

A MUMBAI INTERNATIONAL AIRPORT PVT. LTD.
v.
M/S. GOLDEN CHARIOT AIRPORT AND ANR.
(Civil Appeal No. 8201 of 2010)

B SEPTEMBER 22, 2010

[G.S. SINGHVI AND ASOK KUMAR GANGULY, JJ.]

Approbate and Reprobate: *Shifting of stands – Licence granted to run a restaurant for limited period – Notice issued for vacating the licenced premises after expiry of licenced period – Suit for declaration and injunction by licensee on the ground that the licence was irrevocable – Civil court returned the plaint holding that it did not have pecuniary jurisdiction to hear the case – In appeal, licensee dropped the prayer that licence was irrevocable – Suit revived and decreed on the ground that terms of licence provided for applicability of the provisions of Public Premises Act, 1971 – Proceedings before Estate Officer – Estate Officer directing licensee to vacate the premises – Licensee's plea before Supreme Court that the licence was irrevocable – Held: A litigant cannot change and choose its stand to suit his convenience and prolong a civil litigation on prevaricated pleas – The common law doctrine prohibiting approbation and reprobation is a facet of the law of estoppel – The licensee took a stand before High Court that the licence was revocable and got the benefit as a result of taking such stand in as much as it got the suit revived and tried and got the benefit of an interim order in the said proceedings – As a result of the said stand, the suit went on before the civil court from 2001 to 2004 and in view of the interim protection, licensee ran the restaurant during that period – The licensee on a complete volte-face of its previous stand cannot urge its case of irrevocable licence before the Estate Officer and before the Supreme Court – Even otherwise, the licence by its very term was revocable – Since*

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licencee took inconsistent stands, and thereby prolonged litigation for more than a decade and did not pursue its proceedings honestly in different fora, therefore, its appeal is dismissed with costs assessed at Rs.5,00,000/- – Doctrine of estoppel – Leave and licence – Plea – Costs. A

Leave and licence: *Licence – Revocable licence – Held: Whether a contractual licence is revocable or not, depends on the express terms of the contract – A contractual licence is normally revocable, except in certain circumstances that are expressly provided for in Easement Act, 1882 – On facts, plea of licencee that it invested money in construction of restaurant on the oral assurance by the officers of Airport Authority (AAI) about extension of licence so as to make it irrevocable was of no legal consequence – No such assurance was proved, even if it is proved, such assurance did not and would not bind the AAI – Being a statutory corporation, AAI was totally bound by the Act and the Regulations framed under the Act – Plea of discrimination on the ground that cases of other licencees were extended whereas in the case of licencee, the licence was not extended, not factually correct as its licence was also extended twice – Airports Authority of India Act, 1994 – Airports Authority of India (Amendment) Act, 2003 – Airports Authority of India (Contract) Regulations 2003 – Regulation 3(2) – Constitution of India, 1950 – Article 14 – Easement Act, 1882 – s.52.* B
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Constitution of India, 1950: *Article 14 – Plea of discrimination – Held: Can only be raised if a person has a right in law, to be treated in a particular way, but that treatment is denied to him, whereas others are given the same treatment.* F

Public Premises (Eviction of Unauthorised Occupants) Act, 1971: *s.3 – Power of Central Government to appoint Estate Officer u/s.3 – Notification dated 1.7.1997 published in the Official Gazette by Central Government for* G

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- A *appointment of several persons as Estate Officers for the purpose of the 1971 Act – By a further notification dated 15.5.07, published in the Official Gazette, previous notification amended and for the words ‘Airport Director’, the words ‘Deputy General Manager (Land Management)’ substituted*
- B *– Estate Officer who decided the case of the licensee was promoted and brought to Mumbai as Deputy General Manager (Land Management) – Therefore, by virtue of his designation as Deputy General Manager (Land Management), he was a valid Estate Officer – Airports Authority of India Act, 1994.*
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The contesting respondent entered into a licence agreement with the Airport Authority of India (AAI) for running a restaurant covering 5000 sq. ft., in front of Mumbai Airport. The licence was valid for a period of three years, from 27.11.1995 to 26.11.1998. The provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and the rules framed thereunder were made applicable to the licence agreement. After the initial grant of the said licence, the same was, under request of the contesting respondent, extended upto 26.5.2000. On 4.5.2000, AAI sent notice to the contesting respondent to vacate and hand over physical possession of the licenced premises by 26.5.2000. On 15.5.2000, the contesting respondent filed a suit praying for cancelling the notice dated 4.5.2000 and for permanent injunction restraining AAI from evicting, demolishing or removing the restaurant premises of contesting respondent without adopting the due process of law. The contesting respondent prayed in the suit that the AAI granted an irrevocable licence and, therefore, it has no right to terminate, cancel or revoke the licence. The City Civil Court returned the plaint under Order 7 rule 10, CPC, *inter alia*, on the ground that it did not have the pecuniary jurisdiction to hear the case in view of the declaration

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prayed for. Aggrieved by the said order, the contesting respondent filed an appeal before the High Court. When the said appeal came up for hearing, it was represented by the contesting respondent that they would drop the prayer for the declaration that the licence was irrevocable. On such stand taken by the contesting respondent, the High Court remanded the matter to the City Civil Court granting liberty to the contesting respondent to move proper application for amendment of the plaint. After the remand, the City Civil Court decreed the suit holding that the terms of the licence showed that both the parties had agreed to submit themselves to the provisions of 1971 Act and, therefore, AAI was bound to follow the due process of law for evicting the contesting respondent from the suit premises in terms of 1971 Act. Thereafter, the proceedings were initiated before the Estate Officer.

The contesting respondent made repeated requests to AAI for extension of licence. Further hearings before the Estate Officer were conducted and on 12.01.05, after completion of the hearing and closing of the summary proceedings, the contesting respondent addressed a letter contending that the hearing of the matter be deferred until AAI communicated its decision on its request for the extension of the licence. On 18.3.2005, the Estate Officer rejected the request of the contesting respondent. Aggrieved, the contesting respondent filed the writ petition which was dismissed as withdrawn.

On 7.3.2006, the Estate Officer passed an order holding that the contesting respondent was in unauthorized occupation of the licenced premises, which was a public premises and it was liable to be evicted.

In view of the policy for privatization of airports, on 4.4.2006, Mumbai International Airport Private Ltd. (MIA) was granted the exclusive right and authority for a period

A of 30 years by AAI to undertake some of the functions of
AAI. Pursuant to such right, most of the immovable
properties of AAI including the licenced premises were
leased to MIA. Meanwhile, the contesting respondent filed
an appeal before the City Civil Court against the order of
B the Estate Officer. In the said appeal, MIA was not party.

In 2007, MIA took out a chamber summons before the
City Civil Court for impleading itself as a party in the
appeal which was allowed and ultimately the appeal of
the contesting respondent was dismissed. The
C contesting respondent filed a writ petition in the High
Court without making MIA a party. On 26.7.2008, the High
Court passed an *ex parte ad interim* order directing the
parties to maintain *status quo*. The impleadment
application of MIA was allowed. On 4.3.2009, the High
D Court allowed the writ petition and remanded the matter
to the Estate Officer for fresh decision on the ground that
the order of the Estate Officer was null and void for his
failure to consider the case himself as he had verbatim
reproduced the entire order of his predecessor with few
E cosmetic changes. The matter was remanded to the
Estate Officer and on 17.3.2009, the hearing was
adjourned since SLPs were filed by MIA and AAI
challenging the order dated 4.3.2009. Subsequently,
F during the pendency of the SLPs, a representation was
made before the Supreme Court on 29.1.2010 that there
was no Estate Officer for hearing the matter. The Supreme
Court directed AAI to appoint an Estate Officer under the
1971 Act. On 11.2.2010, the Court was informed that one
Mr. K.K Gupta, Deputy General Manager (Land
G Management) was appointed as the Estate Officer under
Section 3 of the 1971 Act, to hear the case of the
contesting respondent. In view of that, parties were
directed to appear before the Estate Officer. On 29.4.2010,
the Estate Officer passed the final order directing the

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contesting respondent to vacate the premises and to pay damages for unauthorized occupation of the premises by payment of compensation and municipal taxes. The contesting respondent filed appeal before the City Civil Court challenging the same. The matter was placed before the Supreme Court on 11.5.2010 and on that date the counsel for the contesting respondent took a stand that the proceedings pending before the Supreme Court arising out of the two SLPs had become infructuous. The Supreme Court held that the proceedings taken up by it did not become infructuous and also directed transfer of the appeal pending before the City Civil Court to the Supreme Court. When the matter was taken up by the Supreme Court, it was contended by the contesting respondent that there was an oral assurance for an extension of the licence to the extent that it would be an irrevocable licence and relying on such oral extension, the contesting respondent made substantial investment for constructing the restaurant; that the licence was irrevocable; that the Estate Officer did not give the contesting respondent a proper hearing; and that Mr. K.K Gupta was not authorized to discharge the functions of an Estate Officer in accordance with Section 3(a) of the 1971 Act.

Allowing the appeals, the Court

HELD: 1. The case of the contesting respondent before all the forums was that though the licence period commenced on and from 27.11.95, the restaurant was made operational on 1.1.97. The initial period of licence was upto 26.11.98. Therefore, on its own showing, the contesting respondent completed the construction of the restaurant by 1.1.1997, which was well within the initial licence period, which was upto 26.11.98. Admittedly thereafter, there were two extensions of the licence

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A period upto 26.5.2000. Therefore, the construction having
 been completed and the restaurant being operational by
 1.1.1997, there was no occasion for the contesting
 respondent to urge that it invested money in the
 construction of the restaurant on the oral assurance by
 B the officers of the AAI about extension of the licence so
 as to make it irrevocable. The Airports Authority of India
 (Contract) Regulations 2003 have been framed by the
 AAI with the previous approval of the Central
 Government. The regulations are statutory. The said
 C Regulations specify that contracts by AAI are required to
 be sealed with the common seal of AAI. They further
 provide that contracts are to be made with the previous
 approval of the Central Government and AAI. Regulation
 3(2) also state that all contracts shall be finalized by the
 D execution of a Deed of Agreement, Deed of Licence,
 Indenture or like instrument, duly signed by AAI and the
 party concerned, and the said instruments or deeds are
 to be executed on non-judicial paper of appropriate
 stamp value when necessary. Having regard to the said
 E statutory framework, the case of the contesting
 respondent that it was orally assured of extension of
 licence by some officer of AAI is of no legal consequence.
 No such assurance was proved, even if it is proved, such
 assurance did not and would not bind the AAI. Being a
 F statutory corporation, it was totally bound by the Airports
 Authority of India Act, 1994 and the Regulations framed
 under the Act. [Paras 40, 46-49] [348-D-F] [349-E-H] [350-
 A-B]

2. It is well known that a mere licence does not create
 G any estate or interest in the property with which it is
 concerned. Normally a licence confers legality to an act,
 which would otherwise be unlawful. A licence can be
 purely personal, gratuitous or contractual. Whether a
 contractual licence is revocable or not, would obviously
 H depend on the express terms of the contract. A

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contractual licence is normally revocable, except in certain circumstances that are expressly provided for in the Indian Easement Act, 1882. In the instant case, the licence by its very term was revocable. The stand of the contesting respondent that its licence is irrevocable as it has invested money in the premises and made construction is directly contrary to the stand which it took before the High Court and which was recorded in the High Court's order dated 12.7.01. When the City Civil Court returned the plaint filed by the contesting respondent, it came up in appeal against the said order before the High Court, wherein it expressly gave up its claim of irrevocable licence in order to revive the suit. On such stand, the High Court remanded the suit for trial before the City Civil Court. It is, therefore, clear that the contesting respondent took a stand before a court of law and also got the benefit as a result of taking such stand in as much as it got the suit revived and tried, and got the benefit of an interim order in the said proceedings. As a result of the said stand, the suit of the contesting respondent went on before the City Civil Court from 2001 to 2004 and in view of the interim protection, the contesting respondent ran the restaurant during that period. The contesting respondent on a complete volte-face of its previous stand cannot urge its case of irrevocable licence before the Estate Officer and before the Supreme Court. A litigant cannot change and choose its stand to suit its convenience and prolong a civil litigation on prevaricated pleas. The common law doctrine prohibiting approbation and reprobation is a facet of the law of estoppel and well established in Indian jurisprudence also. [Paras 50, 52-55] [350-C-E-G-H] [351-A-F]

C. Beepathumma & Ors. v. V.S. Kadambolithaya & Ors. 1964 (5) SCR 836; *M/s New Bihar Biri Leaves Co. & Ors. v. State of Bihar & Ors.* (1981) 1 SCC 537, relied on.

- A *Benjamin Scarf v. Alfred George Jardine (1881-82) 7 Appeal Cases 345; Tinkler v. Hilder (1849) 4 Exch 187; Clough v. London and North Western Rail Co. (1861-73) All ER; Harrison v. Wells 1966 (3) All ER 524; Kok Hoong v. Leong Cheong Kweng Mines Ltd. (1964) Appeal Cases 993;*
- B *Dwijendra Narain Roy v. Joges Chandra De AIR 1924 Cal 600, referred to.*

Muskett v. Hill (1839) 5 Bing (NC) 694; Heap v. Hartley (1889) 42 Ch. Div. 461, referred to.

- C 3. The complaint of the contesting respondent that Mr. K.K. Gupta, while acting as Estate Officer and deciding the proceedings, failed to observe the principles of natural justice, by not summoning the officers of AAI, is without any substance. The Estate Officer gave adequate reasons
- D for not summoning the officers of AAI by holding that beyond 26.5.2000, there was no written extension of the licence period. The Estate Officer rightly held that when written documents were there, any oral assurance, which purported to contradict the written documents need not
- E be considered. The Estate Officer held that it has to decide whether the contesting respondent is in unauthorized occupation of the public premises within the meaning of the 1971 Act. That being the sole purpose of his enquiry, the Estate Officer thought, and rightly so, that its enquiry
- F cannot be widened by including a plea of discrimination under Article 14 raised by the contesting respondent. Apart from that, the plea of discrimination raised by the contesting respondent on the ground that cases of other licensees have been extended whereas in its case, the
- G licence has not been extended is not factually correct in as much as the licence of the contesting respondent was also extended twice. In any event, a plea of discrimination can only be raised in aid of a right. If a person has a right in law, to be treated in a particular way, but that treatment is denied to him, whereas others are given the same
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treatment, a plea of discrimination can be made out. The A
contesting respondent has no right in law, to get its
licence extended. Therefore, one cannot have a plea of
negative equality under Article 14. There may be very
many administrative reasons for extending the period of
licence of other licensees, but that does not give rise to B
a valid plea of discrimination, when admittedly the
contesting respondent has no right in law to get an
extension. [Paras 66-69] [354-E-F] [355-B-C; E-G]

4. Section 3 of the 1971 Act provides for the power C
of the Central Government to appoint an Estate Officer.
The Ministry of Civil Aviation and Tourism, Department of
Civil Aviation, issued a notification dated 1.7.1997,
appointing several persons as Estate Officers for the
purpose of the 1971 Act. That notification was published D
in the Official Gazette. By a further notification dated
15.5.07, published in the Official Gazette, the Central
Government amended its previous notification and for the
words 'Airport Director', the words 'Deputy General
Manager (Land Management)' were substituted. While E
issuing a notification under Section 3, the Central
Government has to name a person or an individual as an
Estate Officer. The appointment of such Estate Officer is
by designation only. Mr. K.K. Gupta who functioned as
an Estate Officer and decided the case of the contesting
respondent was promoted and brought to Mumbai as F
Deputy General Manager (Land Management). This was
admitted in the affidavit of the contesting respondent.
Therefore, Mr. K.K. Gupta by virtue of his designation as
Deputy General Manager (Land Management) discharged
his function as a valid Estate Officer. [Paras 70-73] [357- G
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5. The contesting respondent has blown hot and
cold by taking inconsistent stand, and has therefore
prolonged several proceedings for more than a decade. H

A It did not pursue its proceedings honestly in different fora. Therefore, the appeal is dismissed with costs assessed at Rs.5,00,000/- to be paid by the contesting respondent in favour of the Supreme Court Mediation Center. [Para 75] [357-A-C]

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Case Law Reference:

(1839) 5 Bing (NC) 694 referred to Para 51

(1889) 42 Ch. Div. 461 referred to Para 51

C (1881-82) 7 Appeal Cases 345 referred to Para 56

(1849) 4 Exch 187 referred to Para 57

(1861-73) All ER referred to Para 58

D 1966 (3) All ER 524 referred to Para 59

(1964) Appeal Cases 993 referred to Para 60

AIR 1924 Cal 600 referred to Para 61

1964 (5) SCR 836 relied on Para 63

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(1981) 1 SCC 537 relied on Para 64

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F From the Judgment & Order dated 4.3.2009 of the High Court of Judicature at Bombay in Writ Petition No. 5591 of 2008.

WITH

G C.A. No. 8200 of 2010.

G.E. Vahanvati AG, C.A. Sundaram, Chander Uday Singh, Shyam Diwan, Farid Karachiwala, Amar Dave, Ashish Jha, Meenakshi Chatterjee, Abhishek Gupta (for "Coac"), Praveen Jain, T.S. Sindhu, Mukesh Kumar, K.P. Singh, V.K. Sharma (for

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M.V. Kini & Associates), Gp. Capt. Karan Singh Bhati, Aishwarya Bhati, Rashid Khan, Vinay J. Hegde, Rakesh Sinha for the appearing parties.

The Judgment of the Court was delivered by

GANGULY, J. 1. Leave granted.

2. These two appeals, one by Mumbai International Airport Pvt. Ltd. and another by Airport Authority of India, seek to impugn the judgment of the High Court dated March 4, 2009.

3. The relevant facts of the case are that M/s Golden Chariot Airport (hereinafter referred to as "the contesting respondent") succeeded in a tendering process for running a deluxe grade-I restaurant, covering a space of about 5000 sq. ft., in the car park zone in front of Terminal 1A of the Mumbai Airport. Pursuant to the said bid of the contesting respondent, a Licence Agreement dated 16.1.96, was entered into between the Airport Authority of India (hereinafter AAI) and the contesting respondent.

4. Some of the clauses of the said Licence Agreement are relevant as one of the arguments advanced by the contesting respondent, before the Estate Officer, the High Court and this Court is that the licence is irrevocable. It has also been urged by the contesting respondent, that apart from the Licence Agreement, there has been an oral extension of the licence and the contesting respondent was assured that it is irrevocable, and on the basis of such assurance, it has invested considerable money in building the restaurant.

5. From the first clause of the Licence Agreement it is clear that the licence is valid for a period of three years, from 27.11.95 to 26.11.98. Apart from the first clause, there are several other clauses in the licence, like clauses 23, 24, 26, 27 and 29 in the General Terms and Conditions, which are a part of the Licence Agreement. The aforesaid clauses are set out:

A "23. In the event of the Licensee being prohibited from
selling one or more articles in the premises because of
Government Laws/Rules/Regulations/Orders, the Authority
shall not be liable for any loss suffered by the Licensee in
such an event the Licensee shall not be entitled to any
B reduction in the fees payable to the Authority or permission
for sale of additional items.

C 24. The Licensee shall deposit duplicate keys of the
premises with the Authority whenever the Airport Director
demands and permit the Authority to make use of the keys
during the emergency. The Licensee shall not remove or
replace the lock on the outdoor or change the locking
device on the said outer door of the shop.

D 25. xxx

E 26. On expiry of the period or on termination of the licence
by the Authority on account of any breach on the part of
the Licensee, the Licensee shall deliver the possession of
the premises in good condition and peaceful manner along
with furniture, fittings, equipments and installations, if any,
provided by the Authority. Further, Licensee shall remove
his/their goods and other materials from the premises
immediately, failing which Authority reserves its right to
remove such goods/materials at the cost and risk of the
Licensee and demand payment for such removal. If such
F payment is not made within 10 days, Authority shall be at
liberty to dispose off the goods/materials of the Licensee
by public auction to recover the cost. The Licensee shall
not be entitled to raise any objection in such an eventuality.

G 27. The licence herewith granted shall not be construed in
any way as giving or creating any other right or interest in
the said space building(s)/land/garden/tank/ premises to
or in favour of the Licensee but shall be construed to be
only as a licence in terms and conditions herein contained.

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29. The provision of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and the rules framed thereunder which are now in force or which may hereafter came into force shall be applicable for all matters provided in the said Act.”

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6. It is clear from what is extracted above that the licence is not irrevocable. Apart from that it is clear that the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and the Rules framed thereunder have been made applicable to the Licence Agreement. It is not in dispute that after the initial grant of the said licence, the same was, under request of the contesting respondent, extended upto 26.5.2000. Before the extended period could expire, a notice dated 4.5.2000 was sent by the Senior Commercial Manager on behalf of AAI to the contesting respondent, requesting it to vacate and hand over physical possession of the licensed premises on expiry of the extended licence on 26.5.2000.

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7. Instead of doing so, the contesting respondent filed, on 15.5.2000, a suit in the Bombay City Civil Court being suit No. 3050/2000, praying for canceling the notice dated 4.5.2000 and for permanent injunction restraining AAI from evicting, demolishing, or removing the restaurant premises of the contesting respondent without adopting the due process of law. In the said suit, the contesting respondent prayed for a declaration that the AAI has granted an irrevocable licence and AAI has no right to terminate, cancel or revoke the licence. The exact prayer to the aforesaid effect is as under:

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(a) “For a declaration of this Hon’ble Court thereby declaring that the defendants have granted an irrevocable licence in favour of the plaintiffs in respect of the said restaurant business situated at the car park of Terminal 1A of Santa Cruz Airport Mumbai, and that the same is

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A subsisting valid and in full force and effect and further that
 the defendants have no right to terminate, revoke and/or
 cancel the same and/or interfere with the peaceful running
 of the said business of the plaintiffs at least till such time
 as the said land, beneath the said restaurant is not
 B required for Airport related development purpose.”

8. On such suit being filed, the Bombay City Civil Court
 returned the plaint under Order VII Rule 10 of Civil Procedure
 Code (for short “CPC”), inter alia, on the ground that the City
 Civil Court does not have the pecuniary jurisdiction to hear the
 C case in view of the declaration prayed for.

9. Aggrieved by the said Order, the contesting respondent
 preferred an appeal before the Bombay High Court. When the
 said appeal came up for hearing on 12.7.01, it was represented
 D by the contesting respondent that they will drop the prayer in
 Clause (a) of the plaint, which is the prayer for the declaration
 that the licence is irrevocable. On such stand being taken by
 the contesting respondent before the Bombay High Court, there
 was a consensus between the parties, and the High Court was
 E pleased to pass the following Order:

“.....the impugned order is set aside without examining
 the merits or demerits of the impugned order and the
 matter is question is remitted back to the City Civil Court,
 F Bombay granting liberty to the Plaintiff to move proper
 application for amendment of the plaint so as to enable
 him to delete prayer clause (a), and other pleadings raised
 in support thereof in the plaint.....”

10. In view of the aforesaid Order of the High Court, the
 G matter was remanded to the Bombay City Civil Court. The City
 Civil Court decreed the suit by a judgment dated 11.2.04. In
 the said judgment, the Bombay City Civil Court held that on a
 reading of clauses 16, 29 and 30 of the Licence Agreement it
 was clear that both parties had agreed to submit themselves
 H to the provisions of the Public Premises (Eviction of

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Unauthorized Occupants) Act, 1971 (hereinafter referred to as the 1971 Act) and Rules framed thereunder. The Court thus held that the AAI were bound to follow the due process of law for evicting the contesting respondent from the suit premises, as given under the 1971 Act. A

11. Accordingly, proceedings were initiated before the Estate Officer on 27.09.04 and notices were issued by the Estate Officer under Sections 4, 5, 5A, 5B and 7 of the 1971 Act to the contesting respondent. Hearings were conducted on 26.10.04 and 8.11.04. B

12. On 13.11.04, the contesting respondent addressed a letter to AAI for extension of licence with respect to the licensed premises till AAI required it for airport development purposes. Further hearings before Estate Officer were conducted and on 12.01.05, after completion of the hearing and closing of the summary proceedings, the contesting respondent addressed a letter contending that the hearing of the matter be deferred until AAI communicated its decision on the letter dated 13.11.04. The contesting respondent once again addressed a letter dated 11.02.05 to the Estate Officer reiterating the same request and urged the Estate Officer to reopen the case to enable the contesting respondent to lead evidence in the matter. On 18.03.05, the Estate Officer heard the case of the contesting respondent and rejected the same. C D E

13. Aggrieved, the contesting respondent filed a writ petition (No. 2900/2005) before the Bombay High Court. On 30.06.05, the Bombay High Court dismissed the writ petition by passing the following order: F

“Allowed to withdraw the liberty to make a fresh application which shall be decided, in accordance with law. All questions, including the questions of tenability, are left open.” G

14. Meanwhile, the Estate Officer Mr. V.K. Monga was H

A transferred and a new Estate Officer Mr. Narinder Kaushal was appointed. Mr. Kaushal forwarded a copy of the record of proceedings to Mr. Monga by a letter dated 11.08.05. Mr. Monga, by letter dated 12.09.05, forwarded a draft summary of the proceedings.

B 15. Even after withdrawal of the writ petition, a letter dated 28.12.05 was written by the advocate of the contesting respondent referring to the withdrawn writ petition, and requesting the Estate Officer for an adjournment of proceedings in view of its previous letter dated 13.11.04.

C 16. On 7.3.06, the Estate Officer passed a detailed Order in EO Case No.6/2004, holding inter alia that the contesting respondent was in unauthorized occupation of the licensed premises, which was a public premises and it was liable to be evicted from the said premises under Section 5 of the 1971 Act with effect from 27.05.2000.

D 17. Aggrieved thereby, the contesting respondent filed an appeal under Section 9 of the 1971 Act before the Bombay City Civil Court (M.A. No. 39/2006), which was dismissed by the Bombay City Civil Court on 24.7.2008.

E 18. It may be mentioned here that between 2003 to 2006, Union of India, through its Ministry of Civil Aviation, came out with a policy for privatization of airports. Resultantly, the Airports Authority of India Act, 1991 was amended by the Airports Authority of India (Amendment) Act, 2003. Accordingly, Mumbai International Airport Private Ltd. (MIA) was incorporated on 2.03.06 with the object of operating, maintaining, developing, designing, constructing, upgrading, modernizing and managing the Mumbai Airport and to enter into contracts with third parties for the said purpose.

F 19. On 4.04.06, MIA entered into an Operation, Management and Development Agreement (OMDA) whereby G H AAI granted MIA the exclusive right and authority (for 30 years

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commencing from 3.05.06) to undertake some of the functions of the AAI such as operation, maintenance, development, design, construction, upgradation, modernization, finance and management of the Mumbai Airport. A

20. Pursuant to the OMDA, AAI entered into a Lease Agreement dated 26.04.06, by which most of the immovable properties of AAI at the Mumbai Airport, including the licensed premises, were leased to the MIA. B

21. In 2007, MIA took out a Chamber Summons before the Bombay City Civil Court for impleading itself as a party in the appeal filed by the contesting respondent (Appeal No.39/2006). The appeal of the contesting respondent and the Chamber Summons of MIA were heard by the Bombay City Civil Court. By its Order dated 24.07.08, the Bombay City Civil Court dismissed the appeal of the contesting respondent and allowed the Chamber Summons of MIA. C D

22. After the dismissal of its appeal by the City Civil Court, the contesting respondent filed a writ petition (No. 5591/2008) in the Bombay High Court, without making MIA a party. On 26.07.08, the Bombay High Court passed an ex-parte ad-interim Order directing the parties to maintain status quo. On 28.07.08, MIA filed a civil application for impleadment in the writ proceedings before the High Court and on 6.08.08 the High Court allowed the same. E F

23. The Bombay High Court passed the impugned Order on 4.03.09 whereby it allowed the writ petition and set aside the judgment of the Bombay City Civil Court dated 24.07.08. The High Court held that the order of the Estate Officer Mr. Kaushal was null and void for his failure to consider the case himself as he had verbatim reproduced the entire order of Mr. Monga with a few cosmetic changes. The High Court thus remanded the matter to the Estate Officer for a fresh decision in accordance with law. G H

A 24. After the impugned Order of the High Court dated
 4.3.09, whereby the matter was remanded to the Estate Officer,
 hearing took place on 14.5.09 by the new Estate Officer Mr. Y.
 Kumaraswamy. Hearings before Mr. Kumaraswamy were
 B adjourned as by 17.3.09, challenging the order of the High Court
 dated 4.3.09, an SLP (6556/2009) was filed by MIA, and soon
 thereafter, another SLP challenging the same order of the High
 Court was filed by AAI on 28.3.09.

C 25. In view of such SLPs being filed before this Court,
 hearing before Mr. Kumaraswamy stood adjourned.

D 26. Both the aforesaid SLPs, now converted into appeals,
 were tagged by an order of this Court dated 8.5.09, passed in
 SLP No. 11663/2009 and thereafter were heard together. In the
 meantime, Mr. Kumaraswamy retired and one Mr. Keshav
 D Sharma, General Manager (Communication & Land
 Management) was appointed the new Estate Officer.

E 27. Subsequently, during the pendency of the proceedings
 before this Court, it transpires on a representation made before
 this Court on 29.1.10, that there was no Estate Officer for
 hearing the matter. This Court, therefore, directed AAI by its
 Order of the same date to appoint an Estate Officer under the
 provisions of the Act of 1971, within a period of 10 days and
 directed the matter to be posted for further hearing on 11.2.10.

F 28. On 11.2.10, this Court was informed that Mr. K.K
 Gupta, Deputy General Manager (Land Management) has been
 appointed the Estate Officer under Section 3 of the 1971 Act,
 to hear the case of the contesting respondent in place of Mr.
 Keshav Sharma. In view of such representation being made
 G before this Court, this Court directed the parties to appear
 before the Estate Officer on 17.2.10, with a request that the
 Estate Officer was to fix a date of hearing and then to hear the
 parties and pass an appropriate Order in accordance with law
 on or before 30.4.10. It was also made clear that the Order of
 H the Estate Officer would be made available to the parties within

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the next two days. The parties were given liberty, if so advised, to challenge or support the Order of the Estate Officer in the pending proceeding before this Court and which was posted before this Court on 7.5.10.

A

29. It appears that on 29.4.10, the Estate Officer, after hearing the parties, passed a final order directing the contesting respondent to vacate the premises. It also directed the contesting respondent to pay damages for unauthorized occupation of the premises by payment of compensation and municipal taxes.

B

30. Aggrieved by the said Order, the contesting respondent filed a miscellaneous appeal before the Bombay City Civil Court, challenging the abovementioned Order of the Estate Officer.

C

31. The matter was placed before this Court on 11.5.10 and on that date learned Counsel for the contesting respondent took a stand that the pending proceedings before this Court arising out of the two SLPs had become infructuous. The impugned Order of the Bombay High Court dated 4.3.09 was no longer holding the field. Instead of that, the present Order dated 29.4.10 of the Estate Officer is the operative order and against that already an appeal has been filed by the contesting respondent before the Bombay City Civil Court.

D

E

32. Counsel for both AAI and MIA opposed the aforesaid stand and contended that the proceedings before this Court had not become infructuous and as this Court has retained its seisin over the matter as this Court directed the Estate Officer to decide the proceedings under the 1971 Act within a time frame but kept the proceedings before it pending.

F

G

33. This Court further gave liberty to the parties in its Order dated 11.2.10, to challenge the ultimate Order of the Estate Officer in the pending proceedings before this Court.

34. The Court after hearing the parties, held that the

H

A proceedings before this Court had not become infructuous. Since the order of this Court dated 11.5.10 has a bearing on the issues, the same is set out:

“Heard learned counsel for the parties.

B Today when the matters were taken up before this Court, this Court was informed by Mr.Mukul Rohtagi, learned senior counsel for the petitioners that pursuant to the order of this Court dated 11.02.2010 the Estate Officer has decided the matter and passed an order dated
 C 29.04.2010. Impugning the said order, the respondents have filed an appeal under Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 before the Principal Judge, Bombay City Civil Court, Mumbai. Mr.Rohtagi submitted that such filing of appeal
 D before the aforesaid judicial authority in view of the directions contained in that order amounts to an act of contempt. He further submitted that in any event, the said filing of appeal circumvented the order of this Court dated 11.02.2010. Mr.Shyam Divan, learned senior counsel
 E appearing on behalf of the respondents, on the other hand, contended that his client has filed the said appeal in view of the statute made by the Parliament and his client has exercised that right. According to him, such right of appeal cannot be taken away by any order of this Court. In support
 F of his argument, he cited several decisions of this Court.

Mr.Rohtagi, learned senior counsel also in support of his submission cited several decisions and submitted that this Court passed the order in order to prevent conflict of decisions and also considering the facts and
 G circumstances and the question of public interest involved in this case namely the urgency of expanding Bombay Airport and the right of the respondents to run their restaurant in the said Airport.

H This Court, however, by balancing the equity had

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passed the said order and the said order does not decide the questions that are raised in the SLPs which are pending and over which this Court retains its seisin. We are of the view that by the order which has been passed namely the order dated 11.02.2010, the right of the respondents to file an appeal has not been taken away. This Court preserved the right of the respondents and also permitted them to challenge the order that may be passed by the Estate Officer by filing an appropriate additional affidavit before this Court.

In view of the above, this Court directs that the appeal which has been filed by the respondents (Misc.Appeal No.50 of 2010) before the Principal Judge, City Civil Court, Mumbai be transferred to this Court. The record of the said appeal may form part of these SLPs. The petitioners are at liberty to file any additional affidavit in answer to the appeal filed by the respondents. The respondents may also file reply to the same. Such filing must be completed by the parties by 09.07.2010.

The matter may be placed for further consideration before this Court on 14.07.2010.”

35. Then the matter was taken up before this Court on 29.7.10 and the learned Counsel for the contesting respondent submitted that Mr. K.K Gupta was not authorized to discharge the functions of an Estate Officer in accordance with Section 3(a) of the 1971 Act. To respond to such a stand, the learned Counsel for AAI took some time to produce the necessary notifications showing the appointment of the Estate Officer.

36. Thereafter, the matter was heard. Before this Court, the learned Counsel for the contesting respondent, apart from raising the aforesaid contention that Mr. K.K Gupta was not validly appointed as an Estate Officer, raised various other contentions.

H

A 37. It was first contended that there was an oral assurance
for an extension of the licence to the extent that it will be an
irrevocable licence. Relying on such oral extension, the
contesting respondent made substantial investment for
constructing the restaurant. The second contention was that the
B licence was irrevocable. The third contention was that the Estate
Officer did not give the contesting respondent a proper hearing.

38. Learned Counsel of both AAI and MIA strongly
opposed the aforesaid contentions raised on behalf of the
C contesting respondent.

39. This Court unfortunately is unable to uphold the
contentions raised by the contesting respondent in view of the
following reasons.

D 40. The case of the contesting respondent before all the
forums is that though the licence period commenced on and
from 27.11.95, the restaurant was made operational on 1.1.97.
The initial period of licence was upto 26.11.98. Therefore, on
its own showing, the contesting respondent completed the
E construction of the restaurant by 1.1.97, which was well within
the initial licence period, which was upto 26.11.98. Admittedly
thereafter, there have been two extensions of the licence
period upto 26.5.2000. Therefore, the construction having been
completed and the restaurant being operational by 1.1.97, there
F is no occasion for the contesting respondent to urge that it
invested money in the construction of the restaurant on the oral
assurance by the officers of the AAI about extension of the
licence so as to make it irrevocable.

G 41. In fact no oral assurance of extension of licence is
contemplated in the facts of this case. Such a contention is
wholly misconceived.

H 42. The AAI is a statutory body constituted under Section
3 of the Airport Authority of India Act, 1994 (AAI Act). Under
Section 3(2) of the AAI Act, it is a body corporate with power

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to hold and dispose of both movable and immovable property and to contract. A

43. The power of the AAI to enter into contracts has been conferred under Section 20 read with Section 21 of AAI Act. As per Section 20, the AAI is competent to enter into contracts (subject to the provisions of Section 21) which may be necessary to discharge its functions under the AAI Act. B

44. Section 21 of AAI Act lays down the mode of executing contracts on behalf of AAI. The Section requires that every contract on behalf of AAI is to be made by the Chairperson or any other member/officer who has been empowered to do so. Further, the contracts, which have been specified in the Regulations, have to be sealed with the common seal of AAI. C

45. Sub-section (2) of Section 21 of AAI Act provides that the form and manner of the contract shall be such as may be specified by the Regulations. D

46. The relevant Regulations have been framed by the AAI with the previous approval of the Central Government and in exercise of the power conferred on it under Section 42(1) read with Section 42(2)(e) and (4), read with Section 21 of the AAI Act, 1994 and the regulations are called the Airports Authority of India (Contract) Regulations 2003. Obviously the regulations are statutory. E

47. The said Regulations specify that contracts by AAI are required to be sealed with the common seal of AAI. They further provide that contracts are to be made with the previous approval of the Central Government and AAI. F

48. Regulation 3(2) also state that all contracts shall be finalized by the execution of a Deed of Agreement, Deed of Licence, Indenture or like instrument, duly signed by AAI and the party concerned, and the said instruments or deeds are to be executed on non-judicial paper of appropriate stamp value when necessary. G
H

A 49. Having regard to the aforesaid statutory framework, the case of the contesting respondent that it was orally assured of extension of licence by some officer of AAI is of no legal consequence. No such assurance has been proved, even if it is proved, such assurance does not and cannot bind the AAI.

B Being a statutory corporation, it is totally bound by the Act and the Regulations framed under the Act.

C 50. The very idea of a licence being irrevocable is a bit of a contradiction in terms. From the clauses of the licence referred to above, it is clear that by its terms the licence is revocable. It is well known that a mere licence does not create any estate or interest in the property with which it is concerned. Normally a licence confers legality to an act, which would otherwise be unlawful. A licence can be purely personal, gratuitous or contractual. Whether a contractual licence is revocable or not, would obviously depend on the express terms of the contract. A contractual licence is normally revocable, except in certain circumstances that are expressly provided for in the Indian Easement Act, 1882.

D

E 51. A licence has been defined in Section 52 of the Indian Easement Act, 1882 as a right to do or continue to do in or upon the immovable property of the grantor something, which, in the absence of such right, could be unlawful, but such right does not amount an easement or an interest in the property.

F [See *Muskett vs. Hill* (1839) 5 Bing (NC) 694, p.707 and *Heap vs. Hartley* (1889) 42 Ch. Div. 461, p.468 (CA)].

G 52. Following the aforesaid principles and the clauses in the licence agreement, this Court holds that the licence by its very term is revocable. The stand of the contesting respondent that its licence is irrevocable as it has invested money in the premises and made construction is directly contrary to the stand which it took before the Bombay High Court and which was recorded in the High Court's Order dated 12.7.01. It may be noted that when the City Civil Court returned the plaint filed by

H the contesting respondent it came up in appeal against the said

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Order before the Bombay High Court, it expressly gave up its A
claim of irrevocable licence in order to revive the suit. On such
stand being taken, the High Court remanded the suit for trial
before the City Civil Court. It is therefore clear that the contesting
respondent has taken a stand before a Court of Law and also
got the benefit as a result of taking such stand in as much as it B
got the suit revived and tried and got the benefit of an interim
order in the said proceedings. As a result of the aforesaid stand
being taken, the suit of the contesting respondent went on
before the Bombay City Civil Court from 2001 to 2004 and in
view of the interim protection, the contesting respondent ran the C
restaurant during that period.

53. Now the question is whether the contesting respondent
on a complete volte-face of its previous stand can urge its case
of irrevocable licence before the Estate Officer and now before D
this Court?

54. The answer has to be firmly in the negative. Is an action
at law a game of chess? Can a litigant change and choose its
stand to suit its convenience and prolong a civil litigation on such
prevaricated pleas? E

55. The common law doctrine prohibiting approbation and
reprobation is a facet of the law of estoppel and well
established in our jurisprudence also.

56. The doctrine of election was discussed by Lord F
Blackburn in the decision of the House of Lords in *Benjamin
Scarf vs. Alfred George Jardine* [(1881-82) 7 Appeal Cases
345], wherein the learned Lord formulated "...a party in his own
mind has thought that he would choose one of two remedies,
even though he has written it down on a memorandum or has G
indicated it in some other way, that alone will not bind him; but
so soon as he has not only determined to follow one of his
remedies but has communicated it to the other side in such a
way as to lead the opposite party to believe that he has made
that choice, he has completed his election and can go no H

A further; and whether he intended it or not, if he has done an unequivocal act...the fact of his having done that unequivocal act to the knowledge of the persons concerned is an election.”

B 57. In *Tinkler vs. Hilder* (1849) 4 Exch 187, Parke, B., stated that where a party had received a benefit under an Order, it could not claim that it was valid for one purpose and invalid for another. (See page 190)

C 58. In *Clough vs. London and North Western Rail Co.* [(1861-73) All ER, Reprint, 646] the Court referred to Comyn's Digest, wherein it has been stated:- “If a man once determines his election, it shall be determined forever.” In the said case, the question was whether in a contract of fraud, whether the person on whom the fraud was practiced had elected to avoid the contract or not. The Court held that as long as such party
D made no election, it retained the right to determine it either way, subject to the fact that an innocent third party must not have acquired an interest in the property while the former party is deliberating. If a third party has acquired such an interest, the party who was deliberating will lose its right to rescind the
E contract. Once such party makes its election, it is bound to its election forever. (See page 652)

F 59. In *Harrison vs. Wells*, 1966 (3) All ER 524, Salmon LJ, in the Court of Appeal, observed that the rule of estoppel was founded on the well-known principle that one cannot approbate and reprobate. The doctrine was further explained by Lord Justice Salmon by holding “it is founded also on this consideration, that it would be unjust to allow the man who has taken full advantage of a lease to come forward and seek to evade his obligations under the lease by denying that the
G purported landlord was the landlord”. (See page 530)

H 60. In *Kok Hoong vs. Leong Cheong Kweng Mines Ltd.*, (1964 Appeal Cases 993), the Privy Council held that “a litigant may be shown to have acted positively in the face of the court, making an election and procuring from it an order affecting

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others apart from himself, in such circumstances the court has no option but to hold him to his conduct and refuse to start again on the basis that he has abandoned.” (See page 1018) A

61. Justice Ashutosh Mookerjee speaking for the Division Bench of Calcutta High Court in *Dwijendra Narain Roy vs. Joges Chandra De*, (AIR 1924 Cal 600), held that it is an elementary rule that a party litigant cannot be permitted to assume inconsistent positions in Court, to play fast and loose, to blow hot and cold, to approbate and reprobate to the detriment of his opponent. This wholesome doctrine, the learned Judge held, applies not only to successive stages of the same suit, but also to another suit than the one in which the position was taken up, provided the second suit grows out of the judgment in the first. B C

62. It may be mentioned in this connection that all the proceedings pursued by the contesting respondent in which it took the plea of irrevocable licence was virtually in clear contradiction of its stand which it took before the Bombay High Court on 12.7.01 where it had given up the plea of ‘irrevocable licence’. It is on this plea that its suit again became triable by the Bombay City Civil Court and all subsequent proceedings pursued by the contesting respondent followed thereafter. D E

63. This Court has also applied the doctrine of election in *C. Beepathumma & Ors. vs. V.S. Kadambolithaya & Ors.*, 1964 (5) SCR 836, wherein this Court relied on Maitland as saying: “That he who accepts a benefit under a deed or will or other instrument must adopt the whole contents of that instrument, must conform to all its provisions and renounce all rights that are inconsistent with it.” (Maitlands Lectures on Equity, Lecture 18). This Court also took note of the principle stated in *White & Tudor’s Leading Case in Equity* volume 18th edition at p.444 – wherein it is stated, “Election is the obligation imposed upon a party by Courts of equity to choose between two inconsistent or alternative rights or claims in cases where there is clear intention of the person from whom he derives one H

A that he should not enjoy both... That he who accepts a benefit under a deed or will must adopt the whole contents of the instrument."

B 64. In *M/s New Bihar Biri Leaves Co. & Ors. vs. State of Bihar & Ors.*, (1981) 1 SCC 537, this Court observed that it is a fundamental principle of general application that if a person of his own accord, accepts a contract on certain terms and works out the contract, he cannot be allowed to adhere to and abide by some of the terms of the contract which proved advantageous to him and repudiate the other terms of the same contract which might be disadvantageous to him. The maxim, *qui approbat non reprobat* (one who approbates cannot reprobate), applies in our laws too.

D 65. Therefore the conduct of the contesting respondent in view of its inconsistent pleas is far from satisfactory. By taking such pleas, the contesting respondent has succeeded in enjoying the possession of the premises for the last 10 years even after the expiry of its licence on 26.5.2000.

E 66. The complaint of the contesting respondent that Mr. K.K. Gupta, while acting as Estate Officer and deciding the proceedings, failed to observe the principles of natural justice, by not summoning the officers of AAI, is without any substance. The Estate Officer has given adequate reasons for not summoning the officers of AAI by holding that beyond F 26.5.2000, there is no written extension of the licence period. The Estate Officer held, and in our view rightly, that when written documents are there, any oral assurance, which purports to contradict the written documents need not be considered. G Apart from that, this Court has already recorded that in the facts of the case and in the context of the statutory dispensation discussed above, there is no scope for an oral extension of licence. Therefore, the reasoning given by the Estate Officer, for not calling the officers of AAI to prove the case of oral extension of licence of the contesting respondent, is sound and H

does not call for any interference by this Court even when it acts as an appellate authority. A

67. The Estate Officer also declined to issue directions for inspection of documents, as prayed for by the contesting respondent on valid grounds. The Estate Officer held that it has to decide whether the contesting respondent is in unauthorized occupation of the public premises within the meaning of the 1971 Act. That being the sole purpose of his enquiry, the Estate Officer thought, and rightly so, that its enquiry cannot be widened by including a plea of discrimination under Article 14 raised by the contesting respondent. B C

68. Apart from that, this Court also does not find any merit in the plea of discrimination raised by the contesting respondent, by contending that cases of other licensees have been extended whereas in its case, the licence has not been extended. Such a plea is not factually correct in as much as the licence of the contesting respondent was also extended twice. In any event, a plea of discrimination can only be raised in aid of a right. If a person has a right in law, to be treated in a particular way, but that treatment is denied to him, whereas others are given the same treatment, a plea of discrimination can be made out. D E

69. We have already discussed that the contesting respondent has no right in law, to get its licence extended. Therefore, one cannot have a plea of negative equality under Article 14. There may be very many administrative reasons for extending the period of licence of other licensees, but that does not give rise to a valid plea of discrimination, when admittedly the contesting respondent has no right in law to get an extension. F G

70. Now the last point that remains is the authority of Mr. K.K Gupta to function as an Estate Officer. This is a point more of desperation than of substance. H

A 71. Under Section 3 of the 1971 Act, the Central Government's power to appoint an Estate Officer is provided.

B 72. From the compilation of notifications that have been filed in this case by the learned Attorney General, appearing for AAI, it transpires that the Ministry of Civil Aviation and Tourism, Department of Civil Aviation, issued a notification dated 1.7.97, appointing several persons as Estate Officers for the purpose of the 1971 Act. That notification was published in the Official Gazette. By a further notification dated 15.5.07, published in the Official Gazette, Central Government amended its previous notification and for the words 'Airport Director', the words 'Deputy General Manager (Land Management)' were substituted.

D 73. It has not been argued by the learned Counsel for the contesting respondent that while issuing a notification under Section 3, the Central Government will have to name a person or an individual as an Estate Officer. The appointment of such Estate Officer is by designation only. It is not in dispute that Mr. K.K. Gupta, who functioned as an Estate Officer and decided the case of the contesting respondent, was promoted and brought to Mumbai as Deputy General Manager (Land Management). This is admitted in the affidavit of the contesting respondent. Therefore, Mr. K.K. Gupta by virtue of his designation as Deputy General Manager (Land Management) discharged his function as a valid Estate Officer. There can be no dispute about his authority to do so since by the subsequent notification dated 15.5.07, the words 'Airport Director' have been substituted for words 'Deputy General Manager (Land Management)'. Hence, there is no substance in these contentions of the contesting respondent.

H 74. This Court even acting as an Appellate Authority does not discern any error in the Order dated 29.4.10 of the Estate Officer. The appeal filed by the contesting respondent before the City Civil Court, Mumbai and transferred to this Court is therefore dismissed.

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75. However, from the facts discussed above, it is amply demonstrated that the contesting respondent has blown hot and cold by taking inconsistent stand, and has therefore prolonged several proceedings for more than a decade. This Court is constrained to hold that it did not pursue its proceedings honestly in different fora. Therefore, the appeal, being Misc. Appeal No. 50 of 2010, filed by the contesting respondent before the Principal Judge, City Civil Court, Mumbai, which was transferred to this Court by this Court's order dated 11.05.2010 and formed part of these appeals, is dismissed with costs assessed at Rs.5,00,000/- to be paid by the contesting respondent in favour of the Supreme Court Mediation Center within a period of two months from date.

76. The civil appeals filed by Airport Authority of India and Mumbai International Airport are allowed. All interim orders are vacated.

D.G:

Appeals allowed.