

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

**PRESENT:
THE HON'BLE JUSTICE BIVAS PATTANAYAK**

**W.P.A. 4280 of 2014
M/s. Twinstar Industries & Anr.
versus
West Bengal Small Industries Development Corporation Limited & Ors.
With
W.P.A. 22402 of 2023
M/s. Twinstar Industries & Anr.
versus
West Bengal Small Industries Development Corporation Limited & Ors.**

For the Petitioners	: Mr. Srijob Chakraborty, Advocate Mr. Aditya Mondal, Advocate
For the Respondent Nos. 1 to 4-WBSIDCL	: Mr. Kamal Kr. Chattopadhyay, Advocate Mr. Susanta Pal, Advocate
Heard on	: 05.02.2024, 08.02.2024, 21.02.2024, 12.03.2024
Judgment on	: 16.08.2024

Bivas Pattanayak, J. :-

1. The fact in brief involved in the present writ petitions is enumerated as hereinbelow:

(i) The petitioner no.1 is a proprietorship firm under the name and style of '*M/s Twinstar Industries*' represented by proprietor being petitioner no.2. Upon application of the petitioners the respondent authorities allotted plot K-10 and K-10/2, Behala Industrial Estate, at 620, Diamond Harbour Road, Kolkata-700034 admeasuring about 2070 Sq. ft. and 689 Sq. ft. in favour of the petitioner no.1-firm vide its memo no. SB561/5 dated 15th May, 1989 under a deed of lease

executed between the petitioner no.1-firm and respondent no.1-West Bengal Small Industries Development Corporation Limited (hereinafter referred to as the '*WBSIDCL*') on 8th June, 1989 for a period of nine years in lieu of certain consideration and the possession of the said property was handed over to the petitioner no.1-firm on 8th September, 1989. Consequent thereof, the petitioner no.1-firm took steps for development of the said property including level of raising land, construction of shed and replacement of electric lines.

(ii) By letter dated 24th February, 1997, the respondent authorities informed the petitioners that would take over the possession of the demised property with effect from 12th March, 1997. On 6th March, 1997 the petitioner no.1-firm made a representation against the aforesaid letter. Since no action were taken in respect of the such representation, the petitioner no.1-firm filed a civil suit being Title Suit No. 88 of 1997 before the learned Civil Judge (Junior Division), 1st Court, at Alipore against respondent no.1-WBSIDCL praying for declaration that West Bengal Government Premises (Tenancy) Regulation Act, 1976 (hereinafter referred to as the '*Act of 1976*') is not applicable to priority sector scheme of the Government of West Bengal and a decree of permanent injunction restraining respondent no.3 herein from taking any action and/ or disturb the smooth working and functioning of the factory of petitioner no.1.

(iii) The term of the lease was extended from time to time and the petitioners continued to be in possession of the allotted plots since 8th September 1989. Due to failure to deposit necessary rent before the

respondent authorities, a show cause notice being No. 2348/1 dated 5th November, 2012 was served upon the petitioner. Pursuant thereto a hearing was conducted by the respondent authorities on 9th January, 2013 and an order was passed thereby directing the petitioners to pay all statutory dues in five equal instalments vide order no. SB-3172(3) dated 28th January, 2013.

(iv) Due to financial hardship the petitioners could not make payment in terms of the aforesaid order, as a consequence thereof the petitioners were served with a notice under Memo no. SB-400/3 dated 3rd May, 2013 whereby they were called upon to quit and deliver vacant possession of the said property within the period of 30 days.

(v) Challenging such notice for eviction issued under Section 3(1) of the Act of 1976, the petitioners preferred an appeal before respondent no.2 on 17th May, 2013. Upon conclusion of hearing of appeal, the petitioners prayed for instalment mechanism and thereafter respondent no.2 vide its letter dated 8th August, 2013 directed the petitioners to make payment of Rs. 4,00,000/- within 18th August, 2013 and remaining amount of Rs. 2,26,140/- by 16th September, 2013.

(vi) On 16th August, 2013 the petitioners replied to the letter dated 8th August, 2013 wherein it stated that in appeal a settlement was reached to the extent that the petitioners are required to pay a sum of Rs.4,00,000/- out of the outstanding dues of Rs. 6,26,140/- and remaining amount of Rs. 2,26,140/- was waived. Since no response was received from the respondent no.1-WBSIDCL, the petitioners again renewed their prayer for payment of Rs. 4,00,000/- only and for waiver

off the interest portion. The respondent authorities fixed the matter for hearing of the appeal on 8th October, 2013.

(vii) The appeal was disposed of directing the petitioners to deposit all arrears within 10th October, 2013 in place of 16th September, 2013. The petitioners deposited a sum of Rs. 3,26,140/- by cheque no. 750752 dated 8th October, 2013 and prayed for extension of time till November, 2013 in order to deposit the balance amount. Thereafter the petitioners were directed to pay the arrears within 30th November, 2013. On the ground of financial hardship, the petitioners again on 27th November, 2013 prayed for further extension of time to pay balance arrear amount. The time for depositing the balance arrear amount was extended till 31st December, 2013, however the amount could not be deposited since such order was received by the petitioners on 27th December, 2013.

(viii) In furtherance to the eviction notice dated 3rd May, 2013, the prescribed authority being respondent no.3 vide Memo No. SB5021(3) dated 28th January, 2014 authorised the Sub-Assistant Engineer, In-Charge, Behala Industrial Estate to take possession of the property. On 30th January, 2014, the petitioners made a representation expressing financial constraint to pay outstanding dues and prayed for extension of time till 31st March, 2014. Such prayer was not considered and the respondent authorities proceeded to evict the petitioners.

(ix) Being aggrieved by such action, the petitioners filed the writ petition being **W.P. No. 4280(W) of 2014**. On 25th March, 2014, this Court upon satisfaction restrained the respondent authorities from

taking any steps for eviction of the petitioners from the land in question till disposal of the writ petition and further directed that injunction will operate unconditionally till 31st March, 2014 or thereafter, subject to deposit of sum of Rs.3.52 lac by the petitioners. In compliance thereof, the petitioners duly paid a sum of Rs. 3.50 lac by way of cheque which was duly received by the respondent authorities.

(x) Even after complying with the order of the Hon'ble Court, the respondent authorities failed to issue monthly rent bills in favour of the petitioners in respect of the said property due to which the petitioners vide letter dated 5th May, 2014 requested the authorities to issue the monthly rent bills from April, 2014, but nothing fruitful resulted.

(xi) In the meantime, the petitioner no.2 was diagnosed with carcinoma, which is a form of cancer, and was not able to pursue his day-to-day activities. Despite such medical predicament, the petitioner no.2 vide its letter 10th January, 2023 requested the respondent authorities for conversion of lease from short term to long term for 99 years in respect of the existing allottee of the said property as per the special scheme issued by the respondent authorities vide Circular No. SB-1/2836/10/2020-21 dated 18th February, 2021 and Circular No. SB/1/1468/2022-23 dated 25th August, 2022 with one shot payment of Rs. 4,00,000/- per *cottah*.

(xii) On 21st June, 2023, in the meantime, the writ petition being W.P. No. 4280(W) of 2014 (W.P.A. 4280 of 2014) was dismissed for default. Taking advantage of the same, the respondent authorities without

providing any further notice passed an order dated 19th July, 2023 being Memo No. SBI/1302/5/2023-24 directing eviction of the petitioners from the said property and to deliver the vacant possession of the said property.

(xiii) On 25th July, 2023, the petitioners requested the respondent authorities to withdraw the order dated 19th July, 2023 and disclosed its willingness to pay all up to date dues in connection with the lease rent. The prayer of the petitioners was rejected on 1st September, 2023.

(xiv) The respondent no.4 proceeded with the eviction of the petitioner by issuing a letter to respondent no.5 to provide adequate police personnel in order to evict the petitioners from the said property.

(xv) Being aggrieved by such action on the part of the respondent authorities, the writ petition being **WPA No. 22402 of 2023** was preferred by the petitioners.

2. The respondent no.1-WBSIDCL duly contested the writ petition by filing affidavit-in-opposition and contended, *inter alia*, as follows.

(i) The plots of land being K-10 and K-10/2 measuring about 2070 sq.ft. and 689 sq.ft. respectively in Behala Industrial Estate were allotted to the writ petitioner namely *M/s. Twinstar Industries* for a period of 9 years since the year 1989 at the rental rate of Rs.0.40 per sq.ft. Accordingly, an allotment letter dated 15th May, 1989 was issued to the writ petitioners and indenture of lease date 9th August, 1989 was executed in favour of the writ petitioners. In accordance with the terms of the allotment letter and the indenture of lease, the writ petitioner-company was to pay monthly rent to the tune of Rs. 1,103.60/- per

month payable on the 7th day of each month. As per clause 5 of the allotment letter dated 15th May, 1989, it has been clearly provided that the tenancy is liable to be revoked in case of failure to pay rent in time and/or violation of any terms of the lease. Further as per clause 4 of the lease deed, if the rent reserved or in part thereof or interest thereon or any part thereof remain unpaid for three months after the same becomes payable, it shall be lawful for the lessor to determine the lease and re-enter into the demised premises or any part thereof. The term of the lease granted in favour of the writ petitioners expired on 8th August, 1998 but the writ petitioner-company continued to occupy the plots in question without paying occupational charges of the plots. The outstanding dues accumulated as on 1st January, 2013 was of Rs. 6,26,114.00/-.

(ii) The competent authority in order to recover such dues allowed 36 equal instalments on 18th May, 2009 and thereafter allowed 5 equal instalments on 21st January, 2013 and 2 instalments were allowed by the appellate authority. The writ petitioners did not redeem the unpaid dues. Only after the order passed by the Hon'ble Court in W.P.A. 4280 of 2014, the writ petitioners deposited the balance amount of Rs.3,50,000/- on 31st March, 2014, though the dues up to July, 2013 was Rs. 3,52,957.85/-.

(iii) With the change in the land policy of the Government of West Bengal, after expiry of the terms of lease of the plot granted to the writ petitioner unit, the same shall have to be considered as vacant and further allotment of the said plot shall have to be made by the full

Board after issuing required notices for such allotment and after recording detail minutes. Thus, the plots in question cannot be given to the writ petitioners for further period without following the formalities as has been formulated by the Government of West Bengal. The writ petitioner has suppressed that his prayer for injunction was refused by the learned Civil Judge (Junior Division) 5th Court, at Alipore, in Title Suit No. 88 of 1997.

(iv) Section 3(1) of the West Bengal Government Premises (Tenancy Regulation) Act, 1976 provides that every tenancy held by a tenant in respect of a government premises shall stand terminated upon the expiry of the period referred to in notice to quit served upon such tenant and, therefore, writ petitioner after the expiry of the lease did not have any right to remain in possession of the said plots in question. The petitioner remained habitual defaulter in payment of occupational charges and a huge outstanding dues to the tune of Rs.5,50,201/- accrued as on 1st March, 2023.

(v) The notice under Section 3(1) of the Act of 1976, which remained operative from 3rd May, 2013 was subjected to an order of injunction passed in writ petition being W.P.A. 4280 of 2014. The authority passed order of eviction on 19th July, 2023 upon vacating of the order of injunction, which is a continuing process for recovery of possession under Section 4(2) of the said Act of 1976. With the help of police administration, the possession of the premises being plot nos. K-10 and K-10/2 were taken by the respondent authorities-WBISDCL on 14th September, 2023 at 11 A.M. Subsequent thereto only after

direction was passed by this Hon'ble Court in W.P.A. 22402 of 2023 on 14th September, 2023, the writ petitioner deposited a sum of Rs. 5,50,201/- before the Corporation. The writ petitioner, who overstayed in the land after expiry of lease, cannot claim any right on the plot of land. The writ petitioner was evicted after compliance with all necessary formalities.

(vi) As per the recent policy decision taken by the Board of Directors, the lease premium in respect of the property in question at the present is Rs. 30 lac per *cottah* for 99 years of lease. The benefit in circulars issued by the respondent authorities for long term lease applies in case of existing lessee and not for the one whose lease have expired. Thus, the petitioners cannot claim benefit of such circulars since it is not an existing lessee. On such ground, the writ petition is liable to be dismissed.

3. Mr. Srijib Chakraborty, learned advocate for the petitioners submitted that the petitioners were inducted as a lessee in respect of the plots being K-10 and K-10/2 in Behala Industrial Estate in the year 1989. Due to financial hardship, the petitioner failed to pay the lease rent. In consequence thereof, the respondents served a show-cause notice being No. 2348/1 dated 5th November, 2012 upon the petitioners. Upon hearing on 9th January, 2013, an order was passed directing the petitioners to pay all statutory dues by 5 equal monthly instalments. However, the petitioners failed to make payment of the aforesaid amount and on 3rd May, 2013, the petitioners were called upon to quit the said property and deliver vacant possession thereof within 30 days. An appeal was preferred

before the respondent no.2 challenging the notice of eviction dated 3rd May, 2013 issued under Section 3(1) of the Act of 1976. The petitioners were directed to make payment of Rs. 4 lacs within 18th August, 2013 and the remaining amount of Rs. 2,26,140/- by 16th September, 2013. The petitioners tried to bring it to the notice of the respondent authorities that there was a verbal agreement between the parties to waive the interest accrued to the tune of Rs. 2,26,140/-. No action was taken by the respondent authorities towards waiver of the interest portion and the petitioners were directed to deposit the arrears within a stipulated period. A sum of Rs. 3,26,140/- was deposited and the petitioners prayed for extension of period of time to deposit the balance amount. Since the balance amount was not paid, an order of eviction was issued on 28th January, 2014. Being aggrieved, the petitioners preferred a writ petition being **W.P.A. 4280 of 2014**. In compliance to the order passed in the writ petition, the writ petitioners deposited a sum of Rs. 3,50,000/- which was duly received by the respondent authorities. Repeated requests were made to issue monthly rent bills from April, 2014 however, such rent bills were never issued. In the meantime, the writ petition being W.P.A. 4280 of 2014 which was pending for adjudication was dismissed for default. Taking advantage of such situation, the respondent authorities on the basis of previous notice again passed an order on 19th July, 2023 for eviction. The writ petitioners requested the respondent authorities to withdraw the order dated 19th July, 2023 and informed of their willingness to pay all up to date dues in connection with the lease rent. The prayer of the writ petitioners was rejected on 1st September, 2023 and the order of eviction

was made absolute. Again, the petitioners filed another writ petition being **WPA 22402 of 2023** challenging such action of the respondent authorities. The petitioners all along intended to clear the dues but could not do so for the reason of financial hardship. The petitioners have already made payment in terms of order dated 25th March, 2014 as well as instalments scheme granted by the respondent authorities and as per order passed in subsequent writ petition which has been acknowledged by the respondent authorities. The West Bengal Government Premises (Tenancy Regulation) Act, 1976 is a beneficial legislation giving opportunity to the tenants to clear arrear rent dues under the scheme. Therefore, if the tenant pays the arrear rent, the lessor is under statutory obligation to renew the lease which has not been done in the present case although the petitioners paid arrear rent in terms of the order of this Court. The order of eviction passed by the respondent authorities is without any basis and unreasoned. The judicial or quasi-judicial orders passed by Courts, Tribunals, Authority must be supported by reasons. In support of his contention, he relied on the decision of Hon'ble Supreme Court passed in ***State of Orissa and Others versus Chandra Nandi***¹. The order of eviction dated 19th July, 2023 has been passed on the basis of a notice which has already reached its finality upon passing of order of eviction on 28th January, 2014. The order of eviction basing on a previous notice is illegal.

The petitioners showed interest for conversion of lease from short term period to long term period for 99 years and also submitted their

¹ (2019) 4 SCC 357

willingness to pay all the due amount. However, such prayer was never acceded to. The respondents have in the subsequent writ petition consented to grant lease in favour of the petitioners for a period of 99 years at the rate of Rs. 30,00,000/- per *cottah*. The West Bengal Small Industries Development Corporation Limited issued circular on 18th February, 2021 for long terms lease for 99 years fixing Rs. 5,00,000/- per *cottah* for one shot payment. Subsequent thereto on 25th August, 2022, another circular was issued stating that a rate of 20% will be given against one shot payment i.e. the revised rebate after such rebate would be Rs. 4,00,000/- per *cottah* and the period was extended for 180 days. Within such period, the petitioners filed application for renewal on 10th January, 2023 however, the same has not been considered and the authorities executed the eviction order by taking over possession of the leased-out property of the petitioners. Whereas another company namely *M/s. Gravo Prints* which is similarly circumstanced, has been granted the benefit under the new circulars for long term lease. He seeks for appropriate order.

4. In reply to the contention raised on behalf of the petitioners, Mr. Kamal Kumar Chattopadhyay, learned advocate for respondent-WBSIDCL submitted that the lease of the petitioners expired on 8th August, 1998. As per clause 4 of the lease deed, if the rent remains unpaid for more than three months, the lessor has right to determine such lease absolutely and clause 11 of the allotment letter clearly shows that upon revocation of the lease deed, the Corporation will be at liberty to take possession of the demised property. Therefore, the action of the respondents cannot be termed as illegal. The petitioners in W.P.A. 4280 of 2014 challenged that

the West Bengal Government Premises (Tenancy Regulation) Act, 1976 does not apply in the case of the petitioners. However, such issue is no more *res integra* in view of the decision of Hon'ble Supreme Court passed in **West Bengal Small Industries Development Corporation Ltd. & Ors. versus M/s. Sona Promoters Pvt. Ltd. & Ors.**² which makes the Act of 1976 applicable in case of the petitioners since he has erected construction over the leased land. The petitioners challenged the notice of eviction before the appellate authority. An order was passed by the appellate authority directing the petitioners to deposit the arrear rents which was not complied with. Therefore, the notice under Section 3(1) of the Act of 1976 continued to be valid since it was not followed by implementation of an order of eviction. Referring to the decision of this Court passed in **Gulshan Kumar Gulati and Another versus West Bengal Small Industries Development Corporation Limited and others**³, he submitted that no fresh notice is required for eviction. Due to non-payment of arrear rents, the petitioner is not an existing allottee and, therefore, he cannot be favoured with the benefit of the scheme vide circulars dated 18th February, 2021 and 25th August, 2022. Further the Writ Court cannot decide the fair rent to be paid by the lessee. To buttress his contention, he relied on the decision of this Court passed in **Deepak Kejriwal versus The State of West Bengal and others**⁴. Thus, if the petitioner at all intends for renewal, in that event the rate for long term

² Civil Appeal No. 2201 of 2020

³ WPO No. 1610 of 2023 (Decision of High Court at Calcutta)

⁴ WPO No. 518 of 2023 (Decision of High Court at Calcutta)

renewal of 99 years would be Rs. 30,00,000/- per *cottah*. In light of aforesaid submissions, he prayed for dismissal of the writ petition.

5. On the contrary, Mr. Chakraborty, learned advocate for the petitioners submitted that the order of eviction under Section 4(2) of the Act of 1976 has to be preceded by a notice under Section 3(1) of the Act of 1976. The order passed in *Gulshan Kumar Gulati (supra)* was in respect of an issue whether notice under Section 3(1) of the Act is time barred or not. Moreover, no case of fixation of fair rent is made out by the petitioners and, therefore, the decision in *Deepak Kejriwal (supra)* is also not applicable. The action of the respondent authorities is illegal inasmuch as a statutory body cannot act beyond the statute. He prayed for appropriate order.

6. Having heard the learned advocates for respective parties, the following issues have fallen for consideration:

- i) Whether the proceedings for eviction under West Bengal Government Premises (Tenancy Regulation) Act, 1976 is maintainable against the petitioners?
- ii) Whether the petitioner is entitled to renewal of lease in respect of leased-out property?
- iii) Whether a fresh notice under Section 3(1) of the Act of 1976 was necessary prior to issuance of eviction order under Section 4(2) of the Act?
- iv) Whether the petitioner is entitled to avail the benefit of the circulars dated 18th February, 2021 and 25th August, 2022?
- v) Whether the petitioners are entitled to restoration of possession?

ISSUE NO.1: WHETHER THE PROCEEDINGS FOR EVICTION UNDER WEST BENGAL GOVERNMENT PREMISES (TENANCY REGULATION) ACT, 1976 IS MAINTAINABLE AGAINST THE PETITIONERS?

7. With regard to the above issue, the petitioners in their ground have asserted that as per West Bengal Government Premises (Tenancy Regulation) Act, 1976, “*Government Premises*” means any premises which is owned by the State Government or by a Government undertaking with certain exclusions. As per the Act of 1976, “*Premises*” means any building or hut and includes part of a building or hut and a seat in a room, let separately and also includes the gardens, grounds and out-houses, if any, appurtenant thereto and any furniture/fitting/fixture affixed therein. Since upon allotment of the plots, the petitioners developed the land and erected structures hence on a cumulative reading and understanding of the aforesaid definitions, it is evident that the lease granted to the petitioners does not fall under the scope and purview of the Act of 1976 and the petitioners cannot be evicted under the said Act.

Admittedly, the petitioners, upon allotment of the concerned plots of land in their favour on lease, duly developed such land and erected structure thereupon. The issue at hand is answered in the decision of *Sona Promoters Pvt. Ltd. (supra)* by Hon’ble Supreme Court which is reproduced hereunder:

“29. Thus, when the eviction proceedings were initiated, admittedly, the land in question did not contain any structures. If the bare land is let out by the government undertaking and it continues to be a bare land as on the date of initiation of eviction proceedings, the incidence of such tenancy cannot be governed by the provisions of the Act and such a tenant cannot be evicted by

taking aid of the provisions of the Act. The material date is the date of initiation of the eviction proceedings. Had respondent No.1 put up the construction on the plots of land leased to it, and if the eviction is sought under Section 3 of the Act for violation of some other clauses of the lease deed or upon satisfaction of the conditions mentioned in sub-sections (1) and (2) of Section 3, the proceedings would have been maintainable. As noted above, the subject matter of this appeal continues to be a bare land as on the date of initiation of the proceedings.”

7.1. Bearing in mind the aforesaid proposition laid down by the Hon’ble Supreme Court, since admittedly the petitioners have put up construction over the leased-out property and the land does not remain a bare land on the date of initiation of proceedings, hence proceedings for eviction is maintainable under the West Bengal Government Premises (Tenancy Regulation) Act, 1976 against the petitioners. Therefore, the above ground raised by the petitioner that the Act of 1976 does not apply to the proceedings for eviction of the petitioners does not hold good.

ISSUE NO.2: WHETHER THE PETITIONERS ARE ENTITLED TO RENEWAL OF LEASE IN RESPECT OF THE LEASED-OUT PROPERTY?

8. With regard to the aforesaid issue, it is found that due to non-payment of lease rent, an eviction notice was issued on 3rd May, 2013. Such eviction notice was challenged in appeal by the petitioners before the respondent no.2 on 17th May, 2013. In the appeal, the petitioners were directed to make payment of Rs. 6,26,140/- in two instalments of Rs. 4,00,000/- within 18th August, 2013 and the remaining amount of Rs. 2,26,140/- by 16th September, 2013. The petitioners prayed for waiver of the interest amount of Rs. 2,26,140/-. However, such prayer was turned

down and the petitioners were directed to pay all arrears within 10th October, 2013. The petitioners deposited an amount of Rs. 3,26,140/- vide cheque no. 750752 dated 8th October, 2013 and prayed for extension of time to deposit the balance amount. Since the balance amount was not paid, the respondent authorities issued order of eviction on 28th January, 2014. The petitioners challenged the eviction order in W.P. No. 4280(W) of 2014. This Court passed an order of injunction with a direction to the petitioners to deposit a sum of Rs. 3,52,000/-. The petitioners deposited a sum of Rs. 3,50,000/-. The aforesaid writ petition was dismissed for default on 21st June 2023. On 19th July, 2023, an order was passed directing for eviction of the petitioners from the said property and to deliver the vacant possession. By letter dated 25th July, 2023, the petitioners requested the respondent authorities to withdraw the order dated 19th July, 2023 and also showed willingness to pay all up to date dues in connection with the lease rent. The prayer of the petitioners was rejected. Thereafter the petitioners filed the subsequent writ petition challenging the action of the respondents. In compliance to the order dated 14th September, 2023, the petitioners deposited a sum of Rs. 5,50,201/-. The aforesaid facts as enumerated above is undisputed. Thus, from the above facts, it is clear that the petitioners have deposited the arrear of rents which has been accepted and acknowledged by the respondent authorities. Section 3 of the West Bengal Government Premises (Tenancy Regulation) Act, 1976 is reproduced hereunder for the sake of convenience of discussion:

“3. (1) Every tenancy held by a tenant in respect of a Government premises shall stand terminated upon the expiry of the period referred to in a notice to quit served upon such tenant in the prescribed manner.

(2) A tenancy in respect of a Government premises shall stand automatically terminated without any notice to quit where the tenant has,–

(ia) subsequently built a house or acquired (by purchase, gift, inheritance, lease, exchange or otherwise) a house or an apartment, either in his own name or in the name of any member of his family, within a reasonable distance from such Government premises.

Explanation.– For the purposes of this section and section 3A,–

(a) “apartment” shall have the same meaning as in the West Bengal Apartment Ownership Act, 1972;

(b) “family” shall include parents and other relations of the tenant who ordinarily reside with him and are dependant on him;

(c) “reasonable distance” shall mean any distance not exceeding twenty-five kilometers, or

(ii) made default in payment of rent for three consecutive months:

Provided that where the tenancy has terminated on account of default in payment of rent for three consecutive months the prescribed authority may, upon application made by the tenant within such time as may be prescribed and upon deposit of all the arrears of rent together with interest at the prescribed rate, grant renewal of the tenancy in favour of the tenant:”

It is evident from the averments made in the writ petition, that admittedly the petitioners were given opportunity by the respondent authorities to make payment of dues towards unpaid rents. It is seen that the petitioners have made part payment of the arrears however could not clear up the

dues altogether within the extended period. Be that as it may, in compliance to the direction passed by appellate authority as well as order passed by this Court, the petitioners have paid the arrears of rents. Proviso to Section 3(2) (ii) of Act of 1976 provides that where the tenancy has been terminated on account of default in payment of rent for three consecutive months the prescribed authority may, upon application made by the tenant within such time as may be prescribed and upon deposit of all the arrears of rent together with interest at the prescribed rate, grant renewal of the tenancy in favour of the tenant. In such circumstances of payment of arrear and bearing in mind the proviso to Section 3 (2) (ii) of Act of 1976 as aforesaid, the petitioners are entitled to grant renewal of tenancy.

ISSUE NO.3: WHETHER A FRESH NOTICE UNDER SECTION 3(1) OF THE ACT OF 1976 WAS NECESSARY PRIOR TO ISSUANCE OF EVICTION ORDER UNDER SECTION 4(2) OF THE ACT OF 1976?

9. With regard to the above issue, admittedly, the notice under Section 3(1) of the Act of 1976 was issued on 3rd May, 2013. The order of eviction on the basis of the notice under Section 3(1) of the Act was passed on 28th January, 2014. Thus, such notice of eviction culminated into an eviction order. Previously, the petitioners filed a writ petition being W.P.A. 4280 of 2014 challenging the order of eviction dated 28th January, 2014. On dismissal for default of the aforesaid writ petition, again an order of eviction has been passed on 19th July, 2023 without providing further notice. Upon perusal of the order dated 19th July, 2023, it is found that such order of eviction has been passed on the basis of the notice of eviction dated 3rd May, 2013. Section 3(1) of the Act provides that every

tenancy held by a tenant in respect of a Government premises shall stand terminated upon the expiry of the period referred to in a notice to quit served upon such tenant in the prescribed manner. Section 4(1) of the Act of 1976 provides that upon termination of a tenancy under any of the provisions of Section 3 or upon a tenancy being void under Section 3A the tenant shall forthwith restore vacant possession of the premises occupied by him in favour of the prescribed authority. Section 4(2) of the Act of 1976 provides that if the tenant fails to restore possession of the premises under sub-section (1), the prescribed authority or any officer authorised by him in this behalf may take such steps or use force as may be necessary to take possession of the premises and may also enter into such premises for the aforesaid purpose. Thus, in order to take possession of the premises, there has to be a notice of termination of tenancy. It is relevant to note that in the present case, two eviction orders dated 28th January, 2014 and 19th July, 2023 have been passed basing on a solitary notice of eviction dated 3rd May 2013. Accordingly, the action of the respondent authorities in issuing eviction order has violated the statutory provisions embodied under the Act of 1976. This Court finds substance in submission of Mr. Chakraborty, learned advocate for petitioners that judicial or quasi-judicial orders passed by the Court, Tribunal, Authority must be supported with reasons relying on *Chandra Nandi (supra)*.

In *Gulshan Kumar Gulati (supra)*, the issue before the Court was whether the implementation of order of eviction after 9 years was time barred or not. Thus, the proposition of the aforesaid decision does not apply to the issue involved in the present case.

ISSUE NO.4 : WHETHER THE PETITIONERS ARE ENTITLED TO AVAIL THE BENEFITS OF THE CIRCULARS DATED 18TH FEBRUARY 2021 AND 25TH AUGUST 2022?

10. With regard to the above issue, it is not in dispute that, in compliance to the order passed by the appellate authority, the petitioners deposited the arrear rents. The petitioners also deposited the arrears rent in terms of order issued by this Court in W.P.A. 4280 of 2014. Thereafter, the petitioners also deposited arrear rent in terms of order of this Court passed in W.P.A. 22402 of 2023. The arrear rents were duly accepted by the respondent authorities. Proviso to Section 3(2) of the Act of 1976 clearly lays down that the prescribed authority may, upon deposit of all the arrears of rent together with interest at the prescribed rate, grant renewal of the tenancy in favour of the tenant. It has been strenuously argued on behalf of the respondent authorities that the petitioner was not an existing allottee on the date of the circulars and as such he cannot avail the benefits of those circular. By way of affidavit-in-reply, the petitioner has brought to the notice of this Court that the respondent authorities have allowed conversion to long term lease in favour of one *M/s. Gravo Prints*, which is similarly circumstanced. Upon perusal of Annexure R-1, it is found that the lease tenancy of *M/s. Gravo Prints* expired on 12th July, 1992. A short-term renewal was not allowed, however, the *M/s. Gravo Prints* was offered to renew and convert the lease for long term period of 99 years and was asked to pay Rs.1,26,66,667/- by letter dated 23rd April, 2018. Be that as it may, by a subsequent letter No. 331/4182/4/2022-23 dated 31st March, 2023, *M/s. Gravo Prints* was allowed conversion for long

term lease of 99 years at the rate of Rs.4,00,000/- per *cottah* for one shot payment. On the date i.e. 31st March, 2023, *M/s. Gravo Prints* was also not an existing allottee. Therefore, it is found that *M/s. Gravo Prints* has been extended the benefit of the scheme under those circulars, whose lease expired way back on 12th July, 1992. As per the lease deed of the present writ petitioner, it expired on 8th August, 1998. However, the petitioners paid the arrear rents as per the order passed by the appellate authority as well as this Court from time to time. Thus, this Court finds that the petitioners should also be favoured with the benefit of the circulars. The petitioner has made application on 10th January, 2023 for conversion of the lease from short term to long term of 99 years within the stipulated period which should be considered by the respondent-WBSIDCL.

11. Although relying on *Deepak Kejriwal (supra)* it has been strenuously argued on behalf of the respondent-WBSIDCL that the assessment of fair rent is beyond the scope of the Writ Court, yet it is relevant to note that by the present writ petition, the writ petitioner has not prayed for fixation of fair rent. Hence the proposition in the said decision does not apply to the facts and circumstance of the present case.

ISSUE NO.5: WHETHER THE WRIT PETITIONERS ARE ENTITLED TO RESTORATION OF POSSESSION?

12. In view of the above discussion hereinabove, since it is found that the writ petitioners have made payments of the arrears as directed by the courts, they are also entitled to restoration of possession of leased-out of property.

13. The writ petitions being no. **W.P.A. 4280 of 2014** and **W.P.A. 22402 of 2023** are disposed of, accordingly, with the following directions:

- i. The order of eviction dated 19th July, 2023 issued vide Memo No. SBI/1302/5/2023-24 passed by respondent no.3 stands quashed.
- ii. The respondent-WBSIDCL is directed to renew and convert the short term lease to long term lease of 99 years pertaining to the application of the petitioners in this regard dated 10th January, 2023 and extend the benefits of Circular No. SB-1/2836/10/2020-21 dated 18th February, 2021 and Circular No. SB/1/1468/2022-23 dated 25th August, 2022 in favour of the petitioners in respect of the plot nos. K-10 and K-10/2, Behala Industrial Estate, at 620, Diamond Harbour Road, Kolkata-700034 and restore possession of the aforesaid plots within a period of 15 days from the date of this order.

14. All connected applications, if any, stand disposed of.

15. Interim order, if any, stands vacated.

16. Urgent photostat certified copy of the order, if applied for, be given to the parties upon compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)