IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

Before:
The Hon'ble The Chief Justice T. S. Sivagnanam
and
The Hon'ble Justice Hiranmay Bhattacharyya

APO/81/2023
I.A. NO. GA/1/2023
DALHOUSIE EXCHANGE AND ANR.
VS
THE LIFE INSURANCE CORPORATION OF INDIA AND ORS.

For the Appellants : Mr. Anindya Kumar Mitra, Sr. Adv.
Mr. Arindam Banerjee,
Mr. Tanay Agarwal,
Ms. Sanchali Bhowmik
.....advocates

For the Respondent LICI : Mr. Debajyoti Basu,
Ms. Sanjukta Ray,
Mr. Dibyendu Ghosh
.........advocates

Reserved on : 18.09.2023

Judgment on : 18.10.2023

<u>Hiranmay Bhattacharyya, J.</u>:-

1. This appeal is at the instance of the writ petitioners and is directed against a judgment and order dated 07.06.2023 passed by a learned Single Judge in WPO No. 129 of 2019.

2. The appellants challenged the initiation of proceedings under Sections 4 and 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, (hereinafter referred to as "the 1971 Act") before the writ Court and prayed for quashing the said proceeding. By the order impugned the learned Single Judge observed that LICI acted fully within its jurisdiction in conducting the proceedings under Sections 4

and 7 of the 1971 Act and accordingly held that there is no scope for interference in the writ petition.

3. The appellants claim that the appellant no. 1 company which was earlier known as Dalhousie Furnishing Company entered into possession of the property sometimes in the year 1954. A written contract of tenancy dated 13.06.1991 was entered into between the appellant no. 1 and LICI. Rent payable by the appellant was also increased from time to time. LICI issued a letter dated 31.07.2003 asking the appellant no. 1 to vacate the disputed premises on the expiry of 31.08.2003. Subsequently there was exchange of letters between the parties in respect of increase in the monthly rent. LICI initiated a proceeding under Section 4 of the 1971 Act giving rise to Case No. EO/299/1203. The said proceeding was subsequently withdrawn on 27.07.2004. Thereafter, LICI filed a suit for declaration and permanent injunction restraining the appellant no. 1 from subletting, transferring, assigning and/or carrying out any work of construction. The application for temporary injunction filed by the respondent no. 1 herein, however, stood dismissed.

4. LICI issued a further notice on 25.05.2005 under Sections 4 and 7 of the 1971 Act and the appellant responded to such notices. A proceeding was initiated by LICI under Sections 4 and 7 of the 1971 Act giving rise to Case No. EO/316/0505.

5. Appellants are contesting the said proceeding by filing a written objection. The appellate filed its affidavit-in-chief and the witness was examined and cross examined.

6. The appellant applied before the Estate Officer to decide his jurisdiction. By an order dated 01.02.2019, the Estate Officer directed that the issue of jurisdiction will be adjudicated at the final hearing of the main proceeding.

7. Mr. Mitra, learned Senior counsel for the appellant contended that there has been no breach of the terms of the existing tenancy by the appellant. LICI terminated the tenancy and initiated the proceedings under 1971 Act on the ground that the appellant had not agreed to the execution of the lease and was not willing to increase the rent as demanded by LICI. According to Mr. Mitra, such action is arbitrary as the same is against the constitutional requirement of an Article 12 authority. Mr. Mitra contended that LICI being a Article 12 authority while terminating the authority of an occupant of a public premises to occupy the same and also for eviction therefrom must act for public benefit. Mr. Mitra contended that LICI demanded rent to be increased in violation of the contract of tenancy. According to Mr. Mitra, the writ court can decide whether such authority acted in a *bona fide* and fair manner. In support of such contention he placed reliance upon the following decisions.

(1989) 3 SCC 293- Dwarkadas Marfatia & Sons vs. Board of Trustees of the Port of Bombay

(1990) 4 SCC 406 – Ashoka Marketing Ltd. and anr. vs. Punjab National Bank and ors.

8. He further contended that the termination of tenancy on the alleged ground of unwillingness to reasonable revision of rent and initiation of proceeding for eviction under 1971 Act is in violation of the Central Government Order of 1992 and 2002 which are binding upon LICI in view of Section 21 of the LICI Act, 1956. According to Mr. Mitra, even if such Government Orders are assumed to be administrative and non-statutory, if the LICI makes a departure from the aforesaid Government orders while taking an action without any reason and in an arbitrary manner, then it would amount to infringing the guarantee of equality under Article 14 and 16 of the Constitution. In support of such contention reliance was placed upon the following decisions.

(1975) 3 SCC 503 – Dr. Amarjit Singh Ahluwalia vs. The State of Punjab & ors.

(1975) 1 SCC 421- Sukhdev Singh & ors. vs. Bagatram Sardar Singh Raghuvanshi and anr.

9. Mr. Mitra submitted that as per the said Government Orders the provisions of 1971 Act should not have been resorted to for evicting a bona fide tenant.

10. According to Mr. Mitra termination of tenancy on such ground is irrational and violative of Article 14 of the Constitution of India. It is also in violation of fundamental right of trade, practice and avocation guaranteed under Article 19(1)(g) and right to life of the partners guaranteed under Article 21 of the Constitution of India.

11. Mr. Basu, learned advocate appearing for LICI contended that the attempt of the appellant is only to delay the proceeding pending before the Estate Officer. He further contended that the guidelines relied upon by his adversary do not have any statutory force. In support of such contention he placed reliance upon the decisions of the Hon'ble Supreme Court in the case of ***Banatwala and Company vs. Life Insurance Corporation of India and anr.*** reported at ***(2011) 13 SCC 446*** and ***Syndicate Bank vs. Ramachandran Pillai and ors.*** reported at ***(2011) 15 SCC 398***.

12. He further submitted that a subsequent clarificatory order dated 23.07.2007 has been issued by the Central Government wherein it has been made clear that the guidelines are not applicable to large business houses and commercial entrepreneurs. He also contended that the question whether or not the appellant is a bonafide tenant is a factual dispute and the writ court cannot decide the same. He further submitted that the appellant failed to make out any case of violation of Articles 14, 19(1) (g) and 21 of the Constitution of India. In support of his contention that a proceeding under the provisions of

the 1971 Act is maintainable against a person who entered into possession prior to the coming into force of the 1971 Act, Mr. Basu placed reliance upon the decision in the case of ***M/s. Jain Ink Manufacturing Company vs. Life Insurance Corporation of India and anr.*** reported at ***AIR1981 SC 670*** He also placed reliance upon the decision of the Hon'ble Supreme Court in ***Ashoka Marketing Ltd. and anr. vs. Punjab National Bank and ors.*** reported at ***(1990) 4 SCC 406*** to support his contention that the 1971 Act has overriding effect over the Rent Control Act and the Transfer of Property Act. By referring to the decision of the Hon'ble Supreme Court in the case of ***Jiwan Dass vs. Life Insurance Corporation of India and anr.*** reported at ***1994 Supp (3) SCC 694***, Mr. Basu contended that a public authority is entitled to use the public property to its best advantage as a commercial venture.

13. Heard the learned advocates for the parties and perused the materials placed.

14. Before the learned Single Judge it was contended by the writ petitioners/ appellants herein that the predecessor-in-interest of appellant no. 1 was a tenant in respect of the premises in question and such relationship was never severed in due course of law, and therefore, the petitioners cannot be classified as unauthorised occupants under the 1971 Act.

15. The appellants claim that the company entered into possession of the property sometimes in 1954 i.e., prior to the coming into force of the 1971 Act. Therefore, a question may arise whether a proceeding for eviction under 1971 Act is maintainable against an occupant who enters into possession of a public premises prior to the coming into force of the 1971 Act.

16. The issue whether a person who had entered into possession prior to the purchase of the property by the public authority fell for

consideration before the Hon'ble Supreme Court in ***M/s. Jain Ink Manufacturing Company*** (Supra). Three Hon'ble Judges of the Supreme Court noted that Section 2(g) of the 1971 Act does not use the word "possession" or the words "entry into possession" at any point of time at all. It was observed that the Section merely requires occupation of any public premises. For the purpose of Section 2(g), what is germane is whether or not the person concerned was in occupation of the public premises when the 1971 Act was passed. The Hon'ble Supreme Court held thus-

"To begin with, it is manifest that S. 2(g) does not use the word 'possession' or the words 'entry into possession' at any point of time at all. The section merely requires occupation of any public premises. Entry into possession connotes one single terminus, viz., the point of time when a person enters into possession or occupies the property whereas occupation is a continuous process which starts right from the point of time when the person enters into possession or occupies the premises and continues until he leaves the premises. What is germane for the purpose of interpretation of Section 2(g) is whether or not the person concerned was in occupation of the public premises when the Premises Act was passed."

17. In the case on hand it is not disputed by the present appellants that they continued to occupy the property even after the 1971 Act came into force. The appellants have also accepted LICI as their landlord and claims to have paid rent to LICI. This Court, therefore, holds that a proceeding initiated under 1971 Act is maintainable against the appellant who entered into possession prior to the coming into force of the 1971 Act and continued to occupy the property even after the 1971 Act came into force.

18. The Hon'ble Supreme Court in the case of ***Ashoka Marketing Ltd.*** (supra) held that the provisions of the Public Premises Act, to the extent they cover premises falling within the ambit of the Rent Control Act, overrides the provisions of the Rent Control Act and a person in unauthorised occupation of public premises under Section 2(e) of the Act cannot invoke the protection of the Rent Control Act.

19. Section 3 of the West Bengal Premises Tenancy Act, 1997 exempts certain properties from the applicability of the provisions of the 1997 Act. It is not the case of the appellants that the premises in question is not covered within the category of premises exempted under Section 3 of the 1997 Act. Since the LIC is a public authority and the premises in question is a public premises, this Court is of the considered view that the provisions of the 1971 Act and not the 1997 Act shall squarely apply to the case on hand.

20. This Court shall now decide whether the action of LICI in terminating the tenancy and initiating the proceeding under the 1971 Act is arbitrary and against the public interest.

21. Mr. Mitra would contend that the action of the LICI being a public authority must be supported by reason and guided by public interest. The decisions of the Hon'ble Supreme Court in the case of ***Dwarkadas Marfatia*** (supra) and ***Ashoka Marketing*** (supra) were pressed into service by Mr. Mitra in support of such contention.

22. The Hon'ble Supreme Court in the case of ***Dwarkadas Marfatia*** (supra) in paragraph 27 held thus-

> *"...every activity of a public authority especially in the background of the assumption on which such authority enjoys immunity from the rigours of the Rent Act, must be informed by reason and guided by the public interest. All exercise of discretion or power by public authorities as the respondent, in respect of dealing with tenants in respect of which they have been treated separately and distinctly from other landlords on the assumption that they would not act as private landlords, must be judged by that standard."*

23. In ***Ashoka Marketing*** (supra), the Hon'ble Supreme Court after noting the aforesaid observations held that the actions of the companies and statutory bodies mentioned in clauses (2) and (3) of Section 2(e) of the Public Premises Act while dealing with their properties under the 1971 Act will have to be judged by the same standard.

24. Mr. Mitra would contend that the appellant is a bona fide tenant and in the absence of any breach of the contract of tenancy, the action of the LICI in terminating the tenancy on the ground of unwillingness of the appellant to revision of rent is in violation of the Government Orders of 1992 and 2002. According to Mr. Mitra, if the aforesaid action of the LICI is judged by the standard which is required of a public authority while dealing with tenants, such action calls for interference by this Court being discriminatory and violative of Articles 14, 19(1)(g) and 21 of the Constitution.

25. For the purpose of deciding the aforesaid contention of Mr. Mitra, it will be profitable to extract the 2002 Guidelines which reads as follows-

"MINISTRY OF URBAN DEVELOPMENT AND POVERTY ALLEVIATION (DIRECTORATE OF ESTATES)

RESOLUTION

New Delhi, the 30-5-2002

Subject: Guidelines to prevent arbitrary use of powers to evict genuine tenants from public premises under the control of public sector Undertakings/financial institutions.

No.21013/1/2000-Pol.I - The question of notification of guidelines to prevent arbitrary use of powers to evict genuine tenants from public premises under the control of Public Sector Undertakings/financial institutions has been under consideration of the Government for sometime past.

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 the Government to lay down the following guidelines:

(i) The provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 [the PP (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.

(ii) The provisions of the PP(E) Act, 1971 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.

(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 unauthorised 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 PP (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.

(iv) It is necessary to give no room for allegations that evictions were selectively resorted to for the purpose of securing and unwarranted increase in rent, or that a change in tenancy was permitted in order to benefit particular individuals or institutions. In order to avoid such imputations or abuse of discretionary powers, the release of premises or change of tenancy should be decided at the level of Board of Directors of public sector undertakings.

(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 ground otherwise than as provided under these guidelines. The provisions under the PP (E) Act, 1971 should be used henceforth only in accordance with these guidelines.

3. These orders take immediate effect.

VINEETA RAI

Additional Secretary"

26. Mr. Mitra would contend that such guidelines is binding upon LICI in view of Section 21 of the Life Insurance Corporation of India Act (for short "LIC Act"). Section 21 reads as under-

"21. Corporation to be guided by the directions of Central Government-In the discharge of its functions under this Act, the Corporation shall be guided by such directions in matters of policy involving public interest as the Central Government may give to it in writing; and if any question arises whether a direction relates to a matter of policy involving public interest the decision of the Central Government thereon shall be final."

27. The Hon'ble Supreme Court in ***Banatwala & Company*** *(supra)* held that the guidelines dated 30.05.2002 are not directions under Section 21 of LIC Act.

28. That apart in the said reported decision, the Hon'ble Supreme Court took note of the subsequent clarificatory order dated 23.07.2003 whereby the Central Government has made it clear that the guidelines dated 30.05.2002 will not apply to affluent tenants. The operative part of the order dated 23.07.2003 is extracted hereinafter.

"Government Resolution dated 30.5.2002 embodies the guidelines dated 14.1.1992 for observance by the public sector undertakings. However, clarification was issued vide OM No. 21011/790 Pol-I IV H. 11 dated 7.7.1993 that the guidelines are meant for genuine non-affluent tenants and these are not applicable to the large business houses and commercial entrepreneurs."

29. From a bare reading of the Government Order dated 23.07.2003 it appears to this Court that the G.O. dated 30.05.2002 shall not apply to commercial entrepreneurs.

30. In ***Banatwala & Co.*** (supra), the Hon'ble Supreme Court after noting several decisions including ***Dwarkadas Marfatia*** (supra), observed that the exercise of discretion by public authorities must be tested on the assumption that they would not act as private landlords and they must be judged by that standard. The Hon'ble Judges of the Supreme Court were, however, pleased to add that such principles will have no relevance while considering a dispute between a statutory body as landlord and an affluent tenant in regard to a commercial or non-residential premises. It is not in dispute that the appellant is exploiting the public premises for commercial purpose and, therefore, the guidelines of 2002 are of no assistance to the appellants.

31. In ***Nusli Neville Wadia*** (supra), the Hon'ble Supreme Court after noting that the Central Government had from time to time issued several guidelines including those issued on 14.01.1992, 30.05.2002 and 23.07.2003 held that issuance of such guidelines are not controlled by statutory provisions. It was further held therein that the effect of such guidelines is advisory and thereby no legal right is conferred upon the tenant.

32. This Court therefore, holds that the learned Single Judge rightly observed that there is no statutory force behind the guidelines.

33. The effect of the Government Order dated 30.05.2002 was considered by the Hon'ble Supreme Court in ***Syndicate Bank*** (supra) and it was held that even if there was violation or non-compliance with the aforesaid guidelines, the enforcement of any right or exercise of any power by the public authority under the 1971 Act cannot be set at naught by relying upon or referring to the said guidelines issued by the Central Government.

34. Even if the argument of Mr. Mitra is accepted that LICI has acted in violation of the Guidelines of the Central Government while terminating the tenancy and initiating a proceeding under 1971 Act, this Court is of the considered view that such alleged violation or breach of guidelines do not confer any legal right upon the appellants to seek a direction from this Court upon the LICI for compliance with such guidelines. A proceeding under the 1971 Act cannot be quashed on that ground.

35. 1971 Act confers power upon the public authority to evict an unauthorised occupant from a public premises. Such statutory right of a public authority shall prevail over the individual right of a citizen guaranteed under Article 19(1)(g) read with Article 21 of the Constitution of India.

36. In view of the aforesaid discussions, this Court is, therefore, of the considered view that the guidelines of 1992 and 2002 are not relevant for the purpose of deciding whether the action of the LICI is discriminatory and arbitrary.

37. "Unauthorised occupation" has been defined under Section 2(g) of the 1971 Act which reads as under.

""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."

38. Section 2(g) of 1971 Act postulates that the authority of an occupant to continue in occupation "has been determined for any reason whatsoever".

39. The Hon'ble Supreme Court in ***Jiwan Dass*** (supra), observed that when the 1971 Act has given such wide power to the public authorities to determine the tenancy, it is not permissible to cut down the width of the powers by reading into it the reasonable and justifiable grounds for initiating action for terminating the tenancy. It was further observed therein that a public authority is equally entitled to use the public property to its best advantage as a commercial venture for which ejectment of a tenant/ licensee is inevitable. The Hon'ble Supreme Court held against indiscriminate extension of the doctrine of livelihood under Article 21 to the area of commercial operation.

40. The 1971 Act has been enacted to provide for a speedy machinery for the eviction of unauthorised occupants of public premises. The said Act serves the public purpose of making for use the public premises after eviction of persons in unauthorised occupation.

41. The Hon'ble Supreme Court in ***Sukhdev Singh*** (supra) held that a public authority is not precluded from making a profit for the public benefit. The Hon'ble Supreme Court in paragraph 39 of the said reports held thus-

"A public authority is a body which has public or statutory duties to perform and which performs those duties and carries out its transactions for the benefit of the public and not for private profit. Such an authority is not precluded from making a profit for the public benefit."

42. From the aforesaid proposition it follows that LICI being an authority within the meaning of Article 12 of the Constitution is not precluded from making a profit for the public benefit by letting out its property at the prevailing market rate of rent. A public authority is entitled to use the public property to its best advantage as a commercial venture. For such purpose, LICI is entitled to revise the rent as per the prevailing market rate of rent and in the process eviction of an occupant may be inevitable. Eviction of an occupant of a public premises for making the same available for using it to its best advantage serves a greater public purpose. This Court, is therefore, not inclined to accept the argument of Mr. Mitra that the action of the LICI in terminating the tenancy and initiating a proceeding under the 1971 Act is violative of Article 14 of the Constitution of India.

43. The learned Single Judge after noting the admitted factual position that the earlier eviction proceeding initiated upon issuance of a notice to quit dated 31.07.2003 being withdrawn and the filing of a suit by LICI is for different reliefs rightly held that the relief for eviction and damages available to the LICI with regard to public premises lies squarely under the 1971 Act.

44. For the reasons as aforesaid this Court is of the considered view that issuance of the notice to quit and the initiation of proceedings under the 1971 Act by the LICI is for a public purpose. Such action cannot be said to be violative of the right to equality guaranteed under Article 14 of the Constitution. The right of the appellants to carry on any occupation, trade or business guaranteed under Article 19(1)(g) of the Constitution, in the considered view of this Court, cannot be stretched that far so as to curtail the power of the public authority under 1971 Act to determine the tenancy/lease and to evict an occupant from a public premises for using the same to its best advantage, which is as observed hereinbefore is for a public purpose.

45. The learned Single Judge after noting that negotiations regarding increase of rent never attained finality rightly held that mere negotiations cannot be termed as a future tenancy/lease between the parties. In view of the aforesaid discussion this Court is of the view that the learned Single Judge was right in holding that the grounds for eviction stated in the notice to quit falls within the expression "any reason whatsoever".

46. There is, however, no quarrel to the proposition of law reiterated by the Hon'ble Supreme Court in ***Dr. Amarjit Singh Ahluwalia*** (supra) that where no statutory rules are made regulating recruitment or conditions of service, the State Government always can in exercise of its executive power issue administrative instructions providing for recruitment and lay down conditions of service.

47. The said decision is not an authority for the proposition that an action initiated in accordance with a statute can be interfered with if there has been any transgression of any guidelines which are not statutory in character. Therefore, the said decision does not have any manner of application to the case on hand.

48. The learned Single Judge have held that the respondents have acted fully within their jurisdiction in conducting the proceedings under Section 4 and 7 of the 1971 Act against the petitioners/ appellants herein. The ultimate conclusion arrived at by the learned Single Judge is supported by cogent reasons. This Court is, therefore, not inclined to interfere with the judgment and order dated 07.06.2023 passed in WPO No. 129 of 2019. The appeal accordingly stands dismissed. The connected application stands disposed of accordingly. There shall be, however, no order as to costs.

49. Before parting this Court makes it clear that the question as to the jural relationship between the parties and also whether the appellants were unauthorised occupants in terms of the provisions contained in the

1971 Act are left open to be decided by the Estate Officer in the pending proceedings.

50. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

I agree.

(T.S. Sivagnanam, CJ.) **(Hiranmay Bhattacharyya, J.)**

(P.A.-Sanchita)