In Re: Wellman Incandescent India Ltd. (In Liquidation)
 West Bengal Small Industries Development Corporation Ltd.

Court: Calcutta High Court

Date of Decision: April 12, 2007

Acts Referred: Companies Act, 1956 â€" Section 456, 529A
Constitution of India, 1950 â€" Article 236
Sick Industrial Companies (Special Provisions) Act, 1985 â€" Section 20(1)
West Bengal Apartment Ownership Act, 1972 â€" Section 3A
West Bengal Government Premises (Tenancy Regulation) Act, 1976 â€" Section 12, 2, 3, 3(2), 4

Citation: (2008) 145 CompCas 228

Hon'ble Judges: Sanjib Banerjee, J

Bench: Single Bench

Advocate: A.K. Dhandhania and A.K. Sur, Ahin Chowdhury, P. Roy Chowdhury, S. Sarkar and S. Bhattacharjee, for the Appellant; R. Chowdhury, for the Respondent

Final Decision: Allowed

Judgement

Sanjib Banerjee, J.
This application was earlier dismissed and the appeal therefrom was disposed of in November 2004, effectively

rejecting the reliefs sought, but sugar-coating the dismissal by providing manifold increase in the lease rental in respect of the concerned premises.

The alleged mortgagee, claiming that it had been left in the lurch, sought review of the appellate order. In the review the lessor asserted its right to

the land. The review was allowed and the earlier order of dismissal was set aside. The applicant now insists upon having the land and claims that

the alleged mortgage has no ground to resist it.

2. The bounds of adjudication in this second round of the proceedings before the company court have been demarcated in the order of February

22, 2006, passed on review:

We, therefore, review the order passed by the Division Bench by recalling the same and sending the matter back to the learned trial judge for

considering whether on the date of winding up, there was any violation of the terms of the lease at the instance of the lessee and also for deciding

whether the mortgage was really created in favour of the present applicant in terms of the indenture of lease by taking consent of the lessor. The

learned trial judge will adjudicate those questions and will pass necessary order if it is satisfied that the applicant lessor really determined the lease

for violation of terms therein, that such determination was in accordance with law and at the same time will also protect the interest of the

mortgagee if the mortgage is created with the consent of lessor in accordance with the tenor of the grant.

We make it clear that we have not gone into those questions; the company court will give opportunity to the parties to lead evidence on the

aforesaid questions. We, thus, recall the order of the Division Bench dated November 25, 2004, and also set aside the order passed by the

learned single judge and remand the matter back to the learned single judge for fresh decision in the light of our observations.

(emphasis supplied)

3. The State of West Bengal, in the name of the Governor, granted a lease in respect of land measuring 30, 612 sq. ft. at the Howrah Industrial

Estate at Baltikuri in favour of the company long prior to its liquidation for a period of 99 years beginning September 1, 1968, at an annual rent of

Rs. 21,627.15 all inclusive. A second lease was made in 1991 for an additional area of 260 sq. ft. for 99 years at a further rent of Rs. 320.60 per

year. The material terms of both the indentures of lease are similar except that the applicability of an Act of 1976 that did not exist at the time of the

first lease, found express mention in the second.

4. It is the rights of the three principal players against the backdrop of the provisions contained in the West Bengal Government Premises (Tenancy

Regulation) Act, 1976, that fall for adjudication in the light of the observations made in the appellate court order of February 22, 2006. Further

affidavits have been called for to enable the parties to establish their respective cases. The original application and the affidavits filed prior to the

matter being dismissed by the order of April 20, 2004, could not be traced and have been reconstructed. Such reconstructed papers have hardly

been referred to and in this fight between the lessor and the alleged mortgagee, where the official liquidator representing the company in liquidation

has understandably thrown in his lot with the alleged mortgagee. The affidavits filed in course of this fresh round before the company court have

primarily been taken into account.

5. Almost as an aside, it may be mentioned that the applicant filed a fresh application seeking the same reliefs in C. A. No. 12 of 2007, in view of

the substantial events that transpired subsequent to the original application being filed. But the applicant has elected to pursue this application on the

strength of the order of February 22, 2006, and has jettisoned the later application.

6. The applicant is a corporation under the administrative control of the State Government and claims to be a Government undertaking within the

meaning of Section 2(b) of the said Act of 1976. It recounts in the application that the first lease for the larger land was of the year 1962 and that a

new lease in respect of such land came to be on November 14, 1969, effective from September 1, 1968. It asserts that by a notification of

December 5, 1994, the State Government assigned the entirety of the Howrah Industrial Estate, of which the two pieces of land covered by the

two subject leases form a part, in its favour. In the application the lessor corporation claims that no rent has been paid in respect of the bigger area

after the year 2002 and that no rent has been paid at all in respect of the lesser area. The application records that the company had not been

functioning or carrying on any manufacturing activity at the premises for the 18 months prior to August, 2003 and that the electricity supply at the

company''s industrial undertaking had been disconnected. The application is founded on a notice of August, 2003 issued on behalf of the applicant

to the official liquidator, seeking return of its lands and sheds, that the official liquidator chose to ignore.

7. The applicant claims that the leases ""automatically came to an end by operation of law and also according to the terms"" of the indentures and

that the applicant is entitled to possess the land and the demised sheds thereat. It is submitted on behalf of the applicant that had the company not

gone into liquidation, the corporation would have entered upon its land that had been wrongly retained by the company upon its acting in

derogation of its obligations in terms of the agreements. It is suggested that it was only in deference to the fact that upon liquidation the assets of the

company in liquidation vested in court, that the corporation was required to seek leave of court rather than suo motu reclaim its own land.

8. Clauses 2(f), 2(g) and 3B of the 1969 document are relied upon in furtherance of the applicant''s rights. The applicant says that the right of the

lessee to mortgage the demised property was subject to the lessor''s rights. The applicant submits that the charter to mortgage found in either lease

cannot confer a right on the mortgagee that did not inhere in the lessee nor can it elevate the mortgagee to the status of the lessor or to such a

pedestal that the lessor would lose its right to re-enter the land upon breach of the conditions of the lease.

9. The relevant clauses of the two deeds are of similar effect. Clauses 2(f)(1)/ 2(g), 3B and the provision in the first lease permitting mortgagee of

the land covered thereby, provide as follows:

2. The lessee to the intent that the obligations may continue throughout the term hereby created covenant/covenants with the lessor as follows:....

(f)(l) 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.

(g) Not to assign underlet or part with the possession of the demised premises or any part thereof/without first obtaining the written consent of the

Government; provided however the lessees/lessee may mortgage and/or otherwise charge and/or hypothecate the leasehold interest in the lands

and/or the structures fixtures etc. to the Life Insurance Corporation of India or any bank or financial corporation, only for the purpose of raising or

securing any loan or overdraft or other financial accommodation in connection with the business of the lessee carried on in the demised premises....

3. The lessor hereby covenants with the lessee that upon the lessee paying the rent hereby reserved and observing and performing the several

covenants, conditions and stipulations on the part of the lessee herein contained the lessee shall peacefully hold and enjoy the demised premises

during the said term without any interruptions from the lessor or the Government or any person rightfully claiming under or in trust for them or it-

Provided always and it is expressly agreed by and between the parties as follows:....

(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

lessees herein contained shall not be performed observed or if the demised premises be not used by the lessees 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 lessees" covenants herein

contained.

(vi) ... (a) The lessees/lessee shall always have power and authority and liability to mortgage charge and/or hypothecate or otherwise encumber the

leasehold interest in the demised premises, i.e. lands, sheds, fittings, fixtures and structures hereunder demised, to the Life Insurance Corporation

of India any bank or financial corporation, for the purpose of raising and/or securing any loan and/or overdraft or other financial accommodation or

arrangement in connection with the business of the lessee carried on at the said premises....

10. According to the applicant and as has been asserted in its recent supplementary affidavit of February, 2007, no manufacturing activity has been

carried on by the company in liquidation at the said premises since October, 2001 and the electricity supply, indispensable to the nature of the

manufacturing process at its undertaking, had been cut off. The alleged mortgagee, Stressed Assets Stabilization Fund (SASF), a body set up to

take over the sticky assets and accounts of IDBI, has denied that no industrial activity was undertaken by the company at the said premises for the

period claimed by the applicant. But SASF has been unable to travel much further than the bald denial of the applicant''s assertions in this regard. It

is significant that the company was wound up by an order of September 24, 2002, following a recommendation made u/s 20(1) of the Sick

Industrial Companies (Special Provisions) Act, 1985 by the Board for Industrial and Financial Reconstruction. The company had made a

reference before that Board in the year 1998 and the Board finally found that there was no viable proposal to resuscitate the ailing undertaking and

was left with no alternative but to have the company shut down. It is credible, therefore, that the company''s manufacturing activities at the said

premises ceased some time before the order of liquidation was made. Though the applicant admits payment of rent in respect of the larger land till

the year 2002, the lesser land remained unpaid for and the company was not entitled to the use thereof long prior to it being wound up.

11. The mortgagee''s case on facts is found in the following four sub-paragraphs of its affidavit of February 6, 2007:

(f) The company in liquidation in the year 1992 approached the IDBI for financial assistance and by and under a loan agreement dated May 6,

1992, the IDBI granted to the company in liquidation term loan of Rs. 10 crores on the terms and conditions mentioned in the said loan agreement.

The said loan agreement, inter alia, provided that the said term loan along with interest would be secured by hypothecation of movable assets and

mortgage of all immovable properties of the company in liquidation.

(g) By another loan agreement dated February 16, 1994, the IDBI granted to the company in liquidation another term loan of Rs. 3 crores on the

terms and conditions contained in the said loan agreement. The said loan agreement, inter alia, provide that the loan together with interest would be

secured by hypothecation of movable assets and mortgage of all immovable properties of the company in liquidation. The applicant craves leave to

refer to and produce the copies of the said loan agreements dated May 6, 1992 and February 16, 1994, at the time of hearing of this application.

(h) On July 15, 1999, the company in liquidation created equitable mortgage in favour of the IDBI and other banks namely the State Bank of India

and the State Bank of Travancore in respect of the leasehold interest of the company in liquidation over the lands covered by the abovementioned

two lease deeds executed between the Government of West Bengal and the company in liquidation as security for the loans granted by them to the

company in liquidation including the two term loans granted by the IDBI to the company in liquidation along with interest and other dues. A copy of

the memorandum of entry dated July 16, 1999, in connection with the said equitable mortgage created on July 15, 1999, is annexed hereto and

marked with the letter ''C''.

(i) As on September 24, 2002, the IDBI and/or the SASF was entitled to receive the under mentioned sums of money from the company in

liquidation.

(Rs.)

(a) Principal 11,79,50,716

(b) Interest and other charges 30,57,18,064

Total 42,36,68,780

Further interest has since accrued and is also accruing from day-today.

12. There are two notable features in the facts pleaded by the SASF : that its mortgage in respect of the lands was created when the company was

on the brink and its net-worth had been eroded; and, that its principal claim as on the date of the company being wound up was a little under Rs.

11.8 crores.

13. The assets of the company have been sold by court and the purchaser has removed up to the last nut and bolt from the erstwhile manufacturing

unit of the company in liquidation. The land and the sheds thereat remain relics of the industrial activity that the unit once saw. But the cessation of

the industrial activity and the breach of the other conditions of the two deeds consequent upon the order of winding up, cannot engage the

company court now in view of the parameters set down by the appellate court order of February 22, 2006, that the consideration now should be

limited to ""whether on the date of winding up, there was any violation of the terms of the lease at the instance of the lessee... "". On facts, it is

apparent that a period of more than six months had elapsed since any manufacturing process had been continued by the company at the said

premises prior to it going into liquidation. Also, on facts it is established, in the absence of any material being produced either by the SASF or by

the official liquidator on behalf of the company in liquidation, that no rent in respect of the lesser land had been tendered to the corporation. Again

on facts, it is inescapable that the company had accepted the corporation as its lessor and thus accepted the assignment by the State Government

of the industrial estate in favour of the applicant. The small matter of rent in respect of the lesser land not being paid is not ground enough to

suggest that the company did not recognise the corporation as its lessor in respect thereof as the same notification, assigning the entire industrial

estate in favour of the corporation, applied ; and the two pieces of land were but a part of the larger industrial estate.

14. The corporation''s stand as to the mortgage said to have been created in favour of the SASF is equivocal. It claims that even if there was a

mortgage, the corporation''s rights could not be affected thereby. The corporation has produced nothing to interdict annexure ""C"" to the

mortgagee''s supplementary affidavit, which is a document creating the mortgage. The applicant has not contested that the lessee was entitled to

mortgage the demised lands for obtaining credit facilities in connection with its business at the said premises. There is no suggestion either that the

security created was for any purpose other than the business of the company in liquidation carried on at the said premises. The documents

accorded the lessor''s prior consent for such mortgage and the lessee was not required to obtain any further permission before creating the

mortgage. There is, thus, the corporation''s undeniable right under the two similarly worded agreements as lessor, and also the mortgagee''s claim.

It is now for the test of strength of the one against the other.

15. The applicant relies on the definition of ""Government premises"" found in Section 2(a) of the said Act of 1976 and its rights recognised by

sections 3 and 4 thereof. The applicant refers to the overriding effect of the provisions of the said Act of 1976 in terms of Section 12 thereof to

belittle the mortgagee''s claim to its security ahead of the applicant''s entitlement upon the lessee failing to adhere to the conditions that would

permit the lessee to retain the lands.

16. Section 2(a) defines ""Government premises"" to be any premises which is owned by the State Government or by a Government undertaking but

does not include the official residence of any person authorised to occupy the premises in consideration of the office which he holds under the State

Government or a Government undertaking for the time being. Sections 3, 4 and 12 of the said Act of 1976, in their material parts, provide as

follows:

3. Termination of tenancy.-(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

(ia) 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.-For the purposes of this section and Section 3A,-

(a) ""apartment"" shall have the same meaning as in the West Bengal Apartment Ownership Act, 1972 ;

(b) ""family"" shall include parents and other relations of the tenant who ordinarily reside with him and are dependant on him ;

(c) ""reasonable distance"" shall mean any distance not exceeding twenty-five kilometres, or

(ii) made default in payment of rent for three consecutive months:

Provided that....

4. Restoration of possession.-(1) Upon termination of a tenancy under any of the provisions of Section 3 (or upon a tenancy being void u/s 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 authorised 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.-(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 Unauthorised

Occupants) Act, 1962 shall not be applicable to any premises to which this Act applies.

17. The corporation insists that the leases stood determined upon the company''s violation of the terms thereof and that the corporation is entitled

to possession of the premises in exercise of the rights recognised by Sections 3(2)(i) and 4 of the said Act of 1976.

18. The applicant relies on a Division Bench decision of this Court reported as Associated Indem Mechanical Private Limited and Another Vs.

West Bengal Small Industries Development Corporation Limited and Others, and the judgment in the failed appeal therefrom rendered by the

Supreme Court in the thus far unreported judgment in Civil Appeal No. 22 of 2007 Associated Indem Mechanical Pvt. Ltd. Vs. West Bengal

Small Scale Industrial Development Corporation Ltd. and Others, . The applicant cites such authorities with greater vehemence than ordinarily

called for, as the applicability of the same provisions of the said Act of 1976 in respect of the same industrial estate and involving the rights of the

applicant, fell for consideration in that case.

19. The applicant first refers to the three deeds of lease that formed the subject-matter of the Associated Indem, case and points out that two of

the documents were executed prior to the said Act of 1976 coming into force and the third came to be made some 18 months after the said Act of

1976 became effective but related to a period beginning June 1, 1975. Each of the three leases was for a period of 99 years. The applicant relies

on the following paragraphs of the judgment rendered by the Division Bench of this Court in the context of the second question raised in such

proceedings as to whether the lessee had violated the provisions of the lease (pages 186 and 187):

34. We now have to consider as to whether the appellant had violated the provisions of the lease. For this purpose, the learned Counsel for the

corporation took us through the order of the chairman. In fact, we were taken through the whole history of the litigation. It was pointed out by Sri

Hirak Mitra, the senior counsel for the corporation, that it was incumbent upon the appellant-petitioner to start and carry on a manufacturing

activity in the premises. According to the learned Counsel, this premises were meant for giving a philip to the industrialisation of the State. Our

attention was invited to this and more particularly to clause 2(f)(i) of the lease deed which suggests that the demised premises was to be used for

carrying on manufacturing business or for business connected with manufacturing process including processing, manufacture or assembling of

machine, tools, implements, instruments, furnaces, heaters, ovens, scientific apparatus, inventions and other industrial products. Therefore

according to the learned Counsel and in our opinion, rightly the appellant had to show some manufacturing activity being carried on in the demised

premises. The learned Counsel pointed out and it was not disputed that the electricity supply of the premises was also disconnected way back in

the year 1994 and 1996. Therefore, it was argued that there was no manufacturing activity in the absence of electrical energy and further in the

absence of any proof that any other mode of energy was used. Our attention was drawn to the fact that either before the learned single judge or

even before us, no material was placed to show that the appellants were engaged in any manufacturing activity or that the said manufacturing

activity was being continued. On the other hand, it was pointed out that when a Form ""A"" notice was issued in the year 1999, it was returned with

a postal remark ""abolished"". Even the final notice dated September 13, 1999, met with the same fate and came back with the postal remark ""not

known"". It was pointed out that thereafter at the instance of the appellant a fresh chance was given by the corporation to restart the manufacturing

activity though the possession was taken on February 25, 2000, and the same was made over to them again on May 17, 2002. However, the

fresh inspections disclosed that the appellants had not commenced any manufacturing activity and the unit remained as a non-functioning unit. There

was a clear reference to all this in the order of the chairman dated September 11, 2002. The learned senior counsel appearing on behalf of the

appellant, Sri Ashoke Banerjee could not controvert to all these factual positions. An attempt was however made before us to show that the

trading activity was going on and that there were machines inside the premises which remained under the lock of the corporation.

35. We do not see as to how this could help the appellants in view of the clearest possible language that there has to be a manufacturing activity on

the premises. No material was shown before us that the appellants were manufacturing anything in the aforementioned sheds. It was therefore clear

that there was a major violation in not doing any manufacturing activity or at least, not continuing with any manufacturing activities. On the other

hand, the fact suggests that the manufacturing activity was either never commenced or at least, the unit remained as a non-functioning unit for much

more period than six months which was one of the essential conditions of the lease. There was thus a clear violation of the terms of lease which we

have already referred to in the earlier portion of the judgment. Not only this, but there was a non-payment of the amount of Rs. 16 lakhs as found

from the accounts pending on March 31, 2002. In our opinion, therefore, there was clear evidence to suggest that there was a major breach on the

part of the appellant in not starting or continuing with manufacturing activity and further the appellant had also fallen in default of payment of rent.

All this therefore suggests that there was a clear out breach of conditions of the lease inviting the automatic termination of the lease vide Section

3(2)(i). If this is the position, then in our opinion, Section 4 of the Act would be clearly activated giving an absolute right to the corporation to walk

into the premises and to recover the possession even by force, if necessary. Section 4 provides as under:

(Section 4 quoted)

36. The language clearly suggests that where there is a termination of tenancy under the provisions of Section 3, it is incumbent upon the tenant to

restore vacant possession of the premises occupied by him. The effect of this provision is that if the tenant fails to restore the possession of the

premises, the prescribed authority or the officer authorised by him may take such steps or use necessary force to take possession of the premises

and may also enter into such premises.

37. These provisions clearly support the corporation which has chosen to put its locks on the premises signifying thereby that they had taken the

possession of the demised premises.

38. The learned Counsel further tried to urge that even if there were any breaches before the possession was taken, the corporation was bound to

take the possession only in accordance with law meaning thereby the corporation should have approached the courts of law for recovery of

possession. We do not accept this argument in the wake of the clearest possible position obtained in Section 4 and more particularly, Sub-section

(2) thereof. It would be obvious that the tenancy stood automatically terminated because of the operation of Section 3(2)(i) and therefore, it had

been incumbent upon the tenant to restore the possession. If that was not done, under Sub-section (2) the corporation had a right to recover the

possession even by force. There would be no question of the corporation to file a civil suit for recovery of possession. The corporation, in our

opinion, had recovered the possession in accordance with law and more particularly, Section 4 of the Act. The argument that the petitioner was

ousted and that resulted in creation of some rights of the petitioner is clearly baseless and has to be rejected. That leaves us with the last question.

20. The corporation prevailed before the Division Bench of this Court. Upon special leave being granted by the Supreme Court to the lessee, the

resultant appeal was dismissed by repelling the appellant''s contention that the provisions of the said Act of 1976 were applicable only to residential

premises and not to industrial sheds which were commercial in nature. Paragraphs 8 to 12 of the unreported judgment of the Supreme Court lay

down as follows AIR 2007 SC 788, 792-794:

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 the 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 authorised 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 authorised 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, out-houses, 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 on 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 prima facie the use of it excludes limitation.

(See Angurbala Mullick Vs. Debabrata Mullick,). 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 alias Dina Vs.

Sukhdeobabu and Others, , Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. [1987] 61 Comp Cas 663 : AIR 1987

SC 1023 and M/s. Mahalakshmi Oil Mills Vs. State of Andhra Pradesh, . The inclusive definition of ""district judge"" in Article 236(a) of the

Constitution has been very widely construed to include hierarchy of specialised civil courts, viz., labour courts and industrial courts which are not

expressly included in the definition. (See The State of Maharashtra Vs. Labour Law Practitioners'' Association and Others, . 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 (ia) 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 (ia) 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 (ia) 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 v. Great Eastern Hotels Authority [2000] 1 Cal LT 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 v. Great Eastern Hotels

Authority [2000] 1 Cal LT 450, was challenged by the State of West Bengal by filing an appeal in this Court and the judgment is reported in State

of West Bengal and Others Vs. Vishnunarayan and Associates (P) Ltd. and Another, . 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 paragraph 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 hearing on the fate of the appeal.

21. The SASF seeks to distinguish the Associated Indem Mechanical Private Limited and Another Vs. West Bengal Small Industries Development

Corporation Limited and Others, on appeal Associated Indem Mechanical Pvt. Ltd. Vs. West Bengal Small Scale Industrial Development

Corporation Ltd. and Others, , cases by suggesting that different considerations would arise if the lessee were to be a company in liquidation. With

respect, there is no merit in such distinction. The lessor can have no control over how the lessee conducts its business and the rights of the lessor

cannot be sunk upon the lessee''s business being run aground.

22. On somewhat similar lines, the applicability of the said Act of 1976 in weighing the rights of the lessor is questioned. It is urged that in passing

the order of February 22, 2006, the appellate court had not been impressed with the corporation''s argument as to the effect of the said Act of

1976 on its rights under the two agreements. The first part of the following paragraph in the appeal court order has been relied upon:

Although, Mr. Chowdhury tried to impress us that the tenancy of the company in liquidation is governed by the provisions contained in West

Bengal Government Premises (Tenancy Regulation) Act, 1976 and as such, the terms of the lease have become inconsequential, we are not at all

impressed by such submission because the grant in favour of the company was made prior to coming into operation of that Act and there is specific

time limit for 99 years with further option of renewal. By subsequent enactment of the said Act the right created in favour of the company in

liquidation has not been taken away as there is no indication in the said Act of 1976 providing abolition of the existing right in favour of a grantee.

We however do not dispute that if the lessor wants to determine the existing lease for violation of any of the terms thereof, the same must be done

in accordance with the provisions contained in the 1976 Act.

23. The first sentence would apparently imply, as suggested by the mortgagee, that the question as to the applicability of the provisions of the said

Act of 1976 has been answered against the lessor. But a closer scrutiny would lead to the inescapable conclusion that the argument that was

rejected was that upon the said Act of 1976 coming into force, the terms of the lease would become inconsequential. Such argument of the lessor

did not find favour with the appeal court on the ground that there was no indication in the said Act of 1976 that the existing rights in favour of a

grantee stood abolished upon the said Act of 1976 coming into effect. The last sentence of that paragraph would also militate against the present

contention of the mortgagee that the provisions of the said Act of 1976 would not apply : the appeal court found it to be indisputable that upon the

terms of the lease being violated, the determination of the lease could only be done in accordance with the provisions of the said Act of 1976. In

any event, the cited judgments preclude any question as to whether the applicant could invoke the provisions of the said Act of 1976 to assert its

rights or pursue its remedies in respect of the two leases.

24. The mortgagee submits that the applicant is not a Government undertaking within the meaning of Section 2(b) of the said Act of 1976. There is

scarcely any room for such submission to be entertained in the light of the Division Bench judgment as affirmed by the Supreme Court in

Associated Associated Indem Mechanical Private Limited and Another Vs. West Bengal Small Industries Development Corporation Limited and

Others, on appeal Associated Indem Mechanical Pvt. Ltd. Vs. West Bengal Small Scale Industrial Development Corporation Ltd. and Others, .

The mortgagee''s argument that the applicant is merely a company and not a body corporate constituted under a Central or a State Act, is

untenable on the fine distinction that is sought to be made between a body constituted under an Act and a company incorporated under the

Companies Act. Though the constitution of the Government undertaking is a matter referred to in Section 2(b) of the said Act, the greater

emphasis is as to the manner of control of such body. There is no suggestion from any quarter that the State Government does not exercise

administrative control over the corporation or that the State Government does hot have exclusive proprietary interest in respect thereof. The further

point taken by the mortgagee that ""premises"" in the said Act does not take within its fold land but is restricted to premises covering land upon

which construction has been made, is equally fallacious. Again, such question appears to have been covered by Associated Associated Indem

Mechanical Private Limited and Another Vs. West Bengal Small Industries Development Corporation Limited and Others, on appeal Associated

Indem Mechanical Pvt. Ltd. Vs. West Bengal Small Scale Industrial Development Corporation Ltd. and Others, , judgments. In addition, Section

2(c) of the said Act defines ""premises"" on the following lines:

(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 ;

25. In this case the deeds referred to the sheds and the inclusive definition of ""premises"" permits grounds, gardens and land appurtenant to the

sheds to be deemed to be part of the premises. Land has not been specifically excluded in the definition and, apart from the fact that ""land"" and

grounds"" are of similar import, there is no indication in the definition of ""premises"" that land was to be left beyond its purview.

26. The official liquidator has relied on such parts of the agreements that provide that upon payment of rent for 30 years, the lessee would become

owner of the structure standing on the land. At the highest, this argument has to be restricted to the first lease as there is nothing shown that any

payment had ever been made by the company in liquidation in respect of the second lease. Again, this argument in respect of the first lease cannot

be countenanced in view of the answer to the third question given by the Division Bench of this Court in Associated Associated Indem Mechanical

Private Limited and Another Vs. West Bengal Small Industries Development Corporation Limited and Others, . To borrow the words of their

Lordships, one cannot visualise a position that by virtue of such clause in the lease, the lessee had become the owner of the premises. Even if the

lessee had become the owner, which it had not, it would not be absolved of the liability under the lease to continue with the manufacturing activity.

Such case of ownership would also militate against the other provisions of the deeds which have to be read as a whole.

27. This leads to the last question : the rights of the mortgagee and the protection that it can be afforded. It is fundamental that a donee or a grantee

can have no rights in excess of that possessed by the donor or the grantor. The lessee in this case could have created a security of such of its rights,

as it possessed under the agreements. The lessee''s creation of a mortgage, notwithstanding the recognition of such right of the lessee under the

agreement, would not detract from the lessor''s rights. If the lessee cannot claim ownership of the land or found any ground on which its violation of

the terms of the lease can be excused, the mortgagee cannot be put on a more exalted platform. The more emotional, and less legally tenable,

argument that companies undertaking industrial activity at such lands may no longer be considered eligible for credit facilities by financial

corporations upon the lessor''s interpretation being accepted, is no reason for the rights of the lessor, appearing in black and white in the two

documents, to be undermined. Doubtless an industrial undertaking is raised by finance made available to it which gives it the legs to stand on the

land provided, but it is for the financial corporation creditor to assess the worth of the security obtained by mortgage.

28. The SASF has urged that since the lands have been held by court upon the company having been wound up and as recognised by Section 456

of the Companies Act, the applicant''s complaint of non-payment of rent and cessation of manufacturing activity is, in effect, a grievance against the

court''s default for the period after the company was directed to be wound up. This is not a difficult argument to answer, but the temptation must

be resisted in the context of the limits of adjudication as set by the appellate court order of February 22, 2006.

29. The applicant corporation is entitled to possess the lands covered by the two documents and needs no further notice or process to perfect its

claim in respect thereof. The mortgagee, despite its unimpeachable rights qua the company in liquidation, does not have any basis to resist the

application and cannot be accorded any protection against the corporation in respect thereof.

30. The mortgagee has to contend with others of its ilk and the workers'' rights recognised by Section 529A of the Act to fight over the sum of Rs.

10 crores or so that the assets of the company have fetched.

31. The application is allowed. The official liquidator shall make over possession of the lands covered by the two deeds of lease of 1969 and 1991

in favour of the applicant-corporation within three weeks from date. There will, however, be no order as to costs.

On the prayer of the mortgagee, the order is stayed for a fortnight from date.

Since C. A. No. 12 of 2007 has not been pressed, the same is dismissed without any order as to costs.

Urgent photostat certified copies of this order, if applied for, be issued to the parties upon compliance with requisite formalities.