and Manufacturing Co. Ltd.
(vii)	581	Indenture of Lease dated 18.08.1891	87 years and 4 months from 10.08.1891	Framji Petit Spinning and Manufacturing Co. Ltd.

7. All the aforementioned leases contained identical terms and conditions but for varying periods though validity of all the seven leases were upto 10.12.1978 with right of renewal.

8. By two deeds of assignment dated 09.05.1935 and 09.07.1936, the lessees above named assigned their leasehold rights under the respective indentures of lease to one Shri Tulsiram Devidayal (since deceased). Thus the said late Tulsiram Devidayal had become the lessee of respondent No.1 in respect of the land and property covered by the said seven indentures of lease, referred to hereinafter as 'the said premises'. Consequently, bills of lease rent were issued by respondent No.1 in favour of late Tulsiram Devidayal as lessee of the said premises which were duly paid.

9. Late Tulsiram Devidayal out of his natural love and affection and for the benefit of his family created a private family trust known as 'Tulsiram Devidayal Trust' by a registered deed of settlement / trust deed dated 02.02.1943. Under the said deed of settlement late Tulsiram Devidayal settled the said premises upon Tulsiram Devidayal Property Trust i.e., petitioner No.3, also referred to as the Trust, as per terms and conditions mentioned therein. Therefore, according to the petitioners, petitioner No.3 i.e., the Trust became the lessee of respondent No.1 with respect to the said premises.

10. Be it stated that under the said deed of settlement / trust deed dated

02.02.1943 late Tulsiram Devidayal appointed himself and his two sons Gopaldas Tulsiram Devidayal (since deceased) and Harkisondas Tulsiram (since deceased) as trustees of the Trust.

11. Ultimately, under a registered deed of appointment of new trustees dated 10.08.1977, a new Board of Trustees of the Trust was appointed which included petitioner Nos.1 and 2 and respondent No.3.

12. However, respondent No.1 through its Estate Manager's letter dated 25.08.1977 objected to appointment of such trustees without its consent. Petitioner No.3 vide letter dated 13.09.1977 denied existence of any condition in the seven indentures of lease requiring prior sanction of respondent No.1. It was also pointed out that appointment of the trustees was for the purpose of managing and administration of the entire estate vested in the Trust and that it did not amount to transfer of the said premises to the new trustees. It is stated that the above stand of the Trust was accepted by respondent No.1 and accordingly the Deputy Legal Advisor of respondent No.1 advised the Estate Manager of respondent No.1 by his letter dated 19.01.1978 to take on rent roll records the names of the new trustees in respect of the said premises.

13. It is stated that vide letter dated 17.02.1978 lawyers of respondent No.1 informed lawyers of the Trust that the aforesaid seven leases would be renewed by respondent No.1. In the meanwhile the terms of the seven leases in respect of the said premises expired on 10.12.1978 by efflux of time though prior thereto the Trust had requested respondent No.1 to renew the said seven leases for a further period of 99 years.

14. Though the validity of the leases had expired by efflux of time, respondent No.1 continued to issue lease rent bills thereafter which were paid by the Trust.

15. Ultimately, respondent No.1 through its Estate Manager issued letter dated 22.05.1984 informing the Trust that respondent No.1 had decided not to renew the said seven leases, contending that existence of a renewal clause did not cast an obligation to renew the said leases.

16. The above stand of respondent No.1 was contested by the Trust i.e., petitioner No.3 by various correspondences. Ultimately the Trust filed Writ Petition No.63 of 1985 before this Court which was however dismissed vide order dated 18.01.1985. SLP No.10479 of 1993 filed by the Trust was dismissed by the Supreme Court vide order dated 29.08.1997 though it was clarified that such dismissal was without prejudice to the rights and contentions of the parties thereto.

17. At that stage the Trust i.e., petitioner No.3 instituted a suit before this Court being Suit No.3235 of 1997 seeking a decree against respondent No.1 for execution of separate leases in respect of each of the seven plots covered by the seven leases.

18. Thereafter respondent No.1 issued letter dated 08.05.1999 addressed to the Trust terminating the holding over of lease in respect of the said seven leases, calling upon the lessees to hand over possession of the said premises and to pay arrears of compensation and other charges quantified at Rs.28,56,84,644.01. The Trust however denied the claim of respondent No.1.

19. Notwithstanding pendency of the suit, respondent No.1 instituted proceeding before the Estate Officer of respondent No.1 under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, briefly the PPE Act hereinafter, seeking arrears of compensation and other charges quantified at Rs.28,56,84,644.01 against petitioner Nos.1, 2, 3, respondent Nos.3, 4 and other persons. In the said proceeding, which was registered as Case No.EO/E(47)(47-A) of 1999, respondent No.1 pleaded that it did not recognize the Trust i.e., petitioner

No.3 and its trustees as lessees of the said premises; only seven trustees were recognised as joint lessees of the said premises. Upon receipt of show cause notice, respondents in the said proceeding appeared before the Estate Officer and filed their respective written statements.

20. Subsequently respondent No.1 filed another petition on 16.04.2001 before the Estate Officer of respondent No.1 under the PPE Act seeking eviction and claiming compensation against the above persons including the Trust, which was registered as Case No.EO/E(63)(63-A) of 2001 against the above persons including the Trust. Similar stand as in Case No.EO/E(47)(47-A) of 1999 was taken in this proceeding by respondent No.1. Upon show cause notices issued by the Estate Officer, the respondents in Case No.EO/E(63)(63-A) of 2001 appeared and filed their respective written statements. It is stated that the said proceeding was conducted by various Estate Officers of respondent No.1 from time to time including by Mr. A. S. Sengar, respondent No.2, with effect from 18.12.2014.

21. In the meantime Suit No.3235 of 1997 was dismissed by this Court vide order dated 04.07.2013. Against such dismissal, the Trust i.e., petitioner No.3 and the trustees filed Appeal No.22 of 2014. It is stated that the said appeal was admitted on 11.02.2014 and is now pending for final hearing.

22. After respondent No.2 took over the proceedings in Case No.EO/E(63)(63-A) of 2001 as the Estate Officer, petitioners herein along with respondent No.4 and late Shyam Sunder Gopaldas Aggarwal filed a miscellaneous application on 14.07.2017 challenging the jurisdiction of Mr. A. S. Sengar i.e., respondent No.2 to hear, try and entertain Case No.EO/E(63)(63-A) of 2001 as the Estate Officer. In the said application reference was made to notification dated 11.04.2014 published in the Official Gazette of India by the Ministry of Shipping (Ports Wing) whereby three Estate Officers including Mr. A. S. Sengar came to be appointed by the Central Government for the purposes of the PPE Act in respect of all the

premises belonging to or taken on lease by or on behalf of the Board of Trustees of the Port of Mumbai constituted under Section 3 of the Major Port Trusts Act, 1963 and all the properties belonging to the erstwhile Bombay Dock Labour Board now vested with the government in terms of notification bearing SO 113 (E) dated 25.02.1995 other than official residences and those falling within the jurisdiction of the respective departments. Thereafter another gazette notification was published on 08.07.2015 appointing three more Estate Officers in respect of properties belonging to the erstwhile Bombay Dock Labour Board now vested with the government in terms of notification bearing GSR 545 (E) dated 08.07.2015, other than official residences and those falling within the jurisdiction of the respective departments. Reference was made to Section 3(b) of the PPE Act as per which the Central Government may by notification in the official gazette define the local limits within which or the categories of public premises in respect of which the Estate Officers shall exercise the powers conferred and perform the duties imposed on Estate Officers by or under the said Act as well as to the rule making provision i.e., Section 18, more particularly sub-section 2(c) thereof, as per which the Central Government has been conferred the power to make such rules providing for distribution and allocation of work to Estate Officers and transfer of any proceeding pending before an Estate Officer to another Estate Officer. Reference was also made to Rule 6 of the Public Premises (Eviction of Unauthorized Occupants) Rules, 1971, briefly the PPE Rules hereinafter, which deals with transfer of pending proceedings. As per this provision power is vested in the Central Government or any gazetted officer especially authorized by the Central Government in this behalf by notification in the official gazette to transfer any proceeding pending before an Estate Officer to another Estate Officer. It was in that context that jurisdiction of the Estate Officer Mr. A. S. Sengar i.e., respondent No.2 to adjudicate Case No.EO/E (63)(63-A) of 2001 was questioned.

23. Respondent No.1 submitted reply on 08.09.2017 to the said miscellaneous application disputing the contentions advanced by the petitioners and contended

that respondent No.2 had the jurisdiction to adjudicate the said proceeding. In this connection mention was made about the letter dated 23.07.2015 of the Under Secretary to the Government of India, Ministry of Shipping addressed to the Chairman, Mumbai Port Trust and endorsement of the Chairman dated 27.07.2015 to the Chief Law Officer and Advocate (Incharge) for distribution of work to Estate Officers. Thereafter, the distribution and allocation was done by the Chief Law Officer and Advocate (Incharge). It was contended that the said work of allocation and distribution was of administrative nature permissible under Section 29 of the Major Port Trusts Act, 1963.

24. Petitioners filed rejoinder to the said reply wherein it was pointed out that no rule has been made under Section 18(2)(c) of the PPE Act for distribution and allocation of work to Estate Officers. In the absence of such a rule, respondent No.2 could not have assumed jurisdiction over the case. That apart, power of appointment of Estate Officer is with the Central Government, subject to certain conditions. Entrustment of work by the Chairman was not in conformity, rather inconsistent with the provisions of the PPE Act. In addition, the order dated 27.07.2015 was only a noting made on the Central Government letter dated 23.07.2015 which could not be construed as a valid and lawful delegation or exercise of any power as far as distribution or allocation of work to Estate Officers was concerned.

25. As part of the hearing, petitioners submitted summary of arguments and compilation of judgments which was replied to by respondent No.1 to which rebuttal was filed by petitioners and respondent No.4.

26. However, by the order dated 15.02.2018, respondent No.2 rejected the said miscellaneous application filed by the petitioners. It was held that there was no irregularity in the allocation and distribution of work which was purely an administrative decision. Respondent No.2 has the jurisdiction to hear and decide

the eviction proceeding against the petitioners.

27. Aggrieved, present writ petition has been filed.

28. In terms of order dated 05.07.2019 the writ petition was amended bringing on record subsequent development and an additional prayer.

29. Tenure of respondent No.2 Mr. A. S. Sengar as Estate officer ended on 10.04.2019. Since then the said case i.e., Case No.EO/E(63)(63-A) of 2001 has not been distributed and allocated.

30. Thereafter, Central Government issued gazette notifications dated 29.12.2017, 27.03.2018 and 17.05.2019 appointing seven more Estate Officers, all in respect of one category of premises, namely, all premises belonging to or taken on lease by or on behalf of the Board of Trustees of the Port Trust of Mumbai constituted under Section 3 of the Major Port Trusts Act, 1963 and all the properties belonging to the erstwhile Bombay Dock Labour Board now vested with the government in terms of notification bearing SO 113 (E) dated 25.02.1995. It is stated that though at present there are nine Estate Officers conducting matters, there are no 'local limits' defined, there being no gazette notification of the Central Government with respect to 'distribution and / or allocation' between the said Estate Officers. Apprehension has been expressed that Case No.EO/E(63)(63-A) of 2001 will now also be distributed and allocated in the same manner as was distributed and allocated to respondent No.2 Mr. A. S. Sengar earlier.

31. In so far the additional prayer is concerned, the same is for setting aside and quashing all the orders passed by respondent No.2 in Case No.EO/E(63)(63-A) of 2001 which has already been mentioned in the beginning of the judgment.

32. Respondent No.1 has filed two affidavits in reply, one prior to amendment

of the writ petition and the second after amendment which will be referred to as additional affidavit in reply.

33. In the affidavit in reply, respondent No.1 has stated that Central Government in exercise of powers conferred by Section 3 of the PPE Act issued notification dated 11.04.2014 appointing officers of the Mumbai Port Trust holding class 1 post which is equivalent to the rank of gazetted officer of the Government of India to be Estate Officer for the purpose of exercising powers conferred and performing duties imposed on the Estate Officer under the said Act. Respondent No.2 who had passed the impugned order was appointed as an Estate Officer vide the said notification dated 11.04.2014 which authorized the concerned Estate Officer to deal with 'all premises belonging to or taken on lease by or on behalf of the Board of Trustees of the Port of Mumbai ...'. Stand taken by respondent No.1 is that allocation and distribution of cases is a work which is administrative in nature. PPE Act does not provide for any provision or mandatory rule for allocation or distribution of matters. In the absence of such statutory guidance and for the just, efficient and speedy disposal of the matters the work of allocation and distribution has been entrusted by the Chairman through the Secretary to the Board under Section 29 of the Major Port Trusts Act, 1963 to the Chief Law Officer and Advocate (Incharge) vide the written order dated 27.07.2015.

33.1. Thereafter respondent No.1 has narrated the brief history and factual background of the case. It is specifically contended that petitioner Nos.1 and 2 and respondent No.3 along with Shri Shyam Sunder Gopaldas Aggarwal, Shri Keval Kishan Aggarwal, Shri Omprakash Tulsiram Aggarwal (deceased) and Amirchand Tulsiram Gupta (deceased) were accepted as joint tenants of respondent No.1 in respect of the said premises. The aforementioned persons were accepted as joint lessees in their individual capacity which was communicated to them by respondent No.1 vide letter dated 30.05.1978. It is stated that respondent No.1

never recognized the Trust i.e., petitioner No.3 and /or its trustees as the lessee of respondent No.1.

33.2. All the leases under which the said premises were granted by respondent No.1 came to an end on 10.12.1978 but the said leases were never renewed. However the erstwhile lessees continued in occupation of the said premises in the capacity of holding over tenants. Ultimately, respondent No.1 terminated the holding over of the seven joint lessees in respect of the said premises vide notice dated 08.05.1999. They were called upon to hand over the vacant and peaceful possession of the said premises together with the structures standing thereon on expiry of the notice period and also to pay the arrears of compensation and other charges quantified at Rs.28,56,84,644.01.

33.3. As the joint tenants failed to comply with the said notice, respondent No.1 initiated proceeding against them as well as against the Trust which was registered as Case No.EO/E(47)(47-A) of 1999 seeking arrears of rent along with interest for wrongful use and unauthorized occupation.

33.4. Respondent No.1 also initiated proceeding under the PPE Act against the joint lessees as well as the Trust and its trustees for handing over the vacant and peaceful possession of the said premises to respondent No.1 as well as for payment of damages for unauthorized occupation. The same was registered as Case No.EO/E(63)(63-A) of 2001.

33.5. It is stated that on 14.07.2017 petitioners along with Shri Shyam Sunder Gopaldas Aggarwal, Shri Atam Prakash Omprakash Aggarwal and Shri Yogesh Aggarwal filed a miscellaneous application challenging jurisdiction of the Estate Officer to entertain the aforementioned eviction proceeding. Respondent No.1 filed detailed reply objecting to the said miscellaneous application.

33.6. After considering the respective submissions, Estate Officer passed the impugned order dated 15.02.2018 rejecting the challenge to his jurisdiction which has been assailed in the present writ proceeding.

33.7. It is contended that the Central Government notification dated 11.04.2014 authorized the concerned Estate Officer to exercise jurisdiction with respect to all premises belonging to respondent No.1 except official accommodation of respondent No.1. It is asserted that vide written order dated 27.07.2015 Chairman of respondent No.1 had authorized the Chief Law Officer and Advocate (Incharge) to allocate cases to various Estate Officers. Allocation of cases to Estate Officers is an administrative function and in the absence of any bias or mala fide, the challenge made by the petitioners in the present writ proceeding would not be sustainable. In such circumstances, respondent No.1 seeks dismissal of the writ petition.

34. In the additional affidavit in reply, respondent No.1 has stated that by gazette notifications dated 29.12.2017, 27.03.2018 and 17.05.2019 the following seven individuals were appointed as Estate Officers:-

1. K. B. Bavdekar
2. N. V. Sapkal
3. B. Dinkar
4. A. W. Kardhekar
5. S. K. Sharma
6. R. R. Mane
7. S. B. Mahale

34.1. Respondent No.1 has denied that appointment of such Estate Officers is faulty or allocation of matters to them is irregular. It is further contended that petitioners have failed to make out any case substantiating violation of any of their legal rights. In the absence of such violation or infringement of legal right, the writ

petition would not be maintainable. Allocation and distribution of work are merely procedural formalities and does not affect the substantive rights of the parties. Allocation of matters is an administrative function, and not judicial or quasi-judicial.

34.2. Jurisdiction of respondent No.2 to adjudicate the eviction proceeding flows from the gazette notification dated 11.04.2014 issued under Section 3 of the PPE Act. It is contended that if the conditions prescribed under Section 3(a) and (b) are fulfilled, appointment of an Estate Officer and the power vested in him by virtue of the PPE Act cannot be questioned by parties to such eviction proceeding.

34.3. Respondent No.1 has stated that notification dated 11.04.2014 appointing respondent No.2 as the Estate Officer was published in the official gazette and had also prescribed the category of premises in respect of which he i.e., respondent No.2 was authorized to exercise his powers. Merely because local limits were not prescribed and the Estate Officers have concurrent jurisdiction to deal with similar categories of premises, the same would not invalidate appointment of respondent No.2 and neither would it curtail the jurisdiction of the Estate Officer i.e., respondent No.2 to adjudicate eviction proceeding pertaining to the premises falling under such category. It is asserted that as the jurisdiction of respondent No.2 as Estate Officer flows from the operation of the Act, lack of any rule regarding allocation and distribution of matters does not impair the jurisdiction of respondent No.2 to try the eviction proceeding in question.

34.4. Power vested with the Central Government regarding framing of rules is directory in nature. Therefore, the statutory powers of an Estate Officer cannot be curtailed on such issue. Rules are subservient to the Act and they are framed to further the objects of the Act. Any rule or absence thereof cannot restrict the powers vested in an authority under the parent Act. When a statute confers power on an authority to do certain acts or exercise power in respect of certain matters,

the exercise of such power does not depend on the existence of rules unless the statute expressly provides for the same.

34.5. In the present case petitioners have not alleged any bias or mala fide against respondent No.2. In the absence of any bias or mala fide, challenge of the petitioners to the jurisdiction of respondent No.2 would not survive. Mere allocation of a matter to respondent No.2 by a representative of respondent No.1 would not imply any bias on the part of respondent No.2. Allocation of matters has been done serially as per appointment of Estate Officers in the gazette notifications issued by the Central Government from time to time to avoid unequal distribution of matters between different Estate Officers. Rule making authority in its wisdom has decided not to frame any rules for allocation and distribution of matters to Estate Officers. That would not curtail or restrict the jurisdiction of the Estate Officer to adjudicate any matter as long as he is appointed as the Estate Officer in the Central Government gazette notification.

34.6. It is therefore contended that respondent No.2 has the authority and power to adjudicate the eviction case against the petitioners. Accordingly, the impugned order as well as all the orders passed by him in the concerned eviction proceeding are valid and lawful. Respondent No.1, therefore, seeks dismissal of the writ petition.

35. Petitioner No.1 on behalf of the petitioners has filed re-joinder affidavit. Stand taken is that respondents have failed to demonstrate that respondent No.2 is an officer of respondent No.1 holding class 1 post which is equivalent to the rank of a Gazetted Officer of the Government of India. In addition, under the gazette notification dated 11.04.2014 three other officers of respondent No.1 i.e., K. B. Bavdekar, K. L. Sache and P. K. Sinha were appointed as Estate Officers of respondent No.1 along with respondent No.2 i.e., A. S. Sengar in respect of the categories of public premises mentioned therein. While K. B. Bavdekar was

appointed in respect of all official residential accommodation belonging to Mumbai Port Trust and the erstwhile Bombay Dock Labour Board now vested with the government in terms of notification SO 113(E) dated 25.02.1995 and allotted to employees and ex-employees; the other three officers including respondent No.2 were appointed in respect of all premises belonging to or taken on lease by or on behalf of the Board of Trustees of the Port of Mumbai and all the properties belonging to the erstwhile Bombay Dock Labour Board now vested with the government in terms of the aforesaid notification except official residence. The question therefore and which respondent No.2 failed to consider is when there were three officers concurrently appointed as Estate Officers for the latter category of public premises then how respondent No.2 assumed jurisdiction in respect of the particular case in question. Respondent No.1 has also failed to demonstrate as to how respondent No.2 exercised jurisdiction in respect of the case of the petitioners. Besides the gazette notification dated 11.04.2014 does not define the 'local limits' within which the three Estate Officers including respondent No.2 were required to exercise powers and perform their duties.

35.1. Petitioners have denied that in the context of the statutory framework, allocation and distribution of cases can be construed as an administrative function. In any case prerogative of allotment and distribution of matters to the Estate Officers vests entirely with the Central Government and not with any other authority much less any officer of respondent No.1.

35.2. It is reiterated that the order dated 27.07.2015 was no order at all in the eye of law as it was only a noting made on the Central Government letter dated 23.07.2015. Besides, a reading of Section 29 of the Major Port Trusts Act, 1963 would reveal that no power is conferred on the Chairman or any officer of respondent No.1 to perform the work of allocation and distribution of cases to any of the Estate Officers of respondent No.1.

35.3. Allegation of respondent No.1 that petitioners had filed the miscellaneous application challenging the jurisdiction of respondent No.2 with the intention of delaying the proceedings has been denied, stating that petitioners had not indulged in any such dilatory tactics.

35.4. Petitioners have reiterated that respondent No.2 does not possess the necessary and / or validly delegated authority to try, entertain and conduct the eviction proceeding against the petitioners. In such circumstances, absence of bias or mala fide becomes irrelevant. Therefore, the prayers made in the writ petition may be allowed.

Submissions

36. Mr. Khambata, learned senior counsel leading the arguments for the petitioners at the outset refers to Section 3 of the PPE Act and submits that the procedure for appointment and conferment of jurisdiction upon an Estate Officer for the purposes of the said Act is provided in Section 3. Power is conferred on the Central Government to appoint by notification in the official gazette individuals as Estate Officers for the purposes of the Act. Secondly, the Central Government has the authority to define the local limits within which or the categories of public premises in respect of which the Estate officers are to exercise jurisdiction. However the PPE Act neither specifies the number of Estate Officers that would be appointed for all the public premises within the local limits or category; nor does it specify as to how it would be decided which Estate Officer would try a given case within that local limit or category.

36.1. Mr. Khambata thereafter referred to Section 18 of the PPE Act which confers power on the Central Government to frame rules. Particular reference has been made to sub-section (2)(c) as per which rules made by the Central Government may provide for the distribution and allocation of work to Estate Officers and the transfer of any proceeding pending before an Estate Officer to

another Estate Officer. Though PPE Rules have been framed which also deals with transfer of pending proceedings before an Estate Officer to another Estate Officer, admittedly no rules have been framed by the Central Government in respect of allocation and distribution of work to Estate Officers.

36.2. Asserting that it is only the Central Government that is empowered by Section 3 of the PPE Act to appoint individuals as Estate Officers and to define the local limits within which or the categories of public premises in respect of which they shall exercise powers and to perform duties and to demarcate their respective jurisdictions, he has elaborated the manner in which the Central Government can proceed in this regard. In support of his contention he submits that when a statute empowers an authority to do a certain thing in a certain way the thing must be done in that way only or not at all. Referring to the decision of the Supreme Court in *Municipal Corporation of Greater Mumbai Vs. Abhilash Lal*, **2019 SCC Online 1479**, he submits that this principle of administrative law as articulated in *Nazir Ahmed Vs. Emperor*, **AIR 1936 PC 253** has found wide acceptance. Extending the principle further, he submits that Delhi High Court in *Prof. Ramesh Chandra Vs. University of Delhi*, **2010 (1) SCT 261**, has held that if a statute empowers a specific body to exercise power, it must be exercised by that body alone and no other body can usurp or exercise that power without the authority of law.

36.3. Mr. Khambata thereafter has referred to Central Government gazette notification dated 11.04.2014 whereby multiple officers of the Mumbai Port Trust including respondent No.2 were appointed as Estate Officers for the purpose of the PPE Act in respect of the premises specified in the said notification without defining the local limits. Multiple Estate Officers were appointed for the same category of public premises without delineation or allotment of work. He has asserted that there has been no allocation or distribution of the case of the petitioners to the Estate Officer Mr. A. S. Sengar i.e., respondent No.2 and therefore respondent No.2 has acted without jurisdiction.

36.4. Responding to the stand taken by respondent No.1 that allocation and distribution of work is an administrative function which has been entrusted by the Chairman of the Board to the Chief Law Officer and Advocate (Incharge) by written order dated 27.07.2015 which power can be traced to Section 29 of the Major Port Trusts Act, 1963, Mr. Khambata submits that Under Secretary to the Government of India, Ministry of Shipping, had issued letter dated 23.07.2015 to the Chairman of the Mumbai Port Trust enclosing therewith 40 copies of the gazette notification dated 08.07.2015 whereby three officers were appointed as Estate Officers in respect of the same category of public premises. The said letter dated 23.07.2015 bore two hand written endorsements both dated 27.07.2015. In one endorsement marked to the Secretary of the Board by the Chairman of respondent No.1 it was mentioned that Estate Officers may be given PPE cases stating that it was urgent. The second endorsement was by the Secretary of the Board marked to the Chief Law Officer and Advocate (Incharge) wherein it was mentioned that there were six Estate Officers; half day work for each one be earmarked in both the sessions so that they could conduct hearings on day to day or at least on alternate day basis, further stating that it was to be done immediately.

36.5. In the above context learned counsel submits that even if the above endorsements are construed as orders, there was still no actual allocation or distribution of cases to the Estate Officers including allotment of the petitioners' case to respondent No.2. In any event, reliance by respondent No.1 on the notification dated 08.07.2015 is entirely misplaced since respondent No.2 was appointed as Estate Officer by the gazette notification dated 11.04.2014 and not by the gazette notification dated 08.07.2015. He further points out that as a matter of fact respondent No.2 took up the case of the petitioners on 18.12.2014 prior to the endorsement dated 27.07.2015. Therefore, he contends that respondent No.2 was not and could not have been allotted petitioners' case pursuant to such endorsement. His further contention is that any demarcation of jurisdiction by

allocation or distribution cannot be done by respondent No.1 or by its officers; under the PPE Act only the Central Government is empowered to do so. Pertinently, he submits that Estate Officers discharge quasi-judicial functions and therefore they have to be independent and impartial, this being the scheme of the PPE Act. Respondent No.1 being a litigant before Estate Officer cannot appoint or allocate matters to Estate Officers.

36.6. Next contention of Mr. Khambata is that if allocation / distribution of work by respondent No.1 is removed, there still remained plurality and concurrency of jurisdiction amongst multiple Estate Officers. This he submits is violative of Article 14 and thus bad in law. In support of this contention, he has placed reliance on the decision of the Supreme Court in *Commissioner of Customs Vs. Sayed Ali*, (2011) 3 SCC 537 and also on the following High Court decisions:-

1. *Shri Balaji Rice Company Vs. Commercial Tax Officer No.1, Nellore*, 55 STC 292 (AP);
2. *Shivaramakrishnan Vs. State of Kerala*, 99 STC 473 (Ker.); and
3. *Mangali Impex Ltd. Vs. Union of India*, 335 ELT 605 (Del.).

36.7. Relying on the above decisions, Mr. Khambata submits that respective local limits of each Estate Officer by clear territorial demarcation or clear demarcation of categories of public premises falling within the jurisdiction of each Estate Officer having not been done, entrustment of power is not complete and the purported entrustment is violative of Article 14 having no legal effect. He therefore submits that case of the petitioner stands on firm legal footing and thus the reliefs sought for by the petitioners may be granted.

37. Mr. Shyam Mehta, learned senior counsel appearing for the petitioner in Writ Petition No.2695 of 2019 has supported and adopted the arguments advanced by Mr. Khambata. Highlighting the submissions of Mr. Khambata, Mr. Mehta has referred to the notification dated 11.04.2014 issued by the Ministry of Shipping (Ports Wing) and published in the Gazette of India as per which three Estate

Officers including respondent No.2 were appointed in respect of the same category of public premises. He submits that respondent No.2 thereafter issued notice in the eviction proceeding on 24.04.2014. He further submits that by endorsement dated 27.07.2015 the Estate Officers were given and asked to take up the cases under the PPE Act. He contends that by no stretch such entrustment can be construed as delegation or allocation of works. Even if it is so construed for the sake of argument, respondent No.2 had started functioning as Estate Officer in respect of the case of the petitioner from 24.04.2014 onwards whereas the so-called allocation was made on 27.07.2015. He therefore submits that respondent No.2 has acted without jurisdiction which has vitiated the proceedings against the petitioners.

38. Mr. Viren Asar, learned counsel for the other petitioners has also adopted the submissions made by Mr. Khambata. In addition, he has pointed out that while in all the other writ petitions the respective Estate Officers have upheld their jurisdiction, in two cases covered by Writ Petition Nos.2902 of 2018 and 881 of 2019, the Estate Officers have held that they would decide the jurisdictional issue along with all other issues in the final order. However, in those cases where the Estate Officers have upheld their jurisdiction, not a single document could be produced by respondent No.1 to show any actual allocation and distribution of the respective cases to the concerned Estate Officers. His further submission is that in many cases details of which he has furnished in his brief written arguments, the Estate Officers issued show cause notices much prior to the purported distribution / allocation of work. In many cases the respective Estate Officers have recorded that the Chief Law Officer and Advocate (Incharge) had not divided the area mentioned in the gazette notification amongst the respective Estate Officers. Again in four cases, the Estate Officer had relied upon a wrong gazette notification dated 08.07.2015 while upholding jurisdiction though he was appointed as Estate Officer vide gazette notification dated 11.04.2014.

38.1. Another point raised by Mr. Asar is that in Writ Petition No.808 of 2019 it has been pointed out that one Mr. Pramod Hiranman Salvi was the Deputy Chief Law Officer and Chief Law Officer (Incharge) of respondent No.1. According to him, the same person had executed *Vakalatnama* on behalf of respondent No.1 appointing lawyer to prosecute the petitioners in Case No.EO/E 232 of 2018 and it was the case of respondent No.1 that distribution and allocation of work was done by the Chief Law Officer and Advocate (Incharge) being the same Mr. Pramod Hiranman Salvi. This, Mr. Asar contends, is totally impermissible and bad in law being in violation of the principles of natural justice. He therefore, submits that all the writ petitions may be allowed by quashing the proceedings against the petitioners.

39. Response on behalf of respondent No.1 is led by Mr. Shrihari Aney, learned senior counsel. In his spirited reply he has first taken the Court to the facts of the case and the challenge of the petitioners. Thereafter, he refuted the contentions raised by the petitioners on six grounds which he elaborated in the course of his submissions.

39.1. His first submission is that jurisdiction of the Estate Officer flows from the PPE Act and not from the PPE Rules. Since Section 3 of the PPE Act contains the power to appoint Estate Officers to exercise powers conferred by the PPE Act, the jurisdiction is intact. Referring to Section 3(a) and Section 3(b) of the PPE Act as well as the gazette notification dated 11.04.2014 he submits that the notification appointing respondent No.2 as the Estate Officer was published in the Official Gazette. The gazette notification prescribed the category of premises for which respondent No.2 was authorized to exercise his powers as Estate Officer. Thus, the conditions prescribed under Section 3 were fulfilled. In such circumstances, appointment of respondent No.2 and his jurisdiction to adjudicate any eviction proceeding pertaining to such category of premises cannot be challenged. Lack or absence of rules relating to allocation and distribution of matters do not curtail the

jurisdiction of the Estate officer to adjudicate the eviction proceeding initiated against the petitioners. In this connection, Mr. Aney has placed reliance on a decision of the Supreme Court in *Surinder Singh Vs. Central Government*, **(1986) 4 SCC 667**.

39.2. His second contention is that the use of the word 'may' in Section 18 of the PPE Act which provides for enactment of rules, implies a directory and not mandatory obligation upon the Central Government for enacting the rules. In the present case no rules have been framed under Section 18(2)(c) of the PPE Act relating to distribution and allocation of work to Estate Officers. Irrespective of whether rules have been framed or not, power of the Estate Officer is an independent provision which originates from Section 3 of the PPE Act. Therefore, absence of any rule does not curtail the powers of the Estate Officer vested by virtue of the governing statute as the rule is not the source of the power. That apart, Constitution of India (Articles 73 and 162) provides that executive power is co-extensive with that of the legislature. Administrative directions can be passed in absence of rules when such directions are procedural in nature. Therefore powers of the Estate Officer can be exercised even in the absence of rules; enactment of rules is not a condition precedent for exercise of powers by Estate Officer. In support of such contention, reliance has been placed on the decision of the Supreme Court in *Union of India Vs. Moolchand Khairati Ram Trust*, **(2018) 8 SCC 321**.

39.3. Next contention of Mr. Aney is that the scope of rule making power is not to be confused with source of power. Allocation of work is an administrative function. Once an Estate Officer is invested with the power to decide, allocation of work between different Estate Officers is a purely administrative action which is not to be confused with the source i.e., the power to decide. An administrative function which subserves a judicial function cannot curtail or divest a jurisdictional power. To support his contention, reliance is placed on *UPSE Board*

Vs. City Board, Musoorie, **(1985) 2 SCC 16** and in the case of **Surinder Singh** (*supra*).

39.4. Mr. Aney has also placed reliance in the case of *Sonvir Vs. State (NCT of Delhi)*, **(2018) 8 SCC 24** as well as in the case of **Surinder Singh** (*supra*) to reiterate the point that irrespective of the fact that rules have not been framed under the PPE Act, powers of the Estate Officer to adjudicate disputes under the PPE Act cannot be curtailed.

39.5. Learned senior counsel for respondent No.1 has also argued that challenge of the petitioners to the jurisdiction of the Estate Officer could only have been considered if the petitioners would have made out a case of personal prejudice, bias or mala fide on the part of respondent No.2. Mere appointment of an officer of respondent No.1 as an Estate Officer does not by itself offend the maxim *nemo judex in causa sua* i.e., no man can be a judge in his own cause. Reliance has been placed on the following decisions:-

1. *Accountant and Secretarial Services Pvt. Ltd. Vs. Union of India*, **(1988) 4 SCC 324**;
2. *Delhi Financial Corporation vs. Rajeev Anand*, **(2004) 11 SCC 625**; and
3. *Crawford Bayley Vs. Union of India*, **(2006) 6 SCC 25**;

39.6. Besides allocation of eviction proceedings initiated against the petitioners to a particular Estate Officer neither infringes any right of the petitioners nor causes any prejudice to them. In the absence thereof, challenge to jurisdiction has to fail.

39.7. Regarding the submissions relating to the act of Mr. Pramod Hiranman Salvi, it is submitted that the functions of Mr. Salvi of signing the *Vakalatnama* and of allocating matters were done under different capacities. He was discharging such functions by virtue of the duties entrusted upon him and therefore exercise of such power is legitimate. It does not create any reasonable apprehension of bias. To allege reasonable apprehension of bias, petitioners have to prove the likelihood of

the essential ingredients of bias on the basis of cogent evidence. Reliance has been placed on the following decisions:-

1. *Hari Khemu Gawali Vs. Deputy Commissioner of Police, Bombay*,
AIR 1956 SC 559; and
2. *Registrar of Co-operative Societies Vs. Dharam Chand*,
AIR 1961 SC 1743.

39.8. Mr. Aney also submits that absence of rules under Section 18(2)(c) of the PPE Act cannot lead to an absurd conclusion. It cannot defeat the objective of the PPE Act which is to provide for a speedier machinery for eviction of unauthorized occupants of public premises.

39.9. In the light of the above, Mr. Aney submits that there is no merit in all the writ petitions which should be dismissed.

40. Mr. Walawalkar, learned senior counsel has also appeared for respondent No.1 and has supported the submissions made by Mr. Aney. In addition, he submits that it is one thing to say that appointment of Estate Officer is bad and illegal being in violation of the procedure laid down but totally another thing to say that in the absence of any rule, allotment / allocation of work to Estate Officer is bad and illegal. His contention is that framing of rules is not a condition precedent for the exercise of power by the concerned Estate Officer under Section 3(b) of the PPE Act. He has specifically placed reliance on the decisions of the Supreme Court in **Surinder Singh** (*supra*) and **Sonvir** (*supra*). He submits that challenge of the petitioners will have to be tested in the backdrop of the objective of the PPE Act which is to provide for a speedier machinery for eviction of unauthorized occupants of public premises. Regarding the apprehension of bias or likelihood of bias, he submits that the same is imaginary and has no substance at all. Reliance is placed on the decision of the Supreme Court in the case of **Dharam Chand** (*supra*). Finally, he submits that once appointment of Estate Officer is found to be in compliance to and in accordance with the provisions of

Section 3 of the PPE Act, assumption or exercise of jurisdiction by the Estate Officer cannot be questioned by the noticee on the ground of the related rules having not been framed or on the ground of there being no or improper allocation of work to the Estate Officer. He therefore calls for dismissal of the writ petitions.

41. In his reply submissions Mr. Khambata submits that there is no dispute to the proposition that executive power can be resorted to in the absence of rules but such exercise of power has to be by the empowered authority. He has distinguished all the decisions relied upon by Mr. Aney and submits that in the absence of any rules or regulations laying down the principles of exercise of power, it is only the authority empowered under the underlying act who can make or issue executive directions. In the instant case such executive decisions ought to have been taken by the Central Government and not by respondent No.1 or by any of its officers. No source of power is to be found in the PPE Act enabling respondent No.1 or any of its officers to allocate / distribute matters.

41.1. Referring to the Major Port Trusts Act, 1963, more particularly to Sections 21 and 22(3) thereof, he submits that even thereunder prior approval of the Central Government is required for delegation of powers. He however submits that reference to and reliance upon the Major Port Trusts Act, 1963 by learned counsel for respondent No.1 is entirely misplaced in as much as the issue arising for consideration is that of demarcation of jurisdiction by allocation and distribution of matters amongst Estate Officers under the PPE Act which power is specifically reserved unto the Central Government under Section 18(2)(c) of the PPE Act. The Major Port Trusts Act, 1963 does not deal with matters of eviction; for this the PPE Act has been enacted as a special legislation.

41.2. Though the Estate Officers are employees of Mumbai Port Trust, while discharging their functions as Estate Officers, they have to act independently and impartially. Necessarily they have to be independent of any supervision or control

of the Chairman or Deputy Chairman.

41.3. He asserts that allocation / distribution of work is not merely an administrative function. It ensures that there is no plurality or concurrency of jurisdiction, thus saving validity of appointment under Section 3 of the PPE Act. Without demarcation of jurisdiction between Estate Officers, there can be no valid and specific entrustment of power to each Estate Officer under Section 3 of the PPE Act.

41.4. Referring to the submissions made by Mr. Aney that even the Constitution provides that executive power is co-extensive with that of the legislature, his contention is that this submission is totally misconceived in as much as respondent No.1 is neither Union of India nor a State; it is only a body corporate.

41.5. Summing up his submissions, Mr. Khambata submits that the rationale underlying as to why demarcation of jurisdiction between different Estate Officers has to be done by the Central Government and not by the undertaking concerned, in this case respondent No.1, is to preserve independence and impartiality of the Estate Officers who are otherwise officers of respondent No.1 discharging quasi-judicial functions.

42. Submissions made by learned counsel for the parties have been considered. Also perused the relevant materials on record as well as considered the judgments cited at the bar.

Discussions

43. Question for consideration is whether respondent No.2 or for that matter the Estate Officer can validly and lawfully exercise jurisdiction in the eviction case against the petitioners in the absence of any distribution or allocation of matters

between the different Estate Officers by the Central Government?

44. Petitioners have questioned the competence of respondent No.2 or for that matter any of the Estate Officers to deal with the eviction case against the petitioners on the ground that though the Estate Officers have been so appointed nonetheless no rules have been framed by the Central Government under Section 18(2)(c) of the PPE Act for allocation and / or distribution of matters between the Estate Officers. In the absence of the same, it is not open to respondent No.1 or any of its officers to allocate / distribute matters between the Estate Officers as contended to have been done vide the order dated 27.07.2015 which being an endorsement on a letter of the Under Secretary dated 23.07.2015 cannot be construed to be a valid order in the eye of law and in any event does not allocate / distribute matters amongst the Estate Officers *inter se*. In the absence of demarcation of work amongst the Estate Officers, jurisdiction exercised by the Estate Officers is incomplete.

45. *Per contra* response of respondent No.1 is that Section 3 of the PPE Act lays down the procedure for appointment of Estate Officer. In the instant case the procedure laid down in Section 3(a) and Section 3(b) of the PPE Act have been fulfilled while appointing respondent No.2 as the Estate Officer or while appointing the other Estate Officers. Though Section 18(2)(c) of the PPE Act empowers the Central Government to frame rules for the purpose of allocation and / or distribution of matters, such provision is not mandatory rather directory. That apart framing of such rules is not a condition precedent for assumption and exercise of jurisdiction by the Estate Officer appointed under Section 3. Allocation and distribution of matters is an administrative function which in no way affects the exercise of jurisdiction by the Estate Officer.

46. Having noticed the challenge and the response, the impugned order dated 15.02.2018 may now be adverted to. Be it stated that the petitioners who are the

respondents in Case No.EO/E(63)(63-A) of 2001 instituted by respondent No.1 for eviction of the petitioners from the said premises, filed an application dated 14.07.2017 questioning the jurisdiction of respondent No.2 in conducting the said proceeding. By the impugned order respondent No.2 rejected the said application filed by the petitioners holding that there was no irregularity in the allocation and distribution of the matter. Respondent No.2 held as under:

“18. Upon hearing the arguments of both the parties, I am of the opinion that under section 3(b) of the PPE Act, the Central government may, while appointing the Estate Officer, inter alia, define the local limits within which or the categories of public premises in respect of which, the Estate Officers shall exercise the power conferred, and perform the duties imposed, on Estate Officers by or under this Act. Further, so far as Gazette Notification issued by Ministry of Shipping, Central Government, dated 11.04.2014 in which my name is shown at serial number third, are concerned, the Estate Officers have been appointed as named therein along with the categories of premises i.e. the local limits within which, or the categories of public premises in respect of which, the Estate Officers shall exercise the power conferred, and perform the duties imposed, on Estate Officers by or under the Act. Since the leased premises in question are falling under the categories of premises given in the aforesaid notification and in respect of the respective estate officer named therein, the Estate Officer have the jurisdiction to decide upon the matter. Further, the Administrative work of allocation and distribution of work (matters / cases) had been entrusted by the Chairman of the Board, Board being the owner of the premises under Section 29 of the Major Port Trust Act, 1963, to the Chief Law Officer & Advocate (In-charge) by written order dated 27.07.2015, given by Chairman of the Petitioners, through the Secretary to the Board, and the distribution / allocation has been done by the Chief Law Officer & Advocate (In-charge) only on account of administrative nature. Also, the Chief Law Officer & Advocate (In-charge) has not divided the area mentioned in Gazette Notification dt. 08.07.2015 amongst the Estate Officers and the action of the Chief Law Officer & Advocate (In-charge) i.e. distribution of cases is purely administrative one.

19. Further the entries available in the Rojnama provides the chronological history regarding all the past and present estate officers from time to time who have conducted the proceedings.

20. In view of the above, I am of the opinion that there is no irregularity in the allocation and distribution of the matter.”

46.1. Respondent No.2 has stated that he was appointed as Estate Officer vide the

notification dated 11.04.2014 of the Central Government, Ministry of Shipping which was published in the gazette. Referring to Section 3(b) of the PPE Act, he has opined that the Central Government may while appointing the Estate Officer define the local limits within which or the categories of public premises in respect of which the Estate Officers shall exercise the powers conferred and perform the duties imposed on Estate Officers by or under the PPE Act. In so far gazette notification dated 11.04.2014 is concerned his name was shown at Serial No.3 appointed as Estate Officer along with the others in respect of the category of premises mentioned therein. Since the leased premises in question were included in the category of premises mentioned in the said notification, he asserted that he had the jurisdiction to take up the case. Besides, the administrative work of allocation and distribution of work was entrusted by the Chairman of respondent No.1 being the owner of the premises under Section 29 of the Major Port Trusts Act, 1963 to the Chief Law Officer and Advocate (Incharge) by written order dated 27.07.2015. Accordingly, distribution / allocation was done by the Chief Law Officer and Advocate (Incharge) which exercise was purely an administrative one. Respondent No.2 also referred to the *rojnama* which provided all the dates and orders passed by the Estate Officers from time to time who had conducted the proceedings.

47. To appreciate the decision of respondent No.2, the PPE Act may be examined. Object of the PPE Act is eviction of unauthorized occupants from public premises. In other words, purpose of the PPE Act is to provide for a speedier process for eviction of unauthorized occupants from public premises. Section 2 is the definition clause defining various expressions such as ‘premises’, ‘public premises’ etc. Since there is no dispute *vis-a-vis* these expressions, no deliberation as such on these expressions is called for. Broadly speaking, the PPE Act contemplates appointment of an Estate Officer who is a highly placed officer of the Government or of the relevant statutory authority which is the owner of the public premises in question. PPE Act provides for issuing notice to the

unauthorized occupants by the Estate Officer and after considering the response, to evict them, if found justified and warranted. PPE Act also provides for ancillary powers to remove unauthorized constructions, demolish unauthorized constructions, payment of rent or damages in respect of public premises. PPE Act provides for provision of appeal before the appellate authority against an order passed by the Estate Officer. However, Section 15 bars the jurisdiction of courts to entertain any suits or proceedings in respect of eviction of any person who is in unauthorized occupation of public premises.

47.1. Section 5 more particularly the proviso to sub-section (1) obliges an Estate Officer to decide eviction proceedings *vis-a-vis* public premises as expeditiously as possible; endeavour to be made to pass final order within 15 days from the date of issue of the show cause notice.

48. From the above what is evident is that the scheme of the PPE Act is to provide a special procedure and a special authority for eviction of unauthorized occupants from public premises. A summary procedure has been provided in this regard. A distinction has been made between public premises and other premises. While eviction from other premises may be carried out through the regular legal process, such as, filing of suits etc., a special statute providing for an expeditious procedure has been enacted i.e., the PPE Act for securing speedier eviction from public premises. Thus public interest has been put on a higher pedestal and eviction from public premises is secured by a quicker procedure in contradistinction to eviction from other premises.

49. Having noticed the above, certain provisions of the PPE Act having relevance to the present proceeding may be examined a little more in detail. Section 3, which is the core provision, deals with appointment of Estate Officers. Section 3 reads thus:-

“3. Appointment of Estate Officers:-

The Central Government may, by notification in the Official Gazette,-

- (a) appoint such persons, being gazetted officers of Government [or of the Government of any Union Territory] or officers of equivalent rank of the [statutory authority], as it thinks fit, to be estate officers for the purposes of this Act:

Provided that no officer of the Secretariat of the Rajya Sabha shall be so appointed except after consultation with the Chairman of the Rajya Sabha and no officer of the Secretariat of the Lok Sabha shall be so appointed except after consultation with the Speaker of the Lok Sabha:

Provided further that an officer of a statutory authority shall only be appointed as an estate officer in respect of the public premises controlled by that authority:

- (b) define the local limits within which, or the categories of public premises in respect of which, the estate officers shall exercise the powers conferred, and perform the duties imposed, on estate officers by or under this Act.”

49.1. Section 3 has two parts - (a) and (b). Opening line of Section 3 is that the Central Government may by notification in the official gazette: then as per part (a), appoint such persons being gazetted officers of the government or of the government of any union territory or officers of equivalent rank of the statutory authority as it thinks fit to be Estate Officers for the purposes of the PPE Act. The first proviso is not relevant for the present purpose. However, the second proviso is relevant and it says that an officer of a statutory authority shall only be appointed as an Estate Officer in respect of the public premises controlled by that authority. As per part (b), the Central Government may by notification in the official gazette define the local limits within which or the categories of public premises in respect of which the Estate Officers shall exercise the powers conferred and perform the duties imposed on Estate Officers by or under the PPE Act.

49.2. Thus, Section 3 lays down the following procedure for appointment of Estate Officers-

1. Appointment of Estate Officers has to be made by the Central Government.

2. Such appointment has to be by way of notification in the official gazette.
3. Such persons being gazetted officers of the government or government of any union territory or officers of equivalent rank of the statutory authority as the Central Government may think fit may be appointed as Estate Officers for the purposes of the PPE Act.
4. In respect of public premises controlled by a statutory authority, only an officer of the statutory authority shall be appointed as Estate Officer. However, such officer must be of equivalent rank of gazetted officer of the government.
5. The Central Government may by notification in the official gazette define the local limits within which **or** the categories of public premises in respect of which the Estate Officers shall exercise the powers conferred and perform the duties imposed on Estate Officers by or under the PPE Act.

49.3. Coming to the last procedural requirement, it is seen that the legislature has used the word 'or' between the expressions 'local limits' and 'categories of public premises'. In other words, it has to be either of the two and not both. That means in the official gazette notification Central Government may either define the local limits within which the Estate Officers shall exercise their jurisdiction or define the categories of public premises in respect of which the Estate Officers shall exercise jurisdiction.

50. Before dealing with the rule making provision, a brief glance at Section 17 would be in order. As per Section 17, Central Government may delegate its power to a State Government or an officer of the State Government. Such delegation has to be by notificaton in the official gazette.

51. Section 18 is the rule making provision. For ready reference, Section 18 is

extracted hereunder:

“18. Power to make rules :-

(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

- (a) the form of any notice required or authorized to be given under this Act and the manner in which it may be served;
- (b) the holding of inquiries under the Act;
- (c) the distribution and allocation of work to estate officers and the transfer of any proceeding pending before an estate officer to another estate officer;
- (d) the procedure to be followed in taking possession of public premises;
- (e) the manner in which damages for unauthorized occupation may be assessed and the principles which may be taken into account in assessing such damages;
- (ea) the rate at which interest shall be payable on arrears of rent specified in any order made under sub-section (1) of section 7, or damages assessed under sub-section (2) of that section;
- (ee) the manner in which the sealing or any erection or work or of any public premises shall be made under sub-section (1) of section 5C:
- (f) the manner in which appeals may be preferred and the procedure to be followed in appeals;
- (g) any other matter which has to be or may be prescribed.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or [in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid] both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.”

52. From the above, it is seen that as per sub-section (1), Central Government may by notification in the official gazette make rules for carrying out the purposes of the Act. Sub-section (2) is more specific. It says that such rules may provide for all or any of the matters enumerated thereunder. Relevant provision is clause (c) which relates to distribution and allocation of work to Estate Officers and transfer of any proceeding pending before an Estate Officer to another Estate Officer.

52.1. Before analyzing the provisions of Section 18(2)(c) as extracted above, a brief reference may be made to Rule 6 of the PPE Rules which reads as under:

“6. Transfer of pending proceedings:-

(1) On the application of any person to whom a notice under the Act has been served and after hearing him, if he desires to be heard, or of its or his own motion, the Central Government or any Gazetted Officer especially authorized by the Central Government in this behalf by notification in the Official Gazette may at any stage transfer any proceeding pending before an estate officer for disposal of the same.

(2) Where any proceeding has been transferred under sub-rule (1), the estate officer who thereafter is in charge of such proceeding may, subject to any special directions in the order of transfer, either re-start it or proceed from the point at which it was transferred.”

53. From the above, it is evident that such transfer of pending proceedings from one Estate Officer to another Estate Officer may be carried out on an application by a noticee or on its own motion by the Central Government or by any gazetted officer especially authorized by the Central Government in this behalf by notification in the official gazette. Such transfer can be made at any stage of the proceeding. On transfer, the Estate Officer to whom the proceeding is transferred may either restart the proceeding or proceed from the stage when the proceeding was transferred.

54. Reverting back to Section 18(2)(c) of the PPE Act, it is evident that Central Government has been conferred the power to make rules for distribution and allocation of work to Estate Officers and the transfer of any pending proceeding

from one Estate Officer to another Estate Officer. Rules relating to transfer of pending proceedings have been incorporated in the PPE Rules vide Rule 6 which has been noticed and discussed. But from the pleadings and submissions, it is the admitted position that no rules have been framed providing for distribution and allocation of work to Estate Officers. The use of the expression 'may' in both sub-section (1) and sub-section (2) of Section 18 cast the obligation upon the Central Government to make rules directory and not obligatory. Central Government may make rules for the distribution and allocation of work to Estate Officers but it has not made such rules till date.

55. Having noticed the statutory provisions as above, reference may now be made to the notification dated 11.04.2014 by which respondent No.2 was appointed as the Estate Officer. The notification dated 11.04.2014 was issued by the Joint Secretary to the Government of India, Ministry of Shipping (Ports Wing) and was published in the Gazette of India of even date. The said notification was issued by the Central Government in exercise of the powers conferred by Section 3 of the PPE Act appointing the four officers mentioned in column 1 of the table to the notification, being officers of the Mumbai Port Trust holding class 1 post of the said statutory organization equivalent to the rank of the gazetted officers of Government of India to be Estate Officers for the purposes of the PPE Act in respect of the premises specified in the corresponding entry in column 2 of the said table. By the said notification, four officers of the Mumbai Port Trust including respondent No.2 were appointed as Estate Officers. While Shri. K. B. Bavdekar was made the Estate Officer in respect of the category of public premises covering all official residential accommodation belonging to Mumbai Port Trust and the erstwhile Bombay Dock Labour Board now vested with the Government and allotted to employees / ex-employees, the other three Estate Officers i.e., Shri. K. L. Sache, Shri. A. S. Sengar (respondent No.2) and Shri. P. K. Sinha were appointed as Estate Officers in respect of the category of public premises covering all premises belonging to or taken on lease by or on behalf of

the Board of Trustees of the Port of Mumbai and all the properties belonging to the erstwhile Bombay Dock Labour Board now vested with the Government, other than official residences and those falling within the jurisdiction of the respective department which was earmarked for Shri. K. B. Bavdekar. Respondent No.2 and the other Estate Officers were appointed for a period of 5 years or till they remained in service, whichever was earlier.

56. The above notification dated 11.04.2014 may be read and examined in conjunction with Section 3 of the PPE Act which lays down the procedure for appointment of Estate Officers as delineated in paragraph 49.2 above. Notification dated 11.04.2014 says that the four officers including respondent No.2 mentioned therein in column 1 of the table were officers of the Mumbai Port Trust holding class 1 post being equivalent to the rank of gazetted officers of the Government of India. This position that respondent No.2 and the other three persons were officers of the Mumbai Port Trust holding class 1 post equivalent to the rank of gazetted officers of the Government of India has been reiterated by respondent No.1. There is always a presumption as to validity of an official act. When the Government notification says respondent No.2 and the other three persons to be so, which is reiterated by respondent No.1, there is no reason to disbelieve such a statement. As a general proposition, burden is on the person who questions such competence.

56.1. The appointment of respondent No.2 and the other three officers as Estate Officers was made by the Central Government. Such appointment was made vide the notification dated 11.04.2014 which was published in the Gazette of India of even date. In the said notification, it was clearly mentioned that respondent No.2 and the other two officers, namely, Shri K. L. Sache and Shri P. K. Sinha were appointed as Estate Officers for the same category of public premises i.e., all premises belonging to or taken on lease by or on behalf of the Board of Trustees of the Port of Mumbai and all properties belonging to the erstwhile Bombay Dock Labour Board now vested with the Government other than official residences, etc.

There is no dispute that the said premises or the premises in question are public premises falling within the category of public premises entrusted to respondent No.2 and the other two Estate Officers. As already discussed, Central Government by official gazette notification may either define the local limits within which the Estate Officers shall exercise their jurisdiction **or** define the categories of public premises in respect of which the Estate Officers shall exercise jurisdiction. Therefore, it is not necessary for the Central Government to define or demarcate the local limits within which the Estate Officers are to exercise jurisdiction. It would be sufficient if the Central Government defines the categories of public premises in respect of which the Estate Officers are to exercise jurisdiction. This has precisely been done in the present case. Therefore, appointment of respondent No.2 as Estate Officer *vis-a-vis* the said premises made vide notification dated 11.04.2014 is in accordance with the procedure laid down in Section 3 of the PPE Act.

56.2. The source of power for appointment of Estate Officer is traceable to Section 3. This is buttressed by the fact that as per the definition clause Section 2(d), Estate Officer has been defined to mean 'an officer appointed as such by the Central Government under Section 3'. Section 3 lays down the procedure for such appointment and it has been seen that appointment of respondent No.2 or for that matter the other Estate Officers have been in compliance with the procedure laid down thereunder. In such circumstances, it would be wrong to say that respondent No.2 had no jurisdiction or had erroneously assumed or exercised jurisdiction in the eviction proceeding against the petitioners. Section 18(2)(c) being a rule making provision and a directory one or the absence of any rule relating to allocation and distribution of work amongst the Estate Officers cannot denude the power of the Estate Officer to entertain and adjudicate the eviction proceeding. Section 3 is an independent provision and is not controlled by Section 18(2)(c).

57. Since respondent No.1 has placed reliance on what is construed to be an

order dated 27.07.2015 allocating and distributing works, the same may also be adverted to. It is seen that Under Secretary to the Government of India, Ministry of Shipping (PHRD Wing) had issued letter dated 23.07.2015 addressed to the Chairman of Mumbai Port Trust enclosing therewith 40 copies of gazette notification dated 08.07.2015 regarding appointment of Estate Officer for the Mumbai Port Trust. There are two handwritten endorsements on the said letter, both dated 27.07.2015. As per endorsement of the Chairman addressed to the Secretary, it was mentioned that Estate Officers be given PPE cases further mentioning the same as urgent. In the second endorsement addressed to the Chief Law Officer and Advocate (In-charge) by the Secretary, it was mentioned that there were 6 Estate Officers and that half a day for each one either in the forenoon or in the afternoon session be earmarked so that hearings could be conducted on day-to-day basis or at least on alternate day. Stand taken by respondent No.1 is that the Chief Law Officer and Advocate (In-charge) had thereafter allocated / distributed the cases to the Estate Officers. This, it has been contended, is an administrative exercise and does not impinge or intrude into the jurisdiction or competence of the Estate Officers. On the other hand it is the contention of the petitioners that having regard to the language of Sections 3 and 18, the authority to allocate and distribute cases is the Central Government or by an authority entrusted by the Central Government. Respondent No.1 or any of its officers could not have taken upon itself the task of allocating and distributing cases amongst Estate Officers.

58. Section 3 no doubt empowers only the Central Government to appoint Estate Officers following the procedure provided therein. Respondent No.2 was appointed as Estate Officer by the Central Government by following the procedure laid down in Section 3. Section 18 on the other hand empowers the Central Government to frame rules amongst others in respect of allocation and distribution of work amongst Estate Officers. It has already been discussed above that the said provision though cast an obligation on the Central Government to make rules, it is

nonetheless directory and not mandatory. Absence of rules under Section 18(2)(c) would not in any manner impact or impair the jurisdiction of the Estate Officer validly appointed under Section 3 as Section 3 is not controlled by Section 18.

59. Though it is true that challenge to jurisdiction can be raised at any stage of a proceeding and at any time, nonetheless it has to be borne in mind that the eviction proceeding against the petitioners being Case No.EO/E(63)(63-A) of 2001 was instituted way back in the year 2001. The application questioning competence of respondent No.2 was filed only in the year 2017. 16 years had gone by in between. Number of officers came to be appointed as Estate Officers dealing with the said case and passing orders from time to time. This has been referred to by respondent No.2 in paragraph 19 of the impugned order. In such circumstances, challenge to jurisdiction of respondent No.2 becomes highly suspect and questionable. Moreover, as has been brought on record by way of amendment, respondent No.2's tenure as Estate Officer ended on 10.04.2019. Though 7 officers have been appointed as Estate Officers in respect of the said category of public premises dealt with by respondent No.2, the said case has since then not been distributed and allocated. At this stage, the second proviso to Section 3(a) of the PPE Act may again be adverted to. As per the second proviso, an officer of a statutory authority shall only be appointed as an Estate Officer in respect of the public premises controlled by that authority. In the opinion of the Court, distributing the cases under the PPE Act relating to public premises controlled by the Mumbai Port Trust amongst the Estate Officers of the Mumbai Port Trust by the Mumbai Port Trust would in no way vitiate assumption and exercise of jurisdiction by the Estate Officer. There is no provision under the PPE Act which prohibits or debars any such allocation and distribution of work by the statutory authority post appointment of Estate Officer of that statutory authority under Section 3. This also takes care of the apprehension expressed by the petitioners that respondent No.1 being a litigant before the Estate Officer cannot allocate and distribute cases to Estate Officer. As already discussed above, respondent No.2 or for that matter any

of the Estate Officers appointed by the notification dated 11.04.2014 were competent to adjudicate the eviction case against the petitioners. Taking up of the case by respondent No.2 and not by the other two Estate Officers can in no manner vitiate the exercise of power by respondent No.2. Reference to and reliance placed by respondent No.1 on the provisions of the Major Port Trusts Act, 1963 was not really necessary as the PPE Act being a special legislation dealing with eviction of unauthorized occupants from public premises will prevail over the Major Port Trusts Act, 1963 insofar eviction of unauthorized occupants from public premises is concerned.

60. Having so discussed the above, the relevant decisions cited by the parties may now be examined.

61. In **Sayed Ali** (*supra*), Supreme Court was dealing with a case under the Customs Act, 1962. In that case, Customs, Excise & Service Tax Appellate Tribunal held in one set of appeals that the Commissioner of Customs (Preventive), Mumbai was not a 'proper officer' as defined under Section 2(34) of the said Act, and therefore, did not have the jurisdiction to issue show cause notice in terms of Section 28 of the said Act. But a contrary view was taken by the same Tribunal in the second set of appeals. As per Section 2(34) of the Customs Act, 'proper officer' is defined in relation to any functions to be performed under the said Act to mean the officer of customs who is assigned those functions by the Board or by the Commissioner of Customs. As per Section 28, the 'proper officer' is empowered to issue notice when any duty has not been levied or has been short-levied or erroneously refunded, or when any interest payable has not been paid, part paid or erroneously refunded. In that context, from a conjoint reading of Sections 2(34) and 28 of the Customs Act, Supreme Court took the view that it is only such a customs officer assigned the specific functions of assessment and re-assessment of duty in the jurisdictional area who would be competent to issue notice under Section 28. The test contemplated under Section 2(34) of the

Customs Act is that of specific conferment of such functions. Contention of the Revenue that once territorial jurisdiction was confirmed, Collector of Customs (Preventive) becomes a 'proper officer' was negated as it was opined that if such a contention was accepted, all officers of customs in a particular area would be proper officers which would lead to a situation of utter chaos and confusion. Supreme Court therefore held that it is only the officers of customs, who are assigned the functions of assessment including re-assessment, working under the jurisdictional collectorate would have the jurisdiction to issue notice under Section 28 of the Act.

61.1. Obviously this decision is clearly distinguishable to the facts of the present case. While in **Sayed Ali** (*supra*), it was held that the test contemplated to become a 'proper officer' was specific conferment of functions of assessment and re-assessment, in the instant case, respondent No.2 and the other Estate Officers were appointed as Estate Officers under Section 3 of the PPE Act thus conferring them powers and functions of Estate Officers and their appointment as such is legal and valid.

62. In **Shri Balaji Rice Company** (*supra*), the State Government acting under Section 4 of the Andhra Pradesh General Sales Tax Act, 1957 appointed several Assistant Commissioners and Commercial Tax Officers (Intelligence) and gave all of them jurisdiction over the entire State of Andhra Pradesh in order to exercise power of assessments. Section 4 of the said Act provided that the State Government may appoint as many Joint Commissioners of Commercial Taxes, Appellate Deputy Commissioners of Commercial Taxes, Deputy Commissioners of Commercial Taxes, Assistant Commissioners of Commercial Taxes, Commercial Tax Officers and Deputy Commercial Tax Officers, as it thinks fit, for the purpose of performing the functions under the said Act; such officers shall perform the said functions within such **local limits** as the State Government, or any authority or officer empowered by it in this behalf, may assign to them. It is in

that context, Andhra Pradesh High Court examined the expression “local area” and held that local limits would mean different territorial limits and only different territorial limits can be fixed for each of the officers mentioned in Section 4 for performing the functions respectively conferred on them by the Act. It was held that if a plurality of officers are invested with the powers of assessing the same dealer, it would result in great hardship and inconvenience to the dealers in travelling to the offices of different officers and producing accounts before different officers greatly handicapping the dealers in making their representations and it would also lead to conflicting and contradictory orders of assessment. It was in such circumstances that Andhra Pradesh High Court held such action of the Government to be arbitrary and discriminatory thus violative of Article 14 of the Constitution of India.

62.1. Obviously this is not the position in the present case. Though on the face of it, there appears to be a plurality of Estate Officers dealing with the same category of public premises, unlike in **Shri Balaji Rice Company** (*supra*), it is not the case of the petitioners that all the Estate Officers intermittently take up the eviction case of the petitioners. Once respondent No.2 had taken up the case during his tenure of 5 years, no other Estate Officer had taken up the said eviction case against the petitioners.

63. Coming to **Shivaramakrishnan** (*supra*), which dealt with the provisions of Kerala General Sales Tax Act, 1963 having similar provision as the Andhra Pradesh Sales Tax Act, here also the State Government had appointed multiple tax officers for the entire State of Kerala without defining any local limits. The relevant statutory provision was sub-section (2) of Section 3 of the Kerala General Sales Tax Act which provides that the Government shall appoint as many Deputy Commissioners, Appellate Assistant Commissioners, Inspecting Assistant Commissioners, Sales Tax Officers and such other officers as it thinks fit for the purpose of performing the functions assigned to them by the Act. It further

provides that such officers shall perform the said functions within such local limits as the Government or any authority or officer empowered by it in this behalf may assign to them. It is in that context that Kerala High Court held that existence of multiplicity of officers of the same status exercising power over the same area can lead to chaos and confusion, and conflicting orders. It may even lead to multiplicity of proceedings regarding the same subject matter causing hardship and inconvenience to dealers. Besides, questions may also arise as to who would be the revisional or appellate authority in relation to a particular proceeding. Therefore, Kerala High Court held that Section 3(2) limited the area of operation of any particular officer to certain local limits and not unlimited throughout the State. It was held that conferment of such power throughout the State was not in consonance with Section 3(2) and was *ultra vires* the said provision.

63.1. In the present case, Section 3 of the PPE Act provides that the Central Government has the option either to define the local limits within which the Estate Officers shall exercise their jurisdiction or to define the categories of public premises in respect of which the Estate Officers shall exercise jurisdiction. Central Government has opted for the latter and has defined the categories of public premises in respect of which the Estate Officers had exercised jurisdiction. Question of defining local limits does not arise. No incident of any chaos or confusion or overlapping of jurisdiction has been pointed out by the petitioners.

64. Reliance was also placed by Mr. Khambata, learned senior counsel for the petitioners in **Mangali Impex Ltd.** (*supra*). That was also a case under the Customs Act, 1962. The question which arose for consideration in that case was the constitutional validity of Section 28(11) of the Customs Act, 1962, which was inserted by the Customs (Amendment and Validation) Act, 2011. As per Section 28(11), all persons appointed as customs officers under Section 4(1) of the said Act prior to 6th July 2011 shall be deemed to have and always had the power of assessment under Section 17 and shall be deemed to have been and always had

been the proper officers. It was contended on behalf of the petitioners that although insertion of Section 28(11) was meant to cure the defects pointed out by the Supreme Court in **Sayed Ali** (*supra*), it did not do so. It was in that context Delhi High Court accepted the contention of the petitioners that Section 28(11) is overbroad in as much as it confers jurisdiction on a plurality of officers on the same subject which could result in chaos, harassment, contrary and conflicting decisions. Section 28(11) gives untrammelled power, thus being arbitrary and violative of Article 14 of the Constitution of India. It was held that the doctrine of comity of jurisdiction requires that for the proper administration of justice, there should not be an overlapping of the exercise of powers and functions.

64.1. There is no such overlapping of jurisdiction of Estate Officers in the present case, at least no such incident has been pointed out by the petitioners. The Estate Officers appointed under Section 3 of the PPE Act are deciding the respective eviction cases on their board. In fact the grievance expressed by the petitioners is not of overlapping of jurisdiction. What is being agitated is that there has been no allocation or distribution of cases amongst the Estate Officers by the Central Government, which has vitiated exercise of jurisdiction. To put it bluntly, it is the contention that Central Government had not allocated and distributed Case No.EO/E(63)(63-A) of 2001 to respondent No.2 for adjudication. As has already been discussed above, respondent No.2 is one of the many Estate Officers who had dealt with this particular case. Tenure of respondent No.2 in the meanwhile has expired. Therefore, decision of the Delhi High Court in **Mangali Impex Ltd.** (*supra*) would not be attracted to the facts of the present case.

65. In **Surinder Singh** (*supra*) relied upon by Mr. Aney, learned senior counsel for respondent No.1, Supreme Court in the context of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 held that when a statute confers power on an authority to do certain acts or exercise power in respect of certain matters, the exercise of power conferred by the statute does not depend on the

existence of rules unless the statute expressly provides for the same. In other words, framing of the rules is not a condition precedent to the exercise of the power expressly and unconditionally conferred by the statute. If rules are framed, the powers so conferred on the authority could be exercised in accordance with the rules. But if no rules are framed, there is no void and the authority is not precluded from exercising the power conferred by the statute.

66. While Mr. Khambata has acknowledged the above proposition with the rider that the authority referred to would mean the same authority provided under the statute, in this case being the Central Government, in the opinion of the Court such insistence appears to be misplaced. The emphasis in **Surinder Singh** (*supra*) is not on the authority but on the exercise of power. The power conferred on the Estate Officer has been validly exercised under Section 3. Allocation and distribution of work is only ancillary and incidental to such substantive power.

67. Mr. Aney had also placed reliance on the decision of the Supreme Court in **Sonvir** (*supra*). That was a criminal appeal against conviction under Sections 302, 392 read with Section 34 IPC. The sentence awarded by the Sessions Court was affirmed by the High Court. The related issue which cropped up was taking of measurement etc. of convicted persons under the Identification of Prisoners Act, 1920. While Section 3 dealt with taking of measurements etc. of the convicted persons, Section 4 dealt with taking of measurements etc. of non-convicted persons. Section 5 dealt with power of Magistrate to order a person to be measured or photographed. It was in that context that a contention was raised that power under Section 4 could not be exercised till rules are framed under Section 8. Negating such contention, Supreme Court held that if such contention is accepted, it would defeat the very purpose and object for which Section 4 was enacted. It was held that non-framing of any rules under Section 8 does not prohibit the exercise of powers under Sections 3 and 4 of the said Act. Exercise of powers under Sections 3 and 4 is hedged by conditions mentioned therein but in a case where no rules

have been framed, the authorities as empowered under Sections 3 and 4 are not denuded of their powers to act under Sections 3 and 4.

68. Thus having regard to the discussions made above and upon thorough consideration of all relevant aspects, Court finds no good ground to entertain the writ petitions. Challenge made by the petitioners as alluded to hereinabove, therefore, fails.

69. Consequently, all the writ petitions are dismissed. However, there shall be no order as to costs.

(UJJAL BHUYAN, J.)

Minal Parab