
(1985) 05 CAL CK 0012
In the Calcutta High Court
Case No : C.R. No. 11393-94 (W) of 1984

Gyan Singh

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 03-05-1985

Acts Referred:

Army Act, 1950 — Section 153
Constitution of India, 1950 — Article 133, 134A, 14, 162, 19
West Bengal Government Premises (Regulation of Occupancy) Act, 1984 — Section 10, 11, 11(1), 11(2), 11(3)
West Bengal Government Premises (Tenancy Regulation) Act, 1976 — Section 11, 11(2), 11(3), 2(d), 3

Citation : 90 CWN 226

Hon'ble Judges : Shamsuddin Ahemed, J; Mookherjee, J

Bench : Division Bench

Advocate : Bhola Nath Son and Tapan Kumar Pal in C.R. No. 11393 of 1984, Arun Kumar Matilal, Suproakash Banerjee and Arati Sircar in C.R. No. 14700 of 1984, Rathindra Chandra Deb and Mahendralal Ghosh in C. R. No. 11397 of 1984, Sushanta Chatterjee and Bulu Chatterjee in C. R. No. 14237 of 1984, Somendra Chandra Bose, Suproakash Banerjee and Arati Sircar in C. R. No. 11077 of 1984, Rabindra Nath Mitra, Phani Bhusan Chakraborty and Tapan Kumar Mukherjee in C. R. No. 12471 of 1984, Bhola Nath Sen and Asoke Kumar Banerjee in C. R. No. 11937 of 1984, Bhola Nath Sen and Ashoke Kumar Ganguly in C. R. No. 11132 and 15739 of 1984, Arup Kumar Lahiry in C.R. No. 17451 of 1984, Arun Kumar Matilal and Tapan Kumar Mukherjee in C.R. No. 11104 of 1984, Kahan Kumar Ghosh and Subhro Kamal Mukherjee in C. R. No. 11466 of 1984, for the Appellant; Dipankar Gupta, R. N. Bajoria, Tapan Kumar Sengupta and Amal Baran Chatterjee, Banani Mukherjee in C.R. Nos. 14237 of 1984, for the Respondent

Judgement

Mookerjee, J.—The petitioners of these Rules are in occupation of respective flats claimed by them in the different Rental Housing Estates in West Bengal. By filing these Writ Petitions, they have challenged the validity of the provisions of the West Bengal Government Premises (Regulation of Occupancy) Act, 1984 (West Bengal Act 21 of 1984) (hereinafter called the Government Premises Act, 1984).

We have analogously heard as preliminary issue the said question of Constitutional validity of the West Bengal Government Premises (Regulation of Occupancy) Act, 1984. The West Bengal Government Premises (Regulation of Occupancy) Act, 1984 (West Bengal Act 21 of 1984) has come into force from 1st of August, 1984 and it extends to the whole of West Bengal. Assent of the President to the said Act was first published in the Calcutta Gazette, Extraordinary Issue of 3rd July, 1984. Premises belonging to or taken on lease or licence or requisitioned by or on behalf of the State Government have been designated in section 2(n) of the said Act as "State Premises". State Premises have been classified into two categories: (i) Public Premises and (ii) Government Premises. "Public Premises" u/s 2(k) of the Act means those premises in respect of which a declaration has been made u/s 3 of the Act and also include State Premises mentioned in Schedule-II of the Act. The provisions of the West Bengal Government Premises Act 1984 do not apply to public premises. "Government Premises" u/s 2(d) of the West Bengal Act 21 of 1984 means State Premises which are not Public Premises. West Bengal Government Premises Act, 1984 purports to provide for regulation of occupancy of. Government Premises which are meant for the employees of the State Government, to prevent unlawful occupation of such premises and to ensure use of such premises by the persons for whom and for the purposes for which they are intended. West Bengal Land (Eviction of Unauthorised Occupants) Act, 1962 and the West Bengal Government Premises (Tenancy Regulation) Act, 1976 no longer apply to "Government Premises" as defined in section 2(d) of the Government Premises Act, 1984.

2. After the commencement of the Government Premises Act 1984, no person shall occupy or remain in occupation of any Government Premises unless he is granted licence u/s 7 of the said Act or he is deemed u/s 9 of the Act to be a licensee. Only persons who are in employment and hold any specified post under the State Government are eligible to be licensees of government premises (vide section 8 of the Act. Persons who on the appointed day were lawfully in occupation and fulfilled the conditions of section 8 of the Act were to be deemed,as licensees. The terms and conditions of such licensees have been described in Schedule-I of the Government Premises Act 1984. The Prescribed Authority may determine additional terms and conditions not inconsistent with Schedule-I of the Act.

3. A licence under the said Act is subject to (a) ipso facto termination under sub-section (1) of section 11 of the Act and (b) termination by an order under sub-section 3 of section 11 of the Act passed by the competent authority in accordance with the terms and conditions of the licence.

4. When any person occupies or remains in occupation of any government premises in violation of any of the provisions of the Government Premises Act, 1984, the Competent Authority (vide section 2(c). of the Act) may u/s 13 of the Act take such steps and use force as may be necessary to take possession of the

premises. Occupation or allowing another to occupy a government premises in violation of any of the provisions of the Act has been made u/s 14(2) of the Act punishable with imprisonment for a term which may extend to six months or with fine which may extend to Rs. 5000/- or with both. The said offence u/s 14(2) has been made cognizable one.

5. The learned advocates appearing on behalf of the petitioners have submitted that the Government Premises Act, 1984 is violative of Article 14 of the Constitution of India. It is unreasonable because without payment of any compensation it purports to deprive occupants of government premises of their subsisting tenancy rights and to provide for their eviction without following due process of law. Even those who would be allowed to remain in occupation, they would be bare licensees with only precarious rights. Without any rational basis the Government Premises Act, 1984 purports to classify occupants of state premises into two separate classes and to adversely treat occupants of government premises. Another arguments on behalf of the petitioners is that sections 3, 22 and 27 of the Government Premises Act, 1984, suffer from vice of excessive delegation of essential legislative activity because the said provisions do not contain any guideline. Even after deletion of clause (f) of Article 19(1) and of Article 31 from Part-III of the Constitution a law for acquisition or extinguishment of tenancy right which is property without payment of compensation would be invalid. Such a law would be unreasonable and therefore would be violative of Article 14 of the Constitution. Secondly, Entry 42 of List-III of the 7th Schedule of the Constitution confers legislative power to acquire or requisition property subject to payment of compensation and not for outright expropriation without payment of compensation. Even conceding that such a law for the deprivation of property could be validly enacted, in the absence of enumeration of such power either in the List-II or in the List-III of the 7th Schedule, the same would fall within the residuary legislative field. The Union Legislature alone has competence to enact laws in respect of residuary subjects. It has been also urged that the Government Premises Act, 1984 infringes Article 21 of the Constitution because Right to Shelter is included within the Right to Life and Liberty guaranteed by Article 21 of the Constitution of India.

6. We uphold the submission made on behalf of the State that the impugned legislation, the West Bengal Government Premises Act, 1984, is covered by Entry 35, List-II of the 7th Schedule of the Constitution which reads as follows :

Works, lands and buildings vested in or in the possession of the State.

According to the preamble of the impugned Act, the object of the legislation was (i) to provide for regulation of occupancy of government premises in West Bengal meant for the employees of the State Government, (ii) to prevent unlawful occupation of such premises and (iii) to ensure the use of such premises by the persons for whom and for the purposes for which they are intended. The learned advocate for the State submitted that the Entries in the three lists of the 7th Schedule of the Constitution are topics of legislation which are to be given widest

meaning and one entry ought not to be interpreted so as to make another entry redundant. They are to be interpreted so as to give full and effective scope for the operation of the different entries in their respective fields. Thus, the Supreme Court in the case of *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, reconciled the apparent conflict between Entry 52 in the List-I of the 7th schedule and Entry 24, List-II of the 7th Schedule by holding that the said Entry 24 carved out gas and gas works in all their aspects from the Entry no. 52 which in its widest amplitude might take in all industries including gas and gas works. The Court had applied the doctrine of harmonious construction in order to give full and effective scope to the said entries. The decision of the Supreme Court in the case of *Harakchand Ratanchand Banthia and Others Vs. Union of India (UOI) and Others*, regarding the legislative power of the Parliament to enact the Gold Control Act of 1968 was also in the same line.

7. By applying the above ratio, we hold that the West Bengal Legislature under Entry 35 of the List II was competent to enact the provisions relating to the terms and conditions of occupation of building vested in or in possession of the State. The Government Premises Act 1984 is in substance not for acquisition of tenancy rights in the premises owned by or belonging to the State. As already observed, it is a regulatory measure relating to the terms and conditions of occupation of premises defined as government premises and also for eviction of unauthorised persons. We have separately considered the questions relating to the nature of the. Government Premise Act and whether the said Act is a reasonable piece of legislation. Under the said topic of discussion, we have dealt with the question whether the Act is for acquisition or expropriation of property rights. Our view regarding the scope of Entry 35 List II, 7th Schedule is supported by the decision of the Supreme Court in the case of *State of Maharashtra etc. Vs. Madhavrao Damodar Patilchand and Others etc.*, , which had considered the scope of Entry 35, List-II of the 7th Schedule of the Constitution. The Court had upheld the validity of the provisions contained in section 28 of the Maharashtra State Agricultural Lands (Ceiling on Holdings) Act relating to production and supply of raw materials from lands which were vested in the State on the ground that the said provision was for the full and efficient use of such land and its affiant management. The Supreme Court had rejected the argument that section 28 of the Act considered by it was a law with respect to Entry No. 52 of List-I and therefore beyond the competence of State Legislature.

8. Mr. Bajoria has also correctly submitted that when a subject falls under two different entries, strictly speaking, no question of repugnancy arises but the court would apply the test of pith and substance to decide whether a particular legislation falls under one entry or the other. The question of repugnancy would be more relevant in case the Parliament and State Legislature both enact laws under a single entry in the concurrent list, i.e., List-II of the 7th Schedule of the Constitution. It may be also pointed out that in the instant case the President had given his assent under Article 254 of the Constitution and therefore no

question of repugnancy with any Central Law could possibly arise. Further, we are unable to hold that the Government Premises Act, 1984 is inconsistent with or repugnant to any Central Law. Even remotely the said Act does not legislate in respect of matters included in the CPC as contended by Mr. Motilal, one of the learned advocates for the petitioners.

9. The question whether or not the Government Premises Act, 1984 is a reasonable piece of legislation, ought to be considered in the context of the nature and extent of rights enjoyed by the occupants of different government premises prior to enactment of the said statute. By accepting the terms and conditions mentioned in their respective allotment letters in some cases the petitioners themselves and in other cases their predecessor-in-interest had come to occupy accommodation in the different Government Rental Housing Estates. Further, we propose to compare the terms and conditions for occupation of flats in the Government Rental Housing Estates with those for occupying flats in the Low Income, Middle Income and High Income Group Housing Estates in order to decide whether or not there was any intelligible basis for classifying the occupants of flats in the Government Rental Housing Estate into a separate class.

10. In their affidavits-in-opposition the respondents have set out the particulars of the different Government Schemes for providing residential accommodation. With the assistance of loans and grants provided by the Central Government and/or Life Insurance Corporation the State Government had undertaken among others the following schemes:

(1) Slum Clearance/Improvement for Allotment to slum dwellers; The houses constructed under the said scheme are under the Housing department of the Government of West Bengal. Houses under the Slum Clearance/Improvement Schemes have been declared as public premises and therefore, they are not governed by the provisions of the Act of 1985.

(2) Rental Housing under the Integrated Subsidised Housing Scheme for Industrial workers and Economically Weaker Sections of the Community; Persons coming under the purview of the Factories Act and also those employed in mines other than coal, mica and iron-ore mines, are eligible for residential accommodation under the scheme provided their monthly income did not exceed Rs. 35/- per month. Persons belonging to the weaker sections of the community are also eligible for allotment. The said premises are also public premises and, therefore, the Act of 1984 does not act to them.

(3) Rental Housing under the Low Income and Middle Income Group Members of the Public;

Whose income does not exceed Rs. 7,200/- per annum are eligible to be allotted flats in Low Income Group housing estates. Government servants along with members of public whose incomes do not exceed Rs. 18,000/- per annum were entitled to apply for allotment for flats in the Low Income Government Housing Scheme. They become subject to the same terms and conditions as those

applicable to other members of public. The houses constructed under the Low Income and Middle Income Group have been declared as public premises and therefore, they are not governed by Act of 1984.

(4) Rental Housing under the High Income Group;

There is only one housing estate under the said Scheme at 28/IA Gariahat Road comprising 53 housing units. The estate was built by the Development and Planning Department but its control was subsequently transferred to the Housing Department. Out of 53 units in the estate 12 are meant for eligible government employees and accordingly the same are governed within the meaning of the Act of 1984. The remaining 41 units were allotted to members of public whose income exceed Rs. 18,000/- per annum are public premises not governed by the Act of 1984.

(5) Rental Housing Scheme for State Government Employees:

Under the said scheme the State Government constructed houses, flats and tenements for allotment to serving employees of the State Government.

11. The respondents have contended that all along accommodation in Rental Housing Scheme could be occupied so long as the allottee remained in the service of the State Government and at the places of their posting. The said allotments have been always made to enable the allottee employees to discharge their duties at their respective places of posting more efficiently and conveniently. The respondents have annexed to their affidavit-in-opposition the terms and conditions for occupying the flats under the Rental Housing Scheme for the State Government employees. It would appear therefrom that in the allotment letters issued prior to 1973, there was no express term that in case of retirement from service the tenancy under Rental Housing Scheme shall come to an end. The said terms and conditions however expressly stipulated that in case of death or transfer or termination of service under the State Government as a result of discharge or dismissal of the allottee the tenancy of the flat shall stand determined on the expiry of the month following that in which death, transfer or resignation took place and that possession should be handed over before the expiry of the said period. Another term for occupation of flat under Rental Housing Scheme was that the tenant shall not assign or sublet the premises or any part thereof and that the premises would be used exclusively for the purpose of the residence of the tenant and the members of his family residing with him. It was also stipulated that in case of breach of any of the terms and conditions on the part of the allottee, the tenancy shall forthwith stand determined and the Government shall be entitled to recover possession of the flat forthwith and the allottee would be also liable to pay full economic rent. The terms also made applicable the normal rules and conditions laid down by the State Government for occupation of government quarters which are not repugnant to the terms and conditions contained in the subsequent letters of allotment. The terms and conditions in the letters of allotment of flat in the Rental Housing Scheme of the

State Government retained nearly similar terms and conditions of occupation but also expressly mentioned that in case of death, retirement from service or transfer or deputation to other authorities or termination of service under the State Government, the tenancy of the flat shall stand determined and the tenant shall hand-over possession before the expiry of the one month following the said event.

12. Upon a perusal of the prescribed terms and conditions for occupation of flats in the Government Rental Housing Scheme Estate, we find that the said tenancies were not heritable and were liable to automatic termination in the event of death of the tenant. The said tenancies were also liable to be automatically terminated in case of resignation or termination of service of the allottee under the State Government. The petitioners have urged that tenancies in the Government Rental Housing Estates were made heritable by the West Bengal Government Premises (Tenancy Regulation) Act, 1976. The respondents have disputed this claim and according to them, the West Bengal Government Premises (Tenancy Regulation) Act, 1976 (hereinafter called the Government Premises Act of 1976) did not spell out any change in the legal status of the occupants of flats in the Government Rental Housing Estates. After considering the provisions of the said Act of 1976, we uphold the submission made on behalf of the State that the said Act did not codify the entire law relating to occupants of premises owned by the State including Rental Housing Estates. The said Act of 1976 only regulated some and not all the incidents of tenancies in the premises owned by the State Government. The said Act without abrogating all the terms and conditions set out in the letters of allotment, purported to, inter-alia, lay down uniform provisions for termination of tenancies and after such termination for recovery of possession. Differences in the language used in the preamble of the West Bengal Government Premises (Tenancy Regulation) Act, 1976 and of the West Bengal Government Premises (Regulation of Tenancy) Act, 1984 are significant. The preamble of the Government Premises Act of 1976 states :

Whereas it is expedient to provide for regulation of certain incident of tenancy in relation to Government Premises in West Bengal and for matters connected therefor or incidental thereof.

13. We have underlined the words "certain incidents of tenancy" to emphasise that the said Act of 1976 did not purport to exhaustively provide for regulation of all the incident of tenancy in relation to government premises. The said Act did not contain any provision for creation of tenancies in government premises. The Act of 1976 did not also prescribe all the terms and conditions of tenancies in government premises. As already stated, the said Act of 1976 contained mainly provisions for termination of tenancy, restoration of possession, penalty for certain unauthorised acts and for recovery of certain claims as public demand. The Government Premises Act, 1976 also contained provisions for imposition of penalties in cases of unauthorised subletting, failure to pay rent, etc. Every tenancy in respect of a government premises was liable to be terminated u/s

3(1) of the Act of 1976 by service of a notice to quit in the prescribed manner. The terms and conditions annexed to the allotment letters for flats in the Government Rental Housing Estates did not expressly provide for such termination by service of notice to quit. By framing rules under the Government Premises Act of 1976, service of one month's notice was prescribed. A tenancy in respect of a government premises under sub-section (2) of section 3 of the Government Premises Act of 1976 was liable to be automatically terminated without any notice to quit in case the tenant (i) violated the terms of the lease or (ii) made default in payment of rent. For our present purpose, we need not set out the three provisos under sub-section (2) of section 3 of the said Act of 1976. By providing for automatic termination in case of violation of the terms of the lease the government premises Act of 1976 recognised continuance of the said terms of allotment and provided for their continued operation.

The petitioners have strongly relied upon the following definition of "Tenant" given in section 2(f) of the Government Premises Act of 1976 :

"Tenant" means any person by whom the rent of any premises is or but for a special contract would be, payable and includes in the event of such person's death such of his heirs as were ordinarily residing with him at the time of his death.

The said definition of "tenant" given in section 2(f) of the Government Premises Act of 1976 cannot be taken as overriding and abrogating the terms and conditions for allotments in Government Rental Housing Estates, that by death, resignation or termination of service, the tenancies would come to an end. The said definition in section 2(f) was to serve as an interpretation clause in respect of the provisions contained in the said Act of 1976, and the definition by itself cannot be taken to be a disguised legislation for making tenancies in government premises heritable. The said definition of "tenant" given in section 2(f) of the said Act of 1976 ought to be used for the purpose of interpreting the provisions of the Act of 1976 inter-alia relating to termination of tenancies, recovery of possession of flats, recovery of dues, etc. We have already observed that the 1976 Act did not contain any provision for creation of tenancies in the government premises and did not also prescribe all the terms and conditions of allotment. By reason of the said definition of "tenant" in section 2(f) of the Government Premises Act 1976, not only the tenant but in case of his death, his heirs residing in flat with him became subject to the provisions of the Government Premises Act, 1976 relating to termination of tenancies, recovery of possession of flats recovery of mesne profits and penalties for unauthorised acts. The Government Premises Act 1976 did not make tenancies in Government Rental Housing Estates heritable for all purposes and did not also vest the heirs of deceased government servant allottees with full tenancy rights. We have already observed that section 3(2)(i) of the Government Premises Act, 1976 gave statutory recognition to the terms and conditions of allotments and in the absence of any repugnancy the terms relating to determination of tenancy by

death, resignation or termination of service contained in the letters allotting flats in the Government Rental Housing Estates contained to remain operative. The present cases relate to occupation of accommodation in Government Rental Housing Estates. Therefore our observations and findings regarding the Government Premises Act 1976 are confined to the tenants/occupants of rental housing Estates vis-a-vis Government Premises Act, 1976.

15. If we accept the contention of the petitioners that after the commencement of the Government Premises Act, 1976 tenancy rights in respect of the Rental Housing Estates became heritable, even then the said tenancies were liable to be terminated by service of a notice issued u/s 3(1) of the said Act. The said tenancies were also subject to automatic termination u/s 3(2) of the Government Premises Act, 1976. In other words, the said tenancies were comparable to tenancies at will under general law. As present advised, we are also inclined to hold that there was no legal impediment in the way of enacting fresh legislation modifying and/or curtailing the said tenancy rights in Government Rental Housing Estates.

16. We find that the State Government thought endeavoured to make occupation of flats in the Government Rental Housing Estates co-terminous with the employment of the allottees under it and stipulated terms and conditions for termination of the said tenancies in cases of death, resignation, removal and termination of the service in any other manner. Since 1973, in the allotment letters retirement from service was expressly mentioned as one of the grounds for automatic termination of the tenancy. The said allotment of accommodation in the Government Rental Housing Estates was also made subject to normal rules and conditions laid down by the State Government for occupation of government quarters.

17. The Governor of West Bengal by a Notification dated 29th June, 1979 amended Chapter-XVI of the West Bengal Service Rules, Part-I by inserting Rules 228A. The clause (i) of the said Rule 228A of the West Bengal Service Rules, Part-I provided, inter-alia, that when a building owned or leased by the Government or an operation thereof is made to a government servant, shall be ineligible to occupy the same in cases of:

- (a) transfer to another station,
- (b) transfer to another post outside the control of the State Government,
- (c) retirement, resignation or dismissal from service.

In such a case he might be served with a notice to vacated the flat.

18. We have already referred to the preamble of the West Bengal Government Premises (Regulation of Occupancy) Act, 1984, which, inter-alia, stated that the Act had been enacted to provide regulation of occupancy of government premises in West Bengal made for the employees of the State Government and to prevent its unlawful occupation. In our view, the State was within its right to

decide that the "government premises" as defined in section 2(d) of the said Act, would be occupied by persons in employment of and holding specified posts under the State Government. In fact, even prior to the enactment of the Government Premises Act except in very rare cases flats in the Government Rental Housing Estates had been allotted only to State Government employees and the said tenancies had been always subject to automatic termination in case of death, resignation, removal, retirement, etc. Although the terms and conditions for allotment of flats in the government premises were throughout substantially the same but there were some minor variations in the words and expressions used in the different allotment letters issued from time to time. The Government Premises Act 1984 read with the Rules made thereunder purports to codify the said terms and conditions and to bring about uniformity. After the Government Premises Act, 1984 came into force, said tenancies became liable to be terminated by service of notice to quit or upon happening of specified events. The Government Premises Act, 1984, no doubt, alters the description of occupants of the Government Rental Housing Estates from tenants to licensees. The rights of the occupants have however substantially remained the same. The terms and conditions applicable to licensees in respect of government premises set out in schedule-I of the Act contain many of the terms and conditions mentioned in the allotment letters issued to the allottees of flats the Government rental Housing Estates. One of the change is that a licence issued u/s 7 of the Act of 1984 shall remain valid for a specified period but the same could be renewed subject to the provisions of sections 2 and 11 of the said act. Licences in government premises have become liable to be terminated in case the licensee acquires any other premises in his own name or in the name of any member of his family who is dependant upon him. In case of licensee being under suspension or upon proceeding on leave for a period exceeding six months, the licence could be also terminated we are unable to agree that these conditions are arbitrary and therefore unreasonable. When any of the events mentioned in Term No. 14 of Schedule-I take place, the competent authority may terminate a licence by passing an order u/s 11(2) of the Act. Before passing any termination order the competent authority is required to give the licensee an opportunity of being heard an appeal shall lie u/s 11(3) of the Act to the appellate authority against an order made under sub-section (2) or an order of the competent authority refusing to renew a licence. Therefore, the Act contains sufficient safeguards against arbitrary exercise of power of termination or refusal to renew license by the competent authority.

19. The petitioner have not established that even before the commencement of the Government Premises act, 1984 the allottees of flats in the Government rental Housing Estate had right to occupy the said flats irrespective of the fact of their continuing in service under the State Government. On the other hand, throughout one of the terms and conditions of allotment of flat's in the Government rental Housing Estates was that the said tenancies would continue so long as the allottees would continue in service and in case they cease to be in

service of the State Government, their said tenancy rights would be automatically determined. Therefore, the Government Premises Act of 1984 which may be described as a regulatory measure in respect of occupation of government premises and substantially re-enact the terms and conditions of allotment of said flats, therefore the said Act cannot be impugned as expropriatory and violative of article 14 of the Constitution. Examined in the context of the rights enjoyed by the occupants of flats in the Government Rental Housing Estates, the provisions Of the Government Premises Act, 1984 cannot be called arbitrary merely because the said act in some ways alters and may be also curtailed the rights of the occupants of flats in the Government rental housing Estates. Such alteration curtailment cannot be called unconscionable or shocking. Therefore, the Government Premises Act, 1984 cannot be held to be arbitrary.

20. Our view that alteration in the above manner of the rights of the allottees of flats in the Government Rental Housing Estates does not amount to deprivation of property rights is supported by the observations made by the Supreme Court in the case of Amar Singh Vs. Custodian, Evacuee Property, Punjab, . In the case of Amar Singh and Others vs. The Custodian, Evacuee Property Punjab (supra) the court held that the right of a quasi-permanent allottee under the East Punjab Evacuee (Administration of Property) Act did not constitute property within the meaning of Articles 19(1) (f) and 31 of the Constitution because the said right was liable to resumption or cancellation and interest of the allottee in essence was provisional. Another reason why the said right was held not to be property was that interest of quasi-permanent allottee was not capable of acquisition by ordinary citizen in any other normal mode. Nor was it capable of disposal by sale, mortgage, gift or will. Therefore, the Supreme Court in Amar Singh's case (supra) held that the allottee whose allotment had been cancelled in order to work out re-adjustment consequent upon an order of the highest authority could not invoke protection of article 31(1) of the Constitution. Jagannadhadas, J. in paragraph 21 of his judgment in the case of Amar Singh and Others vs. The Custodian Evacuee Property, Punjab (supra), rejected the contention that the term "property" used in Article 31(1) was intended to be understood in a wider sense and that deprivation of any individual right out of bundle of rights was sufficient to attract Article 31(1). We respectfully apply the same reasoning and hold that in the instant case the Government Premises Act of 1984 has made provisions for re-adjustment of the rights of the occupants of flats in the Government Rental Housing Estates who never enjoyed full ownership of the said tenancy rights. Prior to the enactment of the Government Premises Act of 1984, the allottees were, no doubt, described as tenants but the same were at the highest tenancies-at-will and secondly, the said rights of tenancy were conferred only to government servants and were not heritable or transferable in any manner. It has been consistently held that law altering rights and obligations of the landlords and their tenants amount to regulatory provisions and not for acquisition of the property (see Thakur Gaganath Baksh Singh vs. United Provinces A. I. R. 1943 F. C. 29(33), AIR 1946 127 (Privy Council) , Shri Kishan

Singh and Others Vs. The State of Rajasthan and Others, . In the above view, the curtailment of the rights of the allottees of the flats in the Government Rental Housing Estates cannot be characterised as deprivation of property. In any case, the said alteration in the legal position of occupation of flats in the Government Rental Housing estates was brought about by legislative enactment and not by executive fiat. The Legislature has chosen to lay down special procedure for termination of licence to occupy Government Premises and eviction of unauthorised persons of such premises. We have hereinafter held that there was rational basis for making such differentiation in the procedures for termination of licence and for recovery of possession from unauthorised occupants of government premises.

21. In support of their submission that the provisions of the Government Premises act of 1984 are opposed to Rule of law, the petitioners had relied upon the decisions of the Supreme Court in the case of Bishan Das and Others Vs. The State of Punjab and Others, and in the case of Lallu Yeshwant Singh vs. Rao Jagdish Singh and Others AIR 1968 S.C. 620. In our view, the said two reported decisions have no manner of application to the cases before us. In the case of Bishan Das vs. State of Punjab (supra), the Supreme Court held that interference with Fundamental Right to property by executive action without any authority of specific Rule of Law was illegal. The Court had deprecated the executive action to deprive a person of the possession of property without reference to law or legal authority. In the other case of Lallu Yashwant Singh vs. Rao Jagdish Singh (supra) the court held that under particular tenancy law the landlord had no right to forcefully re-enter by throwing out the lessee. He must approach the court for dispossession of the tenant. In the instant case, the West Bengal Government Premises Act, 1984 has inter-alia provided for termination of licencees in government premises and also has prescribed the procedure for taking possession by the competent authority." We shall hereinafter separately consider the vires of sections 11 and 13 of the Act of 1984 but for the present we may point that the Act impugned before us does prescribed a procedure for termination of licences and for recovery of possession.

22. The petitioner have challenged the provisions of the Government Premises Act, 1984 on the ground that the said Act violates the Fundamental Right of Equality guaranted by Article 14 of the Constitution of India. Their said challenged have two facets. Firstly, there is no intelligible basis for making two different sets of laws for occupation of government premises and public premises, both of which are state premises. The other facet of their challenge is that the Government Premises Act, 1984 is arbitrary because it purports to deprive without payment of compensation tenancy rights of occupants of government premises and to make them bare licencees. We have already dealt with the second aspect and have found that the said Act of 1984 cannot be called arbitrary.

23. We proceed to consider the point whether or not there was any intelligible

basis for making separate legislation in respect of occupants of government premises. It is unnecessary for us to set out all the reported decisions on the point cited at the bar. It would be sufficient for us to resume of the reported decisions given in paragraphs 62 to 77 of the judgment of Chandrachud, C.J., in *Re: Special Court's Bill*, 1978 S.G. 478. Chandrachud, C.J., in paragraph 73 set out the provisions which emerged from the said reported judgments. It was laid down *inter alia* that the State has power of determining who should be regarded as a class for the purpose of legislation and in relation to a law enacted on a particular subject. This power, no doubt, in some degree is likely to produce some inequality; but if a law deals with the liberties of a member of well-defined classes, it is not open to the charge of denial of equal protection on the ground that it has no application to other persons (*vide* Proposition No. 5 at page 509). By applying the said proposition, we reject the contention of the petitioners that "segregation" of the occupants of the government premises made by the provisions of the Government Premises Act of 1984 was bad because there was a rational basis for such classification and the said intelligible differentia has a nexus, i.e., rational relationship, to the object sought to be achieved by the Act (*vide* Proposition Nos. 7 and 8 at page 509). It is also no argument that since previously all occupants of premises owned or belonging to the State were subject to the provisions of the Government Premises Act, 1976, the State was forbidden for making separate legislation in respect of occupation of flats in the Government Rental Housing Estates.

24. The respondents have established before us that even before the Government Premises Act, 1984, was enacted, persons living in different kinds of premises owned by or in occupation of the State were not similarly situated in respect of their (a) eligibility and (b) terms of their occupancy. The respondents have annexed to their affidavits-in-opposition the terms and conditions for allotment of accommodation in the Government Rental Housing Estates to which we have already referred. The respondents have also produced the standard form of agreement for granting of tenancies in the Low Income Group, Middle Income Group and High Income Group Housing Estates. In case of accommodation in the Government Rental Housing Estates the criteria was holding of employment under the State Government at specified places. In other words, only the Government servants were eligible for allotment of accommodation in Government Rental Housing Estates. But amount of income earned was a criteria for allotment of tenancies in the Housing Estates for Lower Income, Middle Income and High Income Groups. Persons earning up to certain amount were eligible for allotment of flats in the Lower Income Group Housing Estates. Similarly, there was a ceiling of income for eligibility for obtaining allotment in Middle Income Group Housing Estates. The terms of occupancy of flats in the Rental Housing Estates were different from those for occupation in the Low Income, Middle Income and High Income Groups. Since tenancies in Government Rental Housing Estates were co-terminous with holding of employment under the State Government, when the allottee ceased to be a

government servant, his tenancy was automatically terminated. The basis for determination of rent payable of Government Rental Housing Estates was also different from those for assessing rent in the Low Income, Middle Income and High Income Groups. While in case of rent payable for accommodation in the Government Rental Housing Estates the cost of land and interest thereon and departmental charges were not taken into consideration but in case of rent payable under Low Income, Middle Income and High Income Groups, the cost of land and interest thereon and departmental charges were taken into consideration in computing the rent payable. Thus, rent charge for Government Rental Housing Estates was a subsidized and concessional one. The purpose of occupancy of accommodation in the Government Rental Housing Estates was different. Said allotments were made for efficient discharge of duties by the allottees as Government servants. But in case of Low Income, Middle Income; and High Income Group flats, there was no such purpose. Even when government servants were allotted accommodation in the housing estates, they were considered as members of public.

25. The respondents in their affidavits-in-opposition have pointed out that apart from the Housing Department of the State Government, various other departments like Home, Police, Excise Agriculture, Irrigation, Forest, Public Works Department also own houses for residential accommodation of government employees. The respondents have further pointed out that a large number of employees of the government even after their retirement from service or transfer elsewhere have continued to occupy flats in the Government Rental Housing Estates. In some cases, after their deaths the heirs and legal representatives of the deceased employees have been unauthorisedly retaining the possession of such flats. Therefore, the Act of 1984 was enacted to rationalise the terms and conditions under which government premises could be held and for preventing unlawful use of government premises by persons who are not eligible to occupy the same. In the above view, we uphold the submission of the respondents that there was intelligible basis for making separate legislation in respect of government premises as defined in section 2(f) of the Government Premises Act, 1984 and the said basis of classification had a rational connection with the object of legislation.

26. We next consider the submissions made on behalf of the petitioners regarding the vires of the different individual sections of the Government Premises Act, 1976. They have submitted that sections 3, 22 and 27 of the Act are bad on the ground of excessive delegation of legislative functions and that these sections do not contain any guidelines. It is settled law that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of time and may assume every state of facts which may be conceived existing at the time of the legislation. When the statute itself does not indicate the person or thing to whom the provisions are now intended to apply, the basis of classification may be gathered from the surrounding circumstances known or

brought to the notice of the court. In order to decide constitutionality of a legislation, the courts have repeatedly looked into the history of the legislation and other relevant facts disclosed by affidavits. In this connection see *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, *Hamdard Dawakhana and Another*, *Kalipada Deb and Another*, *Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others*, *Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another*, at page 254, paragraph 26. The observations by the Supreme Court in paragraph 26 of their judgment in the case of *Sanjeev Coke Manufacturing Company (Supra)*, does not support the broad contention made on behalf of the petitioners that affidavits could not be looked into for ascertaining object of a legislation and its constitutionality. In the said reported case the affidavits in question were filed not on behalf of the State but on behalf of *M/s. Bharat Coking Coal Ltd.* and upon which the petitioners relied to challenge the legislation. The Supreme Court observed that said affidavits spoke for the parties on whose behalf they were sworn and they did not speak for the Parliament. The Supreme Court had further observed that the said affidavits did not and could not bind Parliament. The Supreme Court at the same time, recognised that the validity of legislation may be judged by considering all relevant circumstances which the court may ultimately find and more especially by what might be gathered from what the legislature had itself said. The Supreme Court had concluded that in the said reported Case there had been no infringement of Article 14 of the Constitution. In the present case considered by us, guidelines for exercise of the discretion to notify a premises as public premises may be gathered not only from the preamble but also from the provisions of the Act particularly sections 4, 5, 6, 8, 11 and Schedule I of the Act. In this connection, see *Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi*, and in *Bhatnagars and Co. Ltd. Vs. The Union of India (UOI)*, .

27. We have already referred to the averments made in the affidavit-in-opposition filed on behalf of the State. The respondents have set out the particulars of different schemes undertaken by the State and their purposes. The houses constructed under Government Rental Housing Scheme have been all along been meant for occupation only by government servants. Both the purpose of their occupation and also their terms and conditions have been all along different. Rent payable have been fixed upon different considerations. We have already mentioned that Schedule I of the Government Premises Act, 1984 substantially reproduced the terms and conditions upon which flats in the Government Rental Housing Estates have been allotted. Further, the Government Premises Act, 1984 itself has specified in Schedule-II of the Act the premises declared by it as public premises. For these reasons, we conclude that sufficient guidelines have been laid down in the Act for exercise of the power of the State Government to make declaration u/s 3 of the Act. The respondents have also pointed out that the power to notify has been conferred on the State Government itself and, therefore, there would be a presumption that the said

power to notify will be exercised fairly and reasonably. Secondly, when the statute has laid down sufficient guidelines, power u/s 3 of the impugned Act to notify cannot itself be bad but if in a given case a particular notification is made mala fide, the same may be struck down.

28. After the commencement of the Government Premises Act, 1984 government premises may be lawfully occupied either by those who are granted licence u/s 7 of the Act or those who on the date of the commencement of the Act are deemed to be licensees. The explanation to section 8 of the Government Premises Act, 1984 lay down that persons who have retired from service of the State Government deemed to be in employment of the government or holding any post under the State. We have already rejected the contention that the Government Premises Act 1984 is a confiscatory piece of legislation. We have held that even before the commencement of the Government Premises Act of 1984, only persons in government service were entitled to remain in occupation and the said tenancies stood terminated by death, resignation or termination of service. Therefore, the Government Premises Act of 1984 cannot be described as an expropriatory piece of legislation. On the other hand, the Act seeks to codify and regulate the terms and conditions for occupancy of flats in the government premises.

29. Section 4 of the Government Premises Act, 1984 is fully consistent with the object of enacting the said legislation to confine the occupancy of government premises to holders of specified posts. Section 2(m) which defines the expression "specified post" contains enough indications guiding the discretion the State Government's power to declare a particular post as specified one. After the commencement of the Act government premises shall be occupied only by persons who is granted licence in his favour by the competent authority or who u/s 8 is deemed as a licensee. We have already held that West Bengal Legislature had legislative competence to prescribe who shall occupy or remain in occupation of any government premises Schedule-I of the. Government Premises Act, 1984 has prescribed the said terms and conditions for granting licence and the same substantially are similar to the original terms and conditions for allotment of flats in the Government Rental Housing Estates. In respect of persons who were in occupation of any Government Premises on the appointed day, i.e., the date of the commencement of the Government Premises Act, 1984. Section 8 has made only those as deemed licensees who are still in employment of and holds specific posts and who had been previously granted lawful authority. In other words, only those allottees who are still in employment and holds specified posts under the State Government, shall become licensees for the purposes of Section 7. We have already pointed out that even under the original terms and conditions of allotment tenancies in Government Premises were liable to be determined by death, resignation or termination of service of the allottee. Since 1973 these terms have prescribed that on retirement the tenancy of the allottee in a government premises shall stand determined. We have already held that section 3(2) of the Government Premises Act, 1976. had impliedly continued the original

terms and conditions of allotment and had inter alia provided in case of breaches thereof for automatic termination of tenancies followed by passing by those allottees whose tenancies stood already determined before "the appointed day" in terms of their allotment, cannot claim any legal right to occupy any government premises after the commencement of the Government Premises Act, 1984. They had disqualified themselves from becoming "deemed licensees". The terms and conditions specified in Schedule-I of the Government Premises Act, 1984 u/s 10 of the said Act shall be deemed to be part of the terms and conditions of every licence under the Act. The competent authority has been also given authority to prescribe additional terms and conditions.

30. Sub-sections (1) and (2) of section 11 of the Government Premises Act, 1984 prescribe two modes of termination of licences:

(1) Every licence may be automatically terminated upon- (i) death of the licensee, (ii) expiry of the period of validity of the licence, (iii) cessation of the licensee's employment under the State Government by reason of his retirement, resignation, discharge or dismissal or by any other reason, (iv) the licensee ceasing to hold any specified post.

(2) Competent Authority may terminate a license in accordance with the terms and conditions of the licence.

Incidentally, section 11 of the Government Premises Act is nearly similar to section 3 of the Government Premises Act, 1976 upon which the petitioners have strongly relied and have, inter alia, contended that the Government Premises Act, 1984 has illegally deprived them of their vested rights under the said Act of 1976. Thus even before the Government Premises Act, 1984 came into force, the tenancies claimed by the petitioners were liable to be terminated either automatically or violation of the terms of their lease and on making default in payment of three months rent and also by service of a prescribed notice to quit. By separate judgment delivered to-day in the case of *State of West Bengal v. R. K. Lahiri*. (F.M.A.T. No. 1444 of 1983), we have upheld the validity of the provisions including section 3 of the Government Premises Act, 1976. Tenancies in Government Premises never enjoyed protection under the Rent Control Legislation. Under the general law also, in case of breach of express terms of a written lease, the lessor could forfeit the lease and exercise his right to re-entry. Therefore, there is nothing unreasonable in providing that in the Government Premises Act, 1984. a tenancy or a licence which is not heritable would automatically terminate on the death of the grantee. Since under the terms of his allotment by retirement, resignation, discharge or dismissal an allottee would forfeit his right to remain in occupation of a government premises, his licence has been made automatically terminable.

31. The petitioner have contended that section 11(1) of the Act of 1982 is unreasonable because the same does not provide for any hearing. For identical reasons challenge could not be made in case of termination of licence by an

order of the prescribed authority passed u/s 11(2) of the Act because proviso to sub-section (2) of section 11 expressly lays down that no such order shall be made without giving an opportunity of being heard. Sub-section (3) of section 11 has provided for an appeal against an order under sub-section (2) of section 11 of the Act. Appeal under the said provision would also lie against the order of the competent authority refusing to renew a licence within the prescribed time. Another safeguard is provision in section 23 of impugned Act for review by the State Government within prescribed time. In the context of the nature of the different disqualifications specified in sub-section (1) of section 11 there was hardly any scope providing a hearing. The respondents have also pointed out that the persons concerned or his heirs would certainly be aware of the happening of the event which cause automatic termination of the licence. The licensee himself would certainly know the date of expiry of the period of the validity of his licence. He may choose to apply for renewal of his licence and in the event the same is refused, he may prefer an appeal u/s 11(3) of the Act. The fact of cessation of his employment would also be known to the licensee. If he chooses to dispute the date of his retirement or factum and validity of his resignation, discharge or dismissal, he is always at liberty to either make representations to his appointing authority or to institute any judicial proceeding including an application under Article 226 of the Constitution. The competent authority under the Government Premises Act, 1984 has not been empowered to adjudicate the said question and he is bound to proceed on the basis of the facts on record which are also known to the allottee himself. The proviso to section 13 of the Government Premises Act, 1984 has, inter-alia, provided that the competent authority shall not take steps to take possession before the expiry of a period of 30 days from the date of termination of a licence under sub-section (1) of section 11 or from the date of communication to the licensees of an order under sub-section (2) of section 11 of the Act. Therefore, during the aforesaid period of interregnum the licensee may challenge in the appropriate forum either anything has happened which may result in automatic termination of his licence or the validity of the order of his retirement or for his termination of service for any reasons. If the licensee in the said proceeding obtains any interim order, the competent authority would be unable to take any further steps for recovering possession of the premises.

32. A statute may either expressly or by necessary implication exclude compliance with principles of natural justice. Absence of such provision for right to make representation prior to making of an order does not necessarily render the statute unconstitutional (see *Union of India (UOI) Vs. Col. J.N. Sinha and Another*, and AIR 1971 963 (SC)). Even after an order is made if persons feeling aggrieved choose to make representations the authorities would consider the same in accordance with law. We have also held that the competent authority under the Government Premises Act, 1984 cannot assume powers of the appointing or disciplinary authority of the licensee and decide questions relating to his transfer, resignation dismissal or retirement. The competent authority

would always abide by the order of the appropriate authority and/or the competent court of law.

33. We find nothing objectionable investing the officers specified in section 2(c) of the Act with the powers of competent authority under sections 11 and 13 of the Act. In the first place, section 2(c) itself has laid down that the competent authority shall not be below the rank of the officer specified therein or holding equivalent ranks. They cannot be considered as petty employees. Secondly, it is wholly irrelevant that such a competent authority may be holding a rank inferior to that of the licensee against whom he might proceed u/s 11 or 13 of the Act of 1984. A competent authority can exercise only such powers which are conferred by the Government Premises Act and in many other statutes like Taxation Laws an officer who may be holding a much more junior rank, may exercise powers under the particular statute against government officers superior to them which may include the President of India himself we conclude, therefore, the provisions for termination of licence contained in section 11 of the Government Premises Act is neither unreasonable nor arbitrary.

34. Where in violation of any of the provisions of the Government Premises Act, 1984 any person occupies or remains in occupation of any government premises, the competent authority may u/s 13 of the said Act take such steps and use such force as may be necessary to take possession. Except in respect of a room or a seat in a room, the competent authority cannot take steps for taking possession before the expiry of 30 days from the appointed day against those who were not qualified to become deemed licensees u/s 8 read with section 9 of the Government Premises Act, 1984. In other words, persons in possession who were no longer in employment of and did not hold any specified post and did not also have any lawful authority to occupy were given one month's time from the date of the commencement of the Government Premises Act, 1984 to amicably vacate the suit premises before the expiry of the said period of one month from the appointed day, the competent authority could not have taken any steps u/s 13 of the Act. Similarly, before expiry of one month from the date of the termination of a licence u/s 11(1) of the Act or communication of an order of termination passed u/s 11(2), the competent authority cannot proceed u/s 13 of the said Act. Proviso to section 13 of the impugned Act empowers the competent authority to extend the said period not exceeding 90 days on grounds of extreme hardship. Provisions of section 13 broadly are in the nature of proceedings in execution of termination orders. Under Order 21 Rule 22 of the Code notice to show-cause against execution is not required when an application for execution is made more than two years after the date of decree or against the legal representative of a party to a decree etc. Therefore, absence of hearing at the stage of the proceeding u/s 13 of the Government Premises Act 1984 is not fatal.

35. We have observed that section 13 is in the nature of execution proceedings therefore, at that stage the competent authority may not go behind the

termination order. The proviso to section 13 has prescribed for expiry of certain period of time before the competent authority would take steps to" recover possession. Therefore, during the said period the persons aggrieved may take necessary steps before the appropriate authority, as already observed by us. It has been urged before us that in case on the ground of automatic termination of a licence u/s 11(1) of the Act, the competent authority proceeds to recover possession, the licensee at any stage gets no opportunity of hearing. We have already observed that normally a person whose licence is automatically terminated u/s 11(1) of the Act, is bound to be aware of the facts which would occasion such automatic termination. He has also a right to move his appointing or disciplinary authority and also the competent court of law. The competent authority under the Act of 1984 would be unable to decide the validity or otherwise of the termination of service of the allottee by resignation, removal or retirement. Further, the learned advocate for the State has submitted that section 13(1) implies that reasonable steps in a given case may imply to the person to be proceeded against a prior notice or intimation that possession would be taken. Such notice or intimation would not be for the purpose of holding formal adjudication but in the nature of an information or communication that the competent authority proposes to take possession u/s 13 of the Act. A person proceeded against u/s 13 of the Act before the competent authority may challenge the jurisdictional fact which allegedly occasions automatic termination of his licence. If he denies the factual existence of the event which has allegedly caused automatic termination, the competent authority may enquire in a summary manner. But such enquiry by the competent authority is not contemplated where one challenges the legality of the order terminating his employment or terminating him from the specified post. The competent authority cannot sit upon judgment against the order of termination of service of the person who is to be ejected u/s 13 of the Act. In such cases, persons concerned has to seek his remedy in other forum and obtain interim orders from the said authority.

36. The petitioners have contended that section 11 and 13 of the Government Premises Act, 1984, is unreasonable because no appeal to civil court against termination orders has been provided for. Exclusion of jurisdiction of civil court and constitution of special tribunal cannot be a ground for challenging the vires of a legislation. Many statutes have barred civil court's jurisdiction and have provided for adjudication by authorities and tribunal constituted under the special legislations. We have noted that termination orders passed u/s 11(2) of the Government Premises Act, 1984 and refusal by the competent authority to renew a licence have been made appealable. Further, when a person is aggrieved by any jurisdictional error committed by such special tribunals, he may seek constitutional remedy by way of making applications under articles 226 and 227 of the Constitution. The learned advocate for the respondents have also pointed out that the Constitution of India now contemplates exclusion of constitutional remedies in certain matters and conferment of jurisdiction on tribunals (vide

Article 323A and 323B).

37. The petitioners have relied upon the decision of the Supreme Court in the case of Lt.-Col. Prithi Pal Singh Bedi and Others Vs. Union of India (UOI) and Others, , in support of their contention that absence of provision for appeal would make an adjudication under a special Act unreasonable and ultra vires. Desai, J. who delivered the judgment of the court in the case of Prithipal Singh vs. Union of India (supra), with reference to section 153 of the Army Act, 1950 at page 1437 of the reports had, inter-alia, observed that absence of even one appeal with power of review, evidence, legal formulation, conclusion and adequacy or otherwise of punishment was a glaring lacuna in a country where counter-part civilian convict can prefer appeal after appeal to hierarchy of courts. But at the same time, the learned Judge has recognised that a hierarchy of courts with appellate powers had been of course found to be counter-productive but the converse was equally distressing. The learned Judge had ended the discussion by expressing hope and belief that the change in Army Law made in other countries may be adopted also in this country, he have already observed that section 11(3) of the Government Premises Act, 1984 provides for an appeal against termination orders passed u/s 11(2) of the Act. Further grounds mentioned in section 11(1) of the said Act provide for automatic termination. So far as clauses (i) and (iii) of section 11 are concerned, no adjudication would be really necessary because under the terms and conditions of licence by death of the licensee, the licence is automatically terminated. When by efflux of time the licence expires, again no question arises of adjudication by the competent authority. The competent authority would obviously be unable to adjudicate the validity of the grounds specified in clauses (iii) and (iv) as already observed by us. Our attention has been also drawn to section 23 of the Government Premises Act, 1984 under which the State Government has power before the competent authority or the appellate authority to call for the records within 30 days from the date of any order by the competent authority or the appellate authority as the case may be and make such orders thereon as it may think fit. Thus, the person aggrieved by any order, the competent authority or the appellate authority may apply for review before the State Government.

38. Occupation of Government premises in violation of the provisions of the Government Premises Act, 1984 u/s 14(1) of the said Act has been made punishable with imprisonment for a term which may extend to six months or a fine which may extend to Rs. 5,000/- or with both. Such offence u/s 14(2) of the Act has been made cognizable one. We are unable to appreciate the contention of the petitioners that section 14 of the Government Premises Act, 1984 is arbitrary and violative of Article 14 of the Constitution. A person who is charged with the violation of the provisions of the Government Premises Act 1984 would be tried before regular court of law. The conviction order if any, would be, subject to appeal or revision, as the case might be. Section 14 has been enacted to prevent unauthorised occupation of government premises. Contravention of various other statute have been made penal offence. "Cognizable offence" u/s

2(c) of the Criminal Procedure Code, 1973 means an offence for which and "cognizable case" meanse a case for which the police officer may in accordance with the First Schedule or under any other law for the time being arrest without warrent" But a person so arrested would be entitled to obtain bail and get himself released.

39. The petitioners have challenged as discriminatory the provisions of section 22 of the Government Premises Act, 1984. The State Government u/s 22 of the said Act may make orders for removing difficulties in giving effect to the provisions of the Act. We reject the contention that section 22 gives uncanalised powers to the State Government. In the first place, the proviso to section 22 has laid down that no order under section 22 shall be made after the expiry of a period of two years from the date of publication of the Act in the Official Gazette. Therefore, power of the State Government can be exercised only for a temporary period of two years and. the same would not be a permanent feature of the Act. Secondly, the State Government can pass u/s 22 of the Act only orders which are not inconsistent with the provisions of the Government Premises Act. Therefore, by invoking powers u/s 22 of the Act, the State Government cannot override the provisions of the Act and can only make orders which are consistent with the provisions of the Act. We have already referred to some of the reported decisions which lay down the principles applicable for determining whether a legislative enactment is bad on the ground of excessive delegation. Applying the said principles, we find that section 22 does not suffer from excessive delegation.

40. The decision of the Supreme Court in the case of *Jalan Trading Co. (Private Ltd.) Vs. Mill Mazdoor Union*, is clearly distinguishable. The provisions of section 37 of the Payment of Bonus Act, 1965 were not *pari materia* with section 22 of the Government Premises Act, 1984. Section 37 of the Bonus Act was held to be bad because it authorised the Government to determine for itself what the purposes of the Act were and to make provisions for removal of doubts and difficulties. Therefore, it was held that power u/s 37 delegated legislative authority to the Government. We have pointed out the difference in the language of section 22 of the Government Premises Act, 1984. The Supreme Court in several other cases have distinguished the decision of *Jalan Trading Co's* case (*supra*) vide *Kalawati Devi Harlalka Vs. Commissioner of Income Tax, West Bengal and Others*, and *Gammon India Ltd. and Others Vs. Union of India (UOI) and Others*, .

41. The Government Premises Act, 1984 u/s 24(1) shall override anything to the contrary in any other law for the time being in force or in any judgment, decree or order of any court, tribunal or other authority or any other instrument or in any contract, custom or usage. In the first place, section 24 of the Government Premises Act, 1984 is clearly severable from the other provisions of the Government Premises Act. Therefore, even if section 24 is held to be *ultra vires* on the ground that it interferes with other provisions of the Act. Similar observations may be made with regard to the challenge made in respect of

sections 24 and 27 of the Act. The question whether section 24 interferes with judicial power appears to be only hypothetical because no decision has been yet rendered in respect of the provisions of Government Premises Act, 1984. Therefore, it is not necessary to decide whether the section 22 of the Government Premises Act, 1984 violates the Constitutional Distribution of Executive, Legislative and Judicial Powers. The decisions upon which the petitioners relied upon dealt with validating laws passed after the earlier Act had been struck down by court. Without removing the lacuna in the statute found by the court, by verbatim re-enactment of the previous law, the legislature cannot make the law immune from further challenge in court of law. The Government Premises Act seeks to regulate and codify the law relating to occupation of Government Premises and also make government premises no longer subject to any other law relating to occupation of State Premises.

42. The petitioners have urged that section 27 of the Government Premises Act, 1984 is ultra vires on the ground of excessive delegation. No guideline has been laid down for exercise of the Government's power to relax or dispense with the requirements of any of the provisions in respect of any government premises. In this connection, the Supreme Court in the case of Sardar Inder Singh Vs. The State of Rajasthan, and in the case of P.J. Irani Vs. The State of Madras, had occasion to consider some what similar provisions for relaxation. In both the said reported decisions the Supreme Court had upheld the constitutional validity of the provisions of the respective Acts considered by them for giving exemption from the application of the said Acts. In the case of Sardar Inder Singh vs. State of Rajasthan (supra), section 15 of the Rajasthan Protection of tenants (Amendment) Ordinance, 1954 authorised the Government to exempt any person or class of persons from the operation of the Act. The Supreme Court repelled the submission that the said provision left unfettered and uncanalised discretion to the Government and therefore, it was repugnant to Article 14 of the Constitution. Venkatarama Ayyar, J. delivered the judgment of the court observed that it was true that section did not itself indicate the grounds on which exemption could be granted but the preamble to the Ordinance set out with sufficient clearness the policy of the legislature and as that governs section 15 of the Ordinance, the decision of Government thereunder cannot be said to be unguided. Ayyanger J. in the case of P. J. Irani vs. State of Madras (supra), agreed with the approach and conclusion of the learned Judge of the Madras High Court which had upheld the validity of section 13 of the Madras Buildings (Lease and Rent Control) Act, 1949. The said provision conferred power upon the State Government to exempt buildings or class of buildings from the operation of the said Act. The learned Judge observed that enough guidance was afforded by the preamble and operative provisions of the Act for the exercise of the discretionary power vested in Government. Although the section itself did not indicate the grounds on which exemption can be granted, the pramble set out with sufficient clearness the policy of the legislature and the decision of the Government thereunder cannot be said to be unguided. Bearing the aforesaid rules of

interpretation, we proceed to consider whether section 27 of the impugned Act is violative of Article 14 of the Constitution. The Act replaced the previous law and contract relating to occupancy of such premises and for ensuring the use of such premises by the persons or for whom and for the purpose for which they are intended. The Schedule-I of the Act sets out the terms and conditions applicable to all licences in respect of the Government premises. In our view, the Act contains enough guide-lines for exercise of the discretion of the State Government and, therefore, its power to dispense with or relax the requirement of any of the provisions of the Act cannot be held to be uncanalised. If in a given case the power u/s 27 of the Act is exercised arbitrarily or in a discriminatory manner, the said individual order may be challenged before a court of law as violative of Article 14 of the Constitution of India. We may also point out that if section 27 was held to be invalid, the said provision is clearly severable from the other provisions of the Act relating to grant of licences for occupation of government premises and termination thereof. Therefore, the said provisions will remain unaffected irrespective of the question whether section 27 is valid or not.

43. The petitioners have challenged the provisions of the Government Premises Act, 1984 on the ground that the said statute violates Article 21 of the Constitution. According to the petitioners, right to shelter is included within Right to Life and Liberty guaranteed by Article 21 of the Constitution. The petitioners in this connection relied upon the decision made by the Supreme Court in the case of Francis Coralie Mullin vs. The Administrator, Union Territory of Delhi AIR 1981 S.C. 746. We are unable to hold the said decision is an authority for the broad proposition that Right to Shelter is a Fundamental Right. The said reported case dealt with the right of the detenu to have interview with their relations. Bhagwati, J. in the case of Francis Coralie Mullin vs. The Administrator, Union Territory of Delhi and Others (supra), in the context of the right of a detenu whose personal liberty had been affected on account of his detention in jail, held that a person who is detained also enjoyed certain basic rights and that the said basic amenities were to be provided according to the resources of the State.

44. The court of law have repeatedly held as valid laws altering the rights and obligations of landlords and tenants. Right to occupy any premises is never an unfettered or unconditional one and the same is subject to the terms and conditions for occupation prescribed by contract custom or usage and also by statute. Therefore, when a person is evicted according to the said terms and conditions of occupation it cannot be held that the same infringes the Right to Shelter.

45. The petitioners have contended that even after clause(f) of Article 19(1) and Article 31 of the Constitution were deleted and right to property ceased to be a Fundamental Right, they can still challenge a law for deprivation of property as ultra vires. We have already rejected their submissions that the Act is unreasonable and arbitrary and it violates Articles 14 and 21 of the Constitution. We have held that the Government Premises Act, 1984 is not a confiscatory

legislation but it provides for regulation of the terms and conditions for occupation of Government Premises.

46. We have further held that the extent of the rights of the occupants of government premises have substantially remained same inspite of the Change in the nomenclature of the occupant from tenant to licensee. In the above view, it is strictly not necessary to deal at length with the submission made on behalf of the petitioners that inspite of deletion of clause (f) of Article 19(1) and Article 31 of the Constitutional obligation to pay adequate amount to the expropriated owner still subsists. Since submissions have been made, we propose to briefly deal with the said point.

47. The Constitution 44th Amendment Act after delating Articles 19(1)(f) and 31 of the Constitution has inserted the following Article 300A :

No person shall be deprived of his property save by authority of law.

It is significant to note that while the wording of Article 300A of the Constitution are substantially the same as those in the repealed Article 30(1) of the Constitution, the new Article 300A does not contain any provision equivalent to repealed Article 31(2) of the Constitution. Right to property has ceased to be a Fundamental Right and Article 300A imposes no obligation to pay compensation in case of deprivation of property. The expression "authority of law" in Article 300A clearly means law made by competent legislature. In other words, the executive cannot deprive a person of his property without specific legal or statutory authority. Recently, the Supreme Court in the case of *Bishambhar Dayal Chandra Mohan and Others Vs. State of Uttar Pradesh and Others*, , had briefly considered the provisions of article 300A of the Constitution. While discussing whether seizure of wheat made in the said case amounted to deprivation of property without authority of law, A. P. Sen, J. had, inter-alia, observed that Article 300A provides that no person shall be deprived of his property save by authority of law. The State Government cannot while taking recourse to the executive power of the State under Article 162 deprive a person of his property. Such power can be exercised only by authority of law and not by a mere executive fiat or order, article 162 was subject to Article 300A. The word "law" in the context of Article 300A must mean an Act of Parliament or of a State Legislature, a Rule or a statutory order having the force of law, i.e., positive or State made law. A. P. Sen. J. distinguished the decisions in the cases of *Wazir Chand Vs. The State of Himachal Pradesh*, and *Bishan Das and Others Vs. The State of Punjab and Others*, and described the said reported decisions as authorities for the proposition that an illegal seizure amounts to deprivation of property without the authority of law (vide paragraph 41) of the reports. In the cases before us the Government Premises Act, 1984 passed by the Competent State Legislature has purported to codify the law relating to occupancy of government premises including provisions for termination and eviction from the said premises. The said statute has vested the competent authority inter-alia, to terminate licences and also take steps for recovering possession from persons

who have no authority to occupy government premises.

48. The petitioner have not challenged before us the validity of the 44th Constitution Amendment Act and they have not raised the question whether the right to property previously guaranteed by Part-III of the Constitution formed part of the basic structure. Therefore, we need not advert to the said aspect of the matter. The main thrust of their argument has been that neither the Parliament nor the State legislatures have any legislative competence to enact laws for acquisition of property without providing for payment of just compensation. Reliance has been placed upon the recent decision of the Division Bench of the Bombay High Court in *Basantibai Fakirchand Khetan and Others Vs. State of Maharashtra and Another*, . The learned Judges of the Bombay High Court in the said case had, inter-alia, laid down that inspite of repeal Article 31 obligation to pay adequate compensation to the expropriated owner has not been taken away. Our attention has been also drawn to the views expressed by Mr. Seervai in paragraphs 15A to 20A of his book "Constitutional Law of India 2nd Edition and to an Article written by Prof. P. K. Tripathi in AIR 1980 Journal 49. In brief, views of the learned authors are that even after the 44th Amendment of the Constitution, the State has no power to acquire property without payment of compensation. Dr. Durga Das Basu in his book "Shorter Constitution of India" 8th Edition, has expressed contrary views.

49. With respect we may point that observations regarding the scope and effect of Article 300A contain in the Division Bench decision of the Bombay High Court in the case of *Basanti Bai vs. State of Maharashtra* (supra), appear to be in the nature of obiter. The particular Act considered by the Division Bench of the Bombay High Court in the aforesaid case was brought into force on December 5, 1977, i.e., before the 44th Amendment of the Constitution came into effect. The said State Act also enjoyed protect on under Article 31C of the Constitution. According to the Statement of Object and Reasons of the 45th Amendment Bill (which became Constitution, 44th Amendment, Act), "In view of the subject position sought to be given to Fundamental Rights, the right to property which has been the occasion for more than one amendment of the Constitution, would cease to be a Fundamental Right and become only a legal right. Necessary amendments for these purposes are being made to article 19 and Article 31 is being deleted. It would, however, be ensured that the removal of property from the list of Fundamental Rights would not affect the right of minorities to establish and administer educational institutions of their choice". According to the said objects, property while ceasing to be a Fundamental Right would, however, be given express recognition as a legal right, provision being made that no person shall be deprived of his property save in accordance with law. In our view, it would be permissible to refer to these objects and reasons to ascertain the intention of the legislature and the object of deletion of right to property and insertion of Article 300A. By relying upon the supposed inherent right apart from the enacted Fundamental Rights, one cannot possibly claim that an expropriated owner of property still has right to receive compensation. We substantially agree

with the views expressed by Dr. Durga Das Basu in his book "shorter Constitution of India" regarding the effect of repeal of Article 19(1) (f) and 31 of the Constitution of India.

50. We are unable to concur with the view that the obligation to pay compensation flows from the doctrine of "eminent domain" and, therefore, without payment of compensation State even by authority of law cannot expropriate property. Until its repeal Article 31 had been amended on several occasions. The Fundamental Right to property including State's obligation to pay an amount of compensation in case of acquisition or requisitioning of property were covered by Article 31. It is significant to note that after the decision in *The State of Bihar Vs. Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Others*, , Entry-42 of List-III of the Constitution was also amended deleting all reference to compensation. The constitutional obligation under Article 31(2) to pay compensation for acquisition requisitioning of property ceased by reason of deletion of Articles 19(1)(f) and 31. Therefore, the scope of Entry-41 of List-III ought not to be enlarged so as to re-impose upon the State said obligation to pay compensation and thereby in effect resurrect Article 31. Under the Indian Constitution Right to Property including right to receive compensation/amount in case of acquisition or requisitioning of property was codified. Therefore, apart from the constitutional provisions contained in Part-III of the Constitution, there was of asserting inherent right, if any, to receive compensation/amount and corresponding obligation on the part of the State to pay the same would no longer subsist. After Article 19(1)(f) and Article 31 were deleted from Part-III of the Constitution, one cannot contend that the said purported inherent right to receive compensation/amount for acquisition or requisitioning of property had revived.

51. For the foregoing reasons, all the contentions raised on behalf of the petitioners regarding the vires of the West Bengal Government Premises (Regulation of Occupancy) Act, 1984 fail. The preliminary issue accordingly is answered in favour of the respondent State. While hearing the aforesaid preliminary issue, the learned advocates for the different petitioners did not make any submission on any other point. Therefore, in order to give opportunities to the petitioners to make submissions on other points, if any, taken in their respective writ petitions, let all the Rules appear on Monday next. In those cases no other point would be raised, the Rules would be discharged. In cases other points raised, after considering them we propose to finally dispose them in accordance with law. After delivery of our judgment on the preliminary issue the learned advocate prayed for granting certificates under article 133 read with Article 134A of the Constitution of India. We are not inclined to grant the said certificates, because, in our opinion, our decision on the preliminary point does not involve any substantial question of law fit to be decided by the Supreme Court. We have applied the law already settled by the Supreme Court in deciding the preliminary issue. We however propose to pass orders on the prayers for granting certificates at the time of the final disposal of the rules.

If the certified copy of the judgment is applied for, same be granted immediately.

Shamsuddin Ahmed, J.

I agree.