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2012 eGLR\_HC 10006635

Before the Hon'ble MR M R SHAH, JUSTICE

**DHRANGADHRA CHEMICALS WORKS LTD. APPELLANT(S) Vs. STATE OF GUJARAT AND 1 -  
DEFENDANT(S)**

**SECOND APPEAL No: 48 of 1990 , Decided On: 02/11/2012**

**K.S.Nanavati, Nanavati Associates, Krina Calla**

**MR.M.R. SHAH** [1.0] Present Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") has been preferred by the appellant - original plaintiff to quash and set aside the impugned judgment and order dated 18.01.1990 passed by the learned Appellate Court - learned Assistant Judge, Surendranagar in Regular Civil Appeal No.147 of 1983 by which the learned Appellate Court has allowed the said Appeal preferred by the respondents herein - original defendants by quashing and setting aside the judgment and decree dated 24.10.1983 passed by the learned trial Court - learned Joint Civil Judge (Senior Division), Surendranagar in Regular Civil Suit No.151 of 1978 by which the learned trial Court decreed the suit preferred by the appellant herein - original plaintiff and granted the declaration as prayed for.

[2.0] Facts leading to present Second Appeal in nutshell are as under:

[2.1] That the appellant herein - original plaintiff instituted the Regular Civil Suit No.151 of 1978 in the Court of learned Civil Judge (S.D.), Surendranagar against the respondents herein - original defendants for a declaration that the agreements at Exhs.43, 44 and 45 produced at Annexures A, B & C to the plaint are binding upon the defendants and under the terms of the said agreements, defendants have no right to determine the leasehold rights or any other rights in the suit land of the plaintiff Company so long as the plaintiff Company exists. It was also further prayed for a declaration that the notice Exh.41 issued by the original defendant No.2 - Collector, Surendranagar dated 24.10.1977 terminating / determining the lease of the salt works is illegal, ultra vires and bad in law being contrary to the terms and conditions of the said agreements at Exh.43, 44 and 45. A permanent injunction was also sought restraining the defendants from taking any further steps and/or taking the possession of the salt works from the plaintiff pursuant to the notice dated 24.10.1977.

[2.2] It was the case on behalf of the plaintiff that the plaintiff is a Public Limited Company registered under the Companies Act having its registered office at Dhrangadhra in

Surendranagar District. That the former State of Dhrangadhra was the owner of one Shree Shakti Alkali Works along with the salt works known as Sir George Lyod Salt Works at Kuda and that the said salt works comprised of land admeasuring 5428 Acres and 27 Gunthas. It was the case on behalf of the plaintiff that the then Government of His Highness Maharaja of Dhrangadhra had granted lease of salt works at Kuda for the purpose of salt pans along with the lands for stacking salt, bungalows, quarters, railway lines and the adjacent lands with plants, machineries and other equipments at Kuda and the same was given on permanent lease at Rs.451 per year. It was the case on behalf of the plaintiff that the 1st agreement was executed on 29.01.1939 (Exh.43). It was also contended that the exclusive right to manufacture salt in the said salt works at Kuda was also given to the plaintiffs. It was contended that the said salt works at Kuda was treated as integral part of the main factory named Shree Shakti Alkali Works and after purchasing the said Alkali Works, the plaintiff Company had treated the said salt works for being used mainly for the manufacturing of raw materials for the production of soda ash produced by the plaintiff Company. It was further contended that the salt is main and basic raw material of soda ash. It was further submitted that right from the very beginning i.e. from the purchase of Shree Shakti Alkali Works, it was specifically stipulated that the permanent lease from Sir George Lyod Salt Works at Kuda who also be given to the plaintiff Company and the said lease shall continue so long as the plaintiff Company exists. The sum and substance on behalf of the plaintiff was that the salt works at Kuda comprised of land admeasuring 5428 Acres and 27 Gunthas was given to the Company pursuant to the agreement Exh.43 dated 29.01.1939 on permanent lease so long as the Company exists and for that the plaintiff relied upon number of clauses mentioned in the said agreement. It was the case on behalf of the plaintiff that the United State of Saurashtra also confirmed the said agreement and the plaintiff Company was using the said land for manufacturing of salt for its chemical woks at Dhrangadhra. That after the merger of State of Dhrangadhra, an agreement of modification with regard to the said lease, leasehold rights in the salt works at Kuda was entered into between the plaintiff and Government of United State of Saurashtra vide indenture dated 04.01.1950 and by the said agreement the State Government adopted and agreed that the rights of the plaintiff Company only subject to further modification contained in the said indenture. It was also the case on behalf of the plaintiff that thereafter and after the said notification of further modification to the said agreement as made on 02.06.1954, whereby the said agreement was further modified to the extent and terms contained in the said modification agreement dated 02.06.1954 by which the terms regarding royalty was modified. Therefore, it was the case on behalf of the plaintiff that under the aforesaid agreements dated 04.01.1950 and 02.06.1954 have recognized the right of the plaintiffs Company as a permanent lessee of the said salt works at Kuda. That the original defendant No.2 Collector, Surendranagar by notice dated 29.10.1977 determined / proposed to terminate the leasehold rights with regard to the said salt works at Kuda and disputed the rights of the plaintiff and determined/terminated the leasehold rights by issuing the said notice under Section 106 of the Transfer of Property Act (hereinafter referred to as "TP Act"). Therefore, being aggrieved and dissatisfied with the aforesaid notice, the plaintiff instituted the aforesaid suit for aforesaid declaration and permanent injunction contending interalia that the salt works was given to the plaintiff as a permanent lessee and therefore, the same cannot be terminated by issuing notice under Section 106 of the TP Act and the plaintiff Company is entitled to use the said leasehold rights till the Company exists.

[2.3] That the suit was resisted by the defendants by filing the Written Statement at Exh.25. It was the case on behalf of the Government that the suit land is a government land which

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was given to the plaintiff on lease as per the agreement dated 29.01.1939. It was also the case on behalf of the Government that so far as the salt works comprising of land admeasuring 5428 Acres and 27 Gunthas is concerned, the same was not given to the plaintiff/Company on permanent lease as contended on behalf of the plaintiff. It was further submitted that even the plaintiff also committed breach of clause 9 & 10 of the agreement. It was also the case on behalf of the State that the plaintiff had committed encroachment upon another government land and has subletted the said land to different persons for manufacturing of the salt and therefore, the plaintiff has committed breach of terms of the agreement. It was further submitted that the Government at no time has revised the lease as a permanent lease. Therefore, it was submitted that the Government has rightly terminated the lease by notice dated 29.10.1977, which is legal and valid. It was also contended that the plaintiff is not using the entire land but using only some portion out of the land leased. Therefore, it was submitted that the plaintiff of land admeasuring 5428 Acres and 27 Gunthas at the nominal yearly rent of Rs.451/. Therefore, it was requested to dismiss the suit.

[2.4] That the learned trial Court framed the issues at Exh.27. Both the parties led evidence, oral as well as documentary. The learned trial Court decreed the suit by judgment and decree dated 24.10.1983 and granted the declaration and permanent injunction as prayed for declaring that the Agreements at Exhs.43, 44 and 45 produced along with Annexures A, B & C to the plaint are binding to the defendants and as per the said agreements, the defendants have no right to terminate the leasehold rights or any other rights in the suit land of the plaintiff so long as the plaintiff Company exists. The learned trial Court also held that notice at Exh.41 dated 24.10.1977 issued by the original defendant No.2 is illegal and in contravention of the terms of the aforesaid agreements.

[2.5] That being aggrieved and dissatisfied with the judgment and decree dated 24.10.1983 passed by the learned Joint Civil Judge (S.D.) in Regular Civil Suit No.151 of 1978, the respondents herein - original defendants - State of Gujarat and another preferred Regular Civil Appeal No.147 of 1983 before the learned District Court, Surendranagar and the learned Appellate Court - learned Assistant Judge, Surendranagar by impugned judgment and order dated 18.01.1990 has allowed the said Appeal by consequently quashing and setting aside the judgment and decree passed by the learned trial Court and consequently the suit preferred by the appellant herein - original plaintiff by holding that the salt works was never given on lease to the plaintiff on permanent basis and that the notice dated 24.10.1977 is just and proper.

[2.6] Feeling aggrieved and dissatisfied with the impugned judgment and order / decree passed by the learned Appellate Court in allowing the Appeal preferred by the respondents herein - original defendants and quashing and setting aside the judgment and decree passed by the learned trial Court and consequently dismissing the suit, the appellant herein - original plaintiff has preferred the present Second Appeal under Section 100 of the CPC.

[3.0] Shri K.S. Nanavati, learned Senior Advocate appearing on behalf of the appellant - original plaintiff has vehemently submitted that the learned Appellate Court has materially erred in quashing and setting aside the judgment and decree passed by the learned trial Court consequently dismissing the suit. It is further submitted that the learned Appellate Court has not properly appreciated and considered all the clauses in the agreement dated 29.01.1939 (Exh.43).

[3.1] It is further submitted by Shri Nanavati, learned Senior Advocate appearing on behalf of the appellant that the learned Appellate Court has not properly appreciated the purpose for which the salt works was given to the plaintiff. It is submitted by Shri Nanavati, learned Senior Advocate appearing on behalf of the appellant that as such the salt works was given to the plaintiff along with Shree Alkali Works on permanent lease. It is submitted that admittedly Shree Shakti Alkali Works was sold to the plaintiff Company and the plaintiff Company was to manufacture soda ash and salt is the raw material required for manufacturing of soda ash and therefore, the salt works comprising of 5428 Acres and 27 Gunthas was given to the plaintiff Company on permanent lease at the yearly rent of Rs.451/-. Therefore, it is submitted that the learned trial Court rightly held the lease of salt works as a permanent lease and therefore, can not be terminated by the notice dated 24.10.1977. It is submitted that as such under the agreement dated 29.01.1939 which was further modified with respect to the amount of royalty only, the plaintiff Company is entitled to manufacture the salt on the salt works till the Company exists as the salt is a raw material which is required for manufacturing of soda ash.

[3.2] Shri Nanavati, learned Senior Advocate appearing on behalf of the appellant - original plaintiff has heavily relied upon the clause Nos.1, 7, 8, 12, 13, 15 of the agreement dated 29.01.1939 in support of his submission that the intention of His Highness Maharaja of Dhrangadhra was to give on lease the salt works also on permanent lease. It is submitted that under clause 1, His Highness Government sold Shree Shakti Alkali Works to the plaintiff Company at the price of Rs.10,50,000/-. It is further submitted that considering the fact that the salt is a raw material

which is required for the purpose of manufacturing soda ash by the Company, His Highness agreed to let the salt works on permanent lease so long as the Company exists for manufacturing of salt at the said Kuda Salt Works. It is submitted that not only that but under clause 7 the Company was granted exemption from payment of any income tax and/or super tax to His Highness Government. It is further submitted that even under clause 8 the Company was granted the exemption from payment of all taxes in respect of the land occupied by the said works and also in respect of the chemists, filters, labourers and officers and all other quarters relating to the said works and all other structure which may at any time be put up by the Company for use of the Company and its employees till the Company exists. It is further submitted that under the said agreement more particularly clause No.12, it was agreed by His Highness Government to give to the Company sole and exclusive manufacturing right so long as the Company exists to manufacture salt at Kuda Salt Works even without charging any royalty to the Company for the same and the Company was conferred the right to manufacture salt for its own purpose as also for Gujarat Law consumption of the Dhrangadhra State. It is

submitted that therefore, clause No.14 under which the salt works was let to the Company at the nominal rent of Rs.451 per year is to be considered as a permanent lease only which cannot be determined by issuing notice under Section 106 of the TP Act. Therefore, it is submitted that the learned trial Court was justified in declaring the notice dated 24.10.1977 as illegal and contrary to the terms and conditions of the Agreement dated 29.01.1939.

[3.3] Shri Nanavati, learned Senior Advocate appearing on behalf of the appellant has further submitted that the rights under the agreement dated 29.01.1939 are assignable and transferable. It is further submitted that even at the time when the agreement dated 29.01.1939 was executed, both Shree Shakti Alkali Works and the salt works were in operation and therefore, Shree Shakti Alkali Works as well as the salt works are to be treated as integral part and the same stands on some footing as the salt is basic raw material required for manufacturing of chemical / soda ash in the plaintiff Company and therefore, as such the salt works was part of the agreement dated 29.01.1939.

[3.4] Shri Nanavati, learned Senior Advocate appearing on behalf of the appellant - original plaintiff has heavily relied upon the following decisions of the Honble Supreme Court as well as this Court as well as the Bombay High Court.

1. Janaki Nath Roy vs. Dina Nath Kundu AIR 1931 Privy Council 207
2. Bavasaheb Walad Mansursaheb Kotri vs. West Patent Press Co. Ltd. 1954 Bom 257 (Paras 13, 14)
3. Vedaraneeswararswamy Devasthanam vs. Dominion of India 1961 (0) GLHEL SC 33861
4. Shivayogeshwara Cotton Press vs. M. Panchaksharappa 1962 SC 413
5. Chapsibhai Dhanjibhai Danad vs. Purushottam (1971)2 SCC 205 (Paras 7, 12 to 14)

Relying upon above decisions it is requested to quash and set aside the judgment and order passed by the learned Appellate court and restore the judgment and decree passed by the learned trial Court by holding that under the agreement dated 29.01.1939, the salt works was given to the plaintiff Company on permanent lease which cannot be determined / terminated by the notice dated 24.10.1977 and the appellant herein - original plaintiff has the right to manufacture salt on the salt works till the appellant Company exists.

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[3.5] Shri Nanavati, learned Senior Advocate appearing on behalf of the appellant - original plaintiff has submitted that as salt is the raw material which is required for manufacturing of soda ash by the plaintiff Company, if the plaintiff Company is not permitted to manufacture salt in the salt works, it will affect the appellant Company. Shri Nanavati, learned Counsel appearing on behalf of the appellant has further submitted that even there cannot be termination of agreement except the eventuality mentioned in clauses 19 and 20. It is submitted that as such there is no provision for termination of agreement except the eventuality mentioned in clause Nos.19 and 20 and therefore, the lease of salt works in favour of the plaintiff is to be treated as permanent lease only. Making above submissions and relying upon above decisions, it is requested to allow the present Second Appeal.

[4.0] Present Second Appeal is opposed by Ms. Krina Calla, learned Assistant Government Pleader appearing on behalf of the respondents - original defendants - original appellants. It is submitted that as such the agreement dated 29.01.1939 is not permanent lease with respect to the Kuda Salt Works as contended on behalf of the plaintiff but is a yearly lease and therefore, the notice dated 24.10.1977 issued under Section 106 of the TP Act is valid and legal.

[4.1] It is further submitted that as such the property in question - Kuda Salt Works admeasuring 5428 Acres and 27 Gunthas is of the ownership of the State Government.

[4.2] It is further submitted that as such the agreement dated 29.01.1939 is twofold. It is submitted that reading clause 1 of the agreement, it is clear that the same is an agreement to sell off Shree Shakti Alkali Works for a price of Rs.10,50,000/-. It is submitted that under other clauses where the said Shree Shakti Alkali Works is being given certain exemption/benefits in taxes, water supply, transportation etc. wherein it is specifically mentioned that the same is till the Company exists. It is submitted that second fold of the agreement is as mentioned in clause 14 under which His Highness Government has let, the salt works to the company on a nominal rent of Rs.451 per annum only. It is submitted that wherever it was intended to give certain benefits till the Company exists it is specifically mentioned that the same is till the Company exists. It is submitted that in clause 14 it is not mentioned that the salt works is let till the Company exists. It is submitted that therefore, the intention to let the salt works was not on permanent lease. It is submitted otherwise in clause No.14 under which the salt works is let to the Company, it would have been provided that the same is let till the Company exists. It is submitted that therefore, any contrary interpretation is not permissible. It is submitted that Section 106 of the TP Act provides for duration of the lease and it clearly provides that in absence of any time limit prescribed, the lease of immovable property for agricultural and manufacturing purposes shall be deemed to be a lease from year to year, terminable, on part of either lessor or lessee, by six months notice, and the same is done in the present case also. It is submitted that in the present case lease is treated as lease on annual rent of Rs.451/ and therefore, under Section 106 of the TP Act is legal and valid. Therefore, it is submitted that lease in question cannot be treated as permanent lease in any manner. It is further submitted that the intention of the then Government while making

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agreement was to see that the salt works was not to be given on permanent lease, and if it was not so there was no need to give the same to the appellant Company on annual rent basis. It is submitted that therefore, to bring out the correct intention of the agreement, a distinction between language used in clause No.1 and clause No.14 of the agreement dated 29.01.1939 is required to be appreciated and considered. It is submitted that in clause 14 nowhere it is stated that same shall be till the Company exists as is stated in other clauses before the said clause. It is submitted that therefore, it is clear that the said phrase till the company exists cannot be attributed to the salt works mentioned in clause 14 of the agreement.

[4.3] It is further submitted that if the intention while drafting the agreement was to give salt works on permanent lease to the Company, the language of clause No.1 would have been adopted in clause 14 also but the same is not done because the same was not the intention. It is submitted that therefore the agreement provides for two distinct interpretations.

[4.4] It is further submitted that perusing clause 23 which provides as to when the Company can surrender the property mentioned in clause 1, it does not provide anything regarding the salt works. Therefore also, clause No.1 and 14 are different and distinct. It is submitted that even if it is considered that salt is a basic raw material required for production and manufacturing of soda ash, which is the manufacturing product of the plaintiff Company, in that case also, the Company can purchase the same from any other factories or places. Therefore, even if the present lease is terminated, the Company producing soda ash will not be affected in any manner.

[4.5] It is further submitted by Ms. Calla, learned AGP appearing on behalf of the State that as such in the year 1973, the State of Gujarat has issued the Notification dated 12.01.1973, which was published in the official gazette on 22.02.1973 whereby the State Government has declared many portions of land belonging to the Rann of Kutch and other areas including certain Districts of Surendranagar as protected area named as "Wild Asses Sanctuary". It is submitted that a large portion of land which is mentioned in the agreement dated 29.01.1939 is also forming part of the said notification.

[4.6] At this stage Shri Nanavati, learned Counsel appearing on behalf of the appellant Company has submitted that an order is

passed by the Appropriate Authority exempting the land in question from the said notification. To that Ms. Calla, learned AGP has submitted that even if any orders are passed thereafter permitting the appellant Company to carry out its work in those areas, it will amount to frustrate the intention of notification by which these areas are declared to be sanctuary. It is submitted that as such orders passed permitting Company to do their business in the protected areas would be against the judgment of the Honble Supreme Court in the case of ~~Ambica Quarrys Ltd. reported in (1987)1 SCC 213 wherein the Honble Supreme Court has~~  
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held that no permission to carry out any activities in the protected areas can be granted, therefore, in the present case also, if the appellant Company is permitted to carry out its work in the protected area, the same would be against the law laid down by the Honble Supreme Court.

Making above submissions, it is requested to dismiss the present Second Appeal by submitting that no illegality has been committed by the learned Appellate Court in holding the notice dated 24.10.1977 as legal and valid and in holding that the lease of salt works is not a permanent lease.

[5.0] Heard learned advocates appearing on behalf of respective parties at length and perused and considered the impugned judgment and orders passed by the learned trial Court as well as the Appellate Court as well as considered the entire evidence on record oral as well as documentary.

[5.1] At the outset it is required to be noted that the short question which is posed for the consideration of this Court is whether notice dated 24.10.1977 issued by the Collector, Surendranagar (original defendant No.2), under Section 106 of the TP Act is applicable to the present case or not? and also whether agreement dated 29.01.1939 was a permanent lease for Kuda Salt Works or not?

[5.2] It is the case on behalf of the plaintiff that the Kuda Salt Works admeasuring 5428 Acres and 27 Gunthas has been given on lease to the plaintiff Company under the agreement dated 29.01.1939 by His Highness State of Dhrangadhra for manufacturing of the salt on permanent lease and till the Company exists. On the other hand it is the case on behalf of the State that in clause No.14 of the agreement under which the Kuda Salt Works was given to the plaintiff Company on lease, no specific period is mentioned and therefore, the said lease is terminable / determined by notice under Section 106 of the TP Act. Therefore, while considering the aforesaid issue, the necessary clauses of the agreement dated 29.01.1939 are required to be considered and the agreement as a whole is required to be considered. For convenience, the entire agreement dated 29.01.1939 is reproduced which reads as under:

"AN AGREEMENT made this twentyninth day of January One thousand nine hundred and thirty nine Between the GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF DHRANGADHRA HEREINAFTER CALLED "HIS HIGHNESS GOVERNMENT" of the first part, HIS HIGHNESS THE MAHARAJA OF DHRANGADHRA of the second part And DHRANGADHRA CHEMICAL WORKDS LIMITED, a Private Company registered under the Dhrangadhra State Companies Act of 1939 A.D and having its registered office in Dhrangadhra (hereinafter called "the COMPANY" which expression where the context so admits shall include its successors and assigns) of the third part WHEREAS His Highness Government owns Shri Shakti alkali Works in Dhrangadhra AND WHEREAS His Highness Government has as and from the 27th day of January, 1939 adopted as the Dhrangadhra State Companies Act of 1939 A.D, Dhrangadhra State Companies Act of 1939 A.D, the Indian Companies Act VII of 1939 A.D, Dhrangadhra State Companies Act of 1939 A.D, the Indian Companies Act VII of

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1913 as amended prior to and with the exclusion of the Indian Companies (Amendment) Act XXII of 1936 AND WHEREAS the Company has been formed under the said Dhrangadhra State Companies Act of 1939 A.D with a nominal capital of Rupees Fifty Lacs divided into One thousand shares of Rupees Five thousand each with a view amongst other things to the acquisition of the said Works AND WHEREAS by Clause 3(a) of the Articles of Association of the Company it is provided that the Company shall enter into an agreement therein referred to being this Agreement NOW IT IS HEREBY AGREED as follows:

1. His Highness Government shall sell and the Company shall purchase the Shri Shakti Alkali works with all the lands and building appertaining to the same together with all the plant and machinery therein and also Alkali Workshop complete with all machinery, furniture, tools, stores and all other miscellaneous articles and things lying in or about the said premises and all the Chemists, Fitters and Workmens quarters belonging to the said Shri Shakti Alkali Works more particularly described in the Schedule A and plans annexed to this Agreement and also all raw materials and stores except Ammonium Sulphate in bags at or for the price of Rupees Ten Lacs and Fifty thousand. (Rs.10,50,000/).
2. The said sum of Rupees Ten Lacs and Fifty thousand being the consideration for the said sale shall be satisfied by the allotment by the company to His Highness Government or their nominee or nominees of Two hundred and ten (210) fully paid up ordinary Shares in the capital of the company of Rupees Five thousand each to be numbered 1 to 210.
3. His Highness Government shall also sell to the company alone and not to anybody else all the salt lying at the Kuda Salt Works at reasonable price to be agreed upon between the parties as and when and in such quantity as the Company may from time to time require. The Company shall make payment to His Highness Government for the salt so purchased six months after the date of the purchase.
4. His Highness Government shall also sell to the Company alone and not to anybody else the Ammonium Sulphate lying at Shri Shaktri Alkali Works at the market value prevailing at the date of the purchase as and when and in such quantity as the Company may from time to time require. The Company shall make payment to His Highness Government for the Ammonium Sulphate so purchased two months after the date of the purchase.
5. The purchase of the premises mentioned in Clause 1 hereof shall be completed within three months from the registration of the Company when the consideration aforesaid shall be satisfied by the allotment of the said shares as aforesaid and thereupon His Highness Government shall at the expense of the Company execute and do all such assurances and things as may be necessary for vesting the said premises in the Company and giving to it the full benefit of this Agreement as shall be reasonably required.
6. His Highness Government shall for and during the period of twenty years from the date of the completion of the said purchase of the premises mentioned in Clause 1 hereof exempt the Company from payment of any Octroi or other duties to His Highness Government or the Dhrangadhra Municipality or any other Civic Authority in the Dhrangadhra State in respect of machinery, raw materials, building materials, salt, and other articles and goods which the Company may from time to time during the said period require for the purpose of its manufacturing business. His Highness Government shall also for and during the said period of twenty years exempt the Company from payment of any excise and/or sale duty on all goods

produced and/or sold by the Company

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7. His Highness Government shall at all times hereafter exempt and keep the Company exempted from payment of any income and/or supertax to His Highness Government PROVIDED HOWEVER that if any Federal Taxation shall involve His Highness Government into any additional financial obligations necessitating a levy of some form of taxation in the Dhrangadhra State then and in such case the Company shall pay and contribute towards such taxation such sum as may be considered fair and reasonable.

8. His Highness Government shall so long as the company exists at all times exempt and keep the Company exempted from payment of all taxes in respect of the land occupied by the said Works and also in respect of the Chemists, Fitters and Labourers and Officers and all other quarters relating to the said Works and all other structures which may at any time be put up by the Company for the use of the Company and its employees.

9. If any land is required by the Company for the legitimate use of the Companys Factory and Works, His Highness Government shall at the expense of the Company acquire at a reasonable rate the same for the Company and shall give the same to the Company. All such land when acquired shall be exempt from payment of any taxes to His Highness Government.

10. His Highness Government shall use its best offices with the Dhrangadhra Electric Power Supply Company for supplying electric energy to the Company to the extent of the Supply Companys ability for its industrial requirements at a very cheap rate not exceeding one anna per unit for such period as the company may require. The Company shall be at liberty to terminate such arrangement on three months notice.

11. His Highness Government will also give to the Company all facilities for the supply of water to the Companys Factory and Works from any bore wells situated outside the Factory premises as the company may from time to time desire and allow the company to draw all required water free of any charge PROVIDED HOWEVER that if the Company has a surplus supply of water then it shall supply His Highness Government with such surplus upto a maximum of two hours pumping capacity of the Lake View Bore a day free of Charge and any larger quantity at a rate to be mutually agreed.

12. His Highness Government shall also give to the Company sole and exclusive manufacturing right so long as the Company exists to manufacture salt at Kuda Salt Works without charging to the Company any royalty for the same. The Company will be allowed without any let or hindrance or interference from His Highness Government consistent with the rights and obligations of His Highness Government with the Government of India to manufacture salt for its own purpose as also for the use and consumption of the Dhrangadhra State and shall supply to His Highness Government may require every year for consumption within the State at cost price. His Highness Government shall bear all freight and expenses for transporting the salt required by Highness Government.

13. If His Highness Government shall at any time secure permission for sale in British India and or in any ..... India States salt manufactured in the territories of His Highness Government, the Company shall have the exclusive right for the sale of such salt in British India and/or any of the Indian States and shall derive all profits from such sales subject however to payment of a royalty to His Highness Government at the rate of twenty five per cent of the net profit realised by the Company on such sales subject to a maximum royalty of three pies per Maund PROVIDED HOWEVER that on the Company ceasing to exist the right

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allowed by His Highness Government to the Company to manufacture and sell salt as aforesaid shall ipso facto terminate and lapse to His Highness Government.

14. His Highness Government shall let to the Company the existing Salt Works of His Highness Government together with all the lands appertaining to the same and all bungalows, quarters or other tenements standing thereon and all railway lines and rolling stock, machinery, plant, implements and tools relating to the same more particularly described in the Schedule "B" annexed to this Agreement at a nominal rent of Rupees Four hundred and fifty one (Rs.451/-) per annum.

15. His Highness Government shall also give to the Company free of rent or any other charge all such land as may from time to time be required by the Company for the manufacture of salt or for building any quarters or factories for the salt works or for any other purposes relating to the Salt Works.

16. His Highness Government shall use their best officers to secure to the Company from the B.B. & C.I. Railway favourable freight terms for the transport of the Companys goods on the Dhrangadhra State Railway and shall also give to the Company all such facilities as the Company may require from time to time for the use of the Kuda Siding of the Dhrangadhra Railway.

17. When the Company is in a position to purchase the rolling stock used on the Siding or bring their own rolling stock for such use His Highness Government shall give to the Company the use of the Kuda Siding (existing lines) clear up to the Works including the necessary portion of the main line (subject to the consent of the B.B. & C.I. Railway) and shall not prevent the Company from using the Siding and the portion of the main line (subject as abovementioned) required for the purpose of the Company and the Company shall not charged for such used of the Siding.

18. His Highness Government will be entitled to nominate two Directors on the Board of Directors of the Company who shall not be required to hold any qualification.

19. Unless before the 31st day of January one thousand nine hundred and thirty nine the company is registered either of the parties hereto may by notice in writing to the other party determine this Agreement and such determination shall not give rise to any claim for compensation expenses or otherwise against the Company or its promoters.

20. The Agreement is provisional only and is not to become absolute unless and until the Company has been registered.

21. The Company shall cause this Agreement to be duly filed with the Registrar of Companies pursuant to Section 104 of the Dhrangadhra State Companies Act, 1939 and also in the case of shares allotted to His Highness Government or their nominee or nominees shall cause a sufficient contract to be so filed constituting the title of His Highness Government or their nominee or nominees.

22. His Highness Government will give all facilities to the Company for discharge of their effluent to a suitable place to any method convenient to the Company and the State.

~~23. If the machinery and Plant ordered out by the Company or a material and effective~~

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portion thereof do not arrive in India within a period of eighteen months from the date of order either due to War or any embargo placed on the shipment of such goods or for any other reason beyond the control of the Company as to which the opinion of the Directors of the Company shall be conclusive, the company shall have the right to surrender back to His Highness Government the said Shri Shakti Alkali Works with all lands and buildings appertaining to the same and plant and machinery therein and the said Alkali Workshop complete with all machinery furniture, tools stores and Chemists, Fitters and Workmens quarters belonging to the said Shri Shakti Chemical Works and all other premises sold by His Highness Government to the Company in pursuance of this Agreement in full satisfaction of the claim of His Highness Government or their nominee or nominees as aforesaid and His Highness Government or their nominee or nominees shall not be entitled to rank in any way for distribution out of the other assets of the company and shall have no claim whatsoever to the same in respect of the said shares.

IN WITNESS WHEREOF the Government of His Highness the Maharaja of Dhrangadhra and His Highness the Maharaj of Dhrangadhra have hereto set their respective hands and the Company have caused their Common Seal to be hereto affixed the day and year first hereinabove written."

[5.3] Now, considering the aforesaid agreement dated 29.01.1939 it can be bifurcated into two parts. One is with respect to Shree Shakti Alkali Works and another is with respect to Kuda Salt Works together with all the lands appurtenant to the same and all bungalows, quarters or other tenements standing thereon and all the railway lines and rolling stock, machinery, plant implements and tools relating to the same more particularly described in Schedule B annexed to the said agreement which was agreed to be let at a nominal rent of Rs.451 per annum. Under clause 1 of the said agreement, Shree Shakti Alkali Works owned by the then His Highness The Maharaja of Dhrangadhra was agreed to be sold along with the properties described in Schedule A along with all raw materials and stores except aluminum sulphate in bags at price of Rs.10,50,000/. Under clause 3, it was agreed to sell the saltlying at Kuda Salt Works only to the plaintiff Company. Under clause 4 it was agreed to sell the existing stock of aluminum sulphate lying at Shree Shakti Alkali Works to the Company alleged. Under clause 6 it was agreed to grant exemption to the Company for a period of 20 years from payment of any criteria or other duties to His Highness Government or Dhrangadhra Municipality or any other Civic Authority in the Dhrangadhra State in respect of machinery etc. Under the said clause it was also agreed to grant exemption to the Company for a period of 20 years from payment of any cost or sale duty on all the goods purchased and/or sold by the Company. Under clause 7 the Company was granted exemption from payment of any income tax and/or super tax to His Highness Government subject to further provisions made in the said clause. Under clause 8 the Company was also granted exemption from payment of all taxes in respect of the land occupied by the said works and also in respect of the chemists, fitters, labourers and officers and all other quarters relating to the said works and all other structure which may at any time may be put up by the Company and/or its employees. Under clause 10 of the agreement, it was also agreed to get the power supply for the Company. Under clause 11 it was provided to supply water for the companies, factories free of charge. Under clause 12 it was also agreed to exempt the Company from payment of royalty for manufacturing of salt at Kuda Salt Works. Clause 14 which is very important provides for lease of the existing salt works to the Company for manufacturing salt. Under the said clause 14, ~~His Highness Government let to the Company the existing salt works of His Highness~~

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Government together with all the lands appertaining to the same and all bungalows, quarters or tenements standing thereon and all railway lines and rolling stock, machinery, plants, implements and tools relating to the same more particularly described in Schedule B annexed to the agreement at a nominal rent of Rs.451 per annum. Admittedly, in the said clause 14, which is with respect to the lease of the salt works, it does not provide any time limit. It also does not say that the said salt works is leased / let to the Company till the Company exists, as provided and mentioned in other clauses. As stated above, in other clauses wherever the intention was to give certain benefits till the Company exists, it provides that "till the company exists". As stated herein above, in clause 14, nowhere it is stated that the same shall be "till the company exists". Therefore, the said phrase "till the company exists" cannot be attributed to the salt works in clause 14 of the agreement. Merely because certain benefits with respect to the royalty, income tax, land revenue, water supply etc. are provided under the agreement, it cannot be said that the salt works which was given on lease to the company as per clause 14 of the said agreement dated 29.01.1939 is for a permanent lease. If the intention while drafting the agreement was to give the salt works on permanent lease to the company, either it should have been mentioned that the same is on "permanent lease" or "till the company exists" as provided in other clauses. Therefore, clause No.1 which is for Shree Shakti Alkali Works and other clauses are distinct than that of clause No.14 under which Kuda Salt Works and the properties mentioned in Schedule B to the agreement were given on lease to the Company at Rs.451 per annum. Under the circumstances, the case on behalf of the appellant that Kuda Salt Works was given on lease to the appellant on permanent lease cannot be accepted.

[5.4] Now, considering Section 106 of the TP Act it provides for duration of the lease and it provides that in absence of any time limit prescribed, the lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year and terminable, on part of either lessor or lessee by six months notice. Under the circumstances, it cannot be said that the notice dated 24.10.1977 issued by original defendant No.2 terminating the tenancy was in anyway illegal and/or invalid and/or contrary to the terms of the agreement dated 29.01.1939. Under the circumstances, as such no illegality has been committed by the learned Appellate court in reversing the judgment and decree passed by the learned trial Court and in declaring the notice dated 24.10.1977 as legal and valid by not holding the lease as a permanent lease as contended on behalf of the appellant - original plaintiff.

[5.5] Now, so far as the reliance placed upon the decision of the Honble Supreme Court in the case of Chapsibhai Dhanjibhai Danad (Supra) is concerned, on considering the same it appears to the Court that the same shall not be applicable to the facts of the present case.

[5.6] Now, so far as the reliance placed upon the decision of the Honble Supreme Court in the case of Shivayogeshwara Cotton Press (Supra) is concerned, on facts the said decision also shall not be applicable. In the case before the Honble Supreme court on interpretation by the lease deed more particularly clause Nos.1 and 2, the Honble Supreme court has held the lease deed as a permanent lease. Therefore, on facts, the said decision also shall not be applicable to the facts of the present case. Now, so far as the decision of the Privy Council in the case of Janaki Nath Roy (Supra) is concerned, on considering the same it appears to the Court that on facts the said decision shall not be applicable, as on interpretation of the lease deed mentioned and on consideration of the documents it was held that the lease

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was permanent determinable only in special case wherein provided and not on service of notice to quit.

[5.7] Now, so far as the reliance placed upon the decision of the Honble Supreme Court in the case of Vedaraneeswararswamy Devasthanam (Supra) is concerned, on going through the same it appears to the Court that even the said decision also shall not be applicable to the facts of the present case. Considering the facts of the case and the previous correspondences which preceded the execution of the document, it was observed and held by the Honble Supreme Court that the intention of the company was to take possession of the property on a permanent footing. Therefore, the said decision also shall not be applicable to the facts of the present case.

[5.8] Now, so far as the reliance placed upon the decision of the Bombay High court in the case of Bavasaheb Walad Mansursaheb Kotri (Supra) is concerned, on facts the said decision shall not be applicable. Relying upon aforesaid decision it was

sought to be submitted on behalf of the plaintiff that as observed by the Bombay High Court, in construing the terms of such contracts, the Courts must look at the substance of the matter and decide what the parties really intended to do. However, even considering the said observation and considering various clauses in the agreement and as stated hereinabove, wherever it was intended to give benefit it provides "till the company exists" and there is no such wording in clause 14 under which the salt works has been leased to the plaintiff Company, it is to be held that the executant did not intend to lease the salt works on "permanent basis" and/or "till the Company exists".

[5.9] Now, so far as the contention on behalf of the appellant that if the appellant Company is not permitted to manufacture salt which is a raw material for manufacturing of soda ash which is manufactured by the Company, till the company exists, the appellant Company would be affected is concerned, on the aforesaid grounds the lease of salt works in favour of appellant Company cannot be held to be "permanent lease" and/or "till the company exists". The appellant Company can still purchase salt from other manufacturers if the salt is required by them. However, the Company cannot be permitted to manufacture the salt by using the large chunk of the land admeasuring 5428 Acres and 27 Gunthas at a nominal rent of Rs.451 per annum more particularly as it has been found that the lease of the salt work was not a "permanent lease" or "till the company exists".

[5.10] Now, so far as the submission on behalf of the State that part of the salt works and/or the land under the agreement dated 29.01.1939 is declared as a protected land under the notification issued for "Wild Asses Sanctuary" and therefore, the same cannot be permitted to be used by the appellant Company and the case on behalf of the Company that the Company is already granted the exemption by the Appropriate Authority while issuing the notifications

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exempting the land from the provisions of the "Protected Area" is concerned and the contention on behalf of the State that even if such exemption order is granted, the same would be contrary to the decision of the Honble Supreme Court in the case of Ambica Quarrys Ltd (Supra) is concerned, the aforesaid cannot be considered in the present proceedings. What is required to be considered by this Court in the present Second Appeal is the interpretation of the document/agreement dated 29.01.1939 and whether salt works has been given on lease to the appellant on a "permanent lease" or "till the Company exists" or not?

[6.0] In view of the above and for the reasons stated above, no illegality has been committed by the learned Appellate Court in allowing the Appeal preferred by the original respondents and quashing and setting aside the judgment and decree passed by the learned trial Court and in holding that the salt works at Kuda was not given to the appellant Company on permanent basis and therefore, it is terminable by issuing the notice under Section 106 of the TP Act and consequently declaring the notice dated 24.10.1977 as legal and valid. For the reasons stated above, this Court is in complete agreement with the view taken by the learned Appellate Court in not holding the lease of salt works as permanent lease and/or till the Company exists and in holding that the lease is terminable by notice dated 24.10.1977, which the Government has rightly issued by notice dated 29.10.1977.

[6.1] In view of the above and for the reasons stated above, present Second Appeal fails and the same deserves to be dismissed and is, accordingly, dismissed. Interim relief, if any, during the pendency of the Appeal stands vacated forthwith. No costs.

At this stage, learned Counsel appearing on behalf of the appellant has requested to stay the further implementation and operation of this Judgment and order for some time so as to enable the appellant to approach the Honble Supreme Court. In the facts and circumstances of the case further implementation and operation of the present Judgment and order is ordered to be stayed till 01.12.2012 so as to enable the appellant to approach the Higher Forum.

*Appeal dismissed.*

