

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 994/2011

1. Smt. Sharayu D/o Ashok Gokhale,
aged about 77 years, Occupaton House-hold.
2. Miss Nita D/o Ashok Gokhale,
age about 50 years, Occupation – Service.
3. Vinod S/o Ganesh Jog,
aged about 75 years, Occupation - Retired.
4. Smt. Prabha Wd/o Anand Jog,
aged about 77 years, Occupation - Retired.
5. Uday S/o Wasantrao Saikhedkar,
age about 52 years, Occupation - Business.
6. Pramod S/o Ramchandra Kelkar,
aged about 48 years, Occupation – Service.
7. Smt. Gauri W/o Sanjay Sohoni,
aged about 52 years, Occupation – Household.
8. Shashank S/o Rambhau Hedao,oo,
aged 53 years, Occupation – Service.
9. Santosh S/o Rambhau Hedao,oo,
aged about 45 years, Occupation – Service.
10. Smt. Sandhya W/o Suhas Khulkhule,
aged about 49 years, Occupation – House-hold.

All residents of Plot No.68, Congress Nagar, Nagpur.
Through their power of Attorney Milind S/o
Madhukarrao Kulkarni, aged 45 years, Occupation -
Business, Resident of 168, Chhatrapatinagar, Nagpur
Tah. & Distt. Nagpur.

11. All India Reporter Private Limited,
a Company duly incorporated under the
Companies Act, 1956, having its Registered
Office at Congress Nagar, Nagpur through its
Managing Director Sumant Widyadhar Chitale,
resident of Dhantoli, Nagpur.

PETITIONERS

-VERSUS-

1. The Nagpur Municipal Corporation, Nagpur,
through its Commissioner, Civil Lines,
Nagpur 440 001.

2. The Commissioner,
Nagpur Municipal Corporation, Civil Lines,
Nagpur 440 001.
3. The Estate Officer,
Nagpur Municipal Corporation, Civil Lines,
Nagpur 440 001.

RESPONDENTS

Shri A.S. Manohar, counsel for the petitioners.
Shri J.B. Kasat, counsel for the respondents.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.

DATE ON WHICH ARGUMENTS WERE HEARD : 23RD JUNE, 2022.

DATE ON WHICH JUDGMENT IS PRONOUNCED : 05TH AUGUST, 2022.

JUDGMENT (PER : A.S. CHANDURKAR, J.)

The challenge raised in this writ petition filed under Article 226 of the Constitution of India is to the insertion of fresh terms and conditions while renewing lease of land in a manner contrary to the law laid down by this Court. Further challenge is raised to the demand notice issued by the Estate Officer, Nagpur Municipal Corporation demanding transfer fees from the petitioner nos.1 to 10 consequent upon transfer of the leasehold land to the petitioner no.11 as being without any authority of law.

2. It is the case of the petitioner nos.1 to 10 that on 10.07.1935 a permanent lease of Plot no.68 admeasuring 8400 square feet was executed in their favour by the then Municipal Committee of Nagpur. The said lease was thereafter renewed in the year 1964 for a period of thirty years. Though the said lease was liable to be renewed from 01.04.1994

but no steps in that regard were immediately taken. Ultimately, on 02.04.2009 the said lease was renewed for a period of thirty years from 01.04.1994 to 31.03.2024. While renewing that lease the lessor – Municipal Commissioner, City of Nagpur added certain terms and conditions that were not existing in the original lease-deed dated 10.07.1935. Clause (i), (j) and (k) are three of the clauses that were inserted while renewing the said lease and the same read as under:-

“(i). The Lessee shall not assign, transfer, alienate, sub-divide or sub-lease the demised land or any part thereof without the previous consent of the Lessor or such authority as may be appointed for that purpose. The Lessor however reserves its right to grant/refuse such permission and resume the land and the standing structure thereon without payment or any compensation. Provided that in case the Lessor decides to grant permission to assign, transfer, alienate, sub-divide or sub-lease the demised land, it shall do so after recovery of the unearned income fixed as per NMC Rules and Govt. Rules framed from time to time in this behalf.

(j). The Lessee, if without the written consent of the Lessor, assigns, sale, transfer, alienates or sub leases the demised land or any part thereof, on presently prevailing cost of the land/premises, the Lessee shall be liable to pay the Unearned Income and penalty as per NMC & Government Rules and as valued by office of the town planner and valuation department on presently prevailing cost of the land/premises of actual cost received by Lessee whichever is higher to the Lessor to get the lease regularized in favour of the assignee or the transferee, failing which the Lessor shall be free to enter upon the said land and repossess it, as if this demise had not been made, after giving notice of 30 days to that effect.

(k). The Lessee, if without the written consent of the Lessor subdivides the demised land into parts and sales any of the part thereof, he shall be liable to pay the charges as

per N.M.C. & Government Rules and as valued by the Office of the town planner and valuation department on presently prevailing cost of the land/ premises of actual cost received by Lessee whichever is higher to the Lessor to get the lease regularized in favour of the transferee, failing which the Lessor shall be free to enter upon the said land and repossess it as if this demise had not be made, after giving notice of 30 days to that effect.”

In the meanwhile on 16.03.2009 petitioner nos.1 to 10 entered into a Memorandum of Understanding with the petitioner no.11 seeking to transfer the leasehold rights in favour of the petitioner no.11. When the petitioners approached the Nagpur Municipal Corporation seeking mutation of the name of the petitioner no.11, a demand of transfer fees of an amount of Rs.20,85,517/- was raised. This demand of transfer fees was based on Resolution no.336 dated 25.11.2008. Being aggrieved by the fact that transfer fees were being sought pursuant to insertion of fresh clauses while renewing the subsisting lease, the petitioners have challenged the same in this writ petition. The petitioners seek a declaration that insertion of the said terms and conditions is contrary to the law laid by this Court in *Smt.Jaikumari Amarbahadursingh & Others Versus State of Maharashtra, through the Secretary, Revenue & Forest Deptt. & Another* [2009(1) ALL MR 343].

3. Shri A.S. Manohar, learned counsel for the petitioners submitted that it was not permissible for the lessor to insert new and distinct terms and conditions in an existing lease while renewing the same. In the

original lease-deed dated 10.07.1935 it was provided that at the expiry of the term of thirty years the lease would be renewed at the request of the lessee. The same was subject to fair and suitable enhancement in the rent of the land demised. It was also stated that the terms and conditions incorporated in the original lease would be continued in the lease as renewed. Inviting attention to the law laid down by this Court in *Smt. Jaikumari* (supra) it was submitted that this Court had held therein that renewal of lease necessarily ought to be on the same terms and conditions as in the earlier lease except the change or revision in respect of annual lease amount. It had been held in clear terms held by relying upon the decision of this Court in *State of Bombay Versus Damodar Tukaram Mangalmurti* [**Appeal No.699/1946 and 700/1946**] dated 19.06.1959 that it was not open for the lessor to add new conditions while renewing the lease unless the conditions of the tenure so provided. The insertion of new terms and conditions by the Nagpur Municipal Corporation while renewing the lease on 02.04.2009 was therefore contrary to law.

It was then submitted that the resolution dated 25.11.2008 passed by the Nagpur Municipal Corporation empowering it to demand transfer fees was without any force of law. Therefore no provision in the City of Nagpur Corporation Act, 1948 (for short, 'the Act of 1948') which empowered the Nagpur Municipal Corporation to seek transfer fees while considering a request for transfer of leasehold rights by a lessee. The said resolution had no legal force especially in view of the judgment of this

Court in *Smt. Jaikumari* (supra) which was delivered on 30.09.2008. The demand of such transfer fees from the petitioners was illegal. In any event, such demand was pursuant to insertion of additional terms and conditions in the lease-deed as renewed and the same was thus illegal. It was then submitted that as lessees, the petitioner nos.1 to 10 had no option but to accept the additional terms and conditions incorporated by the lessor – Nagpur Municipal Corporation while transferring the leasehold rights. If such incorporation of new terms and conditions itself was contrary to law, the mere fact that the petitioners had consented for the same would be of no avail and their consent would not permit the Nagpur Municipal Corporation to demand an amount which it had no authority in law to demand. Inviting attention to the judgment of the Hon'ble Supreme Court in *Central Inland Water Transport Corporation Ltd. & Another Versus Brojo Nath Ganguly & Another* [AIR 1986 SC 1571] it was submitted that insertion of a clause that was contrary to the law operating rendered such term to be against public policy and hence could not be implemented. The petitioners had no option but to accept insertion of those additional terms and conditions since they had no bargaining power with the Nagpur Municipal Corporation. He also referred to the decisions in **Writ Petition No.3002 of 2011** [*Dilip W. Bhamburkar & Another Versus The State of Maharashtra & Another*] decided on 08.08.2011 and **Writ Petition No.3765 of 2011** [*Pramod Deshraj Budhreja & Others Versus The State of Maharashtra & Another*]

decided on 23.09.2011 wherein it was held that insertion of a new term that did not exist in the original lease-deed was impermissible. It was thus submitted that the demand of transfer fees by the Nagpur Municipal Corporation was also liable to be set aside. The petitioners had paid the amount as demanded *vide* notice dated 03.09.2010 under protest and that amount was liable to be refunded if the contentions of the petitioners were accepted. It was thus prayed that the petitioners be granted reliefs as prayed for.

4. Shri J.B. Kasat, learned counsel for the respondent opposed the aforesaid submissions. At the outset he submitted that the petitioners having signed the lease-deed as renewed it was not open for them to challenge the terms and conditions that were incorporated in it. Inviting attention to the averments in paragraph 11 of the writ petition that the petitioner nos.1 to 10 had not noticed the terms and conditions as incorporated he submitted that this stand could not be accepted. Having agreed to the terms and conditions without any protest, it would not be now open for the petitioners to make a grievance in that regard. He invited attention to the observations in paragraph 33 of the decision in *Smt. Jaikumari* (supra) that if a condition to be added or modified in the lease-deed was acceptable to the grantee, it could be said that the same was lawful. Pursuant to the said terms and conditions a demand of Rs.13,600/- was made towards renewal of the lease-deed and that

amount was paid on 15.01.2009. The challenge now raised in the writ petition was by way of an afterthought in the year 2011. He therefore submitted that the terms and conditions in the lease-deed as renewed having been accepted by the petitioners without any protest, there was no justifiable reason to examine the challenge raised to the legality thereof. In the light of contractual rights between the parties it was open for the petitioners to invoke appropriate civil remedy.

The learned counsel referred to Section 70 of the Act of 1948 and submitted that the resolution dated 25.11.2008 was in accordance with the powers conferred therein. The demand of transfer fees was based on the said resolution and therefore it could not be said that such demand had no support in law. He referred to the decision in *State of Punjab & Others Versus Dhanjit Singh Sandhu* [(2014) 15 SCC 144] to urge that the petitioners having knowingly accepted the benefits flowing from the renewal of the lease, they were estopped from denying the validity or the binding effect of such terms and conditions. He therefore submitted that in these facts the Court would be loath to interfere in writ jurisdiction and thus the writ petition was liable to be dismissed.

5. The aforesaid submissions of learned counsel give rise to three questions which can be stated as under:-

- (a) Whether it was permissible for the Nagpur Municipal Corporation to incorporate additional terms and conditions in the lease-deed

while renewing it in the absence of any stipulation in the initial lease-deed permitting it to do so?

- (b) If the answer to the aforesaid is in the negative, whether the petitioners are estopped from challenging the insertion of such additional terms and conditions in the renewed lease-deed on the ground that the petitioners had accepted such inclusion without any protest?
- (c) Whether the Resolution passed by the Nagpur Municipal Corporation dated 25.11.2008 empowering it to demand transfer fees is without any force of law?

We have heard the learned counsel for the parties and we have perused the documentary material placed on record. We have thereafter given due consideration to the respective submissions.

6. **AS TO QUESTION (a)** : The initial lease granted in favour of the predecessor of the petitioner nos.1 to 10 is dated 10.07.1935. It is an admitted fact that the said lease-deed was for a period of thirty years and contains a covenant of renewal for further term of thirty years subject to enhancement in the amount of the rent that would be fair and suitable which the lessor could determine. It is also undisputed that while renewing that lease on 02.04.2009 for the period from 01.04.1994 to 31.03.2024 the lessor – Municipal Commissioner, City of Nagpur inserted additional terms and conditions in that lease-deed. Though various new clauses have been inserted the petitioners are aggrieved specifically with

the insertion of Clauses (i), (j) and (k) therein. By virtue of these clauses, on the lessor granting permission to assign, transfer, alienate, sub-divide or sub-lease the demised land it would be entitled to recover unearned income fixed as per the Rules of the Municipal Corporation and framed by the Government from time to time. Similar is the situation if the lessee without the written consent of the lessor assigns, sells, transfers, alienate or sub-leases the demised land or part thereof. By virtue of Memorandum of Understanding dated 16.03.2009 the petitioner nos.1 to 10 sought to sell/transfer the demised land in favour of the petitioner no.11. It is thereafter that the lease in question has been renewed.

7. The Division Bench in *Smt. Jaikumari* (supra) considered the question as to whether it was open for the Revenue Authorities to impose a new condition in a subsisting lease-deed providing for seeking prior permission of the Authority to legitimize the proposed transfer of land as well as the question whether it could impose a condition to claim/levy unearned charges so as to legitimize and regularize the transfer of the land by a lessee. The question whether the State had authority to levy or claim unearned income was also considered by the Division Bench. After referring to the judgment of the Division Bench of this Court in *Damodar Tukaram Mangalmurti* (supra) it was observed in paragraph 23 and 24 as under:

“23. It necessarily follows that if the original (former) lease did not provide for obligation to pay unearned income to the State, such condition could not be introduced at a subsequent point of time during the subsistence of the lease or for that matter at the time of renewal of lease. On the other hand, if the original or previous lease contains condition authorising the Governmental authority to introduce new condition or is silent about renewal clause, it will be open to the authority to introduce new condition consistent with the law enacted by the State Legislature on that subject.

24. We are conscious of the fact pointed out by the Counsel for the State that the said matter dealt with the terms of the lease produced in that case. Nevertheless, in our opinion, the said decision would bind the State Government atleast in cases having similar leases, unless the State Legislature was to enact a law to overcome the said decision and to empower the State Government to add new conditions at the time of renewal of the lease or for that matter to levy unearned income. In absence thereof, we have no hesitation in taking the view that it is not open to the State Government to impose new conditions for the first time either during subsistence of the lease or at the time of renewal of the lease which conditions may be prejudicial to the grantee and inconsistent with the tenor of the original lease in absence of law on that subject or condition incorporated in the original lease in that behalf.”.

It was concluded in paragraph 37 as under:-

“37. Taking over all view of the matter, we have no difficulty in accepting the claim of the petitioners that provisions enacted by the State Legislature as of now would not authorise the State Government to insert new conditions or modify any condition during the subsistence of lease period or for that matter at the time of renewal of the lease. The renewal of the lease necessarily should be on same terms and conditions as in the earlier lease except the change or revision in respect of Annual lease rent.”

It is thus clear from the aforesaid decision that in view of the principle stated by this Court in *Damodar Tukaram Mangalmurti* (supra) it was not open for the State Government to add a new condition either during subsistence of the lease or at the time of renewal of the lease unless the conditions of the tenure so provide. As stated above, such clause permitting addition of new conditions while renewing the lease is absent in the original lease-deed dated 10.07.1935. We thus find that Question (a) as framed has been considered and decided by this Court in *Smt. Jaikumari* (supra) and it is thus held that it was not permissible for the Nagpur Municipal Corporation to incorporate additional terms and conditions in the lease-deed while renewing it on 02.04.2009 since there is no stipulation in the original lease-deed dated 10.07.1935 permitting it to do so.

8. Since the answer to Question (a) is in the negative it would be necessary to consider whether the petitioners are estopped from challenging the inclusion of such additional terms and conditions in the renewed lease-deed since the petitioners had accepted the renewal of the said lease without any protest. According to the petitioners since this Court in *Smt. Jaikumari* (supra) has held otherwise and that judgment is dated 30.09.2008 it was not permissible for the Nagpur Municipal Corporation to have incorporated an additional condition for payment of unearned income while renewing the lease after that decision. On the

other hand, it is the case of the respondents that having willingly accepted the newly added terms and conditions in the renewed lease it would not be permissible for the petitioners to now challenge such insertion since they were estopped by their conduct to do so.

9. **AS TO QUESTION (b)** : For considering Question (b), certain relevant aspects are required to be kept in mind. Ordinarily, a party that does not object to the terms and conditions incorporated in an agreement/contract while signing the same would be precluded from raising a challenge subsequently since it would be so estopped on first principles from doing so. Having permitted such insertion without any protest and having accepted the same without any demur a party would hardly be in a position to question such addition or insertion subsequently.

An agreement/contract between two private entities would stand on a different footing as against an agreement/contract between a private individual on one hand and the State/statutory entity on the other in the context of Article 12 of the Constitution of India. An exception in this regard has been considered by the Hon'ble Supreme Court in *Central Inland Water Transport Corporation Limited* (supra). After referring to Article 14 of the Constitution of India the Hon'ble Supreme Court observed that the Courts could not enforce and would when called upon to do so, strike down an unfair and unreasonable contract or an unfair or

unreasonable clause in a contract entered into between the parties who are not equal in bargaining power. By way of illustration it was observed that the said principle would also apply where a man has no choice or rather has no meaningful choice but to give his assent to a contract or to sign on a dotted line in a prescribed or standard form or to accept the rules as part of the contract. However where the bargaining power of the contracting parties is equal or almost equal or where both the parties are businessmen and the contract is a commercial transaction such principle would not apply. It was further held that the said principle would apply to contracts which contain terms which are so unfair and unreasonable that they shock the conscience of the Court, they are opposed to public policy and are required to be adjudged void. The learned counsel for the petitioners urged the Court to apply the aforesaid principle as laid down by the Hon'ble Supreme Court and set aside the additional terms and conditions in the renewed lease-deed by which demand of transfer fees was made.

10. In this context it is to be noted that while answering Question (a) it has been found that it was not permissible for the Nagpur Municipal Corporation to incorporate additional terms and conditions in the lease-deed while renewing it especially when there was no such stipulation in the initial lease-deed. The clauses now incorporated and especially Clauses (i), (j) and (k) to which challenge has been raised requires the

lessee to pay unearned income and penalty as per rules of the Corporation as well as the Government. Pursuant to the aforesaid clauses, the Corporation has made a demand of transfer fees of Rs.20,85,517/-. At this stage, it would be necessary to refer to the stand taken by the Nagpur Municipal Corporation on that demand. In paragraphs 12 and 13 of the affidavit filed by the Nagpur Municipal Corporation it has been stated as under:-

“12. As to Para 12 : It is further made clear that as per Resolution of the N.M.C. if the area of plot is above 5000 sq. ft. then the transfer fee (unearned income) shall be charged at the current rate of 12% at the current ready reckoner rate. Thus in these circumstances the demand issued by the N.M.C. on 3.9.2010 is strictly in consonance to the Resolution of N.M.C. and in consonance to the agreed terms and conditions of lease, more particularly, condition No.1(i) of the lease. Thus the petitioners cannot find fault with the same.”

“13. As to Paras 13 and 14 : It is submitted that the demand made on 3.9.2010 from the petitioners in respect of payment of unearned income (transfer fee) is just, proper and legal and is because of the condition of the lease and resolution of the N.M.C. in this regard.”

11. This stand immediately indicates that the demand of transfer fees is in the form of unearned income. Reference in that regard has been made to Clause (i) of the lease-deed. The demand of unearned income by the State Government has been found to be without any authority of law by the Division Bench in *Smt. Jaikumari* (supra). It has been held in clear terms that there is no legislation enacted by the State Legislature which

would govern the field of power to levy unearned income. At the cost of repetition it may be stated that insertion of such clause demanding unearned income while renewing a lease which according to the terms of the original lease did not permit insertion of any additional term or condition has been held to be illegal. Once this legal position is obtained, permitting the Nagpur Municipal Corporation to act contrary thereto would result in approving an act which has been found to be not in accordance with law. Once this Court has held that such insertion of an additional term or condition demanding unearned income would not be legal while renewing a lease and having noticed that in the original lease granted to the predecessors of the petitioners there was no permission to add or insert any additional term or condition, the Nagpur Municipal Corporation by doing so would be giving a go-by to the law that is binding on it. It would also result in violation of Article 14 of the Constitution of India.

12. In the case in hand, the agreement for renewal of the lease is between private parties and the Municipal Corporation which is a local authority within the territory of India for the purposes of Article 12 of the Constitution. According to the petitioners they expected renewal of the lease on the same terms and conditions that existed earlier. It is pleaded that they had no option but to sign on the dotted line. The challenge to the insertion of new additional clauses is based on the decision of this

Court in *Smt. Jaikumari* (supra) by urging that despite the aforesaid judgment, such insertions have been made in defiance thereof. The challenge to the insertion of additional clauses demanding transfer fees based on unearned income would thus have to be examined in the context of violation of public policy and breach of Article 14 of the Constitution of India. If it is found that insertion of such additional clauses requiring payment of unearned income notwithstanding the decision of this Court in *Smt. Jaikumari* (supra) is opposed to public policy and also violates Article 14 of the Constitution, the defence of estoppel raised by the Corporation is liable to fall to the ground since estoppel cannot operate against law. Useful reference in this regard can be made to the decision in *Express Newspapers Pvt. Ltd. & Others Versus Union of India & Others* [(1986) 1 SCC 133], wherein it has been held in paragraph 183 that in public law, the most obvious limitation and doctrine of estoppel is that it cannot be evoked so as to give an overriding power which it does not in law possess. In other words, no estoppel can legitimate action which is *ultra vires*. This principle has been reiterated in *Krishna Rai (Dead) through LRs & Others Versus Banaras Hindu University through Registrar & Others* [AIR 2022 SC 2924] by observing that it is a settled position that the principle of estoppel cannot override the law.

13. The decision in *Central Inland Water Transport Corporation Ltd.* (supra) has been considered recently by the Hon'ble Supreme Court in *Indsil Hydro Power & Manganese Limited Versus State of Kerala & Others* [(2021) 10 SCC 165]. A clause in two agreements between parties was challenged as being arbitrary and discriminatory. In paragraphs 37 and 41 of the said decision it has been observed as under:-

“37. The decision of this Court in *Central Inland Water Transport Corpn.* which was pressed in service, was in relation to terms in a contract of employment. This Court found that such term would get included in the contract only at the instance of the employer where because of lack of bargaining power the employee would have no other option but to accept such term. It was in this context that the relevant term contained in the contract of employment was found to be unconscionable. At the same time, the principles which weighed with the Court for holding such terms unconscionable were specifically stated to be inapplicable in cases of commercial contracts. The relevant discussion in para 89 of the decision was: (SCC p. 216)

“89. ... The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Article 14. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No Court can visualise the

different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex world of giant corporations with their vast infrastructural organisations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances."

41. The law is thus clear that in cases where a term of contract or agreement entered into between the parties is completely one-sided, unfair and unreasonable, where the other party having less bargaining power had to accept such term by force of circumstances, the relief in terms of the decision of this Court in *Central Inland Water Transport Corpn.* can be extended."

In the said decision the agreements in question were found to have been entered after long deliberations and with the advantage of assistance of legal counsel.

14. It would also be necessary to refer to the decision of the Constitution Bench in *Union Carbide Corporation & Others Versus Union of India & Others* [(1991) 4 SCC 584]. Therein, under a Memorandum of Settlement and orders passed by the Court amount of consideration was paid with a view to stifle off criminal prosecutions and it was claimed that this was opposed to public policy. Consent given resulting in passing of a consent order had no higher sanctity than the legality and validity of the agreement on which it rested. In that regard, it was observed by the Hon'ble Supreme Court in paragraph 107 as under:-

“107. At the outset, learned Attorney General sought to clear any possible objections based on estoppel to the Union of India, which was a consenting party to the settlement raising this plea. Learned Attorney General urged that where the plea is one of invalidity the conduct of parties becomes irrelevant and that the plea of illegality is a good answer to the objection of consent. The invalidity urged is one based on public policy. We think that having regard to the nature of plea --- one of nullity --- no preclusive effect of the earlier consent should come in the way of the Union of India from raising the plea. Illegalities, it is said, are incurable. This position is fairly well established. In a Bankruptcy Notice, In re Atkin L.J. said (Ch D p.97)

“(It is) well established that it is impossible in law for a person to allege any kind of principle which precludes him from alleging the

invalidity of that which the statute has, on grounds of general public policy, enacted shall be invalid.”

In Maritime Electric Co. Ltd. v. General Dairies Ltd. a similar view finds expression : (AIR pp.116-17)

“.. an estoppel is only a rule of evidence which under certain special circumstances can be invoked by a party to an action; it cannot therefore avail in such a case to release the plaintiff from an obligation to obey such a statute, nor can it enable the defendant to escape from statutory obligation of such a kind on his part. It is immaterial whether the obligation is onerous or otherwise to the party suing. The duty of each party is to obey the law [T]he Court should first of all determine the nature of the obligation imposed by the statute, and then consider whether the admission of an estoppel would nullify the statutory provision.

... There is not a single case in which an estoppel has been allowed in such a case to defeat a statutory obligation of an unconditional character.

.....”

The Court proceeded further to observe that it was a trite proposition that a contract whose object was opposed to public policy was invalid and that this was not any less so by reason alone by the fact that the unlawful terms were part of a consent decree. The Court referred to its earlier decision in *State of Punjab (Now Haryana) & Others Versus Amar Singh & Another* [(1974) 2 SCC 70] in that regard. In paragraph 33 of this decision it has been observed as under:-

“33. Another argument was suggested that the order, even though passed on a compromise was as valid

and binding as one passed on contest. May be, that as a broad proposition one may assent to it. But where a compromise goes against a public policy prescription of a statute or a mandatory direction to the Court to decide on its own certain foundational facts, a razi cannot operate to defeat the requirement so specified or absolve the Court from the duty. The resultant order will be ineffective. After all, by consent or agreement, parties cannot achieve what is contrary to law and a decree merely based on such agreement cannot furnish a judicial amulet against statutory violation.”

In *Union of India Versus Colonel L.S.N. Murthy & Another* [(2012) 1 SCC 718], it was reiterated that unless the effect of an agreement resulted in performance of an unlawful act, an agreement which was otherwise legal could not be held to be void and if the effect of that agreement did not result in performance of an unlawful act, as a matter of public policy in such a case, the Court would refuse to declare the contract void with a view to save the bargain entered into between the parties and the solemn promises made thereunder.

From the aforesaid it becomes clear that even by agreement or consent resulting in an order passed by the Court, it would not be permissible to achieve a result which otherwise cannot be achieved without violating the relevant Statute. Recently in *Arce Polymers Private Limited Versus M/s.Alphine Pharmaceuticals Private Limited & Others* [(2022) 2 SCC 221], the Hon’ble Supreme Court observed that the rule of waiver would not be applicable when such waiver is contrary to public policy.

15. In the light of the aforesaid discussion it is clear that if a clause in the contract results in requiring either party to violate the law while abiding by or enforcing such agreement/contract, it would be permissible for the Court to declare such clause of the agreement/contract to be void as being against public policy. Permitting operation of such clause in the agreement/contract would result in breach of the law and the same would be against public policy.

16. It is to be noted that after the judgment of the Division Bench in *Smt. Jaikumari* (supra) this Court in *Pramod Deshraj Budhraj* and *Dilip W. Bhamburkar* (supra) has restrained the concerned lessor from inserting any new terms or conditions while renewing a lease-deed in the absence of any stipulation in that regard in the original lease-deed. These are the cases prior to the actual renewal being effected and the parties had approached the Court on being insisted by the lessor to insert new terms and conditions while renewing the lease-deed. That aspect would not make much difference in the present case since it has been found that even after consenting for renewal of the lease-deed, the lessee is not estopped from urging that such insertion of additional terms and conditions is in violation and breach of the law laid down by this Court in *Smt. Jaikumari* (supra) which is against public policy. Estoppel would thus not operate against law.

17. Question (b) is accordingly answered by holding that the petitioners are not estopped from challenging the insertion of additional terms and conditions in the renewed lease-deed on the ground that they had accepted such inclusion without any protest.

18. **AS TO QUESTION (c):** Once it is found that it was not permissible for the Nagpur Municipal Corporation to incorporate additional terms and conditions in the lease-deed while renewing it in the absence of any stipulation in the initial lease-deed permitting it to do so and that the petitioners cannot be estopped from challenging such insertion having not protested against the same while renewing the lease-deed, it would not be necessary in the present case to examine the legality and validity of the resolution dated 25.11.2008 passed by the Nagpur Municipal Corporation on the basis of which the demand of transfer fees was made. Since Clauses (i), (j) and (k) that have been inserted while renewing the lease-deed seek to recover unearned income and as it is the stand of the Nagpur Municipal Corporation that such demand of unearned income is based on its resolution dated 25.11.2008, on finding that insertion of new terms and conditions itself was not permissible, the newly inserted Clauses would have to be deleted from the lease-deed as renewed and those Clauses cannot be relied upon for claiming unearned income. In these facts therefore it is not found necessary to go into the legality and validity of the said resolution dated 25.11.2008 and the

challenge in that regard is kept open for being raised and considered in appropriate proceedings.

19. Thus in view of the answers given to Questions (a) and (b), we find that the petitioners are entitled for a declaration that the insertion of Clauses (i), (j) and (k) in the renewed lease-deed dated 02.04.2009 and deletion of the earlier terms and conditions in the said lease-deed is contrary to the law laid down by this Court in *Smt. Jaikumari* (supra) and therefore invalid. The petitioners would be entitled to seek renewal of the said lease-deed in accordance with the original lease-deed dated 10.07.1935. Consequently, the demand of transfer fees is liable to be set aside since the Nagpur Municipal Corporation is not empowered to demand the same from the lessees in the absence of any such stipulation in the original lease-deed.

20. Accordingly, the following order is passed:-

- (A) It is declared that the insertion of Clauses (i), (j) and (k) in the renewed lease-deed dated 02.04.2009 and deletion of the earlier terms and conditions in the said lease-deed is contrary to the law laid down by this Court in *Smt. Jaikumari* (supra) and therefore invalid.
- (B) The Nagpur Municipal Corporation is directed to execute a fresh indenture renewing the lease-deed for the period from 01.04.1994 to 31.03.2024 on the same terms and conditions as per the original lease-deed dated 10.07.1935 subject to demand of fair and suitable

enhancement in the amount of rent as provided by Clause (III) of the original lease-deed.

- (C) The demand notice dated 03.09.2010 issued by the third respondent-Estate Officer, Nagpur Municipal Corporation is thus set aside and the petitioners would be entitled to refund of the amount of Rs.20,85,517/- paid by them under protest. The aforesaid amount be refunded within a period of eight weeks from today failing which the said amount shall carry interest at the rate of 4% per annum from the date of the judgment till its realization.
- (D) The Nagpur Municipal Corporation shall accordingly mutate the name of petitioner no.11 in accordance with law.

21. Rule is made absolute in aforesaid terms leaving the parties to bear their own costs.

(URMILA JOSHI-PHALKE, J.) (A.S. CHANDURKAR, J.)

APTE