

(1999) 10 CAL CK 0020

In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction Original Side W.P. No"s. 1312, 1299, 1308, 1310, 1311, 1309, 1368, 1369, 1370, 1371, 1372, 1442, 1445 and 1466 of 1997

Blue Print and Others

APPELLANT

Vs

Blue Great Eastern Hotels Authority and Others

RESPONDENT

Date of Decision : 14-10-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 226

Great Eastern Hotel (Acquisition of Undertaking) Act, 1980 — Section 3, 3(1), 4(1), 4(2), 4(7)

West Bengal Government Premises (Tenancy Regulation) Act, 1976 — Section 2, 6A

Citation : (2000) 1 CALLT 450 : (2000) 2 ILR (Cal) 278

Hon'ble Judges : Vinod Kumar Gupta, J; Prodyot Kumar Sen, J

Bench : Division Bench

Judgement

V.K. Gupta, J.—This batch of writ applications filed under Article 226 of the Constitution of India by the erstwhile occupiers of certain shops and other premises at No.1, 2 & 3 Old Court House Street and No.29, Waterloo Street constituting an integral part of Great Eastern Hotel has been referred to this Division Bench for disposal since certain Important points of Law are Involved for consideration and adjudication.

2. Great Eastern Hotel was a privately run establishment. For some reasons, under the Great Eastern Hotel (Taking Over of Management) Act 1975, the Governments of West Bengal took over the Management of the Undertaking of the Company, i.e.. The Great Eastern Hotel Limited and appointed an Administrator for managing the Undertaking of the Company. 1975 Act. whereby only the Management of the Undertaking of the Company was taken over, was followed by the Great Eastern Hotel (Acquisition of Undertaking) Act, 1980 whereby the Undertaking of the Company, as a whole was taken over by the State Government.

Section 3 of 1980 Act reads as under :--

"3. Acquisition of the undertaking of the Company.

(1) On and from the appointed day, the undertaking of the company shall, by virtue of this Act, stand transferred to, and vest absolutely in the State Government

(2) Upon the vesting of the undertaking of the company in the State Government under sub-section (1), the State Government shall, for efficient management and administration thereof, provide by notification for the transfer of the undertaking of the company to, and vesting thereof in, the Hotel Authority with effect from such date as may be specified in the notification."

3. As would thus be seen the Undertaking of the Company, i.e. The Great Eastern Hotel Authority stood vested and transferred, absolutely in the State Government under sub-section (2) of section 3 of 1980 Act the State Government vide Notification Issued on 18th June, 1981 transferred, for efficient management and administration of the Hotel the undertaking of the Company in favour of the Hotel Authority constituted u/s 5 of 1980 Act.

4. The writ petitioners in all the writ applications were the tenants of the Great Eastern Hotel Ltd. before the coming into force of, both 1975 Act and 1980 Act. It is the undisputed case of the parties that the writ petitioners as tenants of the shops, offices and godowna situated at Nos. 1, 2 & 3 Old House Street and No. 29, Water Loo Street were in occupation of these premises. On 29th June, 1997 at about 2.00 p.m. the writ petitioners were forcibly evicted from the occupation of the premises by the respondents. As a result of this forcible eviction, they stood dispossessed from the premises in question and since then continue to do so. The fact and allegation of the writ petitioners about their forcible eviction from the premises in question have not been disputed by the respondents. In fact it is the own case of the respondents that in terms of section 4 of 1980 Act read with section 6A of the West Bengal Government Premises (Tenancy Regulation) Act 1976 (hereinafter to be referred to as 1976 Act) the writ petitioners were forcibly evicted from the shops in question. The affidavit-in-opposition filed by Shri Ratan Chandra Mahapatra, Director of Tourism and Ex-Officio Joint Secretary, Department of Tourism, Government of West Bengal, in answer to the writ application has clearly and without any reservation spelt out, with reference to the relevant provisions of 1980 Act that the writ petitioners, after coming into force of 1980 Act and in terms of sub-sections (1) and (7) of section 4 thereof had become Illegal occupiers and were thus required to deliver possession and since they failed to do so, the State Government had no option but to take steps to recover the possession from them. The following averments made in the said affidavit-in-opposition bear reproduction.

"(N) The spaces occupied by such Illegal occupiers were urgently needed for the purpose of development of the undertaking of the Company, which was one of the tasks entrusted to the Authority by the Act, The State Government, therefore, had no option but to take steps under the law for the recovery of

possession of the said portions. Accordingly, it was decided to evict the 38 Illegal occupiers from the said premises."

"(P) As already stated the Illegal occupiers were liable, under the Act forthwith to restore the vacant possession of the portions in their respective occupation in favour of the prescribed authority under the Act. In the event of any such occupier falling to restore such possession, the prescribed authority or any officer authorised in this behalf is empowered by the 1976 Tenancy Regulation Act, to take such steps and use such force, as may be necessary to recover such possession and to enter into such premises for the purpose. Under the provisions of the said Act, no notice is prescribed prior to the taking of such steps. Assuming but not admitting that exercise of such power should be preceded by notice, it is stated that such requirement can only apply to cases where questions of fact remain to be decided before the exercise of such power. In the present case, no question of fact was outstanding as, with the coming into force of the Act, the tenancies stood terminated with effect from the appointed day. As such. In the present case. It can not be contended that any prior notice was required before taking steps for eviction of unauthorised occupiers."

"(R) Housing Department, Government of West Bengal, the nodal Department under the Act, declared the Member Secretary, Great Eastern Hotel Authority, as the prescribed authority under the Act for the concerned area. As the unauthorised occupants had failed to vacate the portions illegally occupied by them police assistance was also sought on the date fixed for recovery of possession i.e. on 29.6.97. It was decided that in the first phase, steps would be taken to evict 26 (out of 38) illegal occupiers."

"(S) On 29.6.1997 at about 8 AM eviction operation was commenced some of the Illegal occupants voluntarily vacated the portions in their occupation by removing their materials and goods for which the Hotel Authority provided manpower. However the remaining such Illegal occupiers including the writ petitioner refused to co-operate and remove their goods and things. In the circumstances, the Hotel authorities, with the own manpower removed the goods and things of such illegal occupiers from their respective portions and stored them in six storage spaces provided by the Hotel authority and kept them under lock and key, after making an inventory. The Hotel Authorities also informed the said occupants that they could remove their goods from such storage space whenever they wanted. The portions of which possession was taken have since been kept under lock and key. The entire operation was completed peacefully."

"5. In the circumstances, it is stated that (a) the recovery of possession of the portions of the said premises under illegal occupation was effected fully in accordance with the law (b) that such action was taken for the purpose of development of the undertaking and in public Interest and (c) that the writ petitioner and other similarly situated persons are not entitled to any relief in the face of express provisions of the statute."

5. It is the contention of the learned Advocates appearing for the writ petitioners that the forcible eviction of the writ petitioners from the premises in question by the respondents was Illegal, unconstitutional and patently in violation of the Law and that the petitioners accordingly are entitled to be restored the possession in all respects.

Section 4 of 1980 Act reads as under :--

"4, General effect of vesting (1) The undertaking of the Company which has vested in the State Government under sub-section (1) of section 3 shall, by force of such vesting, be freed and discharged from any trust, obligation, mortgage, charge, lien and all other incumbrances affecting it, and any attachment, injunction or decree or order of any court or tribunal restricting the use of the whole or any part of the undertaking of the company in any manner shall be deemed to have been withdrawn.

(2) Any contract, whether express or implied, or other arrangement, whether under any statute or otherwise, in so far as it relates to the affairs of the company in relation to its undertaking and in force immediately before the appointed day shall be deemed to have terminated on the appointed day.

(3) Where any license or other Instrument in relation to the undertaking of the company had been granted at any time before the appointed day to the company by the Central Government or the State Government or any other authority, the State Government shall, on and from the appointed day be deemed to be substituted in such licence or other instrument in place of the company referred to therein as if such licence or other Instrument had been granted to it.

(4) On and from the date of transfer of the undertaking of the company to, and vesting thereof in, the Hotel Authority, the Authority shall be deemed to be substituted in licence or other instrument referred to in sub-section (3) in place of the State Government as if such licence or other Instrument had been granted to the Hotel Authority.

(5) Any liability incurred by the company (including the liability, if any, arising in respect of any loans or amounts advanced by the State Government to the company together with interest thereon) after the management of the undertaking of the company had been taken over by the State Government shall, on and from the appointed day, be the liability of the State Government and shall, on and from the date specified in the notification under sub-section (2) of section 3, stand transferred to, and shall vest in, the Hotel Authority.

(6) If, on the appointed day, any suit, appeal or other proceeding of whatever nature in relation to any matter or business in respect of the undertaking of the company, instituted or preferred or against the company, is pending, the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the undertaking of the company or of anything contained in this Act and the suit, appeal or other proceeding may be continued,

proceeded with and enforced by or against the State Government and on and from the date specified in the notification under sub-section (2) of section 3, the Hotel Authority.

(7) Any person in possession or custody or control of the whole or any part of the undertaking of the company on the date immediately before the appointed day shall, on the appointed day, deliver the possession of such undertaking of the company or part thereof to the State Government or to such person as may be specified by the State Government in this behalf.

(8) The State Government may take, or cause to be taken, such steps as it considers necessary for securing the possession of the undertaking of the company which has vested in the State Government under sub-section (1) of section 3."

6. A look at sub-section (1), of section 4 would suggest that the vesting of the Undertaking of the Company, as per section 3(1) of the Act was to be freed and discharged from any Interest, obligation, mortgage, charge, lien and all other incumbrances affecting it and that any attachment, injunction, decree or any order of any court restricting the use of the undertaking or any part of it should be deemed to have been withdrawn. The argument of the learned Advocates appearing for the writ petitioners is that the legislature did not Include "tenancy" or "Lease" in sub-section (1) of section 4 of the Act and therefore even though Incidents such as Trust, obligation or mortgage etc. were Included therein, "tenancy" or "lease" not having been Included therein were saved as far as the vesting of the Undertaking of the Company in the State Government was concerned and therefore, despite such vesting of the Undertaking of the Company in the State Government, the tenants and lessees occupying the premises in question continued to enjoy such rights and these were not adversely affected in any manner. Once therefore the tenancy and/or leasehold rights were saved and not deemed to have been extinguished by virtue of sub-section (1) of section 4, unlike the extinction of the rights relating to trust, obligation or mortgage etc., it was argued by the learned Advocates appearing for the Petitioners, there was no question of the tenants being in possession of the premises being required to deliver such possession to the State Government in terms of sub-section (7) of section 4 and therefore, the State Government under subsection (8) of section 4 was not entitled to take any step for securing the possession of the tenanted premises from the tenants forming part of the Undertaking of the Company.

7. It was alternatively contended that even if it be presumed that tenancy in respect of the shops in question stood extinguished in terms of subsection [1) of sub-section (2) of section 4 and that the tenants thus were required to deliver possession in terms of sub-section (7), possession could be secured only under sub-section (8) and Sub-section (8) did not provide that the State Government could use force for evicting the tenants or for securing the possession from them. It was argued that dispossessing the writ petitioners by use of force was an

Illegal act. The case of the writ petitioners is that 1976 Act is applicable only to residential premises and in any case not applicable to the Undertaking of the Company under 1980 Act and therefore it was not open to the respondents to invoke any provision of 1976 Act for using force to obtain possession from the writ petitioners.

8. The further argument of the writ petitioners was that under subsection (1) of section 4, even if it be presumed that the tenancy rights stood extinguished because of the vesting of the Undertaking of the Company in the State Government, the extinction being a pre-vesting phenomena, even after the appointed date under the 1980 Act, being 13th July 1980, the Hotel Authority continued accepting rents from the writ petitioners in respect of the shops in question and thus, despite sub-section (1) of section 4, the tenancies either continued to operate or new tenancies came into being and therefore the writ petitioners continued to remain tenants even after the coming into force of 1980 Act and hence could not be evicted except in accordance with the procedure prescribed by Law.

9. The learned Advocate General appearing for the respondents at the very outset submitted that we should examine the entire question relating to the forcible eviction of the writ petitioners from the shops in question in the light of the fact that the eviction was carried out for a public purpose. When there is a conflict between public interest and the interest of individuals, the Individual's Interest should make way for public Interest and since the shops in question were required for a public purpose, the forcible eviction was Justified. The learned Advocate General very strongly relied upon two Judgments of the Supreme Court in the cases of *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, and *The State of Bihar Vs. Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Others*, His other argument was that even if after the coming into force of 1980 Act the writ petitioners continued to pay rents and new tenancies might have been deemed to have come Into force, in 1989 by the coming into force of the Great Eastern Hotel (Acquisition of Undertaking) (Amendment) Act, 1989, sub-section (2) of section 3 of 1980 Act was retrospectively amended and it was provided that the State Government could transfer to the Hotel Authority the Undertaking of the Company, minus the lands and buildings forming part of such undertaking and that in view of such retrospective amendment of section 3 of 1980 Act, any action taken by the Hotel Authority after the coming Into force of 1980 Act, in furtherance of the notification dated 18th June 1981 was set at naught and undone by the issuance of notification dated 14th August 1990 in terms of the amendment section 3 of 1980 Act.

10. The definition stand of the State Government, as represented by the learned Advocate General also was that the eviction of the writ petitioners was carried out by use of force by virtue of the power exercised u/s 6A of 1976 Act read with section 4 of 1980 Act.

11. We must at the very outset deal with the question of public interest, as very elaborately raised by the learned Advocate General during the course of these cases. Two affidavits-in-opposition have been filed in these cases on behalf of the respondents, one is the affidavit of Member Secretary of the Great Eastern Hotel Authority and the other has been filed by the Director, Tourism, Government of West Bengal and Ex-Officio Joint Secretary, Dept. of Tourism. In none of these two affidavits has it at all been stated as to what was the public purpose for which the shops occupied by the writ petitioners were required to be taken over by the respondents. There is no other affidavit filed by any one on behalf of the respondents in these cases. There is no other document also produced before us by the respondents whereby it could be stated by any one on behalf of the respondents as to what could be the public purpose or public Interest for which the possession of these shops was required to be taken by the respondents. The only indication available is in the affidavit of the Director, Tourism wherein it is stated that the premises in question were required for development of the Undertaking of the Company. The following averment in the Affidavit of the Director, Tourism is reproduced for ready reference:-

"The spaces occupied by such Illegal occupiers were urgently needed for the purpose of development of the undertaking of the Company, which was one of the tasks entrusted to the Authority by the Act."

Preamble of 1980 Act reads as under :--

"WHEREAS it is expedient to provide for the acquisition of the undertaking of the Great Eastern Hotel Limited for the purpose of ensuring better facilities for board and lodging to the members of the public and for matters connected therewith or Incidental thereto;"

12. Undoubtedly public purpose and public interest are paramount and, depending upon the fact situation of each case, invariably public Interest would have superior claim over private Interest and when there is a conflict between an Individual's right and a public purpose, the courts should endeavour to ensure that the public purpose is well-served. But before the court embarks upon such an exercise. Is it not absolutely essential that the court must ask and enquire what would the public purpose or public Interest be in this Case? in other words. Is the State invoking the superior claim of serving the public purpose or public Interest not enjoined to come out and disclose the court, either in the affidavits filed or in the contemporaneous record, as to what would the public purpose be in a given fact situation? Unless the court is thus Informed positively and definitely as to what precisely would the public purpose or the public interest be, merely stating during the course of hearing of the case for the first time that the acquisition or the possession of a particular property from its lawful tenants by use of force would serve a public purpose or public interest will not satisfy the Constitutional and legal requirements. Not only this, in the cases before us. It is the positive assertion of the respondents as culled out from their affidavits-in-opposition and it is the stated purpose of 1980 Act, as is seen from the Preamble

thereof that the entire exercise of acquisition is to ensure better facilities for board and lodging to the members of the Public in respect of the Great Eastern Hotel and for matters connected therewith. Undoubtedly therefore, the purpose of dispossessing the petitioners from the shops in question was to acquire the possession for upgrading the facilities, or for renovating the Hotel so as to serve the members of the Public in respect of boarding and lodging in the Hotel which is a pure commercial venture. This according to us is neither public purpose nor in public Interest as such. Great Eastern Hotel is a pure commercial venture. It is not a charitable Institution. It is not an Institution connected with any social or other such purpose. Great Eastern Hotel, with better facilities, augmented resources and up-dated infrastructure can only provide better facilities to such Members of the public who might choose to use its boarding and lodging facilities at a great expense. Great Eastern Hotel is not an ordinary-cheap class Hotel. It is a Star category Hotel. It is not thus open to the respondents to urge that we should view the forcible occupation of the writ petitioners in the light of any un-stated public purpose or any such un-stated public Interest to be achieved by such eviction of the writ petitioners. We therefore find ourselves in total disagreement with the submission of the learned Advocate General that the dispossession of the writ petitioners from the shops in question was in furtherance of any public purpose or was in public interest.

13. Coming to the various contentions advanced before us on behalf of the writ petitioners we feel that except for the limited question regarding use offeree, which we propose to decide and since based on such decision we propose to allow the writ applications and direct the restoration of possession to the writ petitioners only on the basis of our said proposed finding that it was not open to the respondents to use force for evicting the writ petitioners and that sub-section (8) of section 4 of 1980 Act did not permit the respondents to exclude the observance of the principles of natural Justice before steps could be taken by the respondents to secure the possession of the premises from the petitioners, such other contentions, except the aforesaid limited question, need not be considered by us. In that view of the matter therefore, we do not propose to examine the merits of these other contentions raised by the learned Advocates appearing for the writ-petitioners or for that matter the Constitutional validity, correctness, or even the very nature of retrospective applicability of the 1989 Amendment Act

14. It is the contention of the respondents, admittedly and undisputably, that the petitioners were dispossessed from the premises in question by use of force and that such force was used in exercise of the power vested u/s 6A of 1976 Act. Admittedly sub-section (8) of section 4 of 1980 Act is the only provision in that Act which deals with the question of securing possession of the premises. Sub-section (8) does not provide for use of force at all. We shall therefore have to see and find out as to whether any provision of 1976 Act could be invoked and made applicable by the respondents for securing possession of any part of the Undertaking of the Company under 1980 Act. The basic question which is

clamouring for our attention is as to whether 1976 Act can be considered to be applicable to any Government premises other than residential premises and whether it can at all be considered applicable in respect of the Undertaking of the Company under the 1980 Act. Even though the expression "Government premises" as defined in section 2(a) of 1976 Act does not by itself suggest any limited, constricted or narrow applicability of the Act, yet a reference to other provisions of the Act and the statement of objects and reasons undoubtedly leads us to hold that this Act is not applicable to either non-residential properties of the Government or any other property except the residential properties coming within the definition of "Government premises". The Preamble of the 1976 Act reads as under :--

"Whereas it is expedient to provide for the regulation of certain Incidents of tenancy in relation to Government premises in West Bengal and for matters connected therewith or incidental thereto;"

15. The statement of objects and reasons of 1976 Act inter-alia reads as under :--

1. The State Government and public undertakings have built quite a large number of Flats for providing accommodation to the members of the public or for their own employees.

2. Unfortunately realisation position of rent for the Flats so built is very unsatisfactory. Besides there is problem of unauthorised transfer or sub-letting of such Flats. The existing lots are not adequate to tackle with the problem expeditiously.

16. Section 2(a) of 1976 Act defines "Government Premises" as under :--

"2(a) 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 any premises in consideration of the office which he holds under the State Government or a Government undertaking for the time being;"

17. It will thus be noticed that even by defining "Government premises" the Legislature specifically excluded from such definition the official residence of any person authorised to occupy any premises in consideration of the office which he holds under the State Government. So even in the very definition of Government premises we find an inkling of the intention of the Legislature that the Legislature had residential accommodation in mind when it defined "Government premises". This particular intention of the Legislature is further manifested by section 3(2) (a). The relevant extract of section 3 of 1976 Act reads as under :--

"Section 3. termination of tenancy.

(1) Every tenancy held by a tenant in respect of a Government premises shall stand terminated upon the expiry of the period referred to in a notice to quit

served upon such tenant in the prescribed manner.

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

(i) violated the terms of the lease, or

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

Explanation--For the purpose of this section and section 3A,--

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

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

(c) "reasonable distance" shall mean any distance not exceeding twenty-five kilometres;

"Apartment" has been defined in the West Bengal Apartment Ownership Act, 1972 to mean :--

"Part of a property having a direct exit to a road, straight or high-way or to a common area leading to such road, straight or high-way which together with its undivided interest in the common area and facilities forms an independent residential unit"

18. The aforesaid two provisions therefore clearly suggest that if a tenant holding a tenancy in respect of a common premises under 1976 Act builds a house or acquires an Apartment within a reasonable distance (meaning a distance not exceeding 25 KMs) from such common premises, his tenancy shall stand terminated automatically without even a notice to it. It thus means that an automatic termination of tenancy comes to an end only if the tenant of the Government premises builds a house or a flat. The automatic termination of tenancy does not come to an end if he builds a shop or an office space. The termination of tenancy therefore is relatable to building or acquisition of a house or a flat. What does it mean? It only means that before building a house or a flat he was in occupation of a Government premises which only was a residential accommodation and nothing else. If he was occupying Government premises which was a non-residential accommodation, what relation would a newly built or newly acquired house or flat could have on the right of tenancy in respect of a shop or an office space? None, obviously. This fact clearly goes to suggest that 1976 Act applies only to residential premises.

19. Another interesting indication which can be discerned from within 1976 Act with regard to its applicability only to residential accommodation is with

reference to section 3A of this Act which reads as under :--

"Section 3A. Tenancy to be void if held by a tenant owning a house or apartment on the date of allotment of a Government premises.

A tenant in respect of a Government premises shall be deemed to be void where on the date of allotment of such Government premises the tenant is, or had been the owner of a house or an apartment, either in his own name or in the name of his family, within a reasonable distance from such Government Premises."

20. Even though section 3A by itself does not give any indication to the fact that it relates to only residential accommodation, we have to go a little beyond the section to the history of its Introduction. This section was introduced by the West Bengal Government Premises (Tenancy Regulation) (2nd Amendment) Act 1980. We reproduce hereIn-below the Statement of Objects and Reasons accompanying the aforesaid 1980 Amendment Act. This reads as under :--

STATEMENT OF OBJECTS AND REASONS.

The West Bengal Government Premises (Tenancy Regulation) Act, 1976 (West Bengal Act XIX of 1976). as it stands, empowers the State Government to take action against those tenants who have subsequently built houses of their own but are retaining Government premises after letting out their own houses with a view to making monetary profit, but the State Government is not empowered to take any action against any tenant who, on the date of allotment of Government premises, is, or had been, the owner of a house or an apartment, either in his own name or in the name of any member of his family, or who subsequent to the allotment of Government premises built or acquired a house or an apartment in the name of any member of his family.

2. Difficulties are being experienced in evicting a tenant from a Government premises who subsequently built a house of his own as such a tenant is taking this plea that as the provision in this respect made in the principal Act of 1976 by the West Bengal Government Premises (Tenancy Regulation) (Amendment) Act, 1980 was not given retrospective effect, the same is not applicable to him.

3. In order to remove the difficulties mentioned above it is proposed to amend the Act suitably.

4. The objects of the West Bengal Government Premises (Tenancy Regulation) [Second Amendment) Bill 1980 are :--

(1) to empower the State Government to take action against any tenant who subsequently builds or acquires a house or acquires an apartment or who, on the date of allotment of Government premises, is, or had been, the owner of a house or an apartment, either in his own name or in the name of any member of his family, within a reasonable distance from Government premises.

(2) to define the expressions "apartment", "family" and "reasonable distance", and

(3) to give retrospective operation to the provisions proposed in the aforesaid Bill to remove any misconception.

5. The Bill, if enacted. Is excepted to effectively check and control the profit making tendency of tenants of Government premises."

21. 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.

22. 1980 Act I,e. The Great Eastern Hotel (Acquisition of Undertaking) Act 1980 and 1976 Act deal with two entirely different and independent sets of properties. 1980 Act relates to and deals with the only property called as "Undertaking of the Company". 1976 Act on the other hand is concerned with the only property called as "Government premises", which as observed earlier, is relatable only to residential accommodation. Both the Acts are complete Codes by themselves. Both are independent and self-contained enactments of the State Legislature. Neither one of them overlaps the other, nor are these two Acts Inter-related to each other. 1980 Act being a complete self-contained Code, it provides for the mechanism of securing possession of the property under sub-section (8) of section 4. No provision of 1976 Act therefore can be held applicable in respect of the property covered by 1980 Act. We therefore hold that it was not open to the respondents to invoke the provisions of 1976 Act in any manner whatsoever for either evicting the writ-petitioners from the property in question or securing from them the possession of the said property by any means.

23. This therefore brings us to the question whether under 1980 Act the Respondents had any power to use force for evicting the writ-petitioners from the property in question. It is a well-setiled principle of Law that no one can take law in his or its hands. Every action has to be legally done. If a Legislative enactment does not give power to anyone for using force for evicting another from property in question, force cannot be used for evicting such person from such property or for securing the possession of such property from such person. Eviction has to be accomplished and possession secured only in accordance with the procedure prescribd by law. The expression used in sub-section (8) of section 4 "such steps as it considers necessary for securing the possession" only means that the State Government can take or cause to be taken steps which it considers necessary for the purpose of securing possession of the property. What steps the State Government considers necessary is for it to decide. The law only permits the State Government to take "necessary steps". Taking of "necessary steps" can Include filling a Civil Suits, it may Include, if permissible, Invocation of the

provisions of the Public Premises (Eviction of Unauthorised Occupants) Act it may as well Include the invocation of any other legislative enactment, if applicable to the property in question, but it would not include the use of force to forcibly evict the occupants from the property because use of force has not been sanctioned u/s 4(8) of the Act.

24. One more thing which perhaps we cannot avoid taking note of, while concluding our discussion on the ambit of section 4(8) of the Act relates to the observance of the principles of natural justice. Even though subsection (8) does permit the State to take such steps as it considers necessary for securing the possession of the property and, when read with sub-section (7) which enjoins upon any person in possession of the property to deliver the possession of such property to the Company, principles of natural Justice do demand and warrant that if the State Government is of the opinion that in terms of sub-section (7) of person in possession of the property of the Company ought to have delivered possession thereof to the Company and that it has not been done, before taking steps for securing the possession, it should at least call upon that person to explain, with reference to the charge that the State Government may have against such a person, as to why the possession of the property is not being delivered to the State Government and at the same time to put him on notice that the State Government would take necessary steps to secure the possession of the property. Affording such an opportunity of rendering explanation and in a given case, even affording opportunity of hearing on the question might help the State Government in understanding the case and the defence of the person sought to be dispossessed. Such a course of action, in our view would be in conformity with the principles of natural Justice and would at the same time thwart any possibility of an arbitrary action at the hands of the State Government in the present case, as we have noticed, no such opportunity was afforded to the writ petitioners.

For the foregoing reasons therefore, we allow all the writ petitions and by Issuance of a writ of Mandamus direct the respondents to put back in possession the writ petitioners in their respective properties from where they were dispossessed within one week from today. All the writ applications accordingly are allowed with costs assessed at Rs. 10.000/- in each case.

P.K. Sen, J.

25. I agree.

26. Petition allowed with Costs Later :

Let a xerox copy of this Judgment, duly countersigned by the Assistant Registrar of this court, be given to the parties upon their undertaking to apply for and obtain certified copy of the same upon usual undertaking.