

**In The High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPO No.129 of 2019

IA NO.GA/1/2021

**Dalhousie Exchange and another
VS.**

The Life Insurance Corporation of India and others

For the petitioners : Mr. Arindam Banerjee, Adv.,
Ms. Sanchali Bhowmik, Adv.

For the respondents : Mr. Debajyoti Basu, Adv.,
Mr. Subhajit Sil, Adv.,
Ms. Sanjukta Ray, Adv.

Hearing concluded on : 27.04.2023

Judgment on : 07.06.2023

The Court:

1. The petitioners have challenged a proceeding under Sections 4 and 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as, "the 1971 Act") and for quashing the said proceeding. Admittedly, the Life Insurance Corporation of India (LIC), the respondent no.1, issued a letter dated July 31, 2003 asking the petitioner no.1 to vacate the disputed premises on the expiry of August 31, 2003.
2. Subsequently, there was correspondence between the parties in respect of increase in the monthly rent, followed by the respondent no.1 initiating a proceeding under Section 4 of the 1971 Act, bearing No.EO/299/1203, which was subsequently withdrawn on July 27, 2004.

3. Thereafter, a suit was filed against the petitioner no.1 for declaration and permanent injunction restraining the petitioner no.1 from sub-letting, transferring, assigning and/or carrying out any work of construction. In the suit, the temporary injunction application filed by the respondent no.1 was dismissed.
4. However, the respondent no.1/LIC issued further notices on May 25, 2005 under sections 4 and 7 of the 1971 Act, to which the petitioner no.1 responded. The LIC also instituted a proceeding under Sections 4 and 7, giving rise to Case No. EO/316/0505, in which the petitioner no.1 filed a written objection and its affidavit of examination-in-chief. Thereafter the said witness was examined and cross-examined.
5. The petitioner no.1 subsequently filed an application before the Estate Officer asking for cancellation of the orders passed in the proceeding for eviction and damages, challenging the authority of the previous Estate Officer, which question was kept open by the Estate Officer to be decided with the eviction proceeding.
6. Although initially the petitioners challenged the authority of the Estate Officer, subsequently such ground was not pressed seriously on behalf of the petitioners, particularly since the Estate Officer was changed in the meantime. Moreover, in another decision, this Court held that the person concerned was a duly authorised Estate Officer under the 1971 Act.
7. The plinth of the challenge is that the petitioner no.1 was a tenant in respect of the premises and such relationship was never severed in due course of law. Hence, it is argued that the petitioners are not unauthorised occupants within the contemplation of the 1971 Act.

8. Learned counsel for the petitioner cites *Ashoka Marketing Ltd. And another Vs. Punjab National Bank and others*, reported at AIR 1997 SC 855, where the Supreme Court upheld the *vires* of the Act but observed that care must be taken to use the powers, conferred by the Act, bona fide. It is argued that the Central Government published two sets of directions, in 1992 and 2002 respectively, essentially in the light of *Ashoka Marketing (supra)*. As per the said directions, the provisions of the 1971 Act should not be exercised to evict genuine tenants and the powers should be used primarily to evict unauthorised occupants and retired employees of Public Sector Enterprises.
9. Section 21 of the Life Insurance Corporation Act, 1956 (for short, “the LIC Act”) specifically provides that, in discharge of its functions under the Act, the LIC shall be guided by such directions in the matter of policy involving public interest as the Central Government may give to it in writing and that the same shall be binding on the LIC.
10. That apart, it is argued that the LIC is an authority under Article 12 of the Constitution of India, for which proposition learned counsel for the petitioner cites *Sukhdev Singh and others Vs. Bhagatram Sardar Singh Raghubanshi and another*, reported at AIR 1975 SC 1331. As such, the LIC is expected to act fairly, reasonably and to eschew arbitrariness.
11. It is submitted that as per the bilateral agreement between the LIC and the petitioner no.1, the petitioner no.1 was a valid tenant. The rate and periodicity of increase in rent was a part of the crystallised terms between the parties, of which no breach has been alleged.

12. The plinth of the action of termination of the jural relationship, it is argued, was that the petitioners did not agree to a higher rate of rent, which was contrary to the agreement between the parties. The non-agreement of the petitioners, it is argued, does not jurisprudentially qualify as a breach of the contract. Hence, the termination and assumption of powers under the 1971 Act, it is contended, are high-handed, irrational and violative of Article 14 of the Constitution. It is argued that the said action is violative of the freedom of trade, practice and vocation of the partners of the petitioner granted under Article 19(1)(g) of the Constitution and the right to life of the partners of the petitioner granted under Article 21. The violation of the triad, Articles 14, 19 and 21, vitiate the action of the respondents as unconstitutional and void.
13. Distinguishing *Banatwala and Company Vs. Life Insurance Corporation and Another*, reported at (2011) 13 SCC 446, learned counsel for the petitioner argues that the observations therein, regarding the Central Government directions dated May 30, 2002 not being binding, only pertain to the 2002 directions and have not considered the 1992 directions. Moreover, it is argued by the petitioners that the single-line observation of the Supreme Court that the directions dated May 30, 2022 are not directions under Section 21 of the LIC Act, is a stray finding/observation and is not backed by any reason. As such, learned counsel for the petitioners contends that the same cannot be law declared under Article 141 of the Constitution of India. Moreover, it is contended that the interplay of Sections 6(2)(c)

and 21 of the LIC Act were not considered and, as such, the judgment fails the *per incurium* test and cannot have any binding effect.

14. Next dealing with *New India Assurance Company Limited Vs. Nusli Neville Wadia and another*, reported at (2008) 3 SCC 279, the petitioners lay stress on paragraph no.24 of the judgment where the Supreme Court observed as follows:

“We may, however, hasten to add that having regard to the fact that the appellants themselves referred to the directions issued by the Central Government from time to time, its ultimate effect on the obligations need not to be finally determined by us”.

15. Thus, the issue was kept open by the Supreme Court. Even the judgments considered by the Supreme Court did not take into consideration the interplay of Sections 6(2)(c) and 21 of the LIC Act. The ratio laid down in *Ashoka Marketing (supra)* sounded out requirement of care in the user of the draconian powers conferred by the 1971 Act and cannot be said to be merely advisory, which was not considered in *Nusli Wadia’s case*.

16. Even though the 1971 Act overrides the Rent Control statutes, the actions of companies and statutory bodies mentioned in Clauses (2) and (3) of Section 2(e) of the 1971 Act, while dealing with their properties, would have to be judged by the standard as held in *Dwarkadas Marfatiya and Sons Vs. Board of Trustees of the Port of Bombay*, reported at (1989) 3 SCC 293, where it was held that all exercises of discretion or power by public authorities as the respondents, in respect of dealing with tenants in respect of which they have been treated separately and distinctly from other landlords,

were on the assumption that they would not act as private landlords and must be judged by that standard.

- 17.** The impugned action in the present case is arbitrary, it is added.
- 18.** Learned counsel for the petitioners, in reply, also seeks to distinguish other judgments cited by the LIC in the line of the arguments made above.
- 19.** Learned counsel for the LIC argues that the writ petition has been filed only to delay the proceeding pending before the Estate Officer. Secondly, it is contended that the guidelines sought to be relied on by the petitioners have no statutory force. Thirdly, the petitioners have failed to make out any case on merits.
- 20.** While elucidating the first point, learned counsel for the LIC argues that the petitioners have not approached the court with clean hands, having suppressed a subsequent clarificatory order dated July 23, 2007 where the Central Government made it clear that the guidelines will not apply to affluent tenants. By a further clarificatory order, the Central Government has made it clear that the guidelines are not applicable to large business houses and commercial entrepreneurs.
- 21.** Learned counsel for the LIC argues that the question whether the petitioner is a *bona fide* tenant or not is a factual dispute and cannot be adjudicated by the writ court, since the same is yet to be crystallised. The issue is pending before the Estate Officer and ought to be decided by such authority, provided by law.
- 22.** Under Section 21 of the LIC Act, the Corporation is to be guided by directions in the matter of policy involving public interest. The property could have generated much higher amount than the rent

paid by the petitioners, which would go towards the fulfilment of public interest at large. The petitioners are trying to enjoy the possession at an unreasonably low amount, which is detrimental to public interest. The LIC is to insure that the premises are used to subserve the best objectives and to ensure that it optimises the best returns. Learned counsel cites *Iyer and sons Private Limited Vs. LIC*, reported at ILR (2008) 1 Delhi 499 in such context.

23. By placing reliance on *Banatwala (supra)*, it is reiterated that the guidelines of 2002 are not directions under Section 21 of the LIC Act, and, as such, not binding. In *Nusli Wadia's case*, it was held by the Supreme Court that the guidelines by the Central Government are not controlled by statutory provisions and are advisory in character.
24. Learned counsel for the LIC cites *Syndicate Bank Vs. Ramchandran Pillai and others*, reported at (2011) 15 SCC 398, for the proposition that if there has been a violation of non-statutory guidelines, it would not confer any right to the members of the public to seek direction in a court of law for compliance with the same. Courts shall not interfere under Article 226 of the Constitution unless there is an arbitrary action from the end of the State Authorities.
25. The guidelines of 1992 and 2002 were issued apparently to enforce the law laid down in *Ashoka Marketing (supra)* and are executive in nature, the source of which are executive and have no statutory or binding force. In such context, the LIC places reliance on *Life Insurance Corporation of India Vs. Damyanti Verma (Decd.) through Lrs*, reported at (2012) SCC OnLine Del 1778). Relying on *Jiwan Dass Vs. Life Insurance Corporation of India and another* [1994 Supp (3) SCC

694], the respondents argue that that guidelines cannot curtail or limit the applicability of the statute or law.

26. It is argued by the LIC that there cannot be any application of Article 14 of the Constitution unless equals are treated differently without any reasonable basis. In support of such proposition, learned counsel cites *Air India Vs. Nergesh Meerza and others* [(1981) 4 SCC 335].
27. In the present case, there is no unequal treatment and/or any case of transgression or excess of jurisdiction.
28. In the same tune, it is argued that there is no violation of either Article 19(1)(g) or Article 21 of the Constitution of India as well.
29. Learned counsel for the LIC then cites the following Supreme Court judgments:
 - i) *Oriental Insurance Co. Ltd. Vs. MeenaVariyal and others*, reported in (2007) 5 SCC 428;
 - ii) *Municipal Committee Amritsar Vs. Hazra Singh*, reported in (1975) 1 SCC 794;
 - iii) *GM Foods and another Vs. Income Tax and Health and Wealth Tax Settlement Commissioner*, reported in (2015) SCC OnLine Cal 2026.
30. By relying on the same, it is argued that judgments of the Supreme Court are binding on the High Courts. The High Court cannot say that a finding of the Supreme Court is ratio or *obiter dictum*. *Obiter dicta* of the Supreme Court are also binding. In such context, it is argued that the petitioners' line of distinction with regard to *Bantawala (supra)* is not tenable in law.
31. In *Nusli Wadia's case*, the Supreme Court also held that generally guidelines have no binding effect.

32. In *Syndicate Bank (supra)* the Supreme Court classified which executive guidelines have binding effect and which do not. Guidelines which are not law have no binding effect and are thus unenforceable.
33. The executive directions are only enforceable in writ court if they have a statutory source or flavour and not if they are merely executive in character. The latter, being merely advisory, have no binding effect.
34. In support of the said proposition, learned counsel for the LIC cites *Chief Commercial Manager, South Central Railways, Secundrabad and others Vs. G. Ratnam and others, reported at (2007) 8 SCC 212*. By placing reliance on an unreported judgment of this Court in CO No.721 of 2018 (*Gyan Mahindra Swarup Vs. LIC*), learned counsel for the LIC submits that lessees under the Transfer of Properties Act are in a worse position than an occupier under the 1971 Act.
35. As per Section 3(a)(ii) and (iii) of the West Bengal Premises Tenancy Act, 1997, premises owned by a government undertaking and a statutory body are exempted from the said Act. Therefore, the respondent no.1 could not have applied for fixation of standard rent/fair rent under the provisions of the Rent Control statute. The only recourse open to the respondent is under the 1971 Act and Rules framed thereunder.
36. For abundant caution, although the point has not been pressed in final hearing, learned counsel for the LIC cites *Eden Reality Ventures Pvt. Ltd. Vs. Life Insurance Corporation of India, reported at 2020 SCC OnLine Cal 1112*, to argue that the LIC was within its authority to appoint Mr. A. Sikdar as an Estate Officer under the 1971 Act, which was initially disputed by the petitioners.

- 37.** Thus, it is argued that the writ petition ought to be dismissed.
- 38.** Coming to the facts of the present case, it is an admitted position that a notice to quit was issued on July 31, 2000. Even giving a go-bye to the prior eviction proceeding which was withdrawn and/or the suit filed by the LIC for different reliefs, the relief for eviction and damages available to the LIC with regard to public premises lies squarely under the 1971 Act.
- 39.** It is an admitted position that the respondent no.1/LIC issued notices under Sections 4 and 7 of the 1971 Act on May 25, 2005, to which the petitioner no.1 responded. In fact, the respondents also filed a written objection and adduced evidence in connection with the proceeding under the said proceeding, bearing no. EO/316/0505. Insofar as the applicability of the 1997 Act is concerned, it is nobody's case that the exemption under Section 3 of the said Act is not applicable to the present case. The LIC being a public authority, the premises-in-question are public premises, thereby ruling out the applicability of the 1997 Act, which is the governing Rent Control law in West Bengal, and bolstering applicability of the 1971 Act.
- 40.** As rightly argued by the LIC, the position of a lessee is worse as an occupier than an unauthorised occupant under the 1971 Act, which view is also strengthened by the judgment of this Court in *CO No.721 of 2018 (Gyan Mahindra Swarup Vs. LIC)*.
- 41.** In fact, the established position in the light of *Banatwala's case*, *Nusli Wadia's case* and *Ashoka Marketing (supra)* is that the 1971 Act overrides the provisions of the Rent Control law and the Transfer of Property Act insofar as the zone of operation of the 1971 Act is

concerned. Hence, it would be specious to argue that a full-fledged proceeding for eviction under either the Rent Control Act or the Transfer of Property Act is to precede the initiation of a proceeding under Sections 4 and 7 of the 1971 Act.

42. A sufficient quit notice was issued in the present case on July 31, 2003.

43. The expression “unauthorised occupation” as defined under Section 2(g) of the 1971 Act is as follows:

“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.

44. In the present case, the quit notice was sufficient to determine the jural relationship previously existing between the parties. The said definition accommodates “any reason whatsoever”, which could very well include the reasons cited in the notice in the present case.

45. That apart, the petitioners have failed to show undisputedly that there was a subsequent jural relationship between the parties after the expiry of the previous lease. Mere negotiations regarding increase of rent, which never attained finality, could not be termed, by any stretch of imagination, as a further tenancy/lease between the parties.

46. Although learned counsel for the petitioners has advanced convoluted arguments on the applicability of *Banatwala’s case*, it has been

rightly contended by the LIC that even *obiter dicta* of the Supreme Court are binding on the High Courts. Judicial propriety and the Constitutional scheme of India precludes this Court from entering into the question raised by the petitioners as to whether the said judgment is *per incuriam* or not.

47. The ratio laid down in *Banatwala (supra)* was specific, without leaving any scope for ambiguity. The directions dated May 30, 2022 were clearly held not to be directions under Section 21 of the LIC Act. In fact, the petitioners themselves have agreed in their argument that the 1992 guidelines were of similar nature as the 2002 guidelines. As such, the same observations also govern the 1992 guidelines.
48. Hence, there is no statutory force behind the said guidelines.
49. Be that as it may, even if the guidelines were to be applicable, it cannot be said that those have been violated in the present case. The LIC acted squarely in terms of the 1971 Act and the Rules framed under the same. In fact, the petitioners participated in the proceeding before the Estate Officer by filing written objection and adducing evidence and thereafter cannot be permitted to challenge the proceedings, to which they themselves submitted.
50. Also, no arbitrariness or violation of Article 14, 19 or 21 of the Constitution has been made out in the present case by the petitioners.
51. The LIC is justified in contending that the question as to the jural relationship between the parties and as to whether the petitioners were unauthorised occupants within the contemplation of the 1971 Act, in any event, are to be decided by the Estate Officer in the pending proceedings.

- 52.** Hence, there is no statutory or constitutional premise of the present challenge worth being tenable in the eye of law. The respondents have acted fully within their jurisdiction in conducting the proceedings under Sections 4 and 7 of the 1971 Act against the petitioners. Thus, there is no scope of interference in the present writ petition.
- 53.** Accordingly, WPO No.129 of 2019 along with IA NO.GA/1/2021 is dismissed on contest, without, however, any order as to costs.
- 54.** Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

Later

Learned counsel for the petitioner, after passing of the above judgment, seeks stay of operation of the above judgment and order. However, in view of the said judgment having turned down a challenge primarily to the *vires* of certain sections, there is no scope of such grant of stay.

Accordingly, such prayer is refused.

(Sabyasachi Bhattacharyya, J.)