2025 INSC 36

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6667 OF 2023

THE MUNICIPAL CORPORATION OF GREATER MUMBAI & ORS. ...APPELLANTS

VERSUS

CENTURY TEXTILES AND INDUSTRIES LIMITED & ORS. ...RESPONDENTS

J U D G M E N T

VIKRAM NATH, J.

1. The Municipal Corporation of Greater Mumbai[1] and its officers have filed this appeal assailing the correctness of judgment and order dated 14.03.2022 passed by the Bombay High Court allowing the Writ Petition No. 295 of 2017 filed by the Respondent No.1 directing the appellant (Respondent No.1 therein) to execute formal conveyance of plot bearing C.S. No.1546 of Lower Parel Division, Mumbai in favour of

[1] MCGM

the Respondent No.1 (Petitioner no.1 therein) within a period of eight weeks.

2. Brief facts giving rise to the present appeal are summarised hereunder:

2.1. Century Textiles and Industries Limited (Respondent No.1) is a company incorporated under the Companies Act running a cotton mill. Under the provisions of the City of Bombay Improvement Act, 1898[2], Respondent No.1 applied to the Improvement Trust under Section 32B thereof under the Poorer Classes Accommodation Scheme (in short, "PCAS") to provide dwellings to the poorer class workers. The said application was filed on 12.04.1918.

2.2. The Improvement Trust Board, *vide* Resolution no. 121, in its meeting dated 16.04.1918, approved the PCAS of the Respondent No.1 which provided for construction of 44 Blocks of poorer class dwellings containing a total of 980 rooms and 20 shops as a pre-condition for execution of

[2] The 1898 Act

the lease under Section 32G of the 1898 Act (as amended in 1913), with other consequences to follow.

2.3. It would be worthwhile to mention here that the construction was to take place on a piece of land measuring 50,000 sq. yds. sub-divided into three plots A, B and C. However, at present, the dispute relates only to plot A admeasuring 23,000 sq. yds.

2.4. The above scheme, as approved by the Board, was duly notified on 01.05.1918 as Scheme No. 51. The Special Collector handed over the charge of the property/plot bearing C.S. No. 1546 of Lower Parel Division to the Improvement Trust, pursuant to the aforesaid Resolution No. 121 and the notification of Scheme No. 51, sometime in August, 1919. The possession of the said plot was, later on, handed over by the Improvement Trust to the Respondent No.1, whereupon, they started the construction and constructed 476 dwellings and 10 shops till the year 1925, as a part of the pre-condition for execution of lease under Section 32G of the 1898 Act.

2.5. In the year 1925, the 1898 Act was repealed by The Bombay Improvement Trust Transfer Act, 1925[3]. On 10.03.1927, Respondent No.1 applied to the Improvement Trust under Section 37(2) of the 1925 Act for alteration of the notified Scheme No. 51. Again, on 20.05.1927, Respondent No.1, through their solicitors M/s C.N. Wadia and Company applied to the Improvements Committee making the same request for modification of the notified Scheme No. 51 requesting the committee to accept the 476 rooms instead of 980 rooms and 10 shops instead of 20 shops, as required under the notified scheme. The Improvement Trust/Board, *vide* Resolution No. 325 dated 31.05.1927, granted alteration of the notified Scheme No. 51. According to the said resolution, Block-B and Block-C would be excluded from Estate Agent's plan, lease of Block-A for a period of 28 years to be granted to the company on the terms

[3] The 1925 Act

mentioned in paragraphs 2 and 4 of the letter dated 20.05.1927, Block-B to be conveyed to the Respondent No.1 on terms and conditions stated in paragraph 5 of the letter dated 20.05.1927 and Block-C to remain the property of the Improvement Trust/Board.

2.6. Pursuant to the said Resolution No. 325, Block-B was conveyed to the Respondent No.1 on 10.01.1928 for which the Respondent No.1 paid Rs.1,20,000/- as sale consideration.

2.7. Later on, a lease was granted by the Board in favour of Respondent No.1 on 03.10.1928 with respect to Block-A, which included both the land and buildings for a period of 28 years w.e.f. 01.04.1927 at a yearly rent of Rupee One. The lease was to expire on 31.03.1955 i.e. on completion of 28 years. The Respondent No.1 also paid the expenses of acquisition which had been incurred by the Board.

2.8. For a period of 51 years, neither the appellant nor the Respondent No.1 initiated any proceedings against each other - the Respondent No.1 for getting the conveyance

executed, as is being claimed now, and the appellant for eviction of the Respondent No.1 as the lease period had expired. The fact remains that the Respondent No.1 has continued in possession of the land and buildings comprised in Block-A.

2.9. The Respondent No.1, on 14.08.2006, served a legal notice under Section 527 of the Mumbai Municipal Corporation Act, 1888[4] on the appellant stating that as per the lease agreement, after expiry of lease period of 28 years, the said property ought to be conveyed to the Respondent No.1 and, on failure to do so within the specified period, the Respondent No.1 would be constrained to file a suit. However, no suit was ever filed by the Respondent No.1.

2.10. In 2009, an application was filed by the Respondent No.1 for redevelopment of the land in question to the appellant as, according to the Respondent No.1, they had closed the mill in 2008 and they wanted to

[4] The 1888 Act

shift the mill industry out of the land in question.

2.11. Another communication dated 21.04.2009 was sent by the Respondent No.1 to the appellant, requesting for conveyance of Block-A as per the lease deed. The MCGM apparently approved an integrated development scheme on 17.03.2011 with respect to Block-A Plot bearing C.S. No.1546. The Assistant Commissioner (Estate) of the appellant was of the opinion that Block-A should not be conveyed to the Respondent No.1 which is apparent from the internal report dated 17.06.2013.

2.12. A meeting between the parties was held in March, 2014 after which, once again, the Respondent No.1 requested, *vide* letter dated 27.03.2014, to execute a formal deed of conveyance. The Respondent No.1, *vide* letter dated 30.11.2016, again called upon the appellant to execute a formal deed of conveyance in view of Section 51(2) of the 1925 Act. When no action was taken by the appellant, the Respondent No.1 filed writ

petition before the Bombay High Court in December, 2016 which was registered as W.P. No. 295 of 2017. The reliefs claimed by means of the said petition are reproduced hereunder:

> "29. …The Petitioners therefore pray:
> a) For a Writ of mandamus or a writ in the nature of mandamus or for any appropriate writ, order or direction ordering and directing Respondent Nos. 1 and 2 (and their servants, officers and agents) to recognize and proceed on the basis that the said Premises being plot bearing C.S.No.1546 of Lower Parel Division and the buildings standing thereon vest in Petitioner No. 1 by virtue of the provisions of the Improvement Acts and as the absolute owners thereof.
>
> b) For a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India ordering and directing the Respondent No.1 (and its servants, officers and agents) to do all such acts and things as may be necessary for formalizing the vesting of the said Premises in Petitioner No.1 herein including by executing and thereafter registering with the Sub Registrar of Assurances a Deed of Conveyance of the said Premises.
>
> c) For a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or directions

under Article 226 of the Constitution of India ordering and directing the Respondent No.2 (and its servants, officers and agents) to do all such acts and things as may be necessary for reflecting the name of Petitioner No.1 in the records of the Collector of Mumbai in respect of the said plot of land bearing C. S. No. 1546 of Lower Parel Division;

d) That pending the hearing and final disposal of this Petition this Hon'ble Court be pleased to direct the Respondents by themselves their servants, agents, officers and sub-ordinates to consider all applications from Petitioner No.1 as emanating from the owner of the said Premises and deal with them in all matters relating to the said Premises as if Petitioner No.1 were the owner thereof.

e) for ad-interim reliefs in terms of prayer (d) above;

f) for costs of this Petition; and

g) for such other and further relief as the nature and circumstances of the case may require be passed."

2.13. During the pendency of the petition, the Respondent No.1 moved two amendments to the writ petition. The first one in June, 2017, challenging the Directions note prepared on the internal file of the appellant

recommending to stop the ongoing work and the approval granted under the integrated scheme to be recalled and cancelled. Further relief seeking ad interim relief against the said action was also sought.

2.14. The appellant issued a show cause notice dated 28.03.2018 as to why the amended IDS lay out should not exclude Block-A Plot bearing C.S. No.1546. Upon receipt of the said notice, the Respondent No.1 moved the second amendment to the writ petition to challenge the said show cause notice. Under orders of the Bombay High Court dated 12.04.2018, the appellant was directed not to proceed to adjudicate on the show cause notice until further orders.

2.15. After hearing the learned counsel for the parties and based on material on record, the High Court by the impugned judgment dated 14.03.2022, allowed the writ petition and issued appropriate directions to the appellant to execute the conveyance of the plot in question. Aggrieved by the same, MCGM is in appeal. While issuing notice dated

13.07.2022, this Court granted an order of *status quo* to be maintained by the parties. Pleadings have been exchanged.

3. We have heard Shri Dhruv Mehta and Shri Neeraj Kishan Kaul, learned senior counsels for the appellants; Shri Darius J. Khambatta, Shri Ranjit Kumar and Shri Shyam Divan, learned senior counsels appearing for the respondents and, also perused the material on record.

4. The submissions of the learned counsels appearing for the appellants are briefly summarized hereunder:

A. Delay and Laches in filing the Writ Petition

5. The term of the lease dated 03.10.1928 in favour of the Respondent No.1 expired on 31.03.1955. According to the Respondent No.1, it was purportedly entitled to a deed of conveyance on expiry of the aforesaid period. As such, the cause of action would arise immediately after the expiry of the term of the lease. Respondent No.1 took no legal action before any court of law, right from 1955 till the end of 2016 i.e. for 61 years when it filed the writ petition before the High Court on 23.12.2016. Thus, it was submitted that the petition was highly barred by

laches and ought to have been dismissed on such grounds.

6. It was also submitted that in 2006, a legal notice dated 14.08.2006 under Section 527 of the 1888 Act was issued by Respondent No.1, requiring the appellant to execute the conveyance deed. The limitation provided for filing a suit under Section 527 of the 1888 Act is six months. But Respondent No.1 took no action thereafter for more than 10 years. No suit was ever filed by the Respondent No.1. Knowing fully well that the limitation under Section 527 of the 1888 Act had expired long back, they chose to file the writ petition in December, 2016. The submission is that preferring a writ petition could not do away with the issue of limitation which would arise while availing the statutory remedies available. In such circumstances, the High Court fell in error in entertaining the writ petition and holding that the filing of the writ petition even after 61 years would not suffer from delay or laches. In support of the said submissions, the following two judgments are relied upon:

i) **Shri Vallabh Glass Works Ltd. v. Union of India[5],**

ii) **SS Rathore v. State of MP[6]**

B. Effect of Section 51(2) read with Section 48 of the 1925 Act thereof

7. Section 51(2) which talks about default and determination of lease uses the expression "shall convey" that in a situation where there is no default in complying with the obligations under the lease document, the Board shall convey the premises in favour of lessee on expiration of the lease. Whereas, Section 48(a) states that the lessee would keep the demised premises together with its fixtures in good and substantial repair and condition during the term of the lease and leave at the end thereof. The submission is that while reading both the provisions together and in order to give a harmonious construction, the expression "shall convey" must be read as "may convey". It is also submitted that in case Section 51(2) is read with the expression "shall convey", then the expression used in Section 48(a)

[5] (1984) 3 SCC 362
[6] (1989) 4 SCC 582

that the lessee would leave at the end of the term of the lease, would have no meaning and would be rendered as otiose or superfluous. In support of the said submissions, the following decisions are relied upon by the appellants:

i) **CIT v Hindustan Bulk Carriers[7],**

ii) **Sultana Begum v. Prem Chand Jain[8],**

iii) **Sainik Motors v. State of Rajasthan[9]**

C. Concept of contracting out of the obligations and waiving of the statutory rights by either of the parties to a contract.

8. Highlighting the concept of contracting out of obligations arising out of a contract and waiving the statutory rights, it has been submitted that by now, it is well-settled that the party can legally do so and such principle has been duly recognised by this Court in the following decisions:

i) **Lachoo Mal vs. Radhey Shyam[10]**

ii) **Sita Ram Gupta v. Punjab National Bank[11]**

iii) **HR Basavaraj v. Canara Bank[12]**

---

[7] (2003) 3 SCC 57
[8] (1997) 1 SCC 373
[9] (1962) 1 SCR 517
[10] (1971) 1 SCC 619
[11] (2008) 5 SCC 711
[12] (2010) 12 SCC 458

The appellants would be entitled to the benefit of said concept in the facts and circumstances of the case.

D. Misreading by the High Court

9. According to the appellant, the High Court committed serious error by misreading some of the relevant documents and reading something which is not stated in such documents. Details of the same would be discussed while analysing the said arguments. However, in particular, we may note that the pleadings have referred to the Resolution of the Board dated 31.05.1927 as having been misread and secondly the lease deed dated 03.10.1928 as also having been misread.

E. Relevancy of the internal notings and communications *inter se* officers of the Corporations

10. The submission is that until and unless the order is approved by the Competent Authority of the Corporation and issued by its Authorised Officer, Respondent No.1 could not derive any advantage of any internal noting or communications of the Corporation. The High Court committed error in relying upon such noting and internal communications without there being a decision of the

Competent Authority duly communicated to the parties. In support of the said submissions, reliance is placed upon the judgment in the case of **Shanti Sports Club vs. Union of India**[13].

F. No legal rights accrued to the Respondent No.1 for vesting of lease/conveyance of Block-A in terms of the 1925 Act

11. The 1925 Act replaced the 1898 Act, which stood repealed. Referring to the Section 32I(2) of the 1898 Act which stood replaced by Section 51 of the 1925 Act, it was argued that under the 1898 Act, it was mentioned that where no default is made in the conditions of the lease, then on determination of the lease, all the right, title, and interest of the Board shall vest in the employer free from all liabilities. Whereas, under Section 51 of the 1925 Act, under sub-Section (1) on default being made, the Board had the right to re-enter, and under sub-Section (2), where no default is made, then on determination of the lease, the Board shall convey the premises to the lessee at his cost and free of all restrictions and liabilities imposed under the lease. It was, thus,

[13] (2009) 15 SCC 705

submitted that under the 1925 Act, there was no automatic vesting but a separate deed of conveyance to be executed at the cost of the lessee. This is the provision where the submission that the word "shall convey" may be read as "may convey" read with Section 48(a) of the 1925 Act. It was also submitted that the word used "at his cost" in Section 51(2) clearly meant that for a conveyance by the Board, the lessee would be required to make a separate payment for such a conveyance.

G. Payment of cost of Scheme does not entitle Respondents to any rights in the land itself.

12. The claim of the Respondent No.1 that it had incurred huge expenditure as cost of the Scheme at the time of acquisition of the land by the Board entitled it to a conveyance without any further payment of cost of the land, is misplaced. The benefits admissible to the Respondent No.1 under the lease deed were in return of the bearing of the cost of the Scheme. It only envisaged a lease for 28 years, subject to terms and conditions recorded thereunder, but no conveyance. For conveyance, separate costs were required to be paid at the time of conveyance as per the scheme of the 1925 Act. It was submitted that the Respondent

No.1 filed writ petition only to make huge profits under the public welfare scheme by usurping land valued at around Rs. 1200 crores without paying a penny.

13. On such submissions, it was prayed that the appeal be allowed, the impugned judgement of the High Court be set aside and the writ petition be dismissed.

14. On the other hand, the learned senior counsels for the Respondent No.1 prayed for dismissal of the appeal by making the following submissions:

A. The lease confers the right to conveyance on Respondent No.1

15. It is submitted that as the lease deed dated 03.10.1928 stated that the Board agreed to alter Scheme No.51 'pursuant to the lessee's request', as such, the lessee's request which contained the following expression 'convey to the lessees the said portion of land at the expiration of the said term', clearly indicates that the appellant was obliged to execute the conveyance on expiration of the lease. Even if no specific mention of the conveyance is mentioned in the lease deed, since the appellant agreed to alter the Scheme No. 51, they were now

estopped from denying the right of Respondent No.1 to conveyance.

B. Board Resolution No. 325 and lease cannot be used to contract out of Section 51(2) of the 1925 Act

16. The application dated 20.05.1927 submitted by Respondent No.1 for alteration of the Scheme No.51, is reproduced in the Board Resolution No. 325 which accepted paragraph nos. 2 and 4 thereof. There was no occasion for the appellant today to claim that they have contracted out of Section 51(2) of the 1925 Act. Neither the lease deed mentioned specifically that they were contracting out of Section 51(2) of the 1925 Act, nor at any stage thereafter have the appellants taken this plea of contracting out.

C. Section 108(q) of the Transfer of Property Act, 1882

17. It is submitted that the appellants never raised this plea before the High Court relying on Section 108(q) of the Transfer of Property Act, 1882 being expressly excluded in the lease deed and therefore, giving them the right to re-possession may not and should not be entertained by this Court.

D. Vesting and execution of conveyance is mandatory and cannot be contracted out

18. The submission is that the provisions of Section 51(2) of 1925 Act as also the provisions of Section 32I(2) of the 1898 Act are mandatory in nature as the word used is 'shall' and therefore, there is no justification for the appellant to raise a plea of contracting out of the terms of the lease or the statutory provisions. In support of the said submission, the following judgments are relied upon:

   i) **Murlidhar Agarwal and Anr. v State of Uttar Pradesh and Others**[14]

   ii) **Devkaran Nenshi Tanna v. Manharlal Nenshi**[15]

   iii) **PTC (India) Financial Services Ltd. v Venkateswarlu Kari**[16]

E. Obligations of lessee/employer, recompense and composite nature of scheme

19. Our attention has been drawn to the Scheme as spelled out in the 1925 Act, counsels for Respondent No.1 referred to various provisions and have

[14] (1974) 2 SCC 472
[15] (1994) 5 SCC 681
[16] (2022) 9 SCC 704

submitted that once the lessee discharges all his obligations, there is no reason why under the statutory scheme, the land and building should not be conveyed to it. It was further submitted that under the 1925 Act, the conveyance referred to is akin to the vesting provided under Section 32I(2) of the 1898 Act.

F. Section 51 of the 1925 Act, a special provision prevails over Section 48(a) of the said Act which is a general provision

20. Referring to the provision under Section 48(a) and Section 51 of the 1925 Act, it has been vehemently argued that Section 48, being a general provision, deals with standard conditions of the lease to be granted under the scheme. It only postulates that at the end of the term of the lease, the lessee shall leave the demised premises and their fixtures "in good and substantial repair and condition". It does not deal with as to what would happen during the period of lease where there is a default or at the end of the lease where there has been no default. It is Section 51 of the 1925 Act which deals with the above two situations and, as such, this would be a special provision. Relying upon the following two judgments,

it was submitted that the special provision would prevail over the general provision and, therefore, there was no option but for the appellant to execute the conveyance.

i) **Managing Director Chattisgarh State Co-operative Bank Maryadit v Zila Sahkari Kendriya Bank Maryadit and Ors.**[17]

ii) **J.K. Spinning and Weaving Mill Co Ltd. v State of uttar Pradesh & Others**[18]

G. Meaning of the word "premises"

21. Submission on behalf of the Respondent No.1 is that the word "premises" would include both land and building, as defined in Section 3(gg) of the 1888 Act, which clearly means that the word "premises" would include both, buildings and land. Since the word "premises" is not defined in the 1925 Act, Section 5 of the 1925 Act provides that the words used in the 1925 Act but not defined therein would have the same meaning as it does under the 1888 Act.

H. Public-Private Partnership

22. The Scheme as envisaged under the 1898 Act and the 1925 Act was an early example of the Public-Private

[17] (2020) 6 SCC 411
[18] SCC Online SC 16

Partnership principle, by which the Board was able to procure private funding for purposes of providing housing to economically weaker section of the society in exchange for vesting or conveying the land used for the Scheme. The Respondent No.1 having discharged its obligations without a single default, was entitled to the benefit of vesting/conveyance at the end of the Scheme or the lease in the present case.

I. A vested right cannot be divested by subsequent conduct

23. The submission is that once Respondent No.1 had a right to conveyance at the end of the term of the lease, and which was an indefeasible right, any amount of delay, laches, or other conduct would not result in divesting of such rights. Reliance was placed upon the judgement in the case of ***Rameshwar and Others vs. Jot Ram and Another***[19]**.**

J. The appellants recognized and acknowledged the ownership rights of Respondent No.1

24. On the above aspect, the internal correspondence and noting of the Corporation have been referred to by the learned senior counsel at different stages,

[19] (1976)1 SCC 194

which shall be dealt with appropriately at a later stage by analysing the arguments raised by both the sides as to whether such noting and internal communications within the Corporation could be relied upon.

K. Alleged Delay

25. In trying to explain the delay for approaching the Court after 61 years, it was submitted on behalf of the Respondent No.1 that the possession of the Respondent No.1 has continued without any obstruction by the appellant. At no stage during this entire period of 61 years, neither did the appellant sought possession of the Block-A nor did they demand any rent for the same. The Respondent No.1, for the first time, came to know that the Assistant Commissioner (Estate) of the appellant had issued an opinion in June, 2013 that the premises should not be conveyed to Respondent No.1. However, even that opinion was never communicated to the Respondent No.1. The High Court has dealt with this aspect of the matter and has found that there was no delay on part of the Respondent No.1 in approaching the Court.

Reliance has been placed on the judgment in **State of Maharashtra vs. Digambar**[20].

26. Before proceeding to deal with the respective submissions, it would be appropriate to refer to the relevant statutory provisions along with the scheme of those enactments. The 1898 Act was promulgated with the preamble stating *inter alia* improvement and future expansion of city of Bombay by constructing new sanitary dwellings for certain classes of inhabitants by laying out vacant lands and by reclaiming and laying out parts of the foreshore of the island of Bombay.

27. In the 1898 Act, a substantial amendment came in the year 1913 whereby Section 32B to Section 32I were added. This is referred to as the Amendment Act of 1913. Under the said amended provision, the scheme had come whereby land would be acquired by the Board constituted under the 1898 Act and, thereafter, given out for development and construction to private parties on such terms and conditions as the Improvement Trust, constituted under the 1898 Act, may determine and as also

[20] (1995) 4 SCC 683

spelled out in the aforesaid provisions. Sections 32B to 32I of the 1898 Act are reproduced hereunder:

> **"Section 32B. Application by employer for Poorer Classes Accommodation Scheme:** (1) Any person employing members of the poorer classes in the course of his business may make an application to the Board stating that he wishes to provide poorer classes' dwellings for the use of all or some of such members and desiring the Board to make a scheme for such purpose. Such person shall hereinafter be called 'the employer', which term shall include his heirs, executors, administrators, assigns and successors.
>
> (2) The Board on consideration of the said application, if they are of opinion that it is expedient to provide the said poorer classes' dwellings, may pass a resolution to that effect and proceed to make a scheme for that purpose.
>
> (3) The poorer classes accommodation scheme shall provide for –
>
> (a) the construction of poorer classes' dwellings
>
> i) by the Board or

ii) by the employer under the supervision of the Board and in accordance with plans and specifications prepared by the Board, and

(b) the letting on lease to the employer of the dwellings so constructed (hereinafter called 'the dwellings').

(4) Such scheme may provide for all matters incidental to the scheme, including the acquisition, raising, lowering or levelling of land required for the execution of the scheme and the construction of accessory dwellings of any description that may be necessary for the purposes of the scheme.

Section 32C – Land on which dwellings may be constructed: The Poorer Classes accommodation scheme may provide for the construction of the dwellings on land:-

a) acquired by the Board or vesting in the Board either absolutely or for sufficient number of years or

b) vesting in the employer either absolutely or for a sufficient number of years;

Provided that the scheme shall not provide for the construction of dwellings on land alleged to vest in the employer until the employer has proved to the satisfaction of the Board that he has such title to the land as shall be good and sufficient for the purposes of the scheme.

Section 32D. **Procedure on completion of scheme:** Upon the completion of a poorer classes accommodation scheme, the provisions of sections 27, 28 and 29 shall, with all necessary modifications, be applicable to the scheme in the same manner as if the scheme were an improvement scheme.

Section 32E: Procedure when dwellings are to be constructed on Schedule C or D land: When such scheme provides for the construction of dwellings upon lands forming part of any of the lands specified in Schedule C or Schedule D Government or the Corporation, as the case may be, shall, on the scheme being sanctioned, forthwith resume

the land. The Board shall thereupon pay in cash to Government or to the Corporation, as the case may be, a sum equal to the market value of the land as determined by the Collector under the Land Acquisition Act, 1894; and such sum shall be deemed to be part of the cost of the scheme to the Board. The land shall thereupon vest in the Board.

Section 32F.- Deposit and Notice: (1) The construction of dwellings shall not be commenced:-

a) where the land vests in or is acquired by the Board, until the employer has deposited with the Board as security a sum equal to twenty percent of the cost of the scheme ;
b) where the land vests in the employer, until the employer has submitted to the Board a proposal that the land shall be transferred to the Board for the purpose of Poorer Classes Accommodation Scheme and until the board shall have served a notice in writing upon the employer signifying their acceptance of such proposal; provided further that if in the opinion of the Board the value of the land falls short of twenty percent of the estimated cost of the scheme,

the shortage shall be made good by a deposit in cash or securities.

(2) On the service upon the employer of the notice referred to in sub-section (1), clause (b), all the estate, right, title and interest of the employer in and to the land referred to in the proposal shall forthwith vest in the Board.

(3) The employer shall be entitled to the gradual refund of his deposit by annual payments equal to the annual Sinking Fund Charges on all moneys spent by the Board on the scheme, which shall be calculated in the manner described in sub-section (2) of section 32G.

Section 32G.- Term of lease and amount of rent: (1) The Board shall proceed with the Scheme and on completion of the building shall lease the same with the site to the employer for 28 years.

(2) The lessee shall during the said term pay to the Board as annual rent a sum equal to the total of –

(a) the annual interest payable by the Board on all moneys which they have spent on the scheme, and

(b) Sinking Fund charges so calculated that at the end of the term of the lease the aggregate in the Sinking Fund shall amount to the total sum spent on the scheme.

Such total sum shall include –

(i) all moneys spent on Interest and Sinking Fund Charges up to the date of the commencement of the lease,

(ii) if and so far as the land included in the scheme has not been provided by the employer, the cost of such land,

(iii) preliminary expenses and an allowance for management and supervision up to the date of the commencement of the lease.

(3) The cost of such land for the purposes of this section shall be deemed to be –

(a) if and so far as the land has been acquired for the scheme, the actual cost of its acquisition;

(b) if and so far as the land is vested in the Board as being part of the lands specified in Schedule C or Schedule D, the sum paid by the Board under section 32C;

(c) in all other cases the market value of the land at the date of the declaration of the scheme.

Section 32H.- Provisions as to lease: (1) Every lease under a poorer classes accommodation scheme shall commence from such date subsequent to the completion of the dwellings as may be fixed by the Board.

(2) The following conditions shall be expressed or implied in every lease, namely:-

a) that the lessee shall be liable for repairs and insurance;

b) that the lessee shall be liable for the payment of all rates and taxes;

c) that the lessee shall sub-let the dwellings (except such portions thereof as contain shops, care-takers' quarters and the like) only to persons employed by him in the course of his business or their families except in so far as there may not be sufficient numbers of such persons willing to occupy the dwellings and in any case only to members of the poorer classes;

d) that the lessee shall not demand or receive in respect of any room or tenement in the dwellings any rent in excess of the amount fixed as next hereinafter provided;

e) That the maximum rent of each room or tenement in the dwellings (except such portions thereof as contain shops and the like as hereinbefore set out) shall be fixed by the Board after consulting the lessee and that such maximum rent shall be written or painted up by the lessee in a conspicuous position in each such room or tenement. Such maximum rent shall not be subject to alteration save with the consent of the Board.

Section 32I.- Default and determination of lease (1)(a) On default being made by the lessee in any of the conditions of the lease, all the right, title and interest of the employer to the dwellings and in and to the land on which the dwellings are constructed and any deposit or other moneys paid by the employer to the Board whether before or after the commencement of the lease shall be dealt with in the following manner: -

i) The deposit by the employer shall be credited to the Board, and

ii) The Board shall put the said right, title and interest of the employer to the auction.

(b) The Board shall then have the option either of transferring the right, title and interest to the highest bidder at the auction or of themselves taking over the right, title and interest on payment to the employer of the highest sum bid at the auction.

(c) If no sum is bid at the auction but some person is willing to take over the right, title and interest, on receiving payment of any sum, the Board shall have the option either of making such payment and transferring the right, title and interest to that person or of themselves taking it over. The Board shall be entitled to recover the sum in question from the defaulting lessee for non-fulfilment of the contract.

(d) If no sum is bid at the auction but some person is willing to take over the right, title and interest without either paying or receiving payment of any sum, the Board shall have the option either of transferring the right, title and interest to that person or of themselves taking it over without either receipt or payment of any sum.

> (2) Where no default is made in the conditions of the lease, then on the determination of the lease all the right, title and interest of the Board in and to the dwellings and in and to the land on which the dwellings are constructed shall vest in the employer free from all liabilities created by this Act."

28. In the meantime, the 1925 Act was promulgated which replaced the 1898 Act. Under this Act, the powers conferred upon the Board of Trustees under the 1898 Act were to be transferred to the appellant-Corporation and this Act further postulates that its purpose was to improve the city of Bombay by constructing new sanitary dwellings for certain classes. Section 48 of the 1925 Act provided for lease conditions. Section 51 provided for dealing with the lessee where he committed default in the terms and conditions by way of a right of re-entry to the Corporation and further, if there is no default on the part of lessee, it would have a right of conveyance in favour of the lessee at his cost. Sections 48 to 51 of the 1925 Act are reproduced hereunder:

> "48. The lease shall commence from such date subsequent to the completion of the execution of the

scheme as may be fixed by the Committee and shall be subject to the following among other conditions: -

(a) The lessee shall keep during the term of the lease and leave at the end thereof the demised premises together with their fixtures in good and substantial repair and condition.

(b) The lessee shall insure the demised premises against loss or damage by fire.

(c) The lessee shall be liable for the payment of all rates and taxes.

(d) The lessee shall sublet the rooms and tenements prescribed by the Committee to be used as dwellings only to persons employed by him in the course of his business or their families except in so far as there may not be sufficient numbers of such persons willing to occupy the same and in any case only to members of the poorer classes. No such room or tenement shall be used otherwise than as a dwelling except with the previous consent in writing of the Committee.

(e) The maximum rent of each room or tenement shall be fixed by the Committee after consulting the lessee and such maximum rent shall be

written or painted up by the lessee in a conspicuous position in each such room or tenement. Such maximum rent shall not be subject to alternation save with the consent of the Committee.

(f) The lessee shall not demand or receive in respect of any such room or tenement any premium or any rent in excess of the maximum rent fixed and in force for the time being.

(g) The lessee shall not assign or sublet the demised premises or any part thereof without the previous consent in writing of the Committee. Any assignee or sub-lessee shall be bound by the conditions contained in this Act and in the lease.

49. Lessee may commute the rent: The lessee may at any time with the consent of the Committee commute the rent payable under the lease and in such event the rent shall be Rs.1 per annum for the remainder of the term.

50. Lessee not to make alterations so as to reduce the accommodation: The Committee shall not without the previous sanction of the Board and of Government permit the lessee to make any substantial variation in the

user of the premises so as to reduce the accommodation prescribed by the Committee to be used as dwellings.

51. Default and determination of the lease:
(1) On default being made by the lessee in any of the conditions of the lease, the Board may re-enter upon the demised premises or any part thereof in the name of the whole and immediately thereupon the lease shall absolutely determine.
(2) Where no default is made by the lessee in the conditions of the lease, then on determination of the lease at the end of the term thereof, the Board shall convey the premise to the lessee at his cost and free of all restrictions and liabilities imposed by the lease and by this Act or by the City of Bombay Improvement Act, 1898.

29. There is another enactment by the name of Mumbai Municipal Corporation Act, 1888. Section 527 of the said Act provided for statutory legal notice as a pre-condition for filing a suit against the appellant Corporation and also the limitation for filing a suit once such a notice is given. Section 527 of the Act, 1888 is reproduced hereunder: -

"527. (1) No suit shall be instituted against the corporation or against [the Commissioner, the General Manager] [or the Director] or a Deputy Commissioner, or against any municipal officer or servant, in respect of any act done in pursuance or execution or intended execution of this Act or in respect of any alleged neglect or default in the execution of this Act,-

(a) Until the expiration of one month next after notice in writing has been, in the case of the corporation, left at the chief municipal office and, in the case of [the Commissioner, the General Manager] [or the Director] or of a Deputy Municipal Commissioner or of a municipal officer or servant delivered to him or left at his office or place of abode, stating with reasonable particularity the cause of action and the name and place of abode of the intending plaintiff and of his attorney or agent if any, for the purpose of suit; nor

(b) Unless it is commenced within six months next after the accrual of the cause of action.

(2) At the trial of any such suit –

(c) The plaintiff shall not be permitted to go into evidence of any cause of action except such as is set forth in the notice delivered or left by him as aforesaid;

(d) The claim, if it be for damages shall be dismissed if tender of sufficient amount shall have been made before the suit was instituted or if, after the institution of the suit, a sufficient sum of money is paid into Court with costs.

(3) When the defendant in any such suit is a municipal officer or servant, payment of the sum or of any part of any sum payable by him in or in consequence of the suit whether in respect of cost, charges, expenses, compensation for damage or otherwise, may be made, with the [previous] sanction of the [Standing Committee or the Brihan Mumbai Electric Supply and Transport Committee] from the municipal fund or the [Brihan Mumbai Electric Supply Transport Fund] as the case may be."

30. The core issues to be considered are two:

(i) Whether the appellant-Corporation was at all bound to convey the lease land, on completion of the terms of the lease, in favour of

the Respondent No.1 free from all restrictions and liabilities or not. If the answer is that there was no compulsion for the appellant either under the statute or under the terms of the lease deed to convey, then the Respondent No.1 would have no case at all. If the answer is positive that they were required to convey the lease land, then the interpretation of the words "at his cost" in Section 51(2) of the 1925 Act would be required.

(ii) The other question would be whether the writ petition filed before the Bombay High Court suffered from delay and laches and was liable to be dismissed on that ground alone as the cause of action had arisen in the year 1955 whereas the writ petition was filed in the year 2016 after a delay of 61 (sixty-one) years. Related issue to be considered is that a Notice under Section 527 of the 1888 Act was given in the year 2006 and, thereafter, no steps were taken for a period of ten years for filing a suit even though the limitation prescribed was six months as per the above provisions. The Respondent No.1 instead

of filing a suit preferred a writ petition in the year 2016. Another inter-linked issue would be whether a writ petition ought to have been entertained at all where the actual and real remedy was by way of a civil suit for specific performance or for mandatory injunction.

31. Under Resolution No. 121 dated 16.04.1918, the Respondent No.1 was required to construct 44 Blocks of poorer classes dwellings consisting 980 rooms and 20 shops, as a pre-condition to be fulfilled for execution of the lease under Section 32G of the 1898 Act. The Respondent No.1 after receiving possession of land, constructed only 476 dwellings and 10 shops till the year 1925. As provided under the 1925 Act, the earlier schemes already approved under the 1898 Act were saved and were to be executed by the Board under the 1925 Act.

32. The Respondent No.1 applied for alteration of Scheme No. 51 notified on 01.05.1918 *vide* their application dated 10.03.1927. Later on, *vide* letter of their solicitors- M/s C.N. Wadia dated 20.05.1927, a request was made that the Board may accept 476 rooms instead of 980 rooms and 10 shops instead of

20 shops required under the old scheme. They also requested for conveyance of Block-B and for 28 years lease of Block-A and eventual conveyance of Block-A on completion of the lease period. As the contents of this letter of M/s C.N. Wadia and Co. dated 20.05.1927 have been referred to in the subsequent Board resolution, it would be appropriate to reproduce paragraphs 2,4, 5 and 6 of the said letter, which read as follows: -

> **"2. We also request that the Committee will now grant to the Company a Lease of Block A, for a period of 28 years at a nominal rent of one rupee per annum as provided in the Act and a conveyance of Block B.**
>
> **4. We agree to keep a strip 5 feet in width along the eastern boundary of Block A, open and unbuilt upon, to permit the board to lay a sewer therein should they find it necessary to do so. The Conveyance in respect of this land to be granted on the expiration of the lease will also make provision for this.**
>
> 5. As regards Block B, we agree to the following conditions: -

(a) The layout of the land and the plans, etc., of the buildings to be erected thereon shall be subject to the Board's approval.

(b) The height of the buildings shall not exceed a ground and three floors.

(c) The user of the buildings and land shall be confined to shops, chawls, offices, residences, godowns and a wireless and broadcasting station.

(d) All buildings to be set back 15 feet from the road on the south and the same distance between the points F and G from the 40 ft. road on the west.

(e) An open space 10ft. in width if ground floor buildings are erected, or 15 feet in the case of higher buildings, to be left along the south side of the boundary D.E.

(f) An open space 15 feet in width to be left along and within the boundaries Blocks A and B :

(g) Cost of and incidental to the conveyance and stamp duty to be paid by the Company.

6. It is understood that at the end of period of lease Block A is to be conveyed to us as freehold land."

33. The Board passed Resolution No. 325 on 31.05.1927 and granted alteration of the old scheme. While passing the resolution, it considered the Chief Officer's note dated 21.05.1927 recommending the Board to accept the request. The relevant extract of the Chief Officer's note dated 21.05.1927 is reproduced hereunder: -

> ""...3. Owing to the construction by the Development Department of a very large number of rooms in the immediate vicinity more than sufficient accommodation has been provided and there is no necessity for the Company to complete the full number of rooms. They, therefore, ask the Committee to alter the Scheme in the manner proposed in their letter and there is no objection to this being done especially as the Company has refunded to the Board the amount, with interest, spent on the acquisition of the land.""

34. The Board Resolution No. 325 dated 31.05.1927 reads as follows: -

> "Resolution 325 – The Scheme should be and the same is hereby altered by

> the exclusion of Blocks B & C on the Estate Agent's plan No.98…
>
> 2. a lease of Block A for a period of 28 years should be granted to the Company on the terms mentioned in paras 2 & 4 of Messrs. C.N. Wadia's letter, dated 20th May, 1927.
>
> 3. Block B should be conveyed to the Company on terms and conditions mentioned in para 5 of the Company's letter.
>
> 4. Block C will remain the property of the Board."

35. Pursuant to the above resolution, Block-B was conveyed to Respondent No.1 for sale consideration of Rs.1,20,000/- on 10.01.1928 and later, lease of Block-A was executed on 03.10.1928 for a period of 28 years effective from 01.04.1927 at a yearly rent of Re.1/-(Rupee One). As such, the lease was to expire on 31.03.1955. The lease deed dated 03.10.1928, filed as Annexure-P2 before us, incorporates in its initial part the facts including the details about the Scheme no. 51, which was approved in 1918, with regard to the entire land comprising of parcels A, B and C with total land admeasuring 57,758 sq. yds. It,

thereafter, refers to the partial construction by Respondent No.1 and the request made by Respondent No.1 on 10.03.1927 and 20.05.1927 for alteration in the scheme. Thereafter, it goes on to mention the approval of the alteration of said scheme by the Board Resolution dated 31.05.1927 and, then states the terms and conditions thereof. Under the terms and conditions, lease of Block-A was granted for a period of 28 years effective from 01.04.1927 with a yearly rent of Re.1/- (Rupee One only) to be paid without any deduction on first day of each April.

36. A perusal of the terms and conditions stated in the lease agreement would reveal that there is no such stipulation that on the expiry of the period of the lease on 31.03.1955, after completion of 28 years, the appellants would be bound to convey the said land to Respondent No.1. Based on the above resolution dated 31.05.1927 and the terms as incorporated in the lease deed, the submission on behalf of the appellants is that there was neither any decision taken by the Board to convey the land in question on expiration of the lease nor does the lease agreement contain any such clause that the appellants were bound to convey the land.

37. It is also vehemently submitted that the High Court completely fell in error in reading the Board's resolution as agreeing to convey the land on the expiration of the lease and by interpreting the lease agreement to have a clause that the Board would convey the land on the expiration of the lease. Insofar as the lease deed is concerned, the High Court read the narration of the facts relating to the application filed by Respondent No.1 for alteration dated 20.05.1927 to be a term of the lease to mean that on expiration of the lease, there would be a conveyance. In fact, there is no such stipulation in the terms and conditions of the lease deed regarding the conveyance. This was a clear misreading by the High Court.

38. The lease deed dated 03.10.1928, nowhere recites that the land comprising in Block-A would be conveyed at the expiration of the lease term of 28 years provided there was no default on the part of the lessee as provided in Section 51(2) of the 1925 Act. The High Court, while referring to the narration of facts in the initial part of the lease deed, has misinterpreted the same to be a condition incorporated in the lease deed for conveyance at the

end of the period of lease i.e. on expiration of 28 years.

39. Insofar as the resolution of 31.05.1927 is concerned, the proceedings of the said meeting have been filed as Annexure-P1 before us, which is reproduced hereunder:

> "Annexure P-1
>
> **Exhibit 'F'**
>
> **Bombay Improvement Trust**
>
> SECRETARY OFFICE,
> ESPLANADE ROAD
>
> Excerpt from the Proceedings of a Meeting of the Improvements Committee held on the 31st May 1927.
>
> 1. Re : Scheme No. 51 - Century Mills Housing Scheme alteration in
>
> Considered the. following ;.
>
> (a) Letter from Messrs. C.N. Wadia & Co., dt. 20th May 1927.
>
> "With reference to the Committee's Resolution No. 165, dated the 24th March last, we beg to request that as we have paid to the Board the sums due under Section 46(3) of the Act, the Committee may be moved to alter the Scheme under Section 37(2) by the

omission therefrom of Blocks B and C on the accompanying plan."

2. We also request that the Committee will now grant to the Company a lease of Block A for a period of 28 years at a nominal rent of one rupee per annum as provided in the Act and a conveyance of Block B.

3. It was arranged in 1923 that plot C should revert to the Trust.

4. We agree to keep a strip 5 feet in width along the eastern boundary of Block A, open and unbuilt upon, and to permit the Board to lay a sewer therein should they find it necessary to do so. The conveyance in respect of this land to be granted on the expiration of the lease will also make provision for this.

5. As regards Block B, we agree to the following conditions: -

(a) The lay out of the land and the plans, etc., of the buildings to be erected thereon shall be subject to the Board's approval.

(b) The height of the buildings shall not exceed a ground and three floors.

(c) The user of the buildings and land shall be confided to shops, chawls, offices, residences, godowns and a wireless and broadcasting station.

(d) All buildings to be set back 15 feet from the road on the south and the same distance between the points F and G from the 40 ft. road on the west.

(e) An open space 10 ft. in width if ground floor buildings are erected, or 15 feet in the case of higher buildings, to be left along the south side of the boundary D. E.

(f) An open space 15 feet in width to be· left along and within the boundaries Blocks A and B.

(g) Cost of and incidental to the conveyance and stamp duty to be paid by the Company.

6. It is understood that at the end of the period of lease, Block A is to be conveyed to us as freehold land".
(b) Chief Officer's note, dated 21st May 1927.

"This Scheme was sanctioned in 1919 and provided for the acquisition of the land by the Board and the filling in of the site and the construction of the

buildings by the Century. Spinning and Manufacturing Co., Ltd.

2. The Company originally Intended to erect 44 blocks of buildings containing 980 rooms and 20 shops and have in fact complete 476 rooms and 10 shops.

3. Owing to the construction by the Development Department of a very large number of rooms in the immediate vicinity more than sufficient accommodation has been provided and there is no necessity for the Company to complete the full number of rooms. They, therefore, ask the Committee to alter the Scheme in the manner proposed in their letter and there is no objection to this being done especially as the Company has refunded to the Board the amount, with interest, spent on the acquisition of the land."

Resolution 325 - The Scheme should be and the same is hereby altered by the exclusion ·of Blocks B & C on the Estate Agent's plan No. 98, dated 17th May 1927.

2. A lease of Block A for a period of 28 years should be granted to the Company on the terms mentioned in paras 2 & 4 of Messrs. C.N.

Wadia's letter, dated 20th May 1927.

3. Block B should be conveyed to the Company on the terms and conditions mentioned in para 5 of the Company's letter.

4. Block C will remain the property of the Board.

True Excerpt,
C.P. GORWALLA
Secretary"

40. A careful reading of the above excerpts reflects that the letter from M/s C.N. Wadia dated 20.05.1927 is reproduced as it is in the beginning which runs into 6 paragraphs. Thereafter, it considered the Chief Officer's note dated 21.05.1927 which we have briefly referred to in earlier part of this judgment. Thereafter, it records that the Respondent No.1 originally intended to erect 980 rooms with 20 shops. As per the said note, it gave details of the original scheme, the alteration requested for and further the reasons that because of construction by the development department, sufficient accommodation is now available and there may not be any necessity for company to complete the full number of rooms, as

such the request for alteration may be considered. Thereafter, the Resolution No. 325 is recorded which reflects that the scheme stands altered by excluding Block-B and Block-C, the lease of Block-A for a period of 28 years to be granted on the terms mentioned in paragraphs 2 and 4 of letter dated 20.05.1927 of M/s C.N. Wadia, Block-B to be conveyed to the company in terms of paragraph 5 of the aforesaid letter and Block-C to remain property of the Board.

41. Based on the above reading of the resolution dated 31.05.1927, first and foremost, it must be noted that paragraph 6 of the letter dated 20.05.1927 is not approved by the Board which states that at the end of the period of lease, Block-A is to be conveyed to the company as freehold land. Secondly, it approves granting of lease on the terms mentioned in paragraphs 2 and 4 of the said letter dated 20.05.1927. Paragraph 2 does not refer to any conveyance of Block-A. Paragraph 4 states about leaving strip of five feet along eastern boundary open and unbuilt to permit the Board to lay the sewer. It further stipulates that the conveyance in respect of "this land" to be granted on the expiration of the lease

will also make provision for this. “This land” means the strip of five feet and not Block-A.

42. The High Court’s recording that, once paragraph 4 refers to conveyance in respect of “this land”, it is to be treated as Block-A, is actually misreading and misinterpreting paragraph 4 of the communication dated 20.05.1927. It only says the conveyance, if made, on the expiration of the lease will take into consideration provision for this land. The main request of the Respondent No.1 in its communication dated 20.05.1927 with regard to conveyance of Block-A is stated in paragraph 6 which the Board Resolution No. 325 does not approve or accept. The High Court, thus, fell in error in reading paragraph 4 of the communication dated 20.05.1927 to understand that the Board minutes approved the conveyance of Block ‘A’.

43. The conveyance as stated in paragraph 4 is with respect to five feet strip of land on the eastern side and the same would become effective and applicable only if paragraph 6 of their letter was accepted. In the absence of approval of paragraph 6 of the said letter dated 20.05.1927, it cannot be held that the Board

approved the conveyance of Block-A after expiration of the period of lease.

44. From the above analysis, it is more than clear that neither the Board Resolution No. 325 dated 31.05.1927 nor the lease deed anywhere states about conveyance of Block-A on the expiration of the lease deed. The High Court, thus, fell in error in interpreting both the documents otherwise.

45. Further arguments on behalf of Respondent No.1 with respect to conveyance being executed rest on Section 51(2) of 1925 Act. In this respect, it would be appropriate to first deal with Section 48(a) of the 1925 Act and read Section 51(2) of the said Act along with the said provision. Under Section 48(a) of the 1925 Act on the expiration of the lease period, the lessee shall leave the demised premises in good and substantial repair conditions along with fixtures, if any, whereas Section 51(2) of the said Act provides that where no default is made by the lessee in the conditions of the lease, then on determination of the lease at the end of the term, the Board shall convey the premise to the lessee at his cost and such conveyance to be free of all restrictions and liabilities imposed under the lease deed and also by the 1898

Act. The submission on behalf of the appellants is that Section 48(a) of the 1925 Act would be rendered otiose and meaningless, if Section 51(2) of the said Act is read and interpreted as submitted by the counsel for Respondent No.1 which is to the effect that, Section 51(2) of the said Act being a special provision whereas Section 48(a) thereof is a general provision, the special provision will prevail over the general provision. We may not agree with the above submission of Respondent No.1 as submitted but would rather read both the provisions and test whether they could co-exist and be construed harmoniously.

46. Both the provisions, Section 48(a) and Section 51(2) of the 1925 Act, have to be read in the context in which they have been incorporated. Section 48 of the 1925 Act provides the general conditions of the lease given under the PCAS placing restrictions on the lessee as to how it would use and how the rent etc. would be determined for letting out the tenements. Whereas, Section 51 of the said Act provides for default, and determination of the lease. If there is default, then under Section 51(1) of the 1925 Act, the Board has a right to re-enter upon the demised

premises whereas under sub-Section (2) thereof provides that where no default is made, the Board shall convey the premise to the lessee at his cost.

47. If Section 48(a) and Section 51(2) of the 1925 Act are to be interpreted harmoniously, the net result is that under general provisions, the lessee has to leave the premise on completion of the period of lease, however, it will have a right to get the conveyance executed at the end of the lease, provided there has been no default, after paying the cost of the said premise.

48. Well-settled principles of statutory interpretation demand that no provision of a statute should be rendered nugatory or superfluous. A statute must be construed as a coherent whole, ensuring that each part has meaningful content and that the legislative scheme remains workable. Where two provisions appear to be in tension, the proper course is to adopt a construction that reconciles them, allowing both to operate and giving effect to the underlying legislative intent. It is neither necessary nor desirable to treat section 51(2) of the 1925 Act as an absolute mandate that would override or negate Section 48(a) thereof. Instead, they must be read harmoniously so that the

duty to restore the premises at the end of the lease remains intact, unless a clear contrary intention emerges, and the right to conveyance under Section 51(2) thereof is recognized as contingent, not automatic.

49. Such a reading is consistent with the accepted principle that a statutory provision should not be construed in a manner that would reduce another provision to a "dead letter." The reference in Section 48(a) of the 1925 Act leaving the premises in good repair is not a mere formality but a substantive condition governing the lessee's obligations. Simultaneously, Section 51(2) thereof contemplates a conveyance only where the conditions of the lease have been duly met and the terms of the governing arrangement so permit. By interpreting Section 51(2) of the said Act as a provision that confers a right to conveyance contingent upon the terms of the lease and the broader legislative context, rather than as an unqualified command, the overall scheme of the Act is preserved. This ensures that the statute remains fully operative, logical, and internally consistent.

50. Interpreting Section 51(2) in this calibrated manner ensures that no non-obstante clause or hierarchical

superiority is artificially read into the statute. Nothing in the language of Section 51(2) of the 1925 Act suggests that it must prevail to the exclusion of other provisions, nor does Section 48(a) thereof state that its conditions are subject to displacement by Section 51(2) of the said Act. Each provision, on a proper reading, retains its respective field of operation. The terms and intentions underlying the lease itself become the primary determinant of whether the eventual conveyance is warranted or not. Thus, rather than insisting that "shall convey" invariably means an unconditional obligation, it is more appropriate to understand that it calls for conveyance only where the arrangement and compliance align with the statutory prerequisites.

51. By employing a harmonious construction, the 1925 Act's provisions are allowed to complement rather than contradict one another. This approach upholds the integrity of the legislative scheme, ensures that none of its components are undermined, and maintains a balance between the obligations imposed on a lessee and any rights that may accrue at the end of the lease's tenure. These principles were reiterated

by a three-Judge Bench of this Court in **CIT** (supra). The relevant paragraphs are reproduced hereunder:

> "14.A construction which reduces the statute to a futility has to be avoided. A statute or any enacting provision therein must be so construed as to make it effective and operative on the principle expressed in the maxim ut res magis valeat quam pereat i.e. a liberal construction should be put upon written instruments, so as to uphold them, if possible, and carry into effect the intention of the parties. [See Broom's Legal Maxims (10th Edn.), p. 361, Craies on Statutes (7th Edn.), p. 95 and Maxwell on Statutes (11th Edn.), p. 221.]
>
> 15. A statute is designed to be workable and the interpretation thereof by a court should be to secure that object unless crucial omission or clear direction makes that end unattainable. (See Whitney v. IRC [1926 AC 37 : 10 Tax Cas 88 : 95 LJKB 165 : 134 LT 98 (HL)] , AC at p. 52 referred to in CIT v. S. Teja Singh [AIR 1959 SC 352 : (1959) 35 ITR 408] and Gursahai Saigal v. CIT [AIR 1963 SC 1062 : (1963) 48 ITR 1] .)
>
> 16. The courts will have to reject that construction which will defeat the plain intention of the legislature even though there may be some inexactitude in the language used. (See Salmon v. Duncombe [(1886) 11 AC 627 : 55 LJPC 69 : 55 LT 446 (PC)] AC at p. 634, Curtis v. Stovin [(1889) 22 QBD 513 : 58 LJQB 174 : 60 LT 772 (CA)] referred to in S. Teja Singh case [AIR 1959 SC 352 : (1959) 35 ITR 408] .)

17. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility, and should rather accept the bolder construction, based on the view that Parliament would legislate only for the purpose of bringing about an effective result. (See Nokes v. Doncaster Amalgamated Collieries [(1940) 3 All ER 549 : 1940 AC 1014 : 109 LJKB 865 : 163 LT 343 (HL)] referred to in Pye v. Minister for Lands for NSW [(1954) 3 All ER 514 : (1954) 1 WLR 1410 (PC)] .) The principles indicated in the said cases were reiterated by this Court in Mohan Kumar Singhania v. Union of India [1992 Supp (1) SCC 594 : 1992 SCC (L&S) 455 : (1992) 19 ATC 881 : AIR 1992 SC 1] .

18. The statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute.

19. The court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with other parts of the law and the setting in which the clause to be interpreted occurs. (See R.S. Raghunath v. State of Karnataka [(1992) 1 SCC 335 : 1992 SCC (L&S) 286 : (1992) 19 ATC 507 : AIR 1992 SC 81] .) Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between two

different sections or provisions of the same statute. It is the duty of the court to avoid a head-on clash between two sections of the same Act. (See Sultana Begum v. Prem Chand Jain [(1997) 1 SCC 373 : AIR 1997 SC 1006] .)

20. Whenever it is possible to do so, it must be done to construe the provisions which appear to conflict so that they harmonise. It should not be lightly assumed that Parliament had given with one hand what it took away with the other.

21. The provisions of one section of the statute cannot be used to defeat those of another unless it is impossible to effect reconciliation between them. Thus a construction that reduces one of the provisions to a "useless lumber" or "dead letter" is not a harmonised construction. To harmonise is not to destroy."

52. Therefore, in our considered opinion, the interplay between Sections 48(a) and 51(2) of the 1925 Act is resolved through a construction that acknowledges the necessity of leaving the premises in good condition at the expiration of lease, while recognizing that a conveyance can be contemplated only where such a course is unequivocally aligned with the lease terms and the statutory framework as a whole. This reconciliation preserves the intention of the legislature, avoids destructive interpretations, and

provides a coherent, just, and practical reading of the statute.

53. In light of the above discussion, it becomes evident that neither the statutory framework in force nor the terms of the lease deed imposed any obligation upon the appellant to execute a conveyance in favour of the Respondent No.1. While the Respondent No.1 has sought to rely upon selective readings of the statutory provisions and the Board's resolutions, a harmonious and contextual interpretation of Sections 48(a) and 51(2) of the 1925 Act, as well as the clear absence of any covenant to that effect in the lease deed, unequivocally demonstrates that no vested right to conveyance arose on the expiration of the lease. Absent any express statutory mandate or contractual stipulation, the claim for compulsory conveyance at the end of the lease term must fail.

54. Even if in arguendo, we agree to the Respondent No.1's contention that the lease conferred a right to conveyance in their favour, the fact that cannot be overlooked is that Respondent No.1 failed to take any active step in furtherance of getting such a conveyance executed at the end of the lease term. A major reliance has been placed by the Respondent

No.1 on Section 51(2) of the 1925 Act, which clearly states that the Board shall convey the premises to the lessee at his cost. The term "at his cost" shall include the charges involved in conversion of lease hold property into free hold property and would routinely comprise of registration charges, stamping charges etc. It is evident that the Respondent No.1, after the expiry of term of the lease, has neither paid any such charges towards the cost in an effort to seek conveyance nor availed any alternative remedy by filing a suit for specific performance or mandatory injunction. Therefore, the Respondent No.1's reliance on Section 51(2) will also not come to their rescue when it is apparent that they have not fulfilled their part of the obligation under the said provision.

55. From the above discussion and analysis, the first core question stands answered in favour of the appellants that they were neither bound nor were under any legal obligations to convey the premises comprising Block-A to the Respondent No.1.

56. Now we come to the second core issue regarding the writ petition before the High Court suffering from serious delay and laches and as such liable to be dismissed on that ground alone. Admittedly, the term

of the lease came to an end on 31.03.1955. It is also uncontested that thereafter the Respondent No.1 never claimed execution of conveyance at any point of time till 2006, when for the first time they issued a legal notice dated 14.08.2006 purported to be under Section 527 of the 1888 Act requiring the appellant to execute the conveyance deed. Thus, for a period of 51 years, the Respondent No.1 did not raise any demand whatsoever for execution of the conveyance deed. Their contention that they were in constant communication with the officers of the Corporation, though orally, the fact remains that no legal proceedings were undertaken during this period. Even after giving the notice under Section 527 of 1888 Act, the Respondent No.1 took no steps for a period of 10 years by filing a suit or approaching the Court even though the period of limitation prescribed under the above provision was six months. Ten years after the legal notice, they preferred the writ petition, i.e. after 61 years of the cause of action having arisen.

57. We find that the High Court has cursorily dealt with this aspect and held that the writ petition does not suffer from laches. The High Court actually held that there was inaction on the part of the appellant in not

executing the conveyance deed. On the contrary, Respondent No.1 never approached the appellant requiring them either to provide the details of the stamp duty, registration charges etc. so that the conveyance deed could be typed out on such stamp papers and thereafter to be presented for registration. The Respondent No.1 has neither made any pleadings nor has led any evidence to the above effect.

58. The view taken by the High Court in treating the petition to be not suffering from any delay and laches cannot be sustained. Reference may be made to the following judgments wherein delay and laches being non-condonable while filing petition, especially under land acquisition matters, has been elaborately dealt with and has been the consistent view of this Court that such belated petitions are liable to be dismissed.

59. In **Aflatoon v. Lt. Governor of Delhi**[21]**,** it was held that:

> "9. Assuming for the moment that the public purpose was not sufficiently specified in the notification, did the appellants make a grievance of it at the appropriate time? If the appellants had really been prejudiced by the

[21] (1975) 4 SCC 285

non-specification of the public purpose for which the plots in which they were interested were needed, they should have taken steps to have the notification quashed on that ground within a reasonable time. They did not move in the matter even after the declaration under Section 6 was published in 1966. They approached the High Court with their writ petitions only in 1970 when the notices under Section 9 were issued to them. In the concluding portion of the judgment in Munshi Singh v. Union of India [(1973) 2 SCC 337, 342 : (1973) 1 SCR 973, 975, 984] , it was observed: [SCC p. 344, para 10]

> "In matters of this nature we would have taken due notice of laches on the part of the appellants while granting the above relief but we are satisfied that so far as the present appellants are concerned they have not been guilty of laches, delay or acquiescence at any stage."

We do not think that the appellants were vigilant.

10. That apart, the appellants did not contend before the High Court that as the particulars of the public purpose were not specified in the notification issued under Section 4, they were prejudiced in that they could not effectively exercise their right under Section 5-A. As the plea was not raised by the appellants in the writ petitions filed before the High Court, we do not think that the appellants are entitled to have the plea considered in these appeals.

11. Nor do we think that the petitioners in the writ petitions should be allowed to raise this plea in view of their conduct in not challenging the validity of the notification even after the publication of the declaration under Section 6 in 1966. Of the two writ petitions, one is filed by one of the appellants. There was apparently no reason why the writ petitioners should have waited till 1972 to come to this Court for challenging the validity of the notification issued in 1959 on the ground that the particulars of the public purpose were not specified. A valid notification under Section 4 is a sine qua non for initiation of proceedings for acquisition of property. To have sat on the fence and allowed the Government to complete the acquisition proceedings on the basis that the notification under Section 4 and the declaration under Section 6 were valid and then to attack the notification on grounds which were available to them at the time when the notification was published would be putting a premium on dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the petitioners (see Tilokchand Motichand v. H.B. Munshi [(1969) 1 SCC 110 : (1969) 2 SCR 824] and Rabindranath Base v. Union of India [(1970) 1 SCC 84 : (1970) 2 SCR 697]).”

60. Similarly, in **Hari Singh v. State of U.P.**[22], it was observed that:

> "4. At the outset we are of the view that the writ petition filed in July 1982 questioning the notification issued in January 1980 after a delay of nearly two and a half years is liable to be dismissed on the ground of laches only. It is no doubt true that the appellants have pleaded that they did not know anything about the notifications which had been published in the Gazette till they came to know of the notices issued under Section 9(3) of the Act but they have not pleaded that there was no publication in the locality of the public notice of the substance of the notification as required by Section 4(1) of the Act. It should be presumed that official acts would have been performed duly as required by law. It is significant that a large number of persons who own the remaining plots have not challenged the acquisition proceedings. The only other petition in which these proceedings are challenged is Civil Misc. Writ Petition No. 11476 of 1982 on the file of the High Court filed subsequently by Amar Singh and four others. Moreover in a small place like Kheragarh where these plots are situate, the acquisition of these lands would be the talk of the town in a short while and it is difficult to believe that the appellants who are residents of that place would not have known till July 1982 that the impugned notification had been published in 1980. Any

[22] (1984) 2 SCC 624

interference in this case filed after two and a half years with the acquisition proceedings is likely to cause serious public prejudice. This appeal should, therefore, fail on the ground of delay alone."

61. Likewise, in **Municipal Corporation of Greater Bombay v. Industrial Development Investment Co. (P) Ltd.**[23] , with regards to the question of delay and laches, it was held that:

> "29. It is thus well-settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification under Section 4(1) and declaration under Section 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single

[23] (1996) 11 SCC 501

Judge dismissing the writ petition on the ground of laches."

62. More recently, this Court in **New Okhla Industrial Development Authority v. Harkishan**[24], had held that:

> "12. More importantly, when the respondents made the representation, it was dealt with and rejected by the State Government vide order dated 3-12-1999. At that time, award had been passed. However, in the second round of writ petitions preferred by the respondents, they chose to challenge only Office Order dated 3-12-1999 vide which their representation under Section 48 of the Act had been rejected and it never dawned on them to challenge the validity of the award on the ground that the same was not passed within the prescribed period of limitation. As noted above, in the second round of litigation also, the respondents failed in their attempt, inasmuch as, this Court put its imprimatur to the rejection order dated 3-12-1999 vide its judgment dated 12-3-2003 [Ved Prakash v. Ministry of Industry, (2003) 9 SCC 542] . At that time, even the possession of land had been taken. If the respondents wanted to challenge the validity of the award on the ground that it was passed beyond the period of limitation, they should have done so immediately and, in any case, in the second

[24] (2017) 3 SCC 588

> round of writ petitions filed by them. Filing fresh writ petition challenging the validity of the award for the first time in the year 2004 would, therefore, not only be barred by the provisions of Order 2 Rule 2 of the Code of Civil Procedure, 1908, but would also be barred on the doctrine of laches and delays as well."

63. There is yet another aspect of the matter to be considered. The Respondent No.1 had a statutory remedy of filing a suit under Section 527 of the 1988 Act which they could have availed. In fact, the Respondent No.1 proceeded in that direction by giving a notice to file a suit but never filed the suit although limitation for the same was six months. The Respondent No.1 apparently chose to file the writ petition in 2016 after 10 years only in order to escape from the clutches of the limitation. In this regard, it was held in **Shri Vallabh Glass Works Ltd.** (supra), that:

> "9. …Whether relief should be granted to a petitioner under Article 226 of the Constitution where the cause of action had arisen in the remote past is a matter of sound judicial discretion governed by the doctrine of laches. Where a petitioner who could have availed of the alternative remedy by way of suit approaches the High Court under Article

226 of the Constitution, it is appropriate ordinarily to construe any unexplained delay in the filing of the writ petition after the expiry of the period of limitation prescribed for filing a suit as unreasonable. This rule, however, cannot be a rigid formula. There may be cases where even a delay of a shorter period may be considered to be sufficient to refuse relief in a petition under Article 226 of the Constitution. There may also be cases where there may be circumstances which may persuade the court to grant relief even though the petition may have been filed beyond the period of limitation prescribed for a suit. Each case has to be judged on its own facts and circumstances touching the conduct of the parties, the change in situation, the prejudice which is likely to be caused to the opposite party or to the general public etc. In the instant case, the appellants had in fact approached the High Court on September 28, 1976 itself by filing Special Civil Application No. 1365 of 1976 for directing repayment of the excess duty paid by them. But no relief could be granted in that petition in view of the provisions of Article 226 of the Constitution as it stood then and the petition had to be withdrawn. Hence even granting that on the date of making each payment of excise duty in excess of the proper duty payable under law, the appellants should be deemed to have discovered the mistake, all such excess payments made on and after September 28, 1973 which would fall within the period of three years prior to the date on which Special

> Civil Application No. 1365 of 1976 was filed should have been ordered to be refunded under Article 226 of the Constitution. But the High Court declined to do so on grounds of estoppel and acquiescence. While we do agree that the appellants should not be granted any relief in respect of payment made between October 1, 1963 and September 27, 1973 which would fall beyond three years from the date of the first writ petition filed in this case we do not find it proper and just to negative the claim of the appellants in respect of excess payments made after September 28, 1973. In the instant case the appellants had made excess payments on being assessed by the Department and such payments cannot be treated as voluntary payments precluding them from recovering them. (See Sales Tax Officer v. Kanhaiya Lal Mukundlal Saraf [AIR 1959 SC 135 : (1959) SCR 1350 : 9 STC 747] .) We do not also find that the conduct of the appellants is of such a nature as would disentitle them to claim refund of excess payments made in respect of goods other than wired glass."

Therefore, the writ petition ought to have been dismissed on this ground of delay and laches alone. We find no merit in the conduct of the Respondent No. 1 where it deliberately chose to sit still on its rights for a long period of fifty-one years. Even after such a belated delay and sending a notice to the

appellant in 2006, the Respondent No.1 again failed to exhibit any diligence and chose not to file a suit within the period of limitation under the 1888 Act. Instead, the Respondent No.1 has shown utmost craftiness and lack of bona fide in preferring the writ petition before the High Court in 2016 as it is clearly a route adopted to subvert the long delay of sixty-one years, which we do not find condonable, given the conduct of the Respondent No.1 throughout.

64. Further, it must also be observed that Respondent No.1 had submitted plans in 2009 for altering the use of Plot A for commercial purposes and would no longer be providing for Poorer Classes Accommodation as was agreed in the lease deed of 1928. Clause 2(VIII) of the lease deed has been reproduced below which explicitly states the purpose of the lease deed:

> "VIII To use the demised premises (except such portions thereof as contain shops, caretakers' quarters, and the like) exclusively as dwellings for the members of the poorer classes, being persons employed by the Lessees in the course of their business, and the families of such persons, except in so far as there may not be sufficient numbers of such persons willing to occupy the same, and

> in any case only for members of the poorer classes. And in particular not to use the demised premises or any part thereof, or permit the same to be used as a public house, refreshment room, booth, or shop for the sale for consumption either on or off the demised premises of intoxicating liquors, whether country or foreign, and whether by retail or wholesale, or for any other purpose whatsoever otherwise than as dwellings, except with the previous consent in writing of the Board, and not at any time to permit stables, factories, workshops, or workplaces on the demised land. And not to do or suffer to be done on the said premises anything which may be or become noisome, injurious, or offensive to the Board or the owners or occupiers of this or any other property in the neighbourhood."

65. Moreover, the Preamble to the 1925 Act also clearly states that it *"was enacted with a view to make provision for the improvement and for the future expansion of the City of Bombay by forming new and altering streets, by removing or altering insanitary buildings in certain areas, by providing open spaces for better ventilation and for recreation, by constructing new sanitary dwellings for certain classes of the inhabitants of the said city and for the Bombay City police, by laying out vacant lands and by divers other means;".* While the Respondent No.1

would have been allowed to use it for commercial purposes had the land been duly conveyed to them, it has already been shown that conveyance was never granted in the sale deed dated 1928, nor was any "cost" paid for the conveyance. The lease deed, by itself, did not confer any rights to convert the usage of the lands for commercial purposes.

66. It is clear that the protective and welfare-oriented character of the arrangement is integral to the statutory objective. The inclusion of Clause 2(VIII) in the lease deed was not a casual insertion; it was intended to ensure that the property would serve as an instrument of social betterment by housing those who are economically vulnerable. This provision, coupled with the Preamble's emphasis on "constructing new sanitary dwellings for certain classes of the inhabitants," reflects a deliberate legislative policy to secure tangible benefits for the poorer sections of society. The statutory and contractual framework is not merely concerned with property rights and transactions in the abstract; it aims to harness urban development to serve the pressing social needs of the community. By seeking to redirect the property towards commercial

exploitation, Respondent No.1 threatens to erode the very foundation upon which the original agreement stood. The contractual language and statutory purpose are both premised on ensuring that the "demised premises" remain dedicated to providing adequate housing to those otherwise struggling to find decent living conditions in a rapidly expanding metropolis. To ignore or circumvent these conditions would nullify the intended social function of the property and transform a carefully crafted scheme of public welfare into a mere instrument of private profit.

67. Such a departure from the intended purpose is not only a breach of the lease conditions but also a subversion of the policy that animated the entire statutory regime. The legislation and the contract work in tandem to ensure that urban improvement aligns with the welfare of weaker segments. When land allocated under a special scheme, particularly one centred on "poorer classes" accommodation, is sought to be commercially exploited, it represents a direct affront to the spirit of the enactment. Rather than addressing housing inadequacies and improving urban life for those in need, the resource

would be diverted to profit-making ventures that do nothing to alleviate the conditions of the underserved.

68. This conduct amounts to an abuse of beneficial legislation. The 1925 Act was clearly intended to secure broader societal goals—better sanitation, improved living standards, and well-planned urban growth that includes and benefits marginalized communities. Allowing Respondent No.1 to disregard these obligations would open the door to hollowing out the protections and advantages established by the statute. It would set a precedent where statutory schemes designed to uplift vulnerable groups could be co-opted for purely commercial ends, undermining the trust and faith that must exist between public authorities, private actors, and the most vulnerable segments of the population.

69. In essence, the entire arrangement is anchored on a quid pro quo: the property is leased on special terms, with minimal rent and under carefully prescribed conditions, to ensure that the less-privileged receive tangible benefits. When the lessee attempts to convert this arrangement into a vehicle for commercial gain, it repudiates the fundamental

bargain. The public trust reposed in the private entity to serve a greater good is thus betrayed. This not only harms the class of beneficiaries whom the legislation and agreement were designed to protect, but also imperils the broader public interest by allowing beneficial legislative frameworks to be distorted and exploited contrary to their genuine purpose.

70. For all the reasons recorded above, the judgment of the High Court cannot be sustained. Accordingly, the appeal is allowed, the impugned judgment of the High Court is set aside, and the writ petition is dismissed.

71. Pending application(s), if any, shall stand disposed of.

.....J.
(VIKRAM NATH)

.....J.
(PRASANNA B. VARALE)

NEW DELHI
JANUARY 07, 2025