
(2011) 09 KAR CK 0233

In the Karnataka High Court

Case No : Writ Petition No. 25929/2011 (LB-BMP)

M/s. Laxmi Enterprises

APPELLANT

Vs

The Commissioner and The Joint Commissioner (South)

RESPONDENT

Date of Decision : 08-09-2011

Acts Referred:

Citation : (2011) 09 KAR CK 0233

Hon'ble Judges : S. Abdul Nazeer, J.

Bench : Single Bench

Final Decision : Allowed

Judgement

S. Abdul Nazeer, J.—In this case, the petitioner has called in question the validity of the notices at Annexures "K" and "N" dated 4.7.2011 and 30.7.2011 respectively issued by the 2nd respondent, to restrain the respondents from demolishing the petition schedule building and for certain other reliefs. Brief facts necessary for disposal of this case are as under:

The Government of Karnataka had passed an order dated 2.6.1977 permitting the then Administrator of the Corporation of City of Bangalore (now Bruhat Bangalore Mahanagara Palike) to lease the land bearing No. 38/3 measuring 48 + 35/2 ft. x 150 ft, lying over the drain on the eastern side of Lalbagh Road, Bangalore, by holding public auction. One Sri P.C. Sudharshan was the highest bidder in the auction. He requested the Corporation to transfer the leasehold rights in favour of the petitioner-firm. The Government of Karnataka accorded approval to the Administrator of the Corporation to execute the lease deed in favour of the petitioner as per the order at Annexure "A" dated 28.7.1980. The Corporation executed a lease deed dated 24.9.1980 (Annexure "C") registered on 25.9.1980 in favour of the petitioner for a period of 60 years for the construction of a building thereon for commercial purpose. Accordingly, the petitioner has put up a commercial complex on the said land. On 19.5.1983, the Corporation granted permission to the petitioner to occupy the building. The petitioner occupied the said building and let out different portions of the building

to various tenants. The BBMP has assessed the building for the purpose of levy of property tax on the basis of the rents collected by the petitioner from the tenants.

2. The Zonal Joint Commissioner (West) of the Corporation had issued a notice dated 1.4.2006 terminating the tenancy of the petitioner in respect of the property in question. The petitioner filed a suit O.S. No. 2755/2006 on the file of the Additional City Civil Court, Bangalore, for a declaration that the notice is illegal and for permanent injunction restraining the respondents from interfering with its peaceful possession and enjoyment of the property. After contest, the suit was decreed by the trial Court on 1.1.2011. It is the case of the petitioner that it has paid the property tax for the years 2010-2011 and 2011-2012. It is further contended that it had borrowed loan from Canara Bank, Bangalore, for construction of the commercial complex and has been discharging the loan in installments.

3. It is further contended that petitioner has received a notice at Annexure "K" dated 4.7.2011 whereby the second respondent has called upon it to show cause as to why it should not be evicted from the land and the building constructed thereon be not demolished. The petitioner has sent a reply to the show cause notice as per Annexure "L" dated 11.7.2011. During the pendency of the writ petition, the second respondent has issued yet another notice under Section 4(1) of the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974 (for short "Public Premises Act") at Annexure "N" dated 30.7.2011 calling upon the petitioner to show cause as to why it should not be evicted from the petition schedule property within 10 days from the date of receipt of the notice. The petitioner has sent a reply to the said notice as per Annexure "P" dated 11.8.2011. The Bangalore Electricity Supply Company has issued a notice as per Annexure "Q" dated 9.8.2011 informing the petitioner that it has to disconnect the power supply to the building in question within 15 days from the date of receipt of the said notice. Therefore, the petitioner has filed this writ petition seeking the aforesaid reliefs.

4. I have heard Sri K. Suman, learned Counsel for the petitioner and Sri Abhijith A. Harnahalli, learned Counsel for the respondent-Corporation.

5. Learned Counsel for the petitioner submits that the State Government passed an Order at Annexure "A" dated 28.7.1980 granting permission to the Administrator of the Corporation to lease the land in question in favour of the petitioner for a period of 60 years. Accordingly, the Corporation has leased the land under a deed of lease at Annexure "C" dated 24.9.1980 for a period of 60 years. The terms and conditions of the said deed permits the petitioner to construct a building on the land in question for commercial purpose. It was also permitted to let out the building. On the expiry of the period of the lease, the building constructed by the petitioner will vest with the Corporation free from all encumbrances. Condition No. 15 makes it clear that on breach of any of the conditions of the lease, the Corporation has the right to revoke the lease and resume possession of the land with the building constructed thereon

notwithstanding the un-expired period of lease and that the petitioner shall not be entitled for any compensation in respect of the building. The land in question is a space measuring 48 + 35/2 ft. x 150 ft. lying over the drain on the eastern side of Lalbagh Road, Bangalore. The petitioner has put up construction on the said land as per the plan sanctioned by the Corporation. The Corporation has granted permission to the petitioner to occupy the building as per the endorsement at Annexure "D" dated 19.5.1983. The petitioner has let out different portions of the building to different persons. The land and the building constructed thereon has been assessed to tax and petitioner has been paying the property tax regularly.

6. It is argued that the Corporation issued a notice dated 1.4.2006 terminating the tenancy of the petitioner. The petitioner filed a suit O.S. No. 2755/2006 on the file of the Additional City Civil Judge, Bangalore, for a declaration that the notice is arbitrary, illegal and without jurisdiction and for permanent injunction restraining the Corporation or anybody else on their behalf from interfering with its peaceful possession and enjoyment of the said property. The suit was contested by the Corporation. The trial Court passed a decree on 1.1.2011 declaring that the notice of termination issued by the Corporation is without jurisdiction. It has granted an order of injunction restraining the Corporation from interfering with the petitioner's possession and enjoyment of the property. Liberty was reserved to the Corporation to initiate action for eviction of the petitioner from the property in accordance with law.

7. It is further argued that the Corporation has again issued a notice as per Annexure "K" dated 4.7.2011 terminating the lease and directing the petitioner to demolish the building which is not permissible in law. The notice is said to have been issued on the basis of the order of this Court in W.P. No. 31394/2009. During the pendency of the writ petition, the Corporation has again issued a notice dated 30.7.2011 under Section 4(1) of the Public Premises Act. It is argued that the Corporation has leased only the land with liberty to the petitioner to put up a commercial complex thereon. The petitioner has put up construction in terms of the plan sanctioned by the Corporation. Petitioner is the owner of the said building. Therefore, the provisions of the Public Premises Act does not apply to the case on hand. If there is a breach of conditions of the lease, the Corporation has to take action against the petitioner for its eviction under Section 100 of the Transfer of Property Act, 1882. Thus, the notices impugned herein are totally without jurisdiction. The order of the Division Bench of this Court in W.P. No. 31394/2009 has no application to this case.

8. On the other hand, learned Counsel appearing for the respondents submits that a Division Bench of this Court in W.P. No. 31394/2009 has issued interim orders from time to time directing the Corporation to remove all the encroachments over storm water drains. In the said case, the Corporation has filed an affidavit dated 3.8.2011 stating the procedure that would be followed for removal of the encroachments over the storm water drains. Recording the said

affidavit, the writ petition was disposed of. That is why the Corporation has issued notice as per Annexure "K" dated 4.7.2011 calling upon the petitioner as to why the lease should not be terminated and the building should not be demolished. The building forms part and parcel of the land leased to the petitioner having regard to Section 3(17) of the Karnataka General Clauses Act, 1899. The Corporation is also justified in initiating action for eviction of the petitioner from the property in question under the Public Premises Act as the building forms part of the land.

9. It is further contended that Section 288(1) of the Act authorises the Commissioner of the Corporation to grant licence subject to such conditions and restrictions as he may think fit to the owner or occupier of any premises to put up or continue to have verandahs, balconies, sun-shades, weather-frames and the like to project over a street or in streets in which the constructions of arcades has been sanctioned by the Corporation to put up or continue to have an arcade or to construct any step or drain-covering necessary for access to the premises. However, no licence can be granted if the projection of the or construction is likely to be injurious to health or cause public inconvenience or otherwise materially interfere with the use of the road as such. Therefore, the Corporation is justified in issuing the impugned notices [because the building has been constructed over the drain. In this connection, he has relied on the decision of this Court in *Wajid Vs. State of Karnataka*--> . It is argued that Section 288 of the Act overrides the provisions of the Public Premises Act.

10. It is argued that the lease deed has become void due to passage of time. It is violative of Section 23 of the Indian Contract Act, 1872 as it is opposed to public policy. In this connection, he has relied on the decision of the Apex Court in *Ranganayakamma and Another Vs. K.S. Prakash (D) by L.Rs. and Others*, .

11. It is contended that demolition of the building is absolutely necessary in public interest for the free flow of storm water.

12. Having regard to the contentions urged, the first question for consideration is whether the notice at Annexure "K" dated 4.7.2011 terminating the tenancy is illegal?

13. In the notice at Annexure "K" one of the reasons assigned for the eviction of the petitioner is the order passed in W.P. No. 31394/2009. In the said case, the Chief Engineer (Storm Water Drain), BBMP, Bangalore, has filed an affidavit dated 3.8.2011 undertaking to remove the encroachments over the storm water drains. Recording the said affidavit, on 4.8.2011, this Court disposed of the writ petition with a direction to remove all the encroachments over the storm water drains. Needless to say that the encroachments have to be removed in accordance with law and not otherwise. In the instant writ petition, we have to consider as to whether the procedure adopted is in conformity with law.

14. The other ground stated in the notice is that the petitioner has sublet different portions of the building. The lease deed at Annexure "C" executed by

the Corporation is a term lease for 60 years. Under the said deed, the petitioner was permitted to use the schedule land for the construction of the building for commercial purposes. Clause 11 of the lease deed bars the petitioner from subletting or parting with possession of the schedule land. On the expiry of the period of lease, the building constructed by the petitioner vests with the Corporation free from all encumbrances. Clause 15 of the lease deed is as under:

On breach of any of the aforesaid condition, the lessor shall have the right to revoke the lease and resume possession of the schedule land with the building constructed, if any, by the lessee thereon notwithstanding the un-expired period of lease and the lessee shall not be entitled to any compensation in respect of the building. 15. After construction of the building, the petitioner has let out various portions of the building to different tenants. The Corporation has assessed the building to tax on the basis of the rents collected by the petitioner from various tenants. The notice issued by the Corporation terminating the tenancy was challenged by the petitioner in the suit referred to above. Issue No. 1 framed in the suit is as under:

Whether the notice of termination of lease issued by the second defendant bearing No. BCC/LC/RR/06/04-05 dated 1.4.2006 is illegal, arbitrary and without jurisdiction? 16. While answering the said issue, the Civil Court has held that the notice is illegal and without jurisdiction. The decree of the Civil Court has become final and binding on the parties. It is true that the Civil Court has reserved liberty to the Corporation to initiate action for eviction of the plaintiff from the property in question in accordance with law.

17. It is well established that unlike in England, in India there can be a dual ownership, in the sense, that the land may belong to one person and the buildings thereon may belong to another person. This concept of dual ownership was recognised by the Privy Council in *Narayan Das Khettry (Since deceased) vs. Jatindra Nath Roy*³¹ CWN 965 (Privy Council) , as under:

The maxim which is found in English law, viz., "quicquid plantatur solo, solo cedit" has at the most only a limited application in India. There is nothing in the laws or Customs of India, to show any traces of the existence of any absolute Rule of Law that whatever is affixed or built on the soil becomes a part of it and is subjected to the same rights of property as the soil itself.

(emphasis supplied by me)

18. In *K.A. Dhairyawan and Others Vs. J.R. Thakur and Others* , the Apex Court was considering the eviction of a tenant under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. In the said case, the appellants as trustees of the Mankeshwar Temple, executed a registered lease in favour of the respondent, whereby they demised a parcel of the land. The lease was for twenty-one years. Under the terms of the lease, the lessee had to construct within six months from the date of the lease a double storeyed building consisting of shops on the ground floor and residential rooms on the upper floor.

On termination of the lease, either at the end of the twenty-one years or earlier, the lessee was to surrender the demised premises including the building with its fixtures and appurtenances to the lessors without any compensation for the same. Shortly before the lease was to expire, the appellants gave notice to the respondents to deliver possession of the demised premises and the building on the expiry of the lease. After examining the various clauses of the lease, the Apex Court found that in none of them has it been positively stated that the building to be erected on the demised land would be in the ownership of the lessors. Under the law, there was no impediment in the way of the parties to have had a clause, in a positive form, to that effect. In the absence of such a clause in the lease, whether it can be said that there had also been a demise of the building. The Supreme Court found that the schedule to the lease specifically mentions that the land had been demised and there is no mention therein that the building when constructed thereon would also form part of the demised property. Taking into account these factual aspects, the Apex court held as under:

.... In 1927, when the lease was executed the Act was not in existence and it may reasonably be said that none of the parties had ever in contemplation that the Act or anything akin thereto would become law in the future affecting the rights of the parties under the lease. The various clauses of the lease are consistent with the ownership in the building being with the lessees in which the lessors had no right while the lease subsisted. In the case of *Narayan Das Khettry (Since deceased) vs. Jatindra Nath Roy*³¹ CWN 965 (Privy Council) : *Narayan Das Khettry (Since deceased) vs. Jatindra Nath Roy*³¹ CWN 965 (Privy Council) the Privy Council approved the observations of Sir Barnes Peacock in the case of *Thakoor Chunder Poremanick Vs. Ramdhone Bhattacharjee* 6 Suth WR 228 (B) to the following effect:

"We have not been able to find in the laws or customs of this country any traces of the existence of an absolute rule of law that whatever is affixed or built on the soil becomes a part of it, and is subjected to the same "rights of property as the soil itself. In the case of *Vallabhdas Naranji, Khot of Kanjur vs. The Development*^{AIR 1929 163} (Privy Council) ((c) the Privy Council once again referred to Sir Barnes Peacock's observation as stated above. The Privy Council also quoted the following observation of Counc, C.J., in the case of *Narayan Vs. Bholagir* 6 Bom HC (AC) 80 (D):

".... We cannot, however, apply to cases arising in India the doctrine of the English law as to buildings, viz., that they should belong to the owner of the land. The only doctrine which we can apply is the doctrine established in India that the party so building on another's land should be allowed to remove the materials.

19. In *Chandra Bai Vs. Tukaram*, , this Court was considering the eviction of a tenant under Section. 21(1)(f) of the Karnataka Rent Control Act, 1961. In the said case, the petitioner was the owner of an open site. He leased the site to respondent No. 1. Respondent No. 1 constructed a building worth Rs. 400 and

agreed to put up a structure worth Rs. 600. The lease period was 15 years. The lessee agreed to hand over possession of the building without taking money at the end of the term, and not to mortgage or sell the building or alienate the building. Respondent No. 1 had sublet certain rooms in the building to respondent Nos. 2 and 3. This Court held that the demised premises was only the open site and as such the lease of the two rooms to respondent No. 2 and 3 did not amount to subletting.

20. In *R.G. Hiremath and Another Vs. T. Krishnappa*, , this Court has held that there may be separation of the ownership of the building from the ownership of the land, and there is no rule of law that whatever is affixed or built on the soil becomes a part of it and is subjected to the same rights of property as the soil itself.

21. In *West's Patent Press Co. Ltd. and Another vs. Govindnaik Gurunathnaik Kalghatgi and Others-AIR 1984 Noc 274 (Kar)*, this Court has held that in a building lease, if the tenant built on the open site leased to him, then, by virtue of the doctrine of dual ownership, he would have the ownership of the building, and if he let out the building, it would not amount to subletting of the lease-hold property, for the lease-hold property was only an open site.

22. In *Balumal P. Seth Vs. Giryappa*, , this Court was considering the protection available to sub-tenants inducted by tenant with express consent of landlord. In this case, a vacant site was let out by the landlord in favour of respondent No. 4 for a period of 20 years on a monthly rental of Rs. 200/-. The lease deed provided that the tenant shall construct a building according to the plan got sanctioned by the Corporation. The building was to be constructed by the tenant at his own expense, and apart from the ground floor and the first floor as shown in the plan, the tenant was at liberty to construct other storeys thereon and use it for himself and for others at his instance according to his convenience. After the expiry of 20 years, the tenant was to deliver possession of the building as it then stood with atleast the ground floor and the first floor. The landlord gave notice to the tenant as also to the sub-tenants calling upon them to hand over vacant possession of the building on 6.1.1986 as the term of 20 years was to expire on that day. Since the tenant and the subtenants did not vacate the premises, the landlord filed a petition for eviction on various grounds. Relying on the decision in *Dr. K.A. Dhairyawan's* case (supra), this Court has held as under:

Applying the principles laid down by the Supreme Court to the facts of the instant case, all that can be said is that the landlords in view of the contract became the owners of the super-structure on the expiry of the term of the lease, and if they so desired, could recover rent from the sub-tenants. However, for seeking eviction of the tenants, they have necessarily to resort to the procedure laid down in the Karnataka Rent Control Act, which they have done in the instant case. They have therefore to make out a ground for eviction of the occupants from the premises in question. The decision in *Dr. Dhairyawan's* case can be of no assistance in deciding whether in pursuance of the decree for eviction passed

against the tenant, the sub-tenant can also be evicted with the aid of Section 30 of the Act, because the status of the sub-tenants inducted by the tenant did not fall for consideration before the supreme Court. 23. The Apex Court in *Ratan Lal Jain and Others Vs. Uma Shankar Vyas and Others*, , has considered a similar question. It has been held as under:

6. Clause (h) of Section 108 of the Transfer of Property Act, 1882 confers a right on the lessee to remove either during or even after the determination of the lease, at any time whilst he is in possession of the property leased but not afterwards, all things which he has attached to the earth which will include any building raised by him on the leased land. However, such right is subject to a contract or local usage to the contrary. In the present case, clause 16 of the lease deed obliges the lessee to hand over, at the end of the lease, all the construction with fittings and tenancy to the owners. In the facts very similar to those before us, this Court held in *K.A. Dhairyawan (Dr.) V. J.R. Thakur* that although under Section 108 of the TP Act, the lessee had the right to remove the building but by the contract he had agreed to hand over the same to the lessors without the right to receive, compensation at the end of the lease. The matter would be governed by the contract between the parties. Such a contract did not transfer the ownership in the building to the lessors only while the lease subsisted. Obviously at the end of the lease, the things attached to earth by the tenants pass over to lessor-owners of land in accordance with the contract. On determination of lease, as entered into between the parties the consequences which follow are: (i) the lease of land comes to an end, (ii) the ownership of building raised by principal tenants stand vested in the lessor-owners of land, the building goes with the land, (iii) the principal tenants have to physically vacate the property, and (iv) the lessor-owners stand subrogated in place of principal tenants. 24. In the instant case, the Corporation is the owner of the land. Under the lease deed at Annexure "C" the petitioner was put in possession of the said land. It was a term lease for 60 years under which the petitioner was permitted to put up a construction. The petitioner has constructed a multi-storied complex thereon as per the plan sanctioned by the Corporation. None of the clauses in the lease deed positively state that the building to be erected on the demised land would be in the ownership of the Corporation. There was no impediment in the way of the parties to have had a clause in a positive form to that effect. In the absence of such a clause, it cannot be said that the Corporation is the owner of the building. By virtue of the doctrine of dual ownership, the petitioner has become the owner of the building. The petitioner has not violated any of the conditions of the lease. The lease of the building by the petitioner in favour of third parties did not amount to sub-letting as the lease hold property was only the land. On this ground, the Corporation cannot evict the petitioner from the land and the building in question. On the expiry of the period of lease, the building constructed by the petitioner will vest with the Corporation free from all encumbrances. If the petitioner violates any of the terms of the lease insofar as the land is concerned, it can be evicted from the land and the building

notwithstanding the un-expired period of lease.

25. That brings me to the second question as to whether the Corporation is justified in initiating action for eviction of the petitioner under the provisions of the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974?

26. Annexure "N" is the notice issued by the Corporation under Section 4(1) of the Public Premises Act calling upon the petitioner as to why it should not be evicted from the land and building in question. The ground urged in the notice is that petitioner has sub-let the building in favour of third parties in violation of Clause 11 of the lease deed. Clause 11 of the lease deed bars the petitioner from subletting or parting with possession of the land. On the expiry of the period of lease, the building constructed by the petitioner vests with the Corporation free from all encumbrances. Clause 15 states that the Corporation shall have the right to revoke the lease and resume possession of the land with the building constructed thereon if the lessee contravenes any of the terms and conditions of the lease deed. As has been noticed above, under the lease, petitioner was permitted to use the land for construction of the building for commercial purpose. He has not sub-let the land in question. I have already held that petitioner is the owner of the super structure. As the owner of the super structure, he has let out different portions of the building to different tenants. On the expiry of the period of 60 years, the building constructed by the petitioner vests with the Corporation free from all encumbrances. The petitioner has not parted with possession of the land. Therefore, the question is whether the leasing of the buildings to the tenants attracts the provisions of the Public Premises Act?

27. The Apex Court in Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others, , has considered an identical question. In the said case, it has been held thus:

87. The Express Buildings constructed by Express Newspapers Pvt. Ltd., with the sanction of the lessor i.e. the Union of India, Ministry of Works and Housing on Plots Nos. 9 and 10, Bahadurshah Zafar Marg demised on perpetual lease by registered lease deed dated March 17, 1958 can, by no process of reasoning, be regarded as public premise belonging to the Central Government under S. 2(e). That being so, there is no question of the lessor applying for eviction of the Express Newspapers Pvt. Ltd., under S. 5(1) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 nor has the Estate Officer any authority or jurisdiction to direct their eviction under sub-sec. (2) thereof by summary process. Due process of law in a case like the present necessarily implies the filing of suit by the lessor i.e. the Union of India, Ministry of Works and Housing for the enforcement of the alleged right of re-entry, if any, upon forfeiture of lease due to breach of the terms of the lease.

(emphasis supplied by me)

28. This Court in Col. S.P. Anand vs. The Competent Officer, Secretary to

Bangalore Development Authority, Bangalore and Another-2001 (6) KLJ 72, was considering the eviction of an allottee from a site allotted by the BDA and the house constructed by the petitioner thereon with the sanction of the competent authority. It is held that the premises cannot be considered as a public premises belonging to the authority. Consequently, there is no jurisdiction to direct eviction of the allottee therefrom. Due process of law requires filing of suit for enforcement of its right of revoking the allotment and for re-entry. Eviction proceedings was accordingly quashed by this Court reserving liberty to the BDA to take suitable action before the Civil Court in a properly constituted suit. It has been held thus:

In this case, as stated above, the question of tenancy does not arise in view of the fact that the building in question was constructed by the petitioner spending money and the same was also according to the plan and specifications granted by the BDA. Therefore, it cannot be construed as a public premises. 29. Therefore, it cannot be said that petitioner has unauthorisedly sub-let portions of the building. The building in question cannot be treated as public premises. The petitioner is the owner of the said building. The Corporation becomes the owner of the building after the expiry of 60 years from the date of execution of the lease deed. It is only when the petitioner violates the terms of the lease, the Corporation is at liberty to terminate the lease and resume possession of the land and building notwithstanding the unexpired period of lease. The petitioner has not violated any of the terms of the lease. If that is so, the action initiated by the Corporation for eviction of the petitioner under the provisions of Public Premises Act is without authority of law.

30. At this stage, it is necessary to consider the contention of the learned Counsel for the Corporation that the building put up by the petitioner forms part of the land leased by the Corporation having regard to Section 3(17) of the Karnataka General Clauses Act. 1899. Therefore, the Corporation is justified in invoking the provisions of the Public Premises Act for eviction of the petitioner.

31. The object of the Public Premises Act is to indicate the meaning of an expression in a generic and not in a rigid or exhaustive sense and shorten the language of statutory enactments and to provide for uniformity of expression in case where there is identity of subject matter. Whatever the General Clauses Act says as regards the meaning of the words or as regards the legal principles has to be read into every statute to which it applies provided the statute does not contain anything repugnant to them in its subject or context and does not produce a different intention. In *N. Subramania Iyer Vs. The Official Receiver, Quilon*, the Apex Court has held that the General Clauses Act is enacted in order to shorten language used in parliamentary legislation and to avoid repetition of the same words in the course of the same piece of a legislation. Such an Act is not meant to give a hide-bound meaning to terms and phrases generally occurring in legislation. That is the reason why the definition section contains words like "unless there is anything repugnant in the subject or context".

32. Section 2(e) of the Public Premises Act defines "public premises" as any premises belonging to or allotted to State Government or taken on lease or requisitioned by or on behalf of the State Government and includes any premises belonging to or taken on lease by different parties mentioned therein. "Premises" has been defined in Section 2(c) as any land or any building or hut or part of a building or hut and includes the garden, grounds and outhouses if any, appertaining to such building or hut or part of a building or hut, and any fittings affixed to such building or hut or part of a building or hut for the more beneficial enjoyment thereof.

33. In the instant case, the premises let out by the petitioner is the super structure which is not a public premises. It belongs to the petitioner. The expression "premises" or "public premises" are not defined in the General Clauses Act. The object of Public Premises Act is to provide for a speedy remedy for eviction of the unauthorised occupants from public premises. When the expression "public premises" has not been defined in the General Clauses Act, it is unnecessary to import the definition of the expression "immovable property" into the Public Premises Acts.

34. The third contention of the learned Counsel for the petitioner is that the Corporation is authorized to demolish the building in question constructed over the storm water drain having regard to Section 288 of the Karnataka Municipal Corporations Act, 1976. The impugned notices have not been issued under Section 288 of the said Act. Be that as it may.

35. Section 288(1) authorises the Commissioner to grant licence subject to such conditions as he may think fit to the owner or occupier of any premises to put up or continue to have verandahs, balconies, sun-shades, weather frames and the like to project over a street or in streets in which the constructions of arcades has been sanctioned by the Corporation to put up or continue to have an arcade or to construct any step or drain covering necessary for access to the premises. Sub-section (2) authorises the Commissioner to grant licence subject to such conditions and restrictions as he may think fit for any temporary construction in any street or in any public place the control of which is vested in Corporation. Sub-section (4) states that on the expiry of any period for which a licence has been granted or after due communication of an order of suspension or revocation of such licence, the Commissioner may, without notice, cause any projection or construction put up under sub-section (1) or (2) to be removed. These provisions have no application because petitioner has taken possession of the land under a lease deed for a period of 60 years and put up construction thereon. Section 288(4) does not provide for evicting a tenant from the property belonging to the Corporation or to demolish the building lawfully constructed by the petitioner. It authorizes the Commissioner to remove the projections or constructions put up by the licencees after the expiry of the period of licence or after suspension or revocation of the licence.

36. In Wajid's case (supra) relied on by the learned Counsel for the Corporation,

this Court was considering the removal of bunk shops put up by the petitioners therein on the foot path and sub-ways within the Corporation limits. It was held that encroachment of any type including bunk shops on the foot path is not permitted by the statute. There is no power in the Corporation to grant permission to put up even bunk shop on the foot path. The Corporation is competent to remove the obstructions, projections in or upon the streets, bridges and other public places. The Court has further held that Section 288 of the Act when compared to Public Premises Act becomes a special statute and it overrides the provisions of the Public Premises Act. In the instant case, we are not considering the removal of encroachments under Section 288(4) of the Act. Therefore, the aforesaid decision is not applicable to the facts of this case.

37. That brings me to the last contention of the respondent that the object of the lease deed at Annexure "C" has become unlawful as it is opposed to public policy. It is argued that the subject matter of the lease is the portion of the land lying over the storm water drain. The storm water drain is meant for draining the overflowing water which floods the roads, pavements and adjoining properties. Having regard to Section 23 of the Indian Contract Act, 1872, the contract has eventually become void.

38. Section 23 of the Contract Act lays down that the consideration or object of an agreement is unlawful if it is forbidden by law, or would defeat the provisions of any law, or would involve injury to the person or property of another or the Court considers it immoral or opposed to public policy. The Contract Act does not define the expression "public policy". The public policy is the principle which declares that no man can lawfully do that which has a tendency to be injurious to the public welfare. Public policy comprehends the protection and promotion of public welfare. It is a principle of law under which freedom for contract or private dealings is restricted by the law for the good of the community. A contract which has the tendency to injure public interest or public welfare is one against public policy. The concept of public policy is not immutable since it must vary with the changing needs of the society. It does not remain static. It changes with passage of time.

39. In *Nagle vs. Fielden*-1966(2) QB 633, it was stated that the law relating to public policy cannot remain immutable. It must change with passage of time. The wind of change blows upon it.

40. The Andhra Pradesh High Court in *Ratanchand Hirachand Vs. Askar Nawaz Jung and Others*, has observed that in a modern progressive society with fast changing social values and concepts, it becomes more and more imperative to evolve new heads of public policy. Law cannot afford to remain static. The principles governing public policy are thus capable on proper occasion of expansion or modification. If there is no head of policy which covers a case, then the Court must in consonance with public conscience and in keeping with public goods and public interest, declare practices which were considered normal at one time, but have become obnoxious and oppressive to public conscience, to be

opposed to public policy.

41. In *Associated Cement Companies Ltd. Vs. The State of Rajasthan and Another*, , it has been held thus:

Public policy does not remain static in any given community. It may vary from generation to generation and even in the same generation. Public Policy would be almost useless if it was to remain in fixed moulds for all time. The difficulty of discovering what public policy is at any given moment certainly does not absolve the Judges from the duty of doing so. In conducting an enquiry, Judges are not hide bound by precedent. The Judges must look beyond the narrow field of past precedents, though this still leaves open the question, in which direction they must cast their gaze. The Judges are to base their decision on the opinions of men of the world, as distinguished from opinion based on legal learning. In other words, the Judges will have to look beyond the jurisprudence and that in so doing, they must consult not their own personal standards or predilections but those of the dominant opinion at a given moment, or what has been termed customary morality. 42. In *Gurmukh Singh Vs. Amar Singh*, , the Apex Court has held as under:

Public policy is not static. It is variable with the changing times and the needs of the society. The march of law must match with the fact situation. A contract tending to injure public interest or public welfare or fraudulent to defeat the right of the third parties is void under Section 23 of the Contract Act. 43. The legislature often fails to keep pace with the changing needs and values nor is it realistic to expect that it will have provided for all contingencies and eventualities. It is, therefore, not only necessary, but obligatory on the Courts to step in to fill the lacuna. (See *Rattan Chand Hira Chand Vs. Askar Nawaz Jung (Dead)* by Lrs and Others, .

44. The Karnataka Municipal Corporations Act, 1976 authorises the Corporation to lease the lands in question. The agreement was executed on 24.9.1980 for a period of 60 years. The State Government has accorded approval to execute the lease deed. The contention of the Corporation is that the construction of the building over the storm water drain prevents free flow rain water resulting in submergence of the area during the rainy season. It is further submitted that at the time when the lease deed was executed, City of Bangalore had not developed to today's extent. Encroachment and construction over storm water drain has caused obstruction to the free flow of storm water. In public interest, flooding of roads, pavements must be avoided. The Corporation should ensure that Bangalore City is equipped with obstruction free storm water drains, which will channelise the flood water properly. Thus, the contract has now become unlawful. Whether the contract has eventually become void with the passage of time as contended by the learned Counsel for the Corporation is a question of fact. The impugned notices have not been issued on this ground. Therefore, I refrain from recording my observations on this question. The Corporation is at liberty to initiate appropriate proceedings on this ground.

45. In Ranganayakamma's case (supra) relied on by the learned Counsel for the Corporation the Apex Court has held that a void document is not required to be avoided whereas voidable document must be. Whether the lease deed is a void document or not is not the subject matter of this writ petition.

46. It is relevant to note that the Corporation is not helpless to remove the obstruction for the free flow of storm water in the drain in question. It is permissible to acquire the lease hold rights of the petitioner in the land and its ownership rights in the building constructed thereon in accordance with law. The writ petition is accordingly allowed. The notices at Annexure "K" and "N" dated 4.7.2011 and 30.7.2011 respectively are hereby quashed. No costs.