

(2012) 08 AHC CK 0032

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 591 of 2000

Vishnu Dutt Tripathi

APPELLANT

Vs

VIth Additional District Judge, Kanpur Nagar and Others

RESPONDENT

Date of Decision : 08-08-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 162, 21, 335, 46

Life Insurance Corporation Act, 1956 — Section 21

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 2(2)(g),
2(g), 5, 6, 7

Transfer of Property Act, 1882 — Section 106

Citation : (2013) 2 ALJ 148

Hon'ble Judges : B. Amit Sthalekar, J

Bench : Single Bench

Advocate : W.H. Khan, Gulrez Khan, J.H. Khan and K. Khan, for the Appellant;
Manish Goyal, C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

B. Amit Sthalekar, J.—Through this writ petition, the petitioner is assailing the order of the Estate Officer dated 20.8.1995 and the order of the Appellate Authority dated 9.12.1999 passed under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The case of the petitioner is that the plot in dispute being Nazul plot No. 34, Civil Lines, Kanpur was given on lease to Babu Vishwanath Khanna and Vishambhar Khanna through a lease deed dated 9.9.1932. The area covered under the lease measured 5 acres 10 poles which is equivalent to 18754 sq. yards. The lease was initially given for a period of 30 years subject to its renewal for two successive periods of 30 years each.

2. Sometime in the year 1932 the original lessee is said to have transferred the lease hold rights in favour of one Shri M.M. Bhargava who in turn transferred the same in favour of M/s. Free India General Insurance Company through a lease deed dated 19.8.1947. Subsequently, M/s. Free India General Insurance Company merged with the Life Insurance Corporation of India (hereinafter

referred to as LIC), respondent No. 3 in the present writ petition. Thus the LIC stepped into the shoes of M/s. Free India General Insurance Company.

3. It is further contended that on the expiry of the first period of 30 years on 30.8.1962 the LIC applied for renewal of the lease and the renewal was granted only for an area of 1923.12 sq. mts. and with regard to the balance area of 16830 sq. mts. no renewal was granted. On 26.4.1988 the State Government represented by the Chief Secretary and LIC represented by Shri S. Ranganathan arrived at a compromise whereby the plots marked as "B" "C" and "D" in the map, comprising an area of 382.89 sq. mts., 327.33 sq. mts. and 1212.90 sq. mts. was renewed in favour of LIC w.e.f. 31.8.1962 and the LIC in its turn surrendered the remaining portion of the land to the State Government. A Government Order dated 25.4.1989 to this effect is also stated to have been issued.

4. The case of the petitioner further is that a registered legal notice dated 10.6.1985 was served upon him stating that he was in arrears of rent from 1.7.1985 to 15.7.1985 and that an amount of Rs. 370.75 has been kept in the suspense account on account of termination of tenancy of the petitioner w.e.f. 16.7.1985 and thus with effect from the said date the petitioner became an unauthorised occupant of the premises in dispute. The contention of the petitioner further is that on 21.1.1986 an application under sections 5 and 7 of the Act of 1971 for eviction of the petitioner from the disputed premises was filed by the respondent No. 3 before the Estate Officer.

5. The petitioner filed his written statement in the proceedings before the Estate Officer, inter alia, on the following grounds that the Assistant Secretary (Legal) of the LIC was not authorised to sign and verify the application; receipt of registered notice dated 10.6.1985 was denied; the petitioner was never in default of rent or taxes to the applicant i.e. the LIC and there was no arrears against him; he was not liable for payment of any damages; the notice of eviction does not disclose any ground of eviction; lease had already expired and, therefore, the respondent No. 3, LIC had no right to determine and terminate the tenancy of the petitioner; and the LIC had no rights over the premises in dispute on the basis of the lease as on the date of notice dated 10.6.1985.

6. Further grounds taken in the written statement were that the premises in dispute was not public premises and, therefore, the proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act of 1971 (Act of 1971) could not have been initiated at all. The petitioner also filed an amendment application seeking amendment in his written statement.

7. The matter was contested and thereafter the Estate Officer by his order dated 20.8.1995 held the petitioner to be an unauthorised occupant of the premises in question and directed him to vacate the premises and handover vacant and peaceful possession of the same to the LIC within 15 days from the date of publication of the order. The Estate Officer also directed the petitioner to pay to

the LIC a sum of Rs. 18,588.59/- as arrears of rent, water tax and drainage tax and damage accrued from 16.7.1985 till realization.

8. Aggrieved by the order of the Estate Officer dated 20.8.1995, the petitioner preferred an appeal before the appellate authority u/s 9 of the Act of 1971 being Misc. Appeal No. 224 of 1995. The appellate authority by his order dated 9.12.1999, upholding the eviction of the petitioner, has modified the order of the Estate Officer to the extent that the damages have calculated at Rs. 22.23 per month w.e.f. 16.7.1985 till the date of handover of peaceful possession and for the period 1.7.1985 to 15.7.1985, he would be liable for payment of arrears at Rs. 3.59 paisa.

9. Heard Shri Gulrez Khan, learned counsel for the petitioner, learned Standing Counsel for respondent No. 1 and Shri Manish Goyal, learned counsel appearing for the respondent Nos. 2 and 3.

10. The submission of learned counsel for the petitioner is that the lease in favour of the LIC had expired on 30.8.1962 as per the terms and condition of the original lease granted in the year 1932, according to which the lease was granted for a period of 30 years subject to its renewal for two successive period of 30 years each. However, in his written statement, the petitioner has taken a plea that as on the date of the legal registered notice dated 10.6.1985 there was no lease in favour of the LIC-respondent No. 3, therefore, the LIC could not be said to be the owner of the premises in question. This submission of learned counsel for the petitioner appears to be self contradictory inasmuch as in paragraph 4 of the writ petition he has himself stated that the LIC had applied for renewal of the lease and the renewal was granted only for an area of 1923.12 sq. mts. and the lease was renewed w.e.f. 31.8.1962 although his further submission is that the remaining portion of the premises forming an area of 16830 sq. mts. was surrendered by the LIC to the State Government which was to be utilized by the Kanpur Development Authority for its commercial purposes. At this stage a reference may be made to the order dated 25.4.1989 (Annexure-4 to the writ petition) by which the lease was renewed in favour of the LIC. In paragraph (ka) of the said order it is mentioned that out of a total area of 18754 sq. mts. an area of 302.89 sq. mts., (sic) 327.33 sq. mts. and 1212.90 sq. mts., total 1923.12 sq. mts. was being renewed in favour of the LIC w.e.f. 31.8.1962.

11. In paragraph (Kha) of the lease renewal order it is also mentioned that on one portion of the land the LIC has constructed a three storied building which was being used for commercial as well as residential purposes and which it shall continue to do so under the terms of the renewal order. So far as the remaining portion of the land is concerned, an area of 16830.88 sq. mts., it was stated that the same was being surrendered by the LIC which would be utilized by the Kanpur Development Authority for construction of a commercial complex.

12. In paragraph (Gha) of the renewal order, it is mentioned that out of the entire complex known as Free India House Nazul plot Nos. 27, 28 and 11 having

a total area of 10338 sq. mts. a new lease deed was executed in favour of the LIC w.e.f. 1.7.1987 for a sum of Rs. 265/- per sq. mts. as a consideration and annual rent of Rs. 18,26,380/- plus Rs. 45,657 for a period of 90 years subject to two successive renewals of 30 years each.

13. The submission of learned counsel for the petitioner is that the plot in dispute of which he was a resident fell on Nazul plot No. 32 and since plot No. 32 has not been mentioned in paragraph (Gha), therefore, it will be assumed that the said plot had been surrendered by the LIC to the State Government for utilization of Kanpur Development Authority for construction of its commercial complex.

14. This submission is factually fallacious. From perusal of the order dated 25.4.1989 itself it is clear that the portion on which the LIC existed there was a three storied building which was used for commercial as well as residential purposes and the portion of which the lease was renewed w.e.f. from 31.8.1962 for a period of 30 years measured 1923.12 sq. mts. out of a total area of 18754 sq. mts. Moreover the area which was surrendered by the LIC to the State Government comprised 16830.88 sq. mts. and thus if the two figures are added the total area would come to 18754 sq. mts., as already shown in paragraph (Ka) of the renewal order dated 25.4.1989.

15. Moreover, in paragraph 6 of the written statement filed by the petitioner there is a categorical statement that he has been regularly paying rent and taxes to the applicant-LIC. The contents of paragraph 6 of the written statement reads as under:

...The opp. party has been regularly paying rent and taxes to the applicant.

16. Thus there is no dispute that the Nazul plot No. 34 of which the petitioner was a tenant in the building of the LIC stood on Nazul Plot No. 34 whose lease was renewed w.e.f. 31.8.1962 for a period of 30 years. This portion of the land belonging to the LIC has been referred to in paragraph (Ka) of the renewal order as "Bhargava Estate" and immediately thereafter in paragraph (Kha), it is clearly stated in no uncertain terms that the building in possession of the LIC which though commercial but it was given to the LIC on lease as residential, shall continue to be in possession of the LIC as residential and this three storied building which is used for commercial as well as residential purposes by the LIC, the LIC will continue to be in possession of the same on the same terms and conditions under the renewal order.

17. The land referred to as Nazul plot Nos. 27, 28 and 11 in paragraph (Gha) of the renewal order having an total area of 10338 sq. mts. and mentioned as "Free India House", in respect of the said land a fresh lease has been granted in favour of the LIC w.e.f. 1.7.1987 on a consideration of Rs. 265/- per sq. mts. on an annual rent of Rs. 18,26,380/- plus Rs. 45,657/- for a period of 90 years with two successive renewals of 30 years each. There is no mention that there is any building constructed on this Nazul Plot Nos. 27, 28 and 11.

18. The next contention of the learned counsel for the petitioner is that on 10.6.1985 which is the date of the registered legal notice there was no lease in favour of the LIC. The submission is misconceived and factually incorrect. By the renewal order the lease of the three storied building of the LIC containing commercial as well as residential portion has been renewed in favour of the LIC w.e.f. 31.8.1962 for a period of 30 years under the terms of the renewal order dated 25.4.1989. Thus the lease in favour of the LIC was validated w.e.f. 31.8.1962 and continued up to 30.8.1992 and, therefore, on the date of issue of the legal notice and initiation of the proceedings under the Act of 1971 it cannot be said that there was no such lease in favour of the LIC.

19. The next submission of learned counsel for the petitioner is that the notice dated 10.6.1985 was stated to be issued u/s 106 of the Transfer of Property Act, 1882 but no reasons were mentioned therein for issuing of the said notice terminating the tenancy of the petitioner.

20. Section 106 of the Transfer of Property Act 1882 does not contemplate the mentioning of any reason for terminating the tenancy. This question has been adequately considered and answered by the Supreme Court in the case reported in *Jiwan Dass Vs. Life Insurance Corporation of India and Another*, . Paragraph 4 of the said judgment reads as under:

4. Section 106 of the T.P. Act does indicate that the landlord is entitled to terminate the tenancy by giving 15 days" notice, if it is a premises occupied on monthly tenancy and by giving 6 months" notice if the premises are occupied for agricultural or manufacturing purposes, and on expiry thereof proceedings could be initiated. Section 106 of the T.P. Act does not contemplate of giving any reason for terminating the tenancy. Equally the definition of the public premises "unauthorised occupation" u/s 2(g) of the Act postulates that the tenancy "has been determined for any reason whatsoever". When the statute has advisedly given wide powers to the public authorities under the Act to determine the tenancy, it is not permissible to cut down the width of the power by reading into it the reasonable and justifiable grounds for initiating action for terminating the tenancy u/s 106 of the T.P. Act. If it is so read Section 106 of T.P. Act and Section 2(g) of the Act would become ultra vires. The statute advisedly empowered the authority to act in the public interest and determine the tenancy or leave or licence before taking action u/s 5 of the Act. If the contention of the appellant is given acceptance he would be put on a higher pedestal than a statutory tenant under the Rent Act. Take for example that a premises is let out at a low rent year back like the present one. The rent is unrealistic. With a view to revise adequate market rent, tenant became liable to ejectment. The contention then is, action is violative of Article 21 offending right to livelihood. This contention too is devoid of any substance. An owner is entitled to deal with his property in his own way profitable in its use and occupation. A public authority is equally entitled to use the public property to the best advantage as a commercial venture. As an integral incidence of ejectment of a tenant/licensee is inevitable. So the doctrine

of livelihood cannot indiscriminately be extended to the area of commercial operation. Therefore, we do not find any substance in the contentions of the appellant. The appeal is accordingly dismissed. No costs.

21. Learned counsel for the petitioner further submitted that the petitioner was not an unauthorised occupant over the property in dispute as he had entered into the premises under a valid order of allotment dated 3.2.1973 under the U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act 13 of 1972). The appellate authority while considering this plea of the petitioner has categorically held that though the petitioner had entered into the premises under an order of allotment dated 3.2.1973 issued by the Rent Control and Eviction Officer under the U.P. Act 13 of 1972 but in view of the subsequent amendment made in section 2 of the Act 13 of 1972 by which all such premises in possession of the Government would be ousted from the Act 13 of 1972 and, therefore, even if there was a valid order of allotment in favour of the petitioner, the same would be of no consequence after the amendment in section 2 of the said Act and proceedings under the Public Premises Act, being a Special Act the same would supersede the Act 13 of 1972 in respect of Government buildings.

22. It is not disputed by the learned counsel for the petitioner that the LIC was created by an Act of Parliament and even such building which was taken on lease by the LIC, therefore, fell within the definition of Government building. This question has also been adequately answered by the Supreme Court in the case, reported in Jain Ink Manufacturing Company Vs. Life Insurance Corporation of India and Another, . The relevant paragraphs 6, 7, 8, 9 and 10 of the said judgment read as under:

6. The second contention put forward by Mr. Rao was that in view of the provisions of the Rent Act which override the provisions of the Premises Act, S. 14 of the Rent Act completely bars recovery of possession of any premises except in accordance with the procedure laid down in the Rent Act. It was contended by Mr. Rao that although the Premises Act was passed in 1971, it has been given retrospective effect from 16th September 1958 and, therefore, should be construed as a law having been passed in 1958 and as the Rent Act was passed in 1959 it overrides the Premises Act. We are, however, unable to agree with this argument. In the first place, the Premises Act was passed in 1971 and came into force on the 23rd of August 1971, that is to say, long after the Rent Act was passed in 1959. The mere fact that by virtue of a fiction the Premises Act was given retrospective effect from 1958 will not alter the date when the Premises Act was actually passed, that is to say August 23, 1971. In these circumstances, therefore, the Premises Act being subsequent to the Rent Act would naturally prevail over and override the provisions of the Rent Act. It was further contended by Mr. Rao that the Rent Act being a special law as compared to the Premises Act, it will override the Premises Act without going into the question as to which of the two Acts were prior in point of time. In support of his contention the 504 counsel relied on a decision of this Court in

Shri Sarwan Singh and Another Vs. Shri Kasturi Lal, where this Court observed as follows:

When two or more laws operate in the same field and each contains a non-obstante clause stating that its provisions will override those of any other law, stimulating and incisive problems of interpretation arise. Since statutory interpretation has no conventional protocol, cases of such conflict have to be decided in reference to the object and purpose of the laws under consideration.

(Emphasis supplied)

7. It is true that in both the Acts there is a non-obstante clause but the question to be determined is whether the non-obstante clauses operate in the same field or have two different spheres though there may be some amount of overlapping. The observations cited above clearly lay down that in such cases the conflict should be resolved by reference to the object and purpose of the laws in consideration. In Shri Ram Narain Vs. The Simla Banking and Industrial Co. Limited, this Court made the following observations:--

It is therefore, desirable to determine the overriding effect of one or the other of the relevant provisions in these two Acts, in a given case, on much broader considerations of the purpose and policy underlying the two Acts and the clear intendment conveyed by the language of the relevant provisions therein.

8. 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. That the authorities to which the Premises Act applies are a class by themselves is not disputed by the counsel for the appellant as even in the case of Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another, such authorities were held to form a class and, therefore, immune from challenge on Art. 14 of the Constitution. Similarly, the summary procedure prescribed by the Premises Act is also not violative of Art. 14 as held by this Court in 505 Maganlal Chhaganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay and Others, .

9. Thus, it would appear that both the scope and the object of the Premises Act is quite different from that of the Rent Act. The Rent Act is of much wider application than the Premises Act inasmuch as it applies to all private premises which do not fall within the limited exceptions indicated in S. 2 of the Premises Act. The object of the Rent Act is to afford special protection to all the tenants or private landlords or landlords who are neither a Corporation nor Government or Corporate Bodies. It would be seen that even under the Rent Act, by virtue of an

amendment a special category has been carved out under S, 25B which provides for special procedure for eviction to landlords who require premises for their personal necessity. Thus, S. 25B itself becomes a special law within the Rent Act. On a parity of reasoning, therefore, there can be no doubt that the Premises Act as compared to the Rent Act, which has a very broad spectrum, is a Special Act and overrides the provisions of the Rent Act.

10. It was also suggested by Mr. Rao that in view of S. 3(a) of the Rent Act, which is extracted below, it would appear that the intention of the legislature in passing the Rent Act was merely to exclude from its operation only premises belonging to the Government and if the intention was to exclude other premises belonging to corporate Bodies or Corporations, then S. 3(a) should have been differently worded:

3. Nothing in this Act shall apply:--

(a) to any premises belonging to the Government.

This in our opinion, does not advance the case of the appellant any further because once the Premises Act becomes a special Act dealing with premises belonging to Central Government, Corporations and other statutory Bodies, the Rent Act stands superseded. We have to consider the provisions of the two Acts, they having been passed by the same legislature, viz., Parliament, and the rule of harmonious construction would have to apply in such cases.

23. Learned counsel for the petitioner then submitted that even otherwise he was not an unauthorised occupant of the premises in dispute within the meaning of Section 2(2)(g) of the Public Premises Act. This question has also been answered in the case of Jain Ink Manufacturing Company Vs. Life Insurance Corporation of India and Another, and paragraph 5 of the said judgment reads as under:

5. It would be seen that before a person could be said to be in an unauthorised occupation, the Act required the following conditions:--

(1) that the occupant had entered into possession before or after the commencement of the Act.

(2) that he had entered into such possession otherwise than under and in pursuance of any allotment, lease or grant. That Act, therefore, lays special stress on only one point, namely, the entry into possession. Thus, if the entry into possession had taken place prior to the passing of the Act, then obviously the occupant concerned would not be an unauthorised occupant. What made the occupancy unauthorised was his entry into possession at a particular point of time. It was in construing these provisions that this Court held that if the appellants in that case were in possession before the sale of the property to the Government, their entry into possession could not be said to be unauthorised. These observations, however, would have absolutely no application to the instant case where S. 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 S. 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 S. 2(2)(g) is whether or not the person concerned was in occupation of the public premises when the 503 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 S. 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 S. 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 S. 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.

24. The petitioner was given a legal notice dated 10.6.1985 (sic) terminating his tenancy w.e.f. 16.7.1985. The period of notice expired on 15.7.1985 as admitted by him in paragraph 2 of the writ petition. Thus from the expiry of the period of 30 days of the notice dated 10.6.1985 the petitioner became an unauthorised occupant of the premises in dispute as defined in section 2(2)(g) of the Act of 1971.

25. Learned counsel for the petitioner next submitted that the guide lines have been issued by the Central Government on 14.1.1992 and 5.8.1992 prohibiting in-discriminate eviction of a lessee by Government owned corporations and

companies. From a reading of the Government Orders dated 14.1.1992 and 5.8.1992 it is clear that these are at best guidelines and cannot be said to be mandatory. Infact, the subject itself refers to the orders as guidelines under the Public Premises Act for statutory undertakings. Similar guidelines have been issued by the Government with regard to action taken by the LIC in respect of the members of SC/ST and this Court in the case, reported in 2008 (1) ARC 734 Shree Bhagwan Goel (Shri)(deceased) represented by Smt. Kamla Goel v. Life Insurance Corporation of India, Agra and others (AIR 2008 (NOC) 1872 (All)) has held in paragraphs 6 and 7 as under:

6. It was then submitted that even though the guidelines may not have statutory force they are relatable to the provisions of Article 162 of the Constitution of India in absence of any rules having been framed. Shri Manish Goel Counsel for the respondent LIC submitted that Section 21 of the LIC Act read with Section 6 of the Act has already occupied the field in respect of the nature of the directions that can be issued to the LIC. He also submitted that the guidelines are only directory in nature. He placed reliance upon two decisions of the Apex Court. In R. Sai Bharathi Vs. J. Jayalalitha and Others, the Apex Court was dealing with the provision of participation of the Chief Minister in a sale. The contention was that the conduct of the Chief Minister was in contravention of the code of conduct issued by the Government and therefore was an offence within the meaning of Section 169 of the IPC which applies to a public servant's unlawful buying or bidding for property. The argument was repelled by the Supreme Court. It was held that the guidelines could not be raised to the level of statutory directions and were not law and were merely directory relating to the conduct of a person. It was held even if the Government order is proved to have been issued under Article 162 such a code would not be enforceable when the language used is not mandatory. In J.R. Raghupathy and Others Vs. State of A.P. and Others, , the Apex Court was dealing with certain guidelines which related to the manner of creating divisions (mandals) for revenue purposes and it was held that the guidelines in question are not mandatory. Sri M.K. Gupta submitted that the guidelines were mandatory in nature and not directory and in support of his contention he placed reliance on the decision of the Apex Court in Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another, . It was submitted on the strength of this decision that where there is a duty cast by the guidelines they would be mandatory in nature. The case cited related to the discretion conferred on the authority to grant relaxation in marks to Scheduled Castes and Scheduled Tribes candidates. In that case the Supreme Court relied upon the provisions of Article 335 of the Constitution of India which provide that the claims of the members of the Scheduled Caste and Scheduled Tribe shall be taken into consideration consistently with the maintenance of efficiency of administration in making appointments to services and posts. The Court also relied upon Article 46 of the Constitution of India. This decision does not apply to the nature of the guidelines in the present case. It is difficult to accept this submission of the petitioners"

counsel that the guidelines are mandatory. The language employed does not indicate that the guidelines are mandatory. In case the guidelines are held to be mandatory in nature they will run counter to the provisions of the Public Premises (Unauthorised Occupants) Act inasmuch as the guidelines would narrow down the class of persons against whom proceedings for eviction can be initiated as also the definition of an unauthorised occupant. The guidelines cannot therefore, be treated to be of a mandatory nature. Moreover the Life Insurance Corporation is a public sector Corporation. It is an official body. Its acts are deemed to have been regularly performed. The burden would be upon the petitioner to prove that its action was irregular. To say the least it was incumbent upon the petitioners to put forward the material to indicate that the action of the Corporation was in breach of the guidelines. In the application filed before the appellate Court; it was not even stated as to which guideline was breached. In absence of any such specific averments the initiation of the proceedings under the Public Premises Act cannot be taken exception to.

7. In *Advani & Co., Kanpur & others v. Life Insurance Corporation of India & another*, writ petition No. 12591 of 2003 decided on 25.3.2003, this Court had an occasion to consider the effect of the guidelines. It was held by this Court that the guidelines cannot be elevated to the status of a rule. It was pointed out by Shri Goel that the guidelines had been issued by Ministry of Urban Development and not by the Ministry of Finance and it is the Ministry of Finance which actually governs the Life Insurance Corporation. In view of the finding that I have recorded that the petitioner on facts could not establish that the action of the Corporation in the initiation of proceedings under the Public Premises Act is arbitrary or mala fide the question about the force of the guidelines has little importance. The cases relied upon by Shri Gupta upon the point that the action of public sector Corporation is subject to judicial review and any action which is arbitrary or whimsical in nature would infringe not only the guidelines but Article 14 of the Constitution of India also have no application as the petitioners have not demonstrated any arbitrariness on the part of the Corporation. The breach of the guidelines is also not proved.

Thus in the totality of the above facts and circumstances of this case as well as the legal principles enunciated by the Supreme Court and this Court, the writ petition lacks merit and is accordingly dismissed.