

IN THE HIGH COURT AT CALCUTTA  
CIVIL REVISIONAL JURISDICTION  
APPELLATE SIDE

**BEFORE :-**

THE HON'BLE JUSTICE SHAMPA SARKAR

**C.O 1020 of 2024**

Syama Prasad Mookerjee Port, Kolkata

vs.

Indian Jute Industries' Research Association (IJIRA)

|                        |                                                                                                          |
|------------------------|----------------------------------------------------------------------------------------------------------|
| For the Petitioner     | : Mr. Subhankar Nag, Adv.<br>Mr. Sandip Das Gupta, Adv.<br>Mr. Debayan Sen, Adv.<br>Mr. Niket Ojha, Adv. |
| For the Opposite Party | : Mr. Mainak Bose, Sr. Adv.<br>Mr. Niraj Kr. Pandey, Adv.<br>Mr. Shakeel Md. Akhter, Adv.                |
| Judgment reserved on   | : 17.04.2026                                                                                             |
| Judgment pronounced on | : 15.05.2026                                                                                             |
| Judgment uploaded on   | : 15.05.2026.                                                                                            |

**Shampa Sarkar, J.**

1. This civil revisional application arises out of a judgment and order dated January 6, 2024, passed by the learned Additional District Judge, 7th Court at Alipore in P.P. Appeal No. 4 of 2013. The appeal was directed against an order dated March 18, 2013, passed by the Estate Officer Kolkata Port Trust under sub-section (1) of section 5 of the Public Premises

(Eviction of Unauthorized Occupants) Act 1971 (hereinafter referred to as the said Act), in Proceeding No. 1051 of 2010, under sub-section (1) and (2A) of section 7 of the said act, in Proceeding No. 1051/R of 2010 and under sub-section (2) and (2A) of section 7 of the said Act in Proceeding No. 1051/D of 2010. The Estate Officer directed eviction of the opposite party.

2. The learned judge allowed the appeal, thereby setting aside the order of the Estate Officer on various grounds, namely:-

a) The lease deed was executed between the parties on December 18, 1947 with effect from July 1, 1947 and the said Act could not be resorted to, for eviction of the opposite party, who had come in possession of the public premises prior to September 16, 1958.

b) The said Act did not have retrospective application, i.e. prior to the date of its enforcement. Thus, the date of entry of the opposite party would be a relevant factor to test the applicability of the said Act in the instant case.

c) Renewal of the lease deed by the deed of indenture dated April 23, 1981 with effect from July 1, 1977 for a further term of 30 years, would not ipso facto make the said Act applicable, as the occupation of the opposite party dated back to 1947.

d) In view of the position of law laid down in ***Suhas H. Pophale Vs. Oriental Insurance Company Limited & its Estate Officer*** reported in ***(2014) 4 SCC 657***, the opposite party did not fall within the definition of “unauthorized occupant”.

e) The opposite party being ‘State’ under Article 12 of the Constitution of India, could not be evicted from the premises by taking recourse to the said Act. The said Act could be applied only for eviction of a private party.

(f) The office memorandum dated May 22, 2018 clarified the position that, in the event of any dispute or difference relating to interpretation and application of commercial contracts between Central Public Sector Enterprises/Port Trust, *inter se*, and also between Central Public Sector Enterprises and Government Departments/Organizations, such disputes or differences shall be taken up by either party for its resolution through AMRCD. Accordingly, the opposite party had approached the Assistant Land Manager-II, Calcutta Port Trust Estate Department for revision of rent at the end of the second tenure with a request to consider the first alternative, i.e., enhancement of rent by 25%. A reminder was also sent, but the Port Trust expressed its inability to entertain the matter and no settlement could take place.

3. Aggrieved by the aforementioned judgment and order, the petitioner has approached this court, seeking interference with the order impugned, with a prayer that the order of the Estate Officer be upheld.
4. Mr. Subhankar Nag, learned Advocate for the petitioner submitted that the petitioner was the owner of approximately 15 bighas of land situated at 17 Taratala Road, Kolkata – 700088, (hereinafter referred to as the said premises).
5. By a lease deed dated December 18, 1947, the opposite party was granted lease of the said premises for a period of 30 years. The lease expired due to efflux of time. Thereafter, a fresh lease deed was executed on April 23, 1981, for a further period of 30 years, which did not contain a renewal clause. The lease expired due to efflux of time on June 30, 2007. A notice to quit and vacate was issued on May 28, 2008 on the failure of the opposite party to pay rent, taxes, and compensation amounting to Rs. 2,56,02,040. It was alleged that the opposite party violated the conditions of the lease deed by not paying rent to the tune of Rs. 2,15,03,065 for the period between July 1997 to June 30, 2007 and also continued to illegally occupy the premises after expiry of the lease. The petitioner initiated proceedings under the said Act against the opposite party. Notices under Sections 4 and 7, dated March 9, 2010, were issued to the opposite party.

Upon contested hearing, by an order dated March 18, 2013, the Estate Officer passed the order of eviction. Such order of eviction was passed on account of default in payment of lease rent and for other reasons. The proceeding under Section 7 of the said Act was also disposed of, directing payment of a sum of Rs. 9,41,09,706.14/- with interest. The opposite party preferred the appeal vide PP Appeal No. 4 of 2013.

6. The first contention of Mr. Nag was that, the opposite party did not fall within the definition of State under Article 12 of the Constitution of India. The communication of the Under-Secretary to the Government of India, Ministry of Ports, Shipping and Waterways, indicated that the Ministry of Textiles vide a letter dated November 23, 2021, had informed that the opposite party was not an affiliated body of the government. The finding of the learned appeal court that the said Act would not be applicable in case of the opposite party which was State under Article 12 of the Constitution of India, was thus misconceived.
7. According to Mr. Nag, the Act did not make any differentiation between government approved bodies like the opposite party and any other class of unauthorized occupants. The opposite party was in occupation from 1947 for a period of 30 years. Another lease deed was entered into, which ultimately expired on June 30, 2007. The opposite party continued to

possess and utilize the said premises and defaulted in making payment of the lease rent for a long period of time. This was not only a case of breach of the lease agreement, but also a case of continuous occupation of the public premises by the opposite party, even after the authorization to possess and occupy the same had expired. Although, the lease deed by which the opposite party was allowed to occupy the premises had expired due to efflux of time and a notice to quit and vacate had been issued by the petitioner, the opposite party refused to vacate the premises. Thus, the opposite party was covered by the definition of unauthorized occupant.

8. It was next contended that, the initial lease was granted in December 1947.

The said lease expired. A fresh lease deed was executed on April 23, 1981 i.e. after the promulgation of the said Act and the relationship between the parties was governed by the fresh lease dated April 23, 1981. The said Act was applicable on the date when the cause of action arose to evict the opposite party. The ratio of the judgment in ***Suhas H. Pophale (supra)***, on the basis of which the judgment and order impugned was passed, had since been overruled in the decision of ***Life Insurance Corporation of India & Anr. Vs. Vita*** reported in ***(2026) 3 SCC 427***.

9. It was further urged that, the learned Judge failed to take into consideration the ratio laid down in ***Ashoka Marketing Limited Vs.***

**Punjab National Bank & Ors.** reported in **(1990) 4 SCC 406** and **M/s. Jain Ink Manufacturing Company Vs. Life Insurance Corporation of India** reported in **(1980) 4 SCC 435**. Further reliance was placed on the decisions of **Gyan Mahendra Swarup Vs. Life Insurance Corporation of India** reported in **2018 SCC Online Calcutta 5803**, **M/s. B.C. Shaw & Sons Vs. The Union of India & Ors.** reported in **2014 SCC Online Calcutta 17606** and **Board of Trustees for the Port of Kolkata Vs. Metal Box India Limited & Anr.** reported in **2021 SCC Online Calcutta 2405**. Relying on the decision of **Kaikhosrou (Chick) Kavasji Framji Vs. Union of India & Anr.** reported in **(2019) 20 SCC 705**, it was submitted that the Hon'ble Apex Court had clearly held that, the said Act did not create any new right of eviction, but it only created a remedy for a right which already existed under the general law. In other words, the said Act provided a remedy which was speedier than the remedy of filing a suit under the general law, for eviction of unauthorized occupants from public premises. The only consideration in this case would be whether the premises in question was public premise as defined under Section 2(e) of the said Act at the time of initiation of the proceeding for eviction.

10. It was urged that, the West Bengal Premises Tenancy Act, 1997 would not apply in this case, inasmuch as, by virtue of Section 3 (a) (iii)

and (iv), properties owned by government undertakings or enterprises or statutory bodies were excluded from the purview of the 1997 Act. The opposite party was not entitled to any benefit under the local rent law.

11. Mr. Nag further refuted the contention of the opposite party that, being an authority affiliated to the government, it was entitled to special protection. According to Mr. Nag, the observations of a learned Single Judge in a writ petition involving the opposite party, to the effect that two government authorities should resolve their disputes, could not confer any special status to the opposite party, and would not exclude it from the purview of the said Act. The law did not prohibit initiation of eviction proceedings against a society. Secondly, the Ministry of Textiles had also indicated that there was no embargo under the law, in proceeding for eviction of the opposite party, which was not an affiliated body of the Ministry of Textiles. It was further contended that the Circular Resolution No. 21013/1/2000-Pol.1 dated May 30, 2002, which was published in the Gazette of India, Part I, Section 1, dated June 8, 2002 which was relied upon by the opposite party, did not prohibit an eviction proceeding against the opposite party. Moreover, such question was not raised before the Estate Officer. The circular was directory and not mandatory. Moreover, the circular had been substantially complied with, to the extent that,

recourse was taken to the appropriate provision of law under the said Act, in order to evict the opposite party.

12. Thus, it was urged that the order of the appeal court should be set aside on the ground of patent illegality, as it suffered from misinterpretation of law and incorrect appreciation of the legal position with regard to applicability of the said Act.

13. Mr. Mainak Bose, learned Senior Advocate for the opposite party submitted that the opposite party fell within the definition of State under Article 12 of the Constitution of India and functioned under the Ministry of Textiles. Eviction proceeding against the said body was contrary to the decision of the Hon'ble Apex Court in **Suhas H. Pophale (supra)**. In paragraph 56 of the said decision, the Apex Court mentioned the guidelines issued by the Central Government, to prevent arbitrary use of powers under the said Act. Those guidelines were in the nature of a resolution No. 21013/ 1/2000- Pol 1, dated May 30, 2002, which was published in the Gazette of India, Part I, Section 1, dated June 8, 2002. Learned Senior Advocate emphasized that the Act was meant to evict totally unauthorized occupants from public premises or sub-lessees or employees who had ceased to be in service and were ineligible to occupy the premises. The said Act should not be resorted to, either with a commercial motive or to secure

vacant possession of the premises, in order to accommodate the employees of the petitioner, specially in cases where the premises were in occupation of genuine tenants who were lawfully inducted either by the public authority or by such person from whom the public authority acquired the property.

14. According to Mr. Bose, the Apex Court further observed that the guidelines dated May 30, 2002, on the one hand kept it open for the public authority to secure periodic revision of rent in terms of the local rent control Act in each state and also to move the Court on genuine grounds, under the Rent Control Act, for resumption of possession. The opposite party was entitled to the benefit of such provision and had accordingly requested for revision of rent. Further, the guidelines went on to instruct all public undertakings to review all pending cases before the Estate Officer or Courts, with reference to the guidelines and withdraw such proceedings which were pending against genuine tenants. According to the Hon'ble Apex Court, the intention behind the issuance of the guidelines could not be ignored by the public undertakings and they were expected to follow the same.

15. It was urged by Mr. Bose that, the guidelines were issued to prevent arbitrary use of powers under the said Act. Powers conferred upon the

owners of public premises as defined under the said Act, could not be pressed into service to evict the opposite party, who was a genuine tenant and could not be treated to be an unauthorized occupant merely because a notice to quit and vacate the premises had been issued. The opposite party had approached the authority of the petitioner for revision of rent, but the said request, although made on two occasions, were not paid any heed to. The opposite party could not be treated as a private tenant. The eviction proceeding was initiated in abuse of discretionary powers. The said proceeding was not maintainable in view of the guidelines prescribed and also the ratio of the decision of the Hon'ble Apex Court in **Suhas H. Pophale (supra)**. Although the guidelines were advisory in nature, the intention behind the guidelines could not be ignored by the petitioner, as public authority. The said premises had attained the status of public premises from September 16, 1958, that is, the date from which the said Act was brought into force. All persons inducted as tenants in respect of the premises prior thereto, would not come within the ambit of the said Act and could not, therefore, be evicted by proceedings initiated under the said Act. Such occupants could only be evicted under the general law or the local rent control laws. The occupants had vested right to be treated as tenants under the general laws or local rent control law at the time of entry

into the said premises. Had the opposite party entered the said premises after September 16, 1958, the provisions of the said Act would be applicable. As the opposite party was leased out the premises at an earlier date, the said Act was not applicable. The said act provided for eviction of unauthorized occupants and recovery of arrears of rent or damages from such authorized occupants. It was also urged that the provision of the West Bengal Premises Tenancy Act, 1997 would override the provisions of the said Act, being a special statute. When the opposite party had come in possession of the said premises under the lease deed with effect from 1947, The Public Premises (unauthorized occupants) Act, 1958 had not been enacted.

16. Thus, applying the ratio of **Suhas H. Pophale (supra)**, it was submitted by Mr. Bose, that the proceeding initiated by the Estate Officer was contrary to law. The initial date of entry into the said premises should have been taken into consideration by the Estate Officer.

17. The occupants who had come into possession of the premises owned or acquired by public authorities on and from September 16, 1958 or thereafter, could be evicted under the said Act. The date from which the said Act had overriding effect over other laws of eviction, ought to have been determined with reference to the date on which the opposite party had

come into occupation of the premises. Secondly, whether on such date of occupation, the concerned premises was public premises under the 1971 Act should have also been an important test to determine the applicability of the said Act. The concerned premises did not fall within the definition of public premises at the time of entry of the opposite party and not until September 16, 1958.

18. Considered the rival contentions of the parties. Admittedly, the guidelines issued vide resolution No. 21013/1/2000-Pol 1, dated May 30, 2002, do not confer any special right on the tenants/occupants, being bodies approved by various government departments to continue to remain in public premises, even after the authority under which the tenants/occupants had come in possession had expired or had been terminated. In this case, the lease was created for the first time on December 18, 1947, for a period of 30 years. Thereafter, a fresh lease deed was executed on April 23, 1981, for a period of another 30 years, without any renewal clause.

19. The lease expired due to efflux of time on June 30, 2007 and a notice to quit was issued on May 28, 2008. The opposite party continued in possession of the property even thereafter. The petitioner alleged violation of the conditions of the lease and non-payment of lease rent from July

1997 to June 2007. Further case was for non-payment of taxes and compensation. The petitioner initiated proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and accordingly, the notices under Sections 4 and 7, were issued by the Estate Officer. The relevant portions of the notices are quoted below:-

“To,

The Indian Jute Industries,  
Research Association,  
17, Taratala Road,  
Kolkata-700 088.

AND ANY PERSON/S INTERESTED ON  
THE PROPERTY UNDER SCHEDULE

Whereas I, the undersigned, am of opinion on the grounds specified below that you are in unauthorised occupation of the public premises mentioned in the schedule below and that you should be evicted from said premises.

#### G R O U N D S

THAT YOU HAVE VIOLATED THE FUNDAMENTAL CONDITION OF TENANCY AS GRANTED BY KOLKATA PORT TRUST (KOPT) UNDER LEASE. THAT THE CONTRACTUAL PERIOD OF LEASE IN RESPECT OF THE PUBLIC PREMISES IN QUESTION WAS FOR 30 YEARS WITHOUT ANY OPTION FOR RENEWAL AND HAS ALREADY EXPIRED ON 30.06.2007. THAT YOU ARE OCCUPYING THE PROPERTY WRONGFULLY AFTER EXPIRY OF THE PERIOD OF LEASE IN QUESTION. THAT YOU ARE IN WRONGFUL OCCUPATION OF THE PUBLIC PREMISES AND LIABLE TO PAY DAMAGES FOR UNAUTHORIZED USE AND OCCUPATION OF THE PORT PROPERTY UPTO THE DATE OF DELIVERING VACANT AND PEACEFUL POSSESSION TO PORT AUTHORITY. AN APPLICATION FROM KOLKATA PORT TRUST DATED 13.1.2010 IS ATTACHED HERETO WHICH ALSO FORMS A PART OF THE GROUND.

Now, therefore, in pursuance of Sub-Section (i) of Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. I hereby call upon you to show cause on or before

19.04.2010 why such an order of eviction should not be made.

And in pursuance of Clause (b)(ii) of Sub-Section 2 of Section 4, I also call upon you to appear before me in person or through the duly authorised representative capable to answer all material questions connected with the matter along with the evidence which you intend to produce in support of the cause shown on 19.04.2010 at 3 P.M. for personal hearing. In case you fail to appear on the said date and time, the case would be decided exparte.

#### SCHEDULE OF THE PUBLIC PREMISES REFERRED TO ABOVE

The said piece or parcel of land msg. 8752.707 sq. m. in 1<sup>st</sup> belt and 11325.338 sq. m. in 2<sup>nd</sup> belt altogether msg. 20067.045 sq. m. or thereabouts in situate at Taratala Road, Thana- Taratala Police, Calcutta, District-24 Parganas (South), Registration District-Alipore. It is bounded on the North by the Trustees' Taratala Road, on the East by the Trustees' land occupied by M/s. Alstom Ltd. now known as M/s. Marathon Electric Motors (India) Ltd. on the South party by the Trustees' open land and partly by the Trustees' land occupied by the Principal Seamens Welfare Office, and on the West Bengal Trustees' land occupied by I.P.B. Ltd. The Trustees' means the Board of Trustees of the Port of Kolkata.

Sd/-

Date: 22.03.2010

Estate Officer"

"OrderNo.2  
To,  
Shri/Shrimati/M/s.  
The Indian Jute Industries  
Research Association,  
17, Taratala Road,  
Kolkata-700 088

Dated 09.03.2010

Whereas I, the undersigned, am satisfied that you are/were in occupation of the Public Premises described in the Schedule below:

And Whereas in exercise of the powers conferred on me by sub-section (1) of section 7 of the Public Premises (Eviction of

Unauthorised Occupants) Act, 1971, I consider that a sum of Rs 2,15,03,065.00 (Rupees Two crores fifteen lakhs three thousand sixty five only) being arrears of rent from the --- day of July 1997 up to the 30<sup>th</sup> day of June 2007 (both day inclusive) in respect of the said promises is due and payable by you to the Statutory Authority (Kolkata Port Trust);

And whereas in exercise of the powers conferred on me by sub-section (2A) of section 7 of the Public Premises (Eviction of Unauthorised Occupants Act, 1971, I consider that you are also liable to pay simple interest to the Statutory Authority (Kolkata Port Trust) on the said arrears at the rate determined by the undersigned till its final payment;

Now, therefore, in pursuance of sub-section (3) of section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, I hereby call upon you to show-cause on or before the 19.4.2010 at 3 P.M. why an order requiring you to pay the said arrears of rent together with simple interest should not be made.

### **S C H E D U L E**

The said piece or parcel of land msg. 8741.707 sq. m. in 1<sup>st</sup> belt and 11325.338 sq. m. in 2<sup>nd</sup> belt altogether msg.20067.045 sq. m. or thereabouts is situate at Taratala Road, Thana-Taratala Police, Calcutta, District-24 Parganas (South), Registration District-Alipore. It is bounded on the North by the Trustees' Taratala Road, on the East by the Trustees' land occupied by M/s. Alstom Ltd. now known as M/s. Marathon Electric Motors (India) Ltd. on the South party by the Trustees' open land and partly by the Trustees' land occupied by the Principal Seamens Welfare Office, and on the West by the Trustees' land occupied by LF.B. Ltd.

The Trustees means the Board of Trustees of the Port of Kolkata.

Dated 22.3.2010  
the Estate Officer"

Sd/-  
Signature & Seal of

20. The notices outlined the nature of breach of the provisions of the lease deed and those of the said Act and why the opposite party should be treated as an unauthorised occupant. Upon contested hearing, the order of

eviction was passed on March 18, 2013. Relevant portions of the said order are quoted below:-

“NOW THEREFORE, I am consciously of the view that this is a fit case for issuing order of eviction u/s5 of the Act against O.P. for the following grounds/ reasons:-

- 1: That the proceedings against O.P. are very much maintainable within the four corners of the P.P. Act.
2. That O.P's contention with regard to applicability of lease period from a future date or from the registration of the lease deed in view of Sec, 5 of the T.P. Act has got no merit in determining/calculating the terminal date of the contractual period of lease.
3. That all the documents produced before this Forum of Law in course of hearing are forming a part of the record and strict compliance of the Indian Evidence Act is not mandatory or necessary for conducting adjudication process before this Forum of Law, which is a Quasi-Judicial Authority under the P.P. Act.
4. That O.P. has failed and neglected to pay the rental dues in terms of the provision of the lease deed in question and the rental demands made by KoPT in terms of the KoPT's notified schedule of rent charges are correctly payable by O.P.
5. That O.P's contentions regarding "Tenant Holding Over" is not supported by fact and law as well.
6. That O.P's contention regarding time barred claim of KoPT has got no merit in facts and circumstances of the case as O.P. prefers to continue in occupation of the Public Premises, acknowledging the jural relationship as debtor.
7. That O.P. has failed to bear any witness or adduce any evidence in support of their contention regarding authorized occupation.
8. That the demand for possession vide KoT's letter/notice dated 27.05.2008 is valid, lawful and binding upon the parties.
9. That O.Ps occupation, has become unauthorized in view of Sec 2(g) of P.P. Act right from the date of expiry of the contractual period of lease in question and O.P. is liable to pay damages for wrongful use and enjoyment of the Port Property in question upto the date of handing over of clear, vacant and unencumbered possession to KoPT.

ACCORDINGLY, Department is directed to draw up formal order of eviction u/s.5 of the Act as per Rule made there under, giving 15 days time to O.P. and any person/s whoever may be in occupation to vacate the premises. I make it clear that all person/s whoever may be in occupation are liable to be evicted by this order and the Port Authority is entitled to claim

damages for unauthorized use and occupation of the property against O.P. in accordance with Law up to the date of recovery of possession of the same.

It is my considered view that a sum of Rs.2,13,80,872/- for the period 30.06.2000 to 30.06.2007 is due and recoverable from O.P. by the Port authority on account of rental dues and O.P. must have to pay the rental dues to KoPT on or before 31.05.2013. Such dues attracts interest at the rate of 15% per annum upto 18.09.1996 and thereafter at the rate of 18% per annum upto 06.04.2011 and thereafter at the rate of 14.25% per annum till its liquidation of the same from the date of incurrance of liability in accordance with the notification of KoPT issued under Authority of Law as per adjustment of payments made so far by O.P as per KoPT's books of accounts. Department is directed to draw up formal order as per Rule u/s 7 of the Act.

Department is directed to draw formal order for damages u/s.7 of the Act for Rs. 1,10,67,450/-for the period 01.07.2007 to 30.11.2009, directing O.P. to pay the amount on or before 31.05.2013. Such amount attracts interest from the date of incurrance of liability @ 15% per annum upto 18.09.1996 and thereafter 13% per annum upto 06.04.2011 and thereafter @ 14.25% till its final payment as per notification published under authority of law by the Port Authority as per adjustment of payments made so far as per books of accounts of KoPT.

In my opinion KoPT's claim for damages upto August,2012 for Rs. 3,60,13,817.13 (excluding interest for delayed payment) for wrongful occupation may be payable by O.P. as it is gathered in course of hearing that the charges so claimed by KoPT is on the basis of the Schedule of Rent Charges published under the Authority of Law as per provisions of the Major Port Trusts Act 1963. To course of hearing, I find that KoPT has made out an arguable claim against O.P., founded with sound reasoning. I make it clear that Kolkata Port Trust is entitled to claim damages against O.P. for unauthorized use and occupation of the public premises up to the date of recovery of clear, vacant and unencumbered possession of the same in accordance with Law and KoPT is entitled to claim interest upon dues/charges right from the date of incurrance of liability by O.P. as per KoPT's Rule. KoPT is accordingly directed to submit a statement comprising details of its calculation of damages indicating there in the details of the rate of such charges together with the basis on which such charges are claimed against O.P. for my consideration for the purpose of assessment of damages as per Rule made under the Act.

I must reiterate that KoPT's total claim against O.P, on account of rental dues and charges for compensation for wrongful use and enjoyment of the property for Rs.9,41,09,706.13 upto July,

2012 which includes interest for delayed payment of Rs. 3,07,15,017.00 has received my due attention and I am satisfied that Port Authority has made out an arguable claim based on sound reasoning for such claim against O.P.

All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL

Sd/-

(P.BHATTACHARYA)

ESTATE OFFICER”

21. The relevant provisions of law on the basis of which the order was passed are quoted below:-

**“ 4. Issue of notice to show cause against order of eviction.** (1) *If the estate officer has information that any person is in unauthorised occupation of any public premises and that he should be evicted, the estate officer shall issue in the manner hereinafter provided a notice in writing within seven working days from the date of receipt of the information regarding the unauthorised occupation calling upon the person concerned to show cause why an order of eviction should not be made.*

*(1A) If the estate officer knows or has reasons to believe that any person is in unauthorised occupation of the public premises, then, without prejudice to the provisions of sub-section (1), he shall forthwith issue a notice in writing calling upon the person concerned to show cause why an order of eviction should not be made.*

*(IB) Any delay in issuing a notice referred to hi sub-sections (1) and (1A) shall not vitiate the proceedings under this Act.*

*(2) The notice shall-*

*(a) specify the grounds on which the order of eviction is proposed to be made; and*

*(b) require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in, the public premises,-*

*(i) to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not later than seven days from the date of issue thereof; and*

*(ii) to appear before the estate officer on the date specified in the notice along with the evidence which they intend to produce in support of the cause shown, and also for personal hearing, if such hearing is desired.*

*(3) The estate officer shall cause the notice to be served by having it affixed on the outer door or some other conspicuous part of the public premises, and in such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly given to all persons concerned.*

**5. Eviction of unauthorised occupants.** (1) If, after considering the cause, if any, shown by any person in pursuance of a notice under section 4 and any evidence produced by him in support of the same and after personal hearing, if any, given under sub-clause (ii) of clause (b) of sub-section (2) of section 4, the estate officer is satisfied that the public premises are in unauthorised occupation, the estate officer shall make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated, on such date as may be specified in the order but not later than fifteen days from the date of the order, by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises:

Provided that every order under this sub-section shall be made by the estate officer as expeditiously as possible and all endeavour shall be made by him to issue the order within fifteen days of the date specified in the notice under sub-section (1) or sub-section (1A), as the case may be, of section 4.

(2) If any person refuses or fails to comply with the order of eviction [on or before the date specified in the said order or within fifteen days of the date of its publication under sub-section (1), whichever is later, the estate officer or any other officer duly authorised by the estate officer in this behalf may, after the date so specified or after the expiry of the period aforesaid, whichever is later, evict that person] from, and take possession of, the public premises and may, for that purpose, use such force as may be necessary:

Provided that if the estate officer is satisfied, for reasons to be recorded in writing, that there exists any compelling reason which prevents the person from vacating the premises within fifteen days, the estate officer may grant another fifteen days from the date of expiry of the order under sub-section (1) to the person to vacate the premises.

**7. Power to require payment of rent or damages in respect of public premises.** (1) Where any person is in arrears of rent payable in respect of any public premises, the estate officer may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order.

(2) Where any person is, or has at any time been, in unauthorised occupation of any public premises, the estate officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such instalments as may be specified in the order.

(2A) While making an order under sub-section (1) or sub-section (2), the estate officer may direct that the arrears of rent or, as the case may be, damages shall be payable together with compound interest at such rate as may be prescribed, not being a rate exceeding the current rate of interest within the meaning of the Interest Act, 1978 (14 of 1978).]

*(3) No order under sub-section (1) or sub-section (2) shall be made against any person until after the issue of a notice in writing to the person calling upon him to show cause [within seven days from the date of issue thereof], why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same, have been considered by the estate officer.*

*(3A) If the person in unauthorised occupation of residential accommodation challenges the eviction order passed by the estate officer under sub-section (2) of section 3B in any court, he shall pay damages for every month for the residential accommodation held by him.*

*(4) Every order under this section shall be made by the estate officer as expeditiously as possible and all endeavour shall be made by him to issue the order within fifteen days of the date specified in the notice."*

22. The factual findings of the Estate Officer were not controverted by Mr. Bose. The learned appeal court also did not express any opinion on the same. The appeal court allowed the appeal, by holding that the eviction proceeding before the Estate Officer against the opposite party was erroneous and not maintainable. The ratio laid down in **Suhas H. Pophale (supra)**, was applied, inter alia, to hold that the opposite party was not an unauthorised occupant. The learned Judge was of the view that, as the said Act was given effect only from September 16, 1958, and the opposite party had come into possession of the property by virtue of a lease deed of 1947, the opposite party would be governed by the general law of eviction or by the local rent control law. A right had vested upon the said occupant, to be treated as a tenant under the law prevailing at the relevant point of time. The subsequent renewal of the lease deed, would not alter the fact that the occupant was in possession since 1947, when the said premises

were not public premises. The other factor which prevailed upon the appeal court was that, the opposite party was an affiliated body of the Ministry of Textiles and as such the guidelines of 2002 would prevail and protect the opposite party from such eviction proceedings.

23. In my opinion, the guidelines were only advisory in nature. They made no special provision for protection of an unauthorized occupant like the opposite party, who continued to remain in the premises without paying rent and even after the lease had expired. The opposite party is a registered society, approved by the Ministry of Textiles and amenable to the provisions of the said Act.

24. The communication of the Ministry of Textiles, which was relied upon by the Ministry of Ports, Shipping and Waterways in the letter dated November 26, 2021, clarified the position that, the opposite party's status as an affiliated body to the Ministry of Textiles had ceased and it was merely a body approved by the Ministry of Textiles, who could be evicted in terms of the said Act.

25. Moreover, the decision of **Suhas H. Pophale (supra)** has been overruled by the Hon'ble Apex Court in the decision of **Life Insurance Corporation of India (supra)**, **Suhas H. Pophale (supra)** laid down the law that, any occupant who had come into possession of the premises prior

to September 16, 1958 would not be subject to eviction under the said Act, but would be treated to be a tenant under the local Rent Control Act, and could be evicted only under the local law. In ***Life Insurance Corporation of India (supra)***, a contrary view was taken by a larger bench comprising of three Hon'ble Judges of the Apex Court. The Hon'ble Apex Court held that, the decision in ***Suhas H. Pophale (supra)*** was bad law, being in direct conflict with the decision of the Hon'ble Apex Court in ***Ashoka Marketing Limited (supra)***. In rendering the decision in ***Suhas H. Pophale (supra)***, the Hon'ble two Judges bench had not only contradicted, but also disregarded the decision of a bench of larger strength.

26. Thus, the contention of Mr. Bose that, the opposite party having come into possession in December 1947, could not be evicted under the said Act as the premises was not public premises as on the date of entry into possession, is contrary to the decision of the Hon'ble three Judges bench in ***Life Insurance Corporation of India (supra)***. Further contention that the opposite party would fall within the definition of tenant under the West Bengal Public Premises Tenancy Act 1997 is misconceived. In ***Ashoka Marketing Limited (supra)***, it was laid down that the said Act, would have an overriding effect over the Rent Control Act. The provisions of the said Act would have to be applied even to such public premises, which

were within the bounds of the Rent Control Act and no exceptions could be created on the basis of the date of coming into force of the said Act.

27. Section 2(e) of the said Act defines public premises and Section 2(g) of the said Act defines unauthorised occupation, which are as follows:-

**“2(e) “public premises” means—** (1) any premises belonging to, or taken on lease or requisitioned by, or on behalf of the Central Government, and includes any such premises which have been placed by that Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1980 (61 of 1980) under the control of the Secretariat of either House of Parliament for providing residential accommodation to any member of the staff of that Secretariat;”

(2) any premises belonging to, or taken on lease by, or on behalf of,—

(i) any company as defined in section 3 of the 3 [the Companies Act, 2013 (18 of 2013)], in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government or any company which is a subsidiary (within the meaning of that Act) of the first-mentioned company;

(ii) any corporation (not being a company as defined in section 3 of the 3 [the Companies Act, 2013 (18 of 2013)], or a local authority) established by or under a Central Act and owned or controlled by the Central Government; 4

(iii) any company as defined in clause (20) of section 2 of the Companies Act, 2013 (18 of 2013) in which not less than fifty-one per cent. of the paid up capital is held partly by the Central Government and partly by one or more State Governments and includes a company which is a subsidiary (within the meaning of that Act) of the first-mentioned company and which carries on the business of public transport including metro railway.

(iiia) any University established or incorporated by any Central Act,];

(iv) any Institute incorporated by the Institutes of Technology Act, 1961 (59 of 1961); 1

(v) any Board of Trustees or any successor company constituted under or referred to in the Major Port Trusts Act, 1963 (38 of 1963);]

(vi) the Bhakra Management Board constituted under section 79 of the Punjab Reorganisation Act, 1966 (31 of 1966), and that Board as and when re-named as the Bhakra-Beas Management Board under sub-section (6) of section 80 of that Act, 2 \*\*\*.

- (vii) any State Government or the Government of any Union territory situated in the National Capital Territory of Delhi or in any other Union territory,
- (viii) any Cantonment Board constituted under the Cantonments Act, 1924 (2 of 1924); and]
- (3) in relation to the 4 [National Capital Territory of Delhi],—
  - (i) any premises belonging to the 5 [Council as defined in clause (9) of section 2 of the New Delhi Municipal Council Act, 1994 (44 of 1994) or Corporation or Corporations notified under sub-section (1) of section 3 of the Delhi Municipal Corporation Act, 1957 (66 of 1957),] of Delhi, or any Municipal Committee or notified area committee, 2 \*\*\*
  - (ii) any premises belonging to the Delhi Development Authority, whether such premises are in the possession of, or leased out by, the said Authority;] 6 [and], 7
  - (iii) any premises belonging to, or taken on lease or requisitioned by, or on behalf of any State Government or the Government of any Union Territory,] 8
  - (iv) any premises belonging to, or taken on lease by, or on behalf of any Government company as defined in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013).
- (4) any premises of the enemy property as defined in clause (c) of section 2 of the Enemy Property Act, 1968 (34 of 1968).

**2(g)** “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.”

28. Admittedly, the petitioner being a public authority was the owner of the property when the opposite party had entered into the premises as the lessee of the petitioner. Continuation of the occupation of the opposite party in the said premises, after expiry of the lease, makes the opposite party an unauthorised occupant. Such occupation was without any legal authority, as the lease had expired. Moreover, the opposite party also defaulted in payment of the lease rent. This was in breach of the terms and

conditions of the lease deed. Sections 4 and 5 of the said Act outlines the procedure for eviction. There is no challenge to the procedure followed by the Estate Officer, in passing the order of eviction. There are no challenges to the factual findings arrived at by the Estate Officer and to the calculation of arrear rent damages and compensation. The said Act, envisages a special procedure for eviction of unauthorised occupants from public premises. The special procedure seeks to facilitate speedy recovery of possession of public premises by avoiding technicalities and possibility of delay. The constitutional validity of the said Act and the summary procedure for eviction has been upheld by an Hon'ble five Judges Bench of the Apex Court in ***Kaiser-I-Hind Pvt. Ltd. & Ors vs National Textile Corporation Ltd. & Ors*** reported in ***(2002) 8 SCC 182***. It was also held that the said Act would prevail over the state law. The relevant portions are quoted below:-

“40. Once the PP Eviction Act is enacted then the Bombay Rent Act would not prevail qua the repugnancy between it and the PP Eviction Act. To the extent of repugnancy, the State law would be void under Article 254(1) and the law made by Parliament would prevail. Admittedly, the duration of the Bombay Rent Act was extended up to 31-3-1973 by Maharashtra Act 12 of 1970. The result would be from the date of the coming into force of the PP Eviction Act, the Bombay Rent Act qua the properties of the Government and government companies would be inoperative. For this purpose, language of Article 254(1) is unambiguous and specifically provides that if any provision of law made by the legislature of the State is repugnant to the provision of law made by Parliament, then the law made by Parliament whether passed before or after the law made by the legislature of the State, would

prevail. It also makes it clear that the law made by the legislature of the State, to the extent of repugnancy, would be void.

**41.** Hence, once the PP Eviction Act came into force w.e.f. 23-8-1971, the existing Bombay Rent Act would be *void* so far as it is repugnant to the law made by Parliament as in view of Article 254(1), the law made by Parliament would prevail.

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**60.** From the aforesaid observations, it is clear that when the President gave assent to the Kerala Act in 1962, there was no repugnancy to the Act made by Parliament or some existing law in concurrent field. However, before grant of subsequent assent in 1967 to the Act extending the life of the Kerala Act by another two years, the declaration of electricity as an essential article had been made and was part of the Act. Thereafter, the Court observed that the assent of the President should be deemed not merely to the substitution of the words “five years” by the words “seven years” in the Kerala Act but to the Act as a whole, that is the Act as amended by the 1967 Act and any repugnancy between the Kerala Act and the Electricity Act, 1910 and the Electricity (Supply) Act, 1948 should be deemed to have been cured by such assent.

**61.** From the aforesaid discussion, it would appear that (a) if there is extension of the duration of the temporary Act, it cannot be said that the new Act is enacted, the old Act continues and its life is extended; (b) however, while extending the duration if there is any substantial amendment in the statutory provisions as found in *Basantlal Banarsilal case* [AIR 1955 Bom 35 : 55 Bom LR 614] it cannot be said that it was mere extension of the existing law.

#### ***Additional contention***

**62.** On behalf of the appellant, the following additional ground is raised in the written submission.

“Article 254(1) incorporates the principle of supremacy of parliamentary law — it applies to any provision of ‘a law made by the legislature of a State’ which is repugnant to any parliamentary law or (which is repugnant) to any existing law. Article 254(1) opening part, does not expressly give supremacy to parliamentary law over existing State/provincial law — i.e. law made in the Provinces before the Constitution: hence Constitution (*sic*), the Bombay Amending Act 43 of 1951 (the first law enacted by the State Legislature after the Constitution) — even though a mere extension law — must constitutionally be regarded as a law made by the legislature of a State, for purposes of applicability of Article 254(1), which it could only be if it was a substantive law re-enacting or incorporating the provisions of the 1947 Act, post-Constitution. That it was reserved for the consideration of the President and received his assent lends support to the fact that it

was not a mere extension but treated as a substantive enactment.”

**63.** The aforesaid submission requires to be rejected mainly because Article 254(1) as quoted above clearly *inter alia* provides that if any provision of a law made by the legislature of a State is repugnant to any provision of a law made by Parliament then the law made by Parliament, *whether passed before or after the law made by the legislature of such State, shall prevail*. It also provides that the law made by the legislature of the State shall, to the extent of repugnancy, be void.

**64.** Further, in the present case, there is no question of considering that the Bombay Rent Act was an existing law as defined under Article 366(10). Explanation III to Article 372 specifically provides that nothing in the said article shall be construed as continuing any temporary law in force beyond the date fixed for its expiration or the date on which it would have expired if the Constitution had not come into force. Therefore, there is no question of applying the concept of “existing law” as defined under Article 366 to a law of which duration is extended from time to time. Article 254(1), *inter alia*, also provides that if any provision of a law made by the legislature of a State is repugnant to any provision of an existing law, the existing law shall prevail and law made by the legislature of the State shall to the extent of repugnancy be void but in the present case there is no question of applying the said part of Article 254(1).

**65.** The result of the foregoing discussion is:

1. It cannot be held that summary speedier procedure prescribed under the PP Eviction Act for evicting the tenants, sub-tenants or unauthorised occupants, if it is reasonable and in conformity with the principles of natural justice, would abridge the rights conferred under the Constitution.

2. (a) Article 254(2) contemplates “reservation for consideration of the President” and also “assent”. Reservation for consideration is not an empty formality. Pointed attention of the President is required to be drawn to the repugnancy between the earlier law made by Parliament and the contemplated State legislation and the reasons for having such law despite the enactment by Parliament.

(b) The word “assent” used in clause (2) of Article 254 would in context mean express agreement of mind to what is proposed by the State.

(c) In case where it is not indicated that “assent” is qua a particular law made by Parliament, then it is open to the Court to call for the proposals made by the State for the consideration of the President before obtaining assent.

3. Extending the duration of a temporary enactment does not amount to enactment of a new law. However such extension may require assent of the President in case of repugnancy.

*WPs (Civil) Nos. 1056, 1081 of 1991 and 162 of 1992*

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**68.** These writ petitions are filed challenging the vires of certain provisions of the PP Eviction Act. In view of the order passed above, these writ petitions are dismissed.”

29. The Constitution Bench in ***Ashoka Marketing Limited (supra)*** addressed the question as to whether a person who was inducted as a tenant of such premises which became public premises for the purpose of the said Act and whose tenancy had expired or had been terminated, could be evicted from the premises as being person in unauthorized occupation of the premises under the provisions of the said Act, or whether such person could invoke the protection of the Delhi Rent Control Act, 1951. The issue in a nutshell was, whether the provisions of the 1971 Act would override the provisions of the State Rent Control Act in respect of premises which would come within the purview of both the enactments. An interpretation of the decision in ***Ashoka Marketing Limited (supra)*** was rendered in ***Life Insurance Corporation of India (supra)*** as follows:-

***“Interpretation in Ashoka Marketing Ltd.***

**43.** In dealing with the above issue, the five-Judge Bench of this Court observed that the Rent Control legislations fall within the ambit of Entries 6, 7 and 13 of List III of the Seventh Schedule to the Constitution. The Rent Control Act has been enacted by Parliament in exercise of its legislative power under Article 246(4) of the Constitution. On the other hand, the PP Act, 1971 which deal with the eviction of unauthorised occupants from the premises belonging to or taken on lease or requisitioned by or on behalf of the Central Government would

fall within Entry 32 of List I, being law with respect to a property of the Union. At the same time, it was stated that in relation to the properties belonging to the various legal entities mentioned in sub-sections (2) and (3) of Section 2(e) of the PP Act, 1971 would stand covered by Entries 6, 7 and 46 of List III.

**44.** Thus, both the statutes, namely, the Rent Control Act and the PP Act, 1971 were enacted by the same legislature in exercise of the legislative powers in respect of the matters enumerated in the Concurrent List and the Union List, respectively. The Court stated that in its opinion, the question whether the provisions of the PP Act, 1971 override the provisions of the Rent Control Act had to be considered in light of the principles of statutory interpretation applicable to the laws made by same legislature.

**45.** The Court proceeded to highlight such principle of statutory interpretation observing: (*Ashoka Mktg. case [Ashoka Mktg. Ltd. v. Punjab National Bank, (1990) 4 SCC 406 : (1992) 74 Comp Cas 482]* , SCC p. 438, para 50)

“50. One such principle of statutory interpretation which is applied is contained in the Latin maxim: *leges posteriores priores contrarias abrogant* (later laws abrogate earlier contrary laws). This principle is subject to the exception embodied in the maxim: *generalia specialibus non derogant* (a general provision does not derogate from a special one.) This means that where the literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in the earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one (Bennion, *Statutory Interpretation*, pp. 433-34).”

#### **Domain of two statutes**

**46.** It was observed that the Delhi Rent Control Act is an earlier enactment, whereas the PP Act, 1971 is subsequently enacted law and thus, it being the enactment later in point of time, represents the last will of Parliament. The Court observed that the PP Act, 1971 should, therefore, prevail over the Delhi Rent Control Act unless it can be said that the PP Act, 1971 is a general enactment, whereas the Rent Control Act is a special enactment.

**47.** Explaining the operational status of the rent control legislation and the PP Act, 1971, it was observed: (*Ashoka Mktg. case [Ashoka Mktg. Ltd. v. Punjab National Bank, (1990) 4 SCC 406 : (1992) 74 Comp Cas 482]* , SCC pp. 439-40, para 55)

“55. The Rent Control Act makes a departure from the general law regulating the relationship of landlord and tenant contained in the Transfer of Property Act inasmuch as it makes

provision for determination of standard rent, it specifies the grounds on which a landlord can seek the eviction of a tenant, it prescribes the forum for adjudication of disputes between landlords and tenants and the procedure which has to be followed in such proceedings. The Rent Control Act can, therefore, be said to be a special statute regulating the relationship of landlord and tenant in the Union Territory of Delhi.”

**48.** The PP Act, 1971 intends for speedy eviction, stated the Constitution Bench: (Ashoka Mktg. case [Ashoka Mktg. Ltd. v. Punjab National Bank, (1990) 4 SCC 406 : (1992) 74 Comp Cas 482] , SCC p. 440, para 55)

“55. ... The Public Premises Act, 1971 makes provision for a speedy machinery to secure eviction of unauthorised occupants from public premises. As opposed to the general law which provides for filing of a regular suit for recovery of possession of property in a competent court and for trial of such a suit in accordance with the procedure laid down in the Code of Civil Procedure, the Public Premises Act, 1971 confers the power to pass an order of eviction of an unauthorised occupant in a public premises on a designated officer and prescribes the procedure to be followed by the said officer before passing such an order.”

**49.** It was thus clearly expressed that the PP Act, 1971 is a special statute and that it will override the Rent Control Act: (Ashoka Mktg. case [Ashoka Mktg. Ltd. v. Punjab National Bank, (1990) 4 SCC 406 : (1992) 74 Comp Cas 482] , SCC p. 440, para 55)

“55. ... Therefore, the Public Premises Act, 1971 is also a special statute relating to eviction of unauthorised occupants from public premises. In other words, both the enactments, namely, the Rent Control Act and the Public Premises Act, 1971, are special statutes in relation to the matters dealt with therein. Since, the Public Premises Act, 1971 is a special statute and not a general enactment the exception contained in the principle that a subsequent general law cannot derogate from an earlier special law cannot be invoked and in accordance with the principle that the later laws abrogate earlier contrary laws, the Public Premises Act, 1971 must prevail over the Rent Control Act.”

30. The Hon’ble Apex Court discussed the policy and purpose behind the special enactments and held that both the enactments would operate in their respective realms. Relevant paragraphs are quoted below:-

“50. As both the enactments are “special enactments” in their respective realms, the five-Judge Bench observed on the basis of the principle stated in *Ram Narain v. Simla Banking & Industrial Co. Ltd.* [*Ram Narain v. Simla Banking & Industrial Co. Ltd.*, (1956) 2 SCC 75 : (1956) 26 Comp Cas 280 : AIR 1956 SC 614] that when each enactment is a special Act, the ordinary principle that a special law overrides a general law does not afford any clear solution. In such circumstances, it was stated, it would be desirable to determine the overriding effect of one or the other of the relevant provisions in these two Acts, in a given scenario, on much broader considerations of the purpose and policy underlying the two statutes and the clear intendment conveyed by the language of the relevant provisions therein.

**51.** After referring to several other decisions, the proposition was stated thus: (*Ashoka Mktg. case* [*Ashoka Mktg. Ltd. v. Punjab National Bank*, (1990) 4 SCC 406 : (1992) 74 Comp Cas 482] , SCC p. 442, para 61)

“61. The principle which emerges from these decisions is that in the case of inconsistency between the provisions of two enactments, both of which can be regarded as special in nature, the conflict has to be resolved by reference to the purpose and policy underlying the two enactments and the clear intendment conveyed by the language of the relevant provisions therein.”

**52.** It was stated that the consequence of giving overriding effect to the provisions of the PP Act, 1971 over the Rent Control Act would be that the buildings belonging to companies, corporations and autonomous bodies referred to in Section 2(e) of the PP Act, 1971 would be excluded from the ambit of the Rent Control Act in the same manner as properties belonging to the Central Government. It was further stated that the Government while dealing with the citizens in respect of property belonging to it would not act for its own purpose as a private landlord but would act in public interest.

### ***Legislative intent recognised***

**53.** *Ashoka Mktg.* [*Ashoka Mktg. Ltd. v. Punjab National Bank*, (1990) 4 SCC 406 : (1992) 74 Comp Cas 482] considered the object and purpose of the PP Act, 1971 and the overall legislative intendment behind the enactment. It was held that the object and purpose of the PP Act, 1971 would give it an overriding effect over the provisions of the Rent Control Act, even though, the relevant sections of both the PP Act, 1971 and the Delhi Rent Control Act contained a *non obstante* clause. The Court provided that the scope of the provisions of the Public Premises Act cannot be whittled down on the basis of the apprehension that the Corporations like nationalised banks or the Life Insurance Corporation are trading Corporations

interested in earning profit. They cannot be precluded from buying the properties in possession of the tenants at low price and then vacating the tenants after terminating the tenancy and thereafter selling the property at higher price.

**54.** Negating the contention that the provisions of the PP Act, 1971 if given overriding effect would be exploited by such corporations to expand the business with a view to earn profit, it was observed: (*Ashoka Mktg. case* [*Ashoka Mktg. Ltd. v. Punjab National Bank*, (1990) 4 SCC 406 : (1992) 74 Comp Cas 482] , SCC p. 446, para 69)

“69. ... The consequence of giving overriding effect to the provisions of the Public Premises Act, 1971 is that premises belonging to companies and statutory bodies referred to in clauses (2) and (3) of Section 2(e) of the Public Premises Act, 1971 would be exempted from the provisions of the Rent Control Act. The actions of the companies and statutory bodies mentioned in clauses (2) and (3) of Section 2(e) of the Public Premises Act, 1971 while dealing with their properties under the Public Premises Act, 1971 will, therefore, have to be judged by the same standard.”

**55.** The Constitution Bench with above interpretational philosophy and cogent reasons stated further: (*Ashoka Mktg. case* [*Ashoka Mktg. Ltd. v. Punjab National Bank*, (1990) 4 SCC 406 : (1992) 74 Comp Cas 482] , SCC p. 446, para 70)

“70. ... we are unable to accept the contention of the learned counsel for the petitioners that the provisions contained in the Public Premises Act, 1971 cannot be applied to premises which fall within the ambit of the Rent Control Act. In our opinion, the provisions of the Public Premises Act, 1971, to the extent they cover premises falling within the ambit of the Rent Control Act, override 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.”

31. Moreover, the West Bengal Premises Tenancy Act, 1956 as also 1997, excludes government undertakings or enterprises or statutory bodies from the purview of the said Act. Thus, had the 1971 Act not been promulgated, upon expiry of the lease granted to the opposite party, the remedy for the

petitioner would have been to proceed under the general law, i.e., under the Transfer of Property Act, seeking eviction.

32. The reasons underlying the exclusion of property belonging to the government from the ambit of the Rent Control Act were discussed in ***Ashoka Marketing (supra)***. The said Act sub-served public interest by making available for public use, those premises belonging to the government or public authority. The said premises was owned by the petitioner, which was always a public authority. Paragraph 62 to 70 of Ashoka Marketing are quoted below:-

“**62.** The Statement of Objects and Reasons for the enactment of the Rent Control Act, indicates that it has been enacted with a view:

(a) to devise a suitable machinery for expeditious adjudication of proceedings between landlords and tenants;

(b) to provide for the determination of the standard rent payable by tenants of the various categories of premises which should be fair to the tenants, and at the same time, provide incentive for keeping the existing houses in good repairs, and for further investments in house construction; and

(c) to give tenants a larger measure of protection against eviction.

This indicates that the object underlying the Rent Control Act is to make provision for expeditious adjudication of disputes between landlords and tenants, determination of standard rent payable by tenants and giving protection against eviction to tenants. The premises belonging to the government are excluded from the ambit of the Rent Control Act which means that the Act has been enacted primarily to regulate the private relationship between landlords and tenants with a view to confer certain benefits on the tenants and at the same time to balance the interest of the landlords by providing for expeditious adjudication of proceedings between landlords and tenant.

**63.** As mentioned earlier, the Public Premises Act has been enacted with a view to provide for eviction of unauthorised

occupants from public premises. In the Statement of Objects and Reasons for this enactment reference has been made to the judicial decisions whereby the 1958 Act was declared as unconstitutional and it has been mentioned:

“The court decisions, referred to above, have created serious difficulties for the government inasmuch as the proceedings taken by the various Estate Officers appointed under the Act either for the eviction of persons who are in unauthorised occupation of public premises or for the recovery of rent or damages from such persons stand null and void.... It has become impossible for government to take expeditious action even in flagrant cases of unauthorised occupation of public premises and recovery of rent or damages for such unauthorised occupation. It is, therefore, considered imperative to restore a speedy machinery for the eviction of persons who are in unauthorised occupation of public premises keeping in view at the same time the necessity of complying with the provisions of the Constitution and the judicial pronouncements, referred to above.”

This shows that the Public Premises Act has been enacted to deal with the mischief of rampant unauthorised occupation of public premises by providing a speedy machinery for the eviction of persons in unauthorised occupation. In order to secure this object the said Act prescribes the time period for the various steps which are required to be taken for securing eviction of the persons in unauthorised occupation. The object underlying the enactment is to safeguard public interest by making available for public use premises belonging to Central Government, companies in which the Central Government has substantial interest, corporations owned or controlled by the Central Government and certain autonomous bodies and to prevent misuse of such premises.

**64.** It would thus appear that, while the Rent Control Act is intended to deal with the general relationship of landlords and tenants in respect of premises other than government premises, the Public Premises Act is intended to deal with speedy recovery of possession of premises of public nature, i.e. property belonging to the Central Government, or companies in which the Central Government has substantial interest or corporations owned or controlled by the Central Government and certain corporations, institutions, autonomous bodies and local authorities. The effect of giving overriding effect to the provisions of the Public Premises Act over the Rent Control Act, would be that buildings belonging to companies, corporations and autonomous bodies referred to in Section 2(e) of the Public Premises Act would be excluded from the ambit of the Rent Control Act in the same manner as properties belonging to the Central Government. The reason underlying the exclusion of property belonging to the Government from the ambit of the

Rent Control Act, is that the Government while dealing with the citizens in respect of property belonging to it would not act for its own purpose as a private landlord but would act in public interest. What can be said with regard to government in relation to property belonging to it can also be said with regard to companies, corporations and other statutory bodies mentioned in Section 2(e) of the Public Premises Act. In our opinion, therefore, keeping in view the object and purpose underlying both the enactments viz. the Rent Control Act and the Public Premises Act, the provisions of the Public Premises Act have to be construed as overriding the provisions contained in the Rent Control Act.

**65.** As regards the non-obstante clauses contained in Sections 14 and 22 and the provisions contained in Sections 50 and 54 of the Rent Control Act, it may be stated that Parliament was aware of these provisions when it enacted the Public Premises Act containing a specific provision in Section 15 barring jurisdiction of all courts (which would include the Rent Controller under the Rent Control Act). This indicates that Parliament intended that the provisions of the Public Premises Act would prevail over the provisions of the Rent Control Act in spite of the abovementioned provisions contained in the Rent Control Act.

**66.** It has been urged by the learned counsel for the petitioner that there is no conflict between the provisions of the Rent Control Act and the Public Premises Act and that both the provisions can be given effect to without one overriding the other. In this regard, it has been pointed out that since no provision has been made in the Public Premises Act for the termination of the lease, the provisions of the Rent Control Act can be held applicable up to the stage of termination of the lease, and thereafter, proceedings can be initiated for eviction under the provisions of the Public Premises Act. In support of this submission, reliance has been placed on *Dhanpal Chettiar case* [(1979) 4 SCC 214 : (1980) 1 SCR 334], wherein it has been held that in view of the special provisions contained in the State Rent Control Acts, it is no longer necessary to issue a notice under Sections 106 of the Transfer of Property Act to terminate the tenancy because in spite of the said notice the tenant is entitled to continue in occupation by virtue of the provisions of the said Acts. In the said case, it has been further laid down that the relationship between the landlord and tenant continues till the passing of the order of eviction in accordance with the provisions of the Rent Act, and therefore, for the eviction of the tenant in accordance with the law, an order of the competent court under the Rent Control Act is necessary. This would mean that in order to evict a person who is continuing in occupation after the expiration or termination of his contractual tenancy in accordance with law, two

proceedings will have to be initiated. First, there will be proceedings under Rent Control Act before the Rent Controller followed by appeal before the Rent Control Tribunal and revision before the High Court. After these proceedings have ended they would be followed by proceedings under the Public Premises Act, before the Estate Officer and the Appellate Authority. In other words, persons in occupation of public premises would receive greater protection than tenants in premises owned by private persons. It could not be the intention of Parliament to confer this dual benefit on persons in occupation of public premises.

**67.** It has also been urged that in Section 22 of the Rent Control Act, special provision has been made for recovery of possession of premises belonging to a company or other body corporate or any local authority or any public institution and that premises belonging to companies, corporations and autonomous bodies mentioned in clauses (2) and (3) of Section 2(e) of the Public Premises Act would be covered by the said provision and that in view of this special provision it is not necessary to have a further provision in the Public Premises Act for the recovery of possession belonging to those bodies, and therefore, the provisions of the Public Premises Act should be confined in their application to premises other than premises covered by the Rent Control Act. Section 22 of the Rent Control Act provides as under:

“22. Where the landlord in respect of any premises is any company or other body corporate or any local authority or any public institution and the premises are required for the use of employees of such landlord or in the case of a public institution for the furtherance of its activities, then, notwithstanding anything contained in Section 14 or any other law, the Controller may, on an application made to him in this behalf by such landlord, place the landlord in vacant possession of such premises by evicting the tenant and every other person who may be in occupation thereof, if the Controller is satisfied—

(a) that the tenant to whom such premises were let for use as a residence at a time when he was in the service or employment of the landlord, has ceased to be in such service or employment; or

(b) that the tenant has acted in contravention of the terms, express or implied, under which he was authorised to occupy such premises; or

(c) that any other person is in unauthorised occupation of such premises; or

(d) that the premises are required bona fide by the public institution for the furtherance of its activities.

*Explanation.*— For the purpose of this section, “public institution” includes any educational institutional, library,

hospital and charitable dispensary but does not include any such institution set up by any private trust.”

**68.** The said special provision shows that, it enables recovery of possession of premises of which the landlord is a company or other body corporate or any local authority or any public institution in certain circumstances viz. if the premises are required for the use of the employees of such landlord. In the case of public institutions possession can also be obtained under this provision if the premises are required for the furtherance of its activities. In other words, recovery of possession is permissible under this provision only in certain circumstances and for certain purposes. In spite of this provision Parliament has considered it necessary to extend the Public Premises Act to premises belonging to companies, corporations and statutory bodies mentioned in clauses (2) and (3) of Section 2(e) by widening the definition of the expression “public premises” in Section 2(e) of the Public Premises Act. The scope and ambit of the aforesaid power conferred under the Public Premises Act cannot be restricted by reference to the provision contained in Section 22 of the Rent Control Act.

**69.** It has been urged by the learned counsel for the petitioners that many of the corporations referred to in Section 2(e)(2)(ii) of the Public Premises Act, like the nationalised banks and the Life Insurance Corporation, are trading corporations and under the provisions of the enactments whereby they are constituted these corporations are required to carry on their business with a view to earn profit, and that there is nothing to preclude these corporations to buy property in possession of tenants at a low price and after buying such property evict the tenants after terminating the tenancy and thereafter sell the said property at a much higher value because the value of property in possession of tenants is much less as compared to vacant property. We are unable to cut down the scope of the provisions of the Public Premises Act on the basis of such an apprehension because as pointed out by this Court in *Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay* [(1989) 3 SCC 293] : (SCC p. 306, para 27)

“...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.”

These observations were made in the context of the provisions of the Bombay Rents, Hotel and Lodging Houses Rates

(Control) Act, 1947 whereby exemption from the provisions of the Act has been granted to premises belonging to the Bombay Port Trust. The consequence of giving overriding effect to the provisions of the Public Premises Act is that premises belonging to companies and statutory bodies referred to in clauses (2) and (3) of Section 2(e) of the Public Premises Act would be exempted from the provisions of the Rent Control Act. 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 Public Premises Act will, therefore, have to be judged by the same standard.

**70.** For the reasons aforesaid, we are unable to accept the contention of the learned counsel for the petitioners that the provisions contained in the Public Premises Act cannot be applied to premises which fall within the ambit of the Rent Control Act. In our opinion, the provisions of the Public Premises Act, to the extent they cover premises falling within the ambit of the Rent Control Act, override 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."

33. In ***Jain Ink (supra)***, the Hon'ble Apex Court held that, what was germane for the purpose of interpretation of Section 2(g) was whether or not the person concerned was in occupation of the public premises when the said Act was passed. In ***Jain Ink (supra)*** also, the appellant had continued to possess the property after the said Act had come into force and had accepted LIC as the landlord. It was held that, as the appellant therein was issued a notice under Section 106 of the Transfer of Property Act, the appellant/tenant fell within the ambit of the definition of Section 2(g) of the said Act and had become an unauthorised occupant after having been served a notice to quit and vacate. The claim for protection under the Rent Control Act was denied. It was held as follows:

**“5.** It would be seen that before a person could be said to be in an unauthorised occupation, the Act required the following conditions:  
(1) that the occupant had entered into possession before or after the commencement of the Act,

(2) that he had entered into such possession otherwise than under and in pursuance of any allotment, lease or grant.

That Act, therefore, lays special stress on only one point, namely, the entry into possession. Thus, if the entry into possession had taken place prior to the passing of the Act, then obviously the occupant concerned would not be an unauthorised occupant. What made the occupancy unauthorised was his entry into possession at a particular point of time. It was in construing these provisions that this Court held that if the appellants in that case were in possession before the sale of the property to the government, their entry into possession could not be said to be unauthorised. These observations, however, would have absolutely no application to the instant case where Section 2(g) defines unauthorised occupation thus:

“ ‘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.”

To begin with, it is manifest that Section 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. In the instant case, it is not disputed that the appellant continued to occupy the property even after the Premises Act came into force and in fact accepted the LIC as his landlord. In these circumstances, therefore, the case of the appellant squarely falls within the ambit of the definition of ‘unauthorised occupation’ as contemplated by Section 2(g). There is yet another aspect of the matter which distinguishes the present case from the language employed in the Punjab Act. Section 2(g) is an inclusive definition and consists of two separate limbs— (1) where a person is in occupation in relation to any public premises without authority for such occupation, and (2) even if the possession or occupation of the tenant continues after the lease is determined. In the instant case, the lease was doubtless determined by the landlord by a notice under Section 106 of the Transfer of Property Act whose validity for purposes of deciding the question of law has not been

questioned by the learned Counsel for the appellant. Therefore, there can be no doubt that the appellant was in unauthorised occupation of the premises once the lease was determined. The second limb mentioned in Section 2(g) is conspicuously absent from the provisions of the Punjab Act. For these reasons, we overrule the first contention raised by the counsel for the appellant and we hold, agreeing with the High Court, that the appellant was undoubtedly in unauthorised occupation of the premises.

**6.** The second contention put forward by Mr Rao was that in view of the provisions of the Rent Act which override the provisions of the Premises Act, Section 14 of the Rent Act completely bars recovery of possession of any premises except in accordance with the procedure laid down in the Rent Act. It was contended by Mr Rao that although the Premises Act was passed in 1971, it has been given retrospective effect from September 16, 1958 and, therefore, should be construed as a law having been passed in 1958 and as the Rent Act was passed in 1959 it overrides the Premises Act. We are, however, unable to agree with this argument. In the first place, the Premises Act was passed in 1971 and came into force on August 23, 1971, that is to say, long after the Rent Act was passed in 1959. The mere fact that by virtue of a fiction the Premises Act was given retrospective effect from 1958 will not alter the date when the Premises Act was actually passed, that is to say, August 23, 1971. In these circumstances, therefore, the Premises Act being subsequent to the Rent Act would naturally prevail over and override the provisions of the Rent Act. It was further contended by Mr Rao that the Rent Act being a special law as compared to the Premises Act, it will override the Premises Act without going into the question as to which of the two Acts were prior in point of time. In support of his contention the counsel relied on a decision of this Court in *Sarwan Singh v. Kasturi Lal* [(1977) 1 SCC 750, 760 : (1977) 2 SCR 421] where this Court observed as follows: (SCC p. 760, para 20)

“When two or more laws operate in the same field and each contains a nonobstante clause stating that its provisions will override those of any other law, stimulating and incisive problems of interpretation arise. Since statutory interpretation has no conventional protocol, cases of such conflict have to be decided *in reference to the object and purpose of the laws under consideration.*” (emphasis supplied)

**7.** It is true that in both the Acts there is a non-obstante clause but the question to be determined is whether the nonobstante clauses operate in the same field or have two different spheres though there may be some amount of overlapping. The observations cited above clearly lay down that in such cases the conflict should be resolved by reference to the object and purpose of the laws in consideration. In *Ram Narain v. Simla Banking & Industrial Co. Ltd.* [AIR 1956 SC 614 : 1956 SCR 603 : (1956) 26 Com Cas 280] , this Court made the following observations:

“It is, therefore, desirable to determine the overriding effect of one or the other of the relevant provisions in these two Acts, in a given case,

on much broader considerations of the purpose and policy underlying the two Acts and the clear intendment conveyed by the language of the relevant provisions therein.”

**8.** In the light of the principles laid down in the aforesaid cases we would test the position in the present case. So far as the Premises Act is concerned it operates in a very limited field in that it applies only to a limited nature of premises belonging only to particular sets of individuals, a particular set of juristic persons like companies, corporations or the Central Government. Thus, the Premises Act has a very limited application. Secondly, the object of the Premises Act is to provide for eviction of unauthorised occupants from public premises by a summary procedure so that the premises may be available to the authorities mentioned in the Premises Act which constitute a class by themselves. That the authorities to which the Premises Act applies are a class by themselves is not disputed by the counsel for the appellant as even in the case of *Northern India Caterers Pvt. Ltd. v. State of Punjab* [AIR 1967 SC 1581 : (1967) 3 SCR 399] such authorities were held to form a class and, therefore, immune from challenge on Article 14 of the Constitution. Similarly, the summary procedure prescribed by the Premises Act is also not violative of Article 14 as held by this Court in *Maganlal Chhagganlal (P) Ltd. v. Municipal Corporation of Greater Bombay* [(1974) 2 SCC 402 : (1975) 1 SCR 1] .

**9.** Thus, it would appear that both the scope and the object of the Premises Act is quite different from that of the Rent Act. The Rent Act is of much wider application than the Premises Act inasmuch as it applies to all private premises which do not fall within the limited exceptions indicated in Section 2 of the Premises Act. The object of the Rent Act is to afford special protection to all the tenants or private landlords or landlords who are neither a corporation nor government or corporate bodies. It would be seen that even under the Rent Act, by virtue of an amendment a special category has been carved out under Section 25-B which provides for special procedure for eviction to landlords who require premises for their personal necessity. Thus, Section 25-B itself becomes a special law within the Rent Act. On a parity of reasoning, therefore, there can be no doubt that the Premises Act as compared to the Rent Act, which has a very broad spectrum, is a special Act and overrides the provisions of the Rent Act.

34. Upon enactment of the 1971 Act, the petitioner could proceed against the opposite party under the said Act. The said Act was enacted to deal

with the mischief of rampant unauthorized occupation of public premises, by providing a speedy machinery for eviction of such persons.

35. The Hon'ble Apex Court in ***Kaikhosrou (chick) Kavasji Framji (supra)*** observed as follows:-

**“49.** At this stage we consider apposite to take note of the Constitution Bench decision of this Court wherein this Court after examining and upholding the constitutional validity of the PP Act in *Kaiser-I-Hind (P) Ltd. v. National Textile Corporation. (Maharashtra North) Ltd.* reiterated the view taken by this Court in an earlier decision of *Northern India Caterers (P) Ltd. v. State of Punjab* that the PP Act does not create any new right of eviction but it only creates a remedy for a right which already exists under the general law. In other words, it was held that it only provides a remedy which is speedier than the remedy of a suit under the general law.”

36. The relevant paragraphs of ***Gyan Mahendra Swarup v. Life Insurance Corporation of India*** are quoted below:-

“36. Hence, the Transfer of Property Act cannot be said to provide any special protection to the occupier vis-à-vis the 1971 Act, akin to that provided by the 1997 Act for that matter any other State Rent Control Act.

37. Moreover, a combined reading of Section 3(a) (iii) of the 1997 Act, which exempts premises owned by the Government undertakings or enterprises from the operation of the said Act, and the definition of "public premises" for the purpose of the 1971 Act, which includes such premises within the fold of the said Act, point unerringly to the conclusion that there is no conflict between the 1997 Act and the 1971 Act. The 1971 Act is thus a special statute governing the public premises, which are under discussion at present, thereby automatically excluding the applicability of the Transfer of Property Act, 1882 to such premises.

38. Under the aforesaid circumstances, the Estate Officer could not be said to have acted without jurisdiction in taking up the proceeding under Section 5 of the 1971 Act for adjudication upon holding the same to be maintainable.

39. That apart, in the present case, the notice to quit dated May 2, 2017 sufficiently satisfied the pre-requisite envisaged under

Section 2(g) of the 1971 Act as well as Section 111, alternatively Section 106, of the Transfer of Property Act insofar as determination of the previous jural relationship between the parties was concerned. Hence, the Estate Officer had jurisdiction, in any event, to entertain and decide the proceeding under Section 5 of the 1971 Act, since the petitioner had already been rendered to be in 'unauthorized occupation' as contemplated under Sections 2(g) and 4 of the 1971 Act by the notice to quit."

37. The learned appeal court held as follows:-

**“17.**Therefore, the submission made on behalf of the Appellants that the Indian Jute Industries Research Association is a “state” in view of the judgment of the Hon'ble Apex Court and a Central Government Organization or Government aided organization and therefore does not come under the purview of “*unauthorized occupation*” as defined u/sec.2 (g) of the 1971 Act, finds force in it.

**18.** Ld. Advocate for the Appellant relied on a decision of the Hon'ble Madhya Pradesh High Court, in the matter of Lakhan Lal Rawat V/s Union of India, reported in 2010(89) AIC 677 (MP), wherein, it has been held that word ‘payable’ in section 7 of Act means legally recoverable. Damages for illegal occupation of Railway quarter for the period from 01.04.1985 to 29.06.1997, recovery proceeding after about 6 years was time barred and could not be recovered. The Hon'ble Supreme Court in the matter Shiv Sagar Tiwari Vs Union of India reported in AIR 1997 SC 2725 has been pleased to observe public premises, the Estate Officer may, having regard to such principal of assessment of damages as may be prescribed, assess the damages on account of the use of the occupation.

**19.** The public premises (Eviction of Unauthorized Occupants) Act, 1971, came into force with effect from 23.04.1971 and no retrospective effect has been given. Whether any retrospective effect has been given to the aforesaid act, the Appellant relied on the judgment of the Hon'ble Supreme Court reported in SCC 2014 685, wherein the Hon'ble Supreme Court has been pleased to hold “1971 Act has no retrospective effect and will not apply to persons who had entered into occupation prior to date”. The Hon'ble Supreme Court has been pleased to hold "All persons falling within the definition of a tenant occupying the premises prior thereto will not come under the ambit of the Public Premises Act and cannot be therefore, be said to be persons in 'Unauthorized Occupation' and the Public Premises Act apply only to those who come in such occupation after such date”.

**20.** The Ld. Advocate for the Appellant also relied on a decision of the Hon'ble Supreme Court reported in SCC 2015 Page 652-A

wherein the Hon'ble Supreme Court has been pleased to hold that Public Premises Act cannot be applied to premises where occupants came into possession prior to enforcement of 1971 Act, i.e., 16.09.1958. After the said judgment, an amendment was made to the Public Premises Act, wherein retrospective effect has been given on and from 16<sup>th</sup> day of September, 1958, save and except of sections 11, 19 and 20 and therefore Public Premises (Eviction of Unauthorized Occupants) Act, 1971 could have given retrospective effect upto 16<sup>th</sup> day of September, 1958 and not beyond that.

**21.** Having gone through the purported lease deed which has been executed on 18.12.1947, it appears that the said Lease Agreement was entered into between the Commissioners for the Port of Calcutta (hereinafter will be referred the "Commissioners") and the Indian Jute Mills Association Research Institute with effect from 1<sup>st</sup> day of July, 1947 at a monthly rent of Rs.1,200/- being calculated at the rate of Rs.4/- per cottah per month. The said lease renewed vide Deed of Indenture dated 23.04.1981 in between the aforesaid parties with effect from 1<sup>st</sup> of July, 1977 for the term of 30 years at a monthly rent of Rs.8.900.99p. Therefore, it appears that the Appellant came into possession over the property in question in the year 1947 and since then the Appellant is in possession over the property in question. As it appears that the subsequent amendment of the Act has given retrospective effect to the aforesaid act, with effect from 16.09.1958, save and except certain sections and therefore, Public Premises (Eviction of Unauthorized Occupants) Act, 1971 cannot be said to be applicable to premises where occupants came into possession, prior to enforcement of 1971 Act, which has been given retrospective on and from 16.09.1958 and therefore the Appellant who has come into possession of the premises in question in the year 1947 does not come within the purview of the "unauthorized occupants".

**22.** The Ld. Advocate for the Appellant has contended that Office Memorandum issued by Ministry of Heavy Industries and Public Enterprises, Department of Public Enterprises, whereby Government set up administrative mechanism for resolution of CPSE(s) disputes (AMRC) for resolving disputes arising in between two or more for settlement for public disputes between Central Public Enterprises inter se and CPSE(s) and Government Departments and the present disputes in between Indian Jute Industries Research Association (IJIRA) and (KOPT) is pending for disposal. The Ld. Advocate for the Appellant has relied on the copy of the petition pending before the Administrative mechanism for resolution of CPSE(s)' disputes (AMRCD) and drew the attention of the court that there is specific clause of Arbitration for settlement of any disputes and differences in the

renewal Deed of Lease dated 23.04.1981. Accordingly, it is contended that the order of eviction dated 18.03.2013, passed by the Ld. Estate Officer be set aside.

**23.** Perused the Office Memorandum dated 22.05.2018, wherein it appears that in the said memorandum, it has been stated on the point of applicability that in the event of any dispute or difference relating to the interpretation and application to the provisions of commercial contract(s) between Central Public Sector Enterprises (CPSEs) / Port Trust inter se and also between CPSE(s) and Government Departments / organizations (excluding disputes concerning Railways, Income Tax, Customs and Excise Departments) such dispute or difference shall be taken up by either party for its resolution through AMRCD. The Secretary cum Financial Controller of IJIRA on 31.07.1997 has sent a letter addressed to the Assistant Land Manager-II, Calcutta Port Trust, State Department, 15, Strand Road, Calcutta - 700001, for revision of rent at the end of second ten years with a request to consider the first alternative i.e., enhancement of rent by 25% in preference to the current schedule rate basis which has been sent by registered post. Again by a letter dated August 6 / 7, 1997, the Secretary cum Financial Controller, IJIRA, submitted another letter to the Assistant Land Manager-II, Calcutta Port Trust Estate Department and informed their inability to entertain the huge demand and admit the liability till a mutually acceptable final settlement is reached in the matter. However, no settlement has been taken place in between IJIRA and the Port Trust Authority and the Ld. Estate Officer did not deal the same convincingly.

**24.** Considering the aforesaid aspect of the matter, it appears that the Appellant, who is in occupation since prior to 16.09.1958 i.e., prior to the applicability of the Public Premises Act, is clearly outside the coverage of the Public Premises Act, 1971 and as such the order passed by the Ld. Estate Officer on 18.03.2013 is liable to be set aside."

38. The scope of an application under Article 227 of the Constitution of India is limited. This court has assessed the perversity and patent illegality in the order impugned.

39. The issue under reference in ***Life Insurance Corporation of India Limited (supra)*** are quoted below:-

“2. The referral order dated 17-3-2015 [*LIC v. Vita (P) Ltd.*, 2015 SCC OnLine SC 1995] , aforementioned, reads as under: (*LIC case* [*LIC v. Vita (P) Ltd.*, 2015 SCC OnLine SC 1995] , SCC OnLine SC para 1)

“1. In these petitions, in fact, the ratio decided by the two-Judge Bench of this Court in *Suhas H. Pophale v. Oriental Insurance Co. Ltd.* [*Suhas H. Pophale v. Oriental Insurance Co. Ltd.*, (2014) 4 SCC 657 : (2014) 2 SCC (Civ) 685] , is contrary to the decision of the Constitution Bench rendered in *Ashoka Mktg. Ltd. v. Punjab National Bank* [*Ashoka Mktg. Ltd. v. Punjab National Bank*, (1990) 4 SCC 406 : (1992) 74 Comp Cas 482] . Therefore, these matters need to be heard by a three-Judge Bench.”

3. It is accordingly that the present batch of cases came to be posted before this Court, which await answer to the issue referred to.

***Issue under reference***

4. The principal question that arises for determination in this batch of matters is whether the provisions of the PP Act, 1971 would prevail over the respective State Rent Control legislations, in relation to premises let out prior to the commencement of the said Act, as against the premises let out after its enforcement but before their acquisition or transfer to the Government or any statutory corporation, by which the character of such premises stood transformed into “public premises” within the meaning of the Act.”

40. The issue which fell for decision in ***Life Insurance Corporation of India (supra)*** was whether a valid distinction could be made between tenants who were in occupation of the premises prior to the enforcement of the said Act and those who entered into occupation subsequent thereto, but before such premises were taken over by the government or a government corporation as the case may be, and whether in such cases the operation of the said Act was intended to be only prospective in nature.

41. In ***Suhas H. Pophale (supra)***, the Division Bench carved out two categories of persons in occupation of premises which became public premises, for the purpose of applying to them the provisions of the said Act.

It was held that, for premises which became public premises, the relevant date would be September 16, 1958 or on whichever later date the concerned premises had become public premises, that is, the date on which it was acquired by any public body or nationalised bank or company, insurance companies etc. All persons/entities falling within the definition of tenant who were occupying the premises prior to September 16, 1958, would not come within the ambit of the said Act, and those persons/entities could not be said to be in unauthorised occupation as per its definition under the said Act. Thus, according to the Division bench in ***Suhas H. Pophale (supra)***, it would not be open to such company or corporations to issue notices and proceed against those occupants under the said Act. Any such proceeding would be void and illegal. It was held in ***Life Insurance Corporation of India (supra)*** that, as a consequence of overriding effect of the provisions of the said Act over the Rent Control Act, building, belonging to companies, corporations, central government and other autonomous bodies referred to under Section 2(e) of the said Act would be excluded from the ambit of the Rent Control Act in the same manner as properties belonging to the Central Government. The conclusions of the large bench are quoted below:-

“Conclusions

77. In view of the foregoing discussion, reasons and analysis, the following position of law emerges:

77.1. In view of the law laid down by the Constitution Bench in Ashoka Mktg.<sup>1</sup> and the three-Judge Bench decision in Jain Ink, the view taken in Suhas H. Pophale<sup>2</sup> which is a two-Judge Bench decision, is palpably incorrect and unjustified. Suhas H. Pophale<sup>2</sup> cannot and does not hold the field.

77.2. Since, the propositions laid down in Suhas H. Pophale runs contrary to the decisions laid down by the Benches of larger strength in Ashoka Mktg. and Jain Ink<sup>2</sup>, the same is bad in law.

77.3. The ratio decidendi by the Bench of larger strength is binding on the Bench of the smaller strength, irrespective of the fact whether the judgment by the Bench of the larger strength is a priori or posterior, in point of time.

77.4. A Bench of the smaller strength cannot mark a departure from the decision of the Bench of larger strength, so as to vary the ratio of the Bench of larger strength, in guise of explaining the decision of the larger Bench.

77.5. It was not permissible for the two-Judge Bench in Suhas H. Pophale to interpret the statutes and lay down propositions in conflict with what was laid down by the Constitution Bench in Ashoka Mktg.<sup>2</sup> and by a three-Judge Bench in Jain Ink<sup>2</sup>, when the set of material facts in the background of the controversy dealt with, were similar,

77.6. In laying down the propositions incongruent to and contrary to the law laid down in Ashoka Mktg.<sup>2</sup>, the Bench in Suhas H. Pophale disregarded the principle of stare decisis and violated the well-settled law of precedent.

78. As a sequitur, this Court reiterates the propositions of law laid in Ashoka Mktg.<sup>2</sup>

78.1. Both categories of statutes, namely, the PP Act, 1971 on one hand, and the Bombay Rent Control Act, 1947, the Maharashtra Rent Control Act, 1999, the Delhi Rent Control Act, 1958 and similar Rent Control legislations, on the other hand, are special laws. Therefore, in order to determine as to which Act will apply in case of conflict, reference has to be made to the purpose and policy underlying the two enactments and the clear intendment conveyed by the language of the relevant provisions therein. Keeping in view the object and purpose underlying both the enactments, that is, the PP Act, 1971 and the Rent Control Acts, the provisions of the PP Act, 1971 shall override the provisions in the Rent Control legislations.

78.2. The PP Act, 1971 and the State Rent Control Acts are special enactments in themselves. Rule *generalia specialibus non derogant* will not apply. Having regard to the purpose, policy and legislative intent of the PP Act, 1971, the same would prevail over the State Rent Control Acts in respect of eviction of "unauthorised occupants" of "public premises" as defined in Section 2(g) of the Act.

78.3. The provisions of the PP Act, 1971, to the extent they cover the premises falling within the ambit of the Rent Control Act, override the provisions of the Rent Control Act.

78.4. A person in unauthorised occupation of "Public Premises" under Section 2(e) of the Act cannot invoke the protection of the Rent Control Act.

78.5. In cases where the tenanted premises are claimed to be governed by the State Rent Control Act and the same have also become "Public Premises" within the meaning in Section 2(e) of the PP Act, 1971, for their unauthorised occupation, the PP Act, 1971 will have application. 78.6. The statutory machinery envisaged under the PP Act, 1971, could be activated for recovery of possession of public premises by any government or public entity mentioned in the definition. 78.7. The PP Act, 1971 will apply to the tenancies which may have been created and in existence either before coming into force of the Act or which may have been created subsequent to coming into the force of the Act.

78.8. Two conditions must be satisfied for the applicability as above. Firstly, the tenanted premises must fall within the purview of definition under Section 2(e) of the PP Act, 1971. Secondly, the premises should have been in unauthorised occupation.

78.9. Termination of tenancy of "Public Premises" by issuing notice under Section 106 of the Transfer of Property Act, 1882 is one of the modes which would render the occupation of the tenant unauthorised, post the date specified in such notice. This would hold true in respect of tenancies created before or after coming into force of the PP Act, 1971.

78.10. Invocation and applicability of the provisions of the PP Act, 1971 is not dependent upon the aspect of possession. What is material is the occupation of the premises which has become unauthorised occupation. The occupation is a continuous concept.

78.11. The propositions enunciated in Suhas H. Pophale, as noticed in para 19 of this judgment, do not, in our considered view, state the correct position of law. The observations made therein, with great respect, are not in consonance with the settled legal principles and runs contrary to the principle of stare decisis and stand overruled to that extent.

79. The reference is answered accordingly.”

42. It is accordingly held that the order impugned suffers from perversity. The appeal court misinterpreted the law with regard to the prospective effect of the said Act and wrongly applied the guidelines in respect of the opposite party. Under such circumstances and for the

reasons afforded herein above, the application succeeds. The order impugned is set aside. The petitioner is at liberty to proceed with the implementation of the order of the Estate Officer.

43. Urgent Photostat certified copies of this judgment, if applied, for be supplied to the parties upon fulfilment of requisite formalities.

**(Shampa Sarkar, J.)**