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CONTENTIOUS RULE, INCREDIBLE VERDICT :

THE PAINFUL LEGACY OF UNLAWFUL DEPLOYMENT LAW POLLUTING THE STREAMS OF JUSTICE.

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The malady of judicial delays and mounting court arrears has much in it which goes beyond the mere numbers. It is often the case that reckless conduct of the parties corrupts and neutralizes the judicial process. Government is the biggest litigant and quite often, it has not been a model litigant. The article deals with the obstruction of justice by a Government agency in Maharastra and the resultant miscarriage of justice. The matter pertains to the award of compensation to the salt manufacturers in Uran (Maharashtra) whose lands have been acquired for the New Bombay project and Jawaharlal Nehru Port Trust. In 1970, lands were originally notified as private lands but subsequently the notification was revised, at the instance of the Salt Department, for acquisition of leasehold and other outstanding rights in Government lands. Award declared was for nil compensation. The revised notification and awards were challenged through writ petitions which were rejected holding that ownership rights claimed by the salt manufacturers could be decided by the Reference Court. In 1993, the District Court allowed the References holding the salt manufacturers to be the owners eligible for compensation. In the appeals, the Bombay High Court held the land to be Government lands but allowed compensation to the claimants. In 2002, the Supreme Court remanded the matters to

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the High Court. The High Court, in 2007, rejected all the 78 references holding that the Reference Courts could not have gone beyond the subject-matter of the notifications. Public and historical records are unequivocal with regards to the private nature of ownership of the lands; it is only that, due to historical reasons, the land fell into a distinct tenure characterized by the Salt Department land revenue in the form of ground rent. The words and deeds of the Government in the past confirm the truth. The Salt Department has been knowingly and willfully distorting facts, history and law and confounding the courts rendering them vulnerable in providing justice.

I. Introduction

The malady of judicial delays and the resultant piling up of cases has caught up the nation's attention with the Prime Minister as well the Hon'ble Chief Justice of India expressing their anguish. The Government has announced road map for tackling the issue on a priority basis. The emphasis is on augmenting the number of courts and appointing requisite number judges so that litigation is brought down to manageable limits. However, the malady has many a reason which goes beyond the mere numbers. It has much to do with the efficacy and integrity of the judicial process itself. Hence any attempt in redeeming the situation calls for a dispassionate assessment of what actually happens in the courts.

The starting block for such inquiry is the other face of the Government, as the biggest litigant. Government is expected to be a model and responsible litigant, the objective being to protect and safeguard public interest. The interest of the Government is synonymous with that of its citizens. Inevitably, in any litigation, it is the duty of the State to place before the court all relevant and material facts truly, faithfully and with utmost fairness. Law used unlawfully corrupts the judicial process; graver would be the implication if agencies of the State opts so. But the public servants are rather apathetic. "Let them go to court" is safe-bet in decision making. It is often the case that the resources of the State can be deployed in ensuring "once litigation, always a litigation" that accountability stands postponed indefinitely. Such instances are too many. Recently the Supreme Court had expressed concern over the dangerous attitude developing amongst executive resulting in institutional damage:

"To be just and act in a fair manner is writ large in our Constitution and the laws. Legislature is to act in a just manner by enacting just laws within the frame work of the Constitution. The executive is enjoined with a duty to act to apply the laws in a just manner and if the individual or the institution is dissatisfied with the State in enacting laws or their implementation he can approach the Court seeking redressal of his grievances.

"Unfortunately a dangerous attitude resulting in doing institutional damage is developing that Justice is required to be done only by the Courts. Every and any authority working under the statute has to discharge its duties in just manner. Otherwise people will lose faith in governance."[1]

The imbroglio over the salt pan lands in Maharashtra is a telling example of willful distortion rendering the judicial process quick-sand for the citizens.

II. The Salt Land Controversy

The disputes over the ownership of salt pan lands in and around Mumbai have been raging for more than three decades. With a number cases pending in the High Court of Mumbai and the other courts, the legal contest which commenced as an innocuous misgiving over the tenure of a couple of salt works has presently engulfed every salt work in one form or other. The salt works number more than a hundred. The land involved is about twenty thousand of acres. The salt works are spread out in the Districts of Mumbai, Thane, Raigad and Sindhudurg in the Konkan. Most of them are situated in the vicinity of Mumbai.

These salt works are of much antiquity. Some of them have been in existence when these parts came under the British Rule. Almost all of them were opened before the commencement of the twentieth century.

The root of the entire controversy can be traced to two simple facts – one, that these lands are recorded as *Mithagar* in the Record of

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[1] . Union of India & Another v. Raja Ahmed Amir Mohammad Khan A.I.R. 2005 S.C. 4383.

Rights and two, that the Land Revenue Department has not been making any levy of land revenue assessment. Instead, the Salt Department has been levying ground rent from these salt works.

The Salt Department under the Union Ministry of Industry has been claiming, for the last four decades, that these lands belongs to them on behalf of the Union of India and the salt manufacturers have only limited rights to manufacture salt, with no rights vested over the land. Consequently, the land would revert to the Government on the cessation of manufacture of salt, for one reason or other, and the salt manufacturers are not entitled to any compensation even when these lands are acquired for public purpose under the Land Acquisition Act, 1894. Consequently, the salt manufacturers in Uran and Belapur were awarded no compensation when their lands were acquired for the New Bombay Project and Jawaharlal Nehru Port Trust.

III. The Land Acquisition References

The consequent Land Acquisition References has taken a rather tortuous course and has come to a dead end with the Bombay High Court holding that the claimants were not entitled for any compensation.

A. *Technical Nature of the Verdict*

The rationale spelt out in these judgments is merely technical - the ratio laid down states:

> *" ... as regards to the point of determination relating to the scope of inquiry under Section 18 of the (said) Act, the same would depend upon the subject matter of acquisition as revealed from the notification under Section 4 read with the declaration under Section 6 and the award under Section 11 of the (said) Act. In the case in hand, the subject matter of the acquisition being the lease hold rights and other interests, excluding the ownership rights of the Government in the land in question, the scope of inquiry in the reference proceedings in question was restricted to those rights excluding ownership rights in the land. The finding of the reference court that the ownership of land is that of the claimants is therefore beyond the scope of the inquiry and hence the same cannot be sustained....*

> *they (the claimants i.e. the salt manufacturers) have utterly failed to establish their claim and apart from the claim of ownership, no other claim having been canvassed and established, they have failed to establish their right to claim compensation .....*"[2]

The decisions have been pronounced on the appeals filed against the Alibag District Court's decrees in the 79 land acquisition references on the salt pan lands in Uran Taluka acquired for the New Bombay Project and the Jawaharlal Nehru Port Trust. And to those familiar with the contours of the issues involved, the pronouncement has been a source of immense disappointment.

B. *Chequered History*

The matters have a long chequered history spanning over a generation. The original notification and declaration, during 1970, covered the acquisition of all the lands in 13 villages, the salt work lands included. Subsequently, in 1973, a revised notification and declaration was issued for the acquisition of lease hold and other outstanding interests in the salt pan lands. The reason proposed was that these lands were not privately owned lands, but Government lands.

It took more than a decade for the awards to be passed. These were for nil compensation, giving rise to writ petitions challenging the validity of the notification and the declaration as well as the denial of compensation. The essence of the contention was that the petitioners have been the owners of the salt work land for generations; many of these salt works have been in existence even prior to the British rule. The High Court rejected the petitions holding that the question of ownership could be taken up by the reference court[3]. Significantly, the Government counsel had conceded that the

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[2] Smt. Halimabibi & Others v. The Special Land Acquisition Officer & Others, MANU/MH/0573/2007 ¶ 68.

[3] Unpublished Judgment of Justice Satyarajan C. Dharmadhikari % Justice Harjivandas H. Kanthari dated 5th August 1985 in WP No. 4501 of 1983. It was held vide ¶7:

> *".....However, according to Shri Cooper expression 'outstanding interest' can in no case include ownership rights. We find it difficult to accept such a narrow construction. ..... there was an apparent dispute of ownership. Therefore the said notification was modified. By subsequent notification,*

outstanding rights covered by the land acquisition notification and declaration include ownership rights, if any, and could be decided in the reference proceedings.[4] The Apex Court also had taken the same view in the subsequent Special Leave Petitions. The Special Leave Petitions had been dismissed with the observation that the question whether petitioners are the owners of any right in the property and if so to what compensation if any are they entitled to are questions open to determination in the references preferred by them.[5] That was in 1985.

The District Court took eight years to give the decision; but it was comprehensive. The salt manufacturers were held to be the owners of the salt work lands entitling them to full compensation. In the subsequent appeals, the High Court, in 1996, gave a two-pronged decision[6]. Salt wok lands were held to be Government lands, but the salt manufacturers were decreed to be entitled for full compensation. The Supreme Court in 2002 had set aside this judgment and remanded the high court for fresh hearing. The present judgment has placed the matters in an entirely different and novel dimension.

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apart from leasehold rights all the outstanding interests, in the said lands were being acquired which must include in its import disputed ownership rights of the petitioners. In our view the context in which the said expression is used, together with the history of acquisition, it will include even the disputed claim of ownership. When there is a dispute about the ownership, and it is the case of the State Government that the ownership does not vest in the petitioners but in the Central Government, the what Government could acquire, would only be the outstanding interests in the lands, which must take in its import even the claim of ownership as made by the petitioners…."

[4] *Id.* ¶6.*"It is the case of both the Govts. That lands belong to the Central Government and petitioners are mere licensees. The ownership rights of the petitioners is disputed and assuming that they can claim such a right, it is covered by the expression 'Outstanding interests' as used in the notifications. Therefore, it cannot be said that the proceedings void ab-initio. We find much substance in this contention of Shri Singhavi."*

[5] Unpublished Order dated 9th December 1985 of Justice R.S.Pathak & Justice Sabyasachi Mukherjee.

[6] Union of India v. Muhammad Masud Muhammad Mahsin Bhaiji 1997 (2) Bom. C.R. 314.P

C. *The Verdict*

The bottom-line of the verdict has been that the reference court exceeded its jurisdiction in venturing to decide the ownership claims canvassed by the claimants. The rule put forth has been:

> *"In a case where the notification under Section 4 and the declaration under Section 6 of the said Act do not include the subject matter of ownership of land, the question of Reference Court going into the said issue would not arise"*[7].

In other words, the jurisdiction of the Reference Court is circumscribed by the terms set out in the notification and the declaration. The inherent incongruity vis-à-vis the ratio set out in the judgment rejecting the writ petitions is too obvious to be missed.

Furthermore, their Lordships relate this rule to the law laid down by the Apex Court Supreme Court in *Sharda Devi v. State of Bihar & Anr.*[8] and *Shymali Das v. Illa Choudhary & Ors.*[9] .

The law as set out in *Sharda Devi's* case has been summed by their Lordships in the following words:[10]

> *"To sum up, the State is not a "person interested" as defined in Section 3(b) of the Act. It is not a party to the proceedings before the Collector in the sense, which the expression "parties to the litigation" carries. The Collector holds the proceedings and makes the award as representative of the State Government. Land or an interest in land pre-owned by the State cannot be the subject matter of the acquisition of the State. The question of deciding the ownership of the State or holding of any interest by the State Government in proceedings by the Collector*

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[7] Smt. Halimabibi & Others v. The Special Land Acquisition Officer & Others, MANU/MH/0573/2007 ¶37.

[8] (2003)3 S.C.C. 128.

[9] A.I.R. 2007 S.C. 215.

[10] Smt. Halimabibi & Others v. The Special Land Acquisition Officer & Others, MANU/MH/0573/2007 ¶28.

> *cannot arise in the proceedings before the Collector [as defined in Section 3(c) of the Act]. If it was government land there was no question of initiating the proceedings for acquisition at all. The Government would not acquire the land which already vests in it. A dispute as to the preexisting right or interest of the State Government in the property sought to be acquired is not a dispute capable of being adjudicated upon or referred to the civil court for determination under Section 18 or Section 30 of the Act."*

Their Lordships have placed much reliance on rule laid down by the Apex Court in *Shymali Das's* case, which has been summarized in the following words:[11]

> *"In Shyamali Das's case the Apex Court held that the said Act is a complete code by itself and it provides for remedies not only to those whose lands have been acquired but also those who claim the awarded amount or any apportionment thereof. A Land Acquisition Judge derives its jurisdiction from the order of reference and it is bound thereby. Its jurisdiction is to determine adequacy or otherwise of the amount of compensation paid under the award made by the Collector. It is not within its domain to entertain any application of pro interesee suo or in the nature thereof. The decision is a complete answer to the contention sought to be raised on behalf of the claimants."*

IV. Analyzing *Sharda Devi's* Case

The reference in the Sharda Devi's case was made under Section 30. The point of reference was whether the title to the land vests in the appellant, so as to entitle her to payment of compensation or whether the appellant's title had stood already extinguished in view of the land having vested in the State consequent upon vesting of zamindaris. By order dated 06.09.1986 the Civil Court directed the reference to be rejected holding that Smt. Sharda Devi was an occupancy raiyat of the land in question and, therefore, the award prepared in her name was just and legal.

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[11] *Id*. ¶36.

Against this judgment, the State Government preferred an appeal to the High Court. A Single Bench of the High Court by upheld the judgment of Special Subordinate Judge. The State filed a Letters Patent Appeal. The Division Bench framed five questions of law and referred the matter to a Full Bench. One of the questions framed by the Division Bench was: *"Whether the reference u/s 30 of the Land Acquisition Act, 1956 was maintainable at the instance of the State of Bihar?"* The questions of law framed, including the question as above, were answered against the appellant. The case was remanded to the Single Judge. The appellant thereupon preferred a Special Leave Petition to the Supreme Court.

The Supreme Court in its judgment on the matter had opined that the core question was when the State proceeds to acquire land on an assumption that it belongs to a particular person, can the award be called into question by the State seeking a reference under Section 30 of the Act on the premise that the land did not belong to the person from whom it was purportedly acquired and was a land owned by the State having vested in it, consequent upon abolition of proprietary rights, much before acquisition?

The judgment examines the two provisions contemplating the power of the Collector to make reference as contained in Section 18 and Section 30 of the Act. Under Section 18 the subject-matter of reference can be a dispute as to any one or more of the following: (i) as to the measurement of the land, (ii) as to the amount or the quantum of the compensation, (iii) as to the persons to whom the compensation is payable, (iv) as to the apportionment of the compensation among the persons interested. Under Section 30 the subject matter of dispute can be: (i) the apportionment of the amount of compensation or any part thereof, (ii) the persons to whom the amount of compensation or any part thereof is payable. The expression employed in Section 18 is *'the amount of compensation'* while the expression employed in Section 30 is *'the amount of compensation or any part thereof'*. Though, at the first blush, it seems that Section 30 overlaps Section 18 in part their Lordships held that it is not so, relying on *Dr. G.H. Grant* v. *State of Bihar*[12]:

> *"(i)There are two provisions in the Act under which the Collector can make a reference to the Court, namely, Section 18 and Section 30. The powers under*

[12] (1965) 3 S.C.R. 576.

the two sections are distinct and may be invoked in contingencies which do not overlap.

(ii) It is not predicated of the exercise of the power to make a reference under Section 30 that the Collector has not apportioned the compensation money by his award.

(iii) The award made by the Collector under Section 11 is not the source of the right to compensation. An award is strictly speaking only an offer made by the Government to the person interested in the land notified for acquisition; the person interested is not bound to accept it and the Government can also withdraw the acquisition u/s 48. It is only when possession of the land has been taken by the Government u/s 16 that the right of the owner of the land is extinguished.

(iv) The liability of the Government u/s 31 to pay compensation to the person entitled thereto under the award does not imply that only the persons to whom compensation is directed to be paid under the award may raise a dispute u/s 30. The scheme of apportionment by the Collector under Section 11 is conclusive only between the Collector and the persons interested and not among the persons interested. Payment of compensation u/s 31 to the persons declared in the award to be entitled thereto discharges the State of its liability to pay compensation leaving it open to the claimant to compensation to agitate his right in a reference u/s 30 or by a separate suit.

(v) There is nothing in Section 30 which excludes a reference to the Court of a dispute raised by a person on whom the title of the owner of the land has since the award, devolved."[13]

Keeping in view the principles laid down by the Supreme Court in *Dr.G.H. Grant's* case and analyzing in-depth the provisions of the Act

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[13] *Id*. at 577.

the difference between reference under Section 18 and the one under Section 30 the Apex Court had summarized the law as under in *Sharda Devi's* case:-

- The Act does not contemplate the interest of the Government in any land being valued or compensation being awarded there for[14].
- The Government is not debarred from acquiring and paying for the only outstanding interests[15].
- The Act does not contemplate or provide for the acquisition of any interest which already belongs to Government in land which is being acquired under the Act but only for the acquisition of such interests in the land as do not already belong to the Government[16].
- When Government possesses an interest in land which is the subject of acquisition under the Act, that interest is itself outside such acquisition because there can be no question of Government acquiring what is its own. An investigation into the nature and value of that interest is necessary for determining the compensation payable for the interest outstanding in the claimants but that would not make it the subject of acquisition.[17]
- The award of the Collector is not the source of the right to compensation; it is the pre-existing right which is recognized by the Collector and guided by the findings arrived at in determining the objections, if any, the Collector quantifies the amount of compensation to be placed as an offer of the appropriate Government to the owner recognized by the State.[18]

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[14] Sharda Devi v. State of Bihar & Another (2003) 3 S.C.C. 128 ¶31.

[15] *Id.* ¶33 while referring to Government of Bombay vs. Esufali Salebhai 1908 Bom. L.R. 994.

[16] *Id* ¶34 while referring to Deputy Collector, Calicut Division v. Aiyavu Pillay, 9 Ind. Cas. 341 (Mad).

[17] *Id.* ¶35.

[18] *Id.* ¶36.

- The power to make an award under Section 11 and to make a reference under Sections 18 or 30 of the Act is a statutory power. The sweep of jurisdiction of Court to determine the disputes is also statutory and is controlled by the bounds created by Section 17 or 30 where under the reference has been made to the Court.[19]

- The power has to be exercised to the extent to which it has been conferred by the Statute and on availability of pre-existing conditions on the availability of which and which alone the power can be exercised.[20]

- Wherever jurisdiction is given by a Statute and such jurisdiction is only given upon certain specified terms contained therein it is a universal principle that those terms should be complied with, in order to create and raise the jurisdiction, and if they are not complied with the jurisdiction does not arise[21].

- Under the Land Acquisition Act, the matter goes to the Court only upon a reference made by the Collector and there is no doubt that the jurisdiction of the Court arises solely on the basis of a reference made to it. The Court can adjudicate upon the matter referred to it but the Court is certainly not invested with the jurisdiction to consider a matter not directly connected with it and this is not a matter of mere technicality[22].

- A dispute as to *pre-existing* right or interest of the State Government in the property sought to be acquired is not a dispute capable of being adjudicated upon or referred to the Civil Court for determination either under Section 18 or Section 30 of the Act. Such a reference is not maintainable.[23]

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[19] *Id.*

[20] *Id.*

[21] *Id.* ¶38 while referring to Nusserwanjee Pestonjee v. Meer Mynoodeen Khan Wullud Meer Sudroodeen Khan Bahadoor, 6 Moo. Ind. App. 134.

[22] *Id*. while referring to Kothamasu Kanakarathamma and Others. v. State of Andhra Pradesh and Others. A.I.R. 1965 S.C. 304.

[23] *Id*. ¶39.

The Court held that all the proceedings under Section 30 of the Act beginning from the reference and adjudication thereon by the Civil Court suffer from lack of inherent jurisdiction and are therefore a nullity.

V. Analyzing *Shyamali Das'* Case

This was an appeal directed against a judgment and order by a learned Single Judge of Calcutta High Court allowing a revision application. In this context that the Court had held:

> *"The Act is a complete code by itself. It provides for remedies not only to those whose lands have been acquired but also those who claim the awarded amount or any apportionment thereof. A Land Acquisition Judge derives its jurisdiction from the order of reference. It is bound thereby. Its jurisdiction is to determine adequacy or otherwise of the amount of compensation paid under the award made by the Collector. It is not within its domain to entertain any application of pro inters se suo or in the nature thereof. The learned Reference Judge, therefore, was entirely correct in passing its order dated 22.6.2004. A finding of fact was arrived at therein that the appellant was not a party interested in the proceeding within the meaning of Section 3(b) of the Act. The said order attained finality. It could not have, thus, been reopened. Another application for impleadment, therefore, was not maintainable. It may be true that in the proceeding of a suit, the court can in a changed situation entertain a second application under Order I, Rule 10(2) of the Code of Civil Procedure. But, the learned Reference Judge having opined, while passing its order dated 26.2.2004, that the appellant was not a person interested, in our opinion, a second application despite the subsequent event was not maintainable. It is one thing to say that a proceeding under Sections 30 and 31 of the Act was maintainable at the instance of the appellant. She was given an opportunity to file the same by the Calcutta High Court in terms of its order dated 22.09.2000. She did not avail the said opportunity. Having not availed*

> *the opportunity, in our opinion, she was not entitled to be impleaded as a party*.[24]

In coming to the above conclusion, the Court had relied on the rule laid down in *Sharda Devi* case and in the case of *Prayag Upnivesh Awas Evam Nirman Sahkari Samiti Ltd.* v. *Allahabad Vikas Pradhikaran*[25] wherein, it was opined:

> *"It is well established that the reference court gets jurisdiction only if the matter is referred to it under Section 18 or 30 of the Act by the Land Acquisition Officer and that civil court has got the jurisdiction and authority only to decide the objections referred to it. The reference court cannot widen the scope of its jurisdiction or decide matters which are not referred to it."*

The Court furthermore held that a disputant is entitled to an interim order, provided he is a party thereto. If for one reason or the other, he cannot be impleaded as a party to the proceeding, the Court would have no jurisdiction to pass any interim order in his favour. If the impleadment application was not maintainable, it was, required to be dismissed in limine. It could not have been entertained only for pressing an interim order. Law does not contemplate exercise of such a jurisdiction by a court of law. Any such order passed is *coram non judice*.

VI. Singular Circumstances:

However, the status of the references dealt by the Alibag District was wholly different from those of the above two cases. The references were made under Section 18 of the Act at the instance of the salt manufacturers. There has never been a whisper at any stage of the proceedings that they are not the interested parties or that the references were not maintainable and that the reference court suffered from lack of inherent jurisdiction. The proposition that was canvassed against the reference court's decision and accepted by the Appellate Court has been that reference court has its jurisdiction limited to those rights covered by the subject-matter of notification and declaration under Sections 4 and 6. It is submitted that neither of the cases viz. *Sharda Devi* and

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[24] A.I.R. 2007 S.C. 215 ¶10.

[25] (2003) 5 S.C.C. 561.

Shymali Das supports this rule. In fact, the circumstances are singular and distinguishing in more than one way vis-à-vis the aforesaid cases.

Most remarkable has been that the lands were originally notified as privately owned. It was the subsequent notifications and declarations which restricted the subject matter of the acquisition being the lease hold rights and other interests of the claimants. The reason advanced was that the salt work lands belonged to the Government, held by the Salt Department on behalf of the Union of India; only the leasehold and other outstanding rights of the salt manufacturers were required to be acquired. However, it has been the consistent stand of the claimants they have been the owners of the notified lands.

The objective of land acquisition procedure is to extinguish all the private rights so that once the award is finalized and possession is taken, the land would vest in the Government free of all encumbrances. The proceedings in the cases under reference have been completed more than two decades ago. The lands notified have been taken into possession and developed for the intended purpose. It is but natural that claimants have been divested of all their rights. More than anything, they have been deprived of main or only source livelihood with disastrous consequences for quite a few.

The reference court had been categorical in that the claimants were the owners of these lands. In the judgment dated the 23rd June 1993 the District Judge, Alibag had held that the salt manufacturers had proved their ownership over the salt work lands and they were entitled for compensation as land owners. The Judgment was based on the following main grounds for arriving at the said decisions[26]:

> *"All the regulations, statutes and other laws had recognized the rights of the perpetual proprietors of the soil then in occupation of their respective salt manufacturing land and other lands.*
>
> *The intent and purpose of various Salt Acts have been to control the salt manufacturing activities and in order to regulate the same, various provisions of licensing and other administrative control by the Salt*

[26] Unpublished judgment pronounced in L.A.R. 184 of 1986.

Department had been provided therein. This position by itself never indicated that the ownership of the land underneath the salt work rests with the Salt Department.

Land revenue was being charged and collected by the State Government i.e. the Bombay Presidency Government, thus accepting the ownership and occupation of the salt manufacturers; the ground rent recovered by the Salt Department was in lieu of land revenue."

Subsequent to this verdict, much research and study has been made into the history, facts and law. Officials from the Salt Department as well as some among the salt manufacturers had deeply delved into the records available with the Department of Archives, Government of Maharashtra. The facts speak for themselves. The information available from the archival records is comprehensive. The issues in contention can be traced to two important facets of British rule in the erstwhile Bombay Presidency – the levy of duty on salt and introduction of survey tenure.

A. *Facts*

The facts involve much history and some law. Extensive salt works were in existence in the Island of Bombay and various parts of the districts of Konkan when the East India Company annexed those parts to the Bombay Presidency[27]. The Konkan coast has been ideal for salt manufacture. Salt works have been in existence in these places from time immemorial. The Islands of Bombay (i.e. the part present day City of Mumbai up to Matunga and Mahim), Salsette (the present Mumbai Suburban District and Thane Taluka), Caranja (the present day Uran), Belapur, Vasai and Vengurla have been the major centres.

There existed Government as well as private salt works. The produce of the Government salt works were shared between the salt workers (*coorumbees*) and the Government; the Government also bore part of the expenses for towards the repair and maintenance of the

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[27] Island of Bombay was the earliest acquisition in the year 1661. Other places came under British rule in the course of the period from 1774 to 1840. North Kanara had been part of Madras Presidency till 1862.

embankments[28]. There existed varied systems with reference to private salt works[29].

In principle, the British considered themselves to be on the same footing as the respective earlier rulers from whom they had succeeded and continued the same exaction as then prevailing, whether it was with reference to land revenue or other imposts. Regarding revenue from salt, a system of indirect monopoly prevailed in the Island of Bombay[30] and direct monopoly in Pen[31]. In the Island of Salsette, a levy of one-eighth of the produce was made towards land revenue. In the Island of Caranja[32], the levy was in the form of *Teesatee* of Rs.10 for every *Teesatee*[33] comprising of 560 maunds.

B. *Salt Laws and the Salt Duty*

The Salt Acts commence with the Act XXVII of 1837. The principle of the Act was the substitution of the duty of eight annas per Bengal maund of salt in lieu of all the then prevalent local imposts, *haks* and transit duties but excluding the ground rent for the land occupied by

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[28] Salt works are constructed on lands recovered from the sea by constructing embankments. Heavy outlay is incurred in making the reclamation. The crucial question in deciding the proprietary rights over such lands have been as to who had undertaken the reclamation and has been keeping the embankments in good repair.

[29] 9 Revenue Department Diary 12 (1829).

[30] Island of Bombay had both Government and private salt works. No portion of the produce of the private salt pans were to be exported until the Government had disposed of 100 rash and then only in proportion of 1/3rd of the Company's 2/3rd. the company was having its own salt shops and was having monopoly of retailing salt within the City. *See* 22 Revenue Department Diary 529, 567-574 (1798).

[31] The salt works at Pen were constructed during the reign of Kanoji Angria. The Government had the monopoly of selling salt and the cultivators were paid a fixed price for their produce. *See* 44 Revenue Department Diary 215-218 (1827); 40 Revenue Department Diary 208 (1828).

[32] Presently, areas comprising of Uran. Almost all the works have been acquired for the New Bombay Project and the JNPT.

[33] *Teesatee* was the amount of salt that could have fetched Rs.30/-. Incidentally, this levy was also known as *Teesatee.* As later events revealed the amount levied as *Teesatee* comprised of Rs.3/- chargeable towards land revenue, 8 *anna* towards *Deshmukhi* and the remaining excise.

the salt works[34]. The Act gave authority to the Government to establish chowkies within the salt works for protection of Government revenue. Government also decided to withdraw from all concern in the manufacture of salt.

The introduction of duty on salt brought out an important administrative change. Hitherto, the revenue from the salt pans, which was mostly in the nature of land taxes, was in the management of the Collectors of Land Revenue. This task was transferred to the Collector of Continental Excise. The latter Department was also authorized to collect the land revenue assessment[35]. But this was a matter of administrative convenience[36]; the revenue was to be credited to the Land Revenue Department[37].

Subsequent salt laws were far more stringent. Act XXXI of 1850 contained provisions for suppression of salt works where the average annual production was less than 5000 maunds. Proprietors of salt works opened thereafter had to bear the establishment charges for the guarding establishment. Opening of new salt works or the extension of the existing ones required the permission of the Government.

Licensing of salt manufacture was introduced through Act VII of 1873 with the objective of effective realization of salt revenue by plugging

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[34] 3 REVENUE DEPARTMENT DIARY (1837).

[35] The Government of Bombay in their dispatch dated 20.1.1838 had concurred with the suggestion that ground rent may be assumed to be the land revenue leviable if the ground occupied by the salt work is planted with rice. In a further dispatch dated 31.12.1838 it was instructed that ground rent, however small, should be extracted and it should never exceed the rate of assessment the land would have paid, had it been cultivated with grain and in many cases would admit of being much lower. *See* 78 REVENUE DEPARTMENT DIARY 95-241, 294-314 (1838).

[36] The principle has been laid down in the Government of Bombay's dispatch dated 20th June 1840; See 120 REVENUE DEPARTMENT DIARY 30-79 (1840). . The Governor in Council had held that ground rent of the salt pans has been in the nature of land revenue and therefore belonging to that Department. The Collector of the District was to assess and levy it, as he would in any other portion of land revenue. However, for the sake of convenience, the collection may be made by the Collector of Continental Customs & Excise who, however, possessed no powers to enforce the payment and must, if it was withheld, would take recourse to Mamlatdars.

[37] 90 REVENUE DEPARTMENT DIARY 231-232 (1843); 91 REVENUE DEPARTMENT DIARY 15-17 (1843).

its leakage and preventing smuggling. This development was preceded by the formation of a separate Salt Department under the Collector of Salt Revenue. Section 21 of the Act had provided that proprietors of existing salt works were entitled for licence. The introduction of licensing gave rise to widespread protests. This led the Government to assure that the salt manufacturers need not fear any injury to their legitimate rights by taking out the licence for manufacture of salt[38].

The mode for suppressing the salt work under the Act of 1873 was through the process of land acquisition[39]. The subsequent Act of 1890 provided for withdrawal of licence without any compensation, but the salt manufacturers were entitled to retain the land under the ordinary survey tenure.

The licence's issued under the Salt Acts of 1873 and 1890 contained several conditions. The law officers had, on various occasions, given the opinion that no further condition as laid down under the provisions of the law could be inserted in the licence except such as may be prescribed by the Governor in Council from time to time. It was not competent for the Collector of Salt Revenue to create a condition as opposed to the tenor of the Act itself and the general law.[40]

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[38] GR 4142 of 1875.

[39] Salt Act, 1850 § 7.It had empowered the Government to suppress the salt works of average annual production less than 5000 maunds. The objective was doing away with small and scattered salt works where the duty realized was not commensurate with the establishment charges. The Salt Bill, 1873 also contained similar provisions. But during the proceedings in the Legislative Council, the native members pointed out that once the salt work had been suppressed, the land was of no use to the salt manufacturer, salt work land being generally unsuitable for any other purpose. They suggested that the Government might acquire the salt works under the provisions of the law. Government had acceded to the request and Section 36 was amended accordingly.

[40] 107 Revenue Department Diary 439 (1874).

On a different occasion, the Advocate General had stated in his opinion No.4/1897 dated 18.1.1897(RDV 208/1897 page 41) – *"I think it would not be legal to insert in a licence granted under Section 12 & 13 of the Bombay Salt Act, 1890 a condition that the licensee should not sell, mortgage or otherwise alienate his salt work without the permission of the Collector of Salt Revenue. Section 12 renders it obligatory to on the part of the Collector to grant the licence for manufacture of salt to persons entitled under Section 17 and Section 13 directs that certain things shall be specified in the licence ……a condition preventing a man from*

The early twentieth century saw the various Salt Departments in different Presidencies coming under the umbrella of the Central Board of Revenue. A central Act, viz. Central Excise & Salt Act, 1944 took the place of various provincial Acts. The system of licensing continued to be in vogue, but with less vigour.

The country's independence foresaw by the abolition of duty of salt and the formation of a Salt Department under the Salt Controller (subsequently Salt Commissioner). The system of licensing continued, but it was more of a lame-duck regulation until it was finally done away with in 1996.

C. *Reforms in Land Revenue Administration*

The British rulers had realized that the welfare of the people and the progress of the country depended upon the introduction of a moderate and equitable system of land revenue realization.[41] It had been stated by the Government of Bombay in a letter addressed to the Court of Directors[42]:

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selling, leasing or raising money upon his salt work ....is a condition which would prevent a man from doing what the ordinary law allows him to do, and all conditions, rules and bylaws encroaching the ordinary rights of the individuals are construed strictly and unless it could be shown the legislature clearly intended that such condition should be imposed it would be invalid....."

[41] The British rulers, in the initial stages of their occupation of the country were under the impression that, except in rare cases, the cultivators were just the tenants at will and enjoyed no rights of property. But this has been a misconception borne of the unsettled affairs in the territory. The internecine wars during the 17th and 18th centuries led to extra levies on landed property. These levies had become so burdensome rendering property in land worthless. Ownership of property in land was recognized from time immemorial by custom and usage of the country. *Manusmriti (IX: 44)* prescribes that the land belongs to the clearer of the land as it was he who brought virgin land into productive capacity. The original settler of the land who brought the land under cultivation became its natural proprietor. The tenure was originally known as *Thalakari;* later, it came to be designated as *Miras.* The former term is a derivation of the Sanskrit word *Sthala,* meaning thereby a specific piece of land. The latter term is of Arabic origin which simply means "to inherit', signifying a positive, permanent and hereditary right of possession of land. *Mirasdors* are residents of the village who had permanent property rights in land could not be ejected or dispossessed so long as they paid the land revenue.

This position has been recognized by the Bombay High Court in Collector of Thana v. Dadabhai Bomanji (1877) 1 I.L.R. 352. It had been held, *"No doubt, the preamble of Regulation III of 1814 declared that 'the ruling power of the provinces*

> *"Many of the taxes enumerated……form an integral part of the land revenue, and arise out of extremely objectionable and complicated system of assessment and computation, which prevails throughout this part of the country to such an extent that it may safely be assumed, that the Maratha Government studied to render their system incomprehensible to an ordinary cultivator, and to leave the rent payers as much as possible at the mercy of the Government officers since it must have been beyond the capacity of anyone not in some degree educated and skilled in accounts to calculate what he would have to pay for any given quantity of land."*

It was stated that the principle steps for the improvement of the country was to place the land revenue on a moderate and simple footing. The initial system introduced by Mr.Pringle, the then Survey Superintendent was a failure and had to be abandoned. Mr.Wingate carried out an experiment of resurvey in Indapur Taluka of Pune District. This attempt of survey and settlement proved out to be successful. Therefore, the three Superintendents of Survey met in conference in Pune and took careful review of their practical experiences. They prepared a perfect and scientific scheme survey and settlement in the year 1847. The principle involved was the classification of soil based on its productive capacity. This scheme, the Joint Rules, became the foundation of the survey tenure. Survey and settlement operations were undertaken all over the Presidency and completed by 1880[43].

The Bombay Survey & Settlement Act (I of 1865) (hereinafter the Survey Act) and the subsequent Bombay Land Revenue Code (BLRC – Act IV of

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now subject to the Government of Bombay has, in conformity with the usages of the country, reserved to itself, and has exercised the actual proprietary right of lands of every description. The correctness of this statement is very questionable. The reports of Elphinston, Chaplin, Grant Duff, Robertson and others indicate very clearly that large portions of the ryots, especially the mirasdars, are, according to the ancient usages of the country, proprietors of their estates, subject to the payment of a fixed land tax to the government."

[42] 168 REVENUE DEPARTMENT DIARY 61 (1846).

[43] *See* CHARACTER OF LAND TENURES AND SYSTEM OF SURVEY & SETTLEMENT IN BOMBAY PRESIDENCY (1914).

1879) (hereinafter BLRC) conferred these principles the force of law. The first Act dealt only with the survey occupants. But the BLRC gave statutory recognition to every type of occupancy, survey occupancy included[44].

D. *Exemption of Salt Work Lands from Survey Settlement:*

The principles of revenue classification were of no application in grading salt work lands. At the suggestion of the Customs Commissioner, the salt work lands were kept out of the survey tenure. GR 4269 of 1859 laid down the procedure whereby the land revenue from the salt pan lands came to be managed by the Salt Officers[45]. But these changes were merely administrative. Land revenue continued to be an item of final receipt of the

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[44] § 2(j) of the Survey Act defined 'occupant' to mean the person whose name is entered authorizedly in the survey papers or other public accounts, as responsible to the Government for payment of the assessment due on the field or a recognized share of the field.

According to §3(16) of the BLRC, 'occupant' means a holder in actual possession of unalienated land, other than a tenant. Definition provided under MLRC 1966 is also on similar lines.

[45] The Revenue Commissioner in his Memo No.1654 dated 26.8.1859 requested for instructions as to how the lands taken up for salt manufacture were to be dealt with in the surveyed districts stating, therein, that he was the opinion that main principle of survey should be applied to all lands and that it was of no consequence what crop was produced, whether rice or salt; the land should pay the regulated assessment of land revenue, and that unassessed land required for salt works should be dealt with in the same way as it was required for any other description of cultivation. The Commissioner of Customs, Salt & Opium in his report dated 20.9.1859 had stated that the question raised was intimately connected with the then existing system of levying ground rent in various districts of the Presidency. In the Konkan, there existed various systems. In some places, ground rent was levied at *Bigotee* rates i.e. rate assessed on the area of the land, but at different rates at different places – either on the entire area of the salt works or only on the area of the salt beds, the rates in the latter cases being much higher. In certain other places, a small sum of two to three paise was levied on each maund of salt removed from the salt works and in some other places, a certain portion of appraised value or proportion of produce commuted to a money payment was levied. In all districts, except in the solitary instance of Uran Taluka, where it was being levied directly by the District Collector, this ground rent was being levied by the Customs Department and credited to the Land Revenue Department. The GR accepts the suggestion of the Customs Commissioner that lands taken up for salt manufacture to be deducted from the *Kumal* and that such lands be transferred to the Customs Department. Consequently, survey settlement (other than the preliminary step of assigning the survey number) was not extended to the salt work lands.

Land Revenue Department. It was only that the levy was realized through the Salt Officers on a scale distinct from that under the survey classification[46].

Consequently, the salt work lands came to be shown in the village/ survey records Mithagar without showing the name of the occupants. Record of rights came into force during 1903. But still salt work lands continued to be recorded as *Mithagar*[47].

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[46] The Commissioner of Customs, Opium & Abkari vide his letter dated 12.6.1885 had suggested that the ground rent levied from salt work lands which were till then collected by the Salt Department and handed over to the Land Revenue Department to be credited to 'Land Revenue' in the accounts, may be allowed thereafter to be credited to salt revenue. It was urged in support of the said proposal that similar concession had been granted to the Forest Department and that as all the expenditure incurred in the survey of lands devoted to the survey of salt manufacture had been borne by the Salt Department, the revenue derived from ground rent levied on such lands should also be transferred to salt revenue. On reference made to the Accountant General, the Government was informed that the proposal involved an important alteration, in the then existing classification of revenue and if the Government approved it, it seemed necessary to obtain the sanction of the Government of India. Hence the Government did not consider that sufficient ground existed to justify an application being made to the Government of India for the proposed change. *See,* GR 8445 of 1885.; 302 REVENUE DEPARTMENT DIARY 243 (1885).

The system was subsequently modified in the year 1897. Under GR 5186 of 1897 the item of establishment charges, which was being levied from salt works opened after 1850, was consolidated with ground rent as a levy on salt removed in the form of *maundage* charges. It has been stated at para 5 of the said resolution that the ground rent so collected was a special contract in terms of Section 45 of the BLRC and this arrangement was to continue so long as the land covered by the salt works continued to be used for manufacture of salt. The charge levied had been at the rate of 3 paise per *maund.* In accordance with the resolution, the Salt Department has been making a lump sum payment of Rs.36000/- to the Land Revenue Department towards the assessment of salt works lands. With the abolition of excise duty on salt, the Department bore no establishment charges. Hence, after 1959, the *maundage* charges has been collected at the rate of ½ paise i.e. just the amount required for crediting the amount of land revenue payable to the State Government.

[47] The system of record of rights was introduced on the recommendation of the Famine Commission of 1897. The main principle involved is that all sorts of rights and liabilities in respect of every piece of land are to be recorded in a document maintained in the village itself maintained by the Talathi. This has been great improvement upon the survey records which recorded only the rights and liabilities of the occupants.

The Salt Officers had been maintaining, at least from the year 1860, a register known as *Jamin Kharda,* register of lands. Every detail relating to the land under salt manufacture has been recorded in these registers. All the salt works, other than Government salt works, have been classified as 'private salt works'[48]. The *Jamin Kharda* has always recognized to be a document as to title as well as the record of rights.

The Government had constructed *chowkies* in every salt works for stationing the guarding establishment[49]. The Building Register maintained by the Department shows the land on which these *chowkies* have been constructed as 'belonging to the *shilotry*'.

E. *Distinct Tenure*

To sum up, salt work lands came to be placed in tenure distinct from the ordinary survey tenure, characterized in that they were recorded as *Mithagar* in revenue records and that, instead of land revenue, the Salt Department had been levying ground rent. However, the distinctions were well understood over a century or more, as evident from the departmental and archival records and even, publications of repute[50].

The salt manufacturers were recognized to be the occupants of the land and the proprietors of the salt works and that the ground rent was understood to be a levy in lieu of land revenue assessment. There has never been any whisper, at least until 1960, from any quarter of the Salt Department being the owner of these lands. This has manifested by words and deeds recorded in public documents.

The *Jamin Kharda* maintained by the Salt Officers contained all these particulars. Hence there was no need to introduce this system in respect of the salt work lands. 304 of the Bombay Salt Manual mentions that the *Jamin Kharda* takes the place of record of rights. *See* BOMBAY SALT DEPARTMENT, 1 THE BOMBAY SALT MANUAL : ACT, RULES & NOTIFICATIONS (1922) IPR/V/27324/20.

[48] Later, the Salt Act, 1890 had defined 'private salt work' to include the agrias working on their account on Government land and the contractors working for their own profit Government salt works for fixed periods. This inclusive definition was provided for the purpose of bringing such salt works within the ambit of Section 17 to 26 of the Act. This definition, for obvious reasons, is just a legislative device – a legal fiction whereby B is deemed to be A, although B is not A.

[49] The Salt Act 1837 and all the subsequent Acts had provisions enabling the Government to construct the *chowkies*.

[50] S.C. AGARWAL, THE SALT INDUSTRY IN INDIA 220(1977).

There have been number of instances where the salt work lands ceased to be used for salt manufacture for one reason or other. Records reveal that the procedure consistently followed was to cancel the licence granted for manufacture of salt and to inform the Collector of Land Revenue for bringing the lands under ordinary survey tenure and make an entry to this effect in the *Jamin Kharda.*

F. *Acquisition of Salt Work Lands for Public Purposes - A Peep into History*

The past two centuries has witnessed the rapid growth of Mumbai and its suburbs. This had resulted in the salt work lands, which at one time extended up to Sewri, acquired for various public purposes. In all these cases, at least prior to 1970, the salt manufacturers had received due compensation. It has always been the consistent stand of the Department that other than the chowkies, it had no interest in the salt works under acquisition.[51]

As early as 1850, it was the Government policy that private property of individuals should not be acquired by mere payment of visible outlay and remission of assessment. Government of India was of the opinion that *Miras* and *Inam* tenures which carried the right to property. Even though the Government had right to appropriate any poperty for public purpose, this right should not be exercised to the detriment of any private person without fully and fairly reimbursing the loss, as well as inconvenience he may sustain; ownership should be purchased at its full market value or land of fully equal value should be given in exchange. The Court of Directors had approved the above decision of the Government of India and had expressed the opinion that land should never be taken without full compensation being made to the owners and this rule should be followed in future. The Court of Directors vide para 2 of the of the Letter No.3 dated 22.5.1850 had informed the Government of Bombay, "We entirely approve the decision of the Government of India that the right to appropriate all the lands that may be required for public purpose should be strictly construed ; but these rights should in no case be exercised without fully and fairly reimbursing for the loss as well as inconvenience

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[51] For instance, in connection with the acquisition of certain salt work lands at Wadala, the Collector of Salt Revenue had stated in his letter No.6652 dated 18th July 1908 addressed to the Collector of Bombay, "*3. The Naro, Motha Antab, Lahan Antab being private salt works, the Salt Department has no interest in their acquisition, except as regards to the ———buildings."*

he may sustain by removal, and if there can be an owner of land so taken the ownership should be purchased at its full market value or land of fully equal value should be given in exchange. We have in more than one dispatches to your Presidency expressed an opinion that land should never be taken by the Government without full compensation made to the owners. We accordingly desire that rule quoted above be followed in future"

According to the above principle, compensation had been granted whenever slt works were acquired or even when injury to manufacture of salt was caused because of public works. The compensation paid to the salt works at Kurla is of considerable interest in this context.

The erection of Chembur and Bandra causeways during 1839-40 injured these salt works as the flow of sea water to them was prevented. Bomanjee Hormasjee, the proprietor of the Kurla village represented to the Government. The Collector of Thana vide his letter No,29/1845[52] had stated:

> *"It is true that erection of Chembur and Bandra Causeway has the effect stated by the petitioners……owing to the completion of Bandra and Mahim cause causeway these salt pans has become still more unproductive and probably will be abandoned in few years….."*

The Collector of Thana and the Collector of Continental Customs suggested compensation either by annual payment or the cost of constructing new pans. The Revenue Commissioner had objected to the principle of paying compensation claim by Government for contingent and remote effects of public works on value of private property. The Legal Remembrancer, when consulted, stated that the principle laid down by the Commissioner was correct and beyond doubt, but it did not govern the case under consideration. In this case it had been fund necessary for the convenience of the public to prevent sea flowing for the future, over a private person's estate, and where he had erected works which for the reason of this interruption had become useless. "There is no distinction in substance ", it was stated, "between appropriating a man's land for the purpose of public work and turning

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[52] 180 Revenue Department Diary 138 (1845).

for the same purpose the course of water which had accustomed to flow through and irrigate his estate and it was impossible to class the latter amongst the contingent and remote effect of public works on the value of property affected by them" He was of the opinion that Government was bound to pay award a fair compensation for those pans[53]. Accordingly, the Government with the approval of Court of Directors had granted compensation. The Court of Directors by their letter dated 28..2.1850 had informed, "It is not the question that by the construction of these causeways the supply of sea water to the salt pans belonging to Bomanjee Hormasjee has been entirely cut off and your Legal Remembrancer is of the opinion that he is justly entitled to be compensated for the loss which he had thereby sustained……as you are of the opinion that no terms favourable of Government by referring the case to arbitration, we confirm the proposed arrangement which has received Bomanjee's concurrence"[54]

G. *Tenuous Contentions*

However, the pleadings by the State advance a different contention. This has been summarized by their Lordships at paragraph 8.[55] The salient points include:

(a) that ownership of the land in question vests with the Union of India under various statutory provisions and Government resolutions;

(b) that the salt work lands were under the control of the Salt Department since prior to 1859;

(c) that it was under the licence issued by Salt Department of the Union of India that the claimants were allowed to manufacture salt in the land;

(d) The lands under the salt works are situated mostly below high water mark. In terms of Section 37 of the Land Revenue Code 1879 such lands were declared to be the property of the Crown;

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[53] 214 Revenue Department Diary 195 (1849).

[54] 195 Revenue Department Diary (1850).

[55] Smt. Halimabibi & Others v. The SpecialLand Acquisition Officer & Others, MANU/MH/0573/2007.

(e) In terms of Section 37 of the said Code, claiming right to any land against the Government had to establish his title by producing documentary evidence in that regard and the claimants did not have any such evidence in support of their claim;

(f) In terms of Rule 7(A) and Rule 7(B) of the Land Revenue Rules, 1881, the land required for salt manufacture was transferred by the Revenue Department to the Salt Department which was allotted to private person for manufacture of salt;

(g) In terms of Rule 8 of the said Rules, the lands were allowed for manufacture of salt work and it was clarified in the year 1890 that such right would not include creation of any proprietary rights in the land and further that on the determination of right to manufacture salt either by way of expiry, forfeiture or otherwise, the possession of the ground and of any work constructed on it would revert to the Government;

(h) The salt department had been levying ground rent for the land under salt manufacture, pursuant to the license granted and continued to be granted in terms of Rule 131(1)(b)(i) of the Central Excise Rules, 1944;

(i) Under the Government of India Act, 1858 as well as 1915-19, the properties in India were vested in the Crown for the purpose of Government of India and after coming into force the Government of India Act, 1935, the Crown lands under salt manufacture continued to vest in the Crown for the purpose of Government of India as manufacture of salt continued to be a federal purpose. Under the Constitution of India, the lands have been vested in Government of India (Salt Department);

(j) The Jamin Kharda was maintained by the Salt Factory Officer and the same discloses that the salt work to be a private salt work. The license for manufacture of salt which was issued since last century clearly disclosed that the salt operators had to pay ground rent at the rate as may be fixed from time to time by the Government.

The above averments were made in the written statements filed in the LARs in the late eighties. However, information gathered from the Archives and available in the Departmental records places the matters in a different light.

VII. Misconceptions Over Ownership of Land

Unlike other Presidencies, the British rulers never monopolized salt manufacture or trade in the Bombay Presidency. In fact, the proposal from the Bombay Government for establishment of salt monopoly was 'negatived' by the Court of Directors during 1825 on the ground that the country was in depressed and unsettled state and the monopoly may cause deficiency of salt. There were some limited monopolies in certain localities, a legacy of the previous regimes. But all such systems were abandoned with the introduction of duty on salt in 1837. Thereafter it had been a private enterprise, the Government restricting itself to the levy of excise duty on salt and ground rent for the salt work land.

The licence for manufacture, for the first time, was enforced in 1873. And all the then salt manufacturers, as laid down in Section 21[56] of the Salt Act of 1873 and Section 17(1)[57] of the Act of 1890, were entitled for a licence in their capacity as proprietors of private salt works.

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[56] §21 reads as follows:

A license for manufacture of salt shall not, except hereinafter mentioned, be refused to the proprietor of any salt work not being the sole property of the Government which is being worked at the time of passing of this Act, or which may have been worked within three years previous to the date of its introduction, or to any person who may establish by virtue of any Sannud granted by the British or any former Government, a special and permanent right to manufacture salt.

[57] §17(1) reads as follows:

Except as is hereinafter otherwise provided, every proprietor of a private salt work, to which Section does not apply and which is being lawfully worked at the time when this Act comes into force, or which was lawfully worked at any time within three years next before the date on which the Act came into force, shall, unless his salt work is suppressed under Section 24 of this Act or has been suppressed under Section 33 of the Bombay Salt Act, 1873 be entitled, on application, to a licence to manufacture of salt.

The archival records are unequivocal in that it is the Collector of Land Revenue who is competent to grant unoccupied waste lands[58] for construction of salt works. True, the Collector of Salt Revenue had a decisive say in the allocation of land for salt manufacture, but the latter's role had always been *de facto,* not *de jure.* The procedure for allocation of land for construction of salt works saw some changes in the year 1890[59]. But these could not have been of any impact on the tenure of the then existing salt works, unless these amendments could be of retrospective effect, a logical and legal absurdity[60]. Other than the salt works at Bhandup, hardly any major salt work was opened after 1890.

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[58] § 16 provided that Special and permanent rights of manufacturing salt to be recognized.

The Government's letter No. 3739 dated 10.12.1840 had instructed that applications for permission to enlarge salt works or to create new ones were to be made to the Continental Customs & Excise and, after recording that Department's opinion, were to be forwarded to the Revenue Commissioner, who would issue instructions to the Collector in whose District the pans were to be formed, to assess the land taken up. The Salt Act of 1850 provided that opening of salt works required the sanction of the Government. Such proposals were submitted to the Government only after obtaining the concurrence of the Collector of the District for appropriation of the land.

The Bombay Land Revenue Rules notified in the year 1881 provided, under Rule 7, for the grant of occupancy of land and all rights which have been the property of Government could be disposed by the Collector. Rule 16 had authorized the Collector to grant occupancy of any unoccupied salt marsh not assigned for special purposes at his discretion. Section 3 of the BLRC had defined Collector to be the Collector of the District.

[59] There were two developments. The 'Rules for Disposal of Application for permission to Open New Salt Works' were notified in the year 1890 as an executive instruction having no force of law. The salt works at Bhandup and one at Mira were opened under these rules on the lands leased out by the Collector of Salt Revenue on execution of lease period for specific periods.

Land Revenue Rules were also amended in the same year incorporating Rule 7A, 7B & 7C. Rule 7A stipulated that marshy lands required for salt works were to be disposed by the Collector of Land Revenue in consultation with the Collector of Salt Revenue. Rule 7B provided that the lands required for opening of salt works were to be kept at the disposal of the Collector Salt Revenue. Rule 7C dealt with conditions for granting permission for opening salt works on occupied lands – either by relinquishing occupancy or to pay fine under §65 for retaining occupancy or to retain occupancy under special terms contained in §67.

[60] It is the basic principle that statutory provisions alone can have retrospective

The salt works at Bhandup form a distinct class of their own. These lands were acquired on behalf the Department and have been given on lease by the Collector of Salt of Revenue on execution of lease deeds. Even in these cases, it had been set out that the lessees would have all the rights of the proprietors of private salt work except that of the requirement for keeping reserve stock. The leases are renewable.

Another apparently contentious issue in this debate is the postulate that all lands situated below high tide level belong to the Government and that any one who claims ownership of such lands has to produce documentary proofs in support of such titles. Obviously, almost all the salt manufacturers do not have any such documents with them esp. successors of original occupants who have been holding these lands for generations.

This assertion is supported by the statutory provision contained in Section 37 of the Bombay Land Revenue Code, says its proponents. But a careful reading of the very same section reveals a different intent. What the provision lays down is that the lands so situated which is not the property of private persons belong to the Government[61]. And this is a simple customary law, a universal truism – that land, wherever situated, which is not the property of private persons, belongs to the Government. This aspect was clarified during the discussions Land Revenue Code Bill in the Bombay Legislative Council in 1877. Further, the Advocate General had assured that mere possession would give title in itself, unless it could be shown to be utterly wrong.

And that hits the nail on its head. The permission and the licence for manufacture of salt under the various Salt Acts from 1837 onwards has

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effect, if the Legislature so intent. In a number of instances, the Legal Remembrancer as well other Law Officers had opined that the provisions of BLRC were not of retrospective effect. The Land Revenue Rules are rules notified under §214 of the Code.

[61] §37 reads as:

All public roads, lanes and paths, the bridges,……., and all lands, wherever situated, which are not the property of individuals or aggregates of persons legally capable of holding property, and except in so far as any rights of such persons may be established in or over the same, and except as may be otherwise provided inn any law for the time being in force, are and are hereby declared to be, with all rights in or over the same, or appertaining thereto, the property of Government; and it shall be lawful for the Collector……to dispose them in such manner as he may deem fit, or as may be authorized by the by general rules sanctioned by Government.

been granted in recognition of the salt manufacturers being the proprietors of private salt works. This simple fact repudiates the very foundation of the entire controversy. It is a case of much ado about nothing.

On a deeper analysis, the entire imbroglio turns out to be just a misconception – that of the import of ownership of land. Ownership of land is a relative term. In fact, no one can be owner of the land in absolute sense of the term, as in the case of movable property. Ownership of land is the ownership of property or the estates therein[62]. Ownership of land is just the ownership of a bundle of rights. A person who holds all the rights in his holding, other than that of the revenue rights, which is the prerogative of the Government or Sovereign, can rightly be considered as the owner of the land.

In fact, the laws of the land, BLRC included, only recognized the holders of the land, alienated or unalienated. After the enactment of BLRC, holders of all unalienated lands has come within the definition of 'Occupant', with all the attendant rights and liabilities as provided therein. The archival and the departmental records leave little doubt that the holders of the salt work lands fell within this concept and its definition and were always considered and recognized as occupants, their rights in the land being perpetual, inheritable and transferable. Obviously, the entire pleadings are just an overstatement ignoring all the relevant facts, law and history.

Had these relevant legal concepts applied there would not have been any room for any misconception, leave alone a dispute. And in fact, there had been similar instance in the past and the manner it was resolved repays study.

All the salt works in Pen were constructed during the 18th Century. Kanoji Angria, the then ruler constructed the outer embankments and the

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[62] *See* BADEN POWEL, THE LAND SYSTEMS IN BRITISH INDIA (1892). The ratio laid down by the Bombay High Court in Collector of Thana v. Dadabhai Bomanji (1877) 1 I.L.R. 352 lays down the law: *" the distinction between Government and the land belonging to the private individuals is not to be sought in the payment or non-payment of assessment. The distinction therefore which is intended must, we think have reference to proprietary right in the soil, and the expressions 'land belonging to the Government' and Government land can only mean land of which Government is the proprietor, and do not apply to land in which proprietary right in soil vests in a private individual, whether or not it is subjected to payment of assessment to the Government."*

salt works were constructed within them. Consequently, the Government had the monopoly of the sale of salt. The produce from the pans were considered to be the property of the Government, which was disposing the entire produce and making fixed payments to the salt manufacturers and the salt workers. This system continued by the British rulers also. On the introduction of duty on salt, the monopoly was abandoned and the Government restricted itself to the collection of excise duty on salt and ground rent for the land occupied by the salt work.

However, Mr.Payne, the then Assistant Collector of Continental Customs & Excise pointed out during 1850 that the salt pans at Pen were the property of the Government and it was too hasty step to abandon the proprietary rights on the introduction of duty on salt. It had been pointed out that unlike the salt works in Caranja (Uran), which he stated was the property of the private persons, the salt works at Pen were the property of the government; the position of Government with reference to the salt works at Pen had been similar to those of any other land owner and that the Government was extending financial help for conducting local fairs etc. in that capacity. This development led to the reintroduction of monopoly, However, Government soon realized that the system of monopoly was not working well and the management of the sale of salt was given back to the *Shilotries* on *ad hoc* basis[63]

At the direction of the Government, the Survey & Settlement Commissioner made an inquiry on the tenure and it was reported that there was no sufficient reasons for deciding against the claims of the *Shilotries* to be considered as mirasdars, although the outer embankments which protected a large area of salt work as well other lands had been built by the former Government. It had been kept up by the shilotries at their own expenses and the maintenance by the Government was only necessary because of the skilled labour required.

Based on further reports from the Survey & Settlement Commissioner and the Commissioner of Customs, it was decided by the Government by GR 5576 dated 20/10/1980 that the *shilotries* should be entered as occupants in the Government records[64].

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[63] 237 Revenue Department Diary 13-278 (1851); 185 Revenue Department Diary 165-194 (1852).

[64] 141 Revenue Department Diary (1880).

VIII. The Ominous Consequences of Misconceptions

The inevitable surmise is that the revised notification qualifying the salt work lands to be Government lands and for the acquisition of leasehold and other outstanding rights had been an act of unparalleled institutional highhandedness. The proposition had been a fatal error in fact as well as law and virtually amounted to confiscation of private property.

The injury that has been caused to the affected salt manufacturers has been unprecedented. They had been denied of their fundamental and constitutional rights. They had been deprived of their property, business and right to livelihood.

There are no credible grounds by which the decision of the reference court could have been faulted. The earlier decision of the High Court in these appeals[65] (which have been set aside and remanded back by the Apex Court), holding that the salt work lands belonged to the Government, it is submitted, was substantially based on the misconception of black batty being salt, as contended in the written submissions by the then Additional Solicitor General. (Black batty, in fact, is paddy cultivated in brackish soil in the Konkan districts.)[66]

It is submitted that the misconceptions involved in judgment under review are far more critical. The ruling that the jurisdiction of the Reference Court is circumscribed by the terms set out in the notification and the declaration is faulty on more than one count. The judgments relied on viz. *Sharda Devi and Shymali Das* hardly supports this ruling.

It is undisputed that the reference court derives its jurisdiction from the Act. The point of reference under Section 18 cannot but be related to the *subject matter* of acquisition. The object of land acquisition, as contemplated under Section 16 of the Act, is to enable the Collector, when he makes the award under Section 11, to take possession of the land, which shall thereupon vest absolutely in the Government, free, from

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[65] Union of India v. Muhammad Masud Muhammad Mahsin Bhaiji 1997 (2) Bom. C.R. 314.

[66] The ASG appears to have been briefed wrongly the second clause of §2(2)of Regulation I of 1808: "Second, This produce consisted, as far as regarded the cultivation of rice grounds, in chowka, or white, called also gora and the khara or ratta (i.e. salt, or black batty, the term batty, or paddy, meaning rice in husk)……"

all encumbrances. This objective has been accomplished in the instant cases. The salt manufacturers have been dispossessed of their lands, the salt works rendered unworkable and the sites have been developed for various public purposes. Effectively, all their rights have been extinguished and there is nothing left for them in these premises. And this includes their occupancy and proprietary rights.

Under Section 18 one among the subject-matter of reference can be a dispute as to the amount or the quantum of the compensation. Compensation naturally has to be with reference to all the rights and interests that have been acquired/extinguished, as a consequence of which the land could be taken possession and vested absolutely in the Government free of all encumbrances. It was only just and legal that the Notification under Section 4 and Declaration under Section 6 and Award under Section 11 should have embodied the whole of these rights and interests. A defect or omission therein is unreasonable and unlawful. The issues before the reference court are required to be decided in the light of the factum of acquisition which covered all the private rights and interests. The Notification or the Declaration or the award made by the Collector is not the source of the right to compensation. A reference for determination would be an inchoate exercise if the question of compensation is decided short of the factum of acquisition. Naturally, the factum of acquisition as evidenced by rights and interests acquired/extinguished so as to vest the land in the land in the Government free of all encumbrances, is the subject matter of acquisition and the source of right of compensation and determines the jurisdiction of the reference court; it cannot be circumscribed by the terms set out in the Notification or the Declaration. Subject matter of acquisition is determined by the factum of acquisition to achieve the object of land acquisition as defined by the provisions of Section 16 and not the letter of notification under Section 4 and declaration under Section 6.

The reason is too obvious. Rule of law implies independence of judiciary. Executive cannot determine or circumscribe its authority. The process of Notification under Section 4 and Declaration under Section 6 are executive actions. The courts derive their authority from the Constitution and the statutes and adjudicate the matters of dispute based on the facts and circumstances. It is inconceivable how artificial and highhanded executive action could tie the hands of the court. It is the duty of the courts to ensure that administration is conducted in accordance with the

law. The present judgment has placed the matters in an entirely different and novel dimension. The verdicts under review, theoretically, only inform the claimants that, so far, they have been pursuing the wrong remedy. But this information has come too late, at least by a quarter of a century. The irony of the matter is that another Division Bench of the High Court had directed them to pursue this remedy and this was affirmed by the Apex Court. But, in effect, the decision amounts to ratification of the confiscation prescribed by the revised land acquisition Notification and Declaration and subsequent Award.

The dimensions are ominous. The most immediate is that the affected persons are obliged to give back the compensation they had received by furnishing bank guarantees. This entails great hardship to the majority of the persons affected; they are in dire straits of losing even whatever little means they have. Individuals tribulations apart, the present outcome practically negates the very fundamental principle of rule of law expressed by the maxim *ubi jus ibi remedium* – where there is a right, there is a remedy.

IX. In Conclusion: The Institutional Vice of Justice *Sans* Conscience

It is an institutional tragedy that the rights of citizens, deprived of their fundamental and constitutional rights, for judicial remedy have been rendered illusory because of unconscionable false pleadings and erroneous legal submissions. Courts can do justice only if litigants are willing to place all the relevant facts before it. Judges can give the right decision only when ably assisted by the lawyers. The State is very much an organism; institutions are its body parts. It is the rule of law that provides the life force. It is an institutional malignancy if the organization turns false to law and its rule. The obvious fallout would be metastasis of the polity. The judiciary, whose functions have to be detached and objective, is the most vulnerable. Deprived of best evidence judiciary chokes and judgments go astray.

What is most galling is that the counsels who have been appearing in these matters have failed to live up to be professionals as the Officers of the Court. Spurious pleadings and misleading submissions have never been challenged. No attempts have been made been unraveling the historical truths or elucidating the correct law. The texts of the earlier and present judgments reveal them to be too obsessed with semantics and precedence than facts and law. Otherwise, the misleading submission of black batty

being salt[67] or the subject-matter of acquisition being distinct from factum of acquisition could not have escaped critical scrutiny.

Manusmriti lays down the dictum, 'Litigants should not either enter the courts; or if they enter the courts they should only tell the truth. Those who remain silent when questioned and those who answer falsely are sinners. If litigants spoil justice through injustice and witnesses spoil truth through untruth even the audience becomes afflicted with sin. If *dharma* is ruined, *dharma* will ruin us.' Certainly, false pleadings are unconscionable. It confounds the judicial system. Consequences are bound to be graver when public agencies play hide and seek with the judicial proceedings.

[67] *Id*.