SUPREME COURT OF INDIA

Dr.Suhas H. Pophale

Vs.

Oriental Insurance Co. Ltd. and Its Estate Officer

C.A.No.1970 of 2014

(H.L.Gokhale and J. Chelameswar JJ.)

11.02.2014

JUDGEMENT

H.L. GOKHALE J.

1. Leave granted.

2. This appeal by special leave raises the question as to whether the rights of an occupant/licensee/ tenant protected under a State Rent Control Act (Bombay Rent Act, 1947 and its successor the Maharashtra Rent Control Act, 1999, in the instant case), could be adversely affected by application of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 ('Public Premises Act' for short)? This question arises in the context of the eviction order dated 28.5.1993 passed by the respondent No. 2, Estate Officer of the first respondent, invoking the provisions of the Public Premises Act with respect to the premises occupied by the appellant since 20.12.1972. The eviction order has been upheld by the Bombay High Court in its impugned judgment dated 7.6.2010, rejecting the Writ Petition No.2473 of 1996 filed by the appellant herein.

The facts leading to this appeal are this wise:-

3. One Mr. Eric Voller was a tenant of the Indian Mercantile Insurance Company Ltd. (hereinafter referred to as the erstwhile Insurance Co.), the predecessor in title of the first respondent in respect of the premises being Flat No.3, Second Floor, Indian Mercantile Mansion (formerly known as Waterloo Mansion), Wodehouse Road, Opposite Regal Cinema, Colaba, Mumbai. This Mr. Voller executed a leave

and licence agreement in respect of these premises on 20.12.1972 in favour of the appellant initially for a period of two years, and put him in exclusive possession thereof. Mr. Voller, thereafter migrated to Canada with his family. The appellant is a practicing physician. The erstwhile insurance company did not object to the appellant coming into exclusive possession of the said premises. In fact, it is the case of the appellant that when Mr. Voller sought the transfer of the tenancy to the appellant, the General Manager of the said insurance company, by his reply dated 16.1.1973, accepted the appellant as the tenant, though for residential purposes only. The said erstwhile insurance company, thereafter, started accepting the rent directly from the appellant. It is also the case of the appellant that on 14.3.1973, he wrote to the said General Manager seeking a permission for a change of user i.e. to use the premises for his clinic. It is also his case that on 18.4.1973, the General Manager wrote back to him that the erstwhile insurance company had no objection to the change of user, provided the Municipal Corporation of Greater Mumbai gave no objection.

4. The erstwhile insurance company subsequently merged on 1.1.1974 into the first respondent company which is a Government Company. The management of the erstwhile insurance company had however been taken over by the Central Government with effect from 13.5.1971, pending its nationalisation and that of other private insurance companies. The first respondent, thereafter, addressed a notice dated 12.7.1980 to Mr. E. Voller terminating his tenancy with respect to the said premises, and then filed a suit for eviction against Mr. E. Voller and the appellant being R.A.E. Suit No.1176/3742 of 1981 in the Court of Small Causes at Mumbai, under the provisions of the then applicable Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947 ('Bombay Rent Act' for short). Initially the suit came to be dismissed for default, but an application was made under Order 9 Rule 9 of Code of Civil Procedure to set aside the said order. The application was allowed, and the suit remained pending.

5. The appellant then sent a letter dated 22.11.1984 to the first respondent requesting them to regularize his tenancy as a statutory tenant. The first respondent, however, served the appellant notices under Section 4 and 7 of the Public Premises Act, to show cause as to why he should not be evicted from the concerned premises, and to pay damages as specified therein for unauthorised occupation as claimed. The first respondent followed it by preferring Case No.10 and 10A of 1992 before the respondent No. 2 Estate Officer under the Public Premises Act, to evict Mr. E. Voller and the appellant, and also to recover the damages. After initiating these proceedings, the first respondent withdrew on

22.2.1994 the suit filed in the Court of Small Causes. It is, however, relevant to note that in paragraph No. 4 of their case before the Estate Officer, the first respondent specifically accepted that Mr. E. Voller had sublet or given on leave and licence basis or otherwise transferred his interest in the said flat to the appellant in or about 1972, though without any authority from the respondent No. 1. The first respondent alleged that the appellant had carried out structural changes. The appellant denied the allegation. He claimed that he had effected some essential minor repairs for maintenance of the premises since the first respondent was neglecting to attend the same. The appellant filed a reply pointing out that he had been accepted as a tenant by the predecessor of the first respondent by their earlier referred letter dated 16.1.1973. The first respondent, however, responded on 5.1.1993 stating that they did not have any record of the erstwhile insurance company prior to 1975. The second respondent thereafter passed an order on 28.5.1993 directing eviction of Mr. E. Voller and the appellant, and also for recovery of damages at the rate of Rs.6750 per month from 1.9.1980.

6. Being aggrieved by the said order, the appellant filed an appeal before the City Civil Court at Mumbai under Section 9 of the Public Premises Act, which appeal was numbered as Misc. Appeal No.79/93. The City Civil Court set aside the order of damages, and remanded the matter to the second respondent to reconsider that aspect, but upheld the order of eviction by its judgment and order dated 17.1.1996. The appellant thereupon filed a writ petition bearing No.2473/1996 before the High Court on 15.4.1996 to challenge that part of the appellate order which upheld the order of eviction. The High Court dismissed the Writ Petition, by the impugned judgment and order dated 7.6.2010, with costs.

7. The principal contention raised by the appellant right from the stage of the proceedings before the respondent No. 2, and even before the High Court, was that his occupation of the concerned premises was protected under the newly added S 15A of the Bombay Rent Act with effect from 1.2.1973, i.e. prior to the first respondent acquiring the title over the property from 1.1.1974. Therefore, he could not be evicted by invoking the provisions of Public Premises Act, and by treating him as an unauthorised occupant under that act. The impugned order of the High Court rejected the said submission holding that the provisions of the Bombay Rent Act were not applicable to the premises concerned, and the said premises were covered under the Public Premises Act. The High Court principally relied upon the judgment of a Constitution Bench of this Court in Ashoka Marketing Ltd. Vs. Punjab National Bank reported in 1990 (4) SCC 406. As per the view taken by the High Court, this judgment rejects the contention that the provisions of the Public

Premises Act cannot be applied to the premises which fall within the ambit of a State Rent Control Act. The High Court held that the Public Premises Act became applicable to the concerned premises from 13.5.1971 itself i.e. the appointed date under the General Insurance (Emergency Provisions) Act, 1971 wherefrom the management of the erstwhile insurance company was taken over by the Central Government, and not from the date of merger i.e. 1.1.1974. It is this judgment which is under challenge in the present appeal.

8. Mr. Rohinton F. Nariman, learned senior counsel has appeared for the appellant and Mr. Harin P. Raval, learned senior counsel has appeared for the respondents.

The principal issue involved in the matter:-

9. To begin with, it has to be noted that the relationship between the erstwhile insurance company as the landlord and the appellant as the occupant, at all material times was governed under the Bombay Rent Act. Like all other rent control enactments, this Act has been passed as a welfare measure, amongst other reasons to protect the tenants against unjustified increases above the standard rent, to permit eviction of the tenants only when a case is made out under the specified grounds, and to provide for a forum and procedure for adjudication of the disputes between the landlords and the tenants. The legislature of Maharashtra thought it necessary to protect the licensees also in certain situations. Therefore, this act was amended, and a section was inserted therein bearing Section No.15A to protect the licensees who were in occupation on 1.2.1973. This Section reads as follows:-

> "15A. Certain licensees in occupation on 1st February 1973 to become tenants
>
> (1) Notwithstanding anything contained elsewhere in this Act or anything contrary in any other law for the time being in force, or in any contract where any person is on the 1st day of February 1973 in occupation of any premises, or any part thereof which is not less than a room, as a licensee he shall on that date be deemed to have become, for the purpose of this Act, the tenant of the landlord, in respect of the premises or part thereof, in his occupation.
>
> (2) The provisions of sub-section (1) shall not affect in any manner the operation of sub-section (1) of section 15 after the date aforesaid."

We may note that S 15(1) prohibits sub-letting of premises.

10. As far as the insurance business in India is concerned, prior to independence, it was owned and operated by private entities. The governing law for insurance in India was, and still is the Insurance Act, 1938. Post-independence, the Industrial Policy Resolution of 1956 stated that the Life Insurance industry in India was to be nationalised. Therefore, the Life Insurance Corporation Act of 1956 was passed creating the Life Insurance Corporation (LIC), as a statutory corporation, and transferring the assets of all the private life insurance companies in India to LIC. Sometimes around 1970-71, it was felt that the general insurance industry was also in need of nationalisation. Therefore, first the General Insurance (Emergency Provisions) Act, 1971 was passed by the Parliament which provided for the taking over of the management of general insurance business. Though the Act received the assent of the President on 17.6.1971, it was deemed to have come into force on 13.5.1971 from which date the Central Government assumed the management of General Insurance Business as an initial step towards the nationalisation. Thereafter, the General Insurance Business (Nationalisation) Act, 1972 was passed on 20.9.1972. Section 16 of this Act contemplated the merger of the private insurance companies into certain other insurance companies. Consequently, these private insurance companies merged into four insurance companies viz.,

(a) The National Insurance Company Ltd.,

(b) The New India Assurance Company Ltd.,

(c) The Oriental Insurance Company Ltd., and

(d) The United India Insurance Company Ltd.

These four companies are fully owned subsidiaries of the General Insurance Corporation of India which is a Government Company registered under Companies Act, 1956, but incorporated as mandated under Section 9 of the above referred Nationalisation Act. The Central Government holds not less than 51 per cent of the paid up share capital of the General Insurance Corporation. The above referred Indian Mercantile Insurance Company Ltd. merged into the first respondent-Oriental Insurance Company Ltd. w.e.f. 1.1.1974.

11. There is one more important development which is required to be noted. The Public Premises Act, 1971 (40 of 1971) came to be passed in the meanwhile. As per its preamble, it is "an act to provide for eviction of unauthorised occupants from public premises and for certain incidental matters" such as removal of unauthorised construction, recovery of arrears of rent etc. It came into force on 23.8.1971, but Section 1(3) thereof states that it shall be deemed to have come into force on 16.9.1958, except Section 11 (on offences and penalty) and Sections 19 and 20 (on repeal and validation). This is because from 16.9.1958, its predecessor Act viz. The Public Premises (Eviction of Unauthorised Occupants) Act (32 of 1958) was in force for similar purposes, and which was repealed by the above referred Section 19 of the 1971 Act. As provided under Section 2 (e) (2) (i) of this Act, the definition of 'Public Premises', amongst others, covers the premises belonging to or taken on lease by or on behalf of any company in which not less than fifty one per cent of the paid up share capital was held by the Central Government. The definition of public premises under Section 2(e) of this Act reads as follows:-

> "2. Definitions…..
>
> [(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 the Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 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 Companies Act, 1956 (1 of 1956), 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 Companies Act, 1956 (1 of 1956), or a local authority] established by or under a Central Act and owned or controlled by the Central Government,

(iii) any University established or incorporated by any Central Act,

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

(v) any Board of Trustees constituted under 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 renamed as the Bhakra-Beas Management Board under sub-section (6) of Section 80 of that Act;

[(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 consitituted under the Cantonments Act, 1924 (2 of 1924); and]

(3) in relation to the [National Capital Territory of Delhi],— (i) any premises belonging to the Municipal Corporation of Delhi, or any municipal committee or notified area committee,

(ii) any premises belonging to the Delhi Development Authority, whether such premises are in the possession of, or leased out by, the said Authority, [and]

[(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;]"

12. The consequence of this development was that in view of the merger of the erstwhile insurance company into the first respondent, (of which not less than 51 per cent share holding was that of the Central Government,) the Public Premises Act became applicable to its premises. It is the contention of the appellant that although the Act is otherwise deemed to have come into force from 16.9.1958, as far as the present premises are concerned, the Act became applicable to them from 1.1.1974 when the erstwhile insurance company merged into the first respondent.

Then only it could be said that the premises ‘belonged’ to a Government Company. However, since the appellant’s occupation of the said premises was protected by Section 15A of the Bombay Rent Act which Section had become enforceable prior thereto from 1.2.1973, he could not be said to be in ‘unauthorised occupation’ and, therefore, could not be evicted by invoking the provisions of the Public Premises Act. On the other hand, the contention of the respondents is that the Public Premises Act became applicable to the concerned premises from 13.5.1971 itself, when the management of the erstwhile insurance company was taken over by the Central Government, and the rejection of the writ petition by the High Court on that ground was justified. The principal issue involved in this matter is thus about the applicability of the Public Premises Act to the premises occupied by the appellant.

Submissions of the rival counsel:-

13. Learned Senior Counsel for the appellant, Mr. Nariman submitted that the finding of the High Court that the Public Premises Act applies to these premises from 13.5.1971 was an erroneous one. That was the date on which the Central Government assumed the management of the erstwhile private insurance company. The erstwhile insurance company continued to exist until it merged in the appellant-company w.e.f. 1.1.1974. In the circumstances, although the Public Premises Act came into force on 23.8.1971 (with deemed date of coming into force being 16.9.1958), and although the appointed date for assuming management was 13.5.1971, the premises could be said to have ‘belonged’ to the first respondent as per the definition under Section 2(E)(2)(i) of the Act, only from 1.1.1974, when the merger took place. Prior thereto the Bombay Rent Act had been amended and the licensees in occupation, were declared as deemed tenants, by virtue of Section 15A of the said Act. The appellant has been in continuous occupation of the said premises as a licensee from 20.12.1972. On 1.2.1973 his status got elevated to that of a ‘deemed tenant’ which was prior to the respondent No. 1 becoming owner of the building from 1.1.1974. The submission of Mr. Nariman was that the appellant had a vested right under the statute passed by the State Legislature protecting the licensees, and since the Public Premises Act became applicable from 1.1.1974, the rights of the tenants and also those of the licensees protected under the State Act prior to 1.1.1974, could not be taken away by the application of the Public Premises Act which can apply only prospectively. In his submission the eviction proceedings under the Public Premises Act against the appellant were therefore, null and void. The only remedy available for the first respondent for evicting the appellant would be under the Bombay Rent Act or under the Maharashtra Rent

Control Act, 1999 which has replaced the said Act with effect from 31.3.2000. We may note at this stage that Mr. Nariman made a statement that the appellant is making out a case on the basis of his legal rights as a protected licencee, and not on the basis of the earlier mentioned correspondence between the appellant and the erstwhile insurance company.

14. Learned senior counsel for the respondents Mr. Raval, on the other hand, submitted that once the management of the erstwhile insurance company was taken over, the Public Premises Act became applicable. Therefore, it was fully permissible for the first respondent to initiate the proceedings to evict the appellant from the public premises. In his view, the legal position, in this behalf, has been settled by the judgment of the Constitution Bench in the above referred Ashoka Marketing case, and the view taken by the High Court with respect to the date of applicability of the Public Premises Act was in consonance with the said judgment.

15. As against that, it is the submission of the Mr. Nariman that the judgment in Ashoka Marketing (supra) has to be understood in its context, and that it did not lay down any such wide proposition as Mr. Raval was canvassing. He pointed out that the judgment in Ashoka Marketing (supra) was with respect to the overriding effect of the Public Premises Act vis-à-vis the Delhi Rent Control Act, which are both Acts passed by the Parliament, and where the premises fall within the ambit of both the enactments. In the instant case, we are concerned with one Act passed by the Parliament, and another by a State Legislature. That apart, in his submission, the Public Premises Act must firstly apply to the concerned premises, and in his submission the concerned premises did not fall within the ambit of that act. That being so, in any case, the rights of the tenants who were protected under the State Act prior to passing of this Act, could not be said to have been extinguished by virtue of coming into force of the Public Premises Act.

Consideration of the submissions

The Judgment in the case of Ashoka Marketing

16. Inasmuch as, the judgment in the case of Ashoka Marketing (supra) is crucial for determining the issue in controversy, it would be relevant to refer to the said decision in detail. When we analyse the judgment in Ashoka Marketing (supra), we have to first see as to what was the subject matter of the controversy before this Court in Ashoka Marketing? It was with respect to the eviction of the occupants from the premises owned by Punjab National Bank and Allahabad Bank which are

both nationalised banks, and by Life Insurance Corporation, which is a Statutory Corporation. In paragraph 1 of this judgment of the Constitution Bench, the question framed by the Court for its consideration was as follows:- "whether a person who was inducted as a tenant in premises, which are public premises for the purpose of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as the 'Public Premises Act'), and whose tenancy has expired or has been terminated, can be evicted from the said premises as being a person in unauthorised occupation of the premises under the provisions of the Public Premises Act and whether such a person can invoke the protection of the Delhi Rent Control Act, 1958 (hereinafter referred to as the 'Rent Control Act'). In short, the question is, whether the provisions of the Public Premises Act would override the provisions of the Rent Control Act in relation to premises which fall within the ambit of both the enactments."

(emphasis supplied)

17. We may refer to the definition of "unauthorised occupation" as provided under Section 2(g) of the Public Premises Act at this stage. It reads as follows:-

> "2. Definitions….
>
> (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."

As can be seen from this definition, it consists of two parts. In paragraph 30 of the above judgment also, this Court noted that the definition of 'unauthorized occupation' in Section 2(g) of the Public Premises Act, was in two parts. The first part of this definition deals with persons who are in occupation of the Public Premises 'without authority for such occupation', and the second part deals with those in occupation of public premises, whose authority to occupy the premises 'has expired or has been determined for any reason whatsoever'. As stated in paragraph 1 of the judgment, the Constitution Bench was concerned with the second part of the definition. As far as these two parts are concerned, the Court observed in paragraph 30 as follows:-

> "30. The definition of the expression 'unauthorised occupation' contained in Section 2(g) of the Public Premises Act is in two parts. In the first part the said expression has been defined to mean the occupation by any person of the public premises without authority for such occupation. It implies occupation by a person who has entered into occupation of any public premises without lawful authority as well as occupation which was permissive at the inception but has ceased to be so. The second part of the definition is inclusive in nature and it expressly covers 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. This part covers a case where a person had entered into occupation legally under valid authority but who continues in occupation after the authority under which he was put in occupation has expired or has been determined. The words "whether by way of grant or any other mode of transfer" in this part of the definition are wide in amplitude and would cover a lease because lease is a mode of transfer under the Transfer of Property Act. The definition of unauthorised occupation contained in Section 2(g) of the Public Premises Act would, therefore, cover a case where a person has entered into occupation of the public premises legally as a tenant under a lease but whose tenancy has expired or has been determined in accordance with law."

18. Thereafter, the Court dealt with the issue of conflict between the two enactments and whether the Public Premises Act, would override the Delhi Rent Control Act. As this Court noted in paragraph 49 of the said judgment, both these statutes have been enacted by the same legislature, i.e. Parliament, in exercise of the legislative powers in respect of the matters enumerated in the Concurrent List. With respect to the rent control legislations enacted by the State Legislatures, this Court observed in paragraph 46 as follows:-

> "46. As regards rent control legislation enacted by the State Legislature the position is well settled that such legislation falls within the ambit of Entries 6, 7 and 13 of List III of the Seventh Schedule to the Constitution (See. Indu Bhushan Bose Vs. Rama Sundari Devi1, V. Dhanpal Chettiar case2; Jai Singh Jairam Tyagi Vs. Mamanchand Ratilal Agarwal3 and Accountant and Secretarial Services Pvt. Ltd. Vs. Union of India4."

1. (1969) 2 SCC 289 : (1970) 1 SCR 443,

2. (1979) 4 SCC 214 : (1980) 1 SCR 334

3. (1980) 3 SCC 162 : (1980) 3 SCR 224, 4. (1988) 4 SCC 324

19. As far as Public Premises Act is concerned, paragraph 48 of this judgment, referred to the earlier judgments in Accountant and Secretarial Services Pvt. Ltd. Vs. Union of India reported in 1988 (4) SCC 324, and Smt. Saiyada Mossarrat Vs. Hindustan Steel Ltd. reported in 1989 (1) SCC 272. In Accountant and Secretarial Service Pvt. Ltd. (supra), this Court had held that the Public Premises Act is also referable to Entries 6, 7 and 13 of the Concurrent List. At the end of paragraph 48, of Ashoka Marketing this Court held:-

> "………..There is no inconsistency between the decisions of this Court in Accountant and Secretarial Services Pvt. Ltd. and Smt. Saiyada Mossarrat case in as much as in both the decisions it is held that the Public Premises Act insofar as it deals with a lessee or licensee of premises other than premises belonging to the Central Government has been enacted in exercise of the legislative powers in respect of matters enumerated in the Concurrent List. We are in agreement with this view."

20. Thereafter, on the question as to whether the Public Premises Act overrides the Delhi Rent Control Act, this Court observed as follows at the end of paragraph 49:-

> "In our opinion the question as to whether the provisions of the Public Premises Act override the provisions of the Rent Control Act will have to be considered in the light of the principles of statutory interpretation applicable to laws made by the same legislature."

> In this context, the Court noted that the two principles which are to be applied are (i) later laws abrogate earlier contrary laws, and (ii) a general provision does not derogate from a special one. In paragraph 54, the Court noted that Public Premises Act is a later enactment having been enacted on 23.8.1971, whereas the Delhi Rent Control Act, was enacted on 31.12.1958. Thereafter the Court observed in paragraph 55 as follows:- "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. The Public Premises Act 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 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. Therefore, the Public Premises Act 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, are special statutes in relation to the matters dealt with therein. Since, the Public Premises Act 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 must prevail over the Rent Control Act."

(emphasis supplied)

21. In paragraph 62, this Court noted the objects and reasons of the Delhi Rent Control Act, which are as follows:-

62. ….(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……..

22. In paragraph 63, this Court noted the statement of objects and reasons of the Public Premises Act, which are as follows:-

> "63………"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."

> Thereafter, the Court observed:-

> "63……This shows that the Public Premises Act, has been enacted to deal with the mischief of rampant unauthorized occupation of public premises by providing a speedy machinery for the eviction of persons in unauthorized occupation……"

> (emphasis supplied)

23. In paragraph 64, this Court then noted that the Rent Control Act and the Public Premises Act operated in two different areas, and the properties 'belonging to' the Central Government, Government Companies or Corporations would be excluded from the application of the Rent Control Act. The Court observed to the following effect:-

> "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……."

(emphasis supplied)

Thereafter, the Court observed:-

"…..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……"

(emphasis supplied)

24. Paragraph 66 of the judgment makes it clear that this Court was concerned with a contractual tenancy and ruled out a dual procedure for eviction. In that context it observed as follows:-

"66……….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."

It is relevant to note that, it is in this context that the Court rendered its decision in Ashoka Marketing, and upheld the orders of eviction under Public Premises Act.

25. It was submitted by Mr. Nariman, that as can be seen from above, the Court was concerned with the second part of the definition of "unauthorised occupation"

under Section 2(g) of the Public Premises Act, which is concerning expiry or determination of the authority to occupy. He submitted that the 'determination of tenancy' is referable to Section 111 of the Transfer of Property Act, and similarly the concept of expiry of the authority to occupy. Paragraph 30 quoted above specifically refers to the Transfer of Property Act. He submitted that the latter part of this definition was indicating a reference to contractual tenancy, and in this behalf referred to the above referred paragraph 66 which also speaks about the contractual tenancy. His submission was that since the first part of the definition under Section 2(g) referred to a person who is occupying the premises without any authority, it would exclude a person who is occupying the premises under the authority of law. In his submission, since the appellant was a deemed tenant under the state law, such a statutory tenant will have to be considered as protected by authority of law and cannot be called a person in "unauthorised occupation". He referred to the judgment of this Court in Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram reported in 1986 (3) SCR 866, which held that the amendment brought about by section 15A was an attempt to protect very large number of legitimate persons in occupation. The judgment also made a distinction in the position of a statutory tenant as against that of a contractual tenant. In that judgment it is held that a statutory tenant is entitled to create a licence, whereas a contractual tenant can create a sub-lease. However, the proposition canvassed by Mr. Nariman would mean that a licensee protected by statute will not be in an unauthorised occupation, but a contractual tenant could be, since, his authority to occupy can be determined, and he would be in an unauthorised occupation thereafter. Thus, a protected licensee would be placed on a pedestal higher than that of a principal contractual tenant. In our view, this judgment does not state so, nor can it lead us to accept any such proposition as it would mean accepting an incongruous situation. From what date would the Public Premises Act apply to the concerned premises?

26. The question that is required to be examined, however, is whether the tenants as well as licencees, who are protected under the State Law, could be called unauthorised occupants by applying the Public Premises Act to their premises as 'belonging' to a Government Company, and if so from what date. As we have noted earlier, to initiate the eviction proceedings under this statute, the premises concerned have to be public premises as defined under Section 2(e) of the Act. Besides, as far as the present premises are concerned, it is necessary that they must belong to a Government Company. The definition of public premises will, therefore, have to be looked into, and it will have to be examined as to from what date the premises can be said to be belonging to a Government Company. Section

19 of the Public Premises Act, 1971 repeals the Public Premises (Eviction of Unauthorised Occupants) Act, 1958. While repealing this predecessor Act, Section 1(3) of the 1971 Act lays down that it shall be deemed to have come into force on the 16th day of September, 1958 except sections 11, 19 and 20 which shall come into force at once (i.e. from 23.8.1971). Section 11 deals with offences and penalties. Section 19 is the repealing Section as stated above, and Section 20 is the section on validation of any judgment, decree or order of any competent court which might have been passed under Public Premises (Eviction of Unauthorised Occupants) Act, 1958. The conjoint reading of Section 1(3) and Section 2(e) defining Public Premises will be that although the provisions with respect to eviction under the Act of 1971 are deemed to have come into force from 16.9.1958, they will apply to the concerned premises only from the date when they become public premises.

27. Thus, in the case of a company under the Companies Act, 1956 as in the present case, it is necessary that the premises must belong to or must be taken on lease by a company which has not less than 51 per cent paid up share capital held by the Central Government. The submission of the respondents is that the date on which the management of the erstwhile Insurance Company was taken over i.e. 13.5.1971 would be the relevant date, and from that date the premises would be said to have become public premises. It was submitted that after coming into force of the said Act, it was not open to the erstwhile company to transfer or otherwise dispose of any assets or create any charge, hypothecation, lease or any encumbrance thereto without the previous approval of the persons specified by the Central Government. It was contended that as a result, the provisions of Bombay Rent Act will have to be held as not applicable to the said premises from such date i.e. 13th May, 1971.

28. The submission of the respondent was accepted by the High Court by relying upon an earlier judgment of a Division Bench of the Bombay High Court in the case of M. Mohd vs. Union of India reported in AIR 1982 Bombay 443. In para 22 thereof, the High Court held as follows:- "…..There is no doubt that the expression "belonging to" does not mean the same thing as "owned by". The two expressions have two different connotations. The expression "belonging to" will take within its sweep not only ownership but also rights lesser than that of ownership."

> It is relevant to note that the appellants therein were government employees occupying premises allotted to them as service premises. The premises were situated in privately owned buildings, and taken on lease by the

Government. The appellants had retired from their services, but were not vacating the premises, and hence eviction orders were passed against them under the Public Premises Act. The premises were admittedly taken on lease, and were therefore premises belonging to the Central Government. At the end of paragraph 21 of its judgment, the High Court in terms held as follows, “Once the factum of lease is established, which has been done in the present case, the authorities under the act get jurisdiction to inquire under the act.” The submission of the appellants therein was that the premises could not be said to be belonging to the respondents, and therefore, not public premises. It is in this context that the High Court held that the expression ‘belonging to’ will take within its sweep rights lesser than that of ownership. The observations quoted above will have to be read in that context. It is however, relevant to note what the Division Bench has thereafter added:-

“It must be remembered in this connection that the expressions used in the statute are to be interpreted and given meaning in the context in which they are used.”

It is material to note that it was not a case like the present one, where the occupant has claimed protection under the State Rent Control Law available to him prior to the Public Premises Act becoming applicable. The High Court had relied upon a judgment of this Court in Mahomed Amir Ahmad Khan vs. Municipal Board of Sitapur reported in AIR 1965 SC 1923, wherein this Court has observed:-

“Though the word “belonging” no doubt is capable of denoting as absolute title, is nevertheless not confined to connoting that sense.”

This was a matter wherein the appellant was alleged to have disputed the title of the respondent landlord by contending that the premises were belonging to the appellant. The Court noted that all that he meant by using the word ‘belonging’ was that he was a lessee, and nothing more. It was in this sense that this Court observed as above while allowing his appeal.

29. In the present matter we are concerned with the question, whether the respondents could resort to the provisions of the Public Premises Act at a time when the merger of the erstwhile insurance company into the first respondent was not complete. The question is whether taking over of the management of the erstwhile company can confer upon the respondent No. 1 the authority to claim

that the premises belong to it to initiate eviction proceedings under the Public Premises Act, to the detriment of an occupant who is claiming protection under a welfare enactment passed by the State Legislature. At this juncture we may profitably refer to the judgment of this Court concerning another welfare enactment in Rashtriya Mill Mazdoor Sangh, Nagpur Vs. Model Mills, Nagpur and Anr. reported in AIR 1984 SC 1813. The issue before the Court was whether upon the appointment of an authorised controller under Section 18A of the Industries (Development and Regulation) Act, 1951 (IDR Act short) in respect of an industrial undertaking, when it is run by him under the authority of a Department of the Central Government, the employees of the undertaking would get excluded from the application of the Payment of Bonus Act, 1965, in view of the provision contained in Section 32(iv) of the Bonus Act. The court made a distinction between the concept of taking over of management and taking over of ownership. Inasmuch as the taking over of the management did not result into the Central Government becoming the owner of the textile mills, the right of the workmen to receive bonus was not extinguished. The Court held as follows:

> "10. Thus the significant consequence that ensues on the issue of a notified order appointing authorised controller is to divert the management from the present managers and to vest it in the authorised controller. Undoubtedly, the heading of Chapter III-A appears to be slightly misleading when it says that the Central Government on the issue of a notified order assumes direct management of the industrial undertaking, in effect on the issuance of a notified order, only the management of the industrial undertaking undergoes a change. This change of management does not tantamount to either acquisition of the industrial undertaking or a take over of its ownership because if that was to be the intended effect of change of management, the Act would have been subjected to challenge of Article 31 and 19 (1) (f) of the Constitution. One can say confidently that was not intended to be the effect of appointment of an authorised controller. The industrial undertaking continues to be governed by the Companies Act or the Partnership Act or the relevant provisions of law applicable to a proprietary concern. The only change is the removal of managers and appointment of another manager and to safeguard his position restriction on the rights of shareholders or partners or original proprietor. This is the net effect of the appointment of an authorised controller by a notified order."
>
> (emphasis supplied)

A similar approach was adopted by the Court in Bhuri Nath and Ors. Vs. State of J&K and Ors. reported in AIR 1997 SC 1711. Here the issue before the Court was with respect to the constitutionality of the Jammu and Kashmir Shri Mata Vaishno Devi Shrine Act, 1988 (XVI of 1988) which was made to provide better management, administration and governance of Shri Mata Vaishno Devi Shrine, its endowments, all temples, and sum total of the properties, movable and immovable, attached or appurtenant to the Shrine. While addressing an argument with respect to the violation of Article 31 of the Constitution, the Court observed in para 29 as follows:

> "29. ……….The right to superintendence of management, administration and governance of the Shrine is not the property which the State acquires. It carries with it no beneficial enjoyment of the property to the State. The Act merely regulates the management, administration and governance of the Shrine. It is not an extinguishment of the right. The appellants-Baridarans were rendering pooja, a customary right which was abolished and vested in the Board. The management, administration and governance of the Shrine always remained with the Dharamarth Trust from whom the Board has taken over the same for proper administration, management and governance. In other words, the effect of the enactment of the Act is that the affairs of the functioning of the Shrine merely have got transferred from Dharmarth Trust to the Board. The Act merely regulates in that behalf; incidentally, the right to collect offerings enjoyed by the Baridarans by rendering service of pooja has been put to an end under the Act. The State, resultantly, has not acquired that right onto itself. ……..."

(emphasis supplied)

30. As far as the present matter is concerned it is required to be noted that the Principal Agencies floated by the promoters of the erstwhile private Insurance Companies were controlling their business. In the 'History of Insurance of India' published by Insurance Regulatory and Development Authority' (IRDA) on its official website on 12.07.2007 under Ref: IRDA/GEN/06/2007 it is stated as follows:

> "The Insurance Amendment Act of 1950 abolished Principal Agencies. However, there were a large number or insurance companies and the level of

competition was high. There were also allegations of unfair trade practices. The Government of India, therefore, decided to nationalize insurance business."

Thus, as far as the erstwhile Insurance Company in the present case is concerned, as an initial step, its management was taken over by the Central Government w.e.f. 13.5.1971, and it was entrusted with the custodian appointed by the Central Government. It would definitely entail a right in the custodian to take necessary steps to safeguard the property of the erstwhile insurance company. But it was a transitory arrangement. The properties of the erstwhile insurance companies did not belong to the Government Companies or the Government at that stage. The Public Premises Act, undoubtedly provides a speedy remedy to recover the premises from the unauthorised occupants. At the same time, we have also to note that in the instant case the occupant is claiming a substantive right under a welfare provision of the State Rent Control Act, which gave him a protected status in view of the amendment to that Act. The question is whether this authority of management bestowed on the Government Company can take in its sweep the right to proceed against such protected tenants under the Public Premises Act, by contending that the premises belonged to the Government Company at that stage itself, and that the State Rent Control Act no longer protected them. Considering that the Rent Control Act is a welfare enactment, and a further protective provision has been made therein, can it be permitted to be rendered otiose and made inapplicable to premises specifically sought to be covered thereunder, and defeated by resorting to the provisions of the Public Premises Act? In the present case, it must also be noted that the appellant is seeking a protection under Section 15A of the Bombay Rent Act, which has a non-obstante clause. The respondent No. 1 is undoubtedly not without a remedy, and it can proceed to evict an unauthorised occupant under the Rent Control Act, if an occasion arises. It can certainly resort thereto until the managerial right fructifies into a right of ownership. However by enforcing a speedier remedy, a welfare provision cannot be rendered nugatory. The provisions of the two enactments will have to be read harmoniously to permit the operation and co- existence of both of them to the extent it can be done. Therefore, the term 'belonging to' as occurring in the definition of Public Premises in Section 2(e) will have to be interpreted meaningfully to imply only the premises owned by or taken on lease by the Government Company at the relevant time. In the facts of this case what we find is that the appellant had the status of a deemed tenant under the Bombay Rent Act,

1947 prior to the concerned premises ‘belonging to a Government Company’ and becoming public premises. If at all he had to be evicted, it was necessary to follow the due process of law which would mean the process as available under the Bombay Rent Act or its successor Maharashtra Rent Control Act, 1999, and not the one which is provided under the provisions of the Public Premises Act.

Can the Public Premises Act be given retrospective effect?

31. There is another aspect of the matter. Mr. Raval, learned senior counsel for the respondents has contended that the appellant’s submission that he was protected under the Bombay Rent Act, and that protection has been continued under the Maharashtra Rent Control Act, 1999, is not available before the Estate Officer. The question, therefore, comes to our mind as to what happens to the rights of the appellant made available to him under the State Act at a time when the erstwhile company had not merged in the first respondent Government Company? Can it be said that he was occupying the premises without the authority for such occupation? Can it be said that with the application of the Public Premises Act to the premises occupied by the appellant, those rights get extinguished? It has been laid down by this Court time and again that if there are rights created in favour of any person, whether they are property rights or rights arising from a transaction in the nature of a contract, and particularly if they are protected under a statute, and if they are to be taken away by any legislation, that legislation will have to say so specifically by giving it a retrospective effect. This is because prima facie every legislation is prospective (see para 7 of the Constitution Bench judgment in Janardan Reddy Vs. The State reported in AIR 1951 SC 124). In the instant case, the appellant was undoubtedly protected as a ‘deemed tenant’ under Section 15A of the Bombay Rent Act, prior to the merger of the erstwhile insurance company with a Government Company, and he could be removed only by following the procedure available under the Bombay Rent Act. A ‘deemed tenant’ under the Bombay Rent Act, continued to be protected under the succeeding Act, in view of the definition of a ‘tenant’ under Section 7(15)(a)(ii) of the Maharashtra Rent Control Act, 1999. Thus, as far as the tenants of the premises which are not covered under the Public Premises Act are concerned, those tenants who were deemed tenants under the Bombay Rent Act continued to have their protection under the Maharashtra Rent Control Act, 1999. Should the coverage of their premises under the Public Premises Act make a difference to the tenants or occupants of such premises, and if so, from which date?

32. It has been laid down by this Court through a number of judgments rendered over the years, that a legislation is not be given a retrospective effect unless specifically provided for, and not beyond the period that is provided therein. Thus, a Constitution Bench held in Garkiapati Veeraya Vs. N. Subbiah Choudhry reported in AIR 1957 SC 540 that in the absence of anything in the enactment to show that it is to be retrospective, it cannot be so constructed, as to have the effect of altering the law applicable to a claim in litigation at the time when the act was passed. In that matter, the Court was concerned with the issue as to whether the appellant's right to file an appeal continued to be available to him for filing an appeal to the Andhra Pradesh High Court after it was created from the erstwhile Madras High Court. The Constitution Bench held that the right very much survived, and the vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise.

33. Similarly, in Mahadeolal Kanodia Vs. The Administrator General of West Bengal reported in AIR 1960 SC 936, this Court was concerned with the retrospectivity of law passed by the West Bengal legislature concerning the rights of tenants and in paragraph 8 of the judgment the Court held that:-

> "8. The principles that have to be applied for interpretation of statutory provisions of this nature are well- established. The first of these is that statutory provisions creating substantive rights or taking away substantive rights are ordinarily prospective; they are retrospective only if by express words or by necessary implication……"

34. In Amireddi Raja Gopala Rao Vs. Amireddi Sitharamamma reported in AIR 1965 SC 1970, a Constitution bench was concerned with the issue as to whether the rights of maintenance of illegitimate sons of a sudra as available under the Mitakshara School of Hindu Law was affected by introduction of Sections 4, 21 and 22 of the Hindu Adoption and Maintenance Act, 1956. The Court held that they were not, and observed in paragraph 7 as follows:-

> "A statue has to be interpreted, if possible so as to respect vested rights, and if the words are open to another construction, such a construction should never be adopted."

> The same has been the view taken by a bench of three Judges of this Court in J.P. Jani, Income Tax Officer, Circle IV, Ward G, Ahmedabad Vs.

Induprasad Devshanker Bhatt reported in AIR 1969 SC 778 in the context of a provision of the Income Tax Act, 1961, in the matter of reopening of assessment orders. In that matter the Court was concerned with the issue as to whether the Income Tax Officer could re-open the assessment under Section 297(2) (d) (ii) and 148 of the Income Tax Act, 1961, although the right to re-open was barred by that time under the earlier Income Tax Act, 1922. This Court held that the same was impermissible and observed in paragraph 5 as follows:-

> "5…… The reason is that such a construction of Section 297 (2) (d) (ii) would be tantamount to giving of retrospective operation to that section which is not warranted either by the express language of the section or by necessary implication. The principle is based on the well-known rule of interpretation that unless the terms of the statute expressly so provide or unless there is a necessary implication, retrospective operation should not be given to the statute so as to affect, alter or destroy any right already acquired or to revive any remedy already lost by efflux of time."

35. In Arjan Singh Vs. State of Punjab reported in AIR 1970 SC 703, this court was concerned with the issue of date of application of Section 32KK added into the Pepsu Tenancy and Agricultural Lands Act, 1955. This Court held in paragraph 4 thereof as follows:-

> "4. It is a well-settled rule of construction that no provision in a statute should be given retrospective effect unless the legislature by express terms or by necessary implication has made it retrospective and that where a provision is made retrospective, care should be taken not to extend its retrospective effect beyond what was intended."

36. In Ex-Capt., K.C. Arora Vs. State of Haryana reported in 1984 (3) SCC 281, this Court was concerned with a service matter and with the issue as to whether an amendment in the law could take away the vested rights with retrospective effect. The Court held that such an amendment would be invalid if it is violative of the present acquired or accrued fundamental rights of the affected persons.

37. In the case of K.S. Paripoornan Vs. State of Kerala reported in AIR 1995 SC 1012, a Constitution Bench of this Court was concerned with the retrospective effect of Section 23(1A) introduced in the Land Acquisition Act. While dealing with this provision, this Court has observed as follows:-

"44. A statute dealing with substantive rights differs from a statute which relates to procedure or evidence or is declaratory in nature inasmuch as while a statute dealing with substantive rights is prima facie prospective unless it is expressly or by necessary implication made to have retrospective effect, a statute concerned mainly with matters of procedure or evidence or which is declaratory in nature has to be construed as retrospective unless there is a clear indication that such was not the intention of the legislature. A statute is regarded retrospective if it operates on cases or facts coming into existence before its commencement in the sense that it affects, even if for the future only, the character or consequences of transactions previously entered into or of other past conduct. By virtue of the presumption against retrospective applicability of laws dealing with substantive rights transactions are neither invalidated by reason of their failure to comply with formal requirements subsequently imposed, nor open to attack under powers of avoidance subsequently conferred. They are also not rendered valid by subsequent relaxations of the law, whether relating to form or to substance. Similarly, provisions in which a contrary intention does not appear neither impose new liabilities in respect of events taking place before their commencement, nor relieve persons from liabilities then existing, and the view that existing obligations were not intended to be affected has been taken in varying degrees even of provisions expressly prohibiting proceedings. (See: Halsbury's Laws of England, 4th Edn. Vol. 44, paras 921, 922, 925 and 926)."

38. In the case of Gajraj Singh Vs. State Transport Appellate Tribunal reported in AIR 1997 SC 412, the Court was concerned with the provisions of Motor Vehicle Act and repealing of some of its provisions. In para 30 referring to Southerland on Statutory Construction (3rd Edition) Vol.I, the Court quoted the following observations:-

"30……Effect on vested rights

Under common law principles of construction and interpretation the repeal of a statute or the abrogation of a common law principle operates to divest all the rights accruing under the repealed statute or the abrogated common law, and to halt all proceedings not concluded prior to the repeal. However, a right which has become vested is not dependent upon the common law or the statute under which it was acquired for its assertion, but has an

> independent existence. Consequently, the repeal of the statute or the abrogation of the common law from which it originated does not efface a vested right, but it remains enforceable without regard to the repeal.
>
> In order to become vested, the right must be a contract right, a property right, or a right arising from a transaction in the nature of a contract which has become perfected to the degree that the continued existence of the statute cannot further enhance its acquisition……"

39. Having noted the aforesaid observations, it is very clear that in the facts of the present case, the appellant's status as a deemed tenant was accepted under the state enactment, and therefore he could not be said to be in "unauthorised occupation". His right granted by the state enactment cannot be destroyed by giving any retrospective application to the provisions of Public Premises Act, since there is no such express provision in the statute, nor is it warranted by any implication. In fact his premises would not come within the ambit of the Public Premises Act, until they belonged to the respondent No. 1, i.e until 1.1.1974. The corollary is that if the respondent No. 1 wanted to evict the appellant, the remedy was to resort to the procedure available under the Bombay Rent Act or its successor Maharashtra Rent Control Act, by approaching the forum thereunder, and not by resorting to the provisions of the Public Premises Act.

When are the provisions of Public Premises Act to be resorted to?

40. In the context of the present controversy, we must refer to one more aspect. As we have noted earlier in paragraph 63 of Ashoka Marketing, the Constitution Bench has referred to the objects and reasons behind the Public Premises Act wherein it is stated that it has become impossible for the Government to take expeditious action even in 'flagrant cases of unauthorised occupation' of public premises. The Court has thereafter observed in that very paragraph that the Public Premises Act is enacted to deal with mischief of 'rampant unauthorised occupation' of public premises.

41. It is relevant to note that there has been a criticism of the use of the powers under the Public Premises Act, and the manner in which they are used in an arbitrary way to evict the genuine tenants from the public premises causing serious hardships to them. The Central Government itself has therefore, issued the guidelines to prevent such arbitrary use of these powers. These guidelines were issued vide Resolution No. 21012/1/2000-Pol.1, dated 30th May, 2002, published

in the Gazette of India, Part I, Sec.1 dated 8th June, 2002. They read as follows:-
"GUIDELINES TO PREVENT ARBITRARY USE OF POWERS TO EVICT GENUINE TENANTS FROM PUBLIC PREMISES UNDER THE CONTROL OF PUBLIC SECTOR UNDERTAKINGS / FINANCIAL INSTITUTIONS

1. The question of notification of guidelines to prevent arbitrary use of powers to evict genuine tenants from public premises under the control of Public Sector Undertakings/financial institutions has been under consideration of the Government for some time past.

2. To prevent arbitrary use of powers to evict genuine tenants from public premises and to limit the use of powers by the Estate Officers appointed under section 3 of the PP(E) Act, 1971, it has been decided by Government to lay down the following guidelines:

(i) The provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 [(P.P.(E) Act, 1971] should be used primarily to evict totally unauthorised occupants of the premises of public authorities or subletees, or employees who have ceased to be in their service and thus ineligible for occupation of the premises.

(ii) The provisions of the P.P. (E) Act, 1971 should not be resorted to either with a commercial motive or to secure vacant possession of the premises in order to accommodate their own employees, where the premises were in occupation of the original tenants to whom the premises were let either by the public authorities or the persons from whom the premises were acquired.

(iii) A person in occupation of any premises should not be treated or declared to be an unauthorised occupant merely on service of notice of termination of tenancy, but the fact of unauthorized occupation shall be decided by following the due procedure of law. Further, the contractual agreement shall not be wound up by taking advantage of the provisions of the P.P.(E) Act, 1971. At the same time, it will be open to the public authority to secure periodic revision of rent in terms of the provisions of the Rent Control Act in each State or to move under genuine grounds under the Rent Control Act for resuming possession. In other words, the public authorities would have rights similar to private landlords under the Rent Control Act in dealing with genuine legal tenants.

(iv) It is necessary to give no room for allegations that evictions were selectively resorted to for the purpose of securing an unwarranted increase in rent, or that a change in tenancy was permitted in order to benefit particular individuals or institutions. In order to avoid such imputations or abuse of discretionary powers, the release of premises or change of tenancy should be decided at the level of Board of Directors of Public Sector Undertakings.

(v) All the public Undertakings should immediately review all pending cases before the Estate Officer or Courts with reference to these guidelines, and withdraw eviction proceedings against genuine tenants on grounds otherwise than as provided under these guidelines. The provisions under the P.P. (E) Act, 1971 should be used henceforth only in accordance with these guidelines.

3. These orders take immediate effect."

42. Thus as can be seen from these guidelines, it is emphasized in Clause 2(i) thereof, that the Act was meant to evict (a) totally unauthorised occupants of the public premises or subletees, or (b) employees who have ceased to be in their service, and were ineligible to occupy the premises. In Clause 2(ii), it is emphasized that the provisions should not be resorted to (a) either with a commercial motive, or (b) to secure vacant possession of the premises in order to accommodate their own employees, where the premises were in occupation of the original tenants to whom the premises were let out (i) either by the public authorities, or (ii) by persons from whom the premises were acquired, indicating thereby the predecessors of the public authorities. Clause 2 (iii) of these guidelines is very important. It states on the one hand that it will be open for the public authority to secure periodic revision of rent in terms of the provision of the Rent Control Act in each state, and to move under genuine grounds under the Rent control Act for resuming possession. This Clause on the other hand states that the public authorities would have rights similar to private landlords under the Rent Control Act in dealing with genuine legal tenants. This clause in a way indicates that for resuming possession in certain situations, where the tenants are protected under the State Rent Control Act prior to the Public Premises Act becoming applicable, the public authorities will have to move under the Rent Control Acts on the grounds which are available to the private landlords. Clause 2(iv) seeks to prevent imputations or abuse of discretionary powers in this behalf by stating that there should be no room for allegation that evictions were selectively resorted for the purpose of securing an unwarranted increase in rent or change in tenancy to

benefit particular individuals or institutions. It, therefore, states that the release of premises or change of tenancy should be decided at the level of Board of Directors of Public Sector Undertakings. Clause 2(v) goes further ahead and instructs all public undertakings that they should review all pending cases before the Estate Officer or Courts with reference to these guidelines, and withdraw the proceedings against genuine tenants on grounds otherwise than as provided under the guidelines.

43. The instructions contained in this Resolution are undoubtedly guidelines, and are advisory in character and do not confer any rights on the tenants as held in para 23 of New Insurance Assurance Company Vs. Nusli Neville Wadia reported in 2008 (3) SCC 279. At the same time, the intention behind the guidelines cannot be ignored by the Public Undertakings which are expected to follow the same. When it comes to the interpretation of the provisions of the statute, the guidelines have been referred herein for the limited purpose of indicating the intention in making the statutory provision, since the guidelines are issued to effectuate the statutory provision. The guidelines do throw some light on the intention behind the statute. The guidelines are issued with good intention to stop arbitrary use of the powers under the Public Premises Act. The powers are given to act for specified reasons, and are expected to be used only in justified circumstances and not otherwise. The overall consequence

44. In Ashoka Marketing (supra), this Court was concerned with the premises of two Nationalised Banks and the Life Insurance Corporation. As far as Life Insurance Corporation is concerned, the life insurance business was nationalised under the Life Insurance Corporation Act, 1956. Therefore, as far as the premises of LIC are concerned, they will come under the ambit of the Public Premises Act from 16.9.1958, i.e the date from which the Act is brought into force. As far as Nationalised Banks are concerned, their nationalization is governed by The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, and therefore, the application of Public Premises Act to the premises of the Nationalised Banks will be from the particular date in the year 1970 or thereafter. For any premises to become public premises, the relevant date will be 16.9.1958 or whichever is the later date on which the concerned premises become the public premises as belonging to or taken on lease by LIC or the Nationalised Banks or the concerned General Insurance Companies like the first respondent. All those persons falling within the definition of a tenant occupying the premises prior thereto will not come under the ambit of the Public Premises Act and cannot therefore, be said to be persons in “unauthorised occupation”. Whatever rights such

prior tenants, members of their families or heirs of such tenants or deemed tenants or all of those who fall within the definition of a tenant under the Bombay Rent Act have, are continued under the Maharashtra Rent Control Act, 1999. If possession of their premises is required, that will have to be resorted to by taking steps under the Bombay Rent Act or Maharashtra Rent Control Act, 1999. If person concerned has come in occupation subsequent to such date, then of course the Public Premises Act, 1971 will apply.

45. It is true that Section 15 of the Public Premises Act creates a bar of jurisdiction to entertain suits or proceedings in respect of eviction of any person in an unauthorised occupation. However, as far as the relationship between the respondent No. 1, the other General Insurance Companies, LIC, Nationalised Banks and such other Government Companies or Corporations, on the one hand and their occupants/licencees/tenants on the other hand is concerned, such persons who are in occupation prior to the premises belonging to or taken on lease by such entities, will continue to be governed by the State Rent Control Act for all purposes. The Public Premises Act will apply only to those who come in such occupation after such date. Thus, there is no occasion to have a dual procedure which is ruled out in paragraph 66 of Ashoka Marketing. We must remember that the occupants of these properties were earlier tenants of the erstwhile Insurance Companies which were the private landlords. They have not chosen to be the tenants of the Government Companies. Their status as occupants of the Public Insurance Companies has been thrust upon them by the Public Premises Act.

46. This Court has noted in Banatwala and Co. Vs. LIC reported in 2011 (13) SCC 446 that the Public Premises Act, 1971 is concerned with eviction of unauthorised occupants and recovery of arrears of rent or damages for such unauthorised occupation, and incidental matters specified under the act. As far as the Maharashtra Rent Control Act is concerned, this Court noted in paragraph 25 of that judgment that as per the preamble of the said Act, it is an Act relating to five subjects, namely (i) control of rent, (ii) repairs of certain premises, (iii) eviction, (iv) encouraging the construction of new houses by assuring fair return of investment by the landlord, and (v) matters connected with the purposes mentioned above. In that matter, the Court was concerned with the issue of fixation of standard rent and restoration and maintenance of essential supplies and services by the landlord. It was held that these two subjects were not covered under the Public Premises Act, and infact were covered under the Maharashtra Rent Control Act. Operative para 99(c) of the judgment therefore specifically held as follows:-

> “99 (c) The provisions of the Maharashtra Rent control Act, 1999 shall govern the relationship between the public undertakings and their occupants to the extent this Act covers the other aspects of the relationship between the landlord and tenants, not covered under the Public Premises Act, 1971.”

47. A judgment of a bench of three Judges of this Court in M/s Jain Ink Manufacturing Company v. L.I.C reported in (1980) 4 SCC 435 was relied upon by Mr. Raval. In this matter also a plea was raised on behalf of the appellant tenant for being covered under the Delhi Rent Control Act, 1958 which came to be repelled. Mr. Raval stressed upon the observations in Para 5 of the judgment to the effect that Section 2(g) merely requires occupation of any public premises to initiate the action. Mr. Nariman on the other hand pointed out that in the earlier part of the very paragraph the Court had observed, although after referring to the provision of Punjab Public Premises and Land (Eviction and Rent Recovery), Act 1959 that if the entry into possession had taken place prior to the passing of the act, then obviously the occupant would not be an unauthorized occupant. That apart, Mr. Nariman submitted that the judgment was essentially on the second part of Section 2(g) defining ‘unauthorised occupation’. It is, however, material to note that in that case the premises were owned by LIC from 19.7.1958, i.e. prior to the Delhi Rent Control Act becoming applicable from 9.2.1959. Besides, the issue of protection under a welfare legislation being available to the tenant prior to the premises becoming public premises, and the issue of retrospectivity was not under consideration before the Court. The observations of the Court in that matter will have to be understood in that context.

48. As far as the eviction of unauthorised occupants from public premises is concerned, undoubtedly it is covered under the Public Premises Act, but it is so covered from 16.9.1958, or from the later date when the concerned premises become public premises by virtue of the concerned premises vesting into a Government company or a corporation like LIC or the Nationalised Banks or the General Insurance Companies like the respondent no.1. Thus there are two categories of occupants of these public corporations who get excluded from the coverage of the Act itself. Firstly, those who are in occupation since prior to 16.9.1958, i.e. prior to the Act becoming applicable, are clearly outside the coverage of the Act. Secondly, those who come in occupation, thereafter, but prior to the date of the concerned premises belonging to a Government Corporation or a Company, and are covered under a protective provision of the State Rent Act, like the appellant herein, also get excluded. Until such date, the Bombay Rent Act and its successor Maharashtra Rent Control Act will continue to govern the relationship

between the occupants of such premises on the one hand, and such government companies and corporations on the other. Hence, with respect to such occupants it will not be open to such companies or corporations to issue notices, and to proceed against such occupants under the Public Premises Act, and such proceedings will be void and illegal. Similarly, it will be open for such occupants of these premises to seek declaration of their status, and other rights such as transmission of the tenancy to the legal heirs etc. under the Bombay Rent Act or its successor Maharashtra Rent Control Act, and also to seek protective reliefs in the nature of injunctions against unjustified actions or orders of eviction if so passed, by approaching the forum provided under the State Act which alone will have the jurisdiction to entertain such proceedings.

49. Learned senior counsel for the respondents Mr. Raval submitted that the judgment of the Constitution Bench in Ashoka Marketing had clarified the legal position with respect to the relationship between the Public Premises Act and the Rent Control Act. However, as noted above, the issue concerning retrospective application of the Public Premises Act was not placed for the consideration of the Court, and naturally it has not been gone into it. It was submitted by Mr. Raval that for maintenance of judicial discipline this bench ought to refer the issue involved in the present matter to a bench of three Judges, and thereafter that bench should refer it to a bench of five Judges. He relied upon the judgment of this Court in the case of Pradip Chandra Parija Vs. Pramod Chandra reported in 2002 (1) SCC 1 in this behalf. He also referred to a judgment of this Court in Sundarjas Kanyalal Bhatija Vs. Collector, Thane, Maharashtra and Ors. reported in 1989 (3) SCC 396 and particularly paragraph 18 thereof for that purpose. What is however, material to note is that this paragraph also permits discretion to be exercised when there is no declared position in law. The Bombay Rent Act exempted from its application only the premises belonging to the government or a local authority. The premises belonging to the Government Companies or Statutory Corporations were however covered under the Bombay Rent Act. This position was altered from 16.9.1958 when the Public Premises (Eviction of Unauthorised Occupation) Act, 1958 came in force which applied thereafter to the Government Companies and Statutory Corporations, and that position has been reiterated under the Public Premises Act of 1971 which replaced the 1958 Act. Under these Acts of 1958 and 1971, the Premises belonging to the Government Companies or Statutory Corporations are declared to be Public Premises. Thus, the Parliament took away these premises from the coverage of the Bombay Rent Act under Article 254(1) of the Constitution of India. This was, however, in the matter of the subjects covered under the Public Premises Act, viz. eviction of unauthorised occupants and

recovery of arrears of rent etc. as stated above. Thereafter, if the State Legislature wanted to cover these subjects viz. a viz. the premises of the Government Companies and Public Corporations under the Maharashtra Rent Control Act, 1999, it had to specifically state that notwithstanding anything in the Public Premises Act of 1971, the Government Companies and Public Corporations would be covered under the Maharashtra Rent Control Act, 1999. If that was so done, and if the President was to give assent to such a legislation, then the Government Companies and Public Corporation would have continued to be covered under the Maharashtra Rent Control Act, 1999 in view of the provision of Article 254(2). That has not happened. Thus, the Government Companies and Public Corporations are taken out of the coverage of the Bombay Rent Act, and they are covered under Public Premises Act, 1971, though from the date specified therein i.e. 16.9.1958. After that date, the Government Companies and Public Corporations will be entitled to claim the application of the Public Premises Act, 1971 (and not of the Bombay Rent Act or its successor Maharashtra Rent Control Act, 1999), but from the date on which premises belong to these companies or corporations and with respect to the subjects specified under the Public Premises Act. In that also the public companies and corporations are expected to follow the earlier mentioned guidelines.

50. We have not for a moment taken any position different from the propositions in Ashoka Marketing. We are infact in agreement therewith, and we are not accepting the submission of Mr. Nariman, that only contractual tenancies were sought to be covered under that judgment, and not statutory tenancies. Tenancies of both kinds will be covered by that judgment, and they will be covered under the Public Premises Act for the subjects specified therein. The only issue is with effect from which date. That aspect was not canvassed at all before the Constitution Bench, and that is the only aspect which is being clarified by this judgment. We are only clarifying that the application of the Public Premises Act will be only from 16.9.1958, or from such later date when concerned premises become Public Premises on the concerned landlord becoming a Government Company or Public Corporation. When the law laid down by the different Benches of this Court including by the Constitution Benches on retrospectivity is so clear, and so are the provisions of the Public Premises Act, there is no occasion for this Court to take any other view. When this judgment is only clarifying and advancing the proposition laid down in Ashoka Marketing, there is no reason for us to accept the objections raised by Mr. Raval, that the issues raised in this matter should not be decided by this bench but ought to be referred to a larger bench.

51. In this context we may note that since the issue of retrospective application of the Public Premises Act, to tenancies entered into before 16.9.1958, or before the property in question becoming a public premises, was neither canvassed nor considered by the bench in Ashoka Marketing (supra), the decision does not, in any way, prevent this Bench from clarifying the law regarding the same. This follows from the judgment of the Supreme Court in State of Haryana Vs. Ranbir @ Rana reported in (2006) 5 SCC 167 wherein it was held that a decision, it is well-settled, is an authority for what it decides and not what can logically be deduced therefrom. The following observations of this court from paragraph 39 of Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd. reported in AIR1993 SC 43 are also pertinent:

> "The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings.
>
> (emphasis supplied)
>
> It is clear from a reading of the very first paragraph of Ashoka Marketing that the question before it was 'whether the provisions of the Public Premises Act would override the provisions of the Rent Control Act in relation to premises which fall within the ambit of both the enactments.' The Court answered this in the affirmative, and we respectfully agree with the same. However, Ashoka Marketing (supra) can not be said to be an authority on the retrospective application of the Public Premises Act, or where the premises fall within the ambit of only one act, as that issue was not before the Court.

52. For the reasons stated above, we allow this appeal and set- aside the impugned judgment and order dated 7.6.2010 rendered by the High Court of Bombay in Writ Petition No. 2473 of 1996. The said Writ Petition shall stand allowed, and the judgment and order dated 17.1.1996 passed by the City Civil Court, Mumbai, as well as the eviction order dated 28.5.1993 passed by the respondent No. 2 against the appellant will stand set aside. The proceedings for eviction from premises, and

for recovery of rent and damages initiated by the first respondent against the appellant under the Public Premises Act, 1971, are held to be bad in law, and shall therefore stand dismissed. We however, make it clear, that in case the respondents intend to take any steps for that purpose, it will be open to them to resort to the remedy available under the Maharashtra Rent Control Act, 1999, provided they make out a case therefor. The parties will bear their own costs.