

(2019) 01 UK CK 0035

In the Uttarakhand High Court

Case No : Writ Petition (M Of S) No. 4317 Of 2001 (Old No. Writ Petition (M Of S) 6647 Of 1984)

Shri Amar Nath Seth

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 11-01-2019

Acts Referred:

Constitution Of India, 1950 — Article 227
Life Insurance Corporation Act, 1956 — Section 45
United Provinces (Temporary) Control Of Rent And Eviction Act, 1947 — Section 1(A), 3A, 7, 9
Estates Officer Under The Provisions Of The Public Premises (Eviction Of Unauthorised Occupants) Act, 1971 — Section 2(g), 2(2)(g), 4(1), 5, 5(1), 7(3)
Uttar Pradesh Urban Buildings (Regulation Of Letting, Rent And Eviction) Act, 1972 — Section 2, 2(1)(a), 43(1)
Code Of Civil Procedure, 1908 — Section 115
Transfer Of Property Act, 1882 — Section 106
Evidence Act, 1872 — Section 116
Bombay Rent Act, 1973 — Section 15A
Public Premises Act, 1971 — Section 15

Citation : (2019) 01 UK CK 0035

Hon'ble Judges : Ramesh Ranganathan, CJ

Bench : Single Bench

Advocate : Dharmendra Barthwal, Siddhartha Bisht

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. The jurisdiction of this Court, under Article 227 of the Constitution of India, has been invoked by the petitioner seeking a writ of certiorari to quash the orders dated 21.10.1982 and 17.01.1983 passed by the third respondent; and the orders dated 23.02.1984 and 27.02.1984 passed by the second respondent.

2. Facts, to the extent necessary, are that the Life Insurance Corporation of India (the "LIC" for short) was the owner of a group of buildings called the Bharat

Insurance Buildings at Dehradun. The said building was previously owned by M/s Mansa Ram & sons who sold the property to Bharat Insurance Co. Ltd on 22.04.1955. In view of Section 45 of the Life Insurance Corporation Act, 1956, the entire assets of the Bharat Insurance Co. Ltd. were transferred to and vested in the LIC w.e.f. 06.07.1960. The said premises were broken into five different numbers, and nearly a dozen multi-storied blocks was constructed thereupon. After the property was purchased by Bharat Insurance Co. Ltd., they continued to let out the shops and quarters. The petitioner herein (Sri A.N. Seth) claims to be the tenant of one of the shops from 1956. As he was a permanent defaulter, Suit for ejectment and recovery of arrears of rent was filed against him. On 10.06.1959, the petitioner (Sri A.N. Seth) filed an application before the Rent Control and Eviction Officer, Dehradun praying that the annual reasonable rent of the entire group of buildings be determined. The LIC submitted its objections thereto contending, among others, that Sri A.N. Seth was a persistent defaulter in payment of rent, and seven Suits for recovery of rent had been filed against him. The Rent Controller passed an order on 17.02.1961 holding that these buildings were pre-1951 constructions, and came under the purview of the United Provinces (Temporary) Control of Rent and Eviction Act, 1947 (the "1947 Act" for short).

3. On the LIC invoking the jurisdiction of the Allahabad High Court by way of Civil Misc. Writ Petition No.1605 of 1961, seeking a direction to quash the order of the Rent Control and Eviction Officer dated 17.02.1961, the Allahabad High Court, in its order dated 11.01.1965, held that the Rent Control and Eviction Officer had no jurisdiction to determine the annual reasonable rent for the occupants of buildings at the instance of Sri A.N. Seth; the impugned order did not purport to determine the annual reasonable rent, and only held that the buildings in dispute were pre-1951 constructions, and the tenants were directed to intimate vacancy as and when it occurred to the Rent Control Officer; while such an order could be made under Section 7 of the Act but, before the District Magistrate could taken action under Section 7, it had to be shown that the accommodation was such to which the 1947 Act applied; Section 1(A) of the 1947 Act stipulated that, nothing in the 1947 Act shall apply to any building or part of the building which was in erection or was constructed on or after 1st January, 1951; the 1947 Act, therefore, did not apply to a building which was not constructed prior to 1st January, 1951; in respect of such a building, the District Magistrate had no power to pass an allotment order; the LIC had specifically contended that the buildings in dispute were not pre-1951 constructions, but were built thereafter; the LIC was the landlord of hundreds of accommodations in these groups of buildings; the Rent Control Officer did not apply his mind to the question of the identity of the group of buildings; the LIC had contended that the four mud-shops built in 1949 had been demolished, and the present group of buildings were constructed long afterwards; the present buildings were, therefore, new buildings, and the same were not in existence in 1949; the impugned buildings had over a hundred shops, quarters and flats; the letter of Sri K.C. Joshi, the District Relief and

Rehabilitation Officer, to the City Board dated 27.11.1948, spoke of four shops only; Section 1(A) of the 1947 Act excluded applicability of the 1947 Act even to such buildings as were in the course of being constructed on 01.01.1951; the 1947 Act would apply only to such buildings as had been completely constructed prior to 01.01.1951; even if the four shops had been in existence prior to 01.01.1951, until and unless it was found that the present building had been in existence prior to that date, the 1947 Act would not apply; the findings of the Rent Control Officer, that the buildings were pre-1951 constructions, was erroneous; and the Rent Control Officer had completely misdirected himself, and his findings were perverse. The order passed by the Rent Control Officer on 17.02.1961 was quashed, and he was directed not to enforce the order or take any steps in implementation thereof.

4. A leave and license agreement dated 29.04.1963 was executed between the LIC and the petitioner. Subsequently, by notice dated 11.05.1977, the LIC informed the petitioner that the license agreement stood revoked on the expiry of thirty days from the date of service of the notice, and he should vacate the premises. As he failed to do so, the LIC invoked the jurisdiction of the Estates Officer under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (the "1971 Act" for short). The Estates Officer, by order dated 17.01.1983, directed the petitioner to vacate the premises within thirty days. Aggrieved thereby the petitioner preferred an appeal to the District Judge, Dehradun who, by his order dated 27.02.1984, dismissed the appeal, and granted the petitioner three months time to vacate the premises. Aggrieved thereby, the petitioner invoked the jurisdiction of the Allahabad High Court, under Article 227 of the Constitution of India, filing Civil Writ Petition No.6647 of 1984. The said writ petition was re-numbered as W.P. (M/S) No.4317 of 2001 on its being transferred to this Court. The writ petition was allowed by order dated 01.01.2013, and the matter was remanded to the Estates Officer. Aggrieved thereby the LIC preferred SLP (C) No.4640 of 2014, and the Supreme Court, by its order dated 13.04.2017, set-aside the said order, and remanded the matter to this Court.

5. The petitioner's case, as stated in the affidavit filed in support of the writ petition, is that he had taken the subject premises on lease from Bharat Insurance Company Limited in 1956 at a rent of Rs. 37.50 per month and, as proof thereof, receipt dated 07.09.1956, issued by Bharat Insurance Company Limited, was being filed; he had made an application to the Rent Control and Eviction Officer, under Section 3-A of the U.P. Control of Rent and Eviction Act, 1947, on 10.06.1959 for determination of the annual reasonable rent of the premises occupied by the tenants of the building; the Rent Controller had passed an order dated 17.02.1961 holding that the building, in which the subject premises was included, was constructed prior to the year 1951, and fell within the purview of the 1947 Act; the said order of the Rent Controller was challenged by the LIC in Civil Miscellaneous Writ Petition No. 1605 of 1961 wherein they admitted that the petitioner was a tenant, and his tenancy had commenced when

the building was owned by Bharat Insurance Company Limited; the said writ petition was allowed, by order dated 11.01.1965, holding that the said building had not been completely constructed prior to 01.01.1951, and the provisions of the 1947 Act was excluded from operation over the said building by reason of Section 1-A of the Act; and the said building was not governed by the provisions of the 1947 Act. The order passed by the Rent Controller was, therefore, set-aside.

6. It is the petitioner's case that, even after the assets and liabilities of Bharat Insurance Company Limited stood transferred to the LIC in 1960, he continued to be in occupation of the premises; the petitioner took out an agency of LIC in July, 1958, and was attached to the Dehradun branch; after the building stood transferred to the LIC, he submitted a letter asking them to deduct the rent of the building from the commission payable to him; the agency of the petitioner was kept in abeyance by the LIC with effect from the date of his appointment as a Development Officer of the LIC on 09.07.1963; his services as a Development Officer was, however, terminated by order dated 21.11.1964; a notice was issued on 11.05.1977 stating that the petitioner was allowed to occupy the premises as a licensee of the LIC, and as he had made alterations and additions in the premises without the consent of the LIC, they no longer wanted to keep him as a licensee and, as such, the notice of revocation of the licence, and for vacating the premises was issued; the petitioner replied thereto, by letter dated 07.06.1977, stating that he was a valid tenant in the premises, and the notice dated 11.05.1977 was misconceived; the LIC moved an application under Section 5 of the 1971 Act on 15.05.1978 before the Estates Officer; notices, under Sections 4(1) and 7(3) of the 1971 Act, were issued to the petitioner; the petitioner appeared before the Estates Officer and submitted his reply; the statement of the petitioner was recorded on 10.12.1979; the petitioner filed an application on 10.12.1979 seeking a direction to the fourth respondent to produce copies of certain documents, including the judgment of the Allahabad High Court; the said application was rejected by the third respondent by his order dated 10.10.1980; the counsel for the petitioner was unable to appear before the Estates Officer on the date fixed, as he was suffering from dengue; despite a request for adjournment, the third respondent passed an order on 21.10.1982 posting the case for ex-parte hearing; the fourth respondent produced two witnesses on 22.10.1982 who were both employees of the LIC, and their statements were recorded; ex-parte arguments were heard, and orders were passed reserving orders in the case on 22.10.1982; the Estates Officer passed an order on 17.01.1983 holding the petitioner to be an unauthorised occupant; the petitioner was also directed to pay Rs. 64.55 per month for the period from April, 1977 to 10.06.1977, Rs. 1340/- at Rs. 120/- per month from 11.06.1977 to 15.05.1978, and damages of Rs. 120/- per month till delivery of vacant possession of the premises; against the said order, the petitioner preferred an appeal, under Section 9 of the Act, to the District Judge; initially, an order of stay was passed restraining eviction; during the pendency of the appeal,

the petitioner filed an application on 23.02.1984 seeking amendment of the memorandum of appeal by inserting an additional ground that Parliament lacked legislative competence to enact the 1971 Act; the said application was rejected by the District Judge; an order was passed on 27.02.1984 by the District Judge rejecting the appeal, and upholding the order of the Estates Officer dated 21.10.1982; the District Judge held the petitioner to be a mere licensee and not a tenant, and had relied on an agreement dated 29.04.1963, though the said document was just a letter addressed to the LIC; the finding of the District Judge, holding the letter dated 29.04.1963 to be an agreement, is perverse; the letter dated 23.07.1975 used the word "rent" and not "licence fee"; and Parliament lacked legislative competence to enact the 1971 Act.

7. The writ petition was initially heard and allowed by this Court by order dated 01.01.2013, and the matter was remanded to the Estates Officer to decide two questions after affording the petitioner and the respondent an opportunity to adduce evidence. The two questions were (i) whether the petitioner was a tenant or a licensee of the premises in dispute and (ii) whether Parliament had the legislative competence to enact the 1971 Act in so far as it pertained to the property owned by statutory corporations and Government companies situated in areas outside the Union Territories and Cantonment areas. Aggrieved thereby, the LIC carried the matter in appeal, and the Supreme Court, in its order in SLP(C) No. 4640 of 2014 dated 17.04.2017, observed that the question regarding legislative competence of Parliament to enact the 1971 Act could hardly be decided by the Estates Officer and, in any event, did not arise for consideration; and the question, whether the respondent was a tenant or a licensee, could have been decided by the High Court on the basis of the material on record. The order passed by this Court was set-aside, and the matter was remanded for a decision to be taken on the objection of the respondent that he was a tenant and not the licensee of the LIC.

8. Mr. Dharmendra Barthwal, learned counsel for the petitioner, would submit that the petitioner was a tenant ever since 1956, as is evident from the rent receipt dated 07.09.1956; the fact that the petitioner was a tenant has been admitted by the LIC and has, in fact, been recorded by the Allahabad High Court in its order in Civil Miscellaneous Writ Petition No. 1605 of 1961 dated 11.01.1965; the Estates Officer erred in passing an ex-parte order without giving the petitioner a reasonable opportunity of being heard; the District Judge proceeded on the erroneous premise that the petitioner was a licensee and not a tenant; the findings recorded by the District Judge are perverse; in any event, since it is now admitted, on behalf of the LIC, before this Court that the petitioner is a tenant, and as it is evident that he was a tenant even before the 1971 Act came into force, the petitioner was entitled for protection under the 1947 Act, and the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter called the "1972 Act"); and he cannot be evicted from the said premises. Learned counsel would rely on Suhas H. Pophale (2014) 4 SCC 657.

9. On the other hand Mr. Siddhartha Bisht, learned counsel for the LIC, would submit that both the orders passed by the District Judge and the Estates Officer are well considered and reasoned orders which do not necessitate interference in proceedings under Article 227 of the Constitution of India; it hardly makes a difference even if the petitioner is presumed to be a tenant, since, under Section 2(g) of the 1971 Act, the petitioner would, nonetheless, be an unauthorised occupant; Section 2(1)(a) of the 1972 Act makes the said Act inapplicable to a building of which a public sector corporation is the landlord; since the LIC is a Government of India public sector corporation and is, admittedly, the owner of the subject building, the provisions of the 1972 Act has no application; consequently, the petitioner can be evicted under the provisions of the 1971 Act; and the petitioner is, on one pretext or the other, needlessly dragging on proceedings only with a view to avoid his eviction from the subject building. Learned counsel would rely on M/s Jain Ink Manufacturing Company (1980) 4 SCC 435; Ashoka Marketing Ltd. & another (1990) 4 SCC 406; Dr. K.R.K. Talwar AIR 1977 Delhi 189; Advani and Co. & others 2000 All.L.J. 2955, judgments of this Court in State Bank of India Writ Petition (M/S) No. 210 of 2007 dated 25.03.2015 and Prem Chand Writ Petition (M/S) No. 583 of 2014 dated 04.12.2017.

10. As the order of the District Judge, Dehradun dated 27.02.1984, affirming the order of the Estates Officer dated 17.01.1983, is under challenge in this writ petition, it is useful to take note of the contents of the aforesaid orders, and the contents of the notice dated 11.05.1977 which preceded the proceedings initiated by the LIC under the 1971 Act. By proceedings dated 11.05.1977, the LIC informed the petitioner herein that he was allowed as a licensee of the LIC to use, and occupy, the subject shops-cum-residential premises; in terms of the license, he had agreed not to make any alteration or addition to the premises in his occupation without the previous consent of the LIC in writing; but, in violation thereof, he had erected a room roofed with asbestos sheets without the LIC's consent; the LIC was, therefore, serving a notice of revocation of license in respect of the premises under the petitioner's occupation; and the license stood revoked on the expiry of thirty days from the date of service of the notice. The petitioner was informed that, if he did not vacate and surrender vacant possession of the premises, suitable action for ejectment and recovery of damages would be taken against him.

11. The LIC, thereafter, approached the Estate Officer under the 1971 Act who, by his order dated 17.01.1983 and in the exercise of the powers conferred on him by Section 5(1) of the 1971 Act, ordered the petitioner, and all persons who were in occupation of the premises or any part thereof, to vacate the premises within thirty days of the date of publication of the order. The petitioner was informed that, in the event of refusal to comply with the order within the period specified, he and all persons concerned were liable to be evicted from the said premises, if need be, by the use of such force as may be necessary.

12. The order of the Estates Officer dated 17.01.1983 records that an application dated 15.05.1978 was filed by the LIC contending that the petitioner was served the notice dated 11.05.1977 on 12.05.1977, to vacate the premises; since he did not comply with the notice, the LIC had filed an application before the Estates Officer praying for his eviction from the premises, and also claiming arrears of rent and damages; show-cause notice dated 27.07.1978 was issued under Section 4(1) and Section 7(3) of the 1971 Act; these notices were received by the petitioner on 02.08.1978 as per the acknowledgement due receipt; the petitioner had filed his objections on 21.08.1978; the case has been dragging on ever since June, 1978 on the ground of adjournments sought by the petitioner on one pretext or the other; he was specifically informed, vide intimation notice dated 07.05.1982 fixing the case for 11.06.1982, that no adjournment would be allowed; even then the counsel for the petitioner did not appear before the Estates Officer on 11.06.1982 and, instead, sent an application seeking adjournment; the petitioner did not also turn up; nevertheless, in the interest of justice, the case was adjourned; again, vide notice dated 04.10.1982, the case was fixed for final hearing on 21.10.1982; the petitioner was informed that no adjournment would be granted on any count; both the petitioner and his counsel failed to appear even on 21.10.1982; a telegram was received from the counsel of the petitioner that he was suffering from dengue; the petitioner could have made alternative arrangements, even if his counsel was ill; neither the petitioner nor his counsel had paid any heed to the notices; in such circumstances, there was no other option but to proceed ex parte; subsequently, a registered letter dated 18.10.1982 was received at Kanpur on 05.11.1982; the case has been dragging on since 1978 and, despite sufficient opportunities having been granted, neither the petitioner nor his counsel had appeared before the Court; on 22.10.1982, the LIC had produced two witnesses who were administered oath, and their statements were recorded; the arguments of the counsel for the LIC was also heard; the Leave and License Agreement dated 29.04.1963 had been filed, and the signatures of the petitioner was admitted by his counsel; this document had also been proved by the witness of the LIC who had identified the signatures of the petitioner; in terms of the agreement, the petitioner was a licensee of the premises; and his license was legally and validly revoked vide order dated 11.05.1977, which was served on the petitioner on 12.05.1977. An order was passed holding that the petitioner had no authority to occupy the premises, and he was an "unauthorized occupant" liable to be evicted under the 1971 Act.

13. Aggrieved thereby, the petitioner preferred an appeal, in Misc. Civil Appeal No.18 of 1983, before the Learned District Judge, Dehradun. In his appellate order dated 27.02.1984, the Learned District Judge, Dehradun held that the records showed that the case was pending before the Estates Officer from 1978, and the appellant (petitioner herein) had been adopting delaying tactics; he had sought adjournment of the case on 22.08.1978, 27.10.1978, 19.11.1979, 21.01.1980, 10.10.1980, 20.11.1980 and 11.06.1982; he had already been

informed, by the Estates Officer, that it was not convenient for him to grant any further adjournment; the Estates Officer was justified in not granting the prayer of the petitioner to adjourn the case on 21.10.1983; on the said date of hearing, neither the petitioner nor his counsel had appeared before the Estates Officer; on the other hand, the counsel for the petitioner simply sent a telegram requesting for adjournment of the case; sending of a telegram was not a proper presentation of an application for adjournment; and, therefore, the Estates Officer had rightly rejected the said telegram for adjournment of the case.

14. The Learned District Judge, Dehradun rejected the petitioner's contention that he was a tenant and not a licensee of the said premises. He held that the respondent had filed a copy of the agreement dated 29.04.1963 executed by the petitioner himself; in the said agreement, the petitioner had clearly stated that he was in the service of the LIC as an Agent and, by reason of his being in such service and employment, he had been allowed to use and occupy the premises in question as a licensee; in the said agreement, the petitioner had further stated that he was a licensee at will; he also undertook to vacate the premises as soon as his agency was terminated; by making an endorsement on the said agreement, the counsel for the petitioner had admitted the signature of the petitioner on the said agreement; LIC had examined two witnesses to prove the said agreement; they stated that the petitioner was just a licensee in the aforesaid premises; the petitioner did not produce any evidence to show that he was a tenant, and not a licensee; and the evidence was overwhelming to prove that the petitioner was just a licensee in the premises.

15. With respect to the photocopy of the letter dated 23.07.1975 filed by the petitioner, the Learned District Judge observed that a photocopy could not be relied upon as it was not a certified document; reference to the word "rent" in the said letter did not mean that the petitioner was a tenant, and not a licensee; rent could very well mean license fee; the word "rent" could not be connected with tenancy; and the Estates Officer had rightly held that the petitioner was a licensee, and not a tenant. The Learned District Judge further observed that a notice dated 11.05.1977 was sent by the LIC to the petitioner terminating his lease; by making an endorsement on the said letter, the petitioner had admitted receipt of the said notice; the LIC had produced the postal receipt to show that the said notice was sent to the petitioner by registered post on 11.05.1977; the postal acknowledgement of the said notice showed that it was received by the petitioner on 12.05.1977; the license was duly terminated by the LIC; and the petitioner was, therefore, bound to vacate the premises. The Learned District Judge further observed that license fee was fixed as early on 29.04.1963 when the petitioner was in the service of the LIC; thereafter the cost of living had increased, and the premises could easily fetch Rs.120/- per month; and the learned Estates Officer had not committed any error in assessing the damages for unauthorized occupation at Rs.120/- per month. The appeal was dismissed, and the petitioner was granted three months time to vacate the premises, and deliver its peaceful possession to the LIC.

16. As the jurisdiction of this Court, under Article 227 of the Constitution of India, has been invoked by the petitioner, it is necessary to examine the scope of interference by this Court in proceedings under Article 227 of the Constitution of India. Even if the scope of Section 115 of the Code of Civil Procedure has been curtailed, that has not resulted in expanding the High Court's power of superintendence. In exercising its jurisdiction, the High Court must follow the regime of law (*Radhey Shyam and another* (2015) 5 SCC 423). It is not permissible for the High Court, under Article 227 of the Constitution of India, to review or reweigh the evidence upon which the inferior court has passed the order (*Sadhana Lodh* (2003) 1 SCR 567). In cases where there is no error apparent on the face of the record, and the error if any has to be discovered by a long process of reasoning, such jurisdiction would not be exercised (*Satyanarayan Laxminarayan Hegde* (1960) 1 SCR 890; *Venkatlal G. Pittie* (1987) 3 SCR 593; and *Beopar Sahayak (P) Ltd.* (1987) 3 SCR 496).

17. Where two views are possible, and the trial court has taken one view which is a possible and plausible view, merely because another view is attractive, the High Court would be in error in exercising its supervisory jurisdiction, to interfere with the findings of the subordinate court (*Khalil Ahmed Bashir Ahmed* (1988) 1 SCR 1057). However wider its powers may be than the provisions of Section 115 C.P.C, the High Court cannot assume appellate powers (*Satyanarayan Laxminarayan Hegde* (1960) 1 SCR 890), and unlimited prerogative to correct all species of hardship or wrong decisions, and interference must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice where grave injustice would occur unless the High Court intervenes (*Laxmikant Revchand Bhojwani* (1988) 1 SCR 1057 and *Municipal Corporation of Hyderabad rep. by its Commissioner* 2008 (1) ALT 670).

18. The power of superintendence under Article 227, intended to keep subordinate courts within the bounds of their authority (*Dalmia Jain Airways Ltd.* AIR 1951 Cal 193 ; *Waryam Singh* AIR 195 SC 215; and *Nagendra Nath Bora* (1958) 1 SCR 1240), may be exercised in cases such as when (i) the court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction, though available, is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction. (*Municipal Corporation of Hyderabad rep. by its Commissioner* 2008 (1) ALT 670).

19. Under Article 227 of the Constitution of India, the High Court may interfere in cases where there is an error of law apparent on record, (as distinguished from a mere mistake of law), arbitrary or capricious exercise of authority or discretion, a patent error in procedure, or where it results in manifest injustice. Interference would be justified if the subordinate court has come to a conclusion without any evidence or upon manifest misreading of the evidence thereby indulging in improper exercise of jurisdiction. If the evidence on record, on a question of fact, has not been taken into consideration, or if relevant and material documents

have been ignored while arriving at the finding of fact by the inferior court, such finding must be held to be lacking in factual basis (Achutananda Baidya AIR 1997 SC 2007; Mani Nariman Daruwala alias Bharucha (Deceased) through LRs. AIR 1991 SC 1494; and Tranvancore Devaswom Board AIR 1999 SC 519).

20. Findings of fact can also be set aside or ignored if there is no evidence or the finding is so perverse that no reasonable person can possibly come to the conclusion which the Court has come to (Estralla Rubber AIR 2001 SC 3295;; Mohan Amba Prasad Agnihotri AIR 2000 SC 931). Mere errors of fact or of law cannot be corrected unless (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby (Tranvancore Devaswom Board AIR 1999 SC 519). When a court asks itself a wrong question or approaches the question in an improper manner in recording a finding, the said finding of fact cannot be said to be one rendered within jurisdiction, and would be amenable for correction under Article 227 of the Constitution. Failure to record the necessary findings to support its order would also be a jurisdictional error liable to correction (Kishore Kumar Khaitan AIR 2006 SC 1474). Interference is also justified where important evidence has been overlooked and the legal provisions involved are misinterpreted or misapplied (P.V. Hanumantha Rao (2003) 10 SCC 121). The supervisory jurisdiction is to be exercised sparingly, and only in appropriate cases, where the judicial conscience of the High Court dictates it to act lest gross failure of justice or grave injustice occasion. The High Court may feel inclined to intervene where refusal to do so would result in travesty of justice (D.N. Banerji (1953) 4 SCR 302; Municipal Corporation of Hyderabad rep. by its Commissioner 2008 (1) ALT 670).

21. Bearing these principles in mind, let us now consider whether the appellate order of the District Judge dated 27.02.1984 necessitates interference in proceedings under Article 227 of the Constitution of India. On the petitioner's claim that the order of the Estates Officer was in violation of principles of natural justice, Shri Dharmendra Barthwal, learned counsel for the petitioner, would contend that the Estates Officer had erred in passing an ex parte order without giving the petitioner a reasonable opportunity of being heard. On the other hand Mr. Siddhartha Bisht, learned counsel for the LIC, would submit, placing reliance on the judgment of the Delhi High Court, in Dr. K.R.K. Talwar AIR 1977 Delhi 189, that the petitioner was needlessly dragging on proceedings only to avoid an order of eviction being passed against him under the 1971 Act. In Dr. K.R.K. Talwar AIR 1977 Delhi 189, the Delhi High Court observed:

".....The duty to hear an appellant is required by the same basic rule of natural justice which requires every person to be heard before an order affecting his rights can be passed. At the appellate stage this duty is not more onerous than it is at the stage of the original hearing. The rule of audi alteram partem only requires that an opportunity to be heard should be given to the person

concerned. It does not require that even if the said person does not avail himself of the opportunity, an order against him cannot be passed without hearing him. Such an interpretation of the rule would mean that the person concerned may simply refuse to say anything against the order proposed to be passed against him and may thereby stultify the proceedings against him completely with the effect that no order against him can be passed merely because he does not allow it to be passed by merely refusing to defend himself. The same principle should normally apply to an appeal by a person aggrieved by an order against which the appeal is preferred....."

(emphasis supplied)

22. In the present case the petitioner, in his appeal filed before the District Judge against the order passed by the Estates Officer, had contended that the Estates Officer had erred in passing an ex parte order, and in denying him a reasonable opportunity of being heard. In the appellate order dated 27.02.1984, the learned District Judge, Dehradun held that, though the case was pending before the Estates Officer since the year 1978, the petitioner had sought repeated adjournments of the case on 22.08.1978, 27.10.1978, 19.11.1979, 21.01.1980, 10.10.1980, 20.11.1980 and 11.06.1982; he was informed by the Estates Officer that it was not convenient for him to grant any further adjournment; the Estates Officer was justified in not granting the prayer of the petitioner to adjourn the case on 21.10.1983, more so as neither the petitioner nor his counsel had appeared before the Estates Officer; the telegram sent for adjournment was not a proper presentation of the application for adjournment; and, therefore, the Estates Officer was justified in rejecting such a request for adjournment.

23. It is evident, from the material on record, that the claim of the petitioner's counsel, of suffering from Dengue, in the telegram sent by him to the Estates Officer, was not supported by any documentary evidence in proof of his illness. Repeated adjournments were sought by the petitioner, and it is he who failed to avail the repeated opportunities given to him by the Estates Officer. Even otherwise, the order of the Estates Officer has merged in the appellate order of the learned District Judge; and, since the petitioner was heard by the appellate authority and an order was passed on merits, the petitioner's contention of being denied a reasonable opportunity of being heard by the Estates Officer necessitates rejection

24. Neither does the petitioner's claim that he continued as a tenant of the subject premises till proceedings were instituted by the LIC before the Estates Officer under the 1971 Act, nor does his claim of not having executed a leave and license agreement, merit acceptance. The documents filed by the petitioner himself, along with Writ Petition (M/S) No.4137 of 2001, contains a copy of the petitioner's reply to the application made by the LIC to the Estates Officer. In the said reply the petitioner, while stating that he was recognized as a tenant by the LIC, and the LIC had admitted that he was a tenant before the Allahabad High Court in Writ Petition No.1605 of 1961, also claimed that he did not remember

the contents of the agreement dated 29.04.1963 after a long time; he was a tenant from the beginning; after being dismissed from service, by order dated 21.11.1964, he was recognized as a tenant; and the agreement dated 29.04.1963 stood waived and cancelled. While contending that the LIC had not made any construction after 29.04.1963, the petitioner stated that he was not liable to be ejected and he was ready to deposit the entire amount of rent. The petitioner reiterated, before the Estates Officer, that he was a tenant of the premises and not a licensee, after his services were terminated in the year 1964 and he was recognized as a tenant by the LIC, in support of which he relied on a photocopy of the letter dated 23.07.1975 signed by the Affiliating Superintendent.

25. The petitioner filed an application dated 10.12.1979 before the Estates Officer seeking certain documents. In his order dated 10.10.1980, the Estates Officer observed that the petitioner had sought a copy of the leave and license agreement vide his application dated 22.08.1978, which the then Estates Officer had allowed; a copy of the leave and license agreement was supplied to the petitioner; the original leave and license agreement was filed by the LIC, and the same was on record; and the question of supplying a certified copy again of the license agreement did not arise. Curiously the petitioner, while contending before this Court that the leave and license agreement was merely a letter, has chosen not even to file a copy of the said leave and license agreement, or as he claims a letter, along with the writ petition.

26. The stand taken by the petitioner, in his reply to the application made by the LIC to the Estates Officer, was that he did not remember the contents of the agreement dated 29.04.1963; after being dismissed from service by order dated 21.11.1964, he was recognised as a tenant by the LIC; and the said agreement dated 29.04.1963 stood waived and cancelled. It is evident, therefore, that the petitioner, on his own showing, does not dispute having executed the leave and license agreement and merely contends that the said agreement stood waived and cancelled consequent on his dismissal, as a Development Officer of the LIC, by order dated 21.11.1964. The petitioner's contention, that he was a tenant and not a lessee of the subject premises, has been rejected by the learned District Judge. In his order in Misc. Civil Appeal No.18 of 1983 dated 27.02.1984, the learned District Judge, Dehradun had noted that the LIC had filed a copy of the leave and license agreement dated 29.04.1963 executed by the petitioner himself; in the said agreement, the petitioner had clearly stated that he was in the service of the LIC as an Agent and, by reason of his being in such service and employment, he had been allowed to use and occupy the premises in question as a licensee; the petitioner had further stated therein that he was a licensee at will, and undertook to vacate the premises as soon as his agency was terminated; the LIC had adduced evidence, through two witnesses, to prove the agreement; these two witnesses had stated that the petitioner was just a licensee in the said premises; and the petitioner did not produce any evidence to show that he was a tenant and not a licensee.

27. The finding recorded by the District Judge in the impugned order, that the petitioner was a licensee, is based on the evidence on record, and after examining the contents of the leave and license agreement. Except to contend that such a finding is perverse, the petitioner has chosen not even to file a copy of the said agreement along with the writ petition. We see no reason therefore, in proceedings under Article 227 of the Constitution of India, to re-appreciate the evidence on record, and to take a view different from that of the learned District Judge in this regard.

28. It is evident, therefore, that a leave and license agreement was executed between the parties, after the petitioner was appointed as the Development Officer in the LIC; and, in the said agreement, the petitioner had acknowledged that he was a licensee of the subject premises. This license came to be determined by the notice issued by the LIC dated 11.05.1977. Section 2(g) of the 1971 Act defines "unauthorised occupation", in relation to any public premises, to mean 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 or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. Consequent on the determination of the leave and license agreement by notice dated 11.05.1977, the petitioner's continuance in occupation of the subject premises was unauthorized, and fell within the ambit of Section 2(g) of the 1971 Act.

29. In *M/s Jain Ink Manufacturing Company* (1980) 4 SCC 435, on which reliance is placed on behalf of the LIC, the appellant was inducted as a tenant by Sri Mithanlal who was the owner of the subject premises. This premises was purchased by the LIC at a court auction on 19.07.1958; and the appellant, in view thereof, attorned to the new landlord, namely, the LIC. The Delhi Rent Control Act 1958 came into force on 09.02.1959, and the LIC issued notice dated 24.07.1959 determining the tenancy, but this notice was withdrawn. Subsequently, on 23.04.1977, yet another notice was issued directing the appellant to vacate the premises on or before 31.05.1977. As the appellant failed to do so, the LIC preferred a complaint to the Estates Officer. The appellant raised certain objections which mainly related to the jurisdiction of the Estates Officer to proceed under the Premises Act. On these objections being overruled by the High court, the appellant approached the Supreme Court, and contended that the provisions of the Premises Act had no application as he was not an unauthorised occupant, having entered into possession of the premises long before they were purchased by the Life Insurance Corporation; the condition precedent, for assumption of jurisdiction by the Estates Officer, was that the appellant must be an unauthorized occupant; and if the possession of the appellant was lawful, though the property changed hands subsequently, he cannot be dubbed as an unauthorized occupant. It is in this context that the Supreme Court observed:-

".....Section 2(2)(g) defines unauthorised occupation thus :-

'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 or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever."

To begin with, it is manifest that Section 2(2)(g) does not use the word 'possession' or the words 'entry into possession' at any point of time at all. The section merely requires occupation of any public premises. Entry into possession connotes one single terminus, viz., the point of time when a person enters into possession or occupies the property whereas occupation is a continuous process which starts right from the point of time when the person enters into possession or occupies the premises and continues until he leaves the premises. What is germane for the purpose of interpretation of Section 2(2)(g) is whether or not the person concerned was in occupation of the public premises when the Premises Act was passed. In the instant case, it is not disputed that the appellant continued to occupy the property even after the Premises Act came into force and in fact accepted the LIC as his landlord. In these circumstances, therefore, the case of the appellant squarely falls within the ambit of the definition of 'unauthorised occupation' as contemplated by Section 2(2)(g). There is yet another aspect of the matter which distinguishes the present case from the language employed in the Punjab Act. Section 2(2)(g) is an inclusive definition and consists of two separate limbs-(1) where a person is in occupation in relation to any public premises without authority for such occupation, and (2) even if the possession or occupation of the tenant continues after the lease is determined. In the instant case, the lease was doubtless determined by the landlord by a notice under Section 106 of the Transfer of Property Act whose validity for purposes of deciding the question of law has not been questioned by the learned Counsel for the appellant. Therefore, there can be no doubt that the appellant was in unauthorised occupation of the premises once the lease was determined. The second limb mentioned in Section 2(2)(g) is conspicuously absent from the provisions of the Punjab Act. For these reasons, we overrule the first contention raised by the counsel for the appellant and we hold, agreeing with the High Court, that the appellant was undoubtedly in unauthorised occupation of the premises.

..... In the light of the principles laid down in the aforesaid cases we would test the position in the present case.

So far as the Premises Act is concerned it operates in a very limited field in that it applies only to a limited nature of premises belonging only to particular sets of individuals, a particular set of juristic persons like companies, corporations or the Central Government. Thus, the Premises Act has a very limited application. Secondly, the object of the Premises Act is to provide for eviction of unauthorised

occupants from public premises by a summary procedure so that the premises may be available to the authorities mentioned in the Premises Act which constitute a class by themselves....." (emphasis supplied).

30. The judgment of the three Judge Bench of the Supreme Court, in M/s Jain Ink Manufacturing Company (1980) 4 SCC 435, was referred to in Ashoka Marketing Ltd.(1990) 4 SCC 406, wherein a Constitution Bench of the Supreme Court expressed its inability to agree with the submission that the provisions contained in the Public Premises Act cannot be applied to premises which fall within the ambit of the Rent Control Act, and held that the provisions of the Public Premises Act, to the extent they cover premises falling within the ambit of the Rent Control Act, overrode the provisions of the Rent Control Act; and a person, in unauthorised occupation of public premises, could not claim the protection of the Rent Control Act

31. In M/s Jain Ink Manufacturing Co. (1980) 4 SCC 435, the Supreme Court drew a distinction between the word "possession" and "occupation"; and held that continuance, in occupation of the property, even after the 1971 Act came into force, and the tenant's accepting the LIC as its landlord, brought the tenant within the ambit of "unauthorized occupant" under Section 2(g) of the Act. As the petitioner continued in occupation after the 1971 Act came into force, and the LIC was forced to make an application to the Estates Officer under the 1971 Act seeking his eviction, after determining the license by notice dated 11.05.1977, the petitioner's occupation of the public premises fell within the ambit of Section 2(g) of the 1971 Act, and the LIC was justified in invoking the provisions of the 1971 Act seeking his eviction.

32. In examining the question whether the petitioner is entitled to claim protection of the 1947 and the 1972 Rent Control enactments, it is necessary to note that the 1947 Act was an Act to provide for the continuance, during a limited period, of powers to control the letting and the rent of residential and non-residential accommodation and to prevent the eviction of tenants therefrom. Section 1-A, thereof, stipulated that nothing in the 1947 Act shall apply to any building or part of a building which was under erection or was constructed on or after 01.01.1951. By Section 43(1) of the Uttar Pradesh Urban Planning (Regulation of Letting, Rent and Eviction) Act, 1972 (the "1972 Act" for short), the 1947 Act was repealed. Section 2 of the 1972 Act relates to exemptions from the operation of the Act. Section 2(1)(a) of the 1972 Act stipulates that nothing in the 1972 Act shall apply to any building of which the Government or a local authority or a public sector corporation or a Cantonment Board is a landlord.

33. It is not in dispute that the LIC is a public sector corporation falling within the ambit of Section 2(1)(a) of the 1972 Act. Consequently, the 1972 Act has no application to the subject building. Likewise, Section 1(A) of the 1947 Act make the 1947 Act inapplicable to any building or part of a building which was under erection or was constructed on or after 01.01.1951. In the light of the judgment in Civil Miscellaneous Writ Petition No.1605 of 1961 dated 11.01.1965 (a

judgment inter-parties i.e. between the LIC and the petitioner herein), the 1947 Act also has no application to the subject buildings since the Allahabad High court has held that the subject buildings were either under construction or were constructed after 01.01.1951. Since the order of the Allahabad High Court has attained finality, the findings recorded in its judgment are binding inter-parties including on the petitioner herein. An order, passed after a hearing on merits, must bind the parties till set aside in appeal or revision. (Direct Recruit Class II Engineering Officers' Association 1990 SCR (2) 900; UPSRTC AIR 2005 SC 446). In other words, either of the parties will not be permitted to reopen the issue decided by such a decision. (Supreme court Employees Welfare Association²⁹). Issues which have been concluded inter-parties cannot be raised again in proceedings inter-parties (State of Haryana (2004) 12 SCC 673). Consequently, the petitioner is not entitled to claim protection either under the 1947 Act or under the 1972 Act.

34. As the petitioner did not choose to file a copy of the rent receipt, which he now seeks to place reliance upon, (rent receipt allegedly issued by Bharat Insurance Company Ltd. on 07.09.1956), before the District Judge, Dehradun, he cannot, in proceedings under Article 227 of the Constitution of India, place reliance thereupon, and thereby claim to be a tenant of the premises before the 1971 Act came into force w.e.f. 16.09.1958. It matters little even if it is presumed that the petitioner was in occupation of the premises, as a tenant of Bharat Insurance Company, before the 1971 Act came into force w.e.f. 16.09.1958. LIC became the owner of the subject premises, under Section 45 of the Life Insurance Corporation Act, on the assets of Bharat Insurance Company Ltd. vesting in it, during the year 1960. The petitioner has, by claiming to be a tenant of the LIC and not to be a licensee, has admitted that the LIC is his landlord. He has, evidently, attorned in favour of the LIC after the 1971 Act came into force and long before the 1972 Act came into force. Attornment, in its strict sense, is an agreement of the tenant to a grant of the reversion made by the landlord to another, or, as it has been defined, 'the act of the tenant putting one person in the place of another as his landlord. (Uppalapati Veera Venkata Satyanarayanarau AIR 1967 SC 174). Attornment implies a continuity of the tenancy created by the original landlord in favour of the tenant. It is in these circumstances that the existing tenant, for the rest of the period of his tenancy, agrees to acknowledge the new landlord as his landlord. Such an agreement of the tenant amounts to attornment, and by such an attornment the tenant by his act substitutes the new landlord in the place of the previous one. Such attornment is complete the moment the tenant agrees to acknowledge the new landlord to be his landlord.(Uppalapati Veera Venkata Satyanarayanarau AIR 1967 SC 174).

35. Attornment is one mode of recognising a person as one's landlord, just as payment of rent is another mode for the purpose. The tenant is not allowed to impeach the title of a person to whom he has paid rent, or whose title he has otherwise recognized. Simply by attornment, the tenant is estopped from

questioning the derivative title of the landlord's successor. (Uppalapati Veera Venkata Satyanarayanarau AIR 1967 SC 174). Section 116 of the Evidence Act relates to estoppel of a tenant and of license of the person in possession and, thereunder, no tenant of immovable property or person claiming through such tenant shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person, who came upon any immovable property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when the license was given. The petitioner's claim of being a tenant of Bharat Insurance Company in 1956 is, therefore, of no consequence. Production of the rent receipt dated 07.09.1956 by the petitioner, for the first time before this Court, is an afterthought, and to support his specious contention that he was a tenant of the premises even before the 1971 Act came into force w.e.f. 16.09.1958; and that, in the light of the judgment of the Supreme Court in Suhas H. Pophale (2014) 4 SCC 657, the 1971 Act had no application.

36. In Suhas H. Pophale (2014) 4 SCC 657, on which reliance is placed by the petitioner, the principal contention raised by the appellant, even before the High Court, was that his occupation of the concerned premises was protected under the newly added Section 15A of the Bombay Rent Act with effect from 1.2.1973, i.e. prior to the first Respondent acquiring title over the property from 1.1.1974; and, therefore, he could not be evicted by invoking the provisions of Public Premises Act, and by treating him as an unauthorised occupant under that Act. The High Court rejected the said submission holding that the provisions of the Bombay Rent Act was not applicable to the premises concerned, and the said premises were covered under the Public Premises Act. The High Court, principally, relied upon the judgment of a Constitution Bench of the Supreme Court in Ashoka Marketing Ltd. (1990) 4 SCC 406, and held that this judgment rejected the contention that the provisions of the Public Premises Act could not be applied to premises which fell within the ambit of a State Rent Control Act. The High Court held that the Public Premises Act became applicable to the concerned premises from 13.5.1971 itself i.e. the appointed date under the General Insurance (Emergency Provisions) Act, 1971 wherefrom the management of the erstwhile Insurance Company was taken over by the Central Government, and not from the date of merger i.e. 1.1.1974. It is this judgment which was under challenge in appeal, and the Supreme Court observed:-

".....To begin with, it has to be noted that the relationship between the erstwhile insurance company as the landlord and the Appellant as the occupant, at all material times was governed under the Bombay Rent Act. Like all other rent control enactments, this Act has been passed as a welfare measure, amongst other reasons to protect the tenants against unjustified increases above the standard rent, to permit eviction of the tenants only when a case is made out under the specified grounds, and to provide for a forum and procedure for adjudication of the disputes between the landlords and the tenants. The

legislature of Maharashtra thought it necessary to protect the licensees also in certain situations.....

.....In the present matter we are concerned with the question, whether the Respondents could resort to the provisions of the Public Premises Act at a time when the merger of the erstwhile insurance company into the first Respondent was not complete. The question is whether taking over of the management of the erstwhile company can confer upon the Respondent No. 1 the authority to claim that the premises belong to it to initiate eviction proceedings under the Public Premises Act, to the detriment of an occupant who is claiming protection under a welfare enactment passed by the State Legislature.....

.....Having noted the aforesaid observations, it is very clear that in the facts of the present case, the Appellant's status as a deemed tenant was accepted under the state enactment, and therefore he could not be said to be in "unauthorised occupation". His right granted by the state enactment cannot be destroyed by giving any retrospective application to the provisions of Public Premises Act, since there is no such express provision in the statute, nor is it warranted by any implication. In fact his premises would not come within the ambit of the Public Premises Act, until they belonged to the Respondent No. 1, i.e. until 1.1.1974. The corollary is that if the Respondent No. 1 wanted to evict the Appellant, the remedy was to resort to the procedure available under the Bombay Rent Act or its successor Maharashtra Rent Control Act, by approaching the forum thereunder, and not by resorting to the provisions of the Public Premises Act.....

.....In Ashoka Marketing (supra), this Court was concerned with the premises of two Nationalised Banks and the Life Insurance Corporation. As far as Life Insurance Corporation is concerned, the life insurance business was nationalised under the Life Insurance Corporation Act, 1956. Therefore, as far as the premises of LIC are concerned, they will come under the ambit of the Public Premises Act from 16.9.1958, i.e. the date from which the Act is brought into force. As far as Nationalised Banks are concerned, their nationalization is governed by The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, and therefore, the application of Public Premises Act to the premises of the Nationalised Banks will be from the particular date in the year 1970 or thereafter. For any premises to become public premises, the relevant date will be 16.9.1958 or whichever is the later date on which the concerned premises become the public premises as belonging to or taken on lease by LIC or the Nationalised Banks or the concerned General Insurance Companies like the first Respondent. All those persons falling within the definition of a tenant occupying the premises prior thereto will not come under the ambit of the Public Premises Act and cannot therefore, be said to be persons in "unauthorised occupation". Whatever rights such prior tenants, members of their families or heirs of such tenants or deemed tenants or all of those who fall within the definition of a tenant under the Bombay Rent Act have, are continued under the Maharashtra

Rent Control Act, 1999. If possession of their premises is required, that will have to be resorted to by taking steps under the Bombay Rent Act or Maharashtra Rent Control Act, 1999. If person concerned has come in occupation subsequent to such date, then of course the Public Premises Act, 1971 will apply.....

.....It is true that Section 15 of the Public Premises Act creates a bar of jurisdiction to entertain suits or proceedings in respect of eviction of any person in an unauthorised occupation. However, as far as the relationship between the Respondent No. 1, the other General Insurance Companies, LIC, Nationalised Banks and such other Government Companies or Corporations, on the one hand and their occupants/licencees/tenants on the other hand is concerned, such persons, who are in occupation prior to the premises belonging to or taken on lease by such entities, will continue to be governed by the State Rent Control Act for all purposes. The Public Premises Act will apply only to those who come in such occupation after such date. Thus, there is no occasion to have a dual procedure which is ruled out in paragraph 66 of Ashoka Marketing. We must remember that the occupants of these properties were earlier tenants of the erstwhile Insurance Companies which were the private landlords. They have not chosen to be the tenants of the Government Companies. Their status as occupants of the Public Insurance Companies has been thrust upon them by the Public Premises Act.....

.....As far as the eviction of unauthorised occupants from public premises is concerned, undoubtedly it is covered under the Public Premises Act, but it is so covered from 16.9.1958, or from the later date when the concerned premises become public premises by virtue of the concerned premises vesting into a Government company or a corporation like LIC or the Nationalised Banks or the General Insurance Companies like the Respondent No. 1. Thus there are two categories of occupants of these public corporations who get excluded from the coverage of the Act itself. Firstly, those who are in occupation since prior to 16.9.1958, i.e. prior to the Act becoming applicable, are clearly outside the coverage of the Act. Secondly, those who come in occupation, thereafter, but prior to the date of the concerned premises belonging to a Government Corporation or a Company, and are covered under a protective provision of the State Rent Act, like the Appellant herein, also get excluded. Until such date, the Bombay Rent Act and its successor Maharashtra Rent Control Act will continue to govern the relationship between the occupants of such premises on the one hand, and such government companies and corporations on the other. Hence, with respect to such occupants it will not be open to such companies or corporations to issue notices, and to proceed against such occupants under the Public Premises Act, and such proceedings will be void and illegal. Similarly, it will be open for such occupants of these premises to seek declaration of their status, and other rights such as transmission of the tenancy to the legal heirs etc. under the Bombay Rent Act or its successor Maharashtra Rent Control Act, and also to seek protective reliefs in the nature of injunctions against unjustified actions or orders of eviction if so passed, by approaching the forum provided under the

State Act which alone will have the jurisdiction to entertain such proceedings.

.....Learned Senior Counsel for the Respondents Mr. Raval submitted that the judgment of the Constitution Bench in Ashoka Marketing had clarified the legal position with respect to the relationship between the Public Premises Act and the Rent Control Act. However, as noted above, the issue concerning retrospective application of the Public Premises Act was not placed for the consideration of the Court, and naturally it has not been gone into

.....The Bombay Rent Act exempted from its application only the premises belonging to the government or a local authority. The premises belonging to the Government Companies or Statutory Corporations were however covered under the Bombay Rent Act. This position was altered from 16.9.1958 when the Public Premises (Eviction of Unauthorised Occupation) Act, 1958 came in force which applied thereafter to the Government Companies and Statutory Corporations, and that position has been reiterated under the Public Premises Act of 1971 which replaced the 1958 Act. Under these Acts of 1958 and 1971, the Premises belonging to the Government Companies or Statutory Corporations are declared to be Public Premises. Thus, the Parliament took away these premises from the coverage of the Bombay Rent Act under Article 254(1) of the Constitution of India. This was, however, in the matter of the subjects covered under the Public Premises Act, viz. eviction of unauthorised occupants and recovery of arrears of rent etc. as stated above. Thereafter, if the State Legislature wanted to cover these subjects viz. a viz. the premises of the Government Companies and Public Corporations under the Maharashtra Rent Control Act, 1999, it had to specifically state that, notwithstanding anything in the Public Premises Act of 1971, the Government Companies and Public Corporations would be covered under the Maharashtra Rent Control Act, 1999. If that was so done, and if the President was to give assent to such a legislation, then the Government Companies and Public Corporation would have continued to be covered under the Maharashtra Rent Control Act, 1999 in view of the provision of Article 254(2). That has not happened. Thus, the Government Companies and Public Corporations are taken out of the coverage of the Bombay Rent Act, and they are covered under Public Premises Act, 1971, though from the date specified therein i.e. 16.9.1958. After that date, the Government Companies and Public Corporations will be entitled to claim the application of the Public Premises Act, 1971 (and not of the Bombay Rent Act or its successor Maharashtra Rent Control Act, 1999), but from the date on which premises belong to these companies or corporations and with respect to the subjects specified under the Public Premises Act. In that also the public companies and corporations are expected to follow the earlier mentioned guidelines.

.....We have not for a moment taken any position different from the propositions in Ashoka Marketing. We are infact in agreement therewith, and we are not accepting the submission of Mr. Nariman, that only contractual tenancies were sought to be covered under that judgment, and not statutory tenancies.

Tenancies of both kinds will be covered by that judgment, and they will be covered under the Public Premises Act for the subjects specified therein. The only issue is with effect from which date. That aspect was not canvassed at all before the Constitution Bench, and that is the only aspect which is being clarified by this judgment. We are only clarifying that the application of the Public Premises Act will be only from 16.9.1958, or from such later date when concerned premises become Public Premises on the concerned landlord becoming a Government Company or Public Corporation..... (emphasis supplied)

37. In *Suhas H. Pophale* (2014) 4 SCC 657, the relationship between the erstwhile Insurance Company as the landlord, and the appellant as the occupant, was, at all material times, governed under the Bombay Rent Act. The question, which fell for consideration before the Supreme Court, was whether taking over the management of the erstwhile company would confer, on the Oriental Insurance Company Ltd., authority to claim that the premises belonged to it in order to initiate eviction proceedings under the 1971 Act to the detriment of an occupant who was claiming protection under the Bombay Rent Act followed by the Maharashtra Rent Control Act. The Supreme Court held that the appellant's status as a deemed tenant was accepted under the state enactment, and he could not therefore be said to be in "unauthorised occupation"; the right granted to him by the state enactment could not be destroyed by giving retrospective application to the provisions of the 1971 Act, since there was no such express provision in the said Act, nor was it warranted by implication; the premises did not come within the ambit of the 1971 Act, until they belonged to the first respondent i.e. until 1.1.1974; if the Oriental Insurance Company wanted to evict him, the remedy was to resort to the procedure available under the Bombay Rent Act, or its successor the Maharashtra Rent Control Act, by approaching the forum thereunder; and not by resorting to the provisions of the 1971 Act.

38. Unlike in *Suhas H. Pophale* (2014) 4 SCC 657, in the present case neither the provisions of the 1947 Act nor that of the 1972 Act (the rent control legislations) are attracted. The Allahabad High Court, in its order in Civil Misc. Writ Petition No.1605 of 1961 dated 11.01.1965, has categorically held that the 1947 Act has no application since the subject building had not been completely constructed before 01.01.1951. As, admittedly, the LIC became the owner of the subject premises in the year 1960, several years before the 1972 Act came into force on 15.07.1972 vide gazette notification dated 27.06.1972, the 1972 Act does not also apply in view of Section 2(1)(a) thereof, which stipulates that nothing in the 1972 Act shall apply to any building of which a public sector corporation is the landlord. In the absence of either the 1947 Act or the 1972 Act being applicable, and as the learned District Judge (appellate authority under the 1971 Act) has held that the petitioner was a licensee, he would, consequent on a notice being issued to him by the LIC on 11.05.1977 terminating the license, be an "unauthorized occupant" falling within the ambit of Section 2(g) of the 1971 Act, and liable for eviction under Section 5(1) thereof.

39. The judgment of the three Judge Bench of the Supreme Court, in M/s. Jain Ink Manufacturing Co. (1980) 4 SCC 435, was considered by the two Judge Bench of the Supreme Court in Suhas H. Pophale (2014) 4 SCC 657, and it was held :-

".....A judgment of a bench of three Judges of this Court in M/s. Jain Ink Manufacturing Co. v. L.I.C. reported in (1980) 4 SCC 435 was relied upon by Mr. Raval. In this matter also a plea was raised on behalf of the Appellant tenant for being covered under the Delhi Rent Control Act, 1958 which came to be repelled. Mr. Raval stressed upon the observations in Para 5 of the judgment to the effect that Section 2(g) merely requires occupation of any public premises to initiate the action. Mr. Nariman on the other hand pointed out that in the earlier part of the very paragraph the Court had observed, although after referring to the provision of Punjab Public Premises and Land (Eviction and Rent Recovery), Act 1959 that if the entry into possession had taken place prior to the passing of the act, then obviously the occupant would not be an unauthorized occupant. That apart, Mr. Nariman submitted that the judgment was essentially on the second part of Section 2(g) defining 'unauthorised occupation'. It is, however, material to note that in that case the premises were owned by LIC from 19.7.1958, i.e. prior to the Delhi Rent Control Act becoming applicable from 9.2.1959. Besides, the issue of protection under a welfare legislation being available to the tenant prior to the premises becoming public premises, and the issue of retrospectivity was not under consideration before the Court. The observations of the Court in that matter will have to be understood in that context....."

(emphasis supplied)

40. The judgment in M/s Jain Ink Manufacturing Company (1980) 4 SCC 435 was distinguished by the Supreme Court in Suhas H. Pophale (2014) 4 SCC 657 on the ground that, in the case before it, the protection of the Delhi Rent Control Act was available to the tenant prior to the premises becoming a public premises under the 1971 Act, and the issue of retrospectivity was not under consideration in M/s Jain Ink Manufacturing Company (1980) 4 SCC 435. As the petitioner, in the present case, is not entitled to the protection of either the 1947 Act or the 1972 Rent Control Act, the judgment of the Supreme Court in Suhas H. Pophale (2014) 4 SCC 657 has no application.

41. Viewed from any angle, I find no error in the order passed by the learned District Judge, Dehradun warranting interference in proceedings under Article 227 of the Constitution of India. The writ petition fails and is, accordingly, dismissed. In case the petitioner does not vacate the subject premises by 31.01.2019, it is open to the respondent-LIC to take such action, as is permissible in law, to have him and others residing thereat, evicted from the subject premises. No costs.