(1993) 02 CAL CK 0030

In the Calcutta High Court

Case No : C.R. No. 13532 (W) of 1982

M/s. Accounting and Secretarial Services Pvt. Ltd. and another — APPELLANT

Vs

Union of India and others — RESPONDENT

Date of Decision : 25-02-1993

Acts Referred:

Administrative Tribunals Act, 1985 — Section 6
Constitution of India, 1950 — Article 14, 226
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 1, 2, 3, 4(1), 5
West Bengal Premises Tenancy Act, 1956 — Section 13, 13(6)

Citation : AIR 1993 Cal 102

Hon'ble Judges : Ajit Kumar Sen Gupta, J

Bench : Single Bench

Advocate : Mr. Anindya Mitra, Mr. Samarjit Gupta and Mr. Sites Sinha, for the Appellant; Mr. P.K. Roy, for the Respondent

Judgement

1. The petitioner, in this application under Art. 226 of the Constitution of India, has challenged the ex parte order passed by the Estate Officer, United Commercial Bank, dated 25th Nov. 1981 directing the petitioner to vacate the premises No. 1B Russel Street, Calcutta, by 31st December, 1982. The said order is passed in exercise of powers under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Apart from challenging the order passed by the said Estate Officer, the applicant goes a step further by impugning the very appointment of respondent No. 3, viz. Shri V. Rama chandran, as the Estate Officer on the ground that the said office in the first instance requires the incumbent to be a man experienced and trained to exercise judicial powers and secondly to be a man independent and impartial not having interest directly or indirectly in the matter to be adjudicated upon, free from bias and partiality. In that connection, the vires of Section 3 of the said Act of 1971 is also in challenge as it confers on the Central Government unguided powers to appoint as the Estate Officer anybody irrespective of qualifications, experience and personal

background, even though the performance of the duties of the office requires expertise in law and training and experience in judicial work. The said provision of S. 3 is assailed as ultra vires Art. 14 of the Constitution of India.

2. Shortly stated the facts leading up to the impugned order passed by the Estate Officer, respondent No. 3, are that United Commercial Bank, respondent No. 2, is the owner of the premises No. 1B, Russel Street, Calcutta, A two-storied building and the petitioner-company claims to be the tenant of the subject property and has been carrying on its business at the ground floor and a portion of the first floor thereof. The premises is also the Registered Office of the petitioner-company. According to, the claim of the petitioner, it is the monthly tenant under the said Bank on a rent of Rs. 1,000/ - per month. The tenancy owes its origin, as claimed by the petitioner, to the year 1960.

3. The petitioner complains that the respondent bank, bent upon evicting the petitioner, has been Striving to achieve that end by any means fair or foul. In October 1975, the respondent Bank issued a notice u/s 13(6) of the West Bengal Premises Tenancy Act, 1956 calling upon the petitioner to vacate and quit the premises thereby admitting the inter se relationship of landlord and tenant. Thus, the rights of the petitioner as a tenant are pleaded to be indisputable. The respondent did not however, follow up the issue of the said notice for eviction and refrained from filing any suit. On February 4, 1977 the respondent Bank, instead, appointed one of its officers as the Estate Officer, who issued a notice under Sections 4(1) and 7(3) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

4. The petitioner at that juncture filed a writ application challenging the resort to the said Act by the respondent Bank contending that the Act could not extend to any premises held by a Government Corporation and such extension was beyond the legislative competence of the Central Government. That matter was referred to a Division Bench by Sabyasachi Mukherjee, J. as he then was, as an important point of law was involved. The Division Bench, however, dismissed the said writ petition and held that the extension of the Act is valid. The issue was carried to the Supreme Court. The Supreme Court confirmed the judgment of the Division Bench and held that the said Act of 1971 could extend to premises owned by a Government Corporation. (See Accountant and Secretarial Services Pvt. Ltd. and Another Vs. Union of India (UOI) and Others,

5. It is stated that on behalf of the petitioner that the respondent bank resorted to dubious means for throwing out the petitioner from the subject premises and caused to be issued on November 17, 1978 an order of demolition of the premises from the Calcutta Corporation. The said order of demolition issued by the Corporation was challenged in a petition under Art. 226 being C.R. No. 9659 (W) of 1978 whereupon an interim order of injunction was issued by this Court.

6. It has been further alleged by the petitioner that the respondent bank nevertheless started demolishing the premises without any notice whatsoever to

the petitioner. The petitioner moved a contempt application before this Court. In the contempt proceeding the respondent bank and its officers appeared and tendered unqualified apology to the Court on 29th January, 1979. They were excused in view of such apology, but on payment of the cost of the application. It has been alleged on behalf of the petitioner that the respondent bank, however, did not relent in its effort to evict the petitioner by indirect means. With that object in view it allegedly caused an order of requisition for the portion of the premises in occupation of the petitioner to be issued by the Government of West Bengal. Attempt was also made, it is alleged, to take possession of the said premises without serving any notice of requisition upon the petitioner. It is the case of the petitioner that the authorities of the Calcutta Municipal Corporation as well, as the Government of West Bengal acted only at the instance and initiative of the respondent bank. It has also been pointed out that this Court intervened in such requisition by the issue of an interim injunction against the Government of West Bengal from giving effect to such requisition. The writ petition filed in that matter is still pending.

7. As the Government of West Bengal was claiming the possession of the premises, the proceedings before the Estate Officer for adjudicating upon the question of eviction were got stalled or were rendered infructuous. Therefore, the proceedings before the Estate Officer were adjourned sine die at the instance of the respondent bank in view of the order of requisition by the State Government, we are told.

8. But a fresh notice was issued by the respondent bank on February 14, 1982 by which respondent No. 3, Shri V. Ramachandra, who was the General Manager of the said Bank, was appointed as the Estate Officer. The proceeding which started with this notice is now in challenge in the instant proceeding.

9. The petitioner in the first instance contends that recourse to Public Premises. (Eviction of Unauthorised Occupants) Act, 1971 is not bona fide. The respondent bank found this statutory measure handy as a short-cut method to evict the petitioner as the respondent bank is quite aware of its inability to make out a case for eviction against the petitioner in a suit under the Tenancy Law as contained in Section 13 of the West Bengal Premises Tenancy Act, 1956. In this connection, it is pointed out that at the outset the respondent bank issued a notice u/s 13(6) of the said Tenancy Act, but refrained from filing any suit. It is also alleged that though in the notice the respondent bank admitted the landlord-tenant relationship, eventually retracted from that position and treated the petitioner as a licensee with the mala fide intention of side-stepping the provisions of the Tenancy Act and invoking, instead, the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Thus, the petitioner''s grievance is that though a public authority and instrumentality of the State the respondent bank has been behaving unscrupulously and arbitrarily like a private landlord to achieve its purpose of getting the petitioner evicted.

10. It is contended that the bank has resorted to indirect devious means for

eviction of the petitioner. One such mala fide attempt for eviction is the present recourse to the Act of 1971. It is the contention that the bank cannot act arbitrarily in any contractual matter and should act only for furtherance of the public interest.

11. It is also submitted on behalf of the petitioner that though the matter regarding the requisition is still subjudice, a fresh notice should not have been issued by the respondent bank.

12. The further contention of the petitioner is that the bank has not been able to demonstrate that they have acted in pursuance of a policy which is referable to public purpose in the matter in the instant case. The whole conduct of the respondent bank shows that it has been acting unreasonably and maliciously and such conduct is not justifiable. It is on the grounds of mala fides of the conduct of the respondent bank that the petitioner urges for the impugned proceedings being struck down. For this purpose reliance has been placed by the learned Counsel appearing for the petitioner on the decision of the Supreme Court in Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay, reported in AIR 1980 SC 1642. It is finally submitted that the conduct of the respondent bank is arbitrary and unreasonable and cannot be sustained.

13. The learned Counsel for the petitioner assails the validity of the order as passed by the Estate Officer pursuant to the notice dated April 14, 1982 on the further ground that the said order is in blatant violation of the principles of natural justice. On February 16, 1982, an application was made by the petitioner before the Estate Officer challenging his jurisdiction. By an order dated April 12, 1982, the Estate Officer dismissed the application. The Estate Officer was requested to keep the matter in abeyance for some time so that the question of his jurisdiction to adjudicate upon the matter be settled by the higher judicial authority but such prayer was also rejected. On October 12, 1982, the date on which the case was fixed by the Estate Officer for hearing, the learned Advocate for the petitioner could not appear at the hearing on account of the sudden demise of one of his relations. There was a prayer for adjournment of the case on that ground. No order of rejection of the said prayer for adjournment, if any, passed by the Estate Officer was communicated to the petitioner. It later transpired that on October 12, 1982, the Estate Officer heard the argument of the respondent bank in the absence of the petitioner''s advocate and concluded the proceeding ex parte. The petitioner upon coming to know of this aspect of the matter through the Advocate''s letter dated November 23, 1982, objected to the closing of the case pointing out that such conclusion denies to the petitioner the opportunity of cross-examination and adducing evidence and this resulted in the violation of natural justice. The paid objection remains unheeded and no reply was received. On November 25, 1982, the Estate Officer issued the order of eviction.

14. It is now submitted that in view of the admitted position that the petitioner did not have the opportunity of adducing evidence, examining and rebutting the

materials used by the respondent bank against the petitioner and cross-examining the witnesses, if any, the conclusion of the case on October 12, 1982 in the absence of the petitioner was in palpable violation of the principles of natural justice resulting in grave injustice to the petitioner. Such violation of natural justice is all the more cynical as no notice of peremptory hearing had been given earlier.

15. The next contention canvassed for the petitioner is that the order impugned is devoid of jurisdiction because the appointment of respondent No. 3 as the Estate Officer is itself invalid and in abuse of the statutory power under the said Act of 1971. It is pointed out that respondent No. 3 has no judicial or legal experience or training and is an employee of the respondent bank in charge of General Administration of the Bank. Thus, he cannot be taken as a person competent or qualified to adjudicate upon and decide the legal question involved in the proceeding, viz. whether the petitioner company is a tenant to be governed by the provisions of West Bengal Premises, Tenancy Act, 1956, or a licensee outside the scope of the said Act and the further question of validity of the notice of determination of tenancy. However, the respondent No. 3 is merely an obliging tool in the hands of his employer, respondent No. 2, and was appointed to act and use the power under the statute in favour and at the behest of the said employer and thereby to subvert the very object of the process of adjudication. Given that the Estate Officer, respondent No. 3 is qualified to act as a Tribunal of fact and law, he is an agent of the contending party and cannot act without fear and favour. Being a servant of the respondent No. 2 he is to act at its behest.

16. The learned Counsel for the petitioner has further challenged the validity of Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Section 3 of the said Act does not lay down any qualification of the Estate Officer and leaves the matter entirely to the unbridled discretion of the Central Government which wields unguided power to appoint as Estate Officer any person irrespective of whether such person has legal or judicial experience or a person presumably incapacitated to act independently.

17. The Estate Officer is to discharge judicial function and to decide upon whether an order of eviction is warranted or not. Thus, the Estate Officer acts as a court of fact and law in the matter of eviction of a tenant from the public premises. He is entrusted with the same judicial authority which the court performs in determining a suit for eviction under the general tenancy law.

18. A similar contention, it is pointed out, was raised regarding the validity of Section 6 of the Administrative Tribunals Act, 1985. Section 6 of the said Act does not give unguided power but lays down the qualification of the members of the Tribunal, viz. the holding of the post of Additional Secretary of the Government of India for two years or the post of Joint Secretary of the Government of India for at least three years etc. No qualification whatsoever has, however, been laid down in Section 3 of the Public Premises (Eviction of

Unauthorised Occupants) Act, 1971 for appointment of a person as Estate Officer. Anybody can be appointed as Estate Officer regardless of his qualification or judicial experience. In the present case, it is contended on behalf of the petitioner that the respondent bank, taking advantage of the unguided power, has appointed its own employee as the Estate Officer. The Supreme Court in a case before the Administrative Tribunal held that the Chairman of the Tribunal should ordinarily be a retiring or retired Chief Justice of a High Court or at least a senior Judge of proven ability and has laid down the manner of selection of the Vice-Chairman of the Tribunal. It was further held that unless this is done the constitutional validity of the Tribunal would be open to challenge. The tenor of the judgment of the Supreme Court is, it is pointed out, that the Officer of the Tribunal performs a judicial function as a substitute for court of taw and should be appointed in such a manner as would ensure selection of proper and competent person to man this office of trust. It is urged that the ratio of the said judgment is applicable in this case.

19. It is contended that the unguided naked power given to the Central Government is further abused by the respondent bank by appointing its own employee with no training of law to discharge the judicial function of the office of the Estate Officer, as a means to obtaining the order of eviction. In a proceeding under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, the prosecutor''s employee can become the judge in the case. This is violently opposed to the principles of natural justice and requirement of the principles of fair play as enshrined in Article 14 of the Constitution of India. The provision allows the prosecutor to be the judge of its own case.

20. Finally, the learned Counsel for the petitioner drew the attention to the minutes of October 12, 1982 at page 47 of the petition as well as para 6 of the order of the Estate Officer to highlight the impropriety of the conduct of the Estate Officer.

21. The learned Counsel for the respondent bank, however, maintains that the petitioner company is not a tenant of the subject premises but a mere licensee thereof. The bank has decided to construct a multi-storeyed building at the said premises to meet the increased requirement of the office space for the Bank. The licence was, therefore, revoked and the petitioner asked to quit upon delivering up the vacant possession on or before July 1, 1973. It was necessary to vacate the subject premises as the first step towards implementing the respondent bank''s plan for erection of a multi-storeyed building as a measure to ease the constraint the bank has been facing for carrying on its operations and the expansion of its activity. According to the respondent, the petitioner was merely a licensee and the licence terminated on the petitioner being asked by the bank to quit and vacate.

22. The petitioner refusing to vacate the premises upon such notice, the bank was forced to initiate proceedings under, the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. It is the case of the bank that the licence

having terminated, the petitioner had no legal rights to hold on to the property and was, therefore, to be treated as an unauthorised occupant.

23. At this stage, it is necessary to reiterate a few facts :

In the year 19/2 Bank decided to construct a multi-storeyed building in the subject premises to meet its increased requirement for office space and revoked the license and called upon the writ petitioner to hand over vacant possession on or before 1-7-1973. As the building plan for the subject premises was sanctioned by the Calcutta Municipal Corporation and vacant possession was not given by the writ petitioner the bank initiated proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as ''the Act'').

24. In September, 1978 the writ petitioner challenged the show-cause notices issued by the Estate Officer under the Act in Writ Petition (being Matter No. 676 of 1978) in the Original Side of this Court on the ground that the Act could not be extended to Government Companies or Corporation and obtained an interim order of stay. Ultimately the interim order was vacated on 24-1-1980. In August, 1982 the said Matter No. 676 of 1978 was heard and was referred to a larger Bench.

125. The proceedings before the Estate Officer could not proceed because of the interim orders obtained by the writ petitioner time taken by the writ petitioner before the Estate Officer on one pretext or other. Moreover, on 25-11-1982 the final order was passed by the Estate Officer, inter alia, directing the writ petitioner to quit and deliver vacant possession by December 31, 1982.

26. Immediately thereafter the writ petitioner moved another writ application in the Appellate Side of this Court being C. R. No. 13552 (W) of 1982 challenging the said order dated 25-11-1982 passed by the Estate Officer for eviction. The High Court by its order dated 24-12-1982 stayed the eviction order Subject to the writ petitioner complying with Certain conditions and also ordered that in view of the complicated nature of the matter parties are given liberty to mention before the learned Chief Justice for construction of a larger Bench as the similar point (in Matter No. 676 of 1978) has been referred to for speedy disposal of the Rule,

27. On 12-2-1987 the larger Bench delivered judgment upholding the validity of the said Act and dismissed the said Writ Petition being Matter No. 676 of 1978.

28. From the said order dated 12-2-1987 the writ petitioner preferred an appeal in the Supreme Court (being Civil Appeal No. 900 of 1987) and by judgment delivered on the July 20, 1988 the appeal was dismissed upholding the validity of the Act.

29. While appeal was pending before the Supreme Court a transfer petition (Civil No. 2942 of 1987) was filed by the bank for transfer and hearing of the instant Writ Petition No. 13552(W) of 1982 pending in the High Court, Calcutta, along

with the above appeal. The Supreme Court was pleased to observe that the matter which is pending before the High Court will proceed before that Court.

30. In this Writ Petition, the writ petitioner took the plea that the Act is invalid so far it seeks to include any premises or building belonging to or taken on lease by and on behalf of the writ petitioner in which not less than 51% paid up share capital is held by the Central Government or any Corporation under Central Act and that such premises are subject to legislative enactment of the State of West Bengal and beyond the legislative competence of the Parliament and further contended that the above contention had been raised in the pending Writ Petition No. 676 of 1978 which has been referred to a larger Bench as mentioned hereinabove.

31. The above contention of the writ petitioner has already been decided by the Supreme Court as mentioned above and nothing substantial is left to be decided in this writ petition about the same.

32. The subject matter of challenge in this writ petition is an order dated November 25, 1982 passed by the Estate Officer which has been made Annexure ''H'' to the writ petition.

33. In the writ petition, grounds of challenge to the said order dated November 25, 1982 in short are that the said order is arbitrary, mala fide and without jurisdiction and was passed in violation of principles of natural justice as the writ petitioner No. 1 had not been afforded any opportunity to produce relevant materials and documents in support of its contentions.

34. On or about December 7, 1989 the writ petitioner made an application in the said writ petition for leave to amend the writ petition by engrailing therein the grounds enumerated in paragraph 16 of the application. In the said application, a challenge has been thrown to the provisions of Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

35. Thereafter, the matter was assigned before this Bench and the matter was heard.

36. Subsequent to the conclusion of the hearing the petitioner, however, sought for leave to rely on certain guidelines issued by the Union Government, Ministry of Industries, Department of Public Enterprises, in order to impress on us that the said circular protects the right of the petitioner as a lawful tenant against eviction by a summary proceeding meant exclusively for unauthorised occupants of the Public Premises. The said circular being No. 2(6)/92/-DPE(WC)dated February 8, 1992 goes in the following terms :--

".....Although the provisions of the P.P. (Eviction of Unauthorised Occupants) Act, 1971 have been upheld by the Supreme Court in the case of Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others, and various other civil petitions, the Supreme Court had also observed that every activity of the public authority should be guided by public interest, and they should deal with their tenants distinctly from private land- lords. The matter has, therefore, been further, examined in the Government having regard to all the relevant factors, it has been decided that PSEs should not use the P.P. Act to evict genuine tenants, use the Act primarily to evict those found to be subletting the premises for commercial or residential purpose or illegal occupants, or recalcitrant employees who have ceased to be in service of the Public Sector Undertaking. Government is of the view that protection of the Public Premises Act enjoyed by the premises of Government owned organisations mentioned in Para 1 above should continue. At the same time, it has been decided to prescribe for the benefit of all these organisations a set of guidelines in order to prevent arbitrary use of the provisions of the P.P. Act to evict genuine tenants and to limit the use of the summary powers primarily to evict unauthorised occupants and retired employees of the enterprises. This will ensure compliance with the spirit underlying the protection extended by the Parliament to these premises and the observation of the Supreme Court while upholding the validity of the amended Act. The guidelines given below set limits for the resort to P.P. Act by the PSEs and are to ensure that the interest of the genuine tenants are not jeopardised. The following are the guidelines :--

(i) The provisions of the P.P. Act should be used primarily to evict totally illegal occupants of the premises of public authorities or unauthorised sublettees, or employees who have ceased to be in their service and thus ineligible for occupation of the premises. The proceedings should be initiated in accordance with the provisions of the Act only in cases where the occupation becomes unauthorised on genuine grounds of law.

(ii) The provisions of the Act should not be resorted to either with a commercial motive or to secure vacant possession of the premises in order to accommodate their own employees, where premises were in occupation of the original tenants to whom the premises were let either by the public authorities or the persons from whom the premises were acquired.

(iii) A person in lawful occupation of any premises should not be treated or declared to be an unauthorised occupant merely, on service of notice of termination of tenancy, nor should any contractual agreement be wound up by taking advantage of the provisions of the Act. At the same time, it will be open to the public authority to secure periodic revision of rent in terms of the provisions of the Rent Control Act in each State, or to move under genuine grounds under the Rent Control Act for resuming possession. In other words, the public authorities would have rights similar to private landlords under the Rent Control Act in dealing with genuine legal tenants.

(iv) It is necessary to give room for allegations that evictions were selectively resorted to for the purpose of securing an unwarranted increase in rent, or that a change in tenancy was permitted in order to benefit particular individual or institutions in order to avoid such imputations or abuses of discretionary powers. The release of premises or change of tenancy should be decided at the, level of

Board of Directors of the Public Undertakings.

(v) All the Public Undertakings should immediately review all pending cases before the Estate Officer or Courts with reference to these guidelines, and withdraw eviction proceedings against genuine tenants on grounds otherwise than as provided under these guidelines. The provisions under the P.P. Act should be used henceforth only in accordance with these guidelines."

37. The guidelines of the Government of India clearly spell out that this law is not intended to be invoked except for the purposes of evicting unauthorised occupants. That is the gist of the whole guidelines. The learned counsel for the respondent-bank submits that this circular, far from advancing the petitioner''s case, vindicates the order of eviction that is being impugned. The contemporaneous document, i.e. the leave and licence agreement of 1972, whereunder the petitioner had been occupying the premises, clearly establishes that the petitioner was a mere licensee. The petitioner was continuing in possession after the terminating of the license as a pure and simple unauthorised occupant of the Public Premises. The case thus correctly fell to be dealt with under the said Special Act.

38. The central issue in the case is whether the petitioner is a lawful tenant or a mere licensee and stands in the position of an unauthorised occupant after the revocation of the licence through the notice dated October 8, 1975 served on the petitioner by the respondent-bank. The petitioner seeks to found its claim upon the following paragraph ''that occurs as the concluding paragraph of the said notice issued by the solicitors for and on behalf of the respondent :--

"Please treat this as a notice terminating your leave and licence and in the alternative also as a notice u/s 13(6) of the West Bengal Premises Tenancy Act and the notice under the Transfer of Property Act."

39-40. According to the petitioner, the reference in the notice to Section 13(6) of the Tenancy Act is good enough as admission by the respondent-bank that the petitioner is an occupant of the premises as a tenant and not as a licensee.

41. In my view, the said paragraph of the notice cannot be construed as acceptance of the petitioner''s tenancy right. The said paragraph of the notice is unequivocal to the effect that the petitioner is a licensee. It is only by way of abundant precaution that the solicitors thought it fit to refer to S. 13(6) of the West Bengal Premises Tenancy Act though such reference was unnecessary. The respondent-bank''s instructions to its solicitors were unequivocal that the status of the petitioner is that of a licensee. This is clear from the contents of the notice which refer to the leave and licence agreement dated March 20, 1972. The notice also mentions in its preceding paragraph 3 that the respondent bank merely permitted the petitioner to use and occupy the premises and also to use the furniture, fittings equipments, air-conditioner etc. for which the petitioner agreed to pay a monthly sum of Rs. 1,000/- as compensation. The said para 3 of the notice is in the following terms :--

"By Clause 3 of the agreement dated March 20, 1972 made between the bank and you the bank permitted you to use and occupy then under your occupation and also to use the furniture, fittings, equipments, air-conditioners etc., which you were using so long. You agreed to pay to the bank a sum of Rs. 1,000/ per month as. compensation and also to pay the bank a sum equivalent to occupier''s share of Corporation taxes in respect of the premises and also the charge for electricity consumed by you. The agreement further provides that the bank may withdraw the permission given to you for use and occupation of the portion of the premises and use of the furniture, fittings etc. aforesaid by giving six months'' notice in writing to you and that you shall on the expiry of the said period deliver up vacant possession of the said premises and the said furniture, fittings equipments etc. to the bank."

42. Further, paras 4 and 5 of the said notice specifically refer to the petitioner as a Licensee and refer to the notice as a notice terminating the licence. Paras 4 and 5 of the notice are in the following terms:--

"4. As the bank requires the entire premises No. 1B, Russel Street, Calcutta, for demolition and for construction of a new building for its own use and occupation six months'' notice terminating of license was given to you by letter dated December 25, 1972. In spite thereof you have not vacated the portions of ground floor and first floor occupied by you on the pretext that you have not yet been able to find a suitable accommodation during all these years. It is no longer possible for the bank to allow you to continue to occupy the said portions."

"5. Under instructions from the United Commercial Bank and on its behalf we hereby give you six months notice terminating your leave and license to occupy the portion of the ground floor and portion of the first floor or premises No. 1B, Russel Street, Calcutta, described below and call upon you to make over vacant possession of the said portions with all furniture, fittings etc. belonging to the bank on the expiry of the last date of the month of April 1976."

43. If we go through the notice as a whole, its drift and tenor although is that the petitioner had been occupying the portion of the premises under a leave and licence agreement which is being terminated by the notice. Even the last paragraph which the petitioner seeks to capitalise, indicates that the notice was a notice terminating the leave and licence. It was only alternatively mentioned that it could be as well treated as a notice under S.13(6).

44. The reference to S. 13(6) has been made only as precaution against all possible contesting claims. It cannot be construed to mean the admission of the petitioner as the tenant. The averment part in the last paragraph of the notice is the first part where the notice is said to be a notice of termination of the licence; the rest part is non-committal or at the worst a mistake.

45. It is not the Lawyer''s notice which is determinative of the petitioner''s right. It is the agreement and its terms whereby the petitioner had been occupying the premises that should decide the character of the petitioner as a licensee or

otherwise. The agreement is unambiguous. Its terms are unequivocal as to the fact that there was no tenancy right being conferred by that agreement. It was merely an agreement permitting the petitioner to occupy the portion of the premises along with its furniture, fittings and equipments, with the obligation to quit as and when the permission is withdrawn.

46. As indicated the only thing on which the petitioner''s case of tenancy rests is the fact that the respondent-bank issued a notice which was described, apart from being notice of termination of the licence, as a notice under S. 13(6) of the Tenancy Act as well. No other evidence, direct or circumstantial, has been placed before me by the petitioner to show that the relationship of landlord and tenant existed between the parties. Reference to S. 13(6) of the Tenancy Act in the said notice was not the substantive part of the notice. The notice is in the main a notice of termination of the licence. The notice read as a whole, cannot but be treated as a notice terminating the petitioner''s licence. The casual reference in the last paragraph of the notice to S. 13(6) of the Tenancy Act could be said to be by way of precaution. The innocuous part of the notice cannot be taken out and construed as the all-important part of the notice. The total, effect of the notice clearly shows that what the notice-giver had in mind was the termination of the licence and not of any tenancy as no tenancy existed. Of primary importance in the last paragraph of the notice is not the reference to S. 13(6) of the Tenancy Act but the reference to termination of the licence. The respondent bank''s solicitors obviously thought it well-advised to take precaution against a possible tenancy claim. It might be said to be unnecessary or it could as well be said to be a mistake. But it has been rightly submitted for the respondent that the casual reference to S. 13(6) should not be conclusive of the petitioner''s right of a tenant. In any case, it is rightly emphasised that the petitioner is taking advantage of a mistake that made its way into the notice and the petitioner has nothing else to depend upon in proof of its claim of tenancy in respect of the subject premises. Reference to S. 13(6) of the West Bengal Premises Tenancy Act, 1956 was, at the worst, a mistake and that in view of the total effect of the contents of the notice the said reference should be ignored as inconsequential. Alternatively, it cannot by itself be taken as conclusive of the whole matter; particular, if the relationship of landlord and tenant really existed between the parties, the petitioner as a tenant must be having other evidence to support its claim of tenancy right. The very fact that the petitioner has refrained from so doing even though the petitioner is seriously agitated over its rights shows that the petitioner, presumably, has no other means of establishing its purported right as a tenant.

47. The other contentions of the petitioner raise diverse questions of legal validity of the act of the respondent bank including the question of violation of the principles of natural justice. The petitioner''s first contention as to the vires of the facts of the respondent bank is inseparably related with the petitioner''s claim of tenancy right. The petitioner''s case is that the resort to the extraordinary course for avoiding the ordinary process of eviction prescribed

under S. 13 of the West Bengal Premises Tenancy Act is reproachable and is liable to be struck down. For this purpose, the learned counsel for the petitioner relied on the decision of the Supreme Court in the case of Dwarkadas Marfatia & Sons (supra), In the said decision it has been laid down that whenever public authority is exempted from Rent Control Legislation in the larger public interest, the exercise of such exemption should be made conscionably and not for gain to the exclusion of reasonableness. Therefore, the said benefit of exemption from the ordinary law of Rent Control should not be taken advantage of in a manner that a private landlord would be tempted to do. The proceeding must he free from arbitrariness. It was urged by the petitioner that in this case the respondent hank in exercise of the power under a Special Act has been acting in a manner that a private landlord would have acted. This submission would have weighed with the Court if the petitioner could have shown, otherwise than by the mere reliance on the insignificant part of the notice of termination of the licence, that its claim of tenancy right is well founded. But that is not the case. I cannot, only on the basis of the tenuous circumstance that there was a reference in the notice of termination of the licence to S. 13(6) of the Tenancy Act, accept that the petitioner had been a tenant. The petitioner cannot have a claim larger than a claim as a licensee. Its holding on the subject premises even after the service of the notice renders the petitioner an unauthorised occupant. Therefore, the ratio decidendi in Dwarkadas Marfatia A Sons (supra) is of no assistance to the petitioner. The petitioner could have perhaps drawn support if the petitioner could first establish its claim of tenancy right.

48. It cannot also be said that the respondent bank has acted mala fide because the claim of the respondent bank is that it has reasonable requirement of the subject premises for erection of a multi-storeyed building to meet its immediate requirement of space. The bank is a nationalised bank and is an instrumentality of the State. It is also, indisputable that its expansion and development conduce to the development of the national economy, to the extent it plays its role in the economy. Therefore, substantial and real public interest is involved in the question of the bank having working space commensurate with its growing requirement. The contention that the bank is behaving unconscionably like a private landlord is without substance. The bank cannot conceivably be said to have any private gain to make like a private developer. The bank is acting in its own interest and the interest of the bank are inextricably connected with larger public interest which the bank subserves as one of the important channels of economic activity of the country. Therefore, it must beheld that the jurisdictional fact for the invocation of the Special Act is present in the case. There has not been any evidence presented on behalf of the petitioner to show that the petitioner was not a licensee but a regular tenant. Therefore, the occupation of the petitioner is unauthorised and removal of such occupation is a legal necessity. The unauthorised occupation is no doubt a positive impediment to the implementation of the respondent-bank''s plan for erection of a multi-storeyed building which is of utmost urgency for more efficiency in the carrying on of the

activity of the bank. A resort to the Special Act cannot be said to be mala fide, rather it is in public interest that the petitioner should quit and should not continue to impede the implementation of the respondent-bank''s plan for expansion by erection a multi-storeyed building providing it larger space than now for its more conducive functioning.

49. As indicated earlier, the petitioner in the amended petition has raised further grounds assailing the vires of the provisions of S. 3 of the Act, insofar as S. 3 of the said Act does not lay down any qualification for the person to be appointed as the Estate Officer, leaving thereby to the Central Government unguided and unrestricted power to appoint even a person not having judicial or legal experience to hold that office and to discharge the function equivalent to the function of a Court of Law for all practical purposes. This contention has no substance. Section 3 confers on the Central Government no such power as can be said to be unguided. The provisions of Section 3 require that the Central Government may appoint a person who is either a Gazetted Officer of the Central Government or an Officer of equivalent rank of any statutory authority. It further provides that an Officer of a statutory authority shall only be appointed as the Estate Officer in respect of public premises controlled by that authority. Moreover, the Act gives sufficient guidelines for the discharge of the duties of the Estate Officer. The requirement of judicial or legal experience cannot be said to be the sine qua non for the appointment of an adjudicating authority. The scope of adjudication is quite limited in that the powers exercisable are exercisable only in relation to unauthorised occupancy of public premises. There cannot be any misapprehension for error of judgment going unremedied because the provisions of the Act confer the right of appeal from every order of the Estate Officer. Section 3, therefore, cannot be said to be an arbitrary provision conflicting with Article 14 of the Constitution. That being so, the appointment of respondent No. 3 as the Estate Officer cannot be challenged on the ground that the said appointment is in abuse or in colourable exercise of authority, merely for this reason that the Estate Officer has no judicial experience or training.

50. One other contention of the petitioner is that the Estate Officer appointed being an employee of the respondent-bank it can very well be said that the respondent-bank became the judge of its own case. The proceeding has also been challenged on that score. It is further contended that the Estate Officer acts as substitute Court; therefore, the person appointed as Estate Officer to adjudicate on the question of eviction must be a person instructed as to law as well as the manner of conducting a judicial proceeding. I am not, however, impressed with these submissions. The respondent-bank is a statutory authority and its officers also discharge the statutory duties. Therefore, there is nothing wrong in appointing such an officer of a statutory authority to a quasi-judicial office. The object of the particular Act viz. Public Premises (Eviction of Unauthorised Occupants) Act, 1971 is also too narrow to throw up highly complicated issues of law or of fact so that the person of acumen and training in law and administration of justice is an absolute necessity. The scope of the said

Act lies in a very short compass of clearing the public properties of unauthorised and unlawful occupants. It has been very rightly pointed out by the learned counsel for the respondent- bank that if the law does not require an arbitrator to be a man instructed specially as to law and trained in conducting an adjudicatory proceeding, there can hardly be any objection to an officer, even though not trained for judicial work being appointed to the office of the Estate Officer to perform the quasi-judicial duty. There are many Special Acts where such inbuilt adjudicatory process is provided for and the incumbents of such adjudicatory offices are not required to be persons well versed in law. Legislature ordinarily under such Special Acts provides for appellate remedy. This particular Special Act is no exception.

51. The last but not the least contention is that the Estate Officer has not acted strictly according to the procedure and the principles of natural justice before passing the order of ejectment. The Estate Officer has shown undue haste in concluding the proceedings without giving proper opportunity to the petitioner to represent its case or to cross-examine the witness, on whose evidence the case was finally decided against the petitioner.

52. This contention has to be considered in the light of the facts appearing from the records. The following list of dates would demonstrate to what extent the petitioner was afforded opportunity by the Estate Officer :--

16-2-82

(Notice given on 4-2-82) : Written application filed by Mr. Smarjit Gupta, Advocate objecting to the proceeding in view of several proceeding pending in the High Court, asking for inspection of earlier proceedings and adjournment.

Adjourned by consent of the parties till 24-2-82. No fresh notice to be issued.

19-2-82

Copy of Govt. notification dated 21-5-77 and copy of office order passed by Chairman of the Bank handed over to Mr. Gupta''s clerk.

24-2-82

None appears on behalf of the Company; adjourned till 5-3-82, (After the proceeding was over Mr. Gupta files an application asking for adjournment)

5-3-82

(Notice given on 26-2-82) : An application filed on behalf of the company for adjournment on the ground that counsel is engaged in High Court. Further asking for inspection of earlier proceedings which he could not do because of difficulties; adjourned till 11-3-82; Notice given on 8-3-82.

11-3-82

(Notice given on 8-3-82) : Mr. Gupta attends -- raises objection with regard to the appointment of Estate Officer. Proceedings pending in High Court -- matter sub judice -- Estate Officer cannot proceed.

12-4-82

Order passed by Estate Officer on points raised by Mr. Gupta --Copy given to Mr. Gupta.

20-4-82

(Notice given on 12-4-82) : Mr. Gupta fifes application - challenging the order passed by Estate Officer stating that the company wants to move the Court against the said order -- asks for adjournment. A Director of the Company (Mr. L. S. Gupta) attends -- asks for adjournment -- adjournment refused --Issues framed -- Submissions made earlier by Sri Avjit Choudhury Counsel on behalf of the Company regarding issues considered adjourned till 3-5-82.

3-5-82

(Notice given on 22-4-82) : Adjourned till 11-5-82 as the Estate Officer was out of town (Notice of adjournment given on 28-4-82).

11-5-82

None appeared on behalf of the company. Bank''s witness examined. Adjourned till 15-6-82.

15-6-82

(Notice given on 8-6-82) : Adjourned till 23-6-82 as the Estate Officer was put of town (Notice given on 17-6-82).

23-6-82

Adjourned till 3-7-82 -- Estate Officer out of town. Notice given.

3-7-82

Mr. Gupta attends -- asks for adjournment on grounds that certain application pending before High Court -- adjournment refused -- Mr. Gupta withdrew from the proceedings and left. Evidence continued.

13-7-82

(Notice given on 5-7-82) : Adjourned till 22-7-82 at the request of the Company.

22-7-82

Mr. Sitesh Sinha, Advocate on behalf of the Company files an application asking for adjournment on the ground that certain proceedings are pending in the High Court -- Adjournment till5-8-82.

5-8-82

Mr. Samarjit Gupta attends, files an application for adjournment on the ground that proceedings pending in High Court. Adjourned till 18-8-82.

18-8-82

Mr. Sitesh Sinha attends -- asks for adjournment on the ground that Mr. Samarjit Gupta ill. Adjourned till 26-8-82.

26-8-82

Mr. Sitesh Sinha appears -- asks for adjournment on the ground of pending proceeding in High Court adjournment refused --Mr. Sinha withdrew and left -- evidence continued.

15-9-82

(Notice given on 28-8-82) : None attended on behalf of the Company --evidence continues.

23-9-82

(Notice given on 18-9-82) : Mr. S. Gupta attends -- asks for adjournment -- adjourned till 5-10-82 for cross-examination of Bank''s witness.

12-10-82

(Notice given on 20-9-82) : None appeared on behalf of the company -- submissions made on behalf of the Bank -- case treated as closed.

25-11-82 Order passed by the Estate Officer.

53. From the aforesaid list of dates, it will appear that since 16th February, 1982 till 12th October, 1982 on as many as 11 occasions the writ petitioner sought for adjournment of the hearing, which was granted at least 8 times.

54. The main ground for seeking adjournment on the part of the writ petitioner was more or less uniform, namely, that a writ petition was pending before the High Court at Calcutta and as such the matter should be adjourned and the Estate Officer should not proceed with the hearing. Besides the said ground, there are also other grounds which are of lesser significance.

55. Though the writ petitioner had come to know that the witness on behalf of the Bank had been examined first on 11-5-82 no effective step was taken on the part of the writ petitioner to contest the proceeding. It cannot be said that non-appearance of the writ petitioner before the Estate Officer was accidental or casual. It appears that the writ petitioner absented himself defeating the '' object of the proceeding. The Estate Officer duly issued notices intending to proceed with the proceeding at a specified time and place and notwithstanding such notice the writ petitioner chose not to attend.

56. On the facts of this case, it cannot be said that the writ petitioner has not been afforded reasonable opportunity to produce relevant materials and

documents in support of its contentions. The writ petitioner did not even make any demand for or availed itself of, and on the contrary deliberately avoided any such opportunity at the material time either to adduce any evidence or to produce any witness or to cross-examine the witness of the respondent-bank. The writ petitioner by its conduct sufficiently evinced its intention to preventing justice or defeating the object of the proceedings. In that view of the matter, the Estate Officer was entitled to proceed in the absence of the writ petitioner. The Estate Officer being an adjudicating authority had a discretion either to allow or not to allow an adjournment or to proceed ex parte. On the facts of this case, he exercised his discretion properly and bona fide and it cannot be said that the Estate Officer failed to act reasonably and fairly and justly. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the Tribunal is acting. The subject matter that is being dealt with and so forth. The question whether the requirements of natural justice have been met by the procedure adopted in a given case must depend on the facts and circumstances of the case. In my view, having regard to the facts and circumstances mentioned hereinbefore, it cannot be said that the writ petitioner did not get reasonable opportunity of presenting his case before the Estate Officer.

57. For the reasons aforesaid, it must be held that the purported grounds of challenge to the order dated 25th November, 1982 are without any merit and have to be rejected.

58. Before I part with this case it must be emphasised that Bank has seriously been prejudiced because of the pending of the proceedings initiated in the year 1977. It is more than one and a half decades now that the respondent-bank has been deprived of the user of its own premises, for the respondent-bank duly applied for obtaining a plan sanctioned by the Municipal Authority to put up a building for its own use and accommodation.

59. The writ petitioner adopted various dilatory tactics at each and every stage of the proceedings and also initiated multifarious proceedings from time to time and as a result the building plan sanctioned on 20-12-76 and renewed thereafter by the Calcutta Municipal Corporation also lapsed. The escalating cost and reduced area available under the amended bye-laws of Corporation for --construction have also greatly prejudiced the bank. The bank is stated to be incurring more than a sum of Rs. 11,34,000/- per month towards the rent of buildings taken for office purposes in and around Calcutta. Furthermore, all other plans of expansion of the business of the bank have suffered on account of delay in the proposed construction and lack of office space.

60. The aforesaid premises No.1B, Russel Street, Calcutta, admeasuring approximately 17,092 sq. ft. with construction thereon was purchased by the bank in the year 1949. With the expansion of the commercial activities of the bank and in view of the fact that the existing structure on the said premises was more than 100 years'' old it was felt necessary to demolish the existing structure

and construct a multi-storeyed building thereon for the use and occupation of the bank. Accordingly, a plan was prepared and submitted to the Calcutta Municipal Corporation and the same was duly sanctioned by the Corporation of Calcutta on the 20th December, 1976. According to the aforesaid sanctioned plan, the bank was permitted to construct 95,000 sq. ft. of built-up area and the height of the building was ground floor plus nine floors. The then existing bye-laws of the Calcutta Municipal Corporation also permitted the bank a double basement that could be used by the bank for banking purposes as well as locker facilities to its customers.

61. The sanctioned plan was valid for five years and to be renewed once for further period of five years. The said sanctioned plan, however, could not be used by the bank and construction could not be made in view of the various litigations initiated by the writ petitioner and stay order obtained by the writ petitioner. The plan which was to lapse in 1982, was renewed for a further period of five years and again expired in December 1986.

62. Under the existing bye-laws the bank will have to apply for fresh sanction of the plan and the said sanction will seriously affect the interest of the bank as the Municipal Law and bye-laws have since been amended and fresh plan can only be sanctioned in conformity with the amended bye-laws.

63. Under the amended bye-laws the following changes will have to be incorporated in the plan:--

a) The built-up area now permissible is only 62,000/ sq. ft. as against the previously sanctioned area of 95,000 sq. ft.

b) Only a single basement can be constructed as against the double basement previously allowed.

c) The ground floor and basement under the existing bye-laws can be used only for Car Parking purposes -- whereas under the lapsed plan the bank was permitted to use both the basement and the ground floor for its banking and locker facilities.

(d) The permissible height of the building can now be only one basement, ground floor plus six (6) upper floors as against two basements, ground and nine (9) upper floors as per earlier sanction.

64. Furthermore, the cost of construction at the time of sanction is stated to be Rs. 70/-sq. ft. for the total commercial area of 95,000 sq. ft. The said cost of construction is stated to have escalated to 350/- per sq. ft.

65. A fresh sanction would, I am told, entail a further expenditure of Rs. 40/- per sq. ft. on account of various other expenses, such as Corporation fees, Architecture''s remuneration etc.

66. Having regard to the aforesaid facts an option was given to the petitioner to vacate the premises within a reasonable time to be fixed by the Court but that

option was not acceptable to the petitioner.

67. In the result this application fails and is dismissed. All interim orders are vacated. The petitioner shall make over peaceful and vacant possession to the bank within a fortnight from date hereof.

68. There will be no order as to costs.

69. Stay asked for is refused.

70. Certified copy of the judgment, if applied for, be issued to the parties as expeditiously as possible.

71. Let a plain copy of the operative portion of the judgment and order be given to the learned Advocates for the parties.

72. Application dismissed.