

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5678 OF 2015

The Board of Trustee of the Port of Mumbai]
A Statutory Corporate incorporated under the]
Major Port Trust Act, 1963, having its]
Administrative Office at Shoorji Vallabhdas] Petitioner
Marg, Ballard Estate, Mumbai 400 001.] [*Original Appellant*]

Versus

New India Assurance Co. Ltd]
New India Assurance Building]
85, M.G.Road, Fort,] Respondent
Mumbai 400 001.] [*Original Respondent*]

Mr. P. S. Dani, Senior Counsel, a/w Mr. Rajesh Patil, Mr. Shahen Pradhan and Ms. Ashwini Hariharan, i/by M/s. HSA Advocates, for the Petitioner.

Mr. V. Y. Sanglikar for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI,J.

RESERVED ON : 18TH APRIL 2018.

PRONOUNCED ON : 3RD MAY 2018.

JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard finally, at the stage of admission itself, by consent of Mr. Dani, learned Senior Counsel for the Petitioner, and Mr. Sanglikar, learned counsel for the Respondent.

2. A very short question raised for consideration in this Writ Petition, filed under Article 227 of the Constitution of India, is,

'Whether the premises belonging to the 'Port Trust of India', being a local authority, which has been excluded from the purview of the protection granted to the tenants under the Bombay Rent Act, 1947 and its successor, the Maharashtra Rent Act, 1999, stand covered by the judgment of the Hon'ble Apex Court in the case of Suhas H. Pophale Vs. Oriental Insurance Co. Ltd and its Estate Officer, (2014) 4 SCC 657 ? '

3. In other words,

'Whether the said judgment can be made applicable to this premises, so as to protect the possession of the respondent-tenant, on the count of Respondent being in possession of the said premises since prior to the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, (for short, "the Public Premises Act"), came into effect from 1971 ?'

4. The facts of the Writ Petition, therefore, which lie in a narrow compass, are to the effect that, the Petitioner is the owner of the premises bearing Old R.R. No.647, admeasuring 428.66 sq. meters, with building standing thereon, situated at Apollo Reclamation, Mumbai. From 1st May, 1898 to 30th April, 1997, the petitioner has demised the said premises to Ardeshir B. Patel and another, for a

term of 99 years. Sometime in the year 1956, by virtue of diverse assignments, the said premises came to be vested in Chandrakant Mulraj Khatau and Lalitkumar Mulraj Khatau. On 22nd March, 1960, by the Resolution bearing No.272, the predecessor of the Petitioner permitted Chandrakant, Lalitkumar and others to assign lease of the said premises to the Respondent. Since then, the Respondent is in possession of the said premises.

5. On 12th October 2001, the Petitioner has, by its Advocate's notice, terminated the tenancy of the Respondent in respect of the said premises and called upon the Respondent to hand over vacant and peaceful possession thereof to the Petitioner, along with arrears of compensation. Respondent failed to comply with the requisition in the said notice. Hence, the Petitioner filed an application before the Estate Officer on 28th February 2003 for necessary orders to be passed under Sections 4 and 7 of the Public Premises Act. On 25th September 2003, the Respondent filed reply/written statement to the said application before the Estate Officer. After holding due enquiry, by the order dated 10th October 2007, the Estate Officer allowed the application and directed the Respondent to hand over possession of the said premises and also to pay the arrears of compensation to the Petitioner. Against the said order, the Respondent filed statutory

appeal, under Section 9 of the Public Premises Act, before the Principal Judge, City Civil and Sessions Court, Mumbai. It was allowed by the Judgment and Order dated 12th September 2014, setting aside the order passed by the Estate Officer. Being aggrieved thereby, this Writ Petition is preferred.

6. While challenging the impugned Judgment and Order of the Appellate Court, the submission of learned Senior Counsel for the Petitioner is that, the Appellate Court has committed an apparent error in relying on the judgment of the Hon'ble Supreme Court in the case of *Suhash H. Pophale Vs. Oriental Insurance Company Ltd. (Supra)*, as, according to him, the said Judgment is wholly inapplicable to the premises in question. It is submitted that, the provisions of the Bombay Rent Act and its successor Maharashtra Rent Control Act, cannot have application to the subject premises, since, even prior to coming into force of the Public Premises Act, the present premises are belonging to the local authority, like Bombay Port Trust, and hence, these premises were exempted from the operation of the provisions of the Bombay Rent Act. It is urged that, the Judgment of the Hon'ble Apex Court in the case of *Suhas H. Pophale Vs. Oriental Insurance Co. Ltd. (Supra)* can be applicable only in respect of those tenants, who were "protected" under the Bombay

Rent Act. In the instant case, as the Respondent, being the tenant of the local authority, like the Bombay Port Trust, the Respondent was never “the protected tenant” and hence, the Respondent stands excluded from the purview of Judgment of the Hon'ble Apex Court in the case of *Suhas H. Pophale Vs. Oriental Insurance Co. Ltd. (Supra)*. Therefore, according to him, the impugned Judgment and Order passed by the Appellate Court needs to be quashed and set aside.

7. Per contra, learned counsel for the Respondent has supported the order of the Appellate Court by submitting that, the Petitioner is making this artificial distinction in the premises owned by the local authority and the premises owned by the private parties. It is urged that, the protection granted by the Apex Court in the case of *Suhas H. Pophale Vs. Oriental Insurance Co. Ltd. (Supra)* is applicable to all the tenants, who were in possession of the premises since prior to coming into effect of the Public Premises Act. As, admittedly, the Respondent is in possession since prior to 1st September 1971, on which date the Public Premises Act came into effect, the Appellate Court has rightly protected Respondent's possession. Hence, no interference is warranted in the impugned order passed by the Appellate Court.

8. In my considered opinion, as the entire controversy in this case

revolves around the law laid down by the Hon'ble Apex Court in the case of *Suhas H. Pophale Vs. Oriental Insurance Co. Ltd (Supra)*, it would be useful to consider the facts of that case and the legal position discussed therein, in detail, in order to ascertain whether the dictum of the law laid down by the Hon'ble Apex Court in the said Judgment can be made applicable to the facts of the preset case.

9. As the opening paragraph of the said Judgment depicts, the question raised for consideration before the Hon'ble Apex Court in that Appeal by Special Leave was, *"whether the rights of an occupant/licensee/tenant "protected" under the State Rent Control Act (Bombay Rent Act, 1947) and it's successor Maharashtra Rent Control Act, 1999', in the instant case, could be adversely affected by the application of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971?"*.

10. This question has arisen in the context of the eviction order dated 28th May 1993, passed by the Estate Officer of the first Respondent therein – the Oriental Insurance Company, invoking the provisions of the Public Premises Act with respect to the premises occupied by the Appellant since 20th December 1972. The eviction order passed by the Estate Officer therein has been upheld by this

Court in its impugned Judgment dated 7th June 2010, rejecting Writ Petition No.2473 of 1996 filed by the Appellant.

11. The facts leading to the said Appeal were that, one Mr.Eric Voller was the tenant of the Indian Mercantile Insurance Co. Ltd. - the predecessor-in-title of the first Respondent - Oriental Insurance Company. Mr. Voller has executed a 'Leave and License Agreement' in respect of the subject premises on 12th December 1972, in favour of the Appellant - Suhash H. Pophale, initially, for a period of two years and put him in the exclusive possession thereof. The erstwhile Insurance Company had not taken objection to the Appellant coming into the exclusive possession of the said premises. Conversely, his tenancy was accepted, initially, for residential purpose and, thereafter, even for the change of user, for practicing as 'Physician'. The erstwhile Insurance Company subsequently merged on 1st January 1974 with the first Respondent - Oriental Insurance Company, which is a Government Company. A Suit for eviction and arrears of rent was filed against the Appellant by the said Company, which was pending. During that time, the Appellant therein had sent a letter dated 22nd November 1984 to the first Respondent, requesting them to regularize his tenancy as a 'statutory tenant'. In response thereto, a show cause notice, under Sections 4 and 7 of the

Public Premises Act, came to be issued to the Appellant by the first Respondent; thereafter, in the case preferred before the Estate Officer, an order of eviction came to be passed as such. The said order of eviction was subsequently confirmed by the City Civil Court, Mumbai, and thereafter by this Court also. It was the subject-matter of the Second Appeal by Special Leave Petition before the Hon'ble Apex Court.

12. As can be seen from paragraph No.8 of the said Judgment, the principal contention raised by the Appellant in the said case, right from the stage of proceeding before the Estate Officer and even before this Court, was that, his occupation in the premises concerned was protected under the newly added Section 15-A of the Bombay Rent Act with effect from 1st February 1973, i.e. prior to the first Respondent acquiring title over the property from 1st January 1974. Therefore, he could not be evicted by invoking the provisions of the Public Premises Act and by treating him as an 'unauthorized occupant' under that Act. The said contention was rejected by this Court holding that, the provisions of the Bombay Rent Act were not applicable to the premises concerned, as the premises were covered under the Public Premises Act. While arriving at this conclusion, this Court had relied upon the Judgment of the Constitution Bench of the

Hon'ble Apex Court in the case of *Ashoka Mktg Ltd. Vs. Punjab National Bank*, (1990) 4 SCC 406. In this judgment, the contention that the provisions of the Public Premises Act cannot be applied to the premises, which fall within the ambit of the State Rent Control Act, was rejected. It was, therefore, held by this Court that, the Public Premises Act became applicable to the premises concerned from 13th May 1971 itself i.e. after the date from when the management of the erstwhile Insurance Company was taken over by the Central Government and not from the date of merger i.e. from 1st January 1974.

13. While considering the principal issue involved in the matter, the Hon'ble Apex Court had proceeded with the admitted position that, the relationship of the erstwhile Insurance Company as 'landlord' and the Appellant as the 'occupant' at all material times was governed under the Bombay Rent Act. In paragraph No.11 of the Judgment, it was held by the Hon'ble Apex Court that,

“Like all other Rent Control enactments, this Act has been passed as a welfare measure amongst the other reasons to protect tenants against unjustified increases above the standard rent, to permit eviction of the tenants only when a case is made out under the specified grounds and to provide for a forum and procedure for adjudication of the disputes between the

landlords and the tenants. The legislature of the Maharashtra thought necessary to protect licensees also in certain situations. Therefore, this Act was amended and Section was inserted therein, bearing Section 15-A to protect the licensees, who were in occupation on 1st February 1973.”

14. Thereafter, the Hon'ble Apex Court has considered the provisions of the Public Premises Act, including its object, to provide for the eviction of unauthorized occupants from the “public premises” and matters incidental thereto. Then, the Hon'ble Apex Court was pleased to consider, *'whether the provisions of the Public Premises Act can be applicable to the premises occupied by the Appellant, which were initially covered under the welfare legislation like the Bombay Rent Act?'*

15. The argument was proceeded on behalf of the Appellant therein, which is found in paragraph No.18 of the Judgment, to the effect that,

“The Appellant had a vested right under the statute passed by the State Legislature, protecting the licensees and since the Public Premises Act became applicable from 1st January 1974, the rights of the tenants and also those of the licensees protected under the States Act prior to 1st January 1974, could not be taken away by the application of the Public Premises Act, which can apply only prospectively.”

16. It was argued that, the eviction proceeding initiated under the Public Premises Act against the Appellant were, therefore, null and void. The only remedy available to the first Respondent for evicting the Appellant would be under the Bombay Rent Act or the Maharashtra Rent Control Act, which has replaced the State Act with effect from 31st March 2000. Thus, the case made out by the Appellant was on the basis of his legal rights as a 'protected licensee'.

17. In that context, learned counsel for Appellant in the said Judgment had tried to distinguish the Judgment of the Hon'ble Apex Court in the case of *Ashoka Marketing Ltd. Vs. Punjab National Bank (Supra)* and it was submitted that, in this case, the premises did not fall within the ambit of that Act and hence, the rights of the tenants, which were protected under the State Act prior to passing of the Public Premises Act, could not be said to have been extinguished by virtue of coming into force of the Public Premises Act.

18. The Hon'ble Apex Court has then considered the Judgment of the Constitution Bench in the case of *Ashoka Marketing Ltd. Vs. Punjab National Bank (Supra)*, wherein, it has been categorically held that,

“The effect of giving overriding effect to the provisions of the Public Premises Act over the Rent Control Act, would be that the buildings belonging to the 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”.

19. It was further held that,

“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'.”

20. The Hon'ble Apex Court has thereafter, in paragraph No.38, considered the question, with which it was dealing, as follows : -

“In the present matter, we are concerned with the question, 'whether the Respondents could resort to the provisions of the Public Premises Act at a time when the merger of the erstwhile Insurance Company into the first Respondent was not complete?'. The question is, 'whether taking over of the Management of the erstwhile Company can confer upon Respondent No. 1, the authority to claim that the premises belong to it to initiate eviction proceedings under the Public Premises Act, to the detriment of an occupant, who is claiming

protection under a welfare enactment passed by the State Legislature?'. [Emphasis Supplied]”

21. The Hon'ble Apex Court has then, in paragraph No.42, held that, in the present case, the properties of the erstwhile Insurance Companies did not belong to the Government Companies or the Government at that stage, when the Appellant has acquired the status of 'tenant', under Section 15-A of the Bombay Rent Act. It was, therefore, held as follows :

“The Public Premises Act, undoubtedly, provides a speedy remedy to recover the premises from the unauthorized occupants. At the same time, we have also to note that, in the instant case, the occupant is claiming a substantive right under a welfare provision of the State Rent Control Act, which gave him a protected status in view of the amendment to that Act. The question is, ‘whether this authority of management bestowed on the Government Company can take in its sweep the right to proceed against such protected tenants under the Public Premises Act, by contending that the premises belonged to the Government Company at that stage itself and that the State Rent Control Act no longer protected them?’ ‘Considering that the Rent Control Act is a welfare enactment and a further protective provision has been made therein, can it be permitted to be rendered otiose and made inapplicable to premises specifically sought to be covered thereunder and defeated by

resorting to the provisions of the Public Premises Act? [Emphasis Supplied]"

22. In the backdrop of these facts, it was further held, in paragraph No.43 of this Judgment, that,

“The Appellant is seeking protection under Section 15-A of the Bombay Rent Act, which has a non obstante clause. Respondent No.1 is, undoubtedly, not without a remedy and it can proceed to evict an unauthorized occupant under the Rent Control Act, if an occasion arises. It can certainly resort thereto until the managerial right fructifies into a right of ownership. However, by enforcing a speedier remedy, a welfare provision cannot be rendered nugatory.”

23. In paragraph No.45, it was, therefore, further held that, as far as those tenants, who are “deemed tenants” under the Bombay Rent Act, they continue to have their protection under the Maharashtra Rent Control Act, 1999. Hence, in answer to a question, *‘whether coverage of their premises under the Public Premises Act can make a difference to the protection, which they enjoyed earlier under the Rent Control Act?’*, it was held that, *“the protection given to them under the Rent Control Act cannot be taken away by the Public Premises Act”*.

24. In paragraph No.60 of the Judgment, it was further clarified that, as the occupants of these premises, like the Appellant therein, were earlier tenants of the erstwhile Insurance Company, which were the private landlords and 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 Premise Act. Hence, they cannot be deprived of the protection, which they enjoyed under the Rent Control Act. In accordance with this reasoning, it was held, in paragraph No.64, that,

“Those occupants, who are covered under the protective provision of the State Rent Act, like Appellant therein, need to be excluded from the coverage of public premises and with respect to such occupants, it will not be open to the Companies or Corporations to issue notices and to proceed against them under the Public Premises Act.”

25. In paragraph No.65 of the Judgment, it was further clarified that,

“The Bombay Rent Act exempted from its application only the premises belonging to the Government or local authority. The premises belonging to the Government Companies or Statutory Corporations were, however, covered under the Bombay Rent Act. As these Government Companies and Public Corporations are taken out of coverage of the Bombay

Rent Act, by virtue of the Public Premises Act, the provisions of Public Premises Act cannot be made applicable to the tenancies entered into before 16th September 1958 or before the property in question becoming public premises.”

26. Thus, the perusal of the entire judgment of *Suhas H. Pophale Vs. Oriental Insurance Co. Ltd.* makes it crystal clear that, the Judgment grants protection to those tenants, who were enjoying the protection of the Bombay Rent Act, before the Public Premises Act came into effect. Their protection was continued and held not to be taken away by enactment of Public Premises Act. It was held that, as earlier they were tenants of the private landlords, like the Government Companies or Public Corporations or Private Insurance Companies, the status of being the tenant of public premises was thrust upon them on account of the Public Premises Act coming into effect and those Private Insurance Companies thereafter becoming General Insurance Companies. Hence, those cannot be deprived of the protection given to them under the Welfare Legislation of the Bombay Rent Act and its successor Maharashtra Rent Control Act.

27. At the cost of repetition, for the sake of emphasis, it needs to be stated that, the very question raised for consideration by the Hon'ble

Apex Court in the said Judgment was, *'whether the rights of the occupants/licensees/tenants, who were protected under the State Rent Act and it's successor, could be adversely affected by the application of the Public Premises Act?* This question was raised because the premises in that case were previously owned by the Private Insurance Company and, therefore, the tenant-appellant therein was enjoying the protection of beneficial legislation, like Bombay Rent Act. However, those premises acquired the status of "public premises", on account of the merger with Oriental Insurance Company. Hence, the tenants, like the Appellant therein, were losing protection of the Rent Control Act, which they were enjoying earlier. Therefore, it was held that, the said protection enjoyed by the tenant under the Rent Control Act, cannot be taken away by the Public Premises Act.

28. The necessary corollary of this Judgment is that, in order to exclude any tenant from the clutches or coverage of the Public Premises Act, it must be shown that earlier the said tenant was enjoying the protection of the Bombay Rent Act or it's successor Maharashtra Rent Control Act. As a result, if such tenant was earlier also excluded from the coverage or protection of the Bombay Rent Act or it's successor, then, the question of depriving such tenant from the

benefit of protection of the Rent Act, on account of the Public Premises Act coming into effect, does not arise. The provisions of the Public Premises Act will, therefore, become applicable automatically to such tenants, excluded from protection of the Rent Control Act, the moment, the said Act came into effect, as earlier also, those tenants were neither the tenants of private landlords, so as to enjoy the protection of the Rent Control Act, nor the status of being tenant of the public premises was thrust upon them on enactment of the Public Premises Act. Therefore, such tenants, who were excluded from the operation of the Bombay Rent Act, are required to be considered differently from the tenants, who were earlier enjoying that protection, being tenants of the private landlords. The judgment of the Hon'ble Apex Court in the case of *Suhas H. Pophale Vs. Oriental Insurance Co. Ltd. (supra)* is, thus, applicable to those tenants, who were earlier enjoying the protection of the Bombay Rent Act, being tenants of the private landlords. Hence, the said Judgment cannot be made applicable to the tenants, who were not enjoying the protection under the Bombay Rent Act.

29. In the context of this case, admittedly, the Petitioner is a Body Corporate, constituted under the provisions of the Major Port Trusts Act, 1963, as amended by the Major Port Trusts (Amendment) Act,

1974. Petitioner is a successor-in-title of the Board of Trustees of Port of Bombay, a Body Corporate, constituted under the provisions of the Bombay Port Trusts Act, 1879. In short, the premises in question, therefore, belong to the Board of Trustee of Port of Bombay. The question for consideration is, *'as to whether the Bombay Rent Act was applicable to the premises owned by the Port Trust?'* In this respect, Section 4(i) of the Bombay Rent Control Act is relevant. It provides as follows :-

4(1) *“This Act shall not apply to any premises belonging to the Government or a local authority or apply as against the Government to any tenancy, (licence) or other like relationship created by a grant from (or a licence given by) the Government in respect of premises [requisitioned or taken on lease (or on licence) by the Government, including any premises taken on behalf of the Government on the basis of tenancy (or of licence) or other like relationship by, or in the name of any officer subordinate to the Government authorized in this behalf; but it shall apply in respect of [premises let, or given on licence, to] the Government or a local authority [or taken on behalf of the Government on such basis by, or in the name of, such officer].”*

30. Thus, as per this Section, the premises belonging to the Government or the local authority are excluded from the provisions

of the Bombay Rent Act. Even the Maharashtra Rent Control Act, 1999, contains similar provision in section 3(a) of the said Act. It reads as follows :

3(a). "To any premises belonging to the Government or a local authority or apply as against the Government to any tenancy, license or other like relationship created by a grant from or a license given by the Government in respect of premises requisitioned or taken on lease or on licence by the Government, including any premises taken on behalf of the Government on the basis of tenancy or of license or other like relationship by, or in the name of any officer subordinate to the Government authorized in this behalf, but it shall apply in respect of premises let, or given on licence, to the Government or a local authority or taken on behalf of the Government on such basis by, or in the name of, such officer".

31. Thus, under the provisions of both these Acts, the premises belonging to the Government or local authority stand exempted or excluded from the provisions of beneficial welfare legislation like Rent Control Act.

32. Now, the next question for consideration is, '*whether the Port trust is a Government or local authority, which is exempted from the application of the Bombay Rent Act?*' This question is also no more

res integra, as it is set at rest by the Judgment of this Court, long back, in the year 1983 in the case of *Ram Ugrah Singh Girjarsingh and Another Vs. Board of Trustees of the Port of Bombay, 1983 SCC OnLine Bom. 113*. The very question raised for consideration in the said judgment was, 'whether the Respondent , i.e. the Board of Trustees of Port of Bombay, is a local authority and after considering the provisions of Section 3(26) of the General Clauses Act, 1904, which defines "local authority", it was held that, the Bombay Public Trust is a local authority. For ready reference, the definition of the "local authority", as given in Section 3(26) of the Bombay General Clauses Act, 1904, can be reproduced as follows :-

"Local Authority" shall mean 'a Municipal Committee, District Board, Body of Port Commissioners or Other Authority legally entitled to, or, entrusted by the Government with, the control or management of a Municipal or local fund;"

33. In the light of this definition, it was categorically held that,

"If the Body of Port of Trust is included in the definition of "local authority", under the Bombay General Clauses Act, 1904, then, nothing more remains to be inquired into, to hold that, it is a local authority."

34. It was further held that,

“The present Board of Trustees of the Port of Bombay is, admittedly, constituted under Section 3 of the Major Port Trusts Act, 1963, and like the Board under the Act of 1879, the present Board is also a Body Corporate, entitled to sue and is liable to be sued in the name of the Board of Trustees. Admittedly, therefore, the present Board of Trustees is also the Body of Port Trustees and, therefore, it is required to be regarded as “local authority”.”

35. While rejecting the contention that the Board of Trustees under the Bombay Trust Act cannot be 'local authority', because, it does not possess autonomy and other attributes of a local authority, in paragraph No.14 of the said Judgment, it was further affirmed that,

14. “I am, therefore, of the opinion that, the Board of Trustees of the Port of Bombay, constituted under the Major Port Trusts Act, 1963, is a Body of Port of Trustees, coming under the definition of “local authority”, under Section 3(26) of the Bombay General Clauses Act. If this is so, the premises, which are the subject-matter of the proceedings in the Court below, are necessarily exempted from the provisions of the Bombay Rent Act, by virtue of the provisions contained in Section 4 of the said Act.”

36. In view of the Judgment of this Court, it follows that the subject premises in the present case also, which belongs, since beginning, to the Port Trust, which is a local authority, are clearly excluded and exempted from the application of the provisions of the Bombay Rent Act and its successor Maharashtra Rent Control Act. Even the definition of “public premises”, as given in Section 2(e)(v) of the Public Premises Act, categorically includes the premises belonging to the Board of Trustees, constituted under the Major Port Trusts Act, 1963.

37. Once, therefore, it is held that, the premises in question were, since beginning, excluded from the protection of the Rent Control Act, being the premises belonging to the local authority, it follows that, the law laid down by the Hon'ble Apex Court in the case of *Suhas H. Pophale Vs. Oriental Insurance Co. Ltd (Supra)* cannot be applicable to the facts of the present case. The said Judgment, at the cost of repetition, can be made applicable only to those tenants, who were enjoying protection under the Rent Control Act. As regards the premises belonging to the Government or the local authority, these premises never enjoyed such protection. As, since beginning, these are the “public premises”, exempted from the application of Rent Control Act, the order passed by the Appellate Court, setting aside the

eviction order, only relying upon the Judgment of the Hon'ble Apex Court in the case of *Suhas H. Pophale Vs. Oriental Insurance Co. Ltd.* (*supra*), cannot be sustainable in law.

38. In the view, which I am taking, for distinguishing the Judgment of *Suhas H. Pophale Vs. Oriental Insurance Co. Ltd. (Supra)*, in the facts of the present case, I am also supported from the Judgment of the Calcutta High Court in the case of *M/s B.C. Shaw and Sons Vs. The Union of India and Ors.*, 2014 SCC OnLine Calcutta 17606. In the said case also, the premises were belonging to the Indian Railways and hence it was held that, the premises were continued to be governed by the provisions of the Transfer of Property Act, 1882; hence, they were excluded from the purview of the Rent Control Act. After careful analysis of the Judgment of the Hon'ble Apex Court in the case of *Suhash H. Pophale Vs. Oriental Insurance Co. Ltd. (Supra)*, it was held that, the law laid down therein applies only to those tenants, who were already enjoying the protection of the Rent Control Act and not to those tenants, who were not enjoying such protection. In paragraph Nos.14, 17 and 18 of the said Judgment, it was held as follows,

14. "Pertinently, the relevant provisions of the West Bengal Premises Tenancy Act, 1956, and West Bengal

Premises Tenancy Act, 1997, exclude premises belonging to the Central Government from its coverage. It is, therefore, clear that the said two enactments would have no application to the said plots. The present case is, thus, significantly different from the one considered in Suhas H. Pophale (Supra)."

17. *"I have not been able to locate any law laid down in Suhas H. Pophale (Supra) to the extent that the "1971 Act" would have no application in cases where the tenancy/lease in respect of 'public premises' belonging to the Central Government came into existence prior to September 16, 1958. That was really not an issue there and it is axiomatic that the fact situation did not warrant such a finding being returned in that regard."*

18. *"Now, advertent attention to paragraph 64 of the decision in Suhas H. Pophale (Supra), it is noticed that the two categories of occupants, for whom exclusion of coverage of the "1971 Act" has been adumbrated therein are the "occupants of (sic premises of) these public corporations", and not the occupants of premises belonging to the Central Government. It is settled by a catena of judicial pronouncements that a line here or there in a Judgment of a superior court need not be read as a statute. In fact, in the said decision, the learned Judge referred to the oft-quoted saying that a decision is an authority for what it decides and not what can logically be deduced therefrom. The*

Supreme Court carved out exceptions applicable to public premises belonging to public corporations, which cannot be extended to public premises belonging to the Central Government. The decision in Suhas H. Pophale (Supra) is clearly distinguishable and does not, therefore, aid the Petitioner.”

39. The contention advanced in the said case that, the eviction has to be resorted to by invoking the relevant provisions of the Transfer of Property Act, 1882, was also rejected holding that,

“If such contention was to be accepted, the Court would have to lay down the law that even though a tenancy or a lease was created by the landlord/lessor in respect of a public premises before September 16, 1958, the “1971 Act” would not be applicable to such public premises on the specious ground that, the “1971 Act” itself had not been enacted on the date the tenancy/lease was created. That could not have been the legislative intention and acceptance of the contention raised, would militate against the object of the “1971 Act”.

40. Thus, the legal position, which emerges from this decision of Calcutta High Court, makes it clear that, the Judgment of the Hon'ble Apex Court in the case of *Suhas H. Pophale Vs. Oriental Insurance Co. Ltd. (Supra)*, cannot be made applicable as 'straight jacket formula' to all the premises, where tenancy was created prior to Public Premises

Act came into effect. It can be applicable only to those premises, to which the provisions of the Rent Control Act were applicable and not to those premises, like the present one, which were specifically excluded from its operation. The learned Appellate Court has, in this case, not taken into consideration this distinguishing factor, while allowing the Appeal, by applying the law laid down in the case of *Suhas H. Pophale Vs. Oriental Insurance Co. Ltd. (Supra)*. Hence, it needs to be said aside.

41. Though learned counsel for the Respondent has relied upon the Judgment of the Division Bench of this Court in the case of *Dr. Preeti Bhatt Vs. Central Bank of India, 2017 (6) Mh.L.J. 33*, in my considered opinion, the same cannot be applicable, as, in that case, the property was purchased by the Central Bank of India on 22nd May 1972; whereas, the tenant was in possession of the said premises from the year 1950 and in view thereof, it was held that, as the tenant enjoyed the protection of the Bombay Rent Act, since prior to the Public Premises Act came into effect, therefore, in view of the law laid down by the Hon'ble Apex Court in the case of *Suhas H. Pophale Vs. Oriental Insurance Co. Ltd.*, the eviction order cannot be sustained.

42. As stated above, in the present case, since beginning, the subject premises are owned by the local authority and, therefore, excluded from the application of the Rent Control Act, that is the distinguishing factor in the present case from this Judgment of *Dr. Preeti Bhatt Vs. Central Bank of India (Supra)*.

43. Thus, the position, which emerges from the above discussion, is that, the law laid down by the Hon'ble Apex Court in the case of *Suhas H. Pophale Vs. Oriental Issuance Co. Ltd. (Supra)*, was in the particular facts and circumstances of the case, namely, the Appellant being 'tenant' of the private landlord and, therefore, enjoying protection under the Rent Control Act. The status of being a 'tenant' of the Public Company was thrust upon him. Hence, it was held that, such protection, which the Appellant was enjoying under the Rent Control Act, cannot be taken by the Public Premises Eviction Act, after it came into effect.

44. As against it, in the facts of the present case, the Respondent was, since beginning, the 'tenant' of the public premises belonging to the local authority, like Port Trusts, which were excluded from the coverage of the Rent Control Act and hence, not enjoyed protection under the Rent Act. Therefore, Respondent cannot get benefit of the

Judgment of the Hon'ble Apex Court in the case of *Suhas H. Pophale Vs. Oriental Insurance Co. Ltd. (Supra)*. As this is the only issue involved and only on this point alone, the Appellate Court has reversed the eviction order passed by the Estate Officer, it has to be held that, the impugned order has to be quashed by allowing this Writ Petition.

45. Accordingly, the Writ Petition is allowed. The impugned order passed by Appellate Court is quashed and set aside. As a result, the order passed by the Estate Officer stands restored.

46. Rule is made absolute in the above terms.

47. After pronouncement of the Judgment, learned counsel for the Respondent seeks stay to the operation of this order for a period of 12 weeks, in view of the Summer Vacation to the Hon'ble Supreme Court. Learned Senior Counsel for the Petitioner resisted the said prayer.

48. However, considering that the eviction order is not yet executed, in view of the stay granted during the pendency of the Appeal, the operation of this order is stayed for a period of 10 weeks from today.

[DR.SHALINI PHANSALKAR-JOSHI, J.]