
(2005) 12 CAL CK 0056

In the Calcutta High Court

Case No : A.P.O. No's. 348 and 349 of 2004

Associated Indem Mechanical Private Limited and Another APPELLANT
Vs

West Bengal Small Industries Development Corporation RESPONDENT
Limited and Others

Date of Decision : 13-12-2005

Acts Referred:

West Bengal Government Premises (Tenancy Regulation) Act, 1976 — Section 2, 2(1), 3, 3(1), 3(2)

Citation : AIR 2006 Cal 176 : (2006) 3 CALLT 85 : (2006) 4 CHN 281

Hon'ble Judges : V.S. Sirpurkar, C.J.;Arun Kumar Mitra, J

Bench : Division Bench

Advocate : Ashok Banerjee, S. Sen and Subir Ranjan Ghosh, for the Appellant;Hirak Mitra, P. Roy Chowdhary and S. Sarkar, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Sirpurkar, C.J.—This judgment will dispose of APO No. 348 of 2004 and APO No. 349 of 2004. These two appeals are against a common judgment dismissing two writ petitions.

Factual Scenario:

2. For the sake of convenience the facts are being taken from APO No. 348 of 2004, The facts in APO No. 349 of 2004 are almost the same. Those facts would be stated separately. The appellant is the lessee of West Bengal Small Scale Industrial Development Corporation Limited (hereinafter called "Corporation" for short) in respect of industrial sheds. The case of the appellant in APO No.348 of 2004 is that three separate lease deeds were executed in respect of industrial sheds being Nos. Y-72, Y-73 and Y-76 at Baltikuri Industrial Estate, Howrah. The three lease deeds in case of the appellants are of different dates but identically worded. These leases were in respect of the above industrial sheds for 99 years with yearly fixed rent. Vide Clause 2F(i) all these lease deeds spelt out a specific liability. The clause reads as under:

2(f)(i) To use the demised premises as a place for carrying on manufacturing business and/or purposes connected with any manufacturing process including processing, manufacture or assembling of machine, tools, implements, instruments, furnaces, heaters, ovens, scientific apparatus, inventions and other industrial products.

3. Vide Clause 2(i) the appellants (hereinafter called lessee for short) agreed to start manufacture or production within six months from the date of the respective lease deeds or within any extended period granted by the Government under exceptional circumstances. Clause 3-B spelt out the further liability of the lessee in case of default in payment of rent or non-use of the demised premises. The clause reads as under:

3B. If the rent hereby reserved or any part thereof shall remain unpaid for six months after becoming payable or if any covenants on the part of the lessee herein contained shall not be performed observed or if the demised premises not used by the lessee for the purposes mentioned in Clause 2(f) hereof for a continuous period of six months then and in any such event, it shall be lawful for the lessor or the Government at any time thereafter to determine the lease and to re-enter upon the demised premises or any part thereof in the name of the whole and thereupon this demise shall absolutely determine without prejudice to the rights of the lessor or the Government in respect of breach of the lessor's covenants herein contained.

4. It was also agreed between the parties vide Clause B(vi)(b) as under:

b) The lessee shall after expiry of thirty years from the date hereof and having fully paid all the dues of the lessor, shall have the option to acquire ownership of the lessor, shall have the option to acquire ownership of the demised sheds and structures, and also walls, soil and other pipes, sanitary fittings, fixtures, etc, exclusive of the piece and parcel of the lands upon which the demised sheds structures, walls etc. stand on additional payment of Rs. ... only equivalent to one month's rent for demised sheds and structures, fittings, fixtures, etc. as the estimated value thereof and upon such payment, the lessee shall thereafter be deemed to be full and absolute owner of the demised sheds, structures, walls, etc. excluding the land or lands upon which they stand and the said lessor shall at the cost and expenses of the lessee grant, convey, transfer, sell and confirm the same and every item thereof and the right, title and interest of the lessor therein for the consideration as aforesaid and thereafter the lessee shall be liable to pay the lessor annually and by due date only the annual rent of Rs. ... only provided for the land only inclusive of the recurring expenses for administration, common facilities, depreciation, etc.

5. In short, the continuation of the leases for thirty years, in terms of the lease deeds, entitled the lessee to own the sheds so demised and thereafter the lease was to be only in respect of the plot of land on which the leased structures stood. These leases commenced as per the following table:

----- Date of
Regd. Date of Commence- Plot No. Annual rent & period of Lease ment of lease
rent 09-02-1970 01-09-1969 Y-76 Rs. 3641.64 (Payable (for 99 years) Schedule
A annually by Ist September 26-05-1972 01-12-1971 Y-73 Rs. 3758.16 (Payable
(for 99 Years) Schedule B annually by 1st December 31-08-1977 01-06-1975
Y-72 Rs. 3759.99 (Payable (for 99 Years) Schedule C annually by 1st June

6. Two notices being SB 784/3 dated 29th May, 2002 and SB 983/3 came to be served on the petitioner-appellant on 19th July, 2002 whereby the three plots mentioned herein above were required to be evicted within a month from the service of the said order. These notices were given as, according to the State of West Bengal, the lessee had violated the terms of the lease vide Clause 3-B quoted above inasmuch as it had failed to take up any manufacturing activity in the said sheds. It was further stated that the lessee had committed default in payment of rent for three consecutive months. These notices were purportedly issued u/s 3(1) of the West Bengal Government Premises (Tenancy Regulation) Act, 1976. Similarly, such notice was given to the appellant in the other appeal also on the identical grounds.

7. Two writ petitions came to be filed they being W.P.No. 9926(W) of 2002 and W.P. No. 10345(W) of 2002 on behalf of the petitioner/appellant. They were disposed of by orders dated 23rd July, 2002 and 31st July, 2002 respectively whereby the learned single Judge of this Court directed the Chairman of the Corporation to consider and dispose of the grievances of the petitioners as mentioned in the writ petition treating the writ petitions as the representations of the petitioners within a period of four weeks from the date of communication of the order. Though the two orders passed in the two writ petitions are slightly different, it is apparent that the impugned notice/order dated 29th May, 2002 was quashed.

8. The petitioner/appellant-company then filed a civil suit being Title Suit No. 132 of 2002 on 26th August, 2002 in the Court of Civil Judge (Senior Division), 3rd Court at Howrah praying for a declaration that the three leases subsisted and that as per the terms of the leases the petitioner/ appellant-company had become owner of the demised sheds, structures, walls, etc. A further declaration was sought that the West Bengal Government Premises (Tenancy Regulation) Act, 1976 (hereinafter referred to as the Act for short) had no application, A further declaration was also sought that the petitioner-appellant-company was never a defaulter in payment of rent. Lastly, a permanent injunction was sought restraining the defendants, namely the respondents herein, from evicting/ dispossessing the plaintiff the petitioner/appellant-company herein from the suit properties as described in the schedule. The Civil Court issued notices of temporary injunction application upon which the respondents herein entered appearance and filed its objection to the injunction application.

9. However, in the meantime, in terms of the orders passed by the High Court in

the earlier referred two writ petitions the respondent No. 2, the Chairman of the Corporation, passed the order coming to the conclusion that there was infraction of Clause 3-B and further that the petitioner/appellant-company had also become defaulter and, therefore, recorded a finding that the action taken by the respondent No. 3 was justified in law and he was entitled to take further action in accordance with law. The appellant thereafter filed fresh writ petition challenging the action on the part of the respondents. The learned single Judge, however, dismissed the above mentioned two writ petitions necessitating the present appeals.

10. The learned single Judge took the view that the provisions of the Act were very much applicable to the demised premises. In that the learned single Judge refuted the contention that the Act was applicable only in cases of residential premises. The learned single Judge also came to the conclusion that there was indeed violation of the terms of the leases on the part of the lessees inasmuch as they had failed to start or carry on any manufacturing activity on the demised premises in that the learned single Judge confirmed the finding arrived at by the Chairman of the respondent No. 1. The learned single Judge also held that as per the terms of the lease, the respondents were justified in taking possession of the demised premises as they did.

11. Common arguments were advanced as the questions involved in both the appeals are identical. The contentions raised by the parties are as follows:

Contentions of the appellant:

12. The contentions of the appellants are as follows:

12.1.1 That the demised premises being non-residential premises, the Act was not applicable to the same and hence the action taken u/s 3(1) of the Act is illegal and inconsequential. In support of this, the learned Counsel relied on the decision of a Division Bench of this Court in the case of Blue Print and Others Vs. Blue Great Eastern Hotels Authority and Others,).

12.1.2 The further argument is that the judgment was of binding precedent and hence the learned single Judge was bound to follow the same. Similarly, it being the judgment of Co-ordinate Bench, it is equally binding on this Court.

12.2 The order passed by the Chairman of the Corporation dated 11th September, 2002 holding that the action taken by the Prescribed Authority for eviction of the appellant was justified, as per the direction of the learned single Judge in W.P. No. 9926(W) of 2002 and W.P. No. 10345(W) of 2002 dated 23-7-2002 and 31-7-2002 respectively, was totally without jurisdiction and he has no such power to pass any such order. In that the learned Counsel urged that a jurisdiction cannot be invoked by the consent or dissent of the parties and, therefore, the subsequent taking of possession by the Corporation even without any notice or without filing the suit was wholly illegal and as such the appellant was liable to be reinstated back in the premises.

12.3 That in terms of the lease deed more particularly vide Clause B(vi)(b) the appellant had fully paid the rents for 30 years and as such had earned an option to acquire the ownership of the demised sheds and structures which option was exercised and, therefore, the appellant had become the owner of the demised sheds and structures. Thus the Corporation could not have put its padlocks on the demised premises by ousting the appellant. In short, the contention is that the possession should have been obtained only following the regular course of law.

12.4 Even otherwise the hasty action on the part of the Corporation in instituting the proceeding and ousting the appellant was not justified since the appellant was running industry and was closed down only for the reason beyond its control namely the declared lockout consideration should have been shown before initiating such drastic action.

Respondents' Contention:

13. As against this the contentions of the learned Counsel for the respondent-Corporation are as under:

13.1.1 That the concerned Act was fully applicable to the demised premises as the demised premises were covered under the definition of "Government premises" vide Section 2(a) of the Act.

13.1.2 That the learned single Judge had correctly held that the judgment in Blue Print and Others Vs. Blue Great Eastern Hotels Authority and Others, was not a binding precedent as against the learned single Judge or against this Court.

13.2 That the order passed by the Chairman of the Corporation was strictly as per the orders of the High Court dated 23-7-2002 and 31-7-2002 and, therefore, in passing the orders the Chairman was merely complying with the directions given by the High Court as such directions were sought for by the petitioner/appellant by filing the writ petition. Therefore, the appellant/petitioner now cannot turn around and complain regarding the lack of jurisdiction. The High Court in the earlier writ petitions had merely directed the Chairman of the Corporation to reconsider the representations of the appellant/petitioner. In that the High Court had ordered the writ petition itself to be treated as representations and, therefore, the question of jurisdiction to pass the order could not be raised.

13.3 The order passed by the Chairman was absolutely correct on facts and in law and the appellant/petitioner could not have shown that they had not violated any terms of the lease. No material was brought on record either before the Chairman or even before the learned single Judge in the subsequent writ petitions to show that the appellant/petitioner (1) had been continuing the manufacturing business and (2) was not a defaulter in payment of lease rents. Therefore, u/s 3(2)(i), it was clear that the appellant had violated the terms of the lease and as such the tenancy in its favour stood automatically terminated

without any notice to quit. Therefore, the Corporation was justified u/s 4(2) of the Act to take back possession or even use necessary force to take back possession and the Corporation had acted in terms of the lease deed.

13.4 Lastly, the learned Counsel suggested that all the actions taken by the Corporation were in a bona fide manner finding that the demised premises were just lying idle and there was no industrial manufacturing activity right from 1994 (at least).

14. On these rival pleadings the following questions would fall for consideration.

1. Is the concerned Act applicable only to the residential premises or it is applicable to all the Government premises residential or otherwise.?

1 (a) Is the Division Bench judgment in Blue Print and Others Vs. Blue Great Eastern Hotels Authority and Others, , holding that the Act is applicable to the residential premises, a binding precedent vis-a-vis the learned single Judge or this Court ?

2. Whether the appellant had violated the provisions of the lease and whether the Corporation was justified in taking back possession ?

3. What is the effect of the appellant becoming owner under the terms of the lease by exercising option which became available to it on account of its payment of 30 years of lease rent ?

Re : Question 1 and 1(a)

15. There can be no dispute that the judgment in Blue Print and Others Vs. Blue Great Eastern Hotels Authority and Others, unequivocally holds that the West Bengal Government Premises (Tenancy Regulation) Act, 1976 is applicable only to the residential premises. What was relied upon for coming to this conclusion was basically the first two paragraphs of the statements of objects and reasons of the 1976 Act (the third paragraph was not mentioned) as also the language of Section 3 and more particularly Section 2(1)(a) thereof which was introduced by the Amendment of the Act in 1980. A reference was made to Section 3A which was also introduced by 2nd Amendment Act, 1980. Heavy reliance was however, placed on the statements of objects and reasons of the amendment Act of 1980. It was then observed that an amendment is always made and brought about to promote the object of the Act. It was then observed in paragraph 22 that the Great Eastern Hotel (Acquisition of Undertaking) Act, 1980 and the West Bengal Government Premises (Tenancy Regulation) Act, 1970 dealt with two entirely different and independent statutes of properties. While Great Eastern Hotel (Acquisition of Undertaking) Act, 1980 dealt with only property called undertaking of the company, the West Bengal Government Premises (Tenancy Regulation) Act, 1976 was only concerned with the only property called "Government premises" and that the "Government premises" were relatable only to residential accommodation. It was held that two Acts are uncommon and operated independently and were also complete self contained codes. It was then

further held that no provision of the West Bengal Government Premises (Tenancy Regulation) Act, 1976 can be held applicable in respect of the property covered by the Great Eastern Hotel (Acquisition of Undertaking) Act 1980.

16. In this matter the challenge was to the action on the part of the Government in ousting the tenants who were operating from Great Eastern Hotel. It was pointed out that previously the management was taken over by the West Bengal Government vide Great Eastern Hotel (Taking Over of Management) Act, 1975. This Act was followed by the Great Eastern Hotel (Acquisition of Undertaking) Act, 1980 whereby the whole undertaking that is the hotel was taken over by the State Government. The contention raised was that the writ petitioners who were tenants were forcibly evicted from the premises. The respondents, however, took the defence that they were justified in doing so in terms of Section 4 of the Great Eastern Hotel (Acquisition of Undertaking) Act, 1980 and also u/s 6A of the West Bengal Government Premises (Tenancy Regulation) Act, 1976. The Division Bench found that the ouster of the tenants was not justified much less under the Great Eastern Hotel (Acquisition of Undertaking) Act, 1980 as the rights of the existing tenants were not affected by the taking over of the management of the Great Eastern Hotel and that the tenants continued to enjoy their tenancy rights. It was also held that the Government Authorities could not merely force their entry into the hotel by ousting the tenants. It was in this backdrop that the matter proceeded.

17. From the judgment the appeal went to the Supreme Court and the Supreme Court while upholding the judgment of the Division Bench of this Court came to the conclusion that it was not necessary to decide the question relating to West Bengal Government Premises (Tenancy Regulation) Act, 1976. The provisions of Great Eastern Hotel (Acquisition of Undertaking) Act, 1980 were considered exclusively by the Supreme Court and ultimately it was held that the taking over of the Great Eastern Hotel under the Great Eastern Hotel (Acquisition of Undertaking) Act 1980 did not affect the tenancy rights of the erstwhile tenants of Great Eastern Hotel. It was, therefore, held that the tenancy rights continued and the State Government had stepped into the shoes of the landlord by taking over the management of the undertaking by virtue of Great Eastern Hotel (Acquisition of Undertaking) Act, 1980. In paragraph 17 of the judgment a reference was made to a reported decisions in the cases of Bishan Das and Others Vs. The State of Punjab and Others, and State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others, and it was held that the possession could be resumed by the State Government only in a manner known to or recognized by law. In the same paragraph, however, it was made clear that the provisions of West Bengal Government Premises (Tenancy Regulation) Act, 1976 were not being considered. It was observed:

We make it clear that we are not expressing any opinion whether such steps include action under the Act of 1976 or any other law in force in the State of West Bengal. We are of the opinion that the action of the appellants by removing

the respondents from the premises in question with the help of police is destructive of the basic principle of rule of law.

18. Again in paragraph 22 the Court observed, after referring to Section 6A of West Bengal Government Premises (Tenancy Regulation) Act, 1976, as under:

22. Lastly, it was contended by Mr. Mukul Rohatgi that as the respondents were trespassers, the Government could evict them by invoking Section 6-A of the Act of 1976. The said sub-section runs as follows:

6-A. Eviction of unauthorised occupants and penalty for such occupation - Where any person, not being a tenant, occupiers, or remains in occupation of any Government premises without the written order of the prescribed authority .-

(a) the prescribed authority, or any officer authorized by it in this behalf, may take such steps and use such force as may be necessary to take possession of the premises and may also enter into the premises for the said purpose, and

(b) such person shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or both.

23. Section 6-A can be invoked against any person, who is not a tenant or who remains in occupation of any Government premises without written order of the prescribed authority. The respondents were tenants under the erstwhile Company and continued to be so, as held by us. Therefore, they cannot be evicted by invoking powers conferred on the authority u/s 6-A of the Act of 1976. However, we are not deciding the controversy as to whether this Act would apply only to residential premises, as held by the High Court.

19. In short, the Supreme Court did not think it necessary to examine the correctness of the judgment of the High Court in so far as it pertains to West Bengal Government Premises (Tenancy Regulation) Act, 1976 and even without going into that question chose to uphold the judgment only on the interpretation of the Great Eastern Hotel (Acquisition of Undertaking) Act, 1980. Thus, the judgment was affirmed only on the interpretation of the Great Eastern Hotel (Acquisition of Undertaking) Act, 1980 and not on the interpretation of West Bengal Government Premises (Tenancy Regulation) Act, 1976. The question as to whether the West Bengal Government Premises (Tenancy Regulation) Act, 1976 was applicable only to the residential premises was therefore, by implication, not thought necessary to be gone into. The learned single Judge, therefore, relying on another Supreme Court judgment in the case of S. Shanmugavel Nadar Vs. State of Tamil Nadu and Another, came to the conclusion that since the whole judgment in the Blue Print and Others Vs. Blue Great Eastern Hotels Authority and Others, was affirmed on different points and not on the question of interpretation and applicability of West Bengal Government Premises (Tenancy Regulation) Act, 1976, it has lost its force as binding precedent. In this judgment the Supreme Court had approved the proposition of law from the treatise of

Salmond's on Jurisprudence. The learned single Judge also referred to a Special Bench judgment of our own Court in the case of Ahmed Hossain Sk. v. State of West Bengal reported in 2002 (1) CLJ 115 and relied on the observation therein that a precedent ceases to be a binding precedent when affirmed or reversed on different ground. In the case of S. Shanmugavel Nadar v. State of Tamil Nadu (supra) the Supreme Court quoted a passage from Salmond's on Jurisprudence, 12th Edition, pages 149-150 to lay a stress on the following observations:

The true view is that a decision either affirmed or reversed on another point is deprived of any absolute binding force it might otherwise have had, but it remains an authority which may be followed by a Court that thinks that particular point to have been rightly decided.

20. The larger Bench of this Court has also taken a similar view which is binding on us. In this very judgment in the case of S. Shanmugavel Nadar Vs. State of Tamil Nadu and Another, the Supreme Court had quoting from a Three Judges' Bench judgment in the case of State of Madras Vs. Madurai Mills Co., Ltd., , held that the doctrine of merger is not a doctrine of rigid and universal application and it cannot be said that wherever there are two orders, one by the inferior authority and the other by a superior authority, passed in appeal or revision, there is a fusion or merger of two orders irrespective of the subject-matter of the appellate or revisional order and the scope of the appeal or revision contemplated by the particular statute. The application of the doctrine depends on the nature of the appellate or revisional order in each case and the scope of the statutory provisions conferring the appellate or revisional jurisdiction.

21. In the case of the case of S. Shanmugavel Nadar Vs. State of Tamil Nadu and Another, , the Supreme, Court also relied on the decision reported in Kunhayammed and Others Vs. State of Kerala and Another, declaring that the doctrine of merger is not of universal or unlimited application. It is, therefore clear that merely because the Supreme Court had affirmed the whole of the judgment in the Blue Print and Others Vs. Blue Great Eastern Hotels Authority and Others, , the same cannot be said to have merged with the Supreme Court order so as to have a binding precedent. On the order hand, the Supreme Court had specifically let out of consideration the interpretation of West Bengal Government Premises (Tenancy Regulation) Act, 1976 keeping that question open. Thus, it is clear that the abovementioned Division Bench order of this Court was affirmed only on the question of interpretation of Great Eastern Hotel (Acquisition of Undertaking) Act, 1980 and not on the interpretation of West Bengal Government Premises (Tenancy Regulation) Act, 1976 with which we are presently concerned. Therefore, it is clear, as rightly held by the learned single Judge, that the Division Bench judgment did not have a binding effect.

22. Once it is held that the Division Bench judgment was not binding, it would be required to be examined as to whether the West Bengal Government Premises (Tenancy Regulation) Act, 1976 can be said to be applicable only to the residential premises. In our view such constricted view cannot be taken

particularly in view of the various provisions of the Act. There can be no dispute that the Act applies to the Government premises which are leased out, that is a plain reading of Sections 3 and 3A of the Act, The term "Government premises" is used all through the Act, more particularly in these two sections which deal with two separate subjects of termination of tenancy and tenancy being void under particular circumstances respectively. Even Section 4 which deals with the restoration of possession by implication uses the term "Government premises" as the section provides for the restoration of the possession only of the premises, the tenancy of which has been terminated u/s 3 or where the tenancy has become void u/s 3-A of the Act. Section 4(2) also refers to the premises referred to in Section 4(1) which are only "Government premises". Therefore, the terms "Government premises" are the key words which have to be considered for examining the questions at hands.

23. In order to ascertain as to whether the Act applies only to the residential premises, it will be necessary for us to examine few provisions of the Act of 1976. Section 2(a) of the Act defines "Government premises" as under:

"Government premises" means any premises which is owned by the State Government or by a "Government undertaking but does not include the official residence of any person authorised to occupy and premises in consideration of the office which he holds under the State Government or a Government undertaking for the time being.

24. The word "premises" in this definition is defined vide Section 2(c) which runs as under:

"premises" means any building or hut and includes part of a building or hut and a seat in a room, let separately, and also includes.-

(i) the gardens, grounds and out-houses, if any, appurtenant thereto.

(ii) any furniture supplies or any fittings or fixtures affixed for the use of the tenant in such building, but or seat in a room, as the case may be.

25. A plain reading of these two provisions does not in any manner suggest that the Act is applicable only to the residential premises. If the term "premises" could mean any building or hut and could also be restricted to a seat in a room if let separately, it certainly would not mean any residential premises. A seat in a room could never be a residential premises since the term "premises" is used in the definition of "Government premises". There would be no question of holding that the "Government premises" would mean only residential Government premises. In insisting upon such interpretation instead of using "Government premises" the Legislature would have used the word "Government residential premises". The definition of premises in that case would also have been restricted and the same would have been in the following manner:

"premises" means any residential building or hut and includes part of a building or hut and a seat in a room, let separately....

26. Applying the rule of *Litra legis* the definitions are extremely clear and unambiguous that they apply to the tenancies of all kinds of premises owned by the Government or Government undertakings. Since there is no ambiguity to be found in the language of the two provisions quoted above, there will be no question of interpreting them in a restrictive manner as is contended by the appellant. Very heavy reliance was placed on the above-mentioned ruling of the Division Bench in the *Blue Print and Others Vs. Blue Great Eastern Hotels Authority and Others*, and the learned Counsel adopted the same argument. It is, therefore, necessary to take stock of the reasoning given in that judgment.

27. When we scan through the reasoning of the judgment, adopted by the learned Counsel, it becomes clear that the provisions of Section 2(a), which is the definition clause, has been interpreted on the basis of (1) subsequent amendments to the Act and (2) the external aid of interpretations such as the statement of objects and reasons of the original Act as also the two subsequent amendment Acts. We shall consider the first reason first.

27.1 In paragraph 17 of the judgment after referring to the definition of "Government premises", it is suggested that since the Legislature had specifically excluded from such definition the official residence of any person authorised to occupy any premises due to his office and therefore the inkling of Legislature was to be found that it had residential accommodation in mind. There can be no dispute that the Legislature did have the residential accommodation in mind when it defined "Government premises" but the question is whether it had only residential premises in mind because had that been so the Legislature would not have used the words "Government premises" which is owned by the State Government, it would have said "any residential premises". Be that as it may, it is further suggested that this inkling of intention becomes further manifested by Section 3(2)(a). Thereafter, quoting Section 3 the Bench then proceeds to suggest that if a tenant holding a tenancy in respect of Government premises builds a house or acquires an apartment within a reasonable distance then his tenancy would stand terminated automatically. The Bench, therefore, suggested that since the tenancy is terminated automatically only if the tenant builds a house or acquires an apartment within the reasonable distance and it may not be terminated if he builds a shop or owns an office space. Therefore, what is contemplated by Section 3A was only residential premises. Now there can be no dispute even regarding Section 3(2)(i)(a). However, firstly, that Section 3(2)(i)(a) is only introduced by amending the Act and secondly this subsequent amendment cannot change the colour of the words in the original statute or the whole provisions. The learned Counsel very heavily relied on this provisions and the reasoning in the Division Bench judgment. However, it would be incorrect to consider only a part of the provision which is introduced by way of amendment to interpret a general term like "Government, premises" which has been used not only in Section 3 but also in the other sections of the Act. What is stated by the Bench may be held applicable only to Section 3(2)(i)(a) and not to the whole section. In saying this we may observe that by bringing any subsequent

amendment the earlier broad scope of a provision cannot be restricted unless the amendment itself suggests that way. Such is not the position. In Section 3(2) there are two eventualities for automatic termination of tenancy without any notice to quit. First is the violation of the terms of the lease and the second one is which is approved by Section 3(2)(i)(a) that is subsequent building of house or owning apartment. The two clauses undoubtedly operate independent of each other and have nothing in common in them. Whereas under Clause (i) to Section 3(2) only a simple violation is enough for terminating of the tenancy without notice to quit. The other Clause (i)(a) to Section 3(2) operates in entirely different circumstances. Therefore, when the learned Counsel relies on Section 3(2)(i)(a), clause 3(2)(i) is completely ignored from consideration. We do not see any consideration by the Bench on Clause 3(2)(i) and in effect that clause finds only a mention without consideration and in that the judgment proceeds per incuriam of that clause. When a specific question was put to the learned Counsel as to the implication of Section 3(2)(i), the learned Counsel had to admit that there was no reference or active consideration of that clause in that judgment. Learned Counsel also could not suggest. Therefore, the arguments based on Section 3(2)(i)(a) alone cannot be accepted and it cannot be held that merely because there is a reference of acquisition of apartment or building of house in terms of Section 3(2)(i)(a) that would change even the original tone of the section or would suggest that the whole of Section 3 applies only to the residential premises alone. In short, we hold that a subsequent amendment cannot change the original texture of the provisions. In our view such an attempt would be doing violence to the otherwise plain language of Section 2(a) and Section 3 in so far as it pertains to the reference to "Government premises". We wonder, if the amendment had not been brought about by way of adding Sub-section (i)(a) to Section 3(2) what would be the position ?

Undoubtedly, the provisions would have been required to be interpreted in terms of plain language which does not suggest a restricted interpretation in favour of residential premises alone. In similar manner, learned Counsel relied on Section 3-A which was also brought in by Amendment Act (Act 46 of 1980). Where again a provision is made suggesting that the tenancy would be deemed to be void in case the tenant acquires his own house or apartment within the reasonable distance on the date of allotment of a "Government premises". In our view nothing would depend on the amended provision which would have to be read separately and which could not be interpreted to control the earlier existing sections like Sections like 2(a) and 3.

27.2 We now refer to the statement of objects and reasons of the original Act as also the two subsequent amendment Acts which were relied upon by the learned Counsel as also in the earlier judgment of Great Eastern Hotel Blue Print and Others Vs. Blue Great Eastern Hotels Authority and Others, . It is already pointed out by us earlier that while referring to the statement of objects and reasons of the original Act, the Bench mentioned only first two paragraphs. Unfortunately, the third paragraph was omitted (and perhaps not considered). The paragraph is

as follows:

3. The Bill, if enacted, is expected to considerably improve the situation both for the purpose of realization of the outstanding arrears of rent and for the prevention of unauthorized occupation of the Government premises.

27.3 A plain reading would suggest that the object of the original Act was not to consider the difficulties of the Government in respect of getting vacated its residential premises only. The third paragraph clearly mentioned that the Legislature had the "Government premises" also in mind along with the residential premises.

27.4 However, in our opinion, in view of the clear cut language of Section 2 (a) and Section 3, only the external aid of interpretation like statement of objects and reasons cannot be resorted to. We have already shown that the language of the aforementioned provisions is crystal clear. Therefore, the statement of objects and reasons cannot be relied on. Law is settled on that issue.

28. In the famous decision of *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, , the Supreme Court relying on *Administrator-General of Bengal v. Premlal* and *Krishan Ayangar v. Neela Perumal* reiterated the observations therein that no statement made on the introduction of the measure or its discussion can be looked at as affording any guidance as to the meaning of the words. The Supreme Court also observed very specifically:

The statement of objects and reasons attached to the Bill only depicts the object which the sponsor of the Bill had in mind, but it throws no light on the object which the Legislature as a body had in mind when passing the Bill into an Act...those objects and reasons may at best be indicative of the subjective intention of the Law Minister who sponsored the Bill but they could not reflect the inarticulate mental processes lying behind the majority vote which carried the Bill.

29. The law laid down in this case was further reiterated in *The Gujarat University, Ahmedabad Vs. Krishna Ranganath Mudholkar and Others*, More precisely, the Supreme Court observed therein:

Statements of Objects and Reasons of a Statute may and do often furnish valuable historical material in ascertaining the reasons which induced the Legislature to enact a Statute, but in interpreting the Statute they must be ignored.

29.1 Further in AIR 1997 3127 (SC) , the majority judgment of the Supreme Court specifically relying on the earlier decision of *Aswini Kumar Ghose* (supra) and few other cases held:

But it is a cardinal rule of interpretation that the Statement of Objects and Reasons of a statute is to be looked into as an extrinsic aid to find out the legislative intent only when the meaning of the statute by its ordinary language is obscure or ambiguous. But if the words used in a statute are clear and

unambiguous then the statute itself declares the intention of the Legislature and in such a case it would not be permissible for a Court to interpret the statute by examining the Statement of Objects and Reasons for the statute in question.

30. As against this, Sri Banerjee relied on the observations of the Supreme Court in *Subhash Ramkumar Bind @ Vakil and Another Vs. State of Maharashtra*, in paragraph 15, where the Supreme Court referred to the law laid down in *Aswini Kumar Ghose v. Arabinda Bose* (supra). But added that in case of an urgent need of the situation by reason wherefor the intent of the Legislature is to be assessed, the Statement of Objects and Reasons can be looked into for the limited purpose of ascertaining the conditions prevailing at the time which prompted or actuated the proposer of the Bill to introduce the same and the extent of remedying the existing evil of the society. There can be no question about the law laid down. However, the observations do not, in any way, unsettle the established position that where the words are clear, the Statement of Objects and Reasons cannot be referred to for the interpretation of such words. We are, therefore, unable to agree with Sri Banerjee that the Statement of Objects and Reasons should be relied on by us for giving a restricted interpretation to the term "Government premises".

31. Under the circumstances, we cannot accept the contention of the learned Counsel that the earlier Division Bench was right in relying on the statement of objects and reasons of the original 1976 Act (unamended).

31.1 If this was so, then a reference to the statement of objects of the two subsequent amendment Acts would also be of no consequence and further the argument on the part of the learned Counsel that we should read and interpret the provisions of the original unamended Act "more particularly Section 2(a) and 3" in that light has to be necessarily rejected. Even at the cost of repetition, we may say that we have shown the language of the unamended Act was absolutely crystal clear and aduted(sic) of no restricted operation of the Act. In so far as the amendments are concerned, they are undoubtedly applicable only to the residential premises, but that by itself cannot restrict the scope of the definition of the Government premises in Section 2(a) as also in Section 3. The very object of these amendment was to make it easier for the Government to take back the residential quarters. But that by itself could not exclude from its powers to take back the other Government premises of non-residential nature. We do not find in the amendment any such intention for the exclusion. Therefore, we are unable to subscribe to the observation made by the Bench and relied upon by the counsel in paragraph 21 to the following effect.

An amendment is always made and brought about to promote the object of the Act. As is manifestly clear from the aforesaid statements of objects and reasons, the object was to cover such cases where on the original and initial date of allotment the tenant had been the owner of a house or an apartment and if such was the case, his tenancy would be deemed to be void on the date of allotment of such Government premises. It thus becomes clear that the tenancy of a

Government premises should not be deemed to be void if the tenant on the date of allotment had been the owner of a commercial or non-residential property.

32. In our view, these observations would be clearly inapposite to the controversy involved. The appellant, therefore, cannot rely on the statement of objects and reasons of the original Act as also the two subsequent amending Acts.

33. From the discussions above, it would be clear that the contention raised by the appellant that the Act applies only to the residential premises and the Government could not have therefore proceeded to rely upon the provisions therein for recovering the possession from the appellant has to be rejected. We therefore answer the question Nos. 1 and I(a) against the petitioner.

Re : Question No. 2

34. We now have to consider as to whether the appellant had violated the provisions of the lease. For this purpose, the learned Counsel for the Corporation took us through the order of the Chairman. In fact, we were taken through the whole history of the litigation. It was pointed out by Sri Hirak Mitra, the senior counsel for the Corporation, that it was incumbent upon the appellant petitioner to start and carry on a manufacturing activity in the premises. According to the learned Counsel, this premises were meant for giving a philip to the industrialization of the State. Our attention was invited to this and more particularly to clause 2(f)(i) of the lease deed which suggests that the demised premises was to be used for carrying on manufacturing business or for business connected with manufacturing process including processing, manufacture or assembling of machine, tools, implements, instruments, furnaces, heaters, ovens, scientific apparatus, inventions and other industrial products. Therefore according to the learned Counsel and in our opinion, rightly the appellant had to show some manufacturing activity being carried on in the demised premises. The learned Counsel pointed out and it was not disputed that the electricity supply of the premises was also disconnected way back in the year 1994 and 1996. Therefore, it was argued that there was no manufacturing activity in the absence of electrical energy and further in the absence of any proof that any other mode of energy was used. Our attention was drawn to the fact that either before the learned single Judge or even before us, no material was placed to show that the appellants were engaged in any manufacturing activity or that the said manufacturing activity was being continued. On the other hand, it was pointed out that when a Form "A" notice was issued in the year 1999, it was returned with a postal remark "abolished". Even the final notice dated 13-9-1999 met with the same fate and came back with the postal remark "not known". It was pointed out that thereafter at the instance of the appellant a fresh chance was given by the Corporation to restart the manufacturing activity though the possession was taken on 25-2-2000 and the same was made over to them again on 17-5-2002. However, the fresh inspections disclosed that the appellants had not concerned any manufacturing activity and the unit remained as a non-functioning unit.

There was a clear reference to all this in the order of the Chairman dated 11-9-2002. The learned senior counsel appearing on behalf of the appellant, Sri Ashoke Banerjee could not controvert to all these factual positions. An attempt was however made before us to show that the trading activity was going on and that there were machines inside the premises which remained under the lock of the Corporation.

35. We do not see as to how this could help the appellants in view of the clearest possible language that there has to be a manufacturing activity on the premises. No material was shown before us that the appellants were manufacturing anything in the aforementioned sheds. It was therefore clear that there was a major violation in not doing any manufacturing activity or at least, not continuing with any manufacturing activities. On the other hand, the fact suggests that the manufacturing activity was either never commenced or at least, the unit remained as a non-functioning unit for much more period than six months which was one of the essential conditions of the lease. There was thus a clear violation of the terms of lease which we have already referred to in the earlier portion of the judgment. Not only this, but there was a non-payment of the amount of Rs. 16 lacs as found from the accounts pending on 31st March, 2002. In our opinion, therefore, there was clear evidence to suggest that there was a major breach on the part of the appellant in not starting or continuing with manufacturing activity and further the appellant had also fallen in default of payment of rent. All this therefore suggests that there was a clear out breach of conditions of the lease inviting the automatic termination of the lease vide Section 3(2)(i). If this is the position, then in our opinion, Section 4 of the Act would be clearly activated giving an absolute right to the Corporation to walk into the premises and to recover the possession even by force, if necessary Section 4 provides as under:

4. Restoration of possession.-- (1) Upon termination of a tenancy under any of the provisions of Section 3 (or upon a tenancy being void u/s 3A), the tenant shall forthwith restore vacant possession of the premises occupied by him in favour of the prescribed authority.

(2) If the tenant fails to restore possession of the premises under Sub-section (1), the prescribed authority or any officer authorised by him in this behalf may take such steps or use force as may be necessary to take possession of the premises and may also enter into such premises for the aforesaid purpose.

36. The language clearly suggests that where there is a termination of tenancy under the provisions of Section 3, it is incumbent upon the tenant to restore vacant possession of the premises occupied by him. The effect of this provision is that if the tenant fails to restore the possession of the premises, the prescribed authority or the officer authorized by him may take such steps or use necessary force to take possession of the premises and may also enter into such premises.

37. These provisions clearly support the Corporation which has chosen to put its locks on the premises signifying thereby that they had taken the possession of

the demised premises.

38. The learned Counsel further tried to urge that even if there were any breaches before the possession was taken, the Corporation was bound to take the possession only in accordance with law meaning thereby the Corporation should have approached the Courts of law for recovery of possession. We do not accept this argument in the wake of the clearest possible position obtained in Section 4 and more particularly, Sub-section (2) thereof. It would be obvious that the tenancy stood automatically terminated because of the operation of Section 3(2)(i) and therefore, it had been incumbent upon the tenant to restore the possession. If that was not done, under Sub-section (2) the Corporation had a right to recover the possession even by force. There would be no question of the Corporation to file a civil suit for recovery of possession. The Corporation, in our opinion, had recovered the possession in accordance with law and more particularly, Section 4 of the Act. The argument that the petitioner was ousted and that resulted in creation of some rights of the petitioner is clearly baseless and has to be rejected. That leaves us with the last question.

Re : Question No. 3

39. It was reiterated that because of the payment of rent of 30 years of the period of lease, the appellant had become the owner of the structure. Our attention was invited to Clause B(vi)(b) of the lease deed. A detailed table has been produced before us by the learned Counsel showing that in case of the three premises, that is, Shed no Y-72, Shed No. Y-73 and Shed No. Y-76, the appellant had earned the option and he had option to purchase the demised premises and the appellant had also exercised its option. The date of leave in respect of Y-76 and Y-73 appears to be 9-2-1969 and 26-5-1972 respectively while in case of Shed No. Y-72, the date of lease deed is 31-8-1977. The effect of lease deed, however, in case of the first two premises is 1-9-1969 and 1-12-1971 while in case of the third Shed No. Y-72, it is 1-6-1975. The argument, even if it were to be accepted, can therefore not cover Shed No. Y-75 because the lease of 30 years of period was not over. In so far the Y-73 and Y-76 are concerned, the period of 30 years is over and it could be argued that the petitioner had become owner of those two sheds. However the fact remains that the petitioners, because of the terms of the lease deed, become the owners only to the superstructure and it did not cover the plot. In our opinion, merely because the petitioners claimed that they had become the owners of the superstructures, it could not stop the operation of the Act. In this case, it must be pointed out that the action against the appellants had started way back in 1999 and the possession was also received back. At that time, there was no question of the option having been exercised. We cannot visualize a position that the petitioners had become owners of the premises. Even if we however go a step ahead and hold that the appellant had become the owners, still in our view, that does not absolve them from liability under the lease deed to continue with the manufacturing activity. In our view, if such a view is taken that would go against

the object of the creation by the Corporation and also militate against the various provisions in the lease deed. It is nowhere provided in the lease deed that once the option is exercised and the lessee becomes the owner of the demised premises, his liability to continue with the manufacturing activity comes to an end. The whole lease deed does not spell out any such position. Therefore, it is incumbent that the manufacturing activity had to go on. There was a clear finding in this case that no such manufacturing activity ever went on since 1996. Thus much before the option was allegedly exercised, the lease deed got terminated automatically under the provisions of Section 3(2)(i). There would be, therefore, no question of the appellant exercising any such option. In our view, even such option was there, there would be no question of the appellants earning any rights thereupon, particularly vis-a-vis the rights of the Corporation, springing from Section 3(2)(i) and Section 4 of the Act read with the lease deed. We, therefore, reject this argument. We, however, leave it open to the appellants to agitate regarding its other rights before a proper forum. We, accordingly, answer the third question in favour of the Corporation and against the appellants. In short, we hold that the appeal has no merit and has to be dismissed. This leaves us with other appeal.

R : APO No. .349 of 2004.

40. In this appeal, the petitioner was allotted shed being Shed No. 57 in the same Howrah Industrial Estate having an area of 3733 sq. ft. out of which the area of 1769 sq. ft. was covered and rest was uncovered. The total yearly rent was Rs. 2588.03 payable on or before the month of September every year. The appellant pleaded in the writ petition that he had started an electric Aro-Furnace and had applied to the Electricity Board for grant of electric connection which was rejected and therefore, the petitioner could not start its steel casting business. He then pleaded that ultimately the supply of electricity was sanctioned on same conditions. But the desired supply of electricity was not granted owing to some reasons and therefore, the steel casting business was not started. He then wanted to start a plastic mould manufacturing unit, but could not do so due to the non-availability of the electricity supply. He was, therefore, served with a letter-cum-notice dated 18th April 2002 terminating the tenancy of the petitioner in respect of the demised premises on the ground that he had violated the conditions of the Lease Deed and had also defaulted in payment of rent for a consecutive period of three months. He made a representation wherein it was clearly admitted that the manufacturing activities had not been connected even till then. Ultimately, it seems that the petitioner was informed that the possession of the shed will be taken by the Corporation on 5th July 2002 vide Memo dated 24-6-2002. The petitioner, therefore, filed a writ petition being W.R. No. 8952(W) of 2002 wherein the said Memorandum was quashed by the learned single Judge of this Court and the petitioner was directed to make a representation to the Corporation within seven days and the Corporation authority was directed to consider the said representation after giving hearing. A further representation accordingly was made by the petitioner. However, the

Chairman passed an order on 2-9-2002 rejecting the contentions made therein. We have already made a detailed reference to the order of the Chairman while dealing with the earlier appeal and therefore, we need not deal the same here. At any rate, the petitioner again filed a petition before the learned single Judge who dismissed the said writ petition by the impugned judgment necessitating the present appeal.

41. In fact, therefore, it would be seen that the very identical questions are involved in this appeal with which we have dealt with in the earlier appeal. No other plea was raised by the appellant and the arguments were restricted only to the question as to whether the West Bengal Government Premises (Tenancy Regulation) Act 1976 was applicable to the non-residential premises also. We have, therefore, to hold in the identical terms that the Act was applicable to the demised premises herein and that the Corporation was well within its right to terminate the lease and to recover the possession. We are, therefore, of the clear opinion that there is absolutely no scope to interfere with the order passed by the learned single Judge and the appeal, having to merits, is directed to be dismissed.

42. In the result, both the appeals stand dismissed. However, under the circumstances, there shall be no order as to costs.

Arun Kumar Mitra, J.

43. I agree.