Bombay High Court The Board Of Trustees Of The Port Of ... vs Jayantilal Dharamsey & Ors. on 1 August, 2000 Equivalent citations: AIR 2001 Bom 26, 2001 (1) BomCR 44, (2001) 2 BOMLR 273 Author: N J Pandya Bench: N Pandya, . D Chandrachud JUDGMENT N. J. Pandya, J. 1. These Appeals arise out of the order dated 4.10.1990 of the learned Single Judge Mr. S. M. Daud, J. in Writ Petition Nos. 35 of 1983 and companion petitions of 1984, 1985 1986 and 1989. On an earlier occasion, Appeal No. 258 of 1991 arising out of Writ Petition No. 35 of 1985 was treated as the main Appeal and all the parties concerned were heard in it and by a common judgment dated 11th/12th March, 1993 it came to be allowed. 2. The matter went before the Supreme Court and by an order dated 31st October, 1995, the Appeals came to be allowed and as a result the order of the Division Bench passed in Appeal No. 258 of 1991 on 12th March, 1993 was set aside and the matter was remanded back to this Court. 3. In the aforesaid background, we will have to first ascertain the manner in which the appeal after remand is to be dealt with by us. Two grievances were made before the Hon'ble Supreme Court. One was that in the course of the hearing of the appeal before the earlier Division Bench, when on the suggestion of the Bench a proposal ("the compromise proposal") was putforth by the Appellant - Port Trust the whole matter was gone into on that basis and while considering this proposal submitted in the Appeal, the impact of the order of the learned Singe Judge Mr. Daud, J. on that proposal was not examined at all. The second grievance is of the intervenors who were permitted to participate in the proceedings pursuant to an earlier order of another Division Bench during the pendency of the appeal. Notices under Order 1 Rule 8 of the C. P. C. were directed to be issued and were in fact issued. The intervenors appearing in response to the notices under Order I Rule 8 of the C. P. C. have to be heard as a matter of right. They were not heard. That was the grievance and therefore the intervenors are to be heard. 4. Before proceeding further we shall have to give the factual background leading to the dispute which came before this Court by way of writ petitions delivered by the learned Single Judge Mr. Daud, J. The Appellants, Bombay Port Trust has vast tracts of land covering almost 1/8th of the area of land of Mumbai. With a view to develop the Port, this land was made available to the Port Trust which was constituted under the Bombay Port Trust Act, 1879. After enactment of the Major Port Trust Act, 1963 and subsequent amendments thereto, the Bombay Port Trust came to be governed by the Major Port Trusts Act, 1963. 5. However, one common feature running through the legislative history relating to the constitution of the Port Trust is that the Trust was sui juris and was to have and to hold immovable properties. The power to deal with the same including that of letting out the land was also with the Trust. On account of the exercise of power relating to the properties of the Port Trust as stated above, of the large tracts of land available with the Bombay Port Trust, majority of lands were leased out on either monthly basis, 15 monthly basis or long term basis with or without an option of renewal. The Port Trust before the onset of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 and other Orders, Enactments and Ordinances pertaining thereto was fixing the rent for which the properties were let out to the respective holders.

After the enactment of the Rent Act, the Port Trust continued to revise the rent from time to time. It Is an accepted position that under the Rent Legislation namely Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 like any other local authority, Bombay Port Trust was exempted vide Section 4 of the said Act. 6. Upto 1982 or thereabout, there have been periodical revisions of rent, which is an admitted position. B. P. T. regularly raised the lease rents in the case of all classes of lessees by 25% every 5-6 years, and in very year from 1976 onwards, thereby resulting in an annual rent increase of around 4-5%. In the case of the Coal Depot, rents at the minimum level were raised from 31 paise per square metre per month (psm/pm) in 1950 to 37 paise psm/pm in 1951," and thereafter were raised in 1968, 1972, 1976, 1977, 1978, 1979, 1980 and 1981, yielding a rent of Rs. 1.69 In 1981. Rents at the maximum level in the Coal Depot area were raised during the same period from 50 paise psm/pm in 1950 to Rs. 2.75 psm/pm In 1981. Similarly, In Lakdi Bunder those lessees who were being charged 37 paise psm/pm in 1967 faced regular rent increases thereafter, making a total of Rs. 1.69 in 1981, while those who were being charged 60 paise in 1967 ended up paying Rs. 2. 75 psm/pm in 1981. In the case of the Meherally Saw Mills in Ghodapdeo, the lease rent was increased from Rs. 342.66 (30 palse psm/pm) to Rs. 2061. 35 (Rs. 1.82 psm/pm) in 1981. 7. In the year 1981-82 the Port Trust undertook a major exercise of revision of rent which according to the holders was drastic and many times over the original rent payable prior to the revision. By the original rent it is meant, in case of holders of plots long standing leases, rents revised from time to time at the end of the respective lease periods. This led to an uproar and there was a series of writ petitions in this Court which came to be dealt with by the learned Single Judge Mr. Daud. J. from which the present Appeals arise. 8. The reason for the exercise as set out before the learned Single Judge in Writ Petition No. 35 of 1983, the lead petition and others as well as in the course of Appeal was a felt need on the part of the Trust to revise the value of its assets namely the immovable properties in the form of land and try to charge rent on the basis of a certain percentage of the value of the land thus revised. 9. The revision of rents was the outcome of a long drawn exercise starting with the suggestion made by the World Bank in 1962 with regard to the value of the assets particularly immovable properties which in the opinion of the World Bank were not correctly reflected in the balance sheet of the Trust. We are told that within a decade or so of this direction of the World Bank, there was a simitar observation made by the Comptroller and Auditor General of India. This prompted the Port Trust to move in the matter and therefore on 30th August, 1978 a public advertisement was issued inviting tenders from the experts in the field to take up the work of evaluation of the immovable properties of the Trust. Pursuant thereto, tenders were submitted and after deliberation the tender of Kirloskar Consultants Limited, Pune was accepted. The consultants went through the exercise elaborately and submitted their report on or about 25.9.1980. After receipt of the report, the Port Trust deliberated on it and took a decision to accept the report and accordingly revised the rent from the year 1981-82. According to the petitioners, the rents demanded with effect from 1.10.1982 were

at a uniform rate of Rs. 25.31 per square metre/per month in all areas regardless of relevant material like development, location, amenities, available F. S. I. etc. According to the Port Trust this was based on the said Kirloskar Report. However, according to the petitioners, when analysed, the recommendation of the consultants was to Increase rents to Rs. 16.88 psm/pm from around the year 1986-87 if the F. S. I. of 1.33 was available and the land was completely open, unoccupied, free and unencumbered. The factors of encumbrance, occupation and encroachment would lead to halving of the said rate and there would be proportionate reduction if an F. S. I. of less than 1.33 is available in case of occupied plots in Coal Depot, Darukhana, Ghodapdeo, Lakdibunder etc., i.e. unit Nos. 3, 4, 5, 6. According to the Kirloskar Report, even on the basis of the instance of the CEAT Bhavan, at Worli the rate would be Rs. 6. 33 psm/pm from around the year 1986-87. 10. The petitioners in their challenge before the learned Single Judge had proceeded on the basis that the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 is not directly applicable as they accepted the position that the Trust is exempted from the operation of the Rent Act. However, arguments were debated on both sides as to whether the Trust being exempt from the provisions of the Rent Act, is it free to act in an arbitrary and capricious manner. The grievance of the holders of the plots was that taking advantage of the said exemption, there was a sharp increase in the rent and therefore it was neither fair nor reasonable. Falling back upon, the Kirloskar Report, the stand of the Port Trust was that it had undertaken the exercise of upward revision after taking the help of consultants who were experts in the field and rent was sought to be fixed on the basis of a certain percentage of the value of the land. In other words, according to the Appellant Trust, the exercise was neither arbitrary nor unfair. It was based on scientific data collected by the said consultants and on the recommendations made on that basis, the Trust being the landlord, could certainly taken land value as the basis for working out the rent. 11. The learned Additional Solicitor General appearing for the Appellant-Trust has also relied on the Wednesbury principle. For this purpose, he placed reliance on Tata Cellular v. Union of India. Laying down the law, the Court held that the decision making process and not the merits of the decision itself is reviewable as the Court does not sit as an Appellate Court while exercising power of review. It has been clearly held that the decision or action should not be vitiated by arbitrariness, unfairness, illegality, irrationality or Wednesbury unreasonableness. The last mentioned principle means that the decision should not be such as no reasonable person on a proper application of mind could take. In the course of said judgment at paragraph 80 at page 680, the following passage is found extracted from the Supreme Court Practice 1993 Vol. 1 page 849-850. “4. Wednesbury principle. - A decision of a public authority will be liable to be quashed or otherwise dealt with by an appropriate order in judicial review proceedings where the Court concludes that the decision is such that no authority properly directing itself on the relevant law and acting reasonably could have reached it. Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn. Per Lord Greene, M. R. In that very judgment at page 680 in para 81 two other facets of irrationality are found mentioned.

These two facets will have to be kept in mind while considering the impact of the learned Single Judge's judgment on the compromise formula submitted by the appellant-trust before the earlier Division Bench. The first of those facets is that it is open to the Court in a given case to review the decision maker's evaluation of the facts. The second facet is that the decision would be regarded as unreasonable if it is partial and unequal in its operation as between different classes. 12. The learned Single Judge, therefore, was dealing with the matter in this conspectus. In the judgment given in the main Writ Petition (W. P. No. 35 of 1983 at page 15) in relation to the two plots held by these petitioners, revision of rent starting from 1948 stretching upto the year 1981, has been set out. The last one indicates that the rent payable per month was Rs. 794.33 in respect of plot No. G-2 and in respect of plot No. H-1 it was Rs. 317.11. As a result of the upward revision in 1982 respectively it came to be Rs. 7,082.02 and Rs. 4,515.86 per month. The learned Single Judge has accordingly set out the figures at pages 16, 17, 18, 19, 20 and 21 of the respective petitioners. One striking feature is that the upward revision is within the range of 10 to 20 times of the 1981 rent level. 13. When an attempt was made by the Port Trust to justify this exercise before the learned Single Judge on the basis of the said report, in an elaborate judgment after referring to the provisions of the Major Port Trusts Act, 1963 particularly Sections 33, 34, 49 and 52, on the basis of the last two sections as appearing in Chapter VI, the learned Single Judge proceeded to examine the question. The crucial question as to fairness or otherwise is dealt with from paragraph 11. After discussing the aforesaid provisions of the Major Port Trusts Act. 1963 the learned Single Judge negatived the contention raised by the petitioner that the impugned exercise of upward revision was in violation of the Major Port Trusts Act, 1963. For the reasons to be spelt out hereinafter, we agree with this finding of the learned Single Judge. The main question is whether the action of the Port Trust is arbitrary or capricious. It is nobody's case that on being exempted from the provisions of the Rent Act the Trust has not to conform to the standard of fairness and reasonableness. If this be so, obviously we will have to examine the whole question on the basis of whether the exercise is in accordance with the norms of fairness and reasonableness. 14. The learned Additional Solicitor General drew our attention to the judgment of the learned Single Judge where in paragraph 13 after gleaning the position of law with reference to various judgments the main judgment being that of the Supreme Court in Marfatia (to be referred hereafter), the learned Judge has noticed that the Port Trust laboured under a belief that the lands were not yielding proper revenue. The learned Judge referred to the figure of Rs. 520 crores arrived at by the consultant of the value of the lands of the Port Trust to be a mystical figure. Then the learned Judge referred to occupants/tenants who are employees of the Trust and has referred to them as service tenants. The learned Single Judge drew the conclusion that the expenses incurred by the Trust for the maintenance of its real estate are too high and that the entire expenses are shifted to non-service tenants. Thereafter, the learned Single Judge concluded that the trust was seeking to exact rent which will correspond to the present day market value of the land and this would violate the basic

assumption underlying the rent control legislation. The learned Judge referred to the arguments advanced on behalf of the petitioners that the land-owner/ landlord is entitled to a reasonable return for his investment and that he is not entitled to profiteer by taking advantage of the increase in land prices. Even if for the time being we leave aside the question as to how the learned Judge drew the aforesaid conclusion it is not possible to understand how the underlying assumption of legislative policy would make the market rate a total anethema for fixing the rent especially when the reasonable return is referred to by the petitioners themselves. We understand the learned Judge so far to mean that if at all market rate is to be taken as basis which in our opinion is inevitable if fair return is to be worked out in view of the promulgation of the Rent Act it has to be fixed either on the 1940 rent value which is the base here for the rent and on that alone rent can be worked out. 15. This is further reinforced by the subsequent reasoning in concluding part of the judgment where the learned Single Judge permits the Trust to get protection against an erosion in the rental as a result of Inflationary trends, but no more. In his opinion the only reasonable and fair thing to do by the Trust was to increase the rent to neutralise the inflationary spiral. Thereafter the Single Judge held that if it is other than this, it would be taking advantage of the Port Trust being the holder of a scarce commodity namely the land and would be stepping into forbidden territory as it would not be reasonable and fair. The learned Judge further held that this would be the position despite the statutory obligations of the Port Trust. 16. The aforesaid observations and conclusion would clearly indicate that the Bombay Port Trust had taken the then prevailing market rates of its estate while fixing the initial rent. But for this by the aforesaid reasoning itself allowing for inflationary spiral would also be illusory. So far we have not been able to find any material on record to warrant that what was fixed initially was on the basis of the market rate. In any case allowing only neutralisation on inflation would necessarily mean that in real term the Trust will continue to get the rent which they were getting from the date of first lease. This in our opinion would therefore be illusory. 17. In our opinion, much is sought to be made of Section 4(1) of the Rent Act and its implication. Several judgments were cited beginning with in the case of M/s. Kasturllal Lakshmi Reddy v. The State of Jammu & Kashmir. This authority is, strictily speaking, regarding the standard to be maintained by the State authorities and Government in awarding contracts. On this line, there are other judgments also. These judgments are not required to be considered at great length for the reason that they are not cited before us nor are they necessary in view of the accepted position of the need for the Port Trust to observe the standard of fairness and reasonableness. On the same line is the judgment in Shri Sachidanand Pandey and Anr. v. State of West Bengal and ors.. 18. Directly applicable on the question of the impact of exemption on the Rent Act arc the authorities which we may now refer to. These include, first Rampratap Jaidayal v. Dominiom of India, followed by Baburao Shantaram More v. Bombay Housing Boards. The most important one is the judgment reported in the case of Dwarkadas Marfatia & Sons v. Board of Trustees of the Port of Bombay. The learned single Judge has

dealt with this judgment elaborately. Wherever necessary he has extracted the relevant portion of the Judgment in the course of his order under appeal. 19. As can be expected Marfatia is a leading judgment for this purpose. On going through the same we do not find anywhere the proposition of law laid down to the effect that market rate cannot be resorted to for the purpose of fixing the rent. By market rate we mean the fair market rent of the property that is leased out. On the contrary all the judgments including aforesaid Wednesbury principle point towards one thing only namely the charging of fair rent. On the basis of the relevant material, if the public authority is found to be acting in a fair and reasonable manner its decision has to be accepted as that is the limited scope of judicial review. The Courts do not sit in appeal over the decision of the public authority. In our opinion this will be the impact of paragraphs 24, 25 and 27 of the Marfatia judgment at pages 305 and 306 of . Our aforesaid observation is fortified by the conclusion recorded by Their Lordships in paragraph 31 of the said Marfatia judgment at pages 307 and 309. 20. We proceed on the basis that the Bombay Port Trust, though it is exempted from the Rent Act has to conform to the standard of fairness and reasonableness. It cannot be arbitrary or capricious. The underlying philosophy of the Rent Act is to stop private landlords from acting in a particular manner. But for the exemption, the properties held by the authorities mentioned in Section 4 of the Rent Act would equally be covered by the rigorous provisions of the Rent Act. However, it has been held in the aforesaid various judgments and in fact in a series of judgments of the Apex Court and several judgments of different High Courts, no doubt under different Rent Act regimes, that the exempted landlords are so exempted because the Legislature has reposed faith in them of not behaving like private landlords. In other words, though they are free to terminate the leases and recover rent with upward increase from time to time, they are expected to behave in fair and reasonable manner. 21. Neither before the learned Single Judge nor before us it is urged on behalf of the Port Trust that it is free to do whatever it tikes. In fact the formula dealt with by the earlier Division Bench while disposing of the appeal was itself a positive response of the Trust to the suggestion from the Court as well as arising out of the discussion in the course of hearing. If one looks at the formula it would clearly indicate that what was supposed to be levied from 1982 was made applicable on and after 1991 and that too at almost 1/3rd or 1/4th of the original rate with effect from 1982. This estimate is a rough and ready estimated for the time being. 22. Before us the action of the Board of Trustees of the Port is not only sought to be justified but is sought to be defended with a further prayer of it being accepted in toto and to that extent therefore to set aside the order of the learned Single Judge. The provisions of the Major Port Trusts Act, 1963 before amendment and after amendment have been seriously relied on as also the purposes and objects for which the properties and the earnings of the Trust have to be utilized. 23. The compromise formula put before the Court in the course of hearing of the appeal earlier is therefore sought to be justified with a rider that it shall be applicable only from the year 1994. This stand of the trust was taken before the Hon'ble Supreme Court that dealt with S. L. P. filed by some of the pe-

titioner/intervenors. This has been maintained before us also. 24. In other words the earlier attempt on the part of the Trustees before the learned Single Judge as also before us is to justify their action in the form of the Kirloskar Report as well as the subsequent formula referred to as"compromise formula" as conforming to the standard of fairness and reasonableness as also the said Wednesbury principle. All this has been referred to earlier while discussing the Tata Cellular case and keeping that submission in mind this posilion is culled out. 25. The submission, therefore is that the exercise carried out by the Board of Trustees on receipt of the Kirloskar Report as also before this Court by way of said compromise formula if tested by the aforesaid two standards will prove to be satisfactorily made with reference to the said standards and is hence worthy of acceptance. We give hereunder the relevant portion of the compromise formula which Is annexed to the earlier Division Bench judgment. "(i) Nature of occupations may continue as at present on revised rents. Development may be in accordance with the Development Plan and the Development Control Regulations and B. P. T. Master Plan including restructuring from time to time to cater for port's and city's needs. (ii) Occupations may be classified for the purpose of levy of rents either as Non-Home Occupation or as Home Occupation as defined tn the Development Control Regulations on the basis of actual use. (iii) Letting rates for Non-Home Occupation per sq. metre of floor space per month of built up area (as derived from valuation by Kirloskar Consultants) shall be as under for the period 1.10.1982 to 30.9.1992. (a) Sassoon Dock Estate : Rs. 22.03 (b) Wellington & Apollo Reclamation Estates : Rs. 26.91 (c) Ballard and Mody Bay Estates : Rs. 24.00 (d) Elphinstone Estates (T. S. P) : Rs. 14.44 (e) Bunders South : Rs. 21.38 (f) All other Estates : Rs. 12.66 Letting rate for Home Occupation may be at 20 per cent of the above rates. Letting rates for future years from 1.10.1992 to 30.9.2012 for Non-Home Occupation and Home Occupation shall be as given in the Annexures. Notwithstanding the fixation of letting rates for 20 years for good and sufficient reasons. Board may review and revise the letting rates. (iv) Minimum rent may be for built up area upto 0.5 F. S. I. irrespective of whether the area is built up or not. Minimum rent from 1.10.1982 to 30.9.1992 for non-hazardous trade/use will be Rs. 6.33 per sq. metre per month and for P. O. L. and hazardous trade/use will be Rs. 8 per sq. metre per month or for 0.5 F. S. I. of built up area, whichever is more. The rent will increase proportionately to the built up area but maximum rent may not exceed the rent that would have been payable on the basis of Fair Market Rents recommended by Kirloskar Consultants Ltd. (v) In case of letting of B. P. T, structures, the revised rate of rent per sq. metre of floor space may be at 2.5 times the letting rates. The repairs and maintenance of the structure shall be done by the tenant/lessee. For this purpose the lessee/tenant shall retain 0.5 times the rent and pay to B. P. T. a net rent at twice the letting rates. (vi) Rent in respect of occupations having mixed use may be in proportion of the floor space under use for Home Occupation and Non - Home Occupation. In case of change of use from Home Occupation to Non - Home Occupation rents will be regulated at the letting rate for Non - Home Occupation for the floor space so changed with effect from date of change of use. (vii) Rents shall

be increased by 4 per cent every year over the rent in the previous year from 1.10.1992. (viii) Arrears for the period from 1.10.1982 upto 30.9.1991 in the case of monthly tenancies and 15 monthly lease would be recovered irrespective of the built up area of a flat rate of Rs. 6.33 per sq. mtr. per month In case of non-hazardous trade/use or at a rate of Rs. 8 per sq. metre per month in case of P. O. L. and hazardous trade/use with simple interst at 8 per cent per annum. (ix) Arrears in respect of structures would be recovered at the applicable rate from 1.10.1987 upto 30.9.1991 with simple interest at 8 per cent per annum. (x) In case of monthly tenancies/15 monthly leases where the pre-revised rent is more than the rent under above terms or where allotments have been made through auction/tender at rates higher than the rate applicable letting rate for a year exceeds that rate of rent where after the rent will increase to be applicable letting rate and will further Increase at 4 per cent per annum. (xi) In case of expired lease, fresh lease on new terms shall be at the sole discretion of the Board. Grant of fresh lease may be considered taking into account restructuring requirements for the City's Development Plan, B. P. T's Master Plan and the Development Control Regulations. Where a fresh lease is granted, arrears may be recovered in the form of premium at the applicable letting rate for respective use with simple interest at 15 per cent per annum from the date of expiry of lease till grant of fresh lease. In case of expired leases without a renewable clause, additional premium may be recovered at 12 months rent at the applicable letting rate. (xii) In case of monthly tenancies the applicable rates used to be more than the above rates to cover general property taxes. However, in view of the restrictive tenure, the tax liability is to be borne by B. P. T. (xiii) In the case of subsisting leases, assignments and consequent grant of lease on new terms would be at the prevailing letting rate at the relevant time and in relation to use. However, in case of amalgamation revised rent would be at the letting rate prevailing at the time of amalgamation subject to a ceiling that the revised rent will not be more than 12 times the earlier rent. Where lessee is already paying rent at the prevailing letting rate, assignment would be permitted on levy of revised rent at 25 per cent over the applicable letting rate or on levy of premium at 12 months rent at the applicable letting rate as may be desired by the lessee/tenant. (xiv) Subletting, change of user, transfer, occupation through an irrevocable power of attorney and any other breaches may be regularised by levy of revised rent at the applicable letting rate at the time of such breach from the date of breach. Where lessee/tenant is already paying rent at the prevailing letting rate, such regularisation be permitted on levy of revised rent at 25 per cent over the applicable letting rate or a levy of premium at 12 months rent at the applicable letting rate as may be desired by the lessee/tenant. (xv) In case of hardship where effect of the terms is harsh, such cases may be brought up before the Board for consideration on merits. (xvi) The above proposals are applied to properties falling outside the port limits which is within the Board's power to sanction. For properties falling within the port limits, proposals on the above lines may be made to Government for approval. 26. On behalf of the original petitioners as well as the intervenors, common submissions have been on the line that ex facie a fair and upward revision could not be in the range of

10 times to 20 times the pre-revised rates. In fairness to the petitioners and the intervenors it must be recorded that they all are willing to submit themselves to upward revision periodically but not to the drastic level suggested by the Port Trust either on the basis of the Kirloskar Report or on the basis of the so-called compromise formula. (There are appendixes to the said proposal annexed to the said Exh. A of the earlier Division Bench judgment setting out actual calculations with reference to each of the separate units). 27. The compromise is nothing else but a softening of the blow. If it is allowed to operate, the effect is that there will be increase on and from 1994 with annual upward revision at the rate of 4% compounded from year to year reaching upto the level of original formula by the year 2012. There is also a provision in this formula of simple interest being charged at the rate of 8% per annum on the arrears of the revised rent. This would necessarily mean that from the year 1994 upto the date of the payment for the respective year, the outstanding rental amount will carry interest of 8% per annum till payment. In a given case, therefore, the plot-holder who continues to occupy the plot and therefore continues to be the lessee right from 1981 till date will be paying revised rent as per the formula from the year 1994 and also paying interest at 8% per annum for each of the years. 28. Needless to say, so far as the plea for Interest is concerned it is disputed by the plot-holders. The submission is that by its very nature, interest can be demanded only on a crystallized amount known to be due from a given date. In case of rent and that too revised rent there is nothing like that and therefore the concept of interest should not be made applicable to it. The answer of the Port Trust is that if the formula is accepted the rent becomes due and payable from 1994 and therefore it turns into s debt payable from a particular point of time and therefore it admits concept of interest. This will be dealt with later. 29. We will now turn to the basic controversy as to whether the rent at all could be fixed on the basis of the market value of the land. If the land is let out with or without permission to raise a structure on it, temporary or permanent, the rent charged on the plot of land would necessarily have an element of fair return on the asset held by the owner. The asset being a piece of land, its market value for the purpose of fair return will necessarily be present to the mind of the owner. Therefore, in our opinion the matter of recovery of rent on the basis of market value cannot be faulted. 30. This will be the logical conclusion to be drawn on the basis of what we have staled earlier. We do not find either in the decision in Marfatia's case or in any of the judgments relied on by the petitioners that market rate, meaning thereby the value of land cannot be the basis for fixing the rent. The very concept of fair return would become meaningless if the value of the asset is not kept in mind. Return is always of a particular sum invested for acquiring the asset. The learned Single Judge in our opinion proceeded on an assumption that the rent fixed earlier was on the basis of the value of the land. In our opinion this assumption is totally unwarranted. To that extent, the finding of the learned Single Judge will have to be Set aside. 31. The provisions of the Land Acquisition Act. 1894 and the method of valuation thereunder for arriving at fair market value may be referred to. Going by the yield method and employing adequate period for the purpose of capitalisation is a reverse exercise of arriving

at a fair market value on the basis of return. If that be the basis for awarding compensation under the provisions of Land Acquisition Act, 1894 we do not see any reason why the landlord while fixing the rent cannot take into consideration the market value of his land. 32. However, it would be one thing to say that the landlord can go by the market value for fixing the rent and it is another thing to say that the market value fixed by the landlord is a fair market value. 33. After saying this we may make a note here that as per the Kirloskar Report as also the compromise formula, the percentage value of the landed property employed for fixing the rent respectively for commercial and noncommercial land is 15% and 12%. Obviously much has been said on the percentage employed by the Trust. 34. This will bring up the question as to whether the market value fixed by the Board of Trustees is fair and reasonable. If it is so, obviously after resolving the controversy as to the percentage, appropriate rent can be fixed. If it is otherwise, the whole exercise may fail. 35. This will necessarily carry us to the Kiroskar Report. Kirloskar Consultants submitted their report under letter dated 25.12.1980 as referred to earlier. This was preceded by the submission of a draft report on different dates and discussions that ensued thereon. We have already noted the fact that the appellant trust had commissioned consultancy services only for the purpose of getting its landed properties evaluated in accordance with the market rates prevalent at the relevant time. In this background the comments made on behalf of the original petitioners/ intervenors that it is a report designed to ascertain the market rate, in our opinion is hardly of any relevance. In fact Mr. C. U. Singh, the learned Counsel who led the petitioners/intervenors has very fairly stated that the consultants have in accordance with their brief ascertained the market rates. 36. For that the base that was taken was severely criticized by all the parties opposing the Appellant Trust. The main reason is that the usual operative method which was initially resorted to by the consultants themselves and set out in Chapter VIII, (page 8-1 onwards) in fact had categorically observed that unfortunately there was little material to go by. As can be seen from paragraph 8. 4.2 onwards (at page 8-9) of Chapter VIII starting with 300 instances of sale, only 156 transactions could finally be taken into consideration as set out in paragraph 8.4.4. Ultimately what they have decided to rely on was a transaction at Worli of a plot sold to CEAT Tyres admeasuring 5480 sq. yards. With reference to the property of the trust it is shown to be B. P. T. Unit 3. These details are to be found in the table at 8.4.5. after page 812 with relevant comments in para 8.5.5 at page 8-16. The consultants have opined that area in Unit Nos. 1 to 9 are fairly comparable in respect of location and user. Accordingly, going by the said value and also on the basis of an F. S. I. of 1.33, the rate was taken to be Rs. 1200/- per square metre and for F. S. I. 1.66 it was taken at Rs. 1500/ per square metre. In their opinion this could be the fair value of Unit Nos. 1 to 9 of the appellant trust. 37. Most of the petitioners/intervenors have leasehold interests in the plots situated in Unit Nos. 1 to 9. They are on monthly lease, 15 monthly lease or long term lease as the case may be. Essentially we are concerned with these Unit Nos. 1 to 9 which are referred to as"other estates" in some of the record of the appellant trust. 38. Kirloskar Consultants, from paragraph 8.6

of their Report took into consideration an alternative method of valuation also. This is known as the "Builder's Method". An elaborate exercise has been done. After working out figures in table 8.7.5, the Consultants have gone on record to observe that they have adopted the lower figure from the range worked out by this method as the objective of this exercise of computing the land values is not meant for profiteering but for operating on a reasonable level of return in all cases. However, even this method is not found to be that suitable because in paragraph 8.8. the consultants have noted that for estimating land values for the B. P. T. land extending over a distance of 9 kms. on the basis of the few available instances, the whole exercise is similar in statistical terms, fitting a curve on to a few given points. Being thus conscious of these limitations, the consultants resorted to rationalisation and smoothening out of angularities by an exercise of the valuer's Judgment. With the aforesaid reservation and an awareness of the complexity of the exercise on one hand and the vexed problem on the other, the consultants also took into consideration the fact that in the case of B. P. T. there will be no unaccounted money at all. Finally, at para 8,9,3 and 4 read with table at 8.9.5 the consultants have come out with unit wise value of the Bombay Port Trust properties. In all there are 36 different blocks which are clubbed together in different units from 1 to 12 of which as stated earlier we are mainly concerned with Unit Nos. 1 to 9. Very rarely in each of the units does one find that F. S. I. is more than 1.33. Tf at all it is above it is 1.66. Within this range recommended value at 1.33 F. S. I. is set out in column No. 12 of the table at page 8-28. The range is Rs. 990 to 1350. 39. Once this aspect of the methodology is taken care of obviously only one question will remain namely whether B. P. T. after the report has acted on it and has decided to adopt what it considers to be a reasonable return. In this view when the matter was before the learned Single Judge from whose judgment the present appeal has arisen, 15% return for non-residential properties and 12% return for residential properties was adopted by the appellant trust. 40. As we have seen earlier, the learned Single Judge while dealing with this aspect has accepted the proposition that the land-owner is entitled to a fair return but he does not accept the idea of fixing the rent on the market value of the land. Going by this conclusion in our opinion fair return can never be worked out. If, for whatever purpose, by adopting scientific method fair market value of the property is worked out, by the very reasoning of the learned Single Judge that should form the basis of working out the fair return. What could be the fair return in terms of percentage could be a matter of dispute to be resolved by the Court if necessary. However that is exactly what the learned Single Judge decided not to do. At the same time the learned Single Judge has accepted the rights of the Trust to increase the rent provided it were fair and reasonable. This is where the learned Single Judge links up the revision with inflation spiral. 41. The aforesaid concept necessarily means neutralising the effect of inflation on the return. By return we mean the initial rent which was fixed by the Trust. There has been no basis for the assumption that it was based on market value of the property like subsequent increase as noted hereafter. This would be also an ad hoc rent. In fact this is the basic plea of the Trust that so far they have

not gone on the basis of the market value and hence they be permitted to do so. For the reasons to be given hereafter, we agree with the Trust that they can adopt market value as basis. 42. On behalf of the petitioners/intervenors one of the Counsel, Mr. D. J. Khambatta has cited Trustees of the Port of Madras v. Amichand Pyarelal and Ors.. The point involved was whether the demurrage charges fixed by the Board were reasonable and whether the demurrage charges could be recovered in the event of goods being detained by the Customs or other authorities. In other words the issue was whether demurrage is to be paid even though the importer is not negligent in clearing the goods. In the course of dealing with the rival submission as setout in para 19 of the judgment at page 1940 and later on summarised at paragraph 24 page 1942 there are certain observations which are relied on by Shri Khambatta. In paragraph 24 it has been stated that the Port Trust is not a commercial organisation which carries on business for their own profit. It has a statutory obligation under section 39 to provide reasonable facilities. However, as can be seen from paragraph 28 of the judgment, not only the demurrage under the aforesaid circumstances or its recovery has been upheld but charges have also been held to be fair. The element of incentive to clear the goods as early as possible on one hand and to compel by way of a deterrent the importer not to delay the clearance of goods has been kept in mind by Their Lordships of the Supreme Court and accordingly the decision has been given in favour of the appellant trust. Going by the aforesaid reasoning, in our opinion in the case before us also the exercise sought to be done by the Board on and after the year 1980 which was the year in which the Kirloskar Report was received, in our opinion was a proper exercise on the part of the Trust. We should not loose sight of the fact that the Board may not be there to carry on business for their own profit but there is nothing wrong if it can sustain itself by generating its own income and in the process generate some surplus to be utilised for its own purposes. 43. In other words as we read the judgment we find that the right of the trust to increase the rent is accepted but what is insisted upon is reasonableness and fairness. 44. To this as noted earlier, there is no objection on behalf of the petitioners/intervenors. The dispute therefore relates only to one question as to what would be the reasonable increase. 45. The earlier Division Bench which dealt with the Appeal had before it what is referred to as the compromise formula where inspite of the original increase of rent by 10 to 20 times there is a uniform across the Board for increase of roughly approximately 5 times. Obviously this too is being objected to by the petitioncrs/lntervenors. As per the Supreme Court direction we have to examine this compromise formula also in the light of the judgment of the learned Single Judge. In other words, we have to test the compromise formula on the aforesaid principle of reasonableness and fairness. 46. With regard to this formula also in our opinion the learned Advocate Mr. Singh has very successfully pointed out that the entire exercise in fact is based on Kirloskar Report because when the aforesaid Table 8.9.5 of the report is given effect to in the case of those lease hold properties where F. S. I. is to be halved per square meter the rate per square meter works out to Rs. 6.33. Inability of lessees to utilise the full F. S. I. is described as a reduction factor in clause (iii) of paragraph 8.10 at page

8-35. Thereafter at paragraph 8.11 the fair market rate (shortened as F. M. R.) as also the indication that the Port Trust is facing a large amount of litigation which can successfully be settled by suitably reducing the rates is suggested at page 8-39 in para 8.11.2. This is known as the settlement factor. At page 8.11.4 inability of the lessee to use F. S. 1. either on account of a restriction imposed by the Trust or on account of the odd shape of smallness of plot is also kept in mind and therefore the suggestion is to reduce the rates suitably. Paragraph 8.11.6 works out an example which will have the effect of the rate working out to Rs. 6.33 p. s. m. 47. Thus so far as the Kirloskar Report is concerned when it has worked out the fair market rate it has been accepted to be based on a scientific method by the Port Trust. If the position of the Port Trust is to be accepted, one would ordinarily look for a justification for the adoption of 15% return. Unfortunately, there is no justification given for adopting this rate of return. In our opinion, this is where the real problem lies. Having determined the fair market rate, if the Port Trust has chosen lesser amount of return the resentment obviously would not have been as sharp and vocal as it is today. What would be reasonable return, no doubt is to be determined by the Trust but when called upon to do so they should justify that also. 48. It should not be a mere exercise in justification for the sake of it but the decision should meet the test of reasonableness i.e. to say what a reasonable person in the circumstances could be permitted to do or could have done. This Is the mandate of the applicability of the policy in the form of rent control legislation. 49. By a series of judgments of this Court as well as of the Supreme Court, it has been held that the Government and its agencies which are exempted from the rigours of the Rent Act cannot themselves practise where by the legislation, the landlords are prevented from doing. The following judgments were cited : 1. Rampratap Jaidayal v.Dominton of India. 2. 1954 S. C. R. 572 3. Dwarkadas Marfatia v. Board of Trustees of the Port of Bombay. 4. (1992) Mah. L. H. 1356. 50. In the last mentioned Judgment which is a judgment of a Division Bench of this Court, the very judgment under appeal before us was cited and was approved by the learned Judges of the Division Bench. Based on this, it was very seriously urged before us that the Division Bench having approved the judgment of the learned Single Judge it has attained finality. In case we at all disagree with the learned Judges of the Division Bench who rendered the judgment in Kapadia's case, then we may have to refer the matter to a larger Bench. Firstly, there is no question of our referring the matter to a larger Bench at all. The submission about that judgment having attained finality and being binding is rejected. This Appeal is directed against the very judgment of the learned Single Judge and in our opinion it cannot be suggested that if we are hearing an appeal against that judgment we cannot go into the validity of that Judgment. However, so far as the Judgment of the learned Single Judge Is concerned both for the reasons stated by him as also on account of the aforesaid series of judgments, we record our agreement with him that only fair and reasonable increase can be permitted and therefore hold that the judgment in question dealt with by us in this Appeal is valid only to that extent. 51. In the hierarchial system of Courts either by statute or by trust an appeal is provided, and as per the appeal provision if

an appeal is filed the entire judgment appealed against is at large before the Appellate Court or Bench. As long as the Appeal is not decided it is not possible to say that the judgment appealed against has become final. If during the pendency of appeal the judgment which is yet to be dealt with in the appeal, is approved by another Division Bench in connection with totally an independent matter though having some relation to the matter at the most would amount to creating a situation whereby the judgment under appeal can be said to have been read with approval by another Division Bench and an analogous Bench. The opinion expressed in that regard will be given due weightage. However, to raise it to the pedestal of a precedent and that too a binding one, the Division Bench that hears the Appeal against the very judgment in our opinion could be a travesty of the law of appeal as is prevalent in India. 52. As noted above, if the Appeal disposed of by earlier judgment had not been on the basis of the compromise formula and had there not been a Special Leave Petition before the Supreme Court with the aforesaid directions, the matter would have come to an end. However, over and above the Supreme Court directions referred to above we have also before us a situation that came about during the pendency of the appeal on account of the adoption of the procedure under Order 1 Rule 8 of the C. P. C. Originally, persons who were not before the Court thus automatically became parties to the proceedings though they are referred to as intervenors. This would be the consequence of Order 1 Rule 8 of the C. P. C. 53. Each one of the intervenors therefore is virtually a petitioner before us. They had a grievance before the Supreme Court that they were not heard by the earlier Division Bench. Therefore the direction that they be heard by us. 54. Accordingly after hearing all of them so far as the exercise of the Port Trust to call consultants for determining the fair price market rate of that property is concerned we do not find anything wrong with that. The decision of the Port Trust to fix rent on that basis also cannot be faulted. The justification for the same will be gone into at length hereafter when we consider the rate at which there could be a permissible increase based on what is referred to as fair market price. 55. Thus examined from different angles and taking into consideration various submissions made by different parties with regard to their individual difficulties and peculiar of a given use or the restrictions on development or the location of a given plot ultimately the question comes down to fairness and reasonableness of increase. 56. In our opinion this would be the impact of the judgment of the learned Single Judge on the compromise formula and it will have to be tested on the aforesaid principle. The expression "compromise formula" referred to as such strictly speaking is a misnomer. It was not arrived at as a result of both sides putting their heads together and after negotiations bargain and give and take as to what could have been worked out. In fact the Trust having faced heavy weather before the learned Single Judge reconsidered the original suggestion in the course of the hearing of the appeal and came out with what it described in its proposal to be a compromise proposal. 57. To the extent to which It reduces the impact of the increase it was a compromise offered by the Trust to its lessees. This having been found acceptable to the earlier Division Bench of this Court it was accorded a seal of approval. As

the judgment delivered by the earlier Division Bench has been set aside by the Supreme Court with a direction that the said proposal he examined by us in the light of the judgment of the learned Single Judge as also after hearing all the parties, that is what we proceed to do. 58. The compromise proposals are to be found annexed to the earlier judgment of the Division Bench as Exh. A and that has been extracted in this judgment earlier, except for the tables. 59. The Board considered the matter and noted in para 4 that the revision so far has been on ad hoc basis in terms of percentage of previous rent, the rates fixed are neither in accordance with the current rate nor have they kept pace with inflation. They referred to some indices and take the figure of 8% compounded over the last 2 decades. Accordingly the need to bring the rates to a common rate was recognised and with a view to Streamline the rent and to neutralise inflation, the formula was worked out. It was essentially for monthly tenancy and 15 monthly leases. The cut off date was put as 1.10.1982. In case of 15 monthly lease the past rent was supposed to be 50% of the applicable Kirloskar rate which increased by 8% per annum so as to reach the Kirloskar rate of rent on 1.10.1991. That is how at internal page 2 of the said formula running page 55 we have a table of increase of rent starting at 8.44 on 1.10.1982 ending with Rs. 16.88 on 1.10.1991. This is on the applicability of F. S. I. at 1.33 and is said to be what is suggested by Kirloskar Report. We have already seen that the suggestion of Kirloskar is for Rs. 6.33 only and therefore the earlier proposal of reducing the rent by 50% and with 8% compounding to bring it back to Kirloskar level at the interval of 10 years strictly speaking does not bear any scrutiny at all. There was a suggestion for interest on arrears of rent at 15%. This is another contentious issue which will be dealt with hereafter. 60. The formula is discussed from time to time at internal page 5 of the compromise formula running page 58. Finally we have the approved formula. So far as Unit Nos. 1 to 9 are concerned the rate is shown to be Rs. 12.66 at page 59. This was later on decided to be made applicable on or from 1.10.1991 which later on was further pushed to 1.4.1994. On and from 1.4.1994, the rent is to be Increased by 4% every year over the rent of previous year as per paragraph 7 at page 59. Arrears for the period 1.10.1982 to 1.4.1994 will be recovered at flat rate of Rs. 6.33 as per Item No. 8. As per Item No. 9 interest was to be 8% per annum starting from 1.10.1987 upto 31.3.1994. 61. What is referred to as the compromise formula therefore is in fact a formula whereby the impact of the increase is made applicable in instalments. It is, therefore, an exercise in softening the blow. 62. Before we examine the scheme any further we will deal with the question of interest. The submission made on behalf of parties has already been set out in paragraph 28 above. Mainly this plea of the appellant-trust is opposed on the ground that there is no crystalised amount and that it being a matter of rent when it has not been paid on account of dispute, there cannot be any interest on it. Strictly speaking in other cases this could be the position. However, as already seen in the discussion so far about the fair upward revision, the plot-holders have no objection. They themselves have cited instance of such revision upto the year 1981 and it has been said several times that had there been similar exercise on the part of the trust and had that been continued over

a period of time, the plot-holders will have no objection for paying the rent so revised. This we have already referred to in paragraph 6 of the judgment. The respondents themselves are willing to pay the rent at increased rate provided the increase is within the range that the appellant trust had expected to be a norm till the year 1981. If this be so, obviously the plea of the appellant trust for interest has to be accepted. It may be that the increase in rent will be decided by this judgment or in the course of the proceedings that may be taken up upon or after the judgment in the present appeal but to an extent determination will certainly be there upon which interest should be paid to the appellant trust. In the formula, the Port Trust has come out with a proposal of 8% interest. In our opinion in keeping with the over all policy of interest which we have mentioned later on even with reference to unamended Code of Civil Procedure, 1908 the rate should be 6% per annum only. 63. Now coming to the basis of the aforesaid formula decided by the earlier Division Bench when it referred to reaching upto the level recommended by the Kirloskar Report over a period of 10 years or so in our opinion it is totally an exercise in futility. The initial decision after receipt of Kirloskar Report itself was on higher side and has been struck down by the learned Single Judge. We have agreed with him on this issue. The compromise formula is nothing else but reintroducing that very rate after a period of 10 years or so starting from 1.10.1994. This has been repeated in a statement annexed to the affidavit dated 29.6.2000 filed by Adi Vasaigara on behalf of the Trust. The deponent has dealt with the plot held by the respective petitioner and has pointed out that the option given of making lumpsum payment or in instalment will work out to a monthly payment of a particular amount. Thereafter in the last column the rate applicable on and after 1.4.1994 is also shown. The rate thus shown in the last column will therefore be the one where the aforesaid annual increase as per the formula of 4% every as per para 7 will apply. This was to apply on and after 1.10.1992 but now it will be applicable on and after 1.4.1994. 64. In our opinion, therefore, the so-called compromise formula also does not meet with the aforesaid test of fairness and reasonableness. 65. The Trust itself has come out with a 4% increase annually on and after 31.3.1994 as per that formula. Keeping that in mind if we consider the fair return on the basis of the market value we have a situation on one hand of the trust claiming a straight increase on the basis of a return of 15% which in reality because of the earlier meagre increase will work out to 10 times or 20 times the original rent. As noted above there is no justification at all for adopting the return of 15%. 66. This increase is sought to be justified by referring to various objects and the obligations of Major Port Trust like Mumbai under the Major Port Trusts Act, 1963. There have been periodical amendment to the Act and one of the amendments has the effect of virtually obliging bigger Ports like Mumbai to make use of their spare resources for the development of other major ports. The relevant provisions will appear to be enabiing provision but these being mandatory provisions this may almost amount to an obligation on the Board of Trustees of a Port like Mumbai Port. 67. However, in our opinion that by itself will not save the aforesaid rate of 15% if it is otherwise not justified by material on record. So far we have not come

across any such material. 68. An earlier Division Bench which heard this appeal after the said direction under Order 1 Rule 8 had an occasion to suggest 6% to be the fair return but the Board did not accept it. 69. It may be recalled that upto the time that the C. P. C. came to be amended under Section 34 the power vested in the Civil Court to grant interest was upto 6% interest per annum. As noted above the Board referred to 4% upper revision on and after 1.4.1994. 70. For granting upper revision, we will divide the entire period starting from 1981 to 2000 into two parts. The trust itself has divided the period into two parts in a way because in the compromise formula it has decided to levy interest on and from 1.4.1984. Accordingly, the first period will commence from the year 1981 and end with 31.3.1994. The second period will start on and after 1.4.1994. 71. In view of the stand of the Port Trust itself before the Supreme Court in S. L. P. upto 31.3.1994 it should be permitted to apply its original norms of proper revision as it was doing right upto the year 1981, periodically. It may accordingly revise the same upto 31.3.1994. 72. Coming to the second period, the revision will have to be on the basis of 6% of the market rate instead of 15% for non-residential use. For residential use it has been pegged by the Port Trust at 12% which in our opinion cannot be sustained for the aforesaid reason. In order to maintain the distinction as was done by the Board itself by keeping 15% for non-residential properties and 12% for residential properties we hold that for residential purpose the return shall be worked out at the rate of 4% on the market value. At this rate, the Kirloskar Report has to be worked out on and from 1994 till 31.3.2000. We are fixing this dale because on and after 1.4.2000 the new Maharashtra Rent Control Act, 1999 came into force. The importance of this statutory is that from the definition of the local authority, the Bombay Port Trust has been omitted completely. It was specifically mentioned as one of the local authorities that had been exempted under section 4 sub-section 1 in the old Rent Act. However in the list of exempted local authorities, the Bombay Port Trust or the Mumbai Port Trust namely the appellant is conspicuous by its absence in the new Rent Act. Reference may be made to section 7 sub-section 6 of the said Maharashtra Rent Control Act. 1999. This has generated much debate particularly at the instance of the appellant when the learned Additional Solicitor General very seriously contended that looking to the aims and objects of the Major Port Trusts Act, 1963 preceded by legislative history covering the period when the Bombay Port Trust Act itself was enacted in the 19th century the Rent Act can never cover the Bombay Port Trust's properties. It was also with equal seriousness urged that the Major Port Trusts Act and its provisions taken in their totality should get the benefit of the doctrine of occupied field and by implication therefore the provisions of the Rent Act if necessary be struck down in relation to the properties of the appellant or if not then the trust properties should be treated as exempted from the provisions of the Rent Act. 73. In our opinion these two arguments are different facets of one and the same submission. Reference was made to List I and List II of the Seventh Schedule of the Constitution and relevant entries were also mentioned. We are not going into the details because it is quite obvious that the theory of the occupied field in the instant case can have no application. No doubt the said Rent legislation

falls in List III of Schedule 7 (specifically Entries 6, 7 and 13). The Maharashtra Rent Control Act. 1999 has received Presidential assent and the requirements in this regard have been duly complied with. The provisions of Article 254 of the Constitution Act of India will therefore straightaway come into play. 74. Apart from that when the State Legislature while exercising its power under Article 246 read with the concurrent list chooses either to exempt or not to exempt particular property, the statute will have to be given its proper meaning and effect and recourse to the theory of occupied field as and when made will have to be examined very critically. 75. By its very nature, rent legislation covers the relationship between landlord and tenant. It does not deal with creation of tenancy but it places either a restriction or embargo on the right of the landlord under the general law relating to revision of rents and eviction. The Rent Act also deals with the question of charging of rent and to that extent it also encroaches upon the field of general law as to the creation of tenancy because creation may be according to general law but that part of the transaction where the tenant agrees to pay a certain amount of rent will be regulated and controlled by the provisions of the Rent Act. Unless therefore it is shown that in the Major Port Trusts Act there are similar provisions as to the control, regulation or revision of rent and relating to eviction, obviously the said theory and occupied field cannot have any place whatsoever. We, therefore, reject this submission. 76. In view of the aforesaid finding the appellant trust will stand governed by the provisions of the Maharashtra Rent Contol Act, 1999. To the extent permissible therein, the appellant trust can certainly increase the rent periodically and the occupants of the plots on whatever terms and conditions at present will also have to abide by the same. We also hold that the appellant trust cannot claim any exemption from the provisions of the Rent Act. 77. We now take up individual submissions as made on behalf of the respective parties through the respective counsel. So far we have referred to the submissions made generally in respect of the entire matter by the learned Advocate Shri C. U. Singh as also by Shri D. J. Khambatta. They like others have submitted certain written facts covering their individual cases which we will now deal with individually. 78. Shri Naphade contended that the Major Port Trusts Act, 1963 has been amended in the year 1977 and as a result a Tariff Authority for the Major Ports has now been constituted. It is this authority which alone can fix the rates. The word 'rate' according to Shri Naphade would include the rent or the lease premium that is being charged from the holders of Port Trust properties in view of Section 2(b) of the said Major Port Trusts Act, 1963. However, as one looks at section 49 and other relevant provisions it is quite clear that the authority can fix the rate in respect of the properties within the dock area. This would necessarily mean that rates for the properties outside the dock area can be fixed by the trust even after the said amendment constituting the authority. The major thrust of the argument in our opinion will go away because except for what is known as Lakdi Bunder, admittedly all properties are outside the dock area. This can be seen from the detailed map of the Port Trust properties which was given by the Estate Department of the Mumbai Port Trust-appellant. In fact this part of the properties of the trust was pointed out to us by Shri C.

U. Singh appearing for the original petitioners cum intervenors as some of his clients have plots in the said area known as Lakdi - Bunder. However, these very plot holders have no objection to the revision of rent as done uptil now and therefore in our opinion this aspect of the matter will have very little bearing on the outcome of the present petition. 79. On behalf of M/s. B. F. Wadia & Sons, one of the intervenors. Shri Khambatta has set out at page 23 of his submissions the case of individual hardship. We may record that in case of almost all plots certain peculiarities are to be noticed and they are noted by the said Kirloskar Consultants in their Report. Firstly, there are restrictions as to the development of the plots. In some case no construction whatsoever has been allowed. These are leasehold plots. There are F. S. I. restriction. Coupled with this, in most of the cases either surroundings are not conducive, roads are not maintained properly and there might be even encroachments on the open plots. On behalf of the Port Trust it was urged that in some of its properties there are encroachments and there have also been unauthorised transfers and totally new occupants have taken over in respect of which they have not entered into an exercise of regularising the same in which by and large they have succeeded. 80. These are larger questions and Kirloskar Consultants having taken into consideration these facts coupled with the aforesaid factual position but also the fact of protracted litigation which can be avoided if a reasonable compromise formula is worked out, we are not entering into greater detail. However, coming back to the individual cases like that of the said intervenors in this plot, there is a storm water drain of approximately 3 feet diameter which runs underneath the godown shed all along a length of 156 feet. As a result the Municipal Corporation would not permit them to raise any structure on it. In our opinion, this is in keeping with the position of most of the plot-holders of the appellant trust either on account of such peculiarity as stated above or on account of the lease term itself. So far as the submission as to financial difficulty is concerned, in our opinion in view of this order it is largely taken care of. 81. Shri Shyam Mehta though appearing for five intervenors, essentially made oral submission with regard to the Methodist Episcopal Church. Reply of the Port Trust to the extent to which property is utilised for the church activities, is that they have always given concession and charged less rent to religious institution but if they are found to be conducting commercial activities, may be to supplement the income of the Church, to the extent to which the trust premises arc used for this activity there cannot be any concession granted to them. We see substance in this submission made on behalf of the Port Trust and therefore we reject the submission made by Shri Shyam Mehta in respect of the Church. In the written submission essentially the thrust is on the exorbitant rate at which rents were proposed to be increased which has been dealt with elaborately herein above. 82. In fact, Shri Mehta has annexed to his written submissions a working of the rent on the basis of annual increase. The first submission is on the basis of the suggestion of Division Bench consisting of the then Chief Justice Mr. M. B. Shah sitting with Mr. Justice R. J. Kochar where starling from the year 1982, 6% increase was proposed. If rent for the year 1982 is Rs. 1092/- the 6% increase will work out to 1157.52 which after an annual increase of 6% every year will

work out to Rs. 6648.28 by 1.10.2012 as set out in the last column. As against that, the Mumbai Port Trust before the Supreme Court in the Special Leave Petitions sought to increase on and from 1.10.1994 the rent at Rs. 3337/- by 4% to make Rs. 3470.48. When the figures for the year 1994 are taken from the working of the previous chart as per the said suggestion of the Division Bench the Municipal rent is shown to be Rs. 2197.34 as increased by 6% 2329.18 as set out in the last column. 83. In short according to the intervenors the suggestion made by the earlier Bench was eminently reasonable and ought to have been accepted because by the year 2012 the Port Trust will get Rs. 6648. 28 as against their projected rent of Rs. 7030.45 as set out in the second chart. The third chart relates to the proposed increase at the rate of 6% on and from 1.10.1987 which at the end of the calculation in the year 2012 in the last column results in a figure of rent of Rs. 4967.98. In other words, viewed by the first chart and second chart, submission made on behalf of these intervenors is that increase may be permitted at reasonable rate. 84. Shri Bookwala appearing for M/s. R. E. Mody & Co. as intervenors has drawn our attention to pages 327 - 329 of his compilation submitted on their behalf. The thrust of the submission is that they are riot affected people during the period of 1994 and therefore special concession has to be given to them. In paragraph 8 at page 328 it is recorded that fresh lease of 30 years could be granted from 1.4.1994. The Port Trust apparently after passing its resolution decided to give certain concessions as set out in the aforesaid pages. A condition was imposed that atleast 25% of the amount should be deposited by 31.1.1995 and the remaining amount be paid in instalments. The resolution of the Board bearing No. 528 dated 4.10.1994 is set out in paragraph 9 at page 329. This apparently is acceptable to the intervenors. This being totally an exceptional case arising out of the aforesaid unfortunate event of the Bombay bomb blast it stands totally on a different footing and therefore to the extent of these Intervenors getting benefit of our order passed herein they shall certainly be entitled to it but in case there is anything adverse to them, the Port Trust shall be bound by their Resolution No. 528 dated 4.10.1992. At the same time we agree with the counsel of the Port Trust that benefit can be given only to the occupants of the plots who were originally there as per the Port Trust record and not to third parties or strangers who may have come on the scene unauthorisedly. Such persons are to be treated by the Port Trust in accordance with the regulations as has been done in respect of other properties of the Port Trust. 85. Shri Mudnaney and Shri Diwan submitted on behalf of their respective clients in respect of long term leases, that the compromise formula in clause 11 has permitted the Port Trust to go against the terms of the contract and that cannot be accepted. The learned Additional Solicitor General has stated that wherever there are contracts subsisting, they are binding on the Trust and they should accept the same save and except for any statutory change that may have been brought about or that may be brought about in future. For this reference was made to section 34 and section 111 of the Major Port Trusts Act. 1963. This stand in our opinion is quite fair and that will take care of the grievance of the intervenors. 86. The Western India Oil Distributing Co. Ltd. one of the intervenors, through their

Advocate has drawn our attention to a drastically changed situation in respect of its lease transaction. Prior to the year 1970, in keeping with the Government of India policy these intervenors were importing petroleum products for which they had obtained leasehold rights and have laid down tanks, pipe lines etc. On and after the year 1970 import of petroleum products by private parties came to be banned. Since about 1975 therefore they use the tanks for storing edible oil. The intervenors were not allowed either to use the pipelines or B. P. T. Railway facilities. In view of this change of user, the Port Trust demanded compensation at the rate of 66 times the rent originally paid. In the written submission example of Caltex Oil Company has been given who have been permitted to store methanol on certain additional charges as set out in paragraph 13. In our opinion this is not a case of intervenors who have been affected by the aforesaid exercise of whole sale upward revision in rent of all the properties. 87. This is a case of individual hardship mainly arising because of the change in policy of import of petroleum products as effected by the Government of India. The Port Trust is therefore directed to consider the case of this intervenor on its own footing and after taking into consideration the merits as set out in the intervention application as also the further submissions which the intervenors are permitted to make and thereafter decide the same as a case of individual hardship in accordance with regulations. To the extent to which remission can be given keeping in mind the case of Caltex Oil Company, the Port Trust may do so. Within four weeks of this order it shall be open for the said Intervenors to file additional written submissions before the Port Trust and thereafter as set out above the Port Trust shall follow up the directions given herein and deal with the matter. 88. An affidavit filed on behalf of the intervenors namely Darukhana Iron, Steel and Scrap Merchants Association represented by Mr. S. Dharmadhikari contains particulars more or less on the lines set out in the petition itself. Their most grievance is about a sharp upward increase in the rent which we have already dealt with. 89. Intervenor M/s. D. V. B. Warehousing has a peculiar problem. They have taken godown facilities on lease from the Trust. They have given it on contract to the Food Ministry to the Government of India. The Government is paying the intervenors Rs. 300/- per day. Their total income comes to Rs. 21,028.50. The rent outgoing is Rs. 14,850/-. If the upward revision is given effect to, they would be faced with huge loss which in our opinion could not be a matter to be considered by us. It is mainly a situation arising out of a commercial transaction which the intervenors had entered into with the Government of India somewhere in the year 1957 at which time of course it was found to be very profitable. However to the extent to which they may get the benefit of this order, certainly they will stand at par with other persons save and except that the intervenors are not using the premises but have let them to the Food Ministry and as a result of that if any action has to be taken by the Port Trust, we clarify that the present order will not come in the way of the Port Trust. 90. Intervenors M/s. D. Abraham & Sons Pvt. Ltd. as also the Industrial Minerals & Chemicals Pvt. Ltd. respectively represented by Mr. Kirit Mody and Mr- S. P. Bharati have almost the same story to repeat as done by the petitioner about the sharp increase. That has

already been taken care of. 91. Shri Gursahani has submitted the needs of the residential societies which has already been taken care of by reducing the rate from 12% to 4%. Nothing further is required to be done in this case either. 92. For the reasons stated above, we come to the conclusion that the finding of the learned Single Judge on the point that rent cannot be fixed on the market rate of the properties is set aside. Rest of the judgment is confirmed. On examining the impact of the learned Single Judge on the "compromise formula" as given by the appellant trust before the earlier Division Bench, for the reasons stated above, we have varied and modified the rate at which the rent could be recovered and the market rate. Accordingly, the Port Trust is permitted to go ahead with fixation of rent. 93. The Port Trust shall work out rent payable by each of its plot-holder and shall serve them the bill cum demand notice on and after 1.11.2000. While working out the amount to be paid by the respective plot-holder, the Port Trust shall also take into consideration the amount already paid. In case there be any short fall, obviously the Port Trust will recover it by way of bill cum demand notice and if there be any excess, it shall adjust the same against future payment. In either case, it shall intimate to the respective plot-holders by way of statement of accounts setting out the necessary details yearwise so that the plot-holder is able to understand as to how the amount is either demanded or adjusted. 94. The Appeals stand allowed accordingly. Parties are left to bear their own costs. 95. After pronouncement of the judgment, our attention was drawn to the orders that were passed on different dates in relation to the pending suits in the Small Causes Court. Bombay as also in the City Civil Court, Bombay. By way of an example, one order which is passed on 19th March, 1998 by the Division Bench consisting of the then Chief Justice Mr. M. B. Shah sitting with Mr. Justice A. Y. Sakhare is quoted. The said order reads as under : "Considering the dispute involved in these Appeals, the Small Causes Court, Bombay is directed not to proceed with the suits filed by the Port Trust against the Appellants and Intervenors till 30th April, 1998." As the Appeals have been disposed of, so far as this Court is concerned, the dispute has come to an end. All the suits pending either before the Small Causes Court or City Civil Court involving a dispute that has been resolved in terms of the judgment in the present Appeals, shall have to be dealt with by the said (wo Courts in accordance with this judgment. Accordingly, the Appellant-Port Trust who are the Plaintiffs before the respective Courts in respective suits shall bring to the notice of the concerned Court the effect of the judgment on the pending suits and thus it being brougHt to the notice of the respective Courts, the pending suits will be dealt with by the respective Courts in accordance with the said judgment. Accordingly, the stay of the suits is vacated. 96. Issuance of the certified copy is expedited. Erratum dated 3.8.2000 P. C. : 1. Reading para 6 and para 71, there is a possibility of some confusion and. therefore, it is clarified that the Port Trust is to revise rent from 1.10.1982 at 5% for every year and thereafter in accordance with the rest of the directions and charge interest also year after year upto 31.3.1994 and accordingly serve them Bill Cum Demand Notice. 2. In para 78 for the words "Dock Area", the words "Port Limits" shall be substituted. 3. In para 84 in the sentence beginning with the

words “at the same time” and ending with the words “scene unauthorisedly” for the word “occupants” the word “tenants or lessees” shall be substituted. 4. In paragraph 27 in line 11th from top of the paragraph, it should be provided as “1st October, 1982 till 31st March, 1994” instead of “1994”. 5. In the last line on the same instead of 1981 it should be 1982. 6. In paragraph 28 on page 38, 4th line from the bottom of the said paragraph instead of 1994 it should be 1982. In paragraph 70, page 63 in the 2nd line instead of 1981 it should be 1982. Similarly in paragraph 70 in the 5th line from top. instead of 1.4.1984, it should be 1.4.1994 and in the 2nd last line in the same paragraph instead of 1981 it should be 1982. On page 64 2nd line instead of 1981, it should be 30th September, 1982. 7. That the appearances of the following Intervenors be mentioned in the order dated 1st August, 2000. (a) Ebrahim Hasham Kolsawalla & Ors.. (Bombay Charkol Merchants Assoc. Ltd.. & 69 Ors. (b) Sabanatly Gulam Meherally & 5 Ors- (Timber Merchants, Ghodapdeo) (c) Manji Velji Patel. Mr. C. U. Singh i/by Sanjay Udeshi & Co., for Intervenors. 8. In para 79 at page 70 in the last sentence of the para beginning with the words “on behalf of for the word”not“, the word”now" shall be substituted.