**(2012) 09 CAL CK 0128**

**In the Calcutta High Court**

**Case No :** Writ Petition No. 1437 of 2002

The Peerless Gen. Finance Inv. Com. Ltd. and Another — APPELLANT

Vs

W.B. Small Industries Corpn. Ltd. — RESPONDENT

**Date of Decision :** 24-09-2012

**Acts Referred:**

Companies Act, 1956 — Section 17, 32, 33(3), 34, 35
Constitution of India, 1950 — Article 226
Easements Act, 1882 — Section 52
West Bengal Government Premises (Tenancy Regulation) Act, 1976 — Section 2, 2(1), 2(a), 2(b), 2(e)

**Citation :** (2013) 2 WBLR 179

**Hon'ble Judges :** Ashoke Kumar Dasadhikari, J

**Bench :** Single Bench

## Judgement

Ashoke Kumar Dasadhikari, J.—The subject matter of challenge in this writ petition is an order dated 1st July, 2002 issued under Rule 3(1) of the West Bengal Premises Regulation Rule, 1976 by which the writ petitioner, Peerless General Finance and Investment Company Limited were informed that the respondents have decided to terminate the tenancy in respect of Government premises occupied by them as described in the schedule. The said order reads as follows:

Whereas it has been decided to terminate your tenancy in respect of the Govt. premises, i.e. now under your occupation as described In the schedule below (hereinafter referred to as the said premises).

Now, therefore, I Shri A. Banerjee, E.D., The WBSIDC Ltd. and the prescribed authority under West Bengal Govt. Premises Tenancy Regulation Act, 1976 do hereby give you Notice under Sub. Sec. (1) of Sec. 3 of the West Bengal Govt. Premises (Tenancy Regulation Act, 1976) to quit the said premises and deliver vacant possession thereof within one month from the date of service of this Notice.

Your tenancy is terminable inasmuch as you have violated the terms of the lease vide clause No. 2(J). If you fail to comply with this Notice, I/or any officer authorised by me in this behalf may take such steps or use such force as may be necessary to take possession of the said premises and as may be necessary to take possession of the said premises and may also enter the said premises for the aforesaid purpose.

Reason: Allotment was made on the ground of your own office purpose.

But in violation of the term let out

The same to a third party.

Prescribed Authority appointed under Sec. 2(e) (read with Sec. B) of Act, XIX of 1976 West Bengal Govt. Premises (Tenancy Regulation) Act, 1976.

2. Challenge was made mainly on two grounds. The first ground is that the premises in question is not a Government premises as defined in the West Bengal Government Premises (Tenancy Regulation) Act, 1976 (hereinafter referred to as "the said Act". Therefore, the provisions of the said Act particularly Section 3(1) do not have any application to the premises in question. Accordingly, the notice in question is with without or in excess of jurisdiction. The second ground of challenge is that there is no violation of clause 2(j) of the deed of lease executed by the respondent No. 1 in favour of the petitioner company because the petitioner company has granted a license in favour of a third party in respect of the lease hold premises. Therefore, the respondents have acted arbitrarily and without application of mind thereby issuing the impugned order as aforesaid. Mr. Chatterjee, learned Senior Counsel appearing in support of the writ petition submitted that by and under an Indenture of Lease executed on 11.1.1995 by the respondent No. 1 the petitioner company was granted a demised office space measuring about 9000 sq.ft. of built up area on third floor with all fittings and appurtenance situated as being part of the premises No. 62, Diamond Harbour Road, Behala, Kolkata-34 for holding the same for a term of 99 years from 11th July, 1994 to 10th July, 2093 yielding and paying to the respondent No. 1 @ Re. 1/- per year as rent according to English Calendar year during the said term. A premium of Rs. 54 Lakh was also paid by the petitioner company to the respondent No. 1 as consideration for grant of said lease.

3. As per the lease agreement, the petitioner company was required to pay Municipal Tax and surcharge against the bills to be raised by the respondent No. 1 as also common service charge as per rates fixed by them. It was submitted that the writ petitioner is paying the lease rent and also the tax along with common service charges as demanded by respondents from time to time.

4. The petitioner company was given possession of the demised premises on 11th July, 1994 and they peacefully enjoying the said premises and have been performing obligations under the lease.

5. The Estate Manager of the respondent No. 1 issued a purported notice on 14th

 

November, 2000 addressed to the Deputy General Manager of the petitioner company alleging that it has been reported by Sub-Assistant Engineer, of the Respondent No. 1 that Northern portion of the Commercial building allotted in favour of the petitioner company was under occupation of NIIT which has displayed glow sign board for drawing attention of customers. It was alleged that there was gross violation of the terms of the lease agreement and particularly clause 2(j). By the said impugned notice the petitioner--company was asked to explain why the lease, agreement shall not be terminated for such violation. The said notice was replied by the petitioner. It was informed that the petitioner company is occupying the premises under a registered lease deed for 99 years by paying premium which was more than prevailing fair market price for a freehold right in the locality. It was also stated that the petitioner company neither assigned nor transferred the leasehold interest absolutely or at all to anybody and therefore there is no question of violating provisions contained in the lease agreement specially clause 2(j). It was also informed that a portion of the demised premises is occupied by one Ad Synotech Private Limited, a franchisee of NUT on leave and license basis.

6. On 12.2.2001 the Executive Director of the respondent No. 1 along with some employees discussed the matter with the Manager, Behala Branch office and Regional Manager, Eastern Regional Office of the petitioner company. During the said discussion, the petitioner was allegedly threatened that the gates of the office would be closed down. The aforementioned fact was recorded by a letter issued on the side of the petitioners. The respondents did not give any response till 2nd November, 2001. However, the Estate Manager wrote to the General Manager (Legal) of the petitioner company requesting him to regularise the alleged unlawful shift of possession to M/s. Synotech Private Limited by paying the requisite permission free amounting to Rs. 13,50,000/- within 15 days and regularise the shifting/transfer of possession.

7. The petitioners aggrieved by the impugned demands moved an application under Article 226 of the Constitution of India being WP No. 2502 of 2001 (The Peerless General Finance and Investment Company Limited & Another v. West Bengal Small Industries Corporation Limited and Others) praying inter alia for withdrawal recalling and/or cancel of the impugned letter dated 14th November, 2000 and 2nd November, 2001 and further to forbear from giving any effect or further effect thereto or acting in terms thereof.

8. The said writ petition was heard and disposed of by an order dated 19th December, 2011 by a Learned Single Judge of this Hon''ble Court. The order passed by the Learned Single Judge reads as follows:--

Heard the learned Counsel for the parties.

Mr. Kar, learned Counsel appearing for the respondents submits that the impugned demand as communicated by the letter dated 2.11.01 being annexure-P-5 to the writ petition is an offer on their part asking the petitioners to regularise the manner in which they are in possession of the plot in question.

Mr. Kar further submits that the stand of the petitioners is that they are not going to pay the said demand. In that case the respondents will not insist on that in terms of the impugned communication.

Mr. Gupta, learned Counsel appearing for the petitioners submits that the said demand is a demand which is without any authority of law and as such is wholly an unauthorised demand and the petitioner is not obliged to accede to the same, and since the respondents are willing to withdraw the said letter dated 2.11.01, no further order need be passed on this writ petition.

The writ petitioner, is, therefore, disposed of on the basis of the stand taken by Mr. Kar and which has been recorded as above.

This Court makes it clear that this order is passed without prejudice to the rights and contentions of the parties under the lease agreement.

In the absence of affidavit allegations are not admitted.

All parties are to act on a xerox signed copy of this dictated order on the usual undertaking.

9. After the disposal of the aforementioned writ petition, the respondents remained silent for some time and thereafter the impugned order dated 1st July, 2002 was issued by the Authorised Officer.

10. Mr. Chatterjee, learned senior Counsel appearing for the writ petitioners submitted that the premises in question is not a government premises as defined in the said Act and as such the provisions of the said Act have no application on the said premises. Mr. Chatterjee referred to the definition of the Government premises, as contained in Section 2(a) of the said Act. Mr. Chatterjee also submitted that the premises is neither owned by the State Government nor by a Government Undertaking. Therefore, the provisions of the said Act of 1976 is not at all applicable. Mr. Chatterjee submitted that the premises is owned by the respondent No. 1 which is not the State Government, nor the Government Undertaking. He submitted that the essential pre-condition for being a Government Undertaking as contemplated under the said Act of 1976 is that the Undertaking must be, (1) a body corporate, (2) constituted by or under a Central or State Act, (3) which is under administrative control or in which the State Government has exclusive proprietary interest.

11. Mr. Chatterjee submitted that the Government company as defined u/s 617 of the Companies Act, 1956 is only a Public Limited Company which can not be a Government undertaking as defined in the said Act of 1976. Mr. Chatterjee submitted that the impugned order dated 1st July, 2002 is without or in excess of jurisdiction and bad in law and as such the same is a nullity.

12. The next point argued by Mr. Chatterjee is that there is no violation of clause 2(j) of the lease deed since the writ petitioner granted a license in favour of M/s.

 

Ad Synotech Pvt. Ltd. in respect of a portion of the leasehold premises. Therefore, there is no question of assignment or transfer of the leasehold interest absolutely. Accordingly, the decision of the respondent authorities as communicated in the impugned notice dated 1st July, 2002 is without any application of mind. Mr. Chatterjee submitted that the company have duly replied to the notice of show cause. The respondent authorities purportedly passed the order dated 1st July, 2002 in a perfunctory manner and in contravention of the terms of the lease itself. It was submitted by Mr. Chatterjee that a restrictive covenant like clause 2(j) of the lease deed dated 11th January, 1995 has to be construed strictly. According to him, parting of possession on a leave and license basis would not by any stretch of imagination come within the purview of clause 2(j) of the lease agreement. It was submitted by Mr. Chatterjee that the said clause deals with assignment for transfer of the leasehold interest absolutely. The absolute assignment and/or transfer are conceptually and jurisprudentially distinct and separate form of grant of leave and license. According to him, the impugned order dated 1st July, 2002 is ex facie erroneous and the same is perverse. Therefore, the said impugned order issued by the respondents should be quashed and/or set aside.

13. Mr. Chatterjee, learned senior Advocate at the time of argument cited various judgments in support of his contention and submitted that the definition of the Government Premises and Government Undertaking begin with the word "means" which signifies that the definitions are exhaustive and he has placed reliance on the following decisions:

(1 P. Kasilingam and others Vs. P.S.G. College of Technology and others,

(2) Commissioner of Trade Tax, U.P. and Another Vs. Kajaria Ceramics Ltd.,

14. According to him, the definition as given in the said Act is a hard and fast definition and no other meaning can be assigned to the expression than which is put down in the definition. According to him, the premises in question belongs to a government company and not a company created or established under a Central or State Act.

15. Mr. Chatterjee submitted that definition of the Government Company as stipulated in Section 17 of the Companies Act, 1956 means any company in which not less than 51% of paid-up share capital is held by the Central Government or by any State Government or by governments or partly by the Central Government or partly by one or more State Governments and includes a company which is a subsidiary of the Government company. He submitted a Government company cannot be said to be created and/or established under a Central or State Act and therefore the respondent No. 1 do not come under the definition of "Government Undertaking". According to Mr. Chatterjee, this company is a Government Company but it is neither created nor established under a Central or State Act. Therefore, it is neither a Government Company nor a Government Undertaking.

16. Mr. Chatterjee cited different Central Acts like Life Insurance Corporation of India Act, Reserve Bank of India Act and such other Acts which are created and/ or established under a State and/or Central Act. He cited a decision reported in Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others, Mr. Chatterjee cited various other judgments in support of his contention and he submitted that the premises in question is not owned by the Government nor by the Government Undertaking.

17. At the time of referring to Section 2 of the said Act of 1976, Mr. Chatterjee submitted that the premises in question is not a Government premises, which is admitted position. So far ownership of the premises by Government Undertaking is concerned, he submitted that the respondent No. 1 is a body corporate which is not disputed by him. He also admitted that the respondent No. 1 is under administrative control of the State Government but he submitted that the respondent No. 1 is not at all constituted by any Central or State Act. According to him, the meaning should be restricted as defined under sub-section (b) of Section 2 of the said Act.

18. Mr. Chatterjee submitted that an incorporated company is not established under the Companies Act. An incorporated company does not owe its existence to the Companies Act. An incorporated company is formed by the Act of any seven or more persons (or two or more persons for a Private Limited) associated for any lawful purpose subscribing their names to a Memorandum of Association and by complying with such requirements of the Companies Act in respect of registration. Therefore, a company is incorporated and registered under the Companies Act and not established under the Companies Act.

19. Mr. Chatterjee cited a decision in support of such contention which is reported in Dalco Engineering Private Ltd. Vs. Shree Satish Prabhakar Padhye and Others, According to him, the word "establish", refers to coming into existence by virtue of an enactment. It does not refer to a company, which, when it comes into existence, is governed in accordance with the provisions of the Companies Act. Mr. Chatterjee also referred several other decisions in support of his contention.

20. Mr. Chatterjee submitted that in case it is held that the respondent No. 1 is not a Government Undertaking, then also they are, not precluded to take any suitable action in case of violation of any of the terms of the lease deed by the lessee under the provisions of the Transfer of Property Act.

21. Mr. Chatterjee further submitted that ex facie there is no violation of the terms of the lease. The petitioner company has granted a license and according to Mr. Chatterjee, license is different from lease. According to him, a license as defined u/s 52 of the Indian Easement Act has a right to do or continue to do, in or upon the moveable property of the grantor, sometime which would be in absence of such unlawful right and such right does not amount to an easement or interest in the property. He submitted that if the interest in moveable

 

property, entitling the transferee to its enjoyment is created, it is a lease, if permission to use the land without the right to exclusive possession is alone granted, the transaction is a license. He submitted that the Hon''ble Supreme Court has clearly laid down the distinction and/or difference of lease and license. He cited a decision reported in Associated Hotels of India Ltd. Vs. R.N. Kapoor, The other judgment he cited is reported in B.M. Lall (Dead) by Lrs. Vs. Dunlop Rubber and Co. Ltd. and Others, . He also cited a judgment which is reported in AIR 1998 SC 184(Khalil Ahmed Basir A. v. T. Samasbha Sarang Poornala). He referred some clauses of the agreement entered into between the petitioner and the licensee. According to him, there is no violation of the terms of the lease agreement nor clause 2(j) of the same. He submitted that the writ petitioner is taking a license fee of Rs. 20,960/- on monthly basis, for the office space for a built up area of 2620 sq.ft. of the demised premises. According to him, the petitioner, being the licensor, have the right to enter the portion given on license by giving 48 hours previous notice. According to Mr. Chatterjee, the impugned order should be quashed and/or set aside.

22. Mr. Joydeep Kar, learned Counsel representing the respondent No. 1, West Bengal Small Industries Development Corporation Limited submitted that the concerned Industries premises occupied by the petitioner is owned by the respondent No. 1 which is not the State Government nor the Department of the State Government but is a "Government undertaking" as defined under the said Act and accordingly it comes under the definition of "Government premises". Mr. Kar submitted that a plain reading of Section 2(b) of the said Act lays down triple tests for determining the status of the respondent No. 1. Mr. Kar submitted that the respondent No. 1 being a government company within the meaning of Section 717 of the Companies Act, 1956 is a body corporate which is not disputed by the learned Counsel for the petitioner. In any event it is settled law that a company within the meaning of the Companies Act, 1956 is a body corporate. Mr. Kar cited a decision in respect of his contention which is reported in 1964 (4) SCR 996 equivalent to AIR 1963 SC 1871. He also submitted that the learned Counsel for the petitioner fairly admitted that the respondent No. 1 viz. West Bengal Small industries Limited is under administrative control of the State.

23. Mr. Kar further submitted that so far the administrative control of the State Government or the State Government''s exclusive proprietary interest is concerned, if any one of the tests is fulfilled then that test passes through. In the instant case it is undisputed that there is full administrative control of the State Government over the respondent No. 1.

24. Mr. Kar submitted that out of total 17,25,71,500 equity shares issued and subscribed of the company 17,25,71,100 equity shares stand in the name of Governor and the balance 400 shares stands allotted to ex officio Posts who are appointees of the Government. These are qualifying shares required to be held by the appointees. Mr. Kar submitted the directors are nominated by the State Government. According to Mr. Kar it is beyond a pale of doubt that the

 

Government exercises full administrative control over the functioning of the company. However, he submitted that in view of acceptance of such administrative control on the side of the writ petitioners there should not be any doubt. Therefore, the third test is also satisfied in favour of the respondent No. 1 being lessor of the demised premises.

25. Mr. Kar submitted as regards proprietary interest is concerned the said test is also fulfilled as in the event the company goes into liquidation the sale proceeds of the assets after meeting the liabilities will be distributed to the share holders which in effect wilt be received by the Government. However, this Hon''ble Court need not go into the second option since it is settled that the State Government has its administrative control over the functioning of the respondent No. 1. Mr. Kar then submits that the third test, whether the respondent No. 1 is constituted by or under a Central or State Act. Mr. Kar submitted if it is held that the respondent No. 1 is constituted by or under the Central or State Act, is a decisive factor. If it is held that the respondent No. 1 is constituted by or under the Central or State Act in that event all three tests would be satisfied for declaring the respondent No. 1 as "Government undertaking" and resultantly the premises would a "Government Premises" under the and the said Act of 1976 would have application otherwise the said Act would not apply. Mr. Kar then submits that the word "constitute" means to set up and to give a legal form. Mr. Kar referred shorter oxford dictionary to show the meaning of the word "constitute". He also referred an Apex Court Judgment reported in P.R. Chowdhary and S. Gangoli Vs. The State of U.P., ), Mr. Kar submitted that Three Judges Bench of the Supreme Court have interpreted the word "Constituted" in the judgment long long back. He submitted that the decision of the Hon''ble Apex Court is clearly applicable in the instant case.

26. Mr. Kar submitted the expression "Constituted by and under a Central or a State Act" will have to be interpreted to mean to give a legal form either under the Central Act or under the State Act. Mr. Kar referred different provisions u/s 32, 33(3), Section 34, Section 35 and Section 561 of the Companies Act, 1956. According to Mr. Kar unless the company is incorporated u/s 34 and effect certificate u/s 35 is read into, as to its collusiveness, the company does not come to its existence. He further submits that thus the company only after obtaining a certificate of incorporation come into existence as "Body Corporate". It can, therefore, be easily stated that a company only after its incorporation under the provisions of the Companies Act, 1956 is given a legal form and can be said to be constituted under a Central Act viz. The Companies Act, 1956. Mr. Kar submits this test is also satisfied in favour of respondent No. 1 and, therefore, it can safely be concluded that the respondent No. 1 is a "Government undertaking".

27. Mr. Kar submitted that all three tests are accordingly satisfied and the respondent No. 1 is a "Government undertaking" as defined under 2(b) of the West Bengal Government (Premises Tenancy) Regulation Act, 1976 and the premises owned by the respondent No. 1 also comes within the definition

 

"Government Premises" as contemplated u/s 2(a) under the said Act of 1976.

28. Mr. Kar also submitted that for interpreting a statutory provision the intention of the suit makers and the policy behind it is required to be considered and looked into. He also submits that words are required to be construed in terms of the legislative intent. Mr. Kar referred the Hon''ble Apex Court Judgment reported in Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others, He submitted that in this case the Hon''ble Apex Court while interpreting Public Premises (Eviction of unauthorised occupants) Act, 1971 considered whether premises belonging to Nationalised Banks were included in the definition of public premises contained in Section 2(e) of the said Act. After careful consideration of the provisions of that Act the Hon''ble Court expressed its views that it could not be the intention of Parliament that the premises belonging to public corporation like Nationalised Banks, whose entire paid up capital vests in Central Government and who are instrumentality of the State would not be included within the ambit of public premises. The Hon''ble Court gave effect to the legislative policy, legislative intent and came to a conclusion that the Nationalised Banks are included within the definition.

29. Mr. Kar then submitted that normally in giving effect to the intention of the statutory provision, the context in which it has been made, the purpose and object which it seeks to achieve is required to be looked into. According; to Mr. Kar in the present Act of 1976 some benefits were extended to the Government premises owned by the Government or Government undertaking. Whether an undertaking is a Government undertaking or not, triple tests are required to be satisfied. In the event as undertaking passes through, those triple tests there should not be any reason to give a restricted interpretation. Mr. Kar cited a decision in support of his contention which is reported in Maharashtra University of Health Sciences and Others Vs. Satchikitsa Prasarak Mandal and Others,

30. Mr. Kar further submitted that although literal rule is not the only rule of interpretation, the Court should also give purposive construction to construe the provision to ensure that such interpretation does not defeat the purpose of the Act and the real intention of the legislation is taken note of in interpreting the statute. He also cites a decision reported in Surjit Singh Vs. Mahanagar Telephone Nigam Ltd.,

31. Mr. Kar submitted that the submissions made by Mr. Chatterjee appearing for the writ petitioners showing some other acts i.e. CMDA Act, 1972, Calcutta Improvement Trust Act, 1971 etc. to contend that the definition contained in the said Act 1976 is a hard and fast definition and no other meaning should be assigned to it. Mr. Kar submitted that it is now well settled that in interpreting a statute the definition given is other statutes cannot be looked into unless they are statutes in pari materia. He also cited a decision reported in (2002)4 SCC 705 paragraphs 9, 11, 16. According to Mr. Kar the said Act of 1976 is a Statute dealing with different subject and that is not in pari materia with the statutes as referred on behalf of the petitioners. According to him the expression used is

 

CMDA Act and CIT Act is "established" and not "constituted". According to Mr. Kar the word "established" has a different meaning altogether and it means to bring something into existence. But the word "constituted" has a different meaning altogether and it is a very significant expression, which really means to give a legal shape. Mr. Kar submits that argument advanced on the side of the petitioners is based on the word "established" and the judgment cited by the learned Senior Counsel is totally different and have no manner of application in interpreting Section 2(b) of the said Act of 1976.

32. Mr. Kar further submitted that the respondent No. 1 is constituted under the Companies Act, by reason of its incorporation and also getting a legal shape by reason thereof. This view is also supported by the judgment reported in Dalco Engineering Private Ltd. Vs. Shree Satish Prabhakar Padhye and Others, According to Mr. Kar in view of passing through the aforementioned three tests and also in view of the Hon''ble Apex Court''s Judgments delivered in several cases as cited by him interpreting some provisions as well as the words there is no escape from coming to a conclusion that the premises in question is a Government premises as defined u/s 2(a) of the said Act of 1976.

33. Mr. Kar also submitted that it has also been held in two other decisions that the said Act of 1976 applies in so far as the respondent company is concerned. The relevant judgments are reported in Associated Indem Mechanical Private Limited and Another Vs. West Bengal Small Industries Development Corporation Limited and Others, and Associated Indem Mechanical Pvt. Ltd. Vs. West Bengal Small Scale Industrial Development Corporation Ltd. and Others,

34. The next contention of Mr. Kar as regards granting license in respect of a portion of the premises which violates clause 2(J) of the lease deed dated 11.1.95 is concerned, the expression and/or the word "absolute" as contained in the clause of the said agreement includes part of the demised premises and, therefore, when there is a total bar in letting out a leasehold right, granting license to a part of the said premises is definitely a violation of the said clause.

35. It is submitted that admittedly office space of 9000 sq.ft. of built-up area on the third floor with fittings and appurtenances was demised in favour of the petitioner with a rental liability of Re. 1 per year according to English calendar. The lease contained a negative covenant as to assignment or transfer. However, the claim was qualified to the extent that the lessee could assign or transfer leasehold interest to small-scale units or financial or government institutions for obtaining financial assistance with prior permission. It is apparent that the lessee has sublet this space for use by so called licensee for an area of 2620 sq.ft. out of leasehold premises as office at a rent of Rs. 20,960/- calculated at the rate of 8 per sq.ft. Mr. Kar submitted that the said agreement and/or so called license agreement also contained a clause 3(f) that parties agree to obtain approval/ permission as may be required for giving effect to the license agreement. He further pointed out that the aforementioned agreement also contains a clause that on expiry of each period of three years the license fees shall be enhanced by

 

15% over the fees currently paid. According to Mr. Kar, a bare, reading of the document shows that licensor is not in occupation of the portion of the premises. According to him, although the word "license" was used but in reality it is a case of sub-letting. Mr. Kar submitted that this Court is required to determine whether the document termed as agreement of license is actual license or lease/tenancy. He also drew attention of this Court that clause 2(j) of the lease agreement, in no uncertain terms conveys the idea that the lessee is debarred from encumbering or transferring the leasehold interest in any manner whatsoever except to the institutions mentioned therein subject to prior written permission. He also submitted that the premises which was leased out at a nominal rate to enable the petitioner to function from entirety of the said premises which is earmarked for office use, without causing any hardship and the area cannot be used for the purpose of earning profit by letting out a portion. According to Mr. Kar, the word "absolutely" attributes a clear meaning that no part of the demised premises could be let out. He submitted that government premises cannot be used as a place for profit by letting it out at a higher price while enjoying the lower rate without having prior permission. According to him, the terms and conditions of the lease agreement between the petitioner and the respondent No. 1 are violated and the parties for such tenancy stood defeated the moment when it was given to third party. Mr. Kar also submits that the lease agreement between the writ petitioner and the respondent No. 1 contained a clause that if the demised premises be not used by the lessee for the purpose of which it is being demised.... it shall be lawful for the lessor at any time to determine the lease and reenter upon the demised premises or any part thereof. According to Mr. Kar, the provision clearly explains that if the lessee i.e. writ petitioner herein, does not use the demised premises for its purpose, it shall be a ground for forfeiture and re-entry even for a part. Mr. Kar submitted that the judgment cited by the learned Advocate for the petitioner reported in Swarnamoyee Debya Vs. Aferaddi and Others, has no manner of application in the present case. The point falls for determination is not decided in that case. He submitted that the point decided in that case is, under the Bengal Tenancy Act, no suit lay without serving a notice on the tenant.

36. Mr. Kar also submitted that the intention of the parties to an instrument must be gathered on the terms of the agreement and it should be in the light of the surrounding circumstances. According to him, the crucial test is whether the instrument create or do not create any interest in the property is the subject matter of the agreement. According to him, indeed an interest is created in the property by a third party and the impugned license agreement is a camouflage. He cited two decisions--one is reported in Sohan Lal Naraindas Vs. Laxmidas Raghunath Gadit, and the other one is reported in Rajbir Kaur and Another Vs. S. Chokesiri and Co., . Mr. Kar submitted that the document is a camouflage and the mask or veil is required to be removed for determining the true intent and purpose of the document. According to him, it is out and out an agreement to sublet. He further submitted that the purported agreement of 1997 which is for

 

15 years has continued even after 2012. Therefore, the occupation of the so-called licensee is permanent in nature. According to him, it is apparent that the tenant or the lessee being the writ petitioner has no possession thereof and therefore, the licensee is in exclusive possession of the said area. Mr. Kar submitted that there is clear violation of clause 2(j) of the deed of lease dated 11th January, 1995 and according to him, the order dated 1st July, 2012 is valid one and the competent authority is authorised to pass such order against the writ petitioners since the premises is owned by a government undertaking.

37. After hearing the learned Counsel appearing for the parties it appears to this Court that the writ petitioners have raised a question of non-applicability of the provisions of the West Bengal Premises (Tenancy and Requisition) Act, 1976. In the event the premises is owned by the Government or its undertaking then and then only the provisions of the aforementioned Act of 1976 would apply otherwise not. Therefore, for coming to a conclusion about the applicability of the provisions of the said Act it is to be decided whether the premises is owned by the Government or it''s undertaking. To determine the question one has to consider the definition clauses u/s 2(a) and 2(b) of the said Act defines Government premises. However, both sides agreed that this is not Government premises since it is not owned by the State Government. Now question is remains whether premises is owned by "Government Undertaking?" The writ petitioners strenuously argued that the premises is also not owned by a "Government Undertaking" since respondent No. 1 is not covered by the definition of "Government Undertaking" as defined u/s 2(b) the aforementioned Act. According to them the order impugned passed by the concerned respondents is without jurisdiction and also not sustainable since the provisions of the aforementioned Act is not applicable.

38. For consideration of the status of premises whether it is owned by a Government Undertaking or not, it is very relevant to consider the definition of ''Government Undertaking.

Clause 2(b) of the said Act of 1976 reads as follows:--

2(b) "Government Undertaking" means a body corporate constituted by or under a Central or State Act (which is under the administrative control of the State Government) or in which the State Government has exclusive proprietary interest.

39. From a plain reading of sub-section (b) of Section 2 of the said Act of 1976, it appears that to be a Government Undertaking three tests are required to be satisfied. The first test is (i) whether it is a body corporate, (ii) The second one is whether it is constituted by or under a Central or State Act and (iii) the third test is whether it is under the administrative control of the State Government or in which the State Government has exclusive proprietary interest. Both the Counsels representing the parties accepted that the respondent No. 1 is body corporate and it was also accepted by them that the respondent No. 1 is under

 

administrative control of the State Government. Therefore, the first and third tests are satisfied. So far the second test is concerned, the petitioners did not accept that the West Bengal Small Industries Corporation Limited is constituted by or under a Central or State Act. Thus, the only question that falls for determination by this Court is whether the respondent No. 1 is constituted by or under an Act of Central or State Government.

40. While considering this aspect of the matter, it is clear that the respondent No. 1 is a Government Company registered under the Companies Act, 1956. Section 617 of the Companies Act, 1956 clearly stipulates that a Government Company in which not less than 31% of paid up share capital is held by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments including a company which is a subsidiary of the Government company is a Government company. It is settled law that a company registered under the Companies Act 1956 is a body corporate and it does not owe its existence to the said Act but as per Section 34 of the Companies Act, on registration of the Memorandum of the Company, a Certificate is issued by the Registrar of Companies to the effect that the company is incorporated which gives a legal form and/or shape to the company. While interpreting Section 2(b) of the said Act of 1976 the word "constituted'''' plays a very significant role. The word ''constituted'' is not synonymous to the word ''established''. The word ''constituted'' as is used in the aforementioned sub-section (b) of Section 2 not only means creating and/or setting up but also includes the idea of giving a legal form. The Hon''ble Supreme Court in the case of Mr. R.C. Mitter & Sons (supra) considered the meaning of the word ''constituted'' and has held, the word ''constituted'' does not necessarily mean ''created'' or ''set up'' though it may mean giving a legal form. In the Oxford Dictionary, Vol. II, at pages 875-876, the word ''constituted'' is said to mean, inter alia, to set up, establish, found (an institution etc.) and also to give legal or official form or set (an assembly, etc.). Thus the word ''constituted'' in its wider significance includes both the idea of creating or establishing, and the idea of giving a legal form. While deciding the issue involved in that case, the Hon''ble Supreme Court distinguished the Calcutta High Court judgment rendered in the case of M/s. R.C. Mitter & Sons. v. Commissioner of income tax and clearly held that the meaning of the word ''constituted'' should not be restricted to mean only to create when clearly it could also mean putting a thing in a legal set.

41. The full Bench decision of the Hon''ble Supreme Court interpreted the word "constituted". In fact the Hon''ble Court accepted the wider significance of the word and clearly held that the word "constituted" also means putting a thing in a legal shape. In this regard it would be very relevant to point out the argument advanced on behalf of the petitioner that the definition clause as defined in the government premises is excessive and there is no scope to give a different meaning to the word used in that section "constituted". However, the definition which stipulates the condition constituted by or under a Central Act is to be interpreted taking note of the significance of the word "constituted" used in the

 

context of defining the word "Government undertaking". Had it been the intention of legislative to give a restrictive meaning in that event the words, establish, set up or create would have been used. But legislature have used the word "constituted" for the purpose of giving an extensive and wider meaning to the statutory definition. Therefore, it would not be proper to give a restrictive meaning. The meaning of the word "constituted" is the decisive factor and in the event the word "constituted" is given a restricted meaning then it would frustrate the purpose of the legislation. The three Judges'' Bench of the Hon''ble Supreme Court widely discussed the meaning of the word and interpreted it holding that the word "constitute" not only means "to create" but also means putting a thing in a legal shape. It is well settled that after the incorporation of the company in terms of Section 34 it comes into existence as a body corporate after obtaining a certificate of incorporation. Accordingly, the company is incorporated in terms of Sections 34 and 35 of the Companies Act, 1956 is given a legal shape and therefore can be said to be constituted under a Central Act i.e. the Companies Act, 1956.

42. While interpreting a statutory provisions it is necessary to look into the policy behind the statute and the words are required to be construed, in terms of the legislative intent. In this regard the Hon''ble Apex Court''s decision of Ashoka Marketing Limited & Another (supra) is applicable. In that case the scope of definition of expression "public premises" contained in Section 2(e) and "unauthorised occupation" contained in 2(g) of public premises was interpreted and the Hon''ble Supreme Court while considering whether a Nationalised Bank is a Corporation established by or under a Central Act and is owned or controlled by Central Government, held that it cannot be ignored that the object of legislation enlarging the definition of public premises u/s 2(e). To make available the machinery of the Act for vacating unauthorised occupants not only from the premises belonging to the Central Government but also from the premises belonging to the companies Corporations and statutory bodies in which Central Government has a substantial interest. In that case it was held that under Sections 2(e) and 2(1) premises belonging to a company incorporated under the Companies Act, 1956, in which not less than 51% of the paid up capital is held by the Central Government are to be treated as public premises. It was also held that it could not be the intention of the parliament that premises belonging to public corporation whose entire paid up capital vest in the Central Government and who are the instrumentality of the State would be excluded from the ambit of the definition of "public premises". Accordingly, the expression "corporation" under Sections 2(e) and 2(H) of public premises Act would include public corporations of the new pattern constituted under the Central Act wherein the entire paid up capital vest in the Central Government. The Hon''ble Supreme Court keeping in view of the provisions of the Banks Nationalisation Act concluded that a Nationalised Bank is a Corporation established by a Central Act and it is owned and controlled by the Central Government. It was also held that the premises belonging to the Nationalised Bank are public premises. In my

 

view, following the Hon''ble Supreme Court''s decision referred in case of M/s, R.C. Mitter and Sons as wells as Ashoka Marketing Limited it could safely be concluded that the word "constituted" means giving a legal shape to a company and accordingly the respondent No. 1 is a government undertaking and therefore the provisions of the West Bengal Government Premises Tenancy Regulation Act, 1976 is clearly applicable and on that score the order passed by the respondent authorities on 1st July, 2002 is lawful and valid. In view of my aforesaid findings I hold that the notice is within jurisdiction and the premises is owned by government undertaking viz. The West Bengal Small Industries Development Corporation Limited, the respondent No. 1 in the instant proceedings. It would be very relevant to point out that the decisions which has cited by Mr. Chatterjee in support of his contention that the word "constituted" implies creation or establishment or constitution is not at all valid interpretation of the said word. Accordingly, the second test is also satisfied. Thus the demised premises is owned by the "Government Undertaking" being the respondent No. 1.

43. The next point that falls for determination is the contention of the writ petitioners that there is no violation of clause 2(j) of the Deed of Lease executed by the respondent No. 1 in favour of the petitioner company since the petitioner company has granted a license in favour of one concern in respect of a portion of the leasehold premises. To consider this point it would be very pertinent to point out two clauses of the said license agreement (hereinafter referred to as "the said agreement")

44. Clause 3(f) of the said Agreement clearly stipulates that the parties therein agreed to obtain approval/permission as may be required for giving effect to the license agreement. Clause 4(f) also contains that on expiry of each period of 3 years the license fee shall be enhanced by 15% over the fees currently been paid. It is an admitted case that under the lease, office space of 9000 sq.ft. of built-up area on the third floor with fittings and appurtenances was demised in favour of the writ petitioner for a period of 99 years from 11th July, 1994 till 10th June, 2093 with a rent liability of rupee one per year, according to English calendar. The said lease agreement contained a negative covenant as to assignment or transfer which was qualified to the extent that the lessee could not assign or transfer leasehold interest unless it obtained prior permission. On a plain reading of the said license agreement, it clearly shows that the lessee has, in fact, sublet this space for use by the so called licensee for an area of 2620 sq.ft. out of leasehold premises against a rent of Rs. 20,960.00 calculated at the rate of Rs. 8.00 per sq.ft. A bare reading of the document clearly shows that the licensor was not in occupation of the portion of the licensed premises. It also appears from clause 2(f) of the said license agreement that the licensee has agreed to permit the licensor or his agent to enter the premises and view and/or see the condition during office hours. Unless the licensor is dispossessed from the area under license, there was no necessity to preserve the right of entry into the licensed premises. There is obligation upon the licensee to repair the interior of the demised premises. All these give a clear idea that the so called licensee

 

under the said license agreement, is under exclusive possession of the area of 2620 sq.ft. which had been given allegedly on license. Clause 2(j) of the lease agreement in no uncertain terms conveys the idea that the licensee is debarred from encumbering or transferring the leasehold interest in any manner whatsoever except to the institutions mentioned therein and that, too, with prior permission. However, in the instant case although a clause was inserted in the alleged license agreement for taking permission, but no such permission was ever obtained and a portion of the leasehold premises was given on rent to some other institution not named in the Main Lease agreement, with an intention for earning profit by letting out a portion of the same.

45. In my view, the expression "absolutely" attracts a clear meaning that no part of the demised premises could be let out and certainly not in the manner as suggested. If the interpretation of the word ''absolutely'' is read only to mean in its entirety and not a part thereof, it will lead to absurdity. Accordingly, a Government premises cannot be used for earning profit while the lessor was paying a meager rent on a condition that in case of letting out and/or parting with possession a prior permission would be necessary. The purpose of such lease is defeated the moment it is given to third party. It is also settled principle of law that the. intention of the parties are to be gathered from the terms of the agreement. In the instant case if the terms of the agreement is examined in the light of the surrounding circumstances, it would show that an interest is created in the subject property. In my view, it is not at all a license; rather it is a sub-letting. Therefore, clause 2(j) of the lease agreement entered into between the writ petitioner and the respondent No. 1 is definitely violated. Accordingly, I do not find any illegality in the impugned order dated 1st July, 2002.

46. In view of my aforesaid findings I do not find any merit in the writ petition. The writ petition is dismissed. There will be no order as to costs.

47. Learned Counsel for the writ petitioners prays for stay of operation of the judgment and order. The prayer is considered and the same is rejected. Photostat certified copy of this judgment and order be made available to the parties upon compliance of usual formalities.

 