
(2004) 08 CAL CK 0038
In the Calcutta High Court
Case No : Writ Petition No. 2242 of 2002

Lal Mohon Nandy

APPELLANT

Vs

Executive Director W.B. Small Industrial Development
Corporation and Others

RESPONDENT

Date of Decision : 16-08-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 226
West Bengal Government Premises (Tenancy Regulation) Act, 1976 — Section 2, 2A,
3(1), 3(2), 3(3)

Citation : (2005) 2 ILR (Cal) 1

Hon'ble Judges : Indira Banerjee, J

Bench : Single Bench

Advocate : Protap Chatterjee and Sakya Sen, for the Appellant; H.K. Mitter and Jaydeep Kan, for the Respondent

Final Decision : Dismissed

Judgement

Indira Banerjee, J.—In this writ application, the Petitioners have challenged an order dated 2nd September, 2002, whereby the Chairman of West Bengal Small Industries Development Corporation Ltd., which is, hereinafter referred to as the Respondent Corporation, directed the prescribed authority to take steps, in accordance with law, for resumption of Shed No. Z-57 at the Howrah Industrial Estate, demised to the Petitioner by the Government of West Bengal.

2. The facts giving rise to the writ application are briefly enumerated hereunder.

By a deed of lease dated 12th December, 1979 the State of West Bengal leased out to the Petitioner Shed No. Z-57 at the Howrah Industrial Estate, Baltikuri, District Howrah, hereinafter referred to as the demised premises, comprising an area of about 3733 square feet of which 1768 square feet was covered and 1965 square feet uncovered, for a period of 99 years, at a rent of Rs. 2,588/- per annum. The said Deed of Lease was registered on 27th February, 1980.

The Said Deed of Lease cast upon the Petitioner inter alia the following obligations.

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

(j) To start manufacture and production as per Sub-clause (f)(i) of this Clause 2, (if nor already started within six months from the date of these presents or within any extended period which may be granted by Government under exceptional circumstances.

The Deed of Lease further provided as follows:

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

The Executive Director of the Respondent Corporation being the prescribed authority under the West Bengal Government Premises (Tenancy Regulation) Act, 1976 issued a notice being Order No. SB 265/4 dated 18th April, 2002 u/s 3(1) of the said Act, terminating the tenancy of the Petitioner in respect of the demised premises, on inter alia the alleged ground of violation of Clause 3B of the Deed of Lease and also of default of rent for a consecutive period of three months. The Petitioner was called upon to quit the demised premises and make over vacant possession thereof to the Respondent Corporation within one month from the date of service of the said notice.

On receipt of the said notice, the Petitioner made a representation to the prescribed authority, that is, the Executive Director of the Respondent Corporation. In the said representation there was an admission that manufacturing activities had not, till then, been commenced. The Petitioner prayed for extension of time to commence manufacturing activities at the demised premises.

The prescribed authority, however, issued a notice dated 24th June, 2002 informing the Sub-Divisional Officer, Howrah Sadar, of the date and time fixed for forcible ejection of the Petitioner from the demised premises and requesting that police Personnel be posted to Prevent breach of Peace. A Copy of the said notice

was forwarded to the Petitioner.

3. The notices dated 18th April, 2002 and 24th June, 2002 were challenged by the Petitioner in a writ application being W.P. No. 8952 (W) of 2002.

By an order dated 4th July, 2002, His Lordship the Hon'ble Mr. Justice Pranab Kumar Chattopadhyay was pleased to dispose of the said writ application by quashing the notices dated 18th April, 2002 and 24th June, 2002 and by directing the Petitioner to submit a representation to the Chairman of the Respondent Corporation which was to be disposed of by the Chairman, by a reasoned order, within the time stipulated in the said order, after hearing the Petitioners.

Pursuant to the aforesaid order of P.K. Chattopadhyay, J. the Petitioner made a representation to the Chairman of the Respondent corporation. The Chairman has, by the impugned order, rejected the representation of the Petitioner directed the prescribed authority to take steps in accordance with law for resumption of the demised premises.

It is alleged that pursuant to the impugned order, the authorities of the Respondent Corporation locked up the demised premises on 12th September, 2002.

4. Mr. Pratap Chatterjee, Sr. Advocate, appearing on behalf of the Petitioners with Mr. Sakya Sen submitted that the entire proceedings initiated by the Respondent Corporation under the West Bengal Government Premises (Tenancy Regulation) Act, 1976, hereinafter referred to as the 1976 Act, was without jurisdiction inasmuch as the 1976 Act had no application to nonresidential premises.

Relying on a judgment of a division Bench of this Court in the case of Blue Print and Ors. v. Great Eastern Hotel Authorities and Ors. reported in 2000 (1) CLT 450 Mr. Chatterjee submitted that the said Act applied only to residential premises.

Mr. Chatterjee submitted that in the case of Great Eastern Hotel Authorities (supra) the Division Bench after considering and analysing the various provisions of the 1976 Act and the Statement of objects and Reasons of the 1976 Act as well as the West Bengal Govt. Premises (Tenancy Regulation) (Amendment) Act, 1980 held that the 1976 Act was not applicable to nonresidential premises of the Government.

The Hon'ble Division Bench inter alia held as follows:

14. ...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".

17. It will thus noticed that even by defining "Government premises" the Legislature specifically excluded from such definition the official residence of any person authorized 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).

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 nonresidential accommodation, what relation would a newly build 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.

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 nonresidential property.

5. The State of West Bengal filed a Petition in the Supreme Court for Special Leave to appeal from the said judgment and order of the Division Bench. The Supreme Court, after contested hearing, upheld the judgment of the Division Bench of this Court not on the ground that the 1976 Act had no application to non-residential premises, but on the other grounds recorded in the judgment of the Division Bench. The Supreme court expressly recorded that the Supreme Court had not considered the question of applicability of the 1976 Act. The judgment of the Supreme Court is reported in State of West Bengal and Others Vs. Vishnunarayan and Associates (P) Ltd. and Another, .

Mr. Chatterjee submitted that the judgment of the Division Bench in the case of Great Eastern Hotel Authorities (supra) having been upheld by the Hon"ble Supreme court, the finding to the Division Bench that the 1976 Act did not apply to nonresidential premises is binding on a Single Bench.

The main issue in this writ application is, whether the finding of the Division Bench that the 1976 Act had no application to non-residential premises would, operate as a binding precedent after the judgment of the Supreme Court, wherein the Supreme Court has expressly recorded that the Supreme Court has not considered the question of applicability of the 1976 Act.

6. Mr. Chatterjee emphatically argued that the Supreme Court expressly recorded that it had not considered the applicability of the 1976 Act. In other words, the Supreme Court chose not to interfere with the finding of the Division Bench on the applicability of the 1976 Act, inspite of the attention of the Supreme Court having been drawn to the same.

Mr. Chatterjee relying on the judgment of the Supreme Court in the case of Gojer Bros. (Pvt.) Ltd. Vs. Shri Ratan Lal Singh, submitted that when an appeal is preferred, it is the operative portion of the judgment and order and/or the decree which merges in the judgment and order/decreed in appeal.

Mr. Chatterjee also cited the decision of the Supreme Court in the case of S. Shanmugavel Nadar Vs. State of Tamil Nadu and Another, (at 367). The parts of the aforesaid judgment relied upon by Mr. Chatterjee are extracted herein below:

10. Firstly, the doctrine of merger. Though loosely an expression merger of judgment, order or decision of a court or forum into the judgment, order or decision of a superior forum is often employed as a general rule the judgment or order having been dealt with by a superior forum and having resulted in confirmation, reversal or modification, what merges is the operative part i.e. the mandate or decree issued by the court which may have been expressed in a positive or negative form. For example, take a case where the subordinate forum passes an order and the" same, having been dealt with by a superior forum, is confirmed for reasons different from the one assigned by the subordinate forum, what would merge in the order of the superior forum is the operative part of the order and not the reasoning of the subordinate forum; otherwise there would be an apparent contradiction. However, in certain cases the reasons for the decision can also be said to have merged in the order if the Superior Court has, while formulating its own judgment or order, either adopted or reiterated the reasoning, or recorded an express approval of the reasoning, incorporated in the judgment or order of the subordinate forum.

11. Secondly, the doctrine of merger has a limited application. In State of U.P. v. Mohd. Nooh the Constitution Bench by its majority speaking through S.R. Das, C.J. so expressed itself.

While it is true that a decree of a court of first instance may be said to merge in

the decree passed on appeal therefrom or even in the order passed in revision, it does so only for certain purposes, namely, for the purpose of computing the period of limitation for execution of the decree.

A three-Judge Bench in *State of Madras v. Madurai Mills Company Ltd.* held:

The doctrine of merger is not a doctrine of rigid and universal application and it cannot be said that wherever there are two orders, one by the inferior authority and the other by a superior authority, passed in an appeal or revision, there is a fusion or merger of two orders irrespective of the subject-matter of the appellate or revisional order and the scope of the appeal or revision contemplated by the particular statute. The application of the doctrine depends on the nature of the appellate or revisional order in each case and the scope of the statutory provisions conferring the appellate or revisional jurisdiction.

Recently a three-Judge Bench of this Court had occasion to deal with the doctrine of merger in *Kunhayammed v. State of Kerala* and this Court reiterated that the doctrine of merger is not of universal or unlimited application; the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or which could have been laid, shall have to be kept in view, (emphasis supplied) in this view of the law, it cannot be said that the decision of this Court dated 10-9-1986 had the effect of resulting in merger into the order of this Court as regard the statement of law or the reasons recorded by the Division Bench of the High court in its impugned order. The contents of the order of this Court clearly reveal that neither the merits of the order of the High Court nor the reasons recorded therein nor the law laid down thereby were gone into nor could they have been gone into.

In the Written Notes of Arguments submitted on behalf of the Petitioners reference was made to the judgment of the Supreme Court reported in *R.S. Kallolimath Vs. State of Mysore and Another*, . The aforesaid decision was neither cited nor is relevant to the propositions propounded by Mr. Chatterjee.

7. Mr. Chatterjee concluded his submissions with the argument that there could be no merger of an entire judgment since the principle of merger as laid down in the case of *Gojer Brothers* (supra) and reiterated in *S. Shanmugavel Nadar's* case (supra) as a general rule, implies that the judgment or order having been dealt by a superior forum and having resulted in confirmation, reversal or modification, the merger is the operative part, that is mandate or decree issued by the court, which has been expressed in a positive or negative form. Mr. Chatterjee submitted that in the instant case, there is no mandate of the Hon''ble Supreme Court on the question of applicability of the 1976 Act. The aforesaid issue has expressly been decided by the Division Bench. The decision of the Hon''ble Division Bench on the issue of applicability of the 1976 Act cannot be said to have merged in the decision of the Hon''ble Supreme Court.

Mr. H.K. Mitter, Sr. Advocate, appearing on behalf of the Respondents, with Mr. Jaydeep Kar, submitted that the judgment and order of the Division Bench of this

Court in the case of a rent Eastern Hotel Authorities (supra) having been affirmed by the Supreme Court, not on the ground of the 1976 Act not being applicable but on other grounds, the finding of the division Bench that the 1976 Act applied only to residential premises would not operate as a precedent so far as this Court is concerned.

In this context, Mr. Mitter relied on the decision of the Chancery Division reported in 23 Law Reports 103 at 112. The relevant portion is extracted therein below:

It appears to me the Mulkern v. Lord in the House of Lords, so far as it points out a ratio decidendi, is not only distinguishable from this case, but is an authority for deciding it in the way we are deciding it. As regards the judgment of the Court of Appeal in that case, I must say this, that the decision of the Court of Appeal was affirmed, but not the House of Lords affirm a decision on different grounds from those of the Court below, it is evidence, in fact proof, to those who know the practice of the House of Lords, that they do not agree with those grounds. Therefore a judgment so affirmed, so far from leaving the judgment of the Court of Appeal intact, shows the contrary and that you are no longer bound by it. The mere affirmance of the decision is quite a different thing. You are bound by the decision but not by the reasons given for its.

Mr. Mitter also relied on a passage from. 12th Edition of Salmond on jurisprudence, which is extracted herein below:

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

Mr. Mitter submitted that the aforesaid proposition of law has been approved by the Supreme Court in the case of S. Shanmugavel Nadar Vs. State of Tamil Nadu and Another, , on which reliance was placed by Mr. Chattterjee. The relevant paragraph of the said judgment is extracted herein below:

15. A situation, near similar to the one posed before us, has been dealt in Salmond's Jurisprudence (12th Edn., at pp. 50) under the caption-"Circumstances destroying or weakening the binding force of precedent; (perhaps) affirmation or reversal on a different ground." It sometimes happens that a decision is affirmed or reversed on appeal on a different point. As an example, suppose that a case is decided in the Court of Appeal on ground A and then goes on appeal to the House of Lords, which decides it on ground B, nothing being said upon A. What, in such circumstances, is the authority of the decision of ground A in the Court of Appeal? Is the decision binding on the High Court and on the court of Appeal itself subsequent cases? The learned author notes the difficulty in the question being positively answered and then states:

(i) The High Court may, for example, shift the ground of its decision because it thinks that this is the easiest way to decide the case, the point decided in the

court below being of some complexity. It is certainly possible to find cases in the reports where judgments affirmed on a different point have been regarded as authoritative for what they decided, (ii) The true view is that a decision either affirmed or reversed on another point is deprived of any absolute binding force it might otherwise have had; but it remains an authority which may be followed by a court that thinks that particular point to have been rightly decided.

In reply, Mr. Chatterjee reiterated that the finding of the Division Bench with regard to applicability of 1976 Act to residential premises alone was not disturbed by the Supreme Court and the aforesaid finding was binding on this Court.

It was also argued that in the instant case, the judgment of the Supreme Court cannot be construed as implied reversal of the judgment of the Division Bench since the Division Bench expressly kept the question of applicability of the 1976 Act open.

Mr. Sakya Sen concluding the reply on behalf of the Petitioner submitted that the Supreme Court did not uphold the judgment of the Division Bench on different reasons, but on the same reasons. In the circumstances, the proposition laid down" in Salrnond"s Jurisprudence and approved by the Supreme Court, was not attracted. The decisions relied upon by Mr. Mitter would, therefore, have no application.

The first and the main issue involved in this writ application is whether the provisions of 1976 Act can at all be invoked to terminate the lease of the demised premises. If the first issue is answered in the affirmative, the issue which follows is whether the Petitioner was entitled to further notice before resumption of the demised premises in question, the earlier notice dated 18th April, 2002 u/s 3(1) of the 1976 Act having been set aside by this Court.

So far as the first issue is concerned a Division Bench of this Court has in no uncertain terms held that the 1976 Act has "no application to non-residential premises. The Question is, whether the aforesaid decision of the Division Bench is binding on a Single Bench."

9. There cannot be any doubt that a decision of a Division Bench on a question of law would ordinarily be binding on a Single Bench. In the instant case, however, the issue has assumed complexity by reason of the fact that the judgment and order of the Division Bench was questioned in entirety by filing a SLP in the Supreme Court. The Supreme Court did not simply dismiss the Special Leave Petition. The supreme Court gave a reasoned judgment and order affirming the judgment and order of the Division Bench not on the ground of the 1976 Act not being applicable to non-residential premises, but on the other grounds recorded by the Division Bench. On the other hand, the Supreme Court expressly recorded that the Supreme Court had not considered the aforesaid question of applicability of the 1976 Act to nonresidential premises.

It May be inferred that the Supreme Court did not deem it necessary to go into the question of applicability of the 1976 Act, since the Supreme Court found the eviction in that case to be unsustainable on the various other grounds recorded by the Supreme Court. The question of applicability of the 1976 Act was kept open.

The Supreme Court having taken the view that the judgment and order under appeal should be sustained for the reasons recorded and accordingly, Having consciously not gone into the question of applicability of the 1976 Act, would the finding of the Division Bench, that the 1976 Act applied only to residential premises still operate as a binding precedent.

In the case of Gojer Brothers (supra) relied upon by Mr. Chatterjee, the Supreme court was considering the question of whether a decree could be said to have been passed before an amendment, when admittedly the amendment came into force after passing of the original decree but before disposal of the appeal. The Supreme Court held that the appeal having been disposed of after contested hearing, the original decree had merged in the appellate decree which was passed after the amendment. The question of whether the finding of a lower court, neither affirmed nor reversed, but not at all considered in appeal, which after contested hearing is dismissed on other grounds, would operate as a binding precedent or not, was not in issue and therefore, not decided by the Supreme Court.

10. In S. Shanmugavel Nadar's case (supra) Supreme Court held that although loosely the expression merger of a judgment of a Court in the judgment of an Appellate court is used, as a general rule, what merges is the operative part, that is, the mandate or the decree, When a judgment is dealt with by a superior court and confirmed reversed or modified.

However, as held by the Supreme Court itself, the rule of merger of only the operative part is a general and not an unexceptionable rule. In certain cases reasons can also be said to have merged in the order of the Superior court, if the superior court has, while formulating its own judgment or order either adopted or reiterated the reasoning or recorded an express approval of the reasoning of the lower Court. The instances cited by the Supreme Court, of the cases where the reasoning of the lower court can be said to have merged in the reasoning of the superior court, are only illustrative and not exhaustive.

In any event, the Supreme Court in the aforesaid case approved the proposition of law in the passage of Salmond on Jurisprudence (12th Edition) relied upon by Mr. Mitter and held that a decision either affirmed or reversed on another point is deprived of any absolute binding force it might otherwise have had, but it remains an authority which may be followed by a Court that thinks that particular point to have been rightly decided.

In the case of Ahmed Hossain S.K. v. State of West Bengal reported in 2002 (1) CLJ 115 a Special Bench of this Court comprising three judges held that a

precedent ceases to be a binding precedent, when affirmed or reversed on a different ground.

11. The submission of learned Junior counsel, Mr. Sen, in his reply, that the principles enunciated in *Salmond on Jurisprudence* and approved by the Supreme Court in *S. Shanmugavel Nadar's* case, would not be attracted, in the instant case, since the judgment and order of the Division Bench had been affirmed by the Supreme Court on the same points, is difficult to accept.

Whether a judgment based on several reasons is affirmed by a superior court on an altogether different reasoning, or on the basis of some but not all the reasons given by the inferior court, should make no difference to the value of the decision as a binding precedent in respect of those findings which have not been affirmed. In both the cases, the position is the same. Although the judgment is upheld, some findings in the judgment are neither affirmed nor reversed. The differentiation sought to be made out by Mr. Sen does not stand to reason.

If a proposition of law laid down in a judgment, which is affirmed on an altogether different point, is not to operate as a binding precedent, I see no reason why a proposition of law laid down in a judgment, which is affirmed not on that proposition, but on the basis of some other findings of the inferior court should operate as a binding precedent.

In the instant case, the judgment of the Division Bench in the case of *Great Eastern Hotel Authority* (*supra*) not having been affirmed on the ground that the 1976 Act had no application to non residential premises, the aforesaid finding as contained in the judgment and order of the Division Bench would not operate as a binding precedent on this Court.

As held by the Supreme Court in the case of *S. Shanmugavel Nadar* (*supra*), this Court might follow the decision of the Division Bench on the point of the applicability of the 1976 Act if this Court is of the view that the point has rightly been decided.

In spite of repeated opportunity, no arguments were advanced on behalf of the Petitioners in support of the finding of the Division Bench with regard to the applicability of the 1976 Act to residential premises alone. This Court proceeds on the basis that the Petitioner has no independent submissions in this regard and adopts as his arguments, the reasons given by the Division Bench in support of its findings.

12. Mr. Mitter extensively argued that the 1976 Act is of widest amplitude and would apply to all Government premises whether residential or non-residential. In this context, reliance was placed on the judgment of the Supreme Court in the case of *The State of West Bengal and Another Vs. M/s. Banalata Investment Pvt. Ltd.*, .

In the aforesaid case the Supreme Court observed as follows:

The definition of Government Premises within the meaning of Section 2A as noticed above is rather of the widest possible amplitude.

In the case Banalata Investments (supra), however, the question of whether 1976 Act would apply to non-residential premises or not was not in issue before the Supreme Court, the judgment was in fact rendered in connection with residential premises and is, therefore, of no assistance in the instant case.

It is therefore, necessary to consider the various provisions of the 1976 Act as also the grounds on which the Hon"ble Division Bench held that the 1976 Act would not apply to non-residential premises.

Some of the relevant provisions of the 1976 Act are extracted herein below for convenience:

2. In this Act, unless, the context otherwise requires

(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 authorized to occupy and premises in consideration of the office which he holds under the State Government or a Government undertaking for the time being;

(b) "Government undertaking" means a body corporate constituted by or under a Central or State Act which is under the Administrative control of the State Government or in which the State Government has exclusive interest;

(c) "Premises" means any building or hut and includes part of a building or hut and a seat in a room, let separately and also includes....

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

(ii) any furniture supplied or any fittings or fixtures affixed for the use of the tenant in such building, hut or seat in, as the case may be;

(d) "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.

13. (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;

(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 kilometers, or

(ii) made default in payment of rent for three consecutive months:

Provided ...

(3)(a) Where any Government premises allotted to a tenant remains under lock and key for a period of more than three consecutive months or where the tenant or any member of his family is not ordinarily resident of such Government Premises, the tenancy in respect of such Government premises shall stand automatically terminated:

Provided ...

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 tenancy 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 any member of his family, within a reasonable distance from such Government premises.

12. Act to override other law.--(1) The provisions of this Act shall-have effect notwithstanding anything contained in any other law for the time being in force or in any contract, express or implied, or in any custom or usage to the contrary.

(2) In particular and without prejudice to the generality of the foregoing provisions, the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 shall not be applicable to any premises to which this Act applies.

As argued by Mr. Mitter the definition of Government premises is of wide amplitude and includes all premises owned by the State government or by a Government undertaking except the official residence of any person authorized to occupy the same in consideration of the office held by him under the State Government or the Government undertaking.

In fact, even in the case of great Eastern Hotel Authority Ltd. (supra) the Division Bench of this Court observed that the expression "Government premises" as defined in Section 2(a) of the 1976 Act, does not by itself suggest any limited, constricted or narrow applicability of the Act. The Division Bench,

however, on consideration of some other provisions of the 1976 Act, particularly Sections 3(2)(ia) and 3A inserted by the West Bengal Government Premises (Tenancy Regulation) Amendment) act, 1980 hereinafter referred to as the 1980 Amendment Act, Section 3(3)(a) inserted by amendment in 1994 and also the Statement of objects and Reasons of the 1976 Act and the 1980 Amendment Act, concluded that the 1976 Act had no application to residential premises.

There is no ambiguity in the definition of "Government premises" in Section 2(a) of the 1976 Act which only excludes official residential premises occupied by persons in consideration of office under the State government or the State Government undertaking as the case might be.

When a word has been defined in the Statute, that definition governs whenever the word is used in the body of the statute, unless the context makes the definition inapplicable.

All statutory definitions must be read subject to the qualification expressed in the definition clause and even where the definition is exhaustive, in as much as the word is said to mean a certain thing, it is possible for the word to have somewhat different meanings in different sections of the Act, depending on the subject or the context.

Thus all definition sections in statutes usually begin with qualifying words, similar to Section 2 of the 1976 Act, which opens with the words "In this Act, unless the context otherwise requires". The Court has to look not only to the words, but also the context and give the word a meaning somewhat different from that given in its definition if the context so requires.

14. Repugnance of the definition of Government premises with Sections 3(2)(ia), 3(3)(a), 3A or any other provision cannot limit or control the definition of Government premises nor affect the application of the definition to those sections, where the definition can be applied.

Sections 3(2)(ia), 3(3)(a) and 3A of the 1976 Act are not, attracted in the facts and circumstances of the instant case. In an appropriate case, where the aforesaid sections are involved, it may be necessary for the Court to interpret Government, premises to mean residential Government premises, in the context of the aforesaid sections. There is no reason why the expression Government premises should be restricted to residential premises alone in the context of Sections 3(1), 3(2)(i), 3(2)(iii), 4, 5, 6A and 6C.

In any event Sections 3(2)(ia), 3(3)(a) and 3A have been inserted by subsequent amendment of the 1976 Act. Subsequent amendments cannot be looked at for determining the true intent of the legislature at an earlier point of time when the statute was originally enacted. Prior to amendment of the 1976 Act by the 1980 Amendment Act there was no provision in the 1976 Act to which the wide definition of Government premises as contained in Section 2(a) was inapplicable.

In any event, when the words used in a statute have a plain meaning it is not for

the Courts to concern themselves with the supposed intention and policy underlying the Statute. It is a primary rule of construction that the intention of the Legislature must be gathered from the words of the Statute itself. The words of a statute should to the extent possible be literally construed, unless such literal construction leads to absurdity.

Even if the Legislature intended that which has not been expressed clearly, or intended something very different from or even almost contrary to what is expressed, it is not for the Court to rewrite the statute by reading into the statute words which are not there.

In the case of *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, Patanjali Shastri, C.J. speaking for the majority of the Court emphatically ruled out statement of object and reasons as an aid to the construction of a statute. To quote his words : "As regards the propriety of the reference to the Statement of Objects and Reasons, It must be remembered that it seeks only to explain what reasons induced the mover to introduce the Bill in the House and what objects he sought to achieve. But those objects and reasons may or may not correspond to the objective which the majority of members had in view when they passed it into law. The bill; may have undergone radical changes during its passage through the House or Houses and there is no guarantee that the reasons which led to its introduction and the objects thereby sought to be achieved have remained the same throughout till the bill emerges from the House as an Act of the Legislature, for they do not form part of the Bill and are not voted upon by members. We, therefore, consider that the Statement of Objects and Reasons appended to the Bill should be ruled out as an aid to the construction of the statute."

15. Since then it has consistently been held that the Statement of Objects and Reasons is not admissible for construing a section; far less can it control the actual words used. Statement of Objects and Reasons can at best be used for understanding the background and the antecedent state of affairs leading up to the legislation. Statement of Objects and reasons have been looked into inter alia for the purpose of judging the reasonableness of restrictions under Article 19(1) or the reasonableness of a classification to see if the same infringes the fundamental right guarded under Article 14. When there is no ambiguity in the wording of the Section, the recital in the objects and reasons is not to be taken into account.

Premises has been defined in Section 2(c) of the 1976 Act to mean any building or hut and includes part of a building or hut and seat in a room let separately. The inclusion of a seat in a room let separately" in the definition of premises appears to have escaped the notice of the Division Bench.

The word seat not having been defined in the 1976 Act, it would have to be understood in its ordinary meaning as given in standard dictionaries. A reference to New Shorter Oxford Dictionary 1983, Oxford Advanced Learners' Dictionary

(Sixth Edition) and Chamber's 21st Century Dictionary clearly shows that the word "seat" is commonly understood to mean a place on which a person sits, for example a seat at a table, seats in theatres, vehicles etc. or a thing designed or used for sitting such as a chair.

Seats in rooms may be let out separately in commercial and/or business premises for professional, business, commercial and/or office use. The inclusion of "Seat in a room let separately" in the definition of "premises" in the 1976 Act militates against restriction of the applicability of the said Act to residential premises alone.

In this context it would also be pertinent to refer to the meaning of the word building as given in the New Shorter Oxford Dictionary (1993 Edition) Oxford Advanced Learners' Dictionary (Sixth Edition) and Chamber's 21st Century Dictionary, the word "building" inter alia means a structure with walls and a roof used as a house, a school, a factory, a church etc.

16. For the purposes of the 1976 Act, the word Government Premises means any property of the State Government or any State Government undertaking which fits into the definition of premises in Section 2(c) except the official residence of any person authorized to occupy the same in consideration of the office he holds under the State Government or the State Government undertaking.

It is not the case of the Petitioner that the demised premises does not fit into the definition of premises as given in Section 2(c) of the 1976 Act. It is also not disputed that the Respondent Corporation, being the owner of the demised premises is a State Government undertaking. The demised premises thus fall within the definition of Government premises in the 1976 Act.

The Division Bench importance to the exclusion of official residence from the definition of Government premises and found an inkling of the intention therefore held that legislature had residential premises in mind when it defined Government premises. Had the attention of the Division Bench been drawn to the definition of premises; the Division Bench would perhaps have not restricted the application of the 1976 Act to residential premises.

The Division Bench also appears to have overlooked the opening words of Section 2 which made it clear that the definitions in Section 2 would be attracted whenever the words defined, were used in the 1976 Act, unless the context required otherwise.

There is no doubt that the Legislature had residential premises in mind when it defined Government premises, but not to the exclusion of non-residential premises.

As rightly argued by Mr. Kar, learned Jr. Counsel the Amendments brought about by the 1980 Act might have been necessary to remove difficulties in relation to residential premises. The fact that subsequent amendments were carried out with residential premises in view, does not take nonresidential premises out of

the purview of the 1976 Act.

17. In my view, the 1976 Act is also applicable to nonresidential premises which fit into the definition of "Government premises" as given in Section 2(a) of the 1976 Act read with the definition of "premises" in Section 2(c) of the said Act.

The impugned order dated 2nd September, 2003 is a long and reasoned one. It is not for this Court exercising jurisdiction under Article 226 of the constitution of India to sit in appeal over the impugned order. There is no such infirmity in the impugned order to warrant interference of this Court in exercise of its extraordinary writ jurisdiction.

18. The next question is whether the Petitioner was entitled to any further notice under 3(1) of the 1976 Act, before resumption of the premises in question, the earlier notice dated 18th April, 2002 having been set aside by this Court.

It is true, as contended by the Petitioners, the notice dated 18th April, 2002 u/s 3(1) of the 1976 Act has been set aside by his court. However, as argued by Mr. Mitter this Court referred the matter to the Chairman of the Respondent Corporation. The impugned order, which has been passed pursuant to the order of this Court, after hearing the Petitioner, is binding on the parties.

The Chairman of the Respondent Corporation arrived at the clear finding that the Petitioner had violated the terms and conditions of the lease by not commencing manufacture in terms of the lease. Accordingly the Chairman of the Respondent Corporation by the impugned order directed the prescribed, authority to take steps in accordance with law for resumption of the demised premises.

As held by a Division Bench of this Court, in the case of Diptimoy Banerjee v. State of West Bengal reported in 2000 (1) CHN 319, cited by Mr. Kar, the procedure prescribed u/s 3 of the 1976 Act for eviction of a tenant is of a summary nature and no notice to quit is even required to be given in the circumstances enumerated in Section 3(2). One of the circumstances enumerated is violation of the terms of the lease. There was also no direction of this Court for issuance of any fresh notice u/s 3(1) of the 1976 Act in the event, the Chairman of the Respondent Corporation held against the Petitioner

19. The principles of Natural Justice have in the instant case been complied with, the Petitioner having been given opportunity of hearing. The impugned order constitutes notice on the Petitioner. Any further notice would only have been an idle formality, which was not even necessary in view of Section 3(2) of the 1976 Act. There is no challenge in the writ petition to Section 3(2) of the 1976 Act. Setting aside the action of the Respondents for want of notice, at this stage, would not even ensure to the benefit of the Petitioner, would hardly be able to utilize the demised premises. It would be open to the Respondents to take possession of the demised premises upon issuance of a notice.

The Respondent Corporation having been constituted to encourage small scale industries in West Bengal, it is not in public interest that industrial premises

belonging to the Respondent Corporation, let out on the express condition of commencement of manufacture within 6 months, should remain unutilized for years.

The impugned order or the action taken in pursuance thereof does not call for interference of this Court. The writ application is, therefore, dismissed without any order as to costs.

Urgent xerox certified copy of the judgment, if applied for, be made available to the parties.

All parties are to act on a signed copy of the operative portion of this judgment on the usual undertakings.