

PETITIONER:
PRABHA MANUFACTURING INDUSTRIALCO-OPERATIVE SOCIETY

Vs.

RESPONDENT:
BANWARI LAL

DATE OF JUDGMENT14/02/1989

BENCH:
RANGNATHAN, S.
BENCH:
RANGNATHAN, S.
MUKHARJI, SABYASACHI (J)

CITATION:
1989 AIR 1101 1989 SCR (1) 647
1989 SCC (2) 69 JT 1989 (1) 397
1989 SCALE (1)383

ACT:

Delhi Rent Control Act, 1958: s. 2(i)--Plot of land-allotted by Custodian of Evacuee Property and temporary structure put thereon-Whether 'Premises'--Suit for eviction and possession in Civil Court-Maintainability of.

Constitution of India, Article 136: Concurrent findings of fact-Non-interference by the Court.

HEADNOTE:

The appellant-society was temporarily allotted the property in question by way of a lease by the Custodian of Evacuee Property in March, 1949. In the allotment letter it was described as an 'industrial establishment' known as open compound. The inspection report dated January 9, 1951 of the person who had delivered the possession to the society described the property as a 'plot' on which the allottee promised to start a factory. Sometime thereafter the society sought reduction of the assessment rent. The order of the Deputy Custodian thereon dated March 31, 1955 granting the relief, again described the property as a 'plot' with a self-constructed shed. Subsequently, the society through its letter dated January 21, 1957 requested that the said 'industrial plot' may be permanently allotted to it. However, the Custodian chose to sell the property by auction on July 15, 1960 in favour of the predecessor in-interest of the respondent. The society moved to have the said sale set aside and in its application dated October 15, 1960 made to the concerned authority it mentioned the property as an 'industrial plot'. That application was eventually rejected by the Chief Settlement Commissioner on August 25, 1961. In its revision petition before the Government of India the contention of the society was that the plot was allotted to the society for industrial purpose and they had erected a building and installed machinery thereon. The Government order rejecting the revision petition too started with a recital that the Custodian had allotted 'an open plot of land' to the society for industrial purposes and that the society had erected 'a temporary structure' on the plot and also installed some machinery.

648

On February 15, 1968 the appellant society filed an

application under s. 44 of the Delhi Rent Control Act, 1958 seeking permission to make repairs to the premises in question. The owners resisted the said application on a preliminary objection that the petitioners were not tenants of any premises within meaning of the Delhi Rent Control Act. The Controller found that what was allotted to the petitioner society was only a plot and that the shed was self-constructed. The petitioner, therefore, being a tenant only with respect to an open site, which did not come within the definition of a 'premises' as contemplated by the Act, the petition under s. 44 was not maintainable.

The respondent instituted a suit against the society in 1977 seeking its eviction and possession stating that the property was only a plot of land and not 'premises' within the meaning of Delhi Rent Control Act, and that the plaintiffs had terminated the tenancy of the defendants. All the three courts below held in his favour.

In this appeal it was contended for the appellant-society that the property in question was a 'building' within the meaning of the Delhi Rent Control Act, 1958 the eviction from which could be sought by the landlord only from a Rent Controller on grounds specified in the Act and not by a suit in a civil court under the Transfer of Property Act read with the Code of Civil Procedure; that the references in the allotment letter to 'industrial premises', to the 'industrial establishment known as open compound', and to the 'factory/workshop/industrial establishment' clearly showed that what was allotted to the society was not a mere plot but an industrial premises.

Dismissing the appeal,

HELD: 1. The property allotted to the appellant-society in respect of which it was a tenant initially under the Custodian and later under the plaintiff-respondent was only a plot of land. The plaintiff was, therefore, justified in attempting to recover possession thereof by a suit for possession in a civil court. [664F-G]

2. The letters addressed by the society to the Custodian and the Settlement Commissioner as well as the application for reduction of rent and the order, thereon, are valuable pieces of evidence both because they are anterior to the litigation between the parties and also because they reflected the representations of the society to, and the findings of the very authority that allotted the said property. The society represented that it had been 'allotted only a plot of land and that

649

the shed had been put up thereon by itself and this plea would not have been accepted by the Custodian had it not been correct. Both in the opening sentence as well as in the body of the order there is a clear finding to this effect. This is a very strong circumstance to show that what was allotted to the society was only a plot of land. Furthermore, the findings of the Rent Controller in the application under s. 44 of the Rent Control Act filed by the society, right or wrong, had attained finality as between the parties and it was not open to the society on principles analogous to res-judicata to take a contrary stand in these proceedings. [659F-H;660A]

3. The reference to 'industrial premises' in the allotment letter cannot be construed as a reference to 'premises' within the meaning of the Rent Control Act. It was obviously a cyclostyled proforma allotting an item of evacuee property and except for the portion where it contained a description of the property in question viz., 'open compound', it only contained terms applicable to allotment generally. [661F-H]

4. The finding on the point of the courts below are concurrent findings on a question of fact. This Court under Article 136 of the Constitution does not normally reappraise the evidence or interfere with such concurrent findings of fact, even if it is possible on the facts to come to a contrary conclusion. [663G]

The decree for eviction not to be executed till February 28, 1990 provided the persons in occupation of the premises file the usual undertaking. [664G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1504 of 1980.

From the Judgment and Order dated 20.5. 1980 of the Delhi High Court in Regular Second Appeal No. 18 1 of 1979.

S.K. Mehta, D. Mehta, A. Vachhar and Atul Nanda for the Appellant.

Dr. Shankar Ghosh and Ashok Grover for the Respondent.

The Judgment of the Court was delivered by

RANGANATHAN, J. The appellant, a cooperative society, (hereinafter referred to as 'the society'), resists a suit for possession

650

laid by the respondent, contending that the property in question is a 'building' within the meaning of the Delhi Rent Control Act, 1958 ('the Act'), the eviction of a tenant from which can be sought by the landlord only from a rent controller on grounds specified in the Act and not by a suit in a civil court under the Transfer of Property Act read with the Code of Civil Procedure (C.P.C.). This contention of the appellant has been rejected, concurrently, by the Assistant District Judge, the Additional District Judge and the High Court. In this appeal, counsel for the appellant seeks to persuade us that all the three courts have decided erroneously a substantial question of law raised by it and that they ought to have dismissed the suit instead of decreeing it. To get a cogent idea of the history of the litigation concerning this property and to properly appreciate the contentions urged, it is necessary to set out the relevant facts at some length.

2(a) The property in question originally belonged to one Khan Din Hussain Din but it came to be vested in the Custodian of Evacuee Property on the owner being declared an evacuee on the eve of the partition of the country. The Custodian leased it out to one Pritam Chand who occupied it in September 1947. There is on record an undated survey report in a "proforma for residential premises" which pertains to the period when Pritam Chand was in occupation. It described the property covered by it thus:

1. Locality or street Hamilton Road, Delhi
2. H.C. No. III/1403-1406
3. No. & size of rooms 15' x 15' shed, 3' x 8'
10' x 10', 10' x 10'
10' x 10' Ver 40' x 8'
shed 35' x 10' Open
space 50' x 45' use as
Motor Lorry Workshop.

(b) Subsequently, the allotment in favour of Pritam Chand appears to have got cancelled and the Society applied for the allotment of the property to it for starting a factory. The application was granted and the property was allotted, by way of a lease, to the Society by an order dated 28.3.1949. It is necessary to extract this order in

full:

ORDER

"Subject: Allotment of industrial premises.

651

With reference to your application dated-----I have to inform you that Industrial Establishment known as open compound at Hamilton Road (Portion of Jai Hind Motor Works) with 25 Front and 50 deep together with all the machinery and accessories kept therein has been allotted to you. Possession of the factory/workshop/Industrial establishment will be delivered to you immediately after your fulfilling the following conditions namely:

1. Delivering at this office a communication addressed to the Custodian undertaking to pay such deposit and rent as may be assessed and required to be paid and to execute the lease on the prescribed form.

2. Filling a duly attested affidavit as per form 'A' attached herewith.

3. Possession of stocks of consumable goods and other stores and material, if any, will be given to you for safe custody as caretaker until the disposal thereof.

Assistant Custodian Industrial is hereby required to deliver the possession of factory/workshop/Industrial Establishment and other moveable property kept therein (to) the above named allottee after satisfying himself that he has fulfilled conditions laid down above. If necessary, the enforcement section will help the Assistant Custodian and the allottee of the property in accordance with the procedure prescribed under law."

(c) A report on the use of the allotted plot submitted on 9.1.51 is of some relevance. It clarifies that no machinery had been allotted to the Society and that power was being fitted. It says then:

"I have found nobody at the premises except a Gorkha Chowkidar. I remember it very well that in the presence, I gave the possession of the above-said plot to allottee who promised that they want to start a factory very soon, but it is regretted that no advantageous use of the premises is being made by the Co-operative. However, I have seen new power connection being fitted on the premises. The work might have (then) set back due to non-availability of power. Any how we must consult the file and subsequently call the allottee."

652

(d) It appears that Pritam Chand was attempting to get the allotment to the Society cancelled on the allegation that it had unauthorisedly sublet the property. A letter was written, in this context, by the Assistant Registrar of Cooperative Societies to the Custodian on 15.5.1954. This letter, on the subject of "Allotment of Industrial Premises", reads as under:

"Kindly refer to your order No. DC/IV/A/185 dated the 28th March, 1949 on the above subject under which the house No. 2939-III/1403-1406 on Industrial Establishment known as open compound at Hamilton Road (Portion of Jai Hind Motor Works with 25' front and 56' deep)

together with all machinery and accessories kept therein, was allotted to the Prabhat Manufacturing Co-operative Industrial Society Ltd.

Before allotment one Shri Pritam Chand was occupying the whole premises. He is now again trying to take the premises allotted to the society. He therefore filed an application to the Assistant Custodian against the Society alleging that the premises had been sublet to Shri Ajit Singh Duni Chand and Banwari Lal. The Assistant Custodian served the Society with a notice for cancellation of allotment of the said premise. The fact is that Shri Ajit Singh, is the Secretary of the Society and Shri Duni Chand and Banwari Lal were its members. The question of subletting does not arise. A Government loan of Rs.4,000 was also advanced to the society under the Rehabilitation Scheme. Under the above circumstances I would request you to allow the Society to function in the allotted premises, so that it may be able to repay the Government loan advanced to it."

(e) The Society made an attempt to have the assessment of rent reduced. The order of the Deputy Custodian dated 31.5. 1955, under which this relief was granted reads thus:

"This is revision petition by M/s Prabhat Mfg. Cooperative Socio Industrial Society Ltd., against the assessment of rent. The petitioner has got a plot. There is a small shed on this plot also. The petitioner was assessed on the rental of Rs.50 on the basis of the M.A.R. It is contended before me that there is no M.A.R. for property No. 2939

653

but there is joint M.A.R. for house No. 1403-6. From the copy of the assessment sheet, (it) appears that 1403-1406 is equivalent to 2939-40. It is not clear therefore whether new number has got an assessment of Rs.50 or there are several numbers included in this assessment. I find that I inspected this house on 20th March 1953 and asked the S.D.O. to let me know the value of the plot and probable rent. At that time he had assessed the value of the plot at Rs. 10970. The present value of course will be more than that. However, on the basis of this valuation, the rent of the petitioner's plot if it were a vacant plot would work out to Rs.327 per month exclusive of house tax. There is a small shed also which is alleged to be self constructed. Considering therefore all the circumstances I fix the rent of the petitioners plot at Rs.35 per month. As the petitioner is a cooperative society, I direct that rate should have retrospective effect. The petitioner is, however, directed to clear the arrears within fortnight."

(f) After this order was passed, a survey report was made on 15.7.1955 which describes the property in the occupation of the Society thus:

1. Sr. No.
2. Road, Street, lane or Mohalla Hamilton Road
3. Municipal House No. (old) III/L/4 (1403-6) old

2939 (new)

4.

5.

- | | |
|----------------------------|-----------------------|
| 6. Accommodation available | Plot with tin shed |
| No. & Size of rooms store | 27 ft. North |
| rooms, verandah, kitchen, | 61 ft. East |
| bath, courtyard etc. | 64.8 ft. West |
| | 24 ft. South |
| 15. Description of present | Manufacturing concern |
| occupation i.e. business | Motor accessories and |
| service (Govt. or Pvt.) | tools Regd. No. 199 |
| other occupation) | dated 24.3.49. |
| 16. Rent previously fixed | Rs.50 reduced to |
| for the accommodation | Rs.35 |

3.(a) Having thus got the plot on lease, the Society tried to acquire the property for itself. There is on record a letter of the Society dated 21.1.1957 requesting that the "industrial plot" may be perma-

654

nently allotted to it.. However, the Custodian chose to sell the property by auction on 15.7.60 in favour of one Dina Nath (the predecessor-in-interest of the present respondent Banwari Lal). The upset price was Rs.21,000 and the sale was for Rs.23,000. Unfortunately, however, except the information that sale deed in favour of Dina Nath was executed on 13.7.61, there is no document on record about the exact nature and condition of the property thus sold.

(b) The Society moved to have the sale set aside on the ground that, as the value of the property was less than Rs. 10,000, it should have been sold to the Society itself as the allottee and not to an outsider. In the course of these proceedings, it made an application on 15.10.60 to the concerned authority for a copy of the order declaring the property to be saleable, the first paragraph of which reads thus:

"The above mentioned property an Industrial Plot on Hamilton Road No. 2939 (old No. 1403-1406) was sold by auction on 15.7.60."

(c) The application of the Society was, eventually, rejected by the Chief Settlement Commissioner on 25.8.1961 and so the appellant filed a revision petition before the Government of India. In this petition, it is seen, the Society tried to take advantage of a Press Note of the Government which enabled an allottee who had invested more than Rs.30,000 in a property to get a priority when the property came to be allotted but this attempt was also unsuccessful. Certain reports submitted by the concerned authorities in the context of the Society's application have been placed on record. On 21.3. 1962, the Executive Engineer reported.

"The land under property in question has been assessed at Rs. 17,500 while the structure value of it has been assessed at Rs.3,883 giving a total value of Rs.21,383. The reserve price of this property has been fixed at Rs.21,000"

Reports submitted by one T.C. Dewan contain the following observations:

"I have been to the premises and obtained a list of machinery now installed in the premises. The copy of the letter dated 21.3.56 addressed to the C.S.C. is also attached. M/s Prabhat Mfg. Co-op. Industrial Society want to have the premises transferred to them as Industrial concern.

655

The property has already been auctioned on 15.7.1960.

The sale certificate has been issued in favour of Dina Nath s/o Charan Das on 13.6.61."

"I have to submit further that a part of the superstructure was evacuee and was valued with the plot. Some portion has been made as a temporary shed etc. The position can be made clear by consulting the valuation schedule on the property. The portion which was included in the valuation at that time means at the time of auction as noted it was definitely an evacuee structure. The rest is non evacuee raised by the occupant."

It also appears that, in the course of these proceedings, Ajit Singh, on behalf of the Society made a statement to the following effect in May, 1962:

"The above Society is in occupation of the premises since the year 1949. There was only a shed built in the premises but the other portion was open plot when it was allotted to us. The entire machinery has been installed by the Co-op. Society. I can supply inventory of the machinery which has been installed by the Society would be produced on 8.5.62."

(d) The Society's revision petition was rejected on 6.8.62. The order of the Joint Secretary to the Government of India starts with a recital that the Custodian had allotted "an open plot of land" to the society for industrial purposes, and that the Society had erected "a temporary structure on this plot and also installed some machinery". In para 3, the contention of the Society is stated to be "that the plot was allotted to the Society for industrial purposes and they erected a building and installed machinery worth about Rs.30,000 in it." The order proceeds:

"... the valuation officer was asked to assess the value of the land, building and machinery. After a spot inspection he reported that the value of land and building was about Rs.21,000, whereas the value of the machinery installed in March, 1956, according to the vouchers produced before him by the Society came to only Rs.6,585. Hence, the value

656

of the machinery did not exceed that of the land and building. Further, the Press Note of the 22nd March, 1956 required such allottees to submit applications to the Regional Settlement Commissioner concerned with a certificate from the Director of Industries of the State that they had established factories under the Commissioner, New Delhi.

4. It is, therefore, clear that this case is not covered by the Press Note of 22nd March, 1956. The property in their occupation was rightly auctioned."

4. Now we come to the third chapter of the story. Dina Nath, the purchaser of the property filed suit No. 155 1/62, in the court of Rent Controller, Delhi seeking eviction of the appellant society from the property in question on the ground of sub-letting, misuser, default in payment of rent and requirement of the premises for the bona fide use of the owner. The Rent Controller dismissed the petition. It is seen from the order of the Rent Controller that the owner had alleged that a portion of the demised premises had been

sublet, assigned or otherwise parted with to M/s. Malviya Industries after 9.6.1952 without obtaining the written consent of the landlord. The respondent had shown that Malviya Industries was a proprietary concern of Ajit Singh, who was in possession of the whole premises as a Secretary of the appellant society and that, apart from the fact that the goods manufactured by the society were sold through Malviya Industries, there was nothing to show that any particular portion of the property in question was exclusively used by Malviya Industries. It also appears that the owner alleged that he required the premises in question for purposes of re-building it. The controller held that as the property had been given to the tenant for residential purposes and the proposed reconstruction would change the character of the premises, this was not permissible under the Act, and therefore, the landlord could not be said to require the premises bona fide for re-building. On behalf of the appellant it is urged that the fact the landlord filed a rent control eviction petition as well as a finding in the order of the Rent Controller dated 16.1.1967 clearly show that the property in question was a 'building' falling within the scope of the Delhi Rent Control Act. It is also pointed out, from a copy of the application for eviction placed on record, that in para 5 of the application it was stated that a workshop was situated on the piece of land and about 20 people (approx.) were working therein and the details of the accommodation were shown as comprising of one tin shed as shown in the attached plan.

657

(b) In 1964 the society filed suit No. 294 of 64 against Dina Nath and others. In this suit it prayed for an injunction restraining the defendants from interfering with its possession and lawful enjoyment of the property, inter alia, by preventing the plaintiff from carrying out the necessary repairs to the premises in question. This suit was filed during the pendency of the earlier suit filed in the rent controller's court. It was alleged that the portion of the roof had started leaking and that, when the plaintiff began to make the necessary repairs to the premises, the defendants began to interfere illegally with its possession with the ulterior motive of securing the possession of the premises otherwise than in due course of law. The defendants resisted this suit. It appears that this suit was eventually dismissed but further details are not available.

(c) It also appears that Banwari Lal had filed a suit for permanent injunction against the Society restraining it from erecting any new structure on, or making any additions or alterations to the property in question. It is said that in one of the affidavits filed in the course of these proceedings Banwari Lal stated as follows:

"3. That the defendant is tenant of ground floor consisting of a tin shed in house No. 2939, Hamilton Road, Delhi at a monthly rent of Rs.35 which is a single storeyed property.

4. That the defendant has got no right title and interest to erect any new structure on the first floor or to make any additions and alterations in the aforesaid property without the consent of the plaintiff."

There is no further information available regarding this suit.

(d) One more proceeding instituted by the appellant society has also to be referred to: On 15.2.1968, the appellant filed an application under section 44 of the Delhi Rent Control Act, 1958 (Suit No. 169-M of 1968-69), seeking

permission to make repairs to the premises in question. This application was resisted by the owners on a preliminary objection that the petitioner were not tenants of any premises within the meaning of Delhi Rent Control Act. This application was dismissed on 9.3.1972. It is necessary to extract paragraph 5 of this order since it is relevant to the controversy presently in question:

"5. I also find it established on record that the petitioner society is a tenant only with respect to an open site and the

658

structure thereon namely, the shed itself constructed by the tenant. It is admitted (that) by Ajit Singh, who states himself to be the Secretary of the Society by the custodian, as it was an evacuee property. A reference to the allotment order Ex. RW 1/1 which was produced by the clerk of the office concerned, examined as R.W. 1 shows that the subject matter of the allotment of the petitioner society was an 'Open Compound'. It is further clear from the copy of an order Ex. R.W. 1/1 that it was stated by the tenant, namely the petitioner society before the custodian' that the shed was self constructed and the rent was got reduced from Rs.50 per month to Rs.35 per month. This continues to be the rent upto date, according to be that the petitioner society continues to be in occupation of the same property, as it was, when it was allotted to them by the Custodian, and it is established from the evidence of the clerk of the office of the Custodian. R.W. 1 and the orders produced by him, namely R.W. 1/1 and R.W. 2/2, as well as the survey report Ex. R.W. 1/3 that what was allotted to the petitioner society, was only a plot and that the shed was self constructed. The petitioner has failed to substantiate the contention that the respondent himself has treated him/them/as a tenant because no certified copy of the previous pleadings has been placed on the file. The petitioner, therefore, being a tenant only with respect to open site, which does not come within the definition of a 'premises', as contemplated by the Delhi Rent Control Act the petition under sec. 44 of the act, is not entertainable."

5. The suit out of which the present appeal arises has to be understood in the context of the above previous history. In 1977 Banwari Lal instituted suit No. 318/77 against the Society seeking eviction of the Society from "the plot of land in question". It was alleged that the plaintiff was the owner of the above said plot and that the defendant had put up a shed thereon. It was alleged that the Society had been occupying the property much earlier and that the plaintiff who came to the scene much later had mistakenly thought that the defendant was the tenant of both the land and the shed put up thereon and accordingly filed the petition under the Rent Control Act for evicting the Society. Subsequently it was said, after examining the records of the Custodian and allotment letter in favour of the defendant he had come to know that the shed had been constructed by the defendant and that, as such the property from which the eviction

659

was to be sought was only a plot of land and not 'premises' within the meaning of the Delhi Rent Control Act. In these circumstances, it was claimed that the plaintiff had terminated the tenancy of the defendants and that the suit was being filed to recover possession of the property from the tenants. As mentioned earlier, the plaintiff has succeeded in all the three courts and hence the present appeal.

6. Shri S.K. Mehta, learned counsel for the Society, contends that in this case both the parties had taken up inconsistent stands at different stages of the litigation and that, in that state of affairs, the courts below should have ignored the past conduct of both the parties and gone by the contents of the documents of title in order to decide the matter. Instead, he complains, the courts have held the conduct of the Society in some of the prior litigation as negating its claim but, when it came to a consideration of the like conduct on the part of the plaintiff, they have chosen to make light of it, accepting the lame excuses put forward on his behalf. We shall, therefore, consider, at the outset, the impact, if any, of the earlier proceedings in this case on the question at issue.

7. The detailed narration of facts set out earlier will show that the parties have not been consistent in their stands and have tried to blow hot or cold as the occasion suited them. Taking up the stand of the Society first, the Society, in its application to the custodian for reduction of rent claimed--successfully--that what was allotted to it was only a plot of land and that the small shed thereon had been put up by the Society itself. So also, in its application for allotment dated 21.1.1957 and 15.10.1960, it referred to the property only as an industrial plot. The letters addressed by the Society to the Custodian and Settlement Commissioner as well as the application for reduction of rent and the order thereon are valuable pieces of evidence both because they are anterior to the litigation between these two parties and also because they reflect the representations of the Society to, and the findings of, the very authority that allotted the property to the Society. The Society represented that it had been allotted only a plot of land and that the shed had been put up thereon by itself and this plea would not have been accepted by the Custodian had it not been correct. Shri Mehta tried to argue that the Custodian has only reduced the rent on general grounds and has given no finding that only a plot had been allotted to the Society but we are unable to accept this contention as both in the opening sentences as well as in the body of order there is a clear finding to this effect. This is a very strong circumstance to show that what was allotted to the Society was only a plot of land. Secondly,

660

the findings of the Rent Controller in the application under section 44 filed by the Society, right or wrong, have attained finality as between the parties and it is not open to the Society on principles analogous to res judicata to take a contrary stand in these proceedings.

8. It is true that in the suit for injunction filed in 1964 as well as in its application under section 44 of the Rent Control Act the Society took up a contrary position and claimed that the property was tenanted 'premises'. It is not clear why the Society filed the suit if the property was subject to the Rent Control Act and, though it appears that the plaintiff pointed out that the property was the subject of proceedings under the Rent Control Act, the suit was eventually dismissed without any findings. Again, the Society's claim in the second set of proceedings was rejected by

the Rent Controller in a reasoned order on 9.3.1972. The statement of Ajit Singh of May, 1962 is ambiguous, as it says on the one hand that there was a shed but also says on the other that what was allotted to the Society was only an open plot. These are, therefore, not of much help to the Society.

9. Turning next to the stand of the plaintiff, in December 1962, soon after acquiring the property, he applied to the Rent Controller-though unsuccessfully--for the eviction of the Society on the allegation that the property comprised a shed, that it had been unauthorisedly sublet and that the plaintiff required it for reconstruction as residential premises. His explanation that this was due to some mistaken notion has been accepted by the first appellate court. Counsel for the appellant contends that this was a naive explanation which should not have been accepted as the material on record shows that Banwan Lal and Dina Nath were members of the Society and were fully aware of all the transactions and activities of the Society right from the inception and could not have been unaware of the nature of the property allotted to the Society as alleged. There is some truth in this but at the same time, it should be appreciated that, when filing this application, the plaintiff might not have been fully aware of all the legal implications of the situation. At the time of the action, the property consisted of a land and shed. If the land belonged to the Custodian and the shed had been put up by the Society, what was sold to the plaintiff was really only the right, title and interest of the Custodian and the plaintiff could not have become the owner of the shed superstructure. Strictly speaking, the Society was the tenant only in respect of the land but it is possible that, without examining the niceties as to what was the original allotment and the effect of subsequent structure having been put up on it by the lessee, the plaintiff may just have tried

661

to evict the Society by resort to the Rent Control Act. The question whether the property was 'premises' within the Rent Control Act was not put in issue in that case and the decision of the Rent Controller also rested on a very narrow finding which has no relevance to the point at issue. We, therefore, think, that these proceedings do not affect the present case of the plaintiff, particularly in view of the specific findings given by the Rent Controller in the Society's application.

10. Summing up the position, therefore, it seems to us that the history of the earlier litigation and findings given in the orders therein support the plaintiff's case rather than that of the Society as held by the courts below. That apart, we do not think the position is different even if, as urged by Sri Mehta, we ignore all these proceedings as unhelpful to either side and concentrate only on the documents on which Shri Mehta relies as supporting his plea that the Society had got an allotment of not a mere plot of land but of a building as well.

11. The first and most important document on which Shri Mehta places great reliance is the order of allotment dated 28.3.1949 by the Custodian in favour of the Society. Counsel lays stress on the references in it to "industrial premises", to the "industrial establishment known as open compound ... (portion of Jai Hind Motor Works)", to "the factory/workshop/industrial establishment", to "possession of stocks of consumable goods and other stores and material, if any", "and other movable property kept therein" and contends that the document clearly shows that what was

allotted to the Society was not a mere plot of land but an industrial premises.

12. We are unable to accept the above contention for a number of reasons. In the first place, the reference to 'industrial premises' in this letter cannot be construed as a reference to 'premises' within the meaning of the Rent Control Act. The letter also refers to the allotted property as factory, workshop and industrial establishment though, admittedly, there was no such factory, workshop or establishment in existence on that date. The letter also refers to stocks of consumable goods, stores and movable property on the property but it is common ground that there was none of these things on the site at the time. It was obviously a cyclostyled proforma allotting an item of evacuee property and, except for the portion where it contains a description of the particular property in question viz. "open compound at Hamilton Road (portion of Jai Hind Motor Works) with 25 front and 50 deep", it only contains terms applicable to allotments generally. In this case the

662

particular description is not of much help either. That the property was "known as office compound" does not necessarily mean that there were premises inside the compound as was sought to be suggested. It is equally consistent with the claim that it was only an open plot of land inside a compound on which some motor works were located.

13. Secondly, in the absence of a clear indication of the nature of the property in the allotment letter, we may refer to the other documentary evidence on record. The inspection report of the person who delivered the property to the Society dated 9.1.1951, the order dated 31.3.1955 of the Deputy Custodian, the letters of the Society dated 21.1.1957 and 12.10.1960, the revision petition filed by the Society as well as the order dated 6.8.1962 thereon clearly indicate that what was allotted to the Society was only a plot of land and that the Society had put up a temporary structure and installed some machinery on it. The importance of these documents, as indicated earlier, lies in the fact that they arise out of proceedings between the allotting authority and the Society and relate to a point of time anterior to the commencement of the litigation between the Society and the plaintiff. Shri Mehta invited our attention to the reports called for and submitted in connection with the application under s. 33 of the Displaced Persons Act filed by the Society. He pointed out that the report of the Executive Engineer shows that the reserve price for the auction sale of the property was fixed at Rs.21,000 by taking into account the value of the land at Rs. 17,500 and the value of the structure of Rs.3,883 (in all Rs.21,383) and that this had been further clarified by the report of T.C. Dewan. But, as rightly pointed out by Dr. Ghosh for the plaintiff, these were only reports submitted in 1962 (much later than the allotment) in the context of justifying the action of the department in auctioning the property in 1960 instead of allotting it to the occupant Society. As mentioned earlier, the Society itself had pleaded in its application that it had been allotted the land and that it had put up structure and machinery thereon worth Rs.31,000. It is clear that the machinery installed by the Society on the land was not considerable. It is seen from the order on the revision petition that the Society could prove installation of machinery only to the extent of Rs.6,585. The effort of the Society was, therefore, apparently to contend that it had been allotted only the land for which an upset price of Rs.21,000 had been fixed and that since it had also put up a

structure and installed machinery worth Rs.31,000, the property should not have been sold in auction. An inspection was ordered and report of the Executive Engineer indicates that the value of Rs.21,000 had been fixed taking into account both the land and the structure thereon and not merely for the

663

land. The report of T.C. Dewan was also to the effect that the upset price of Rs.21,000 fixed in 1960 had taken into account a part of an evacuee structure that had already existed on the land. These reports were thus drawn up in the context of a controversy between the parties as to the nature of the property allotted and the manner in which it had been valued at Rs.21,000. These reports drawn up several years after the allotment, and intended to justify the department's action, cannot be of much evidentiary value. It is also significant that, although Dewan's report states that "the position can be made clear by consulting the valuation schedule" of the property" no attempt was made to bring on record the valuation schedule which must have been drawn up at the time of the sale, before fixing the upset price at Rs.21,000. These documents cannot, therefore, be relied upon as to the state of the property when it was allotted to the Society.

14. Thirdly, the survey reports referred to by us earlier are helpful in indicating how the confusion in the case could have arisen. The report made at the time of Pritam Chand's occupancy obviously covers a much more extensive property which consisted of an open space of area 50' x 45 which was used as motor lorry workshop and a number of sheds and a verandah. If we read the letter of allotment in the context of this report, it is clear that what was allotted to the Society was only a portion of the Jai Hind Motor Works measuring 50' x 25'. This makes it abundantly clear that only an open space was allotted to the Society. Even the report of 1955 shows the property (though somewhat larger in size than 50' x 25' shown in the allotment letter) only as a plot with tin shed. As, even on the Society's own showing, it had put up a shed on the plot, we again reach the position that what was originally allotted was only a plot of land.

15. The allotment letter and the other documents referred to by counsel for the Society do not, therefore, further its case. On the contrary, they only reinforce the conclusion of the courts below. Actually, the findings on the point of all the three courts are concurrent findings on a question of fact. The Additional District Judge has cogently collected together all the circumstances which militate against the Society in its judgment and the High Court has approved this summing up. This Court does not normally reappraise the evidence or interfere with such concurrent findings of fact, even if it is possible on the facts to come to a contrary conclusion. We have, however, discussed the material at great length and practically reviewed the entire evidence on record as Shri Mehta submitted that the property is at present occupied by a larger number of members of the petitioner Society who are carrying on small business and that they will all be

664

thrown out on the road as a result of the decision of the courts below. Even so, for reasons discussed above, we do not think we can come to a contrary conclusion on the material on record.

16. The High Court has gone one step further. It has indicated that, even if one accepted the best case of the

appellant Society--that there was a shed on the land even at the time of the original allotment--such plot-cum-shed cannot convert the land into 'premises' within the meaning of the Rent Control Act. This was the prima facie view of the court as it did not hear arguments from the parties on this point. Counsel canvassed this point before us also. Shri Mehta, referring to *Corporation of City of Victoria v. Bishop of Vancouver Island*, AIR 1921 PC 240; *Karnania Properties Ltd. v. Augustin*, [1957] SCR 20; *State of Bombay v. Sardar VenkatRao Krishna Rao Gujar*, [1963] 1 SCR 428 and *Ghanshiam Das v. Devi Prasad & Another*, [1966] 3 SCR 875 contended that the definition of premises envisages a building and that, as per these decisions, anything that is built on land, even if it is only a kacha shed, would be a building and this brings the property in question within the purview of the Act. On the other hand Dr. Ghosh sought, by analogy of the principle of the decisions in *Uttam Chand v. S.M. Lalwani*, AIR 1965 SC 716; *S.M Gopalkrishna Chetty v. Ganeshan & Ors.*, [1973] 1 SCR 273 and *Morarji Goculdas Deoji Trust & Ors. v. Mahadev Vithan Kutwa*, [1983] 1 RCJ 195, to contend that what the Rent Control Act contemplates is a building let out qua building, may be with appurtenant land, but not a land let out for use as land merely because there may be a small building on it. The relevant question, he says, is what was the dominant subject matter of the allotment--the land or the building and this is a question which can only be decided in the respondent's favour. We do not consider it necessary to embark on a discussion of this aspect as we are satisfied, for the reasons already discussed, that the property allotted to the Society in respect of which it was a tenant, initially under the custodian and later under the plaintiffs, was only a plot of land and that the plaintiffs were justified in attempting to recover possession thereof by a suit for possession in the civil court.

It is further directed that the decree for eviction will not be executed till 28.2.1990 provided the persons who are in occupation of the premises in question file an undertaking containing the usual terms within four weeks from today.

17. The appeal, therefore, fails and is dismissed but, in the circumstances, we make no order as to costs.

P.S.S.

Appeal dismissed.