

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

BEFORE :-

THE HON'BLE JUSTICE SHAMPA SARKAR

C.O 497 of 2022

T. D. Kumar and Brothers Private Ltd. and another
vs.
Union of India and others

For the Petitioner	: Mr. Swatrup Banerjee, Adv. Ms. Somali Mukhopadhyay, Adv. Mr. Sariful Haque, Adv.
For the Opposite Parties	: Mr. Arabinda Sen, Sr. Adv. Mr. Tapan Bhanja, Adv.
Judgment reserved on	: 08.05.2026
Judgment pronounced on	: 19.06.2026
Judgment uploaded on	: 19.06.2026.

Shampa Sarkar, J.

1. This revisional application arises out of an order dated January 29, 2022 passed by the learned Additional District Judge, 1st Court at Howrah in Misc. Appeal No. 124 of 2019. By the order impugned, the learned Judge upheld the decision of the Estate officer dated July 5, 2019, inter alia, holding that the said decision was passed in consonance with the directions of the High Court given in G.A. 1161 of 2019 arising out of APOT 39 of 2019. It was held that the principles of natural justice were followed and the provisions of the Public Premises Eviction of Unauthorised Occupants Act, 1971 (hereinafter referred to as the 'said Act') was squarely applicable in the

matter of eviction of the petitioner No. 1 company, which was an unauthorized occupant in respect of the premises owned by the then Calcutta Port Trust, at present Shyama Prasad Mookherjee Port, Kolkata (hereinafter referred to as the Port Trust).

2. Mr. Swatrup Banerjee, learned Senior Advocate for the petitioners submitted that the order of the Estate Officer was without jurisdiction. The proceeding under the said Act was misconceived. According to Mr. Banerjee, as the petitioner became a tenant under the Port Trust (which was governed by the Calcutta Port Trust Act, 1890) on the basis of a document dated June 12, 1935 and a lease agreement, the provisions of the said Act, would not be applicable. The date of entry of the petitioners was July 1, 1935. The relevant date to be taken into consideration for applicability of the said Act, was the date of entry into the premises. The land was leased on short term basis, initially for a period of two months and thereafter on a monthly basis, which was terminable by 15 days' notice, expiring with the end of the English Calendar, month on either side. Thus, it would be evident that the petitioners continued to be a monthly tenant under the Port Trust. The expression 'public premises' as defined under section 2(e) of the said Act, did not extend to the subject premises, as the relevant date of entry was prior to the promulgation of the said Act. The Act was given retrospective effect from September 16, 1958. The premises were under the control of the Board of Trustees, which was constituted under the Major Port Trust Act, 1963. Under the Major Port Trust Act, "public premises" was not defined. The then Calcutta Port Trust or the Board of Trustees were ordinary landlords and the petitioners were nothing but tenants who would be governed by the

applicable local tenancy laws. The Calcutta Port Act, 1980 ceased to operate from the date of promulgation of the Major Port Trust Act, 1963, resulting in repeal of municipal assessment of the properties belonging to the Port of Calcutta. It was further urged that the law laid down by the Hon'ble Apex Court in ***Suhas H. Pophale Vs. Oriental Insurance Company Limited & its Estate Officer*** reported in ***(2014) 4 SCC 657***, had not been followed either by the Estate Officer or by the Additional District Judge. It was submitted that, the present case was identical to the facts of ***Suhas H. Pophale*** (supra), inasmuch as, the land was given on perpetual lease and the persons in possession of the same would not be governed by the said Act. As the Hon'ble Apex Court had held that, occupants of premises which were given on long term lease prior to the coming into effect of the said Act could not be evicted by taking recourse to the said Act, the orders impugned before this court ought to be set aside. The aforesaid premises would be governed by the tenancy laws of the State. Mr. Banerjee urged that, the Additional District Judge also bypassed the decision of the ***Suhas H. Pophale*** (supra) by placing reliance on a decision of a Single Bench of this Court in the matter ***Board of Trustees for the Port of Kolkata Vs Metal Box India Limited and Another*** which was reported in ***AIR 2021 Cal 331***. The decision in ***Metal Box (supra)*** was distinguishable on facts. In the said case, Metal Box had come in possession of the premises in question, prior to the enforcement of the said Act. However, the agreement of Metal Box with the Calcutta Port Trust had expired due to efflux of time and the lease had come to an end on June 10, 1982. Thereafter, a fresh agreement was executed between the parties when the said Act was already in force, and on

such facts, the decision was rendered by the learned Single Judge, inter alia, holding that the said Act would be applicable for eviction of Metal Box. Reliance was placed by the petitioners on a decision of another learned Single Judge of this Court dated February 26, 2019, passed in C.O 674 of 2018. In the said decision as well, the ratio of **Suhas H. Pophale** (supra) was followed and it was held that two categories of tenants would be excluded from the scope and ambit of the said Act namely, those who were tenants prior to the coming into force of the said Act and those who were tenants prior to the premises becoming public premises. It was further contended that the allegations and demand of the opposite parties against the petitioners, as also the notices issued under sections 4 and 7 of the said Act by the Estate Officer, would indicate that the proceedings were drawn on the ground of raising unauthorised constructions and subletting. No allegation of default in payment of rent had been made. Moreover, the Port Trust had accepted the Rs. 10 lakhs towards rent on the basis of an order of the Division Bench of the High Court dated May 23, 2019. Thus, any further right to continue the eviction proceedings had been waived. Mr. Banerjee vehemently urged this Court to set aside the order of the Estate Officer and also of the Appeal Court on the ground of illegality and failure on the part of the Port Trust to produce documents, which would indicate that the premises would fall within the definition of 'public premises' under the said Act, in view of the date of entry of the petitioners. It was urged that the day the premises were handed over to the petitioners i.e. July 1, 1935, a right had been created in favour of the petitioners as tenants and the provisions of the Bengal Tenancy Act, 1885 was the prevailing law. Section 4 of the

Bengal Tenancy Act, 1885 classified tenants, tenure holders, raiyats and under raiyats, and as such, the lease under the Port Trust would be covered by the Act of 1885. Upon repeal of the 1885 Act, the West Bengal Premises Tenancy Act, 1956 and thereafter the West Bengal Premises Tenancy Act, 1997 were promulgated, and as such, on the date of initiation of the proceeding, the 1997 Act should have been applied.

3. Mr. Sen learned senior Advocate for the opposite parties urged that there was neither any jurisdictional error nor any material irregularity in exercise of power under section 9 of the said Act, by the learned Appeal Court. It was further contended that the Estate Officer was the competent authority to pass an order of eviction of the petitioner No. 1 / company, in accordance with the provisions of the said Act and pass necessary directions upon the petitioners. The said Act was squarely applicable to the premises. The Calcutta Port was the first major port as per definition as well as the only riverine port of the country. It came to be governed by a Trust on October 17, 1870 on the appointment of a Commissioner for improvement of the port of Calcutta as per Act V of 1870. The subject port was always a public premise, inasmuch as, the same belonged to the Calcutta Port Trust even prior to the lease of 1935. The land which was leased out to the petitioner/ company on a short term basis and thereafter month by month, fell within the definition of 'public premises' under Section 2(e). Unauthorized occupation was defined under Section 2(g) of the said Act and it included any person who was using the public premises without any authority of such occupation and included continued occupation of such premises after the authorization by which the occupant was allowed to

occupy the premises had expired or had been determined for any reason whatsoever. The short term lease which was granted to the petitioners had expired. Further continuation of the petitioners as lessee/tenant on monthly basis, had been determined by the port authority upon service of a notice to quit dated June 4, 2018. Proceedings were instituted at the behest of the port authority with the clear intention to get back possession of the premises in question. The company was an unauthorized occupant. The Act of 1971 provided for a summary procedure for eviction of an unauthorized occupant. The said Act also empowered the Estate Officer to initiate proceedings in respect of such premises. Any proceeding for eviction of unauthorized occupants from public premises, after September 16, 1958, would be governed by the said Act. The provisions of the Bengal Tenancy Act, 1885 would not be applicable, inasmuch as, the said Act was promulgated to consolidate certain enactments relating to landlords and tenants within the territories under the administration of the Lieutenant Governor of Bengal. The Act extended its operation to all territories which were under the administration of the Lieutenant Governor of Bengal, except the town of Calcutta. On the date of grant of lease in the year 1935, the subject premises was under the control of the Calcutta Port Trust and as such, the 1885 Act was not applicable. It was further urged by Mr. Sen that, the West Bengal Non-Agricultural Tenancy Act, 1949 would also not govern the subject tenancy, inasmuch as, the petitioners were granted lease on a short term basis, in the year 1935. The Act of 1949 was enacted for a specific purpose and had no manner of application in the present case. Lastly, it was submitted that the decision in ***Suhas H. Pophale (supra)*** was

not distinguishable, on the ground that the premises involved in the decision of **Suhas H. Pophale (supra)**, did not belong to any public authority at the time of induction of the tenant. Thus, the Hon'ble Apex Court had made a distinction on the basis of the date of entry of the tenant into the premises, which was not public premises on that date. It did not belong to either a Government authority or any other public authority, and as such, did not fall within the definition of Section 2(e) of the said Act. It was further urged that objection with regard to applicability of the said Act, was barred by the principle of issue estoppel. Orders of the Estate Officer had been challenged in two writ petitions and the only prayer of the petitioners therein was that, the proceedings should be reopened from the stage of inspection, by allowing further inspection, evidence and arguments. Such prayer in the writ petitions would clearly indicate that the petitioners had accepted the jurisdiction of the Estate Officer and also the applicability of the said Act. The order of the writ court was not in favour of the petitioners and accordingly the petitioners approached the Division Bench by preferring appeal. The Division Bench allowed the prayer of the petitioners to the extent of permitting a fresh joint inspection in the presence of the parties and further hearing on the issue of unauthorized construction, by allowing the petitioners equal opportunity to put forward their case. It was specifically directed that, the principles of natural justice should be followed.

4. Under such circumstances, the petitioners were estopped from raising a question with regard to applicability of the said Act. It was urged that, the very fact that the petitioners approached the writ court for an opportunity of

further hearing and an opportunity to adduce evidence before the Estate Officer, and such prayer having been allowed by the Division Bench, the applicability of the said Act and jurisdiction of the Estate Officer to initiate proceedings thereunder, had already been upheld by the Division Bench in the earlier proceeding.

5. According to Mr. Sen, there were outstanding dues on account of unpaid rent. The petitioners became unauthorized occupants on and from July 16, 2014, upon service of the notice dated June 4, 2014, by which the lease was terminated, on the allegations of non-payment of rent, unauthorized construction and unauthorized parting of the property in favour of the petitioner No. 2. It was further urged that the learned Additional District Judge, 1st Court at Howrah, upon affording sufficient opportunity of hearing had passed the order impugned. Section 9 of the said Act provided for an appeal against the order of the Estate Officer and accordingly, the appeal was also maintainable in the eye of law, before the learned Additional District Judge. Mr. Sen relied on the judgment in ***Metal Box (supra)*** in this regard.

6. Before dealing with the issues raised, it is necessary to discuss the facts which emerge from the records and the affidavit-in-opposition filed by the opposite parties. The petitioner No. 1/ Company, was issued an offer letter on June 20, 1935, for grant of a short term lease. On June 21, 1935 the company accepted the offer. On July 1, 1935, the possession of the public premises was handed over to the company and the company occupied the premises. The premises was to be utilized for the purpose of storage of iron and steel materials. On September 28, 2012, a letter was

issued to the petitioner No. 1/ company, inter alia, alleging that the company had unauthorizedly parted with the possession of the premises, thereby, inducting the petitioner No. 2. It was further alleged that the company had amalgamated two adjacent plots, and had raised unauthorized constructions. There were also unpaid dues. The company was asked to remedy the breaches. On November 19, 2012, a reminder was sent to the company for remedying the breaches failing which, the Port Trust reserved the right to take appropriate legal action. On January 14, 2013, a final notice was sent asking the petitioner No. 1 to remedy the breach. On June 4, 2014, the Port Trust terminated the lease with effect from July 16, 2014, for breach of the terms and conditions of the agreement i.e. non-payment of rent, raising of unauthorized constructions and unauthorized parting of the premises in favour of Madhu Kant Surelia. On September 28, 2016, an application was filed under the said Act, before the Estate Officer, requesting initiation of eviction proceedings against the petitioner No. 1, and for recovery of the total dues, with accrued interest. Accordingly, proceedings were initiated bearing No. 1542, 1542/R, 1542/D of 2017. Notices under sections 4 and 7 of the said Act were issued to the petitioner No. 1. On June 14, 2017, Madhu Kant Surelia i.e. the petitioner No. 2, filed a reply to the show cause notices. The Port Trust filed a reply denying all the contentions made by Madhu Kant Surelia in answer to the show cause notices and also took strong objection to the claim that Madhu Kant Surelia was the lessee. It was stated by the Port Trust that, there was neither any privity of contract nor any jural relationship between Madhu Kant Surelia and the Port Trust. No permission had been taken by the petitioner no. 1 from the Port Trust

before inducting Madhu Kant Surelia and before raising the constructions. A joint inspection was held in terms of the order of the Estate Officer on July 28, 2017 and the following breaches were found:-

- I. Unauthorized constructions;
- II. Amalgamation of the Plots;
- III. Encroachment of the vacant SMPK land of the Port Trust;
- IV. Unauthorized constructions.

7. On March 14, 2019, another joint inspection was carried out and encroachment and unauthorized constructions were found. It was found that the premises were being used for storage of all kinds of goods and not restricted to the original terms of the lease. The hearing was concluded and the parties were directed to file their written notes of arguments. The said order was challenged by the petitioners by filing WP No. 171 of 2019. The said writ petition was heard analogously with a similar writ petition and the learned Single Judge refused to interfere with the order of the Estate Officer. Both the writ petitions were disposed of together. However, the time to file the written notes was extended. The petitioners urged before the learned Single Judge who was hearing the writ petition that, the proceedings should be restored to the stage of re-inspection and the Estate Officer should be directed to allow further opportunity to the petitioners to adduce evidence, produce documents and relevant materials, and controvert the findings arrived at during the course of inspection. Such prayers were not allowed.

8. The Estate Officer thereafter passed the final order on May 7, 2019. The petitioners filed an appeal from the order of the learned Single Judge dated April 5, 2019 and the Hon'ble Division Bench by an order dated May

23, 2019 directed a joint inspection to be held on May 31, 2019. It was further directed that minutes of the inspection should be drawn on the date itself, in presence of the parties. Their Lordships directed the Estate Officer to hear the parties afresh, on the basis of the joint inspection and conclude the proceedings by July 5, 2019. The final order of the Estate Officer was set aside. The Division Bench also directed the petitioners to deposit Rs. 10 lakhs in favour of the Port Trust, against the outstanding dues. On May 31, 2019, further inspection of the premises were conducted and the petitioner company was present. A report was prepared and the same was submitted before the Estate Officer on June 4, 2019. On June 25, 2019, further hearing was held and both the parties participated in the hearing. The parties filed their written notes. The Estate Officer passed the order on July 5, 2019, inter alia, holding that the allegation of unauthorized construction stood proved. The company had committed breaches by abandoning the public premises in favour of a rank outsider i.e. the petitioner No. 2 and there had been default in the payment of rent. Thus, it was directed that, in consonance with Section 5(1) of the said Act, the company and any person in occupation of the said premises should vacate the same within 15 days from the date of passing of the order and the port authority was entitled to claim damages for unauthorized use and occupation of the property. The Port Trust was granted liberty to submit a statement of the calculation of the damages for the subsequent period, after the assessment vide order dated May 7, 2019, thereby indicating in detail the rate of charges, the period of damages together with the basis on which such charges were claimed against the petitioners. The petitioners preferred an appeal before

the learned Additional District Judge, 1st Court at Howrah by filing Misc. Appeal No. 124 of 2019. The appeal was dismissed with reasons.

9. The submissions of the parties have been considered. Admittedly, the land always belonged to the Calcutta Port Trust. A short term lease was granted to the petitioner No. 1, initially for a period of two months and thereafter, on monthly basis. The lease was terminable upon issuing a 15 days' notice, expiring with the end of the English Calendar month, on either side. The land was offered to petitioner No. 1 on June 12, 1935, by the authorized representative of the Calcutta Port Trust. The offer was accepted by the company by a letter dated June 21, 1935. The letter dated June 20, 1935 and the letter of the Managing Director of the petitioner No. 1 company dated June 21, 1935 are quoted below :-

“

20.06.1935

To.

Messrs T.D. Kumar and Bro., Ltd.

67/4, Strand Road, Barabazar, Calcutta.

Dear Sirs,

Your letter No. Nil dated the 12th June 1935

With reference to your above letter, I beg to inform you that 5 cottahs 8 chittaks 8 sq.ft of land at the above site can be leased to you on a short term lease at a rent of Rs.6 per cottah per mense plus occupiers on the following conditions:-

- (1) The tenancy will be for a period of two months, in the first instance and thereafter monthly terminable by fifteen days notice expiring with the end of English calendar month on either side.
- (2) You will be required to execute and register a short term lease.
- (3) You will be required to deposit the equivalent of three months rent plus(illegible) .. as security for the payment of rent.
- (4) It will be necessary for you to submit plans in triplicate together with state plans of any structure that you propose to erect on the above land. You will not be allowed to commence construction until the plans are sanctioned.
- (5) Rent will be charged against you from the date, the possession of the land is made over to you.

(6) Both owner's and occupier's share of municipal taxes on all structures erected by you on the land leased to you are additions made by you to the godown payable by you.

On your depositing the security and registering the short term lease arrangements will be made to be over the land is offer of lease is open for acceptance for few days the date at this letter."

"

CALCUTTA 21st June, 1935

**The Commissioners for the Port of Calcutta,
Strand Road, Calcutta,**

Re:- Land on the east side of Foresore Road near its junction with siding No. 18. at Shalimar, Measuring 5 Cottahs.

Dear Sirs,

We are in receipt of your letter No. 42528 dated 20.06.35 and glad to learn that you agree to give the above land on a short term lease at Rent of Rs. 6/- per Cottah per mensem plus occupiers- share of Municipal tax at 15% of the rent.

As per your terms, we beg to enclose herewith a Cheque No. 9635 of even date on Lloyds Bank Ltd., for Rs. 103/8/- as security deposit for 3 months rent in advance including municipal taxes which please acknowledge and send us a formal receipt for the same.

The concerning lease has been duly signed with an adhesive stamp of annas -/12/- which has already been sent to your office.

Please arrange to give the possession of the land at an --- early date and oblige.

Thanking you.

We Remain,
Yours faithfully
T.D.KUMER & BROS. LTD.
Sd/-
Managing Director"

10. On July 1, 1935 possession of the premises was handed over to the company. The contents of the certificate of possession are quoted below :-

"THE COMMISSIONERS FOR THE PORT OF CALCUTTA.
Certificate of possession of land.

This is to certify that I have this day the 1st July 1935 taken over possession of a plot of land, the dimensions of which are given in the undernoted sketch plan, at Shalimar from Mr. K.C. Das Gupta Assistant Estates Superintendent, Port Commissioners, Calcutta. The land has been leased to Messrs T.D. Kumar & Bro. Ltd. on a short term lease with effect from the 1st July 1935.

Dated 1/7/1935

Sd/-
Signature of the lessee.

1/7/1935

Sd/-
Signature of the Assistant
Estates Superintendent.”

11. A letter was issued by the Port Authorities in 2012, indicating that the company had parted with the possession of the property in favour of the petitioner No. 2, had amalgamated two adjacent plots, had raised unauthorized construction and defaulted in payment of the lease rent. Two respective reminders were sent on November 19, 2012 and January 14, 2013 by the Calcutta Port Trust, asking the company to remedy the breaches. The tenancy was terminated by a notice to quit and vacate on June 4, 2014 with effect from July 16, 2014. The termination notice is quoted below :-

“

04 June 2014

1. T.D. Kumar & Bros (P) Ltd.,
2. No. Maharshi Debendra Road,
(Old Dharmatala Street) Burrabazar,
Kolkata- 700007 B7-4, Stand Road, Kolkata – 700001,
Beside P.T.R. Siding No. 16, Shalimar,
Howrah, Howrah-711102

WHEREAS you have been granted monthly lease in respect of land msg. about 612.42 sq. m. at Shalimar P.T.R. Siding No. 16, Howrah under Plate No. HL-391/1 as described in the schedule below.

WHEREAS you have failed and neglected to pay the outstanding dues along with accrued interest which is Rs. 33,40,125=00 as calculated upto 14-05-2014.

Now, I do hereby give you notice that the Board of Trustees of the Port of Kolkata hereby forfeit the said lease and in exercise of the option to do so hereby determine the same and give you notice that they will re-enter upon the demised land on 16-07-2014 at 11.00 a.m. when please arrange to quit, vacate and deliver up peaceful possession of the Public premises described hereunder to their duly authorized representative who will then call at the site at the appointed time for the purpose. It is also hereby notified that all your relationship with the Board of Trustees for the Port of Kolkata shall

stand determined with effect from 16-07-2014 and you are accordingly liable to pay compensation/mesne profit and/or damages for unauthorized use and occupation of the Public Premises w.e.f. 16-07-2014 up to the date of delivery of vacant and peaceful possession of the land mentioned in the schedule hereunder to Kolkata Port Trust. This is for you to take note that any payment tendered by you or received from your end in respect of the period subsequent to the expiry of the lease as mentioned in this notice to quit will be deemed to have been tendered by you as compensation for wrongful use and occupation and acceptance of such payment will be without prejudice to this notice to quit and also to the Kolkata Port Trust's right to take further action in the matter. It is further notified that Kolkata Port Trust has no intention/desire to revive your status as tenant under the Board of Trustees for the Port of Kolkata. It is also notified that in case of default in handing over vacant possession of the premises mentioned in the schedule hereunder as aforesaid, Kolkata Port Trust will be at liberty to take recourses of law, civil or criminal or both as may be advised without prejudice to any other rights, which may be available under law and you will be held liable for all costs and consequences arising therefrom.

It may be mentioned that there is no other alternative but to place the matter before the Ld. Estate Officer, the Adjudicating Authority under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 in case of default in compliance as above on the part of the notice in view of the bar in Court's jurisdiction under Section 15 of the Act in respect of the eviction, recovery of arrear rental dues, damages, accrued interest, etc. as the Port's property is declared "Public Premises" as defined under the said Act.

Schedule of Property

Land msg. about 612.42 sq.m. at P.T.R. Siding No. 16, Shalimar, Howrah; under Plate No. HL-391/1. It is bounded on the North partly by the Trustees' land occupied by M/s. Lodna Colliery and partly Trustees' open land alongside Railway track, on the South by the Trustees' passage, on the East partly by the Trustees' open land alongside Railway track and partly Trustees' land occupied by Nalini Behari Sett and on the West by the Trustees' land occupied by M/s. Lodna Colliery and partly Trustees' passage. Trustees means The Board of Trustees for the Port of Kolkata.

(S.K. Dhar)

Estate Manager (I/C)

For and on behalf of the

Board of Trustees for the Port of Kolkata"

12. The relevant correspondence between the parties, indicating the nature of the breach committed by the petitioner No. 1 in respect of the premises in question etc. have been described in the affidavit-in-opposition supported by documents annexed thereto. The factual aspects have not been disputed by Mr. Banerjee. The joint inspection in terms of the order of

the Estate Officer revealed that the breaches had been committed. A writ petition was filed by the petitioners, aggrieved by the procedure followed by the Estate Officer. The petitioners alleged, violation of the principles of natural justice, inability to lead evidence, denial of the opportunity of cross-examination and inability of the petitioners to place their case in further details, by participating in the proceeding. The learned Writ Court was of the view that, as the petitioners had been served with the joint inspection report and were granted opportunity to file written notes of arguments, the Estate Officer had sufficiently adhered to the principles of natural justice. The relevant portion of the order passed in the writ petition are quoted below :-

“Having heard the parties and considering materials placed, this Court arrives at the following findings -

(A) That the scheme of enquiry, as laid down in the 1971 Act, was implemented by the Respondent no.2/Estate Officer. The petitioning companies were admittedly granted the opportunity of joint inspection.

(B) That the 1971 Act does not stipulate the minutes of the joint inspection should be prepared on spot. It is not denied that the petitioners were not shown the Minutes and also granted the opportunity to sign the joint minutes at the office of the Respondent no.2/Estate Officer which the petitioning companies have again chosen not to do.

(C) It is also not the position that the petitioning companies have not been granted the opportunity to controvert the joint minutes of inspection, since all materials connected to and arising out of the joint minutes of inspection, were handed over to the petitioning companies inviting them to file Written Notes of Argument/Objections.

(D) The insistence on an oral hearing with evidence to be produced and complaining of the fact that refusal of such further oral evidence amounts to denial of natural justice is not, to the mind of this Court, in symmetry with the 1971 Act. Under Section 8 of the 1971 Act the Respondent no.2/Estate Officer is required to hold an enquiry and follow the canons of due process associated with such enquiry, which the Respondent no.2 has attempted to do only to be time and again opposed by the petitioners.

(E) To the further mind of this Court, the Respondent no.2/Estate Officer did grant the petitioners an opportunity to controvert the joint minutes by way of filing oral evidence. As discussed earlier, the Exception Application at the stage when the enquiry proceedings have begun, without participating in the initial proceedings as required by

law is itself exceptionable. It is trite that natural justice is not a strait jacket formula.

(F) The principle of natural justice must fit into the factual format. In the facts of the present case, by granting the petitioning companies the opportunity to file their Written Notes of Argument/Objections to the materials received by them of the joint inspection, to the further mind of this Court, the requirement of natural justice stood fulfilled.

For the above recorded reasons, the order of the Respondent no.2/Estate Officer is not interfered with.

However, time is extended by a fortnight from date for the petitioners to file their Written Notes of Argument/Objections before the Respondent no.2/Estate Officer as directed by his order dated 19th March, 2019 and reiterated by his order dated 2nd April, 2019.

It is made clear that in the event such Written Notes of Argument/Objections are not received by the Respondent no.2/Estate Officer within the period, as extended above, the Respondent no.2/Estate Officer shall be free to conclude the proceeding under the 1971 Act in accordance with law.

Before parting with the discussion, it will be useful to mention that in respect of both the petitioning companies a common Power of Attorney was handed over to the Respondent no.2/Estate Officer of an individual without explaining in any manner whatsoever his association with the petitioning companies except, only for the purpose of contesting the eviction proceedings.

Both W.P. No. 171 of 2019 and W.P. No. 172 of 2019 stand thus disposed of.”

13. It is pertinent to mention here that, two writ petitions were filed by two companies, who were leased out separate pieces of land by Calcutta Port Trust on similar terms and conditions and both of whom were facing eviction proceedings. Both the writ petitions were disposed of together, namely, W.P No. 171 of 2019 and W.P No. 172 of 2019. Thereafter, the Estate Officer passed the order of eviction. The order of the single Judge was challenged in an appeal being A.P.O.T 39 of 2019. It was directed that joint inspection should take place on May 31, 2019 at 12 noon, a report should be prepared and the petitioners could file exceptions to the report. The minutes of the proceedings should be drawn on the date itself, in presence of the parties and the petitioners should sign the minutes. In the event, a

fresh report was prepared, the Estate Officer should hear the matter afresh on the basis of the report, if any. The petitioners were directed to deposit a sum of Rs. 10 lakhs with the authorities as a condition precedent for availing of the opportunity. Accordingly, Rs. 10 lakhs was deposited with the port authority. The order of the Division Bench is quoted below :-

“Under such circumstances, let a joint inspection take place on 31st May 2019 at 12 noon, for which no further notice shall be served upon either of the parties, and in the event the petitioners are not represented on the said date, the earlier joint inspection report prepared on behalf of KOPT shall be taken to be correct and the Estate Officer shall decide the matter on the basis of the existing joint inspection report, after taking into consideration the exception filed by the writ petitioners, in accordance with law. It is made clear that the Minutes of the proceedings should be drawn on that date itself in presence of the parties and the writ petitioners shall sign the Minutes of the said meeting with their comments, if any, and may supplement such objection by a detailed representation, if they feel it necessary, but not later than one week from 31st May 2019.

In the event a fresh report is prepared in terms of this order, the Estate Officer shall hear the matter afresh on the basis, of the said joint inspection report and, if necessary, shall permit oral examination of the witnesses of either of the parties and shall conclude such proceedings by 5th July 2019.

The petitioners shall by 30th May 2019 deposit a sum of Rs. 10 lakh with the KOPT authorities as a condition precedent for availing this opportunity, as we are of the view that on 19th March 2019 the explanation offered for not signing the joint inspection report is not convincing, failing which the final order passed by the Estate Officer on 7th May 2019 shall remain. Unless there are compelling reasons, the Estate Officer shall not grant any adjournment to either of the parties. We make it clear that we have not gone into the merits of the matter and the Estate Officer shall decide the matter following the principles of natural justice and keeping in mind the decision of the Supreme Court in *New India Assurance Co. Ltd. vs. Nusli Neville Wadia* reported at 2008 (3) SCC 279.”

14. Thereafter, a joint inspection was held and the Estate Officer passed the final order, upon hearing all the parties. With regard to the procedure followed by the Estate Officer, the following discussions are necessary. The notices issued by the Estate Officer are quoted below :-

“Office of the Estate Officer
2017

Proceedings & No. 1542 of

Kolkata Port Trust

Order No. 01 Dated 12.01.2017

15, Strand Road, 4th Floor, Kolkata 700001

Board of Trustees of the Port of Kolkata

And Court Room at The 2nd Floor of Kolkata

vs

Port Trust’s Head Office, Old Buildings,

M/s. T.D. KUMAR & Bros. (P) Ltd.

15, Strand Road, Kolkata - 700001

To.

M/s. T.D. Kumar & Bros. (P) Ltd.

2 No. Maharshi Debendra Nath Road,

(Old Dharmatala Street) Burrabazar, Kolkata – 700007 and\

B 7-4 Strand Road, Kolkata – 700001 and

Beside P.T.R Siding No.- 16,

Shalimar, Howrah, Howrah – 711102.

AND ANY PERSON/S INTERERESTED 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 the said premises.

GROUNDS

THAT YOU HAVE VIOLATED THE FUNDAMENTAL CONDITION FOR GRANT OF SHORT TERM MONTHLY LEASE IN RESPECT OF PUBLIC PREMISES BY KOLKATA PORT TRUST (KOPT). THAT YOU HAVE DEFAULTED IN MAKING PAYMENT OF THE MONTHLY RENT AND TAXES AND ALSO ACCRUED INTEREST THEREON, HAS PARTED WITH POSSESSION OF THE PREMISES TO RANK OUTSIDERS AND HAVE MADE UNAUTHORIZED CONSTRUCTION ON THE PUBLIC PREMISES IN CLEAR VIOLATION OF THE TERMS AND CONDITIONS OF LEASE IN QUESTION. THAT YOU HAVE FAILED AND NEGLECTED TO HAND OVER POSSESSION VIDE NOTICE TO QUIT DATED 04.06.2014 AS SERVED UPON YOU BY KOPT. THAT YOU HAVE LOST YOUR AUTHORITY WHATSOEVER TO OCCUPY THE PUBLIC PREMISES AFTER EXPIRY OF THE PERIOD AS MENTIONED IN THE SAID NOTICE TO QUIT DATED 04.06.2014. AS SUCH YOU ARE A WRONGFUL OCCUPANT OF THE PREMISES IN QUESTION AND IS LIABLE TO BE EVICTED FROM THE PUBLIC PREMISES. AN APPLICATION FROM KOPT DATED 28.09.2016 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 before 25.01.2017 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 25.01.2017 at 12.30 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 and parcel of land measuring about 618.42 Sq. mtrs or hereabouts is situated at Shalimar P.T.R. Siding No. 16, Howrah, PS-Shibpur, District and Registration District Howrah. It is bounded by on the North partly by Kolkata Port Trust's land occupied by M/s Lodna Colliery and partly by Trustees' open land alongside Railway Track, on the South by the Trustees' passage, on the East partly by the Trustees' open land alongside Railway Track and partly Trustees' land occupied by Nalini Behari Sett and on the West by the Trustees' land occupied by M/s. Lodna Colliery and partly Trustees' passage.

Trustee's means the Board of Trustees for the Port of Kolkata.

Dated : 16.01.2017

Sd/-

ESTATE OFFICER"

“

(Form "F")

PROCEEDINGS NO. 1542/D OF 2017

ORDER NO. 01 DT. 12.01.2017

Form of notice under Sub Section (3) or Section 7 of the Public Premises Eviction of Unauthorised Occupants Act, 1971.

To

Shri/Smt./Km/M/s.

M/s. T.D.Kumar & Bros. (P) Ltd.,

2No. Maharshi Debendra Road,

(Old Dharmatala Street) Burrabazar, Kolkata 700 007 AND

B7-4, Strand Road, Kolkata-700001 AND

Beside P.T.R. Siding No-16,

Shalimar, Howrah, Howrah-711102.

Whereas I, the undersigned, am satisfied that you are/ were in unauthorised occupation of the public premises mentioned in the SCHEDULE-I below:

And, whereas, in exercise of the powers conferred on me by sub- section (2) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants). Act, 1971. I consider the damages amounting to Rs.7,88,793.71(Rupees Seven Lakhs Eighty Eight thousand Seven hundred Ninety Three and paisa Seventy One only.) are due for the period (s) and at the rate(s) shown in SCHEDULE-II below an account of unauthorised use and occupation of the said premises:

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

Now, therefore, under the provisions of Sub-section (3) of Section 7 of the Act, I, hereby, call upon you to show-cause on or 25.01.2017 why an order requiring you to pay the said damages together with interest should not be made.

SCHEDULE -I

The said piece and parcel of land measuring about 618.42 Sq.mtrs. or thereabouts is situated at Shalimar P.T.R. Siding No. 16, Howrah, PS Shibpur, District and Registration District Howrah It is bounded by on the North partly by Kolkata Port Trust's land occupied by M/s Lodna Colliery partly by Trustees' open land alongside Railway Track, on the South by the Trustees' passage, on the East partly by the Trustees' open land alongside Railway Track and partly Trustees' land occupied by Nalini Beheri Sett and on the West by the Trustees' land occupied by M/s. Lodna Colliery and partly Trustees' passage

Trustee's means the Board of Trustees for the Port of Kolkata.

SCHEDULE -II

Period	Rate at which assessed	Amount Assessed	Amount paid	Balance in Arrear
16.07.2014 to	As per the rate of Port Trust's Rent Schedule/s	Rs.7,88,793.71/-	Nil	Rs.7,88,793.71/-

05.07.2016	as time to time Notified in Official Gazettee/s for the relevant period.			
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Sd/-

Signature and seal of the Estate Officer”

“PROCEEDINGS NO. 1542/R OF 2017

ORDER NO. 01 DT. 12.01.2017

To

Shri/Smt./Km/M/s.

M/s. T.D.Kumar & Bros. (P) Ltd.,

2No. Maharshi Debendra Road,

(Old Dharmatala Street) Burrabazar, Kolkata 700 007 AND

B7-4, Strand Road, Kolkata-700001 AND

Beside P.T.R. Siding No-16,

Shalimar, Howrah, Howrah-711102.

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.15,38,207.34/- (Rupees Fifteen Lakhs Thirty Eight thousand Two hundred Seven and paise Thirty Four only) being arrears of rent from the 31st day of July'1983 upto the 16th day of July'2014 (both day inclusive) in respect of the said premises 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 compound 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 above-cause on or before the 25.01.2017 why an order requiring you to pay the said arrears of rent together with compound interest should not be made.

SCHEDULE

The said piece and parcel of land measuring about 612.42 Sq. mts. or thereabouts is situated at Shalimar P.T.R. Siding No. 16, Howrah, P.S Shibpur, District and Registration District Howrah. It is bounded by on the North partly by Kolkata Port Trust's land occupied by M/s Lodna Colliery and partly by Trustees' open land alongside Railway Track, on the South by the Trustees' passage, on the East partly by the Trustees open land alongside Railway Track and partly Trustees' land occupied by Nalini Behari Sett and on the West by the Trustees' land occupied by M/s. Lodna Colliery and partly Trustees' passage.

Trustee's means the Board of Trustees for the Pott of Kolkata.

Sd/-

Signature and seal of the Estate Officer”

15. Sections 4,5 , 5(A), 5(B) and 7 of the said Act 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.

(1B) Any delay in issuing a notice referred to in 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 3 [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.

5A. power to remove unauthorised constructions, etc.—(1) No person shall—

(a) erect or place or raise any building or 7 [any movable or immovable structure or fixture]

(b) display or spread any goods,

(c) bring or keep any cattle or other animal, on, or against, or in front of, any public premises except in accordance with the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy such premises.

[(2) Where any building or other immovable structure or fixture has been erected, placed or raised on on any public premises in contravention of the provisions of sub-section (1), the estate officer may serve upon the person erecting such building or other structure or fixture, a notice requiring him either to remove, or to show cause why he shall not remove such building or other structure or fixture from the public premises within such period, not being less than seven days, as he may specify in the notice; and on the omission or refusal of such person either to show cause, or to remove such building or other structure or fixture from the public premises, or where the cause shown is not, in the opinion of the estate officer, sufficient, the estate officer may, by order, remove or cause to be removed the building or other structure or fixture from the public premises and recover the cost of such removal from the person aforesaid as an arrear of land revenue.

(3) Where any movable structure or fixture has been erected, placed or raised, or any goods have been displayed or spread, or any cattle or other animal has been brought or kept, on any public premises, in contravention of the provisions of sub-section (1) by any person, the estate officer may, by order, remove or cause to be removed without notice, such structure, fixture, goods, cattle or other animal, as the case may be, from the public premises and recover the cost of such removal from such person as an arrear of land revenue.]

5B. Order of demolition of unauthorised construction.—(1) Where the erection of any building or execution of any work has been commenced, or is being carried on, or has been completed, on any public premises by any person in occupation of such public premises under an authority (whether by way of grant or any other mode of transfer), and such erection of building or execution of work is in contravention of, or not authorised by, such authority, then, the estate officer may, in addition to any other action that may be taken under this Act or in accordance with the terms of the authority aforesaid, make an order, for reasons to be recorded therein, directing that such erection or work shall be demolished by the person at whose instance the erection or work has been commenced, or is being carried on, or has been completed, within such period, as may be specified in the order 1 ***

Provided that no order under this sub-section shall be made unless the person concerned has been given, by means of a notice [of not less than seven days] served in the prescribed manner, a reasonable opportunity of showing cause why such order should not be made.

(2) Where the erection or work has not been completed, the estate officer may, by the same order or by a separate order, whether made

at the time of the issue of the notice under the proviso to sub-section (1) or at any other time, direct the person at whose instance the erection or work has been commenced, or is being carried on, to stop the erection or work until the expiry of the period within which an appeal against the order of demolition, if made, may be preferred under section 9.

(3) The estate officer shall cause every order made under sub-section (1), or, as the case may be, under sub-section (2), to be affixed on the outer door, or some other conspicuous part, of the public premises.

(4) Where no appeal has been preferred against the order of demolition made by the estate officer under sub-section (1) or where an order of demolition made by the estate officer under that sub-section has been confirmed on appeal, whether with or without variation, the person against whom the order has been made shall comply with the order within the period specified therein, or, as the case may be, within the period, if any, fixed by the appellate officer on appeal, and, on the failure of the person to comply with the order within such period, the estate officer or any other officer duly authorised by the estate officer in this behalf, may cause the erection or work to which the order relates to be demolished.

(5) Where an erection or work has been demolished, the estate officer may, by order, require the person concerned to pay the expenses of such demolition within such time, and in such number of instalments, as may be specified in the order.

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 4 [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 5 [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.”

16. Section 8 is quoted below :-

“8. Powers of estate officers.—An estate officer shall, for the purpose of holding any inquiry under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) any other matter which may be prescribed.”

17. The Estate Officer was empowered to hold an enquiry. He enjoyed some of the powers vested in a Civil Court under the Code of Civil Procedure. Thus, I do not find any procedural irregularity.

18. It is an admitted fact that the lease was terminated by a notice to quit and vacate. After the period mentioned in the notice was over, the petitioners became unauthorized occupants in respect of the premises in question. The premises in question was always owned by the Calcutta Port Trust, even at the time of entry of the petitioner No. 1. The breaches, which were detected by the Estate Officer during enquiry and which also found reflection in the order of the writ court, are findings of fact which this court need not dwell upon. Moreover, no arguments were advanced, assailing such factual findings. Both the Estate Officer and the Appeal Court have arrived at such factual findings which have not been controverted in these proceedings. Although, there is an allegation that evidence was not allowed

to be led, both the Estate Officer and the Appeal Court have given elaborate reasons justifying the decision of the Estate Officer.

19. Inspection was held afresh and the matter was taken up for hearing once again upon compliance with the direction of the Division Bench in APOT 39 of 2019. Arguments were advanced and parties were allowed to place their respective case laws. The Estate Officer went through the documents which were available on record, and passed the order. Certain issues with regard to unpaid dues, unauthorized parting of the property and termination of the lease had already been decided, upon hearing the parties. The Division Bench had directed holding of a fresh joint inspection and fresh hearing on the said report. The joint inspection report indicated that unauthorized construction had been made. Each of the objections of the petitioners was negated by the Estate Officer with reasons. It was found that most of the documents which the petitioners sought production of before the Estate Officer, ought to have been in the custody of the petitioners. They failed to produce the same. Moreover, according to the Estate Officer, those documents were not relevant for the proceeding. During the course of hearing, the petitioners did not adduce evidence, be it documentary or oral. Reliance was placed by the petitioners on the decision of the Apex Court in ***New India Assurance Company Ltd. vs. Navil Wadia*** reported in **(2008) 3 SCC 279**. The Estate Officer was not satisfied with the submissions of the petitioners. It was specifically recorded as follows :-

"I am not satisfied with mere filing of applications by Shri Surelia when he is not ready to produce any evidence on the issue of unauthorised construction. It is true that the Hon'ble Division Bench had directed this Forum to permit oral examination of the witnesses of either of the parties, if necessary, but when there is no effort to lead

any evidence (oral/documentary) on behalf of Shri Surelia there is little scope to go ahead with any sort of oral examination. Instead of leading evidence on the issue of unauthorised construction (as was the direction of the Hon'ble Division Bench of the Calcutta High Court) Shri Surelia instead chose to rake up different and distinct issues such as applicability and jurisdictional validity of the P.P. Act of 1971, applicability of the Limitation Act, 1963, claim of arbitrary enhancement of rent etc even though there is no real "evidence" that he wants to produce or lead before this Forum on the issue of unauthorised construction. In my humble view. such raising of the way new/fresh issues (which have no bearing or connection whatsoever with the unauthorised constructions) by and on behalf of Shri Surelia are not in consonance with the direction of the Hon'ble Division Bench of the Calcutta High Court. In due compliance to the direction of the Hon'ble Division Bench, this Forum has tried to explore all facets of natural justice and never denied any opportunity to Shri Surelia during the course of the re-hearing. Shri Surelia and/or his Ld Advocate has been heard at length on 18.06.2019 and 25.06.2019 and were allowed to file applications as and when they desired. An opportunity to file written notes was also granted after conclusion of the hearing on 25.06.2019 as an opportunity to Shri Surelia to come back with any further evidence if it so chooses. The opportunity was taken and written notes came to be filed by the Ld Advocate of Shri Surelia on 28.06.2019 but again bereft of any evidence whatsoever. Again, for the sake of natural justice I am not inclined to consider the allegation of KoPT as regards "encroachment" as mentioned in the fresh Joint Inspection report dated 31.05.2019 inasmuch as such an allegation had never been brought by KoPT earlier. Be that as it may, this Forum is bound to conclude the re-hearing in the manner as directed by the Hon'ble Division Bench. and within the available time-frame, a lot of opportunities has been granted to Shri Surelia to disprove the contention of KoPT unauthorised construction but I must say that Shri as regards Surelia has failed to disprove such allegations. As I have mentioned above, Shri Surelia could not produce any sanctioned plan of the construction and could not mention anything about the period of construction. Coming to the nature of construction, a feeble attempt has been made by Shri Surelia to portray the construction as a "temporary removal structure whereas the ground realities are entirely different. It reveals from the fresh joint inspection dated 31.05.2019, read with attached sketch map bearing no. 9861-2-H dated 31.05.2019, that the constructions are of the nature of R.C.C. structures measuring 502.48 sqm and C.I.R structures measuring 251.24 sqm and C.I.R godown measuring 293.19 sqm. It has been explained by KoPT in its comments dated 24.06.2019 that such huge R.C.C. (Reinforcement cement concrete) and C.I.R. (corrugated iron shaded room) structures are ipso-facto evidentiary of permanent nature of construction. In my view, the nature of the constructions suggest that they are intended to be used for a prolonged period of

time and the suggestion of Shri Surelia that they are "temporary removal structures" is far from the truth. The very photographs of the exterior/interior of the structure as taken on 31.05.2019 (and submitted vide KoPT's application dated 04.06.2018) reveal that it is a construction intended for long-term beneficial use and I have no hesitation that it is neither a temporary nor a removable structure in any sense. A temporary structure for storage of goods implies a basic shed with bamboo or other similar material which is the subject matter of natural decay. The way, cement and concrete has been used to build a huge structure implies that it is not intended for mere temporary use but is intended for long term commercial use. In view of all these, I am not at all agreeable to the suggestion of Shri Surelia and consequently, I hereby re-affirm my earlier view that the O.P. Company is definitely guilty of having carried out unauthorised constructions without any approval of the Port Authority or the Municipal Authority which is a clear violation of the terms and conditions of the offer and acceptance of the lease in question, viz. Clause (4) of the offer letter which casts a duty upon the O.P. Company to submit plans in triplicate together with site plans of any structure that O.P. Company proposes to erect on the demised land. Particularly, it was mentioned that O.P. Company will not be allowed to commence construction until the plans are sanctioned."

20. It was the specific finding of the Estate Officer that the allegation of unauthorized construction stood proved. The order dated May 7, 2019 already contained allegations of several breaches which were proved. It was the specific finding that the public premises was leased in favour of a rank outsider, namely, Madhu Kant Surelia @ Madhu kanta Sharma. Accordingly, the order was passed for eviction, and permission was granted to the Port Trust, to prepare a statement of calculation for the damages to be recovered from the unauthorized occupant. The following directions were issued:-

“ACCORDINGLY, in terms of Sec. 5(1) of the P.P. Act, 1971, I hereby grant 15 days time to O.P. Company and any person/s whoever may be in occupation, to vacate the premises make it clear that all persons whoever may be in occupation, including Madhu Kant Surelia alias Madhu Surelia alias Madhu Kant Sharma, are liable to be evicted by this order read with the order dated 07.05.2019 and the “Form-B” issued thereunder and the Port Authority is entitled to claim damages for unauthorized use and occupation of the property against O.P.

Company in accordance with Law up to the date of recovery of possession of the same.

KoPT shall have the liberty to submit a statement comprising details of its calculation of damages after the period already assessed vide order dated 07.05.2019, indicating therein the details of the rate of such charges, and the period of the damages (i.e. till the date of taking over of possession) together with the basis on which such charges are claimed against O.P., for appropriate consideration of this Forum for the purpose of assessment of such damages as per Rule made under the Act.

This order is passed on 05.07.2019 in due obedience to the Order dated 23.05.2019 passed by the Hon'ble Division Bench of the Hon'ble High Court, Calcutta in GA No. 1161 of 2019, APOT No. 39 of 2019 with W.P. No. 171 of 2019. Needless to mention, therefore, this order shall abide by the further directions, if any, of the Hon'ble High Court Calcutta or any other competent Court of Law.”

21. An appeal was preferred under Section 9 of the said Act.
22. The primary grounds of appeal before the learned Additional District Judge were as follows :-

“1. The Ld. Court below/Estate Officer has erred in law and in the facts of the instant case.

2. The Ld. Court below/Estate Officer has even after being directed by the Hon'ble High Court at Calcutta by the order dated 23/05/2019 did not follow the principles of natural justice and has passed the impugned judgment and order dated 05/07/2019 in proceeding No. 1542, 1542R, 1542D of 2017 vide order sheet No.78.

3. The Ld. Court below/Estate Officer has erred in law by not appreciating and following the procedure as laid down in the public premises (Eviction of Unauthorized Occupants) Act, 1971 and in a most whimsical and arbitrary manner has passed the impugned judgment and order dated 05/07/2019 in proceeding No.1542, 1542R, 1542D of 2017 vide order sheet No.78.

4. The Ld. Court below/Estate Officer has erred in law by not allowing the appellants to adduce evidence and cross-examine the witnesses as was directed by the order dated 23/05/2019 by the Hon'ble High Court at Calcutta in G.A No.1161 of 2019, A.P.O.T No.39 of 2019 with W.P NO.171 of 2019.

5. The Ld. Court below/Estate Officer erred in fact by not allowing to examine the documents by way of oral evidence and by relying on unilateral documents produced by the respondents, without having any basis and nor proving the same by following the minimum principles of evidence as has been envisaged in the Act of 1971 thereby passing the impugned judgment and order dated 05/07/2019 in proceeding No.1542, 1542R, 1542D of 2017 vide order sheet No.78.

6. The Ld. Court below/Estate Officer erred in holding that in respect of agreements amongst the parties, the Act of 1971 applies whereas, it is settled law that for such agreements executed prior to the enactment of the Act of 1971, the Act will not apply and the same will not have a retrospective effect, without there being expressed provision in the Act applying the same and has thereby completely erred in passing of the impugned judgment and order dated 05/07/2019 in proceeding No.1542, 1542R, 1542D of 2017 vide order sheet No.78 and so on.”

23. Admittedly, the West Bengal Non-Agricultural Tenancy Act, 1949 and Bengal Tenancy Act, 1885 do not have any application. Some of the provisions of the Bengal Tenancy Act, 1885 are quoted below :-

“1. (1) This Act may be called the Short title. Bengal Tenancy Act, 1885.

(2) It shall come into force on such date (hereinafter called the commencement of this Act) as the Local Government, with the previous sanction of the Governor- General in Council, may, by, notification in the local official Gazette, appoint in this behalf.

(3) It shall extend by its own operation to all the territories for the time being under the administration of the Lieutenant-Governor of West Bengal, except the town of Calcutta, [any area constituted a Municipality under the provisions of the Bengal Municipal Act, 1884, or part thereof, and specified in a notification in this behalf by the local Government,] the Division of Orissa, and the Schedule Districts specified in the third Part of the First Schedule of the Scheduled Districts Act, 1874; and the Local Government may, with the previous sanction of the Governor-General in Council, by notification in the local official Gazette, extend the whole or any portion of this Act to the Division of Orissa or any part thereof.

2. (1) The enactments specified in Schedule I hereto annexed are repealed in the territories to which this Act extends by its own operation.

(2) When this Act is extended to the Division of Orissa or any part thereof, such of those enactments as are in force in that Division or part, or, where a portion only of this Act is so extended, so much of them as is inconsistent with that portion, shall be repealed in that Division or part.

(3) Any enactment or document referring to any enactment hereby repealed shall be constructed to refer to this Act or to the corresponding portion thereof.

(4) The repeal of any enactment by this Act shall not revive or existing at the commencement of this Act.

24. The above provisions categorically indicate that the premises in question fell outside the purview of the Bengal Tenancy Act, 1885. The West Bengal Non-Agricultural Tenancy Act, 1949 also does not have any application in this regard. The petitioner No. 1 was a lessee under the statutory authority (Port Trust) initially, for a specific term and thereafter as a monthly tenant, on the basis of a lease agreement.

25. The learned appeal court rightly held that, no interference could be called for in the procedure followed by the Estate Officer, inasmuch as, the Estate Officer had specifically recorded that, neither any oral nor documentary evidence was ever sought to be adduced by the petitioners. Opportunity had been given to the petitioners to make de novo submissions on the basis of the final inspection report, but instead of producing any evidence either demonstrating the errors in the joint inspection report or in the earlier findings of the Estate Officer with regard to the allegation of unauthorized occupation, non-payment of dues and illegal parting of the property in favour of petitioner No. 2, the learned Advocate for the petitioners sought directions upon the Port Trust for production of documents which were supposed to be in their custody. Moreover, the Estate Officer found that such documents were totally irrelevant for the purpose. The factual findings of the Estate Officer were not interfered with by the Appeal Court. It was rightly held that the order of the Division Bench of the High Court did not direct full-fledged hearing from the date of initiation of the proceeding. The order of the Division Bench only restricted

the issue to the allegation of unauthorized construction and allowed the parties to advance further arguments and adduce evidence on such finding, upon fresh inspection being made. The Estate Officer and the Appeal Court both came to the finding that the records demonstrated that allegations levelled by the Port Trust were genuine.

26. Thus, the breach of the terms and conditions of the lease and termination of the monthly lease / tenancy having been proved, the only issue which now calls for a decision is whether the decision in **Suhas H. Pophale** (supra) should be applied in this case or not. Mr. Banerjee's contention was that, as per the ratio of the said decision, the entire proceeding was illegal and void ab initio. The decision of the Estate Officer and the Appeal Court ought to be set aside as the proceedings suffered from jurisdictional error. The deposit of Rs. 10 lakhs was a pre-condition to avail of the opportunity of a further inspection, leading evidence and hearing. Acceptance of such deposit as per the direction of the Division Bench, does not make the eviction proceeding vulnerable on the ground of waiver.

27. In my view, the applicability of the 1971 Act was rightly decided by the learned Appeal Court, inasmuch as, the notice of eviction to quit and vacate was issued after the promulgation of the said Act and the said Act had already come into force when the petitioners had become unauthorized occupants. Upon expiry of the date mentioned in the notice to quit and vacate, the petitioners were unauthorized occupants. Thus, the proceedings were correctly initiated by the Estate Officer. On the date of the proceeding the petitioners were governed by the said Act.

28. 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)**. It was held that, 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.

29. Thus, the contentions of Mr. Banerjee that, the Petitioner No. 1 having come into possession in July, 1935 could not be evicted under the said Act, as the premises was not public premises on the date of entry into possession, was contrary to the decision of the Hon'ble three Judges bench in **Life Insurance Corporation of India (supra)**.

30. Further contention that the petitioners were covered by the definition of 'tenant' either under the Bengal Tenancy Act 1885, or the Non-Agricultural Tenancy Act, 1949 on the date of entry and later as per the definition in the West Bengal Public Premises Tenancy Act 1997 after the repeal of the 1885 Act, the 1949 Act and the 1956 Act, is totally 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.

31. 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.”

32. Admittedly, the Port Trust was the owner of the property when the petitioner No. 1 had entered into the premises. The monthly tenancy continued. On account of the several breaches, the notice of termination was issued. The petitioners continued to occupy the premises thereafter. Such occupation was without any legal authority, as the lease / tenancy had been terminated. The petitioner No. 1 also defaulted in payment of the

lease rent, raised unauthorized construction, alienated the property and amalgamated the two adjacent plots. The breach of the terms and conditions of the lease, led to termination.

33. The said Act envisages a special procedure for eviction of unauthorized 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 laws. 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.

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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.”

34. The Constitution Bench in ***Ashoka Marketing Limited (supra)*** addressed the question as to whether a person who was inducted as a tenant of certain 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 conterarias 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.”

35. 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.”

36. Moreover, the West Bengal Premises Tenancy Act, 1956 as also 1997, exclude government undertakings or enterprises or statutory bodies from the purview of the said Act. Thus, had the 1971 Act not been promulgated, the remedy for the Port Trust would have been to proceed under the general law, i.e., under the Transfer of Property Act, seeking eviction.

37. 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. 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.”

38. 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 intentment 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.

39. Upon enactment of the 1971 Act, the Port Trust could proceed against the petitioners 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. The petitioner No. 1/ company was in possession when the said Act was promulgated, with retrospective effect from September 16, 1958.

40. 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.”

41. The relevant paragraphs of ***Gyan Mahendra Swarup vs. Life Insurance Corporation of India*** reported in 2018 SCC Online Cal 5803 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.”

42. 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.”

43. 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.

44. 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 further held in ***Life Insurance Corporation of India (supra)*** that, as a consequence of the overriding effect of the provisions of the said Act over the Rent Control Act, buildings 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.*¹ and the three-Judge Bench decision in *Jain Ink*, the view taken in *Suhas H. Pophale*² which is a two-Judge Bench decision, is palpably incorrect and unjustified. *Suhas H. Pophale*² 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*², 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.*² and by a three-Judge Bench in *Jain Ink*², 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.*², 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.*²

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.”

45. Under such circumstances, reliance of the petitioners on the decision of ***Suhas H. Pophale*** (supra), was totally misconceived.

46. The order impugned is upheld and the revisional application is dismissed.

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

(Shampa Sarkar, J.)