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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1290 OF 2012

Dr.Preeti Bhatt	...Petitioner
vs.	
Central Bank of India	...Respondent

ALONG WITH
WRIT PETITION NO.5315 OF 2012

Central Bank of India	...Petitioner
vs.	
Dr.(Ms) Preeti R. Bhatt	...Respondent

Mr.Vaibhav Joglekar a/w Mr.Riyaz I. Chagla,
Mr.Neerav Merchant and Mr.Ishwar Ahuja i/b
M/s.Thakordas and Madgavkar for the Petitioner in
W.P.No.1290/2012 and for applicant in CAW/444/2012
and for the respondent in W.P.No.5315/2012
Mr.G.S.Godbole a/w Mr.K.K.Jadhav and Mr.J.K.Jadhav
i/b K.K.Jadhav and Associates for the petitioner in
W.P.No.5315/2012 and for the applicant in
CAW/2486/2015 and for the respondent in
W.P.No.1290/2012

CORAM : A.S.OKA, & A.K.MENON, JJ.

DATE ON WHICH JUDGMENT IS RESERVED: MAY 5, 2017

DATE ON WHICH JUDGMENT IS PRONOUNCED: JULY 20,2017

JUDGMENT: (PER A.S.OKA,J.)

1 These writ petitions can be disposed together as the same relate to the same property. The subject matter of these petitions is the property known as "Ewart House" situated at 22, Homi Mody Street, Fort, Mumbai 400 032 (for short "the said building"). The said building comprises of ground plus four upper floors. The respondent in the Writ Petition No.1290 of 2015 and the petitioner in Writ

Petition No.5315 of 2012 is Central Bank of India, which a body corporate established under the provisions of the Bank Companies (Acquisition and Approval of Undertakings) Act,1970 having its central office at Chandramukhi, Nariman Point, Mumbai 400 021. By a deed of conveyance dated 22nd May 1972, the Life Insurance Corporation of India sold the said building to Central Bank of India (for short "the said Bank").

2 The said Bank filed an application before the Estate Officer appointed under the provisions of the Public Premises (Eviction of unauthorized Occupants) Act,1971 (for short "the said Act of 1971"). The eviction application was filed against the petitioner in Writ Petition No.1290 of 2012 and the first respondent in Writ Petition No.5315 of 2012 Dr.Preeti Bhatt (for the sake of convenience referred as "the tenant"). It was stated in the said application by the said Bank that the tenant was in occupation of a premises on the fourth floor of the said building. It was stated that the area of the said premises on the fourth floor was 1800 sq ft of carpet area (for short "the said premises"). Monthly rent was Rs.683.85. In the application, it was stated that by Advocate's notice dated 13th June 2007, the tenancy of the tenant was terminated by the said Bank and the tenant was called upon to vacate the said premises. The tenant replied to the said notice raising various contentions. The first prayer in the said application made before the Estate Officer was for directing the tenant to hand

over the vacant possession of the said premises to the said Bank. The second prayer was for directing the tenant to pay *mesne profit* at the rate of Rs.2,17,000/- per month with effect from 1st July 2007 till the date of handing over vacant possession of the said premises to the said Bank with interest thereon at the rate of 12% per annum.

3 The said application was contested by the tenant by filing a written statement. It was contended in the written statement that her deceased father Mr.R.S.Bhatt was the original tenant in respect of the said premises. She stated that she was residing in the said premises right from the year 1950 with her father. It was contended that she was suffering from Cancer and that she has been considered to be legally blind. She relied upon a medical certificate issued to that effect. She contended that the notice of termination of tenancy was illegal. She contended that the said Bank was not a Statutory Authority within the meaning of sub clause (iii) of clause (f-a) of section 2 of the said Act of 1971. The tenant denied the claim for compensation made by the Bank.

4 Evidence was adduced before the Estate Officer by both the parties. The Estate Officer by his Judgment and Order dated 24th October 2011 directed the tenant to vacate the said premises within a period of 15 days. He directed the tenant to pay damages at the rate of Rs.1,83,600/- from 1st July 2007 till the date of handing over peaceful

possession of the said premises to the said Bank. Interest was made payable on the said amount with effect from 1st July 2007 at the rate of 6% per annum. Being aggrieved by the said Judgment and Order of the Estate Officer, the tenant preferred an Appeal before the City Civil and Sessions Court. By the Judgment and Order dated 12th January 2012, the learned Judge of the City Civil Court partly allowed the appeal. But the order of eviction was confirmed. However, the amount of damages was reduced by quantifying the same at Rs.90,000/- per month. Being aggrieved by the order of eviction and the order of payment of damages, the tenant has preferred Writ Petition No.1290 of 2012. Being aggrieved by that part of the Judgment and Order dated 12th January 2012 of the Appellate Court by which the quantum of damages was reduced, the said Bank has filed a Writ Petition No.5215 of 2012.

5 The submissions of the learned counsel for the tenant are three fold. Firstly, he urged that there is evidence on record to show that the petitioner falls in the category of persons with disability under the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short "Disabilities Act"). He urged that the impugned orders are vitiated as the rights of the tenant under the provisions of the Disabilities Act have not been considered by the Estate Officer as well as the Appellate Authority. The second submission is that the order of eviction is contrary to the

binding guidelines issued by the Government of India. Lastly, he submitted that in view of the law laid down by the Apex Court in the case of Suhas H. Pophale vs. Oriental Insurance Company Limited and its Estate Officer¹, the tenant cannot be evicted from the said premises. His submission is that the said building in which the said premises are situated was not vested in the said Bank on 24th May 1972 and thus, the said Act of 1971 will become applicable to the said building from the date of the conveyance under which the Bank purchased the property. He submitted that the father of the tenant was a tenant of the said premises even before vendor of the said bank (Life Insurance Corporation of India) came into existence. He submitted that in view of the law laid down by the Apex Court in the case of Suhas Pophale (supra), the order of eviction cannot be passed against the tenant and the proceedings under the said Act of 1971 are not maintainable. He urged that the Apex Court while deciding the case of Suhas Pophale has extensively relied upon its earlier decision of Constitution Bench in the case of Ashoka Marketing Limited vs. Punjab National Bank². He submitted that not only the application for review made by the respondents but also curative petition filed by the respondents in the case of Suhas Pophale (supra) has been dismissed by order dated 10th September 2015.

6 The learned counsel for the tenant relied upon

1 (2014) 4 SCC 657

2 (1990) 4 SCC 406

the decision of the Apex Court in the case of Sundarjas Kanyalal Bhatija and others vs. Collector, Thane and others³. He relied upon another decision of the Apex Court in the case of Band Box Private Limited vs. Estate Officer, Punjab and Sind Bank and another⁴. He relied upon another decision of the Apex Court in the case of Punjab Land Development And Reclamation Corporation Limited, Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and others⁵. He submitted that as held in the case of Suhas Pophale (supra), there is no conflict between the view in the said decision and the view taken by the larger Bench in case of Ashoka Marketing and therefore, the decision in the case of Suhas Pophale (supra) cannot be said to be *per incuriam*. Lastly, he relied upon the decision in the case of Central Bank of India vs N.R.C. Limited⁶. The learned counsel for the tenant also relied upon the provisions of Rights of The Persons With Disabilities Act, 2016 (for short "the said Act of 2016") which came into force on 19th April 2017.

7 The learned counsel for the said Bank invited our attention to the fact that the decision of the Apex Court in the case of Ashoka is by a Constitution Bench consisting of five Hon'ble Judges. Relying upon various paragraphs of the said Judgment, he would urge that what binds this Court is the decision in the case of Ashoka Marketing

3 (1989) 3 SCC page 396

4 (2014) 16 SCC 321

5 (1990) 3 SCC 682

6 (2014) 13 SCC 291

Limited (supra) which is by a Constitution Bench, and therefore, the decision in the case of Suhas Pophale (supra) will have to be held as *per incuriam*. He relied upon the decision of the learned Single Judge of this Court in the case of Mrs. Rani Sevakram, (since deceased by her legal heirs) vs The Oriental Insurance Company Limited and others⁷. He pointed out that by relying upon the decision of the Apex Court in the case of Ashoka Marketing Limited and another (supra) decision of this Court in the case of Kesar-I-Hind Private Limited and another vs. National Textile Corporation Limited⁸, the learned Single Judge has come to the conclusion that there was no merit in the contention that the owner has to invoke the provisions of Bombay Rent Act or the Maharashtra Rent Control Act. He submitted that a Full Bench of this Court has laid down the law that when a Bench of High Court is required to consider two conflicting views of the co-ordinate Benches of the Apex Court, the Bench has a choice to rely upon one and discard the other. He submitted that the provisions of the Disabilities Act will not render impugned orders invalid or illegal.

8 We have given careful consideration to the submissions. It is not in dispute that father of the tenant was a tenant in respect of the said premises, even before the predecessor in title of the Bank Life Insurance Corporation of India came

7 Writ Petition No.2442 of 1994 decided on 28th February 1989.

8 (2002) 8 SCC 182

into existence. He was in possession of the said premises as a tenant much prior to 16th September 1958.

9 We have carefully perused the decision of the Apex Court in the case of Suhas Pophale (supra). In the facts of the said case, the proceedings under the said Act of 1971 were initiated in respect of a flat at Woodhouse Road, Opposite Regal Cinema, Colaba, Mumbai-400005. One Mr. Eric Voller was a tenant of an erstwhile Insurance Company which was the owner of the said premises. On 20th December 1972, the said Voller inducted the appellant before the Apex Court in the said premises on Leave and Licence basis. Subsequently, the appellant was accepted as a tenant by the erstwhile Insurance Company. The management of the erstwhile Insurance company was taken over by the Central Government on 13th May 1971. The said Insurance Company merged with the Oriental Insurance Company Limited. The Competent Authority under the said Act of 1971 passed an order of eviction against Mr. Voller and the appellant before the Apex Court. The said order was confirmed in Appeal by the City Civil Court and in a Writ Petition by this Court. The order of eviction was challenged by the Appellant before the Apex Court. The law has been laid down in the said decision in paragraphs 60, 64 to 66 which read thus:

"60. It is true that Section 15 of the Public Premises Act creates a bar of jurisdiction to entertain suits or proceedings in respect of eviction of any person in an unauthorised occupation. However, as far as the relationship between Respondent 1, the other general insurance companies, LIC, nationalised banks

and such other government companies or corporations, on the one hand and their occupants/licensees/tenants on the other hand is concerned, such persons who are in occupation prior to the premises belonging to or taken on lease by such entities, will continue to be governed by the State Rent Control Act for all purposes. The Public Premises Act will apply only to those who come in such occupation after such date. Thus, there is no occasion to have a dual procedure which is ruled out in para 66 of *Ashoka Mktg. [Ashoka Mktg. Ltd. v. Punjab National Bank, (1990) 4 SCC 406]* **We must remember that the occupants of these properties were earlier tenants of the erstwhile insurance companies which were the private landlords. They have not chosen to be the tenants of the government companies. Their status as occupants of the public insurance companies has been thrust upon them by the Public Premises Act.**

64. As far as the eviction of unauthorised occupants from public premises is concerned, undoubtedly it is covered under the Public Premises Act, but it is so covered from 16-9-1958, or from the later date when the premises concerned become public premises by virtue of the premises concerned vesting into a government company or a corporation like LIC or the nationalised banks or the general insurance companies like Respondent 1. **Thus there are two categories of occupants of these public corporations who get excluded from the coverage of the Act itself. Firstly, those who are in occupation since prior to 16-9-1958 i.e. prior to the Act becoming applicable, are clearly outside the coverage of the Act. Secondly, those who come in occupation, thereafter, but prior to the date of the premises concerned belonging to a government corporation or a company, and are covered under a protective provision of the State Rent Act, like the appellant herein, also get excluded. Until such date, the Bombay Rent Act and its successor Maharashtra Rent Control Act will continue to govern the relationship between the occupants of such premises on the one hand, and such government companies and corporations on the other. Hence, with respect to such occupants it will not be open to such companies or corporations to issue notices, and to proceed against such occupants under the Public Premises Act, and such proceedings will be void and illegal.** Similarly, it will be open for such occupants of these premises to seek declaration of their status, and other rights such as transmission of the tenancy to the legal heirs, etc. under the Bombay Rent Act or its successor Maharashtra Rent Control Act, and also to seek protective reliefs in the nature of injunctions against unjustified actions or orders of eviction if so passed, by approaching the forum provided under the State Act which alone will have the jurisdiction to entertain such proceedings.

65. The learned Senior Counsel for the respondents Mr Raval submitted that the judgment of the Constitution Bench in *Ashoka Mktg. [Ashoka Mktg. Ltd. v.*

Punjab National Bank, (1990) 4 SCC 406] had clarified the legal position with respect to the relationship between the Public Premises Act and the Rent Control Act. However, as noted above, the issue concerning retrospective application of the Public Premises Act was not placed for the consideration of the Court, and naturally it has not been gone into. It was submitted by Mr Raval that for maintenance of judicial discipline this Bench ought to refer the issue involved in the present matter to a Bench of three Judges, and thereafter that Bench should refer it to a Bench of five Judges. He relied upon the judgment of this Court in *Pradip Chandra Parija v. Pramod Chandra Patnaik* [(2002) 1 SCC 1] in this behalf. He also referred to a judgment of this Court in *Sundarjas Kanyalal Bhatijav. Collector* [(1989) 3 SCC 396] and particularly para 18 thereof for that purpose. What is however, material to note is that this paragraph also permits discretion to be exercised when there is no declared position in law. The Bombay Rent Act exempted from its application only the premises belonging to the Government or a local authority. The premises belonging to the government companies or statutory corporations were however covered under the Bombay Rent Act. This position was altered from 16-9-1958 when the Public Premises (Eviction of Unauthorised Occupation) Act, 1958 came in force which applied thereafter to the government companies and statutory corporations, and that position has been reiterated under the Public Premises Act of 1971 which replaced the 1958 Act. Under these Acts of 1958 and 1971, the premises belonging to the government companies or statutory corporations are declared to be public premises. Thus, Parliament took away these premises from the coverage of the Bombay Rent Act under Article 254(1) of the Constitution of India. This was, however, in the matter of the subjects covered under the Public Premises Act viz. eviction of unauthorised occupants and recovery of arrears of rent, etc. as stated above. Thereafter, if the State Legislature wanted to cover these subjects vis-à-vis the premises of the government companies and public corporations under the Maharashtra Rent Control Act, 1999, it had to specifically state that notwithstanding anything in the Public Premises Act of 1971, the government companies and public corporations would be covered under the Maharashtra Rent Control Act, 1999. If that was so done, and if the President was to give assent to such a legislation, then the government companies and public corporations would have continued to be covered under the Maharashtra Rent Control Act, 1999 in view of the provision of Article 254(2). That has not happened. Thus, the government companies and public corporations are taken out of the coverage of the Bombay Rent Act, and they are covered under the Public Premises Act, 1971, though from the date specified therein i.e. 16-9-1958. After that date, the government companies and public corporations will be entitled to claim the application of the Public Premises Act, 1971 (and not of the Bombay Rent Act or its successor Maharashtra Rent Control Act, 1999), but from the date on which premises belong to these companies or corporations and with respect to the subjects specified under the Public Premises Act. In that also the

public companies and corporations are expected to follow the earlier mentioned guidelines.

66. We have not for a moment taken any position different from the propositions in *Ashoka Mktg. [Ashoka Mktg. Ltd. v. Punjab National Bank, (1990) 4 SCC 406]* We are in fact in agreement therewith, and we are not accepting the submission of Mr Nariman, that only contractual tenancies were sought to be covered under that judgment, and not statutory tenancies. Tenancies of both kinds will be covered by that judgment, and they will be covered under the Public Premises Act for the subjects specified therein. The only issue is with effect from which date. That aspect was not canvassed at all before the Constitution Bench, and that is the only aspect which is being clarified by this judgment. We are only clarifying that the application of the Public Premises Act will be only from 16-9-1958, or from such later date when premises concerned become public premises on the landlord concerned becoming a government company or public corporation. When the law laid down by the different Benches of this Court including by the Constitution Benches on retrospectivity is so clear, and so are the provisions of the Public Premises Act, there is no occasion for this Court to take any other view. When this judgment is only clarifying and advancing the proposition laid down in *Ashoka Mktg. [Ashoka Mktg. Ltd.v.Punjab National Bank, (1990) 4 SCC 406]* , there is no reason for us to accept the objections raised by Mr Raval, that the issues raised in this matter should not be decided by this Bench but ought to be referred to a larger Bench.

(emphasis added)

10 In the present case, the tenant's father was admittedly a tenant of the said premises before the predecessor of the said Bank, Life Insurance Corporation of India, came into existence. Moreover, the petitioner's father was admittedly a tenant of the said premises prior to 16th September 1958. The petitioner's father died on 9th September 1997. At that time, the petitioner was staying with him in the said premises. The petitioner became the tenant on her father's death. In view of what is held in paragraph 64 above, the proceedings under the said Act of 1971 against the tenant are not competent. In

view of what is held by the Apex Court in the case of Suhas Pophale (supra) in especially in paragraph 64, the order of eviction under the said Act of 1971 could not have been passed against the tenant who along with her father occupied the premises from the year 1950. When the said Bank became the owner of the said premises, the tenant's father was already a tenant of the said premises. The proceedings against the tenant under the said Act of 1971 are not competent in the present case.

11 An argument was canvassed by the learned counsel for the petitioner that the said decision in the case of Suhas Pophale (supra) is *per incuriam* as it lays down the law which is contrary to the law laid down in the case of Ashoka Marketing (supra) by the Constitution Bench. We must note here that the Apex Court in the case of Suhas Pophale (supra) has extensively considered the decision in the case of Ashoka Marketing and has specifically recorded a finding that the view taken in the case of Suhas Pophale (supra) is not in conflict with the decision in the case of Ashoka Marketing. Thus, in terms, the Apex Court in the case of Suhas Pophale (supra) has held that what is decided by the said decision is not in conflict with the decision of the Constitution Bench in the case of Ashoka Marketing (supra). Hence, it is not open for us to hold that the decision in the case of Suhas Pophale (supra) is *per incuriam*.

12 We may make a useful reference to the decision

of the Apex Court in the case of Band Box Private Limited (supra). The Apex Court dealt with a specific argument that the decision in the case of Suhas Pophale is erroneous in the light of the earlier decisions of the Apex Court in the cases of Ashoka Marketing and Kaiser-I-Hind Private Limited. In paragraphs 7 to 10 it was held thus:

"7. There are two other submissions raised by Mr Vikas Singh. Firstly, he drew our attention to the fact that in *Ashoka Mktg. Ltd.* [*Ashoka Mktg. Ltd. v. Punjab National Bank*, (1990) 4 SCC 406] , there were two properties involved, namely, one that was of Ashoka Marketing Ltd. and the second was of M/s Sahu Jain Services Ltd. Both the parties were occupying the premises concerned since 1-7-1958 i.e. prior to the date when the Public Premises Act became applicable, and in spite of that their submissions have been rejected by the Constitution Bench. **This being the position, in his submission, the view taken by a Bench of two Judges in *Suhas H. Pophale* [*Suhas H. Pophale v. Oriental Insurance Co. Ltd.*, (2014) 4 SCC 657 : (2014) 2 SCC (Civ) 685] is erroneous.**

8 We have noted this submission of Mr Vikas Singh. In para 631 of the judgment in *Suhas H. Pophale* [*Suhas H. Pophale v. Oriental Insurance Co. Ltd.*, (2014) 4 SCC 657 : (2014) 2 SCC (Civ) 685] this Court has referred to the judgment in *Jain Ink Mfg. Co. v. LIC* [*Jain Ink Mfg. Co. v. LIC*, (1980) 4 SCC 435] , and has observed that the issue of protection under a welfare legislation being available to the tenant prior to the premises becoming public premises, and the issue of retrospectivity, was not under consideration before the Court in *Jain Ink Mfg. Co.* [*Jain Ink Mfg. Co. v. LIC*, (1980) 4 SCC 435] The same holds good for the judgment rendered in *Ashoka Mktg. Ltd.* [*Ashoka Mktg. Ltd. v. Punjab National Bank*, (1990) 4 SCC 406] , and that being so, since those aspects were not gone into in the judgment of *Ashoka Mktg. Ltd.* [*Ashoka Mktg. Ltd. v. Punjab National Bank*, (1990) 4 SCC 406] this Court has examined them in *Suhas H. Pophale* [*Suhas H. Pophale v. Oriental Insurance Co. Ltd.*, (2014) 4 SCC 657 : (2014) 2 SCC (Civ) 685] . This Court has specifically observed in para 66 thereof that for a moment this Court was not taking any different position from the propositions laid down in *Ashoka Mktg. Ltd.* [*Ashoka Mktg. Ltd. v. Punjab National Bank*, (1990) 4 SCC 406] In fact, what was done was to clarify that the Public Premises Act will apply only in certain circumstances. That being so, this submission of Mr Vikas Singh cannot be accepted.

9. Mr Vikas Singh then referred us to a judgment of another Constitution Bench in *Kaiser-I-Hind (P) Ltd. v. National Textile Corpn. (Maharashtra North) Ltd.* [Kaiser-I-Hind (P) Ltd. v. National Textile Corpn. (Maharashtra North) Ltd., (2002) 8 SCC 182], and particularly paras 40, 42 and 65 thereof. Para 40 of this judgment reads as follows: (SCC pp. 207-08)

“40. Once the PP Eviction Act is enacted then the Bombay Rent Act would not prevail qua the repugnancy between it and the PP Eviction Act. To the extent of repugnancy, the State law would be void under Article 254(1) and the law made by Parliament would prevail. Admittedly, the duration of the Bombay Rent Act was extended up to 31-3-1973 by Maharashtra Act 12 of 1970. The result would be from the date of the coming into force of the PP Eviction Act, the Bombay Rent Act qua the properties of the Government and government companies would be inoperative. For this purpose, language of Article 254(1) is unambiguous and specifically provides that if any provision of law made by the legislature of the State is repugnant to the provision of law made by Parliament, then the law made by Parliament whether passed before or after the law made by the legislature of the State, would prevail. It also makes it clear that the law made by the legislature of the State, to the extent of repugnancy, would be void.”

10. As seen from para 40 of *Kaiser-I-Hind case* [Kaiser-I-Hind (P) Ltd. v. National Textile Corpn. (Maharashtra North) Ltd., (2002) 8 SCC 182] quoted above, the judgment clearly says that the Bombay Rent Act would not prevail qua the repugnancy between it and the Public Premises Eviction Act. That aspect has not been contradicted in *Suhas H. Pophale case* [Suhas H. Pophale v. Oriental Insurance Co. Ltd., (2014) 4 SCC 657 : (2014) 2 SCC (Civ) 685]. It also relies upon the judgment in *Ashoka Mktg. Ltd.* [Ashoka Mktg. Ltd. v. Punjab National Bank, (1990) 4 SCC 406] which says that the Public Premises Act as well as the State rent control laws are both referable to entries in the Concurrent List and they operate in their own field. It is only in the area of its own that the State Rent Control Act applies and in its own time-frame. The judgment in *Suhas Pophale case* [Suhas H. Pophale v. Oriental Insurance Co. Ltd., (2014) 4 SCC 657 : (2014) 2 SCC (Civ) 685] accepts that the Public Premises Act will prevail over the Bombay Rent Act to the extent of repugnancy i.e. for eviction of unauthorised tenants and for collection of arrear of rent, but, not prior to 16-9-1958 when the Public Premises Act became applicable. **Paras 42 and 65 of Kaiser-I-Hind case** [Kaiser-I-Hind (P) Ltd. v. National Textile Corpn. (Maharashtra North) Ltd., (2002) 8 SCC 182] which are relied upon also do not deal with the aspect of retrospectivity and being protected under the welfare legislation. That being so, it is not possible to accept this submission of Mr Vikas Singh.”

(emphasis added)

Hence, the argument of *per incuriam* is not available to the Bank.

In the decision of the learned Single Judge in the case of Mrs. Rani Sevakram vs. Oriental Insurance Company, he has held that in view of the decision in the case of Ashoka Marketing, the decision in the case of Suhas Pophale is not a binding precedent. In

view of the above decision, the view taken by the learned Single Judge is not correct.

13 One of the contentions raised by the learned counsel for the Bank was that on one hand in view of the decision in the case of Suhas Pophale (supra) the said premises will continue to be a public premises within the meaning of the said Act of 1971 and on the other hand, the jurisdiction of the other Courts to deal with the proceedings for eviction is ousted by section 15 of the said Act of 1971. His submission based on the provisions of the Maharashtra Rent Control Act, 1999 is that the Bank will be without any remedy for evicting the tenant as the said premises continue to be a public premises within the meaning of the said Act of 1971. The said argument is not relevant at all. The only question which we are examining is whether the order of eviction against the tenant is legal and valid. As the law laid down in the case of Suhas Pophale is squarely applicable to the case, the order of eviction and consequently the order of grant of damages will have to be set aside only on the ground that the order of eviction could not have been passed against the tenant under the provisions of the said Act of 1971, as proceedings under the said Act of 1971 are not competent. As we are setting aside the impugned Judgments, on this ground, it is not necessary to deal with the other two submissions of the tenant.

14 We make it clear that no adjudication is made on the question whether the tenancy of the Petitioner has been validly terminated and whether the Petitioner can be evicted. All contentions of the parties on merits are kept open which can be agitated in appropriate proceedings.

15 Hence, we pass the following order:

- (I) Impugned orders dated 24th October 2011 and 12th January 2012 are hereby quashed and set aside on the ground that the proceedings under the said Act of 1971 against the tenant for eviction and for recovery of damages was not maintainable;
- (II) Accordingly, the application filed by the said Bank (Case No.E.O./B.M./P.P. E & R/16 of 2007) stands dismissed only on the ground that the same was not maintainable. Accordingly, the petition filed by the tenant must succeed and the petition filed by the bank deserves to be dismissed;
- (III) Rule issued in Writ Petition No.1290 of 2012 is accordingly made absolute and the Rule issued in Writ Petition No.5315 of 2012 stands discharged;
- (IV) Pending Civil Applications do not survive and the same are disposed of.
- (V) There will be no order as to costs.

(A.K.MENON,J.)

(A.S.OKA,J.)