

CASE NO.:
Appeal (civil) 22 of 2007

PETITIONER:
M/s Associated Indem Mechanical Pvt. Ltd.

RESPONDENT:
West Bengal Small Scale Industrial Development Corporation Ltd. & Ors.

DATE OF JUDGMENT: 05/01/2007

BENCH:
G.P. Mathur & A.K. Mathur

JUDGMENT:
J U D G M E N T
(Arising out of Special Leave Petition (Civil) No.2863 of 2006)

G. P. MATHUR, J.

1. Leave granted.

2. This appeal, by special leave, has been preferred against the judgment and order 13.12.2005 of a Division Bench of the Calcutta High Court by which the letters patent appeal filed by the appellant was dismissed, affirming the judgment and order dated 16.8.2004 of a learned Single Judge dismissing the writ petitions filed by the appellant wherein challenge was laid to the cancellation of lease deed which had been executed in its favour.

3. The facts leading to the filing of the writ petition by the appellant herein may be noticed in brief. The West Bengal Small Scale Industrial Development Corporation Ltd. (for short "Corporation") by three different indentures of lease each for a period of 99 years demised in favour of the appellant M/s Associated Indem Mechanical Pvt. Ltd., three separate industrial sheds bearing nos.Y-76, Y-73 and Y-72 at Baltikuri Industrial Estate, Howrah on 9.2.1970, 26.5.1972 and 31.8.1977 respectively. Clauses 2(f)1, 2(j) and 3(B) of the lease deed which are relevant for the controversy in hand are being reproduced below :-

"2(f)1. To use the demised premises as a place for carrying on manufacturing business and/or purposes connected with any manufacturing process including processing, manufacture or assembling of machine, tools, implements, instruments, furnaces, heaters, ovens, scientific apparatus, inventions and other industrial products.

2(j) To start manufacture and production as per Sub-Clauses (f)(1) of this Clause 2, (if not already started) within six months from the date of these presents or within any extended period which may be granted by Government under exceptional circumstances.

3(B). If the rent hereby reserved or any part thereof shall remain unpaid for six months after becoming payable or if any covenants on the part of the Lessee herein contained shall not be performed/observed or if the demised premises be not used by the Lessee for purposes mentioned in Clause 2(f) hereof for a

continuous period of six months then and in any such event, it shall be lawful for the lessor or the Government at any time thereafter to determine the Lease and to re-enter upon the demised premises or any part thereof in the name of the whole and thereupon this demise shall absolutely determine without prejudice to the rights of the Lessor or the Government in respect of breach of the Lessee's covenants herein contained.

All the three lease deeds contain identical clauses. The Prescribed Authority sent a notice under Section 3(1) of the West Bengal Government Premises (Tenancy Regulation) Act, 1976 (for short "the Act") to the appellant on 15.3.1999 as it failed to commence production and/or manufacturing activity, but the notice was returned with the postal endorsement "abolished". After about six months, the Prescribed Authority issued another notice on 13.9.1999 by which the lease deed was terminated and the appellant was asked to hand over possession of the industrial sheds. The notice was returned with the remarks "not known". The Corporation, thereafter, took over possession of the plots on 25.2.2000. However, on the representation made by the appellant and on furnishing undertaking to commence manufacturing activity and tendering rent, the possession was handed over back to it on 17.5.2000. Even thereafter the appellant did not commence any manufacturing activity and consequently two notices under Section 3(1) of the Act were issued by the Prescribed Authority on 29.5.2002 calling upon the appellant to hand over possession of the industrial sheds. The appellant filed two writ petitions before the Calcutta High Court which were disposed of by a learned Single Judge by separate orders. In view of the prayer made on behalf of the appellant, a direction was issued to the Chairman of the Corporation to give oral hearing to the appellant. The Chairman of the Corporation after affording an opportunity of hearing to the appellant passed a detailed order on 11.9.2002 holding that the appellant was liable to be evicted from the demised premises. The appellant then filed a writ petition before the Calcutta High Court challenging the aforesaid order dated 11.9.2002 of the Chairman of the Corporation. The writ petition was dismissed by a learned Single Judge on 16.8.2004 and the said order was affirmed in appeal by the Division Bench on 13.12.2005. It is these orders which are subject matter of challenge in the present appeal.

4. Before we examine the contentions raised by learned counsel for the parties, it is necessary to refer to certain provisions of the West Bengal Government Premises (Tenancy Regulation) Act, 1976. Sections 2(a), (b), (c), (f), 3(1)(2), 4 and 12 of the Act are reproduced below :-

2(a) "Government premises" means any premises which is owned by the State Government or by a Government undertaking but does not include the official residence of any person authorized to occupy any premises in consideration of the office which he holds under the State Government or a Government undertaking for the time being;

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

(c) "premises" means any building or hut and includes part of a building or hut and a seat in a room, let separately, and also includes -

(i) the gardens, grounds and out-houses, if any, appurtenant thereto,

(ii) any furniture supplied or any fittings or fixtures affixed for the use of the tenant in such building, hut or seat in a room, as the case may be;

(f) "tenant" means any person by whom the rent of any premises is, or but for a special contract would be, payable and includes in the event of such person's death, such of his heirs as were ordinarily residing with him at the time of his death.

3. Termination of tenancy \026 (1) Every tenancy held by a tenant in respect of a Government premises shall stand terminated upon the expiry of the period referred to in a notice to quit served upon such tenant in the prescribed manner,

(2) A tenancy in respect of a Government premises shall stand automatically terminated without any notice to quit where the tenant has, -

(i) violated the terms of the lease, or

(1a) subsequently built a house or acquired (by purchase, gift, inheritance, lease, exchange or otherwise) a house or an apartment, either in his own name or in the name of any member of his family, within a reasonable distance from such Government premises.

Explanation - (omitted as not relevant)
Provided \005\005\005\005\005\005\005 (omitted as not relevant)
Provided \005\005\005\005\005\005\005 (omitted as not relevant)
Provided further\005\005\005\005. (omitted as not relevant)

4. Restoration of possession \026 (1) Upon termination of a tenancy under any of the provisions of section 3 or upon a tenancy being void under section 3A, the tenant shall forthwith restore vacant possession of the premises occupied by him in favour of the prescribed authority.

(2) If the tenant fails to restore possession of the premises under sub-section (1), the prescribed authority or any officer authorized by him in this behalf may take such steps or use force as may be necessary to take possession of the premises and may also enter into such premises for the aforesaid purpose.

12. Act to override other laws \026 (1) The provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force, or in any contract, express or implied, or in any custom or usage to the contrary.

(2) In particular and without prejudice to the generality of the foregoing provisions, the West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962 shall not be applicable to any premises to which this Act applies.

The three provisos which are appended to sub-section (2) of Section 3 of the Act deal with default in payment of rent, renewal of tenancy upon deposit of all arrears of rent together with interest

etc. and recovery of arrears of rent, but they are not relevant for the decision of the controversy. Section 13 lays down that no civil court shall have jurisdiction to decide or deal with any question which is by or under the Act required to be decided or dealt with under the provisions of the Act.

5. Shri Ranjit Kumar, learned senior counsel for the appellants has submitted that the Government Premises (Tenancy Regulation) Act, 1976, is applicable only to residential premises and not to industrial sheds which are commercial in nature and the demised premises Y-76, Y-73 and Y-72 being industrial sheds and not residential premises, the provisions of the Act under which the notice for eviction was issued by the Prescribed Authority and possession was sought to be taken over by the Corporation can have no application. In support of his contention, learned counsel has referred to the definition of "premises" and "tenant" as given in Section 2(c) and (f) of the Act and also to the provisions contained in Section 3(2)(ia) of the Act and has submitted that the whole Scheme of the Act shows that the same can apply to residential premises only and can have no application to an industrial shed. Learned counsel has elaborated his argument by submitting that while defining the word "premises" in sub-section (c) of Section 2 of the Act, the words "building or hut and includes part of a building or hut" have been used. Similarly, while defining "tenant" under sub-section (f) of Section 2, the words "in the event of such person's death, such of his heirs as were ordinarily residing with him" have been used, which show that what is contemplated within the purview of the Act is a residential building and not a commercial building or an industrial shed. It has been urged that the use of the words "house or an apartment" in clause (1a) of sub-section (2) of Section 3 unequivocally shows that the Act was intended to apply only to residential buildings and not to a commercial building or an industrial shed which has been leased out for carrying on manufacturing activity.

6. Shri Bhaskar P. Gupta, learned senior counsel for the respondent Corporation, has submitted that the intention of the legislature is not to be gathered by merely looking at few provisions of the Act but has to be gathered from reading the entire Act which clearly shows that the Act was intended to cover every kind of tenancy, whether it was for a residential purpose or a commercial purpose or an industrial purpose. He has further submitted that different provisions of the Act, reference to which has been made by learned counsel for the appellant, have been included in order to make the Act more comprehensive and elaborate and they take within their sweep all kinds of situations.

7. We have given our anxious consideration to the submissions made by learned counsel for the parties. In our opinion, the contention raised by learned counsel for the appellant that the Act is intended to apply only to residential premises cannot be accepted.

8. The Preamble of the Act says that it is an Act to provide for the regulation of certain incidents of tenancy in relation to Government premises in West Bengal. The Preamble does not say that the Act is meant for regulation of residential tenancies alone. The definition of "Government premises" in Section 2(a) is very wide. It means any premises which is owned by the State Government or by a Government undertaking except the official residence of any person authorized to occupy any premises in consideration of the office which he holds under the State Government or a Government undertaking. Therefore, all kinds of premises whether commercial, industrial or residential, if owned by the State Government or by a Government undertaking would

be covered by the definition. But, it specifically excludes the official residence of any person authorized to occupy any premises in consideration of the office which he holds under the State Government or a Government undertaking for the time being.

9. It may be mentioned here that the legislature has enacted another Act viz., the West Bengal Government Premises (Regulation of Occupancy) Act, 1984 and here the definition of the word "premises" as given in Section 2(i) of the Act reads as under:-

2(i) "premises" means any building, shed or hut, used or intended to be used for residential purposes, and includes part of a building, shed or hut and a room or a seat in a room allotted separately, and also includes -

(i) the gardens, grounds, outhouses, garages and godowns, if any, appurtenant thereto, and

(ii) any furniture supplied or any fittings or fixtures affixed for the use of the occupant of such building, garage, godown, shed, hut, room or seat in a room, as the case may be.

Though the definition of "premises" in the Act under consideration (Act No.19 of 1976) and in Act No.21 of 1984 is almost the same, but in the substantive part the expression "used or intended to be used for residential purposes" has been added in the later Act. The use of the expression "used or intended to be used for residential purposes" clearly evinces the intention of the legislature that the 1984 Act shall apply only to residential buildings in contradistinction to the Act under consideration viz., Act No.19 of 1976. Therefore, it is not possible to accept the contention of learned counsel for the appellant that the Act under consideration i.e. 1976 Act can have application only to residential buildings or that the same shall not apply to non-residential buildings like industrial sheds or commercial buildings.

10. As the language shows, the definition of the word "premises" as given in Section 2(c) of the Act is a very comprehensive one and it not only means any building or hut or part of a building or hut and a seat in a room, let separately but also includes godowns, gardens and out-houses appurtenant thereto and also any furniture supplied or any fittings or fixtures affixed for the use of the tenant in such building, hut or seat in a room, as the case may be. A "seat in a room" or "gardens" or "godowns" by themselves do not qualify to be called a residential building. A residence ordinarily means a place where one resides; the act or fact of abiding or dwelling in a place for some time; an act of making one's home in a place. "Residential" ordinarily means - used, serving or designed as a residence or for occupation by residents; relating to or connected with residence. Gardens or grounds or any furniture supplied or fittings or fixtures affixed in a building or seat in a room can by no stretch of imagination be called or said to be a residential building, but they are included in the definition of premises. This shows that the legislature intended to give a very wide and all comprehensive definition of premises and did not intend to give it a restricted meaning. The opening part of the definition of the word "premises" in Section 2(c) employs the word "any". Any is a word of very wide meaning and prime facie the use of it excludes limitation. (See Angurbala Mullick v. Debabrata Mullick AIR 1951 SC 293 at 297). The definition of premises in Section 2(c) uses the word "includes" at two places. It is well settled that the word "include" is generally used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute; and when it is so

used those words or phrases must be construed as comprehending, not only such things, as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. (See *Dadaji v. Sukhdeobabu* AIR 1980 SC 150; *Reserve Bank of India v. Pearless General Finance and Investment Co. Ltd.* AIR 1987 SC 1023 and *Mahalakshmi Oil Mills v. State of Andhra Pradesh* AIR 1989 SC 335). The inclusive definition of "district judge" in Article 236(a) of the Constitution has been very widely construed to include hierarchy of specialized Civil Courts viz. Labour Courts and Industrial Courts which are not expressly included in the definition. (See *State of Maharashtra v. Labour Law Practitioners' Association* AIR 1998 SC 1233). Therefore, there is no warrant or justification for restricting the applicability of the Act to residential buildings alone merely on the ground that in the opening part of the definition of the word "premises", the words "building or hut" have been used.

11. The argument based on clause (1a) of sub-section (2) of Section 3 of the Act has hardly any substance. It is important to note that the aforesaid clause was introduced in Section 3 of the Act by an amendment made by West Bengal Act No.46 of 1980. Section 3 of the Act provides for automatic termination of tenancy in respect of a Government premises on the happening of certain contingencies. Clause (i) contemplates the situation where the lessee has violated the terms of the lease. This is couched in very wide terms and no inference can be drawn therefrom that it contemplates only a residential lease. In whatever way this clause is interpreted it cannot be restricted only to a residential lease but would cover all kinds of leases including a commercial or industrial lease. Clause (1a) has been introduced to squarely cover a situation where the lessee has built a house or has acquired an apartment either in his own name or in the name of any member of his family within a reasonable distance from Government premises under his tenancy. A sub-clause of a section introduced to cover a particular type of contingency cannot cut down the scope or content of other clauses of the same section or the main provisions of the Act nor can the addition of the said sub-clause by way of a subsequent amendment whittle down or restrict the applicability or reach of the whole enactment. Therefore, clause (1a) of sub-section (2) of Section 3 of the Act cannot lead to an inference that the Act under consideration can have application to residential buildings alone and not to any other type of building or land or gardens or grounds etc. where commercial or industrial activity is carried on.

12. Learned counsel for the appellant has next submitted that in *Blue Print & 13 Ors. v. The Great Eastern Hotels Authority & Ors.* (2000) 1 Calcutta Law Times 450, a Division Bench of the Calcutta High Court had held that the Act applied only to residential premises and, therefore, it was not open to learned Single Judge and also the Division Bench in the appeal filed by the appellant to take a contrary view, namely, that the Act is applicable to residential as well as non-residential premises including industrial sheds. It is necessary to state here that the decision in the case of *Blue Print & 13 others* was challenged by the State of West Bengal by filing an appeal in this Court and the judgment is reported in (2002) 4 SCC 134 (*State of West Bengal & ors. v. Vishnunarayan & Associates (P) Ltd. & Anr.*). Though the appeal was dismissed but the question as to whether the Act would apply only to residential premises was not decided and was left open, as will be evident from para 23 of the reports. As we have examined the controversy and have come to the conclusion that the Act is applicable to non-residential and commercial premises as well, the contention raised is purely academic in nature and can have no bearing on the fate of the appeal.

13. It may be mentioned here that the Chairman of the Corporation, in pursuance of the order passed by the learned Single Judge in the writ petitions which were filed by the appellant at the earlier stage, after considering the contemporaneous documents and the report of the concerned sub-Assistant Engineer, incharge of Baltikuri Industrial Estate, has recorded a clear finding that the unit is non-functioning one and was lying closed over a long period. The report of the West Bengal State Electricity Board showed that the commercial line and the industrial line had been disconnected in 1994-96 and the total dues of the appellant for the two service connections were Rs.2,78,415/-. The fact that electricity connection had been disconnected several years back fully corroborates the stand of the respondent that the unit is lying closed for a long period and no manufacturing activity was being carried on. Thus, there was a clear violation of the terms of the lease and the tenancy of the appellant stood automatically terminated under Section 3(2)(i) of the Act.

14. Learned counsel has also submitted that the appellant was entitled to ownership of two sheds after expiry of a period of 30 years as provided in clause VI(b) of the lease deed. The opening part of Clause VI of the lease deed says "Subject to the covenants hereinbefore contained" and thereafter there are two sub-clauses (a) and (b). Therefore, sub-clause (b) of clause VI is not in absolute terms but is subject to the covenants enumerated in the earlier part of the lease deed. Since it has been found as a fact that the appellant has contravened the provisions of clauses 2(f)1 and B of the lease deed, it cannot claim any right under clause VI(b). Therefore, the appellant is not entitled to exercise the option to acquire ownership of the demised industrial sheds and his claim in that regard is wholly baseless.

15. For the reasons discussed above, we find no merit in the appeal, which is hereby dismissed with costs. The interim order granted by this Court on 17.2.2006 is vacated.