

DWARKADAS MARFATIA & SONS
v.
BOARD OF TRUSTEES OF THE PORT OF BOMBAY

APRIL 27, 1989

[SABYASACHI MUKHARJI, M.H. KANIA AND
S. RANGANATHAN, JJ.]

*Constitution of India, 1950: Articles 12, 14, 32 and 226—
'Bombay Port Trust'—Whether 'State'—Evicting its tenant and granting
the land in question to another tenant—Frontiers of judicial review of
such action.*

The respondent Board of Trustees of the Port of Bombay is a statutory authority, and as such has been exempted from the operation of the Bombay Rents, Hotel & Lodging House Rates (Control) Act, 1947. The appellant has been the lessee of the respondent since about 1932 in respect of part of the original plot No. 4 (now plot 5B) which adjoins plot No. 6 tenanted by M/s Bombay Bharat & Swadeshi Rice Mills. In or about 1933-34, M/s Bombay Bharat & Swadeshi Rice Mills took over the appellant, and a rice mill was started on appellant's part of plot No. 4 and plot No. 6.

In December 1957, the Town Planning Scheme No. 1 in Bombay City came into force, and the original plot No. 4 was reconstituted into final plot No. 5. In or about 1963 the respondent sub-divided plot No. 5 into final plot 5A and final plot 5B, and as a result of the sub-division M/s Dhanji Mavji became the tenant/occupant of a major portion of plot 5B. In 1970-71 the respondent agreed to let the entire plot 5B, including the portion which had been let to and was in possession of the appellant since 1933, to Dhanji Mavji. The appellant objected to the offer made to Dhanji Mavji but the respondent asserted that as Dhanji Mavji had been in possession of the major portion of plot No. 5B, it agreed to let the entire plot to them. In the premise, the respondent purported to terminate the tenancy of the appellant in respect of its portion of plot 5B, and later filed suit for eviction. The Trial Court dismissed the suit holding that it would be legitimate to infer that the letting was for a manufacturing purpose and hence the notice of termination was bad. The appellate court reversed that decision. Aggrieved thereby, the appellant filed a writ petition under Article 227 of the Constitution. The High Court accepted the finding of the appellate court that the notice of ejection was valid notice and there was no waiver of notice.

A Before this Court, it was contended on behalf of the appellant that (1) the exemption from the operation of the Rent Act was given to the Port Trust Authority on the assumption that it would act in public interest and would not behave like ordinary landlords; (2) the action of the respondent in terminating the appellant's contractual tenancy had a public law character attached to it and was accordingly subject to judicial review; (3) every action of the respondent which was 'State' within Article 12 of the Constitution, whether it be in the field of contract or any other field, was subject to Article 14 of the Constitution and must be reasonable and taken only upon lawful and relevant grounds of public interest; (4) the respondent's established rational/policy was to offer/allot a final/reconstituted plot for development to the existing occupants thereof as joint tenants; and (5) the eviction of the appellant was not necessary in the public interest for the proper development of the plot as required by the Town Planning Scheme.

D On behalf of the respondent it was contended that (1) the onus was entirely on the appellant to establish that the Bombay Port Trust had terminated the tenancy or taken the proceedings in eviction not in public interest but for a collateral purpose or *mala fide* or that it had acted in a manner contrary to the provisions of Article 14; (2) since there was no obligation or duty cast upon the Bombay Port Trust to provide accommodation, there could be no question of acting in governmental character, and such a body stood on the same footing as any other citizen and would, in respect of such activity, not be subjected to public law duty; (3) the respondent's dealing with tenants was a contractual dealing and it was not a matter for public law domain and was not subject to judicial review; and (4) it was the policy of the respondent to allot the entire re-constituted plot to one person who was occupying the major portion of such plot, for its proper development.

F Dismissing the appeal, it was,

HELD: *Per Sabyasachi Mukharji, J., (Kania, J. agreeing)*

G (1) Bombay Port Trust being a public body, even in respect of its dealing with its tenants, it must act in public interest, and an infraction of that duty is amenable to examination either in civil suit or in writ jurisdiction. [761G]

H *Rampratap Jaidayal v. Dominion of India*, [1952] 54 Bom. L.R. 927; and *Baburao Shantaram More v. The Bombay Housing Board*, [1954] V SCR 572, referred to.

(2) Where any special right or privilege is granted to any public or statutory body on the presumption that it must act in a certain manner, such bodies must make good such presumption while acting by virtue of such privilege. Judicial review to oversee if such bodies are so acting is permissible. [762D-E]

A

Radhakrishna Agarwal & Ors. v. State of Bihar & Ors., [1977] 3 SCR 249 and *Life Insurance Corporation of India v. Escorts Ltd. & Ors.*, [1985] 3 Supp SCR 909, referred to.

B

(3) The field of letting and eviction of tenants is normally governed by the Rent Act. The Port Trust is statutorily exempted from the operation of the Rent Act on the basis of its public/Governmental character. Every action/activity of the Bombay Port Trust which constituted "State" within Article 12 of the Constitution in respect of any right conferred or privilege granted by any statute is subject to Article 14 and must be reasonable and taken only upon lawful and relevant grounds of public interest. [762E-F; 763A-B]

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S.P. Rekhi v. Union of India, [1981] 2 SCR 111 and *M.C. Mehta & Anr. v. Union of India & Ors.*, [1987] 1 SCC 395, referred to.

D

(4) Where there is arbitrariness in State action, Article 14 springs and judicial review strikes such an action down. Every action of the Executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, it should meet the test of Article 14. [763C]

E

(5) All exercise of discretion or power by public authorities as the respondent, in respect of dealing with tenants in respect of which they have been treated separately and distinctly from other landlords on the assumption that they would not act as private landlords must be judged by that standard. [763H; 764A]

F

(6) If a governmental policy or action even in contractual matters fails to satisfy the test of reasonableness, it would be unconstitutional. [764A-B]

G

E.P. Royappa v. State of Tamil Nadu, [1974] 2 SCR 348; *Maneka Gandhi v. Union of India*, [1978] 2 SCR 621; *R.D. Shetty v. The International Airport Authority of India & Ors.*, [1979] 3 SCR 1014; *Kasturi Lal Lakshmi Reddy v. State of J & K*, [1980] 3 SCR 1338 and

H

A *Ajay Hasia v. Khalid Mujib Sehravardi*, [1981] 2 SCR 79, referred to.

(7) Governmental Policy would be invalid as lacking in public interest, unreasonable or contrary to the professed standards and this is different from the fact that it was not done *bona fide*. [764B-C]

B (8) There is always a presumption that a governmental action is reasonable and in public interest. It is for the party challenging its validity to show that the action is unreasonable, arbitrary or contrary to the professed norms or not informed by public interest, and the burden is a heavy one. [764C-D]

C (9) Judicial review is not concerned with the decision, but with the decision making process. Unless this restriction on the power of the court is observed, the court under the guise of preventing the abuse of power, would be itself guilty of usurping power which does not belong to it. [765E-F]

D (10) The Court cannot really substitute a decision reached by a fair procedure keeping the policy of the respondent in mind by a different decision only on the ground that the decision which appeals to the court is a better one. [765G]

E *Council of Civil Service Unions v. Minister for the Civil Service*, [1984] 2 AER 935; *Chief Constable of the North Wales Police v. Evans*, [1982] 1 WLR 1195; *In re Preston v. I.R.C.*, [1985] 2 WLR 336 and *Regina v. Chief Constable of the Merseyside Police*, [1986] 2 WLR 144, referred to.

F (11) The Bombay Port Trust, perhaps, was justified in coming to the conclusion that the only possible way to develop the properties of the Bombay Port Trust in compliance with the Town Planning Scheme was by allotting plots to holders of major portions thereon. Such a decision cannot be faulted. [766E-F]

G (12) Upon the facts of the instant case, there was an implied obligation in respect of dealings with the tenants/occupants of the Port Trust Authority to act in public interest/purpose. That requirement is fulfilled if it is demonstrated that the Port Trust authorities have acted in pursuance of a policy which is referable to public purpose. Once that norm is established whether that policy is the best policy or whether another policy was possible, is not relevant for consideration. [767E-F]

(13) Under the constitutional scheme of this country, the Port Trust Authorities were required by relevant law to act in pursuance of public purpose. This Court is satisfied that they have proceeded to so act. [767G]

Per S. Ranganathan, J. (Concurring)

On the facts of the instant case, the action of the Port Trust was not improper and there are no grounds for interference. [768F]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2036 of 1987.

From the Judgment and Order dated 19.11.1986 of the Bombay High Court in W.P. No. 710 of 1984.

Aspi Chinai, R.F. Nariman, Miss Darshna Bhogilal, K.K. Lahiri, R. Karanjawala, Ejaz Maqbool and Mrs. Manik Karanjawala for the Appellant.

K.K. Singhvi, Brij Bhushan and Anil Kumar Gupta for the Respondent in C.M.P. No. 19447 of 1988.

G. Ramaswamy, Additional Solicitor General, U.J. Mukhija, B.S. Basania, Mrs. A.K. Verma, Arun Banga and D.N. Misra for the Respondent.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. This is an appeal by special leave from the judgment and order dated 19th November, 1986 of the learned Single Judge of the Bombay High Court. In this appeal this Court has been asked to examine the frontiers of judicial review of the action of a statutory authority, i.e. the Board of Trustees of the Port of Bombay, in evicting its tenant and granting the land in question to another tenant. However, in order to appreciate the controversy it is necessary to have a conspectus of the facts involved.

A The respondent Board of Trustees of the Port of Bombay is a statutory authority. Vast areas of South Bombay which are completely tenanted, are owned by the respondent. Being a statutory authority, the respondent has been exempted from the operation of the relevant Rent Act. The respondent is a statutory corporation constituted under the Major Port Trust Act, 1963 as amended by the Major Port Trust (Amendment) Act, 1974.

C Between about 1906 and 1932, one Jhunjhunwala was the lessee of plot No. 6 (which adjoins plot 5B which is the suit plot) and a building was existing on plot No. 6 which was tenanted to M/s Bombay Bharat & Swadeshi Rice Mills, and the said Mills were desirous of operating a rice mill on plot No. 6 but could not get the licence from the Municipality for the operation of the said rice mill unless satisfactory arrangement was made for the removal and storage of rice husk in a separate chamber/structure.

D Since about 1932, the appellant had been the lessee of the respondent in respect of part of the original plot No. 4 (now plot 5B) which adjoins plot No. 6 of the suit plot measuring 113.4 sq. mts. In or about 1933-34, with a view to acquire the suit plot and using the same for the rice mill/dust room, M/s Bombay Bharat & Swadeshi Rice Mills took over the appellant. The dust room structure was constructed on the suit plot. The rice mill on plot No. 6 and the dust room on the suit plot had a common wall and were inter-connected by ducts.

F It was stated that the respondent's inspectors had regularly visited the premises in question but had never objected to the user of the rice mill/dust room. In December'57, the Town Planning Scheme No. 1 in Bombay City came into force. The original plot No. 4 was reconstituted into final plot No. 5 but continued to belong to the respondent. The Scheme also stipulated that all rights of lessee/tenants in the original plots stood transferred to the final plots. It may be noted that in December'57 original plot No. 4 comprised of 113.4 sq. mts. let to the appellant, 390 sq. mts. let to M/s Dhanji Mavji, 453 sq. mts. let to two associate firms (M/s Gordhandas Ranchoddas and M/s Chunilal Gupta) and 195 sq. mts. let to M/s Vassanji Hirji. Hence, of the final plot No. 5, the appellant and their associates, it was asserted, held 569 sq. mts., Dhanji Mavji held 390, Vassanji Hirji held 195 sq. mts. and the balance 155 sq. mts. was with the respondent/others. Total area of final plot 5 was 1309 sq. mts. From 1957-72, the respondent, it is asserted, continued the tenancies of the appellant and its associate firms. In or about 1963, however, the respondent applied for and got final plot No. 5 sub-divided into final plot 5A (659 sq. mts.)

and final plot 5B (650 sq. mts.). The suit plot and M/s Dhanji Mavji's plot fell entirely in final plot 5B and as a result of the sub-division, Dhanji Mavji became the tenant/occupant of a major portion of plot 5B. It is asserted that appellant's associate firm and Chunilal Gupta fell in plot No. 5A and became the tenants/occupants of a major portion of plot No. 5A. In 1971 the Municipality renewed the mill licence covering both the structures.

It is the case of the appellant that in 1970-71, the respondent arbitrarily agreed to let the entire plot 5B including the portion which had been let to and in the possession of the appellant since 1933 to M/s. Dhanji Mavji, and thereby agreed to give him 650.6 sq. mts. against his existing 390 sq. mts. Also the appellant offered to develop final plot 5B jointly with Dhanji Mavji in 1972-76. The appellant, however, asserted that it had offered to pay the revised rent that might be fixed by the respondent. The appellant objected to the offer made to Dhanji Mavji exclusively and pointed out that the established practice of the respondent was to continue the existing tenants/occupants on the final plots. The respondent, however, asserted that as Dhanji Mavji had been in possession of the major portion of plot No. 5B (390 sq. mts. vis-a-vis 113.4 sq. mts.), they agreed to let the entire plot to Dhanji Mavji and, therefore, could not entertain the appellant's request. In the premises, by notices issued in 1971-73, the respondent purported to terminate the tenancy of the appellant. In 1973-74, the Municipal Corporation auctioned the right, title and interest of Jhunjhunwala and the respondent in plot No. 6 for non-payment of property taxes. An associate firm of the appellant M/s. Natwar Parekh & Sons purchased plot No. 6 and became the owner thereof. The case of the appellant was that the respondent got the Corporation to wrongfully exclude the respondent's interest from the conveyance. The said Natwar Parekh challenged such exclusion by filing writ petition No. 52/74 in the High Court. On 26.7.1976, the writ petition was allowed, and Natwar Parekh are now the owners of plot No. 6. This, according to the appellant, caused resentment to the respondent, and it offered Plot No. 5A to the existing tenants, i.e. the petitioner's associates who held 453 sq. mts. and Vassanji Hirji, who held 195 sq. mts. The petitioner's associates who held 70% of the plot 5A, pointed out that the said Vassanji Hirji was not interested and that the entire plot should accordingly be given to them. The respondents declined and instead commenced eviction proceedings against all the three holders. In or about October 1977, the respondent issued one month's notice to the appellant to terminate the tenancy.

In December, 1977 the respondent filed suits Nos. 447 & 603/77 against the appellant in the Court of Small Causes, Bombay. The

appellant filed its written statement and pleaded that the proceedings

- A had been instituted *mala fide* and just to benefit Dhanji Mavji and to harass the appellant's associates, who had acquired the respondent's title to plot no. 6. Secondly, it was asserted that the premises had been acquired and used for rice mill for 40 years and accordingly it could not be terminated by one month notice. The lease was for manufacturing purposes. Thirdly, it was asserted, that the notice of termination, in any event, had been waived by demanding and recovering rent/enhanced rent.

It is asserted that at the hearing the witnesses of the respondent had admitted that the plot would be given to Dhanji Mavji if the appellant was evicted therefrom. It also agreed that the respondent was under no statutory obligation to give the entire plot to Dhanji

- C Mavji.

On or about 31st March, 1981 the Trial Court dismissed the suit, holding that the appellant was admittedly using the plot for a rice mill for over 50 years to the knowledge of the respondent; and it would be legitimate to infer that the letting was for a manufacturing purpose.

- D Hence, the notice of termination was bad. The Trial Court did not deal with the question of *mala fide*. On or about 13th January, 1984 the appellate court reversed that decision and also held that the issue of *mala fide* or arbitrariness was not relevant on the legality of the eviction proceedings. Aggrieved thereby, the appellant filed a writ petition No. 710/84 under Article 227 of the Constitution. The High Court
- E dismissed the said writ petition by the judgment under appeal and upheld the order of eviction. The High Court accepted the finding of the appellate court that the notice of ejectment was valid notice and there was no waiver of notice. In our opinion, the High Court was right on this aspect and in any event under Article 227 of the Constitution the High Court could not have gone into this question. We, in an
- F appeal under Article 136 of the Constitution cannot re-appraise that question.

The question that survived after the finding of the appellate court and which was urged mainly before the High Court and also in this appeal, was whether the action of the respondent in evicting the

- G appellant and granting the premises in question to M/s Dhanji Mavji was proper and right. It was contended on behalf of the appellant that the action of the respondent in terminating the appellant's contractual tenancy had a public law character attached to it and was accordingly subject to judicial review. It was asserted that every action of the respondent which was 'State' within Article 12 of the Constitution, whether it be in the field of contract, or any other field, was subject to Article 14 of the Constitution and must be reasonable and taken only
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upon lawful and relevant grounds of public interest. In that light, it was urged that if the eviction of the appellant was not necessary in the public interest and if it had been taken pursuant to any norm or policy which does not permit eviction of the appellant, then the action is arbitrary and discriminatory and not in accordance with any policy which the respondent was enjoined to follow.

In the aforesaid background it was contended that the eviction of the appellant was not necessary in public interest. It appears that the eviction of the appellant was only in pursuance of a policy of the Port Trust to let out a reconstituted plot to the person who occupied the major portion and who could use it for development. It was urged that the decision of the Port Trust to allot the entire plot to M/s Dhanji Mavji to the exclusion of the appellant (although the appellant was also the existing tenant and in occupation of a portion thereof for the past 40 years) was an arbitrary and discriminatory departure from the established policy of the Port Trust, which was to offer the plot to the existing tenants (where two or more tenants were in occupation of one plot) as joint-tenants. It was contended that the impugned termination was *ultra vires* and arbitrary. It was contended that the exclusive allotment of the entire plot 5B to M/s Dhanji Mavji and the consequent termination of the appellant's tenancy was not necessary to enable proper development of the plot as required by the Town Planning Scheme. There was no policy requiring the entire final/reconstituted plot to be allotted exclusively to the person occupying the major portion thereof or requiring the other existing occupants to be evicted. Nor, it was submitted, was the allotment of the entire plot, pursuant to any such alleged policy. On the other hand, the appellant contended that the respondent's established policy was to offer/allot a final/reconstituted plot for development to the existing occupants thereof as joint tenants. It was contended that this rational policy which, according to the appellant, would have fulfilled the public interest of development in accordance with the regulations of the Town Planning Scheme and at the same time would not have required or necessitated the eviction of the existing occupants.

Contrary to the established rational policy of accommodating tenants by offering/allotting a new plot jointly to the existing occupants/tenants, the respondent arbitrarily, it was contended, and discriminately did not offer the new plot 5B to M/s Dhanji Mavji and the appellant (both of whom were existing tenants/occupants of the plot) as joint tenants, but instead wrongfully decided to give the entire plot to M/s Dhanji Mavji to the exclusion of the appellant.

Our attention was drawn to Section 4 of the Bombay Rents, Hotel & Lodging House Rates (Control) Act, 1947, which enjoins that

A the Act would not apply to the premises belonging to the Govt. or to the local authorities. By the provisions of the said Section 4, the Port Authorities were exempted from the operation of the Rent Act. This privilege was given to the Port Trust Authorities, it was submitted, on the assumption that it would act in public interest, and would not behave like ordinary landlords. The special privileges, powers and benefits were statutorily conferred on the Bombay Port Trust by Section (4) of the aforesaid Act. It had those rights due to its statutory or public character, as a local authority.

Our attention was also drawn to the decision in *Rampratap Jaidayal v. Dominion of India*, [1952] 54 Bom. LR 927 at 934 where the Chief Justice Chagla observed as follows:

C "It is not too much to assume, as the Legislature did in this case assume, that the very Government whose object was to protect the tenants and prevent rent being increased and prevent people being ejected, would not itself when it was the landlord do those very things which it sought to prohibit its people from doing, and therefore the underlying assumption of this exemption is that Government would not increase rents and would not eject tenants unless it was absolutely necessary in public interest and unless a particular building was required for a public purpose."

E This Court in *Baburao Shantaram More v. The Bombay Housing Board & Anr.*, [1954] V SCR 572 had to consider Section 4 of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947, and so far as material for our present purposes explained the basis of exemption under Section 4 as that the Govt. or local authority or the Board would not be actuated by any profit making motive so as to unduly enhance the rents or eject the tenants from their respective properties as private landlords are or are likely to be. In other words, this Court recognised that the basis of differentiation in favour of the public authorities like the respondent, was on the ground that they would not act for their own purpose as private landlords do, but must act for public purpose.

G Our attention was also drawn by Mr Chinai, learned counsel for the appellant, to the observations on 'Administrative Law' by Wade, 5th Edn. at page 355. It was stated therein as follows:

H "Statutory power conferred for public purposes is conferred as it were upon trust, not absolutely—that is to say, it can validly be used only in the right and proper way which Parliament when conferring it is presumed to have intended."

It, therefore, follows that the public authorities which enjoy this benefit without being hidebound by the requirements of the Rent Act must act for public benefit. Hence, to that extent, this is liable to be gone into and can be the subject-matter of adjudication. A

Learned Addl. Solicitor General Mr Ramaswami contended that the onus was entirely on the appellant and the burden lay on the defendant to establish that the Bombay Port Trust had terminated the tenancy or taken the proceedings in eviction not in public interest but for a collateral purpose or *mala fide* or that it had acted in a manner contrary to the provisions of Art. 14 of the Constitution. He is right in so contending. B

It was further urged by Mr Ramaswamy that public law duties are owed to society at large and the nature of the body performing the functions is not determinative of public law or private law character of the action taken. He contended that since the provisions of the Bombay Rent Act did not apply to the premises of the Bombay Port Trust in the notice of termination no reason was required to be given either in the notice itself terminating the tenancy or in the plaint for evicting the appellant. He further contended that originally the Bombay Port Trust was constituted as a body corporate under the provisions of the Bombay Port Trust Act, 1889 and is now constituted under the provisions of the Major Port Trusts Acts, 1988. In both these Statutes the object for constituting the Bombay Port Trust was not to provide accommodation to persons and, therefore, the object was totally different from the object for which the Bombay Rent Act and similar enactments have been enacted. It was, therefore, urged that since there was no obligation or duty cast upon the Bombay Port Trust to provide accommodation, there could be no question of acting in Government character. C

It was urged that the respondent did not enjoy any special privileges/powers of benefits vis-a-vis such activities by virtue of its being a local Body or Government character. In the premises, it was contended that such a body stands on the same footing as any other citizen and will, in respect of such activity, not be subjected to public law duty. D

We are unable to accept the submissions. Being a public body even in respect of its dealing with its tenant, it must act in public interest, and an infraction of that duty is amenable to examination either in civil suit or in writ jurisdiction. G

Our attention was drawn to the observations of this Court in *Radhakrishna Agarwal & Ors. v. State of Bihar & Ors.*, [1977] 3 SCR 249. Reliance was also placed on the observations of this Court in *Life* H

Insurance Corp. of India v. Escorts Ltd. & Ors., [1985] 3 Suppl SCR 909, in support of the contention that the public corporations' dealing with tenants is a contractual dealing and it is not a matter for public law domain and is not subject to judicial review. However, it is not the correct position. The Escorts' decision reiterated that every action of the State or an instrumentality of the State, must be informed by reason. Indubitably, the respondent is an organ of the State under Art. 12 of the Constitution. In appropriate cases, as was observed in the last mentioned decision, actions uninformed by reason may be questioned as arbitrary in proceedings under Art. 226 or Art. 32 of the Constitution. But it has to be remembered that Art. 14 cannot be construed as a charter for judicial review of State action, to call upon the State to account for its actions in its manifold activities by stating reasons for such actions.

The contractual privileges are made immune from the protection of the Rent Act for the respondent because of the public position occupied by the respondent authority. Hence, its actions are amenable to judicial review only to the extent that the State must act validly for a discernible reason not whimsically for any ulterior purpose. Where any special right or privilege is granted to any public or statutory body on the presumption that it must act in certain manner, such bodies must make good such presumption while acting by virtue of such privileges. Judicial review to oversee if such bodies are so acting is permissible.

E The field of letting and eviction of tenants is normally governed by the Rent Act. The Port Trust is statutorily exempted from the operation of Rent Act on the basis of its public/Government character. The legislative assumption or expectation as noted in the observations of Chagla C.J. in *Rampratap Jaidayal's* case (supra) cannot make such conduct a matter of contract pure and simple. These corporations must act in accordance with certain constitutional conscience and whether they have so acted, must be discernible from the conduct of such corporations. In this connection, reference may be made on the observations of this Court in *S.P. Rekhi v. Union of India*, [1981] 2 SCR 111, reiterated in *M.C. Mehta & Anr. v. Union of India & Ors.*, [1987] 1 SCC 395, wherein at p. 148, this Court observed:

G "It is dangerous to exonerate corporations from the need to have constitutional conscience; and so, that interpretation, language permitting, which makes governmental agencies, whatever their mien amenable to constitutional limitations must be adopted by the court as against the alternative of permitting them to flourish as an imperium in imperio."

Therefore, Mr Chinai was right in contending that every activity of the Bombay Port Trust which constituted "State" within Art. 12 of the Constitution in respect of any right conferred or privilege granted by any Statute is subject to Art. 14 and must be reasonable and taken only upon lawful and relevant grounds of public interest. Reliance may be placed on the observations of this Court in *E.P. Royappa v. State of Tamil Nadu*, [1974] 2 SCR 348; *Maneka Gandhi v. Union of India*, [1978] 2 SCR 621; *R.D. Shetty v. The International Airport Authority of India & Ors.*, [1979] 3 SCR 1014; *Kasturi Lal Lakshmi Reddy v. State of J & K & Anr.*, [1980] 3 SCR 1338 and *Ajay Hasia v. Khalid Mujib Sehravardi & Ors. etc.*, [1981] 2 SCR 79. Where there is arbitrariness in State action, Art. 14 springs in and judicial review strikes such an action down. Every action of the Executive Authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, it should meet the test of Art. 14. The observations in paras 101 & 102 of the *Escorts*' case (supra) read properly do not detract from the aforesaid principles.

The High Court had relied on the observations of this Court in *Kasturi Lal Lakshmi Reddy v. State of Jammu & Kashmir & Anr.*, (supra) that the State was not totally freed of the duty to act fairly and rationally, merely because it could do so under a contract. The High Court stated that though it might be accepted that a public body like the respondent should not act unreasonably or unfairly but it did not follow that everytime they decided to take action against the contractual tenants, they had to decide the said action in terms of fairness, equity and good faith. In support of this proposition, reliance was placed on the observations of this Court in *L.I.C v. Escorts*, (supra). In this connection, Mr Chinai appearing for the appellant reiterated before us as he did before the High Court, that the basis of the legitimate assumption or expectation of which the statutory exemption had been granted by the Legislature to the Bombay Port Trust provided a guideline or touch-stone by which the conduct of the public authority which had been granted exemption, should be judged. And, according to him, the necessity of eviction in the instant case, must have been only in public interest. Reliance was placed on several decisions referred to hereinbefore.

We are inclined to accept the submission that every activity of a public authority especially in the background of the assumption on which such authority enjoys immunity from the rigours of the Rent Act, must be informed by reason and guided by the public interest. All exercise of discretion or power by public authorities as the respondent, in respect of dealing with tenants in respect of which they have been treated separately and distinctly from other landlords on the assump-

A tion that they would not act as private landlords must be judged by that standard. If a governmental policy or action even in contractual matters fails to satisfy the test of reasonableness, it would be unconstitutional. See the observations of this Court in *Kasturi Lal Lakshmi Reddy*, (supra) and *R.D. Shett v. The International Airport Authority of India & Ors.*, [1979] 3 SCR 1014 at 1034.

B Learned Additional Solicitor General reiterated on behalf of the respondent that no question of *mala fide* had been alleged or proved in these proceedings. Factually, he is right. But it has to be borne in mind that governmental policy would be invalid as lacking in public interest, unreasonable or contrary to the professed standards and this is different from the fact that it was not done *bona fide*. It is true as learned

C Addl. Solicitor General contended that there is always a presumption that a governmental action is reasonable and in public interest. It is for the party challenging its validity to show that the action is unreasonable, arbitrary or contrary to the professed norms or not informed by public interest, and the burden is a heavy one.

D In this background the contention of the appellant has been that its eviction was not necessary in public interest, and further that the eviction was only in pursuance of an alleged policy on the part of the Port Trust to let out the reconstituted plot to the person who occupied the major portion, which, according to the appellant, was not in consonance with the obligation of the Trust to take action only in public interest. It was contended that eviction for development with least dislocation, should have been the aim and that would have served the public purpose better. On behalf of the appellant it was contended that before the Trial Court it was established that both the appellant and M/s Dhanji Mavji had been tenants of the Port Trust on the original plot No. 4 since 1932, and in fact the appellant was older tenant. Our attention was drawn to para 16 of the appellant's written statement, Vol. 2 Paper Book, page 35. In this context, it was submitted that the decision of the Port Trust was not based on public purpose/interest, and as such was *ultra vires* of the powers of the Port Trust. It was contended that such a plea was justiciable in all civil suits.

G On behalf of the Port Trust authorities, however, the submission was that there was no obligation under the Bombay Port Trust Act to provide accommodation. So, there cannot be any governmental character. This we have already dealt with.

H Learned Addl. Solicitor General submitted that in evidence it has been mentioned by Katara (P.W. 1 at page 43, Vol. II) that the plot had been allotted to Dhanji Mavji since it was the policy of the Bombay Port Trust to allot a re-constituted plot to a person occupying

a major portion of such plot. There was no challenge to this evidence in cross-examination. On the other hand, he contended that there was no evidence on the alleged policy of the Port Trust of giving plots on joint tenancy to all occupants. According to him, in the letters addressed by the Port Trust at pp. 82, 123, 128 of Vol. 1 and in the letters by and on behalf of the appellant and/or their alleged associate concerns at pp. 141 to 147 they have specifically admitted that there was a policy of the Port Trust to allot plots to the occupants of the major portions thereof and in fact a grievance has been made by them that in accordance with the said policy of the Bombay Port Trust, Plot No. 5A was not being allotted to the associates of the appellant. In that view of the matter even under the scope of judicial review, it was contended, whether it should have been given on joint-tenancies or not, is not a matter which could be gone into by the Court. Reliance was placed on the observations of Lord Justice Diplock in *Council of Civil Service Unions v. Minister for the Civil Service*, [1984] 2 AER 935 at 950, where the learned Lord Justice classified 8 grounds subject to control of judicial review, namely, illegality, irrationality and procedural impropriety. Learned Addl. Solicitor General is right, in our opinion, in that we cannot really substitute a decision reached by a fair procedure keeping the policy of the respondent in mind by a different decision only on the ground that the decision which appeals to the court, is a better one. Reliance was placed on the observations of Lord Chancellor Lord Hailsham in *Chief Constable of the North Wales Police v. Evans*, [1982] 1 WLR 1155. In our opinion, it is necessary to remember that judicial review, in the words of Lord Brightman in that case, is not concerned with the decision, but with the decision making process. As observed by Prof. Dias in 'Jurisprudence' (5th Edn. at p. 91) unless the restriction on the power of the court is observed, the court would under the guise of preventing the abuse of power, be itself guilty of usurping power which does not belong to it. It is therefore necessary to bear in mind the ways and means by which the court can control or supervise the judicial action of any authority which is subject to judicial control. In this connection, it is necessary to refer to the observations of Lord Justice Templeman in *re Preston v. I.R.C.*, [1985] 2 WLR 836 and the observations of Lord Justice May in *Regina v. Chief Constable of the Merseyside Police*, [1986] 2 WLR 144. It is not within the purview of a court to substitute a decision taken by a constituted authority simply because the decision sought to be substituted is a better one. Learned Addl. Solicitor General, in our opinion, is therefore right in contending that the appellant should not be allowed to contend that the decision of the Bombay Port Trust to allot the plot to the major holder is not one of the feasible means of achieving the objectives of development. It was not open to the appellant to contend

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A that the Bombay Port Trust could have framed a better policy in a way in which both the goals, development and non-eviction of existing tenants, could have been achieved.

B Furthermore, we have to bear in mind that joint-allotment for the purpose of development pre-supposes cooperation. In this connection, it is necessary to remember that Mr Singhvi, appearing for the intervener, in C.M.P. No. 19447/88 indicated that the joint development was not possible because they were not willing to take it jointly. He also pointed out that the appellant was aware that the decision to allot this plot in his client's favour had been taken as early as 1973 and that it was within the knowledge of the present appellant that they had also put up constructions thereon at substantial cost. He urged that, though it is true that the lease in favour of the petitioner was terminated and the suit filed only in 1977, the fact is that the appellant took no step earlier to have the allotment in favour of his clients cancelled. This, he has urged, is also a ground for non-interference at this stage. We are inclined to agree.

C D Our attention was drawn to the fact that Dhanji Mavji had held 80% of the re-constituted plot. The plot 5B had been developed inasmuch as a building of ground plus 5 upper storeys had been erected as was the maximum possible notwithstanding the fact that the appellant had not yet surrendered their portion. As against this, on plot 5A where the Bombay Port Trust offered a joint tenancy to the three occupants, since there was no occupant holding a major portion thereof, there had been no development whatsoever and in fact there has been litigation going on to remove all the 3 occupants. In that view of the matter the Bombay Port Trust, perhaps, was justified in coming to the conclusion that the only possible way to develop the properties of the Bombay Port Trust in compliance with the Town Planning Scheme by allotting plots to holders of major portions thereon. Such a decision cannot be faulted.

E F G H The Town Planning Scheme came into force in 1957. Plot 5 was divided into Plot 5A and 5B in 1963. The Town Planning Act had been enacted to meet the requirements for planning, development and use of land. Having regard to Sections 2(7), 2(13), 2(17), 2(18), 2(21), 2(22), 2(27), 13, 14, 22, 59, 65, 88, 89, & 159, it appears that one of the purposes was the extinguishment of the tenancies of the Port Trust, and as such tenants of plot 5A and 5B were liable to eviction. The Port Trust continued them as monthly tenants for many years before formulating a policy to develop the plots by offering them to major holders. In pursuance to that Scheme, regulations have been framed under Section 169 of the Town Planning Act. Our attention was placed on some of these regulations. It is contended that it was viewed that

plot of land of less than 500 sq. yards out of the Town Planning Scheme cannot be allotted. In that view of the matter it is a possible view and we need not go beyond this.

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In that context even though we reiterate that the Port Trust must act reasonably and in adherence to a policy which serves the public purpose on the assumption of which exemption was granted to it from the Rent Act, while dealing with the tenants or occupants, it cannot be said that the Port Trust has acted improperly. In that light the decision of the High Court must be affirmed though on a different emphasis.

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In the view that we have taken, it is not necessary for us to go into the question whether under Art. 227 of the Constitution, it was open to the High Court to go into the question of constitutional validity for which reliance was placed on the observations of this Court in *Venkatlal G. Pittie & Anr. v. Bright Bros (P) Ltd.* [1987] 3 SCC 558 at 569 and *Khalil Ahmed Bashir Ahmed v. Tufelhussein Samusbhai Sarangpurwala*, [1988] 1 SCC 155. Reliance was also placed by Mr Chinai on the observations of the House of Lords in England in *Wandsworth London Borough Council v. Winder*, [1985] AC 461 at 505-507. In that case the local authority was under the agreement itself, required to fix rent under the statutory provision. It committed a breach thereof. Hence, it was held there that that was a breach of a contractual obligation enforceable under the Private Law and, therefore, justiciable.

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As we look upon the facts of this case, there was an implied obligation in respect of dealings with the tenants/occupants of the Port Trust authority to act in public interest/purpose. That requirement is fulfilled if it is demonstrated that the Port Trust Authorities have acted in pursuance of a policy which is referable to public purpose. Once that norm is established whether that policy is the best policy or whether another policy was possible, is not relevant for consideration. It is, therefore, not necessary for our present purposes to dwell on the question whether the obligation of the Port Trust Authorities to act in pursuance of a public purpose was of public law purpose or a private law purpose. Under the Constitutional scheme of this country the Port Trust Authorities were required by relevant law to act in pursuance of public purpose. We are satisfied that they have proceeded to so act.

We must record that learned Addl. Solicitor General made a statement that irrespective of the result of this appeal, the Port Trust Authorities of Bombay, will consider reasonably granting of an alternative site to the appellant, if such an application is made to them.

In the view that we have taken this appeal must, therefore, fail and is accordingly dismissed. The C.M.P. No. 19447/88 is disposed of

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A by directing that the applicants are permitted to intervene and their submissions have been considered. In the facts and the circumstances of the case, the parties will pay and bear their own costs. All interim orders are vacated.

B RANGANATHAN, J. I respectfully agree with the conclusion of my learned brother Sabyasachi Mukharji, J. However, I would like to add a word of reservation.

C 2. The principal argument which Shri Chinai addressed to us at great length on behalf of appellant was that the relationship between the appellant and the Port Trust was not purely contractual and in the realm of private law. He urged that the Port Trust, having been granted an exemption from the provisions of the rent control acts on certain public grounds, is not at liberty to take action to evict the petitioner without being accountable therefor and that its action is in the realm of public law and hence liable to judicial review. He submitted that the decision of this Court in the *Escorts* case, 1985-3 Suppl. SCR 909, is not inconsistent with this contention.

D 3. The learned Additional Solicitor General contested the above proposition on principle and refuted the suggestion that the Port Trust was under any obligation to show that its action was *bona fide*, and not arbitrary or unreasonable but could be justified on grounds of public interest. He submitted that on the facts of the present case, the state of the pleadings at the various stages and its own findings on the facts, the

E High Court was not called upon to go into the larger issue at all and that its observations in this regard were purely casual. He submitted, however, that, without prejudice to these contentions, he would be willing to satisfy us on the facts of the present case that the action of the Port Trust was *bona fide* and based on policy and reason. He addressed us on this aspect and I agree, with respect, with the conclusion of my learned

F brother Sabyasachi Mukharji, J. that, on the facts of the present case, the action of the Port Trust was not improper and that there are no grounds to interfere with the same.

G 4. In view of the above conclusion on the merits and in view of my opinion that we have not heard full arguments on both sides on the general propositions contended for by Shri Chinai as to the parameters and scope of judicial review in such matters which are issues of far-reaching importance, I would like to refrain from expressing any final and concluded opinion on these aspects though, *prima facie*, I am also inclined to think, as held by my learned brother that there is considerable force in them.