

(2008) 02 MAD CK 0231

In the Madras High Court

Case No : Writ Petition No. 3789 of 2006 and WPMP. No. 4057 of 2006 and
WVMP. No. 1435 of 2006

Murray and Co.

APPELLANT

Vs

Appellate Authority under Central Act 40 of 1971 Public
Premises (Eviction of Unauthorised Occupants) Act V. Addl.
Judge and Life Insurance Corporation of India

RESPONDENT

Date of Decision : 26-02-2008

Acts Referred:

Constitution of India, 1950 — Article 12, 162, 21, 309
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 2, 3, 4,
4(1), 4(2)
Transfer of Property Act, 1882 — Section 106

Citation : (2008) 4 MLJ 639

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : K.C. Rajappa, for the Appellant; R. Muthukumarasamy for M.B.
Gopalan, for R.2, for the Respondent

Final Decision : Dismissed

Judgement

P. Jyothimani, J.—This writ petition is directed against the judgement and decree of the first respondent, the Appellate Authority, passed u/s 9 of Public Premises (Eviction of Unauthorised Occupants) Act (Central Act 40 of 1971) in CMA. No. 72 of 2005 dated 25.01.2006, confirming the order of eviction passed by the Estate Officer, Life Insurance Corporation of India, South Zone, Chennai dated 10.05.2005, from the premises situate at No. 149, 151, 151-A, Anna Salai, Chennai 600 002.

2. The petitioner, which is a Partnership Firm is carrying on Auctioneer profession. The petitioner has administrative office at No. 340, Thambu Chetty Street, Chennai 600 001 and its place of auction, show room and godown are situate at No. 149 and 151, Anna Salai, Chennai 600 002, in an extent of 5005 sq.ft. and in No. 151-A, Anna Salai in an extent of 583 sq.ft. The property

originally belonged to M/s. Kushaldas & Sons, from whom the petitioner obtained lease on 01.03.1930 and put up superstructures in the form of Zinc sheet shed in the extent of 2800 sq.ft. out of the total extent of 5588 sq.ft. On 01.08.1953, M/s. Kushaldas & Sons have sold the leased land to the second respondent, Life Insurance Corporation of India (in short, LIC of India) and the petitioner's lease was attorned by the LIC of India.

2(a). On 01.01.1982, the second respondent, LIC of India has granted lease of the premises for a period of three years on a consolidated rent of Rs. 1,000/- per month and subsequently, it was increased to Rs. 2,000/- per month by renewal of lease on 01.09.1985. Further, the lease was renewed on a consolidated rent of Rs. 2,715/- per month on 01.09.1990; Rs. 3660/- per month from 01.09.1995; and to Rs. 11,000/- by renewing the lease on 01.09.2000, out of which, Rs. 10,000/- being the rent for the building and Rs. 1,000/- being the rent for the land. Therefore, according to the petitioner, it was granted renewal from time to time on a revised enhanced rent and it has been paying the rent regularly to the second respondent, LIC of India.

2(b). According to the petitioner, the second respondent, LIC of India has sent letters dated 21.07.2003, 21.10.2003 and 14.11.2003, calling upon the petitioner for discussion at the LIC Office and in the meeting, where the Secretary (Estates) and the Assistant Secretary (Estates) have told the petitioner that the rent will be refixed and asked the petitioner to wait for finalisation of the renewal. However, on 18.03.2004, the second respondent has terminated the tenancy in respect of the leased premises.

2(c). The petitioner has sent a reply on 06.04.2004, stating that when discussion regarding the renewal of lease on a revised rent is pending, it is not open to the second respondent to unilaterally terminate the tenancy and that the petitioner is always willing to pay the enhanced rent. Even for the period when the discussions were going on for renewal during November, December, 2003 and January, 2004, the petitioner has been paying rent regularly and the same was accepted by the second respondent by passing receipts.

2(d). The Estate Officer of the second respondent, LIC of India has sent a notice to the petitioner on 22.06.2004 u/s 4(1) of the Public Premises (Eviction of Unauthorised Occupants) Act (Central Act 40 of 1971) (in short, "the Act"), treating the petitioner as an unauthorised occupant and called upon it to show-cause, why it should not be evicted from the leased premises on the basis that there was no subsisting lease agreement. The petitioner sent a reply on 09.07.2004, stating that under the facts and circumstances and taking into consideration that the petitioner has been in the premises for five decades and negotiations were going on for renewal of lease as it has been done in the past, the petitioner cannot be treated as an unauthorised occupant.

2(e). The Estate Officer, who is the Enquiring Authority under the Act, conducted an enquiry by giving opportunity to both the parties and after completing the

enquiry, reserved the matter for orders in September, 2004. However, without passing orders, the Estate Officer has sent a notice on 03.02.2005, enclosing a letter dated 13.01.2005 of the second respondent, LIC of India, seeking to place certain new materials to show as if the demised premises are in dilapidated condition and are to be demolished. The petitioner came to know that after the enquiry before the Estate Officer is completed, the second respondent, LIC of India has approached the Corporation of Chennai and obtained a demolition plan sanctioned in respect of the property and wanted to place the said materials before the Estate Officer along with some photographs.

2(f). The petitioner has filed an objection on 03.03.2005 before the Estate Officer, opposing the said application by the second respondent, however, the Estate Officer has rejected the opposition by the petitioner, passed an order u/s 5(1) of the Act on 10.05.2005 in Petition No. 19 of 2004, and directed the petitioner to vacate the leased premises within 15 days from the date of receipt of the order, since the Estate Officer has concluded on the basis that when the tenancy in respect of the public premises is terminated, the tenant loses its authority to be in occupation and therefore, the tenant will be treated as an unauthorised occupant.

2(g). The petitioner has filed an appeal u/s 9 of the Act before the Appellate Authority, first respondent herein, viz., The Principal Judge, City Civil Court, Madras and ultimately, the same was heard by the V Additional Judge, City Civil Court, Madras in CMA. No. 72 of 2005. After arguments, the appellate authority, has dismissed the appeal by judgement dated 25.01.2006.

2(h). The said order of the appellate authority is challenged by the writ petitioner on various grounds, including that the said order is vitiated by error on the face of record, since it proceeded on wrong presumption that the petitioner has questioned the termination notice dated 18.03.2004, forgetting the fact that the petitioner has challenged the show-cause notice dated 22.06.2004, purporting to be a notice under Sections 4(1) and 4(2) of the Act, and therefore, the challenge is not in respect of the termination notice issued u/s 106 of the Transfer of Property Act.

2(i) That apart, it is the case of the petitioner that the impugned order of the first respondent is perverse. According to the petitioner, when the order of the Estate Officer shows that such a tenant cannot be treated as a trespasser, even though it may be regarded as an unauthorised occupant u/s 2(g) of the Act, it is not correct for the first respondent, appellate authority to decide as if the petitioner has become an unauthorised occupant, by merely giving notice of termination, and the first respondent has failed to consider the Scheme of the very Act, particularly when the Act contemplates cogent procedure of hearing and also filing of appeal.

2(j). There is a distinction between a case where termination notice of lease is challenged before the Court and a case which arises under the Central Act 40 of

1971, based on issuance of show-cause notice and thereafter reply and then order passed on merits. It is the further case of the petitioner that the first respondent has failed to take into consideration that when the negotiation between the petitioner and the second respondent was going on in respect of renewal of lease and refixation of rent as it has been done earlier, the termination notice happened to be given and show-cause notice issued and therefore, on the factual situation also the petitioner cannot be treated as an unauthorised occupant.

2(k). It is the further case of the petitioner that the first respondent has exceeded its summary power arbitrarily passing the eviction order. The impugned order of the first respondent is challenged on the ground that the first respondent ought not have considered that the leased premises in occupation of the petitioner is dilapidated in nature, while the motivation of the second respondent is to get higher rent. According to the petitioner, the first respondent has failed to give purposive interpretation to the provisions of the Act. It is also the case of the petitioner that pending the appeal the petitioner has in fact filed CMP. No. 2718 of 2005, for permission to effect repairs to the leased premises, which was directed to be posted along with the appeal and it does not mean that the petitioner has admitted that the building is in dilapidated condition. It is the further case of the petitioner that the first respondent has acted in excess of its jurisdiction.

3. The second respondent has filed counter affidavit. It is the case of the second respondent that the petitioner is a tenant under LIC of India and the premises being owned by LIC of India, is a public premises as per the Act and the extent of property, viz., 5588 sq.ft. is worth several crores and the same is situate in Anna Salai, Chennai. According to the second respondent, the building is very old, existing for more than 80 years. While the petitioner was paying Rs. 11,000/- as rent per month, which is a very meager amount, the original lease granted to the petitioner came to an end in 1990, and thereafter, there was no fresh lease agreement entered into and since the petitioner was a tenant, its tenancy can be terminated by giving 15 days notice u/s 106 of the Transfer of Property Act.

3(a). It is also the case of the second respondent that merely because the petitioner was a tenant for several years, it does not give permanent right of occupancy to it. It is also the case of the second respondent that inasmuch as no rental agreement is in existence and therefore, the petitioner is governed by Section 106 of the Transfer of Property Act, for terminating the tenancy for which no reasons need be given. By the said notice of termination dated 18.03.2004, the tenancy right of the petitioner was determined and on expiry of the said period given under the notice, the petitioner has to vacate and deliver possession. However, the petitioner gave a reply on 06.04.2004, refusing to vacate the public premises and as per the Act, the possession of the petitioner thereafter is unauthorised occupation, as it has been held in various cases. In

those circumstances, the second respondent approached the Estate Officer, seeking eviction on various grounds.

3(b). It was, after due application of mind and finding that the petitioner is in occupation of a "public premises", the Estate Officer has concluded that the petitioner is an unauthorised occupant and issued a show-cause notice u/s 4 of the Act. It was after due opportunity given to both parties, the Estate Officer found that there is no agreed period of lease and the petitioner was occupying only on monthly rental basis and there has been a valid termination and in spite of the same, the petitioner failed to vacate the premises and therefore, the petitioner is an unauthorised occupant as per the Act. However, before the orders were pronounced by the Estate Officer, the demolition plan sanctioned by the Chennai Corporation has been produced and the Estate Officer has in fact given an opportunity to the petitioner and the petitioner has filed a counter and it was after a detailed enquiry, the Estate Officer came to the conclusion that the petitioner was liable to be evicted and accordingly, the eviction order was passed.

3(c). According to the second respondent, even pending appeal, the petitioner has filed an application admitting that the building requires repair in roof portion and that is sufficient to prove the poor condition of the building, which is more than 80 years old. It was, after elaborate arguments, the first respondent, appellate authority has confirmed the order of eviction, holding that there was no concluded contract for renewal of lease and the termination of lease was valid and the show-cause notice and eviction order passed by the Estate Officer were justified on facts and circumstances.

3(d). That apart, the second respondent denied all the legal grounds raised by the petitioner. It is the further case of the second respondent that the offer of the petitioner to pay higher rent itself cannot be the basis to contend that the second respondent has agreed to extend the lease and is willing to renew the lease in favour of the petitioner, because the petitioner has been paying a very meager amount as rent in respect of a property situate in prime locality. It is the case of the second respondent that the appellate authority has comprehensively dealt with the entire issue and hence, it does not require or warrant any interference.

4. Mr. K.C. Rajappa, learned Counsel appearing for the petitioner has submitted that the notice issued by the Estate Officer u/s 4(1) of the Act itself is arbitrary. In this regard, his submission is that when the discussion between the petitioner and the second respondent was going on in respect of extension of lease with increase in rent, there was no necessity for the Estate Officer to invoke the provisions of Section 4(1) of the Act. It is his further contention that issuance of said show-cause notice u/s 4(1) is not bona fide in the sense that the contract between the parties are about to be concluded, since discussion was going on and in the absence of any decision taken by the second respondent on the negotiation, Act 40 of 1971 cannot be enforced.

4(a). On the facts of the case, his further submission is that when the Estate

Officer has reserved the matter for orders in September, 2004, it was not open to him to receive any additional documents and give further notice on 03.02.2005 on the basis that the second respondent has produced some other documents to show that the premises is in dilapidated condition. According to him, the Estate Officer has no power or jurisdiction to reopen the case at all. Therefore, he submits that the Estate Officer having reserved the orders in September, 2004 and kept quite till February, 2005, the second respondent filed application for additional documents. He would also submit that to receive additional documents, the second respondent in fact has filed no petition at all. Therefore, once show-cause notice was given u/s 4(1) of the Act and after enquiry, the matter was reserved for orders, there is no power vested in the Estate Officer to reopen the case and the Estate Officer is duty bound to pronounce orders on the basis of the materials available. According to the learned Counsel for the petitioner, in the present case it appears that the Estate Officer has waited for some other materials from the second respondent and after receiving the materials, given notice to the petitioner as well as to the second respondent, to which he has no jurisdiction.

4(b). According to the learned Counsel, in the absence of statutory powers to issue second show-cause notice, it should be treated as excess of jurisdiction. His further submission is that the conduct of the second respondent, LIC of India, in having discussion with the petitioner in respect of enhanced rent, taking into consideration its previous conduct by which every year the lease period has been extended after negotiation and rent has been increased, should be treated as an estoppel by conduct and in this regard, he would also rely upon the judgements, viz., Food Corporation of India v. Babulal Agrawal 2004 (3) LW 12 and K.M. Mohan Vs. The District Collector and Others, .

4(c). His basic contention is that the petitioner cannot be termed as an unauthorised occupant. He submits that when the purpose of the Act 40 of 1971 is to give speedy remedy of taking possession in respect of "public premises", in the absence of statutory protection to the tenants, the authorities under the Act are expected to act more cautiously. He would also rely upon the judgement of the Supreme Court in Crawford Bayley and Co. and Others Vs. Union of India (UOI) and Others, . The learned Counsel for the petitioner has fairly submitted that he is not questioning the notice of termination issued by the second respondent u/s 106 of the Transfer of Property Act. His submission is only based on the validity or otherwise of the show-cause notice issued by the Estate Officer u/s 4(1) of the Act.

4(d). He would also submit that the public authority like the Estate Officer is expected to act not like an ordinary landlord. He would also rely upon the judgement of the Supreme Court in Jamshed Hormusji Wadia Vs. Board of Trustees, Port of Mumbai and Another, . He would submit that the decision of the public authorities must not be arbitrary and the conclusion should not be unjustified and relied upon the judgement of the Supreme Court in Bharat

Petroleum Corporation Ltd. v. Maddula Ratnavalli and Ors. 2008 (1) LW 165. Ultimately, he would submit that one of the reasons assigned by the Estate Officer as well as the appellate authority for passing orders viz., the premises is in dilapidated condition, is arbitrary and unjustified, since that point was never raised at any point of time by the second respondent before the Estate Officer as a ground, while issuing show-cause notice u/s 4(1) of the Act and therefore, according to him, the Estate Officer has no jurisdiction to take new materials for consideration.

4(e). According to the learned Counsel for the petitioner, the petitioner is a leading auctioneer in the State and carrying on business for many long years and by virtue of various letters of the second respondent, the petitioner has been accepting the enhanced rent and extension of lease and in such circumstances, the second respondent ought to have chosen either of the courses before it approached the Estate Officer. According to him, Act 40 of 1971 confers valuable right on the tenant. In this regard, he would also reiterate the decision of the Bombay High Court in Minoo Framroze Balsara Vs. The Union of India and others, . He would also rely upon an Official Memorandum issued by the Government giving guidelines and directions to the public authorities to be followed while resorting to eviction of public premises. His further submission is that even after the notice issued u/s 106 of the Transfer of Property Act, the petitioner has got a right not to be dispossessed. He would also place reliance upon the judgement in Dr. Yash Paul Gupta Vs. Dr. S.S. Anand and Others, .

5. Per contra, Mr. R. Muthukumarasamy, learned senior counsel appearing for the second respondent, by referring to the definition of "public premises" and "unauthorised occupation", would submit that an unauthorised occupant is a person who is in occupation without authority or continue to occupy after the authority is concluded or a person who is allowed to occupy and who continues to be in occupation even after the termination of agreement/lease, which need not be for any reason. Therefore, according to the learned senior counsel, under the Act, which provides for summary procedure, there is no necessity to give any reason for termination of tenancy. He would also submit that when the petitioner has made it very clear that it is not questioning the termination notice issued by the second respondent, it has to be presumed that the petitioner is no longer a tenant.

5(a). He would submit that the object of the Act must be taken into consideration as a whole and if the purpose of the present Act, which provides for summary procedure for the purpose of eviction, should be interpreted to give reason for eviction, then it will be worse than the Rent Control Act and that is not the purport of the Act dealing with "public premises". Therefore, according to the learned senior counsel, the premises under the Public Premises (Eviction of Unauthorised Occupants) Act, is different from the premises under the Rent Control Act or the common law. He would submit that even under the common law by giving a notice u/s 106 of the Transfer of Property Act, without assigning

any reason, an Ejectment suit can be filed and the same analogy is applicable for eviction of a person who is in occupation of the public premises under the Act 40 of 1971.

5(b). To substantiate his contention that no reason need be given for the purpose of termination, he would rely upon the judgement in *Jiwan Das v. LIC of India and Anr.* 1994 (3) SCC (Suppl.) 394 apart from the judgements in *Jain Ink Manufacturing Company Vs. Life Insurance Corporation of India and Another*, ; and *Commissioner, Jalandhar Division and Others Vs. Mohan Krishan Abrol and Another*, . On the other hand, in the present case, the second respondent has issued a termination notice on 18.03.2004, giving reason, which is not necessarily to be given. His submission is that the procedure followed by the Estate Officer is perfectly in order and valid in law. With regard to additional documents submitted by the second respondent before the Estate Officer, his contention is that the Estate Officer is authorised to see any further document and there is absolutely no bar on the part of the Estate Officer while conducting enquiry u/s 5 of Act 40 of 1971 to consider subsequent developments. In the present case, at the time of enquiry before the Estate Officer, the application for demolition was pending before the Chennai Corporation and after the matter was reserved by the Estate Officer, the demolition order was received from the Chennai Corporation and that was also placed before the Estate Officer. The Estate Officer, in conformity with the principles of natural justice, has, in fact given an opportunity to the petitioner and the petitioner having participated in the proceedings, is not at all entitled to question the conduct of the Estate Officer.

5(c). He would also submit that the appellate authority has given a correct reason, which does not require/warrant any interference. His submission is that the direction to be followed for eviction of public premises, which is relied upon by the learned Counsel for the petitioner, has no statutory force and such direction cannot be treated as a bar to take any further proceedings under the Act. In this regard, he would also rely upon the judgement of the Supreme Court in *Union of India and Others Vs. S.L. Abbas*, . He would also submit that any executive instructions cannot be issued when the field is occupied.

5(d). His further submission is that when Act 40 of 1971 prescribes the entire procedure, there is no question of issuing any executive instruction. He would rely upon various judgements, viz.,

(i) *B. Sundararajan v. Government of Tamil Nadu* 1997 WLR 391;

(ii) *The Association of Management of Private Colleges, etc. and Ors. v. The State of Tamil Nadu, etc. and Ors.* 1997 WLR 647 (DB);

(iii) *Uttam Parkash Bansal v. LIC of India* 2002 DLT 497 (DB); and

(iv) *Mirta Lina Private Ltd. v. LIC of India* 1999 (2) CLJ 457.

He would ultimately submit that such instructions cannot place a fetter on the statutory powers of the executive authority, by relying upon the judgement of

the Supreme Court in Indian Aluminium Company Vs. Kerala State Electricity Board, . His further submission is that the power given to the Estate Officer under the LIC Act cannot be taken away by the executive instructions.

5(e). He would submit that the second respondent is not estopped by its conduct. At no point of time the second respondent has made any representation that the petitioner will continue to be a tenant on payment of enhanced rent. The negotiation cannot be treated as a representation, inasmuch as there is no renewal. He would rely upon the judgement of the Supreme Court in M/s. Pawan Alloys and Casting Pvt. Ltd., Meerut etc, etc. Vs. U.P. State Electricity Board and others, . He would submit that the question of estoppel does not arise. It may be case of legitimate expectation for renewal and that is not a ground for giving relief, for which he relied upon the judgement of the Supreme Court in Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries, .

6. I have heard the learned Counsel for the petitioner and the learned senior counsel for the second respondent and perused the entire records, considered each and every aspects of the case.

7. At the outset, it is clear that the premises, which is the subject matter in the writ petition, viz., Old Door Nos. 100, 101 and 101-A and New Nos. 149, 151 and 151-A, Anna Salai, Chennai 600 002 respectively and in possession of the petitioner are public premises, within the meaning of Section 2(e) of the Act and in the present case, the said Act is applicable. The object of the Act is for speedy recovery of possession in favour of the Government or statutory bodies from persons who are occupying the places by way of summary eviction procedure. The premises in occupation of the petitioner belongs to the second respondent, which is a Corporation, established under the Central Act, as per Section 2(e)(2) (ii) of the Act. The other requirement is that the petitioner, who is in occupation should be an unauthorised occupant.

8. The term "unauthorised occupation" is defined u/s 2(g) of the Act, which is as follows:

2(g) "unauthorised occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant of any other mode of transfer) under which he was allowed to occupy the premises, has expired or has been determined for any reason whatsoever.

9. Therefore, under the Act to constitute as an unauthorised occupation, the person must be,

- (i) in possession of public premises; and
- (ii) His possession must be without authority for occupation; or
- (iii) Person in possession of the public premises continuous in occupation after

authority has expired; or

(iv) the authority by which a person was allowed to occupy the premises expires or stands terminated for any reason whatsoever.

By applying the above said requirements of "unauthorised occupation" to the facts and circumstances of the case and on the categoric admission by the petitioner and the learned Counsel for the petitioner that the second respondent, who is the owner of the public premises has terminated the tenancy by letter dated 18.03.2004, which is the requirement u/s 106 of the Transfer of Property Act and the same has not been disputed or challenged by the petitioner or his counsel, the petitioner has to be treated as an unauthorised person who was holding the authority under the agreement which was subsequently terminated or determined.

10. It is also significant to note that Section 2(g) of the Act makes it explicit that in cases of such termination of authority of a person to occupy, it can be for any reason whatsoever and therefore, the reasonability of such reason cannot be questioned. A reference to the said termination notice issued by the second respondent dated 18.03.2004, is as follows:

You are the tenant under us in respect of the property comprising of the following area in Door No. 101(old), Anna Salai, Chennai 600 002 for which a rent of Rs. 11,000/- is being paid by you.

1. 2400 sq.ft. In the ground floor of the United India building (old).
2. 2059 sq.ft. Open ground at the back of the building
3. 77 sq.ft. For toilet
4. 583 sq.ft. In the old Hindi cell
5. 469 sq.ft. Area open to sky.

For such an area situated in the heart of Chennai behind the landmark LIC Building, the returns to the corporation is very meager. It has therefore been decided to resume possession of the premises for taking suitable steps for securing better returns.

Accordingly your tenancy shall stand terminated on expiry of 15 days from the date of receipt of this notice after which you are called upon to vacate and hand over vacant possession to us.

The above termination notice makes it very clear that the second respondent has terminated the tenancy of the petitioner and decided to resume possession for the reason that the returns to the Corporation is very meager.

11. It is very strange for the petitioner to contend that by virtue of various letters of the second respondent dated 21.07.2003, 21.10.2003 and 14.11.2003, the petitioner was made to believe that the second respondent would renew the

lease on higher rent and in this way, it is admitted by the petitioner itself that the rent paid by it to the second respondent is low, and the petitioner has failed to prove that after expiry of the last lease granted by the second respondent on 01.09.2000, there was any agreement of lease entered by the second respondent with the petitioner. Therefore, it cannot be said that the petitioner continue to have the authority from the landlord to remain in possession even after the termination and therefore is not an unauthorised occupant. Admittedly, after termination of tenancy issued by the second respondent/landlord, the authority of the petitioner to remain in possession as a legal occupant comes to an end and thereafter, what is required is to follow the summary procedure for eviction under the Act.

12. The petitioner having categorically admitted that it is not questioning the validity of the termination notice issued by the second respondent/landlord dated 18.03.2004 and thereby has become an unauthorised occupant u/s 2(g) of the Act, cannot find fault with the order of the Estate Officer and the first respondent, appellate authority on the basis that the reason for termination or requirement of possession of public premises was either unreasonable or different reason has been adopted subsequently. That is not the intent and purport of the Act.

13. The termination notice issued by the second respondent dated 18.03.2004 is one covered u/s 106 of the Transfer of Property Act, which is as follows:

106. Duration of certain leases in absence of written contract or local usage.-(1) In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months" notice; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days" notice.

(2) Notwithstanding anything contained in any other law for the time being in force, the period mentioned in Sub-section (1) shall commence from the date of receipt of notice.

(3) A notice under Sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.

(4) Every notice under Sub-section (1) must be in writing signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

14. Therefore, the notice of termination is expected to be given only as per the

time schedule granted under the Act and it does not require any reason. The Supreme Court in *Jiwan Das v. LIC of India* and Anr. 1994 (3) SCC (Supp.) 694, while comparing the said provision with that of an order of eviction passed u/s 5(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, has held that when the latter Act empowers the authority to act in public interest and determine the tenancy, it cannot be said that the tenant should be put in higher pedestal as a statutory tenant under Rent Control Act. In the said judgment, the Supreme Court has held as follows:

4. Section 106 of the T.P. Act does indicate that the landlord is entitled to terminate the tenancy by giving 15 days" notice, if it is a premises occupied on monthly tenancy and by giving 6 months" notice if the premises are occupied for agricultural or manufacturing purposes, and on expiry thereof proceedings could be initiated. Section 106 of the T.P. Act does not contemplate of giving any reason for terminating the tenancy. Equally the definition of the public premises "unauthorised occupation" u/s 2(g) of the Act postulates that the tenancy "has been determined for any reason whatsoever". When the statute has advisedly given wide powers to the public authorities under the Act to determine the tenancy, it is not permissible to cut down the width of the powers by reading into it the reasonable and justifiable grounds for initiating action for terminating the tenancy u/s 106 of the T.P. Act. If it is so read Section 106 of T.P. Act and Section 2(g) of the Act would become ultra vires. The statute advisedly empowered the authority to act in the public interest and determine the tenancy or leave or licence before taking action u/s 5 of the Act. If the contention of the appellant is given acceptance he would be put on a higher pedestal than a statutory tenant under the Rent Act. Take for example that a premises is let out at a low rent years back like the present one. The rent is unrealistic. With a view to revise adequate market rent, tenant became liable to ejectment. The contention then is, action is violative of Article 21 offending right to livelihood. This contention too is devoid of any substance. An owner is entitled to deal with his property in his own way profitable in its use and occupation. A public authority is equally entitled to use the public property to the best advantage as a commercial venture. As an integral incidence of ejectment of a tenant/licensee is inevitable. So the doctrine of livelihood cannot indiscriminately be extended to the area of commercial operation. Therefore, we do not find any substance in the contentions of the appellant. The appeal is accordingly dismissed. No costs.

15. In the latest judgement rendered in *Commissioner, Jalandhar Division and Others Vs. Mohan Krishan Abrol and Another*, , the Supreme Court, while dealing with the Punjab Public Premises and Land (Eviction of Rent Recovery) Act, 1973, has held that after the expiry of a period of lease, when subsequently it was not renewed, the public premises is deemed to be in authorised occupation. The operative portion of the judgement is as follows:

12. The only question, therefore, which remains to be decided is whether the competent authority was right in coming to the conclusion that Respondent 1

was in unauthorised occupation of the property as defined u/s 3(b) and, therefore, liable to be evicted u/s 5 of the 1973 Act.

13. As stated above, during the lifetime of Smt. Chanan Kaur, a lease was executed in favour of Respondent 1 on 7-6-1962 for ten years. Clause 8 provides for renewal and not for extension of lease. Hence, Respondent 1 was required to apply for renewal which he never did. The so-called application dated 22-5-1972 for renewal merely states that there was a lease deed dated 7-6-1962 and on its expiry, the lessee would continue. In this case, the intention of the testatrix under the Will was to bequeath her bungalow to the Hospital absolutely and free of all encumbrances and for all times. She wanted her bungalow to be used as a ward in the government hospital. In the circumstances, we are of the view that on expiry of the lease, Respondent 1 was in wrongful and illegal use and occupation of the property in the nature of unauthorised occupation and, therefore, the competent authority was right in passing the impugned order of eviction under the 1973 Act.

Therefore, it is clear that there is no requirement of showing any independent ground for eviction, and validity or otherwise of the reasons cannot be the ground for an unauthorised occupant to sustain his possession.

16. u/s 4 of the Act, if the Estate Officer is of the opinion that any person is in unauthorised occupation and therefore, he should be evicted, he shall give notice specifying the grounds. Section 4 of the Act is as follows:

Section 4. Issue of notice to show cause against order of eviction.- (1) If the estate officer is of opinion that any persons are in unauthorised occupation of any public premises and that they should be evicted, the estate officer shall issue in the matter hereinafter provided a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.

(2) The notice shall:

(a) specify the grounds on which the order of eviction is proposed to be made; and

[(b) require all persons concerned, that is to say, all persons who are, or may be, in occupation, or claim interest in, the public premises:

(i) to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than seven days from the date of issue thereof, and

(ii) to appear before the estate officer on the date specified in the notice along with the evidence which they intend to produce in support of the cause shown, and also for personal hearing, if such hearing is desired.]

(3) The estate officer shall cause the notice to be served by having it affixed on the outer door or some other conspicuous part of the public premises, and in such other manner as may be prescribed whereupon the notice shall be deemed

to have been duly given to all persons concerned.

17. It is in accordance with the provisions of the Act, in this case, the Estate Officer has given a notice to the petitioner on 22.06.2004, giving various reasons, which include the notice for termination of tenancy issued by the second respondent dated 18.03.2004 and after narrating the grounds, having satisfied that the petitioner is in unauthorised occupation, the Estate Officer has issued the said notice. The grounds enumerated in the said notice issued by the Estate Officer are as follows:

1. That you, the Respondent were a tenant under Life Insurance Corporation of India, the Petitioner in respect of the Public Premises.
2. The Respondent was occupying a large extent of property of 5588 sq.ft. Portion in United India Building (old) Door No. 100 (old)/New (149), 101, (New 151) and 101A (New 151A) Anna Salai Chennai 600 002 carrying on commercial business and paying rent of Rs. 11000/- per month from September 2000 onwards.
3. There is no subsisting lease agreement and as such the tenancy was on a month to month basis only.
4. A final termination notice was issued to the Respondent on 18.3.2004 terminating the tenancy on expiry of 15 days from the date of receipt of notice.
5. The notice dated 18.3.2004 was duly served on the Respondent on 31.3.2004.
6. That you, are continuing to remain in the Public Premises even after expiry of the notice period and have failed to remove yourselves from the Public Premises as required in the notice of termination of tenancy.
7. That, on the expiry of 15 days from the date of receipt of the termination notice dated 18.3.2004, there is no authorisation for you, the Respondent, to remain in occupation of the Public Premises and you are an unauthorised occupant and therefore liable to be evicted from the Public Premises.

Now therefore, in pursuance of subsection (1) of Section 4 of the Act, I hereby call upon you to show cause on or before 9th July 2004, why such an order of eviction should not be made.

And in pursuance of Clause b(ii) of subsection (2) of Section 4 of the P.P. Act, 1971, I also call upon you to appear before me in person or through a duly authorised representative capable of answering all material questions connected with the matter along with the evidence which you intend to produce in support of the cause shown, on 9th July 2004 at 3.00 p.m. for personal hearing.

18. Section 5 enables the Estate Officer to pass orders subsequently after giving opportunity to the parties, which is summary in nature. On the factual position and as per law laid down by the Apex Court, it is clear that if a person is in unauthorised occupation, there is absolutely no reason to presume that the

notice issued by the Estate Officer u/s 4(2) of the Act is either arbitrary or mala fide in nature. The further contention of the learned Counsel for the petitioner that the order of eviction passed by the Estate Officer u/s 5(1) of the Act on the basis of the subsequent development, viz., the additional documents filed by the second respondent is not maintainable for the reason that it was not raised as a ground in the notice issued by the Estate Officer u/s 4(2) of the Act, is also not sustainable.

19. A reference to the order passed by the Estate Officer u/s 5(1) of the Act dated 10.05.2005 shows that he has taken into consideration the grounds given in the notice u/s 4(2) of the Act. The additional document was taken only as an additional ground stating that the LIC's requirement for developing the property is genuine and bonafide. In my considered view, that itself cannot be taken to declare that the decision of the Estate Officer in ordering eviction is arbitrary, especially in the circumstances that the petitioner has not challenged the termination notice and by virtue of that after the expiry of the time granted u/s 106 of the Transfer of Property Act, the petitioner became an unauthorised occupant of the public premises.

20. The further contention raised by the learned Counsel for the petitioner that the Estate Officer as well as the first respondent should have considered that the second respondent is estopped by the conduct since there were representation and deliberations by the parties is also not sustainable. In fact, the Estate Officer as well as the appellate authority have taken into consideration in detail the said contentions and held that inasmuch as the petitioner's tenancy was terminated in accordance with law by the second respondent and there is no tenancy created subsequently, the occupation of the petitioner should be treated as an unauthorised occupation in a public premises as per the Act. Therefore, the reliance placed on by the learned Counsel for the petitioner in *Food Corporation of India v. Babulal Agrawal* 2004 (3) LW 12 and *K.M. Mohan Vs. The District Collector and Others*, , has no relevancy to the factual circumstances in this case.

21. The next judgment on which the reliance was placed by the learned Counsel for the petitioner is *Minoo Framroze Balsara Vs. The Union of India and others*, . As submitted by the learned Counsel for the petitioner himself, the Bombay High Court has narrated the procedures to be followed by the Estate Officer while giving notice u/s 4(2) of the Act, stating that he must be first prima facie satisfied that the person is in authorised occupation of the premises and secondly he should be satisfied that such person should be evicted and the notice must also give reason, so as to enable the occupant to give proper reply. The portion of the said judgement relied upon by the learned Counsel for the petitioner is as follows:

34. The provisions of the Eviction Act, 1971, can be applied to persons who are in unauthorised occupation of public premises. A person, by reason of Section 2(g), is in unauthorised occupation if his occupation is without authority. He is in unauthorised occupation if he continues to occupy public premises after the

authority under which he was allowed to occupy the same has expired or has been determined for any reason whatsoever. The provisions of the Eviction Act, 1971, therefore, entitle the Government company or corporation which is the owner of the public premises to terminate for any reason whatsoever the authority of the occupant to occupy the same and, by so doing, place the Government company or corporation and the occupant in the position of landlord and tenant governed by the provisions of the Transfer of Property Act. The provisions of Sections 4 and 5 of the Eviction Act, 1971, deal with the procedure for the eviction of an unauthorised occupant and must be read together. Section 4 prescribes that the unauthorised occupant must be issued with a notice in writing to show cause why an order of eviction should not be passed against him. That notice has to be issued by the Estate Officer provided he is of the opinion that the addressee of the notice is in unauthorised occupation of public premises and that he should be evicted. Prima facie satisfaction of the Estate Officer is a sine qua non of the issuance of the show cause notice. The prima facie satisfaction must be two-fold; firstly, that the addressee is in unauthorised occupation of public premises, and, secondly, that, he should be evicted. The notice must set out the grounds on which the order of eviction is proposed to be made. It must, therefore, state not only why the addressee is thought to be in authorised occupation but also why it is thought that he should be evicted. It must inform the addressee that he is entitled to show cause against the proposed order of eviction. The addressee cannot effectively show cause unless he knows why the Estate Officer is of the opinion that he is in unauthorised occupation. He also cannot show effective cause unless he knows why his eviction is proposed. The provisions of Section 4 make it clear that the addressee may seek a personal hearing from the Estate Officer and may lead evidence for the purposes of showing cause against the proposed order of eviction. This is clear also from the provisions of Section 8 which vest in the Estate Officer the powers of a Civil Court in regard to the summoning of witnesses and examining them on oath and the discovery and production of documents.

Applying the ratio laid down by the Division Bench of the Bombay High Court on the factual situation in this case, there is absolutely no difficulty to come to the conclusion that the Estate Officer has in fact come to the conclusion that the petitioner is in unauthorised occupation and it should be evicted and he has given so many reasons, which have been ultimately followed by him while passing final order u/s 5(1) of the Act. The above said judgment is of no assistance to the case of the petitioner.

22. Again, the learned Counsel for the petitioner has placed reliance on the judgment of the Supreme Court in *Bharat Petroleum Corporation Ltd. v. Maddula Ratnavalli and Ors.* 2008 (1) LW 165, which is of no use to the petitioner's case. In that case, the Supreme Court has held that the executive actions must be fair and objective satisfaction must be the basis for any such action and State, "should act bona fide and not arbitrarily while acting as a landlord or tenant". In that case the Supreme Court was dealing with the Bharat Petroleum Corporation

Limited as a lessee of the respondent, who got an order of eviction against the said Corporation in the first appellate Court, which was subsequently confirmed in the second appeal and considering the stand of the Corporation that the Corporation which has succeeded the previous lessee viz., Bhurma Shell Oil Storage and Distributing Company of India Ltd., was paying the rent at the rate of Rs. 50/- and the Corporation has been taken over by an enactment and therefore, as a tenant, the Corporation is entitled to continue as a tenant on the same basis, the Supreme Court has elaborately dealt with the fairness of reasons of the executive authorities by quoting various judgements and ultimately held as follows:

26. Reasonableness and non-arbitrariness are the hallmarks of an action by the State. Judged from any angle, the action on the part of the appellant does not satisfy the test of fairness or unreasonableness. It being wholly arbitrary cannot be sustained.

23. Needless to state that in this case, we are dealing with unauthorised occupation and the action taken by the authorities under the Act, viz., the Estate Officer and the appellate authority, and not about the action of the second respondent LIC. This is relevant, because the petitioner as well as its counsel have made it very clear that they are not questioning the action of the second respondent in terminating the tenancy of the petitioner by issuing notice dated 18.03.2004 u/s 106 of the Transfer of Property Act. In such circumstances, even assuming that there has been a prior discussion between the second respondent and the petitioner for enhancement of rent, it was only due to the reason that the discussion was not fruitful, ultimately, the second respondent has given termination notice, which is valid in law. Therefore, the petitioner having taken the stand categorically that it has not questioned the termination notice issued by the second respondent, cannot be permitted to raise the question of reasonableness or unreasonableness of the notice or action of the second respondent, which has taken place before the termination notice issued as stated above. That apart, as far as the action of the authorities under the Act, viz., the Estate Officer as well as the first respondent is concerned, there is absolutely no reason to come to the conclusion that it is arbitrary in nature.

24. The other Supreme Court judgment relied upon by the learned Counsel for the petitioner is Crawford Bayley and Co. and Others Vs. Union of India (UOI) and Others, . It is a case, wherein the Supreme Court has upheld the amendment to the Public Premises (Eviction of Unauthorised Occupants) Act 40 of 1971, which provides that an officer of the statutory authority alone should be appointed as an Estate Officer in respect of the public premises and it further provides that the Central Act 40 of 1971 will prevail over the State Act, viz., Maharashtra Rent Control Act, 2000, which was ultimately upheld by the Supreme Court, wherein it was held that the purpose of Act 40 of 1971 is to provide speedy measure to recover public premises and for that purpose the Act was enacted, holding that there is no discrimination, in the following terms:

13. ...In the context of the need for speedy and expeditious recovery of public premises for utilisation for important public uses, where dilatoriness of the procedure may defeat the very object of recovery, the special procedure prescribed by the two Acts was held not to be really and substantially more drastic and prejudicial than the ordinary procedure of a Civil Court. The special procedure prescribed by the two Acts, it was observed, was not so substantially and qualitatively disparate as to attract the vice of discrimination.

25. The learned Counsel for the petitioner also placed reliance on certain guidelines issued to prevent arbitrary eviction from public premises, and one such guidelines issued by the Government of India is, "Fresh guidelines to prevent arbitrary eviction from public premises" dated 27.06.2002. In the said guidelines, a reference to Public Premises (Eviction of Unauthorised Occupants) Act 40 of 1971 is made and it is explained as to how the public authorities should get vacant possession in respect of public premises and it also directed the public undertaking to review all pending cases before the Estate Officer or Courts with reference to said guidelines. The guidelines are as follows:

In order to prevent arbitrary use of powers to evict genuine tenants from public premises under the control of Public Sector Undertaking and financial institutions, a notification has been issued seeking to limit the use of powers by the Estate Officers.

The resolution already notified by the Ministry of Urban Development and Poverty Alleviation in the Gazette, states that the provisions of Public Premises (Eviction of Unauthorised Occupants) Act 1971 should be used "primarily to evict totally unauthorised occupants of the premises of public authorities or subletees, or employees who have ceased to be in their service and thus ineligible for occupation of the premises.

The guidelines stipulate that the "provisions of the P.P.(E) Act 1971 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 the 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.

The resolution further states that the fact of unauthorised occupation shall be decided by following the due procedure of law. The notification specifies that the contractual agreement shall not be wound up by taking advantage of the provisions of P.P.(E) Act 1971. Moreover, the public authorities would have rights similar to private landlords under the Rent Control Act in dealing with genuine legal tenants to secure periodic revision of rent.

In order to give "no room for allegations" regarding selective eviction done for the purpose of securing an unwarranted increase in rent or that a change in tenancy was permitted so as to benefit particular individuals or institutions, the guidelines lay down that the release of premises or change of tenancy should be decided at the level of Board of Directors of public sector undertakings.

And finally the resolution says that "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.

26. The LIC of India is a statutory creation by the Parliamentary enactment; therefore, the property in dispute, which belongs to the LIC of India is a public premises as per Section 2(e) of the Act. The Government of India has appointed the Estate Officer u/s 3 of the Act. The nature of function and the procedure to be followed by the Estate Officer in issuing show cause notice and also passing order of eviction are clearly dealt with under the Act itself. In fact the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 have been framed, which also explain the manner of conducting enquiry and the procedure to be followed by the appellate authority in appeal and all other minute details. While so, the question to be considered in the light of the reliance placed on by the learned Counsel for the petitioner, the above said guidelines is, to what extent the guidelines is binding.

27. It is well settled that in the presence of the statutory provisions, any such guidelines or executive instructions cannot have the nature of enforceability in law. While dealing with the fundamental rules framed under Article 309 of the Constitution of India, the Supreme Court has held in *Union of India and Others Vs. S.L. Abbas*, that any guidelines issued by the Government does not confer any legally enforceable right. The said guidelines referred to by the Supreme Court stipulates that as far as possible the husband and wife must be posted in the same place. Holding that no doubt the guidelines requires the spouses to be posted at one place as far as practicable, the Apex Court held that it does not enable any spouse to claim such posting as a matter of right, if the Departmental authorities do not consider it feasible.

28. While dealing with the validity of a Government Order that 50% of seats in All Unaided Colleges should be filled with Government quota, which was purported to be issued as an executive instruction under Article 162 of the Constitution of India, the Division Bench of this Court consisting of Shivaraj Patil, J. (as he then was) and P.D. Dinakaran, J. in *Association of Management of Private Colleges v. State of Tamil Nadu* represented by its Secretary to Government, Higher Education, Chennai-9 and Ors. 1997 WLR 647 has held,

Having regard to the fact that the field is already occupied relating to admission of students in the private unaided self-finance colleges, the impugned Government Order issued invoking Executive power under Article 162 of the Constitution cannot be sustained. The impugned order does not give the background, reasons or necessary for issuing it.

The same was the view taken by E. Padmanabhan, J. in *B. Sundararajan v. Government of Tamil Nadu* represented by the Special Commissioner and Secretary to Government, Municipal Administration and Water Supply

Department, Madras 1997 WLR 391.

29. In *Indian Aluminium Company Vs. Kerala State Electricity Board*, the Three Judge Bench of the Supreme Court while dealing with the Electricity Supply Act, 1948 in respect of Section 49, which relates to the power of the Electricity Board to enhance rates for supply of electricity, held as follows:

10. Having analysed the provisions of Section 49, we may now turn to consider the argument advanced on behalf of the Board that a stipulation binding the Board not to charge anything more than a specific rate would be void as it would have the effect of divesting the Board of the power to fix and re-fix charges entrusted to it u/s 49, or hindering or fettering its future exercise. Now, if there is one principle more well settled than any other, it is that when a public authority is entrusted by statute with a discretionary power to be exercised for the public good, it cannot, when making a private contract in general terms, fetter itself in the use of that power or in the exercise of such discretion. There are a number of decisions which would establish this principle beyond doubt. We may refer to a few of them in order to appreciate the true scope and ambit of this principle - what is its area of operation and what are its limitations.

30. Therefore, on the factual position of this case, the second respondent, LIC of India has been created by the Parliamentary enactment, for whom the Estate Officer has been appointed u/s 3 of the Act which contains exhaustive provisions regarding his powers, and hence, any executive instruction cannot be a fetter on the statutory powers. Even on a reference to the said guidelines relied upon by the learned Counsel for the petitioner, there is nothing to infer against the proceedings of the Estate Officer as well as the appellate authority, viz., the first respondent.

31. While dealing with the principle of promissory estoppel against the State in granting any exemption or concession or rebate for a specific period to a class of persons in public interest without any promise or representation and withdrawing such concession prior to the specified period under the Electricity (Supply) Act, 1948, the Supreme Court has held in *Pawan Alloys and Castings Private Limited v. U.P. State Electricity Board and Ors.* 19976 (7) SCC 251, that the principle of promissory estoppel has no application. It was held that even though the State can be held responsible for promissory estoppel, the necessary ingredient must be that based on such representation, the persons claiming estoppel should have changed their position. Ultimately, the Supreme Court has held in the following words.

10. It is now well settled by a series of decisions of this Court that the State authorities as well as its limbs like the Board covered by the sweep of Article 12 of the Constitution of India being treated as "State" within the meaning of the said article, can be made subject to the equitable doctrine of promissory estoppel in cases where because of their representation the party claiming estoppel has changed its position and if such an estoppel does not fly in the face of any

statutory prohibition, absence of power and authority of the promisor and is otherwise not opposed to public interest, and also when equity in favour of the promisee does not outweigh equity in favour of the promisor entitling the latter to legally get out of the promise.

32. On the facts and circumstances of this case, as I have narrated above, there is absolutely no sufferance or detriment on the part of the petitioner merely because the representations have been made by the second respondent for negotiation in respect of fixation of rent, especially in the circumstances that the second respondent has never agreed for renewal of lease after the termination, which was effected on 18.03.2004. In view of the reasons enumerated above, I do not see any justification to interfere with the impugned order of the first respondent on any of the grounds raised by the petitioner.

With the result, the writ petition fails and the same is dismissed. No costs. Connected miscellaneous petitions are closed.

After delivery of the judgment, Mr. K.C. Rajappa, learned Counsel appearing for the petitioner would submit that as per the Act, 14 days time is given for delivery and Notice was already given and the writ petitioner is likely to be dispossessed at any time, even before filing of the Appeal. In view of the same, the respondents shall not disturb possession of the petitioner for a period of three weeks from this date.