IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.328 OF 2015

Vrindavan CHSL .. Petitioner

Versus

State of Maharashtra & Anr. .. Respondents

WITH
INTERIM APPLICATION (L) NO. 8802 OF 2024
IN
WRIT PETITION NO. 328 OF 2015

Bakulesh T. Shah & Anr. .. Applicants/ Intervenors

In the matter between:-

Vrindavan CHSL .. Petitioner

Versus

State of Maharashtra & Anr. .. Respondents

WITH
WRIT PETITION NO. 3144 OF 2015

Archdiocese of Bombay .. Petitioners

Versus

State of Maharashtra & Anr. .. Respondents

WITH

WRIT PETITION NO. 3131 OF 2022

Bandra Hill Maryy CHSL .. Petitioner

Versus

State of Maharashtra & Ors. .. Respondents

WITH
WRIT PETITION NO. 923 OF 2014

Mr.Anil Kapoor & Ors. .. Petitioners

Versus

State of Maharashtra & Ors. .. Respondents

WITH
INTERIM APPLICATION NO. 205 OF 2024
IN
WRIT PETITION NO. 923 OF 2014

Florida Apartments CHSL .. Applicant

In the matter between:-

Anil Kapoor & Ors. .. Petitioners

Versus

The State of Maharashtra & Anr. .. Respondents

WITH
INTERIM APPLICATION (L) NO. 27723 OF 2023
IN

WRIT PETITION NO. 923 OF 2014

State of Maharashtra & Ors. .. Applicant/ Org.Respondents

In the matter between:-

Anil Kapoor & Ors. .. Petitioners

Versus

State of Maharashtra & Ors. .. Respondents

WITH
PUBLIC INTEREST LITIGATION NO. 108 OF 2013

Shailesh Ramkumar Gandhi .. Petitioner

Versus

State of Maharashtra & Ors. .. Respondents

WITH
NOTICE OF MOTION NO. 568 OF 2018
IN
PUBLIC INTEREST LITIGATION NO. 108 OF 2013

Shailesh Ramkumar Gandhi .. Petitioner

Versus

State of Maharashtra & Ors. .. Respondents

AND

Mr.Anil Kapoor & Ors. .. Applicants

(Proposed Intervenors)

WITH

WRIT PETITION NO. 347 OF 2015

1(a) Maharukh Perseus Treasuryvala & Anr. .. Petitioners

Versus

State of Maharashtra & Anr. .. Respondents

WITH
WRIT PETITION NO. 348 OF 2015

The Seakist CHSL .. Petitioner

Versus

State of Maharashtra & Anr. .. Respondents

WITH

WRIT PETITION NO. 511 OF 2015

Seaking Premises Cooperative Society Ltd. .. Petitioners

Versus

State of Maharashtra & Ors. .. Respondents

WITH

WRIT PETITION NO. 493 OF 2015

The Shirinbai Cama Convaescent Home

for Poor Parsi Men and Boys .. Petitioners

Versus

State of Maharashtra & Anr. .. Respondents

WITH

WRIT PETITION NO. 483 OF 2015

Mon Repos CHSL .. Petitioners

Versus

State of Maharashtra & Anr. .. Respondents

WITH
WRIT PETITION NO. 491 OF 2015

Adil Gandhi .. Petitioners

Versus

State of Maharashtra & Anr. .. Respondents

WITH

WRIT PETITION (L) NO. 34697 OF 2023

Parkwest LLP & Anr. .. Petitioners

Versus

The State of Maharashtra & Anr. .. Respondents

WITH

INTERIM APPLICATION (L) NO. 8890 OF 2024
IN
WRIT PETITION (L) NO. 34697 OF 2023

Bandstand CHSL .. Applicant

In the matter between:-

Parkwest LLP & Anr. .. Petitioners

Versus

The State of Maharashtra & Anr. .. Respondents

AND

WRIT PETITION (L) NO.8174 OF 2024

Deep Bella Co-operative Housing Society Ltd. .. Petitioner

Versus

State of Maharashtra through
Principal Secretary, Department
of Revenue and Forest .. Respondent

Mr. R. A. Dada, Senior Advocate *a/w Mr. Narayan Sahu, Zubair Dada, Vicky Singh, Spenta Kapadia, M. S. Federal, Murtuza Federal, Nitika Bagaria, Sudarshan Satalkar & Sejal Jain i/b Fededal & Company, Advocates for Petitioners in WP/923/2014.*

Mr. R. A. Dada, Senior Advocate *a/w Mr. Narayan Sahu, M. S. Federal, Murtuza Federal, Veer Ashar & Aaroha Kulkarni i/b Federal & Company, Advocates for Applicant in*

IA(L)/8890/2024.

Mr. R. A. Dada, Senior Advocate *a/w Mr. Narayan Sahu, Mrs. Spenta Kapadia, M.S.Federal, Murtuza Federal, Nitika Bagaria, Sudarshan Satalkar i/b Federal & Co., Advocates for Respondent in IA/205/2024.*

Mr. R. A. Dada, Senior Advocate *a/w Mr. Narayan Sahu, M.S.Federal, Murtuza Federal, Nitika Bagaria, Sudarshan Satalkar i/b Federal & Co., Advocates for Applicant in IA/19828/2023.*

Mr. Navroz Seervai, Senior Counsel *a/w Gulnar Mistry, Shaukat Merchant, Zerick Dastoor, Guru Shanmugam & Dhruval Suthar i/b M & M Legal Venture, Advocates for Petitioner in WP/493/2015.*

Mr. Navroz Seervai, Senior Counsel *a/w Gulnar Mistry, Shaukat Merchant, Guru Shanmugam & Dhruval Suthar i/b M & M Legal Venture, Advocates for Petitioner in WP/483/2015 & WP/491/2015 .*

Mr. Rohan Sathaye *a/w Shaukat Merchant, Guru Shonmugan & Dhruval Suthar i/b M & M Legal Venture, Advocates for Petitioner in WP/328/2015.*

Mr. Bernado Reis *a/w Mr. Viraj Jadhav i/b Kevin Pereira, Advocates for Petitioner in WP/3144/2022 & WP/3131/2022.*

Mr. Nimay Dave *a/w Samit Shukla, Saloni Shah, Mustafa Nulwala & Sayali Diwadkar i/b DSK Legal, Advocates for Petitioner in WPL/34697/2023.*

Mr. Aloukik R. Pai *a/w Mr. Shanmukh Puranik i/b Bina Pai, Advocates for Applicant in IA/205/2024.*

Mr. S.H.Merchant *a/w Guru Shonmugan, Rihal Kazi, Dhruval Suttar, Zainab Tinwala & Rishita Dubey i/b M & M Legal*

Venture, Advocates for Petitioner in WP/511/2015 & WP/348/2015.

Mr. Shaukat Merchant *a/w Rihal Kazi. Dhruwal Suthar, Zainab Tinwala, Guru Shonmugan, Kajal Rai & Rishita Dubey i/b M & M Legal Venture, Advocates for Petitioner in WP/348/2015 & WP/347/2015.*

Mr. Rohan Sathaye *a/w Shaukat Merchant, Guru Shanmugm, Zainab Tinwala & Mr. Rishita Dubey i/b M & M Legal Venture, Advocates for Petitioner in WP/328/2015.*

Mr. Gaurav Mehta *a/w Mukul Taly & Sehyar Taly i/b S. Mohamedbhai & Co., Advocates for Applicant in IA(L)/8802/2024.*

Dr. Birendra Saraf, *Advocate General* *a/w Ms. Jyoti Chavan, Addl. GP, Pooja Patil, AGP (for State in WP/328/2015, WP/923/2014, WP/511/2019 & WP/483/2015); (a/w Mr. Mohit Jadhav, AGP for State in WP/511/2015); (a/w Mr. A. L. Patki, Addl. G. P. a/w Pooja Patil, AGP For State in WP/921/2020, & WP/3131/2022); (a/w Mr. Milind More, Addl. G.P. for State in WP/493/2015); (a/w Ms. Pooja Patil, AGP for State in WP/3144/2022); (a/w Ms. Nazia Shaikh, AGP for State in WP/347/2015); and (a/w. Mr. Amar Mishra, AGP for State in WP/L/8174/2024).*

Mr. Chetan Kapadia, Senior Counsel *a/w. Rohan Sathaye a/w. S.H. Merchant, Guru Shanmugam, Zainab Tinwala & Kajal Rai i/b. M & M Legal Ventures, Advocates for Petitioners in WP/L/8174/2024.*

CORAM :B. P. COLABAWALLA &
SOMASEKHAR SUNDARESAN,JJ.

RESERVED ON : APRIL 17, 2024

PRONOUNCED ON : JULY 10, 2024

JUDGMENT: [Per B. P. COLABAWALLA, J.] :-

1. These writ petitions challenge the constitutional validity of certain terms on which long-term leases granted by the State to various lessees, most of which are Housing Societies, all located in Bandra, are being renewed. The litigation over these leases has had a chequered history in this Court, these petitions constituting the latest round of litigation. At the heart of the challenge is the assertion that any linkage between the lease rentals for the lands on which various residential premises stand, and the value of those lands, is *per se* prohibited owing to past rulings of this Court. The issues boil down to interpreting the terms of contract [the expired Lease Deeds] between the petitioners and the State, and the Government Resolutions that fix the methodology for calculating the lease rent payable by the Petitioners who seek renewal of their lease.

2. Added to the mix, are the terms on which the said Leasehold lands may be converted into Freehold lands under the *Maharashtra Land Revenue Code, 1966*, if the Petitioners so choose to do. However, this conversion issue is not under challenge in these proceedings. For completeness, we must also mention that some of the above Writ Petitions also challenge the constitutional validity of Article 36 (iv) to Schedule I of the *Maharashtra Stamp Act, 1958* and the Government Resolution dated 31st October 2006. However, we are not deciding this challenge by the present judgement.

3. For the sake of context, we shall set out what each of the above Writ Petitions challenge in these proceedings. Writ Petition Nos.328 of 2015; 923 of 2014; 491 of 2014; 493 of 2014; 511 of 2015; 347 of 2015; 483 of 2015; 348 of 2015; and (L) 8174 of 2024 all challenge the Government Resolutions dated (i) 29th May 2006 (for short **"the *2006 GR*"**); (ii) 12th December 2012 (for short **"the *2012 GR*"**); and (iii) 5th May 2018 (for short **"the *2018 GR*"**) respectively. As a consequence, all the above-mentioned Petitions (except Writ Petition No.328 of 2015) also challenge the Notice dated 30th March 2013 issued pursuant to the *2012 GR*. Basically the *2012 GR* and the *2018 GR* set out the methodology for calculating the lease rent at which the expired leases would be renewed

by the Government. The *2006 GR* basically states that the Government has taken a policy decision to adopt the *"Annual Statement of Rates",* also commonly known as the *"Ready Reckoner"* rate, for determining the value of Government lands. Since the *2012* and the *2018 GR*s seek to determine the lease rent payable on the basis of the value of the land [as per the *Ready Reckoner*], the *2006 GR* is also challenged.

4. Over and above the aforesaid GRs, several Petitions, namely, Writ Petition Nos.328 of 2015; 491 of 2015; 493 of 2015; 511 of 2015; 347 of 2015; 483 of 2015; 348 of 2015; and (L) 8174 of 2024; also challenge the constitutional validity of Article 36 (iv) to Schedule I of the *Maharashtra Stamp Act, 1958* and Government Resolution dated 31st October 2006.

5. Lastly, Writ Petition (L) No.34697 of 2023; 3131 of 2022; and 3144 of 2022 only challenge the *2012 GR*, the *2018 GR,* and the Notice dated 30th March 2013 issued pursuant to the *2012 GR*.

6. At the outset, we made it clear to the parties that the constitutional challenge to Article 36 (iv) of the *Maharashtra Stamp Act, 1958* is not being decided by the present judgment and we would be only deciding the challenge to the *2006, 2012* and the *2018 GR*s. Hence, the

parties have proceeded before us on this basis. Since Mr. Rafique Dada, the learned senior counsel appearing on behalf of the Petitioners in Writ Petition No.923 of 2014, took the lead in all the above Writ Petitions, we shall set out the facts in Writ Petition No.923 of 2014. We are not setting out the individual facts of each case because the facts are more or less similar, and the arguments canvassed before us to challenge the *2006, 2012* and the *2018 GRs* are almost identical.

WRIT PETITION NO.923 OF 2014

7. In this Writ Petition, Petitioner Nos.1 to 9 are Co-operative Housing Societies situated in Bandra, Mumbai, registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 and are represented through their respective Chairman/Secretaries/Treasurers. Petitioner Nos.10 to 12 are individual occupiers of parcels of land situated at Bandra, who have bungalows. Respondent No.1 is the State of Maharashtra represented through the Principal Secretary, Revenue & Forest Department, and Respondent No.2 is the Collector for the Suburban District of Mumbai.

8. To put it in a nutshell, as mentioned earlier, the challenge in all the above Writ Petitions relates *inter alia* to the fixation of lease rent on the basis of the value of the land provided in the *Ready Reckoner* and which was a policy decision taken by the Government vide its *2006 GR*. The methodology for calculating the lease rent is on the basis of the *2012 and 2018 GRs*. According to the Petitioners, the fixation of lease rent on the basis of the value of the land provided in the *Ready Reckoner* increases the rent payable by the Petitioners between 400 to 1900 times of the rent that they are presently paying. In other words, the argument of the Petitioners is that this increase in rent is manifestly arbitrary, and it is on this basic ground that the *2006, 2012 and 2018 GRs* are assailed in the above Petitions.

FACTS IN W.P. No.923 OF 2014

9. Coming back to the facts of the case, it is the case of the Petitioners that their predecessors in interest were granted leases by the Secretary of the State for India in Council (British Crown) for a period of 50 years and were put in possession of their respective plots of land in the vicinity of Bandra. The said Lease Deeds, in Clause 2(h) thereof, *inter alia*, authorized construction of structures thereon and Clause 6 thereof provided for renewal of the lease on the terms and conditions mentioned

therein. The details of the leases executed by the Petitioners (in Writ Petition No.923 of 2014) are as follows:-

i. *P1-Zephyr CHSL- 19th September 1911, for a period of 50 years commencing from 1st January 1901*

ii. *P2 – Silver Cascade CHSL - 1st January 1909, for a period of 50 years commencing from 1st January 1901*

iii. *P3 - Sea Breeze CHSL - 11th September 1906 commencing from a period of 50 years commencing from 1st January 1901*

iv. *P4- Bandra Trishul Premises CHSL - 14th August 1936 for a period of 20 years commencing from 1st January 1931*

v. *P5 – West Wind CHSL - 13th August, 1918 for a period of 33 years commencing from 1st August, 1918*

vi. *P6 – Madhusarita Apartments CHSL - 11th October 1911 for a period of 50 years commencing from 1st May 1909*

vii. *P7 – Sea Springs Bandra Premises CHSL - 27th August 1924 & 13th April 1929 for a term of 50 years and 22 years respectively commencing from 1st August 1924 and 1st August 1929*

viii. *P8 - Le Papeyon CHSL - 26th July 1912 for a period of 50 years commencing from 1st January 1901*

ix. *P9 – Bandstand CHSL - 17th September 1935 for a period of 30 years commencing from 1st January 1921*

x. *P10 – Mr.Mohamed Aakif Obedulla Ebrahim Habib - 22nd September 1906, for a period of 50 years commencing from 1st January 1901*

xi. *P11 – Mr.Ikbal Nathani - 15th August 1906 for a period of 50 years commencing from 1st January 1901*

xii. *P12 – Mr.Taher A. Natalwalla - 1st May 1903 for a period of 50 years commencing from 1st January 1901*

10. By the efflux of time, all the aforementioned leases expired, the details of which are as under:-

i. *P1 – Zephyr CHSL - 31st December 1950*

ii. *P2 – Silver Cascade CHSL - 31st December 1950*

iii. *P3 – Sea Breeze CHSL - 31st December 1950*

iv. *P4 – Bandra Trishul Premises CHSL - 31st December 1950*

v. *P5- West Wind CHSL - 31st July 1951*

vi. *P6 – Madhusarita Apartments CHSL - 30th April 1959*

vii. *P7 – Sea Springs Bandra Premises CHSL - 31st August 1950 & 31st July 1974*

viii. *P8 – Le Papeyon CHSL - 31st December 1950*

ix. *P9 - Bandstand CHSL - 31st December 1950*

x. *P10 – Mr.Mohamed Aakif Obedulla Ebrahim Habib - 31st December 1950*

xi. *P11 – Mr.Ikbal Nathani - 31st December 1950*

xii. *P12 – Mr.Taher A. Natalwalla - 31st December 1950*

11. It is the case of the Petitioners that the Respondents, to promote and encourage building activities in the vicinity of Bandra, on 21st November 1957, came out with Government Resolution No.

LAND.4857/162146-A-I, directing the Collector to grant permission and to renew the earlier leases.

12. Pursuant to the aforesaid Government Resolution dated 21st November 1957, on 3rd January 1975 the Government of Maharashtra executed lease deeds in favour of the respective occupiers for a term of 30 years commencing from 1st January 1951, and on the terms and conditions mentioned therein. The renewed leases stipulated that from 1st January 1981, the yearly rent would be determined by the State Government, to be paid in advance without any deduction whatsoever on 1st January of each succeeding year. The lessees of the land also constructed structures and buildings on the Leasehold land and subsequently, with the consent of the Collector, Bandra, re-developed the said land by construction of flats which were sold to the various flat purchasers. The flat purchasers of such re-developed Leasehold land are in quiet, peaceful and continued possession of their respective flats and have registered Co-operative Housing Societies as required under law read with the provisions of the *Maharashtra Ownership of Flat Act, 1963*.

13. All the leases that were renewed pursuant to the Government Resolution dated 21st November 1957, and which were for a period of 30 years, expired on 31st December 1980. Accordingly, the Government of Maharashtra, vide its Government Resolution dated 14th March 1986 ("***the 1986 GR***"), decided that the lease for 48 plots of land at Bandra Bandstand should be extended from 1st January 1981 to 31st December 1990 and the revised lease rent for the extended period for all the plots of land, except Retreat House No.119, should be as follows:-

(a) Land used for residential purpose – 25 times the previous rent prevailing prior to 1st January 1981;

(b) Land used for commercial purpose – 50 times the previous rent prevailing prior to 1st January 1981.

14. The occupiers of these Leasehold lands, including the Petitioners, being aggrieved by the aforesaid *1986 GR*, filed various Writ Petitions in this Court to challenge the action of the Respondents. These Writ Petitions were disposed of by a Division Bench of this Court vide its judgment and order 23rd April 1992 and 24th April 1992. By the said judgment and order, the Division Bench set aside the *1986 GR*. This judgment of the Division Bench was rendered in the case of ***Ratti Palonji Kapadia & Anr V/S State of Maharashtra & Ors*** **[(1992) Mh. LJ 1356]**. Mr. Dada, the learned senior counsel appearing

on behalf of the Petitioners, has heavily relied upon this decision to assail the *2006, 2012* and the *2018 GR*s. We shall deal with the decision/judgment rendered in ***Ratti Palonji Kapadia (supra)*** a little later.

15. Since the *1986 GR* was set aside by the Division Bench of this Court in ***Ratti Palonji Kapadia***, the Government of Maharashtra, on 5th October 1999, came out with a new Government Resolution (***"the 1999 GR"***) in respect of renewal of Leasehold land on the basis of the value of the land on the date of the expiry of the lease. This *1999 GR* was also challenged by the Petitioners and others by filing Writ Petition No.711 of 2001 and other connected matters. In the said Writ Petitions, initially an order dated 4th May 2001 was passed by a Division Bench of this Court granting an interim stay on the demand notices issued pursuant to the *1999 GR* subject to the Petitioners therein paying lease rent at the rate equivalent to 50% of the lease rent demanded for the period 1980 to 1998. It is the case of the Petitioners that pursuant to this order, the Petitioners have deposited the necessary lease rent with the office of the Collector, Bombay Suburban District.

16. Finally, the Government decided to withdraw the *1999 GR* and, on 24th August 2004, informed the Court accordingly. Hence, on 25th August 2004, a Division Bench of this Court, disposed of Writ Petition No.711 of 2001 (and other connected Writ Petitions) making it clear that valuation with regard to fixation of the value of the Leasehold land shall be done by the State of Maharashtra in accordance with law, as laid down by the Hon'ble Supreme Court of India and this Court including the relevant provisions of the applicable law. Thereafter, the occupiers, including the Petitioners, continued to be in possession of their respective Leasehold plots/lands and the concerned Collector, from time to time, continued to collect rent at the rates that were fixed when the leases were renewed for 30 years from 1951 to 1981.

17. Subsequently, on 29th May 2006 (the *2006 GR*) the Government of Maharashtra passed a Resolution which adopted the *"Annual Statement of Rates"* (i.e. *Ready Reckoner* Rate) as the basis for determination of value of Government lands. We must mention here that this *2006 GR* was originally not challenged when Writ Petition No.923 of 2014 was filed. The challenge to the *2006 GR* was added by way of amendment subsequent to the filing of the affidavit in reply by the

Respondents placing reliance on the said GR for computation of lease rent.

18. Thereafter, Respondent No.1 passed another Government Resolution dated 12th December 2012 (the *2012 GR*) resolving that the lease granted to the occupiers are to be renewed and the revised lease rent is to be fixed based on the value of the land on the terms and in the manner mentioned in the said Resolution. The said *2012 GR* also gave an opportunity to the occupiers to convert their Leasehold land to Occupancy Class-II land subject to certain payments and in the manner provided therein. To put it in a nutshell, for renewal of the lease, the revised lease rent was calculated at 2% of 25% of the value of the land for residential purpose; 4% of 25% of the value of the land for Industrial purpose; 5% of 25% of the value of the land for Commercial purpose; and 5% of 25% of the value of the land for mixed usages, namely, for residential and commercial purpose, respectively. The *2012 GR* also provided that while calculating the lease rent for educational, social, cultural, medical/hospital [charitable purposes], would be the same as for residential purposes. This *2012 GR* also stated that where all the leases that expired prior to or on 31st December 2011, the lease rent would be recovered at the old rate till 31st December 2011 and the said leases

shall be treated as deemed to be renewed till 31st December 2011. The said *2012 GR* further stipulated that from 1st January 2012 the said leases shall be renewed for the period of 30 years but there would be a revision of lease rent every 5 years. This revision would be based on the value of the land on the date of the revision and the revised lease rent would be calculated accordingly. In other words, even though the lease was to be renewed for 30 years, the lease rent would be revised taking into consideration the valuation of the land on 1st January 2017, 1st January 2022, 1st January 2027 and so on.

19. Pursuant to the *2012 GR*, Respondent No.2 issued notices dated 30th March 2013 to the Petitioners and other occupiers of other Leasehold lands to either exercise their option to convert their Leasehold land into the Occupancy Class-II land on payments mentioned therein on or before 31st May 2013, or in the alternative, to have their lease renewed for 30 years with effect from 1st January 2012 on payments of the amounts mentioned in the said notice. It appears that after the issuance of the said notice, the Petitioners, on 20th May 2013, wrote a letter to Respondent No.2 requesting for an extension of 3 months from the date of the letter and also requested for a personal hearing in that regard. This request was rejected by Respondent No.2 vide his letter dated 20th May 2013.

Thereafter, there was some correspondence between the Petitioners and the Respondents which is not really germane for deciding the challenge to the *2006, 2012* and *2018 GR*s. Suffice to state that this correspondence did not resolve the situation to the satisfaction of the Petitioners and hence they have approached this Court by filing the above Writ Petition (Writ Petition No.923 of 2014) on 25th March 2014.

20. In the above Writ Petition, Respondent Nos.1 and 2 filed a common reply and sought to justify the *2012 GR*. It is the case of the Petitioners that for the first time in the affidavit-in-reply, a reference was made to the *2006 GR* though no such reference was found in the *2012 GR*. Thereafter, the Petitioners filed their affidavit-in-rejoinder, and the Respondents also filed an additional affidavit dated 21st February 2018. Subsequently, during the pendency of the above Writ Petition, the Government came out with the *2018 GR*, which basically sought to modify the *2012 GR*. Put simply, in the *2018 GR* the methodology of calculating the lease rent for renewal of the leases remained the same, namely, the calculation of the lease rent would be on the basis of 25% of the value of the land. However, the *2018 GR* stipulated that in respect of lands given on lease in Mumbai City and Mumbai Suburban Districts for personal residential use as on the date of the said *2018 GR*, the lease rent

would be calculated at 1% of 25% of the value of the land as per the annual *Ready Reckoner,* provided the land/plot was 500 sq. mtrs. or lesser in area, or the land/plot was leased to Co-operative Housing Societies. In other words, in respect of Co-operative Housing Societies there was no stipulation of a maximum area, and the annual lease rent was to be calculated at the rate of 1% of 25% of the value of the land as per the annual *Ready Reckoner* (i.e. effectively 0.25% of the full value of the land). In respect of land given on lease to charitable institutions for the purposes of social, cultural, religious, orphanage and such other charitable purposes, the *2018 GR* stipulated that the annual lease rent was to be charged at 0.5% of 25% of the value of the land calculated as per the annual *Ready Reckoner* (i.e. effectively 0.125% of the full value of the land). It was clarified that the lands leased for educational and medical purposes would not be included in this category.

21. Since the aforesaid *2018 GR* came about after the Writ Petition was filed, the Petitioners amended the Writ Petition on 13th July 2018 and included the challenge to the *2018 GR* as well. An affidavit-in-reply was thereafter filed on 8th August 2018 to the amended Petition and a rejoinder thereto was also filed by the Petitioners on 19th October 2018. Thereafter, the Writ Petition was again amended on 15th January 2019 to

challenge the *2006 GR,* to which a reply and a rejoinder was filed by the Respondents and the Petitioners respectively.

22. It is also important to note that after the *2018 GR*, the Government came out with another Resolution/Notification dated 8th March 2019 (for short the ***"2019 GR"***) which allowed for conversion of Government Leasehold/Occupancy Class-II lands, to Occupancy Class-I lands, on the terms and conditions more particularly mentioned in the said *2019 GR*. We have stated this only for the sake of completeness as the said *2019 GR* is not under challenge in any of the above Writ Petitions. Under the *2019 GR*, any holder of land on Occupancy Class-II or Leasehold basis, was allowed to make an application for converting their land to Occupancy Class-I [viz. basically freehold] as more particularly set out in the said GR. This application was to be made within 3 years from the date of the aforesaid *2019 GR*. This period of 3 years was thereafter extended to 5 years [pursuant to a Government Resolution dated 27th March 2023] from the date of the *2019 GR*. In other words, any application for conversion of land from Occupancy Class-II or Leasehold basis to Occupancy Class – I, was to be made on or before 7th March 2024.

23. Since time was running out for the Petitioners, many of the Petitioners have, without prejudice to the pendency of these Writ Petitions, applied for conversion of their land from Leasehold to Occupancy Class – I. Taking this into consideration, on 1st March 2024, we had passed an order that any applications made by the Petitioners for conversion can be processed by the Government but no demand shall be raised till this judgement is pronounced. We had also made it clear that this order shall enure only to the benefit of the Petitioners before us who have applied for conversion of their land before 7th March 2024 and no other party.

SUBMISSIONS ON BEHALF OF THE PETITIONERS:

24. In this factual backdrop, Mr. Dada, the learned senior counsel appearing on behalf of the Petitioners [in WP 923/2014], framed following propositions for our consideration:-

(i) The impugned Government Resolutions, namely, the *2006, 2012 and 2018 GR*s not only propose to increase the lease rent in an extortionate and an exorbitant fashion but are contrary to the judgment and orders in the matter of ***Ratti Pallonji V/S State of Maharashtra (1992 Mh.L.J. 1356)*** and in the case of ***Asuda Kutir Co-operative Housing Society Ltd & Ors. V/S State of Maharashtra & Ors.***

(Writ Petition No.711 of 2001 decided on 25th August 2004).

(ii) The *2006, 2012 and 2018 GR*s are clearly illegal as they seek to increase the lease rent in an exorbitant, extortionate, and an unreasonable fashion, and which is contrary to public policy. In other words, this increase is manifestly arbitrary which clearly violates the mandate of Article 14 of the Constitution of India.

(iii) Despite the directions of this Court [in ***Asuda Kutir Co-operative Housing Society Ltd & Ors. (supra)***] to the Respondent State to give an opportunity of being heard to the affected parties, the Respondents have not complied with the same and have violated the principles of natural justice.

(iv) In any event, the *2006, 2012 and 2018 GR*s are in violation of the agreed contractual terms under the Original Lease Deed, and are therefore, arbitrary, unfair, unreasonable and liable to be set aside.

(v) The policy in the *2006, 2012 and 2018 GR*s is to fix a hypothetical market value of the plots of the Petitioners based on the *"Annual Statement of Rates"* (also known as the *Ready Reckoner* Rate). The basis adopted is unacceptable and untenable in law because the lease rent cannot be fixed on the basis of the market value as

held in the judgments of ***Ratti Palonji Kapadia (supra)*** and ***Jamshed Hormusji Wadia V/S Board of Trustees, Port of Mumbai (AIR 2004 SC 1815)***. Further, in any event, the impugned GRs and the purported calculations made on the basis thereof adopt a uniform rate/ same value for all the plots of the Petitioners although differently situated. In other words, unequals are treated as equals, and this would be manifestly arbitrary and violative of Article 14 of the Constitution of India.

(vi) The impugned GRs are contrary to the underlying public policy of the *Maharashtra Rent Control Act, 1999*. The Government, being exempted from the provisions of the *Maharashtra Rent Control Act 1999,* is not expected to act like a private landlord and is required to act reasonably and in a non-arbitrary manner as mandated under Article 14 of the Constitution. Since the right to life under Article 21 of the Constitution of India encompasses the right to shelter, the impugned GRs have arbitrarily resolved to impose an exorbitant, extortionate and unreasonable lease rent which would lead to the dispossession of the Petitioners who cannot afford the same. Consequently, the impugned GRs are also violative of Article 21 read with Article 19(1)(e) of the Constitution.

(vii) The impugned GRs completely ignore the Social Welfare legislations such as the *Maharashtra Housing and Area Development Act, 1976* and the *Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act 1971* which intend to further the purpose of Article 21 to provide affordable housing.

25. In support of these propositions, Mr. Dada firstly submitted that the Impugned GRs, apart from calculating rent at exorbitant, extortionate and unreasonable rates, and in contravention of public policy, also violate the judgment of this Court in ***Ratti Palonji Kapadia (supra)*** and the Hon'ble Apex Court in ***Jamshed Hormusji Wadia (supra)***. He submitted that the Respondents are the State, and under the Constitution of India, are required to act fairly having regard to the principles of justice, equity and fair play. He submitted that the Respondents are bound by the mandate of Article 14, and it is an undeniable position of law that State actions affecting the fundamental rights of citizens must be tested on the touchstone of reasonableness. In other words, the validity of any law coming under the scrutiny of Article 21, must be tested also with reference to Articles 14 and 19 of the Constitution.

26. According to Mr. Dada, the impugned GRs and the impugned Notice issued thereunder, are violative of the Constitutional and fundamental rights of the Petitioners. The extortionate demand of the Respondents is causing grave prejudice to the Petitioners in as much as they seek to increase the lease rent by 400 to 1900 times of the existing lease rent payable by the Petitioners. According to Mr. Dada, nearly half of the members of the Petitioners' societies [aggregating to around 305 members] are senior citizens who are either retired government servants or were self-employed persons, who at present, have no source of income. Mr. Dada also contended that the policy of fixation of the lease rent, apart from being extortionate and unreasonable, defies all settled principles and such policies are liable to be set aside in the interest of justice, equity, fair play, and good conscience.

27. Mr. Dada then submitted that even in contractual matters, the State cannot act arbitrarily and must act in a fair and reasonable manner. Mr. Dada, in support of the aforesaid proposition, relied upon a decision of the Hon'ble Supreme Court in the case of ***M/s Dwarkadas Marfatia & Sons V/S Board of Trustees, Bombay Port [(1989) 3 SCC 293]***. Mr. Dada submitted that in the facts of ***M/s Dwarkadas Marfatia*** **(supra)** also, the legality and validity of the increase in lease

rent by the Bombay Port Trust was in issue before the Hon'ble Supreme Court. Mr. Dada submitted that the appellant-tenant (before the Hon'ble Supreme Court) pleaded that the Bombay Port Trust's action of eviction was not permissible under the provisions of the *Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947*, and was arbitrary, unreasonable and contrary to the principles laid down under Article 14 of the Constitution. Mr. Dada submitted that after hearing the parties, the Hon'ble Supreme Court held that the Bombay Port Trust was a "State" within the meaning of Article 12 of the Constitution and that every action by the Bombay Port Trust was subject to Article 14 and must be in public interest. He submitted that the Hon'ble Supreme Court opined that while the State was exempted from the Rent Act, the same was on the ground that it is assumed that the State shall not act as a private landlord and its actions must be informed by reason and in public interest. Thus, it was held that although the State is not hidebound by the requirements of the Rent Act, they must act for public benefit and government policies or actions even in contractual matters must satisfy the test of reasonableness. The State should not be actuated by a profit-making motive by unduly enhancing rent like private landlords, was the submission.

28. Mr. Dada then submitted that this is again reiterated by the Hon'ble Supreme Court in the case of ***Jamshed Hormusji Wadia (supra).*** He submitted that though the Hon'ble Supreme Court held that the State having been exempted from the Rent Control Legislations could not be indirectly, or by analogy, bound by the very law from which it was exempt, does not mean that the State can do as it pleases. It is still bound by the principles of Article 14. In other words, the State ought to ensure fair competition and non-discrimination in its actions in the field of contracts and while it could augment its resources, its object should be to subserve the public good by resorting to fair and reasonable methods. Mr. Dada submitted that though the State is not obligated to necessarily be benevolent and a good charitable Samaritan, it cannot be seen to be indulging in rack-renting, profiteering and indulging in whimsical or unreasonable evictions or bargains. To put it differently, Mr. Dada submitted that it is quite clear that the State, even while acting in its capacity as a landlord, is still bound by its constitutional obligations and governed by the principles of reasonableness under Article 14 of the Constitution.

29. Mr. Dada also relied upon a decision of the Hon'ble Supreme Court in the case of ***Shrilekha Vidyarthi V/S State of U.P. (AIR***

1991 SC 537) to contend that merely because a contract is made, the personality of the State is not cast off and the State is regulated in its conduct in all spheres by the requirements of Article 14. Mr. Dada submitted that this decision clearly holds that it is not as if Article 14 and contractual obligations are alien concepts which cannot co-exist. In other words, Mr. Dada submitted that the mere fact that the disputes fall within the domain of the State's contractual obligations, would not relieve it of its obligations to comply with the basic requirements of Article 14.

30. Mr. Dada submitted that if the impugned GRs are to be tested on this touchstone, then it is clear that they are wholly unreasonable and manifestly arbitrary as they seek to increase the rent payable by the Petitioners 400 to 1900 times from the existing lease rent. In other words, this increase is actuated by nothing else but a profit-making motive by acting like a private landlord. This, the State cannot do as laid down the Hon'ble Supreme Court in the decisions referred to above.

31. To bolster and justify the aforesaid arguments, Mr. Dada submitted that in the past also, the State, namely, the Respondents herein, sought to increase the lease rent by an exorbitant amount and

which was struck down by this Court in the case of ***Ratti Palonji Kapadia (supra)***. He submitted that in 1986 the Government came out with a Resolution for increasing the lease rent of the very same properties of the present Petitioners by 25 times of the previous rent [prevailing prior to 1st January 1981]. This *1986 GR* did not give any reason for the Government to formulate such a policy. When the said *1986 GR* was challenged before this Court by filing Writ Petitions, the State Government sought to justify the increase in lease rent by way of an affidavit. This Court, after a detailed hearing, set aside the said *1986 GR* and held that the proposed increase in the lease rent is unjust and fixation of lease rent cannot be based on a hypothetical market value. Mr. Dada submitted that this Court in ***Ratti Palonji Kapadia (supra)*** further held that the exemption of the State from the purview of Rent Control Legislations is on the basis that the Government is not actuated by a profit-making motive and/or act like a private landlord, but instead must comply with the mandate of Article 14 of the Constitution. Mr. Dada submitted that Clause 6 of the original Lease Deed was also construed by this Court, and it held that the said Clause did not empower the State to compute or charge lease rent on the basis of market value. Mr. Dada placed heavy reliance on this decision and submitted that the same applies on all fours to the facts of the present case. He submitted that once

this decision clearly states that the lease rent cannot be based and/or computed by taking into consideration the hypothetical market value, then, the impugned GRs fall foul of this very judgment and ought to be quashed and set aside.

32. As far as the applicability of the *Maharashtra Rent Control Act, 1999* is concerned, Mr. Dada fairly submitted that the Respondents being the State are exempt from the provisions of the Rent Act. He submitted that the object of the Rent Act is to control the rent and repairs of certain premises, and for encouraging the construction of new houses by assuring a fair return on the investments by the landlord. It is in furtherance of this object that there are certain provisions within the Rent Act which regulate the rent payable and allows for the Court to fix the standard rent at such amount as the Court may deem just. He submitted that even though under Section 3 of the Rent Act the State is exempt from the provisions thereof, this exemption is granted by the legislature because the State is not expected to be actuated by a profit-making motive and/or act like a private landlord but should be guided by the principles of Article 14 of the Constitution. Mr. Dada submitted that though the Rent Act may not be strictly applicable, the challenge to the impugned GRs is on the basis that the policy underlying the Rent Control Legislation is

completely ignored and the purported lease rent fixed is wholly illegal. He submitted that though the State/Government is exempt from the Rent Control Legislation, the principles underlying the same are applicable when the State acts as a landlord. In any event, Mr. Dada submitted that the State is bound to act in accordance with the mandate of the Constitution, and the exemption granted in respect of Rent Control Legislation does not exempt the State from being bound by the Constitution, especially whilst acting in its capacity as landlord. Thus, even if the State intends to increase the lease rent payable by the Petitioners [at the time of renewal of their respective leases], the same must be determined in a reasonable manner, and in accordance with the principles laid down in the Rent Control Legislation and Article 14 of the Constitution.

33. Mr. Dada submitted that this ties in with the Constitutional protection granted to citizens under Article 21 of the Constitution. Mr. Dada submitted that Article 21 read with Article 19(1)(e) encompasses the right to shelter. Thus, right to shelter forms part of the fundamental right spelt out in Article 21 of the Constitution and such a fundamental right cannot be taken away by the Respondents by imposing unreasonable

conditions and/or extortionate lease rent at the time of renewal of the leases granted in favour of the Petitioners.

34. Mr. Dada then submitted that by passing the impugned GRs, the Respondents have failed to comply with public policy and have opted to charge exorbitant and extortionate lease rent based on the hypothetical market value of the land. Mr. Dada submitted that the State Government, in furtherance of its public policy, has enacted several socio-welfare legislations to provide dignified shelter/affordable shelter to its citizens. In furtherance of this object, the Respondents have enacted the *Maharashtra Housing and Area Development Act, 1976* (**"MHAD Act, 1976"**) and the *Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971* (the **"Slum Act"**). In so far as the provisions of the MHAD Act, 1976 are concerned, it clearly shows that the said Act was brought into force to further the objectives of providing affordable housing; charge nominal rent; and ensure equitable distribution of ownership and control of houses for common good. As far as the Slum Act is concerned, Mr. Dada submitted that the Respondents' policy under the said Act is to rehouse and resettle the slum dwellers and in fact exempts the charging of any rent. According to Mr. Dada, under the guise of regulating grant of leases of Government lands in the manner that is

sought to be done by the impugned GRs, in fact runs counter to the public policy of the State Government and which policy finds statutory recognition under the provisions of the MHAD Act, 1976 and the Slum Act.

35. Without prejudice to the aforesaid arguments, Mr. Dada then submitted that the impugned GRs are even contrary to the clauses of the original Lease Deed. Mr. Dada submitted that Clause 2(a) of the original Lease Deed provides that the Lessee shall pay lease rent to the Lessor, at its option, either annually or in a lump sum at once. Mr. Dada submitted that despite this contractual provision, the impugned GRs provide for a revision in the lease rent every 5 years on the basis of the *Ready Reckoner* value of the property, namely, as on 1st January 2017, 1st January 2022 and so on. Considering this revision is to take place every 5 years, it would not be possible for the Petitioners to exercise their option to pay the lease rent in one lump sum for the entire lease period, and which is for 30 years. In other words, it would not be possible to ascertain the lump sum lease rent for the 30-year period as the same would keep changing every 5 years depending on the *Ready Reckoner* value of the property on the date of the so-called revision. Thus, Mr. Dada submitted that the provision for the revision/reset of the lease rent every 5 years

based on the *Ready Reckoner* value of the land of that particular year would be in contravention of the agreed contractual terms and would deprive the Petitioners of exercising their option of making payment of the entire lease rent in one lump sum as provided in the Lease Deed.

36. Apart from this, Mr. Dada submitted that the impugned GRs are also contrary to Clause 6 of the Lease Deed. He submitted that Clause 6 requires the fixation of lease rent [while renewing the lease] on the "general value of unimproved land" similarly situated and not with reference to the "special value of the land" by improvements effected by the Lessee. Mr. Dada submitted that by taking market value of the land into consideration for fixation of lease rent the "general value of unimproved land" is not the basis on which the lease rent is sought to be fixed. This is directly contrary to the provisions of Clause 6 of the original Lease Deed. Mr. Dada submitted that for this purpose reference is to be made only to the "general value of the unimproved land" and for that purpose reliance can be placed only on land. He submitted that if the value of the land is to be on the basis of the *Ready Reckoner* value, then, in any event the *Ready Reckoner* provides for computation of the market value on the basis of various developments and improvements to the land, which is contrary to the agreed terms of the original Lease Deed as

set out in Clause 6 thereof. In support of the aforesaid propositions, Mr. Dada relied upon the Black's Law Dictionary 10th Edition to state that unimproved land is raw land that has never been developed and lacks utilities or land that was formerly developed but now has been cleared of all buildings and structures. Once this is the case, the impugned GRs cannot stand and must be set aside, was the submission.

37. Lastly, Mr. Dada submitted that in the facts of the present case, unequals are being treated equally and which is violative of the mandate of Article 14 of the Constitution. Mr. Dada submitted that it is clear that each of the Petitioners being a Society or otherwise, are situate at different locations having various advantages and disadvantages owing to the circumferential situation of each land. Despite this, the impugned notices all dated 30th March 2013 require the Petitioners to opt for conversion of Leasehold land to Occupancy Class II at the rate and valuation mentioned in paragraph 2 of the impugned notices. The said impugned notices also gave an option for payment of lease rent at the rate based on the market value as per the *Ready Reckoner* Rate as stated in paragraph 2 of the impugned notices. Mr. Dada submitted that on a bare perusal of the impugned notices, it was clear that the State had adopted a uniform valuation rate for all the Leasehold lands. Hence all the lands

were treated equally though each land had its own advantages and disadvantages. This approach is plainly unacceptable, and the straight jacket policy adopted for treating all equal is contrary to the ratio of several judgments of the Hon'ble Supreme Court which have clearly held that equals cannot be treated unequally, and unequals cannot be treated as equals.

38. For all the aforesaid reasons, Mr. Dada submitted that the impugned GRs cannot stand and ought to be set aside. As far as the learned counsel appearing for the Petitioners in all the other Writ Petitions are concerned, they basically supported Mr. Dada in his submissions to impugn the aforesaid 3 Government Resolutions.

SUBMISSIONS ON BEHALF OF THE STATE:-

39. On the other hand, Dr. Saraf, the learned Advocate General appearing on behalf of the Respondents, submitted that there was no merit in the contentions canvassed by the Petitioners. He submitted that the relationship between the Petitioners and the State is governed by the Lease Deed and the provisions of the *Maharashtra Land Revenue Code, 1966* (for short the **"MLRC, 1966"**). He submitted that the provisions of the Code which are relevant are as under:-

(i) Section 2(11) – defines Government Lessees,

(ii) Section 2(19) – defines Land Revenue to include lease rent,

(iii) Section 2(40) – defines tenant to mean lessee,

(iv) Section 29 includes as a class of Occupancy Government Lessee,

(v) Section 38 gives the power to grant land on lease,

(vi) Section 39 obliges the occupant lessee to pay the amount fixed as per the terms of the lease,

(vii) Section 53 empowers the Government to evict a lessee for non-payment of rent and breach of terms of lease,

(viii) Section 295 deals with powers to grant leases of foreshore lands.

40. Dr. Saraf submitted that the Petitioners are bound by the terms of the lease and cannot assert a right contrary thereto including the right of renewal incorporated in Clause 6. According to him, as per Section 39 of the MLRC, 1966, the lessee is bound to abide by the terms of the lease and the Petitioner cannot seek to assert a right of renewal at a variance thereof. This apart, Dr. Saraf submitted that Section 3 of the *Government Grants Act, 1895* provides that nothing in the Transfer of Property Act, 1882 shall apply to grant or transfer of land or of any interest by the Government. Section 3 of the said Act provides that all provisions, restrictions, conditions and limitations contained in such grants shall be valid and take effect according to their tenor

notwithstanding any decree or direction of a Court or any rule of law, statute or enactment to the contrary. Dr. Saraf therefore submitted that the Petitioners cannot seek a renewal of the lease which is contrary to its terms.

41. As far as the fixation of lease rent based on the impugned GRs are concerned, Dr. Saraf submitted that the same is not only fair and reasonable but fully justified. In this regard, Dr. Saraf submitted that the when the leases of the Petitioners were renewed from 1951 to 1981 (for 30 years), the lease rent was fixed at 5% of the market value fixed in the year 1968. From 1981, since the leases expired, the Petitioners have been paying lease rent at the same rate. In fact, by the impugned GRs, the Petitioners have been permitted to pay the lease rent till 31st December 2011 at the old rate. In other words, despite the expiry of the lease in 1981, the Petitioners have been granted a deemed renewal till 31st December 2011 at the old rates i.e. the rates governing the lease for the period 1951 to 1981. For 30 years, the Petitioners have enjoyed the property with no increase in rent whatsoever.

42. Dr. Saraf submitted that now, whilst fixing the lease rent, the government has considered that there are sitting lessees on the plots of

land who have constructed structures thereon and therefore has considered only 25% of the value of the land (as reflected in the *Ready Reckoner*) as the basis of calculating the lease rent. Dr. Saraf submitted that taking into consideration Clause 6 of the original Lease Deed, whilst computing the lease rent, only the "general value of unimproved land" is taken into consideration and not the special value of the land on account of any improvements done by the lessee. Though initially, for renewal of the lease, the Government proposed to charge 2% of 25% of the value of the land (the *2012 GR*), subsequently, by the *2018 GR,* it has been reduced to 1% of 25% of the value of the land (i) in respect of plots of a certain size used for residential purposes, and (ii) for plots on which Co-operative Housing Societies are situated. In so far as the land being used for social, cultural, religious, orphanage and other charitable purposes are concerned, it is further reduced to 0.5% of 25% of the value of the land. He submitted that the rationale for fixation of lease rent on this basis is itself set out in the *2012 and 2018 GRs*.

43. Dr. Saraf was at pains to point out that for residential Co-operative Housing Societies (Petitioner Nos.1 to 9 in Writ Petition No.923 of 2014), the lease rent is effectively calculated at 0.25% of the full value of the land. Dr. Saraf submitted that this, by no stretch of the imagination,

can either be termed as extortionate, exorbitant or manifestly arbitrary. This is apart from the fact that the value of the land, when fixed on the basis of the *Ready Reckoner*, would inherently constitute a fair and just value, considering the process adopted to arrive at the valuation stipulated in the *Ready Reckoner*. Over and above this, Dr. Saraf submitted that the Government has also placed on record a communication dated 22nd March 2024 addressed by the Deputy Secretary of the Revenue and Forest Department, Government of Maharashtra wherein it is clearly specified that in case of some individual cases, if any special circumstances are made out, then the value of the land, pursuant to such procedure, can even be below the *Ready Reckoner* with the approval of the Government.

44. Dr. Saraf then submitted that the fixation of lease rent is in fact in accordance with the decision of this Court in ***Ratti Palonji Kapadia (supra)*** and on which heavy reliance was placed by the Petitioners. He submitted that the judgment of ***Ratti Palonji Kapadia (supra)*** does not in any way prohibit or restrict the Government from fixing the lease rent on the basis of the value of the land. The only stipulation is that the Government should act fairly and in a just manner and not like a private landlord whose motive would be to maximize profit.

45. Dr Saraf submitted that in fact when the leases of the Petitioners were renewed from 1951 to 1981, the Petitioners themselves executed a Lease Deed where the rent was fixed on the basis of 5% of the value of the entire land. This itself belies the contentions of the Petitioners that the lease rent cannot be fixed by taking recourse to the value of the land on which the structures now stand. In fact, the formula arrived at now by the *2012 GR* read with the *2018 GR* is a miniscule fraction of what the Petitioners had agreed to pay when their leases were renewed for the period 1951 to 1981. This itself goes to show that the fixation of lease rent as contemplated under the *2012 GR* read with the *2018 GR* is fair and reasonable and certainly cannot be termed as extortionate, exorbitant or manifestly arbitrary.

46. To substantiate this argument, Dr. Saraf relied upon a decision of this Court in the case of ***Shrimati Jaikumari Amarbahadursingh and Ors. V/S State of Maharashtra (Writ Petition No.4433 of 1999 decided on 30th September 2008)*** to contend that even where the Government had proposed renewal of leases in relation to *Nazul* lands (Government land leased to non-State parties) with a clause that the annual lease rent would be equal to the prime

lending rate on 20% of the existing market value of the land, the same was termed to be reasonable and not exorbitant or extortionate. Dr. Saraf submitted that the Court noticed that the formula in that case was necessitated in larger public interest both for deriving a realistic and fair returns on Government property and also to bring in uniformity and simplification of procedure for computation and levy of lease rent. He submitted that the facts of the present case are no different. In fact, in the facts of the present case, the lease rent for the Petitioner Societies is being fixed at only 1% of 25% of the value of the land. Once this is the case, it hardly lies in the mouth of the Petitioners to complain that the fixation of lease rent is either exorbitant, extortionate or manifestly arbitrary.

47. Dr. Saraf then submitted that no doubt the Government must act in a fair and reasonable manner. But this does not mean that the annual lease rent should be so structured that in the perception of the lessee the same is affordable to him, irrespective of the fact that such low rent may not subsume the inflation cost, cost of administration and escalation impact. He submitted that in fact this would militate against the larger public interest. This is apart from the fact that doctrine of fairness and reasonableness cannot be invoked to unilaterally modify and alter the terms of a contract and to create an obligation upon the State

which is not in the contract. He submitted that in the guise of the State having to act fairly and justly, the Petitioners cannot seek a one-sided modification of the express terms of the contract. He submitted that this has been clearly held by the Hon'ble Supreme Court in the case of ***Assistant Excise Commissioner V/S Isaac Peter and Ors. [(1994) 4 SCC 104]***. Dr. Saraf submitted that what is important to note in this decision is that the Hon'ble Supreme Court took note of its own judgment in ***Dwarkadas Marfatia*** relied upon by the Petitioners in the present case. Dr. Saraf submitted that before the Hon'ble Supreme Court what was sought to be argued was that though the statutory corporation had a right to terminate the agreement without assigning any reasons, the same was unconscionable and the statutory corporation should exercise such a right in a fair and reasonable manner. The Hon'ble Supreme Court held that where contracts are freely entered, the doctrine of fairness and reasonableness cannot be relied upon to alter or add to the terms and conditions of the contract and the parties are bound by the terms thereof. He therefore submitted that once this is the case, it can hardly be stated that the increase in the lease rent is neither fair nor reasonable.

48. As far as the reliance placed by the Petitioners on the decision in the case of ***Ratti Palonji Kapadia (supra)*** is concerned, Dr. Saraf submitted that the reliance placed thereon is wholly misplaced. He submitted that in ***Ratti Palonji Kapadia (supra)*** the Government Resolution was issued for revising the lease rent (at the time of renewal) by 25 times the lease rent which was paid prior to 1st January 1981. Further, the leases were renewed only for a period of 10 years. The Division Bench in ***Ratti Palonji Kapadia (supra)*** noted (in paragraph 10) that the Government Resolution does not set out any reasons for the increase nor does it set out the basis on which the increase in lease rent has been worked out. In answer to this, the Government sought to justify the lease rent fixed by stating that the market value of the property at the relevant time was much higher, and that as per the prevailing policy of the Government, lease rent was being fixed at 8% of the market value of the land in case of fresh leases of open plots of land. The Court was dealing with such a situation and such a justification. In other words, the Government was supporting the fixation of lease rent which was without any reason/basis, by comparing it with lease rent fixed at 8% of the full market value of the lands for a fresh lease. It was in this context that in ***Ratti Palonji Kapadia (supra)*** this Court observed that the Government cannot act as a private landlord, and though

exempted from the provisions of the Rent Act, must act fairly and reasonably. He submitted that what is important to note is that this Court in ***Ratti Palonji Kapadia (supra)*** in fact opined that even if rents were to be fixed on the market value of the land, the said exercise has to be done fairly and reasonably and not to charge an exorbitant rent. Therefore, this judgement stipulates that if the State were to rely on market value of the land, the State should ensure the lease rent fixed is fair and reasonable. Therefore, the judgment in ***Ratti Palonji Kapadia (supra)*** cannot be read to mean that under no circumstances can the lease rent be fixed by the Government by taking into consideration the value of the land. Reading the judgment in such a fashion would in fact be contrary to the express terms of Clause 6 of the original Lease Deed, was the submission.

49. Dr. Saraf submitted that in fact whilst issuing the impugned GRs, the observations of this Court in ***Ratti Palonji Kapadia (supra)*** have been duly considered and taken into account. Whilst interpreting Clause 6 of the Lease Deed, this Court [in ***Ratti Palonji Kapadia (supra)***] observed that it should be considered that the land was already leased to the lessees, and it was not a case of an open plot being granted for lease for the first time. It is taking this into consideration that the

impugned GRs have considered only 25% of the value of the open land as the base for fixing the lease rent. This is also on the basis that while awarding compensation (specially in acquisition matters) the Courts have consistently held that the entitlement of the lessor should be 25% and the entitlement of the lessee would be 75% of the value of the land. Further, in ***Ratti Palonji Kapadia (supra)***, it was held that the lease rent could not have been increased with retrospective effect. In compliance with the said observations, under the *2012 GR*, the expired leases of the Petitioners have been treated to be deemed as renewed till 31st December 2011 and the lease rent is proposed to be increased only from the year of issuance of the *2012 GR*. He therefore submitted that the reliance placed by the Petitioners on ***Ratti Palonji Kapadia (supra)*** for impugning the *2006, 2012 and 2018 GRs* is wholly misplaced.

50. Dr. Saraf then submitted that equally, placing reliance on the provisions of the Rent Act are also wholly misplaced. Dr. Saraf submitted that the Petitioners seek to place reliance on the provisions of the *Maharashtra Rent Control Act, 1999* to contend that fixation of lease rent at the time of renewal should be governed by and/or in any case guided by the principles of the Rent Act. As far as this argument is concerned, Dr. Saraf submitted that the Rent Act is not applicable to the Government

as the Government is excluded from the purview of the Rent Act. He submitted that in paragraph 19 in the case of ***Jamshed Wadia (supra)***, the Hon'ble Supreme Court has clearly held that the principles of the Rent Act cannot be invoked to test the actions of the State which is not governed by the Rent Control Legislation. The only condition that is put on the State is that it must act fairly and in a reasonable manner. Dr. Saraf submitted that, in any case, pursuant to the amendment to the *Maharashtra Rent Control Act, 1999* open land is excluded from the ambit of the Rent Act completely. This is clear from the definition of the word "premises" in Section 7(9) of the Rent Act which does not include an open plot of land. In fact, a judgment of this Court in the case of ***Radhakisan Ramnath Malpani V/S Rajeh Dattatray Mahajan [2013 (4) Mh.L.J. 266]***, has clearly held that leases in respect of open land are not governed by the provisions of the Rent Act. This has again been reiterated in a recent decision of this Court in the case of ***Baburao Tukaram Patil V/S Suresh Bhikaji Jadhav [Second Appeal No.69 of 2016 decided on 20th March 2024]***. In these circumstances, Dr. Saraf submitted that to insist upon the Government to fix the lease rent on the basis of the Rent Control Legislation is wholly baseless. He submitted that once the Government is excluded from the

provisions of the Rent Act the same cannot be made applicable to it by this indirect method.

51. Dr. Saraf then sought to justify the actions of the Government to rely upon the *Ready Reckoner* as the basis for arriving at the value of the land. In this regard, Dr. Saraf submitted that in 1995 the *Bombay Stamp (Determination of True Market Value of Property) Rules, 1995* were framed. The said Rules provide for preparation of the "Annual Statement of Rates" of immoveable property annually and set out a detailed procedure for fixation of the average annual rate of lands and buildings (commonly known as the *Ready Reckoner*). He submitted that the same is prepared by an expert body of persons after gathering information from all sources including the Registration Office as regards the registration of documents, various acquisition awards, tenders/actions of government/semi-government bodies, rates obtained by local enquiry, and property exhibitions. Rules 4 and 5 of these Rules are relevant which set out the detailed procedure for preparation of the "Annual Statement of Rates" (*Ready Reckoner*). A perusal of the *Ready Reckoner* discloses a great deal of the detailing whereby the rates are varied even street wise. Even within a particular road, at times, different rates are provided for different areas depending on the peculiarity of the

same. Dr. Saraf submitted that in the affidavits dated 8th August 2018, 15th February 2019 and 9th January 2020 filed on behalf of the State, the procedure for preparation of the *Ready Reckoner* is set out. The details are also provided of how the values in respect of these particular lands were arrived at in the *Ready Reckoner*. When one peruses all this material, it was the submission of Dr. Saraf, that the *Ready Reckoner* is neither an arbitrary nor a whimsical implemantation, but a very carefully carried out statutory scientific exercise involving due application of mind and applying well settled principles of valuation. It therefore does not lie in the mouth of the Petitioners to complain that the value of the land on which the Petitioners have their buildings, cannot be determined on the basis of the *Ready Reckoner,* especially when there is no challenge to the *Ready Reckoner* in the present proceedings. This is apart from the fact that the Petitioners have not brought forth a single valuation report or any other instance to demonstrate that the valuation of these properties is lesser than the value arrived at as per the *Ready Reckoner,* was the submission. This, according to Dr. Saraf, itself demonstrates that the Petitioners have no material whatsoever to dispute the valuation arrived at on the basis of the *Ready Reckoner*. He submitted that the use of the *Ready Reckoner* as the basis of valuation in fact ensures applicability of

a uniform methodology to all plots and excludes any possibility of arbitrariness and discrimination.

52. Dr. Saraf submitted that there is yet another reason why the Petitioners cannot complain about the valuation as per the *Ready Reckoner*. This is for the simple reason that judicial notice has been taken of the fact that the rates mentioned in the *Ready Reckoner* are lower than the market rates, and in any case, are seldom higher than the market rates. In this regard, Dr. Saraf relied upon the judgment of the Hon'ble Supreme Court in the case of ***State of Maharashtra V/S Super Max International Pvt Ltd [2009 (9) SCC 772]*** and a decision of this Court in the case of ***Shri Chandrakant V/S Dev Shakti Dal Mills [Writ Petition No.7703 of 2018 decided on 25th August 2022]***. He, therefore, submitted that there is absolutely no merit in the contention of the Petitioner that the lease rent cannot be fixed by taking into consideration the *Ready Reckoner* valuation of the plots of lands belonging to the Petitioners.

53. The last argument canvassed by Dr. Saraf was regarding the challenge laid by the Petitioners to the Clause in the *2012 GR* mandating revision of the lease rent every 5 years on the basis of the value of the land

on the date of revision. In this regard, Dr. Saraf submitted that Clause B(1)(d) of the *2012 GR* contemplates revision of lease rent every 5 years. While doing such a revision, the value of the land [on the date of the revision] is to be taken into account and the lease rent is thereafter fixed as per the Clauses B(1)(a), B(1)(b) and B(1)(c) thereof. Thus, every 5 years, there is a revision of lease rent on the basis of the same formula but the value as on date of the revision is contemplated by the *2012 GR*. Dr. Saraf submitted that the Lease Deed contemplates the charging of the lease rent on the basis of the value of the property. The value of a property can fluctuate over a period of time and it is only fair and just that the lease rent be assessed at regular intervals based on the value of the property. The revision ensures that the lease rent is not completely disproportionate to the value of the property. Dr. Saraf submitted that there is no bar in the Lease Deed from doing so. The Lease Deed requires that the lease rent be fixed on the basis of the value of the property and does not in any way provide that the lease rent should be stagnant throughout the period of the lease. So long as the basis of fixation of the lease rent is the same for the entire period of the lease, the mere recalculation of the same every 5 years does not in any manner alter the basis for charging the lease rent. There is no embargo in the Lease Deed from doing so, was the submission of Dr. Saraf. To bolster this argument,

Dr. Saraf submitted that in fact such a revision can very well enure to the benefit of lessee if the price of the land for any reason falls. If such a revision is not done the lessee would have to continue to pay the lease rent which is already fixed whereas if such revision is permitted, the lease rent of the lessee would even stand reduced. Dr. Saraf therefore submitted that even the challenge to the revision of lease rent every 5 years is misplaced and ought not to be taken into consideration by us. For all the aforesaid reasons, Dr. Saraf submitted that there was no merit in the above Writ Petitions challenging the impugned Government Resolutions and the same ought to be dismissed, in so far as the challenge to the said GRs are concerned.

FINDINGS:-

54. We have heard learned counsel for the parties at great length. We have also perused the papers and proceedings in the above Writ Petitions. Though the parties have made detailed submissions set out by us above, the crux of the arguments can be narrowed down into 3 questions as under:-

[A] Can the Government fix the lease rent for lands leased by the Government to the Petitioners by

taking into account the value of the land [as per the *Ready Reckoner*]?

[B] Even if the answer to the **question [A]** above is in the affirmative, then whether the increase in lease rent as stipulated in the *2006, 2012 and the 2018 GRs* [the impugned GRs] is extortionate, exorbitant and/or manifestly arbitrary?

[C] Another facet which needs to be considered is that even if **questions [A] and [B]** above are answered against the Petitioners and in favour of the Government, whether the Government can revise/reset the lease rent every 5 years, depending on the value of the land on the date of such revision?

55. If the answer to **question [A]** above is in the negative [i.e. against the Government], the *2006, 2012 and the 2018 GRs* [the impugned GRs] will have to be struck down. If for any reason **question [A]** is answered in the affirmative [i.e. in favour of the Government] but the answer to **question [B]** is in the affirmative [i.e. in favour of the Petitioners], then also the impugned *2012 and 2018 GR*s would have to go. However, if **question [A]** is answered in the affirmative [i.e. in favour of the Government] and **question [B]** is answered in the negative [i.e. against the Petitioners, and in favour of the Government], and

question [C] is answered in the negative [i.e. against the Government], then only that part of the *2012 GR* would have to be struck down which resets the fixation of lease rent every 5 years.

56. Before we deal with the three questions formulated by us, it would be prudent to mention that though the State or its instrumentalities are exempt from the provisions of the Rent Control Legislations, they are required to act in a reasonable manner having regard to the principles of justice, equity and fair play. In other words, they would be bound by the mandate of Article 14. It is also equally well settled that even in contractual matters, the State cannot act arbitrarily and must act in a fair and reasonable manner. Merely because a contract is entered into with the State, the personality of the State is not cast off and the State is regulated in its conduct in all spheres by the requirements of Article 14. Where the State is the landlord, it is exempt from the Rent Control Legislations. However, this does not mean that the State can do as it pleases and act like a private landlord and indulge in rack renting, profiteering and/or indulging in whimsical and unreasonable evictions or bargains. It is also equally true and well settled that in the guise of asking the State to act in a fair and reasonable manner, the doctrine of fairness and the reasonableness cannot be invoked to unilaterally modify and alter

the terms of a contract to create an obligation upon the State which is not in the contract. In other words, in the guise of calling upon the State to act fairly and justly, a party cannot seek a one-sided modification of the express terms of the contract entered into with the State. These principles are now too well settled and need not detain us any further. Whilst deciding the three questions formulated by us above, we will keep in mind the aforesaid principles.

Findings on Question [A] :-

57. In support of the proposition that the Government cannot fix the lease rent by taking into account the value of the land [as per the *Ready Reckoner*], Mr. Dada heavily relied upon the decision of this Court in ***Ratti Palonji Kapadia (supra)***. The primary contention of Mr. Dada was that in ***Ratti Palonji Kapadia (supra)***, this Court has made it clear that lease rent cannot be fixed by taking into account the market value of the land and the impugned circulars do exactly that. Once this is the case the impugned circulars cannot stand, was the submission of Mr. Dada.

58. To understand this argument, it would be necessary to carefully examine the decision of this Court in the case of ***Ratti Palonji***

Kapadia (supra). In ***Ratti Palonji Kapadia,*** several Petitions were filed by 48 plot holders situated at Mount Mary Road, Bandra Band Stand, Bombay. Some of the Petitioners in ***Ratti Palonji Kapadia*** are also the Petitioners before us. In fact, the plots in question in the case of ***Ratti Palonji Kapadia*** were the same plots that are the subject matter of the above Petitions. Since the facts in ***Ratti Palonji Kapadia*** were almost identical to the facts before us we are not referring to the facts in detail. Suffice it to state that the leases granted in favour of the Petitioners [in the case of ***Ratti Palonji Kapadia***] had expired on 31st December 1950. After expiry of the lease, the State continued to recover ground rent from the Petitioners at the rate mentioned in the original lease, that is to say, at the rate of Rs.35/- per year. On 30th March 1955, a letter was issued to the Petitioners therein informing them that the Government had ordered that the leases should be renewed for a period of 30 years with effect from 1st August 1951. In respect of the renewed leases, the revised rent was fixed at 5% of the full market value of the land determined after taking into consideration the improvements, if any made by the lessee. The Government was also granting to the lessees a concession regarding payment of rent. For the first 10 years the lower of the full amount of lease rent, or 25 times of the amount paid under the expiring lease, would be payable, and for the remaining period, the full lease amount would have

to be paid. Accordingly, as on 1st January 1981 the Petitioners were paying lease rent as per their plot size. Although the lease expired on 1st January 1981, no action was taken for renewal till March 1986. It is on 14th March 1986 when the Government came out with a Resolution [the *1986 GR*] that all the leases in question would be renewed for a period of 10 years from 1st January 1981 on a revised lease rent. It was in these facts that the Court examined whether the *1986 GR,* under which the lease period of the 48 plots of land extended for a period of 10 years at the revised lease rent of 25 times the rent prevailing as on 1st January 1981 for residential plots, and at 50 times the rent prevailing prior to 1st January 1981 for commercial plots, could be considered as fair and reasonable. The Court noted that the *1986 GR* set out neither any reason for the increase nor the basis on which the increase in lease rent was worked out.

59. To justify the increase in the lease rent, the Government in its affidavit-in-reply sought to rely upon the market value of open plots of land at Bandra by stating that the market value of the property was extremely high and if they were to charge lease rent at 8% of the full market value (which was the then prevalent Government Policy), the lease rent would be far higher than what was being charged under the *1986 GR*. Hence, the justification given was that in comparison, the

increase in lease rent by 25 times or 50 times [as the case may be], of the existing lease rent, was fair and reasonable. This Court negated this justification and opined that it had to be borne in mind that these were not fresh leases of open and undeveloped plots of land, where the lessees hoped to make profit by developing the land. This Court noted that these are renewals of existing leases and most of the lessees or their predecessors in title have already developed the plots of land leased to them. This Court was, therefore, of the opinion that the said plots could not be evaluated as open and undeveloped plots of land and any reference to the market value of open plots of land in the area, therefore, would be highly misleading. This Court thereafter went on to opine that it is well settled that even when the State exercises contractual rights, the action of the State must be fair and informed by reason. The State cannot act arbitrarily and capriciously. It opined that as far as the private lessors are concerned, they were governed by the *Bombay Rents, Hotel and Lodging House Rates Control Act, 1947* which, *inter alia* covers the right of the landlord to increase lease rent. The Court opined that the State is exempt from the provisions of the Rent Act purely for the reason that it is not expected to behave like an ordinary landlord but is expected to behave fairly and in a reasonable manner. In other words, the State Government must also comply with the public policy of ensuring basically, a fair return

on investment on land without charging exorbitant rent based on the prevailing market prices of the land.

60. When one reads this judgment in its entirety, we are unable to agree with Mr. Dada that the judgment in ***Ratti Palonji Kapadia (supra)*** lays down any absolute proposition that the Government is barred from revising the lease rent with any reference to the market value of the land, much less, as per the *Ready Reckoner*. In fact, in ***Ratti Palonji Kapadia (supra)***, the rent was increased 25 times (for residential) and 50 times (for commercial) without taking into consideration the value of the land. Further, there was absolutely no basis given in the *1986 GR* for such increase. The justification came forth from the Government only in their affidavit-in-reply, and it is in this reply that they referred to the market value. In fact, what the Court finally held was that even if the lease rent was to be fixed by reference to the market value of the land, the said exercise should be done fairly and reasonably and not by arbitrarily charging any exorbitant rate. This is clear from the observations made in paragraph 20 of the said judgment. We agree with Dr. Saraf, the learned Advocate General, that what the Court [in ***Ratti Palonji Kapadia***] has held is that even if the rents were to be fixed by taking the market value of the land into consideration, the said exercise

should be done in a fair and reasonable manner and not charge exorbitant rent. We, therefore, find that relying upon the judgment rendered in ***Ratti Palonji Kapadia (supra)*** to contend that the value of the land cannot be taken into consideration at all for the purposes of calculating the revised lease rent, is wholly misplaced.

61. We also agree with Dr. Saraf that the Government has in fact taken into consideration the observations made by this Court in ***Ratti Palonji Kapadia (supra)*** and thereafter issued the impugned GRs. In ***Ratti Palonji Kapadia***, the Court noted that one of the important factors that need to be taken into consideration is that the land is already leased to the lessees on which construction was already carried out. It was not a case of an open plot being granted on lease for the first time. It is taking these observations into consideration that in the *2012 and 2018 GRs,* the lease rent is not fixed on the basis of the full market value of the land as if it is an open undeveloped plot of land, but by taking into consideration only 25% of the value of the land [as per the *Ready Reckoner*]. This is for the reason that the lessees are sitting lessees on the land belonging to the Government, and if the said land was to be acquired and/or sold, the Government would be entitled to only 25% of the

compensation. Hence, we find that there is a proper rationale for the decision taken in the *2012 and 2018 GRs*.

62. Further, in ***Ratti Palonji Kapadia,*** this Court held that the lease rent could not have been increased with retrospective effect. In compliance with these observations, the Government, under the *2012 GR,* have given a deemed renewal [of the otherwise expired leases] till 31st December 2011 at the old rate and proposed to increase the rent only from the year of the issuance of the said GR, namely, from 1st January 2012. We, therefore, are of the considered view that the impugned GRs cannot be assailed on the basis that they are contrary to the decision of this Court in the case of ***Ratti Palonji Kapadia (supra)***.

63. Faced with this situation, Mr. Dada submitted that though the Government is exempt from the provisions of the Rent Act the principles underlying therein ought to be applied to the Government as laid down in ***Ratti Palonji Kapadia***. We are afraid we are unable to accept this submission for the simple reason that in the decision of ***Jamshed Wadia (supra),*** the Hon'ble Supreme Court has categorically stated that the instrumentalities of the State having been exempt from the operation of the Rent Control Legislation cannot be held

to the same shackles for which the State and its instrumentalities have been freed by the legislature. To put it in a nutshell, the Hon'ble Supreme Court held that the State and its instrumentalities cannot be indirectly, or by analogy, subjected to the same law from which they are exempt. This would otherwise tantamount to defeating the exemption clause consciously enacted by the legislature. What the Hon'ble Supreme Court in ***Jamshed Wadia (supra)*** stated was that despite the State being exempt from the shackles of the Rent Control Legislation, they are not exempt from honouring the Constitution and hence their actions in the field of landlord and tenant relationship are to be tested, not under the Rent Control Legislation, but under the Constitution. Paragraph 19 of the decision in ***Jamshed Wadia (supra)*** reads thus:-

> *"19. A balance has to be struck between the two extremes.* ***Having been exempted from the operation of rent control legislation, the courts cannot hold them tied to the same shackles from which the State and its instrumentalities have been freed by the legislature in their wisdom and thereby requiring them to be ruled indirectly or by analogy by the same law from which they are exempt****. Otherwise, it would tantamount to defeating the exemption clause consciously enacted by the legislature.* ***At the same time the liberty given to the State*** *and its instrumentalities by the statute enacted under the Constitution* ***does not exempt them from honouring the Constitution itself. They continue to be ruled by Article 14****. The validity of their actions in the field of landlord-tenant relationship is available to be tested not under the rent control legislation but under the Constitution. The* ***rent control legislations are temporary, if not seasonal; the Constitution is permanent*** *and an all-time law."*
>
> ***(emphasis supplied)***

64. In other words, what the Hon'ble Supreme Court has clearly held is that though the Government is not bound by the Rent Control Legislation, it still has to act in a fair and reasonable manner and not arbitrarily and capriciously. We, therefore, find that Mr. Dada is not correct in his submission when he seeks to contend that the rent ought to be increased by the Government by looking to the provisions of the Rent Act or the principles underlying therein. That would effectively mean that we would be binding the Government to the provisions of the very Rent Control Legislation from which they have been exempt. This cannot be permitted.

65. As a corollary to this argument, Mr. Dada submitted that in any event the Government cannot take recourse to determine the value of the land on the basis of the *Ready Reckoner*. To put it in a nutshell, Mr. Dada submitted that each plot has its own peculiarity and by applying the *Ready Reckoner* rate, unequals are being treated as equals which is contrary to Article 14 of the Constitution. We are afraid we are unable to accept this submission. In 1995 the *Bombay Stamp (Determination of True Market Value of Property) Rules, 1995* were framed. The said Rules provide for preparation of the *"Annual Statement of Rates"* and which is

also commonly known as the *Ready Reckoner*. These rates are revised annually and set out a detailed procedure for fixation of average annual rate of lands and buildings. It is not in dispute that the same is prepared by an expert body of persons after gathering information from all sources like the Registration Office as regards the registration of documents, various acquisition awards, tenders/actions of government/semi-government bodies, rates obtained by local enquiry, and property exhibitions. A perusal of the *Ready Reckoner* discloses a great deal of detailing wherein rates are fixed even street wise. Even within a particular road, different rates at times are provided for different areas depending on the peculiarity of the same. Once this is the case, we find that there is nothing wrong in the Government looking to the *Ready Reckoner* rate as a reasonable benchmark of value for the purposes of calculating the revised lease rent. This is more so in the facts of the present case when none of the Petitioners have brought on record any valuation which would suggest that the *Ready Reckoner* rate applied by the Government is on the higher side and that the market value of their property is in fact lower than the *Ready Reckoner* rate. In fact, time and again, judicial notice has been taken that *Ready Reckoner* rates are more often than not lower than the actual market value of the property. This court in ***Super Max International Pvt Ltd V/S State of Maharashtra [2009 (2)***

Mh.L.J. 134] has taken judicial notice that the rates mentioned in the *Ready Reckoner* are lower than the market rates and in any case are seldom higher than the actual market rates. This judgment is thereafter affirmed by the Hon'ble Supreme Court in the ***State of Maharashtra V/S Super Max International Pvt Ltd [(2009) 9 SCC 772]***. Once again, in the case of ***Shri Chandrakant V/S M/s. Dev Shakti Dal Mills [Writ Petition No.7703 of 2018 decided on 25th August 2022]*** this Court came to a similar finding. We therefore do not find any illegality in the Government applying the *Ready Reckoner* for determining the value of the land for fixation of the lease rent.

66. This apart, we must also note that a communication addressed by the Deputy Secretary of the Revenue and Forest Department, Government of Maharashtra dated 22nd March 2024 has been placed before us. This communication clearly specifies that in individual cases, if any special circumstances are made out, then the value of the land, pursuant to such procedure, can be even below the *Ready Reckoner* with the approval of the Government. This, to our mind, would clearly protect the rights of the Petitioners.

67. Hence, to conclude on this issue, we are of the opinion that ***Ratti Palonji Kapadia (supra)*** does not in any way completely prohibit the Government from taking into consideration the value of the land [as per the *Ready Reckoner*] whilst fixing the lease rent. As mentioned earlier, by the impugned GRs, the Government has not taken into consideration the full value of the land but has been mindful of the fact that there are sitting lessees on the said land and hence decided that the lease rent would be calculated only on the basis of 25% of the value of the land [as per the *Ready Reckoner*]. We, therefore, have no hesitation in answering **question [A]** in the affirmative, i.e. against the Petitioners and in favour of the Government.

Findings on Question [B] :-

68. Having held that the Government can take into consideration the value of the land [as per the *Ready Reckoner*] for revising the lease rent, we still have to consider whether the increase in lease rent by the Government is fair and reasonable or whether it is exorbitant, extortionate and/or manifestly arbitrary.

69. On this aspect, the long and short of the argument of the Petitioners is that by the impugned GRs, and more particularly the *2012*

and *2018 GR*s, rent is sought to be increased by 400 to 1900 times. This itself, according to the Petitioners, on the face of it shows that the increase in the lease rent is manifestly arbitrary. As mentioned earlier, according to the Petitioners, the State must act in a fair and reasonable manner and not like a private landlord with a profit motive. The State, being a welfare State, has to take into consideration all aspects and be fair and reasonable in its dealings with its citizens. The argument of the Petitioners is that this increase can hardly be justified as being fair and reasonable in the eyes of law.

70. Though at first blush this argument seems attractive, on a closer scrutiny, we find that this argument is not of much substance. For the expired leases, the lease rent is revised as per the *2012 GR*. The relevant portion of the English Translation of the *2012 GR*, and which is not disputed by any party, reads as under:-

> *"[B] Renewal of Lease and fixation of the amount of lease rent:-*
>
> *(1) In cases where the period of lease of such lessees have come to end before 31st December, 2011, in such cases if the concerned lessee has not submitted option for conversion of such Leasehold land on Occupancy Right under Occupant Class-2 category Right of Holding within the prescribed time limit, the action for renewal of lease and charging lease rent at revised rates should be taken as follows:-*
>
> ***(a) For calculation of valuation of land held under lease, the annual Ready Reckoner published by Stamp Duty***

Department every year should be used. The valuation of the concerned property should be calculated at the rate of open land as per the valuation given in the Ready Reckoner. Hon. High Court has already given a decision in such cases that out of this valuation, the share of land owner and the lessee shall be 25% and 75% respectively. Accordingly, the share of land owner, viz. The Government shall be taken as 25% of the total valuation of such land. On the amount of this 25% valuation, the lease rent should be charged at 2%, 4%, 5% and 5% for the use of land for residential, industrial, commercial purpose and for mixed purpose of residential and commercial respectively.

(b) While calculating the amount of lease rent for charitable purposes such as educational, social, cultural, medical/hospital, etc., the lease rent should be fixed as in the case of residential purpose.

(c) In cases where the lease of properties come to end anytime before 31st December, 2011, in those cases of Leasehold properties, lease should be charged at the old rate up to 31st December, 2011 and after recovery of such lease rent, deemed renewal should be done. Thereafter, from 1st January, 2012, the lease should be renewed for a period of 30 years so that all such properties whose lease has come to end before 31st December, 2011, shall have their lease renewed for a period of 30 years from 1st January, 2012 and thus as the renewal of lease has been done on the same day, viz. On 1st January 2012, it will be easier for the Collector to take review of all such cases.

(d)The properties whose lease has come to end on 31st December, 2011, after temporary deemed renewal of such leases on 31st December, 2011 and after effecting further renewal of 30 years from 1st January 2012, revision of lease rent in cases of such leases should be made every five years. While doing such revision, the market value of the property as on the date of revision should be taken into account and the lease rent be fixed as (a), (b) and (c) as the case may be. (For example, the properties in whose case the renewal of lease has been done for a period of 30 years on 1st January

2012, in such cases the valuation of concerned property as on 1st January, 2017, 1st January, 2022 should be taken into account and the revised lease rent be fixed based on (a), (b) and (c) – as the case may be.

(e) Before demanding the lease rent by fixing the amount, the directions of the Hon. High Court should be taken into account and the information as to how the amount of lease rent has been calculated by taking market value into account and how on the basis of such market value, the amount of lease rent has been fixed should be intimated in writing to the lessee and if the concerned lessee has any objection in regard to the market value or the amount lease rent, he should be asked to submit such objections in writing within 15 days from the date of receipt of information in writing. After receipt of objection, before taking any decision on them, the concerned lessee should be given appropriate and suitable opportunity of hearing. After the hearing, the Collector should, with the prior approval of Government, pass the self-explanatory orders giving detailed reasons as to why the objections raised by the lessee have been accepted or rejected as the case may be. After passing such orders, prescribed procedure should be followed for recovery of such amount of lease rent so calculated.

(ee) Cases where the period of lease has not come to end, in such cases till the date of expiry of the period of lease, the lease rent should be recovered at the old rate. In such cases, from the date of expiry of lease period, the lease rent should be charged and recovered at the revised rate."

(***emphasis supplied***)

71. As can be seen from the *2012 GR*, in cases where the leases have to come an end before 31st December, 2011 and the lessees have not submitted an option for conversion of such Leasehold lands to Occupancy Class-II lands, the said GR provides that for calculation of valuation of

the land held under lease, the annual *Ready Reckoner* published by the Stamp Duty Department every year shall be used. The valuation of the concerned property would be done at the rate of open land as per the valuation given in the *Ready Reckoner*. Since on the Leasehold lands there are already buildings and/or structures that are standing, the said GR provides that for the purposes of valuation of the land, the share of the landowner would be taken as 25% and that of the lessee would be 75%. Therefore, the said GR goes on to state that the share of the landowner, namely the Government, be taken as 25% of the total value of such land, and on the amount of this 25%, lease rent would be charged at 2%, 4%, 5% and 5% for use of land for residential, industrial, commercial, and for mixed purpose of residential and commercial, respectively. What we are really concerned with in the present case is the charging of revised rent which is calculated at 2% of 25% of the value of the land. In other words, the lease rent in the case of the Petitioners before us would be calculated at 2% of 25% of the value of the land. Another important factor, and which shall be dealt with later, is that the *2012 GR* also proposes that the rent would be revised every 5 years on the basis of the *Ready Reckoner* rate in that year. It is this GR that was originally challenged in all the above Writ Petitions.

72. However, while these Petitions were pending, the Government came out with another GR which is the *2018 GR*. The relevant portion of the English translation of *2018 GR*, and which is not disputed by any party, reads thus:-

> *"By this Government Resolution, revised orders are hereby issued that taking into account the situation explained in the Introduction above, while charging the amount of lease rent in respect of government leased lands,* ***following action should be taken while implementing the provisions of Government Resolution No.LND-2505/C.R.-405/J-2, dated 12.12.2012****:-*
>
> 1) ***In respect of lands given on lease*** *in Mumbai City and Mumbai Suburban Districts* ***for the personal residential use and as on this date if the land is being used for the same purpose and is 500 sq.meters or less in area****, in case of such lands while renewing the lease as per the provisions contained in the said Government Resolution dated 12.12.2012,* ***the annual lease rent should be charged at 1% on the 25% of the value of the land calculated as per the annual Ready Reckoner****.*
>
> 2) ***In respect of government lands given on lease*** *in Mumbai City and Mumbai Suburban Districts* ***to Co-operative Societies for the purpose of residential use****, in case of such lands while renewing the lease as per the provisions contained in the said Government Resolution dated 12.12.2012,* ***the annual lease rent should be charged at 1% on the 25% of the value of the land calculated as per the annual Ready Reckoner****.*
>
> 3) ***In respect of government lands given on lease to Charitable Institutions for the purposes of social, cultural, religious, orphanage and such other charitable institutions****, in case of such lands while renewing the lease as per the provisions contained in the said Government Resolution dated 12.12.2012,* ***the annual lease rent should be charged at 0.5% on the 25% of the value of the land calculated as per***

> ***the annual Ready Reckoner***. *However, the lands leased for educational and medical purposes shall not be included in this category.*"
>
> (***emphasis supplied***)

73. As can be seen from the *2018 GR*, now, a revised lease rent was to be calculated at the rate of 1% of 25% of the *Ready Reckoner* rate in certain circumstances. In other words, for plots admeasuring 500 sq.mtrs or less in area used for residential purposes, and in respect of Co-operative Societies for the purposes of residential use, the lease rent was to be calculated at the rate of 1% of 25% of the value of the land as per the annual *Ready Reckoner*. For individuals who held plots of land which were larger than 500 sq.mtrs., they would have to pay the revised lease rent at the rate 2% of 25% of the value of the land [as per the annual *Ready Reckoner*] as stipulated in the *2012 GR*.

74. Having set out in brief what the *2012 and 2018 GRs* state, and how the lease rent is to be calculated, we will now apply this formula to the case of the Petitioners to see if the revised rent proposed to be charged under these GRs is really exorbitant, extortionate and/or manifestly arbitrary. In this regard, we must mention that the Petitioners in Petition No.923 of 2014 have tendered a chart showing an increase in

rent, and which is annexed as Annexure-1 to their written submissions. We are not reproducing the entire chart but only an extract of the same to examine whether in fact the increase in annual lease rent is extortionate and manifestly arbitrary. P1 to P9 are all of Co-operative Housing Societies and the extract from their chart is as under:

Sr. No.	Petitioner	Number of Members	Area	Current Annual Lease Rent (*fixed as per market rate in 1968 and unchanged since then*)	Annual Lease Rent as per the *2018 GR*	**Per month per member**
1.	P4	20	3667	1578	14,32,183/-	**Rs.5968/-**
2.	P9	72	5593.2	2510	21,84,480/-	**Rs.2529/-**
3.	P3	16	2732.5	1471	10,67,205/-	**Rs.5559/-**
4.	P2	48	4480.25	3250	17,49,806/-	**Rs.3038/-**
5.	P6	38	2092.8	1603	8,17,363/-	**Rs.1793/-**
6.	P8	28	3449.89	3088	13,47,389/-	**Rs.4010/-**
7.	P1	43	2991.63	2684	11,68,411/-	**Rs.2265/-**
8.	P7	25	2285.14	2800	8,92,484/-	**Rs.2975/-**
9.	P5	15	1010.86	1886	3,94,801/-	**Rs.2194/-**

75. We must mention that in the above chart, the column called *"Per month per member"* is inserted by us and did not form part of the chart tendered by the Petitioners in WP No.923 of 2014. We have added this column to examine whether in fact the increase in rent per member, is extortionate and manifestly arbitrary.

76. As far as the individual plot holders are concerned, they are P10, P11 and P12. The extract of their chart is as under:-

Sr. No.	Petitioner	Number of Members	Area in Sq.Mtrs.	Current Annual Lease Rent (*fixed as per market rate in 1968 and unchanged since then*)	Annual Lease Rent as per the *2012 GR* read with the *2018 GR*	Per month
1.	P10	Individual	3914.71	Rs.1580/-	Rs.30,57,858/-	Rs.2,54,822/-
2.	P11	Individual	4345.4	Rs.2338/-	Rs.33,94,279/-	Rs.2,82,857/-
3.	P12	Individual	3115.35	Rs.1980/-	Rs.24,33,462/-	Rs.2,02,789/-

77. As can be seen from the aforesaid charts, as far as the Residential Societies are concerned, each member's liability towards revised lease rent is a maximum of Rs.6,000/- per month, and in some cases, even less than Rs.2,000/- per month. When one takes these figures into consideration and especially the fact that the properties of the Petitioners are located at Bandra Bandstand (a very sought after, and high-end real estate area in Mumbai), one can hardly call this increase exorbitant, extortionate and/or manifestly arbitrary. A very important fact of which note must be taken is that right from 1951 these parties have been paying rent fixed when their leases were renewed at the relevant time. Considering the value of money and inflation (and the fact that no revision has been effected without being mired in litigation), it becomes obvious that these lessees have enjoyed and used all these properties

virtually for free for 30 years even after their leases expired in 1981. When one looks at all these factors it can hardly be said that the increase in the revised rent is so exorbitant and/or manifestly arbitrary that would require interference under Article 226 of the Constitution of India.

78. Even as far as the individual plot holders are concerned, they are enjoying huge portions of land in the prime location of Bandra virtually free of cost. If one were to really break down what these individuals are paying now for government land leased to them, it can hardly be regarded as exorbitant. For example, Petitioner No.10 is an individual who is occupying 3914.71 sq.mtrs of land in a prime location in the city. Though at first blush the figure that he would have to pay seems rather large, when one benchmarks that with the area that he occupies, he would actually be paying merely Rs.65 per square meter per month [on a rough and ready estimate] or approximately Rs.6.50 per square foot per month. To our mind, and especially an individual who is holding such a large parcel of land in a prime locality in Mumbai from 1951 onwards at a measly rate of Rs.1,580/- per year (which is virtually free), can hardly be heard to say that the increase in lease rent is either exorbitant, extortionate and/or manifestly arbitrary. If individuals want to hold large parcels of land in a prime locality and want to enjoy this

luxury, it is only fair that they would have to pay for it a reasonable sum that is now the revised amount. When the law mandates that the Government has to be fair and reasonable in dealing with its citizens, it does not mean that the Government has to do charity. It also does not mean that the annual lease rent should be so structured that in the perception of the lessee the same is affordable to him irrespective of the fact that such low rent may not even subsume the inflation cost, cost of administration and the escalation impact. Though it is indeed true that the Government should not act as a private landlord where profit would be the prime motive, it is still entitled to a reasonable return on its land. We also cannot lose sight of the fact that land is a finite resource and when a few societies or individuals occupy such a finite resource, the lease rentals charged to them has to be commensurate with what they enjoy. Besides, land being in short supply in an island city like Mumbai, any policy decision on revising lease rentals on a reasonable basis, must factor in the costs imposed by such land holding on the rest of the State. When one therefore balances these competing considerations and factors in the ground reality of the enjoyment of land, a finite resource, by the Petitioners, we are of the considered view that the revised lease rent as per the *2012 GR* read with the *2018 GR* can hardly be termed as exorbitant, extortionate and/or manifestly arbitrary. We therefore

answer **question [B]** in the negative i.e. against the Petitioners and in favour of the Government.

Findings on Question [C] :-

79. This now leaves us to deal with **question [C]**, which is the third and final question to be decided by us. **Question [C]** relates to whether the Government is justified in revising/resetting the lease rent every 5 years even though the leases of the Petitioners are to be renewed for a period of 30 years. As mentioned earlier, the *2012 GR* initially stipulated that the revised lease rent would be calculated on the basis of 2% of 25% of the value of the land [as per the *Ready Reckoner*]. This, by virtue of the *2018 GR,* was thereafter reduced to 1% of 25% (effectively, 0.25% of the full value of the land): (a) for Co-operative Housing Societies; and (b) for other persons whose plots of land were below 500 sq.mtrs in area. For Charitable Institutions engaging in social, cultural, religious, orphanage and such other charitable institutions, the lease rent was to be calculated at 0.5% of 25% (effectively, 0.125% of the full value of the land). As far as persons holding plots of land admeasuring more than 500 sq.mtrs. are concerned (i.e. other than Co-operative Housing Societies and Charitable Institutions), lease rent would be calculated at the rate of 2% of 25% of the value of the land [as per the *2012 GR*].

80. Clause B(1)(d) of the *2012 GR* stipulates that the lease rent payable by the lessees would be revised every 5 years on the basis of the value of the land on the date of revision. In other words, as an example, for Co-operative Housing Societies, after the leases are renewed for 30 years with effect from 1st January 2012 [i.e. till 31st December 2041], the rent would be revised again on 1st January 2017; 1st January 2022; 1st January 2027; and so on, depending on the *Ready Reckoner* value of the land on the date of the revision. In other words, on 1st January 2017, the rent would be revised by calculating 1% of 25% of the *Ready Reckoner* value of the land as on 1st January 2017. Again, on 1st January 2022 the rent would be revised by calculating 1% of 25% of the *Ready Reckoner* value of the land as on 1st January 2022; and so on.

81. To understand whether the Government can unilaterally impose such a covenant, it would be important to see some of the clauses of the original Lease Deed entered into with the Petitioners. To our mind, two clauses of the original Lease Deed are important to determine this issue. They are Clause 2(a) and Clause 6 which read as under:-

> **"***2. And the Lessee does hereby convenant with the Lessor that he, the Lessee, during the said term*

> *(a) will pay the yearly rent hereinbefore reserved on or before the said 1st day of January in every year* ***or at his option a lump sum at once in composition thereof as hereinbefore stipulated****;"*
>
> ******************
>
> *"6. AND IT IS HEREBY FURTHER AGREED that in case the Lessee shall duly pay the said rent, and perform all and every the conditions aforesaid to the satisfaction of the Collector, the Lessee shall at the expiration of the said term of fifty (50) years be entitled to a renewal of the lease hereby granted, on a rental then to be fixed in reference to the general value of unimproved land similarly situated and not in reference to the special value given to the land hereby demised by improvements effected by the Lessee for a further term of twenty-one (21) years* ***with all the same covenants provided and stipulations as are in these presents contained or expressed including the Covenant for renewal****."*
>
> **(*emphasis supplied*)**

82. As can be seen from the above reproduction, Clause 2(a) stipulates that the yearly rent payable can be paid on the 1st day of January of every year, or at the option of the lessee, in one lump sum for the entire period of the lease. If the Government is allowed to revise the lease rent every five years, it would be in direct conflict with this clause because the lessee would not be able to exercise its option to pay the entire lease rental in one lumpsum. We say this because neither the lessee nor the Government would know what the lease rent would be in the future as the same is dependent on the value of the land [as per the *Ready Reckoner*]

on the date of the revision. For example, the Ready Reckoner value of the land of the Petitioners on 1st January 2027 is not known either to the Government or the lessee. Therefore, a bargain in the contract that is based on certainty of the lease rent for the entire term cannot be changed by simply passing a Government Resolution. It must be remembered that a Government Resolution is not legislation passed by the State Legislature but is an expression of a decision by the State Government, which cannot be the means of simply re-writing a contract executed by the Government with private citizens.

83. Another factor that one must consider is that Clause 6 of the original Lease Deed stipulates that the lessee would be entitled to a renewal of the lease *inter alia* for a further term with the same covenants and stipulations provided in the original Lease Deed, including the covenant for renewal. Nowhere does the original Lease Deed contemplate that the covenants can be changed, or the rent can be increased or decreased during the tenure of the lease. In fact, on reading a copy of the original Lease Deed (which has been copy-typed and annexed along with the original in the petitions), it is apparent that the intention of the parties always was that the renewal would be on the same terms and conditions. We say this because in Clause 6, originally in the draft, the words "*for*

such further term and on such conditions as may then be determined by the Collector acting under the orders of the Governor of Bombay in Council" are found as having been consciously struck off by the signatories. Instead, the words "*for a further term of 21 years with all the same covenants provided and stipulations as are in these presents contained or expressed including the Covenant for renewal*" were inserted by hand. All this clearly goes to show that it was never in contemplation of the parties that the lease, though being renewed for a period of 30 years, would have the lease rent revised intermittently. If the Government were permitted to revise the lease rent every 5 years, the same would be contrary to the bargain struck between the State and the lessees. Just as the lessees cannot, under the guise of calling upon the State to act fairly, unilaterally seek a modification in the contract, so also the State cannot unilaterally modify the contract entered into with the lessees.

84. Another important factor of which we must take note is that even when the leases of the Petitioners were renewed for the period of 1951 to 1981, no such stipulation [that the lease rent would be revised every 5 years] was inserted. We therefore find that inserting a covenant for revising the lease rent every 5 years is not found in the original

contract between the parties and the same is a unilateral decision on the part of the Government. If we were to allow this, it would be contrary to the express provisions of the contract [i.e. the clauses of the original Lease Deed]. We therefore find that clause B(1)(d) of the *2012 GR* cannot stand as the same seeks to insert a unilateral covenant which was never in contemplation whilst entering into the original Lease Deed, or even when the same was renewed for the period 1951 to 1981. Hence, clause B(1)(d) of the *2012 GR* is hereby quashed and set aside.

85. We are unable to agree with the arguments of Dr. Saraf, the learned Advocate General, that it would only be fair and just if the lease rent is assessed at regular intervals based on the value of the property and that there is no bar in the Lease Deed from doing so. We are also unable to agree with Dr. Saraf that the Lease Deed does not provide that the lease rent should be stagnant throughout the period of the lease. As mentioned earlier, Clause 2(a) in fact gives an option to the lessee to pay the entire lease rent in one lumpsum. This would be rendered impossible if the lease rent was revised every 5 years. Secondly, Clause 6 of the original Lease Deed also stipulates that the renewal would take place at a new lease rent, but on all other counts, on the same terms and conditions. There is no condition in the original Lease Deed which allows and/or permits the

State to revise the lease rent intermittently during the tenure of the lease. In fact, knowing this fully well, even during the renewal that took place for the period 1951 to 1981, no such stipulation was inserted. Once this is the case, the Government, as mentioned earlier, cannot be allowed to unilaterally alter the structure of the contract entered into between the parties. Once the Lease Deed stipulated that the renewal will be on the same terms and conditions, a new condition of this sort cannot be inserted unilaterally by the Government.

86. We must mention that as a last-ditch effort, the learned Advocate General sought to contend that revising the lease rent every 5 years would be to the benefit of the lessees because there could be a possibility that the value of the property would fall and correspondingly so would the lease rent. This argument is stated only to be rejected. Firstly, the bargain between the parties does not contemplate any such situation. The bargain clearly contemplates that the lease is for a fixed period and the lease rent would be fixed for that entire period. Nowhere does the Lease Deed give a right to the Government to unilaterally change the lease rent intermittently during the tenure of the lease. Secondly, it is futile to suggest that property prices in the city of Mumbai may fall. As observed earlier, land in a city like Mumbai is a finite resource and it is

not reasonable to expect land values to fall, except in exceptional and extraordinary circumstances. Even if land values were to come down for a temporary period [for example during the Covid-19 Pandemic], they would stand corrected thereafter. Land in Mumbai is a precious commodity, and prices of land are expected to only go up. To therefore suggest that there is a possibility of the land values falling in the future and the same would enure to the benefit of the lessees, is not a reasonable argument that we can accept. In view of the following discussion, we answer **question [C]** in the negative i.e. in favour of the Petitioners and against the Government.

CONCLUSION:-

87. In view of the foregoing discussion, we summarize our conclusions as under:-

(a) The decision of this Court in ***Ratti Palonji Kapadia (supra)*** does not lay down any immutable, inviolable and absolute proposition that the State cannot take into account the value of the land [as per the *Ready Reckoner*] when revising lease rentals. The only test is whether the Government has acted in a fair and reasonable manner and whether

the increase in lease rent can be regarded as exorbitant, extortionate or manifestly arbitrary.

(b) We do not find that the Government, by taking the *Ready Reckoner* value into account (for determining the value of the land) is treating unequals, as equal. The Government is applying the *Ready Reckoner* to all the lands of the Petitioners which is a fair and transparent method adopted by the Government for valuation of the lands owned by it. Without bringing on record any valuation that any land of the Petitioners covered by any of the leases is valued lower than the *Ready Reckoner* value, the Petitioners cannot, either assail the *Ready Reckoner* value, or contend that unequals are being treated equally.

(c) The increase in lease rent and/or the revised lease rent calculated as per the *2012 GR* read with the *2018 GR*, for the reasons stated in this judgment, cannot be termed as exorbitant, extortionate and/or manifestly arbitrary. For the reasons stated earlier,

the revised lease rent is fair and reasonable and keeping with the times, taking care to discount the value of the land and applying a small reasonable percentage rate of such discounted value as the lease rent payable. We do not find that by this revision, the Government is indulging in either rack renting, profiteering and/or indulging in unreasonable or whimsical evictions or bargains.

(d) For the reasons stated herein, Clause B(1)(d) of the *2012 GR* [that seeks to reset/revise the lease rent every 5 years], is unsustainable as the same is contrary to the bargain struck between the parties when they entered into the original Lease Deed, and even when the leases of the Petitioners were renewed from 1951 to 1981. Hence, Clause B(1)(d) of the *2012 GR* is hereby quashed and set aside. The effect of setting aside this element sought to be introduced by the State, is that the revisions in the lease rentals would be linked to the value as per the *Ready Reckoner* as of 1st January 2012, and this approach

could never be assailed as being arbitrary, unreasonable and much less, extortionate.

(e) In the light of the subsequent developments, nothing survives in the challenge to the Notice dated 30th March 2013.

(f) Since many of the Petitioners have applied for conversion of their land from Leasehold to Occupancy Class-I land (as per the *2019 GR*) the Government shall process these Applications in accordance with law, but after calculating the arrears of lease rent, if any, in accordance with this judgment. It is made clear that the Government would be entitled to process only those Applications already preferred by all the Petitioners before us on or before 7th March 2024 and is free to reject any Application filed after 7th March 2024.

88. Writ Petition No.923 of 2014, Writ Petition (L) No.34697 of 2023, Writ Petition No.3131 of 2022 and Writ Petition No.3144 of 2022

are disposed of in terms of this judgment. As far as Public Interest Litigation No.108 of 2013 is concerned, it had assailed the lease rental revisions as being on the lower side and not commensurate with real values of the properties enjoyed by the lessees. Although the PIL was called out on every date during arguments, none appeared on behalf of the PIL Petitioner. We, therefore, also dispose of the said PIL in terms of this judgment.

89. As far as other Writ Petitions are concerned, apart from challenging the *2006, 2012 and 2018 GRs*, they also challenge the constitutional validity of Article 36 (iv) of the 1st Schedule to the *Maharashtra Stamp Act, 1958*. These Writ Petitions are also disposed of insofar as they challenge the *2006, 2012 and 2018 GRs*. They are however kept pending insofar as they challenge the constitutional validity of Article 36 (iv) of the 1st Schedule to the *Maharashtra Stamp Act, 1958*.

90. Interim Application No.205 of 2024 in Writ Petition No.923 of 2014 is filed by the Applicant seeking to intervene in the above Writ Petition as there appears to be some disputes between the Applicant and Petitioner No.10. Again, this dispute cannot be gone into these proceedings and the Applicant is free to agitate its grievances against

Petitioner No.10 in appropriate proceedings.

91. Interim Application (L) No.27723 of 2023 in Writ Petition No.923 of 2014 is filed by the State of Maharashtra. In view of this judgment nothing survives in the said Interim Application and the same is disposed of accordingly.

92. Interim Application (L) No.8802 of 2023 in Writ Petition No.328 of 2015 is filed by the Applicants against the Petitioner seeking to intervene in the above Writ Petition. Again, this intervention is sought because there is some dispute about "area" between the Applicants and the Petitioner. This dispute cannot be agitated in these proceedings and hence the Interim Application is disposed of with liberty to the Applicants to agitate their grievances in an appropriate forum.

93. Interim Application (L) No.8890 of 2024 in Writ Petition (L) No.34697 of 2023 is filed by the Applicant (the Bandstand CHSL) to intervene and been joined in Writ Petition (L) No.34697 of 2023. Since, the Bandstand CHSL is Petitioner No.9 in Writ Petition No.923 of 2014, and which is disposed of by the present judgment, nothing survives in the above Interim Application. If there is any dispute between the Bandstand

CHSL and the Petitioner (Parkwest LLP & Anr.), the same will have to agitated in an appropriate forum.

94. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[SOMASEKHAR SUNDARESAN, J.] **[B. P. COLABAWALLA, J.]**