

THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****1. WRIT PETITION NO. 2442 OF 1994**

Mrs. Rani Sevakram, since deceased,
by heirs and legal representatives:- ... Petitioners

1. Mrs. Purva alias Urvashi Suresh Jahangiani;
2. Miss Jyotika Suresh Jhangiani;
3. Miss Ruchiak Suresh Jhangiani

having Shop No.8, Ground Floor, Indian Mercantile Mansion, 22-24, Madam Cama Road, Opp.Regal Cinema, Bombay 400005 and "Panchamrut" Co-op. Housing Society, D/303, Ghodbunder Road, Kasarvadavali, Thane (W)-400601

Versus

1. The Oriental Insurance Co. Ltd.
 2. U.P.State Handlooms Corporation's
 3. S.C.Shah, Estate Officer
- Oriental Insurance Co.Ltd Respondents

WITH

2. WRIT PETITION NO. 1422 OF 1996

Uttar Pradesh State Handloom Corporation Limited,
an Uttar Pradesh State Undertaking carrying on business, inter alia, at Indian Mercantile Mansion, Ground Floor, Shop No.8, Opposite Regal Cinema, 22/24, Madam Cama Road, Bombay. .. Petitioner

Versus

1. The Oriental Insurance Co. Ltd.
2. S.C.Shah, Estate Officer, Oriental Insurance Co.Ltd
3. Mrs. Rani Sevakram, since deceased, by heirs and legal representatives:-

3A. Mrs. Purva alias Urvashi Suresh Jahangiani;
 3B. Miss Jyotika Suresh Jhangiani;
 3C. Miss Ruchiak Suresh Jhangiani;

having Shop No.8, Ground Floor, Indian Mercantile
 Mansion, 22-24, Madam Cama Road,
 Opp.Regal Cinema, Bombay 400005 and
 "Panchamrut" Co-op. Housing Society, D/303,
 Ghodbunder Road, Kasarvadavali,
 Thane (W) -400601..

... Respondents

WITH

1.CIVIL APPLICATION NO. 1109 OF 2016
 IN
 WRIT PETITION 1422 OF 1996

Purva Alias Urvashi Suresh Jahangiani Through
 Attorney Mr. Gulab Talukdar
 and Ors

....

Applicants

V/S

Uttar Pradesh State Handloom Corp. Ltd. ...

Respondent

WITH

2. CIVIL APPLICATION IN WP NO. 884 OF 2016
 IN
 WRIT PETITION 1422 OF 1996

The Oriental Insurance Co. Ltd.

....

Applicant

V/S

Uttar Pradesh Handloom Corporation Ltd.

Respondent

Mr. E.A.Sasi, Advocate for petitioners in W.P.No. 2442/1994 &
 Respondents No. 3A to 3C in W.P. No.1422/1996.

Mr. A.R. Pandey a/w Ms. Pooja Pandey, Advocate for Petitioner in
 W.P.No. 1422/1996.

Mr. V.Y.Sangalika, Advocate for Respondent No. 1 in W.P.No.
 1422/1996 & W.P.No.2442/1994.

CORAM : R.G.KETKAR,J.
RESERVED ON : 24th JANUARY, 2017
DATE: 28th FEBRUARY, 2017.

JUDGMENT:

1. Heard Mr.E.A.Sasi, learned counsel for the petitioners in Writ Petition No. 2442 of 1994 and Respondents no. 3A to 3C in Writ Petition No.1422 of 1996, Mr.A.R.Pandey, learned counsel for the petitioner in Writ Petition No.1422 of 1996 and Mr. V.Y.Sanglikar, learned counsel for respondent no.1 in Writ Petitions No. 2442 of 1994 and No.1422 of 1996 at length.

2. These Writ Petitions take exception to the Judgment and order dated 27.10.1993 passed by Estate Officer in Case No.8 of 1992 as also the Judgment and order dated 29.4.1994 passed by the learned Principal Judge, Bombay City Civil Court at Bombay (for short, 'Appellate Authority') in Misc. Civil Appeals no. 155 and 153 of 1993. Since common questions of law and fact arise between the same parties, these Petitions can, conveniently, be disposed of by this common order. The relevant and material facts giving rise to filing of these petitions, briefly stated, are as under.

3. The controversy raised in these petitions is in respect of Shop no.8, Ground floor, Indian Mercantile Mansion, opposite to Regal Cinema, 22-24, Madam Cama Road, Opp.Regal Cinema, Mumbai-400005 (for short, 'suit premises'). On 30.12.1991,

Oriental Insurance Company (for short, 'Insurer') made application before Estate Officer setting out therein that Insurer is a subsidiary of the General Insurance Corporation of India which is a company as defined in Section 3 of the Companies Act, 1956, in which not less than 51% of the paid-up share capital is held by the Central Government. Accordingly, the premises belonging to, or taken on lease by or on behalf of the Insurer are 'public premises' within the meaning of Section 2(e)(2)(i) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short, 'Public Premises Act'). The building known as 'Indian Mercantile Mansion', at the junction of Wodehouse Road and Madam Cama Road, Opp. Regal Cinema, Mumbai 400005 (for short, 'said building') belonged to and was the property of the Indian Mercantile Insurance Company Ltd prior to the nationalisation of the General Insurance Business (Nationalisation) Act, 1972. As a consequence of the General Insurance Business (Nationalisation) Act, 1972, the said building has vested in the Insurer as reconstituted as a subsidiary of the General Insurance Corporation of India under the scheme for reorganization of the General Insurance Business under the said Act, 1972. The said building owned and controlled by Insurer is a public premises within the meaning of the Public Premises Act.

4. It is the case of Insurer that Ms. Rani Sevakram (for short, 'Sevakram'), since deceased, was the recorded tenant of the

Insurer in respect of the suit premises. The suit premises was given on a monthly tenancy commencing from the first day of the month according to the English Calendar and expiring on the last day of each English Calendar month. The monthly rent including permissible increases worked out to Rs. 518.83. As Sevakram had been a consistent defaulter in payment of rent due and payable to the Insurer, notice dated 19.7.1983 was duly served on her. The tenancy was terminated at the expiration of the month next to the current month of the tenancy. Sevakram was called upon to quit, vacate and deliver quiet peaceful and vacant possession of the suit premises.

5. In paragraph 5 of the application dated 31.12.1991, the Insurer contended that as Sevakram did not vacate the suit premises, Insurer instituted suit for eviction and recovery of arrears of rents/compensation in the Small Causes Court at Bombay being R.A.E. & R. Suit No.1388/3955/85. In view of the provisions of the Public Premises Act, Small Causes Court has no jurisdiction to entertain and try the suit as the provisions of the Public Premises Act override the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, 'Bombay Rent Act'), the Insurer applied for withdrawal of the suit and the suit was subsequently dismissed as withdrawn.

6. In paragraph 6 of the application, the Insurer contended that though the eviction suit was filed before the Small Causes

Court and Sevakram took steps to defend the same, it transpired that Sevakram had unauthorisedly and unlawfully sub-let or given on licence, the whole or part of the premises or assigned or transferred interest therein to M/s U.P.Handlooms Corporation (for short, 'Corporation') for unlawful gain. In paragraph 7, it was contended that the Corporation not only unlawfully occupied the suit premises but also carried out illegal and unauthorisedly structural changes by constructing a mezzanine floor in the suit premises. In paragraph 9, the Insurer claimed damages at the rate of Rs. 48,000/- per month with effect from 1.9.1983.

7. On 24.10.1989, the Insurer issued two separate notices to Sevakram and Corporation. In the notice addressed to Sevakram, it was stated that she had illegally and unauthorisedly permitted the Corporation to use the premises for commercial purpose. She was called upon to furnish full details as per law regarding the nature of arrangement, monthly compensation, etc., arranged and agreed with the Corporation. She was also called upon to forthwith discontinue any user of Corporation or any other person and surrender the premises failing which the Insurer will be compelled to adopt appropriate legal and other proceedings against her entirely at her risk as to costs and consequences. Copy of the notice served on the Corporation was also enclosed to show the extensive unauthorized work done and cautioned Sevakram that she will

be entirely liable and responsible for all the acts and/or omission of the Corporation.

8. In a notice addressed to the Corporation, Insurer called upon it to disclose full details and particulars of the arrangement/agreement etc and amounts paid or payable by the Corporation to Sevakram with photocopies of the agreements and latest receipts etc. It was further set out that the Insurer was advised by the Mumbai Municipal Corporation vide their letter dated 28.8.1989 that the Corporation have unauthorisedly without obtaining Mumbai Municipal Corporation's permission constructed mezzanine floor in the premises occupied by it. The Corporation was called upon to demolish the unauthorized mezzanine floor forthwith and called upon the Corporation not to enter upon the suit premises any time except for demolishing the unauthorized structure.

9. On 8.1.1992, Estate Officer issued notice to (1) Sevakram (2) Corporation and (3) all other unauthorised occupants of Shop no.8 as contemplated by Section 4(1) and (2) (b) (ii) of the Public Premises Act. It was set out therein that the Estate Officer was of the opinion that addressee is in unauthorized occupation of the public premises (suit premises) on the grounds specified therein and that they should be evicted from the suit premises. The grounds specified were:

(i) Notice dated 19.7.1983 was issued to Sevakram for the

reasons stated therein calling upon her to quit, vacate and hand over the vacant possession of the suit premises upon expiry of tenancy month, in which the said notice was received by her. Though Sevakram received the notice, vacant possession was not given to Insurer in terms of the said notice and thus she became unauthorised occupant with effect from 1.9.1983;

(ii) Even though the suit for eviction was filed, Sevakram had unauthorisedly and unlawfully sub-let or given on licence the whole or part of the premises or assigned or transferred interest therein to Corporation.

(iii) Corporation, besides occupying unauthorisedly the suit premises, also carried out illegal and unauthorized structural changes by constructing mezzanine floor in the premises.

(iv) Sevakram and Corporation and others claiming through them are in unauthorised occupation of the suit premises and each of them is liable to be evicted for the reasons set out in the application dated 31.12.1991 made by Insurer to the Estate Officer, copy of which annexed therewith. The Estate Officer, therefore, called upon them to show cause why an order of eviction should not be made and called upon them to appear before them in person or duly authorized representative capable to answer all material questions connected with the matter along with evidence which they intend to produce in support of the cause shown for personal hearing. The case was numbered as

Case No.8 of 1992.

10. On the same day, Estate Officer issued notice under section 7(3) of the Public Premises Act calling upon them to show cause why an order requiring them to pay damages amounting to Rs. 48 lakhs and at the rate(s) shown in Schedule-II below on account of unauthorised use and occupation of the suit premises. The Estate Officer proposed damages at the rate of Rs. 48,000/- per month for the period from 1.9.1983 to 31.12.1991 future and pendent lite damages. As noted earlier, along with notice dated 8.1.1992 issued by the Estate Officer under section 4(1) and (2) (b)(ii), application dated 31.12.1991 made by the Insurer was enclosed.

11. Sevakram resisted the application by filing written statement dated 5.3.1992. She relied upon the Guidelines issued by the Central Government and contended that in view of the Guidelines the application is not maintainable and deserves to be dismissed in limine. The suit premises was let out to her in the year 1952, much prior to the Insurer purchasing the building, and she had been in occupation since then and paying to her landlord since then. She denied receipt of notice dated 19.7.1983. In any event and without prejudice she denied the contents of the said notice or validity of the said notice. She also denied that her tenancy was terminated. She denied the ground of default and in any event contended that the said ground was abandoned and

given up. Insurer is estopped from raising the said contention. In view of the extra ordinary long period of time, the said notice should be treated as lapsed and is treated to be as waived as the rent is being recovered by Insurer from her since last almost 8 years after the said purported notice without any objection. It was also contended that she is a commission agent of the company dealing in U.P.Handlooms and is entitled by virtue of agreement dated 25.3.1977 and further agreement dated 22.3.1982, to recover agency commission. She also made reference to the suit instituted by the Corporation in the Small Causes Court and contended that the Corporation had raised false and dishonest claim by making false claim that it is a subtenant. She also denied contention that any structural alterations or any constructions were made.

12. The Corporation filed Written Statement dated 17.2.1992 opposing the application. It is contended that issue as to whether the Corporation is a lawful sub-tenant or not under the Bombay Rent Act is pending adjudication in R.A.D Suit No.2360 of 1987 filed in the Small causes Court having exclusive jurisdiction to determine the said issue. It was, therefore, contended that if the Estate Officer proceeds with the proceeding, it would not only amount to interference with due course of administration of justice by the Court of Small Causes Bombay but also seriously prejudice the interest of the Corporation. In the circumstances,

Estate Officer ought to desist from going ahead with the proceedings. Reference was also made to Guidelines issued by the Central Government to contend that Estate Officer ought to follow these Guidelines and withdraw the proceedings. Service of notice dated 19.7.1983 as also its validity was denied. Determination of tenancy was also denied. In paragraph 8, the Corporation contended that Sevakram had sub-let a well demarcated portion of the said premises along with mezzanine floor to Corporation with effect from 1.4.1977. Demarcated and defined portion of the said premises is about 3/4th area of shop no.8 on the ground floor. The subletting was done with the consent, knowledge and acquiescence of the Insurer. Since 1.4.1977 the Corporation is in occupation as lawful sub-tenant and carries on their business therefrom openly and to the knowledge of all concerned. In any case, by conduct the insurer had waived objection and is estopped from contending that the Corporation is in unauthorized and/or unlawful occupation of the premises or from treating its occupation as unauthorized. Corporation also denied that it carried out illegal and/or structural changes by constructing a mezzanine floor, as alleged or otherwise. The mezzanine floor was already in existence when the premises were sublet in the year 1977. Existence of mezzanine floor in 1977 was with the knowledge of the Insurer. The insurer is now estopped from contending that mezzanine

floor is illegal and/or unauthorized, particularly in view of their knowledge, consent and acquiescence and also because of waiver.

13. Parties adduced evidence before the Estate officer. After considering the evidence on record, the Estate Officer ordered eviction of Sevakram as also Corporation and also awarded damages at the rate of Rs. 22000/- per month from 1.9.1983. Aggrieved by this decision, the Corporation preferred Misc. Appeal No.153 of 1993. Sevakram preferred Misc. Appeal No.155 of 1993 before the Appellate Authority under Section 9 of the Act. By separate judgments and orders dated 29.4.1994, the Appellate Authority dismissed both the Appeals. In so far as damages awarded by the Estate Officer is concerned, that direction was modified by directing the appellants to pay a sum of Rs. 15,000/- per month in respect of the unauthorised occupation from 1.9.1983 till date together with simple interest at the rate of 12% per annum with effect from 1.11.1983 subject to adjustment of the amount paid by Sevakram.

14. It is against these decisions, Sevakram has instituted Writ Petition No. 2442 of 1994 ordering eviction and Writ Petition No.2243 of 1994 in so far as ordering damages at the rate of 15000/- per month from 1.9.1983 onwards is concerned. The Corporation has instituted Writ Petition No.1422 of 1996 challenging both order of eviction and awarding damages.

15. In support of the Petitions filed by Sevakram, Mr. Sasi relied upon:-

- (i) Guidelines issued by the Central Government on 21.10.1992 (Exhibit-J, pages 79 to 80 of Writ Petition No.1422 of 1996 filed by Corporation);
- (ii) Guidelines issued by the Central Government dated 30.5.2002 published in the Gazette of India, Part-I, Section-1 dated 8.6.2002 which are considered by the Apex Court in Suhas S. Pophale Vs. Oriental Insurance Company Ltd, (2014) 4 SCC 657.

Relying upon these Guidelines, Mr. Sasi submitted that the provisions of the Public Premises Act should be used primarily to evict totally unauthorised occupants of the premises of public authorities or subletees, or employees who have ceased to be in their service and thus ineligible for occupation of the premises;

- (iii) The provisions of Public Premises Act should not be resorted to either with a commercial motive or to secure vacant possession of the premises in order to accommodate their own employees, where the premises were in occupation of the original tenants to whom the premises were let either by the public authorities or the persons from whom the premises were acquired. The Guidelines lay down that a person in occupation of any premises should not be treated or declared to be an

unauthorized occupant merely on service of notice of termination of tenancy, but the fact of unauthorised occupation has to be decided by following the due procedure of law. Further, the contractual agreement shall not be wound up by taking advantage of the provisions of the Public Premises Act. It will be open to the public authorities to secure periodic revision of rent in terms of the provisions of the Rent Control Act in each State or to move under genuine grounds under the Rent Control Act for resuming possession. In other words, the public authorities would have rights similar to private landlords under the Rent Control Act in dealing with genuine legal tenants. The Guidelines further lay down that all the public undertakings should immediately review all pending cases before the Estate Officer or Courts with reference to these Guidelines, and withdraw eviction proceedings against genuine tenants on grounds otherwise than as provided under these guidelines. The provisions of Public Premises Act should be used henceforth only in accordance with these Guidelines.

(iv) Mr. Sasi submitted that admittedly Sevakram was inducted in the suit premises in the year 1952, much prior to the Insurer purchasing the building. She had been in occupation since then paying to her landlord since then. In

view of the Guidelines, Public Premises Act cannot be resorted to either with a commercial motive or to secure vacant possession of the premises where the premises were in occupation of the original tenants, namely, in the present case Sevakram, to whom the premises were let by the persons from whom the premises were acquired. He submitted that assuming for the sake of argument without conceding that notice dated 19.7.1983 was served on Sevakram, she cannot be treated or declared to be unauthorised occupant merely on service of notice of termination of tenancy. The fact of unauthorised occupation has to be decided by following the due procedure of law. The contractual tenancy cannot be terminated and possession cannot be sought by taking advantage of the Public Premises Act. As per the Guidelines, it will be open to the Insurer to move under genuine grounds under the Rent Control Act for resuming possession.

- (v) Mr. Sasi submitted that in fact in the present case, Insurer had instituted suit against Sevakram in the year 1985. The Guidelines further lay down that the provisions of the P.P. Act has to be used henceforth only in accordance with the Guidelines. Mr. Sasi, therefore, submitted that invocation of provisions of Public Premises Act is in the teeth of the

Guidelines issued by the Central Government on 21.10.1992 and 30.5.2002. It is nothing but abuse of discretionary powers on the part of the Insurer in moving the Estate Officer for securing possession and damages from Sevakram. He heavily relied upon the decision of the Apex court in Suhas Pophale (supra).

16. Mr. Sasi submitted that in Suhas Pophale's case (supra), the Apex Court has considered decision of Ashoka Marketing Ltd Vs. Punjab National Bank, AIR 1991 SC 855. The Apex Court also considered from what date would the Public Premises Act apply to the premises concerned. The Court noted distinction between the concept of taking over of management and taking over of ownership. The Court considered the submission whether the Public Premises Act can be given retrospective effect. The Court dealt with the Guidelines issued by the Central government on 30.5.2002 for considering when the provisions of the Public Premises Act to be resorted to. In paragraph 64, the Apex Court held that 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 concerned premises become public premises by virtue of the concerned premises vesting into a Government company or a Corporation like LIC or the

Nationalised Banks or the General Insurance Companies like the Respondent No. 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 concerned premises belonging to a Government Corporation or a Company, and are covered under a protective provision of the State Rent Act, also get excluded. Until such date, the Bombay Rent Act and its successor Maharashtra Rent Control Act, 1999 (for short, 'Maharashtra Rent 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 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.

17. Mr. Sasi submitted that notice to quit dated 19.7.1983 was not served to Sevakram. At any rate, notice to quit was waived by Insurer. Mr.Sasi submitted that Sevakram had not inducted Corporation as a sub tenant. Sevakram was working as a commission agent dealing in UP Handlooms. He relied upon the agreement dated 25.3.1977 and further agreement dated 22.3.1982 to establish That she was recovering agency commission from the Corporation. He,therefore, submitted that the authorities below were not justified in holding that Sevakram had illegally sublet the premises to the Corporation.

18. Mr.Sasi submitted that before issuing notice by the Estate Officer,he has to record a finding that Sevakram was in unauthorized occupation of the suit premises.No such prima faice finding is recorded by the Estate Officer. Notices were issued by the Estate Officer under sections 4 and 7 without recording any prima facie opinion. On this ground also, the impugned orders are vitiated and as such are liable to be set aside.

19. In support of the petition filed by the Corporation, Mr. Pandey submitted that the Corporation has already initiated proceedings against Sevakram in the Small Causes Court by filing a declaratory suit. The Corporation has sought a declaration that it is a protected sub tenant and is inducted in the suit premises in

the year 1977. Since then the Corporation is in exclusive use, occupation and possession and enjoyment and control of 3/4th area of the suit premises. He submitted that subletting was done with the consent, knowledge and acquiescence of the Insurer. The Corporation is, therefore, a lawful subtenant inducted in the suit premises. He further submitted that the Corporation did not carry out any illegal and/or unauthorised construction of mezzanine floor. He, therefore, submitted that the impugned orders deserve to be set aside thereby dismissing the proceedings initiated against the Corporation.

20. On the other hand, Mr. Sanglikar supported the impugned orders. He submitted that reliance placed on the Guidelines dated 21.10.1992 and 30.5.2002 issued by the Central Government is misconceived. In paragraph 23 of *New India Assurance Company Ltd Vs. Nusli Wadia*, (2008) 3 SCC 279, the Apex Court has held that the Guidelines are non statutory in nature. Guidelines are advisory. No legal right is conferred on the tenants by the Guidelines. In any case, Guidelines do not prohibit action under the Public Premises Act. What the Guidelines provide is that the power should not be exercised arbitrarily. Guidelines permit action under the Public Premises Act on the grounds akin to Rent Control Act. In the present case, the Insurer has specifically averred that Sevakram has unlawfully and illegally inducted the Corporation. Sevakram has illegally sublet

the premises to the Corporation. The Corporation has constructed mezzanine floor unauthorisedly and illegally.

21. Mr. Sanglikar relied upon the decision of the Division Bench of this Court in *Minoo Framroze Balsara Vs Union of India*, AIR 1992 Bombay 375 and in particular paragraph 34 thereof. He also relied upon the decisions of *Ashoka Marketing Ltd (supra)* as also *Kesar-I-Hind Pvt Ltd Vs. National textile Corp.*, (2002) 8 SCC 182. The Apex Court has approved the view taken by the Division Bench of this Court in *Minoo Framroze Balsara* case. In paragraphs 40 and 41, the Apex Court has held that once the Public Premises Act came into force with effect from 23.8.1971, the existing Bombay Rent Act would be void. In view of Article 254(1), the law made by the parliament would prevail. In the case of *Crawford Bayley & Co. Vs. Union of India*, (2006) 6 SCC 25, the Apex Court has held that the provisions of the Public Premises Act would prevail over the provisions of the Maharashtra Rent Act.

22. Mr. Sanglikar relied upon Full Bench decision of this Court in *Kamleshkumar I. Patel Vs Union of India*, 1995 (2) Bom C.R. 640. He submitted that this Court should prefer decision of a larger Bench in *Ashoka Marketing Ltd* to that of smaller Bench of *Suhas Pophale's* case. He submitted that in *Ashoka Marketing (supra)* and in particular paragraphs 63 to 65 the Constitution Bench has held that the effect of giving overriding effect to the provisions

of the Public Premises Act over the Rent Control Act would be that buildings belonging to companies, corporations and autonomous bodies referred to in S. 2(e) would be excluded from the ambit of the Rent Control Act in the same manner as properties belonging to the Central Government. The reason underlying the exclusion of property belonging to the Government from the ambit of the Rent Control Act, is that the Government while dealing with the citizens in respect of property belonging to it would not act for its own purpose as a private landlord but would act in public interest. The Apex Court opined that keeping in view the object and purpose underlying both the enactments, i.e. the Rent Control Act and the Public Premises Act, the provisions of the Public Premises Act have to be construed as overriding the provisions contained in the Rent Control Act.

23. Mr. Sanglikar further submitted that even assuming for the time being that Sevakram was inducted in the year 1952 and that Insurer took over the building in 1972, on 19.7.1983, notice was issued by Insurer to Sevakram determining the tenancy. He submitted that the General Insurance (Emergency Provisions) Act, 1971 came into force with effect from 13.5.1971. Section 3(2) thereof lays down that any contract, whether express or implied, providing for management of the undertaking of an insurer, made before the appointed day between the Insurer and any person in charge of the management of such undertaking

immediately before the appointed day, shall be deemed to have been terminated on the appointed day. He submitted that even otherwise statutorily from 13.5.1971 the tenancy contract of Sevakram came to an end. As the tenancy was determined on 13.5.1971, Sevakram cannot claim benefit of Section 15A of the Bombay Rent Act. He submitted that this aspect was not dealt with in Suhas Pophale's case.

24. Mr. Sanglikar submitted that in the Written Statement Sevakram contended that notice to quit was never served on her. He has taken me through the impugned orders passed by the authorities below and submitted that the notice was duly served on Sevakram. Her acknowledgment appears on A.D. Card. He submitted that the suit instituted by the Insurer in Small Causes Court could not proceed further as the Public Premises Act was stayed by this Court. In any event, the suit was instituted in Small Causes Court on the ground of default in payment of rent. As against this, in the proceedings under the Public Premises Act, the Insurer came with the case of unlawful subletting as also unauthorized structural alterations. On 7.11.1996, the suit instituted by the Insurer in Small Causes was withdrawn.

25. He submitted that the authorities below have concurrently found that Sevakram had unlawfully inducted Corporation. Corporation is unlawful sub-tenant. He submitted that in paragraph 8 of the Written Statement, the Corporation came with

the case that Sevakram sublet the well demarcated portion along with a mezzanine floor to it with effect from 1.4.1977. The said demarcated and defined portion is about 3/4th of the area of the suit premises on the ground floor. The Corporation came with the case that subletting was done with the consent, knowledge and acquiescence of the Insurer. This stand was not substantiated by the Corporation. He invited my attention to letter dated 2.7.1993 addressed by General Manager of Corporation to the Insurer. In that letter, it was set out that "the Corporation being a Government undertaking, in good faith, entered into subtenancy with Smt. Rani Sevakram under the impression that the Insurance Company has granted the permission to Smt. Rani Sevakram. However, the fact has been disputed by the Insurance Company and the Insurance Company thereafter initiated the proceeding of eviction and damages against Smt. Rani Sevak and the Corporation before Estate Officer which is still pending." Request was made that shop be allotted to the Corporation on terms and conditions mutually agreed and subject to and taking into consideration settlement of/compromise between the Corporation and the Insurer in eviction proceedings before the Estate Officer.

26. Mr. Sanglikar submitted that before issuing notices under Sections 4 and 7 of the Public Premises Act, the Estate Officer has recorded findings as contemplated under these provisions as

also in conformity with the decision of this Court in Minoo Framroze Balsara case. He, therefore, submitted that no case is made out for interfering with the impugned orders.

27. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. Mr.Sasi heavily relied upon Guidelines issued by Central Government on 21.10.1992 and 30.5.2002. He contended that in the present case, Insurer was not justified in invoking the provisions of the Public Premises Act. In fact, the Insurer had instituted suit for evicting Sevakram in the Small Causes Court. In order to appreciate this submission, it is necessary to reproduce the Guidelines dated 30.5.2002 issued by the Central Government and in particular Guidelines 2(i), (iii)(v):

“2. To prevent arbitrary use of powers to evict genuine tenants from public premises and to limit the use of powers by the Estate Officers appointed under Section [3](#) of the PP(E) Act, 1971, it has been decided by Government to lay down the following guidelines:

(i) The provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 [(P.P.(E) Act, 1971] should be used primarily to evict totally unauthorised occupants of the premises of public authorities or subletees, or employees who have ceased to be in their service and thus ineligible for occupation of the premises.

(iii) A person in occupation of any premises should not be treated or declared to be an unauthorised occupant merely on service of notice of termination of tenancy, but the fact of unauthorized occupation shall be decided by following the due procedure of law. Further, the contractual agreement shall not be wound up by taking advantage of the provisions of the P.P.(E) Act, 1971. At the same time, it will be open to the public authority to secure periodic revision of rent in terms of the provisions of the Rent Control Act in each State

or to move under genuine grounds under the Rent Control Act for resuming possession. In other words, the public authorities would have rights similar to private landlords under the Rent Control Act in dealing with genuine legal tenants.

(v) All the public Undertakings should immediately review all pending cases before the Estate Officer or Courts with reference to these guidelines, and withdraw eviction proceedings against genuine tenants on grounds otherwise than as provided under these guidelines. The provisions under the P.P. (E) Act, 1971 *should be used henceforth only in accordance with these guidelines.*

Perusal of clause 2(i) shows that the Public Premises Act is meant to evict totally unauthorised occupants of the public premises or subletees. Clause 2(iii) provides that it will be open to the public authority to secure periodic revision of rent in terms of the provisions of the Rent Control Act. In other words, the public authorities would have rights similar to private landlords under the Rent Control Act in dealing with genuine legal tenants.

28. In the present case, Sevakram came with the case that she was not served with notice dated 19.7.1983. Perusal of the orders passed by the authorities below shows that they have concurrently held that service was duly effected on Sevakram. In particular in paragraph 26, the Appellate Authority observed that the affidavit was filed by Shri V.R.Joshi, Assistant Legal Advisor attached to Bombay Regional Office of the Insurer. He had produced Registered A.D. Slip along with notice. A.D.Slip was shown to Sevakram and her Advocate. Sevakram admitted her signature on the Registered A.D. Slip. The Appellate Authority,

therefore, held that from the conduct of Sevakram, it is crystal clear that notice was received by her and only because Registered A.D. was not produced before the Court, she tried to take undue advantage of situation and denied having received termination of notice dated 19.7. 1983.

29. In paragraph 23, the Appellate Authority observed that when Sevakram was confronted with the signature on registered acknowledgment, she stated that the same was not signed by her. She thereafter stated that the person who had signed acknowledgment was not in her employment at the time when she gave evidence. She thereafter stated that she does not know who had signed acknowledgment slip and was not in a position to recollect the name of person who had signed it. She also stated that she does not remember whether she had instructed her Advocate Bhanage to act on her behalf and send a reply to the said letter. The Appellate Authority ultimately recorded a finding that the notice was duly served upon Sevakram and her tenancy was determined. The said finding is based upon material on record. In view thereof, I do not find any merit in the submission of Mr. Sasi that the notice dated 19.7.1983 was not served upon Sevakram and that her tenancy was not terminated.

30. Mr.Sasi submitted that Sevakram did not induct Corporation as sub-tenant. she was working as Commission Agent dealing in U.P.Handlooms. He relied upon Agreement dated 25.3.1977 and

further Agreement dated 22.3.1982 to establish that she was recovering agency commission from the Corporation. He, therefore, submitted that the authorities below were not justified in holding that Sevakram had unlawfully sublet the suit premises to the Corporation. Mr. Pandey submitted that the Corporation is a lawful sub tenant inducted with the consent, knowledge of Insurer.

31. It is not possible to accept this submission. Perusal of the Written Statement filed by the Corporation shows that it came with the case that with consent, knowledge of Insurer, Sevakram inducted it as a sub-tenant. A perusal of the letter dated 2.7.1993 addressed by the Corporation to Insurer shows that the Corporation contended therein that being a Government undertaking, in good faith, entered into sub-tenancy with Sevakram under the impression that the Insurer had granted permission to Sevakram. Neither Sevakram nor Corporation had produced any permission on record. Thus, the position that emerges is that in 1977 the Corporation was inducted illegally as a sub-tenant by Sevakram. The authorities below have considered this aspect. In particular, the Appellate Authority from paragraph 35 onwards dealt with the issue of subletting. After considering the material on record, the Appellate Authority held that the agreements relied by Sevakram are merely camouflage and in fact it amounts to subtenancy. Not only that, the Corporation has instituted a declaratory suit in the Small Causes Court for declaration that it is a tenant. The Appellate

Authority, after considering the Income-tax returns of Sevakram as also her evidence, noted that Sevakram had no knowledge about the nature of Handloom business. The Appellate Authority concluded that the occupation of Corporation is not under the agency agreement and the same is under the agreement which is in fact of sub-tenancy under the guise of agency. The agreement, though styled as agency agreement for all intent and purposes, was a document of lease. The authorities below concurrently found that Sevakram had unlawfully and unauthorisedly inducted the Corporation as a sub-tenant in the suit premises. I do not find any good reason to take a different view. Sevakram and the Corporation were not in a position to demonstrate that the findings recorded by the authorities below are either contrary to evidence on record or that they are based on no evidence. They were also not in a position to demonstrate that no reasonable or prudent person would have reached the conclusions arrived at by the authorities below. The findings recorded by the authorities below are findings of fact based upon appreciation of evidence on record. In view thereof, I do not find any merit in the submissions of Mr. Sasi and Mr. Pandey that the Corporation is not unlawful sub tenant.

32. I have already referred to Guidelines dated 30.5.2002 issued by the Central Government. As per Guideline 2(i), the Public Premises Act is to be used to evict totally unauthorised

occupants of the premises of public authorities or subletees. As per clause 2(iii), by following due procedure of law, the authorities below have concluded that Sevakram and Corporation are liable to be evicted. In paragraph 58 of Suhas Pophale's Judgment, the Apex Court referred to paragraph 23 of New India Assurance Co. Ltd (supra). In paragraph 23 of that decision, the Apex Court has held that the Guidelines are non-statutory in nature. The Guidelines are advisory. No legal right is conferred on the tenant by the Guidelines. In any case, the Guidelines do not prohibit action under the Public Premises Act. What the Guidelines provide is that the powers should not be exercised arbitrary. The Guidelines permit action under the Public Premises Act on the grounds akin to the Rent Act. The decision in Nusli Wadia (supra) applies in all fours to the facts of the present case.

33. Mr. Sasi submitted that before issuing notice by the Estate Officer, he has to record a finding that Sevakram was in unauthorised occupation of the suit premises. No such prima facie finding was recorded by the Estate officer. On this ground also, impugned orders are vitiated and as such are liable to be set aside.

34. In the case of Minoo Framroze Balsara case (supra). the Division Bench of this Court observed in paragraph 34 thus:

“34. The provisions of the Eviction Act, 1971, can be applied to persons who are in unauthorised occupation of public premises A person, by reason of Section [2\(g\)](#), is in unauthorised occupation if his occupation is without

authority. He is in unauthorised occupation if he continues to occupy public premises after the authority under which he was allowed to occupy the same has expired or has been determined for any reason whatsoever. The provisions of the Eviction Act, 1971, therefore, entitle the Government company or Corporation which is the owner of the public premises to terminate for any reason whatsoever the authority of the occupant to occupy the same and, by so doing, place the Government company or corporation and the occupant in the position of landlord and tenant governed by the provisions of the Transfer of Property Act. The provisions of Sections [4](#) and [5](#) of the Eviction Act, 1971, deal with the procedure for the eviction of an unauthorised occupant and must be read together. Section [4](#) prescribes that the unauthorised occupant must be issued with a notice in writing to show cause why an order of eviction should not be passed against him. That notice has to be issued by the Estate Officer provided he is of the opinion that the addressee of the notice is in unauthorised occupation of public premises and that he should be evicted. Prima facie satisfaction of the Estate Officer is a sine qua non of the issuance of the show cause notice. The prima facie satisfaction must be two-fold; firstly, that the addressee is in unauthorised occupation of public premises, and, secondly, that, he should be evicted. The notice must set out the grounds on which the order of eviction is proposed to be made. It must, therefore, state not only why the addressee is thought to be in authorised occupation but also why it is thought that he should be evicted. It must inform the addressee that he is entitled to show cause against the proposed order of eviction. The addressee cannot effectively show cause unless he knows why the Estate Officer is of the opinion that he is in unauthorised occupation. He also cannot show effective cause unless he knows why his eviction is proposed. The provisions of Section [4](#) make it clear that the addressee may seek a personal hearing from the Estate Officer and may lead evidence for the purposes of showing cause against the proposed order of eviction. This is clear also from the provisions of Section [8](#) which vest in the Estate Officer the powers of a Civil Court in regard to the summoning of witnesses and examining them on oath and the discovery and production of documents.”

35. Perusal of notices issued under sub-section (1) and clause (b)(ii) of sub-section (2) of Section 4 as also under sub-section

(3) of Section 7 of the Public Premises Act issued by the Estate Officer shows that the notices are in conformity with the provisions under which they were issued as also in conformity with paragraph 34 of Minoo Framrose Balasara's judgment extracted herein above. I, therefore, do not find any merit in the submission of Mr Sasi.

36. Mr.Sasi submitted that in the present case, Sevakram was inducted in the suit premises in the year 1952, much prior to the Insurer purchasing the building. In view of the Guidelines as also the decision of Suhas Pophale's case, Public Premises Act cannot be resorted to by the Insurer. He heavily relied upon paragraph 59, 60 and 64 of that decision in support of his submission.

37. In paragraph 59 of Suhas Pophale's case, the Court observed that “for any premises to become public premises, the relevant date will be 16.9.1958 or whichever is the later date on which the premises concerned becomes the public premises as belonging to or taken on lease by LIC or the nationalized banks or the general insurance companies concerned. All those persons falling within the definition of a tenant occupying the premises prior thereto will not come under the ambit of the Act and cannot, therefore, be said to be persons in “unauthorised occupation”. Whatever rights such prior tenants, members of their families or heirs of such tenants or deemed tenants or all of those who fall within the definition of a tenant under the Bombay

Rent Act have, are continued under the Maharashtra Rent Act. If possession of their premises is required, that will have to be resorted to by taking steps under the Bombay Rent Act or the Maharashtra Rent Act”.

38. In paragraph 60, the Apex Court dealt with Section 15 of the Public Premises Act and observed that “as far as the relationship between respondent no.1 (Oriental Insurance Co.Ltd), 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 paragraph 66 of Ashoka Marketing. 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”.

39. In paragraph 64 of Ashoka Marketing, it was observed

thus:-

“64. It would thus appear that, while the Rent Control Act is intended to deal with the general relationship of landlords and tenants in respect of premises other than government premises, the Public Premises Act is intended to deal with speedy recovery of possession of premises of public nature, i.e. property belonging to the Central Government, or Companies in which the Central Government has substantial interest or Corporations owned or controlled by the Central Government and certain corporations, institutions, autonomous bodies and local authorities. The effect of giving overriding effect to the provisions of the Public Premises Act over the Rent Control Act, would be that buildings belonging to Companies Corporations and Autonomous bodies referred to in Section [2\(e\)](#) of the Public Premises Act would be excluded from the ambit of the Rent Control Act in the same manner as properties belonging to the Central Government. The reason underlying the exclusion of property belonging to the Government from the ambit of the Rent Control Act, is that Government while dealing with the citizens in respect of property belonging to it would not act for its own purpose as a private landlord but would act in public interest. What can be said with regard to Government in relation to property belonging to it can also be said with regard to companies, corporations and other statutory bodies mentioned in Section [2\(e\)](#) of the Public Premises Act. In our opinion, therefore, keeping in view the object and purpose underlying both the enactments viz., the Rent Control Act and the Public Premises Act, the provisions of the Public Premises Act have to be construed as overriding the provisions contained in the Rent Control Act.”

40. On the other hand, Mr.Sanglikar relied upon the decisions in (i) Ashoka Marketing Ltd (supra), (ii) Minoo Framroze Balsara (supra) and (iii) Kaiser-I-Hind Pvt Ltd (supra). In paragraphs 40 and 41 of Kaiser-I-Hind Pvt Ltd (supra), the Constitution Bench has held that once the Public Premises Act came into force, the Bombay Rent Act qua the properties of the government and government companies would be inoperative. Once the Public Premises Act came into force with effect from 23.8.1971, the

existing Bombay Rent Act would be void so far as it is repugnant to the law made by the Parliament as in view of Article 254(i), the law made by the Parliament would prevail. He submitted that in *Crawford Bayley & Co (supra)* the Court has held that the provisions of the Public Premises Act would prevail over the provisions of the Maharashtra Rent Control Act.

41. Mr. Sanglikar submitted that Section 15 of the Public Premises Act lays down that no court shall have jurisdiction to entertain any suit or proceeding in respect of (a) the eviction of any person who is in unauthorized occupation of any public premises. Mr. Sanglikar relied upon the decision of the Apex Court in the case of *New India Assurance Co. Ltd. vs. Hilli Multipurpose Cold Storage Pvt. Ltd*, AIR 2016 SC 86, and submitted that the law laid earlier by larger Bench, namely in *Ashoka Marketing (supra)*, will prevail over the law laid down by the smaller Bench and is binding on the subsequent Bench of lesser or equal strength. Mr. Sanglikar also relied upon the Full Bench decision of this Court in *Kamleshkumar I. Patel Vs Union of India*, 1995 (2) Bom C.R. 640, wherein it is held that the declaration of law emanating from a larger Bench would obviously outweigh any contrary observation in a smaller Bench and it may not be even relevant to consider as to whether any such declaration whether by the larger Bench or the smaller Bench, was or was not accompanied by actual application

thereof.

42. In paragraphs 63 to 65 of Ashoka Marketing Ltd (supra), the Constitution Bench has held that the effect of giving overriding effect to the provisions of the Public Premises Act over the Rent Control Act, would be that buildings belonging to Companies Corporations and Autonomous bodies referred to in Section 2(e) of the Public Premises Act would be excluded from the ambit of the Rent Control Act in the same manner as properties belonging to the Central Government. The reason underlying the exclusion of property belonging to the Government from the ambit of the Rent Control Act, is that Government while dealing with the citizens in respect of property belonging to it would not act for its own purpose as a private landlord but would act in public interest. The Apex Court held that keeping in view the object and purpose underlying both the enactments viz., the Rent Control Act and the Public Premises Act, the provisions of the Public Premises Act have to be construed as overriding the provisions contained in the Rent Control Act.

43. Thus, there are two Constitution Benches' decisions of the Apex Court, namely, Ashoka Marketing Ltd., and Kaiser-I-Hind Pvt. Ltd, which hold that once the Public Premises Act came into force, the Bombay Rent Act qua the properties of the government and government companies would be inoperative. On the other hand, the Bench consisting of two learned Judges of the Apex

Court in Suhas H. Pophale (supra) has held that all those persons falling within the definition of a tenant occupying the premises prior to 16.9.1958 or whichever is the later date on which the premises concerned becomes the public premises, will not come under the ambit of the Public Premises Act and cannot, therefore, be said to be persons in "unauthorised occupation". Whatever rights such prior tenants, members of their families or heirs of such tenants or deemed tenants or all of those who fall within the definition of a tenant under the Bombay Rent Act have, are continued under the Maharashtra Rent Control Act. If possession of their premises is required, that will have to be resorted to by taking steps under the Bombay Rent Act or the Maharashtra Rent Act.

44. Before I deal with the question whether I should follow and apply the decisions of the Constitution Benches in Ashoka Marketing Ltd and Kaiser-I-Hind Pvt. Ltd or Suhas H. Pophale decisions, it is necessary to deal with the provisions of the Public Premises Act.

45. Sections 2(e)(2)(i) and 2(g) read thus:

"2. Definitions.- In this Act, unless the context otherwise requires -

(e) "public premises" means-

(1) xxx xxx

(2) any premises belonging to, or taken on lease by, or on behalf of,-

(i) any company as defined in Section [3](#) of the Companies

Act, 1956 (1 of 1956), in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government or any company which is a subsidiary (within the meaning of that Act) of the first-mentioned company,”

(g) "unauthorised occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason *whatsoever*.

Section 15(a) reads thus:-

“15. Bar of jurisdiction - No court shall have jurisdiction to entertain any suit or proceeding in respect of -

(a) the eviction of any person who in unauthorized occupation of any public premises, or

46. In paragraph 30 of Ashoka Marketing Ltd (supra), the Constitution Bench has dealt with expression 'unauthorised occupation'. It was observed thus:

“30. The definition of the expression 'unauthorised occupation' contained in Section 2(g) of the Public Premises Act is in two parts. In the first part the said expression has been defined to mean the occupation by any person of the Public premises without authority for such occupation. It implies occupation by a person who has entered into occupation of any public premises without lawful authority as well as occupation which was permissive at the inception but has ceased to be so. The second part of the definition is inclusive in nature and it expressly covers continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason *whatsoever*. This part covers a case where a person had entered into occupation legally under valid authority but who continues in occupation after the authority under which he was put in occupation has expired or has been determined. The words "whether by way of grant or any

other mode of transfer" in this part of the definition are wide in amplitude and would cover a lease because lease is a mode of transfer under the Transfer of Property Act. **The definition of unauthorised occupation contained in Section 2(g) of the Public Premises Act would, therefore, cover a case where a person has entered into occupation of the public premises legally as a tenant under a lease but whose tenancy has expired or has been determined in accordance with law."**

(emphasis supplied)

47. In the present case, Sevakram was inducted in the suit premises as a tenant in the year 1952. Thus, she entered into occupation of the suit premises under a valid authority. In 1971, building where the suit premises is situate, was taken over by Insurer. It is not in dispute that the suit premises belongs to Insurer and is a public premises within the meaning of Section 2(e)(2)(i) of the Public Premises Act. It is also established that by notice dated 19.7.1983, tenancy of Sevakram was terminated/determined. Thus, the definition of expression 'unauthorised occupation' contained in section 2(g) covers a case where a person like Sevakram who was inducted as a tenant and thus had entered into occupation legally under valid authority but who continues in occupation after the authority under which he was put in occupation has expired or has been determined. The Constitution Bench held that the words "whether by way of grant or any other mode of transfer" in this part of the definition are wide in amplitude and would cover a lease because lease is a mode of transfer under the Transfer of Property Act. The

definition of unauthorised occupation contained in Section 2(g) of the Public Premises Act would, therefore, cover a case where a person has entered into occupation of the public premises legally as a tenant under a lease but whose tenancy has expired or has been determined in accordance with law. Section 15 of the Public Premises Act mandates that no court shall have jurisdiction to entertain any suit or proceeding in respect of (a) the eviction of any person who is unauthorised occupation of any public premises.

48. In Suhas H. Pophale's case (supra), the Apex Court has held that all those persons falling within the definition of a tenant occupying the premises prior to the premises becoming public premises on 16.9.1958 or subsequently, cannot be said to be persons in unauthorized occupation. Whatever rights such prior tenants, members of their families or heirs of such tenants or deemed tenants or all of those who fall within the definition of a tenant under the Bombay Rent Act have, are continued under the Maharashtra Rent Control Act. If possession of their premises is required, that will have to be resorted to by taking steps under Bombay Rent Act or Maharashtra Rent Act as the case may be. Same was reiterated in paragraph 64. In my opinion, once the premises in question becomes public premises, the public authority can resort to provisions of the Public Premises Act for eviction of any unauthorized occupant. It can not invoke the

provisions of the Bombay Rent Act or the Maharashtra Rent Act, as the case may be. The entities specified in Section 2(e)(1) and (2) cannot be asked to resort to the provisions of either the Bombay Rent Act or the Maharashtra Rent Act on the ground that the occupant was inducted prior to the premises becoming the public premises. In my opinion, that will be contrary to the provisions of Sections 2(e) (2)(g) and 15 of the Public Premises Act as also it will be contrary to the Statement and Objects and reasons for which the Public Premises Act was enacted. Even if a person is inducted prior to 16.9.1958 or prior to the premises becoming a public premises, once it becomes a public premises in terms of Section 2(e) of the Public Premises Act, his tenancy rights are attorned to the concerned entity specified in Section 2(e) of the Public Premises Act. Thus, the Public Premises Act is applicable to the premises specified in Section 2(e) as also the entities specified in Section 2(e) can invoke the Public Premises Act by approaching the Estate Officer appointed under the Public Premises Act. The Estate Officer has to follow procedure under Sections 4 to 7 by exercising powers under section 8. Merely because occupant is inducted as tenant prior to 16.9.1958 or prior to premises being taken over by the entities specified in section 2(e) of the Public Premises Act, the premises does not ceased to be a public premises.

49. This aspect can also be considered by considering the

entities specified in Section 2(e) of the Public Premises Act. Under Section 2(e), the premises may belong to Central Government/State Government or any other companies, corporations specified therein. Section 3(1)(a) of the Maharashtra Rent Act and Section 4(1) of the Bombay Rent Act lay down that these Acts shall not apply to any premises belonging to the Government.. . In view thereof, State Government/Central Government cannot invoke provisions of either the Bombay Rent Act or the Maharashtra Rent Act and essentially will have to invoke provisions of the Public Premises Act for eviction of unauthorized occupants. As against this, if submission of Mr.Sasi that in view of the decision of Suhas Pophale's case and more particularly paragraphs 59 and 64, entities other than the Central/State Governments will have to invoke Bombay Rent Act or Maharashtra Rent Act as the case may be, is accepted, it will defeat the object for which the Public Premises Act is enacted.

50. The entities other than Central/State Government will have to invoke Bombay Rent Act or Maharashtra Rent Act, as the case may be, for eviction of those persons falling within the definition of tenant occupying the premises prior to the premises becoming public premises on 16.9.1958 or whichever is the later date on which the premises concerned becomes the public premises. Thus, the Central/State Government can invoke provisions of the

Public Premises Act in respect of these persons and the entities other than the Central/State Government will have to invoke provisions of the Bombay Rent Act or Maharashtra Rent Act, as the case may be. In paragraphs 62 to 65 of *Ashoka Marketing Ltd, (supra)*, the Constitution Bench has held that the effect of giving overriding effect to the provisions of Public Premises Act over the Rent Act would be that building belonging to companies, corporations and autonomous bodies referred to in Section 2(e) of the Public Premises Act, would be excluded from the ambit of the Rent Act in the same manner as the properties belonging to the Central Government. In paragraphs 40 and 41, the Constitution bench in *Kaier-I-Hind Pvt Ltd. (supra)* has held that once the Public Premises Act came into force, the Bombay Rent Act qua the properties of the government and the Government companies would be inoperative.

51. In the light of the aforesaid discussions and in view of the decisions of Full Bench of this Court in *Kamleshkumar Ishwardas Patel (supra)* as also of *New India Assurance Company (supra)*, I prefer to follow the law laid down by larger Benches of the Apex Court in *Ashoka Marketing Ltd (supra)* and *Keiser-I-Hind Pvt Ltd (supra)*, more so when in paragraph 66 of *Suhas Pophale's* decision (*supra*), the Division Bench held that they have not, for a moment, taken any different position from the proposition in *Ashoka Marketing Ltd (supra)*. I, therefore, do not find any merit

in the submission of Mr. Sasi that the Insurer has to invoke the provisions of the Bombay Rent Act or the Maharashtra Rent Act as the case may be. In the result, Petitions fail and the same are dismissed.

52. In view of dismissal of the Petition, Civil Applications No.1109 and 884 of 2016 in Writ Petition No.1422 of 1996 do not survive and the same are disposed of.

53. At this stage, Mr. Sasi and Mr. Pandey orally apply for stay of this order for a period of eight weeks from today. Mr. Sasi assures that within two weeks from today, legal representatives of Ms. Rani Sevakram using the suit premises will file usual undertaking after giving advance copy to the other side incorporating therein:

- (i) that they are in actual possession of the suit premises and nobody else is in possession;
- (ii) that they have so far neither created third party interest nor parted with the possession of the suit premises;
- (iii) that they will hereafter neither create third party interest nor part with the possession of the suit premises; that they will pay compensation fixed by this Court, to the Insurer;
- (v) that in case they are unable to obtain suitable orders within eight weeks from today from the higher Court, they will deliver vacant and peaceful possession of the suit premises to the Insurer.

54. Mr. Pandey also assures that on behalf of U.P.Handloom Corporation, an authorized representative will file usual undertaking within two weeks from today incorporating therein:

- (i) that they are in actual possession of the suit premises and nobody else is in possession;
- (ii) that they have so far neither created third party interest nor parted with the possession of the suit premises;
- (iii) that they will hereafter neither create third party interest nor part with the possession of the suit premises; that they will pay compensation fixed by this Court, to the Insurer;
- (v) that in case they are unable to obtain suitable orders within eight weeks from today from the higher Court, they will deliver vacant and peaceful possession of the suit premises to the Insurer.

55. In view thereof, notwithstanding dismissal of the writ petitions and subject to the legal representative of Sevakram and the authorized representative of the Corporation filing the undertakings in aforesaid terms within two weeks from today, interim order operating in the petitions shall remain in force for a period of eight weeks from today with clear understanding that no further extension shall be sought from this Court. It is made clear that in case the legal representatives of Sevakram and authorized representative of Corporation do not file the undertakings within the stipulated period, interim relief shall stand vacated without reference to the Court and the Insurer will

be at liberty to proceed in the matters in accordance with law.

56. List the matters for reporting compliance after ten weeks.

(R.G.KETKAR,J.)