

**IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Biswaroop Chowdhury

C.O. 2004 of 2022

All India Manufactures Organization

VERSUS

Life Insurance Corporation of India

For the petitioner:

Mr. Krishna Das Poddar, Adv.

For the Respondent:

Ms. Sanjukta Ray, Adv.

Mr. Asis Kumar Laha, Adv.

Last Heard on: August 20, 2024

Judgment on: November 19, 2024

Biswaroop Chowdhury, J:

This application under Article 227 of the Constitution of India is directed against Judgment dated 05-03-2022 passed by Learned Judge IInd Bench City Civil Court Calcutta in Misc Appeal 42 of 2018. The petitioner being aggrieved by the Order of dismissal passed by the Learned Appellate Court has come up with the instant application.

The case of the petitioner may be summed up thus:

1. The petitioner was a tenant under the opposite party within the meaning of P.P.Act 1971. The said tenancy commenced prior to coming into force the instant Public Premises (Eviction of Unauthorized Occupants) Act 1971.
2. The petitioner took tenancy in respect of some portion of the Ground Floor of the Premises ILLACO House Building Situated at Premises No 1 and 3 Brabourne Road Kolkata-700001 on a monthly rental basis.
3. The petitioner was utilizing the said tenancy for the purpose of running its activities like enlightening the business entrepreneurs or manufacturer about the latest or modern skills of business and management so that they can achieve the best performance in their respective field. They also imparted with the modern policy of the Government and to get them acquainted with those in consideration of minimum professional charges. The petitioner is not a company registered under the Companies Act. The petitioner is teaching practical business notion for enhancement of skills to the prospective officials or entrepreneurs.
4. In Course of the petitioner's activities the petitioner allowed different business teams and their executives for imparting training and business know how from their tenancy for a short span extending few weeks or months with the knowledge of the Landlord/LICI. Even the officers of L.I.C has availed training from the petitioner.

5. The opposite party without any rhyme and reasons has determined the tenancy by declaring it unauthorized occupant by serving a notice under Section -4 of Public Premises Eviction of Unauthorized Occupants Act 1971. The opposite party also stopped receiving rent for which petitioner deposited rent before Rent controller.
6. Since then the proceedings continued before the Estate Officer excepting some temporary halt due to the pendency of writ proceedings and Misc. Appeal before the appropriate Courts of law at the instance of none other than the petitioner in order to challenge the action by the Landlord.
7. At the initial stage the petitioner had the occasion to contest the same but ultimately it ended in exparte-eviction order on the ground of default and sub-letting with an amount of damages to the tune of Rs. 3,19,36,719/- only without any basis.
8. Against the said ex-parte eviction order dated 4th May 2018, an appeal was preferred under Section 9 of the Public Premises Eviction of Unauthorized Occupants Act 1971. An application for stay of the operation of the order impugned was also filed by the petitioner. During the pendency of the application for stay possession was taken by the opposite party of the suit premises, and thus application for stay became infructuous.
9. The petitioner being aggrieved by the acts of the opposite party in taking possession of the suit property moved an application for

injunction before appellate Court for restraining the opposite party from creating any third party interest over the suit property. Learned Appellate Court after hearing the said injunction application was pleased to allow the same subject to deposit of 50% of the damage amount assessed by the Estate officer.

10. The petitioner being aggrieved by the Order of the Appellate Court moved an application under Article 227 of the Constitution of India, before this Hon'ble Court. A Learned Single Judge of this Court was pleased to dispose the said application by directing the Appellate Court to hear out the appeal expeditiously as the petitioner is out of possession without insisting for any condition of payment of damage. The Misc Appeal which was before the Learned Chief Judge City Civil Court Calcutta was transferred to Learned IInd Bench of the said Court.
11. Learned 2nd Bench City Civil Court at Calcutta during hearing of the case asked the opposite party LIC to produce further supporting documents in order to substantiate the charge against the tenant. Pursuant to the direction of the Appellate Court the opposite parties produced certain documents.
12. Learned Appellate Court by Judgment and Order dated 05-03-2022 upheld the order passed by Learned Estate Officer alongwith imposition of damage. Learned Judge held in favour of the petitioner/tenant the allegations with regard to default in payment of

rent but the allegation of sub-letting was held against the petitioner/tenant.

The petitioner being aggrieved by the Order of Appellate Court has come up with the instant application under Article 227 of the Constitution of India.

It is the contention of the petitioner that the Learned Court below has acted with material irregularity in relying on the stranger's documents in holding the issue of sub-tenancy in favour of LIC/Landlord. It is further contended that the Learned Court below acted illegally and with material irregularity by accepting the charge of sub-letting where the case of opposite party/LIC was that the petitioner either in whole or in part has parted with the possession of the tenancy in favour of different third party which amounts to evasive charge. It is also contended that the Learned Court below acted illegally by shifting the burden on the issue of sub-tenancy on the petitioner though the primary burden is upon the Landlord/LIC, who alleges it. The petitioner contends that the Learned Court below acted illegally by holding the damage part as ordered by the Estate Officer as justified even after the petitioner was found not in default of rent. The petitioner further contends that the Learned Court below acted illegally by upholding the order of Estate Officer on the point of sub-letting and additional construction which the LIC could not prove in Ex-parte.

Heard Learned Advocate for the petitioner and Learned Advocate for the opposite party. Perused the petition filed and materials on record.

Learned Advocate for the petitioner submits that the petitioner was a tenant in the premises let out by the opposite party in respect of the portion of ground floor measuring near about 2800 sq.ft at a monthly rental of Rs. 2772/-. The petitioner was running its activities like imparting technical/business education to the young executives of the different business or industrial house. In short the job of the petitioner was akin to Bharat Chamber of Commerce or Bengal Chamber of Commerce. The petitioner is not producing or manufacturing anything but manufacturing young talented executives. The young LIC'S executives also availed the technical education from the petitioner's organization by payment of nominal fees. Several other companies also sent their executives to the petitioner's organization by payment of nominal fees, and several companies sent their executives to the petitioner's organization for enrichment of their business skills. The activities of the petitioner were well known to the opposite party/LICI from the very beginning ie. 1969 when the tenancy was incepted. Learned Advocate further submits that some time in 1990 the LICI had proposed a revision of rent of the tenancy which according to them was very low so that tenant had been agreeable to enhance the rent by 100% but LIC demanded 33 times hike which comes to Rs. 90.000/- per month approximately. The petitioner did not agree to the enhancement for which a notice under section 4(1) of the Public Premises Eviction of Unauthorized occupant Act 1971 was issued. Learned Advocate submits that the ground mentioned in the notice was declaring the petitioner as un-authorized occupant under section 2(g) of the said Act. It is

submitted that at no point of time the petitioner was found at fault regarding payment of rent. Learned Advocate submits that the word 'unauthorized occupant' means a person who is occupying the Government premises having no authority to occupy the same either his/her tenure to occupy the same expired or he has no authority to occupy the same from the inception. The petitioner tenant does not fall in either of the categories. Learned Advocate further submits that the charge of sub-tenancy against the petitioner is unspecific and cannot be sustained. It is submitted that the opposite party LIC in order to prove the sub-tenancy charge against the petitioner had relied upon two documents being forwarding memo by two entities in favour of the petitioner in the year 1975-76. The opposite party LIC used the said document as a vital tool to prove/substantiate the sub-tenancy charge. Singlo Tea Co. Pvt Ltd was made party in the proceeding as opposite party no-2 but no others. Opposite party no.2 never appeared in the proceeding to contest. Even after eviction order of the petitioner in 2019 and during the pendency of Appeal the existence of other was not found in the tenancy.

Learned Advocate further submits that the LIC had accepted rent till 1990 and the alleged cheque sending memo are of 1981 which goes to show two entities had credited an account in favour of the petitioner. Simply because a third party had sent a cheque in favour of the petitioner in the absence of the receipt to that the effect it would be dangerous to interpret the said memo as a receipt of rent. Learned Advocate also submits that assuming but without admitting those entities were in occupation for a short period that may be two

months or 3 months during 1981 or prior to that the LIC opposite parties had knowledge of the same in 1981-82 but not taken any steps as they were no memo thereafter 1981 or prior to that. Learned Advocate submits that the LIC had adopted to prove the sub-tenancy charge in one of supplementary affidavits based on office note dated 25.7.1981 as mentioned in Internal page 15 of the Judgment of Estate Officer starting from 3rd paragraph where it suggests front portion of the building is occupied by Empire plantation (India) private limited and Singlo (India) Tea Co. private limited and rear portion by the original tenant/petitioner. It is submitted that on the basis of the above finding on the inspection memo dated 15.3.1982 mentioning only the name Board of Empire Plantation, Singlo (India) Tea Company and All India Manufacturing Association are displayed outside there is no occupation of Water Bushnell. So the bedrock of subletting charge against the petitioner is the Signboard of the outer wall of the premises, which does not mean the company or the alleged entities were in any sort of occupation in the petitioner's tenancy. Learned Advocate submits that the documents which were issued by Singlo (India) Tea Company were relied upon without Singlo (India) Tea Company being examined. Learned Advocate further submits that as Singlo (India) Tea Company was not examined the document issued by Singlo Tea Company and other business entities are not admissible in evidence. Learned Advocate also submits that different business organizations took training from the petitioner and paid different charges and were allowed to occupy portion of the tenanted property but the same was interpreted by the opposite party as subletting and

rent Learned Advocate submits that payments were made to the petitioner by different business entities cannot be termed rent as alleged by LIC opposite party.

Learned Advocate for the petitioner relies upon the following decisions:-

G.K. Bhat Nagar (Dead) By LRS Vs Abdul Alim (Reported in (2002) 9 SCO-P510)

United Bank of India Vs Cooks and Kelvey properties(p) Ltd.
(Reported in AIR-1995.S.C.380.)

Amar Nath Agarwalla Vs Dhillan Tranport Agency (AIR-2007.S.C.2402.)

Jagdish Prasad Vs Angoori Devi (Reported in AIR-1984.S.C. 1447)

Shama Prashant Raje V Ganpatras and ors. (AIR-2000 S.C. 3094.)

Learned Advocate for the opposite party submits that the opposite party Life Insurance Corporation of India owns various premises which are public premises including the premises being ILLACO House situated at 1 and 3 Brabourne Road Kolkata 700001. Learned Advocate further submits that the petitioner being tenant under the opposite party in respect of 2800 square ft in the ground floor of ILLACO House at monthly rent of Rs. 2772 per month without knowledge and consent from the opposite party wrongfully transferred assigned and sublet part of the said premises. Learned Advocate submits that the petitioner was also a defaulter in payment of rent and continued to occupy

the suit premises without any legal authority after the determinations of tenancy by the notice to quit dated 8.4.1991. The petitioner thus became an unauthorized occupant from 1-6-1991 ie expiry of the notice period. Learned Advocate also submits that as the petitioner did not quit upon receipt of quit notice dated 8-4-1991 the opposite party initiated eviction proceeding under the Public Premises Eviction of Unauthorized Occupants Act 1971 on or about March 1992. It is also submitted that a Title Suit being TS 1406 of 1987 was filed by the opposite party in the City Civil Court at Kolkata impleading the petitioner as defendant no. 1 and Singlo (India) Tea Co. Ltd as defendant no. 2 restraining them from making unauthorized addition and alteration of the suit premises. Learned Advocate submits that a writ petition was filed by the petitioner being WP/2845/92 before this Court wherein the petitioner has stated about Title Suit being no. 1406 of 1987 filed by the opposite party against the petitioner including Singlo India Tea Company limited which was subsequently dismissed for default and the proceeding before the Estate Officer was resumed on the prayer made by the opposite party on 05-05-2003. The Petitioner filed a written objection before the Estate officer on 1.8.2003 after long period of 11 years occupation and was called upon to file evidence on 13.9.2004. At least 6 opportunities were given to the petitioner to file their evidence, thereafter the right to file evidence by the petitioner was expunged by the Estate Officer by order dated 31.1.2005. Learned Advocate submits that the opposite party filed its evidence on 20.6.2005 and the petitioner started cross-examination of the witness of opposite party on 4.8.2006 after seeking

innumerable adjournment over 9 dates. Learned Advocate further submits that as mentioned 7 dates went by when the petitioner started to cross examine opposite party's witness when the petitioner neglected to ensure appearance before Estate Officer. It is also submitted that cross-examination of the witness of the opposite party was finally concluded on 13.2.2008. Proceeding before Estate Officer resumed on 1.2.2018. Petitioner was granted one more opportunity to file evidence. As the petitioner clearly did not file any evidence before the Estate Officer the matter was taken up before the Estate Officer for argument. Learned Advocate submits that on 4.5.2018 the Estate Officer has passed the final Order of eviction. A total amount of 3 Crores 19 lakh 36 thousand 719 was awarded by the Estate Officer as damages alongwith interest of the prolong period of 27 years from 1.6.1991 to 3.4.2018. Learned Advocate submits that the petitioner did not avail opportunity to place evidence disputing the allegation that they were occupying unauthorizedly a public premises nor did they controvert the evidence placed by the opposite parties in support of the fact only that the premises was sub-let by the petitioner without permission of the opposite party in violation of provisions of Public Premises Eviction of Unauthorized Occupants Act. Learned Advocate further submits that when tenancy is determined by issuing a quit notice and the tenant becomes an unauthorized occupant he is liable to pay damages and interest as per the said Act. Damages under (Public Premises Eviction of Unauthorized Occupant) Act 1971 are payable from the date of expiry of the quit notice as against that of the West Bengal Premises Tenancy Act 1997 where damages are

payable from the date of Eviction Order. It is also submitted by the Learned Advocate that on cross-examination petitioner had put question to PW 1 regarding the issue of unauthorized construction but failed to put questions on subletting thus they accepted subletting to Singlo India Tea Company Limited. Learned Advocate further submitted that the contention of petitioner that no reason for issuing quit notice was furnished is not sustainable as reasons for determining the tenancy were very much specified in the Quit Notice dated 08.04.1991 served upon the petitioner and Singlo (India) Tea Co. Ltd. by the advocate for the Opposite Party. The show cause under Section 4 of the PP Act, 1971, was issued by the Ld. Estate Officer to the petitioner and Singlo (India) Tea Co. Ltd, who after being satisfied about the sub-tenancy created by the petitioner issued the same.

Learned Advocate for the opposite party relies upon the following Judicial decisions.

Jivan Dass Vs Life Insurance Corporation of India and Another.

(Reported in 1994 (3) SCC-694.)

Murray and Co. Pvt Ltd and others Vs Mandanlal Poddar Anr Others.

(Reported in 1994 supp (3) SCC-690)

Pandurang Dhondi Chougule And Others. Vs Maruti Harri Jadhav And Others. (Reported in 1965 SCC. Online. S.C. 83.)

Lachhman Dass Vs Santakh Singh [(1995) 4 SCC. P-201]

Garment Craft Vs Prakash Chand Goel. (Reported in (2022) 4 SCC. P181.)

P. Kishore Kumar Vs Villat K.Pattear (Reported in (2023) SCC Online S.C. 1483.)

Dalhousie Exchange and Another Vs Life Insurance Corporation of India and others. (Reported in 2023 SCC. Online. Cal 1403.)

Dalhousie Exchange and Another Vs Life Insurance Corporation of India and others. (Reported in 2023 SCC Online Cal-3771.)

Learned Advocate submits that the decisions relied upon by Learned Advocate for the Petitioner are not applicable to the facts of the case.

Upon hearing the Learned Advocates and considering the facts of the case this Court is of the view that as the point of maintainability of application under Article 227 of the Constitution is raised it would be proper to address on that issue at the outset.

It is well settled that power of High Courts under Article 227 of the Constitution is not an appellate power but power of superintendence. The High Court in exercise of power under Article 227 of the Constitution of India cannot treat application under Article 227 of the Constitution of India as an Appeal petition. The High Court in exercise of power under Article 227 of the Constitution of India is to see whether sub-ordinate Courts and tribunals have acted within the bounds of law and whether the judgment passed is perverse

due to lack of reasons. Upon considering the decisions relied upon by the parties and upon considering the judgment dated 5-03-2022 passed in Misc Appeal 42 of 2018 by Learned Jnd Bench City Civil Court at Calcutta this Court is of the view that although petitioner has exhausted its remedy by filing appeal but the fact that Appeal Court on some material issues has not given reasons and some issues were not addressed in the interest of justice this application under Article 227 of the Constitution of India should be heard.

The first contention of the petitioner is that initially the petitioner had the occasion to contest the proceedings and ultimately it ended in ex-parte eviction. However it is an admitted position that several adjournments were taken by the petitioner on the ground of pendency of writ application Even pursuant to the disposal of the Writ Petition adjournments were sought for but no evidence was adduced by the petitioner tenant. Even before the Appellate Court no leave was sought for to adduce evidence. Thus it cannot be said that the Estate Officer acted arbitrarily in this regard.

With regard to reliance on the letter of M/S. Singlo Tea (India) Co. Ltd and Letter on behalf of Empire Plantations (India) Ltd and the report of the Security Officer the submission of Learned Advocate is that these documents cannot be relied upon as the maker of the document was not examined and there was no scope for cross-examinations. The argument of the Learned Advocate has some substance. As the documents relied upon were not issued by the petitioner the petitioner cannot be said to have knowledge of the said

documents. The opposite party ought to have examined the maker of the said documents, to prove the contentions made therein.

As the Estate Officer is not only an adjudicating officer but also an Enquiry Officer it is necessary to bring before the Estate Officer for the purpose of evidence those persons whose statements are vital to arrive at the conclusion regarding proof of the charge of sub-letting. The mode of proof of subletting is different from that of default in payment of rent. In case of allegation of default of payment of rent, mere production of record that no rent is received and shifting the onus to the tenant to produce rent receipt is sufficient but in case of sub-letting it should be specifically proved that there was parting of possession, for consideration. In the case of complication to decide the issue there may be commission to cause inspection. Mere production of letters purportedly issued by the third party to the landlord and tenant without examining the said party is not sufficient to arrive at the conclusion that there was sub-letting. With regard to the submission of the Learned Advocate for the opposite party that no specific cross examination was made with regard to sub-letting by petitioner although there was cross examination on illegal construction this Court is of the view that as evidence is to be read as a whole, and the fact that the petitioner has suggested in cross examination that documents relied for the purpose of proving sub-letting are manufactured separate suggestion that allegation of subletting is false is not necessary. In the eviction proceedings on the ground of sub-letting it is to be ascertained as to whether control over the premises is kept by the tenant and Permissive

Possession is given for a specific period and specific purpose. In the event control over the premise is not kept by the tenant and the possession is not permissive but exclusive it can be inferred that there is sub-letting. In the instant matter in spite of the fact that makers of documents were not examined and the fact that the petitioner took the plea that possession was parted to give training to the business undertaking including Singlo India Tea Company Ltd and Empire plantation both the Learned Estate Officer and Learned Appellate Court did not specifically address on that issue by giving sufficient reasons, that the possession parted to third parties was exclusive without any control of the tenant and not permissive.

Learned Estate Officer erred in observing that 'although the OP's Advocate while cross-examining the Applicant's witness had alleged that these reports were manufactured the very fact that these five reports authored by no less than the zonal Security Officer and present in the official records of the Corporation leads to a presumption being raised, under Section 114 of the Evidence Act that the said entities mentioned in the report had been functioning or continued to operate from the suit premises, it is doubtful as to three different reports over a span of two and a half years would have been made with identical findings purely out of this air.' It is accepted by Appellate Court without sufficient reasons. It is to be remembered that when a report submitted by any officer of an undertaking is basis for proceeding against a person for eviction the evidence of the report maker in the eviction proceedings is vital. The report maker is required to be examined and cross-examined in the

said proceedings and if necessary clarification may be obtained by the Estate Officer. Now even if the report of security Officer and letters issued by Empire Plantation and Singlo Tea Co. are taken into Consideration it will appear that reports were submitted in 25-7-81, 15-3-82 and 10-10-83 and correspondence of Singlo India Tea Co and Empire Plantation were purported to be made in the year 1981 and not in 1991 when tenancy of petitioner was determined relying on the letters issued by Singlo India Tea Company and Empire Plantation purported to be issued in year 1981 and report of Security Officer filed in those years. The parting of possession for a particular area of tenanted portion is to be specifically alleged with necessary particulars and proved accordingly which is missing in this case. Petitioner has all along contended that parting of possession was for the purpose of imparting training to executive and officers of different business undertaking, and payment received is on account of tuition fees but this plea is not addressed by Appellate Court with reasons.

Now even if it is assumed that the petitioner has inducted sub-tenant which the opposite party came to know in the year 1981 but the opposite party Life Insurance Corporation of India permitted the petitioner to continue with the possession and without any notice in this regard to the petitioner and the alleged sub-tenants. Moreover from some documents produced by the Learned Advocate of the opposite party it will appear that meeting was held, by opposite party with officials of Singlo India Tea Co. Private Limited. The question which now comes for consideration is whether by permitting the petitioner to continue possession in the suit premises inspite of knowledge of existence of third

parties in the said premises, the opposite party has condoned the act of the petitioner, when such knowledge was obtained before eleven years and inspite of such knowledge rent was being receiving by the opposite party from the petitioner for about ten years. Although mere receipt of the rent may not amount to condonation but the conduct of the landlord, the period for which rent is taken and the period for which the tenant and third party allowed to occupy the tenanted premises/suit premises are relevant factors to be taken into consideration. Although it is alleged that there was no written consent to sub-let but at the same time it is an admitted position that there was knowledge about presence of third party in the suit premises for more than ten years. During the period of ten years no notice was issued to either the petitioner or third party regarding sub-letting. Thus it is also to be considered whether sub-letting is a ground for determination of tenancy. The Public Premises (Eviction of Unauthorized Occupants) Act 1971 defines Unauthorized Occupation as follows:

‘Unauthorized Occupation’ in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation and includes 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.’

Nowhere in the Public Premises (Eviction of Unauthorized Occupants) Act 1971 the grounds on which the tenancy can be terminated/determined is provided nor the statute has prohibited creation of sub-tenancy. Thus the terms and conditions in the Tenancy Agreement/Agreement to occupy should be taken into consideration as to whether there is any violation of the terms and conditions of the agreement providing termination of agreement. Nowhere in the notice to quit or in the petition of Eviction Proceedings before Estate Officer there is any contention that by sub-letting the petitioner has violated the terms and condition of tenancy agreement . Thus the ground of termination for subletting does not find any place in the statute nor is there any contention that there is violation of terms in tenancy agreement giving rise to termination. The opposite party is not a private individual but 'State' within meaning of Article 12 of the Constitution of India, thus its action should be fair and reasonable and should not cause undue hardship to any persons. Where an occupant is treated as unauthorized occupant from the date the tenancy right is determined and while assessing damages power is conferred on the Estate Officer to assess damages for unauthorized use and occupation of the public premises under Rule 8 of The Public Premises (Eviction of Unauthorized Occupants Rules 1971 upon taking into consideration the purpose and the period for which the Public Premises were in unauthorized occupation the nature, size and standard of the accommodation available in such premises; the rent that would have been realised if the premises had been let on rent for the period of unauthorized occupation to a private person it is always just and

reasonable for the Government Authority or undertaking having ownership and control of the Public premises which has been let out to cause a preliminary enquiry and give opportunity to the tenant/occupier of the said premises of submitting representation and being heard before taking any decision to terminate/determine the tenancy/occupancy rights. Indeed the Government Authority having ownership of public premises has power to terminate tenancy if there is violation of any terms and conditions of Tenancy Agreement but if the breach is minor and will not cause serious prejudice the Authority concerned may condone the breach. However in both cases there should be a reasoned order upon following principles of natural justice.

It is true that ultimate order of eviction is passed by the Estate Officer in Eviction proceedings but prior to institution of Eviction Proceedings there is termination of right of tenancy. This termination/determination of tenancy order should be passed upon following Principles of natural justice and by applying the mind and satisfying the conscience so that unnecessary eviction proceedings may be avoided in some cases and matter may be resolved. However in case of rank trespasser this procedure is not necessary. In the case of *Canara Bank Vs V.K. Awasthy* reported in AIR-2005 S.C. 2090 the Hon'ble Supreme Court observed as follows;

13. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be

implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and in what its context should be in a given case must depend to a great extent on the facts and circumstances of that case the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression 'Civil Consequences' encompasses infraction of not merely property or personal right but of civil liberties, material deprivation and non-pecuniary damages. In its wide umbrella comes everything that effects a citizen in his civil life."

In the instant matter no preliminary enquiry was made by the opposite party Life Insurance Corporation of India nor any opportunity of being heard is given to the petitioner before deciding to terminate the tenancy of the petitioner. Moreover the Security Officer whose report became the basis for proceeding against the petitioner and terminating its tenancy was not examined, by opposite party nor were the alleged informants whose letters and cheques were relied upon were examined. These vital issues were neither considered by the Estate Officer nor by the Appellate Court. The observation of the Estate Officer and Learned Appellate Court that the petitioner could produce the statement regarding cheques or could have obtained clarification from Singlo India Tea Co. and Empire Plantation cannot be sustained. When a

preliminary enquiry is conducted by landlord Government Authority to verify the allegations against the tenant and the tenant is given opportunity to appear before the Authority it is the duty of the tenant to furnish necessary papers to controvert the allegations or to give explanation. But when the authority proceeds for eviction against the tenant without preliminary enquiry and terminates the tenancy the burden of proof lies upon the Authority to prove the allegation in eviction proceedings. In the instant case no preliminary enquiry was held by the Authority and the petitioner was not called to appear before the authority for clarification. Thus the burden of proving the allegation before the Estate Officer lies upon the Opposite party LIC with cogent evidence. Upon perusal of the case it appears that the opposite party Life Insurance Corporation of India did not apply its mind at the time of deciding to terminate the tenancy of the petitioner, nor did the opposite party, Life Insurance Corporation of India examine those persons whose evidence is vital to prove the allegations in eviction proceedings. These issues were not considered by the Estate Officer or by the Appellate Court although these are vital questions of law, and should be considered irrespective of the fact that they were not raised by any party.

Learned Appellate Court upon considering the submission of Learned Counsel for the appellant/petitioner that the petitioner offered its tenanted space to various concerns for holding work shop and impart training to such concerns where LIC also participated in one of such trainings imparted by petitioner and that the amount received was on account of tuition fees, and

upon considering the annexures being 'A', A₁ A₂ B and C came to the finding that the opposite party was able to establish that the petitioner had sub-let the property. Learned Court further upon considering the cheques purportedly to be issued observed that according to the Court it does not seem that the cheques issued was on account of tuition fees. Learned Appellate Court while discarding the submission advanced by the petitioner/appellant regarding offering of tenanted space for holding workshop and imparting training as well as the submission that cheques issued were on account of tuition fees and on the other hand accepting the documents purported to be issued by Singlo India and the cheques purported to be issued by Empire plantation and accepting the stand of the opposite party that the petitioner has sub-let the suit premises to opposite party no-2 and received rent without giving specific reasons for arriving at such findings erred when the maker of the documents were not examined by the opposite party LICl and opposite party could not produce any copy of agreement of tenancy or correspondence between petitioner and Singlo India Tea Co. or between Petitioner and other business undertaking showing induction by the petitioner of Singlo India or Empire Plantation or other business undertaking. A commercial firm or a Limited company will enter into written agreement if they obtain tenancy or prior to entering into agreement will at least obtain letter from landlord or lessee to take possession. Although the opposite party relied upon letters and documents purported to be issued by Singlo India Tea Co. and Empire plantation, but they failed to make necessary enquiry and collect documents from Singlo India Tea Co, or any other business

undertaking namely Tenancy Agreement, Letter of induction as-sub-tenant, which are very much relevant. Thus in the absence of Agreement or letter inducting Singlo India Tea Co. or other business entities as tenant and in absence of examination of the informants / maker of documents learned Court ought to have given sufficient reasons for arriving at the findings that petitioner had sub-let the suit property, and discarding the stand taken by the petitioner that tenanted portion was given for holding training and payment was received on account of tuition fees. Thus Learned Court erred in coming to such finding without specific reasons. This finding in the view of this Court is perverse.

Now with regard to the order of the Learned Appellate Court that the opposite party Life Insurance Corporation of India shall recover damages as has been indicated by the Estate Officer under Section 7(2) of the Public Premises (Eviction of Unauthorized Occupants) Act 1971, no reasons have been cited by the Appellate Court for upholding the Order of the Estate Officer assessing the quantum damages to the extent of Rs 3, 19, 36, 719/- to be paid by the petitioner. Thus the direction of the Appellate Court for recovery of damages cannot be sustained.

In the facts and circumstance this Court is of the view that the judgment/order dated 5/03/2022 passed by Learned Appellate Court cannot be sustained and the same should be set aside. The matter should be remitted back to the Appellate Court to re-consider and re-hear the appeal. As submitted by Learned Advocate for the petitioner that the petitioner could not

produce relevant documents before Appellate Court to prove that the petitioner gave office space to Singlo India Co and other business undertaking for training purpose and collected tuition fees, as the office was under lock and key' during pendency of appeal the petitioner is granted liberty to produce relevant documents upon moving necessary application for leave in this regard, before Appellate Court. Similarly the opposite party may also produce relevant documents before Appellate Court which were not already produced before Estate Officer at the time of eviction proceedings Learned Appellate Court upon considering the relevancy and admissibility of the documents produced before it and considering the admissibility of the documents already produced before the Estate Officer by the opposite party LIC during eviction proceedings and considering the relevant provisions of law shall take a decision.

As the assets of the petitioner are lying under lock and key at the office of the opposite party LIC for a long period Special Officer should be appointed to make inventory of the said articles. Thus Shri Dwarik Nath Mukherjee Learned Advocate High Court Calcutta having mobile no. 8116555476 and Ms, Rajarshi Mukherjee Learned Advocate High Court Calcutta having mobile no. 8777291292 are appointed as Joint Special Officers. Learned Special Officers, shall cause inventory of the articles of the petitioner lying at the office of opposite party. Learned Special Officer shall also ascertain as to who is a tenant at present in the suit premises. Such inventory should be carried out upon notice to both parties and their Learned Advocates, and within 3 weeks from the date of communication of this order. Upon completion of inventory

report should be submitted before Learned Appellate Court within one week from the completion. It is made clear that during pendency of appeal if the petitioner requires any document to be brought from office of opposite party LIC where their furnitures and documents are lying necessary leave may be obtained from the Appellate Court. Learned Special Officers are entitled to a remuneration of 600 gms each to be paid by the petitioner.

Hence this Revisional Application stands allowed. Judgment dated 05-03-2022, passed by Learned Judge IInd Bench City Civil Court at Calcutta in Misc Appeal 42 of 2018 is hereby set aside. The matter is remitted back to the Learned Appellate Court to reconsider the Appeal in terms of above observation and upon filing of the report of Learned Special Officers.

Urgent photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Biswaroop Chowdhury,J)