

A NEW INDIA ASSURANCE COMPANY LTD.  
v.  
NUSLI NEVILLE WADIA AND ANR.

DECEMBER 13, 2007

B [S.B. SINHA AND HARJIT SINGH BEDI, JJ.]

C *Public Premises (Eviction of Unauthorized Occupants) Act, 1971—ss. 4, 5 and 7—Proceedings under the Act—Dispute as to who should begin to lead evidence in such proceedings—Held: Procedural aspect as to who should lead evidence first, may have to be determined on basis of issues arising in the matter—When an application for eviction is based on such grounds, which require production of positive evidence on part of the landlord, it would be for it to adduce evidence first; more so in a composite application where evidence is also required to be led on quantum of damages to be determined by the Estate Officer—Interpretation of Statutes—Purposive construction—Evidence Act, 1872—s.101—Constitution of India, 1950—Art. 12.*

E Appellant-company, a State within the meaning of Article 12 of the Constitution, owns a building in the town of Mumbai. Respondents are the tenants occupying two apartments in the said building. Notices for eviction of the tenants were issued under the provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

F Dispute arose as to who should begin to lead evidence in proceedings initiated under the Act.

G On behalf of the appellant it was *inter alia* contended that having regard to the scheme of the Act and the Rules framed thereunder, the respondent-tenant should be directed to lead evidence and that 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.

Dismissing the appeals, the Court

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**HELD: 1.1. The procedural aspect as to who should lead evidence first, may have to be determined on the basis of the issues arising in the matter. [Para 35] [614-D]**

**1.2. 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. However, there may be another class of tenants who are required to be evicted 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. [Paras 26 and 27] [613-B, C]**

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**1.3. Furthermore a proceeding may be initiated under Section 4 simplicitor of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. 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.**

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**[Para 28] [613-D, E]**

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**1.4. When an application for eviction is based on such grounds, which require production of positive evidence on part of the landlord, 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.**

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**[Para 30] [613-F, G]**

**1.5. 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. [Para 31] [613-G-H, 614-A]**

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**1.6. The statute, although, does not require a lengthy hearing or a lengthy cross-examination but the noticee should be given an**

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A 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. 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.

B [Paras 38 and 39] [615-A, B]

*Narendra Kumar Maheshwari v. Union of India and Ors.*, [1990] Supp SCC 440; *Maharao Sahib Shir Bhim Singhji v. Union of India and Ors.*, [1981] 1 SCC 166; *J.R. Raghupathy and Ors. v. State of A.P. and Ors.*, [1988] 4 SCC 464; *Uttam Parkash Bansal and Ors. v. L.I.C. of India*, (2002) 100 DLT 487; *Punjab National Bank v. M/s. The Lord Krishna Paper Industries and Ors.*, (1992) 2 CLR 457; *Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay*, [1989] 3 SCC 293; *Ashoka Marketing Ltd v. Punjab National Bank*, [1990] 4 SCC 406; *Brigadier Commandant, Meerut v. Gangaprasad*, AIR 1956 All. 507 (DB); *Jaggu Singh v. Shakuat* 58 CWN 1056 : *Satish Chander v. Delhi Improvement Trust Ali*, (1957) 59 PLR 621; *Northern India Caterers Pvt. Ltd. v. State of Punjab*, [1967] 3 SCC 399; *Maganlal Chaganlal v. Municipal Corporation*, [1974] 2 SCC 402; *Hari Singh v. Military Estate Officer*, [1972] 2 SCC 259 and *Accountant and Secretarial Services v. Union of India*, [1988] 4 SCC 324, referred to.

*Minoo Framroze Balsara v. Union of India and Ors.*, (1992) Bom 375 and *Standard Literature Co. Private Ltd. and Ors. v. Union of India*, AIR (1968) Calcutta 1, referred to.

F 2.1. 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. [Para 44] [618-C, D]

G 2.2. 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

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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. A

[Para 46] [618-G; 619-A]

*K.L. Tripathi v. State Bank of India and Ors.*, [1984] 1 SCC 43 and *Lakshman Exports Limited v. Collector of Central Excise*, (2005) 10 634, relied on. B

*Bareilly Electricity Supply Co. Ltd. v. The Workmen*, [1972] 1 SCR 241 and *Sarbananda Sonowal (II) v. Union of India*, [2007] 1 SCC 174, referred to. C

3.1. 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. This is not contemplated in law. 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. [Para 48] [619-E, F, G; 620-A] D E F

3.2. 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. [Para 49] [620-A, B] G

3.3. If the landlord, being a State within the meaning of Article 12 of the Constitution of India, is required to prove fairness and H

A 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. 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, 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.

[Para 50] [620-C, D, E, F]

D 3.4. 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. With a view to give effect thereto, the doctrine of purposive construction may have to be taken recourse to. [Para 53] [621-E]

E 3.5. Although the provisions of the Evidence Act are not applicable, the underlying principles of Section 101 thereof would apply.

[Para 54] [621-F]

F *Ashoka Marketing Ltd v. Punjab National Bank*, [1990] 4 SCC 406, relied on.

G *Bharat Petroleum Corpn. Ltd. v. Maddula Ratnavalli and Ors.*, [2007] 6 SCC 81; *Oriental Insurance Co. Ltd. v. Brij Mohan and Ors.*, (2007) 7 Scale 753; *Shambhu Nath Goyal v. Bank of Baroda and Ors.*, [1983] 4 SCC 491; *Garden Silk Mills Ltd. and Anr. v. Union of India and Ors.*, [1999] 8 SCC 744 and *J.K. Synthetics Ltd. v. K.P. Agrawal and Anr.*, [2007] 2 SCC 433, referred to.

*Aharon Barak, Purposive Interpretation in Law*, (2007) pg.87 and *Sarkar on Law of Evidence 16th Edition Volume 2*, pg.1584, referred to.

H 4. In the present case, even if it is assumed that in terms of the

statutory provisions the respondents must lead evidence first the same A  
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 B  
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. [Para 57] [622-E, F, G] C

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5879 of  
2007.

From the final Judgment and Order dated 03.03.2006 of the High  
Court of Judicature at Bombay in Writ Petition No. 361 of 2006. D

WITH

C.A. Nos 5871 of 2007.

P.N. Lekhi, Samar Bansal, Rajan Chaurasia, Lokesh Kumar and  
M.K. Garg for the Appellant. E

F.S. Nariman, Anil Divan and Shyam Divan, Parag Gandhi, R.N.  
Karanjawala, Nandini Gore, Debmalya Banerjee, Simran Brar, Manik  
Karanjawala, Mashesh Agarwala, Rishi Agrawala and E.C. Agrawala for  
the Respondents. F

The Judgment of the Court was delivered by

**S.B. SINHA, J.** 1. Leave granted.

*Introduction* G

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

A *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—Nusli Neville Wadia and Anr.*

C 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.

E 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's eviction as set out in the application were :-

- F "1. 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 exhorbitant rents for tenanted premises ;
- G 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.'s own properties ;
- H 4. The tenancy of Respondent No. 1 has been duly terminated

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by the New India Assurance Co. Ltd.'s notice dated 18.02.2002; A

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

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. B C

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's witnesses by the appellant's 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. D E

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

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 'licence' by giving two months' 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 H

A 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 B in terms of Section 4 and 7(3) of the Act on 21st February, 2003.

C 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 :-  
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“the 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.”

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

F “Both 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.”

G 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*

H 11. Mr. P.N. Lekhi, learned senior counsel appearing on behalf of

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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. A
- (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. B
- (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. C D
- (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. E
- (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. F
- (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 H

A 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  
B 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  
C 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 to be given.  
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(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.  
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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.  
F 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.  
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(3) As the principle of natural justice contemplate cross-examination A  
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*

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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 C  
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. D

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 :-

“Section 4 - Issue of notice to show cause against order of eviction E  
- (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 F  
made.

(2) The notice shall--

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

(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 H

A 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.”

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

D “Section 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.”

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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. A

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

*THE RULES;* B

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 :- C

“5. *Holding of inquiries.* – (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. “ D

*GUIDELINES* E

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 F G H

A premises only for his residence as would appear from the guidelines dated 23rd July, 2003, the relevant portion whereof reads as under :-

B “3. 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.2101 i/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.”

C 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 v. Union of India and Ors*; [1981] 1 SCC 166 at 232 : *Maharao Sahib Shir Bhim Singhji v. Union of India and Ors*; [1988] 4 SCC 464 (paragraph 31) : *J.R. Raghupathy and Ors. v. State of A.P. and Ors*; (2002) 100 DLT 487 : *Uttam Parkash Bansal and Ors. v. L.I.C. of India*, and (1992) 2 CLR 457 : *Punjab National Bank v. M/s. The Lord Krishna Paper Industries and Ors*.)

E 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.

F *APPLICATION OF THE ACT AND THE RULES*

G 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 H a personal hearing, if any, as provided under clause (ii) of sub-section 2

of Section 4 of the Act.

A

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.

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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.

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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.

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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.

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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.

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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,

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A 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.

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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.

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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.

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#### 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.

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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".

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37. The question has been succinctly dealt with by a Division Bench of the Bombay High Court in: *Minoo Framroze Balsara v. 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".

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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 along with 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. v. 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 v. Board of Trustees of the Port of Bombay* and [1990] 4 SCC 406 : *Ashoka Marketing Ltd v. 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 :-

"69. It has been urged by the learned counsel for the petitioners that many of the corporations referred to in Section 2(e)(2)(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

A 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 *Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay*, (SCC p. 306, para 27)

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C “...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.”

D 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.”

#### *Constitutional Backdrop*

G 41. Constitutional validity of the Act as also its predecessors' 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 v.*

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*Gangaprasad* ; 58 CWN 1056 : *Jaggu Singh v. Shakuat Ali and A*  
(1957) (59) PLR 621 : *Satish Chander v. 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. v. State of Punjab* held Section B  
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 C  
Judges of this Court in [1974] 2 SCC 402 : *Maganlal Chaganlal v.  
Municipal Corporation*. We must also notice that 1958 Act was struck  
down by Delhi High Court in *P.L. Mehra v. D.R. Khanna* (Civil Writ  
No. 431 of 197).

42. On the aforementioned premises the 1971 Act was enacted after D  
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 v. Military Estate Officer*. However, the challenge  
to its validity was negatived holding that the 1971 Act did not provide E  
for two procedures but only one procedure. Yet again in [1988] 4 SCC  
324 : *Accountant and Secretarial Services v. 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 negatived the challenge and F  
observed:

“32. 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 G  
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 H

A 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.”

B 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.

C *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.

D 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 v. State Bank of India and Ors.*, and 2005 (10) 634 : *Lakshman Exports Limited v.: Collector of Central Excise*]

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

F “The 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.”

G 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

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fairness in the matter of determination of a lis between the parties. A

47. We may also notice that in [2007] 1 SCC 174 : *Sarbananda Sonowal (II) v. Union of India* this Court having regard to the fact that burden of proof was on the noticee held :

“56. Status of a person, however, is determined according to B  
statute. The Evidence Act of our country has made provisions as  
regards “burden of proof”. 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 C  
is placed on the accused, the same would not mean that he is  
deprived of the procedural safeguard.”

It was observed :

“60. Having regard to the fact that the Tribunal in the notice to be D  
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.”

*Interpretative Approval* E

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 F  
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 G  
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 H

A 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.

B 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.

C 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.

D 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

E 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

F under the statutory scheme to fulfill its constitutional obligations as held by the court *inter alia* in *Ashoka Marketing Ltd.* (supra).

G 51. Barak in his exhaustive work on ‘Purposive Construction’ explains various meanings attributed to the term “purpose”. It would be in the fitness of discussion to refer to *Purposive Construction* in Barak’s words:

“Hart and Sachs also appear to treat “purpose” as a subjective concept. I say “appear” because, although Hart and Sachs claim that the interpreter should imagine himself or herself in the

legislator's shoes, they introduce two elements of objectivity: First, A  
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 B  
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.”

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

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

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

53. The provisions of the Act and the Rules in this case, are, thus E  
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. v.  
Brij Mohan and Ors.*] F

*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 G  
under:-

“Principle and Scope .- This section is based on the rule, *ie  
incumbit probation qui dicit, non qui negat* – the burden of  
proving a fact rests on the party who substantially asserts the H

A affirmative of the issue and not upon the party who denies it; for a  
 negative is usually incapable of proof. "It is an ancient rule founded  
 on consideration of good sense and should not be departed from  
 without strong reasons." [per LORD MAUGHAM in *Constantine*  
 B *Line v. 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].*

C (Emphasis supplied)

55. The said principle has been approved by this Court in [1983] 4  
 SCC 491: *Shambhu Nath Goyal v. Bank of Baroda and Ors.*, [1999]  
 8 SCC 744 : *Garden Silk Mills Ltd. and Anr. v. Union of India and*  
 D *Ors.*, [2007] 2 SCC 433 (para 18) and *J.K. Synthetics Ltd. v. K.P.*  
*Agrawal and Anr.*

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  
 E 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  
 F 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  
 G 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  
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NEW INDIA ASSURANCE COMPANY LTD. v. NUSLI 623  
NEVILLE WADIA [SINHA, J.]

before the High Court.

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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.

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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.

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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).

B.B.B.

Appeals dismissed.