In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And
The Hon'ble Mr. Justice Supratim Bhattacharya

M.A.T. No. 1694 of 2024
IA No: CAN 1 of 2024

with

M.A.T. No. 1695 of 2024
IA No: CAN 1 of 2024

The West Bengal Small Industries Development Limited and Others
Vs.
M/s. Twinstar Industries and Others

For the appellants	:	Mr. Kamal Kr. Chattopadhyay, Mr. Mahendra Gupta, Ms. Rimi Chatterjee, Mr. Abhisekh Sikdar, Ms. Moumita Dhar, Ms. Saheli Dey
For the respondents	:	Mr. Srijib Chakraborty, Mr. Aditya Mondal
Heard on	:	12.02.2026, 26.02.2026 & 10.03.2026
Reserved on	:	10.03.2026
Judgment on	:	19.03.2026

Sabyasachi Bhattacharyya, J.:-

1. The West Bengal Small Industries Development Corporation Limited (WBSIDCL) and others have preferred the present appeals against a common judgment dated August 16, 2024 passed in two writ petitions, being WPA 4280 of 2014 and WPA 22402 of 2024, setting aside an order of eviction dated July 19, 2023 passed by the Prescribed Authority, WBSIDCL against the writ petitioners/respondent nos. 1 and 2 and directing the WBSIDCL to renew and convert the short-term lease of the respondent no. 1 to long-term lease of 99 years pertaining to the application of the petitioners in this regard dated January 10, 2023 and to extend the benefits of two schemes floated by the WBSIDCL in favour of the petitioners in respect of Plot nos. K-10 and K-10/2, Behala Industrial Estate at 620, Kolkata-700 034 as well as to restore possession of the aforesaid plots to the writ petitioners/respondent nos. 1 and 2.

2. Respondent no. 1 is a proprietorship firm of the respondent no. 2, running its industry from the said plots.

3. The turn of events leading to the present litigation are as follows:

4. A lease of nine years was granted on June 8, 1989 by the WBSIDCL in favour of the respondent no. 1 in respect of the subject-plots, which expired on August 8, 1998. The appellants allege that the respondent no. 1, even prior to the expiry of the lease, was a defaulter in payment of lease rent.

5. On May 3, 2013, a notice of eviction was issued under Section 3(1) of the West Bengal Government Premises (Tenancy Regulation) Act, 1976 (hereinafter referred to as "the 1976 Act"). An appeal having been preferred by the respondent nos. 1 and 2, the Appellate Authority passed an order on August 8, 2013 directing the respondent no. 1 to pay the arrear rent, out of which Rs. 4 lakh was to be deposited by August 16, 2013 and the balance of Rs.2,26,000/- by September 16, 2013. The respondent no. 1 deposited Rs.3,26,140/- on August 8, 2013. Subsequently, the Appellate Authority extended the time for payment of the balance dues on October 9, 2013 and December 13, 2013 respectively. Ultimately, an order of resumption under Section 4(2) of the 1976 Act was issued by the appellants against the respondent no. 1 on January 28, 2014.

6. A writ petition, being WPA 4280 of 2014, was preferred by the respondent nos. 1 and 2 against the said order of eviction, in which an order restraining the appellants from evicting the respondent nos. 1 and 2 was passed on March 25, 2014, on condition of payment of the rent dues. On March 28, 2014, the said dues were paid by the said respondents in terms of the above order. Thereafter, respondent no. 1 requested the appellant-Authorities for monthly rent bills from April, 2014 by a written communication dated May 5, 2014.

7. On February 18, 2021, the WBSIDCL issued a Scheme by Circular No. SB-1/2896/10/2020-21, which was further extended for 180 days *vide* Circular no. SB/1/1468/2022-23 dated August 25, 2022. Under the said Scheme, the existing allottees of the plots in the said industrial estate were granted an opportunity, upon payment of arrear rents, to have their short-term lease deeds renewed and converted to long-term leases.

8. The respondents applied for getting the benefit of the said Scheme on January 10, 2023.

9. Subsequently, on June 21, 2023, WPA 4280 of 2014 got dismissed for default. On July 19, 2023, a second resumption order under Section 4(2) was passed by the appellant-authorities, against which a representation was given on July 25, 2023 by the respondent nos.1 and 2. The said respondents were heard on the same on August 31, 2023. However, *vide* order dated September 1, 2023, the said representation was rejected by the appellants.

10. Subsequently, on September 11, 2023, a notice was issued by the appellant to the said respondents fixing September 14, 2023 (11 AM) for resumption of possession.

11. On September 14, 2023 itself, respondent nos. 1 and 2 filed a writ petition being WPA 22402 of 2023 and served a copy thereof on the appellants, indicating that the matter would be taken up at 2 PM by the concerned Bench. On the self-same date, when the matter was taken up for hearing, the Court was informed that possession of the said plots had already been taken by the appellants, upon which the learned Single Judge was pleased to pass an order restraining the appellants from creating third party encumbrances and to direct the arrears of rent till March 1, 2023, as quantified by the appellants at Rs. 5,50,201/-, to be deposited by respondent nos. 1 and 2. On September 15, 2023, such amount was deposited by the said respondents.

12. Subsequently, on August 16, 2024, WPA 4280 of 2014 was taken up for hearing along with WPA 22402 of 2023 and the said writ petitions were disposed of by passing the judgment and order impugned in the present appeals.

13. Learned counsel appearing for the appellants argues that upon expiry of the lease deed of respondent no.1 on August 8, 1998, the said respondent lost its right of possession. The subsequent orders under Section 4(2) of the 1976 Act for resumption of possession were merely in furtherance of the eviction order passed under Section 3(1) of the said Act on May 3, 2013.

14. Due to subsistence of the order of stay passed initially in WPA 4280 of 2014, resumption could not take place. Upon the said writ petition being dismissed for default on June 21, 2023, the second resumption order was passed and a notice for taking possession was also issued to the respondent nos. 1 and 2, specifically intimating them that possession would be taken on September 14, 2023 at 11 am. Thus, it is submitted that there was no irregularity in such resumption, since no stay order was subsisting at that point of time and due process of law had been followed.

15. Learned counsel for the appellants further contends that respondent nos. 1 and 2 did not comply with the requirements of the statute by applying in time for renewal and depositing therewith arrears of rent and interest thereon. Thus, there was no question of renewal of the lease of respondent no. 1 at any point of time.

16. It is further argued that the respondent no.1 was not entitled to the benefit of the Scheme dated February 18, 2021, subsequently extended on August 25, 2022, since the said respondent was not an "existing allottee" upon the expiry of its lease. Secondly, the Scheme contemplated an application to be filed for getting the benefit of the same within 30 days with accompanying deposit of all outstanding arrears of rent. Moreover, as a pre-condition of the Scheme, there could not be any pending litigation. None of the said conditions were, however, complied with by respondent no. 1. Thus, it is submitted that respondent no. 1 was never entitled to get the benefit of the Scheme.

17. Addressing the Court on an unreported judgment of this Court in *Continental Chemical Corporation v. West Bengal Small Industries Development Corporation Limited and Ors. (WPA No. 183 of 2024)*, it is submitted that in the said case, there was a direction of the Division Bench on the WBSIDCL to consider the case of the writ petitioner therein; furthermore, draft deeds had been exchanged several times between the parties and were approved by the authorities. Thus, the question of *res judicata* was taken into consideration, Furthermore, there was an order directing the writ petitioner to comply with the Managing Director's order to have the lease deed registered in its favour. Hence, the context was different than the present case in *Continental Chemical Corporation (supra)*[1].

[1] ***Continental Chemical Corporation v. West Bengal Small Industries Development Corporation Limited and Ors. (WPA No. 183 of 2024)***

18. In the case of *M/s. Gravo Prints*, which was given the benefit of the Scheme, which is cited by respondent nos. 1 and 2 for the purpose of claiming similar relief, it is contended by the appellants that the said entity had continued to pay monthly rent and had applied for renewal of lease on March 25, 2012, that is, within time. The prayer for renewal was all along pursued and the renewal and conversion offer was subsisting till 2018. After the Scheme was introduced, it was availed of by *M/s. Gravo Prints* and accordingly the appellant authority passed an order allowing it to pay the arrear amounts of rent and consequently, a long-term lease deed was executed in its favour. However, it is submitted that in the present case, respondent no. 1 never exercised its right of renewal, nor made payment of arrear rents along with the application filed for getting the benefit of the Scheme. That apart, a valid eviction order was passed under Section 3(1) of the 1976 Act and resumption occurred under Section 4 thereof. Hence, it is argued that *M/s. Gravo Prints* stood on a different footing that respondent no. 1 and the latter cannot claim parity with *M/s. Gravo Prints* insofar as the grant of the benefit of the Scheme is concerned.

19. The appellants rely on an unreported judgment of the Supreme Court in the matter of *West Bengal Small Industries Development Corporation Ltd. & Ors. v. M/s. Sona Promoters Pvt. Ltd. & Ors. passed in Civil Appeal No. 2201 of 2020*, where the Hon'ble Supreme Court was pleased to observe that the eviction proceedings initiated by the WBSIDCL under the 1976 Act was without jurisdiction, since the subject-plots did not satisfy the requirements of the definition of "Government premises" within the meaning of Section 2(a), read with Section 2(c), of the said Act and that proceedings were initiated under the West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962. However, in the present case, there is no dispute regarding the 1976 Act being applicable.

20. Learned Counsel for the appellants next cites *Deepak Kejriwal v. The State of West Bengal and others (WPO No. 518 of 2013)*, a Single Bench Judgment of this Court, where the Court held that in absence of any agreement for fructifying the proposed renewal of any lease deed between the parties, there could not be any occasion to renew the lease. It was further observed that merely by acceptance of the occupation charges on calling it "rent", as the writ petitioner therein continued its accommodation, does not amount to a renewal of the lease between the parties since there was no consensus *ad idem* between the parties.

21. Learned counsel next cites *Gulshan Kumar Gulati and Another v. West Bengal Small Industries Development Corporation Limited and others (WPO No. 1610 of 2023)*, where this Court had observed that an eviction order dated November 2, 2012 passed in a proceeding under the 1976 Act was implemented by eviction, which was justified. The objection as to inherent lack of jurisdiction of the concerned authority was turned down since the writ petitioners therein had participated in the proceedings under the 1976 Act.

22. It is argued that the contention of respondent nos. 1 and 2 that there was "legal malice" on the part of the appellant-authorities is not tenable, since the appellants adopted due process of law in passing the eviction order and having it implemented by resumption of possession against the respondent no. 1, whose lease had expired by efflux of time and also by virtue of the notice under Section 3(1) of the 1976 Act since the respondent no. 1 was a defaulter in payment of rent. It is argued that the resumption order was not required to be supported by detailed reasons since it was merely in furtherance of the eviction order and was within the statutory powers of the appellants to pass.

23. Learned counsel for respondent nos. 1 and 2, on the other hand, argues that despite the expiry of the lease, respondent no. 1 remained a tenant in respect of such plots, since the appellant-authorities continued to receive rent from them even after such expiry.

24. Moreover, it is contended that even after the order of eviction was passed under Section 3(1) of the 1976 Act, respondent no. 1 continued to pay substantial amounts of arrears of rent at various point of time, for instance Rs. 3,26,000/- on August 8, 2013 and Rs. 3,50,000/- on March 28, 2014, which were duly accepted by the appellant-authorities.

25. It is thus argued that there was substantial compliance of the provisos to section 3(2) of the 1976 Act, which learned counsel for respondent nos. 1 and 2 seeks to equate with the beneficial provisions under Section 7 of the West Bengal Premises Tenancy Act, 1997 and Section 17 of its predecessor statute of 1956.

26. Learned counsel for respondent nos. 1 and 2 next argues that on May 5, 2014, the said respondent had sought issuance of rent bills after clearing its dues, thus, in effect, expressing its intention to have the lease renewed. Hence, it cannot be said that there was no renewal application as such from the respondent no. 1. If the rent bills were issued by the appellants in terms of such request, there would not be any occasion for respondent no. 1 to make further defaults. The appellants, it is argued, cannot take advantage of their own wrong by sitting tight over such request for issuing rent bills on the one hand and alleging absence of any prayer for renewal of lease by the contesting respondents on the other.

27. Learned counsel for the contesting respondents next argues that *M/s. Gravo Prints* were given the benefit of the Scheme-in-question despite being a defaulter, although its lease had expired due to efflux of time at the relevant juncture. In spite of the same, it was treated as an 'existing allottee' for the purpose of the Scheme by the appellants and given the benefit of the Scheme by converting its lease deed to a long-term lease.

28. It is contended that the 1976 Act and the Scheme floated by the appellant-authorities are beneficial in nature and, as such, ought to be construed in favour of the beneficiaries. Respondent no. 1 applied within the extended time stipulated in the Scheme; thus, there could not be any bar to grant its benefit to respondent no. 1.

29. As regards the clauses in the Scheme contemplating that there should be no pending litigation and all arrear of rents should be paid, it is submitted that those were not preconditions of making an application to get the benefit of the Scheme. It is argued that even after making an application, upon a calculation of the arrears of rent being furnished by the appellants, the duty to pay such rent would be cast on the applicant. Again, only upon the application being sanctioned in principle could there be any occasion for withdrawal of all pending litigations. Thus, it is contended that by not granting the benefit of the Scheme to respondent no. 1, whereas such benefit was extended to *M/s Gravo Prints*, which stood on similar fooring, the appellants squarely violated Article 14 of the Constitution of India. Learned counsel for respondent nos. 1 and 2 also relies on other instances where similar benefit of the Scheme was given to allottees whose leases had expired long prior thereto.

30. Learned counsel for respondent nos. 1 and 2 further argues that the action of the respondent no. 1 was tainted by "legal malice". Despite the request of respondent no. 1 for issuance of rent bills, which tantamounted to expressing intention of renewal of the lease, and the pendency of the application filed by the respondent no. 1 to get the benefit of the Scheme, the appellant-authorities, without disposing of the same, proceeded to pass a further resumption order under Section 4(2) of the 1976 Act immediately after WPA 4280 of 2014 was dismissed for default.

31. Legal malice was further manifest in the appellants' bid to oust respondent nos. 1 and 2 from possession of the subject plots on the very day when the subsequent writ petition, being WPA 22402 of 2024, was moved before a learned Single Judge of this Court, despite a copy of such writ petition and notice of moving the same at 2 pm on the date of dispossession being given to the appellants, without waiting for the outcome of the said writ petition. Thus, it is argued that the acts of the appellants were vitiated by palpable arbitrariness, which comes clearly within the category of legal malice.

32. Learned counsel cites *State of A.P. and others v. Goverdhanlal Pitti*, reported at *(2003) 4 SCC 739*, for the above proposition. In the said case, the Hon'ble Supreme Court observed that legal malice on the part of the State should be understood to mean that the action of the State is not taken *bona fide* for the purpose of the Land Acquisition Act and it had been taken only to frustrate the favourable decisions obtained by the owner of the property against the State in the eviction and writ proceedings.

33. Learned counsel places reliance on *Continental Chemical Corporation (supra)*[2], where the court held that the writ petitioner therein was to be given the benefit of the Scheme at par with *M/s. Gravo Prints*, the latter being alleged to be a defaulter but being given a special favour by the authorities in respect of the self-same industrial estate as the present one. Upon interpreting the language of the concerned Circulars floating the Scheme-in-question, it was held that in the case of beneficial legislations and/or Schemes, the interpretation of widest amplitude, to advance the purpose of the legislation or the Scheme, should be given so as not to restrict the same.

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[2] ***Continental Chemical Corporation v. West Bengal Small Industries Development Corporation Limited and Ors. (WPA No. 183 of 2024)***

34. It is further pointed out that the appellants themselves offered to renew the lease deed upon payment of Rs. 30 lakh per Cottah, as recorded by the learned Single Judge in the order dated September 21, 2023. By doing so, it is argued that the appellants gave up their right to evict the respondent nos. 1 and 2. It is submitted that it was the incumbent duty of the appellants to consider the application of the respondent no. 1 for getting the benefit of the Scheme and to give such benefit to the said respondent upon compliance of due formalities. In the case of *M/s. Gravo Prints*, it is submitted that its lease had also expired long back in 1992 and an eviction order was passed, which had been stayed. *M/s. Gravo Prints* was also defaulter and in its case, it was agreed by the appellants that it would withdraw all the legal cases to get the benefit of the Scheme, therefore, contemplating future withdrawal post-application as a valid mode of granting the benefit of the Scheme. Even in the said case, *M/s. Gravo Prints* was given opportunity to pay the arrear rents later. Thus, the argument of non-applicability of the Scheme to the present respondent no. 2 is not a valid contention.

35. Accordingly, it is submitted that the learned Single Judge was justified in passing the impugned judgment and the same ought not to be interfered with in appeal.

36. Considering the arguments of the parties and in the light of the materials placed before the Court, it transpires that the present adjudication hinges on the following issues:-

(i) Whether respondent no. 1 is entitled in law to the renewal of its tenancy;

(ii) Whether respondent no. 1 is entitled to the benefit of the Scheme dated February 18, 2021, subsequently extended on August 25, 2022;

(iii) Whether there is any violation of Article 14 of the Constitution of India against respondent nos.1 and 2;

(iv) Whether there was any legal malice in the impugned action of the WBSIDCL.

37. The said issues are decided as follows:

(i) Whether respondent no. 1 is entitled in law to the renewal of its tenancy

38. Admittedly, the lease granted to respondent no. 1 in respect of the subject-plots on June 8, 1989 expired by efflux of time on August 8, 1998.

39. A notice under Section 3(1) of the 1976 Act was also given to respondent nos. 1 and 2. The effect of such notice was to terminate the tenancy, since sub-section (1) of Section 3 provides that every tenancy held by a tenant in respect of a Government premises shall stand terminated upon the expiry of the period referred to in a notice to quit served upon such tenant in the prescribed manner.

40. Hence, there cannot be any manner of doubt that the tenancy of respondent no.1 stood expired, both by efflux of time and upon issuance of the notice under Section 3(1). The renewal of lease under the 1976 Act is governed by the first three provisos under Section 3(2) of the said Act as well as Rule 5 of the West Bengal Premises (Tenancy Regulation) Rules, 1976 (for short, "the 1976 Rules").

41. Section 3 of such Act is reproduced for convenience below:

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

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

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

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

(a) "appartment" shall have the same meaning as in the West Bengal Apartment Ownership Act, 1972;

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

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

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

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

Provided further that the prescribed authority may, on sufficient cause being shown, grant renewal of the tenancy in favour of the tenant on deposit of fifty per cent of the arrears of rent along with the application for renewal of tenancy and direct the tenant to deposit the balance of the arrears of rent with interest on the entire amount at the prescribed rate in twelve monthly installments commencing from the month following the month of such renewal of tenancy, and if the tenant fails to deposit any such installment the tenancy so renewed shall stand automatically terminated:

Provided further that the prescribed authority may, if it is satisfied that the tenant has failed to pay rent due to circumstances beyond his control and is not in a position to deposit fifty per cent of the arrears of rent along with the application for renewal of tenancy, grant renewal of the tenancy in favour of the tenant on deposit of twenty-five per cent of the arrears of rent along with the application for renewal of tenancy and direct the tenant to deposit the balance of the arrears of rent with interest on the entire amount at the prescribed rate in such number of monthly instalments, not less than twelve and not more than thirty six, as the prescribed authority may consider reasonable, commencing from the month following the month of such renewal of tenancy, and if the tenant fails to deposit any such instalment, the tenancy so renewed shall stand automatically terminated:

Provided also that notwithstanding the termination of the tenancy the State Government or the Government undertaking, as the case may be, shall be entitled to recover all arrears of rent for the period for which the tenancy subsisted and mesne profits thereafter for so long as the tenant remained in occupation of the premises.

(3) (a) Where any Government premises allotted to a tenant remains under lock and key for a period of more than three consecutive months or where the tenant or any member of his family is not ordinarily resident of such Government premises, the tenancy in respect of such Government premises shall stand automatically terminated:

Provided that if the prescribed authority is satisfied that the circumstances, under which such Government premises remains under lock *and key for more than three consecutive months or the tenant or any member by his family is not ordinarily a resident of such Government premises, are beyond the control of the tenant, it may allow the tenancy to subsist:*

Provided further that the prescribed authority shall give the tenant a notice and an opportunity of being heard before such termination:

Provided also that an appeal shall lie to the Appellate Authority against an order determining non-occupation for a period of three consecutive months or non-residence by the tenant or any member of his family under the above provisos within fifteen days from the date of the order passed by the prescribed authority and, in such case, the decision of the Appellate Authoirty shall be final.

(b) A tenant shall be deemed to be ordinarily resident of a Government premises if he or any member of his family generally resides in such Government premises for not less than ninety days in a period of four consecutive months.

(c) The provisions of this sub-section shall have effect notwithstanding anything contained in this Act or in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act, or in any decree or order of any court, tribunal or other authority, and nothing contained in the Transfer of Property Act, 1882, or the Indian Contract Act, 1872, or the West Bengal Premises Tenancy Act, 1956, shall apply, or shall be deemed over to have applied, to the tenancy as aforesaid and such tenancy shall take effect, and shall be deemed always to have taken effect, as if the Transfer of Property Act, 1882, or the Indian Contract Act, 1872, or the West Bengal Premises Tenancy act, 1956, had not been passed."

42. No dispute has been raised by the respondent nos. 1 and 2 as to the respondent no. 1 being a defaulter in payment of rent when the eviction order was passed. Each of the first three provisos to Section 3(2) stipulates an application to be filed within the prescribed time and simultaneous deposit of arrears of rent, together with interest at the prescribed rate, as a pre-condition for renewal of the lease. Section 2(d) of the 1976 Act defines “prescribed” as prescribed by Rules made under the said Act, thus referring to the 1976 Rules.

43. Rule 5(1) of the said Rules stipulates the prescribed period to be one month from the date on which the tenancy stands terminated on account of default in payment of rent for three consecutive months and Rule 5(2) reiterates that all such applications shall be accompanied by deposit of all arrears of rent together with interest at the prescribed rate. The use of the term “shall” makes it mandatory for such deposit to be made simultaneously with the application. Sub-rule (3) of Rule 5 provides that the rate of interest to be charged an arrear of rent shall be such as may be notified by the State Government from time to time.

44. In the present case, there is no evidence on record to show that the respondent no. 1 made any application for renewal of its tenancy at any point of time, let alone depositing the arrear rents with interest along with the same. Although learned counsel for the respondent nos. 1 and 2 tries to impress upon the court that the request dated May 5, 2014 made by respondent no. 1 to the appellants for issuance of monthly rent bills tantamount to expression of interest for renewal, we are unable to agree with such contention. In the said request, we do not find any whisper or intention to renew but merely the assertion that monthly rent bills ought to be issued to the respondent no. 1.

45. Thus, this Court comes to the finding that the respondent nos. 1 and 2 were not entitled to renewal of the lease granted in favour of respondent no. 1 under the provisions of the 1976 Act or the 1976 Rules.

46. Another aspect of the contesting respondents' arguments is that the 1976 Act being a beneficial piece of legislation, the provisions enumerated in the provisos to Section 3(2) of the said Act ought to be given liberal interpretation, by drawing analogy from the provisions of the West Bengal Premises Tenancy Acts of 1956 and 1997, as incorporated respectively in Section 17 and section 7 thereof.

47. However, the said argument is not tenable in the eye of law. The premise of the provisions of Section 3 of the 1976 Act stands on an entirely different footing than that of the Rent Control laws mentioned above. Under the 1956 and 1997 Acts, an additional layer of protection has been given to tenants, who have previously committed default in payment of rent, in a suit for eviction instituted against them, to afford a second opportunity to pay the arrear rents before they are ultimately evicted. However, the provisions of the 1976 Act, although beneficial to some extent, are more rigorous than the Rent Control Laws inasmuch as Government premises have been treated on a different footing than other premises, apparently due to administrative exigencies and the public interest element involved in dealing with such premises. Some amount of exigency in the eviction process with regard to Government premises is inbuilt in the 1976 Act, insofar as no eviction proceeding is contemplated thereunder prior to eviction, unlike the Public Premises (Eviction of

Unauthorised Occupants) Act, 1971. Upon an order being passed under Section 3(1) of the 1976 Act, the tenancy stands terminated automatically by operation of Section 3(2) thereof.

48. As per the scheme of the 1976 Act, a mere notice under Section 3(1) would suffice to terminate the tenancy outright upon the expiry of the notice period. Sub-section (1) of Section 3 itself provides so, which is further bolstered by sub-section (2), which stipulates that a tenancy in respect of a Government premises shall stand "automatically terminated" without any notice to quit where the tenant has violated any of the subsequent provisions, including making default in payment of rent for 3 consecutive months.

49. Section 4 of the 1976 Act is only a post-termination exercise and does not even require any further notice to be given to the tenant by the Government authorities. Sub-section (1) of Section 4 provides that upon termination of a tenancy under any of the provisions of Section 3, the tenant "shall forthwith restore vacant possession" of the premises occupied by him in favour of the prescribed authority. Sub-Section (2) of Section 4 stipulates that if the tenant fails to so restore, the prescribed authority or any officer authorized by him in this behalf "may take such steps or use such force" as may be necessary to take possession of the premises and "may also enter into such premises" for the aforesaid purpose.

50. Thus, the provisos to section 3(2), which are subservient to the main provision stipulated therein, cannot be equated with the benefits given under Sections 7 and 17 of the 1997 and 1956 Acts respectively.

51. Moreover, the first three provisos to Section 3(2), read with Rule 5 of the 1976 Rules, mandatorily contemplate an application to be made by the tenant, along with deposit of all arrears of rent together with interest at the prescribed rate, as a precondition for attracting the said provisos.

52. That apart, even after such application is made, an element of discretion is left to the authorities since the term "may" has been used to qualify the grant of renewal of the tenancy. Such discretion is, by its very nature, restrictive insofar as the first proviso is concerned. However, there is more scope of exercise of discretion and decision-making by the prescribed authority in the situations envisaged in the second and third provisos. The second proviso stipulates that such renewal of tenancy will be made on deposit of 50 per cent with the application, provided "sufficient cause" is shown. Again, the third proviso envisages that such renewal may be granted if the Prescribed Authority "is satisfied that the tenant has failed to pay rent due to circumstances beyond his control and is not in a position to deposit 50 per cent", upon deposit of 25 per cent at the outset and thereafter in terms of the instalments provided in the said proviso.

53. Due to the above reasons, no manner of analogy can be drawn between the provisions of the Rent Control laws and those of the proviso to

Section 3(2) of the 1976 Act insofar as the protection given to tenants is concerned.

54. Thus, this Court comes to the finding that the respondent nos. 1 and 2 were not entitled to renewal of the lease granted in favour of the respondent no. 1 under the provisions of the 1976 Act or the 1976 Rules, in view of the said respondents having not complied with the mandatory prerequisites for such grant of renewal as envisaged in the said provisions.

(iii) Whether respondent no. 1 is entitled to the benefit of the Scheme dated February 18, 2021, subsequently extended on August 25, 2022

1. The Scheme-in-question was floated *vide* Circular No. SB-1/2836/10/2020-21 dated February 18, 2021 and further extended for 180 days *vide* Circular No. SB/1/1468/2022-23 dated August 25, 2022. Contrary to the contention of the appellants, the respondent no.1 had made an application for grant of the benefit of the Scheme to it within the extended period of 180 days, on January 10, 2023 to be precise. Thus, it cannot be said that the benefit of the Scheme could not be granted to respondent no. 1 due to delay in making the application.

2. The next ground of objection of the appellants to the extension of such Scheme to the respondent no.1 is that the latter was not an "existing allottee" at the relevant juncture.

3. The concept of 'existing allottee' has been explained at length in *Continental Chemical Corporation (supra)*[3]. The scope of the said expression was elaborated in the said report to include both lessees and non-lessee allottees. The provisions of the original Scheme, contained in the minutes of a meeting dated October 13, 2020, was discussed in the said judgment and held to be a special Scheme for "old and existing entrepreneurs of Behala Industrial and Commercial Estate". Hence, the purpose of the Scheme was to extend the benefit of renewal and conversion of short-term lease to long-term lease to the existing entrepreneurs operating in the said industrial estate. Such Scheme was modified on February 18, 2021, referring to the 359th meeting of the WBSIDCL held on February 10, 2021, in which it was decided to launch a special scheme for "conversion of lease from short-term to long-term in respect of the existing allottees of Behala Industrial and Commercial Estate".

4. Since both the expressions, "allottees" and "lease", were used in the aforesaid Circulars, the purpose of the Scheme was interpreted to include all allottees in respect of the industrial estate. In fact, there is a marked difference between "existing allottees" and "existing lessee". Whereas the former expression has been used in the Scheme, the latter has been deliberately avoided, thereby expressing the clear intention of the Scheme to make its benefits available to all allottees who were in

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[3] ***Continental Chemical Corporation v. West Bengal Small Industries Development Corporation Limited and Ors. (WPA No. 183 of 2024)***

possession of the subject-plots at the relevant juncture, making such consideration independent of the criterion of whether any lease subsisted or was ever granted to such allottee at all. Such divergence of the notions of 'allottee' and 'lessee' in the Scheme itself clearly mandates that irrespective of the subsistence of a valid lease, the benefit of the Scheme could be availed of by any allottee on the plots within the estate. There cannot be any doubt that at all relevant points of time the present respondent no.1 was an allottee, having the further protection of a lease, although the latter protection expired subsequently.

5. Hence, the benefit of the Scheme has to be interpreted to be available to the respondent no.1 as well, in the capacity of an existing allottee in the sense that it was still in occupation of the subject-plots at the relevant juncture as an allottee of an industrial plot for the purpose of carrying out its industrial activities in the capacity of an entrepreneur.

6. Moving on to the conditions as envisaged under the Scheme, the very language of the Scheme indicates that the arrears could be cleared and pending litigation could be withdrawn even after the application for availing the benefits of the Scheme being made. There is nothing in the Scheme to show that such payment of arrears and non-pendency of litigation was a pre-condition of even making an application for getting the benefit of the Scheme. Moreover, by its very nature, the condition of withdrawal of litigation and payment of all arrears, particularly the former, cannot precede the making of an application, since, in the event the benefit of the Scheme being refused to the applicant after withdrawing all litigation, the applicant would be remediless against the WBSIDCL. Such a situation cannot be contemplated under a beneficial Scheme, which the 2020 as well as the 2021 Scheme evidently are. Accordingly, such argument on the part of the appellants has also to be turned down.

7. The court cannot overlook the fact that, albeit in terms of the different orders of the Appellate Authority and the court, the respondent nos.1 and 2 had paid all arrears as quantified by the appellants themselves before such Authorities/courts at different points of time, which would be evident from the different orders placed this court. The appellant-authorities also accepted such amounts from the respondent no.1. Although mere acceptance of rent does not confer the status of a tenant to a defaulter otherwise, whose tenancy has already expired, nor can it be construed as an automatic renewal of the lease, insofar as the Scheme-in-question is concerned, the payment of all arrears at every point of time, in terms of the calculations made by the appellants themselves, can definitely be construed to be substantial compliance of the terms of the Scheme regarding payment of all arrears.

8. In fact, the appellants themselves had given out that they had no qualms to renew the lease of the respondent no.1 subject to payment of an amount of Rs.30,00,000/- per cottah, as recorded in the order dated September 21, 2023. Hence, the appellants are evidently not averse to such renewal or granting the benefit of the Scheme to the respondent no.1, subject to fulfilment of all necessary conditions. The amount of

Rs.30,00,000/- per cottah is definitely a ballpark amount, in the absence of any disclosure of the breakup or basis thereof. However, the agreement of the appellants in principle to give the benefit of the Scheme to the respondent no.1 was evident by such offer itself.

9. Thus, this issue is decided in favour of the respondent nos.1 and 2, since the respondents are eligible for getting the benefit of the Scheme-in-question.

(iii) Whether there is any violation of Article 14 of the Constitution of India against respondent nos.1 and 2

10. Respondent nos.1 and 2 have drawn analogy from similar benefit of the Scheme being given to one *M/s. Gravo Prints*. The appellants seek to distinguish between the attending circumstances of the two cases on several grounds. However, such grounds are merely illusory and superficial distinctions and cannot afford a reasonable basis of discriminating between the respondent no.1 in the present case and *M/s. Gravo Prints*.

11. As discussed in *Continental Chemical Corporation (supra)*[4] in respect of *M/s. Gravo Prints* as well, its lease had expired long back and it was also a defaulter in payment of rent. *M/s. Gravo Prints* was granted liberty to deposit the arrears of rent subsequent to its application to come under

[4] ***Continental Chemical Corporation v. West Bengal Small Industries Development Corporation Limited and Ors. (WPA No. 183 of 2024)***

the Scheme and was treated to be an existing allottee for the purpose of the Scheme despite its lease having already been terminated previously.

12. *M/s. Gravo Prints* had deposited the arrears of rent as claimed. The respondent no.1 in the present case has also deposited arrears of rent as per the calculation of the appellant-Authorities, in terms of the submissions made by the appellants in court, at various points of time.

13. Moreover, despite the respondent no.1 having specifically applied for getting the benefit of the Scheme within the extended period of 180 days as per the second Circular, such application was not decided at all by the appellant-authorities at any point of time. Unless the same was decided and an opportunity was given to the respondent no.1 to deposit all arrears and to withdraw pending litigation, which opportunities were given to *M/s. Gravo Prints*, it could not be said that the present respondent no.1 was treated on equal footing as *M/s. Gravo Prints* or that there was no discrimination between the two.

14. It is trite law that a Government Scheme is in the nature of a benefit and a privilege and no automatic right as such to get such benefit is conferred on an eligible applicant. However, once such privilege is granted to an entity, all other entities standing on similar footing automatically acquire a right to get similar treatment from the State. After all, it is more than well-settled that State action (even in contractual matters) has to stand on a much higher pedestal than that of an individual citizen and cannot be manifestly discriminatory or arbitrary.

15. Tested on such anvil, it is clear that the appellant no.1, which comes within the ambit of Article 12 of the Constitution of India, discriminated between the respondent no.1 and *M/s. Gravo Prints* and other similar entities which were given the benefit of the Scheme, in a patently arbitrary manner, without any rationale.

16. The facts of *Deepak Kejriwal (supra)*[5] and *Gulsan Kumar Gulati (supra)*[6] are not applicable to the present case since in the former, the subject-matter of allegation was a challenge to the Circular dated August 18, 2022 and fixation of the arrear rents in the facts of the cases, in which context it was held that mere acceptance of occupation charges does not tantamount to automatic renewal of the lease and that the respondents therein had never agreed to the rent proposed by the writ petitioner in the former case, whereas in the latter, the applicability of the Scheme-in-question was not under consideration but a challenge to the jurisdiction of the authorities to pass an eviction order was raised on the ground that subject-plots were not "Government premises" under the 1976 Act, which was turned down by the Court on the grounds mentioned in the judgment.

17. Accordingly, it is held that the fundamental right of equality guaranteed under Article 14 of the Constitution of India, which was available to the respondent nos.1 and 2, was violated by the impugned action of the appellants.

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[5] ***Deepak Kejriwal v. The State of West Bengal and others (WPO No. 518 of 2013)***

[6] ***Gulsan Kumar Gulati and Another v. West Bengal Small Industries Development Corporation Limited and others (WPO No. 1610 of 2023)***

(iv) Whether there was legal malice in the action of the WBSIDCL

18. The tests of 'legal malice' were laid down in Paragraph Nos.12 to 14 of *Goverdhanlal Pitti (supra)*[7]. The contents of the said paragraphs are set out verbatim below:

> *"**11.** The last submission made is that since the school building was in a dangerous condition and the school having been already shifted at an alternative site, this Court in exercise of its power under Article 136 of the Constitution of India should refuse to interfere in the order of the High Court. In the alternative, it is prayed that the State Government be directed to reconsider its decision for retaining the school building as the school stands shifted to a new location.*
>
> ***12.** The legal meaning of malice is "ill-will or spite towards a party and any indirect or improper motive in taking an action". This is sometimes described as "malice in fact". "Legal malice" or "malice in law" means "something done without lawful excuse". In other words, "it is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard of the rights of others". (See Words and Phrases Legally Defined, 3rd Edn., London Butterworths, 1989.)*
>
> ***13.** Where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. If at all it is malice in legal sense, it can be described as an act which is taken with an oblique or indirect object. Prof. Wade in his authoritative work on Administrative Law (8th Edn., at p. 414) based on English decisions and in the context of alleged illegal acquisition proceedings, explains that an action by the State can be described mala fide if it seeks to "acquire land" "for a purpose not authorised by the Act". The State, if it wishes to acquire land, should exercise its power bona fide for the statutory purpose and for none other.*

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[7] ***State of A.P. and others v. Goverdhanlal Pitti, reported at (2003) 4 SCC 739***

> ***14.*** *Legal malice, therefore, on the part of the State as attributed to it should be understood to mean that the action of the State is not taken bona fide for the purpose of the Land Acquisition Act and it has been taken only to frustrate the favourable decisions obtained by the owner of the property against the State in the eviction and writ proceedings."*

19. As per the above ratio, there could not be any element of personal ill-will or spite when an allegation of legal malice is levelled against the State. Such malice has to be in the legal sense, described to be an act which is taken with an oblique or indirect object. Although, in the said case, the possession of the land was taken *de hors* the purposes of the Land Acquisition Act and to frustrate favourable decisions which had already been obtained by the owner of the property against the State in eviction and writ proceedings, which circumstances are not directly applicable here, legal malice is manifest in the present case on a somewhat different footing.

20. The first ingredient of legal malice can be found in the deliberate action on the part of the appellants to thwart the outcome of the writ petition, being W.P.A. 22402 of 2023. On the very date when it was filed, the appellants took over possession of the subject-plots by evicting the respondent nos.1 and 2, despite being fully aware of and being served with a copy of the writ petition. No doubt, the appellants had previously passed the second resumption order under Section 4(2) of the 1976 Act on July 19, 2023 and had given a notice to the respondent nos.1 and 2 on September 11, 2023, fixing September 14, 2023 (11:00 AM) as the date of taking possession, yet, after coming to know that a writ petition had been filed and would be taken up for hearing at 02:00 PM on the self-same day, it was a manifest attempt on the part of the appellant-Authorities to frustrate the outcome of the said challenge by going ahead with the dispossession of the respondent nos.1 and 2 in the teeth of such pendency, in spite of the concerned Bench having expressed its intention to take up the matter at 02:00 PM on the same day, without awaiting the outcome of such motion.

21. Even earlier, the appellant had hastened to pass a second resumption order on July 19, 2023, soon after the previous writ petition bearing W.P.A. No. 4280 of 2014 was dismissed for default on June 21, 2023. The appellants were fully aware that throughout the pendency of W.P.A. No. 4280 of 2014, there was a subsisting order restraining the appellants from evicting the respondent nos.1 and 2. Thus, taking advantage of the dismissal of the said matter for default and the consequential vacating of the said restraint order, a second notice of resumption was given by the appellants in hot haste, before the respondent nos.1 and 2 could take steps for restoration of their earlier application.

22. The above *modus operandi* of the appellant-authorities reeks of palpable legal malice, which is manifest in the attempt of the appellants to eschew the legal challenge thrown to the attempted resumption by preferring a writ petition before this Court and, despite a restraint order subsisting all throughout the pendency of the previous writ petition, hurrying to resume possession immediately after it was dismissed for default, in a bid to deprive the writ petitioners/respondent nos.1 and 2 of the opportunity to have the previous writ petition restored, along with the previously subsisting restraint order.

23. Hence, this Court comes to the conclusion that "due process of law" was paid mere lip-service of the appellant-authorities, in spirit violating the cardinal tenets of natural justice and fair process. The element of "fairness" must be read into "due process" for the said term to have any meaningful application within the Constitutional Scheme of India and the two cannot exist without each other.

24. Tested on such anvil, the impugned actions of the appellants were tainted by legal malice and were rightly set aside by the learned Single Judge.

<u>CONCLUSION</u>

25. In view of the above findings, this Court comes to the conclusion that the learned Single Judge was justified in passing the impugned judgment, thereby directing possession to be restored to the respondent nos.1 and 2 and the benefits of the Scheme under the Circular dated February 18, 2021, as extended on August 25, 2022, to be given to the writ petitioners/respondent nos.1 and 2 in respect of the subject-plot nos. K-10 and K-10/2 in the Behala Industrial Estate at 620, Diamond Harbour Road, Kolkata – 700 034.

26. Accordingly, M.A.T. No.1694 of 2024 and M.A.T. No.1695 of 2024 are dismissed on contest, thereby affirming the impugned judgment dated

August 16, 2024 passed in W.P.A. No.22402 of 2023 and W.P.A. No.4280 of 2014.

55. Consequentially, the pending applications in the appeals, both bearing CAN 1 of 2024, stand disposed of as well.

56. There will be no order as to costs.

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

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)