

CASE NO.:  
Appeal (civil) 5879 of 2007

PETITIONER:  
New India Assurance Company Ltd.

RESPONDENT:  
Nusli Neville Wadia and another

DATE OF JUDGMENT: 13/12/2007

BENCH:  
S.B. SINHA & HARJIT SINGH BEDI

JUDGMENT:  
JUDGMENT  
(Arising out of SLP (C) No. 8232 OF 2006)  
WITH  
CIVIL APPEAL NO. 5871 OF 2007  
(Arising out of SLP (C) No. 10348 OF 2006)

New India Assurance Company Ltd.

\005\005Appellant

Versus

KLM Engineering Co. Pvt. Ltd. and others

\005\005Respondents

S.B. SINHA, J.

1. Leave granted.

#### Introduction

2. Who should begin to lead evidence in a proceeding under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (in short \021the Act\022) is the question involved in these appeals.

#### Background Facts

3. Appellant is a company incorporated under the Companies Act, 1950. It is a State within the meaning of Article 12 of the Constitution of India. It owns a building in the town of Mumbai commonly known as Mayfair Gardens. Respondents herein are the tenants occupying two apartments in the said building. We would notice the fact of each matter in brief separately.

Facts in appeal \026 Nusli Neville Wadia and Anr.

4. In this appeal a notice terminating the tenancy of first respondent was issued on 9th February, 2001. However, on the premise that no ground of eviction had been mentioned therein, another notice was issued on 18th February, 2002 enumerating the grounds of eviction. Replies were given thereto by the respondent. Appellant filed an application before the Estate Officer praying for eviction of the respondent and for damages for unauthorized occupation of the premises with effect from 1st April, 2002 @ Rs.4,91,700/- per month with interest @ 9 % per annum thereupon.

5. The Estate Officer purported to be satisfied that the occupation of the first respondent is unauthorized and that an order of eviction may have been passed against it issued a show cause notice to respondent No.1 on 28th July, 2003 under Section 4 of the Act. The

grounds for first respondent\022s eviction as set out in the application were :-

\0231. The New India Assurance Co. Ltd. needs and requires the premises for its own use and occupation for accommodating its own senior executives ;

2. The New India Assurance Co. Ltd. is being evicted from tenanted premises and being called upon to pay exorbitant rents for tenanted premises ;

3. Increase in business, globalization of economy and liberalization of policies have necessitated the New India Assurance Co. Ltd. to use and occupy the New India Assurance Co. Ltd.\022s own properties ;

4. The tenancy of Respondent No. 1 has been duly terminated by the New India Assurance Co. Ltd.\022s notice dated 18.02.2002;

5. Respondent No.1 is a rich and wealthy industrialist who has several flats for his residence.\024

6. Notice was also issued on the same date i.e. 28th July, 2003 under the provisions of Section 7(3) of the Act calling upon the tenant-respondent to show cause why he should not be required to pay damages. Reply to the formal show cause notices were filed by the first respondent on 23rd February, 2004. A detailed written statement was filed by him on 3rd September, 2004.

7. Upon an application filed by the appellant, the Estate Officer by an order dated 26th August, 2005 directed the first respondent to lead evidence wherein his advocate was directed to file an affidavit of evidence. The matter was adjourned for cross-examination of the first respondent\022s witnesses by the appellant\022s advocate. First Respondent, however, filed an application before the Estate Officer praying inter alia that he should vary his order dated 26th August, 2005 and direct the appellant to lead its evidence first and offer its witnesses for cross-examination by the first respondent whereafter he would file his affidavit of evidence. The said application was rejected by the Estate Officer by an order dated 12th January, 2006. Aggrieved by and dissatisfied therewith the first respondent filed a writ petition before the Bombay High Court which, by reason of the impugned judgment, has been allowed.

Facts in appeal - KLM Engineering Co. Pvt. Ltd. and Ors.

8. Respondent No.1 was inducted as a licensee in a furnished flat in an apartment in the said building. The period of lease was for 5 years beginning from 1st October, 1994. Allegedly on the premise that the respondent No.1 did not renew the \021licence\022 by giving two months\022 prior notice as required, a notice to quit and handover possession was issued on 13th December, 1999. In response to the said notice the respondents contended that they had exercised their option to renew the licence vide their letter dated 9th December, 1999. Thereafter by a notice dated 9th February, 2001 the tenancy of respondent No.1 was terminated by the appellant. As the said notice did not contain any ground for termination of tenancy, another notice was issued on 18th February, 2002. Composite application was filed by the appellant under Sections 4 and 7 of the Act before the Estate Officer on 16th January, 2003 whereupon two show cause notices were issued by the Estate Officer to the first respondents in terms of Section 4 and 7(3) of the Act on 21st February, 2003.

9. Before the Estate Officer, the appellant filed its affidavits of evidence. Dates after dates were fixed for cross-examination of the witnesses of the appellant. Appellant had been taking adjournments in the matter. On 22nd August, 2005 the first respondent moved an application for direction before the Estate Officer. On or about 20th September, 2005 the appellant had filed an application inter alia stating that as it had already placed all the evidence on record, it was for the first respondent to file its evidence and produce witnesses first for cross-examination by it and prayed inter alia for the following relief :-

\023the Opposite Party be directed to show cause to the Statutory Notice issued by the erstwhile Learned Estate Officer under sections 4 and 7 of the PP Act and the case submitted by the Applicants.\024

By order dated 30th January, 2006 the Estate Officer directed the first respondent to lead evidence by the following order :-

\023Both applications disposed of. Application dated 22nd August, 2005 of the Opposite Party is not allowed. As regards application dated 20th September 2005 taken out by the Applicants, I direct the Opposite Party to file their documents and witness affidavits in lieu of evidence in chief on or before 21.02.2006 complete inspection of documents, if any, by 28.02.2006 and adjourn the matter to 03.03.2006 at 3.30 p.m. for further directions.\024

10. Aggrieved by and dissatisfied therewith, the Respondent Nos. 1 and 2 filed a writ petition before the High Court being W.P. No. 557 of 2006 which has been allowed by reason of the impugned order.

#### Contentions

11. Mr. P.N . Lekhi, learned senior counsel appearing on behalf of the appellant inter alia submitted:

- i) Having regard to the scheme of the 1971 Act and the Rules framed thereunder the respondent-tenant should have been directed to lead evidence.
- ii) The Estate Officer having satisfied itself that the respondent-tenant was in unauthorized occupation of the public premises, it was for the tenant to establish that his occupation is authorized.
- iii) The premises in question being a public premises the Noticee does not enjoy any protection as envisaged under the provisions of the Maharashtra Rent Control Act, 1999 and in that view of the matter termination of tenancy itself is sufficient for directing eviction of the tenant and thus, the onus would lie upon the respondent to show that it is not in unauthorized occupation.
- iv) The procedure prescribed under the Act for eviction of the unauthorized occupants being governed by the provisions of the Act and the Rules thereunder, the provisions of the Code of Civil Procedure or the Evidence Act would not be attracted.
- v) The High Court committed a serious error in passing the impugned judgment relying on or on the basis of the guidelines issued by the Central Government which have no statutory force; being advisory in character, and as such the same could not have been relied upon ignoring the statutory enactment.
- vi) The Division Bench of the High Court acted illegally in so

far as it failed to take into consideration several binding precedents operating in the field.

12. Mr. F.S. Nariman, learned senior counsel, appearing on behalf of the first respondent in Civil Appeal arising out of SLP (C) No.8232 of 2006 would submit that:

(a) Section 4 of the Act deals with two types of cases; first those who are in unauthorised occupation in the sense of being in occupation without any authority therefor which is governed by the first part of Section 4 of the Act; and second, those who have continued in occupation of public premises as Rent Control Acts permitted them to continue to occupy but in respect whereof the tenancy has been terminated for any reason whatsoever as envisaged in Section 2(g) of the Act.

(b) Whereas in the first group of cases the onus of proof would be on the tenant to establish that no order of eviction should be passed, however, in the second group of cases it would be for the landlord to establish their bona fide need, although the provisions of the Code of Civil Procedure and the Evidence Act stricto sensu are not applicable, having regard to the statutory scheme as also the principles of natural justice which are required to be complied with.

(c) As the Act and the Rules envisage a lis between the parties and the decision of the Estate Officer is an appealable one, not only evidence is required to be recorded, an opportunity to cross-examine the witnesses must also be given.

(d) A party to the lis cannot ordinarily be directed to prove a negative and in that view of the matter, it would be for the insurance company to lead evidence at the first instance.

13. Mr. Anil B. Diwan, learned senior counsel appearing on behalf of respondent Nos. 1 and 2 in Civil Appeal arising out of SLP (C) No. 10348 of 2006 submitted that:

(1) As a composite application for eviction as also the damages has been filed and a composite notice having been issued, the onus of proof lay upon the appellant.

(2) Appellant having filed an affidavit of its witnesses accepted that it was for it to lead evidence and having taken a large number of adjournments on the dates fixed for cross-examination of the said witnesses, could not have gone back thereupon and contended that it was for the respondents to lead evidence.

(3) As the principle of natural justice contemplate cross-examination of the witnesses as also inspection of documents, the High Court cannot be said to have committed an error in passing the impugned judgment.

#### THE ACT

14. Indisputably the respondents herein are not protected tenants under the provisions of the Maharashtra Rent Control Act, 1999.

15. Section 15 of the Act bars the jurisdiction of a civil court or any other court to entertain any proceedings in respect of eviction of any person who is in unauthorized occupation of any public premises. Public premises has been defined in Section 2(e) to mean any premises belonging to, or taken on lease by any corporation established by or under a Central Act and owned or controlled by the Central Government. It is not in dispute that the premise in question is a public premise.

16. Section 3 of the Act provides for appointment of an Estate

Officers. Sections 4 provides for issuance of a show cause notice in the following terms :-

\023Section 4 - Issue of notice to show cause against order of eviction - (1) If the estate officer is of the opinion that any persons are in unauthorised occupation of any public premises and that they should be evicted, the estate officer shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.

(2) The notice shall--

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

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

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

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

(3) The estate officer shall cause the notice to be served by having it affixed on the outer door or some other conspicuous part of the public premises, and in such other manner as may be prescribed whereupon the notice shall be deemed to have been duly given to all persons concerned.\024

17. Section 5 deals with the procedure for eviction of unauthorized occupants. It reads :-

\023Section 5 - Eviction of unauthorised occupants.- (1) If, after considering the cause, if any, shown by any person in pursuance of a notice under section 4 and any evidence produced by him in support of the same and after personal hearing, if any, given under clause (b) of sub-section (2) of section 4], the estate officer is satisfied that the public premises are in unauthorised occupation, the estate officer may make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated, on such date as may be specified in the order, by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises.

(2) If any person refused or fails to comply with the order of eviction on or before, the date specified in the said order or within fifteen days of its publication under sub-section (1) whichever is later, the estate officer or any other officer duly authorized by the estate officer in this behalf may evict that person from, and take possession of, the public premises and may, for that purpose, use such force as may be necessary.\024

18. Section 7 empowers the Estate Officer to require payment of rent or damages in respect of public premises by the person who is in unauthorized occupation thereof.

19. Section 9 provides for appeal from an order of the Estate Officer.

THE RULES;

20. Rules have been framed by the Central Government in exercise of its powers under Section 18 of the Act known as the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971. Rule 5, which is material for these appeals reads as under :-

\0235. Holding of inquiries. \026 (1) Where any person on whom a notice or order under this Act has been served desires to be heard through his representative he should authorize such representative in writing

(2) The estate officer shall record the summary of such evidence and any relevant documents filed before him shall form part of the records of the proceedings. \023

#### GUIDELINES

21. A tenant of a public premise although ordinarily does not get any protection from eviction from the tenanted premises under the provisions of the Maharashtra Rent Control Act, 1999, it is accepted that the action of the part of the landlord, which is a State within the meaning of Article 12 of the Constitution of India must in this behalf be fair and reasonable. In other words the action of the State in terms of the provisions of the Act should not be arbitrary, unreasonable or mala fide. With that end in view only, and for determining the legal effect arriving thereunder, the Central Government had, from time to time, issued several guidelines. The guidelines so issued are dated 14th January, 1992 ; 5th August, 1992 ; 7th July, 1993 ; 14th July, 1993 ; 23rd July, 1993; 9th June, 1998, 2nd September, 2002 and 23rd July, 2003. In terms of the said guidelines, however, a distinction is sought to be made between a tenant who is rich or industrialist etc. vis-a-vis a person who is poor and uses the tenanted premises only for his residence as would appear from the guidelines dated 23rd July, 2003, the relevant portion whereof reads as under :-

\0233. The Government Resolution dated 30.05.2002 embodies the guidelines dated 14.01.1992 for observance by the Public Sector Undertakings. However, clarification was issued vide OM No.21011/790 Pol.1 IV.H.11 dated 07.07.1993 that the guidelines are meant for genuine non affluent tenants and these are not applicable to the large business houses and commercial entrepreneurs.\024

22. Issuance of such guidelines, however, is not being controlled by statutory provisions. The effect thereof is advisory in character and thereby no legal right is conferred upon the tenant. (See 1990 (Supp) SCC 440 at 508 : Narendra Kumar Maheshwari vs. Union of India and others ; (1981) 1 SCC 166 at 232 : Maharao Sahib Shir Bhim Singhji vs. Union of India and others ; (1988) 4 SCC 464 (paragraph 31) : J.R. Raghupathy and others vs. State of A.P. and others ; (2002) 100 DLT 487 : Uttam Parkash Bansal and others vs. L.I.C. of India and 1992 (2) CLR 457 : Punjab National Bank vs. M/s. The Lord Krishna Paper Industries and others.

23. We may, however, hasten to add that having regard to the fact that the appellants themselves referred to guidelines issued by the Central Government from time to time, its ultimate effect on the application need not be finally determined by us.

#### APPLICATION OF THE ACT AND THE RULES

24. Where an application is filed for eviction of an unauthorized

occupant it obligates the Estate Officer to apply his mind so as to enable him to form an opinion that the respondent is a person who has been in unauthorized occupation of the public premises and that he should be evicted. When a notice is issued in terms of Section 4 of the Act, the noticee may show cause. Section 5 of the Act postulates that an order of eviction must be passed only upon consideration of the show cause and any evidence produced by him in support of its case also upon giving him a personal hearing, if any, as provided under clause (ii) of sub-section 2 of Section 4 of the Act.

25. Although Section 5 ex-facie does not make any classification in regard to the two classes of tenancies but the same is evident from the decisions rendered by this Court as also by the different High Courts.

26. The occupants of public premises may be trespassers, or might have breached the conditions of tenancy, or have been occupying the premises as a condition of service, but were continuing to occupy the premises despite cessation of contract of service.

27. However, there may be another class of tenants who are required to be evicted not on any of the grounds mentioned hereinbefore but inter alia on the ground, which requires proof of the fairness and reasonableness on the part of the landlord which may include requirement for its own use and occupation.

28. Furthermore a proceeding may be initiated under Section 4 simplicitor. A composite proceedings may also be initiated both under Sections 4 and 7 of the Act. In the latter category of cases the landlord would be required to establish not only the bona fide need on its part but also quantum of damages to which it may hold to be entitled to, in the event that an order is passed in favour of the establishment.

29. Admittedly in these cases two notices for eviction were issued. If the contention of Mr. Lekhi is correct, the first notice was not required to be withdrawn and the second notice was not required to be issued, specifying the grounds on which the eviction of the respondents were sought for.

30. When an application for eviction is based on such grounds, which require production of positive evidence on part of the landlord, in our opinion, it would be for it to adduce evidence first; more so in a composite application where the evidence is also required to be led on the quantum of damages to be determined by the Estate Officer.

31. There may be a case where the tenant may take a defence which discloses no prima facie case in which event the Estate Officer may ask him to lead evidence. But there may be cases where the ground of eviction, having regard to the defence taken by the occupants, may be required to be gone into.

32. Appellant's stand in this case is clear and unambiguous. It intends to evict the respondents on the grounds specified in the notices issued by the Estate officer.

33. The Estate Officer with a view to determine the lis between the parties must record summary of the evidence. Summary of the evidence and the documents shall also form part of the record of the proceedings.

34. Procedure laid down for recording evidence is stated in the Rules. The Estate Officer being a creature of the statute must comply the same. When a notice is issued, the occupant of the public premises would not only be entitled to show cause but would also be entitled to produce evidence in support of the cause shown.

## CONCEPT OF FAIRNESS

35. The procedural aspect as to who should lead evidence first, thus may have to be determined on the basis of the issues arising in the matter. When we say so, we do not mean that the procedure involved being a summary one, the issues are required to be specifically framed but that which is the principal issue(s) between the parties must be known to the Estate officer.

36. Thus under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 the occasion would arise for multi-level inquiry: Primary inquiry will be to arrive at a conclusion on 'unauthorized occupant'; and intermediate inquiry would be as to the eviction of 'unauthorized occupant'.

37. The question has been succinctly dealt with by a Division Bench of the Bombay High Court in: *Minoo Framroze Balsara vs. Union of India and others* (1992 Bom 375) wherein Bharucha, J. (as the learned Chief Justice then was) opined: 'the Government company or corporation must so act not only when terminating the authority of an occupant of public premises of its ownership to occupy the same but also when, thereafter, it seeks his eviction therefrom'.

38. The statute, although, does not require a lengthy hearing or a lengthy cross-examination but the noticee should be given an opportunity to file an effective show cause. An effective show cause can be filed when eviction is sought for a specified ground and the occupants must know the particulars in relation thereto.

39. For the said purpose, Sections 4 and 5 of the Act must be read together. Even the Rules which are validly framed must be read alongwith the statutory provisions. Ordinarily although a tenant occupying the property belonging to a government may be somewhat in a worse position than a tenant having protection under the Rent Control Act as has been held by a Full Bench of the Calcutta High Court in *AIR 1968 Calcutta 1 : Standard Literature Co. Private Ltd. and Ors. vs. Union of India*, but with a view to interpret the provisions of the Act, we must take into consideration the decisions of this Court laying down the concept of 'bona fide act' and the 'fair action' on the part of the owner as laid down in (1989) 3 SCC 293 *Dwarkadas Marfatia and Sons vs. Board of Trustees of the Port of Bombay* and (1990) 4 SCC 406 : *Ashoka Marketing Ltd vs. Punjab National Bank*.

40. In *Dwarkadas Marfatia* (supra) this Court clearly held that 'the public authorities which enjoy this benefit without being hidebound by the requirements of the Rent Act must act for public benefit. Hence, to that extent, that is liable to be gone into and can be the subject matter of adjudication'. *Dwarkadas Marfatia* was applied in *Ashoka Marketing* (supra) stating :- 'It has been urged by the learned counsel for the petitioners that many of the corporations referred to in Section 2(e)(ii) of the Public Premises Act, like the nationalised banks and the Life Insurance Corporation, are trading corporations and under the provisions of the enactments whereby they are constituted these corporations are required to carry on their business with a view to earn profit, and that there is nothing to preclude these corporations to buy property in possession of tenants at a low price and after buying such property evict the tenants after terminating the tenancy and thereafter sell the said property at a much higher value because the value of property in possession of tenants is much less as

compared to vacant property. We are unable to cut down the scope of the provisions of the Public Premises Act on the basis of such an apprehension because as pointed out by this Court in *Dwarkanadas Marfatia and Sons v. Board of Trustees of the Port of Bombay* (SCC p. 306, para 27)

\023...every activity of a public authority especially in the background of the assumption on which such authority enjoys immunity from the rigours of the Rent Act, must be informed by reason and guided by the public interest. All exercise of discretion or power by public authorities as the respondent, in respect of dealing with tenants in respect of which they have been treated separately and distinctly from other landlords on the assumption that they would not act as private landlords, must be judged by that standard.\024

These observations were made in the context of the provisions of the Bombay Rents, Hotel and Lodging Houses Rates (Control) Act, 1947 whereby exemption from the provisions of the Act has been granted to premises belonging to the Bombay Port Trust. The consequence of giving overriding effect to the provisions of the Public Premises Act is that premises belonging to companies and statutory bodies referred to in clauses (2) and (3) of Section 2( e ) of the Public Premises Act would be exempted from the provisions of the Rent Control Act. The actions of the companies and statutory bodies mentioned in clauses (2) and (3) of Section 2( e ) of the Public Premises Act while dealing with their properties under the Public Premises Act will, therefore, have to be judged by the same standard.\024

#### Constitutional Backdrop

41. Constitutional validity of the Act as also its predecessors\022 Act being Public Premises (Eviction of Unauthorised Occupants) Act, 1958 and the Government Public Premises Eviction Act, 1950 was challenged in several proceedings. The Public Premises Act, 1950 was struck down in AIR 1956 All. 507 (DB) *Brigadier Commandant, Meerut vs. Gangaprasad* ; 58 CWN 1056 : *Jaggu Singh vs. Shakuat Ali* and 1957 (59) PLR 621 : *Satish Chander vs. Delhi Improvement Trust*. 1950 Act was repealed by the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 wherein, however the jurisdiction of the civil court was not barred. A Constitution Bench of this Court in 1967 (3) SCC 399 : *Northern India Caterers Pvt. Ltd. vs. State of Punjab* held Section 5 thereof to be void as an additional remedy over and above the usual remedy by way of a suit was conferred thereby providing for two alternative remedies or leaving it to the unguided discretion of the Statutory Authorities to resort to one or the other procedure. *Northern India Caterers Pvt. Ltd. (supra)*, however, was overruled by a Bench of 7 Judges of this Court in (1974) 2 SCC 402 : *Maganlal Chaganlal vs. Municipal Corporation*. We must also notice that 1958 Act was struck down by Delhi High Court in *P.L. Mehra vs. D.R. Khanna* (Civil Writ No. 431 of 197).

42. On the aforementioned premises the 1971 Act was enacted after removing the vice which led to it having been declared as void with effect from 16th September, 1958. It suffered another challenge in (1972) 2 SCC 259 : *Hari Singh vs. Military Estate Officer*. However, the challenge to its validity was negatived holding that the 1971 Act did not provide for two procedures but only one procedure. Yet again in (1988) 4 SCC 324 : *Accountant and Secretarial Services vs. Union of India* challenge to the validity of the Act on the premise

that one of the officers of the Statutory Authority may be appointed as an Estate Officer and thus violative of Article 14. However, the Court negated the challenge and observed:

\02432. Dr Chitale, while initially formulating his contentions, outlined an argument that the provision in the 1971 Act appointing one of the officers of the respondent Bank as the Estate Officer is violative of Article 14. We do not see any substance in this contention. In the very nature of things, only an officer or appointee of the government, statutory authority or corporation can be thought of for implementing the provisions of the Act. That apart, personal bias cannot necessarily be attributed to such officer either in favour of the bank or against any occupant who is being proceeded against, merely because he happens to be such officer. Moreover, as pointed out earlier, the Act provides for an appeal to an independent judicial officer against orders passed by the Estate Officer. These provisions do not, therefore, suffer from any infirmity. In fact, Dr Chitale did not pursue this objection seriously.\024

43. It was on the aforementioned premise that the dicta laid down in *Ashoka Marketing Ltd. (supra)* must be considered wherein this Court held that the Act overrides Delhi Rent Control Act, 1958, although both were Acts of Parliament.

Natural Justice Issue:

44. If some facts are to be proved by the landlord, indisputably the occupant should get an opportunity to cross-examine. The witness who intends to prove the said fact has the right to cross-examine the witness. This may not be provided by under the statute, but it being a part of the principle of natural justice should be held to be indefeasible right. [See 1984 (1) SCC 43 : *K.L. Tripathi vs. State Bank of India and others* and 2005 (10) 634 : *Lakshman Exports Limited Vs.: Collector of Central Excise*]

45. We may also take note of the fact that this Court in 1972 (1) SCR 241 : *Bareilly Electricity Supply Co. Ltd. vs. The Workmen* this Court held as under :-

\023The application of the principle of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no material can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used.\024

46. It is axiomatic that when in support of its case the landlord intends to rely upon a document which is to be taken on record, it would be obligatory on the part of the Estate Officer to allow inspection thereof to the noticee. Denial of such inspection of documents shall be violative of the principle of natural justice. It would run counter to the doctrine of fairness in the matter of determination of a lis between the parties.

47. We may also notice that in (2007) 1 SCC 174 : *Sarbananda Sonowal (II) vs. Union of India* this Court having regard to the fact that burden of proof was on the notice held :  
\02356. Status of a person, however, is determined according to statute. The Evidence Act of our

country has made provisions as regards \023burden of proof\024. Different statutes also lay down as to how and in what manner burden is to be discharged. Even some penal statutes contain provisions that burden of proof shall be on the accused. Only because burden of proof under certain situations is placed on the accused, the same would not mean that he is deprived of the procedural safeguard.\024

It was observed :  
\02360. Having regard to the fact that the Tribunal in the notice to be sent to the proceedee is required to set out the main grounds; evidently the primary onus in relation thereto would be on the State. However, once the Tribunal satisfied itself about the existence of grounds, the burden of proof would be upon the proceedee.\024

#### Interpretative Approval

48. Section 5 of the Act, on a plain reading, would place the entire onus upon a noticee. It, in no uncertain terms, states that once a notice under Section 4 is issued by the Estate Officer on formation of his opinion as envisaged therein it is for the noticee not only to show cause in respect thereof but also adduce evidence and make oral submissions in support of his case. Literal meaning in a situation of this nature would lead to a conclusion that the landlord is not required to adduce any evidence at all nor it is required even to make any oral submissions. Such a literal construction would lead to an anomalous situation because the landlord may not be heard at all. It may not even be permitted to adduce any evidence in rebuttal to the one adduced by the noticee nor it would be permitted to advance any argument. Is this contemplated in law? The answer must be rendered in the negative. When a landlord files an application, it in a given situation must be able to lead evidence either at the first instance or after the evidence is led by the noticee to establish its case and/ or in rebuttal to the evidence led by the noticee.

49. The literal interpretation of the statute, if resorted to, would also lead to the situation that it would not be necessary for the landlords in any situation to plead in regard to its need for the public premises. It could just terminate the tenancy without specifying any cause for eviction.

50. Except in the first category of cases, as has been noticed by us hereinbefore, Sections 4 and 5 of the Act, in our opinion, may have to be construed differently in view of the decisions rendered by this Court. If the landlord being a State within the meaning of Article 12 of the Constitution of India is required to prove fairness and reasonableness on its part in initiating a proceeding, it is for it to show how its prayer meets the constitutional requirements of Article 14 of the Constitution of India. For proper interpretation not only the basic principles of natural justice have to be borne in mind, but also principles of constitutionalism involved therein. With a view to read the provisions of the Act in a proper and effective manner, we are of the opinion that literal interpretation, if given, may give rise to an anomaly or absurdity which must be avoided. So as to enable a superior court to interpret a statute in a reasonable manner, the court must place itself in the chair of a reasonable legislator/ author. So done, the rules of purposive construction have to be resorted to which would require the construction of the Act in such a manner so as to see that the object of the Act fulfilled; which in turn would lead the beneficiary under the statutory scheme to fulfill its constitutional obligations as held by the court inter alia in *Ashoka Marketing Ltd* (supra).

51. Barak in his exhaustive work on \021Purposive Construction\022 explains various meanings attributed to the term \023purpose\024. It would be in the fitness of discussion to refer to Purposive Construction in

Barak\022s words:

\023Hart and Sachs also appear to treat \023purpose\024 as a subjective concept. I say \023appear\024 because, although Hart and Sachs claim that the interpreter should imagine himself or herself in the legislator\022s shoes, they introduce two elements of objectivity: First, the interpreter should assume that the legislature is composed of reasonable people seeking to achieve reasonable goals in a reasonable manner; and second, the interpreter should accept the non-rebuttable presumption that members of the legislative body sought to fulfill their constitutional duties in good faith. This formulation allows the interpreter to inquire not into the subjective intent of the author, but rather the intent the author would have had, had he or she acted reasonably.\024

(Aharon Barak, Purposive Interpretation in Law, (2007) at pg. 87)

52. In Bharat Petroleum Corpn. Ltd. v. Maddula Ratnavalli and Ors., (2007) 6 SCC 81, this Court held:

\023The Parliament moreover is presumed to have enacted a reasonable statute (see Breyer, Stephen (2005): Active Liberty: Interpreting Our Democratic Constitution, Knopf (Chapter on Statutory Interpretation - pg. 99 for "Reasonable Legislator Presumption" ).\024

53. The provisions of the Act and the Rules in this case, are, thus required to be construed in the light of the action of the State as envisaged under Article 14 of the Constitution of India. With a view to give effect thereto, the doctrine of purposive construction may have to be taken recourse to. [See 2007 (7) Scale 753 : Oriental Insurance Co. Ltd. vs. Brij Mohan and others.]

Conclusion:

54. Although the provisions of the Evidence Act are not applicable, the underlying principles of Section 101 thereof would apply. In Sarkar on Law of Evidence 16th Edition Volume 2 at pg. 1584 it is stated as under:-

\023Principle and Scope .- This section is based on the rule, ie incumbit probation qui dicit, non qui negat \026 the burden of proving a fact rests on the party who substantially asserts the affirmative of the issue and not upon the party who denies it; for a negative is usually incapable of proof. \023It is an ancient rule founded on consideration of good sense and should not be departed from without strong reasons.\024 [per LORD MAUGHAM in Constantine Line vs. I S Corpn. (1941) 2 All ER 165, 179]. This rule is derived from the Roman law, and is supportable not only upon the ground of fairness, but also upon that of the greater practical difficulty which is involved improving a negative than in proving an affirmative [Hals 3rd Ed Vol 15 para 488].

(Emphasis supplied)

55. The said principle has been approved by this Court in (1983) 4 SCC 491: Shambhu Nath Goyal vs. Bank of Baroda and others ; (1999) 8 SCC 744 :Garden Silk Mills Ltd. and another vs. Union of India and others and (2007) 2 SCC 433 (para 18) : J.K. Synthetics Ltd. vs. K.P. Agrawal and another.

56. We, however, must not shut our eyes to the objects for which the Act was enacted. It provided for a speedy remedy. The Estate Officer is expected to arrive at a decision as expeditiously as possible. The provisions of the Code of Civil Procedure and Evidence Act being not applicable, what is necessary to be complied with is the principles of natural justice.

57. Even if we assume that in terms of the statutory provisions the respondents must lead evidence first the same can be waived, Appellant not only had filed affidavits in one of the cases but time and again sought adjournments when the deponent of the affidavit was to be cross-examined. Although the appellant had pleaded requirements of the premises on an urgent basis, it kept on taking adjournments for more than 2 years. Why the witnesses were not produced before the Estate Officer for cross-examination for such a long time is not known. Only after a long period, an application was filed asking the respondents to show cause. Cause had already been shown by the respondents. They pleaded that no case has been made out for their eviction. We, therefore, fail to understand on what basis the Estate Officer passed the order impugned before the High Court.

58. We, therefore, direct that both the parties must file their documents within a week from today and the Estate Officer must give both the parties inspection of the said documents within a week thereafter. In the appeal arising out of SLP (C) No. 10348 of 2006 the appellant must file the affidavits of its witnesses within two weeks and thus shall be produced for cross-examination within one week thereafter. In appeal arising out of SLP (C) No. 8232 of 2006 the witnesses must be produced for cross-examination as expeditiously as possible, but not beyond a period two weeks.

59. The proceedings before the Estate Officer, being summary in nature, the cases must go on a day to day basis. The Estate Officer is directed to pass a final order, as expeditiously as possible but not beyond a period of 10 weeks from the date of receipt of a copy of this order.

60. These appeals are dismissed with the aforesaid direction with costs. Counsel fee in each case is assessed at Rs.25,000/- (Rupees twenty five thousand only).