

Board Of Trustees Of The Port Of Bombay ... vs Sriyansh Knitters on 12 August, 1982

Equivalent citations: AIR 1983 BOM 88, 1983 (2) BOM CR 185, (1982) 84 BOM LR 509, AIR 1983 BOMBAY 88, (1983) 2 BOM CR 185

JUDGMENT

Pendse, J.

1. This group of five appeals is preferred by the Board of Trustees of the Port of Bombay and its Officers, and raises an interesting question as to whether the Trustees of the Port Trust constituted under the Major Port Trusts Act, 1963 have a general lien for their dues over the consignment imported by the importers at the Bombay Port. As identical question arises in all these appeals and as the facts given rise to these appeals are almost similar, we propose to dispose of all these appeals by common judgment.

2. The respondent in all these five appeals are importers and have imported various consignment from time to time. The respondent imported woollen rages and after the consignments arrived at Bombay Port, there was dispute between the respondent and the Customs authorities as to whether the imported goods were woollen rage or woollen garments. After a considerable period, the Customs authorities confiscated the imported goods and under the provisions of S. 111(d) of the Customs Act, 1962, but the order of confiscation gave an opportunity to imports to get the goods released on payment of fine. Some of the importers preferred appeals against the order passed by the Customs authorities confiscating the goods, but it is not necessary to refer to appellate orders. As the imported goods remained in the Docks till the order of confiscation, the appellants issued notices to the respondents demanding the demurrage charges. The importers denied their liability and thereupon the Port Trust Authorities instituted various suits to recover wharfage and demurrage charges. These suits filed on the Original Side of this court are still pending decision.

3. After the institution of the suits, the respondents imported Acrylic Fibre under the Import Licences held by them and after the consignments arrived in Bombay Port, the respondents filed Bills of Entry for clearance of the goods for home consumption. The respondents secured the requisite permission from the Customs authorities and thereupon called upon the Board to release the goods in their possession. The appellants refused to permit the respondents to remove the goods and on enquiries, the respondent learnt that the refusal of the Port Trust authorities is based upon a Circular issued by the appellants on October 2, 1979. It would be convenient to set out the Circular at this juncture.

"Bombay Port Trust Docks"

Dock Circular No. S/29-89/52/79-80 2-10-1979.

To,

All Vessel Agents/Vessel Owners/Clearing Agents.

Sub: Recovery of Port Trust Charges:

This Circular is in suppression of Circular No. 5/29/89/39/79/-80 of 13th August. 1979, which is hereby withdrawn. The Board of Trustees of the Port of Bombay have been advised that under Section 171 of the Indian Contract Act, 1872. they have a general lien which they can exercise on the goods which come into their Custody of Importers, Exporters, Owners, Consignees who have for any reason whatsoever not paid the Port Trust charges such as wharfage, carnage. storage, demurrage or any other dues in respect of any earlier consignments Imported/exported or sought to be exported by them.

2. In the circumstances this department will exercise a lien for General Balance of account in respect of wharfage. carnage, storage, demurrage and other dues of the Board of Trustees of the Port of Bombay against the Importers/Exporters, Owners or Consignees of the goods taken charge of by the Board of the Trustees.

3. In case where suits have already been filed against the Importers/Exporters, Owners, Consignees or other persons liable, they will be called upon to, at their option, pay such dues to the Bombay Port Trust without prejudice to their rights and contentions in such suit or approach the court to deposit such dues in the suits filed against them without prejudice to their rights and contentions. In such suits only after such deposits is made with the Board of Trustees or in the court such Importers/Exporters, Owners, Consignees or any other persons liable shall be allowed to clear their goods in respect of which lien has been exercised for general balance of account. A list is maintained by the Department giving the names of the parties against whom suits have been filed with all requisite particulars in respect thereof.

Sd/-

Docks Manager".

The Port Trust authorities claim a general lien under Section 171 of the Indian Contract Act, 1872 in respect of the goods which come into their custody of importers who have for any reason not paid the Port Trust charges such as wharfage, carnage, storage, demurrage or any other dues in respect of any consignments imported by them.

4. The respondents, realising that the appellants would not release the consignments in view of the advice contained in the Circular, preferred petitions on the Original Side of this Court on November 14, 1979, under Article 226 of the Constitution of India. By these petitions, the respondents sought a declaration that the circular dated October 2, 1979, is ultra vires the Major Port Trusts Act, 1963 and in violation of Articles 14, 19, 265 and 300A of the Constitution of India. The respondents also sought a Writ of Prohibition restraining the appellants from taking any steps or proceedings in furtherance or in implementation of the Circular. A Writ of Mandamus was also sought directing the appellants to withdraw or cancel the Circular and to deliver the consignments of goods imported by the respondents and detained under the Circular. The petitioners were set down for admission before the learned single Judge on December 12, 1979, and were duly admitted and by an interim order, the appellants were directed to release the consignments of Acrylic Fibres on the undertaking of the respondents to give a Bank guarantee of a Nationalised Bank for an amount of dues which was claimed by the appellants in respect of suits filed in this court.

5. The petitioners claimed in the petition that the appellants are not entitled to claim general lien under Section 171 of the Indian Contract Act as there is no existing contractual relationship between the appellants and the respondents. The respondents claimed that the provisions of Section 171 of the Indian Contract Act deal only with the contractual bailments. It was further claimed that Port Trust is not bailee of consignees but only of ship-owners. The respondents also claim that the Major Port Trusts Act is a complete Code in itself, and it is not permissible for the appellants to rely upon the provisions of the Indian Contract Act to claim general lien. The validity of this Circular was also challenged on the ground that it infringes the provisions of Articles 14, 19, 265 and 300A of the Constitution of India.

6. In answer to the petition, Shri Donald Joseph Collaco, the Principal Officer of the appellants, filed his return duly sworn on November 27, 1980. By this return, it was claimed that the appellants are entitled to exercise general lien as provided by S. 171 of the Indian Contract Act, the appellants being the wharfingers. The claim made by the respondents about the validity of the Circular was denied.

7. The learned trial Judge delivered a common judgment in all the five petitions and by order dated November 24, 1982, allowed the petitions and granted the relief sought for by the respondents. The trial Judge held that under common law, the general lien to wharfinger is available only for warfage charges and the said general lien is available only by custom or usage. The trial Judge further held that section 171 of the Indian Contract Act deals with contractual bailments and has no application whatsoever to other kinds of bailment which are not contractual in nature. It was further held that the Port Trust is not the bailee of the consignee but only of the ship-owners and there being no contract between the Port Trust and the consignee, the provisions of S. 171 of the Indian Contract Act are not available and the claim of general lien was unsustainable. The trial Judge further recorded a finding that there was no implied contract between the Port Trust and the consignee. The trial Judge accepted the submission advanced on behalf of the respondents that the rights available under S. 171 of the Indian Contract Act are not available and the claim of general lien was unsustainable. The trial Judge further recorded a finding that there was no implied Contract between the Port Trust and the consignee. The trial Judge accepted the submission advanced on behalf of the respondents that the rights available under S. 171 of the Indian Contract Act, even

assuming that there was Contractual relationship between the Port Trust authorities and the consignee, are excluded by the provisions of the Major Port Trusts Act, 1963 as amended in the year 1975. It was further held that the bailment if created debtors the Contract, then such bailee cannot claim a right of general lien as such right is not recognised in India or in England. Finally the trial Judge held that the general lien, if any available can be exercised only of wharfage charges and the appellants would not be entitled to recover the charges for keeping the chattel on which the lien is exercised. On the strength of this finding, the trial Judge accepted the petition and issued a Writ of Mandamus directing the appellants to withdraw or cancel the Circular dated October 2, 1979 and restraining the appellants from taking any steps in furtherance or in implementation of the Circular. The relief sought by the respondents that the appellants should deliver the consignment of goods imported by the petitioners and detained under the Circular was not required to be granted, in view of the fact that by the interim order passed by the trial Judge, the goods were cleared by the respondents on furnishing the requisite Bank guarantees. The judgment delivered by the trial Judge is under challenge in this group of five appeals.

8. Before advertng to the submissions advanced by the learned counsel appearing in support of the appeal, it would be convenient to trace the legislative history which led to the passing of the Major Port Trust Act, 1963, Central Act. No. XXII of 1855 was passed by the Legislative Council of India and received the assent of the Governor-General on August 13, 1855. The legislation was enacted for regulation of ports and port dues and Section 41 of the Act provides for levy of [port dues. The Section, inter alia, provides that the dues and fees usually collected at the several Ports be collected at such Ports respectively. It further provides that no Port dues or fees shall hereafter be levied in any such Port except under the authority of this Act or of an Act hereafter to be passed for fixing the amount thereof. It is not in dispute that this Act merely provides for regulation of Ports and port dues within the territories of the Government of the East India Company and the Act does not provide for levy and recovery of charges in respect of the goods such as wharfage and demurrage and demurrage charges etc. Central Act No. XXXI of 1857 was passed by the Legislative Council of India and received the assent of Governor-General on October 23, 1857 and the Act was passed for the levy of port-dues and fees in the Port of Bombay. This Act also does not provide for levy and recovery of charges such as wharfage and demurrage charges. This Act was repealed by the Central Act No. XXIX of 1861.

9. Bombay Act No. V of 1870 was promulgated on February 13, 1871 and the Act was passed for levy of fees for the use of Government Bunders, Wharves, Landing Places, piers and Hards in the City of Bombay. The Act provides for fixation or determination of fees to be levied for the landing, shipping, wharfage, carnage, storage or demurrage of goods, and for permission for vessels or boat to approach or to be alongside, or on any Government Bounder, Wharf or landing place. The Act provides that Officers appointed to levy fees under the Act shall have same powers for collecting and enforcing the payment of fees as exercised by the Commissioner of Customs in Bombay. This Act was followed by Bombay Port Trust Act I of 1873. The Act received the assent of His Excellency the Governor on March 3, 1873 and the assent of the Governor-General on May 24, 1872 and was published on June 26, 1873. The preamble of the Act reads that whereas it is expedient to consolidate and amend the law relating to the harbour and foreshore of the Port of Bombay, and to make further provision for the regulation conservancy, and improvement of the said Port, the Act

was enacted. The Act repeals the earlier Central Act No. XXII of 1855 and the provisions which were inconsistent with the provisions of the Act. It also repealed Section 1 of Act XXXI of 1857, and the Bombay Act V of 1871.

10. The Act of 1873 is a forerunner of the subsequent enactments relating to the Port Trusts in India. Section 4 of this Act provides for creation of Corporation and the Trustees of Port of Bombay to be appointed as provided under the Act are created a Corporation under the name and style of the Trustees of the Port of Bombay. Section 62 of the Act provides for recovery of tools in arrears and this Section gives a lien to the Trustees on specific goods for the amount of tolls charges, dues, rates etc., Section 65 of the Act enables the Trustees to sell the specific goods after the expiration of three months if tolls are not paid or lien for freight is not discharged. Section 66 of the Act provides for application of proceeds of sale and, inter alia, lays down that in every case the moneys received from the sale shall be applied :

Istly : In payment, according to their respective priorities, of the lines and claims excepted in Section 62 from the priority of the liens of the Trustees for tolls, rates, rents, charges and dues;

2ndly : In payment of the expenses of the sale; and 3rdly : In payment of tolls, charges, rents, rates, dues and expenses due to the Trustees under this Act in respect thereof.

The Section further provides that the surplus, if any, shall be paid to the owner of the goods or his agents on his applying for the same, provided such application is made within one year from the sale of the goods. This Act was repealed by Bombay Port Trust Act No. 6 of 1879 which came into force from September 4, 1879. Act I of 1872 stood repealed from November 1, 1879,. The provisions of the Bombay Port Trust Act No. 6 of 1879 are identical with those of Act I of 1873. This Act No. 6 of 1879 was amended by introduction of S. 67A. by Bombay Act I of 1899. By this amended Section, an additional remedy was conferred on the Port Trust authorities to institute suits in the regular Civil Court for recovery of charges and dues.

11. The Parliament enacted the Major Port Trusts Act, 1963 (Act 38 of 1963) to make provision for the constitution of port authorities for certain major ports in India and to vest the administration, control and management of such ports in such authorities and for matters connected therewith. The Act which received the assent of the President on October 16m 1963 came into force from February 29, 1964. Initially, the Act applied to major ports of Cochin, Kandla and Vishakhapatnam and the Provisions of the Act were made applicable to the Port of Bombay, Madras and Calcutta only from February 1. 1975, in view of the passing of Act No. 29 of 1974. S. 3 of this Act provides for constitution of Board of Trustees and Section 5 provides that every Board constituted under the Act shall be a body corporate having perpetual succession and a common seal with power to acquire, hold or dispose of the property. S. 33 of the Act enables the Board to enter into or perform any contract necessary for the purpose of its functions under the Act, while S. 34 of the Act lays down the mode of executing such contracts on behalf of the Board. Chapter V of the Act deals with works and

services to be provided at Ports and S. 41 lays down that when any dock, berth, wharf, quay, stage, getty, or pier for receiving, landing, or shipment of goods or passengers from or upon vessels, has been made and completed, the Board may after obtaining the approval of the Collector of Customs, published in three consecutive issues of the Official Gazette declare that from the date of the publication of the order it shall not be lawful for any vessel to land or ship any goods at any place within the limits so specified except at such dock, berth, wharf, etc. In other words, S. 41 of the Act creates prohibition to land or ship any boat at any places except those which are notified in the order. S. 42 of the Act deals with the performance of the services by Board or other person authorised by the Board. The services include receiving,, removing, shifting, transporting, storing or delivering goods brought within the Board's premises. Chapter VI of the Act deals with imposition and recovery of rates at ports and S. 48 of the Act demands every Board from time to time to frame the scale of rates and the statements of the conditions under which, any of the conditions under which any of the services specified under S. 42 of the Act is to be performed. S. 58 of the Act requires that rates in respect of goods to be landed shall be payable immediately on the landing of the goods and shall be payable before the goods are so removed. S. 59 of the Act deals with the Board's lien for rates due to the Board in respect of any goods and provides that the Board shall have a lien on such goods and may seize and detain the same until the rates are fully paid. S. 61 of the Act deals with application of sale proceeds and lays down that the proceeds shall be applied in the following order;--

(a) in payment of the expenses of the sale;

(b) in payment, according to their respective priorities, of the liens and claims excepted in sub-section (2) of Section 59 from the priority of the lien of the Board;

(Constitution) in payment of the rates and expenses of landing, removing, storing or warehousing the same, and of all other charges due to the Board in respect thereof including demurrage other than penal demurrage payable in respect of such goods for a period of four months from the date of landing;

(d) in payment of any penalty or fine due to the Central Government under any law for the time being in force relating to customs;

(e) in payment of any other sum due to the Board.

It is required to be stated that clauses (d) and (e) were introduced while clause (Constitution) was modified by amending Act 29 of 1974 from February 1, 1975.

12. With this background, it would now be convenient to consider the three contentions advanced by Shri Zaiwala, the learned counsel appearing in support of the appeals, to claim that the general lien is available to the appellants. The first submission of the learned counsel is that the general lien as claimed by the Board is available under the Provisions of the Major Port Trusts Act, 1963 itself. In support of this submission, reliance was placed on the provisions of S. 59 (1) of the Act. Sub-section (1) of S. 59 of the Act reads as under:--

"For the amount of all rates leviable by a Board under this Act in respect of any goods, and for the rent due to the Board for any buildings, plinths, stacking areas, or other premises on or in which any goods may have been placed, the Board shall have a lien on such goods, and may seize and detain the same until such rates and rents are fully paid".

Strong reliance was placed on the words "in respect of any goods" appearing in this sub-section to claim that the Board's lien is not restricted only to the specific goods but is available in respect of any goods which come into the custody of the Board. It is not possible to accept this submission. The plain reading of sub-section (1) of S. 59 of the Act indicates that the expression "in respect of any goods" has to be read in connection with the expression "the amount of all rates leviable by the Board." The sub-section provides that in respect of amount of rates due to the Board in respect of any goods, the Board shall have the lien on such goods and may seize and detain the same until such rents are fully paid. The words "such goods" obviously have reference to those goods in respect of which the rates due to the Board are not fully paid. It is, therefore, not possible to accept the submission of Shri Zaiwala that a general lien in respect of any goods of the importers is conferred on the Board by the provisions of S. 59 (1) of the Act. In this connection, it would be also advantageous to make reference to the provisions of sub-s. (1) (a) of S. 61 of the Act. S. 61 of the Act enables the Board to sell the goods in respect of which the lien is exercised under S. 59 if the Act and sub-section (1) (a) provides that the Board may sell "such goods" or so much thereof as may be necessary if rates payable to the Board in respect of "such goods" are not paid. The power conferred on the Board to sell the goods is in respect of the rates payable to the Board in respect of specific goods and the expression "such goods" leave no manner of doubt that the lien conferred on the Board under S. 59 of the Act is not a general lien but is a lien on specific goods.

13. Shri Zaiwala then urged that sub-section (1a) (e) of S. 63 indicates that the general lien is available to the Board in respect of any goods imported by the respondents. The submission is not accurate. As mentioned hereinabove, sub-section (1) (e) of S. 63 of the Act was introduced for the first time on February 1, 1975 and S. 63 provides for the application of the sale proceeds of the goods which are sold by the Board in exercise of the powers conferred under S. 61 of the Act. Clause (e) to sub-section (1) of S. 63 provides that if proceeds of sale are available after application to items covered by clauses (a) to (d), then such amount can be applied by the Board in payment of any other sums due to the Board. This clause undoubtedly enables the Board to apply the proceeds of the sale in payment of any other sums due, but from this sub-clause, it cannot be concluded that the general lien is available to the Board in respect of any goods imported by the respondents. S. 63 of the Act deals with the proceeds of sale of specified goods over which the Board has lien in view of the provisions of S. 59 of the Act and merely because a right has been conferred upon the Board to apply the proceeds of the sale to any other sum due to the Boards, it cannot be inferred that the Board can exercise general lien in respect of each and every goods imported by the respondents. Clause (e) to sub-section (1) of S. 63 of the Act merely enables the Board to set off the amount due to it on conversion of the goods but it can by no stretch of imagination enable the Board to retain any goods. In our judgment, the submission urged by Shri Zaiwala that the general lien is available to the Board under the provisions of the Act cannot be accepted.

14. The second submission urged by Shri Zaiwala is that there is contractual bailment when the Board undertakes to perform certain services as contemplated under S. 42 of the Act and, therefore, the provisions of S. 171 of the Contract Act are attracted. S. 171 of the Act reads as under:--

Bankers, factors, wharfingers, attorneys of a High Court and policy-brokers may, in the absence of a contract to the contrary, retain, as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them. unless there is an express contract to that effect".

Shri Zaiwala submitted that under S. 42 (1) of the Act, the Board have power to undertake the services of receiving, removing, shifting, transporting storing or delivering the goods brought within the Board's premises. Bombay Port Trust has framed Docks Bye-Laws and Bye-Law No. 3 requires written application in respect of every vessel desiring to enter the Dock to be made to the Docks Manager by the master, owner or agent of such vessel. On permission being granted to the vessel to enter the Dock and the berth is allotted, the vessel and signment is unloaded from the vessel and stored in the godowns of the Port Trust authorities. The consignment is cleared only after the necessary permission is granted by the Customs authorities. Shri Zaiwala relied upon the provisions of sub-section (2) of S. 42 of the Act and urged that a Contract can be spelt out between the consignee and the Board and the services of storage of goods performed by the Board would be in the nature of contractual bailment. Sub-section (2) of S. 42 of the Act reads as under:--

"A Board may, if so requested by the owner take charge of the goods for the purpose of performing the service or services and shall give a receipt in such form as the Board may specify.' Shri. Zaiwala submitted that the expression "if so requested by the owner" in sub-section (2) of S. 42 of the Bombay Port Trust Act No. 6 of 1879 and its introduction in sub-section (2) of S. 42 indicates that the Legislature felt that if the Board would be in the nature undertakes the services on the request made by the owner, then such services would be performed by the Board under a contract or an agreement. In this connection, it is necessary to make reference to the expression "owner" as defined under S. 2 (e) of the Act. It provides that expression "owner" in relation to the goods includes my consignor, consignee, shipper or agent for the sale, custody, loading, or unloading of such goods. It was urged that the undertaking of the service by the Board under sub-section (2) of S. 42 of the Act is on the request made by the owner and, therefore, the storing of goods by the Port Trust authorities amounts to a contractual bailment, and the general lien of a wharfinger under S. 171 of the Contract Act is available.

15. In support of this submission, reliance was placed on the decision of the Supreme Court in the case of *The Trustees of the Port of Madras v. M/s. Aminchand Pyarelal* and especially on the contents of paragraph 22 of the judgment. In our judgment, the submission is not correct and cannot be accepted for more than one reason. The submission of Shri Zaiwala that under

sub-section (2) of S. 42 if the Act, the Board undertakes the services on the request made by the owner and for performing such services issues a receipt and such receipt amounts to an agreement between the application parties and from the receipt, a contract is spelt out as to enable the Board to claim the advantage of S. 171 of the Contract Act, is misconceived. The receipt under S. 42 if the Act can by no stretch of imagination be claimed to be agreement between the parties. The receipt is issued by the Board only in acknowledgment of the fact that it has undertaken the services which are required to be performed under sub-section (1) of S. 42 of the Major Port Trusts Act, 1963. By consent of the parties, we have taken on record in this appeal a form of receipt issued by the Board under sub-section (2) of S. 42 of the Act and have marked the document as Ex. 1 in appeal. The form of the receipt, we are informed at the Bar, is prepared in pursuance of the Docks Bye-laws framed by the Bombay Port Trust. The perusal of this receipt would clearly establish that the receipt is not agreement between the parties to undertake the services but is merely an acknowledgment of the receipt of the good by the Board. It is impossible to spell out any agreement or concluded contract from this receipt to hold that the bailment is a contractual one and the provisions of S. 171 if the Contract Act are attracted. Another aspect of the matter is that the receipt is issued by the Board not as an evidence of the agreement between the parties but only for the purposes of enforcement of liability as provided under S. 43 of the Act. S. 43 provides that the responsibility of the Board for loss, destruction or deterioration of the goods, of which it has taken charge, shall be that of the bailee under Ss. 151, 152 and 161 of the Contract Act, 1872, omitting the words "in the absence of any special contract", in S. 152 of the Contract Act. It further provides that no responsibility shall be attached to the Board until a receipt mentioned in sub-section (2) of S. 42 of the Act is given by the Board. It is obvious from the provisions of this Section that the receipt under sub-section (2) of S. 42 of the Act is issued by the Board and secured by the owner for enforcement of the liability under S. 43 (1) of the Act and not as evidence of any agreement or contract.

16. The next ground for not accepting the submission of Shri Zaiwala that, receipt under sub-sect. (2) of S. 42 of the Act amount to a contract is that the receipt is not in the form and manner required for execution of valid contracts under the Act. S. 34 of the Act requires that every contract on behalf of the Board be made by the Chairman and shall be sealed with the common seal of the Board. Sub-section (2) of S. 34 of the Act provides that the form and manner in which any contracts have been made under this Act shall be such as may be prescribed by regulations made in that behalf, Shri Zaiwala very rightly did not dispute that the receipt issued by the Board is not executed as required by the provisions of S. 34 of the Act. A faint submission was advanced by Shri Zaiwala that the contract which is not made in accordance with the provisions of the Act will not be binding on the Board in view of the provisions of sub-section (3) of S. 34 if the Act, but it would bind the owner of the goods. We are afraid we cannot entertain this submission because it is futile to claim that the receipt issued by the Board is, in the first instance, an agreement or contract and would create contractual relationship between the importers and the Board. In our judgment, the receipt issued under sub-section (2) of S. 42 of the Act cannot be considered as an agreement or contract as it is executed in the mode provided under S. 34 if the Act.

Thursday, the 12th August 1982.

17. In this connection, Shri Desai, the learned counsel appearing on behalf of the respondents, submitted that even assuming that the receipt issued by the Board under sub-section (2) of S. 42 is considered or treated as an agreement, still such an agreement is not between the Board and the consignee but the agreement is only between the Board and the carrier or the ship-owners. The learned counsel, in support of this submission that the expression "owner" referred to in sub-section (2) of S. 42 if the Act has a limited or a restricted meaning confining it only to the carrier of the ship-owners, placed strong reliance on the decision of the Supreme Court in the case of the Trustees of the Port of Madras v. Sheikh Mohammed Rowther & Co. reported in 1963 Supp (2) SCR 915. In the case before the Supreme Court the Trustees of the Port of Madras claimed charges for labour requisitioned and supplied but not fully or properly utilised and thereby rendered idle because of lapses on the part of the ship-owners. The Board with the sanction of the Central Government had made amendments to the Madras Port Trust Scale of Rates in 1958 and the scale laid down charges to be paid by Masters, Owners, or Agents of vessels in respect of Port Trust labour. The Steamer-agents filed petitions in the High Court of Madras and prayed for issuance of a writ of mandamus directing the Board not to enforce these rates and not to require the filling in of the new form. It was claimed on behalf of the steamer agents that the ship-owners and the steamer agents cannot be made liable for charges for shore labour employed in the receiving or removal of cargo and such charges shall have to be borne by the consignee. It was further claimed that the Port Trust Act provides for the performance of the services by the Board and for imposition and recovery of rates for the services performed for the vessel and for the goods. The rates are to be paid on behalf of the carrier i. e. by the master, ship-owner or the steamer-agent in respect of the services performed for the vessel, and by the consignee in respect of services performed for the goods. The petition filed by the steamer agents was resisted by the Trustees of the Port of Madras, inter alia claiming that various services are performed by the Port Trust under the provisions of the statute and one of the services is the moving of the goods from the landing point to the storage or stacking point and thereafter to deliver the goods to the persons entitled under the Bill of Lading. The Board further claimed that the harbour dues are collected from the consignee at the time of giving delivery, but that collection is made as an agent of the ship-owner, master, or steamer agents who are primarily the persons liable for the dues. It was also claimed that the issuance of the receipt to the master at the landing point is a mere matter of convenience for betokening the fact that the goods have been handed over to the Port Trust for removal, storage and delivery. The Port Trust authorities, therefore, claimed that the liability is of the carrier of the ship-owner and there is no privity of contract between the consignee and the Board. The petition was dismissed by the learned single Judge of the Madras High Court but on appeal, the appellate Bench reversed the order and allowed the petition and issued a writ of mandamus as prayed. The appellate Bench took the view that the services rendered by the Board must be deemed to be the services to the consignee. The trustees carried an appeal before the Supreme Court and the appeal before the lower court and the decision of the appellate Bench was reversed and that of the trial Judge was restored.

18. The Supreme Court after considering the ambit of Section 39 of the Madras Port Trust Act, which is similar to S. 61 (a) of the Bombay Port Trust Act and S. 42 of the Major Port Trust Act, observed that the performance of any of the services mentioned in sub-section (1) of S. 39 and taking of charge of the goods are consequent on the Board being required to do so by the 'owner' which is a general term including consignor, consignee, shipper or agent. The Supreme Court then

proceeded to consider the question for determination as to whether the law making the steamer agent liable to pay these charges for services is good law. The learned Attorney-General appearing on behalf of the trustees submitted that the harbour dues are collected from the consignees as the Board is a bailee of the ship-owner, who is a bailee of the contract to deliver the goods to the consignee or his nominee, on the presentation of the bill of lading. It was further urged that the Board's taking charge of the goods landed does not amount to its taking delivery of the goods from the ship-owner in fulfillment of the ship-owner's duty to deliver the goods to the consignee, for the simple reason that the Board does not get the goods on. the presentation of the bill of lading. The Supreme Court, after considering the submissions, held:--

"There is no doubt that the ship-owner is the bailee of the shipper, the cosignor, and that he is responsible for the delivery of the goods to the consignee or a transferee according to the terms of the bill of lading. Delivery to the Board is not delivery to the consignee or such person, both because the delivery to the consignee or such person, both because the delivery is to be on the presentation of the bill of lading and because the Act contains no provision which would constitute the Board an agent of the consignee for the purpose of taking delivery of the goods". It was further observing at para 940 of the judgment:

"Section 40 speaks of the responsibility of the Board for the loss, destruction or deterioration of the goods of which it has taken charge as a bailee under Section 151, 152 and 161 of the Indian Contract Act. Section 148 of the Contract Act states that a bailment is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the bailor and the person to whom they are delivered is called the bailee. It is clear, therefore that when the Board takes charge of the goods from the ship-owner, the ship-owner is the bailor and the Board is the bailee, and the Board's responsibility for the goods thereafter is that of a bailee. The Board does not get the goods from the consignee. It cannot be the bailee of the consignee. It can be the agent of the consignee only if so appointed, which is not alleged to be the case, and even if the Board be an agent, then its liability would be as an agent and not as a bailee. The provisions of Ss. 39 and 40. therefore, further support the contention that the Board takes charge of the goods on behalf of the ship-owner and not on behalf of the consignee, and whatever services it performs at the time of the landing of the goods or on their removal thereafter, are services rendered to the ship".

From the observation in the above quoted passages, it is clear that the Board does not get the goods from the consignee and it cannot be the bailee of the consignee. It cannot also be the agent of the consignee and it is obvious that the Board takes charges of the goods on behalf of the ship-owner and not on behalf of the consignee and whatever services it performs at the time of landing of the goods or on their removal are services rendered to the ship-owners. The Supreme Court turned down the contention that the Board was an agent of the consignee by observing at page 947 of the judgment:--

"If the Board was an agent of the consignee, it was bound to deliver the goods to the consignee and should not have any right of retaining the goods till the payment of the rates and other dues for which it had a lien on the goods. The provision of there being a lien on the goods for payment of the dues of the Board or the freight, makes it clear that the Board did not have the custody of the goods as an agent of the consignee". In our judgment, the submission of Shri Desai that the receipt issued by the Board under sub-section (2) of S. 42 of the Act, even if considered as an agreement, the agreement is not between the consignee and the Board but only between the Board and the carrier is correct and deserves acceptance. Shri Desai is also right in this submission that as there is neither agreement nor contractual relationship between the Board and the consignee, the provisions of S. 171 of the Contract Act are not attracted and general lien of wharfinger is not available.

19. Shri Zaiwala countered the submission of Shri Desai and placed reliance upon the provisions of S. 1 of the Bills of Lading Act, 1856 which read as under:--

"1. Rights under bills of lading to vest in consignee or endorsee:-- Every consignee of goods named in a bill of lading and every endorsee of a bill of lading to whom the property in the goods therein mentioned shall pass, upon or by reason of such consignment or endorsement shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect to such goods as if the contract contained in the bill of lading had been made with himself".

It was urged by the learned counsel that the title to the goods passed in favour of the consignee on presentation of Bill of Lading and thereby the consignee was vested with all the rights and liabilities in respect of such goods mentioned in the Bill of lading has passed to the consignee and it is not correct to suggest that the agreement for payment of charges of wharfage and demurrage rests only with the ship-owners or the carriers and has not passed over to the consignee. It is not possible to accept this submission. Mere passing of the title in the goods in accordance with the provisions of Sale of Goods Act, 1930 would not automatically create a contract or an agreement between the Board and the consignee. The contractual liability between the Board and the carrier cannot be foisted over the consignee or his transferee by reference to the provisions of S. 1 of the Bills of Lading Act. The provisions of S. 1 of the Bills of Lading Act merely deal with the rights and liabilities of holder of bill of lading or his transferee in respect of goods mentioned there and cannot be so read as to spell out contractual relationship between the consignee and the Board in respect of services rendered on landing of goods and the payment of charges thereof.

20. The reliance by Shri Zaiwala on the decision of the Supreme Court in the case of the Trustees of the Port of Madras v. M/s. Aminchand Pyarelal to claim that all the services by the Board reflect or represent an agreement between the parties is also not correct. The question which came up for consideration before the Supreme Court was whether the scale of rates fixed by the Trustees of the Port of Madras is void on the ground that it is unreasonable. It was clear that the Board was empowered by Section 42 of the Madras Port Trust Act to frame the Scale of Rates and a statement of the conditions under which it shall perform the services specified in the section. The Board had

exercised that power and the contention was that the scale of rates and the statement of the condition amount to framing of the bye-law and as such is liable to be struck down. Mr. Justice Chandrachud as he then was speaking for the Bench while considering this question turned down the submission that the scale of rates framed by the Board under the provisions of the Statute become bye-laws or that the rules are in the nature of bye-laws. While considering this submission, the learned Judge observed in paragraph 22 of the judgment :--

"Indeed, some of the services which the Board may perform are optional and if the importer desires to have the benefit of those services, he has to pay the charges prescribed therefor in the Scale of Rates. For example, any one wanting to use the Board's premises for any of the purposes mentioned in cls. (a) to (d) of Section 43 would have to pay the charges prescribed by the Board for the use of its premises. Similarly any one desiring to have the benefit of the Board's services in behalf of carnage or storage as specified in clauses (c) and (d) of Section 42 shall have to pay for these services at the prescribed rates. Whether the services are from the importer's point of view optional in the sense that he may or may not require them or whether importer has no option save to avail himself of the basic service of the Board as for landing and keeping the goods in the transit area, the services have to be paid for at the scale of rates prescribed by the Board. In such matters, where services are offered by public authority on payment of a price, conditions governing the offer and acceptance of services are not in the nature of bye-laws. They reflect or represent an agreement between the parties, one offering its services at prescribed rates and the other accepting the services at those rates. As, generally, in the case of bye-laws framed by a local Authority. there is in such cases no penal sanction for the observance of the conditions on which the services are offered and accepted. If the services are not paid for, the Board can exercise its statutory lien on the goods under Section 51 and enforce that lien under Section 56 of the Act; or else, the Board may take recourse to the alternative remedy of a suit provided for by Section 62."

The observation made by the learned Judge that the services offered by the public authority on payment of price reflect or represent an agreement between the parties, one offering its services at prescribed rates and other accepting the services at those rates must be read in its proper perspective. The observations are made in this context while considering whether the rule framed by local authority amounts to a bye-law. In our judgment, the contention of Shri Zaiwala that the Supreme Court by these observations had concluded that the offering of service by public authority on payment of price amounts to an agreement or a contract cannot be accepted. We are clearly of the view that the receipt issued by the Board under sub-section (2) of Section 42 of the Act in favour of the ship-owner does not amount to an agreement or contract and the services performed by the Board do not make the Board a contractual bailee as there is no contractual relationship in existence between the Board on the one hand and the consignee on the other. The provisions of Section 171 of the Contract Act are not attracted and it is not open for the Board to claim a general lien over the goods imported by the respondents from time to time.

21. Shri Zaiwala then urged that even assuming that there is no specific agreement between the Board and the consignee, an implied contract can be spelt out and in support of this submission reliance is placed on certain observations made by the Supreme Court in paragraph 12 of the judgment in the case of the Trustees of the Port of Bombay v. Premier Automobiles Ltd. . In the case before the Supreme Court, the Premier Automobiles Limited imported cases of machinery from Italy. The cases were placed on a four wheeler trolley and were being carried in the docks when it fell down and the machine was severely damaged. Several employees of the Board were in charge of the cases and the trolley at that time. The importers claimed damages and the Board denied the claim and the controversy led to the suit by the importers in this Court. The controversy, at the end of the trial, narrowed down to the scope and effect of Section 61-B and paragraph 2 of Section 87 of the Bombay Port Trust Act. The High Court, in appeal, came to the conclusion concurring with the trial Judge that the importers founded their claim upon the breach of statutory duty under Section 61-B and the provision of paragraph 2 of Section 87 was upon a totally different subject with such Section 61-B was not concerned. The High Court further held that the liability of the Board was that of the bailee, and the master or employer was always liable for all torts committed by the servant provided it was in the course of this employment. The Trustees carried appeal before the Supreme Court and the point for consideration before the Supreme Court was whether the High Court was right in taking the view that apart from the claim in tort, the plaintiff also claimed for the breach of statutory liability under Section 61-B of the Act. While considering this question, the Supreme Court held that the claim was not based upon mere breach of statutory duty under Section 61-B but it was based on the Board's liability as the bailee and, therefore, it was no other than by way of action in torts. Thereafter the Supreme Court observed (at p. 1986) :--

"It may be that, as in the present case, certain obligations were fastened on the Board under Section 61-B of the Act which were not in truth contractual inasmuch as they did not rest on agreement, but which, by virtue of the same section, were to be treated as if they were so, and were made the subject-matter of liability under three sections (Sections 151, 152, and 162) of the Contract Act. Such a relationship may well be called as one arising out of an implied contract. But that does not justify the view of the High Court that an altogether new cause of action arose merely because a duty to take charge of the landed goods was cast on the Board under Section 61-A (1) and the Board's responsibility for them was defined in Section 61-B. By the very nature of that relationship which admittedly did not arise out of agreement between the parties, it was essentially a delictual obligation. It was a civil wrong, for which the remedy was an action in damages and not by way of an action for breach of contract, as it is nobody's case that there was any such relationship between the parties. It may be that the obligation of the Board was of the nature of a quasi-contract, but that also would not justify the view that it arose merely because of the words of Ss. 61-S and 61-B as a statutory obligation quite apart from the sources of origin of obligation defined by Salmon (on Jurisprudence) twelfth edition, page 452 as contractual, delictual, quasi-contractual and innominate. In fact as Halsbury has put it (third edition, Vol. 37, page 111) while dealing with the nature and elements of liability the position is as follows :--

"Those civil rights of action which are available under English common law for the recovery of unliquidated damages by persons who have sustained injury or loss from acts, statements or omissions of others in breach of duty or contravention of right imposed and conferred by law rather than by agreement are rights of action in tort".

22. Shri Zaiwala placed strong reliance upon the observation "such a relation as one arising out of an implied contract" to advance submission that an implied contract arises between the Board and the consignee in respect of the imported goods, and therefore, the provisions of Section 171 of the Contract Act are attracted. It is not possible to accept this submission because the Supreme Court in paragraph 12 of the Judgment has further observed that by the very nature of the relationship, which admittedly did not arise out of agreement between the parties, it was essentially a delicate obligation. These relationships, though are called implied contracts, are not contracts and the claims under such contracts cannot be enforced as arising out of the contractual relationship. The term "implied contract" was described in an English case of *Rhodes v. Rhodes* reported in (1890) 44 Ch D 94, as an unfortunate expression. The Supreme Court in the case of *Mulam Chand v. State of Madhya Pradesh*, has termed "quasi contract or restitution" as third category of law, not on contract or tort. In our judgment, it is not possible to accept the submission of Shri Zaiwala that there is implied contract between the Board and the consignee and that enables the Board to claim a general lien as provided under Section 171 of the Contract Act.

23. Shri Zaiwala also submitted that in any event there is statutory contract between the Board and the consignee and there is no difference between the voluntary contract and the statutory contract. It was urged that if a contract is entered into in pursuance of the statutory provisions, then such contract also can be termed as a "voluntary contract". Shri Zaiwala relied upon the decision of the Supreme Court in the case of *M/s. Vishnu Agencies (Pvt.) Ltd. v. Commercial Tax Officer*. In our judgment, the submission of the learned counsel is not accurate. The question before the Supreme Court was whether in the context of the control orders issued by the Government of West Bengal for regulating the supply and distribution of cement, the transactions under which the appellants supply cement to persons who were issued permits by the authorities to obtain the commodity from the appellants involved element of volition or consensuality. The majority decision delivered by Shri Justice Chandrachud as he then was, observed in paragraph 31 of the Judgment that the view taken in the case of *Gannon Dunkerley*, that a sale is necessarily a consensus transaction and if the parties have no violation or option to bargain, there can be no sale may be assumed to reflect correct legal position. Thereafter the Supreme Court proceeded to consider whether there was an agreement of consensuality between the parties. Reading the majority decision, we do not find that the Supreme Court had laid down that in absence of a consensual transaction where the parties have no violation or option to bargain, it can be claimed that the voluntary contract has come into existence. The submission of the learned counsel need not detain us even otherwise, because in the present case, there is no agreement whatsoever and, in any event, one between the Board and the consignee.

24. At this stage, it would be proper to make reference to an interesting submission canvassed by Shri Desai on behalf of the respondents. The learned counsel urged that even assuming that there is a subsisting contract between the Board and the respondents, still, it is not permissible for the Board to take advantage of the provisions of Section 171 of the Contract Act. It was urged by the

learned counsel that the Major Port Trusts Act is a complete Code in itself creating statutory rights and liabilities. A comprehensive scheme is provided under Chapter VI of the Act for collection of charges and rates and, therefore, the provisions of other Statutes including the Contract Act are not applicable in respect of the collection of charges and rates for the services rendered by the Board. Shri Desai urged that Section 59 of the Act provides for lien on specific goods, while Section 61, enables the Board to sell the goods for recovery of the rates payable to the Board in respect of such goods. Reliance was placed on Section 63 of the Act and it was urged that prior to the amendment effected on February 1, 1975 proceeds of every sale were to be applied first in payment, according to their respective priorities, of the liens and claims excepted in sub-section (2) of Section 59 from the priority of the lien of the Board and lastly in payment of rates and expenses of landing, removing, storing or warehousing the same. By amending Act 29 of 1974, the Board was permitted to apply the proceeds of sale in payment of any penalty or fine due to the Central Government and lastly in payment of any other sum due to the Board. It was urged that in February, 1975, for the first time, the Act provided that the Board can apply the proceeds of the sale in respect of any other sum due to the Board and this clause in a way creates a kind of general lien in favour of the Board in respect of proceeds of the sale. Relying on these provisions of the Contract Act are excluded by passing of the Major Port Trusts Act. It was further claimed that the Major Port Trusts Act being a special Act, it excludes the provisions of the general Act like the Contract Act.

25. The learned counsel in support of his submission placed strong reliance upon the decision in the case of *Dresser against Bosanquet* reported in (1890) 122 English Reports 531. In this case, the plaintiff purchased from the owners some timber stored at the Commercial Docks, and which was entered in the books of the Company in charge of Docks in the name of the broker. The Company refused to transfer the timber into the name of the plaintiff, on the ground that the broker was indebted to them for rent and charges in respect of other goods standing in his name in the books of the Company, although the plaintiff tendered to them the specific rents and charges due in respect of the goods purchased by him. The plaintiff claimed that he being the purchaser of the timber from the owner, he is entitled to the timber on paying the specific charges upon it and the Company has no lien upon it for all the charges due to them from the broker. The defendant Company, on the other hand, claimed that the wharfinger has general lien by the common law and that lien may extend to the general charges due from the individual dealing with him. Chief Justice Cockburn passed judgment in favour of the plaintiff and observed that assuming that some of the charges are wharfage charges the Company can have no general lien on these goods because the parties have dealt on the terms of the statutes which entitle the Company to dues in respect of wharfage and rents for warehouse room and certain other charges for other matters. Local and personal Act provides that the Company shall have the right to detain the goods on payment of those charges. Subsequent amendment to the local Act authorises them not merely to distrain and arrest such goods until the charges are paid, but authorises them actually to seize and sell the goods in order to satisfy them. Then comes the observation on which Shri Desai places strong reliance :

"These specific enactments, with these particular remedies to enforce the rights of the Company, do away with all implied rights of lien which, as wharfingers, the Company might otherwise have had. Then comes the question, could the Company distrain these goods and sell them under the special powers of these statutes? I think not, for

the obvious intention of the legislation in both Acts was that. where goods are removed and where it is sought to make other goods liable in respect of the charges on them, those must be goods belonging to the same owner to whom the first goods belonged. Anything else would be the most grievous injustice."

Wightman J. and Mellor, J., concurred with the learned Chief Justice. The matter was carried in the Exchequer Chamber and was heard by Chief Justice Erle, Pollock C. B., Williams and Willes, Judge, and Bramwell and Channell BB. The judgment of the Court of Queen's Bench was affirmed and Chief Justice Erle observed as follows :

"The plaintiff is the true owner of the goods in question and the Company claim the right to seize and hold them against him for the purpose of getting from him a debt due to them from the broker. Now have the Company a right to make the plaintiff pay a debt due to them from the broker? All dues in respect of the goods which the plaintiff claims are paid; but the claim of the Company is in the nature of enforcing a general lien in respect of other goods said to be the property of their debtor. It is not necessary to decide whether the Company have a general lien at common law which could be enforced in this case, for we quite agree with the Court below that there are certain specific statutes affecting this Company under which they must enforce their right to their dock dues."

26. In our judgment; the submission of Shri Desai that as the Major Port Trusts Act is a special statute providing for statutory rights and liabilities, the provision of Section 171 of Contract Act which confers a general lien on the wharfinger cannot be resorted to by the Board is correct and deserves acceptance. Section 59 of the Act gives the Board specific lien over such goods in respect of which rents and rates are not fully paid, while Section 61 enables the Board to sell the said goods for recovery of the rates. Section 63 enables the Board to apply the sale proceeds in payment of the rates and if any amount is left out after satisfying the priorities mentioned in the section to apply the same in payment of any other sums due to the Board. In addition to these rights. Section 67A of the Bombay Port Trust Act provided for filing of suit by Board for recovery of tolls, dues, rents, rates, charges, damages, etc., Section 67A was included in the Bombay Port Trust Act, 1879 by Bombay Act I of 1899 and it reads as under :--

"Not with standing anything contained in the seven sections last preceding and in Section 85, the Board may recover by suit any tolls, dues, rents, rates, charges, damages, expenses, costs, or in case of sale the balance thereof, when the proceeds of sale are insufficient, or any penalties or fines payable to, or recoverable by, the Board under this Act or under any bye-laws made in pursuance thereof."

Section 131 of the Major Port Trusts Act also enables the Board to recover by suit any rates, damages, expenses. costs without prejudice to any other action that may be taken up. In our judgment, the rights conferred on the Board under Sections 59, 61, 63 and 131 of the Major Port Trusts Act are exhaustive rights in respect of recovery of rates and charges for services performed under Section 42 of the Act, of receiving, removing, shifting, transporting, storing or delivering

goods, brought within the Board's premises. As a comprehensive scheme is provided by the provisions of the statute for recovery of rates due in respect of the bailments undertaken by the Board. in our judgment, it is not open for the Board to claim a right of general lien conferred under Section 171 of the Contract Act.

27. The last submission urged by Shri Zaiwala in support of the appeals was that the advantage of the rights of general lien provided under Section 171 of the Contract Act to wharfinger is available to Board even though there is not contractual relationship between the Board and the consignee because of the possessory bailment in favour of the Board. The learned counsel submitted that the services performed by the Board of receiving the goods and storing it till cleared by the consignee on presentation of the bill of lading are those of bailee and the Board is entitled to claim a right of general lien on the strength of possessory bailment. It was urged that the right of general lien goes with the fact of bailment and does not depend on the nature of relationship between the parties. The sequatur of this submission was that the right of the general lien conferred on wharfinger under Section 171 of the Contract Act is not limited only to cases of contractual relationship but also extends to the possessory bailment. In support of this submission that the possessory bailment is not dependent on a contract, reliance was placed on the observations of the Supreme Court in paragraph 10 of the judgment in the case of Trustees of the Port of Bombay v. Premier Automobiles Ltd. :--

"It is well settled that the essence of bailment is possession. It is equally well settled that a bailment may arise, as in this case, even when the owner of the goods has not consented to their possession by the bailee at all : Palmer on Bailment, 1979 Edition page 2 There may thus be bailment when a wharfinger takes possession of goods unloaded at the quay side : (1970) 3 All ER 825. A bailment is not therefore technically and essentially subject to the limitations of an agreement, and the notion of privity need not be introduced in an area where it is unnecessary, for bailment, as we have said, arises out of possession, and essentially connotes the relationship between a person and the thing in his charge. It is sufficient if that possession is within the knowledge of the person concerned. It follows that a bailment may very well exist without the creation of a contract between the parties and it essentially gives rise to remedies which, in truth and substance, cannot be said to be contractual. That is why Palmer has made the assertion that "bailment is predominantly a tortious relationship" (Page 36), and the two are fundamentally similar."

Shri Desai countered that submission by claiming that the right of general lien conferred on bankers, factors, wharfingers, attorneys of the High Court and policy brokers is available provided there exists a contractual relationship between these various categories of the persons and their customers. Shri Desai relied upon the observation of the Supreme Court in paragraph 8 of the judgment in Premier Automobiles' case where the Supreme Court has observed :

"It has to be appreciated that the subject-matter of contractual bailment has been dealt with in Chapter IX of the Contract Act, and Section 148 defines "bailment" to mean the delivery of goods 'upon a contract'."

Reference was also made to the observations of the Supreme Court in paragraph 5 of the decision in the case of the State of Gujarat v. Memon Mahomed Haji Hasam reported in AIR 1967 SC 1885, where it was observed (at p. 1888):

"Bailment is dealt with by the Contract Act only in cases where it arises from a contract but it is not correct to say that there cannot be a bailment without an enforceable contract."

Shri Desai submitted that Section 170 of the Contract Act refers to a particular lien, while S. 171 deals with general lien of five categories of persons and all these categories of persons are entitled to claim the right provided the relationship arises out of an agreement. It was not disputed that Section 168 of the Contract Act which deals with the right of finder of the goods is an exception to the rule that the provisions of Chapter IX of the Contract Act deal with the subject matter of contractual bailment. Strong reliance was placed upon the expression "in the absence of a contract to the contrary in S. 171 of the Contract Act to urge that these words clearly indicate that the right of bankers, factors, wharfingers, attorneys of the High Court and policy brokers can only arise under an agreement with their customer. The latter part of Section 171 of the Contract Act which provides that no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect is a clear pointer to the fact that the rights flowing from Section 171 of the Contract Act can arise only if there is a contractual relationship between the parties. Reference was also made by Shri Desai to the observations made by Palmer on "Bailment". 1979 Edition at page 494. The following passage was relied upon:--

"Most writers assume that the wharfinger has a customary, general lien upon goods deposited with him. In fact, the authorities which are relied upon to establish this lien are of somewhat doubtful persuasion; not only because they are old, but because it is possible to view them as establishing a customary lien only in a particular locality rather than some universal custom peculiar to the trade in question. Certainly, the wharfinger's lien may still be refused in relation to a particular region, even if it can now be considered to be one of general acceptance. The burden of establishing a general customary lien is a heavy one it may be that outside the City of London the wharfinger cannot rely upon automatic judicial recognition of the relevant custom but must establish it independently in relation to his particular port or locality. Of course, a lien may be conferred by express contract or in special cases by statute".

28. It must be mentioned that Shri Zaiwala very fairly stated that the Board is not claiming the right of general lien under common law, nor by any custom or usage. It is indeed not in dispute that the right of general lien was never claimed by the Port Trust authorities prior to the issuance of the Circular dated October 2, 1979. In our judgment, it is not necessary to investigate any further the rival contentions advanced on this point as the question does not require determination in the present appeals in view of our finding that the right of the Board flows only from the provisions of the Major Port Trusts Act and it is not permissible for the Board to take recourse to the provisions of any other statute to claim a right. The answer to the question would be merely academic in view of our finding that the Major Port Trusts Act is a complete Code in itself and the comprehensive

scheme provided under Chapter VI for collection of charges excludes the provisions of other statutes. including the provisions of Section 171 of the Contract Act, in respect of collection and recovery of charges. The right of general lien claimed by the Board in respect of charges due to them under Section 171 of the Contract Act is entirely misconceived. The Circular under challenge recites that the Board have been advised that they have a general lien under Section 171 of the Contract Act and, in our judgment, the assumption of the Board is entirely incorrect. The finding recorded by the trial Judge that the Board cannot exercise a right of general lien either under Section 171 of the Contract Act or under the provisions of the Major Port Trusts Act is correct and requires no interference in these appeals. In our judgment, the learned single Judge was right in allowing the petitions and issuing the writ of mandamus granting the requisite reliefs.

29. Accordingly, all the appeals fail and are dismissed. As regards the costs, taking into consideration the time required for hearing of the appeals and the fact that Appeal No. 78 of 1982 was argued in detail, while the counsel in other appeals merely adopted the arguments, we direct that the appellants shall pay Rs. 1500/- to the respondents in Appeal No. 78 of 1982 as the costs of the appeal and the appellants in the remaining four appeals shall pay to the respondents in each of the appeals Rs. 500/- as costs of the appeals.

30. Shri Makhija. the learned counsel appearing on behalf of the appellants, applies for Certificate under Article 134A of the Constitution of India for filing an appeal to the Supreme Court, in Appeal No. 78 of 1982 only. Certificate refused.

31. Ordered accordingly.