

CALCUTTA HIGH COURT

Surya Properties Private Ltd

Vs

Bimalendu Nath Sarkar

(H Bose, C.J. R Bachawat and D Sinha, JJ. P Mookerjee and G Mitter , JJ.)

19.06.1963

JUDGMENT

Bose, C.J.

1. This reference arises out of a suit for ejectment brought by a landlord against the tenant on the ground that the tenant had constructed without the consent of the landlord a brick built room on the roof of the tenanted premises and had thereby done an act contrary to the provisions of Clause (p) of Section 108 of the Transfer of Property Act. It is alleged in the plaint that the tenancy was terminated by a notice dated 18th July, 1956, calling upon the defendant to give up possession on the expiry of the last day of August 1956. The defence set up in the written statement is that a small temporary tin shed was constructed on the roof upon the existing walls with the consent of the plaintiff and on an increment of rent of 5%. The defendant further challenges the validity and sufficiency of the notice of termination of the tenancy and also pleads that the said notice dated 18th July, 1956, was waived and/or withdrawn by a subsequent notice to quit dated 24th August, 1956, expiring with the end of September, 1956. At the hearing of the suit before the Court of Small Causes Calcutta, the following issues were raised:-

"1. Has the defendant erected upon the premises in suit by permanent structure within the meaning of Clause (p) of Section 108 of the Transfer of Property Act without the consent of the plaintiff company? If so, has the plaintiff company given its subsequent consent to such erection by increasing rent?

2. Has the notice of ejectment dated 18th July, 1956, been served upon the defendant determining the tenancy in suit? If so, does the notice stand waived and withdrawn by notice dated 24th August, 1956?

3. What relief, if any, is the plaintiff company entitled to?

2. The learned trial Judge answered the first issue by holding that a small room with 3" brick walls covered by corrugated iron sheets could not be considered as a permanent structure as it could easily be removed at any time. With regard to the second issue the learned Judge held that two notices had been served on the defendant but the first was one of termination of tenancy under Section 106 of the T.P. Act and the second was a notice as contemplated under Section 13(6) of the West Bengal Premises Tenancy Act, but the second notice was not a notice of ejectment and therefore there was no waiver of the first notice by the second. In view, however, of the finding on the first issue it was held that the plaintiff was not entitled to any relief in the suit. An appeal was preferred against the decree of the trial Court to this Court and the learned Judges of the Division Bench before whom this appeal came up for hearing felt that the question arising for determination were of considerable importance and they made a requisition to me under proviso (ii) Rule 1, Chapter II of the Appellate Side Rules for consideration of two questions by a Special Division Bench. The questions so referred are as follows: -

"(1) What is a permanent structure for purposes of Clause (p) of Section 108 of the Transfer of Property Act? What, if any, are the tests for holding whether a particular structure falls within the mischief of the above clause? Whether a room with "two inches thick brick built walls and a corrugated iron sheet roof" is a permanent structure within the meaning of the aforesaid statutory provision?

(2) What notice is contemplated under Section 13 (6) of the West Bengal Premises Tenancy Act, 1956? Is it a notice to quit or a notice of suit or a combined notice, to answer both the above purposes? Is it a notice, required in addition to a notice under Section 106 of the Transfer of Property Act or a notice in lieu of it? What, if any, are its necessary elements or contents? Is it necessary to mention in it the ground or grounds of ejectment under the aforesaid Act, on which the suit is to be brought? Or, in other words, need it be a notice of such grounds?"

3. The second question which has raised problems of no little difficulty may be dealt with first. This second question is composed of several parts and the first matter to be considered is whether a notice contemplated in Section 13 (6) of the West Bengal Premises Tenancy Act, 1956 is a notice to quit or a notice of suit or it is a combined notice to answer both the above purposes. It is, therefore, essential to set out the text of Section 13 (6) which is as follows:-

"Notwithstanding anything in any other law for the time being in force, no suit or proceeding for the recovery of possession of any premises on any of the grounds mentioned in Sub-section (i) except the grounds mentioned in Clauses (j) and (k) of that sub-section shall be filed by the landlord unless he has given to the tenant one month's notice expiring with a month of the tenancy."

4. Relying on the non-obstante clause occurring in the section and on the permanent character of the Statute it is argued on behalf of the appellants that the notice under Sub-section (6) of Section 13 is a notice to quit and it has replaced Section 106 of the Transfer of Property Act in the sense that in respect of all leases or tenancies whether for manufacturing purposes or for any other purposes one month's notice expiring with a month of the tenancy is prescribed. In support of the argument that the notice is a notice to quit, stress is laid on the expressions "tenant" and "notice expiring with the month of the tenancy", and it is pointed out that the fact that the notice is required to be given to one who is a "tenant" under the Act and the period of the notice is to expire "with a month of the tenancy" which is the normal expression used for determining monthly tenancies, is clear indication that notice under Section 13 (6) is a notice to quit. But it is to be pointed out that this argument overlooks the fact that a "tenant" as denned in Section 2 (h) of the West Bengal Premises Tenancy Act, 1956, includes all classes of tenants -- contractual and statutory, holding tenancies for manufacturing or other purposes and also tenants for fixed periods and it is well-known that the tenancies for manufacturing purposes, in the absence of any contract or local law or usage to the contrary are according to the rule of construction laid down in Section 106 of the Transfer of Property Act deemed to be leases from year to year terminable by six months' notice expiring with the end of a year of the tenancy. So the expression occurring in Section 13 (6), namely, "one month's notice expiring with a month of the tenancy" is not an appropriate expression for determining tenancy from year to year which is terminable by notice expiring with a year of the tenancy. To get rid of this difficulty it is argued that an annual tenancy has also a month and as laid down in the case reported in *Indian Iron and Steel Co., Ltd. v. Baker Ali*, 64 Cal WN 641 : (AIR 1959 Cal 515) (SB) in construing Section 9 (1) (b) (iii) of the West Bengal Non-Agricultural Tenancy Act, 1949, "a year of the tenancy" means a year or a period of twelve months according to the calendar of the particular tenancy starting with its date of commencement or any anniversary thereof, so manufacturing leases can be terminated by a month's notice expiring with a month of the tenancy. But it is to be noted that the wordings of Section 9 (1) (b) (iii) were such that on the language of the statute it was not possible to come to any other conclusion for giving effect to the provisions of the said Act. So a forced construction was adopted and if such a construction was not adopted, the provisions would be meaningless and unworkable. So the construction which was put on the wordings of Section 9 (1) (b) (iii) cannot be regarded as a general rule of construction which can be invoked for the purpose of interpretation of the wordings of Section 13 (6) of the West Bengal Premises Tenancy Act 1956. It is clear that Section 13 (6) was not intended for determining leases for manufacturing purposes. Moreover, to adopt the construction suggested will also play havoc on leases granted for fixed periods. Such leases are terminable under the provisions of Section in of the Transfer of Property Act. To hold that all leases for fixed periods can be determined by one month's notice expiring with a month of the tenancy will be something contrary to reason and commonsense.

The upshot of all these is that the wordings of Section 13 (6) are not appropriate for termination of leases for manufacturing purposes or leases for fixed periods. Such leases have to be terminated in terms of provisions of Section, in read with Section 106 of the Transfer of Property Act. Then again the language of Section 13 (6) is that "no suit or proceeding for recovery of possession shall be filed unless notice as required is given". This indicates that this provision constitutes a bar to the filing or institution of a suit or proceeding for recovery of possession. The expressions "notice to quit" or "notice to determine a lease" which are expressions well-known to the legislature have been carefully avoided in Section 13 (6) although such expression occurs in Clause (j) of Section 13 (1) and in Section 23 of the Act. So it is reasonable to suppose that the notice under Section 13 (6) was not intended to be a notice to quit. Prior to the tenancy control legislation the law was clear that the contractual tenancies had to be determined in the manner indicated in Section 111 read with Section 106 of the Transfer of Property Act before a suit for ejectment could be filed. But in respect of statutory tenants who came under the protection of the tenancy control legislation, no such notice to quit was necessary as a condition precedent for filing a suit for ejectment. So there is no reason to think that the legislature by enacting Section 13 (6) would bring about a drastic change in the law so as to abrogate Sections in and 106 altogether. For all these reasons it must be held that the notice contemplated in Section 13 (6) is one which though partaking of the nature of a notice of suit and of a notice to quit is essentially a notice of suit and it must also be held that such notice is required to be given in addition to the notice contemplated in Section 106 in cases where Section 106 is attracted; but in cases where contractual tenancies had been determined under Section 106 or in of the Transfer of Property Act and the tenant continues in possession after the termination of the tenancy and in case of other tenants who come within the purview of Section 2 (h) of the West Bengal Premises Tenancy Act, 1956, the only notice required for filing a suit for ejectment or possession is that under Section 13 (6) of the Act. Attention of the Court has been drawn to Section 19 of the Act and it is argued that just as Sub-section (2) of that section enables a tenant to give up possession on giving not less than one month's notice where there is no contract so Section 13 (6) provides a counterpart and enables the landlord to put an end to the tenancy by one month's notice. So both these sections contemplate cases of notices to quit. But it is to be pointed out that merely because Section 19 (2) confers a special privilege on the tenant does not necessarily indicate or predicate that a corresponding privilege is guaranteed to the landlord and the right of the tenant to get a longer notice under Section 106 T.P. Act in case of manufacturing leases is curtailed or taken away. Now the further question that arises is whether in the case of leases for manufacturing purposes it is at all possible to comply with the requirement of Section 13(6) in so far as it enjoins the giving of a month's notice expiring with a month of the tenancy. It appears to me that the answer should be in the affirmative. The expression "month of the tenancy" also finds place in Section 12 of the Act and fair rent is payable with reference to a particular "month of the

tenancy". So Section 12 postulates that in respect of all tenancies governed by the Act there is a month of the tenancy and such a conception is possible. So there is no difficulty in giving one month's notice expiring with a month of the tenancy in cases of leases for manufacturing purposes, and in this view of the matter it may be possible in appropriate cases to combine the notice to quit and the notice of suit contemplated in Section 13 (6) in one document in such manners as to make the one month's notice expire with the expiration of the year of the tenancy in case of manufacturing leases and in case of other tenancies with the month of the tenancy.

5. I now propose to consider the other material part of the second question, namely, what, if any, are the necessary elements or contents of a notice under Section 13 (6) and is it necessary to mention in it the ground or grounds of ejectment under the Act.

6. Section 13 (6) does not state expressly that grounds of ejectment have to be stated in the notice. If it was open to the tenant under any of the provisions of the Act to remedy any breaches of the provisions in Section 13 (1) of the Act it could very well be urged that the notice under Section 13 (6) is to state the grounds to apprise the tenants of the breaches complained of and for giving him an opportunity to remedy such breaches. The only specific provisions in the West Bengal Premises Tenancy Act, 1956, which is akin to Section 114-A of the Transfer of Property Act and Section 156 of the Bengal Tenancy Act is Section 34 (4) of the Act of 1956. But according to the terms of this Sub-section (4) of Section 34 if the tenant who is under the conditions of the tenancy bound to make any repairs fails to make any such repair and even if after a notice as contemplated in that sub-section is served upon him requiring him to make the repairs within the time specified in the notice or as allowed by the Controller, such repairs are not effected the landlord is given a right notwithstanding anything contained in this Act or in any contract to sue the tenant for recovery of possession of the premises. The Sub-section (4) of Section 34 is a self-contained section and to suits brought in terms of that section the provisions of Section 13 (6) have no application. In a notice under Section 80 of the Code of Civil Procedure stating of the cause of action in the notice is expressly enjoined by the section itself. There is no such provision in Section 13 (6). It is well-known that in respect of notices to quit it is not necessary to state the grounds. It has been argued with reference to Section 23 of the Act that the concluding portion of the said section gives an indication that a notice to quit is to contain the grounds of ejectment referred to in Section 13 (1) of the Act. The relevant portion on which reliance is placed is as follows: -

"Nor shall it operate as a waiver of any notice to quit given by him to the tenant except a notice on the ground of default referred to in Clause (i) of Sub-section (1) of Section 13."

The emphasis is laid on the words "except a notice on the ground of default" and it is suggested that this shows that a notice must specify the grounds and, therefore, as the notice contemplated

in Section 13 (6) is a notice to quit it must also contain the grounds of ejection upon which a suit is brought. But as pointed out already the notice contemplated in Section 13 (6) is not a notice to quit. Furthermore, there is nothing to indicate in Section 23 that the notice to quit on the ground of default must itself contain such ground. It is possible to conceive of a notice to quit which does not itself specify the ground of default but is referable to the ground of default. If from other correspondence passing between the parties or from surrounding circumstances it appears that the notice to quit which was given is referable to the ground of default, that is sufficient. It is not essential to state the ground of default in the notice to quit as contemplated in Section 23. It was further suggested that the notice under Section 13 (6) should contain the grounds in order to give an opportunity to the tenant to decide whether he will resist the claim or vacate the premises in his possession before any suit is filed and costs are incurred. It may be pointed out that this may be a desirable state of affairs but there is nothing in Section 13 (6) which makes the slating of the grounds in the notice imperative, I, therefore, hold that it is not necessary in a notice under Section 13 (6) to state the grounds of ejection upon which the suit is brought.

7. With regard to the form in which such notice is to be given it may be pointed out that as no particular form is prescribed for such a notice, it need not be in any particular or prescribed form.

8. A large number of decisions were cited at the hearing but I do not think it necessary to deal with them for the purpose of disposal of the matter before us.

9. I shall now take up the first question for consideration. The question whether a particular construction is a permanent structure or not is a question which depends on the facts of each case and on the nature and extent of the particular construction and the intention or purpose for which the construction is made may also be a relevant consideration in certain circumstances, but no hard and fast rule can be laid down with regard to this matter. (See *Atul Chandra Lahiri v. Sonatan Daw*, . In the present case only certain questions have been referred and the entire case or the facts thereof are not before us. So it is not possible for us to give any answer to the question "whether a room with 2" thick brick built walls and a corrugated iron sheet roof is a permanent structure within the meaning of Clause (p) of Section 108 of the Transfer of Property Act."

10. In the result, I answer the questions which have been referred as follows: -

Question No. 1.

What is a permanent structure for the purpose of Clause (p) of Section 108 of the Transfer of Property Act? What, if any are the tests for holding whether a particular structure falls within the

mischief of the above clause? Whether a room with two inches thick brick built walls and a corrugated iron sheet roof is a permanent structure within the meaning of the aforesaid statutory provision ?

Answer.

The question whether a particular construction is a permanent structure or not, depends on the facts of each case and no hard and fast rule can be laid down with regard to this matter. In the absence of relevant materials, no answer can be given to the question whether a room with two inches thick brick built walls and a corrugated iron roof, is a permanent structure within the meaning of Clause (p) of Section 108 of the Transfer of Property Act.

Question No. 2.

What notice is contemplated under Section 13 (6) of the West Bengal Premises Tenancy Act, 1956 ? Is it a notice to quit or a notice of suit or a combined notice to answer both the above purposes? Is it a notice, required in addition to a notice under Section 106 of the Transfer of Property Act or a notice in lieu of it ? What, if any, are its necessary elements or contents ? Is it necessary to mention in it the ground or grounds of ejection under the aforesaid Act, on which the suit is to be brought ? Or, in other words, need it be a notice of such grounds?

Answer.

A notice as contemplated under Section 13 (8) is essentially a notice of suit. Where it was necessary to serve a notice to quit under Section 106 of the Transfer of Property Act, it is still necessary to serve it. A notice under Section 13 (6) may be combined with a notice under Section 106 but the period of such combined notice shall not be less than a month expiring with a month of the tenancy. There is no prescribed form of such a notice. It is not necessary to mention in a notice under Section 13 (6) the ground or grounds of ejection for which a suit is to be instituted for recovery of possession. There is, however, nothing to prevent the landlord from setting out such ground in the notice. The notice, however, will not be a notice of such grounds.

11. Appeal No. 101 of 1961 and Appeal No. 102 of 1961. The judgment delivered today in Appeal No. 444 of 1961 will govern these two appeals and the answer given to the second question in the Reference in the said appeal will be the answer to the question which is the subject matter of Reference in these two appeals.

12. In accordance with the opinion of the majority, the answers to the questions will be the answers given in my judgment.

13. There will be no order as to costs in these References.

14. The cases will now go back to the appropriate Division Bench dealing with such matters.

Bachawat, J.

15. With regard to the first question referred in F. A. No. 444 of 1961 I think that no hard and fast test can be laid down for deter-

mining whether a particular structure is a permanent structure for purposes of Clause (p) of Section 108 of the Transfer of Property Act. The nature and situs of the structure, the mode of annexation, the intention of the tenant and the surrounding circumstances must all be taken into account for the purpose of determining whether or not a particular structure including a room with 3 inches thick brick-built walls and corrugated iron sheet roof is a permanent structure for the purposes aforesaid. The first question should be answered accordingly.

16. The second question in F. A. No. 444 of 1961 which is also the question in F.A. Nos. 101 and 102 of 1961 relates to the notice to be given under Section 13 (6) of the West Bengal Premises Tenancy Act. The notice under Section 13 (6) is a condition precedent to the right of the landlord to file a suit or proceeding for recovery of possession of the premises on any of the grounds mentioned in Section 13 (1) except Section 13 (1) (j) and (k). The collocation of words in Section, 13 (6) links up the notice with the suit or proceeding. The notice sufficiently complies with the requirement of Section 13 (6), if, by express words or necessary intendment, it conveys to the tenant presumably conversant with the facts and circumstances of the case the information that the landlord intends to file a suit or proceeding for recovery of possession of the premises on any of those grounds on the expiry of the period of the notice. A notice which gives this information is sufficient and it is not necessary that the notice should mention the particular ground or grounds on which the suit or proceeding will be instituted.

17. The notice under Section 13 (6) must expire with a month of the tenancy; nevertheless this notice is not a notice to quit, it is not a notice in lieu or in place of the notice under Section 106 of the Transfer of Property Act and where the latter notice is necessary for the determination of a lease, such notice must still be given. With respect I cannot agree with the contrary view expressed in *Murlidhar Garodia v. Purushottam Lal Jain*, . Section 13 (6) does not provide for a mode of determination of a contractual tenancy and it has not abrogated Sections 106 and in of the Transfer of Property Act. The requirement of the special notice of suit under Section 13 (6) is superimposed upon the requirement of the general law that in order to enable the lessor to maintain a suit for recovery of possession of the demised premises, the lessor must establish that the lease has been determined by one of the modes prescribed by Section in. Unless the lease is

so determined, the possession of the lessee is protected by the subsisting lease, and the lessor has no cause of action for recovery of possession of the premises. Section 106 lays down a rule of construction of a lease of an indefinite period see *Ram Chandra Das v. Jagadish Chandra Das*, (26) and in the absence of a contract or local law or usage to the contrary, the duration of the lease and the length of the notice necessary for its determination is fixed by reference to the purpose for which it is created and it is an implied term of the lease that it is terminable by a notice to quit or of intention to quit given in accordance with Section 106 read with Section 19 (h). Save as modified by Section 19 (2) or some other provision of the Special Act this implied term is preserved by Section 19 (1). Section 13 (6) does not affect this implied term and the landlord wishing to determine a lease for manufacturing purposes is still obliged to give six months' notice expiring with the year of the tenancy in accordance with Section 106. The notice to quit under Section 106 is required for determination of a contractual tenancy of an indefinite period, whereas the notice of suit under Section 13 (6) is required to enable the landlord to maintain a suit for eviction of all classes of tenants, whether contractual or statutory or created by statute. The two notices are required for different purposes, the form and mode of service is prescribed for one, and not for the other; but as the two notices may be made to expire simultaneously, they may be effectively given by a single document, see *V.R. Verma v. Mohan Kumar Mukherjee*, .

18. I must now refer to Section 23 which provides inter alia that the withdrawal by the landlord of rents deposited with the Rent Controller would not operate as a waiver "of any notice to quit given by him to the tenant except a notice on the ground of default referred to in Clause (1) of Sub-section (1) of Section 13". Now the words "notice to quit" in Section 23 mean a notice to quit in the technical sense, i. e., a notice to quit under Section 106 of the Transfer of Property Act. The legislative history confirms this conclusion. The identical words in the corresponding Section 21 of the West Bengal Premises Rent Control (Temporary Provisions) Act 1950 and in Section 21 of the West Bengal Premises Rent Control (Temporary Provisions) Act 1948, could be given this meaning only. The excepted "notice on the ground of default referred in Clause (1) of Sub-section (1) of Section 13" must also be a notice to quit in the technical sense, for an exception takes out something which is otherwise included in the main part. It follows that the above mentioned provision of Section 23 concerns wholly a notice to quit in the technical sense. Since the notice under Section 13 (6) is not a notice to quit, Section 23 throws no light on its contents and does not establish that the landlord is obliged to state in it the particular ground or grounds on which the suit for ejection will be instituted. A question has been raised whether in view of Section 23, a notice to quit in the technical sense must now state the grounds of ejection, but that question is beyond the scope of this reference and ought not to be answered by this Bench.

19. Question No. 2 of F.A. No. 444 of 1961 which is the common question in all the appeals should be answered as follows: -

20. The notice under Section 13 (6) is a notice of suit or proceeding. The notice sufficiently complies with the requirement of Section 13 (6), if, by express words or necessary intendment, it conveys to the tenant conversant with the facts and circumstances of the case the information that the landlord intends to file a suit or proceeding for recovery of possession of the premises on any of the grounds mentioned in Section 13 (i) except Section 13 (i) (j) and (k) on the expiry of the period of the notice. A notice which gives this information is sufficient and it is not necessary that the notice should mention the particular ground or grounds on which the suit or proceeding will be instituted.

21. The notice under Section 13 (6) is not a notice to quit, it is not a notice in lieu or in place of the notice under Section 106 of the Transfer or Property Act and where the latter notice is necessary for the determination of a lease, such notice must still be given; but the two notices may be effectively given by a single document.

Sinha, J.

22. These three appeals have been argued together and involve common questions of law. The appeals came up before a Division Bench of this High Court and the learned Judges hearing the appeals have referred certain questions to a larger Bench, for the determination of which this special Bench has been constituted. The common questions that have been referred are as follows: -

"What notice is contemplated under Section 13 (6) of the West Bengal Premises Tenancy Act, 1956? Is it a notice to quit or a notice of suit or a combined notice to answer both the above purposes. Is it a notice, required in addition to a notice under Section 106 of the Transfer of Property Act or a notice in lieu of it? What, if any, are its necessary elements or contents? Is it necessary to mention in it the ground or grounds of ejection under the aforesaid Act, on which the suit is to be brought? Or, in other words, need it be a notice on such grounds?"

Besides the above question, a special question arises in Appeal No. 444 of 1961 which I shall mention later on. The facts have been indicated in the judgment of my Lord the Chief Justice and I need not repeat them. I shall only deal with the questions of law as propounded by the referring Bench. Before dealing with the specific provision which we are called upon to interpret, I might mention that the Act in which it finds place is one of a series of rent Control legislation which have been inspired by the English Rent Acts, said to be deplorable in their complexity, bewildering alike to those whose task is to interpret them as well to those whose lot they are

intended to ameliorate. They are generally passed in a hurry, suffer constant emasculations, and the language used is vague, uncertain and constitutes a prolific source of litigation. Speaking about this kind of legislation, Lord Goddard, C. J. observes in *Little Child v. Holt*, (1949) LJR 1299 that -- "The number of new questions which can arise under the Rent Restriction Acts seems infinite". Greer L. J., in *John Lovibond and Sons Ltd. v. Vincent*, (1929) 1 KB 687 complains that -- "There seems to be no end to the conundrums suggested by the Rent Restriction Acts." Lord Hewart, C.J., says -- "It is deplorable that

a Court, and still more a private individual

should have to make some sort of path through the labyrinth and jungle of these sections and schedules." Rowlatt, J., in *Williams v. B. M. S. Coal Co., Ltd.*, 40 TLR 688 points out that the Rent Control Acts are "arbitrary legislation which have no connexion with, any branch of jurisprudence." "Not the least of the difficulties in the Acts", says Megarry in his book on the English Rent Acts, "Is that in solving one problem, a decision so often opens up fresh fields and pasture new. What for Litigant A is the terminus ad quem is so frequently for Litigants B, C and D, the point of departure." Lord Justice MacKinnon complains about -- "the almost insuperable difficulty of applying the obscure and complicated provisions of that welter of chaotic verbiage which may be cited together as the Rent and Mortgage (Interest) Restrictions Acts, 1920 to 1939." Learned Judges who have had the misfortune of dealing with this vexed branch of the law have complained that the difficulty in these "prolific parents of litigation" lies in the "infinite variety of the circumstances to which the provisions of the statutes have had to be applied." Megarry points out that laws controlling rent have a longer history and more widespread operation than was generally realised. In Europe, it started with the edicts of the Pope. They came into real prominence during and after, the World War No. 1. By the end of the War of 1914-1918, many countries had enacted provisions controlling rent, and by 1950 some 150 countries had adopted such laws. In England, rent control began in 1915, with the Increase of Rent and Mortgage Interest (War Restrictions) Act of 1915. Since then, other Acts have been passed from time to time in order to control the increase of rents due to shortage of houses. The most well-known is the Increase of Rent and Mortgage Interest (Restrictions) Act of 1920. These Acts are more or less confined to residential premises, and are temporary Acts which may be terminated by an Order in council. In India, the Rent Control Acts originated after the First World War. In Bengal, it started with the Calcutta Rent Act of 1920 which was an Act promulgated in order to restrict temporarily the increase of rents in Calcutta. It was framed on the model of the English Act of 1920. Under Section IT of the said Act, it was provided that notwithstanding anything contained in the Transfer of Property Act, 1882, the Presidency Small Cause Courts Act, 1882 or the Indian Contract Act, 1872 no order or decree for the recovery of possession of any premises shall be made so long as the tenant pays rent to the full extent

allowable by the said Acts and performs the condition of his tenancy. It was provided however that this protection was not available where the tenant had done any act contrary to the provisions of Clause (m) Clause (o) or Clause (p) of Section 108 of the Transfer of Property Act, or has been guilty of conduct which was a nuisance or an annoyance to the landlord or the neighbouring occupiers, or where the premises were bona fide required by the landlord, either for the purpose of building or re-building, or for his own occupation, or for the occupation of any persons for whose benefit the premises were held, or where the landlord could show any cause which might be deemed satisfactory by the Court. Under the said Act, the word "landlord" meant any person who was entitled to receive rent in respect of any premises, and the word "tenant" meant any person by whom or on whose account rent was payable for such premises. The Act was several times amended and the operation extended, until it died a natural death in March, 1927. The next important legislation came into existence after the Second World War, namely, the Bengal House Rent Control Order of 1942 which was promulgated under the Defence of India Rules. It extended to the whole of the province of Bengal excluding Calcutta. It was promulgated to meet the situation arising out of the war emergency and to check rack-renting and certain provisions of the old Calcutta Rent Act of 1920 were repeated, almost word for word. There was a similar provision protecting the tenant from eviction namely, para 10. In other words, no order or decree for recovery of possession could be obtained against the tenant who paid his rent to the full extent allowable by the order and performed his conditions of tenancy. This protection was, however, not available if grounds existed similar to those enumerated in the Act of 1920. While the definition of the word "landlord" was the same in the Act of 1920, the word "tenant" was defined to mean any person by whom or on whose account rent was payable for a house, and included a person continuing in possession after the termination of the tenancy in his favour. This introduced the conception of a 'statutory tenant', of whom more will be heard presently. This was followed by a similar legislation namely, the Calcutta House Rent Control Order, 1943 which was also promulgated under the Defence of India Rules. Para 9 corresponded with para 10 of the Bengal House Rent Control Order, 1942. This was followed by the Calcutta Rent Ordinance, 1946 and the West Bengal Premises Rent Control (Temporary Provisions) Act of 1948. In all these Acts and Ordinances, the word "tenant" continued to be defined in the same way. The 1948 Act was also a temporary Act, but its provisions were more elaborate than before. There were provisions for restrictions on the increase of rent, on the payment of premium, salami, or fine, and restriction on the filing of ejectment suits or obtaining orders or decrees for the eviction of a tenant. It also introduced measures for compelling landlords to maintain essential services. The 1948 Act was followed by the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950. This was also a temporary Act. This Act replaced the 1948 Act with some additions and modifications. I have already mentioned that upto now the legislation was temporary. In England, the Rent Control Acts have always been temporary and no permanent Act has yet been brought

into existence. Megarry points out however, that although at first the Rent Acts were regarded as mere emergency legislation, latterly they have been recognised as forming a more enduring part of the present social structure, "deplorable in their complexity, yet affecting the lives of millions". Norton v. White, (1949) 2 KB 87 at p. 97. I have also mentioned that the Indian Law is based on the English model. It is admitted on all hands that the English Rent Acts were passed in a hurry. The language used is often vague and in some cases it appears that the draftsman had deliberately avoided technical expressions, and used language which resembled popular journalism rather than the terms of art, with which statutes are usually framed. They form a patchwork of legislation and in interpreting the provisions, the Courts have endeavoured to place a reasonable or common-sense interpretation upon a statute, rather than a literal one, which would defeat its object. Remon v. City of London Real Property Co. Ltd., (1921) 1 KB 49 at p. 55. A certain amount of common sense has to be brought to the consideration of these Acts -- Curl v. Angelo, (1948) 2 All ER 189 at p. 190. It must also be remembered that the Rent Acts are for the protection of tenants, but not for penalising the landlord --Cumming v. Damson, (1942) 112 LJKB 145 at p. 146. In Barrett v. Hardy Bros, (1925) 2 KB 220, Banks, L. J., said as follows:-

"..... in the attempt to stop obvious holes through which a landlord might escape from the clutches of the statute, a chasm has been opened in which even a house in Pall Mall may be engulfed, and opportunities given to unscrupulous tenants to evade quite legitimate obligations." Speaking about the interpretation of such statutes, Lord Justice Denning stated in Seaford v. Asher, (1949) 2 KB 481 that "a Judge must not alter the material on which it is woven, but he can and should iron out the creases." The Indian Acts, which are based on the English model have almost surpassed their foreign counterparts as regards the complexity of their content, inapt language and the conflicts that inevitably arise when the law is altered in a hurry to meet rapidly changing circumstances. The admonitions made by English Judges who have had the misfortune to deal with this troublesome branch of the law should constantly be borne in mind, particularly their advice" that in construing Rent Restriction Acts, we should not be too literal or pedantic, but should give a common-sense interpretation which was likely to advance the objects with which the Acts were promulgated, rather than that which retards them. In West Bengal, it was felt in 1956 that the time had come to promulgate a permanent Act for the protection of tenants. It is with this object that the West Bengal Premises Tenancy Act, 1956 was promulgated as a permanent Act. The preamble to the Act is important and states that it is an Act to provide for the regulation of "certain incidences of tenancy of premises in Calcutta and some other areas in West Bengal". This must be carefully kept in mind because much of the arguments advanced before us seem to be on the footing that the Act was a complete code governing the relationship of landlord and tenant in West Bengal.

23. We are called upon in this case to construe Section 13 (6) of this Act. In order to do so, it will be necessary to look at several provisions contained in the Act, which I shall now proceed to enumerate. The first thing to be considered is the definition of the word "tenant" which is contained in Clause (h) of Section 2 and which runs as follows:-

"A tenant includes any person by whom or on whose account or behalf, the rent of any premises is, or but for a special contract would be payable and also any person continuing in possession after the termination of his tenancy but shall not include any person against whom any decree or order for eviction has been made by a Court of competent jurisdiction."

24. This definition includes three kinds of tenancies. The first kind is the usual tenancy under a contract, express or implied, between the landlord and tenant. This kind of tenancy is governed by the Transfer of Property Act, 1882 and the provisions relating thereto are contained in Chapter V of the said Act, which relates to 'Leases of immovable property'. Such leases are generally of three kinds namely, a lease for a fixed period, periodic leases and leases in perpetuity. The important provisions regarding leases are contained in Sections 106, 108 and 111. Section 106 deals with the duration of a lease in the absence of a written contract or local law or usage. It has been laid down that in the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy. Section 108 lays down the respective rights and liabilities of the lessor and the lessee. Section 111 deals with the determination of leases. A lease of immovable property is determined by efflux of time limited thereby, or where the limit is conditional, upon the satisfaction of the condition, or by surrender express or implied, or by forfeiture, or upon the expiration of a notice to quit given under Section 106. The Act of 1956 however is not restricted to contractual tenancies alone. It also includes that vexed class of tenants known as statutory Tenants. The expression "statutory tenant" is a peculiar term. I have explained the history and significance of it in *Krishna Prasad Bose v. Saraju Bala Dassi*, (FB). A statutory tenant is not really a tenant at all but is a creature of statute. Under the 1956 Act however, it has at last found a local habitation and a name, for it has been included in the definition of a 'tenant', and for purposes of the Act, has been placed on the same footing as a contractual tenant. The third kind of tenancy contemplated by the Act is a tenancy which has been created by the Act itself. For example, under Section 13 (5), a sub-tenant is under certain circumstances upgraded to the status of a tenant. Briefly speaking, the last two items may be classified as follows :

25. I. A tenant upon whom a notice to quit has been served but who continues to be in possession and no decree for recovery of possession has yet been obtained against him (Section 31).

2. A tenant who, after an ejectment suit has been filed, has been evicted from a part of the premises but continues to be in possession of the rest of the demise (Section 34),

3. A tenant who has been put back in possession because the landlord has failed to carry out the repairs or has failed to occupy the premises for his own purpose, although he has obtained a decree for recovery of possession on those grounds (Section 18).

4. A sub-tenant who has been upgraded to the status of a tenant under the provisions of the Act (Sections 16 (3) and 13 (5)).

26. It would be opportune here to consider how such tenancies are terminated. So far as contractual tenancies are concerned, the duration thereof and the termination of such tenancies are governed by the provisions of Section 106 read with Section 111 of the Transfer of Property Act. Section 106 does not use the expression "notice to quit", but the notice given under Section 106 has been described in Section 111(h) as "a notice to determine a lease or to quit, or an intention to quit the property leased". Thus, both the landlord and the tenant can terminate the tenancy by means of an appropriate notice mentioned therein. In the case of a monthly tenancy, unless there is a contract to the contrary, it is deemed to be a tenancy from month to month and in the case of a tenancy for agricultural or manufacturing purposes, it is deemed to be a lease from year to year. In the former case, the tenancy could be terminated by fifteen days' notice expiring with the end of a month of tenancy, and in the latter case, by six months' notice expiring with the end of a year of tenancy. In AIR 1962 SC 23 Mukherjea J. points out that Section 106 of the Transfer of Property Act lays down a rule of construction of the agreement between the parties. In the case of a statutory tenant however, no notice to quit is necessary for terminating the tenancy. A statutory tenancy commences when the contractual tenancy has been terminated, and brought to an end, but the tenant continues to be in possession. The tenancy of a statutory tenant could only be terminated by a decree for possession. All this has now been substantially affected by the provisions contained in 1956 Act. Under Section 13(6), a notice must precede the filing of a suit by the landlord against the tenant, for recovery of possession, except in one case provided for in the Act itself, i.e. under Section 34 (4). Under that provision, where under the terms of the tenancy a tenant is bound to make any repair but fails to do so even after he is called upon to perform his obligation by the Rent Controller, the Landlord can sue the tenant at once. No notice is necessary to be served upon the tenant in such a case. Coming back to Section 13 (6), a difficulty in interpretation arises from the vague way in which it is worded. The first question that arises is as to whether it contemplates a notice to quit or merely a notice of suit, or a combination of both. Next, the question arises as to whether, it is necessary to set out in the body of the notice

itself, the grounds upon which the notice has been served. So far as a notice to quit is concerned, I have already pointed out that in a contractual tenancy, such a notice is governed by the terms of Section 106. That section does not talk about "a notice to quit"

but it has always been described as such. No particular form of a notice to quit has been prescribed, and this has given rise to much litigation. However, it is now well settled that it would be a sufficient notice to quit if it terminates the tenancy of a tenant, at a point of time as provided for in the statute, or according to the contract between the parties and requires or calls upon the tenant to make over possession. There is not much difficulty in holding that with regard to contractual tenants, a notice under Section 13 (6) can be easily combined with a notice to quit under Section 106. But what about a statutory tenant ? It has been strongly argued before us that in respect of such a tenant, no notice to quit was ever found necessary, and Section 13(6) does not speak about a notice to quit, but merely speaks about a notice preparatory to the filing of a suit or proceeding for the recovery of possession. If we peruse Section 13(6), it would be found that the introductory words do give the impression that the notice has nothing to do with the termination of the tenancy of a tenant, but is merely a notice of suit. Such a notice might be of the nature of a notice under Section 80 of the Code of Civil Procedure. Under that provision, no suit can be instituted against the Government or against a public officer, in respect of any act purporting to be done by him in an official capacity, until the expiry of two months next after notice in writing has been served. This notice is purely a notice of suit. I might have come to the conclusion that all notices under Section 13 (6) should be of this nature, but for the words in the latter part of the sub-section. According to this, the notice is required to be given for definite period of time, namely -- "one month's notice expiring with the end of a month of a tenancy". Such a notice is more consistent with the idea of a notice to quit, than a mere notice of suit. If it is merely a case of notice of suit, then it does not make- sense that it should expire with the end of a month of a tenancy. In order to solve the problem, we shall have to look into some other provisions of the Act. The next provision to be considered is Section 19. Sub-section (1) of Section 19 lays down that a tenant who was in possession of any premises to which that Act applies, and this includes a statutory tenant, shall observe all the terms and conditions of a contract relating to the tenancy and shall be entitled to the benefits thereof, so far as these terms and conditions are consistent with the provisions of the Act. Sub-section (2) provides that, notwithstanding anything in any other law for the time being in force, a tenant may give up possession of the premises on giving such notice as was required under the contract creating the tenancy, or where there was no contract, on giving not less than one month's notice expiring with the end of a month of the tenancy. Next we come to Section 23 which should be set out and runs as follows :

"23. Saving as to acceptance of rent -- The withdrawal of rent deposited under Section 21, in the

manner provided therein, shall not operate as an admission against the person withdrawing it or the correctness of the rate of rent, the period of withdrawal, the amount due, or on any other facts stated in the tenant's application for depositing the rent under the said section, nor shall it operate as a waiver of any notice to quit given by him to the tenant except a notice on the ground of default referred to in Clause (i) of Sub-section (i) of Section 13."

27. The importance of this section is that it actually uses the expression "notice to quit"

and denotes that a notice under Section 13(6) partakes of the nature of a notice to quit. It will be remembered that in Section 13(6) an exception has been made with regard to a notice issued on any of the grounds mentioned in Clauses (j) and (k) of Section 13(1). Clause (j) deals with the cases where the tenant has himself given a notice to quit but has failed to deliver possession. Clause (k) deals with the case where the tenant has agreed in writing with the landlord to deliver possession but has failed to do so. In both the cases, it was considered that a notice to quit need not be served on the tenant, because he had himself expressed an intention of giving up possession or has agreed to do so. This indicates that a notice under Section 13(6) might in certain cases partake of the nature of a notice to quit. In my opinion a notice under Section 13 (6) when combined with a notice to quit under Section 106 partakes of the nature of a notice to quit although in essence it is a notice of suit. So far as notice of suit is concerned, all that Section 13 (6) says is that such a notice is to be given preparatory to the filing of a suit. It does not lay down the form and content of the notice. In that respect it is different from a notice under Section 80 of the Civil Procedure Code where the notice must set out the cause of action and the relief to be claimed in the proposed suit. What has happened is that Section 13(6) has been introduced in the 1956 Act, as an additional protection to tenants, and it has been superimposed on the existing law. Where the existing law can function without doing violence to the provisions of Section 13 (6), it is not abrogated, but the specific terms of Section 13 (6) must prevail where there is a conflict. So far as a contractual tenancy is concerned, there is not much difficulty in combining a notice to quit under Section 106 and a notice under Section 13(6) in such a case, the only difference is that the combined notice must be for a period of not less than a month, expiring with a month of the tenancy. The real difficulty arises in the case of a statutory tenancy. Previous to the 1956 Act, such a tenancy did not call for any termination by the landlord. As the parties did not create the tenancy, the landlord could not terminate it by a notice to quit. It could only be terminated by a decree for possession. What then is the position under the present Act ? As has been pointed out by the Supreme Court in Bhaiya Punjalal Bhagwandin v. Dave Bhagwat Prasad Prabhuprasad, , the right to possession is to be distinguished from the right to recover possession. The right to possession arises when the tenancy is determined. The right to recover possession follows the right to possession and arises when the person in possession does not make over possession as he is bound to do under the law and there arises the necessity to recover possession

through the Court. In the case of a contractual tenancy, the right to possession can only arise upon a determination of the tenancy. The notice to quit served under Section 106 of the Transfer of Property Act determines the tenancy and calls upon the tenant to give up possession by a specified date. If he fails to do so, the right to recover possession arises and the landlord may then file a suit for recovery of possession, but no further notice had to be given. In the case of a statutory tenant, it is neither necessary nor possible for the landlord to determine the tenancy, because he has not created it. Such a tenancy is a creature of statute and can be determined only by the passing of a decree for possession. In the case of a statutory tenant, no notice was required to be served prior to the filing of a suit. until Section 13 (6) incorporated in the 1956 Act, made it necessary. Therefore, the notice under Section 13(6), upon a statutory tenant, cannot strictly be called a notice to quit, as is understood under Section 106 of the Transfer of Property Act. Yet, under that section, a month's notice has to be given 'expiring with the month of tenancy" even upon a statutory tenant. The position therefore is as follows : So far as contractual tenancies are concerned a notice to quit was necessary to be served upon the tenant to determine the tenancy but no notice of suit was necessary. So far as statutory tenants were concerned, neither a notice to quit was necessary, nor a notice of suit. Now under Section 13 (6) of the West Bengal Premises Tenancy Act, a notice of suit is essential in all cases. This special requirement has however been superimposed on the existing law. Where a notice to quit was necessary, it is still necessary, but it can be combined with a notice of suit, and the period of the notice, instead of being a fifteen days' notice expiring with the end of a month of tenancy is to be for a period of not less than thirty days expiring with a month of the tenancy. In the case of a statutory tenant, it operates as a notice of suit, and the period mentioned would be the extent of time which must expire before a suit for recovery of possession can be filed. The next point to be considered is as to whether it is necessary to set out the grounds in such a notice. I do not say that an argument cannot be advanced advocating that such grounds must be given. It may be argued that Section 13 (6) makes an exception in the case of a notice, on grounds mentioned in Clauses (j) and (k) of Section 13 (1), The question may well be asked as to how a tenant was to know whether the matter falls within the exception, unless grounds are mentioned in the notice itself. So far as Clauses (j) and (k) of Section 13 (1) are concerned, there is not much difficulty, because in such a case a tenant would know the facts as much as the landlord. Under the law as it stood previously, apart from the Rent Control Acts, it was held that a notice to quit need not set out the grounds. The reasons have been set out in a decision of Mukharji, *J. Amarendra Nath v. Bibhuti Bhusan*, . That was a case under the Calcutta Rent Ordinance of 1946. It was pointed out that the inclusion of a ground in a notice to quit does not make it compulsory to file a suit on that ground only. A suit for recovery of possession could be filed if the requisite ground existed at the time of the filing of the suit or even at the time when a decree was going to be passed. Thus, a landlord may give a number of grounds in his notice to quit, but he need not avail of all of them at the trial, or

he may rely on a ground which was not disclosed at all in a notice to quit. This being the law before the Act was promulgated, clear words to the contrary, are necessary if we are to hold that it was intended to alter the law. Up to now, it has been firmly established that grounds are not necessary to be stated in a notice to quit. Thousands of suits are pending, and are daily being instituted, without stating such grounds. It would be nothing short of a calamity if, as a result of our decision, all such suits become Incompetent. Where it was the intention of the legislature that specific grounds should be given, that has always been stated specifically. For example, under Section 114A of the Transfer of Property Act, it is provided that no suit for ejectment shall lie in the case of a forfeiture for breach of an express condition, in the lease unless the lessor has served on the lessee a notice in writing specifying the particular breach complained of and if the breach is capable of remedy, requiring the lessee to remedy the breach. Similar is the position under Section 155 of the Bengal Tenancy Act. Under Section 80 of the Code of Civil Procedure, there is a specific provision for setting out in the notice, the particulars of the cause of action upon which the suit is to be based. Under Section 13 (6), however, there is no provision requiring any grounds to be set out in a notice which has to be given under it. It is sometimes rather difficult to determine in advance the exact ground or grounds on which a suit was going to be filed. The only result of holding that the grounds must be set out in a notice under Section 13 (6) will be that a prudent landlord would have to set out in his notice all possible grounds. In fact, to be perfectly safe he would have to set out all the grounds as stated in Section 13 (1) of the Act, reducing the tenant to a state of bewilderment. In my opinion, therefore, nothing is gained by giving this interpretation to Section 13 (6). I think that in a notice under Section 13(6) no grounds need be given, although there is nothing to prevent the landlord setting out the grounds if he wishes to do so. Such a notice will however not be a notice on such grounds:

28. Let us now examine these conclusions against the background of the provisions of Section 106 of the Transfer of Property Act. I have already mentioned that Section 106, lays down the duration of certain leases in the absence of a written contract or local law or usage. The introductory words are -- "In the absence of a contract or local law or usage to the contrary". The West Bengal Premises Tenancy Act 1956 is a local law. Hence, there is no inherent difficulty in holding that the provisions of Section 13 (6) have been superimposed on the general law contained in Section 106. But this does not mean that the matter is free from difficulty. One of such difficulties may be mentioned at once. What about a tenancy for manufacturing purposes ?

According to Section 106, such a tenancy shall be deemed to be a tenancy from year to year and can be terminated, only by six months' notice expiring with a "year of the tenancy". But, Section 13 (6) only speaks of a notice expiring with a "month of the tenancy". Strictly speaking, a tenancy from "year to year" cannot have a "month of tenancy". It is clear, however, that the words 'expiring with a month of the tenancy', have been somewhat loosely used. Section 13 (6)

now comprises of tenancies both contractual and statutory. A contractual tenancy may be of infinite variety. It may commence at any time and end at any time, not necessarily upon the expiry of any particular month. There might be a weekly tenancy or a yearly tenancy where there is only one single annual rent. In such cases, it would be most inappropriate to talk about the expiry of a "month of the tenancy", for there is no month of tenancy at all. In an ordinary tenancy for manufacturing purposes, however, although the tenancy is to be construed under Section 106 to be a tenancy from year to year, the rent is almost always paid according to the calendar month, and so in a loose sense, one might speak of a "month of the tenancy", although the tenancy is from year to year. In Section 13, tenancies are contemplated which are not necessarily monthly tenancies. For example, Clause (i) mentions default in the payment of rent for two months within a period of 12 months if it is a monthly tenancy, or for two successive periods in cases where rent is not payable monthly. Yet, Section 13 which speaks about the fixation of fair rent, speaks only of the "month of tenancy", and makes no mention of tenancies which are not monthly. Some light on the question may be thrown by a decision of a Special Bench of this Court -- 64 Cal WN 641 : (AIR 1959 Cal 515). That was a case under the West Bengal Non-Agricultural Tenancy Act (Act XX of 1949). Section 9 of that Act deals with the incidences of non-agricultural tenancy, held for less than 12 years. One of the grounds for evicting a tenant in such a case is contained in Clause (c) (iii) of Sub-section (1). The ground is that the tenancy has been terminated by the landlord by six months' notice in writing expiring with the end of a year of the tenancy, served on the tenant in the prescribed manner, where the tenant is holding under a lease not in writing. The question was as to the interpretation of the words -- "a year of the tenancy". The position there was in the reverse. What is the "year of the tenancy" in the case of a tenancy from month to month ? Mookerjee, J. held that the simplest explanation would be to consider a year of tenancy to consist of 12 months and "a year of the tenancy" would mean 12 months of the particular tenancy according to its own calendar.

29. It would be remembered that even in the case of a tenancy from year to year, Section 106 does not require a year's notice. The notice is a six months' notice expiring with the end of the year of the tenancy. Therefore it contemplates the splitting up of the year of the tenancy into its constituent months. The terminus ad quem of such a notice would be the last day of the year of the tenancy, but for calculating the commencement of it, one must go back for a period of six months. I think that this procedure may well be adapted to a notice under Section 13 (6) of the West Bengal Premises Tenancy Act. In the case of a tenancy for manufacturing purposes, the terminus ad quem would be the same under Section 106, as under Section 13 (6). All that Section 13 (6) postulates is that the period of a notice shall not be for less than a month. A six months' notice given under Section 106 may be made to satisfy this condition. There is, however, one point to be considered in such a case, namely, the effect of Section 19 (2) of the West Bengal Premises Tenancy Act. That provision runs as follows :

"Notwithstanding anything in any other law for the time being in force, a tenant may give up possession of the premises on giving such notice as is required under the contract creating the tenancy. In the absence of any provision in the contract relating to notice or where there is no contract, the tenant may give up possession of the premises on giving not less than one month's notice expiring with a month of the tenancy."

30. If this provision applies to tenancies for manufacturing purposes, then the tenant can himself terminate his tenancy by giving a month's notice expiring with a month of the tenancy (here also the words "a month of the tenancy" are used). It is argued that one result of our holding that in the case of a tenancy for manufacturing purposes, the length of notice to be given under Section 106 still holds the field, would be to make an unfair discrimination between the landlord and the tenant. For, while the landlord must himself give a notice to quit of not less than six months, a tenant can terminate his tenancy by giving a month's notice. There is no reason why Section 19 (2) should be construed differently so as to discriminate in favour of the tenant. It expressly speaks of a notice of 'not less' than one month. A six months' notice under Section 106 would satisfy this condition. The only objection would be on the ground of redundancy. In other words, it may be argued that if a six months' notice still holds the field then it is wholly unnecessary to provide for a notice of not less than one month. The answer is that under the West Bengal Premises Tenancy Act all kinds of tenancies have been lumped together, and no specific provision has been made for any particular kind of tenancy. That is why an ad hoc period of time has been postulated, it being the minimum that will satisfy the law. It will be remembered that Section 13 (6) merely varies the period of the notice. If it was intended to be comprehensive, abrogating the provisions of Section 106 altogether, then certain undesirable consequences were bound to follow. For example, there is no provision made for the service of such, notice. Here again, grave difficulties arise. Under Section 106, every notice has to be in writing signed by or on behalf of the person giving it. Section 13 (6) however, does not require a notice to be in writing. In the case of a statutory tenant, Section 106 has no application and it cannot be argued that under Section 13 (6), there is anything that requires a notice upon such a tenant to be in writing. Of course, where a notice is not in writing, there is no question of its service on the tenant. It has to be communicated and not served. The position therefore, is that that in a case where Section 106 applies and it is combined with a notice under Section 13 (6), such a notice must satisfy the provisions of Section 106, save and except that the period of notice must in all cases be not less than one month expiring with a month of the tenancy. I will now proceed to consider in more detail a decision of the Supreme Court which has been cited before us -- . The Supreme Court was considering certain provisions of the Bombay Rents Hotel and Lodging House Rates (Control) Act (57 of 1947). The relevant provisions of that Act are as follows :-

"12 (i) A landlord shall not be entitled to the recovery of possession of any premises so long as

the tenant pays or is ready and willing to pay, the amount of standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of this Act.

(2) No suit for recovery of possession shall be instituted by a landlord against a tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of one month next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in Section 106 of the Transfer of Property Act, 1882."

31. It will be observed that the notice mentioned in Sub-section (2) is merely a demand for the payment of the standard rent or permitted increase. This is not by itself a notice to quit, and it is only the service of a notice to quit, to which the provisions of Section 106 of the Transfer of Property Act are attracted. It was held that Section 12 does not do away with the service of a notice to quit under Section 106 of the Transfer of Property Act read with Section 111. It was held that such a notice will have to be given in order to determine the tenancy and the notice under Sub-section (2) is in addition to it. Reference was made to two cases -- Brij Raj Krishna v. S. K. Shaw and Brothers, and Hem Chand v. Sham Devi, ILR (1955) Punj 36. The former decision dealt with Section 111(1) (a) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 which provided that notwithstanding anything contained in any agreement or law to the contrary, a tenant in possession of any building shall not be liable to be evicted therefrom except in the circumstances mentioned therein e. g., in the case of a month-to-month tenancy, for non-payment of rent etc. The whole question was whether the decision of the House Controller, to the effect that there was, in fact, a non-payment of rent, could be interfered with by the High Court. That case, therefore, throws no light on the question as to whether a notice under Section 106 was necessary, nor was the matter considered. In the latter case, the Punjab High Court was dealing with Section 13 (i) of the Delhi and Ajmer-Merwara Control Act 38 of 1952. It provided that no decree or order for the recovery of possession of any premises shall be passed by any Court in favour of the landlord against the tenant, notwithstanding anything to the contrary contained in any other law or any contract except under circumstances mentioned therein. It was held that the Rent Control Act provided for the complete machinery for obtaining the relief of ejection and that being so, the provisions of Section 106 of the Transfer of Property Act had no relevance in considering an application for ejection made under that Act. This is an extreme proposition which it is very difficult to accept as a general rule of interpretation. The Supreme Court stated that there was nothing in the Bombay Act corresponding to the provisions of Section 13 (1) of the Delhi and Ajmer-Merwara Act and, therefore, it was unnecessary to consider whether Hem Chand's case, (supra) was rightly decided or not. The correctness of the Punjab decision was thus not tested. These two decisions were dealt with in the background of

the particular provisions contained in the particular statute which was under investigation. Dayal, J. however laid down the following general proposition : -

"The right to possession is to be distinguished from the right to recover possession. The right to possession arises when the tenancy is determined. The right to recover possession follows the right to possession, and arises when the person in possession does not make over possession as he is bound to do under the law, and there arises a necessity to recover possession through Court. The cause of action for going to Court to recover possession arises on the refusal of the person in possession, with no right to possess, to deliver possession. In this context, it is clear that the provisions of Section 12 deal with the stage of the recovery of possession and not with the stages prior to it and that they come into play only when the tenancy is determined and a right to possession has come in existence. Of course, if there was no contractual tenancy and the person is deemed to be a tenant only on account of a statute giving him right to remain in possession, the right to possession arises on the person in possession acting in a manner which, according to the statute, gives the landlord right to recover possession, and no question for the determination of the tenancy arises, as really speaking, there was no tenancy in the ordinary sense of that expression. It is for the sake of convenience that the right to possession, by virtue of the provisions of a statute, has been referred to as statutory tenancy

We are therefore of opinion that so long as the contractual tenancy continues a landlord cannot sue for the recovery of possession even if Section 12 of the Act does not bar the institution of such a suit, and that in order to take advantage of this provision of the Act he must first determine the tenancy in accordance with the provisions of the Transfer of Property Act."

32. Let us apply these principles to the facts of the instant case. Section 13 (6) speaks about a suit for the recovery of possession. No such suit can be filed until a notice under Section 13 (6) is given. It is pointed out by Dayal, J., that in cases where Section 106 applies, it is necessary first of all to determine the tenancy so that the right to possession arises. This is followed by legal proceedings for recovery of possession, for which a Section 13 (6) notice is now essential under the West Bengal Act. In the case of a statutory tenancy, the law was that no notice at all was necessary to be served before filing a suit for recovery of possession. Now such a notice is necessary under Section 13 (6) itself. So far as a contractual tenancy is concerned, two ends have to be achieved, namely, the termination of the tenancy whereby the landlord gets a right of possession and a notice preparatory to the filing of a suit for recovery of possession. In the case of a statutory tenancy only one end is to be achieved namely, the right to recover possession for which a notice under Section 13 (6) is a pre-condition. A question arises as to whether in the case of a contractual tenancy two separate notices are to be given namely, one under Section 106 and another under Section 13 (6). In my opinion, it would be a superfluity to give two notices. What

was intended was that one notice should be given which would satisfy the conditions of Section 106, as well as the provisions of Section 13 (6). The only distinction between the two lies in the period for which notice should be given. Previously, the period was controlled, either by the terms of the contract or Section 106, which provided a 15 days' notice. In all cases now, the notice must be a month's notice ending with the expiry of a month of tenancy. I have interpreted it to mean that it should not be for less than a month. I have already explained how this could be done in the case of a tenancy for manufacturing purposes. In cases where Section 106 does not apply, for example, in the case of Statutory tenants or tenants under a statute, no question arises of serving a notice to quit. In other words, no determination of tenancy is necessary to obtain a right to possession. In certain circumstances however, it is possible to recover possession even from a Statutory tenant. Previously, no notice was necessary in such case, in order to file a suit to recover possession. Such a notice is now necessary under Section 13 (6). In such a case it is nothing but a notice of suit and the period of notice must be for not less than a month expiring with a month of the tenancy. For such a notice however, no particular form has been prescribed and we cannot lay down any particular form. The form must be one that carries out the intent and purpose of the Statute. I agree with the answer to Question No. 2 as given by my Lord the Chief Justice.

33. In Appeal No. 444 of 1961 a special question has been asked as to the meaning of the expression "permanent structure" as used in Section 108 of the Transfer of Property Act. What happened was that in that case the tenant built a kitchen on the roof with brickwork walls and a C. I. roof. This question cannot be specifically answered because the question as to what amounts to a permanent structure, depends on the facts of each case. The answer depends on the nature of the structure, the intention of the parties and the surrounding circumstances. Usually, a structure which is intended to be permanent is built substantially. On the other hand, it is possible to envisage a substantial structure intended to be used only temporarily. The intention of the parties is the most important test, but this can only be derived from an investigation of the surrounding circumstances. For these reasons, it is obvious that a satisfactory answer cannot be given which will be applicable to the facts of every case. In other words, there is no universal formulae that can be applied to all cases and under all circumstances. I agree with the answer given by my Lord the Chief Justice to question No. 1.

P.N. Mookerjee, J.

34. The common point, involved in these two references, raises the question of interpretation of Section 13 (6) of the West Bengal Premises Tenancy Act, 1956, so far as it relates to the nature and contents of the notice, contemplated therein. The additional point in the Reference in the first case (F. A. No. 444 of 1961) seeks, in essence, elucidation or enunciation of the tests, if any, of a

permanent structure within the meaning of Section 108(p) of the Transfer of Property Act. Both the questions have been framed in several parts but, while, to the first, and to each of its parts, some definite answer or answers may be given, to the second, it seems, no such answer is possible -- not even to any of its several parts -- and we have to be satisfied with certain general observations, bearing on the approach to the particular problem. In the circumstances, this last question will not require much discussion and may be taken up first and disposed of shortly. That question has been framed as follows:

"What is a permanent structure for purposes of Clause (p) of Section 108 of the Transfer of Property Act? What, if any, are the tests for holding whether a particular structure falls within the mischief of the above clause? Whether a room with "three inches thick brick built walls and a corrugated iron sheet roof" is a permanent structure within the meaning of the aforesaid statutory provision?"

35. Now, whether a structure is permanent or not within the meaning of Section 108(p) of the Transfer of Property Act depends on various factors, which cannot be catalogued in detail or exhaustively enumerated. It is a mixed question of law and fact, which depends, for its answer on the facts of the particular case before the Court. The same structure may be well held to be permanent in one case and non-permanent in another. Indeed, no hard and fast rule can be laid down in the matter, although certain broad tests may be formulated, which may conveniently guide the determination and facilitate the correct approach. Relevant from this point of view would be inter alia the nature of the structure or construction in question and the intention, with which it is made, and, almost in every case, they would be of primary and prime importance, the situs, the mode of annexation and the surrounding circumstances being all appropriate matters for consideration on the above two basic and usually determinant elements. Beyond this, I am not inclined to go at present on the above point under reference.

36. On Section 13 (6) of the West Bengal Premises Tenancy Act, 1956, the point under reference has been formulated as follows:

"What notice is contemplated under Section 13 (6) of the West Bengal Premises Tenancy Act, 1956? Is it a notice to quit or a notice of suit, or a combined notice to answer both the above purposes? Is it a notice, required in addition to a notice under Section 106 of the Transfer of Property Act or a notice in lieu of it? What, if any, are its necessary elements or contents? Is it necessary to mention in it the ground or grounds of ejection under the aforesaid Act, on which the suit is to be brought? Or, in other words, need it be a notice of such grounds?"

37. To the several parts of the above question, my respective answers are as follows:

38. That the notice under Section 13 (6) of the West Bengal Premises Tenancy Act, 1956, is a notice of suit and not a notice to quit or a combined notice, answering both the above descriptions or purposes.

39. That it is a notice required in addition to and not in lieu of the notice under Section 106 of the Transfer of Property Act, where this latter notice is otherwise necessary. The two notices, however, may be combined in one and the same document and may expire or may be made to expire simultaneously.

40. That it must express the intention to file the suit or proceeding, mentioned in the section, that is, a suit or proceeding for ejection on a ground or grounds, as mentioned in the section, and, necessarily, therefore, must mention the said ground or grounds so as to be a notice thereof, that is, of the ground or grounds too, on which the intended suit or proceeding is proposed to be brought. In other words, expression of the above intention and mention of the above ground or grounds would be necessary, -- and sufficient also, -- to validate the said notice and would constitute its essential requisites or contents.

41. My reasons for the above view, I shall presently indicate.

42. To start with, I quote the section. It runs as follows:

"Notwithstanding anything in any other law for the time being in force, no suit or proceeding for the recovery of possession of any premises on any of the grounds mentioned in Sub-section (1) except the grounds mentioned in Clauses (j) and (k) of that sub-section shall be filed by the landlord unless he was given to the tenant one month's notice expiring with a month of the tenancy."

43. It has thus three parts. The first is the non obstante clause "notwithstanding anything in any other law for the time being in force", which gives to the section an overriding effect. Its operation cannot be whittled down or affected or restricted or limited by any other law for the time being in force and it will have effect notwithstanding any such law to the contrary. Its second part prohibits and injuncts the filing of "a suit or proceeding by the landlord for recovery of possession of any premises on any of the grounds mentioned in Sub-section (1) (of Section 13) except the grounds mentioned in Clauses (j) and (k) thereof" unless -- and there comes its third part -- "he (the landlord) has given to the tenant one month's notice, expiring with a month of the tenancy." This third part thus postulates and prescribes in itself an essential condition, which has to be complied with, before the suit or proceeding, mentioned in the second part, can be filed. The point is what does this condition imply and what is its true import and requirement.

44. That it requires and contemplates the giving of a notice by the landlord to the tenant is clear.

That, again, the said notice must be "one month's notice expiring with a month of the tenancy" is also explicit in its wording and plain on the face of it. The controversy however, is as to the nature of the notice and as to its contents.

45. On this controversy, three-fold contentions have been raised under either head. As to the nature of the notice, it has been urged (1) that it is a notice to quit in lieu of the notice under Section 106 of the Transfer of Property Act, (2) that it is a notice of suit, distinct and different from a notice to quit, and (3) that it is a combined notice for both the above purposes, or, in other words, that it combines in itself the elements of both the above notices, it being, at the same time, a notice of suit and a notice to quit, thus obviating the necessity of a notice to quit under Section 106 of the Transfer of Property Act, and, to that extent, being in lieu of that notice, with the additional element of a notice of suit. As to the contents of the notice, which will, of course, depend inter alia on its nature, as aforesaid, a further dispute arises, namely, whether it should contain the ground or grounds, on which the notice -- be it a notice to quit or a notice of suit or both -- is given, and, on which, the relative suit or proceeding is intended to be brought. On this further aspect, too, three contentions have been raised, namely, (1) that the ground or grounds ought to be mentioned or indicated in the notice, (2) that no such mentioning or indication is necessary and (3) that no reference to any specific ground or grounds would be necessary, but it will be enough if it appears from the notice that recovery of possession was being claimed on a ground or grounds, as aforesaid, there being just a general statement or averment therein to that effect.

46. In my view, the section, though not explicit on the point, leads, textually and on a reasonable construction, to only one answer, namely, that the notice under it is a notice of suit and should contain the relevant ground or grounds under Sub-section (i), on which the suit or proceeding in question is intended to be brought.

47. The notice is to be given by the landlord to the tenant. The notice is necessary for the filing of the suit or proceeding, referred to in the section. The statute fixes the period of the notice at "one month expiring with a month of the tenancy". It does not, however, expressly say anything as to what else this notice should contain. That has to be ascertained from necessary implication.

48. The section (Section 13 (6)), as its language shows, requires the landlord, (intending to file a suit or proceeding for the recovery of possession of any premises on any of the grounds, mentioned in Section 13 (1), except those, mentioned in its Clauses (j) and (k) to give to the tenant one month's notice, expiring with a month of the tenancy, and the natural and plain meaning of the sub-section is that the landlord must give to the tenant notice of his intention to file a suit or proceeding for the recovery of possession of the premises in question on any of the grounds, mentioned above. In other words, the plain meaning of Section 13 (6) is that the

landlord must give to the tenant notice of his (landlord's) intention, to file a suit or proceeding for recovery of possession of the premises on any of the said grounds, which suggests and implies mentioning of the same in the notice in question. That, of course, does not mean that this notice cannot be combined with the notice to quit under Section 106 of the Transfer of Property Act, if that notice be otherwise necessary, that is, for terminating the tenancy, but, so far as the notice under Section 13 (6) is concerned, it is a notice of suit, that is, of the intended suit or proceeding for ejectment on the relevant ground or grounds under Section 13(1) and should, therefore, mention or contain such grounds.

49. The notice is, obviously, linked up with the filing of a suit or proceeding, as referred to in the section. The immediate implication would, then, be that it would apprise the tenant of the intended suit or proceeding. It would thus be a notice of suit and, in the absence of any indication to the contrary, it may reasonably be held that, whatever else it may contain, it must intimate the tenant of the proposed suit or proceeding, which means a suit or proceeding, as contemplated in the section, or, in other words, a suit or proceeding for recovery of possession of the premises on any of the grounds mentioned in Sub-section (1) (of Section 13) except the grounds, mentioned in Clauses (j) and (k) of that sub-section. A notice of suit, which is to apprise the defendant of the intended suit or proceeding, must sufficiently disclose its nature. Indication merely of a suit or proceeding would not be enough. It may, perhaps, be argued that the nature of the suit or proceeding may be sufficiently disclosed even without the grounds, by, an indication simpliciter of a suit or proceeding for recovery of possession. I do not think, however, that such an argument would be acceptable here. It should not be forgotten that, where a statute requires a notice of suit, it does so with a purpose. And, particularly, when the suit or proceeding is founded on forfeiture, a notice of suit without reference to the forfeiture would not serve the purpose and cannot be necessarily sufficient unless the statute points to the contrary. A notice of suit in such a case embraces within it a notice of forfeiture and should, accordingly, unless otherwise provided, refer to the breach, giving rise to the same. Such, indeed, has been the policy of the law, even where the breach is irremediable (Vide Section 114-A of the Transfer of Property Act and Section 155 of the Bengal Tenancy Act). It is true that, in these sections, there are express provisions, requiring specification of the particular breach, but, even without the said express provisions, those sections would not read differently. The suit or proceeding, contemplated in Section 13 (6), rests on forfeiture of the statutory protection by reason of the presence of one or other of the circumstances, mentioned in Section 13 (1), and, in that context, in the absence of any contrary indication, the notice of suit should contain reference to the ground or grounds of such forfeiture to apprise the tenant of the reason for the intended suit or proceeding. Otherwise, it seems to me, the very purpose of the notice and the very purpose of the statute in requiring or prescribing the same would be frustrated.

50. The matter may also be examined from another standpoint to support the same conclusion. When a landlord terminates a tenancy he does so presumably with a view to evict the tenant. No tenant, whose tenancy is so terminated, can be under any possible misapprehension as to this purpose or presumed intention of the landlord, however-much he may be in doubt about it, when the tenancy terminates automatically, say, by efflux of time. But a notice under Section 13 (6) is not confined to cases of such automatic termination of tenancies. If, in a notice under Section 13 (6), intimation merely of an intended suit or proceeding for ejection or for recovery of possession would have been enough, it may well have been confined to cases in the other cases, it would really serve no purpose whatsoever. It is also sufficiently clear that the purpose or object of the above notice cannot be merely the giving of a month's time to the tenant, expiring with a month of the tenancy, as, then such a notice would not have been necessary to serve any purpose whatsoever in cases, -- say, of manufacturing leases or yearly tenancies or tenancies from year to year, -- where a longer notice is necessary for terminating the tenancy in question.

51. To turn now to the opposing arguments. It is urged that the notice under Section 13 (6) of the West Bengal Premises Tenancy Act, 1956, is a notice to quit. It is urged, further, that in respect of tenancies, governed by the Act, this notice has re-placed the notice to quit under Section 106 of the Transfer of Property Act. I would not say that, even outwardly, the arguments have no substance. Prima facie, there is a good deal of force in these arguments and, at first blush, they appear to be captivating and to have an intense appeal. On closer scrutiny, they disclose their inherent weakness and lose their initial charm.

52. The "notice to quit" argument derives its inspiration from the description "one month's notice expiring with a month of the tenancy" and, in its support, reliance is also placed on Section 23, where the said section speaks of a notice on the ground of default, which notice, in its context, refers to a notice to quit, as contemplated in the section.

53. As I have said above, the argument is attractive but it does not bear close scrutiny. The above description fixes the period of the notice. It has, no doubt, some resemblance with the manner of fixing the period of a notice to quit (Vide Section 106 of the Transfer of Property Act) but the mere fact that a notice is to expire with a "month of the tenancy" would not show that it is a notice to quit or make it so. A notice to quit may expire with a month of the tenancy and, ordinarily, it does. But it may also be otherwise -- say, under a contract, leaving aside other cases. A notice other than a notice to quit also may expire with a month of the tenancy. Law does not prohibit it. It is to be remembered further that the essence of a notice to quit is to determine the tenancy and something is always found in such notices to that effect. Indeed, Section 106 of the Transfer of Property Act itself, on which reliance is placed for the above argument by way of analogy, makes the position absolutely clear as it expressly speaks of the particular tenancy being

terminable by the notice, in keeping with Section 111(h) of the Act, to which it is obviously referable and which deals with notices to quit and determination of leases by reason of such notices, that is, with determination of tenancies with the expiration of the notices in question in accordance with the term, as evidenced by the said notices, "to determine the lease or to quit or of intention to quit". This quitting or determining element or intention in that behalf is plainly absent in Section 13 (6) and no expression of it and no expression, carrying or conveying the same, is to be found in the said section. The attempted analogy to Section 106 thus fails, -- it stops short of its purpose and breaks down, -- and the vivid absence of the essential quitting or determining element in Section 13 (6) would, if Section 106 is to be taken to be the guide, militate against the view that the notice under Section 13 (6) is a notice to quit, which has the effect of determining or terminating the tenancy. In Section 13 (6), therefore, no basis can be found for the argument that the notice under it is a notice to quit and Section 23 also, whatever its apparent outlook, does not lend any real support to such argument. It, no doubt, speaks of a notice -- presumably, a notice to quit, as mentioned in the section, -- on the ground of default but that would not, necessarily, be referable to the notice under Section 13 (6) of the Act, unless the said notice can be reasonably held to answer that description, particularly when Section 23 contains no reference to Section 13 (6) and, even if it be so referable, the Section (Section 23) would not support or lead to the above "notice to quit" argument unless the notice to quit, mentioned therein, refers to a notice to quit in the technical sense "of a notice, determining or terminating the tenancy in question. This latter, however, as I shall show hereinafter, cannot be affirmed on the statute before us and, accordingly, Section 23 cannot be invoked for construing the notice under Section 13 (6) as a notice to quit, strictly so-called, that is, in the above technical sense. Moreover, as I shall presently show, the view that the notice under Section 13 (6) is a notice to quit, -- using that expression in its technical sense, -- is beset with so many difficulties that it cannot be reasonably accepted. It would go against the statutory language, it would whittle down the scope of the statute, it would be destructive of age-long conceptions and would lead to consequences which, if not altogether absurd, would be wholly unreasonable.

54. Under Section 3, the Act applies, generally speaking, to all leases, not exceeding fifteen years. It thus includes periodic leases or leases for fixed periods, not, of course, beyond the said maximum duration. In the absence of a contract to the contrary, such leases cannot be determined by a notice to quit and normally, then run their respective periods and determine by efflux of time on the expiry of the same. Tenancies, again, may determine otherwise than by notice to quit (Vide Section 111 of the Transfer of Property Act, Clauses (a) to (g)). In case of determination, as aforesaid, how are we to apply Section 13 (6), if the notice under it is a notice to quit. A notice to quit determines the tenancy. Where a tenancy has already determined, such a notice would be, to say the least, wholly unnecessary and utterly inappropriate. This difficulty led to two extreme arguments.

55. The first was that the section applied only to monthly tenancies, which would be terminable on notice to quit, or, at any rate, only to tenancies, which would be so terminable. Support for this view was sought to be obtained from the expression "expiring with a month of the tenancy", which, it was said, would be inappropriate and inapplicable except in the case of monthly tenancies. The absurdity of this view will be clear, when it is remembered that, if, by reason of the reference to "a month of the tenancy", a particular section or provision cannot apply except to monthly tenancies, Section 12 would also be so excluded, which would mean exclusion not only of the said Section 12 but also of the connected sections, relating to rent or standardisation of rent. Practically, then, the Act would be excluded -- or, at least, most of its important provisions would be inapplicable, --- in cases of such other tenancies and this, in spite of the comprehensive provisions of Section 3 and its express terms in its opening part, obviously attracting, inter alia, the provisions, relating to rent, to the leases -- not, necessarily, monthly leases -- mentioned in its first part, and the Act itself, that is, including those provisions, to all leases, not exceeding 15 years. The above argument, therefore, would be contradicted by the Act itself and would break down on that ground, even apart from the fact that it would unreasonably restrict the scope of this benevolent statute, which itself is a strong pointer to its untenability.

56. Moreover, the concept of "a month of the tenancy" is not inapt in cases of tenancies other than monthly tenancies, as it is well known that yearly tenancies or tenancies from year to year can be terminated with a "six months' notice", expiring with a month of the tenancy.

thus postulating a month (Vide the phrase "six months' notice" of an yearly tenancy or a tenancy from year to year, just as a year of a monthly tenancy or a tenancy from month to month has also been held to be quite a valid and workable concept (Vide 64 Cal WN 641 : (AIR 1959 Cal 515) (SB)).

57. The other argument is that the Act would apply to all tenancies, coming within its scope under Section 3, but all such tenancies would be terminable by the notice -- the notice to quit, as it is said, -- Under Section 13 (6). This argument has only to be stated to be rejected. It is so absurd on the face of it. Leases for fixed periods -- whatever their term,

-- manufacturing leases, so long requiring six months' notice as a policy of law -- a policy, founded on reason, common sense and experience

-- would all terminate on the month's notice under Section 13 (6). A consequence so violent, so drastic and so revolutionary cannot be accepted, unless the statute compels it or gives or contains some sure indication in that behalf. I find none here, no such compulsion or indication, and, accordingly, I feel bound to reject this argument.

58. It is urged next that, this notice to quit under Section 13 (6) will be necessary for determination of the statutory tenancy under the Act, which will operate after the termination of the contractual tenancy by notice to quit or otherwise, and this argument is sought to be supported by reference to Section 19 (1), which preserves the terms of the contractual tenancy, not inconsistent with the Act, for the statutory tenancy. It is argued, accordingly, that a notice to quit may be necessary in respect of the statutory tenancy, and the statute provides for it in Section 13 (6). It is to be remembered, however, that, unless the particular statute prescribes the contrary, a statutory tenancy need not be determined by the landlord to enable him to file a suit or proceeding for ejectment and, under the Act, now before us (Vide Section 2 (h)), a statutory tenancy determines only on the passing of a decree for ejectment. A notice to quit, therefore, in respect of statutory tenancy for determining the same is unmeaning in the instant case.

59. Indeed, the Act nowhere, except, possibly, in Section 34 (4), deals with or provides for termination of tenancies. That is left to the general law, namely, the Transfer of Property Act. Section 13 (6) only imposes an additional restraint on the landlord in the matter of the filing or institution of a suit or proceeding for ejectment as referred to in the Section. It imposes a new condition, by way of a pre-requisite to the filing of such a suit or proceeding, in the form of the notice, mentioned therein. Prior to this Act, such a notice had been determined, the landlord would have been entitled to recover possession and to file a suit or proceeding for the purpose and to obtain a decree or appropriate order therein. Section 13 (6) restricts that right of suit by requiring the giving of the notice thereunder before the suit or proceeding can be filed, just as Section 13 (1) limits the aforesaid right of obtaining the decree or order, -- and, thus, in a sense and in substance, of filing the suit or proceeding, -- only to cases, where the grounds mentioned therein, exist. Where, previously, termination of the tenancy would have been enough, the law under the Act now requires the giving of the notice under Section 13 (6) before the suit or proceeding referred to therein, can be filed and the existence of one or more of the grounds, mentioned in Section 13 (1), before the decree or order can be obtained, which, also, means, in essence, as stated and explained above, before the suit or proceeding can be filed, as emphasised by Section 13 (6), which speaks of a suit or proceeding for recovery of possession on any of the grounds, mentioned in Section 13 (1), barring Clauses (j) and (k) thereof, thus, virtually, making them grounds of ejectment or grounds of the suit or proceeding for ejectment, contemplated by Section 13 (6) aforesaid. It is this change in law, which is introduced by the above two Sub-sections (1) and (6) of Section 13 and the non obstante clauses therein emphasise, assure and confirm the same. The non obstante clause in Section 13 (6) only means that a suit or proceeding, referred to therein, namely, for recovery of possession by a landlord against a tenant under the Act on any of the grounds, mentioned in Section 13 (1), except the grounds, mentioned in Clauses (j) and (k) thereof, which, but for the said Section 13 (6), could have been filed straightway, that is, without the notice, prescribed thereunder, can no longer be filed without the

said notice and the non-obstante clause in Section 13 (i) only means that a decree or order for ejectment, which, in cases, coming under the Act, could have been passed, prior to this new statute, otherwise than on a ground or grounds, mentioned in the said section, -- which, as seen above, are, in substance, grounds of suit or proceeding or grounds of ejectment, -- that is, without or in the absence of the same, can no longer be so passed, or, in other words, such a decree or order can no longer be passed except on a ground or grounds, as aforesaid. Neither of the said two clauses has the effect of abrogating the general or the pre-existent law except to the extent of the new requirements -- in one case, of the notice' in the other, of the ground or grounds of ejectment -- as embodied in the two respective subsections. The decision of the Supreme Court in , to which our attention was drawn by Mr. Banerjee, does not show or support the contrary and lays down no contrary proposition. Indeed, otherwise, the position would have been that a suit or proceeding for ejectment would have been maintainable and would have succeeded without determination of the tenancy, inasmuch as, as already seen, the Act does not, except, possibly, in Section 34 (4), provides for termination of tenancies. Such, however, is not the law (Vide).

60. From the above, it is clear that the notice under Section 13 (6) of the Act is a notice of suit and not a notice to quit in lieu of that under Section 106 of the Transfer of Property Act and, where a notice to quit under this latter Act is necessary for determining the tenancy, the notice under Section 13 (6) constitutes an additional requirement for the filing of the suit for ejectment referred to in the said section. It follows also that this notice under Section 13 (6) need not be a combined notice to answer both the above purposes, namely, of a notice to quit and of a notice of suit, and, indeed, it cannot be so, as it has not in it the elements of a notice to quit, the quitting or tenancy determinant element not being prescribed or required for it by or under the said section. That, however, does not mean that this notice cannot be combined in the same document with a notice to quit, technically and strictly so called, where this latter notice is also necessary, and made to expire simultaneously with the same, there being, as already seen no difficulty in making the expiry, of the month and/or year of the tenancy, -- the terminus ad quem -- under the notice to quit correspond with the expiry of a month of the tenancy as required for the notice -- the notice of suit -- under Section 13 (0) of the Act. There is nothing in the section to indicate that determination of the tenancy must precede the giving of the notice under it. True, the notice must be of a suit for recovery of possession, which, of course, cannot be filed before determination of the tenancy, but there can be no objection, if such de-termination takes place before the actual filing of the suit, -- may, be, simultaneously with the notice of suit, which, ex hypothesi, must expire before the filing of the suit. In this view, the notice of suit under Section 13 (6) and the notice to quit, determining the particular tenancy in question, may well be combined so as to expire on the same day, which, of course, must precede the filing of the suit. Both the notices -- the notice of suit and the notice to quit -- are necessary before the filing of the suit, as they are, in a sense, parts of its cause of action, and determination of the tenancy must

precede the suit but need not precede the notice of suit. If, of course, the tenancy is not determined before the filing of the suit, the suit cannot succeed, as it will be premature, even though the notice under Section 13 (6) may have been given, just as it will also similarly fail, if the said notice be not given before the filing of the suit. Both the above notices thus appear, as already stated, to be parts of the cause of action for the suit but neither is a pre-requisite for the other and I find nothing to compel me to hold that they cannot be given by the same document and made to expire simultaneously. (Vide, in this connection, (Supra)).

61. Punjalal's case, (supra) cited above, is an authority on many of the above points. It is instructive from many points of view. It has, however, to be carefully studied to realise its full and correct implications and to avoid misapplication. It emphasises the distinction between "the right to possession" and "the right to recover possession" (Vide p. 125) and lays down that "the right to possession arises when the tenancy is determined" and "the right to recover possession follows the right to possession and arises when the person in possession does not make over possession as he is bound to do under law and there arises a necessity to recover possession through Court." It further lays down that "the cause of action for going to Court to recover possession arises on the refusal of the person in possession, with no right to possess, to deliver possession." It then points out that, in the case of a statutory tenancy, "the right to possession" synchronises with "the right to recover possession" and the two rights arise simultaneously and are almost synonymous and "no question for the determination of the ordinary sense of the term" and no question either of "a right to possession, followed or to be followed by a right to recover possession."

62. The decision unmistakably shows that a suit for recovery of possession rests on a "right to recover possession" and this latter right in its turn, postulates a "right to possession". It lays down, in clear and emphatic terms, that to evict a tenant and to institute a suit for the purpose, the landlord must have a right to recover possession and, necessarily, then, a right to possession. The contractual tenancy, if any, must, therefore, be determined and/or the tenant, with no right to possess, must be continuing in possession and refusing to give up possession to furnish the necessary cause of action for the suit. Without determination of the contractual tenancy, if any, the tenant, cannot be evicted, as, so long as that tenancy stands, the tenant is protected under its terms, that is, under the terms of the contract as between him and his landlord, and, if the tenant vacates and delivers up possession, there is no occasion for going to Court and no cause of action to sue upon. These, then, are prerequisites for a suit for possession against the tenant but, if they are present, there will be cause of action for such a suit. This is the general law but the statute may alter it. It may prescribe an event or an act or omission, the happening of which will permit the institution of a suit without an express or prior or further determination of the tenancy or demand or refusal of possession, these being implied and/or comprehended within the said event,

act or omission, or it may require the fulfilment of an additional or further condition for the valid institution of the suit, that is, over and above or in addition to the right to possession, or the right to recover possession, already accrued. Section 34 (4) of the West Bengal Premises Tenancy Act, 1956, is in instance of the former. Section 13 (6) of the latter. In the one case, the landlord's suit or right of suit against the tenant is accelerated; in the other, the statute restricts the landlord's right to evict the tenant. The former section (Section 34 (4)) creates a new right in the landlord to evict the tenant and furnished him with a new cause of action in that behalf; the latter section (Section 13 (6)) does nothing of the sort. It, on the other hand, by prescribing an additional requirement for a landlord's suit for eviction, restricts the landlord's rights to evict the tenant and recover possession. Although the lease may have come to an end and the tenancy may have been determined and the landlord may have got vested in him the right to possession and to recover possession, he cannot sue for possession without the notice. So long as the contract of tenancy stood, the tenant had his protection under its terms and he needed no other but, once that has come to an end, he has to go, unless the statute protects him. Such protection is afforded by special Acts like the present, -- in some cases, more or less permanent, in others temporary, -- may be, only deferring or postponing the evil day, -- the protective events, depending, in some instances, on some act or omission either of the landlord or of the tenant. Section 13 (6) falls more in the latter category but, all the same, it is a restriction on the landlord's right of ejection. It will, however, be a mistake to suppose that, either on its own language or on the authority of Punjalal's case. , (supra), its scheme, object or structure can be interpreted to mean that no action under it is possible before the contractual tenancy is determined. It is obvious that the restriction under it operates against the landlord, only after he has acquired the right to possession and the right to recover possession, or, in other words, has become "entitled to evict the tenant by reason of determination of his contractual tenancy, if any, or otherwise, as, before that, no question of restricting the landlord's right in that behalf does can, possibly, arise. True, indeed, that such restrictions and the like against the landlord become effective only after the above stage and that was what was stressed by the Supreme Court in Punjalal's case, , (supra), at p. 125. Nothing more, however, should be read into those observations. They do not warrant the view that the notice under Section 13 (6J of the West Bengal Premises Tenancy Act, 1956, cannot be given before determination of the tenancy. They only show that such notice will not be effective before that determination, where, as in the case of a contractual tenancy, the determination of the tenancy is necessary to enable or entitle the landlord to evict the tenant. It is also important to note that, in the above case , the notice in question was a combined notice under the general law (Section 106 of the Trans-per of Property Act) and the special law (Section 72(1) of the Bombay Rents Hotel and Lodging House Rates Control Act, 1947), there under consideration, and this was held to be valid and sufficient by their Lordships of the Supreme Court. The theory of a combined notice thus received from their Lordships sufficient approval which, on principle,

substantially supports the view, taken above by us on the point.

63. I need only add here that the other Supreme Court case, cited above, namely, so far as it is relevant for our present purpose, merely shows that the effect of a non obstante clause, as here, is to give the attached statutory provision, to the extent that it goes a predominance and an overriding effect and, to that extent, to make it exhaustive. It does not, however, show that, on matters, not dealt with by the said statutory provision or provided for in it, the existing law will be abrogated by reason of the said non-obstante clause.

64. Now comes the question of grounds. I have already shown that, textually and on a reasonable construction. Section 13 (6) would require the grounds to be stated in the notice. Section 23 also, may, on a proper reading, support this view. That section expressly refers to a notice on the ground of default. It thus contemplates a notice, where such a ground, -- the ground of default,

-- obviously, a ground under Section 13 (1), would be mentioned. Only the notice under Section 13 (6) can be such a notice, as a notice, mentioning a ground under the Act must be referable to the Act and the Act prescribes no other notice, relevant for the purpose, that is, for purposes of Section 23. There is, however, --apparently it seems, -- one prima facie difficulty in the matter as, in the context, in which the notice on the ground of default appears in Section 23, it must be a notice to quit, as referred to in the said section. The Act thus contemplates, so far as this section is concerned, some sort of a notice to quit on the ground of default. A notice to quit, however, in the technical sense, need not be on any ground whatsoever. That, indeed, is settled law. In the premises, the term "notice to quit" appears to me to have been used in this Section (Section 23), not in its technical but in an extended or literal sense, as including a notice which, in effect, calls upon the tenant to quit or vacate, where his tenancy has already been determined. It will then include a notice of suit under Section 13 (6), in which this demand for possession is, at least, implied, it not expressly made, there being thus comprehended within the said phrase 'notice to quit', as used in Section 23, the notice to quit, technically so-called, that is, in its usual sense, and the above notice of suit and a fortiori a combined notice, answering both the above descriptions, of which in the notice of suit, whether separate or in the combined form, as aforesaid, the ground or grounds under Section 13 (1) would be given, thus satisfying the description 'a notice on the ground of default' in Section 23. This will reconcile the different provisions of the statute and, in my view, this harmonious construction should be favoured and preferred on a matter of principle.

65. To explain myself a little more fully I would add a few words here. Section 23 of the Act, as I have said above, contemplates a notice to quit on the ground of default. I do not think that, a notice, not containing the ground of default or any sufficient indication of or reference to it, would come within the above description. It would, indeed, be going too far to say that a notice to quit without mention or indication of or reference to the ground of default would still be a

notice to quit on the ground of default, if in the suit, eventually filed, some such ground is taken, or in some correspondence or document, prior or subsequent, to which the notice may not necessarily be referable, some such ground is mentioned. That being the position, two views are possible -- either the notice to quit, even in its technical sense, must contain or refer to the ground of default or the notice to quit, which the statute contemplates in Section 23 and which, under it, must contain or sufficiently mention or refer to the ground of default, would be a notice to quit in the extended or non-technical sense, given above. Of these two views, the latter, in my opinion, is more acceptable as to accept the former would be to introduce a far more drastic and revolutionary change which, if possible, should be avoided. I would, therefore, hold that the notice to quit, mentioned in Section 23, means fit notice to quit in the above extended sense --

its general and internal sense -- and includes, within it, not merely the technical notice to quit and vacate, and thus answering the general or literal description of a notice to quit, and harmonise the different parts of the statute.

66. It is said that notice of the grounds need not be given because the tenant will in no better position by receiving such a notice, and, it, in fact, the ground or grounds exist, the tenant cannot remedy the defect on receipt of the notice. There are several answers to this contention. We are interpreting Section 13 (6) and the structure of Section 13 (6) suggests that the notice of the suit on any of the grounds, mentioned therein, must be given. The question is what Section 13 (6) means and not whether the tenant will be in a position to improve his lot after receiving the notice. The tenant may be in no better position after receiving the notice of the landlord's intention to institute a suit or proceeding for recovery of possession of the premises, but it is plain that such a notice must be given, and I think that, on a true construction of Section 13 (6), notice of the grounds must also be given. Assuming, again, that the defect is not capable of remedy, it does not follow that notice of the grounds need not be given. Thus, as already seen, Section 114-A of the Transfer of Property Act, --and so also Section 155 of the Bengal Tenancy Act, -- requires notice of the particular breach, complained of, even though the breach, complained of, may not be capable of remedy. Besides, it cannot be assumed that no useful purpose will be served by giving the tenant notice of the ground. Thus, on receipt of a notice that the landlord intends to file a suit on the ground of default in the payment of rent, mentioned in Section 13 (1) (i), the tenant may tender the rent in arrears together with interest thereon, and if the landlord still refused to receive the rent and files a suit on that ground, the tenant may deposit the rent in arrears together with interest thereon under Section 17 (1) and, if he does so. in view of Section 17 (4). no decree for recovery of possession of the premises can be passed and, having regard to the conduct of the landlord before institution of the suit, the Court may deny or deprive the landlord of his costs of the suit. Again, on receipt of a notice of the landlord's intention to file a suit on the ground, mentioned in Section 13 (1) (f), that the premises are reasonably required by

the landlord for his occupation, the tenant may find that the requirement of the landlord may be substantially satisfied by occupation of a part only of the premises and he may, thereupon, offer to vacate that portion of the premises and, having regard to Section 13 (4), the landlord may well accept the offer and a litigation may thus be avoided. A bald notice of suit is a meaningless and empty formality. The essence of the notice of the suit is the notice of the ground, or grounds, on which the suit is instituted. The notice of the suit, as contemplated in Section 13 (6), necessarily implies notice of the ground or grounds, upon which the suit is based.

67. One word here on my own decision, reported in *Radharani Dasi v. Angur Bala Dasi*, 65 Cal WN 1119, which was cited during arguments. There, the present question did not arise for consideration and the incidental observations at page 1123 were made on the argument, not necessary to be examined there, that the notice under Section 13 (6) was a notice to quit as distinct from a notice of suit, upon the assumption of its correctness (Vide the express words of reservation "if and to the extent it refers to the notice to quit", used by me) and upon the well-known theory that, in a notice to quit, strictly so called, no grounds need be stated. It would be misreading my said decision to use it in support of the view that the notice under Section 13 (6) is a notice to quit, in which grounds need not be stated. But I cannot help if it is so misread.

68. Before concluding, I would briefly refer to some other aspects, which also came up for discussion during arguments. Reference was made to the preamble which shows that the Act was passed to provide for regulation of certain incidents of tenancy of premises. This emphasises that the Act was not intended to be a complete code but only to modify or supplement the existing law in the above respect. This the Act does, as I have already shown, by providing inter alia for the special notice -- a notice of suit -- in Section 13 (6). The Transfer of Property Act is not abrogated by this new statute, which is only super-imposed on it to add to or modify its provisions in certain respects. Section 13 (6) is just an instance on the point and, in the cases, mentioned in the said section, the notice under it is an essential requisite, even though no such notice is required or prescribed under the Transfer of Property Act or any other law. That notice, as I have shown above, is not a notice to quit in the technical sense and the two exceptions, therefore, which are expressly made in the said section, however much they might have otherwise supported the "notice to quit" argument would not be available for the purpose. These exceptions, however, do, in my opinion, support the view that the notice under Section 13 (6) must contain the ground or grounds under Section 13 (1), upon which the suit in question is brought. The exceptions relate to grounds under Clauses (j) and (k) which are, obviously, grounds, known to the tenant, and, in the context, the contrast, that is provided by their exception, raises a reasonable inference that the requirement of notice in cases of the other grounds under Section 13 (1) contemplates intimation of those grounds to the tenant. In cases under Section 13 (1), Clauses (j) and (k), where, obviously, the ground or grounds concerned are

known to the tenant, the statute expressly says that the notice under Section 13 (6) would not be necessary and it requires the notice only in the other cases under Section 13 (1), where the grounds are not known to the tenant. The contrast is eloquent and the accent is clearly on the tenant's ignorance or want of knowledge of the grounds in question. In such context, it would, in my opinion, be misreading the statute to hold that its purpose is not to apprise the tenant of the ground or grounds of ejection and that the notice under Section 13 (6) need not state or refer to such grounds.

69. Reference was also made to Section 19 (2) of the Act, which permits the tenant, in the absence of a contract to the contrary, to give up possession of the premises on giving not less than one month's notice expiring with a month of the tenancy and it was sought to be argued therefrom that, as that obviously, effects a change of law in regard to the tenant's notice to quit and fixes its period, in the absence of a contract to the contrary, to a month at the minimum, Section 13 (6), in prescribing the same minimum period for the notice thereunder, must be referring to a notice to quit. I do not think that this argument has any substance. I have sufficiently shown above why the notice under Section 13 (6) would not be a notice to quit in the technical sense but, even apart from that, the language of Section 19 (2) itself is sufficiently distinctive to show that the notice under it, enabling the tenant, as it does, to give up possession, determines the tenancy, or, in other words, that it is a notice to quit in the technical sense, while any such indication is absent in the language of Section 13 (6), so that the notice under this latter provision can bear no analogy to the notice under Section 19(2).

70. In the premises, I would hold, as already stated: -

(1) that the notice under Section 13 (6) of the West Bengal Premises Tenancy Act, 1956, is a notice of suit and not a notice to quit or a combined notice, answering both the above descriptions or purposes:

(2) that it is a notice required in addition to and not in lieu of the notice under Section 106(1) of the Transfer of Property Act, where this latter notice is otherwise necessary. The two notices, however, may be combined in one and the same document and may expire or may be made to expire simultaneously; and (3) that it must express the intention to file the suit, mentioned in the section, that is, a suit for ejection on a ground or grounds, as mentioned in the section, and, necessarily, therefore, must mention the said ground or grounds too, on which the suit is proposed to be brought. In other words, expression of the above intention and mention of the above ground or grounds would be necessary--and sufficient also,--to validate the said notice and would constitute its essential requisites or contents;

and answer the corresponding point under reference accordingly.

71. As to the other point under reference, which concerns F. A. No. 444 of 1961 alone, I have already explained the position and recorded my answer in the matter and to the extent possible, namely, in broad and general terms, and no further elucidation and no greater precision is possible. That answer, as it is sufficiently clear from its terms, substantially corresponds and accords with the view of my learned brothers and I would prefer to leave the matter there.

72. In my view, the references should be answered as above.

73. There should be no order for costs.

Mitter, J.

74. This reference arises out of a suit for ejectment of the tenant by the landlord on the ground that the tenant had built a room on the roof of the house without his consent and thereby done an act contrary to the provisions of Section 108(p) of the Transfer Property Act. According to the plaintiff the tenancy was determined by a notice dated July 18, 1956 calling upon the defendant to give up possession on the expiry of the last day of August 1956. In his written statement the defendant admits having constructed a small temporary tin shed on the roof of the house upon the existing walls but states that it was done with the consent of the plaintiff and on an increment of rent by five percent. The defendant further pleads that the notice of termination of tenancy was invalid and insufficient and/or was withdrawn by a subsequent notice to quit dated August 24, 1956 expiring with the end of September, 1956. At the trial in the court of small causes, Calcutta, the following issues were framed :

(1) Has the defendant erected upon the premises in suit any permanent structure within the meaning of Clause (p) of Section 108 of the Transfer of Property Act without the consent of the plaintiff company ? If so, has the plaintiff company given its subsequent consent to such construction by increasing the rent ?

(2) Has the notice of ejectment dated 18-7-1956 been served upon the defendant determining the tenancy in suit ? If so, has the notice been waived and withdrawn by the notice dated 24-8-1956 ?

(3) What relief, if any, is the plaintiff entitled to ?

75. On the first issue the learned Judge held that a small room with three inch brick walls covered by corrugated iron sheets could not be considered as a permanent structure as it could easily be removed at any time. On the second issue the learned Judge held that two notices had been served on the defendant but the first was one of termination of tenancy and the second was out under Section 13 (6) of the Premises Tenancy Act. The second was not a notice to quit, and consequently there was no waiver of the first notice by the second. In view however of the

finding on the first issue the plaintiff was not entitled to any relief.

76. At the hearing of the appeal preferred from the court of small causes to this court it was felt that questions of considerable importance raised thereby necessitated a hearing by a special division bench and accordingly the learned judges referred the case to the learned Chief Justice under Chapter II Rule 1 Proviso (ii) of the Appellate Side Rules. The questions which they set down for authoritative decision are as follows :

(1) What is a permanent structure for purposes of Clause (p) of Section 108 of the Transfer of Property Act ? What, if any, are the tests for holding whether a particular structure falls within the mischief of the above clause ? Whether a room with "two inches thick brick built walls and a corrugated iron sheet roof" is a permanent structure within the meaning of the aforesaid statutory provision ?

(2) What notice is contemplated under Section 13 (6) of the West Bengal Premises Tenancy Act, 1956 ? Is it a notice to quit or a notice of suit or a combined notice to answer both the above purposes ? Is it a notice, required in addition to a notice under Section 106 of the Transfer of Property Act or a notice in lieu of it ? What, if any, are its necessary elements or contents ? Is it necessary to mention in it the ground or grounds of ejection under aforesaid Act, on which the suit is to be brought ? Or in other words, need it be a notice of such grounds ?

77. The second question which arises under the West Bengal Premises Tenancy Act, 1950 affects all landlords desiring to get rid of their tenants. Section 13 (6) of the Act is a new measure which had no counter part in previous Acts and ordinances which have from time to time been enacted from 1942 onwards. It runs as follows :

"Notwithstanding any tiling in any other law for the time being in force, no suit or proceeding for the recovery of possession of any premises on any of the grounds mentioned in Sub-section (1) except the grounds mentioned in Clauses (j) and (k) of that sub-section shall be filed by the landlord unless he has given to the tenant one month's notice expiring with a month of the tenancy."

78. The points which were brought up before the learned Judges of the referring bench were whether a notice under the new measure was to replace an ordinary notice to quit necessary under the Transfer of Property Act or whether it was an additional notice enlarging the period of 15 days to a month or whether it was a notice of suit analogous to one under Section 80 of the Code of Civil Procedure and again whether a notice under the above section which did not specify the grounds on which eviction was being sought was a valid notice.

79. To ascertain the intention of the legislature and arrive at a true construction of the said section

it is necessary to bear in mind the law as it stood at the time of the coming into force of the said provision and examine the same in the light of the object with which it was brought on the statute book. The other enactments regulating the conditions of tenancy and eviction of tenants were all temporary provisions. The West Bengal Premises Tenancy Act, 1956 which was brought on the statute book on March 30, of that year shows in its preamble that it is an Act to provide for the regulation of certain incidents of tenancy of premises in Calcutta and some other areas in West Bengal. The object of the Act is undoubtedly to ameliorate the condition of the tenants so that they cannot be thrown out at the sweet will of the landlords or made to pay very much enhanced rent on threat of eviction. The Act applies to all leases other than those excepted by Section 3. The landlords are prohibited from claiming, demanding or receiving any sum as premium either in cash or in kind in addition to the rent. The Act permits a limited increase in rent under certain conditions. It is designed to prevent the tenant from creating sub-tenancies against the will of the landlord and continuing in occupation without payment or deposit of rent. The landlord is also compellable to make repairs to the premises under the conditions of the tenancy or in the absence of any such condition to effect such repairs as the Controller considers essential. Similarly a tenant who is bound to make repairs under the terms of the tenancy but neglects to do so stands in peril of eviction if after service of a notice in that behalf he fails to show proper cause or make the repairs within the time specified in the notice or allowed by the Controller.

80. It is to be noted that the West Bengal Premises Tenancy Act 1956 (hereinafter referred to as the Act) does not purport to be a self contained code for the purpose of governing all rights and liabilities of landlords and tenants of premises in Calcutta and some other areas in West Bengal. Its preamble indicates that it only seeks to modify certain incidents of tenancy. Consequently, it leaves unaffected such incidents of tenancy as are not inconsistent with its provisions. It does not purport to abrogate all rights of landlords and tenants set forth in the Transfer of Property Act and replace them by new ones but only seeks to vary or alter some of them. It is well known that the object of the Act is to give protection to tenants which is not available under the Transfer of Property Act.

81. The Act does not lay down how a tenancy may be created for which we have to refer to the Transfer of Property Act. The definition of 'tenant' given in Clause (h) of Section 2 is an inclusive one and brings within its umbrage "any person continuing in possession after the termination of his tenancy". Except for Section 19 the Act does not show in clear terms a tenancy may be terminated by one of the parties for which again we have to refer to the Transfer of Property Act. Section 13 (1) lays down the conditions or the circumstances in which a suit for eviction can succeed. The existence of any of the grounds specified in Clauses (a) to (i) of that sub-section does not ipso facto bring the tenancy to an end, Section 19 (1) on the other hand lays down that a tenant must observe all the terms and conditions of the contract creating the tenancy

and is to be entitled to the benefits thereof so far as they are consistent with the provisions of the Act. Although Section 19 (1) does not expressly make such provision in regard to landlords it must follow that the rights of landlords are unimpaired except to the extent laid down in the Act. Exhaustive provisions have been made by various sections of the Act for fixation of rent, restriction on claims, demands and receipts of premium or other considerations, refund of the premium etc. -- matters which are not provided for under the Transfer of Property Act. The jurisdiction to fix or to increase the rent is given not to the courts of law but to the Controller who has also the power to revise the 'fair rent'.

82. Under the ordinary law a tenant is free to sub-let the whole or any part of the premises in the absence of a contract to the contrary. This right has however been curtailed by Section 14. Section 16 contains provisions with regard to notification of certain and termination of sub-tenancies. Section 17 makes it obligatory on a tenant wishing to get protection against eviction to deposit rent regularly as prescribed there-

in in default of which his defence against possession may be struck out. It is therefore clear that the rights and obligations of landlords and tenants under the Transfer of Property Act are not swept by the board but there are important variation with regard to a good many of them for which special provisions have been made. The rights and liabilities of the lessor and lessee as enumerated in Section 108 of the Transfer of Property Act are not abrogated altogether. There is nothing in the Act which nullifies Section in of the Transfer of Property Act. Consequently when a lease of immovable property determines under that section the erstwhile lessee is protected by the Act and continues to be a tenant for the purposes of the Act by virtue of the definition in Section 2 (h) thereof and can only be evicted as laid down in Section 13 or Section 34 (4) of the Act. The contract of tenancy can be put an end to by notice to determine the lease or to quit or of intention to quit the property leased under Clause (h) of Section 111 served in the manner provided for in Section 106 of the Transfer of Property Act. In the absence of a contract or local law or usage to the contrary, a case of immovable property for purposes other than agricultural or manufacturing must be treated as one from month to month terminable on the part of either lessor or lessee by 15 days notice expiring with the end of a month of the tenancy. The right to evict a tenant is circumscribed by Clauses (a) to (k) of Sub-section (1) of Section 13. When Clauses (j) and (k) do not come into play the landlord must give to the tenant one month's notice expiring with a month of the tenancy. We have to consider the impact of Section 13(6) on Section 106 of the Transfer of Property Act. Considered by itself Section 13 (6) makes it obligatory on the landlord to give the tenant a month's notice before filing a suit. It does not lay down in clear terms what intimation the notice should give but there can be little doubt that it must at least indicate to the tenant that a suit will be filed against him. It does not obviate the necessity of giving other notices for success in the suit. It only casts an additional burden on the landlord. The

opening words "notwithstanding anything in any other law for the time being in force" do not mean that other laws are not to be obeyed but only indicate that the section will have to be complied with irrespective of formalities prescribed by other laws. If there be any other law which provides for the service of notice on the tenant before the institution of a suit such notice must be given. It is to be noted that the sub-section does not override any agreement between the parties. Indeed Section 19 (1) preserves the benefits given by the contract to the tenant. Consequently if the parties have provided in their contract that three month's notice would be necessary to put an end to the tenancy it would not be enough for the landlord to rely on a notice under Sub-section (6) of Section 13 as sufficient for the purpose of evicting his tenant. A clause in the contract providing for three months' notice would not be inconsistent with Section 13 (6) of the Act. If by contract the parties have provided that three days' notice on either side would be enough to put an end to a tenancy, such a notice by itself would not help out the landlord in a suit for eviction as he must also comply with the requirements of Sub-section (b) of Section 13 and give a month's notice to the tenant expiring with a month of the tenancy before filing a suit.

83. Except the phrase "expiring with a month of the tenancy" there is nothing in the sub-section which would link the notice mentioned with a notice to quit. The said phrase merely indicates the terminus ad quem of the notice. As the sub-section does not seek to abridge the rights of the parties under the contract the position would be that a notice complying with it over and above a notice to quit would be required for successfully prosecuting a suit for eviction.

84. It was contended on behalf of the landlords that the effect of Section 13 (6) was to render nugatory provisions for giving notice to quit either under the contract or under the Transfer of Property Act and an intimation to the tenant that the landlord proposed to institute a suit for eviction after the expiry of a month ending with a month of the tenancy would be enough. It was further contended that a notice described as one under Section 13 (6) should be treated as a notice to quit although the tenant was not thereby required to give up possession of the premises. Reference was made to Section 19 (2) of the Act which provides inter alia that "in the absence of any provision in the contract relating to notice or where there is no contract, the tenant may give up possession of the premises on giving not less than one month's notice expiring with the month of the tenancy" and it was argued that the combined effect of Section 13 (6) and Section 19 (2) of the Act was to nullify the provisions of Section 106 of the Transfer of Property Act or to treat the same as repealed by implication. To put shortly, counsel argued, a mere month's notice of suit by the landlord expiring with the end of a month of the tenancy was sufficient for the purposes of the Act and replaced the notice to quit under the Transfer of Property Act. This contention was sought to be supported by the wording of Section 13 (6) because (1) the notice was to be one "expiring with a month of the tenancy" showing thereby that the legislature had Section 106 of the Transfer of Property Act in mind, (2) the exception of Clauses (j) and (k) of Sub-section (1)

of Section 13 was a pointer to the same effect and (3) the expression "notice to quit" occurred in Section 23 of the Act in such circumstances as to show that a notice under Section 13(6) was to be so treated. In my view the above contention is not sound. Merely because the same words have been used to indicate the terminus of a notice to quit under the Transfer of Property Act as also of a notice under Section 13 (6) of the West Bengal Premises Tenancy Act it cannot be said that one merges in the other or that one replaces the other. As Section 23 of the Act refers directly to Section 13 of the Act we must also consider the effect of the said section.

85. Section 23 provides as follows : "The withdrawal of rent deposited under Section 21, in the manner provided therein, shall not operate as an admission against the person withdrawing it or the correctness of the rate of rent, the period of default, the amount due, or of any other facts stated in the tenant's application for depositing the rent under the said section, nor shall it operate as a waiver of any notice to quit given by him to the tenant except a notice on the ground of default referred to in Clause (i) of Sub-section (1) of Section 13".

86. This section as well as Clause (j) of Section 13 (1) go to show that the legislature had not meant to do away with notices to quit. These provisions rather assume the necessity of service of a notice to quit in spite of the Act. A notice to quit must comply with, the contract. If the contract does not provide for any special period of notice, fifteen days' notice expiring with the end of a month of the tenancy would meet the requirements of Section 106 of the Transfer of Property Act but such a notice by itself would not ensure success in the suit because of Section 13 (6) of the Act. A notice which does not ask the tenant to vacate would not be a notice to quit. Consequently, if the tenant is not required by the notice to give up possession his tenancy would not be determined even if Section 13 (6) was complied with. So far as the tenant is concerned, he must under Section 19 (2) of the Act give one month's notice that he would give up possession on the expiry of a month of the tenancy. Such a notice would indeed be a notice to quit, only the period of notice would be somewhat longer than that prescribed by Section 106 of the Transfer of Property Act where the contract contains no provision as to the period of notice. Section 106 and Section 111 of the Transfer of Property Act do not, therefore, stand repealed by implication. Section in is in full force when a special period of notice is provided for in the contract. The period of fifteen days mentioned in Section 106 is modified in the case of a monthly tenant.

87. There was some discussion at the bar as to whether a notice under Section 13 (6) would be required in the case of a lease for manufacturing purposes. The point is not covered by the reference before us and should best be answered when it arises. In my view, Section 13 (6) was not aimed at disturbing the rights under such leases. In the absence of a contract to the contrary, such a lease can only be determined by six months' notice expiring with the end of a year of the tenancy by the combined operation of. Section 106 of the Transfer of Property Act and Section

19 (1) of the Act. In such a case there is really no "month of the tenancy" and the unit of the period of tenancy being a year, it would not be right to split the year into twelve months and hold that a notice under Section 13 (6) can be given so as to expire with any of the twelve months of the tenancy. "A month of the tenancy" does not mean a month out of the tenancy. The expression is associated with tenancies where the unit of the period is a month. It has been used in Section 12 of the Act to mark the terminus from which the increase or decrease in the "fair rent" is to become effective but there is nothing in that section to show that the legislature wanted to alter the periods for payment of rent from those fixed by the contract. It is also significant to note that most of the clauses of Sub-section (1) of Section 13 relates to cases where the property has been leased for residential purposes. Besides, Section 13(6) only gives the tenant an additional period of fifteen days before the institution of a suit over and above a like period where the contract does not provide for a special period of notice. A tenant who has a manufacturing lease which does not specially provide for a particular period of notice is entitled to six months' notice expiring with the end of a year of the tenancy under the Transfer of Property Act. He cannot therefore be evicted without a fairly long notice. Again a lessee under a manufacturing lease does not generally make up his mind all of a sudden to stop manufacturing and quit the premises. In view of these circumstances the legislature may well have thought that no special provision for regulating the incidents of a manufacturing tenancy was called for.

88. The question still remains as to whether the notice under Section 13(6) must specify the ground on which eviction is sought. In the series of statutes and ordinances preceding the Act, the law making authority never thought it necessary for the landlord to inform the tenant about the ground on which his eviction was sought. The grounds for eviction of tenants continued in Section 12 of the 1950 Act were in all material respects the same as those given in Section 13 of the Act. Section 12 of the 1950 Act was the first section in Chapter III which was headed "suits and proceedings for eviction." Chapter IV of that Act containing Sections 19 and 20 was headed "deposit of rent". Chapter IV in the present Act contains five sections, namely, from Section 31 to Section 23 and is similarly beaded The present Section 23 had its counterpart in Section 21 of the Act of 1950 but whereas Section 21 of that Act ended with the words "nor shall it operate as a waiver of any notice to quit given by him to the tenant", the legislature has now added thereto the following :

"except a notice on the ground of default referred to in Clause (i) of Sub-section (1) of Section 13".

89. On behalf of the tenants it was argued that this marks a significant departure and cures the lacuna in Section 13 (6). As already mentioned the text of Section 13 (6) does not show that a landlord was obliged to mention in the notice the ground on which he was seeking to evict the

tenant but the last portion of Section 23 might suggest that the ground should be stated in the notice. I am inclined to think that the interpretation sought to be put upon Section 13 (6) and Section 23 by the tenants ought not be accepted. The tenant's position is hardly improved by the disclosure of the grounds in the notice a rider Section 13 (6). He cannot rectify any defect so as to compel the landlord to change his mind. If the tenant does not get an opportunity of doing something which he had left undone or of undoing something which he had negligently or mistakenly done there can be no sense in disclosing to him the ground of eviction which he will in any event come to know when the suit is filed. Under the ordinary law of the land a tenant would be entitled to fifteen days' notice to quit. Section 13 (6) does not materially improve his position in regard to that but gives him at best another fifteen days, for a landlord is free to combine a notice under Section 106 of the Transfer of Property Act with one under Section 13 (6) of the Act. In the present scarcity of accommodation prevalent in Calcutta and indeed all other towns and cities all over India, it can hardly be suggested that one month's notice would give the tenant an opportunity of finding out alternative accommodation elsewhere. To all intents and purposes a notice under Section 13 (6) merely defers the institution of the suit by fifteen days at the most. As the object of the Act is to modify certain incidents of tenancies of premises leaving unaffected such provisions of the Transfer of Property Act as are not inconsistent with it we must consider whether the furnishing of the ground for eviction would benefit the tenants in any way and if we are unable to hold that the tenant will be any better off by the disclosure. We should not read into Section 13 (6) anything which is not clearly stated there. Viewed in this light it is not possible to hold that the tenant should be informed of the ground for eviction in the absence of clear words to that effect.

90. It was argued on behalf of one set of tenants represented by Mr. Gupta that a notice under Section 13 (6) cannot be combined with a notice to quit under the Transfer of Property Act and that the right to serve a notice under Section 13 (6) only arises after the expiry of the relevant period in a notice to quit served in the manner laid down by Section 106 of the Transfer of Property Act. It was further argued that a notice under Section 13 (6) resembled a notice under Section 80 C. P. Code and could only be given after the accrual of the cause of action for the suit for eviction founded on a notice to quit. There is no doubt some analogy between a notice under Section 13 (6) and one under Section 80 C. P. Code but the likeness is entirely superficial. The object of a notice under Section 80 C. P. Code is to give the Government or the public servant concerned a chance of considering whether the case should be resisted or accepted. See the State of Madras v. C. P. Agencies, . The object of a notice under Section 13 (6) can hardly be the same. If for instance the tenant was informed that the landlord required the premises bona fide for his own use the tenant would scarcely be able to judge whether the claim was good or otherwise and whether he should throw in his hand (sic).

91. In this connection reliance was placed on certain observations of the Supreme Court in the case of and it was argued that a notice to quit was necessary in order to establish the right to possession and a further notice was necessary to exercise the right to recover possession. The Supreme Court had in that case made a distinction between the right to possession and a right to recover possession and said that the first arose when the tenancy was determined and the second when the person in possession did not make over possession as he was bound to do under the law necessitating resort to the Courts. These observations cannot however be dissociated from the context in which they were made as ordinarily under the Transfer of Property Act the right to possession and the right to recover possession arise simultaneously in the vast majority of cases. Section 111 of the Transfer of Property Act enumerates the various circumstances in which a lease of immovable property determines. Clause (h) thereof provides for the determination of the lease on the expiration of a notice as there mentioned. under Section 108 Clause (q) of that Act the lessee is bound to put the lessor into possession of the property on the determination of the lease in the absence of the contract or local usage to the contrary. The result is that unless the contract provides otherwise the lessee is bound to restore possession to the lessor as soon as his lease comes to end. In such cases the lessor's right to possession as well as the right to recover possession arise simultaneously under the Transfer of Property Act. Ordinarily the lessor is not required to call upon the lessee to restore possession after the determination of the lease. He need give no notice to that effect before filing a suit, Mr. Gupta's contention that the notice to quit gives rise to the right to possession and a notice under Section 13 (6) brings into existence the right to recover possession cannot be accepted. No notice similar to a notice under Section 13 (6) was ever considered necessary for the purpose of instituting a suit before the coming into force of the Act. Section 13 (6) is a superimposition On the obligations of the landlord before he can file a suit. In cases where no notice to quit is required as for instance in cases under Clauses (a) or (b) of Section 111 of the Transfer of Property Act a landlord can file a suit by merely giving a notice under Section 13 (6).

92. The intention of the legislature to be gathered from several sections of the Act including Section 17 is that the landlord should be allowed to appropriate the rent pending the litigation which might last for sometime. Even when the tenant disputes his liability to pay the rent as claimed by the landlord the legislature forces him to make an application for the determination thereof immediately after the institution of the suit and compel him to go on making the deposits of rent pending the final determination. Even when the tenant has bona fide doubt as to the person or persons to whom rent is payable or when the landlord refuses to accept the rent tendered by him he must make a deposit under Section 21. Under Section 22 the legislature has prescribed the limit of time within which deposit must be made if the tenant is to avoid the consequences of irregular payment. Whereas under the previous legislation the landlord was free to withdraw rent deposited without prejudice to any of his rights Section 23 now provides that he

may do so only at his peril if he relies on the default in the payment of rent as a ground for evicting the tenant. The closing words of the section "except a notice on the ground of default referred to in Clause (i) of Sub-section (1) of Section 13" were not intended to lay down That all notices under Section 13 (6) must give the ground in Sub-section (1) of Section 13 on which the landlord relies. Section 23 of the Act was not really intended to amplify Section 13 (6). Its only object was to enable the landlord to withdraw the rent deposited under Section 21 without prejudice to his rights and he can freely do so except where his suit is based on the ground of default in payment of rent. The words of Section 23 quoted above merely go to show that if the landlord has given a notice on the ground of default the withdrawal of rent may operate as a waiver. It is common knowledge that landlords are in the habit of giving notices to tenants that they are defaulters and will be evicted as such. It may be that in enacting Section 23 the legislature had this practice in mind. In my view the words "notice on the ground of default" in Section 23 means "notice based on the ground of default" and does not add to the plain meaning of the words in Section 13 (6) by making it compulsory for a landlord to specify the particular ground on which he seeks eviction.

53. In , there is an observation by a Division Bench of this Court that "a notice under Sub-section (6) of Section 13 of the West Bengal Premises Tenancy Act, 1956 has taken the place of a notice under Section 106(106) of the Transfer of Property Act and where a case is governed by the former Act, only one notice under that Act is required to be served upon the tenant for getting khas possession of the premises." There is no discussion of the point nor is any reason given as to why the learned Judges came to take that view. It is not possible to accept the said dictum.

94. The mode of service of a notice under Section 13 (6) came up for consideration in the case of 65 Cal WN 1119. There it was held that such a notice could be given by an agent of the landlord. In passing the Court remarked (see at p. 1123) "indeed, it may well be contended that the only change, if any, intended by the section (Section 13 (6) of the West Bengal Premises Tenancy Act, 1956) -- if and to the extent it refers to the notice to quit -- was in respect of the period of the said notice and upon that view, the only effect of the non-obstante clause would be as to or upon the same alone. We would, accordingly, hold that, under Section 13 (6) also, the giving of notice by the landlord's duly authorised agent on his behalf, would be sufficient as it was under the Transfer of Property Act".

The above clearly shows that the learned Judges did not express any view as to whether a notice under Section 13 (6) was to be a notice to quit.

95. The view taken by me finds support in the case of (F.B.). It was not necessary to examine the provisions of Section 13 (6) in any detail but Bachawat, J., indicated his view at p. 798 (of Cal WN) : (at p. 564 of AIR) in the following words:

"now the notice under Section 106 of the Transfer of Property Act is required to determine a contractual monthly tenancy whereas the notice under Section 13 (6) of the West Bengal Premises Tenancy Act, 1956 is required to enable the landlord to maintain a suit for ejectment against the tenant on grounds other than those mentioned in Section 13 (1) (j) and (k). The two notices are required for different purposes though I am inclined to think that both the notices may be effectively given by a single document." With regard to notice under Section 13 (6) of the Act P. N. Mukherjee, J., took the view "that however is a notice of the suit and is required for the filing of the suit." (see at p. 807) (of Cal WN) : (at p. 568 of AIR).

96. Attempt was made by the learned Advocate appearing for the landlord to show that by the use of the non-obstante clause "notwithstanding anything in any other law for the time being in force" in Section 13 (6) the legislature intended to make the said provision operative in supersession of other similar provisions required by any other law and reliance was placed on the case of where it was held on a construction of Section 11 (1) (a) of the Bihar Buildings (Lease, Rent and Eviction) Control Act of 1947 that the Act set up a complete machinery for investigation of those matters upon which the jurisdiction of the Controller to order eviction of a tenant depended. The provisions of the Bihar Act are very different from the Act before us and as already indicated Section 13 (6) merely superimposes a condition for the landlord's filing a suit and does not obviate the necessity of serving a notice to quit. Indeed in the case of it was pointed out that Section 12 of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 was differently worded and could not be said to be a complete code like the Bihar Act.

97. On behalf of the tenants it was argued relying on the analogy of a notice for showing cause under Article 311 of the Constitution of India after the punishment of a Government servant had been tentatively decided that a notice to quit under the Transfer of Property Act could not be combined with a notice under Section 13 (6) and that the two had to be served one after the other and expiring on different dates. It was argued that when there was a contractual tenant on the premises his contractual tenancy had to be terminated by a notice to quit and a further notice was required under Section 13 (6) evincing the landlord's intention to recover possession by a suit. I find myself wholly unable to accept this contention. The periods of the two notices as also their purposes are different. A notice to quit is only necessary to put an end to the tenancy. It may not be necessary in some cases as for instance where the period of the lease has come to an end by effluxion of time. In such a case notice under Section 13 (6) would be the only prerequisite to a suit. Nor can I see why two notices cannot be given by the same document so as to expire with the end of a month of the tenancy. The notice if suitably worded would comply with the requirements of the Transfer of Property Act as also of Section 13 (6) of the Act. Section 13 (6) does not lay down how the landlord should give the notice specified thereunder and there does not seem to be any bar to a landlord's giving an oral notice. But such a notice would be very

difficult to prove and would unnecessarily prolong litigation. We are not called upon to examine the question as to how a notice under Section 13 (6) should be served but I cannot see any reason why it cannot be served in the manner laid down in Section 106 of the Transfer of Property Act. As the Act is a permanent Act the legislature may be well advised to cure this lacuna and state specifically that service in the manner indicated in Section 106 of the Act would be good service.

98. So far as second question is concerned I concur in the answer thereto given by my Lord the Chief Justice.

99. I now turn to the question of permanent structures erected by the tenant.

100. under Section 13 (1) (b) of the Act a tenant may be evicted if an act contrary to the provisions of Clause (m), Clause (o) and Clause (p) of Section 108 of the Transfer of Property Act has been done either by himself or by any person residing in the premises let to him. Under Clause (m) of Section 108 the lessee is bound to keep the property in as good condition as it was in at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear etc. Under Clause (o) the lessee must use the property and its products as a person of ordinary prudence would use them if they were his own; but he must not use or permit another to use, the property for a purpose other than that for which it was leased, or fell or sell timber, pull down or damage, buildings belonging to the lessor or commit any other act which is destructive or permanently injurious thereto. Under Clause (p) the lessee must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes. It is obvious that in enacting Section 13 (1) (b) the legislature intended that the tenant would keep the property as far as possible in the condition in which it was at the time when it was let and would not do anything which would either be permanently injurious thereto or alter its character permanently. Within the limits specified by Clauses (o) and (p) the tenant could add to the premises and make alterations thereof to suit his needs. The case before us is not one of a lease for manufacturing or agricultural purposes. The tenant is therefore free to raise any temporary structure which can be removed at any time without much trouble or expense. The question whether a structure is a permanent work or not would depend on the nature of its construction and on the intention of the tenant raising it. If the structure is such that it can be removed without difficulty and without causing any damage to the premises let out so that the same would not be any the worse for the removal it cannot be said that the structure was a permanent one. The reported decisions on this point are rather scanty. I may however refer to the judgment of our present Chief Justice in the case of . His Lordship observed (at p. 630 of Cal WN) : (at p. 80 of AIR) "if a structure is intended to be there only temporarily, the statute does not apply, but if the intention is to enjoy the structure permanently and the structure is of a substantial nature, it must be regarded as a permanent structure. In other words, if the work of conversion or construction is

substantial or brings about a substantial change in (he character of the premises and it not merely a small physical change of a temporary or unsubstantial nature such work of construction falls within the mischief of the clause. It is a mixed question of fact and law in each case whether the extent or degree of construction or erection is such as to make it partake of the character of permanent structure or not."

His lordship went on to add that whether a construction was a permanent structure or not would depend on the facts of the each case and on the nature and extent of the particular construction but no hard and fast rule could be laid down with regard to this.

101. I do not think it will serve any useful purpose to examine the other decisions which were cited at the bar. It is impossible to lay down any test which will apply to all cases to find out whether the structure is a permanent structure within the meaning of Clause (p) of Section 108 of the Transfer of Property Act. It is not possible to answer the question as to whether "a room with two inches brick built walls and corrugated iron sheets roof" is a permanent structure. If the walls have been so built as to become a part of the structure which were already there and so attached to the old structure that its removal was bound to affect the old structure it would be a permanent structure. The use of corrugated iron sheets for roofing purpose is not a matter of any significance. All over Calcutta a large number of godowns, garages and workshops will be found which have roofs of corrugated iron sheets and it cannot be suggested that they are not permanent structures because of the use of these sheets which can be dismantled without very much trouble or expense. Again the mere fact that bricks have been used to build the walls is net conclusive in favour of a permanent structure. It would depend on the kind of mortar used and the nature of annexation of the newly erected walls to the existing structure which should guide one in coming to the conclusion as to whether a permanent structure was being constructed.

102. My answer to the first question is the same as that of my lord the Chief Justice.

103. The answer to the second question will also be the answer in F. A. 101 of 1961 and 102 of 1961.

