

PUBLIC ACCOUNTS COMMITTEE (1978-79)

(SIXTH LOK SABHA)

HUNDRED AND THIRTY-NINTH REPORT

BOMBAY PORT TRUST

MINISTRY OF SHIPPING AND TRANSPORT

[Audit Reports on Bombay Port Trust]



Presented in Lok Sabha on 30th April, 1979

Laid in Rajya Sabha on 30th April, 1979

**LOK SABHA SECRETARIAT
NEW DELHI**

April, 1979/Vaisakha, 1901 (S)

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CORRIGENDA TO 139TH REPORT OF PAC(1978-79) PRESENTED TO LOK SABHA ON 30 APRIL 1979.

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(iii)	5	3	sittings	sitting
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PART II*

Minutes of the sittings of the Public Accounts Committee held on the
25 January, 1979, 16, 17 and 30 March, 1979, 3 and 4 April, 1979
and 27 April, 1979.

*Not printed. One cyclostyled copy laid on the Table of the House
and five copies placed in Parliament Library.

PUBLIC ACCOUNTS COMMITTEE

(1978-79)

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SECRETARIAT

Shri H. G. Paranjpe

Shri D. C. Pande

Shri T. R. Ghai

Joint Secretary

Chief Financial Committee officer

Senior Financial Committee Officer

(ii)

INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Hundred and Thirty-Ninth Report of the Public Accounts Committee (Sixth Lok Sabha) on the Audit Reports on the Accounts of Bombay Port Trust for the years 1974-75 to 1976-77.

2. In this Report, the Committee have dealt with the aspects relating to (1) Congestion in Bombay Port, (2) Proposal for construction of a Satellite Port at Nhava-Sheva, (3) Bombay Port Railway, (4) Proposal to empower major Port Trusts to evict unauthorised occupants from Port Trust lands, (5) Outstandings against Government Departments/Under-takings and private parties and (6) Allotment of Port Trust lands on rent. There are various other aspects on which information had been called but for want of time the Committee could not finalize their views. The Committee leave it to their successor Committee to examine these matters and report thereon.

3. The Committee examined the representatives of the Bombay Port Trust, Ministry of Shipping and Transport, Ministry of Works and Housing, Planning Commission and Shipping Corporation of India on the 16, 17 and 30 March, 1979, and 3 and 6 April, 1979. The Committee wish to express their thanks to the officers of these Ministries/Departments/Corporation for the cooperation extended by them in furnishing information in connection with the examination of this subject and for giving evidence before the Committee.

4. At their sitting held on 25 January, 1979, the Committee also examined the representatives of the Indian National Ship-Owners' Association and Scindia Steam Navigation Company. The Committee wish to express their thanks to the President of the Indian National Shipowners' Association and the Joint Manager of the Scindia Steam Navigation Company for giving evidence and making valuable suggestions.

5. The Public Accounts Committee (1978-79) considered and finalised this Report at their sitting held on 27 April, 1979. The Minutes of the sittings form Part II* of the Report.

*Not printed. One cyclostyled copy laid on the Table of the House and five copies placed in Parliament Library.

6. A statement containing conclusions and recommendations of the Committee is appended to this Report (Appendix). For facility of reference these have been printed in thick type in the body of the Report.

7. The Committee would also like to place on record their appreciation of their assistance rendered to them in the examination of the Audit Reports of the Bombay Port Trust by the Comptroller and Auditor General of India.

P. V. NARASIMHA RAO,

Chairman,

Public Accounts Committee.

NEW DELHI;

April 30, 1949.

Vaisakha 10, 1901 (S)

Public Accounts Committee.

CHAPTER · I

BOMBAY PORT TRUST

ORGANISATION

1.1. The Bombay Port Trust is administered by a local authority called the Board of Trustees of the Port of Bombay. This authority was originally constituted in 1872 and an Act called the Bombay Port Trust Act, 1873, was applied. Thereafter the Bombay Port Trust Act, 1879, was adopted and the port was governed by this Act as amended from time to time upto the 31st January, 1975.

Management of the Port

1.2. The management of the Port is vested, under the Major Port Trusts Act, 1963, in the Board of Trustees of the Port of Bombay, which consists of a full-time Chairman appointed by the Central Government, a full-time Deputy Chairman appointed by the Central Government, if considered necessary, and such number of elected and nominated Trustees as might be fixed by the Central Government from time to time. The present Board of Trustees, besides the Chairman and the Deputy Chairman, consists of 19 other Trustees, 8 elected and 11 nominated. The composition of the 8 elected Trustees is as follows:

- (i) one representative of the Indian Merchants' Chamber;
- (ii) one representative of the Maharashtra Chamber of Commerce, Bombay;
- (iii) one representative of the Bombay Chamber of Commerce and Industry;
- (iv) one representative of the Indian National Shipowners' Association;
- (v) one representative of the All India Shippers' Council;
- (vi) one representative of the Federation of All India Sailing Vessels Industry Associations;
- (vii) one representative of the Bombay Custom House Agents' Association; and
- (viii) one representative of the Bombay Municipal Corporation.

1.3. Among the 11 nominated Trustees, two represent the labour employed in the port, who are nominated by Government after consultation with the Trade Unions of employees. The other nominated Trustees are the Principal Officer, Mercantile Marine Department, the Collector of

Customs, Bombay, the General Managers of the Central and Western Railways, the Flag Officer, Commanding-in-Chief, Western Naval Command, the Secretary to the Government of Maharashtra, General Administration Department and the Managing Director, CIDCO, the Municipal Commissioner, the Managing Director, Food Corporation of India and the Managing Director, Indian Oil Corporation. The term of office of the Trustees is two years commencing from 1st April.

Organisational set-up of Bombay Port Trust

1.4. The Bombay Port Trust is divided into the following Departments:

- (1) Services and Organisation and Methods Department.
- (2) Secretary's Department
- (3) Accounts Department
- (4) Civil Engineering Department
- (5) Mechanical Engineering Department
- (6) Stores Department
- (7) Estate Department
- (8) Railway Department
- (9) Docks Department
- (10) Port Department
- (11) Medical Department
- (12) Legal Department; and
- (13) Labour Department

STAFF

1.5. The number of employees in the Bombay Port Trust as on 31-3-1978 was as under:

Class I and II	472
Class III	11,147
Class IV (other than shore workers)	12,219
Shore Workers	6,056
TOTAL	29,894

CHAPTER II

CONGESTION IN BOMBAY PORT

2.1. Of late, the Bombay Port has been facing the problem of severe congestion resulting in long ship delays.

2.2. The following table gives particulars of the traffic handled by the Port from 1965-66 to 1977-78 under the heads of foodgrains, other general cargo and POL :

D. W. Tonnes in thousand					
Year			Food grains	Other general cargo	P.O.L. Total
1965-66			2,732	6,034	9,350 81,116
1966-67	.	.	3,182	5,691	9,393 18,266
1967-68	.	.	2,353	6,091	8,521 16,965
1968-69		.	1,357	55,551	9,497 16,405
1969-70	.	.	1,151	5,283	8,601 15,035
1970-71	.	.	852	5,276	8,276 14,404
1971-72]	.	.	373	6,139	9,621 16,133
1972-73	.	.	289	6,038	9,213 15,540
1973-74			1,571	5,840	11,052 18,46
1974-75			1,878	5,769	10,080 17,727
1975-76	.	.	2,156	6,007	8,634 16,791
1976-77	.		1,491	6,973	8,928 17,392
1977-78	.		99	6,943	9,861 16,903

2.3. The following figures show the traffic handled at the dock and the number of ship days lost since 1967-68 :

Year	Traffic handled at the dock (in million tonns)	Ship-days lost
1967-68	7.83	5,293
1968-69	6.55	2,879
1969-70	6.14	2,349
1970-71	5.58	190
1971-72	5.95	1,032
1972-73	5.66	1,581
1973-74	6.78	7,427
1974-75	7.06	5,817
1975-76	7.58	2,882
1976-77	7.91	1,907
1977-78	6.50	9,731

2.4. A comparative statement showing the number of ship days lost, i.e. days for which ships had to wait for a berth in the docks or at all terminal at Bombay, Kandla, Mormugao and Cochin during the last five years is given below :

	Bombay	Kandla	Mormugao	Cochin
1973-74	7427	1212	1667	550
1974-75	5817	1779	7427	734
1975-76	2882	1947	745	689
1976-77	1907	210	629	424
1977-78	9731	54	352	772

2.5. The Committee wanted to know the maximum period for which ships suffered during the last five years and the reasons for the same. In this connection, the Ministry has furnished the following information :

Year		Average detention	Maximum number of days any vessel waited for berth
1973-74	Fertilizer	10.82	36
	Gen. Cargo	3.25	41
1974-75	Fertilizer	10.09	41
	Gen. Cargo	2.20	24
1975-76	Fertilizer	14.18	85
	Gen. Cargo	0.39	14
1976-77	Fertilizer	2.35	18
	Gen. Cargo	0.64	9
1977-78	Fertilizer	6.92	30
	Gen. Cargo	4.43	35

(General cargo referred to above excludes foodgrains)

2.6. It is stated by the Ministry that the main reason for detention of ships bringing fertilizers is that two berths have been usually kept reserved for fertilizer vessels and one additional third berth is also made available keeping in view the urgency. These ships are normally chartered by the Food Corporation of India. As charterers, the F.C.I. has the option to suggest alteration to the berthing of vessels bringing fertilizers. This alteration in berthing is normally determined by the type of fertilizers brought by the vessel and the priority in getting the fertilizer needed most at that particular time. It is therefore, usual to experience a situation when a fertilizer vessel superseded in getting a berth over vessels arrived earlier. As a result of this, it is not unusual to find certain fertilizer vessels experiencing inordinately long detention.

2.7. In a report of the Committee (known as Mehta Committee) which was appointed by Government in August, 1978 to study the problem of congestion in Bombay Port and which has since submitted its report, the average pre-berthing waiting time per ship at Bombay after excluding POL and passenger vessels was stated to be as follows:

				No. of ship days lost
1974-75	.	.	3.46 days	5223
1975-76	.	.	1.97 days	2617
1976-77	.	.	0.86 days	1719
1977-78	.	.	4.49 days	9347
1978-79 (up to 8/78)	.	.	5.50 days Mehta Committee (Page 78 of Report)	3672

2.8. In the report of the Mehta Committee, the number of ships which entered the port during 1972-73 to 1977-78 is stated as follows:

Year	No.	N.R.T.
1972-73	2450	10,735,458
1973-74	2381	11,301,430
1974-75	2289	11,293,931
1975-76	2736	13,072,896
1976-77	3387	14,543,912
1977-78	3487	13,664,949
1978-79 (upto October 1978)	1637	6,971,285

2.9. In Bombay Dock, Berth occupancy during 1976-77 and 1977-78 was as follows:

Dock	1976-77	1977-78
Indira Dock	82.32	82.48
Victoria Dock	85.17	88.22
Prince's Dock	80.08	86.96

2.10. On the question of berth occupancy of the various docks of the Bombay Port a non-official witness representing a shipowners' association, who gave evidence before the Committee on 25-1-1979, stated as follows:

"At Prince's and Butcher Island docks, you have the traffic of tankers. There the number of tankers coming in is much less compared to the berths. In the Prince's and Victoria, there is restriction on the entry of ships. The Prince's Dock takes in only small ships and in the Victoria Docks, slightly bigger ships can be taken. The dock which takes much larger ships is the Indira Dock where you will find the highest occupancy. In respect of percentage utilization, the Alexandra Dock is the maximum utilised dock. Next comes the Victoria Dock, taking smaller ships and the Prince's Dock taking still small ships. It is our view that the berth occupancy is dangerously high because we understand that in most of the parts of the world, berth occupancy is somewhere around 60 and 70 per cent."

2.11. Commenting on the bad effects of very high berth occupancy, another non-official witness stated:

"From the long-term point of view, it (berths occupancy) should be reduced; otherwise, we will reduce the draft, which means that one of these days bigger ships cannot come in. There are certain equipment which go out of order. . . . Instead of working 5 cranes, we are now working 3 cranes. Two are under repair. So, the utilisation should be restricted to not more than 70 or 75 per cent."

2.12. Stoppage of work and strikes by port and dock workers are stated to be the main factor causing congestion. In this connection, the Bombay Port Trust have furnished the following note:

"Port work, being a chain of several operations, stoppage of work even by a small section can immobilise the entire operations."

A total of 1,43,000 man-days were lost from April, 1977 to October 1978, BPT Employees' Union accounting for 81,854, BPT General Workers' Union 3,557 and Transport and Dock Workers Union 57,589 man-days lost due to the general strike in November 1978 from 17-11-78 to 28-11-78 by the Transport and Dock Workers' Union and BPT General Workers' Union aggregated to 2,40,000. Stoppage and strike notices during this period were as follows:

	No. of strike notices	No. of stoppages, refusal to work etc.	No. of strikes
BPT Employees' Union	17	17	9
BPT General Worker' Union	12	11	7
Transport and Dock workers Union	6	10	2

2.13. Giving further details about the go slow method adopted by a section of the workers, the Ministry has, in a note stated:

"Certain guidelines were issued by the Government in March, 1978 to the Port Trust to be kept in view while reviewing the piece-rate schemes. The Transport and Dock Workers' Union which controls the shore workers of the Port Trust and stevedore workers under the Dock Labour Board started an agitation from 1st April 1978 to express opposition to these guidelines. Shore workers of the Port Trust and stevedore workers of the Bombay Dock Labour Board simultaneously started go slow by reporting at the booking hall at the commencement of the shift, instead of half an hour earlier as had all along been the practice and restricted their output to the prescribed datums. These affected output by about 50 per cent. Subsequently, the guidelines were withdrawn and although restricted working upto the datum lines has been discontinued by the Transport and Dock Workers' Union, the practice of reporting half an hour late at the booking hall continues. Since reporting late by shore workers affected the piece-rate earning of the crane drivers controlled by the BPT Employees' Union, this Union started a retaliatory agitation by taking a longer recess. However, from 26-6-1978, the BPT Employees Union gave up the agitation in response to the appeal made by the Minister of State for Shipping and Transport but the other Union did not respond to the appeal."

2.14. Another factor which has caused congestion is the low productivity of the port and dock labour. The following statement shows the productivity of labour monthwise from January to August 1978 as compared to the same period in 1977:

Labour productivity—Man—hour output:—

Month	Port Labour		Dock Labour			
	1977	1978	General	Cargo	Dry Bulk	Cargo
			1977	1978	1977	1978
January . .	0.98	0.75	1.60	1.22	2.48	1.60
February	0.01	0.85	1.63	1.37	2.29	1.98
March .	0.99	0.91	1.59	1.46	2.09	2.09
April .	0.83	0.62	1.36	1.02	1.41	1.29
May .	0.88	0.66	1.43	1.08	1.74	1.36
June .	0.72	0.51	1.16	0.82	1.60	1.13
July .	0.47	0.51	0.77	0.83	1.27	1.07
August . .	0.61	0.59	0.98	0.95	1.51	1.24
Average (Jan—Aug)	0.82	0.66	1.32	1.07	1.83	1.39

General cargo includes bagged fertiliser

2.15. It is seen from the above statement that the average productivity of labour per man-hour output has gone down considerably during the year 1978 as compared to that in the year 1977.

2.16. The low productivity of workers has resulted in an increase in the service time in handling cargoes of ships at berth. The following statement shows the average service time per 1000 tonnes of cargo during the period January to August 1977 and January to August 1978:

Average Service time per one thousand Tonnes of Cargo (Total time at Breath)

Month	(In hours)			
	General	Cargo	Dry Bulk	Cargo:
	1977	1978	1977	1978
January	56.49	71.17	21.49	31.89
February	51.94	65.69	22.40	23.33
March	50.86	58.26	23.74	22.08
April	63.04	86.89	36.95	29.10
May	90.36	82.91	31.94	39.19
June	74.84	94.34	32.53	41.00
July	97.28	87.57	42.42	49.24
August	78.19	72.91	45.55	89.94
Average	65.95	74.64	31.81	35.45

2.17. On the question of productivity of staff, a non-official witness representing a shipowners Association, who tendered evidence before the Committee on 25-1-1979 stated as follows:

“Worker has to come at a certain time. He comes half an hour later. They stroll along and go to ships. We have crane drivers. We have shore labour. We have stevedors. One section wants to go to tea at one time. The other section wants to go at some other time. Instead of 8 hours we get productivity only for 4 or 5 hours.”

2.18. When asked whether there are any other causes leading to low labour productivity, the witness added:

“In the morning they used to get overtime allowance for half an hour. They would report at half past seven so that they get the job where they have to go and start the work at 8.00 O'clock. We understand that the labour board has stopped that half-an-hour overtime to them. Now the labour reports at 8.00 O'clock to take the job. They have then to walk some distance to go to a particular ship. It takes another half an hour and the work starts at about 9 O'clock.”

2.19. The Committee were initially informed that with a view to introducing mechanised discharge of fertilizers, four fertilizer handling grab cranes were installed in May, 1977. Although more than a year and a half have elapsed, it has not been possible to commission the Cranes and operate mechanical handling system because of the opposition from the Transport and Dock Workers' Union and BPT Employees' Union. During evidence, the Committee wanted to know the latest position. In this connection, the Secretary, Ministry of Shipping and Transport stated:

“These cranes were installed in July, 1977 but there had been no agreement between the Agriculture Department and the Labour Unions and they are not allowing it to operate. Because it has been considered by the Department of Agriculture that the demands that are being made by them in the matter of sharing the profits of this mechanisation are such that they will have adverse repercussions. . . . The latest position is that a Committee of three Secretaries has been formed, at a meeting held by the Ministers concerned to try to see what is possible.”

In this connection, the Ministry of Shipping and Transport have, on 24-4-79 furnished a note (Appendix I) prepared by the Department of Agriculture stating the reasons for delay in the commissioning of this equipment.

2.20. One of factors causing congestion in the Bombay Port is stated to be accumulation of uncleared packages in the transit sheds and Warehouses in the Port premises. Asked about the steps taken to reduce such accumulations, the Bombay Port Trust have, in a note, stated:

“Under Sections 61 and 62 of the Major Port Trusts Act, the Board is empowered to sell the goods not removed from their premises after the prescribed period of two months or where rates or rent are not paid or lien for freight is not discharged. However, such goods can only be sold after the permission of the Customs authorities is obtained, under the provisions of the Customs Act, 1962 (Sections 47 and 48). The Customs authorities for a variety of reasons including the procedures required to be followed in the Customs House for examination of documents, goods, adjudication proceedings, etc., withhold this permission. The result is that thousands of packages continue to lie in the Docks for too long periods occupying valuable transit space and causing congestion in the transit sheds making it difficult for fresh cargo to be landed. The Port Trust have suggested that the Major Port Trusts Act may be amended so as to provide for full powers to the Board to dispose of the goods lying uncleared on their premises for over two months without obtaining the permission of the Customs authorities. It is a matter that would need examination in consultation with the Ministry of Law, Ministry of Finance etc. and thereafter an amendment of the Act could be proposed.”

2.21. The following statement shows the number of uncleared/unclaimed goods listed for sale and that number sold during the last 5 years:

Year	Number of packages		Balance
	Listed for Sale	Sold	
1973-'4	74,691	22,570	52,121
1974-'5	54,930	24,233	30,697
1975-'6	3,07,132	98,211	2,08,921
1976-'77	3,53,845	1,24,560	2,29,285
1977-'8	4,57,910	57,077	4,00,833

2.22. It was stated that as on 15-12-1978, over 50,000 packages were detained by the customs. Details are as under:

41,226	. Packages confiscated.
4,119	. Packages under action by the Special Investigation branch.
5,319	. . . . Packages under Adjudication.

2.23. The Port Trust have stated that 24 Valuers have been appointed in the Docks Department to work under the guidance of three Customs Appraisers and expedite the work of valuation of the uncleared packages which are listed for sale.

2.24. It is stated in the Mehta Committee Report that Bombay Port Trust at present charges demurrage fees on all goods remaining uncleared after expiration of 3 days and the levy of such fees is regulated on the basis of full wharfage for each day or part thereof. This implies that if the wharfage rate of a commodity is low, the demurrage rate for it is also low. For example, the wharfage rate on cotton is Rs. 4.80 per tonne (imports)/Rs. 3.80 per tonne (exports) whereas the wharfage rate on iron and steel is Rs. 8.90 per tonne. That Committee has observed that there is no reason why cotton not cleared from the port should pay less demurrage than the same tonnage of iron and steel.

(Page 173 of Mehta Committee Report)

2.25. In connection with accumulation of uncleared cargo, a non-official witness who gave evidence before the Committee, has stated:

“To prevent the transit sheds being utilised as godowns, we think that one of the deterrent is to increase the penalty charges. But there is also another side of the coin. The Port Trust cannot indiscriminately increase the penalty charges because the delay in the dock is not always the fault of the consignee. There are certain procedures involved with the customs, Port Trust etc.... The Port is not concerned why the cargo is there. It is concerned with for how many days the cargo is there.”

2.26. While discussing the problem of accumulation of cargo in the transit sheds of the Bombay Port, a non-official witness who gave evidence before the Committee on 25-1-1979, has stated:

“We find that this practice of leaving the cargo in the custody of the Bombay Port is quite rampant.... It affects the working of the Port very much. This is why we feel that a deterrent should be provided. At the moment for 4 days after the

general landing date, the Port Trust allows the cargo to remain. There is a penalty schedule with the Bombay Port Trust.

(The landing date is 75 days after the despatch of the cargo)."

2.27. Bombay is generally regarded as a general cargo port. However, a large quantity of bulk cargo is also handled at the Bombay Port. Asked why bulk cargoes could not be diverted to ports like Kandla and Mormugao, the Ministry has, in a note, stated as follows:

"Between 1-1-1978 and 31-10-1978, Bombay, Kandla and Mormugao handled the following bulk imports:

(in tonnes)

	Bombay	Kandla	Mormugao
Fertiliser in bulk .	391,254	317,772	53,074
Edible Oil .	699,118	254,069	..
Cement	230,373	52,816	29,462

It will be seen that Kandla and Mormugao Ports are being used for handling fertilisers and cement keeping in view their capacity and facilities available. Edible oil is also being handled at Kandla but in the absence of required facilities, Mormugao cannot be used for edible oil import. Mormugao is a port for export of iron and the scope to divert bulk fertilizers and cement to that port is limited in view of problem in clearance and inadequate storage.

Mormugao Port also suffers seriously from lack of adequate rail facilities as well as road facilities for onward movement of cargo, particularly to the north, which incidentally accounts for the major consumption of fertilisers and edible oils which are imported through the Port of Bombay."

2.28. Regarding diversion of traffic from Bombay to other ports, a non-official witness representing a shipowners association, who gave evidence before the Committee on 25-1-1979, stated:

"We find that the same conditions are prevailing at other places also. You take the case of Kandla...Kandla port has got limited shed capacity. Then there are no lorries available to take the cargo...No Shipper or consignee is willing to take delivery at Kandla. He has no arrangement there. He would prefer to wait for getting his cargo in Bombay rather than at Kandla."

2.29. In the same context, another witness stated:

"There is a limitation there in so far as these ports are concerned. For instance, Kandla, you have to go into gulf and there is restriction on the type of ship to be taken. You cannot take big container ships. In Bombay Port—Nhava Sheva has got 40' of draught. You can take 100,000 tonne ship whereas in any other port you do not have that much of facility. The bigger the ship and the container, the cheaper the freight."

2.30. Another witness has stated as follows in this connection:

"Unless this system of rail and road transport is adequate, the consignees are not inclined to use service of the port. Kandla port has been opened but so far the rail service and road service has not been adequate to meet the needs. Secondly, the labour problem is also there. There is lack of skilled labour."

2.31. As to what kind of cargo can be diverted to other ports, a non-official witness has stated:

"Too much of bulk cargo is imported to Bombay which should be diverted to other ports. In Bombay Port Trust, there are 8 reserved berths for specific cargoes like fertilisers, foodgrains, cement, oil etc. This limits the number of berths available for general cargo.... So, Bombay having basically the facilities for general cargo should be left for only general cargo and the other bulk cargo should be diverted to other Ports."

2.32. The Mehta Committee which considered the question of diversion of cargo to other ports has made the following observation in this regard:

"The total import of edible oils in 1977-78 amounted to 8.5 lakh tonnes and this required on an average 2 berths regularly and quite often 3 or 4 berths everyday. This covered requirements not only of Bombay's hinterland and Northern India edible oil factories, but also covered requirements of Eastern Region of the country. These were discharged at Bombay and thereafter moved by rail to Calcutta. This is a wasteful movement involving wastage of railway capacity, Ships carrying the requirements of Eastern Region should directly be taken to Calcutta.....

Food exports should be diverted to other ports, Bombay's share could be equally divided between Kandla, Madras, Vizag, Calcutta and Tuticorin....

All additional quantities of bulk items should necessarily be

diverted to other ports unless it is considered advisable to have additional capacity at Bombay.”

2.33. Regarding the possibility of diverting cargo to other ports, the Secretary, Ministry of Shipping and Transport, during evidence on 6-4-1979, stated:

“Except in respect of cement, in all others I have been able to reach an agreement with the Ministry concerned. In respect of cement also, I am hopeful.”

2.34. The Committee referred to complaints that the shippers were often required to wait for 65—70 days to get berths in Bombay. Asked what steps were proposed to be taken in the matter, the representative of the Ministry stated:

“...in September, 1978 we appointed this Mehta Committee with an experienced officer. That Committee has submitted a report in December and we are now in the process of discussing it with various people. Besides, there is also a group of Cabinet which is looking into the congestion in the Port of Bombay... We are hoping that the concentrated attempt of these people for ensuring that the cargo is properly distributed and also for ensuring that the mid-stream handling which we have physically started is taken care of, will be successful. These are the attempts we are trying to make because we are conscious that the situation is absolutely very bad and drastic remedies are necessary.”

2.35. It is seen that the number of ship days lost, i.e. days for which ships had to wait for berth in the docks at Bombay was 2882 in 1975-76, 1907 in 1976-77 and 9731 in 1977-78. This is a very alarming situation particularly the one during the year 1977-78. The number of days for which a ship had to wait for berth was upto 30 days for fertiliser cargo and 35 days for general cargo in the year 1977-78. The average detention of a ship was as much as 6.92 days for fertiliser cargo and 4.43 days for general cargo. The Committee are of the view that the Government and the Port Administration should not have allowed such a situation to arise. The Committee strongly feel that with proper coordination with the shipowners, charterers, as also Government departments handling bulk cargo, by fixing proper priority in the matter of allotment of berths and by having an efficient system of handling loading and unloading operations in the docks, much of the ship days lost could have been avoided. The Committee would like the Government and the Port Trust authorities to seriously address themselves to this matter and make concerted and coordinated effort to improve the present systems so as to reduce ship delays to the minimum and save considerable loss to national economy.

2.36. One of the factors which has led to increase in congestion in the Bombay Port is the low productivity of labour. It is seen that the average output per man-hour has decreased from 0.82 in 1977 to 0.66 in 1978 in respect of port labour; from 1.32 in 1977 to 1.07 in 1978 in respect of general cargo; and from 1.83 in 1977 to 1.39 in 1978 in respect of dry bulk cargo. (All figures are for the months January to August). Another criterion for judging the productivity is service time per 1000 tonnes of cargo. In this respect, it is seen that the average service time per 1000 tonnes of cargo (total time at berth) increased from 65.95 hours in 1977 (January-August) to 74.64 hours in 1978 (January-August) in respect of general cargo. In respect of dry bulk cargo, the corresponding figures were 31.81 hours in 1977 (January-August) and 35.45 hours in 1978 (January-August). The Committee are perturbed at the steadily deteriorating productivity trend of labour in the Bombay Port. From the evidence given by the non-officials, the Committee gather the impression that there is some slackness among the labour force in reporting for work or starting work in time. The Committee are of the view that with better management and labour relations, the productivity of labour can be increased.

2.37. It was reported by non-official witnesses who gave evidence before the Committee, that often the cargo handling equipment, such as cranes, fork-lifts etc. were not in working order and this affected the operations in the docks. Also, some equipments were out-dated. The cranes in the Prince's and Victoria docks were stated to be nearly 80-year old. The Committee would like the Government and Port Trust Authorities to go into the question of modernisation of the equipment so that clearance of cargo is not adversely affected by these factors.

2.38. The Committee have learnt that the practice of leaving cargo in the custody of the Port Trust is very common. It has often been noticed that the customers leave the cargo in the transit sheds of the Port Trust and prefer to pay demurrage because they do not themselves have arrangements for keeping such cargo in warehouses and the present arrangement is found by them to be cheaper. This is evidently a very unsatisfactory state of affairs. The Committee are of the view that the customers should not be enabled to take undue advantage of the present arrangement at the cost of the Port Trust and add to the problem of congestion in the transit sheds. Government should therefore examine whether the present rate of demurrage charges should be enhanced so as to act as deterrent to the owners of cargo from resorting to such practices.

2.39. It has also been reported that customs clearance at the Port takes unduly long time resulting in not only congestion in the transit sheds of the port but also causing considerable inconvenience to the clients besides involving payment of demurrage by the clients for no fault of theirs. The

Committee consider that a suitable method should be urgently evolved in consultation with the customs authorities so that no undue delay is caused in clearance of cargo.

2.40. The Committee find that the number of uncleared/unclaimed goods remaining after sale was 2,29,285 at the end of 1976-77 and this had increased to 4,00,833 at the end of 1977-78. The Committee are greatly perturbed at this heavy accumulation of uncleared packages in the Port Trust premises. The Committee would like the Port Trust authorities to make all out efforts to clear these heavy accumulations. If considered necessary, the procedures relating to sale of unclaimed goods should be simplified.

2.41. An inter-ministerial meeting was held on 24-3-1979 to discuss the recommendations of the Committee (Mehta Committee) to study the problems of Bombay Port congestion to divert some quantities of bulk cargo from Bombay to other ports. At this meeting certain arrangements were envisaged whereunder some quantities of finished fertilisers, fertiliser raw materials, edible oils, imported cement, foodgrains and steel would be diverted from Bombay to other ports. The Committee are of the opinion that the problem of congestion at the Bombay Port is not a new development and the question of diversion of bulk cargo, especially that on Government account, should have been thought of long back. It seems to the Committee that until recently no coordinated effort involving the concerned Ministries and Departments of the Government was made and matters were allowed to drift. The Committee would like to be informed how far the decisions taken in this regard have been implemented.

CHAPTER III

PROPOSAL FOR CONSTRUCTION OF A SATELLITE PORT AT NHAVA-SHEVA

3.1. The question of having a satellite port at Nhava-Sheva was initiated in 1966. Since then the matter has been considered in various forums in the Ministry of Shipping and Transport, Ministry of Finance and the Planning Commission but no final decision has yet been taken. At the instance of the Committee, the Ministry of Shipping and Transport have on 16th April 1979 submitted a detailed note (Appendix II) on the subject. It is seen from this note that in 1967, a study for the preparation of a Master Plan for the Port of Bombay was commissioned. In 1970, M/s. Berlin and Partners, Consulting Engineers to the Bombay Port Trust prepared a Master Plan for Bombay Port. This Master Plan recommended :

- (1) Construction of a Satellite Port to Bombay at Nhava-Sheva on the eastern side of the existing harbour consisting of six berths in the first instance—five for handling bulk commodities (i) manganese ore (ii) fertiliser and fertiliser raw materials (iii) foodgrains, oil cakes and sugar (iv) cement, clinker (v) salt and the sixth for handling containers.
- (2) Once the new dock at Nhava-Sheva is commissioned, the existing docks at Bombay would be required primarily to handle general cargo and should be improved to do this more efficiently.

3.2. In the Master Plan, the total cost of the Nhava-Sheva (excluding cost of dredging in the main channel) was estimated at Rs. 62.00 crores at 1967 prices. In 1971, Bombay Port Trust sought Government's approval to the construction of a satellite Port at Nhava-Sheva at an estimated cost of Rs. 51.74 crores. This proposal had already been included in the Fourth Five Year Plan. The Scheme envisaged construction of three berths (one for fertiliser and fertiliser raw materials, one for sugar and oil cakes and one for containerised cargo) in place of six berths mentioned in Master Plan.

3.3. In September 1973, three Working Groups of the Planning Commission were appointed to consider the different aspects of the scheme. These Working Groups submitted their reports in December, 1974. In June 1975, a note for Public Investment Board was circulated

seeking sanction for an estimated cost of Rs. 96.89 crores (at 1975 prices). In this note, a traffic of 5.2 million tonnes of cargo per year was projected for Nhava-Sheva, out of which 2.6 million tonnes was coal. However, it became evident that these projections especially those relating to coal which accounted for 50 per cent of the traffic projected by Planning Commission, would not materialise. At an inter-ministerial meeting held on 7th September 1976 which was attended by the representatives of the Planning Commission, Ministry of Finance and Ministry of Shipping and Transport, this matter was considered and it was felt that the traffic projections on the basis of which the project had been justified had not been firmed up by the concerned Ministries/Undertakings. It was therefore decided to withdraw the P.I.B. note and remit it back to the Ministry of Shipping and Transport.

3.4. At the instance of the Committee, the Ministry of Shipping and Transport have expressed the following views in justification of the project:

"A factual note on the matter is enclosed. It would be seen from note that the Ministry of Finance (at whose instance the note was withdrawn) and the Planning Commission have been considering the investment in Nhava-Sheva purely from the point of view of traffic estimates. This Ministry, however, have time and again impressed upon the Planning Commission that in the absence of a foolproof system of arriving at traffic projections of traffic to be handled anywhere at a future date, the traffic projections made at any particular point of time can only be roughly indicative of the trends and are not to be considered absolute. The note itself indicates that different agencies of the Government of India, the Consultants appointed by the Port and the State Government have all come up with different estimates of the traffic likely to be handled at Nhava-Sheva and the estimates varied from 5.35 million tonnes to nearly double of that figure. Our experience has been that even the most careful traffic projections have not stood the test of time, mainly because no traffic study however meticulous, could anticipate future events like the petrol price hike of November, 1973 or the resulting slump in the international iron ore market which have drastically altered the pattern of world trade.

For these reasons the Ministry has been of the view that traffic projections should be only one of the several aspects to be considered while making an investment in a new port. Even the Detailed Project Report now agreed to is unlikely to result in an investment decision if traffic is going to be the

main criterion. The Ministry have always felt that Port capacity should precede actual traffic offerings. It would be unrealistic and impracticable to accept trade to develop in an area and wait for a period of several years for port facilities to be created. Annexure II of the note gives details of dead-
~~losses on account of ships having had to wait at Bombay from~~
~~times.~~ In the Ministry's view, creation of alternative port facilities would have been justified on this basis alone, if not on any other considerations. The Transport Secretary agrees with this view and feels that the need for the project has been established. The alternative port capacity, the Ministry feels, would be best provided at Nhava-Sheva in preference to all the other sites mentioned by various agencies from time to time. Immediate execution of the Project will help meet the needs of growing and varying traffic and provide the facilities the absence of which would be worst left in future times, if the project is delayed."

3.5. In a separate note furnished to the Committee, the Bombay Port Trust have stated as follows in justification of this project :

"On development of Nhava-Sheva Port, it is expected that the traffic for bulk commodities and containers would be shifted to the new facility, leaving residual general cargo traffic to be handled in Indira Dock and thereby reducing congestion and ship delays in respect of vessels using Indira Dock. Assuming the general cargo traffic projections indicated in the report of the Working Group on Ports for Five Year Plan beginning from April 1978, excluding traffic for food-grains and fertilisers, aggregating to 7 m. tonnes are to be handled at the existing Docks, it would be necessary to handle 4.3 m. tonnes of the traffic in Indira Dock. The likely ship delay while handling this traffic would be 9732 ship days per annum. If Nhava-Sheva Port is commissioned and even above 1 m. tonnes of traffic could be diverted from the Indira Dock, the likely ship delays will get reduced to 256 days per annum which is considered an acceptable level. This would mean a saving to the extent of 9476 shipdays and on the basis of ship delay cost of Rs. 30,000 per day, this means a gain to the national economy of Rs. 28 crores per annum."

3.6. The Planning Commission under their letter No. T&C 9(30)/78 dated 8 June 1978 have set up a Working Group on the Nhava-Sheva Port Project under the Chairmanship of the Secretary, Planning Commission, for making a detailed appraisal of this scheme.

3.7. Earlier, the Public Accounts Committee had, in their 113th Report (Fourth Lok Sabha), considered this matter and made the following recommendation

“.....A Study Team of International Ports and Harbours which examined these proposals questions the wisdom of the ‘planning logic which suggest that a new port should provide every conceivable type of port facilities within one concentrated area. The Study Team drew pointed attention to the fact that if import foodgrains requirements are eliminated, the Central Government forecasts there would not be sufficient justification for embarking on a port development of this magnitude at this time. The Committee desires that in processing the proposal in this regard, Government should take adequate precautions to obtain reliable forecasts of traffic trends so that facilities are not created on a grandiose scale unwarranted by the requirements of trade. The fact that traffic at the Bombay Port has lately registered a fall suggests the need for extreme circumspection in planning the provision of new facilities.”

3.8. In their Action Taken Note dated 25-11-1970 the Government had given the following reply:

“The Study Team of the International Association of Ports and Harbours did not, it seems, correctly appreciate the justification for the Nhava-Sheva scheme. The justification for the scheme arises not merely from expectations of more traffic but also from the necessity of rationalising the handling of the existing traffic by segregating bulk cargo from general cargo and also of providing the necessary berthing and handling facilities for large bulk carriers and containers. Care will be taken to ensure that the Planning of the new facilities is done consistently with the requirements of traffic and of the national economy.”

3.9. The Committee wanted to know the latest position regarding the development of port facilities at Nhava-Sheva. In this connection, the Adviser, (Transport), Planning Commission stated during evidence:

“The latest position is that on 27th January in the annual plan discussions for 1979-80, when we discussed the major ports, the Planning Commission conveyed its clearance allowing the port to go ahead with the preparation of the DPR (Detailed Project Report) for which a provision of Rs. 60 lakhs was concurred with.”

3.10. Asked when the DPR was expected to be ready, the witness stated:

"It is for the Bombay Port Trust to commission the DPR and we were told that it would take about 9 months".

3.11. The Committee wanted to know the reasons for the delay in taking a decision in the matter. To this, the Adviser (Transport) Planning Commission, stated:

"It was in April 1966 that the terms of reference for the economic status for the master plan of the new port were prepared. The economic studies were assigned to us.

Our report on the port was given in 1970. After that it was in 1971 that the Bombay Port Trust asked for the approval of the Ministry of Shipping and Transport. It was in 1973 that the reference was first made to the Planning Commission. In January, 1975 in the Annual Plan for 1975-76, Rs. 3 crores were provided for the project as a token provision..... The draft note of the Ministry of Shipping and Transport was sent for the consideration of the Public Investment Board in June 1975 and on 17-9-76 this note was withdrawn and that was because there were some doubts about the viability of the project..... At that time out of the total traffic estimated viz., 5.2 million tonnes, 2.6 million tonnes was considered as coal traffic about which they had doubts and the Ministry finally decided to withdraw the PIB note. Thereafter, the question has been taken up again on 24-2-1978 when the Secretary, Ministry of Shipping and Transport wrote to the Planning Commission suggesting the establishment of a Working Group. This was set up. In between, the Planning Commission wrote to the Ministry saying "We agree; these are the terms of reference; we will give you concurrence". The formal setting up of the group was announced on 8-6-1978."

3.12. Asked whether the project has been cleared by the Planning Commission, the witness replied :

"No, Sir. What has been cleared by the Planning Commission is that they should go ahead with the preparation of the D.P.R."

The witness further clarified :

"After the D.P.R. is completed and submitted then the final view on the project will be taken."

3.13. As per the revised estimates, the cost of the project is Rs. 109.9 crores.

3.14. The Committee find that the question of having a satellite port at Nhava-Sheva was initiated in 1966. In September, 1973 three Working Groups of the Planning Commission were appointed to consider different aspects of the scheme relating to development of port facilities at Nhava-Sheva and other related matters. The Working Groups submitted their reports in December, 1974, i.e. after about 15 months. Different estimates were furnished by the Working Groups of the Planning Commission, other agencies of the Government, Consultants appointed by the Port Trust, and the State Government. Another Working Group has been appointed in the Planning Commission in June 1978 for making a detailed appraisal of the Nhava-Sheva Scheme. The Committee are surprised at the appointment of one working group after another within a short period to study the same matter. This has delayed taking a decision. As the matter has been pending for quite some time, the Committee would like this matter to be processed expeditiously and arrive at a final decision.

3.15 The Committee find that the Planning Commission has, in January, 1979 given its clearance for the preparation of a detailed project report for the development of port facilities at Nhava Sheva. A provision of Rs. 60 lakhs has been agreed to for the preparation of the Detailed Project Report. However, the project itself has not yet been cleared by the Planning Commission. The Committee are of the view that the decision to go ahead with the preparation of the Detailed Project Report at a cost of Rs. 60 lakhs even before the project is cleared is not correct inasmuch as this expenditure would become infructuous if later the project is not sanctioned. The proper course would be to carry out preliminary study taking into consideration the facilities already available at the Bombay Port and those required for handling the traffic more efficiently. Also, traffic projections for Bombay Port as also other Major Ports in the country should be made in an integrated manner. If all these justify development of port facilities at Nhava-Sheva, then only the costly venture of preparing a detailed project report should be attempted.

CHAPTER IV

BOMBAY PORT RAILWAY

4.1. The following table gives the financial results of the working of the Port Railway for the last three years ending 1976-77:

	1974-75	1975-76	1976-77
	(Rs. in lakhs)		
Income	170.05	193.65	197.27
Expenditure	284.47	329.98	304.11
Net Deficit	114.42	136.33	106.84

In this connection, following points were noticed :

- (i) The operational staff is not sanctioned according to prescribed norms based on time and motion studies. In Itarsi Yard of the Indian Railways which was stated by Bombay Port Trust Railway to be comparable, the number of operating staff is 592 as against 1200 on the Port Railway.
- (ii) The Railway had a track length of 204.02* km. in 1974-75 and 1975-76. This was reduced to 202.70* kilometres in 1976-77. The cost of maintenance of the track for three years ending 1976-77 (excluding overhead expenses) is given in the following table:

	1974-75	1975-76	1976-77
	(Rs. in lakhs)		
Labour	22.54	29.29	25.12
Materials	7.63	6.72	8.06
Total	30.17	36.01	33.18
The cost per km. of track per annum	0.17	0.20	0.19

*Excludes 25 km. private siding cost of maintenance excluded in Table.

The corresponding cost of maintenance of track per km. per annum on the Central Railway is reported to be Rs. 6,000 approximately.

- (iii) On the basis of Maffilins formula adopted for working on Government Railways, the number of gangmen for the Port—Railway should be 141 as against the existing strength of 266.
- (iv) Information on coal and diesel consumption per km. of run and the handling capacity of engines is awaited (August 1977).

Port stated (December 1977) that there was difference in operation, at Bombay Port Trust Railway which was a terminal point, and an intermediate point like Itarsi Yard. Port further stated that “attempts were made in the past to achieve economy in the expenditure on staff by rationalising the working of the Port Railway, but substantial reduction in expenditure could not be achieved because of labour problems.”

(Bombay Port Trust Annual Accounts 1976-77 and the Audit Report thereon, p.v.)

4.2. The Bombay Port Trust Railway starts at Wadala and terminates at Ballard Pier and covers a distance of about 10 kilometres. The Railway Department arranges for intending of wagons for docks traffic meant for up-country destinations and their placement at points of loading, the reception of incoming traffic from trunk railways and the proper placement of wagons at points of unloading and the marshalling of wagons and their formation into complete trains for handing over to the trunk railways. It also deals with traffic to and from the local stations on the B.P.T. Railway. The Head of the Railway Department is the Railway Manager.

4.3. The following statement shows the working results of the operation of Bombay Port Railway during the years 1971-72 to 1977-78:

		Railway Earnings	Expenditure on Railway Workings	Deficit
		(Rs. in lakhs)		
1971-72	. . . . .	145.08	210.21	65.13
1972-73	. . . . .	150.77	215.86	65.09
1973-74	. . . . .	161.41	236.67	75.26
1974-75	. . . . .	168.20	283.64	115.44
1975-76	. . . . .	190.74	322.87	132.13
1976-77	. . . . .	197.13	302.58	105.42
1977-78	. . . . .	180.83	354.14	173.31

4.4. The Committee were informed that a study on the working of the Port Railway was made by Sankara Aiyer Committee in 1949-50. The two main points of extravagance located were : (i) heavy over-capitalisation, which was done initially when the railway was set up; and (ii) over-staffing. The main recommendations of this Committee were :

- (1) Increase the Terminal charges paid by the Western and Central Railways to the BPT Railway.
- (2) Reduce the establishment of officers and staff on the BPT Railway.
- (3) The BPT Railway should be taken over by the Central Railway.

4.5. The Public Accounts Committee (1969-70) had in their 113th Report (Fourth Lok Sabha) made the following observation :

"The Committee are concerned about the increasing losses sustained by the Bombay Port Trust Railway. If certain notional credits taken in the accounts by the Port Trust on account of oil traffic, dock wharfage and revenue derived from railway served plots are excluded, the deficit in the working of the Railway works out to Rs. 72.58 lakhs in 1965-66, Rs. 85.79 lakhs in 1967-68 and Rs. 91.53 lakhs in 1968-69."

4.6. The Committee wanted to know what steps were taken by the Government to effect economy in expenditure. In this connection, the Ministry of Shipping and Transport have furnished the following reply:

"An Enquiry Committee of the Port Trust Board constituted in August, 1970 recommended reduction in the overtime of the railway and loco staff. When the report of the Committee was placed before the Board, they felt that although the proposals were *prima facie* reasonable, they should be discussed with the Unions before implementation. Between May, 1971 and January 1972, the Administration held a series of discussions with Union representatives and the Union representatives appeared favourably inclined to some reduction in expenditure on overtime. On 10 January 1972, however, the Unions refused to associate themselves any further with these discussions. On 30 March, 1972, the Bombay Port Trust Employees' Union went on a strike on this issue. Their demand was that the overtime should continue in the manner in which it was being given earlier. Further discussions with the Unions on this subject were of no avail and finally the Trustees decided by their Resolution No. 475 dated 11 April, 1972

that the *status quo* in the matter of overtime should be maintained.

The Port Administration also made efforts to reduce the deficit in the expenditure on the Port Railways. Seven temporary posts of Jamadars at the Vadala Yard which were not required after re-modelling of the Vadala Yard, were abolished in January, 1971 but this had to be revived due to resentment by the staff. In 1975 and 1976, 91 posts (belonging to the line staff) which were considered surplus to requirements, were abolished. In September and October, 1978 however, there was a strike on the Bombay Port Trust Railway for 40 days. On 28 October, 1978 the strike was called off after the Administration agreed that the posts abolished earlier would be revived."

4.7. The Committee discussed this matter during evidence on 16-3-1979. As regards the reasons for losses incurred on the working of Bombay Port Railway, the Secretary of the Ministry of Shipping and Transport stated:

"...The main reason as far as the Port Railway losses are concerned, is the higher wages. Besides, it is a small tract, and it is also due to the fact that it has not been possible despite repeated dialogues with the labour unions to be able to reduce or curtail the staff or rationalise the working which, of course, includes the overtime that is being paid to them. Repeatedly, whenever any attempt was made to reduce the staff, there were strikes and hold-ups."

4.8. The Committee pointed out that in 1965-66 the loss was Rs. 46.61 lakhs while in 1977-78 it was Rs. 173.31 lakhs. Asked whether this increase was justifiable, the representative of the Ministry stated:

"There have been 2 or 3 wage revisions. Seventy-five per cent of the total expenditure is on salary. In 1977-78, for instance, the revenue was Rs. 180 lakhs and expenditure Rs. 354 lakhs. The deficit was Rs. 173 lakhs. It is a fact that there are excessive posts in this railway, that there is heavy overtime."

Continuing he said :

"There are three or four reasons which I was wanting to submit. One is the fact that we could not rationalise or reduce the staff; the other is higher wages compared to the other trunk railways; the third is the fact that traffic on the railways has gone down... For instance, in 1964-65, the traffic was 4.6 million tonnes and in 1977-78, it was 3.8 million tonnes."

4.9. Asked about the extent of over staffing, the Secretary of the Ministry stated:

"We have 1946 persons on our railways, and according to our assessment we have 600 excess."

4.10. About the steps taken to absorb the excess staff against new vacancies, he added :

"The number of vacancies on account of retirements that took place in the last ten years was 1248, and we have filled up 1044 vacancies. I must submit here that although the staff in position is in excess of the requirement roughly to the tune of about 600 against 1900 posts, we could not take any steps to restrict the recruitment except, of course, to stop creation of additional posts. Vacancies have had to be filled up as and when they arose. Unless the full complement of staff, according to the sanctioned strength, was provided for, each shift used to stop work."

4.11. Asked what concrete steps were taken to reduce over-staffing, he added :

".....the Economy Committee of the Port Trust Board constituted in 1970 recommended reduction in the strength of railway and loco staff. When the reports of the committee were placed before the Board they felt that although all the proposals were *prima facie* reasonable they should be discussed with the Union before implementation. Between May 1971 and January, 1972, the administration had several discussions with the Union representatives. At first they were favourably inclined to have some reduction in expenditure on overtime. Round—about 10 January, Union refused to have anything to do with further discussions. On 30 March, Bombay Port Trust employees resorted to strike on this issue. Their demand was overtime should continue. The final outcome was that *status quo* may be maintained."

4.12. At the instance of the Committee, the Ministry of Shipping and Transport have furnished the following note indicating the effect of wage revisions and running costs (other than wages) which have resulted in increase in losses after the year 1965-66.

“(i) Increase in Wage Bill

The Wage Bill during 1965-66 as compared to 1977-78 is as under:

Year	Wages
1965-66	Rs. 97.28 lacs
1977-78	Rs. 261.37 lacs
	Increase Rs. 164.09 lakhs

The deficit during the period has increased by Rs. 100.73 lacs i.e. 139 per cent whereas the wages in the same period increased by Rs. 164.09 lacs i.e. 168 per cent.

The increase in wages in those 12 years is due to two wage revisions effected from 1-1-1969 and 1-1-74, as well as periodical revisions in the D.A. The following table illustrates how the minimum wage of the lowest paid employee on the BPT Railway has increased from time to time:

Date	Minimum Wage
31-12-1968	Rs. 163.50
1-1-1969 (Wage Board Revision)	Rs. 202.00
31-12-1973	Rs. 240.16
1-1-1974 (Wage Board Revision)	Rs. 330.00
1-1-1979	Rs. 476.80

(ii) Increase in Running Costs (other than wages)

The expenditure on running costs in 1965-66 and 1977-78 is as under :

Year	Running Costs
1965-66	Rs. 79.76 lacs
1977-78	Rs. 92.78 lacs

The running costs over 12 years have increased by Rs. 13.02 lacs i.e. 16.2 per cent which is marginal owing to the increase in cost of stores—mainly diesel oil and coal since 1965-66.

There has been a drop in traffic handled in 1977-78 as against 1965-66 but this has been compensated by the upward revision of freight charges in 1966 and 1977 and the quinquennial

increase in the terminal charges from 1966 to 1971 and from 1971 to 1976."

4.13. The Ministry has also furnished the following note indicating the surplus staff in the Port Trust Railway category-wise and explaining why the surplus staff could not be absorbed in future vacancies :

Surplus staff

Category	No.
(1) Shunters	36
(2) Jamadars	16
(3) Shunting Porters (Gr. I)	80
(4) Shunting Porters (Gr. II)	66
(5) Shunting Porters (Gr. III)	31
(6) Gatemen	42
(7) Office Boys	14
(8) Station Hamals	19
(9) Watchman	14
(10) Relieving Porters	171
(11) Assistant Goods Clerks	14
(12) Assistant Cabinmen	9
(13) Number Takers	11
TOTAL	523

This surplus has been estimated broadly according to the norms of the Trunk Railways. No attempt was made to adjust the vacancies arising from time to time against the surplus nor were talks held with the Unions for reducing the surplus posts. This was because even a limited attempt to reduce overtime payments by the Economy Committee constituted under TR 1056 of August 1970 pursuant to the PAC recommendation (number 28 of Report 113) failed after a series of meetings with the Unions between May 1971 up to April 1972. As a result of the failure of the talks and the adamant attitude of the Unions against reducing overtime, the Trustees decided *vide* T.R. 474 of 11-4-1972 to continue overtime payments as before. In view of this background of failure, no attempt was made to deal with the much

larger issue of reducing the surplus posts by adjusting the vacancies."

4.14. The question whether the Port Railways should be transferred to the Indian Railways was considered by the Major Ports Commission. The Commission had felt that the integration of the workers of the Port Railways with those of the Indian Railways will throw up innumerable problems. The Commission had therefore recommended that where the Port Railways were being operated by the Port Trusts, namely, at Calcutta, Bombay, Madras, Visakhapatnam and Mormugao, they should continue to do so.

4.15. The present position regarding ownership and operation of Port Railways is as follows:

Port Railways	Owned by	Operated by
Calcutta	Port Commissioners	Port Commissioners
Bombay	Port Trust	Port Trust
Madras	Do.	Do.
Visakhapatnam	Do.	Do.
Mormugao	Do.	Do.
Cochin	Do.	Trunk Railway
Kandla	Do.	Do.
Pradip	Being built at Port expense.	To be decided
Tuticorin	Built at Project expense.	Do.
Mangalore	Do.	Do.

4.16. The Committee find that the financial results of the working of the Bombay Port Railway have, except for one or two years shown large deficits for more than last 25 years. The Public Accounts Committee in their 113th Report (4th Lok Sabha) had adversely commented upon deficits in the years 1965-66, 1966-67 and 1967-68 which amounted to Rs. 72.58 lakhs, Rs. 85.79 lakhs and Rs. 95.09 lakhs respectively, if certain national credits taken in the accounts by the Port Trust on account of oil traffic, Dock wharfage and revenues derived from railway-served plots are excluded. At present the Committee find that the loss during the year 1977-78 was Rs. 173.31 lakhs as compared to Rs. 105.42 lakhs in 1976-77.

The Committee are unhappy to find that though the Port Railway was carrying surplus staff for the past 10 years and even more, to the extent of about 600 out of a total staff strength of less than 2000, the Port Trust Administration has not succeeded in absorbing such surplus staff against vacancies which arose during this period. The reason given is that this is due to the resistance from the Port Railway employees. The Committee would like the Port Trust to analyse the causes and bring about improvements in the working of the Port Railway. As regards absorbing surplus staff against future vacancies, the Committee see no rationale for not doing so and would like the Government to re-examine the matter with a view to take a firm decision.

CHAPTER—V

PROPOSAL TO EMPOWER MAJOR PORT TRUSTS TO EVICT UNAUTHORISED OCCUPANTS FROM PORT TRUST LANDS.

5.1. The Bombay Port Trust lets out Port Trust lands to Government Departments/Undertakings and also to private parties. The lands are allotted on casual occupation basis, monthly tenancies, 15—monthly leases or on long leases. The rates of rent are reviewed periodically and increase in rent is effected as per formulae approved by the Port Trust from time to time. The Committee were informed that difficulties were experienced by the Port Trust in evicting tenants/lease holders if they did not accept revised rents or if there was breach in the terms and conditions of the tenancies/leases. Under the existing procedure for eviction of tenants/leaseholders, the Port Trust was required to initiate legal proceedings in civil courts and this was time-consuming and enabled the unauthorised occupants to stay on in the premises until the adjudication of proceedings launched against them. Accordingly, the Ministry of Shipping and Transport had been requesting for the past many years to give necessary powers to the Major Port Trusts through legislative measures to evict unauthorised occupants from the Port Trust premises under the Public Premises (Eviction) Act.

5.2. The Committee wanted to know the latest position in this regard and called for a note from the Ministry of works and Housing. The note furnished by that Ministry is at Appendix III. In this note, the Committee were informed that a proposal regarding inclusion of the premises of Major Port authorities within the definition of public premises under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 was received from the Ministry of Shipping and Transport in May 1971. Asked about the action taken by the Ministry of Works and Housing on this proposal, the representative of the Ministry stated during evidence:

“In fact, I find from our records that no action was taken on this letter of May 1971, but a reference in the form of a D.O. letter was made from the Additional Secretary in August, 1972. And on that basis it was considered and suggested to the Ministry (of Shipping and Transport) based on the background that we had in our Ministry with regard to the implementation of the Public Premises Act, that inspite of bringing the Bombay Port Trust within the definition of the word

“public premises” that would not solve the problem. It would be better to have the Major Ports Act amended.”

The witness added:

“Only in 1972, based on the earlier court rulings, . . . concerning the Northern India Caterers Private Ltd. *Vs.* the State of Punjab and Hukam Chand *Vs.* S. D. Arya, we advised the Ministry of Shipping and Transport that it would be more appropriate for them to amend the relevant Port Trusts Acts, so as to bring them in line with unauthorised occupation as contained in the Public Premises Act.”

5.3. Asked what was the request made by the Ministry of Shipping and Transport, the witness read out the following portion from a letter of the Ministry of Shipping and Transport:

“There is no reason why the lands and properties of the major port authorities, which are statutory bodies set up by the Central Government and have the status of local authorities cannot similarly be brought within the purview of the Act.”

5.4. Asked whether the matter was referred to the Ministry of law, the witness stated:

“In fact, I find that this has been taken up with the Ministry of Law in 1968. . . . As I mentioned earlier, the original reference came in 1971. That was actually wrong. I find from the note that it was from June, 1967 that the Ministry of Shipping and Transport had made an initial reference to the Ministry requesting that the lands and properties belonging to the various port authorities of the major ports be included in the definition of Public Premises Act.”

5.5. The Committee wanted to know whether the matter was referred to the Ministry of Law. The witness replied that a reference to the Ministry of Law was made in January, 1968 and at that time the advice of the Law Ministry was:

“Various Port Trusts, like Bombay, Calcutta and Madras are created by respective Acts and are statutory bodies incorporated. They are no doubt covered by the definition of “local authority” under the General Clauses Act of 1897. But by no means, they can regulate the Government companies as defined in the Companies Act. We may also state that summary provisions exist in the various Port Trusts Acts for eviction of persons in unauthorised occupation of the port

property and hence this may be kept in view if it is decided to include the premises in the Public Premises Act."

5.6. Asked whether any steps were taken to amend the Public Premises Act, the witness replied:

"In 1967, the Supreme Court struck down the Punjab Public Premises Act, 1959. So, our Act which was also on similar lines was amended."

Clarifying this, he added:

"On 17 June, 1968, an Ordinance was issued. It was enacted on 16 August, 1968. But that amendment was also struck down by the Court in September, 1970... The new Act [Public Premises (Eviction of Unauthorised Occupants) Act, 1971] was enacted in 1971."

5.7. The Committee wanted to know whether the proposal of the Ministry of Shipping and Transport made in 1967 for inclusion of Major Ports in the Public Premises Act was considered by the Ministry of Works and Housing when the question of amending the Act was taken up in 1968 and again in 1971 consequent to court decisions. To this, the witness replied:

"In 1968, that point was not considered so far as I know. Only to cover up that judgement, it (the Act) was amended.... It appears that even at this stage (in 1971) it was not considered."

5.8. The Committee enquired whether the Ministry of Works and Housing acknowledged the letter of the Ministry and Shipping and Transport sent in May, 1971. To this, the witness replied:

"It was not acknowledged."

5.9. Asked whether the Ministry of Shipping and Transport sent reminders and what action was taken on those. The witness replied:

"There were reminders from the Shipping and Transport Ministry but those reminders were not replied to."

5.10. On 2 May, 1973, an O.M. was addressed by the Ministry of Works and Housing to all Ministries/Departments of the Government asking for their views regarding the difficulties/bottlenecks experienced by them in the implementation of the various provisions of the Public Premises Act 1971. By January 1974, the Ministry of Shipping and Transport, Department of Steel, Delhi Development Authority, Ministry of

Defence and Department of Atomic Energy had sent their proposals. On 17 April, 1974, the Ministry of Works and Housing decided to remind the Ministries and they were given time upto 10 June, 1974 to send their replies. A further reminder was sent in September, 1974 to 13 Ministries.

5.11. Asked why it was necessary to get replies from all the Ministries, the representative of the Ministry of Works and Housing stated during evidence:

“It was to avoid piecemeal amendments to the Act.”

5.11-A. The information furnished by the Ministry of Works and Housing in their note (para 7 of Annexure III) is reproduced below:

“Thereafter, Law Ministry prepared a tentative draft Bill in May, 1976 raising certain points for clarification. The points raised by the Law Ministry were clarified and they finalised the draft amendment bill regarding the two proposals referred to in paras 4 to 6 above for which sanction of the Cabinet had already been obtained on 4-11-75 and 26-2-1976. So the proposal regarding Major Port Trusts etc., was not included in the said draft Bill. The Public Premises (Eviction of Unauthorised Occupants) Amendment Bill, 1976 was introduced in the Rajya Sabha on 24-8-1976.”

5.12. In February, 1976 certain proposals for amendment of the Public Premises Act, 1971 were referred by the Ministry of Works and Housing to the Ministry of Law. One of the proposals was to include the premises belonging to statutory and autonomous bodies, namely, Bhakra Management Board, Universities, Houses of Parliament, U.P.S.C., Major Port Trusts etc., within the definition of Public Premises. The Law Ministry approved this proposal in May 1976. Thereafter, a draft of note for the Cabinet was sent to the Ministry of Law in July 1976 and after some correspondence the file was returned to the Ministry of Works and Housing in February, 1977. A note for the Cabinet was again prepared and sent to the Law Ministry in March, 1978. The file was withdrawn from the Law Ministry in May 1978 as the Ministry of Home Affairs had made proposal for making provision that squatting on public land be made a cognizable offence. After consultation with Delhi Administration a draft of note for the Cabinet was sent to the Ministry of Law and Home Affairs in December, 1978 for concurrence. Also, a consolidated note for amendment of the Public Premises Act, 1971 to cover the premises belonging to autonomous bodies and statutory corporations within the definition of public premises, was sent to the Ministry of Law in March, 1979.

5.13. The Committee wanted to know precisely why no decision could be taken in all these years on the proposal of the Ministry of Shipping and Transport made in 1967. To this, the representative of the Ministry of Works and Housing during evidence stated:

“The only apparent reason I can find is because the Ministry made a reference to all the Ministries and Departments on the basis of the request from the Transport Ministry, it was not processed.”

5.14. The Committee enquired whether the Ministry of Shipping and Transport had considered amendment of the Port Trust Acts without waiting for the proposal to amend the Public Premises Act being dealt with in the Ministry of Works and Housing. In this connection, the Secretary, Ministry of Shipping and Transport stated:

“At that time (1973) the Law Ministry was consulted by the Ministry of Shipping and Transport and they advised that it was better if the Public Premises Act was amended. . . . In February 1978 we again took it up with the Ministry of Law We have said that we could amend this Act with a view to get power of the public premises so that we can evict the people. They advised us on 16-3-1978. They said that it would be better to follow up the matter with the Ministry of Works to expedite the amendment regarding eviction of unauthorised occupants Act 1971 instead of amending M.P. Act. We said: Law Ministry may kindly see and advise with reference to our note whether it is legally in order to carry out the amendment to the Major Port Trusts Act, 1963 to include the provisions of Public Premises (Eviction of Unauthorised Occupants) Act within the purview of the Major Port Trusts.”

5.15. The Committee have been informed that difficulties were experienced by the Port Trust in evicting tenants or lease holders, if they did not accept revised rates or if there was breach of the terms and conditions of the tenancies or leases. In a note furnished to the Committee in March, 1979, the Ministry of Works and Housing had stated that “A proposal regarding inclusion of the premises of Major Port Authorities within the definition of Public Premises under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 was received from the Ministry of Shipping and Transport in May 1971”. When the Committee discussed the matter during evidence on 6-4-1979 the representative of the Ministry of Works and Housing stated: “As I mentioned earlier, the original reference came in 1971. That was actually wrong. I find from the note that it was from June 1967 that the Ministry of Shipping and Transport had made an initial reference to the Ministry requesting that the lands and properties

belonging to the various port authorities of the major ports be included in the definition of Public Premises Act". The Committee regret to note that the Ministry of Works and Housing furnished wrong information about the year in which reference on this matter was initially made by the Ministry of Shipping and Transport. The Committee would like the Ministry to fix responsibility for this mistake and take suitable action.

5.16. Initial reference from the Ministry of Shipping and Transport was made to the Ministry of Works and Housing in June, 1967. Although the Public Premises (Eviction) Act was amended in 1968 and a new Act was also enacted in 1971 and the Ministry of Law had advised as early as 1968 that the proposal of the Ministry of Shipping and Transport to include port trust lands and properties within the definition of public premises, should be kept in view, the Ministry of Works and Housing did not care to bring up the proposal during this period of about four years. This is most regrettable. The Committee would like to be informed why the Ministry of Works and Housing did not consider the proposal during this period and also fix responsibility.

5.17. The Committee find that in May, 1971 the Ministry of Shipping and Transport again approached the Ministry of Works and Housing requesting that the Port Trust premises be included in the definition of public premises in the Public Premises (Eviction) Act. The Ministry of Shipping and Transport also sent several reminders during 1971 and 1972 but the Ministry of Works and Housing did not acknowledge any of these communications nor did they send any reply to the Ministry of Shipping and Transport. The Committee deplore this inaction on the part of the Ministry of Works and Housing and would like to be informed why the Ministry of Works and Housing did not observe the basic office procedure of acknowledging and sending replies to communications received in the Ministry.

5.18. It seems that after a lapse of 6 years from 1967, the Ministry of Works and Housing woke up in May 1973 and instead of considering the proposal of the Ministry of Shipping and Transport, sent an office Memorandum to all the Ministries asking for their views regarding the difficulties experienced by them in the implementation of the Public Premises (Eviction of Unauthorised Occupants) Act 1971. Reminders were also sent in April and September 1974 to Ministries which had not sent their replies. In February 1976, certain proposals for amendment of the above Act were referred to the Ministry of Law. One of the proposals was to amend this Act to cover the premises belonging to autonomous bodies and statutory corporations within the definition of Public premises. Correspondence on these proposals is still going on between the Ministry of Works and Housing and the Ministry of Law. The Committee are perturbed at

the delay that has taken place in finalising this matter. After wasting 6 years from 1967 to 1973 by doing nothing in the matter, the Ministry of Works and Housing started a roving enquiry asking all the Ministries to inform whether they had experienced any difficulties in the implementation of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The reason given during evidence for making such a reference was that it was done to avoid piecemeal legislation to amend the Act. It is significant to note in this connection that piece-meal legislation for the same had, infact, been brought forward in respect of some other Ministries and Departments. The Committee see no reason as to why in this case it has taken almost six years from 1973 to get replies from the Ministries and complete consultations with the Ministry of Law and other concerned Ministries. The matter has been under correspondence with the Ministry of Law etc. and a draft of the note for the Cabinet which was prepared in July 1976 has not yet been finalised for placing before the Cabinet for one reason or another. It is highly regrettable that a proposal initiated in 1967 has remained pending for 12 years and is still not finalised. The Committee desire that a probe should be conducted into this case of inordinate delay which has caused loss of several lakhs of rupees to Bombay Port Trust.

The Committee desire that at least now the Ministry of Works and Housing should speed up the proposals and bring forward necessary legislative measure without further loss of time.

CHAPTER VI

OUTSTANDINGS AGAINST GOVERNMENT DEPARTMENTS/ UNDERTAKINGS AND PRIVATE PARTIES

6.1. The following statement shows the information as on 30-9-1978 regarding outstandings of Rs. 5 lakhs and above against Government Departments/Undertakings:

Sl. No.	Name of the Party	Amount (Rs. in lakhs)	Action Taken
1.	Food Corporation of India	13.46	The major portion of this outstanding amount represents interest payable by the party for delayed payments. The FCI is disputing charging of interest. The matter is under correspondence with the Corporation.
2.	Bharat Petroleum Corporation Ltd.	14.46	The lessee is disputing the increase in rent. The matter is under examination by the Legal Adviser of the Port Trust.
3.	Punjab Export Corporation Ltd.	6.73	Legal Action for recovery of lease rent is being taken by the Port Trust.
4.	Defence Ministry	84.64	It has been suggested that the disputes regarding lease rent may be referred to an arbitrator to be appointed in consultation with the Ministry of Law in accordance with Government's instructions on the subject and that the arbitrator could be any person from Government (Central or State) or from any other Public Sector Undertakings acceptable to both the parties. Further action is being taken.
5.	Oil & Natural Gas Commission.	14.80	This amount represents the disputed portion of the bills for supply of water, berth charges/and wharfage. The Bills for the supply of water were rendered at the rate applicable for supply of water to vessels. The party has made part payment at the rate applicable for supply of water to tenancies. The matter is under examination. As regards berth charges and wharfage, there is a dispute whether their vessels should be treated as (i) foreign going or (ii) coastal. The bills were rendered treating the vessel as foreign-going. The party has made part payment treating their vessels as coastal. The matter is being examined in consultation with the Ministry of Law.

6.2. As the outstandings against the Ministry of Defence were quite large, the Committee called for a break-up of the same. The information so furnished is given below:

Analysis of Major Arrears of Defence Departments bills upto 31-3-1978 outstanding as on 30-9-1978

Sl. No.	Name of the Party	Plot No.	Amount
	2	3	4
1.	The President of India, Dy. Director, Military Lands of Cantonments and Bombay and Gujarat Circle.	Plot 'V' (North of : Tata Shed)	2,38,558.75
2.	Do.	Site 'A'	2,07,444.82
3.	Do.	Site 'A-1'	1,54,241.56
4.	Do.	Site A & B and Strip X & Y	35,10,863.75
5.	Do.	Site 'D'	8,25,467.64
6.	The President of India, Dy. Director, Military Lands & Cantonments Bombay and Gujarat Circle.	Site 'E'	3,50,665.47
7.	Do.	North of Esso leasehold	1,33,039.93
8.	Do.	Plots 2 & 3	2,57,596.91
9.	Do.	Plot at Victoria Basim.	2,04,713.37
10.	The President of India, D.A.D. Land & Hirings, H. Q. Southern Command, Poona.	N.O.P. R.S. T. & T1	17,21,247.22
TOTAL			76,03,839.40

6.3. Some of the reasons for these outstandings against the Ministry of Defence are:

- (1) No agreement has been executed since the Port Trust Administration is insisting to vacate the premises as the same was occupied for war period only. The revision of rent with effect from 1-1-1972 and thereafter have not been accepted.
- (2) Land was initially leased for a period of 10 years or for duration of war (1940—46) and continuing thereafter until termination by Government by 6 months notice whichever is earlier. The revisions of 1971 and thereafter have not been accepted.

6.4. The Committee enquired during evidence what steps were being taken to have these outstandings cleared. In reply, the Secretary, Ministry of Shipping and Transport stated:

"In Defence, I have found that there are lot of arrears and no payments are being made. There has been a procedure laid down some years ago and we have issued the orders in consultation with all the Ministries in January 1979 appointing an Arbitrator of the Law Ministry who will decide whether these are dues or not and what should be paid. I thought that should be a better way of dealing with it."

6.5. The Committee note that there are heavy outstandings against certain departments under the Ministry of Defence and also against some Government Undertakings. The outstandings against the Ministry of Defence as on 30 September, 1978 alone were over Rs. 76 lakhs. Though the matter had been neglected for a very long time, the Committee appreciate the recent steps initiated by the Ministry of Shipping and Transport to have these outstandings settled through arbitration. The Committee expect that now expeditious steps would be taken in the arbitration proceedings and the Committee apprised of the outcome thereof.

Outstandings under the head Sundry Debtors against Private Parties

6.6. It was noticed that as on 30-9-1978, the outstandings under the head Sundry Debtors against private parties amounted to Rs. 259.28 lakhs. The Committee wanted to have information as on 30-9-1978 regarding outstandings of Rs. 5 lakhs or over from private parties. In reply, the Bombay Port Trust have furnished the following information:

Name of Party	Amount (Rs. in lakhs)	Action Taken
1. The Western India Oil Distribution Co. Ltd.	7.04	Legal action for recovery of lease rent is being taken.
2. The Vegetable Vita in Foods Co. Pvt. Ltd.	13.68	The Party has disputed the increase in ground rent. The matter is being examined.
3. Sri S. L. Jaiswal	6.54	Suits for recovery of lease rent have been filed.
4. M/s. Chheda (Pvt.) Ltd.	21.78	Do.
5. Shri Gopal Prasad Sharma	7.67	Do.
6. Shri Kunwarji Jethabhai .	7.62	Legal action for recovery of lease rent is being taken by the Port Trust.
7. Shri P. K. Doshi	7.58	Suits for recovery of lease rent are being filed by the Port Trust.

6.7.. The Committee are disturbed to observe that as on 30-9-78 the outstandings against private parties amounted to Rs. 259.28 lakhs. Asked to state the action taken to realise the outstandings, the Port Trust have offered only vague remarks like, "legal action is being taken", "matter is being examined", "suits are being filed" etc. The Committee were not satisfied with these vague and evasive replies and decided to go further into the details of some of these cases to ascertain what the real position was. The Committee have in the later part of this Report made their observations and recommendations on a few selected cases examined by them. At this stage, the Committee cannot but deprecate the tendency on the part of the Bombay Port Trust authorities to furnish vague replies as mentioned above to the Committee. They expect that in future the Port Trust would ensure that in such cases the replies furnished to the Committee are clear and complete.

CHAPTER VII

ALLOTMENT OF PORT TRUST LANDS ON RENT

Arrears payable by M/s. Western India Oil Distributing Co. Ltd.

7.1. The following note has been furnished by the Estate Deptt. on this case:

"M/s. Western India Oil Distributing Co. Ltd. have been allotted a piece of land admeasuring 12,541.91 sq. mtrs, for a period of 50 years commencing from 27-4-1932 to 26-4-1982. The present monthly rent is Rs. 1875/-.

On 25 February 1975, it was observed that the lessees had unauthorisedly allowed sub-letting of the tanks constructed by them on the plot to M/s. State Trading Corporation for storage of Palm Oil without prior permission of the Bombay Port Trust which constituted breach of lease terms. On their being asked to explain on 29-3-75, the lessees vide their letter dated 23-4-75 denied that they had sublet the tanks. However, vide their letter dated 7-5-75, they requested permission for allowing them change of user and to sub-let the said tanks. After obtaining orders of the Chairman, the terms and conditions were accordingly quoted to them on 19-8-75 for the same which included payment of additional rent depending upon the area sub-let and a penalty of Rs. 5000/-. The bill for additional rent w.e.f. 25-2-75 and amounting to Rs. 7,13,732.22 was also issued to the lessees on 1-9-1975. The party vide their letter dated 15-9-75, disputed the payment of additional rent demanded. The request of the party was turned down on 29-9-1975. Since the party did not accept the terms and conditions in spite of reminders on 21-10-75 and 3-12-75, the papers on the subject were forwarded to Legal Adviser, B.P.T. on 3-12-75, and on receipt of draft Notice of Forfeiture from Legal Adviser, Bombay Port Trust on 24-2-76, the notice of forfeiture dated 15-3-76 was served on the lessees calling upon them to clear the arrears as also calling upon them to remove the sub-letting. In response the lessees forwarded a token payment of Rs. 125,000/- on 2.4.76 and requested for reduction in the additional rent. The lessees representative also saw the Chairman on 27-5-76. Since, however, such additional rents were recovered by us from other parties, the request of the lessees was turned down by the Secretary, B.P.T. on 28-10-76 and they were called upon to liquidate the arrears. The lessees, however, did not accept the terms and conditions in spite of reminders, but requested for reconsideration of the same on 26-3-77 which was turned down on 12-4-77. They also represented to the Government of India, in the Ministry of Shipping and Transport in June 1977. They, however, made further payment of Rs. 1,00,000 on 14-7-77 towards disputed payment.

Since the acceptance was not forthcoming from the lessees in spite of protracted correspondence, the papers on the subject were forwarded to the Legal Adviser of this Port Trust on 8th September 1977 for filing a suit against the lessees for recovery of arrears as also for ejectment from the plot, which in turn was forwarded to Port Trust advocates on 22-9-77. After obtaining detailed clarifications, the Port Trust Advocates vide their letter dated 13-3-78 felt that this is a fit case for amicable settlement with the lessees in view of the lease covenants. The Port Trust Advocates also raised certain legal objections to the filing of the suit. The Advocates were, however, informed on 30-5-78 that amicable settlement cannot be arrived at in the subject matter since the additional rent has been recovered by us from other lessees on the same basis and which has been accepted by the other lessees, and as such, no exception can be made in respect of the lessees herein. The Legal Adviser, B.P.T. was also requested on 30-5-78 to advise the Port Trust Advocates regarding the legal objections. The lessees in the meanwhile paid further sum of Rs. 2,00,000 towards the disputed amount on 1-8-78. The Legal Adviser, BPT, advised the Port Trust advocates regarding legal objection on 23-3-79 and requested for filing of suit for recovery of arrears and ejectment.

The statement showing the position of arrears as on 23.3.79 is appended herewith. As per the statement the lessees are in arrears of Rs. 7,83,164.55. It would be seen from the statement that against the demand for additional rent, the lessees have made a payment of Rs. 3,75,000. They are also making further payments of only contractual rent of Rs. 1875.00 p.m. regularly.

7.2. The following is the chronology of events pertaining to the case of Western India Oil Distributing Co. Ltd., as furnished by the Legal Department:

History of the case relating to EMS 1401—Proposed S.C.C. Suit—

The Board of Trustees of the Port of Bombay

V/s.

The Western India Oil Distributing Co. Ltd.

No.	Date of events	Nature of events	Remarks
1	2	3	4
1.	8-9-1977	Papers received from the E. M. B.P.T. for filing suit for ejectment and recovery of arrears amounting to Rs. 7,81,289.55P.	
2.	12-9-1977	Papers submitted by Mrs. Kale to 2nd JAI A for orders.	
3.	13-9-1977	2nd JALA has passed orders to forward papers to Advocate M/s. Patel and Cama for filing the suit.	

1	2	3	4
4.	22-9-1977	Papers forwarded to M/s. Patel & Cama Advocates for filing the suit.	
5.	1-10-1977	Letter received from M/s. Patel & Cama to send E. M.'s representative to him for some clarifications.	
6.	3-10-1977	Sr. Clerk Mrs. Kulkarni has given orders to comply with the Advocates request.	
7.	5-10-1977	Letter written by Mrs. Kale to E.M.B.P.T. to comply with Advocate's request at Sr. No. 5 above.	
8.	24-11-1977	M/s. Patel & Cama Advocates pointed out that the E. M. B.P.T. had accepted the rent upto 30-9-1977 after the first notice and hence the first notice was waived. Therefore, fresh notice was necessary.	
9.	28-11-1977	E.M.B.P.T.'s letter dated 26-11-1977 to us enquiring as to how the matter stood.	
10.	28-11-1977	M/s. Patel & Cama, Advocates' letter dated 24-11-77 submitted by Mrs. Kale for orders.	
11.	28-11-1977	2nd JALA has given orders to call for E.M.B.P.T.'s remarks on Advocates' letter dated 24-11-77.	
12.	9-12-1977	E.M.B.P.T. was requested to comment on advocate's letter dated 24-11-77 and to forward his file containing the original Notice of Forfeiture.	
13.	20-12-1977	E.M.B.P.T. admitted having accepted Rs. Rs. 1,75,000 as compensation after the issue of Notice of Forfeiture. He advised fresh Notice of Forfeiture and details of arrears.	
14.	24-12-1977	Mrs. Kale has submitted E.M.'s letter dated 20-12-77 for 2nd JALA's orders.	
15.	26-12-1977	2nd JALA has passed orders.	
16.	7-2-1978	Advocate's advice to proceed with the filing of the suit after serving fresh Notice of Forfeiture if necessary.	
17.	16-2-1978	E.M.B.P.T. reminded the Legal Department.	
18.	23-2-1978	Our letter to M/s. Patel & Cama, Advocates requesting whether fresh notice of forfeiture was necessary.	
19.	13-3-1978	M/s. Patel & Cama, Advocates advised that we could not file suit for arrears of rent at the revised rate and for ejection in the absence of the covenant in the lease for such revised rent. Hence advised settlement.	
20.	5-4-1978	M/s. Patel & Cama's letter dated 13-3-78 submitted by Mrs. Joshi to A.L.A. (E) for orders.	

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21. 11-5-1978 ALA (E) has called for E. M. B.P.T.'s comments on Advocate's letter dated 13-3-1978.
 22. 12-5-1978 E.M.B.P.T. was asked to offer remarks on Advocate's letter dated 13-3-78.
 23. 30-5-1978 E. M. BPT advised that settlement was not feasible by accepting lower rate of rent from the party as others have already accepted revised rent.
 24. 6-6-1978 Advocates have reminded us to consider his opinion conveyed vide letter dated 13-3-78.
 25. 24-8-1978 E. M. BPT's letter dated 24-8-1978 requesting us to arrange to file suit immediately.
 26. 1-8-1978 E. M's letter dated 30-5-1978 and Advocates, Patel & Cama's letter dated 5-6-78 submitted to the 2nd JALA for orders on 1-8-78.
 27. 29-8-1978 E. M. BPT's letter dated 24-8-78 submitted for orders to 2nd JALA by Mrs. Kulkarni.
 28. 1-9-1978 2nd JALA has put up a note to A.L.A. and Dy. L. A. (T) for orders on M/s. Patel & Cama Advocate's letter dated 13-3-78.
 29. 14-9-1978 A.L.A. has given orders to call for E. M's Papers.
 30. 20-9-1978 2nd JALA's noting that file was required by E.M. B.P.T. and to remind on 29-9-78.
 31. 29-9-1978 Mrs. Joshi noted that she enquired with E.M. and that the file was required by the E. M. BPT.
 32. 13-10-1978 Mrs. Joshi's note that E. M. B.P.T.'s papers were with Chairman, B.P.T.
 33. 7-9-1978 M/s. Patel & Cama's letter dated 4-9-78 advising that they would file suit but we would definitely lose the case.
 34. 13/14-2-1979 E.M's letter addressed to Chairman, B.P.T. stating that the arrears had mounted to Rs. 7,59,596.55.
 35. 21-3-1979 E. M. BPT's letter addressed to us giving Chairman's instructions that suit should be filed immediately.
 36. 21-3-1979 Mrs. Joshi has submitted E. M's letter dated 20/21-3-79 to 2nd JALA for orders.
 37. 23-3-1979 Our letter to M/s. Patel & Cama, Advocates giving him instructions to file the suit for arrears and eviction.
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7.3. It is seen that M/s. Western India Oil Distributing Co. Ltd. have been allotted a plot of land in Wadala Estate R.R. No. 1249 ad-measuring 12,541.91 sq. metres on a 50 years lease commencing from 27-4-1932 to 26.4.1982. On 25.2.1975, the Bombay Port Trust authorities observed that the lessees had unauthorisedly allowed sub-letting of the tanks constructed by them on the plot to M/s. State Trading Corporation for storage of Palm Oil without prior permission of the Bombay Port Trust which constituted breach of lease terms. On their being asked to explain on 29-3-1975, the lessees vide their letter dated 23-4-1975 denied that they had sub-letted the tanks. However, vide their letter dated 7.5.1975, they requested for permission for allowing them change of user and to sub-let the said tank. On 19.8.1975, the Port Trust authorities quoted to them the terms and conditions for the same which included of payment of additional rent depending upon the area sub-let and a penalty of Rs. 5000/- The bill for additional rent with effect from 25.2.1975 and amounting Rs. 7,13,732.22 was also issued to the lessees on 1.9.1975. The party vide their letter dated 15.9.1975 disputed the payment of additional rent demanded. Since the party did not accept the terms and conditions, the papers on the subject were forwarded by the Estate Manager to the Legal Department, Bombay Port Trust on 3.12.1975 and on receipt of reply from Legal Adviser on 24-2-1976, the Notice dated 15-3-1976, was served on the lessees calling upon them to clear the arrears as also to remove the sub-letting.

7.4. In response, the lessees forwarded a token payment of Rs. 1.25 lakhs on 2.4.1976 and requested for reduction in the additional rent. The request for reduction in the additional rent was not acceded to by the Bombay Port Trust. The lessees, however, made further payment of Rs. 1.00 lakhs on 14.7.1977 towards the disputed payment.

7.5. As the lessees had not accepted the terms and conditions quoted by the Port Trust, the papers on the subject were forwarded by the Estate Manager to the Legal Adviser, Bombay Port Trust on 8-9-1977 for filing a suit for recovery of arrears and ejection from the plot. On 1.8.1978, the lessees paid a further sum of Rs. 2.00 lakhs towards the disputed amount. The party is paying the contractual rent of Rs. 1875/- per mensem regularly.

7.6. It is seen that the papers relating to this case were forwarded by the legal Adviser to M/s. Patel & Cama, Advocates on 22.9.1977. On 24.11.1977 the Advocates pointed out that the Estate Manager, BPT had accepted the rent upto 30.9.1977 after the first notice and hence the first notice was waived. Therefore, fresh notice was necessary. On 13.3.1978, the Advocates further advised that the Port Trust could not file suit for arrears of rent at the revised rate and for ejection in the absence of the

covenant in the lease for such revised rent. Hence, the Advocates advised settlement. On 30.5.1978, the Estate Manager wrote that settlement was not feasible by accepting lower rate of rent from the party as others had already accepted revised rent. On 7.9.1978, the Advocates advised that they could file suit but the Port Trust were likely to lose the case.

7.7. The contractual rent payable by the Party is Rs. 1875/- per mensem. The revised rent fixed by the Port Trust authorities is Rs. 25,443/- per mensem. The party is paying the contract all rent of Rs. 1875/- but disputing the additional rent. The arrears due from the party upto 28.2.1979 amounted to Rs. 7.83 lakhs.

7.8. The party had made first payment (Rs. 1.25 lakhs) on 2.4.1976. At that time, the arrears due from the party amounted to Rs. 2.89 lakhs (approximately). As against this, the payment of Rs. 75,000/- towards part payment of compensation plus Rs. 50,000/- towards part payment of deposit was received by the Port Trust. Thereafter, the Port Trust accepted the following payments also from the party :

Date of payment	Amount
14-7-1977	. Rs. 1.00 lakh
1-8-1978	. . . . . Rs. 2.00 lakhs.

7.9. The Committee discussed this case during evidence on 3rd April 1979 and wanted to know when the firm started defaulting and what action was taken. To this, the Estate Manager replied :

"On 25th February, 1975, it was observed that the lessee unauthorisedly gave on rent to State Trading Corporation which constituted a breach of lease terms. Immediately they were asked to explain but the lessee denied that they had sub-let the tanks. He did not accept the bills for additional rent amounting to Rs. 11 lakhs."

7.10. The Estate Manager had sent the papers to the Law Department on 3.12.1975. When enquired about the action taken by the Legal Department, the Legal Adviser stated:

"I got the papers on 8...197... Earlier I received the papers only for drafting the notice. From my note you will find that after the notice was issued the Estate Manager had accepted rent on 30th September, 1977. So, the original notice was waived."

7.11. When the Committee wanted to know why payments were accepted after notice was served on the party, the Estate Manager replied:

"He gave sufficient amount of compensation. There is no point in refusing that. That was over Rs. 1.20 lakhs."

7.12. When asked whether Legal Adviser was consulted, the Estate Manager stated:

"For compensation, we do not obtain legal opinion."

7.13. Ask under whose orders these amounts were deposited, the Estate Manager replied:

"I am not aware of this. That was done on the advise of the Divisional Manager."

7.14. The Chairman, Bombay Port Trust then clarified the position as follows:

"I am told that this practice has been in vogue for a long time. We are accepting this money as 'compensation' and we mark the receipt 'without prejudice'. In lower levels, for all these years, this has been happening. In this case it was about Rs. 3.75 lakhs against a claim of Rs. 7.83 lakhs. Saying "without prejudice" they have accepted it as compensation."

7.15. When asked why the Legal Adviser was not informed earlier the Estate Manager replied:

"Earlier there was no objection in accepting compensation."

7.16. The Chairman, Bombay Port Trust also added:

"The money was received without prejudice and the receipt was given without prejudice."

7.17. The Bombay Port Trust had accepted Rs. 2.25 lakhs from the party till 14-7-1977. However, on 20-12-1977, the Estate Manager had informed the Legal Adviser that only Rs. 1.75 lakhs had been received. When the Committee enquired why the Legal Adviser was not given the

correct information regarding the receipt of money the Estate Manager replied during evidence:

"On 20th December, we informed the Legal Adviser that we had received two bills amounting to Rs. 1.75 lakhs. Rs. 50,000 have been paid as deposit."

7.18. When asked why Rs. 50,000 was accepted as deposit, the Estate Manager explained:

"For granting him permission for sub-letting. He was objecting to the compensation."

7.19. On being asked as to why the Legal Adviser was not informed about acceptance of Rs. 50,000/- as deposit, the Estate Manager explained:

"The issue was on compensation and not that of the deposit."

7.20. When the Committee enquired whether the implications of accepting money after notice was served on a party were considered by the Port Trust authorities the Estate Manager replied:

"We never thought that it will stand in eviction."

7.21. The Port Trust had allotted the land on lease for 50 years from 7.4.1932 to 26.4.1982 on a rent of Rs. 1875/- per mensem. The revised rent fixed by the Port Trust was Rs. 25,443/- per mensem. When the Committee enquired whether the rent could be increased by the Port Trust authorities unilaterally, the Legal Adviser stated during evidence:

"According to my Advocate's advice, there is no provision for revision."

7.22. Asked why the rent was then increased without the consent of any other party, the Legal Adviser replied:

"There was sub-letting and there was breach on his part."

7.23. When asked whether legal advice was sought before effecting increase in rent, the Legal Adviser replied:

"There is no practice of obtaining legal advice with regard to quantum of increase."

7.24. The Committee wanted to know the present position of the case. To this, the Legal Adviser replied:

"So far we have not filed the suit in this case. On 23rd March, (1979) I have sent the papers to the Advocate for filing the suit. It is still to be filed."

7.25. In a written note furnished to the Committee after the evidence, the Bombay Port Trust have explained the background of accepting compensation in lieu of rent after expiry of the notice to quit. The note reads as follows:

"M/s. Mulla & Mulla and Craigie & Caroe, Port Trust Solicitors, by their letter dated 30.8.1955 advised that the Port Trust should not accept any amount offered as rent after the expiry of the notice to quit and unless the tenant agrees in writing to pay the same as 'compensation' for use and occupation."

M/s. Patel & Cama, recently engaged Port Trust Advocates, have expressed an opinion for the first time in the case of M/s. Western India Oil distribution Co. Ltd. that:

- (1) No amount should be accepted towards rent or compensation between the date of notice of forfeiture and the date of declaration of plaint.
- (2) There is no objection to accept the payment if tendered as rent/compensation in the pending suit cases.

7.26. The usual measure of accepting payment after the date of notice to quit/forfeiture as compensation for use and occupation and without prejudice to the rights and contentions of the Board of Trustees, has been a precautionary stipulation mentioned on the receipts in all such cases.

7.27. The Committee note that M/s. Western India Oil Distributing Co. Ltd. were allotted a plot of land in the Bombay Port Trust estate on a 50-year lease commencing from 27-4-1932. On 25-2-1975, the Port Trust authorities observed that there was sub-letting by the firm without prior permission, which constituted breach of lease terms. In the circumstances fresh negotiations commenced for novation of the lease agreement. On 19-8-1975, the Port Trust authorities offered to the firm the revised terms and conditions, including payment of additional rent and a penalty. The firm disputed the payment of additional rent and on a Notice dated 15-3-1976 was served on the firm calling upon them to clear the arrears as also to remove the sub-letting. Even after this, the Port Trust authorities accepted three payments, i.e. Rs. 1.25 lakhs on 2-4-1976, Rs. 1.00 lakhs on 14-7-1977 and Rs. 2.00 lakhs on 1-8-1978. Besides, the Port Trust have

been accepting the rent at the rate the old lease of Rs. 1875/- per mensem regularly. As regards the advisability of accepting "compensation" in lieu of rent after expiry of notice served on a party, the Port Trust authorities have placed reliance on an advice given by M/s. Mulla & Mulla and Craigie and Caroe, Port Trust Solicitors in 1955 that the Port Trust should not accept any amount offered as rent after the expiry of the notice to quit and unless the tenant agrees in writing to pay the same as "compensation" for use and occupation. It is significant that the Port Trust authorities unilaterally decided that the money they were accepting was as compensation and there is no evidence that the tenant anywhere agreed in writing to that effect. Further, in the instant case of M/s Western India Oil Distribution Co. Ltd., M/s. Patel & Cama, Port Trust Advocates have opined that (1) No amount should be accepted towards rent or compensation between the date of forfeiture and the date of declaration of plaints; and (2) there is no objection to accept the payment if tendered as rent/compensation in the pending suit cases. During evidence, the Legal Adviser of the Bombay Port Trust stated that the issue was controversial and different High Courts had different views. The Committee would suggest that besides the legal steps already being taken in this particular case, the matter relating to acceptance of compensation may also be got fully examined, in consultation with the Ministry of Law.

7.28. The Committee note that the Estate Manager failed to inform the Legal Adviser about the amount of Rs. 50,000/- accepted by the Port Trust as deposit while the eviction notice was pending. As the Legal Adviser and the Port Trust Advocates were processing the case for filing a suit, the Committee see no reason why this very material information regarding acceptance of Rs. 50,000/- as deposit by the Port Trust authorities was not communicated to the Legal Adviser at the time of informing him about receipt of Rs. 75,000/- as 'compensation'. This omission on the part of the Estate Department is deplorable.

7.29. In this connection the Committee also perused the Rent Register showing the rent deposited by the party and also the rent outstanding. It was noticed that separate entries were not made in the registers showing clearly the amount received as rent, compensation etc. The inescapable conclusion is that no proper check has been exercised at any level in the Estate Department for the proper maintenance of Rent Registers. The Committee would like that responsibility be fixed for these serious lapses.

7.30. The Port Trust Advocates dealing with this case have advised that there was no provision in the lease document for revision of rent. Hence a suit for recovery of rent or ejection was not likely to succeed. The Advocates have advised settlement with the party. On the other hand, the Port Trusts case is that there was sub-letting in the plot of land under occupa-

tion of the party and therefore it was a breach of lease terms which could entitle the Port Trust authorities to charge additional rent and to impose penalty. The arrears due from the party upto 28-2-1979 have amounted to Rs. 7.83 lakhs. So far, no suit has been filed in this case. As the dispute has been pending for about four years, the Committee would like the Port Trust authorities to have the matter finalised without further delay.

Sub: Old R. R. No. 1779 at Mazagaon Sewri Reclamation Estate.

Lessees: M/s. Vegetable Vitamin Foods Co. (Pvt). Ltd.

7.31. The following note has been furnished by the Estate Department in this case:

The above leasehold plot, admeasuring an area of 7,333.11 sq. metres, at Mazagaon Sewri Reclamation Estate was originally granted on lease in favour of M/s. Rallis India Ltd. under T. R. No. 390 of 1951. It was subsequently assigned in favour of M/s. Vegetable Vitamin Foods Co. Pvt. Ltd. and the said lease expired on 26.8.1976. Chairman's administrative approval was obtained on 26.8.1976 for a renewal of the lease under reference. Thereafter, the detailed proposal was forwarded to the Secretary, B.P.T. on 13.9.1976 for obtaining Board's sanction.

The Board of Trustees under T. R. No. 313 of 11.10.77 Sanctioned the proposal for the renewal of the lease after deferring consideration of the said proposal once in the month of March, 1977. The detailed clarifications on the policy adopted in the renewal of the lease under reference were furnished to the Secretary, BPT, vide the Department's letter dt. 2-2-77. The secretary, BPT, vide his letter dt. 27.2.78 advised the Estate Manager that the Chairman has directed that the party may be billed at the rate mentioned in the first alternative underlying the proposal which was finally approved by the Trustees vide T.R. No. 313 of 12.10.1977. The lessees were accordingly informed about the proposed billing at the revised ground rent of Rs. 74,675.50 per month for the first slab of 10 years commencing from 27.8.1976.

The rent reserved under the expired lease is Rs. 3,288.87 per month. The revised lease rent is Rs. 74,675.50 p.m. with effect from 27-8-1976. The Board of Trustees after considering the various aspects of the proposal finally decided to revise the ground rent on the basis of the land values in Mazagaon Sewri Reclamation Estate approved by them vide T.R. No. 57 of 24.2.76. Since there is no renewal clause in the lease agreement, the Trustees have decided to charge the lease rent on the basis of 11 per cent return on the current market value of the plot under reference. This fixation of the revised lease

rent of Rs. 74,675.50 p.m. was challenged by the lessees and they have accordingly represented to the Chairman and the Trustees of the Port of Bombay *vide* their letter dated 20-4-78 against the revised ground rent. As the lessees have raised a number of issues in their said representation, the same were considered in detail, and remarks of the Department were there after conveyed to the Secretary BPT *vide* the Department's memo dated 7.6.78.

The orders are yet to be received from the Board of Trustees on the representation of the lessees. In the meantime the papers on the subject have been forwarded to the Legal Adviser, B.P.T. for taking further necessary legal action.

The arrears upto 31.3.1979 works out to Rs. 22,28,427.41.

7.32. It is seen that a plot of land was given on lease in favour of M/s. Rallies India Ltd. in 1951 and was subsequently assigned in favour of M/s. Vegetable Vitamin Foods Co. Pvt. Ltd. This lease expired on 26-8-1976.

7.33. From the information furnished, it is seen that the proposal for renewal of the lease was forwarded by the Estate Department to the Bombay Port Trust on 13-9-1976 (*i.e.* more than two weeks after the expiry of the lease) for obtaining Board's sanction. The Board sanctioned the proposal for the renewal of the lease on 11-10-1977, *i.e.* nearly 14 months after the lease had expired. The terms and conditions for the renewal of the lease were quoted to the lessee on 20-1-1978, *i.e.* after a further delay of 4 months.

7.34. The rent reserved under the expired lease was Rs. 3288.87 per mensem. Under the terms and conditions for renewal of the lease, the revised rent was fixed at Rs. 74,675.50 per mensem with effect from 27-8-1976. The lessee has not accepted the revised rent but is paying at the rate of Rs. 3288.87 *i.e.* the rent reserved under the expired lease. The lessee has also represented to the Board of Trustees against the revised lease rent of Rs. 74,675.50. The Board has not yet taken any decision on this representation. The arrears outstanding from the lessee from 27-8-1976 upto 28-2-1979 amount to Rs. 21.60 lakhs.

7.35. On 22-3-1979, the Estate Manager sent the papers to the Legal Department for drafting notice to quit. However, the Estate Manager had not forwarded his file of papers to the Legal Department for drafting notice to quit.

7.36. The Committee note that the lease in respect of the plot of land assigned in favour of M/s. Vegetable Vitamin Foods Co. (Pvt.) Ltd., expired on 26-8-1976. It is regrettable that no action was taken by the Port Trust authorities for renewal or termination of the lease before the date of the expiry of the lease.

7.37. Although a belated action was initiated on 13-9-1976, i.e. after the expiry of the lease, by sending the proposal for renewal of the lease to the Secretary, Bombay Port Trust, the Board of Trustees sanctioned the proposal on 11-10-1977, i.e. 14 months after the lease had expired and the party was still continuing to be there. The Committee deprecate this inordinate delay in taking a decision on this proposal especially when it was known that the lease had expired and the least that could be done at that stage was to take an immediate decision.

7.38. The matter did not end at that. Even after the Board sanctioned the proposal on 11-10-1977, the Estate Department proceeded leisurely and took another 4 months in communicating the revised terms and conditions to the lessee. This is highly regrettable.

7.39. The Committee are informed that the lessee has represented to the Board of Trustees for reduction in the proposed rent but the Board has not taken a decision as yet. It is understood that the claim of the Port Trust will get time-barred from August, 1979.

7.40. The Committee are informed that on 22-3-1979, the Estate Department has sent the papers to the Legal Department for drafting notice to quit. It is significant that the urgency of the matter was felt by the Port Trust only after the Committee took note of the case and asked for further information before calling the officials of the Port Trust to give evidence.

7.41. The Committee would like an enquiry to be made as to why the question of renewal of lease in this case was not initiated in time, and what steps were taken from August, 1976 onwards to expedite the case. Also, suitable action should be taken against the persons responsible for the delay.

Provision in lease agreements regarding Trustees' right of re-entry.

7.42. During evidence on 17-3-1979, the Committee were informed that the Port Trust was using a standard lease forms which were required to be executed whenever Port Trust land was allotted on leasehold basis. The Committee observed that one of the main terms, which is a standard one and which is included in every lease agreement, whether public or private, is that in the case of default, action could be taken. The Committee wanted to know on how many months' default could the Bombay

Port Trust take action. To this, the Estate Manager replied during evidence:

“That is not mentioned in the lease. In the case of breaches only, action can be taken.”

7.43. The Committee pointed out that in every lease document it is mentioned that in the event of so many months' default (one month, three months, six months etc.), it would amount to breach of the terms of the lease. Asked whether there was any such provision in the lease forms used in the office of the Bombay Port Trust, the Estate Manager replied:

“Specific months are not given; the period is not given. In the case of default, it will be a breach.”

7.44. Later, on 27-3-1979, a communication was received from the Estate Manager Bombay Port Trust through the Ministry of Shipping and Transport expressing regret for having furnished certain incorrect information to the Committee during the evidence given on 17-3-1979. This communication is reproduced below:

“During the discussion of question No. 29, while discussing the standard lease conditions, the member had asked the undersigned whether there is a clause in the lease conditions under which when the lessees remain in arrears for certain period, action can be taken for forfeiting the lease. It was stated that though there is a provision for forfeiting a lease for a breach of conditions of the lease, a specific period is not mentioned in the standard lease document. On going through the standard lease conditions under condition No. 7, “Trustees right of re-entry” the clause reads as under:

“This lease is granted upon the condition that the lessee/lessees shall duly observe and perform all the covenants and agreements herein contained and on the part of the lessee/lessees to be observed and performed and that if whenever there shall be a breach of this condition so that any part of the land hereby reserved shall be in arrears for the space of 30 days (whether the same shall have been legally or formally demanded or not) or if and whenever there shall be a breach of this condition.”

Similarly regarding an enquiry of the date of issue of forfeiture notice in the case of item No. 1, (Private Parties) M/s. Western India Oil Distributing Co. Ltd., it was mentioned that the approximate date of issue of forfeiture notice is about 6 months ago. However, since going through the documents,

it is seen that the forfeiture notice has been issued on 15 March, 1976.

As the documents were not readily available, the above information was given from memory only and which on going through the office documents is found to be incorrect for which I am sorry. I have, therefore, to request that I may kindly be excused for the above inadvertence on my part."

7.45. The above communication was forwarded to the Lok Sabha Secretariat under the following letter dated 27-3-1979 from the Under Secretary, Ministry of Shipping and Transport:

"It has been reported by the Estate Manager, Bombay Port Trust that while replying to some questions by an Hon'ble Member of the Public Accounts Committee on the 17th March, he could not give correct information as all the documents were not available with him. He has sent a brief note which now gives the correct position. Two copies of this note are sent herewith with the request that the correct position may kindly be brought to the notice of the Public Accounts Committee."

7.46. Clause 7 of the standard form of lease document to be executed between the Bombay Port Trust and the lessee/lessees referred to in the letter of regret submitted by the Estate Manager on 27-3-1979 relates to Trustees' right of re-entry and provides as follows:

"This lease is granted upon the condition that the Lessee/Lessees shall duly observe and perform all the covenants and agreements herein contained and on the part of the Lessee/Lessees to be observed and performed; AND that if and whenever there shall be a breach of this condition so that any part of the rent hereby reserved shall be in arrears for the space of thirty days (whether the same shall have been legally or formally demanded or not) or if and whenever there shall be a breach of this condition by the Lessee/Lessees so far as it relates to the observance and performance of the covenants and agreements by the Lessee/Lessees herein contained or any of them other than the covenant for payment of rent or if the Lessee/Lessees or any/either of them shall go into liquidation or be adjudicated insolvent or bankrupt or shall petition any Court for the relief of insolvent or bankrupt debtors or shall apply to any Court to be declared insolvent or shall compound or arrange with the Lessee's/Lessees' creditors or if the said premises shall be attached or taken in execution upon any legal process; or if the said premises shall become liable to

be alienated by any operation of law except with the consent of the Trustees; or if the Lessee/Lessee's shall do any act or thing whereby the said premises or the estate or interest of the Lessee/Lessee's therein shall be distrained attached seized or taken in execution; then in any such circumstances as aforesaid the Trustees may re-enter upon the said premises or any part thereof in the name of the whole and immediately thereupon this Lease and all rights of the Lessee/Lessee's hereunder shall absolutely determine PROVIDED NEVERTHELESS that such re-entry or determination shall not discharge the Lessee/Lessee's from liability for any arrears of rent due or accruing due at the time of such re-entry or for or on account of any previous breach of any of the covenants herein contained."

7.47. The Committee during evidence taken on 30-3-1979 wanted to know how wrong information regarding clause 7 of the lease document regarding right of re-entry was supplied to them by the Estate Manager during evidence on 17-3-1979 and why he was insisting that such a provision was not there. In this connection, the Secretary, Ministry of Shipping and Transport, explained:

"When I found the mistake, I thought it necessary to bring it to your notice.....I have merely submitted to the Committee, the reply as it was received. It is not my reply."

7.48. Asked whether the Secretary of the Ministry was not responsible for the reply given by his subordinate, the witness added:

"I agree. I thought it was better to submit it, as it was received from him."

7.49. Asked whether even by a reasonable construction, it could be called an inadvertent mistake, as stated by the Estate Manager, the Secretary further said:

"It is not. I thought that the right thing to do would be to submit the reply, as received, to the Committee."

7.50. During evidence taken by the Committee on 17-3-1979, the Estate Manager, Bombay Port Trust had informed the Committee that in the standard lease form used in the office of the Bombay Port Trust, no mention was made about the period after which action can be initiated in the case of default. Even when the Committee pointed out that the lease documents contain a specific period (usually expressed in months) in the

clause relating to right of re-entry, the Estate Manager insisted that "Specific months are not given; the period is not given". Later, on 27-3-1979 a letter of regret was received from the Estate Manager through the Ministry of Shipping and Transport saying: "As the documents were not readily available, the above information was given from memory only and which on going through the office documents is found to be incorrect for which I am sorry. I have, therefore, to request that I may kindly be excused for the above inadvertence on my part".

The Secretary of Ministry of Shipping and Transport conceded in evidence that the wrong information given by the Estate Manager could not be treated as an inadvertent mistake.

7.51. The Committee need hardly emphasise the necessity of supplying correct information to the Committee either through written replies or during evidence tendered before them. In the instant case, the Committee have come to the inescapable conclusion that the Estate Manager had not cared to study the basic provisions of the standard lease forms in use in the Estate Department of which he was in-charge and was expected to be conversant with in his day-to-day work. The Committee deplore the most careless manner in which this officer was dealing with the questions put by this Committee and the Committee expect that the Ministry of Shipping and Transport would take serious note of it.

7.52. The following is the chronology of events in the case, as furnished by the Estate Department and the Legal Department:

M/s. Chheda Pvt. Ltd.

Occupation of port Trust land at Ahmadabad Street.

Area : 307.50 sq. mtrs.

Arrears : Rs. 24,64,028.62 upto 28-2-1979

Date	Events
10-12-1974	• Application for storage of materials.
13-12-1974	• Memo. No. 17/54 dated 13-12-1974 granting permission.
10-1-1975	• Party occupied the area of 60.00 sq. mtrs.
29-1-1975	• Application from Chheda Pvt. Ltd for extending the permission for further period upto the end of May, 1975.
31-1-1975	• Letter from the Department to M/s. Chheda Pvt. Ltd., that further permission for storage of goods cannot be granted and that they will be charged at the rate of Rs. 0.10 per sq. metre per diem i.e., at the rate for unauthorised occupation from 25-1-1975 for the area occupied by them till they remove the materials.
1-3-1975	• Charges were taken on Casual Register. Payment for period ending 28-2-1975 received and recovered through Chheda.

Date	Events
2-10-1975	The unauthorised casual occupation rate was increased from Rs. 0.60 per sq. metre per diem to Rs. 12/- per sq. metre per diem.
28-10-1975	Letter of Request from the casual occupants addressed to the Chairman for allotment of the final plot number 52 D and also to charge them at the same rate as they were being charged earlier.
6-12-1975	The above request was turned down. Matter of an identical case of Gopal Prasad Sharma referred to Legal Adviser on 12-11-1975 seeking his advice about the correct course of action to be taken for eviction in view of the decision of the court in a case of casual occupation of M/s. Sampat Trading Company and Ors. Legal Adviser's advice that a regular suit has to be filed was received on 21-11-1975.
18-12-1975	Letter to Legal Adviser requesting to forward a draft of the notice to be served on the casual occupant.
5-3-1976	A copy of the Draft Notice furnished by Legal Adviser.
8-4-1976	A notice served on casual occupants.
14-7-1976	Papers to Legal Adviser, BPT for filing a suit for eviction and recovery of arrears.
27-7-1976	Papers forwarded by Legal Adviser BPT to the Port Trust Advocates, Shri A. V. Sabnis for suit in ejectment and for recovery of arrears.
23-8-1976	Letter to Advocates from the Estate Department to take immediate action, regarding filing the suit and consider the possibility of appointment of Court Receiver.
16-12-1977	D. O. letter from Asstt. Manager, Southern Division, to Port Trust Advocates, Shri Sabnis, requesting to take immediate action regarding filing the suits for eviction and arrears.
22-3-1977	Draft Plaint forwarded by Advocates to Legal Adviser, BPT.
14-4-1977	Unauthorised bye-law rate was reduced from Rs. 12/- per sq. metre per diem to Rs. 2.55 per sq. metre per diem.
4-5-1977	Letter to Advocates forwarding the draft Plaint.
12-7-1977	Reminder to Advocate Sabnis to expedite the matter, as the amounts of arrears are mounting up.
1-9-1977	D. O. letter from Dy. Estate Manager to Advocates to expedite to get the matter placed on the Board for hearing.
13-9-1977	Engrossment Plaint from Advocates to the Legal Adviser.
8-11-1977	Amended Plaint restraining the party from subletting the premises was received.
21-11-1977	Legal Adviser's letter to Estate Manager for verifying the Plaint and returning to the advocates with a copy to the Advocates for filing suit for recovery of arrears also.

Date	Events
14-12-1977 .	Engrossed Plaint returned to the Advocates.
23-12-1977 .	Suit filed for eviction only.
16-1-1979 .	Matter on Board and adjourned to 16-10-1979. Defendant has filed a written Statement.
23-2-1979 .	D. O. letter from Estate Manager to the Legal Adviser to expedite the filing of the suits for arrears also.
12-3-1979 .	Engrossment of Plaint for the arrears.
13-3-1979 .	Engrossment of the Plaint for arrears to the Legal Adviser.
17-3-1979 .	Suit filed for arrears.

Detailed history relating to LA-EMS (1205)—The Board of Trustees of the Port of Bombay Vs. Messrs Chhetia Private Limited—Suit for ejectment and recovery of Casual Occupancy Charges.

Sl. No.	Date of Events	Nature of Events	Remarks
1	2	3	4
1.	14-7-1976	Papers received from the E. M. B.P.T. for filing a suit for ejectment and for recovery of arrears.	
2.	20-7-1976	II JALA requested the Estate Manager, B.P.T. to furnish statement of arrears.	
3.	27-7-1976	Papers forwarded to Shri A. V. Sabnis, Advocate for filing a suit in ejectment and for recovery of arrears and the E. M. requested to forward copies of statement of arrears.	
4.	23-8-1976	E. M. B.P.T. requested Shri A. V. Sabnis, Advocate to take immediate action to file a suit in ejectment copy to L. A. B.P.T. for information.	
5.	10-9-1976	Legal Adviser, B.P.T. reminded Shri A. V. Sabnis, Advocate for expediting filing of the suit in ejectment and for recovery of arrears c.c. to E.M. B.P.T. for information.	
6.	15-12-1976	L. A. B.P.T. reminded Shri A. V. Sabnis, Advocate regarding filing of the suit c.c. to E. M. B.P.T.	
7.	8-1-1977	Shri A. V. Sabnis, Advocate visited the Legal Deptt. and explained the difficulties owing to sudden spurt of work.	

1	2	3	4
8.	16-2-1977	E. M. B.P.T. wrote a D.O. letter to Shri A. V. Sabnis, Advocate pointing out that the party was in arrears of storage charges amounting to Rs. 16,60,438.80 and requested to expedite filing of suit.	
9.	14-3-1977	Letter from E. M. B.P.T. addressed to Shri A. V. Sabnis, Advocate thro' L. A. B.P.T. requesting him to take immediate necessary action to file a separate suit for recovery of arrears.	
10.	23-3-1977	Draft plaint received from Shri A. V. Sabnis, Advocate for approval by the E. M. and L. A. Shri A. V. Sabnis, Advocate asked for annual Occupation Charges in respect of the plot for the purpose of valuation the suit.	
11.	30-3-1977	E. M.'s letters dated 14-3-77 and 23-3-77 submitted to the A.L.A. on 30-3-1977.	
12.	31-3-1977	E. M. B.P.T. took away his file of papers unofficially.	
13.	4-5-1977	Letter from E. M. B.P.T. forwarding draft plaint duly approved.	
14.	9-5-1977	A.L.A. gave orders for forwarding E. M.'s letter dated 4-5-1977 to Shri A. V. Sabnis, Advocate for taking further necessary action.	
15.	15-5-1977	E. M.'s letter dated 4-5-77 was forwarded to the Advocate for taking necessary action. E.M. was requested to send his file direct to the Advocate.	
16.	26-5-1977	Draft plaint (only for ejectment) forwarded to Shri A. V. Sabnis, Advocate for necessary action c.c. to E. M. for information.	
17.	25-5-1977	II JALA gave orders to remind Advocate for filing suit for recovery of arrears.	
18.	28-5-1977	E. M. forwarded his file of papers to the Advocate for taking necessary action. c.c. to L.A.	
19.	13-6-1977	Reminder to the Advocate requesting to file a suit for recovery of arrears.	
20.	19-7-1977	Reminder to the Advocate for filing a suit for recovery of arrears.	
21.	1-8-1977	Reminder to the Advocate for filing a suit for recovery of arrears.	
22.	1-9-1977	D. O. letter from E. M. to the Advocate asking to file suit for ejectment immediately c.c. to L.A. B.P.T.	

1	2	3	4
23.	13-9-1977	Engrossed plaint received from Advocate for the signature of the Constituted Attorney, B.P.T. Advocate requested the E.M. to send up-to-date statement of arrears.	
24.	14-9-1977	Sr. Clerk discussed with II JALA for returning the engrossed plaint to the Advocate for including a prayer against subletting.	
25.	21-9-1977	Engrossed plaint returned to Advocate for including the above prayer.	
26.	23-9-1977	Advocate forwarded the H. F. to the E. M. and stated that the amended plaint will be sent within day or two.	
27.	4-10-1977	Advocate's letter dated 22-9-1977 submitted to the II JALA for orders.	
28.	5-10-1977	II JALA gave orders to remind Advocate for engrossed plaint.	
29.	10-10-1977	Reminder to the Advocate for forwarding the amended engrossed plaint. c.c. to E.M.	
30.	10-10-1977	Letter from the E. M. to the Advocate returning H.F. and forwarding statement of arrears and requesting Advocate to include the prayer for restraining the party from further subletting the premises.	
31.	26-10-1977	Letter from the E. M. B.P.T. to the Advocate for calling H.F. in the matter.	
32.	8-11-1977	Amended engrossed plaint for ejectment received from Advocate for the signature of the Trustees' Constituted Attorney & E. M.'s signature near the verification clause.	
33.	16-11-1977	Advocate's above letter dt. 8-11-1977 submitted to the II JALA for orders.	
34.	16-11-1977	II JALA passed orders to send engrossed plaint duly signed by the Constituted Attorney to E. M. for further necessary action.	
35.	21-11-1977	Letter from the L. A. to the E. M. forwarding engrossed plaint duly signed by the Constituted Attorney and requesting to sign near the verification clause and return the same to the Advocate and fill in the blanks in type in para. 8 of the plaint. c.c. to Advocate with a request to make an application for injunction and send the draft plaint in respect of recovery of arrears.	
36.	14-12-1977	E. M. B.P.T. returned the engrossed plaint duly signed by the Asstt. E. M. Shri A. S. Karnik near verification clause. c.c. to L. A. information.	
37.	20-12-1977	Letter from Advocate asking Advance of Rs. 2,800 on account of Court Costs and out of pocket costs.	

1	2	3	4
38.	27-12-1977	Mrs. A. V. Kale A.Sc. Clerk submitted to the II JALA for orders for payment of advance.	
39.	27-12-1977	II JALA gave orders for payment of advance.	
40.	2-1-1978	Letter to C.V. B.P.T. for payment of advance of Rs. 2,800/- to the Advocate. c.c. to Shri A. V. Sabnis, Advocate.	
41.	10-1-1978	C. A. B.P.T. forwarded a cheque for Rs. 2,800 to the Advocate. c.c. to the L. A. for information.	
42.	4-5-1967	Reminder from E. M. to the Advocate asking whether the suit has been filed.	At this time State Gov. employees were on strike for about 54 days from 14-12-77 to 5-2-78 and hence the Small Causes Court was not functioning. Hence the suit could not be filed.
43.	12-7-1978	Letter from the E. M. to the Advocate requesting to write to the defendants for sending a copy of balance sheet of their company to assess their financial status. c.c. to the L. A. for information.	
44.	17-6-1968	Reminder from E. M. to the Advocate to expedite filing of the suit for ejectment.	
45.	7-11-1978	Suit filed in 1978 in S.C.C. under No. 11/11 of 1978 for ejectment.	
	23-2-1979	E. M. B.P.T. instructed L. A. B.P.T. for filing suit for arrears. When asked as to why he did not file a suit for arrears, the Advocate informed that he had told the Officer of the Estate Department that he had not filed a suit for arrears as the arrears were large and had doubts of getting a decree for Rs 22 lakhs and even if a decree was obtained, of its successful execution?	
		Further papers in E.M.S. (1681) for filing suit for recovery of storage charges.	
47.	23-2-1979	L. A. passed orders to the II JALA to take immediate necessary action for filing suit for recovery of arrears.	
48.	7-3-1979	Letter from the E. M. to the L. A. requesting L.A. to give immediate instructions to file suit for recovery of arrears.	
49.	9-3-1979	D. O. letter to Shri A. V. Sabnis, Advocate to file suit for recovery of arrears amounting to Rs. 24,64,028.62.	
50.	13-3-1979	Engrossed plaint handed over to Shri Schevade, Inspector, Estate Department to be passed to Shri Sabnis, Advocate who received the plaint on 1-3-1979, and the suit for arrears of Rs. 24,64,028.62 was filed on 17-3-1979.	

7.53. On 10-12-1974, M/s. Chheda Private Limited applied for a piece of land for storage of materials. The Port Trust granted permission to the party on 13-12-1974. On 14-12-1974, the party deposited a sum of Rs. 2000/- and on 10-1-1975 the area was occupied by it. Initially the permission to occupy the area was for a period of 15 days, i.e. from 10-1-1975 to 24-1-1975. The rent fixed as per bye-laws of the Port Trust was 30 paise per sq. metre per day. The party is in unauthorised occupation of the area since 25-1-1975 and has not been paying any rent after February 1975. For unauthorised occupation of the area, the party was liable to be charged at the rate of 60 p. per sq. metre per day. The unauthorised casual occupation rate was increased from 60 paise to Rs. 12/- per sq. metre per day with effect from 2-10-1975. From 14-4-1977, the rate was brought down to Rs. 2.65 per sq. metre per day. On this basis, the party was liable to pay at the rate of Rs. 5719.50 per month upto 1-10-1975, at Rs. 1,14,390.00 from 2-10-1975 to 13-4-1977 and at Rs. 24,307.88 from 14-4-1977 onwards. The total rent outstanding against the party upto 28-2-1979 was Rs. 24,64,028.62.

7.54. The Committee noted that para 3 of the letter of permission issued by the Port Trust on 13-12-1974 makes the following provision:

"I have further to inform you that the permission granted for temporary use of the above premises shall not be deemed to create a tenancy or other like interest in your favour and that you will be liable to be evicted at any time after 24 hours' notice. On the expiry of such notice, any goods or materials lying on the said premises may be removed at your cost by the Trustees or any of their employees without incurring any liability and without prejudice to the Trustees' right to recover the above-mentioned charges."

7.55. The Committee desired to know why the party was not evicted from the area after giving 24 hours' notice if the permission to continue occupation of the area beyond 24-1-1975 was not granted by the Port Trust. In this connection, the Estate Manager, Bombay Port Trust replied:

"The problem here was that in a similar case we were not allowed to remove the material and a court injunction was brought."

7.56. The Committee noted that para 4 of the standard letter of permission issued to the Party was as follows:—

"I have further to request you to return the accompanying Certificate of Occupation duly signed, showing the area occupied by you, and which would be got verified by this office."

7.57. The standard Certificate of Occupation required to be furnished by a party to the Port Trust authorities is re-produced below:

"To

The Asstt. Estate Manager,
Southern|Central|Northern Division,
Bombay Port Trust, "Vijay Deep",
3rd Floor,
Shoorji Vallabhdas Marg,
Fort, Bombay-1.

CERTIFICATE OF OCCUPATION

Certified that the under-mentioned area at _____ is occupied by me/us for storage of _____ with effect from _____
Location Measurements Area in Sq. mtr.

2. I/We undertake to inform your office as and when the aforesaid land of Trustees ceases to be occupied by me/us.

3. I am/We are aware of the fact that the occupation of the Trustees' land without obtaining prior permission renders me/us liable to pay a fine not exceeding Rs. 50/- per diem, till such time as the infringement continues after receipt of intimation from you. I am/We are further aware that this levy of fine would be without prejudice to the Trustees' rights in the matter of taking such action as may be considered necessary by them in case I/we do not remove the encroachment on the trustees' land made for storage purpose within twelve hours from the receipt of intimation from you.

4. I am/We are also aware of the consequence as stated above in case I/we do not return this Certificate of Occupation as a token of my/our confirmation of the area of the Trustees' land occupied by me/us and date from which the occupation has occurred.

(Signature of Occupier)"

7.58. When asked whether the above certificate of occupation was furnished by the party, the Estate Manager replied:

"From the record it seems that he has not done that."

7.59. Asked as to who gave the permission for occupation for 15 days, the witness stated:

"At the outset I have to say that this permission for 15 days is granted by the Divisional Manager. The papers do not come to me."

7.60. Asked whether he was not responsible for the work done by his subordinates, the Estate Manager stated:

"Not that I have nothing to do it. Finally the Head of the Department is responsible."

7.61. In this connection, the Chairman, Bombay Port Trust has conceded during evidence:

"I do admit that in the absence of a clear proof of para 4 having been satisfied, we will not have the necessary weapon in our hand as we ought to have, and from what has happened it appears that there has been no insistence that this is complied and the record is maintained up-to-date before the person is put in possession of those lands."

7.62. The Committee wanted to know the periodicity of payment of rent in the case of casual occupants. To this, the Estate Manager replied:

"Every month. The Bills are sent monthly."

7.63. The rate of rent payable by the casual tenants for authorised/unauthorised occupation were stated to be as follows:

Date from which effective	Authorised Rate per day per sq. mt.	Unauthorised rate per day per sq. metre
Upto 1-10-1975 .	Re. 0.30	Re. 0.60
2-10-75 to 13-4-1977 .	Rs. 1.50	Rs. 12.00
From 14-4-1977 .	Re. 0.85	Rs. 2.65

7.64. Asked about the reasons for reducing the rates with effect from 14-4-1977, the Estate Manager stated that the rate was reduced as the Board felt that the increase effected from 2-10-1975 was too high.

7.65 & 7.66. The party had not made payment of rent after February, 1975 and was staying unauthorisedly since then. However, notice was served on the party only on 8-4-1976, papers forwarded by the Legal Adviser to the Port Trust Advocates on 27-7-1976 and suit for eviction (LE-11/11 of 1978) filed on 1-3-1978. The information regarding the filing of the eviction suit was obtained by the Legal Department on 7-11-1978.

"The main reason was that my Advocate did not agree that I would be able to recover the revised rent without the prior acceptance by the unauthorised occupant. There is no proper contract concluded and so I cannot file a suit for the revised amount in a court of law."

The witness added:

"Our Advocate told us: 'Although you can file a suit, you will not be able to recover this amount'. His contention was that the party had not accepted our revised rate. Further he said: 'You will be unnecessarily wasting money in thousands.'"

7.67. Regarding the delay in filing the suit and allotting suit number by the court and informing the Legal Department (period from 14-12-1977 to 7-11-1978), the Legal Adviser explained:

"At that time the clerks of the Small Causes Court were on strike from December, 1977 to 5-2-1978. Although the strike lasted for two months, the disruption of work (in the court) remained for nearly 7 to 8 months. Suits were filed but numbers were not given by the clerks on account of their non-cooperation. For about a year, we did not get the numbers."

7.68. On 23-2-1979 the Estate Manager instructed the Legal Adviser for filing suit for arrears. When asked as to why suit for arrears was not filed earlier, the Advocate informed that he had not filed a suit for arrears as the arrears were large and he had doubts of getting a decree for Rs. 22 lakhs and even if a decree was obtained, of its successful execution. Clarifying the point during evidence, the Estate Manager stated:

"The Advocates were all the while saying that our rates are exorbitant and that the courts would not accept these rates, and we were insisting on filing a suit for arrears and for eviction."

7.69. The suit for arrears has since been filed on 17-3-1979.

7.70. M/s. Chheda Private Ltd. were allotted a piece of land in Port Trust estates on casual occupation basis for a period of 15 days, under letter dated 13-12-1974 issued by the Bombay Port Trust to the party.

Alongwith this letter, a prescribed form, i.e. Certificate of Occupation, was enclosed. The party was required to return this form duly signed, showing the area occupied by it, date of occupation and giving the prescribed undertakings. The Port Trust authorities allowed the party to occupy the land allotted to it without insisting on the turnishing of the Certificate of Occupation. The Chairman, Bombay Port Trust conceded during evidence that in the absence of this certificate, "we will not have the necessary weapon in our hands as we ought to have, and from what has happened it appears that there has been no insistence that this is complied and the record is maintained up-to-date before the person is put in possession of these lands". The Committee regret to observe that the matter was dealt with by the Port Trust authorities in a most casual manner and no care was taken to observe the procedure in this regard, which later led to unauthorised occupation of the land by the party and non-payment of the rent ever since February 1975.

7.71. In the letter of permission issued by the Port Trust authorities on 13-12-1974, it was made clear that permission was granted for temporary use of the land and the party was liable to be evicted at any time after 24 hours' notice. Although permission for occupation of land on and from 25-1-1975 was not granted and the party had not vacated the land and had also defaulted in payment of rent, the Port Trust authorities did not take any action for well over 10 months and it was only in December, 1975 that action was initiated to serve notice on the party. The notice was actually served in April 1976, i.e. after a further delay of 4 months. In July, 1976, action was initiated to file a suit for eviction and recovery of arrears but the suit could not be filed for a long time as the Port Trust Advocate felt that there was no proper contract concluded with the party and it would not be possible to recover the rent at the revised rate without the prior acceptance by the unauthorised occupant. However, after a long-drawn correspondence, suit for eviction only was filed on 23-12-1977 and was given suit number by the court on 1-3-1978. Suit for arrears of rent was not filed at that time as the Port Trust Advocate felt that there was no hope of recovery of arrears and the financial position of the firm was not known. The suit for arrears has since been filed on 17-3-1979.

7.72. It is evident from the chronology of events of this case that the urgency for taking legal steps against the party was felt only after the Committee took note of this case and asked for detailed information.

7.73. The Committee highly deplore the inaction and negligence on the part of Port Trust authorities in not initiating legal action against the party immediately after it became an unauthorised occupant and had defaulted in making payment of rent. There is absolutely no justification for the Port Trust authorities having delayed action against the party for well

over four years by which time the arrears due from the party have mounted to more than Rs. 24 lakhs. The Committee suspect that the reason for delay in this case may also be deeper than what has been explained. The Committee desire that this case should be investigated by CBI.

SUB: Strip of land opposite Britannia Biscuit Co. at Mazagaon Reclamation Estate.

Occupant: Shri Shivmangal L. Jaiswal.

7.74. The following is the brief history of this case as furnished by Legal Department:

"The sterile strip of land admeasuring about 120 sq. mtrs. was lying vacant opposite Britannia Biscuit Co. at Mazagaon Reclamation Estate as the Municipal Sewer is passing underneath.

2. The said party was allowed to occupy the sterile strip of land for a period of 15 days expiring on 21-6-1973. The party did not vacate, but continued to use the Port Trust land beyond 21st June 1973. After examining the legal position, the Port Trust took action against him for the removal of the said materials. The same, however, could not be done as the party brought a stay order from the Court on 10-12-1973 restraining this Port Trust from dispossessing him the plot in his occupation without resorting to due process of law. In view of the stay order, we could not take over the possession of the land which was occupied by him under casual occupancy rights. The details of the suit proceedings initiated by the party for injunction against the Port Trust and subsequent action taken by us are given as under:

3. On 10-12-1973, an injunction order of the court returnable after 24 hours notice was served on us by the party. We opposed the said order. The Notice of Motion taken out by the party in the City Civil Court on 10-12-1973 was adjourned by the learned Judge and the injunction was extended for 10 days i.e. upto 20th December 1973 and hearing of the Notice of Motion was fixed on 20th December, 1973. The Notice of Motion finally heard on 31-1-1974 when the learned Judge passed orders that this Port Trust is not entitled to dispossess the party the piece of land under reference without resorting to due process of law, but the Trustees were granted liberty to remove the goods stored on the plot in accordance with provisions of the B.P.T. General Bye-laws. Against this order the party obtained stay on 19-2-1974 from

the City Civil Court to the effect that pending the hearing and final disposal of the Appeal, the Port Trust is restrained from moving the goods and articles stored on the plot and he preferred an Appeal in the High Court on 3-4-1974 against the order of the lower Court. This Appeal was admitted by the High Court and finally heard on 21-10-1975 when the High Court passed orders in favour of the party restraining this Port Trust from dispossessing the party the piece of land and also from removing goods stored without resorting to due process of law.

4. The casual occupation charges were in the meanwhile revised from Rs. 0.45 P. per sq. metre per diem to Rs. 9.00 per sq. metre per diem with effect from 2-10-1975. The Solicitors' opinion was, therefore, sought to charge the party on the basis of the revised rate and also to file suit for ejectment and recovery of storage charges at revised rate. Arising out of the discussions at various levels, the Solicitors opined on 19th July, 1976 that it is possible to recover the revised unauthorised occupation charges after complying with certain legal formalities. They also advised us to file separate suits for ejectment and recovery of storage charges instead of waiting for the outcome of the suit in City Civil Court as that would take many years and in case it is decided against us, we will have to file a separate suit at a later stage. In the meanwhile, we had also initiated action by serving a Notice on the party on 7-5-1976 and forwarded papers to the Legal Adviser, BPT, on 2-6-1976, for filing a suit.
5. We also started preferring bills on the basis of the revised rates with effect from 2-10-1975. The Casual charges were further revised and lowered to Rs. 2.55 per sq. metre per diem from Rs. 9/- per sq. metre per diem with effect from 14-4-1977. Finally, the Legal Adviser, B.P.T. forwarded papers to the Port Trust Advocates on 1-6-1977 for filing separate suits for ejectment and recovery of arrears. The draft plaint for suit for ejectment was forwarded by the Port Trust Advocate on 24-9-1977 which was returned to them by the Legal Adviser, B.P.T. on 30-11-1977 after verification.
6. Later, the matter regarding filing of one combined suit for ejectment and recovery of arrears was again examined by us in consultation with the Port Trust Advocates and they were asked to amend the plaint on 17-8-1978, so as to file one combined suit. This draft plaint was sent to us for verifica-

tion on 15-11-1978 and later a suit bearing No. 475/645 of 1978 was filed in December, 1978.

7. The total amount of arrears due from the party upto 28-2-1979 amounts to Rs. 7,63,042.07."

7.75. The following is the chronology of events pertaining to the case of Shri S. L. Jaiswal, as furnished by the Department:

Sl. No.	Date of events	Nature of events	Remarks
1	2	3	4
1.	18-11-76	Papers were received from the Estate Manager, BPT for filing a suit in ejectment and for recovery of arrears of storage charges.	
2.	19-11-76	Submitted to the II JALA for orders by Mrs. R. R. Pendharkar. The same was resubmitted to the Addl. Dy. L. A. for orders.	
3.	1-2-77	A reminder received for the E. M. B. P. T. how the matter stands.	
4.	4-3-77	A. D. letter received from D. M. B.P.T. addressed to Shri R. K. Shetty, Legal Adviser.	
5.	23-3-77	Reminder received from E. M. N. P. T. to expedite the matter.	
6.	14-4-77	Reminder received from E. M. B.P.T. to expedite.	
7.	29-4-77	Do.	
8.	14-5-77	Do.	
9.	1-6-77	D. O. letter addressed to Advocate Shri Sabnis, by Addl. Dy. L. A. requesting him to file a suit in ejectment and for recovery of arrears of storage charges, c.c. to E. M. BPT for necessary action.	
9A.	2-8-77	Reminder to Advocate by L. A.	
10.	28-8-77	A letter received from E. M. BPT addressed to Shri A. V. Sabnis requesting him to file the suit immediately.	
11.	23-9-77	Reminder issued to Advocate to draft plaint.	
12.	24-9-77	A letter received from Shri Sabnis, Advocate addressed to E. M. BPT forwarding a draft plaint for approval and asking for up-to-date statement of arrears etc.	

1	2	3	4
13.	2-11-77	A letter received from E. M. BPT. A draft plaint received duly corrected in pencil. Informing the opinion of Advocate that suit may file only for eviction of the defendant and for possession of the premises. Advocate Sabnis felt that our success in the suit is doubtful. Further party was not possessed of any property. Sub-letting to 8 other parties. Since arrears were 6 lakhs and above, suit for eviction will be waste of Rs. 75,000 by the BPT. Request this department to advice to the advocate.	
14.	10-11-77	Submitted to the II JALA for orders by Mrs. A. V. Kale.	
15.	17-11-77	Orders given by the II JALA after discussing with Legal Adviser.	
16.	30-11-77	A letter written to the E. M. BPT advising him that it was not worthwhile filing the suit for recovery of arrears of storage charges and to obtain a paper decree in view of defendant not possessing any property to be attached (Reply to letter dated 2-11-77) copy to the Advocate forwarding a draft plaint duly approved, for information and further necessary action. Requested Advocate to join all the sub-tenants who are in actual possession of the premises as co-defendants since they were in illegal occupation and to avoid multiplicity of judicial proceedings. Further requested him to amend the draft plaints and to serve the fresh notice on sub-tenants before filing suit, if considered necessary.	
17.	1-12-77	Reminder received from the Estate Manager B.P.T.—how the matter stands.	
18.	11-1-78	A letter received from the E. M. BPT—Intimating that the Defendant paying at the rate of Rs. 1,700/- per mensem. The E. M. B.P.T. requested this department to verify the actual occupants, can be held liable at bye-law rates for payment of storage charges. E. M. BPT wants to incorporate the suitable clause in the plaint holding them jointly or severally responsible for payment of storage charges. Requested Legal Department to advise to Port Trust Advocate suitably.	
18A	12-1-78	Submitted to Clerk 'A' Scale by Smt. A. P. Deshpande.	
19.	16-1-78	Submitted to II JALA by Mrs. A. V. Kale.	
20.	18-1-78	Resubmitted to the II JALA with EM. HC-593	
21.	1-2-78	Order given by II JALA after discussion with A.L.A.	
22.	4-2-78	A letter written to Advocate Shri Sabnis requesting him to make suitable provisions in the plaint holding the actual occupants also responsible for payment of storage charges. Requested Advocate to deal immediately.	

1	2	3	4
23.	19-4-78	A letter received from E. M. BPT stating that the party had stacked two tanks unauthorisedly on Port Trust land. An unauthorised Memo was issued but party has not removed tanks. Sought a draft of the notice to be served upon the party.	
24.	24-4-78	Submitted to the Dy. L. A. (T) by Mrs. J. P. Thosar.	
25.	24-5-78	A letter addressed to the E. M. BPT stating that both the courses mentioned in para 3 are open to E. M. If party pays his bills regularly he may adopt the second alternative. Further stated that write to the party pointing out that he has unauthorisedly occupied and requested party to remove the two tanks otherwise Port Trust will remove tanks without any further intimation, if the Party does not comply with removal of the tanks from the Port trust plo	
26.	7-6-78	A letter received from the E. M. stating that the party has removed the unauthorised tanks stacked on the Port Trust plot on 11-5-78 and the party is being billed for the occupation at the unauthorised rate as per the Trustees' General Bye-law. Requesting Legal Deptt. to instruct the Port Trust Advocate to expedite drafting of plaint as the arrears of storage charges were mounting from month to month.	
27.	22-6-78	Orders passed by II JALA to write a D. O. letter immediately to the Advocate and E. M. to offer his comments on letter dated 15-4-78 from the Advocate Jaiswal.	
28.	29-6-78	A letter received from the E. M. stating that the party has been making payment at the rate of Rs. 1,650/- to 1,700/- per month as against his bill of Rs. 9271.80 to 9580.86 per month. Requesting for advice. Also requesting to advise whether the amounts received from the parties could be adjusted towards the last outstanding bills and the parties be informed accordingly.	
29.	25-7-78	A letter received from the E. M. BPT stating that the Port Trust Advocates may be requested to expedite the preparation of the plaint. He also asked the Legal Department to obtain Chairman's orders whether or not to file suit for arrears as the stamp fee would be heavy.	
30.	5-8-78	The above two letters were submitted to Clerk by Mrs. A. P. Deshpande.	
31.	11-8-78	Submitted to the Dy. L. A. (T) for orders.	

1	2	3	4
32.	17-8-78	A D. G. letter written to Shri Sabnis requesting him to file a suit immediately for recovery of arrears amounting to approximately Rs. 7 lakhs c.c. to E. M. BPT requesting him to ascertain the financial position.	
33.	28-8-78	Instructions to Mr. Bandokdar to remind.	
34.	2 to 6-10-78	Phoned Shri Sabnis 5 times by Mrs. Thosar requesting him to forward the engrossed plaint. He informed that he would forwarding it tomorrow.	
35.	13-10-78 18-10-78 23-10-78 27-10-78 6-11-78 7-11-78	Phoned Shri Sabnis by Mr. Thosar requesting him to expedite the matter. He informed that he will deal with the matter immediately.	
36.	17-11-78	A letter received from the E. M. BPT addressed to Shri A. V. Sabnis requesting him to forward the engrossed plaint immediately. The draft plaint has been forwarded to him duly verified.	
37.	30-11-78	A letter addressed to Chief Accountant B.P.T. requesting him to pay a sum of Rs. 13,400/- c.c. Shri A. V. Sabnis requesting him to forward a copy of plaint as filed. E. M. has informed that it was presumed that he had ascertained the financial position and that he had satisfied that as and when the decree was obtained for recovery of casual occupation charges the same could be successfully recovered when the decree was executed.	
38.	2-12-78	Intimation was received from the Chief Accountant, BPT about the payment of Rs. 13,400/- to the Advocate.	
39.	20-12-78	Intimation received from Chief Accountant BPT about making payment of Rs. 200/-	
40.	20-12-78	Phoned to Shri Sabnis on 22-12-78. He informed that the suit was filed in the last week. The suit No. is 475/645 of the 1978 for eviction and arrears.	
41.	5-1-79	Reminder to E. M. BPT inviting his reference to this office endorsement dated 30-11-78 and requesting him to expedite reply.	
42.	16-1-79	A letter received from E. M. BPT stating that the financial position of the defendant was being ascertained.	

7.76. It is seen that one Shri S. L. Jaiswal had applied on 6-6-1973 for permission to use a strip of land for storing sundry materials, such as, timber, iron etc. On 7-6-1973, the Port Trust granted permission to the applicant on casual occupation basis for a period upto 21-6-1973 upon payment by him of the amount of charges at the rate prescribed by the Board's General Bye-laws. The land allotted measured 120 sq. metres. The party did not vacate the land after 21-6-1973. The party moved the court on 7-12-1973. On 31-1-1974 the Bombay City Civil Court passed orders (Appendix IV) that the Port Trust were not entitled to dispose the plaintiff of the open plot of land without resorting to the process of law, but the Trustees were granted liberty to recover the goods stored on the plot in accordance with the provisions of the B.P.T. General Bye-laws. Against this order, the party preferred an appeal in the Bombay High Court on 3-4-1974 which was admitted. On 21-10-1975, the Court passed order (Appendix V) in favour of the party restraining the Port Trust from dispossessing the party the piece of land and also from removing goods stored without resorting to due process of law. Relevant extract from the orders of the High Court is given below:

"All that the defendants had sought to contend in the affidavit in reply was that they were entitled to resort to and act under the powers given to the defendants under General Bye-law No. 9. Now the General bye-law No. 9 gives power to the Docks Manager or Estate Manager of the defendants to take action for clearing roads, thoroughfares or pathways in the Port Trust estate and for removing obstruction which may be caused in the manner indicated in the said bye-law. There is no clear averment in the Affidavit in reply nor any finding given by the trial Court that this strip of land, which is the subject mater of the dispute, constitutes any road, thoroughfare or pathway within the Port Trust Estate.... In the result the Appeal must be allowed and the impugned order set aside and replaced by an order simplicitor restraining the defendants from dispossessing the plaintiff from the suit strip of land or interfering with the plaintiff except by due process of law....."

7.77. The Committee pointed out that Bye-law No. 9 empowered the Port Trust to take action to remove obstructions on roads, thoroughfares or pathways in the Port Trust estate, and enquired how this Bye-law could be invoked to eject persons who have been allotted land on temporary basis. To this, the Legal Adviser replied:

"In the past in 90 per cent of the cases we have succeeded in removing the obstructionists by following bye-law 9 read with Annexure 'A' to that bye-law..... Annexure 'A' gives

various places and rates of rental that we can charge. This is Annexure 'A' to the bye-law itself. We always construe it as a single document."

7.78. Asked how this seemingly illegal document was being used for the last 15-16 years, the Legal Adviser replied:

"Our view on the subject was that Annexure 'A' was part of Bye-law 9 and therefore, it was legal, unless it was thrown out."

7.79. The witness added that after the Bombay High Court passed orders in this case of Shri S. L. Jaiswal on 21.10.1975, Bye-law 9 has been amended.

7.80. The casual occupation charge payable by the party was revised from Re. 0.45 per sq. metre per diem to Rs. 9.00 per sq. metre per diem with effect from 2.10.1975. The charges were revised and lowered to Rs. 2.55 per sq. metre per diem with effect from 14-4-1977. The party had been paying at the rate of Rs. 1650/- to Rs. 1700/- per month as against the bill of Rs. 9271.80 to Rs. 9580.86 per month. The total arrears due from the party upto 28-2-1979 amounted to Rs. 7.63 lakhs. Asked why the rent was being accepted by the unauthorised occupant if he was a defaulter, the Estate Manager replied:

"Without prejudice we are accepting that as compensation."

7.81. The Committee wanted to know the action taken against the party for continued unauthorised occupation of the land. To this, the Estate Manager replied during evidence:

"He brought a stay order from the court on 10.12.1973. But he has been a defaulter from 1976. He has been paying the contractual rent and till today he has been paying that rent."

7.82. The Committee desired to know the action taken by the Port Trust after the High Court passed orders on 21.10.1975. To this, the Estate Manager replied:

"On 21-10-1975, the High Court passed an order in favour of the party. Thereafter, on 10.11.1975, I sent my papers to the Legal Department. The draft notice was received from the Legal Adviser on 23.3.1976. The notice was issued on 7.5.1976. The papers were sent to the Legal Department for filing suit on 18-11-1976. Legal Department sent the papers to Advocate on 1.6.1977."

7.83. From the chronology of further events, it is seen that on 7.5.1976, the Port Trust served a notice on the party. On 18.11.1976 the Estate Manager forwarded the papers to the Legal Adviser for filing a suit in

ejectment and for recovery of arrears of storage charges. On 1.6.1977, the Legal Department forwarded the papers to the Port Trust Advocate for filing a suit. On 2-11-1977 the Advocate opined that the suit may be filed for eviction only. He felt that the party was not possessed of any property and filing suit for arrears of about Rs. 6 lakhs would be waste of money by the Bombay Port Trust. On 30.11.1977, the Legal Adviser wrote to the Estate Manager advising him that it was not worthwhile filing the suit for recovery of arrears of storage charges and to obtain a paper decree in view of the party not possessing any property to be attached. It transpired that the party had sub-letted the premises to 8 other parties. On the advice of the Estate Manager, the Legal Adviser wrote to the Advocate on 17.8.1978 for filing a suit for recovery of arrears amounting to Rs. 7 lakhs approximately. In December, 1978, suit (No.475/645 of 1978) was filed for eviction and arrears.

7.84. The Committee note that the party, Shri S. L. Jaiswal, was allotted a piece of land measuring 120 sq. metres in the Port Trust premises for a period of 15 days expiring on 21-6-1973. The party did not vacate the land and has been occupying it unauthorisedly since then. When the party moved the trial court and later appealed in the Bombay High Court, the latter court in its order dated 21-10-1975 decided in favour of the party on the ground that Bye-law No. 9 of the Bombay port Trust provided for taking action for clearing obstructions on roads, thoroughfares or pathways and did not cover the area which was allotted to the party by the Port Trust for storage of materials. The plea of the Port Trust that Annexure 'A' to Bye-law No. 9 indicates various places and rates of rental and the Port Trust could take action against the defaulting party under this Bye-law read with Annexure 'A' was not accepted by the Appellate Court. Subsequently, the Port Trust has amended Bye-law No. 9. The Committee regret to note that there was a lacuna in Bye-law No. 9 on the basis of which the case was defended by the Port Trust in the trial court and the appellate court, inasmuch as reliance was placed on this bye-law which did not give clear authority to the Port Trust to evict persons who were allotted land on casual occupancy basis.

7.85. The Committee also find that the orders of the High Court were passed on 21-10-1975 restraining the Port Trust from evicting the party except by the process of law. Thereafter, a period of more than three years was taken in correspondence with the Legal Adviser of the Port Trust and the Advocates and suit for eviction and arrears of rent (amounting to over Rs. 7 lakhs upto February 1979) was filed only in December, 1978. From the chronology of events in this case, it is seen that the Estate Department took several months in processing the case at every stage. This raises suspicion in the mind of the Committee. The responsibility for part of the delay is also to be shared by the Legal Department

inasmuch as cases were held up in that Department at various stages. Meanwhile, the party has sub-letted the premises to 8 other parties. The Port Trust is also accepting a monthly rent of Rs. 1650/- to Rs. 1700/- as against the bill of Rs. 9271.80 to Rs. 9580.86 per mensem. The Committee express their unhappiness at the leisurely or almost indulgent manner in which this case has been allowed to linger on since orders were passed by the Bombay High Court in October, 1975. The fact that the suit could be filed only in December, 1978 clearly indicates that the Port Trust started feeling the urgency of the matter only after the Committee took up examination of this case alongwith other cases of similar nature. This is regrettable. The Committee would like the Port Trust authorities to have the matter finalised expeditiously.

GENERAL

7.86. Some of the glaring omissions that have come to light as a result of examination of only a few cases pertaining to outstandings against private parties in respect of Estate rentals are mentioned below :

- (i) Land is allotted to private parties on casual occupancy basis initially for a period not exceeding 15 days. No care is taken to ensure that the Certificate of Occupation which is required to be furnished by the allottee is actually obtained by the Estate Department before the allottee is allowed to occupy the area. This is very irregular. The absence of a proper agreement with the allottee results in long drawn litigation when the allottee defaults in payment of rent and refuses to vacate the area. The Committee desire that proper instructions should be issued so that such irregularities are stopped forth with.
- (ii) The Committee were informed that in many cases land is allotted on casual occupation basis for a period not exceeding 15 days on Bye-law rates fixed by the Bombay Port Trust. Thereafter the occupation continues. There are no formal applications from occupants for extension of the period of allotment. The Estate Department does not bother about this. After some time, this Department starts sending monthly bills to the occupants for payment of rent and thus starts treating them as monthly tenants. Thus, the whole basis on which permission is granted initially changes. After treating the occupants as monthly tenants, the Port Trust authorities find it difficult to evict the occupants on 24 hours' notice as per original condition under which the land is allotted on casual occupancy basis. The Committee highly deprecate that such irregularities have been allowed to continue in the Estate

Department which is apparently run in a very slipshod manner. They would like the Port Trust authorities to re-examine this system of allotment of land on casual occupancy basis. Where land is required by a party for a longer period, the prescribed procedure for entering into proper agreements should be followed.

- (iii) The Committee learn that in many cases the Port Trust land is occupied unauthorisedly without the knowledge of the Port Trust authorities. Only after the unauthorised occupation comes to the notice of the Port Trust authorities, and often at quite a late stage action is initiated for obtaining a formal application from the unauthorised occupant and the occupation of the area is regularised. The Committee regret to observe that such undesirable practices regarding misuse of Port Trust lands have been allowed to continue unabated. They would like the Port Trust management to activate its inspection wing so that such malpractices are stopped and responsibility be fixed in cases of glaring dereliction of duty.
- (iv) The Committee were informed that permission for casual occupation of Port Trust land is given by officers below the rank of Estate Manager and that the Estate Manager is not informed about it. In a few cases examined by the Committee, it was found that the financial condition of the occupants against whom rental bills were outstanding was not known. Even if there is such delegation of powers to officers below the rank of Estate Manager, the Committee would like the Port Trust authorities to evolve a system of proper supervision by the Estate Manager in all cases where powers are delegated to the subordinates. The Committee deplore that this is not being done.
- (v) In the cases examined by the Committee, it was found that in the case of defaults in payment by the parties, Estate Department moved very casually and leisurely in pursuing the matter with the parties. Unreasonable discrimination between the parties was also in evidence. On the basis of information placed before the Committee through written replies and also during evidence, the Committee have gained the impression that the Estate Department is functioning inefficiently and ineffectively in these matters. Even for filing of suits against defaulters, instead of initiating action at the right time, years pass before any action is taken by the Estate Department. In these cases also there is evidence of discrimination between

parties. The Committee consider this as a highly unsatisfactory state of affairs.

- (vi) The Committee learnt that sometimes a defaulting party sent in a representation to the Chairman of the Port Trust objecting to payment of enhanced rent and on that basis the Estate Department stopped taking any further action until the disposal of the representation. It also came out in evidence that these matters were often decided arbitrarily by the Chairman in an ad hoc manner and disposed of at such time and on such terms as suited his sweet will. The Committee would like the Port Trust authorities to streamline the procedure in this regard so that the representations are disposed of expeditiously and proper norms are laid down and there is no scope for unreasonable discrimination and exercise of arbitrary authority. In such cases it should be insisted that the parties go on making deposits at the enhanced rate, subject to adjustment on the disposal of their representations by the Chairman.

7.87. The Committee have, in this Report, dealt with only a few cases of irregularities in the matter of settlement of cases relating to unauthorised occupation of Port Trust lands by private parties. All these cases appear to be unsatisfactory. The Committee apprehend that there are many other cases with similar irregularities. The Committee recommend that an Inquiry Committee consisting of three Senior officers, one from the Bombay Port Trust, one from the Ministry of Shipping and Transport and one from the Ministry of Law may be appointed to examine the working of the Estate Department of the Bombay Port Trust and suggest measures for bringing about improvements therein.

7.88. The Committee are of the view that the Bombay Port Trust should also take suitable action against the officers concerned for committing various irregularities and delays causing loss of revenue to the Port Trust.

NEM DELHI:

April 28, 1979

Vaisakha 8, 1901 (S)

P. V. NARASIMHA RAO,

Chairman,

Public Accounts Committee

APPENDIX I

(See Para 2.19).

Note on medium-speed mechanised handling facility for Fertilisers at Indira Docks No. 14, Bombay Port.

(Prepared by the Department of Agriculture)

The Facility

The equipment was installed by the Department of Agriculture in consultation with the Bombay Port Trust and the Ministry of Shipping and Transport. The Engineering Projects of India Ltd. were the Executing Agents, the work was taken up during 1976 and completed in July, 1977. The sanctioned cost of the project to be financed by Ministry of Agriculture was Rs. 1.11 crores. However, the actual cost uptill now has been about Rs. 0.85 crore. In addition, Bombay Port Trust has provided two numbers of 13.1 tonnes cranes at a cost of about Rs. 40.00 lakhs which will be used along with the equipments. It was envisaged that the equipments, when commissioned, would have the capacity of unload on an average 2880 MT per day as against daily average unloading of only 487 tonnes through manual labour.

Reasons for Delay in Commissioning and Details of Negotiations.

2. The Commissioning of the equipment is held up on account of non-settlement of terms and conditions for deployment of labour and sharing of benefits arising out of mechanisation with the labour leaders. Even the trial runs have not been possible. The negotiations with the labour union led by Shri S. R. Kulkarni were first held by the then Joint Secretary (Inputs), Deptt. of Agriculture during 1975. Based on the arrangement then in force for mechanised handling of foodgrains at Bombay Port, an agreement in principle was reached according to which it was decided that:

- (a) "there will be no retrenchment as a consequence of the mechanisation; and
- (b) certain incentives payment will be given to the labour consequent on the mechanisation."

The labour union representatives, however, did not sign the agreement at the last minute. During early, 1977, when the project was about to be ready, negotiations were resumed with the representatives of the two unions viz. S/Shri S. R. Kulkarni, Manohar Kotwal and Dr. Shanti Patel. These were conducted successively as under :

- (a) by Zonal Manager (West)/FCI and Joint Commissioner (Fert), Deptt. of Agriculture;

- (b) Joint Secretary (Inputs), Deptt. of Agri.;
- (c) A committee appointed by Government of India on 30th August, 1977 consisting of Commercial Manager, FCI, Dy. Chairman, Bombay Port Trust and Joint Commissioner (Fert) Department of Agriculture;
- (d) Chairman, Bombay Port Trust.

The negotiations did not succeed as by the time one issue was sorted out, the union representatives came out with some new demand. On account of the existence of more than one union, it became difficult to secure agreement simultaneously with them.

On 22-2-1979, the matter was discussed by the Minister (Agri. and Irrigation) with Labour Minister and Minister of State for Shipping. A committee of three Secretaries, viz., Secy. (A&RD), Secretary (Food) and Secretary (S&T) was constituted to hold further negotiations and arrive at an agreed settlement. This Committee met on 19-3-1979 and again on 31-3-1979. On 31-3-79 the Committee also met Shri S. R. Kulkarni. Based on these discussions, two alternative proposals are being worked out which will be posed to the labour unions for eliciting their response.

Points of Difference between Unions regarding Operation of the Plant

3. The main points of difference between the Unions and the Department of Agriculture/Bombay Port are as under :

- (a) The unions demand is that no category of labour should be displaced from the existing deployment irrespective of the fact whether the work existed. With the mechanisation, certain categories of employees will no longer be required; and when required, that will be in reduced number. The unions have been assured that there will be no retrenchment in the affected categories of workers. This assurance does not satisfy them;
- (b) The union representatives have also demanded that the piece rate wages of certain categories should be computed on the basis of machine out-put. This could not be agreed to as it meant a very wide disparity in the earnings among the same category of workers for similar job content; and
- (c) The unions also demand that speed-money should be paid to crane-drivers. This is not acceptable as speed money is not a legal payment.

Financial and Economic Loss due to non-operation of the Plant

4. As mentioned under para 3 above, the discharge capacity of the equipment per day is 2880 MT as against the average of only 487 tonnes manually. This would ensure that the ships will be released much quicker thereby minimising demurrage/maximising despatch. In addition, there will be the following benefits :

- (a) there will be less number of berths required for handling the same quantity of fertilisers. Considering the requirements of unloading capacity for fertilisers at Bombay Port, as many as 5.8 to 7.5 berths per day will be required only for handling of fertilisers. After the commissioning of the equipments, the requirement of number of berths will be reduced to 3 to 4;
- (b) there will be less shortage or slippage as a result of mechanising the unloading and bagging of fertilisers;
- (c) it would be possible to reduce congestion of ships at Bombay port to the extent the ships are released early by use of those equipments.

5. The actual quantification is, however, very difficult at this stage as even trial runs have not been possible.

APPENDIX II

(See Para 3.1)

Public Accounts Committee—Examination of Bombay Port.

SUBJECT:—*Project for construction of a Satellite Port at Nhava-Sheva*
—*Delay in sanction to.*

BACKGROUND:

The existing docks at Bombay, two of which were constructed in the first quarter of the nineteenth century and the third in the first quarter of the twentieth century, were designed to handle mainly conventional general cargo ships. Over the years, bigger and bigger ships are being built and the existing docks have not been able to cope with the changing needs of modern shipping. With the growing size of the ships, the effective number of berths in the Alexandra Dock (now named Indira Dock) have got reduced and the Prince's and Victoria Docks, due to their own limitations, have not been able to make any significant contribution in relieving the pressure on the Indira Dock.

U. N. Expert's view

In 1960, Government of India, through the United Nations Bureau of Technical Assistance Operations, requested Mr. F. Posthuma of Rotterdam Port to visit India and advise on the development of Bombay and Calcutta Ports. When he visited Bombay in 1960, he was given the following terms of reference:

“Government of India would like to seek Mr. Posthuma's advice on the modernisation scheme as a whole with special reference to:

1. the measures that will be necessary after the docks have been modernised, to maximise the movement capacity of the Alexandra Dock; and
2. the nature and extent of assistance required for shipping through a single Dock.”

“Advice was also required on two other problems, namely:

1. Protection to lock gates against swell; and
2. problems pertaining to re-sitting of the New Ferry Wharf.”

Dock Expansion Scheme:

The main feature of the modernisation scheme (now known as Dock Expansion Scheme) is the provision of a communication passage between Victoria Dock and Alexandra Dock (now Indira Dock). After obtaining Mr. Posthuma's advice, the contract for this work was awarded in 1964 at a cost of Rs. 10.70 crores and it was completed in 1971.

Conclusions and recommendations of Mr. Posthuma:

After a detailed study, Mr. Posthuma concluded that Bombay Port is vulnerable to congestion for the following reasons:

- (1) The productivity of labour reached its maximum in 1960 and it is very likely that in future it will remain stable on a somewhat lower level as has been explained in the Report.
- (2) The need for ship-repair berths will decrease the port capacity somewhat further.
- (3) The present shortage of deep draft berths will become a still more serious problem in the future.
- (4) The handling of the cargo is already mechanised to such an extent that further mechanisation will add little to the capacity of the port.

To remedy the situation, Mr. Posthuma made certain recommendations which included:

“making a study about a Master Plan for the efficient future development of the Port of Bombay.”

Master Plan for Bombay:

In 1967, a study for the preparation of a Master Plan for the Port of Bombay was commissioned. In 1970, M/s. Bertlin and Partners, Consulting Engineers to the Bombay Port Trust, prepared a Master Plan for Bombay Port. This Master Plan recommended:—

- (1) Construction of a Satellite Port to Bombay at Nhava-Sheva, on the eastern side of the existing harbour consisting of six berths in the first instance—five for handling bulk commodities (i) manganese ore (ii) fertiliser and fertilizer raw materials (iii) food-grains, oil cakes and sugar (iv) cement, clinker (v) salt and the sixth for handling containers.
- (2) Once the new dock at Nhava-Sheva is commissioned, the existing docks at Bombay would be required primarily to handle general cargo and should be improved to do this more efficiently.

In the Master Plan, the total cost of the Nhava-Sheva (excluding cost of dredging in the main channel) was estimated at Rs. 62.00 crores at 1967 prices.

Brief history of Nhava-Sheva Port Project:

In 1971, Bombay Port Trust sought Government's approval to the construction of a Satellite Port at Nhava-Sheva at an estimated cost of Rs. 51.74 crores. This proposal had already been included in the Fourth Five Year Plan. The scheme envisaged construction of three berths (one for fertiliser and fertiliser raw materials, one for sugar and oil cakes and one for containerised cargo) in place of six berths mentioned in the Master Plan. This was examined in the Ministry in consultation with the Planning Commission, Ministry of Finance, etc.

Working Groups of the Planning Commission:

In September 1973, Planning Commission appointed three Working Groups to consider the different aspects (coal traffic, fertiliser traffic and environmental aspects) of the scheme. The Working Groups were to submit their report within three months time. They, however, submitted their report in December, 1974, and it was finalised in August 1975. A.P.I.B. Note was also circulated in June 1975 seeking sanction for an estimated cost of Rs. 96.89 crores (at 1975 prices). This estimate was for construction of four berths including one additional berth for coal which did not feature in the earlier scheme of Bombay Port Trust. In this note, a traffic of 5.2 million tonnes of cargo per year was projected for Nhava-Sheva, out of which 2.6 million tonnes was coal. Details of the traffic projections made by different agencies for 1980 for Nhava-Sheva as given in this note are as under:

Commodity	Director (Transport Research) of the Ministry	Consult- ants to the Port. M/s. Bertlin & Partners	Working Group constituted by the Ministry	State Govt. of Mahara- shtra.	Working Groups constituted by the Plan- ning Com- mission
(In million tonnes)					
1	2	3	4	5	6
Foodgrains		1.50			
Finished Fertilizers and Fertilizer raw ma- terials.	3.97	4.23	1.84	4.07	1.2
Gvmsum . . .	..	..	..	1.00	..

1	2	3	4	5	6
Sugar	0.72	0.38	0.34	0.20	0.2
Oil Cake	2.28	1.00		0.50	0.5
Coal			2.50	4.00	2.5
Containers			0.67	0.67	0.7
TOTAL	6.07	7.11	5.35	10.44	5.2

However, it became evident that these projections especially those relating to coal which accounted for 50 per cent of the traffic projected by Planning Commission, would not materialise.

Withdrawal of proposal from PIB:

The matter was specifically considered at an inter-Ministerial meeting convened by the Financial Adviser to the Ministry on 7-9-1976. The representatives of the Planning Commission, Department of Expenditure and Plan Finance Division of the Department of Expenditure apart from officers of the Ministry of Shipping and Transport were present at this meeting. It was felt that the traffic projections on the basis of which the project has been justified have not yet been firmed up by the concerned Ministries/Undertakings. In these circumstances, it was decided at that meeting that the PIB Note should be remitted back to the Ministry of Shipping and Transport. A copy of the minutes of the meeting is at Annexure I.

Nhava-Sheva Port Project presently under consideration:

The more important aspects involved in the consideration of the Nhava-Sheva Port Project are as follows:

- (i) *Traffic:* Traffic estimates furnished by Bombay Port Trust in 1978 indicate that the Port will be required to handle 10.95 million tonnes of break-bulk dry cargo by 1982-83 which may go as high as 17.55 million tonnes in 1992-93. In addition to this, the Port is expected to handle about 11.46 million tonnes of POL and 0.3 million tonnes of vegetable oil from 1982-83 onwards. As Bombay Port is already saturated, additional Port Capacity will have to be created to handle this traffic. No coal traffic is, however, to be handled at Nhava-Sheva.

- (ii) *Project cost*: Updated cost estimate of the Project with three berths is Rs. 109.90 crores. This does not include a coal berth. A barge berth at Pir Pau which featured in the earlier estimate referred to P.I.B. has also been omitted since no coal traffic is now envisaged.
- (iii) *Losses due to congestion and berthing delays*: A study undertaken by the Transport Research Division of the Ministry in July 1978 showed that the number of vessels calling at the port had increased steadily in the last four years from 1916 in 1974-75 to 2426 in 1975-76, 3039 vessels in 1976-77 and 3162 vessels in 1977-78. The number of ship-days lost has also gone up from 5223 days in 1974-75 to 9347 days in 1977-78. The resulting direct losses (computed by detention days multiplied by standing charges per day) would total Rs. 79.71 crores from the year 1962-63 to the year 1977-78 (without discounting it for present value). At an annual interest rate of 10 per cent, the present value of the total dead losses upto 1977-78 computed upto 1977-78 end comes to Rs. 128.22 crores. These losses do not reflect the multifarious indirect losses sustained by various related organisations using the port and by the nation at large. For details please see Annexure II. (Not printed)
- (iv) *Constraint on improvement in existing Bombay Port*: As early as 1960, Mr. Posthuma (U.N. Expert) had observed that the handling of general cargo in Bombay "is already mechanised to such an extent that further mechanisation will add little to the capacity of the Port". Further mechanisation in the Bombay docks (which handle mainly general break-bulk cargo) can be only by way of containerisation which need atleast 30 acres of open area at each Container Berth. Existing docks do not have even one fourth of this requirement. More sophisticated Roll-on Roll-off ships need even bigger space. The port and the surrounding area is so highly congested that the cargo clearance from the docks and its movement outside by rail or by road is seriously hampered. Hence the possibility of improving the existing dock in Bombay Port is strictly limited.

In this behalf the Committee to study the problems of congestion at Bombay Port and to recommend diversion of traffic (Mehta Committee) has made the following observation:

"The system has no capacity at all to take the normal growth of traffic which may be expected at the port and in the country in general".

- (v) *Environmental aspect*: Environmental and social aspects of having an alternative growth centre to Bombay which is already heavily crowded will include matters like convenience to commuters, reduction in the congestion of traffic on Bombay roads, pollution and similar matters which are not amenable to precise quantification in economic terms.

Present status of the schemes:

In June 1978, at the instance of the Ministry of Shipping and Transport, a High-level Working Group was constituted in Planning Commission to examine the Nhava-Sheva proposals from all angles. The Working Group has not yet submitted its report but Planning Commission have agreed to provide Rs. 60 lakhs for preparation of a Detailed Project Report for Nhava-Sheva, Port Project. Necessary instructions have been issued to the Bombay Port Trust in the matter. An investment decision on the project can be taken only after the receipt of the Detailed Project Report which may be expected in about a year's time.

Ministry of Shipping and Transport

Finance Division.

SUBJECT: Minutes of the inter-ministerial meeting held at 3 P.M. on 7-9-1976 in Room No. 509, Transport Bhavan to consider the Note dated 5-6-1976 for P.I.B. on Nhava-Sheva.

Participants:

- (i) Shri A. B. Datar, F.A., Min. of S&T—*Chairman*
- (ii) Shri M. M. S. Srivastava, *Director Department of E.A., Ministry of Finance.*
- (iii) Shri V. K. Srinivasan, *Dy. Secretary, Plan Finance Division Ministry of Finance.*
- (iv) Smt M. Krishna, *Joint Director, P.A.D. Planning Commission.*
- (v) Shri M. Y. Rao, *Deputy Secretary, Min. of Shipping and Transport.*
- (vi) Shri S. Vasudev, *Under Secretary, Min of Shipping and Transport.*
- (vii) Shri S. P. Mahna, *Deputy Financial Adviser, Ministry of Shipping and Transport.*
- (viii) Shri D. R. Bansal, *Asstt. Financial Adviser, Ministry of Shipping and Transport.*

F.A. opened the discussions by saying that the PIB Note had been circulated over a year back. Planning Commission, Plan Finance and Department of E.A. had raised a number of points. The purpose of the meeting was to see if these could be clarified and the note placed before the P.I.B. early with the comments of all concerned.

At Smt. Krishna's request, Shri Rao clarified that in case the 4th Oil Berth at Butcher Island is not approved, the additional cost of dredging will be Rs. 260 lakhs. He also confirmed that no additional dredgers will be required other than what has been provided in the P.I.B. Note.

She stated that the sizeable investment has to be justified in terms of traffic requirements, quite apart from the possibility of saving demurrage payments. Out of a total traffic of 5.2 million tonnes assumed in the

Note to be handled at Nhava-Sheva, 2.6 million tonnes is accounted for by coal alone. Coal movement of this magnitude may not materialise as there seems to have been some rethinking on the use of coal in lieu of oil by the Tata Electricity Plants and there is no definite indication about the proposed super thermal power station at Bombay.

As regards fertilisers, Shri Srivastava stated that a decision has been taken to taper fertiliser imports and the expectation of handling 1.2 million tonnes of fertilizers-finished and raw materials seems doubtful. As regards sugar, Smt. Krishna intimated that S.T.C. are not confirming even the existing traffic.

It was, therefore, felt that the traffic projections on the basis of which the project has been justified has not been confirmed by the concerned Ministries/Undertakings. In this connection Shri Srinivasan referred to his suggestion made in his letter dated 21-8-1976 to convene an inter-ministerial meeting. Shri Rao pointed out that there is no need for such a meeting as the report of an inter-ministerial group which is looking into the pattern of oil production and imports is already under preparation. Shri Srinivasan still felt and the representatives of the P.A.D. and E.A.D. agreed with him, that all the traffic projections need to be firmed up in consultation with the Ministries concerned, and that the project is not justified as presently formulated. The representatives of the Ministry of Shipping and Transport conceded that things have undergone a change since June 1975 when the P.I.B. Note was floated. They also referred to their fear that the Bombay Port facilities will become obsolete in course of time, if not improved upon. All agreed that this alone cannot justify the proposal as the assumption that bigger vessels will be mostly employed in international and home trade, may not prove true. A point was also made that alternative port facilities created on the Western coast e.g. at Kandla, Mormugao can be utilised to the maximum extent possible thereby the pressure on the railway system around Bombay will not worsen.

In the circumstances it was decided that the P.I.B. Note be remitted back to the Administrative Ministry.

Appendix III

(See Para 5.2)

Ministry of Works and Housing (Directorate of Estates)

SUBJECT: Premises belonging to Major Port Authorities-Inclusion thereof within the definition of Public Premises under the public Premises (Eviction of Unauthorised Occupants) Act, 1971.

A proposal regarding inclusion of the premises of Major Port Authorities within the definition of public premises under the public premises (Eviction of Unauthorised Occupants) Act, 1971, was received from the Ministry of Shipping and Transport in May, 1971. The matter was examined and it was found that provisions similar to the Public Premises Act exist in the number of Port Trust Acts and in the Major Port Trusts Act, 1963 in regard to the eviction of unauthorised occupants from their premises. The said provisions were, however, limited to Port Trusts Employees, who were in unauthorised occupation of such premises. The inclusion of such premises within the definition of the Public Premises under the Public Premises Act would result in existence of two forums, one under the Port Trusts Act and the other under the Public Premises Act. It was feared that making provisions under the Public Premises Act would be struck down by the courts in view of the decision of Northern India Caterers Private Limited Vs the State of Punjab (AIR 1967, Supreme Court 1581) and Hukam Chand Vs. S.D. Arya (Delhi High Court). The Ministry of Shipping and Transport were accordingly informed and also advised that the appropriate course would be to amend the relevant Port Trusts Acts as well as the Major Port Trust Act so as to bring them in line with the relevant provisions about the unauthorised occupants and recovery of rent/damages as contained under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

2. The Ministry of Shipping and Transport again referred the matter in March, 1973 to this Ministry, proposing that the properties of Port Trusts be included within the definition of Public Premises under the Public Premises Act. According to opinion of Law Ministry obtained by the Ministry of Shipping and Transport, the Port Trusts Authorities could be empowered to evict unauthorised occupants in a similar manner as provided in the Public Premises Act, 1971. They also stated that if and when the Public Premises Act of 1971 is amended the said Ministry would take necessary steps to delete the relevant provisions regarding eviction of unauthorised occupants in the respective Port Trusts Acts. The

matter was examined and it was decided that before going for legislation, this Ministry should obtain views of the other Ministries/Departments of the Central Government including Corporations, Companies etc. under their administrative control regarding the difficulties/bottlenecks experienced by them in the implementation of the various provisions of the Public Premises Act, 1971. It was done to avoid piece-meal legislations.

3. An O.M. was addressed on 2 May, 1973 to all Ministries/Departments of the Government who were asked to obtain the views of their attached/subordinate offices and undertakings. Only by the end of June, 1975, the relevant information could be furnished by all the concerned Ministries/Departments. The information received from them was voluminous and contained proposals for amending, practically, all the Sections of the Act.

4. Before we could embark upon the voluminous task of screening the various proposals received from the different Departments of the Government, a fresh proposal from the Lok Sabha Secretariat was received in August, 1974. This proposal was related to empowering gazetted officers of Lok Sabha Secretariat with the powers of the Estate Officer under the P.P. Act for properties belonging to the Lok Sabha Secretariat. It was decided at the level of Secretary in April 1975 that the P.P. Act be amended to give effect to the proposal of the Lok Sabha Secretariat. Accordingly a note for the Cabinet was sent after due deliberations with the Law Ministry on 10 October, 1975 which was finally approved by the Cabinet in their meeting held on 4 November, 1975. Thereafter, the Ministry of Law was requested to prepare a draft Bill as this Ministry wanted to introduce it in Rajya Sabha on 15-3-1976.

5. The problem of squatting as well as temporary encroachments on public premises/Government lands had attained enormous proportions and reached an alarming stage. As the existing provisions of the P.P. Act took about three to four months for removal of such unauthorised constructions, encroachments, squatters etc. it was decided that the period should be curtailed to the minimum and for that certain proposals were formulated.

6. After consulting the Law Ministry these proposals were finalised and sent to the Cabinet for approval and it was also decided at that time that the other proposals for amending the P.P. Act need not be linked with them. The Cabinet finally approved these proposals on 26.2.1976.

7. Thereafter, Law Ministry prepared a tentative draft bill in May, 1976 raising certain points for clarification. The points raised by the Law Ministry were clarified and they finalised the draft amendment bill regarding the two proposals referred to in paras 4 to 6 above for which

sanction of the Cabinet had already been obtained on 4.11.75 and 26.2.1976. So the proposal regarding Major Port Trust etc. was not included in the said draft bill. The Public Premises (Eviction of Unauthorised Occupants) Amendment Bill, 1976 was introduced in the Rajya Sabha on 24.8.1976.

8. Meanwhile, various suggestions received from the Ministry/Departments were processed and the following proposals including the inclusion of the premises of Major Port Authorities within the definition of Public Premises were formulated:

- (a) To include the premises belonging to statutory and autonomous bodies namely, Bhakhra Management Board, Universities, Houses of Parliament, U.P.S.C., Major Port Trusts etc. within the definition of Public Premises in Section 2 (e) of the Act.
- (b) Provision for charging interest on arrears.
- (c) To confer the power of appointment of 'Estate Officer' on the heads of such statutory or autonomous bodies including the Corporations and Government Companies.
- (d) To empower the 'Estate Officer' to dispose of perishable goods where the premises were sealed.
- (e) To make provisions in the Act by which any person against whom proceeding for recovery of rent/damages were initiated, to deposit the dues that might become due or to furnish a guarantee or security for the same to the 'Estate Officer.'
- (f) To empower the 'Estate Officer' to attach the property before the payment order is made.
- (g) Offence under Section 11 of the Act be made cognizable.

9. These proposals were referred to Law Ministry on 2-3-1976. In the proposals mentioned at (a) above, their advise was also sought as to how the premises of Steel Plants which had become subsidiary companies of the Steel Authority of India Limited could also be covered under the definition of Public Premises. The Law Ministry advised that this could be done provided the administrative Ministry would consider to suitably amending the provisions contained in Section 2(e)(1) (i) of the Act. Regarding the proposal at (b) above, it was advised that suitable provisions could be made in the lease/licence deed and in the allotment rules, providing for liability to pay interest on arrears. The Ministry of Law did not consider the proposal at (e) (f) and (g) above feasible. The matter was further examined in the light of the advice of the Law Ministry and they were requested to reconsider their views regarding (e),

(f) and (g) above. The Law Ministry however, agreed only regarding the proposals at (e) above in May, 1976.

10. Thereafter, a note for the Cabinet indicating the proposed amendments to the Act for removing difficulties and deficiencies experienced by the different Departments of Government in the working of the P.P. Act was prepared and sent to the Ministry of Law for concurrence on 31st July 1976. The Law Ministry sought some clarifications and returned the file to this Ministry on 20.9.1976. The clarifications sought for by the Ministry of Law were examined and the file was returned to them on 22.11.1976. The file was returned by the Law Ministry on 3.2.1977 after recording their advice. It was also pointed out by the Law Ministry that the Bill earlier introduced in the Rajya Sabha (referred to in para 7 above) also contained similar provisions and the same could be withdrawn and a consolidated bill, incorporating the amendments under consideration could be introduced in due course. In consideration of Law Ministry's advice and with the approval of the Cabinet, the bill was withdrawn on 22.7.1977 from the Rajya Sabha.

11. Thereafter, consolidated proposals, including the proposals already approved by the Cabinet, were redrafted and a note for the Cabinet was prepared accordingly and sent to the Law Ministry on 27.3.1978. In this note the proposal to amend section 11 for making a provision to make squatting on public land and premises a cognizable offence was dropped. The file was withdrawn from the Ministry of Law on 2 May, 1978 as the Ministry of Home Affairs desired that the provision for squatting on public land be made a cognizable offence. The Ministry of Home Affairs further informed that they had set up a study Group for this purpose. In a meeting held under the Chairmanship of the Prime Minister on 16.9.1978 to discuss the question of encroachment on public land, it was decided that the offence of encroachment on public lands and premises could be made cognizable in the manner suggested in the report of the Study Group. It was also decided that an Ordinance might issue for this purpose.

12. To implement the above decision, i.e. to make encroachments on public land a cognizable offence, it was necessary to amend the Delhi Development Act, 1957, Delhi Municipal Corporation Act, 1957 and Punjab Municipal Act, 1911 as extended to Delhi and also the Public Premises (Eviction of Unauthorised Occupants) Act 1971. Since the Punjab Municipal Act is being administered by the Home Ministry, it was felt that the proposals of amendment have to be also co-ordinated with the Ministry of Home Affairs. To give effect to these proposals, the Delhi Administration was requested to suggest specific amendments to the various sections of the Public Premises (Eviction of Unauthorised Occupants) Act 1971 and other Acts. A separate note for the Cabinet

was made and sent to the Ministry of Law and Ministry of Home Affairs for concurrence on 23 December, 1978. Subsequently, on 7 March, 1979, a consolidated proposal was sent to the Ministry of Law, incorporating amendments to Public Premises (Eviction of Unauthorised Occupants) Act, 1971 to cover premises belonging to autonomous as well as statutory corporations within the definition of 'public premises' to curtail the period of finalising the proceedings and appointment of gazetted officers of the Houses of Parliament and also officers of equivalent rank of gazetted officers of the Central Government, statutory corporation and autonomous bodies, as Estate Officers under the P. P. Act. This note was also withdrawn on 13.3.79 in view of the current Public Accounts Committee meeting.

Appendix IV

(See Para 7.76)

IN THE BOMBAY CITY CIVIL COURT AT BOMBAY

S. C. SUIT No. 9654 of 1973

Coram : His honour judge Guttal.

31st January, 1974.

Shivmangal L. Jaiswal, an Inhabitant of Bombay Sole Proprietor of S. L. Jaiswal & Co., residing and carrying on business at Magazine Street, Darukhana, Bombay 10.....Plaintiff

VERSUS

The Trustees of Port of Bombay, a body corporate under the Provisions of Bombay Port Trust Act, and having its office at Ballard Pier, Bombay-1.....Defendants.

The Plaintiff by his Notice of Motion herein dated the 7th day of December 1973 taken out against the Defendants above named prays as follows:—

- (a) That pending hearing and final disposals of the suit, the Defendants by themselves and /or through their servants and agents representatives or labourers or workmen or any other person claiming or acting through the defendants be restrained by an order and injunction of this Honourable Court from removing in any manner whatsoever any of the articles things and goods from the said plot of land described in prayer (a) of the Plaint and/or from dispossessing the plaintiff from the said plot of land or any portion thereof in any manner whatsoever except by the due process of law and not without the due process of law;**
- (b) that ad-interim injunction in terms of prayers (a) be granted pending the hearing and final disposal of this Notice of Motion forthwith;**
- (c) that the defendants be decreed and ordered to pay to the plaintiff the costs of this notice of Motion;**
- (d) and such further and other reliefs be granted.**

This Court on 31st day of January 1974 after hearing Mr. Morje Advocate for Plaintiff in support of the said Notice of Motion and Mr. George Advocate for Defendants who shows cause against the same has

passed the following order:

P.C. Application for adjournment made on behalf of the defendants is rejected. I have made it plain in the past that the adjournment to accommodate senior Counsel cannot be granted. Those who have filed appearance are bound to go on with the matter. The Attorneys for defendants who have filed the appearance are bound to engage counsel who can go on with the matter.

Mr. George however argued the matter after I rejected his application for adjournment. I heard both Mr. Morje and Mr. George. In view of the affidavit in reply, there is no dispute that the Plaintiff was permitted to use strip of land admeasuring 120 sq. metres for the purpose of storing material like timber and iron. Besides the plaintiff has shown to me a certificate from the corporation in respect of Registration of his ship under shop and establishment Act. There are certain receipts showing payment of the charges to the Bombay Port Trust. They also establish the present user by the Plaintiff of the piece of land which is open. This therefore constitutes evidence of the Plaintiff's occupation of the piece of land. In my opinion the defendants are not entitled, to dispossess the plaintiff of the open plot of land without resorting to the process of law.

But the defendants contend that they are entitled under the provisions of the Bombay Port Trust Act and the bye-laws to remove the goods of the plaintiff from the open plot of land belonging to them. This appears to be so. If the storage of the goods is without the permission of defendants. Defendants may remove them in exercise of the powers under the Bombay Port Trust Act. It is also open to them not to permit the user of the piece of land for the purpose after such removal of the goods. The injunction which I propose to grant will not apply to these acts by the defendants in respect of the piece of land. Subject to the Plaintiff's Notice of Motion dated 7-12-73 at serial No. 5224 is made absolute. Costs will be costs in the suit.

Appendix V

(See Para 7.76)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY APPELLATE SIDE

APPEAL FROM ORDER NO. 76 OF 1974

(with C.A. Nos. 553 of 1974 with 26 of 1975)

**Shivmangal L. Jaiswal
(Original Defendants)**

.....Appellant

VERSUS

**The Trustees of the Port
of Bombay
(Original Defendants)**

.....Respondents

Appeal from Order against the decision of Guttal Esquire, Judge City Civil Court, Bombay dated 31-1-1974 in S.C. Suit No. 9654 of 1973. Mr. B. S. Shetty with Mr. A. C. Revankar, Advocates for the Appellant Mr. C. N. Daji with M/s. Mulla & Mulla & Craige Blunt & Caroe, Attorneys for the Respondents.

NOTE: "The numbers of the paragraphs of this Judgement do not form part of this judgement, but have been given for convenience of reference of the office of the High Court."

CORAM: DESAI J

21st October, 1975

ORAL JUDGEMENT

The Appellant before me is the plaintiff in Suit No. 54 of 1973 filed in the Bombay City Civil Court. The appeal is against a portion of the order dated 2nd February 1974 made on the plaintiffs Notice of Motion. Under the impugned order, it was observed by the Learned Judge in view of the Affidavit in reply, plaintiff was in permissive occupation of the strip of land admeasuring 12 square metres and that in respect of this land, the defendants, who were the Bombay Port Trust were not entitled to dispossess the plaintiff without resorting to process of law.

The observations made in the last para of the said order are the observations against which the plaintiff has come in this Appeal. The

plaintiffs grievances against the said observations are well founded. The said observations are vague and would make the operative part of the order meaningless. All that the defendants had sought to contend in the Affidavit in reply was that they were entitled to resort to and act under the powers given to the defendants under general Bye-Law No. 9. Now the general Bye-law No. 9 gives power to the Docks Manager or Estate Manager of the defendants to take action for clearing roads thoroughfares or pathways in the Port Trust estate and for removing obstruction which may be caused in the manner indicated in the said bye-law. There is no clear averment in the Affidavit in reply nor any finding given by the trial Court that this strip of land, which is the subject matter of the dispute, constitutes any road, thoroughfare or pathway within the Port Trust Estate. In the absence of such averment or finding, it is difficult to up-hold the observations made in the said para. The clarification with respect, merely confuses the order given and would permit the defendants to act in any manner as they choose.

3. In the result the Appeal must be allowed and the impugned order set aside and replaced by an order simplicitor restraining the defendants from dispossessing the plaintiff from the suit strip of land or interfering with the plaintiff's possession thereof except by due process of law. The Respondent will pay to the Appellant the costs of this Appeal.

4. In view of this Civil Application does not survive and there will be no order thereon as to costs thereof.

Appendix VI

CONCLUSIONS AND RECOMMENDATIONS

S. No.	Para No.	Ministry of Department	Conclusion and or recommendation
1	2	3	4
1	2-35	Shipping & Transport	<p>It is seen that the number of ship days lost, i.e. days for which ships had to wait for berth in the docks at Bombay was 2882 in 1975-76, 1907 in 1976-77 and 9731 in 1977-78. This is a very alarming situation particularly the one during the year 1977-78. The number of days for which a ship had to wait for berth was upto 30 days for fertiliser cargo and 35 days for general cargo in the year 1977-78. The average detention of a ship was as much as 6.92 days for fertiliser cargo and 4.43 days for general cargo. The Committee are of the view that the Government and the Port Administration should not have allowed such a situation to arise. The Committee strongly feel that with proper coordination with the shipowners, charterers, as also Government departments handling bulk cargo, by fixing proper priority in the matter of allotment of berths and by having an efficient system of handling loading and unloading operations in the docks much of the ship days lost could have been avoided. The Committee would like the Government and the Port Trust authorities to seriously address themselves to this matter and make concerted and coordinated effort to improve the present system so as to reduce ship delays to the minimum and save considerable loss to national economy.</p>

One of the factors which has led to increase in congestion in the Bombay Port is the low productivity of labour. It is seen that the average output per man-hour has decreased from 0.82 in 1977 to 0.66 in 1978 in respect of Port labour; from 1.32 in 1977 to 1.07 in 1978 in respect of general cargo; and from 1.83 in 1977 to 1.39 in 1978 in respect of dry bulk cargo. (All figures are for the months January to August). Another criterion for judging the productivity is service time per 1000 tonnes of cargo. In this respect, it is seen that the average service time per 1000 tonnes of cargo (total time at berth) increased from 65.95 hours in 1977 (January-August) to 74.64 hours in 1978 (January-August) in respect of general cargo. In respect of dry bulk cargo, the corresponding figures were 31.81 hours in 1977 (January-August) and 35.45 hours in 1978 (January-August). The Committee are perturbed at the steadily deteriorating productivity trend of labour in the Bombay Port. From the evidence given by the non-officials, the Committee gather the impression that there is some slackness among the labour force in reporting for work or starting work in time. The Committee are of the view that with better management and labour relations, the productivity of labour can be increased.

It was reported by non-official witnesses who gave evidence before the Committee, that often the cargo handling equipment, such as cranes, forklifts etc. were not in working order and this affected the operations in the docks. Also, some equipments were out-dated. The cranes in the Prince's and Victoria docks were stated to be nearly 80-year old. The Committee would like the Government and Port Trust Authorities to go into the question of modernisation of the equipment so that clearance of cargo is not adversely affected by these factors.

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1	2	3	4
4	2.38	Shipping & Transport	<p>The Committee have learnt that the practice of leaving cargo in the custody of the Port Trust is very common. It has often been noticed that the customers leave the cargo in the transit sheds of the Port Trust and prefer to pay demurrage because they do not themselves have arrangements for keeping such cargo in warehouses and the present arrangement is found by them to be cheaper. This is evidently a very unsatisfactory state of affairs. The Committee are of the view that the customers should not be enabled to take undue advantage of the present arrangement at the cost of the Port Trust and add to the problem of congestion in the transit sheds. Government should therefore examine whether the present rate of demurrage charges should be enhanced so as to act as deterrent to the owners of cargo from resorting to such practices.</p>
5	2.39	-do-	<p>It has also been reported that customs clearance at the Port takes unduly long time resulting in not only congestion in the transit sheds of the Port but also causing considerable inconvenience to the clients besides involving payment of demurrage by the clients for no fault of theirs. The committee consider that a suitable method should be urgently evolved in consultation with the customs authorities so that no undue delay is caused clearance of cargo.</p>
6	2.40	-do-	<p>The Committee find that the number of uncleared/unclaimed goods remaining after sale was 2,29,285 at the end of 1976-77 and this had increased to 4,00,833 at the end of 1977-78. The Committee are greatly perturbed at this heavy accumulation of uncleared packages in the Port Trust premises. The Committee would like the Port Trust authorities to</p>

make all out efforts to clear these heavy accumulations. If considered necessary, the procedures relating to sale of unclaimed goods should be simplified.

An inter-ministerial meeting was held on 24-3-1979 to discuss the recommendations of the Committee (Mehta Committee) to study the problems of Bombay Port congestion to divert some quantities of bulk cargo from Bombay to other ports. At this meeting certain arrangements were envisaged whereunder some quantities of finished fertilisers, fertiliser raw materials, edible oils, imported cement, foodgrains and steel would be diverted from Bombay to other ports. The Committee are of the opinion that the problem of congestion at the Bombay Port is not a new development and the question of diversion of bulk cargo, especially that on Government account, should have been thought of long back. It seems to the Committee that until recently no coordinated effort involving the concerned Ministries and Departments of the Government was made and matters were allowed to drift. The Committee would like to be informed how far the decisions taken in this regard have been implemented.

The Committee find that the question of having a satellite port at Nhava-Sheva was initiated in 1966. In September, 1973 three Working Groups of the Planning Commission were appointed to consider different aspects of the scheme relating to development of port facilities at Nhava-Sheva and other related matters. The Working Groups submitted their reports in December, 1974, i.e. after about 15 months. Different estimates were furnished by the Working Groups of the Planning Commission, other agencies of the Government, Consultants appointed by the Port Trust, and the State Government. Another Working Group has been appointed in the Planning Commission in June 1978 for making

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a detailed appraisal of the Nhava-Sheva Scheme. The Committee are surprised at the appointment of one working group after another within a short period to study the same matter. This has delayed taking a decision. As the matter has been pending for quite some time, the Committee would like this matter to be processed expeditiously and arrive at a final decision.

The Committee find that the Planning Commission has, in January, 1979 given its clearance for the preparation of a detailed project report for the development of port facilities at Nhava-Sheva. A provision of Rs. 60 lakhs has been agreed to for the preparation of the Detailed Project Report. However, the project itself has not yet been cleared by the Planning Commission. The Committee are of the view that the decision to go ahead with the preparation of the Detailed Project Report at a cost of Rs. 60 lakhs even before the project is cleared is not correct inasmuch as this expenditure would become infructuous if later the project is not sanctioned. The proper course would be to carry out preliminary study taking into consideration the facilities already available at the Bombay Port and those required for handling the traffic more efficiently. Also, traffic projections for Bombay Port as also other Major Ports in the country should be made in an integrated manner. If all these justify development of port facilities at Nhava-Sheva, then only the costly venture of preparing a detailed project report should be attempted.

The Committee find that the financial results of the working of the Bombay Port. Railway have, except for one or two years shown large

deficits for more than last 25 years. The Public Accounts Committee in their 113th Report (4th Lok Sabha) had adversely commented upon deficits in the years 1965-66, 1966-67 and 1967-68 which amounted to Rs. 72.58 lakhs, Rs. 85.79 lakhs and Rs. 95.09 lakhs respectively, if certain notional credits taken in the accounts by the Port Trust on account of oil traffic, Dock wharfage and revenues derived from railway-served plots are excluded. At present the Committee find that the loss during the year 1977-78 was Rs. 173.31 lakhs as compared to Rs. 105.42 lakhs in 1976-77.

The Committee are unhappy to find that though the Port Railway was carrying surplus staff for the past 10 years and even more, to the extent of about 600 out of a total staff strength of less than 2000, the Port Trust Administration has not succeeded in absorbing such surplus staff against vacancies which arose during this period. The reason given is that this is due to the resistance from the Port Railway employees. The Committee would like the Port Trust to analyse the causes and bring about improvements in the working of the Port Railway. As regards absorbing surplus staff against future vacancies, the Committee see no rationale for not doing so and would like the Government to re-examine the matter with a view to take a firm decision.

The Committee have been informed that difficulties were experienced by the Port Trust in evicting tenants or lease holders, if they did not accept revised rates or if there was breach of the terms and conditions of the tenancies or leases. In a note furnished to the Committee in March, 1979, the Ministry of Works and Housing had stated that "A proposal regarding inclusion of the premises of Major Port Authorities within the definition

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of Public Premises under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 was received from the Ministry of Shipping and Transport in May 1971". When the Committee discussed the matter during evidence on 6-4-1979 the representative of the Ministry of Works and Housing stated: "As I mentioned earlier, the original reference came in 1971. That was actually wrong. I find from the note that it was from June, 1967 that the Ministry of Shipping and Transport had made an initial reference to the Ministry requesting that the lands and properties belonging to the various port authorities of the major ports be included in the definition of Public Premises Act". The Committee regret to note that the Ministry of Works and Housing furnished wrong information about the year in which reference on this matter was initially made by the Ministry of Shipping and Transport. The Committee would like the Ministry to fix responsibility for this mistake and take suitable action.

Initial reference from the Ministry of Shipping and Transport was made to the Ministry of Works and Housing in June, 1967. Although the Public Premises (Eviction) Act was amended in 1968 and a new Act was also enacted in 1971 and the Ministry of Law had advised as early as 1968 that the proposal of the Ministry of Shipping and Transport to include port trust lands and properties within the definition of public premises, should be kept in view, the Ministry of Works and Housing did not care to bring up the proposal during this period of about four years. This is most regrettable. The Committee would like to be informed why the Ministry of Works and Housing did not consider the proposal during this period and also fix responsibility.

The Committee find that in May 1971 the Ministry of Shipping and Transport again approached the Ministry of Works and Housing requesting that the Port Trust premises be included in the definition of public premises in the Public Premises (Eviction) Act. The Ministry of Shipping and Transport also sent several reminders during 1971 and 1972 but the Ministry of Works and Housing did not acknowledge any of these communications nor did they send any reply to the Ministry of Shipping and Transport. The Committee deplore this inaction on the part of the Ministry of Works and Housing and would like to be informed why the Ministry of Works and Housing did not observe the basic office procedure of acknowledging and sending replies to communication received in the Ministry.

It seems that after a lapse of 6 years from 1967, the Ministry of Works and Housing woke up in May 1973 and instead of considering the proposal of the Ministry of Shipping and Transport, sent an office Memorandum to all the Ministries asking for their views regarding the difficulties experienced by them in the implementation of the Public Premises (Eviction of Unauthorised Occupants) Act 1971. Reminders were also sent in April and September 1974 to Ministries which had not sent their replies. In February 1976, certain proposals for amendment of the above Act were referred to the Ministry of Law. One of the proposals was to amend this Act to cover the premises belonging to autonomous bodies and statutory corporations within the definition of Public Premises. Correspondence on these proposals is still going on between the Ministry of Work and Housing and the Ministry of Law. The Committee are perturbed at the delay that has taken place in finalising this matter. After fasting 6 years from 1967 to 1973 by doing nothing in the matter, the Ministry of Works and Housing started a roving enquiry asking all the Ministries to inform whether

they had experienced any difficulties in the implementation of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The reason given during evidence for making such a reference was that it was done to avoid piecemeal legislation to amend the Act. It is significant to note in this connection that piece-meal legislation for the same had, infact, been brought forward in respect of some other Ministries and Departments. The Committee see no reason as to why in this case it has taken almost six years from 1973 to get replies from the Ministries and complete consultations with the Ministry of Law and other concerned Ministries. The matter has been under correspondence with the Ministry of Law etc. and a draft of the note for the Cabinet which was prepared in July 1976 has not yet been finalised for placing before the Cabinet for one reason or another. It is highly regrettable that a proposal initiated in 1967 has remained pending for 12 years and is still not finalised. The Committee desire that a probe should be conducted into this case of inordinate delay which has caused loss of several lakhs of rupees to Bombay Port Trust.

The Committee desire that at least now the Ministry of Works and Housing should speed up the proposals and bring forward necessary legislative measures without further loss of time.

15 · 6·5 Shipping & Transport

The Committee note that there are heavy outstandings against certain departments under the Ministry of Defence and also against some Government Undertakings. The outstandings against the Ministry of Defence as on 30 September, 1978 alone were over Rs. 76 lakhs. Though the matter had been neglected for a very long time, the Committee appreciate

the recent steps initiated by the Ministry of Shipping and Transport to have these outstanding settled through arbitration. The Committee expect that now expeditious steps would be taken in the arbitration proceedings and the Committee apprised of the outcome thereof.

The Committee are disturbed to observe that as on 30.9.78 the outstandings against private parties amounted to Rs. 259.28 lakhs. Asked to state the action taken to realise the outstandings, the Port Trust have offered only vague remarks like, "legal actions being taken", matter is being examined", "suits are being filed" etc. The Committee were not satisfied with these vague and evasive replies and decided to go further into the details of some of these cases to ascertain what the real position was. The Committee have in the later part of this Report made their observations and recommendations on a few selected cases examined by them. At this stage, the Committee cannot but deprecate the tendency on the part of the Bombay Port Trust authorities to furnish vague replies as mentioned above to the Committee. They expect that in future the Port Trust would ensure that in such cases the replies furnished to the Committee are clear and complete.

The Committee note that M/s. Western India Oil Distributing Co. Ltd. were allotted a plot of land in the Bomay Port Trust Estate on a 50 year lease commencing from 27.4.1932. On 25.2.1975, the Port Trust authorities observed that there was sub-letting by the firm without prior permission, which constituted breach of lease terms. In the circumstances fresh negotiations commenced for novation of the lease agreement. On 19.8.1975, the Port Trust authorities offered to the firm the revised terms and conditions, including payment of additional rent and a penalty. The

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firm disputed the payment of additional rent and on a Notice dated 15.3.1976 was served on the firm calling upon them to clear the arrears as also to remove the subletting. Even after this, the Port Trust authorities accepted there payments, i.e. Rs. 1.25 lakhs on 2-4-1976, Rs. 1.00 lakhs on 14-7-1977 and Rs. 2.00 lakh on 1-8-1978. Besides, the Port Trust have been accepting the rent at the rate the old lease of Rs. 1875/- per mensem regularly. As regards the advisability of accepting "compensation" in lieu of rent after expiry of notice served on a party, the Port Trust authorities have placed reliance on an advice given by M/s. Mula & Mulla and Craigie and Caroe Port Trust Solicitors in 1955 that the Port Trust should not accept any amount offered as rent after the expiry of the notice to quit and unless the tenant agrees in writing to pay the same as "compensation" for use and occupation. It is significant that the Port Trust authorities unilaterally decided that the money they were accepting was as compensation and there is no evidence that the tenant anywhere agreed in writing to that effect. Further in the instant case of M/s. Western India Oil Distribution Co. Ltd., M/s. Patel & Cama, Port Trust Advocates have opined that : (1) No amount should be accepted towards rent or compensation between the date of forfeiture and the date of declaration of plaintiffs; and (2) there is no objection to accept the payment if tendered as rent/compensation in the pending suit cases. During evidence, the Legal Adviser of the Bombay Port Trust stated that the issue was controversial and different High Courts had different views. The Committee would suggest that besides the legal steps already being taken in this particular case, the matter relating to accep-

tance of compensation may also be got fully examined, in consultation with the Ministry of Law.

The Committee note that the Estate Manager failed to inform the legal Adviser about the amount of Rs. 50,000/- accepted by the Port Trust as deposit while the eviction notice was pending. As the Legal Adviser and the Port Trust Advocates were processing the case for filing a suit, the Committee see no reason why this very material information regarding acceptance of Rs. 50,000/- as deposit by the Port Trust authorities was not communicated to the Legal Adviser at the time of informing him about receipt of Rs. 75,000/- as 'compensation'. This omission on the part of the Estate Department is deplorable.

In this connection the Committee also perused the Rent Register showing the rent deposited by the party and also the rent outstanding. It was noticed that separate entries were not made in the registers showing clearly the amount received as rent, compensation etc. The inescapable conclusion is that no proper check has been exercised at any level in the Estate Department for the proper maintenance of Rent Registers. The Committee would like that responsibility be fixed for these serious lapses.

The Port Trust Advocates dealing with this case have advised that there was no provision in the lease document for revision of rent. Hence a suit for recovery of rent or rejection was not likely to succeed. The Advocates have advised settlement with the party. On the other hand, the Port Trusts case is that there was sub-letting in the plot of land under occupation of the party and therefore it was a breach of lease terms which

could entitle the Port Trust authorities to charge additional rent and to impose penalty. The arrears due from the party up to 28.2.79 have amounted to Rs. 7.83 lakhs. So far, no suit has been filed in this case. As the dispute has been pending for about four years, the Committee would like the Port Trust authorities to have the matter finalised without further delay.

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Shipping & Transport

21 7'36

The Committee note that lease in respect of the plot of land assigned in favour of M/s. Vegetable Vitamin Foods Co. (Pvt.) Ltd., expired on 16-8-1976. It is regrettable that no action was taken by the Port Trust authorities for renewal or termination of the lease before the date of the expiry of the lease.

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Although a belated action was initiated on 13-9-1976, i.e. after the expiry of the lease, by sending the proposal for renewal of the lease to the Secretary, Bombay Port Trust, the Board of Trustees sanctioned the proposal on 11-10-1977, i.e. 14 months after the lease had expired and the party was still continuing to be there. The committee deprecate this inordinate delay in taking a decision on this proposal especially when it was known that the lease had expired and the lease that could be done at that stage was to take an immediate decision.

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The matter did not end at that. Even after the Board sanctioned the proposal on 11.10.1977, the Estate Department proceeded leisurely and took another 4 months in communicating the revised terms and conditions to the lessee. This is highly regrettable.

The Committee are informed that the lessee has represented to the Board of Trustees for reduction in the proposed rent but the Board has not taken a decision as yet. It is understood that the claim of the Port Trust will get time-barred from August, 1979.

The Committee are informed that on 22.3.1979, the Estate Department has sent the papers to the Legal Department for drafting notice to quit. It is significant that the urgency of the matter was felt by the Port Trust only after the Committee took note of these case and asked for further information before calling the officials of the Port Trust to give evidence.

The Committee would like an enquiry to be made as to why the question of renewal of lease in this case was not initiated in time, and what steps were taken from August, 1976 onwards to expedite the case. Also, suitable action should be taken against the persons responsible for the delay.

During evidence taken by the Committee on 17.3.1979, the Estate Manager, Bombay Port Trust had informed the Committee that in the standard lease form used in the office of the Bombay Port Trust, no mention was made about the period after which action can be initiated in the case of default. Even when the Committee pointed out that the lease documents contain a specific period (usually expressed in months) in the clause relating to right of re-entry, the Estate Manager insisted that "Specific months are not given; the period is not given". Later, on 27.3.1979 a letter of regret was received from the Estate Manager through the Ministry of Shipping and Transport saying: "As the documents were not readily

available, the above information was given from memory only and which on going through the office documents is found to be incorrect for which I am sorry. I have, therefore, to request that I may kindly be excused for the above inadvertence on my part". The Secretary of Ministry of Shipping and Transport conceded in evidence that the wrong information given by the Estate Manager could not be treated as an inadvertent mistake.

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Shipping Transport

The Committee need hardly emphasise the necessity of supplying correct information to the Committee either through written replies or during evidence tendered before them. In the instant case, the Committee have come to the inescapable conclusion that the Estate Manager had not cared to study the basic provisions of the standard lease forms in use in the Estate Department of which he was in-charge and we expected to be conversant with in his day-to-day work. The Committee deplore the most careless manner in which this officer was dealing with the questions put by this Committee and the Committee expect that the Ministry of Shipping and Transport would take serious note of it.

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M/s. Chheda Private Ltd. were allotted a piece of land in Port Trust estates on casual occupation basis for a period of 15 days, under letter dated 13.12.1974 issued by the Bombay Port Trust to the party. Along with this letter, a prescribed form, i.e. Certificate of Occupation, was enclosed. The party was required to return this form duly signed, showing the area occupied by it, date of occupation and giving the prescribed under-

takings. The Port Trust authorities allowed the party to occupy the land allotted to it without insisting on the furnishing of the Certificate of Occupation. The Chairman, Bombay Port Trust conceded during evidence that in the absence of this certificate, "we will not have the necessary weapon in our hands as we ought to have, and from what has happened it appears that there has been no insistence that this is complied and the record is maintained up-to-date before the person is put in possession of these lands". The Committee regret to reserve that the matter was dealt with by the Port Trust authorities in a most casual manner and no care was taken to observe the procedure in this regard, which later led to unauthorised occupation of the land by the party and non-payment of the rent after ever since February 1975.

In the letter of permission issued by the Port Trust authorities on 13.12.1974, it was made clear that permission was granted for temporary use of the land and the party was liable to be evicted at any time after 24 hours' notice. Although permission for occupation of land on and from 25.1.1975 was not granted and the party had not vacated the land and had also defaulted in payment of rent, the Port Trust authorities did not take any action for well over 10 months and it was only in December, 1975 that action was initiated to serve notice on the party. The notice was actually served in April 1976, i.e. after a further delay of 4 months. In July, 1976, action was initiated to file a suit for eviction and recovery of arrears but the suit could not be filed for a long time as the Port Trust Advocate felt that there was no proper contract concluded with the party and it would not be possible to recover the rent at the revised rate without

the prior acceptance by the unauthorised occupant. However, after a long-drawn correspondence, suit for eviction only was filed on 23-12-1977 and was given suit number by the court on 1.3.1978. Suit for arrears of rent was not filed at that time as the Port Trust Advocate felt that there was no hope of recovery of arrears and the financial position of the firm was not known. The suit for arrears has since been filed on 17.3.1979.

31 7-72 Shipping & Transport

It is evident from the chronology of events of this case that the urgency for taking legal steps against the party was felt only after the Committee took note of this case and asked for detailed information.

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The Committee highly deplore the inaction and negligence on the part of Port authorities in not initiating legal action against the party immediately after it became an unauthorised occupant and had defaulted in making payment of rent. There is absolutely no justification for the Port Trust authorities having delayed action against the party for well over four years by which time the arrears due from the party have mounted to more than Rs. 24 lakhs. The Committee suspect that the reason for delay in this case may also be deeper than what has been explained. The Committee desire that this case should be investigated by CBI.

33 7-84 -do-

The Committee note that the party, Shri S. L. Jaiswal, was allotted a piece of land measuring 120 sq. metres in the Port Trust premises for a period of 15 days expiring on 21.6.1973. The party did not vacate the land and has been occupying it unauthorisedly since then. When the party

moved the trial court and later appealed in the Bombay High Court, the latter court in its order dated 21.10.1975 decided in favour of the party on the ground that Bye-law No. 9 of the Bombay Port Trust provided for taking action for clearing obstructions on roads, thoroughfares or pathways and did not cover the area which was allotted to the party by the Port Trust for storage of materials. The plea of the Port Trust that Annexure 'A' to Bye-law No. 9 indicates various places and rates of rental and the Port Trust could take action against the defaulting party under this Bye-law read with Annexure 'A' was not accepted by the Appellate Court. Subsequently, the Port Trust has amended Bye-law No. 9. The Committee regret to note that there was a lacuna in Bye-law No. 9 on the basis of which the case was defended by the Port Trust in the trial court and the appellate court, inasmuch as reliance was placed on this bye-law which did not give clear authority to the Port Trust to evict persons who were allotted land on casual occupancy basis.

The Committee also find that the orders of the High Court were passed on 21.10.1975 restraining the Port Trust from evicting the party except by the process of law. Thereafter, a period of more than three years was taken in correspondence with the Legal Adviser of the Port Trust and the Advocates and suit for eviction and arrears of rent (amounting to over Rs. 7 lakhs upto February 1979) was filed only in December, 1978. From the chronology of events in this case, it is seen that the Estate Department took several months in processing the case at every stage. This raises suspicion in the mind of the Committee. The responsibility for part of the delay is also to be shared by the Legal Department inasmuch as cases were held up in that Department at various stages. Meanwhile, the party has sub-letted the premises to 8 other parties. The

Port Trust is also accepting a monthly rent of Rs. 1650/- to Rs. 1700/- as against the bill of Rs. 9271.80 to Rs. 9580.86 per mensem. The Committee express their unhappiness at the leisurely or almost indulgent manner in which this case has been allowed to linger on since orders were passed by the Bombay High Court in October, 1975. The fact that the suit could be filed only in December, 1978 clearly indicates that the Port Trust started feeling the urgency of the matter only after the Committee took up examination of this case alongwith other cases of similar nature. This is regrettable. The Committee would like the Port Trust authorities to have the matter finalised expeditiously.

Some of the glaring omissions that have come to light as a result of examination of only a few cases pertaining to outstandings against private parties in respect of Estate rentals are mentioned below:

- (i) Land is allotted to private parties on casual occupancy basis initially for a period not exceeding 15 days. No care is taken to ensure that the Certificate of Occupation which is required to be furnished by the allottee is actually obtained by the Estate Department before the allottee is allowed to occupy the area. This is very irregular. The absence of a proper agreement with the allottee results in long drawn litigation/when the allottee defaults in payment of rent and refuses to vacate the area. The Committee desire that proper instructions should be issued so that such irregularities are stopped forthwith.

(ii) The Committee were informed that in many cases land is allotted on casual occupation basis for a period not exceeding 15 days on Bye-law rates fixed by the Bombay Port Trust. Thereafter the occupation continues. There are no formal applications from occupants for extension of the period of allotment. The Estate Department does not bother about this. After some time, this Department starts sending monthly bills to the occupants for payment of rent and thus starts treating them as monthly tenants. Thus, the whole basis on which permission is granted initially changes. After treating the occupants as monthly tenants, the Port Trust authorities find it difficult to evict the occupants on 24 hours notice as per original condition under which the land is allotted on casual occupancy basis. The Committee highly deprecate that such irregularities have been allowed to continue in the Estate Department which is apparently run in a very slipshod manner. They would like the Port Trust authorities to re-examine this system of allotment of land on casual occupancy basis. Where land is required by a party for a longer period, the prescribed procedure for entering into proper agreements should be followed.

(iii) The Committee learn that in many cases the Port Trust Land is occupied unauthorisedly without the knowledge of the Port Trust authorities. Only after the unauthorised occupation comes to the notice of the Port Trust authorities, and often at quite a late stage action is initiated for obtaining a formal application from the unauthorised occupant and the occupa-

tion of the area is regularised. The Committee regret to observe that such undesirable practices regarding misuse of Port Trust lands have been allowed to continue unabated. They would like the Port Trust management to activate its inspection wing so that such malpractices are stopped and responsibility be fixed in cases of glaring dereliction of duty.

38 7-86(iv) Shipping and Transport

(iv) The Committee were informed that permission for casual occupation of Port Trust land is given by officers below the rank of Estate Manager and that the Estate Manager is not informed about it. In a few cases examined by the Committee, it was found that the financial condition of the occupants against whom rental bills were outstanding was not known. Even if there is such delegation of powers to officers below the rank of Estate Manager, the Committee would like the Port Trust authorities to evolve a system of proper supervision by the Estate Manager in all cases where powers are delegated to the subordinates. The Committee deplore that this is not being done.

39 7-86(v) -do-

(v) In the cases examined by the Committee, it was found that in the case of defaults in payment by the parties, Estate Department moved very casually and leisurely in pursuing the matter with the parties. Unreasonable discrimination between the parties was also in evidence. On the basis of information placed before the Committee through written replies and also during

evidence, the Committee have gained the impression that the Estate Department is functioning inefficiently and ineffectively in these matters. Even for filing of suits against defaulters, instead of initiating action at the right time, years pass before any action is taken by the Estate Department. In these cases also there is evidence of discrimination between parties. The Committee consider this as a highly unsatisfactory state of affairs.

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40 7-86(vi)

(vi) The Committee learnt that sometimes a defaulting party sent in a representation to the Chairman of the Port Trust objecting to payment of enhanced rent and on that basis the Estate Department stopped taking any further action until the disposal of the representation. It also came out in evidence that these matters were often decided arbitrarily by the Chairman in an *ad hoc* manner and disposed of at such time and on such terms as suited his sweet will. The Committee would like the Port Trust authorities to streamline the procedure in this regard so that the representations are disposed of expeditiously and proper norms are laid down and there is no scope for unreasonable discrimination and exercise of arbitrary authority. In such cases it should be insisted that the parties go on making deposits at the enhanced rate, subject to adjustment on the disposal of their representations by the Chairman.

41 7-87 Ministry of Shipping and Transport/Ministry of Law

The Committee have, in this Report, dealt with only a few cases of irregularities in the matter of settlement of cases relating to unauthorised occupation of Port Trust lands by private parties. All these cases appear

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to be unsatisfactory. The Committee apprehend that there are many other cases with similar irregularities. The Committee recommend that an Inquiry Committee consisting of three Senior officers, one from the Bombay Port Trust, one from Ministry of Shipping and Transport and one from the Ministry of Law may be appointed to examine the working of the Estate Department of the Bombay Port Trust and suggest measures for bringing about improvements therein.

42 7-88 Shipping and Transport

The Committee are of the view that the Bombay Port Trust should also take suitable action against the officers concerned for committing various irregularities and delays causing loss of revenue to the Port Trust.