West Bengal Small Industries Development Corp. Ltd. Vs Sona Promoters Pvt. Ltd.

Court: Calcutta High Court

Date of Decision: Sept. 19, 2014

Acts Referred: Calcutta Municipal Corporation Act, 1980 â€" Section 4
Companies Act, 1956 â€" Section 617
Life Insurance Corporation Act, 1956 â€" Section 3
Penal Code, 1860 (IPC) â€" Section 21
State Bank of India Act, 1955 â€" Section 3
West Bengal Government Premises (Tenancy Regulation) Act, 1976 â€" Section 12, 12(2), 2, 2(2), 2(4)
West Bengal Premises Tenancy Act, 1956 â€" Section 2(f)
West Bengal Public Lands (Eviction of Unauthorised Occupants) Act, 1962 â€" Section 2(4), 3, 4, 4A, 5

Citation: (2015) 4 CALLT 262 : (2015) 1 CHN 503 : (2016) 1 WBLR 264

Hon'ble Judges: J. Bhattacharya, J; Ishan Chandra Das, J

Bench: Division Bench

Advocate: Alok Kr. Ghosh and Debanghsu Mondal, Hirak Kumar Mitra, Sr. Adv., R.N. Ghose and Sayani Mondal, Advocate for the Appellant; Debasish Kundu, Sr. Adv., S. Sarkar and S. Mitra, Advocate for the Respondent

Final Decision: Disposed Off

Judgement

Jyotirmay Bhattacharya, J.
This mandamus appeal is directed against an interim order of injunction passed by the Learned Trial Judge on

29th January, 2014 in Writ Petition being W.P. No. 36 of 2014, at the instance of the appellant/respondent No. 1 in the writ petition. At the time

when hearing of this appeal commenced, we were invited by the Learned Advocates of both the parties to dispose of the writ petition on merit.

Under such circumstances, the writ petition was heard on merit.

2. Let us now consider the merit of the writ petition as well as this appeal in the facts of the instance case. The West Bengal Small Industries

Development Corporation Ltd. (hereinafter referred to as the ""said company""), executed two lease deeds in favour of the writ petitioner for letting

out three industrial plots of land being plot Nos. 7, 8 & 15 for a period of 99 years, on realization of lease rent from the writ petitioner/respondent

at a time for the entire lease period. Those long term leases were granted for establishing industrial units therein. The terms and conditions which

were agreed upon between the parties as condition for letting out those three plots of industrial land were mentioned in those two lease deeds. The

relevant terms and conditions with which we are presently concerned are set out hereunder:-

2(c) To observe that any new construction/addition/alteration within allotted space shall be executed by the lessee himself at his own cost,

provided that the plan for such work is approved by the concerned authority. That in case of any such construction of paddock/land, the side

space should be kept open as will be prescribed by the competent authority. That the lessee will be bound by all rules in force concerning the

Municipal bodies of the locality where this Industrial/Commercial Estate is situated.

2(g) To start construction, manufacture and production/office activities/trading activities according to the provisions of Clause 2(c) of these

presents within 12 (twelve) months from the date of these presents or within such time as may be allowed by the lessor in writing.

3. In case of breach of the lessee''s covenant, right of re-entry was reserved with the lessor in both the aforesaid lease deeds.

4. Since the writ petitioner being the lessee failed to start construction, manufacture and production/office activities and/or trading activities within

12 (twelve) months from the date of commencement of the lease, the lease deeds were terminated by notice issued on 9th November, 2013 by the

appellant herein u/s 3(1) of the West Bengal Government Premises (Tenancy Regulation) Act, 1976, on the ground of forfeiture of the lease due to

breach of the lessee''s covenant as mentioned above.

5. Challenging the legality of the said notice, the instant writ petition was filed by the writ petitioner. During the pendency of the writ petition,

eviction order was passed by the concerned authority, namely, the respondent No. 5 against the writ petitioner. On an application taken out by the

writ petitioner being G.A. No. 272 of 2014 in connection with the said writ petition, an interim order of injunction was passed by the Learned Trial

Judge restraining the respondents from taking steps for evicting the writ petitioners from the disputed plots of land until disposal of the said

application. The said interim order is still continuing and the writ petitioner is still in possession of all these three industrial plots of land by virtue of

the said interim order passed by the Learned Trial Judge. In connection with the said interlocutory application, a question cropped up as to

whether the West Bengal Premises (Tenancy Regulation) Act, 1976 under which the eviction order was passed by the respondent No. 5, has any

application at all in the facts of the present case. The Learned Trial Judge after taking into consideration the definition of ""premises"" as mentioned in

Section 2(c) of the said Act ultimately held that since bare land was let out to the writ petitioner by the appellant, the said Act has no application to

the writ petitioner''s tenancy under the said lease deeds. His lordship held that when the dominant purpose of letting out is building or a part of a

building and if the gardens or the grounds are also let out simultaneously, which appertains to the primary letting out, it squarely comes within the

definition of ""premises"". But when garden or ground or an out-house alone is let out, such letting of garden or ground or an out-house cannot come

within the definition of ""premises"" unless it is appurtenant to the building or part of the building or a seat in a room let out to the tenant. His Lordship

thus, opined that since only bare land was let out by the appellant herein to the writ petitioner, the demised property cannot be regarded as

premises within the meaning of ""premises"" as defined u/s 2(c) of the said Act. His Lordship thus, held that if the subject of letting cannot be

considered as ""premises"" within the meaning of ""premises"" as defined under the said Act, eviction of the lessee from the said premises cannot be

made under the provisions of the said Act.

6. The legality of the said order is under challenge in this appeal.

7. Since we are now considering the main writ petition, we cannot restrict our consideration to the merit of the instant appeal alone; rather we

extend our consideration to the merit of the writ petition as a whole as we were not only invited to do so but we were also addressed by the

Learned Advocates of the parties on the merit of the writ petition.

8. Before entering into the factual aspect of the present dispute, we feel that the issue regarding applicability of the present Act to the facts of the

instant case should be decided first in the context of the facts as recorded hereinabove. However, we will subsequently deal with the factual aspect

of the dispute also.

9. Let us now consider the issue regarding applicability of the said Act to the present case. Mr. Mitra, Learned Senior Counsel, appearing for the

appellant, firstly drew our attention to the legislative background of such enactment by the State legislature. He submitted that normally and usually

the right of the lessor and lessee and the incidents of tenancy are governed by the Transfer of Property Act. The provision relating to termination of

tenancy in case of breach of lessee''s covenant and for recovery of possession from the lessee under the Transfer of Property Act is a very time

consuming factor. Sometimes it takes more than a decade for recovery of khas possession from the lessee. Even after a decree for eviction is

passed, possession cannot be recovered by the lessor by evicting the lessee forcibly. Such recovery is only possible through the process of

execution before the Executing Court. Execution of the decree and recovery of possession is another hazardous process which is also very time

consuming. To avoid all these hurdles and to expedite the recovery proceeding, the State Legislature has enacted a special law, namely, West

Bengal Premises (Tenancy Regulation) Act, 1976 to provide for the regulation of certain incidents of tenancy in relation to Government premises in

West Bengal. To support his contention that the said Act is applicable in the present case, Mr. Mitra, drew our attention firstly to the definition of

Government premises"" as defined in Section 2(a) of the said Act which runs as follows:-

Section 2(a): ""Government Premises"" means any premises which is owned by the State Government or by a Government Undertaking but does

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

Government or a Government undertaking for the time being.

10. Referring to the said definition, Mr. Mitra, Learned Senior Counsel, submitted that all ""premises"" within the State of West Bengal which are

owned by the Government or by a Government undertaking, excepting the temporary official accommodation of the Government officials or

Government undertaking officials, come within the ambit of the said Act.

11. In the present case, admittedly, the premises concerned is not owned by the Government. The premises concerned is owned by the West

Bengal Small Industries Development Corporation Ltd. which is a Government Company incorporated under Companies Act and majority of the

shares of the said company are held by the State Government, leaving a few shares which are held by some I.A.S. Officers in their official capacity

as directors of the said company. In this context, a question came up for consideration as to whether the appellant company can be regarded as a

Government undertaking"" so as to attract the applicability of the provisions of the said Act in respect of the premises held by such a company.

12. To impress upon us that the appellant company is a ""Government undertaking"", Mr. Mitra, Learned Senior Counsel, invited our attention to the

definition of ""Government undertaking"" as it is defined in Section 2(b) of the said Act which runs as follows:-

Section 2(b): ""Government undertaking means a body corporate constituted by or under a Central or State Act which is under the administrative

control of the State Government or in which the State Government has exclusive proprietary interest.

13. Mr. Mitra, contended before us that since the appellant company is a company registered under the Companies Act, it should be regarded as

a company constituted under the Companies Act, which is a Central Act and since such a company is under the administrative control of the State

Government and almost entire shares of the said company are held by the State Government leaving a few which are held by I.A.S. Officers in

their official capacity, the appellant company should be regarded as a ""Government undertaking"" and thus according to him the said Act applies in

the present case for regulating the incidents of tenancy in relation to those three industrial plots in question which are owned by the appellant

company.

14. According to him, the expression ""premises"" which is defined in Section 2(c) of the said Act was introduced therein not for restricting the

applicability of the said Act to the premises which otherwise satisfies the test of ""Government Premises"" as defined in Section 2(a) of the said Act.

As a matter of fact, he contended that by introducing the definition of ""premises"" u/s 2(c) of the said Act, the scope and/or ambit of applicability of

the said Act to a Government premises was enlarged. Reading the said definition of ""premises"", he strenuously argued that not only a building or

hut but also part of a building or part of a hut and even a seat in a room, if let out separately, such letting should be construed as a letting of

Government premises. Drawing our attention to the inclusive definition of ""premises"" which provides for letting of gardens, grounds and out-houses,

if any, and even the furniture supplied or any fittings or fixture affixed for the use of the tenant in such building, hut or seat in a room as the case may

be, he contended that even if bare land is let out by the Government undertaking, incidents of such tenancy relating to such bare land will also be

governed by the said Act, provided however the ownership of the land is held by the lessor.

15. He further contended that if a restricted meaning is given to ""Government Premises"" by limiting its operation to any building or hut or part of a

building or a part of a hut and a seat in a room let out separately and thereby excluding the operation of the said Act to the bare land, then purpose

for which the said Act was enacted cannot be achieved; rather the very purpose for which the said Act was enacted will be defeated. In case bare

land is let out by the Government and/or the Government undertaking, the lessor in such cases will be required to evict the lessee by following the

procedure laid down under the provision contained in the Transfer of Property Act.

16. He further contended that if the preamble of the said Act is considered, then the object for which the said Act was enacted will be crystal

clear. By relying upon a decision of the Punjab High Court in the case of Piara Singh and Others Vs. The State, he submitted that statutes are not

mere exercises in literary composition, but being instruments of Government, while construing them, the general purpose underlying the enactment

is more important aid to their meaning than any rule which grammar or formal logic may suggest.

17. He further contended that when the definition of Government premises is clear and unambiguous, the premises which satisfies the test as laid

down u/s 2(a) of the said Act, can be regarded as ""Government premises"". Referring to the said definition of ""Government premises"", he submitted

that the expression ""any premises"" used in the said Section means premises of any description; be it a building or a part of the building, be it a hut

or a part of the hut or be it a seat in a room let out separately along with the gardens, grounds and out-houses, if any, appurtenant thereto as well

as the bare land, as the case may be, are all Government premises, provided it is held and/or owned by the Government or by any government

undertaking. He contended that meaning of ""Government premises"" as mentioned in Section 2(a) cannot be diluted by implanting the definition of

premises"" given u/s 2(c) of the said Act in the place of the expression ""premises"" appearing in Section 2(a) of the said Act. According to him as

per the rule of interpretation of statute, the provisions of any Act cannot be interpreted either by adding something to it or by subtracting something

from it. Even substitution of the general concept of the expression ""premises"" which common people carry in their mind, in the place of

Government premises"" for limiting the operation of the said Act, is not permissible. In support of his said contention he has relied upon a decision

of the Bombay High Court in the case of Jagatchandra N. Vora and Another Vs. The Province of Bombay and Others, , wherein it was held that a

definition given in the Act must be substituted for the word defined wherever it occurs in the Act. Referring to the said judgment Mr. Mitra, drew

our attention to the various other provisions of the said Act i.e., Section 3, Section 6 wherein termination of tenancy in respect of the Government

premises and eviction of unauthorized occupant from the Government premises were mentioned.

18. By relying upon another decision of the Lahore High Court in the case of AIR 1928 325 (Lahore) he submitted that every word or phrase is

defined for carrying a particular meaning in an enactment, and it is that meaning alone which must be given to it in interpreting a section of the Act,

unless there appears anything repugnant to the context.

19. It was further held therein that construction of any provision, which leads to an anomaly, can be given effect to only if the words of the statute

are clear and unambiguous and admit of no other interpretation.

20. According to him, since the definition of ""Government premises"" is clear and unambiguous, the ""Government premises"" as it is defined u/s 2(a)

of the said Act should be readily accepted in the manner as it is couched and the same should be substituted in acceptance of the said Act

wherever the expression ""Government premises"" appears in the said Act. According to him, if any other meaning is attributed to the expression

Government Premises"" then a destructive construction will emerge for introducing something in the said definition which is otherwise absent therein

and thus the very purpose of enactment of such Act will be frustrated.

21. By referring to another decision of the Hon''ble Supreme Court in the case of Associated Indem Mechanical Pvt. Ltd. Vs. West Bengal Small

Scale Industrial Development Corporation Ltd. and Others, , he contended that even the Hon''ble Supreme Court, after considering the definition

of the word ""premises"" appearing in Section 2(c) of the said Act held that the word ""premises"" is a very comprehensive one and it not only means

any building or hut or part of a building or a part of a hut or a seat in a room let out separately but it also includes gardens, grounds and outhouses,

if any, appurtenant thereto and even it also includes 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. He contended that the Hon''ble Supreme Court in the said decision held that the legislature intended to give

a very wide and comprehensive definition to the expression of premises and did not intend to give a restricted meaning to it. The opening part of

the definition of the word ""premises"" in Section 2(c) employs the word ""any"". ""Any"" is a word conveying very wide meaning and prima facie the

use of it excludes limitation. He further drew our attention to the part of the order of the Hon''ble Supreme Court wherein it was observed that the

word ""includes"" 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 to their natural

import, but also those things which the interpretation clause declares that they shall include.

22. By referring to another decision of the Hon''ble Supreme Court in the case of The State of West Bengal and Another Vs. M/s. Banalata

Investment Pvt. Ltd., he pointed out that the appellant who is now before us, was a party in the said appeal before the Hon''ble Supreme Court

wherein the Hon''ble Supreme Court after interpreting various provisions of the Act, held that the said Act is applicable to a premises held by the

appellant herein and eviction of the unauthorized occupant from a premises owned by appellant herein by following the said Act, was approved in

the said order of the Hon''ble Supreme Court.

23. He has also relied upon a decision of a Learned Single Judge of this Court in the case of In Re: Wellman Incandescent India Ltd. (In

Liquidation), wherein it was held that since land has not been specifically excluded in the definition and apart from the fact that the lands or the

grounds are of similar import; in the absence of any indication in the definition of the ""premises"", land cannot be left beyond its purview. Mr. Mitra,

Learned Senior Counsel, thus contended that the said Act of 1976 is very much applicable for termination of tenancy of the writ petitioner and/or

for recovery of possession of the demised premises from the writ petitioner. He thus invited us to dismiss the writ petition.

24. Mr. Kundu, Learned Senior Counsel appearing for the writ petitioner refuted such submission of Mr. Mitra by contending, inter alia, that the

appellant company being a company incorporated under the Companies Act, cannot be regarded as a ""Government undertaking"" constituted by or

under the said Act. By referring to the definition of ""Government undertaking"" as mentioned in Section 2(b) of the said Act, he submitted that the

definition of ""Government undertaking"" clearly indicates that unless a body corporate is created by or under a statute and is also controlled and/or

managed by the State Government or the major shares of the said company are held by the Government, such a body corporate cannot be

regarded as a Government undertaking. He contended with all emphasis that a Government company incorporated under the Companies Act

cannot be considered as a company born either by or under any Central Act or any State Act. In support of his contention, he has relied upon a

decision of the Constitutional Bench of the Hon''ble Supreme Court in the case of Sukhdev Singh, Oil and Natural Gas Commission, Life

Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal,

Industrial Finance Corporation, wherein it was held that a company cannot come into existence unless it is incorporated in accordance with the

provisions of the Companies Act. It was further held therein that a company incorporated under the Companies Act is not created by the

Companies Act but comes into existence in accordance with the provisions of the said Act. It was thus held therein that a company incorporated

under the Companies Act is not a statutory body because it was neither created by the statute, nor it was created under the statute; rather it is a

body corporate created in accordance with the provisions of the statute. By referring to another decision of the Madhya Pradesh High Court in the

Case of Sobhagyamal Vs. Prakash Pharmaceuticals, Indore, , he drew our attention to the clear distinction drawn by the Madhya Pradesh High

Court between a ""Corporation"" established by or under an Act and ""a body"" incorporated under an Act. It was held therein that Corporation is not

a Government company within the meaning of ""Government company"" as defined in Section 617 of the Companies Act. By relying upon another

decision of the Hon''ble Supreme Court in the case of Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others, he has also

drawn our attention to the relevant part of the said decision wherein the circumstances under which a body corporate can be deemed to have been

established by an act are mentioned. As a matter of fact, a question came up for consideration before the Hon''ble Supreme Court in the said case

as to whether a nationalized bank can be regarded as a body corporate established by a Central Act when it is owned and controlled by the

Central Government or not, so as to ascertain as to whether the premises appurtenant to such nationalized bank can be regarded as public

premises under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. It was held therein that the nationalized

bank is a corporation established by a Central Act and it is owned and controlled by the Central Government and as such the premises belonging

to a nationalized bank will be public premises and the provision of the said Act will be applicable to such premises for evicting unauthorized

occupants therefrom. Citing those decisions, Mr. Kundu submitted that the appellant company cannot be regarded as a ""Government undertaking

as it was neither established by a Central or State Act nor it was established under any Central or State Act. As such, according to him, the

incidents of tenancy created in respect of the demised premises, cannot be governed by the said Act. He further contended that when both

Government premises"" and ""premises"" are defined in the Act itself; both the definition of ""Government premises"" as mentioned in Section 2(a) and

the definition of the ""premises"" as mentioned in Section 2(c) should be read conjointly for giving a complete meaning to the expression

Government premises"" referred to in the said Act. According to him, the definition of ""Government premises"" u/s 2(a) of the said Act cannot be

read in isolation of the definition of the ""premises"" u/s 2(c) of the said Act. He further argued that if the said definition of ""Government premises"" is

read in isolation of the definition of ""premises"" u/s 2(c) of the said Act then proper and comprehensive meaning of ""Government premises"" cannot

be given. He ultimately submitted that if definition of ""Government premises"" of the said Act as defined in Section 2(a) is read conjointly with the

definition of premises as defined in Section 2(c), it goes without saying that bare land let out to the lessee cannot come within the purview of

Government premises"" u/s 2(a) of the said Act and as such the said Act cannot be availed of for eviction of a lessee in respect of a land under the

said Act.

25. He thus, prayed for quashing of the eviction proceeding.

26. Let us now consider the applicability of the said Act in the facts of the instant case in the context of the submission made by the Learned

Counsel of the respective parties.

27. Since the Act deals with the incidents of tenancy of ""Government premises"" owned by the Government and/or Government undertaking and

further since the appellant company invoked provision of the said Act for evicting the writ petitioner from the demised premises by treating the

same as ""Government premises"", we are required to analyze both the definitions of ""Government undertaking"" and ""Government premises"" to find

out the applicability of the said Act to the present case.

28. Let us first of all analyze the definition of the ""Government undertaking"" to ascertain as to whether the appellant company can be regarded as a

Government undertaking"" within the meaning of the expression ""Government undertaking"" as defined in Section 2(b) of the said Act. Admittedly,

the lessor is not ""Government"" and the ""premises"" which was demised is not owned by the ""Government"". Thus, if it is found that the Appellant

company is a ""Government undertaking"" and the land demised to the writ petitioner, is held by the ""Government undertaking"" then only we can

hold that the Act of 1976 can be applied in the instant case. For the sake of convenience of understanding the definition of ""Government

undertaking"" is set out hereunder:-

Section 2(b) ""Government undertaking means a body corporate constituted by or under a Central or State Act which is under the administrative

control of the State Government or in which the State Government has exclusive proprietary interest.

29. Thus, to be a ""Government undertaking"" the following conditions must be fulfilled:-

(I) It is a body corporate constituted by a Central Act or by a State Act;

or

(II) it must be a body corporate constituted either under a Central Act or under a State Act;

and

(III) such a body corporate is under the administrative control of the State Government;

or

(IV) the State government has exclusive proprietary interest in such body corporate.

30. When the definition Clause of ""Government undertaking"" contemplates establishment of such a Government undertaking by using the terms ""a

body corporate"" constituted ""by or under"" the Central or State Act, emphasis should be given on the word ""constituted"" in addition to the words

''by or under'' to ascertain as to which Government organization can be regarded as ""Government undertaking"". The word ''constitution'' refers to

coming into existence by virtue of an enactment; such enactment may be a Central or a State Act. Let us now give some examples for convenience

of understanding as to which statutory organizations came into existence by operation of the Central Act or the State Act; State Bank of India was

established by operation of Section 3 of the State Bank of India Act 1955. Section 3 of the said Act provides that a bank to be called the State

Bank of India shall be constituted to carry on business of banking. Again for example, Life Insurance Corporation can also be referred to herein,

as it was established u/s 3 of the Life insurance Corporation Act 1956 which provides that with effect from such date as the Central Government

may by notification in the Official Gazette appoint, there shall be a corporation called the Life Insurance Corporation of India. Reference may also

be given to the State Financial Corporation Act 1951 by which various financial Corporations were established under the said Act, Those are the

bodies corporate established under the Central Act.

31. Let us now give example of some Government organizations which were created by the State Act. Section 4 of the Kolkata Municipal

Corporation Act, 1980 provides that with effect from such date as the State Government may, by notification, appoint there shall be a corporation

charged with Municipal duties within Calcutta which will be known as the Calcutta Municipal Corporation. Thus, the Calcutta Municipal

Corporation was established by State Act. Various other Municipalities were created under the Bengal Municipal Act. Various other statutory

authority such as Asansol Mines Board of Health was created by a State Act.

32. Let us now consider as to how the appellant company was established. The appellant company, namely, West Bengal Small Industries

Development Corporation Limited was not established either by a Central Act or by the State Act. Admittedly, it is Government company as per

the definition of a Government company u/s 617 of the Companies Act, 1956. It is incorporated under the Companies Act, 1956. Let us now

consider as to whether, by virtue of its incorporation under the Companies Act, 1956, can it be regarded as a Government undertaking within the

meaning of ""Government undertaking"" as per Section 2(a) of the said Act. As per the Companies Act, 1956, a ''company'' is not ''established''

under the Companies Act as an incorporated company does not owe its existence to the Companies Act. An incorporated company is formed by

the act of any seven or more persons associated for any lawful purpose subscribing their names to a Memorandum of Association and by

complying with the requirements of the Companies Act in respect of its registration. Therefore, a ''company'' which is incorporated and registered

under the Companies Act is not an establishment under the Companies Act as it is not created either by or under the Companies Act. It simply

comes into existence in accordance with the provisions of the said Act. There is a well-marked distinction between a body created by or under a

statute and a body which after coming into existence is governed in accordance with the provisions of a statute. The Hon"ble Supreme Court in the

case of Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations

Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, made a fine distinction between a company

incorporated under the Companies Act and a company or corporation created by or under the Central or State Act. It was held therein that a

Company cannot come into existence unless it is incorporated in accordance with the provisions of Companies Act. It was further held therein that

a company cannot exercise its power unless it follows the statutory provisions. It was also held therein that a company incorporated under the

Companies Act is not created by the Companies Act but it comes into existence in accordance with the provisions of the Companies Act. It is not

a statutory body because it is not created by the statute rather it is a body created in accordance with the provisions of the statute.

33. While interpreting the provision contained in Section 21 of the Indian Penal Code, the Hon"ble Supreme Court in the case of S.S. Dhanoa Vs.

Municipal Corporation, Delhi and Others, relied upon the decision of the Hon"ble Supreme court in the case of Sukhdev Singh-Vs.-Bhagatram

Sardar Singh Raghuvanshi (Supra) and held that mere Act of incorporation of a body or society under the Central or a State Act does not make it

a corporation within the meaning of Clause 12 of Section 21 of the Indian Penal Code as in the opinion of the Hon"ble Supreme Court, the

expression ""Corporation"" must, in the context of Section 21 of the Indian Penal Code mean a Corporation created by the legislature and not a

body or society brought into existence by an Act of a group of individual. It was thus, held therein that a cooperative society is, therefore, not a

corporation established by or under an Act of the Central Government or State Legislature even though such cooperative society was registered

under the Societies Registration Act. similarly, the distinction between a body corporate created by or under an Act and a body corporate

registered under the Companies Act can also be drawn in the light of the decision of the Hon"ble Supreme court in the case of Executive

Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others, wherein it was held as follows:-

In other words the position seems to be that the institution concerned must owe its very existence to a statue which would be a fountainhead of its

powers. The question in such case to be asked is, if there is no statute, would the institution have any legal existence. If the answer is in the

negative, then undoubtedly it is a statutory body, but if the institution has a separate existence of its own without any reference to the statute

concerned but is merely governed by the statutory provisions, it cannot be said to be a statutory body"".

34. Let us now consider the status of the company after its incorporation under the Companies Act from another angle. If we hold that because of

its incorporation under the Companies Act, it pertakes the status of statutory organization, then we will have to accept that the employees of all the

companies incorporated under the Companies Act, are the employees of statutory organization and they may enforce their fundamental rights

against their employer by invoking the writ jurisdiction of the High Court and/or Supreme Court. If we hold as such, a disastrous situation will

emerge.

35. Thus, since company is not established under the Companies Act, an incorporated company does not ''owe'' its existence to the Companies

Act. As such we have no hesitation to hold that the appellant company was not created either by a Central or State Act or under a Central or

State Act. As such the appellant company which is a Government company cannot be regarded as a ""Government undertaking"" within the meaning

of ""Government undertaking"" u/s 2(b) of the said Act even though it is controlled by the State Government and majority of the shares of the said

company are held by the Government leaving a few which are held by some I.A.S. Officers in the capacity of their position held in the Board of

Management of the said company. In view of our finding, as aforesaid, we cannot hold that the appellant company is a Government undertaking.

36. Let us now consider the other limb of the submission of Mr. Mitra with regard to the definition of the Government premises. Section 2(a)

defines Government premises in the following manner. Section 2(a) runs as follows:-

Section 2(a) ""Government Premises"" means any premises which is owned by the State Government or by a Government Undertaking but does not

include the official residence of any person authorized to occupy the premises in consideration of the office which he holds under the State

Government or a Government undertaking for the time being.

37. Looking at the said definition one can hold that any premises owned by the Government or Government undertaking is a Government premises

excepting those which are official residences of the persons authorized to occupy the said premises in consideration of the office which the

Government Officers hold under the State Government or under any Government undertaking for the time being. Had the ""premises"" not been

defined in Section 2(c) of the said Act then of course, we could have held that any premises held by the Government or a Government undertaking

excepting the temporary official residences of the Government officials and/or the Government undertaking officials can be regarded as

Government premises. If the dictionary meaning of ""premises"" is considered then of course, premises includes bare land also but the dictionary

meaning of ""premises"" and/or the ordinary meaning of premises which one ordinarily understands, cannot be substituted in the place of the

expression ""premises"" used in Section 2(a) of the said Act as premises has been defined in the said Act differently. When the expression ""premises

itself is defined in Section 2 of the said Act, we are of the view that a premises can be regarded as a ""Government premises"" only when it satisfies

the definition of ""Government premises"" u/s 2(a) of the said Act read conjointly with the definition of ""premises"" u/s 2(c) of the said Act as reading

the definition of ""Government premises"" u/s 2(a) of the said Act in isolation of the definition of ""premises"" u/s 2(c) of the said Act would lead to

uncertainty and anomaly in importing the true purports and imports of the expression ""Government premises"" as mentioned in Section 2(a) of the

said Act. As a matter of fact, the legislature does not use any expression in the Statute unnecessarily. We find that not only ""Government premises

was defined in the Act but also premises was also defined in the Act. If the provisions dealing with eviction in the said Act are considered then we

will find that both the ""Government premises"" and ""premises"" were used therein in such manner which leads us to conclude that the expression

premises"" cannot be read in isolation of the expression ""Government premises"". If we hold that the definition of premises is surplusage in the Act,

then various provisions of the Act will became inoperative. To give a complete meaning to ""Government premises"" we should first implant the

definition of ""premises"" u/s 2(c) of the said Act in the place of the expression ""premises"" appearing in Section 2(a) of the said Act and then

consider as to whether a ""premises"" is a ""Government premises"" or not. For the sake of convenience of understanding, the definition of ""premises

u/s 2(c) of the said Act is given below:-

Section 2(c): ""Premises"" means any building or hut and includes part of 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;

38. Thus, if we read the definition of ""Government Premises"" appearing in Section 2(a) of the said Act conjointly with the definition of ""premises

appearing in Section 2(c) of the said Act then no doubt it is a wide definition as it not only includes a building or a part of it or a hut or a part of it

but also it includes a seat in a room, let separately, and also includes the gardens, grounds and out-houses, if any, appurtenant thereto together with

the furniture, all fittings and fixtures provided for the use of the tenant in such building, hut or seat in a room as the case may be.

39. Thus, when a seat in a room of a Government premises is let out to a tenant, certainly it will be a Government Premises. Again if a seat in a

room is let out together with the gardens, grounds and out-houses, if any, appurtenant to a seat in a room then of course, such tenancy will be a

tenancy in respect of a ""Government Premises"". Thus, no doubt it is a very wide and expansive definition as it was held by the Hon''ble Supreme

Court in the case of M/s. Associated Indem Mechanical (P) Ltd.-Vs.-West Bengal S.S.I.D.C. Ltd. & Ors. (Supra), but the point of consideration

in the present case is something different. The point of consideration before us is as to whether when neither a building nor a part of the building nor

a hut nor a part of the hut nor a seat in a room is let out to a tenant but only bare land is let out to a tenant, can such tenancy be regarded as a

tenancy in respect of a Government premises to attract the provisions of the West Bengal Premises (Tenancy Regulation) Act, 1976. The

expression ""includes"" is used in two places of the said definition of ""premises"" in Section 2(c) and the expression ""includes"" which was used for the

second time in the said definition no doubt was included in the said provision to expand the ambit of tenancy in a Government premises so as to

attract the provisions of the said Act, whenever even a seat in a room is let out together with the gardens, grounds and out-houses if appurtenant to

such tenancy. The expression ""appurtenant to it"" carries special significance. We cannot read the definition of ""premises"" bereft of the expression

appurtenant to it"". In fact the said expression was used in different rent legislation Acts while defining the expression ""premises"". Let us now try to

find out the similar provisions of the other Acts where ""premises"" has also been defined in an identical way. We find that ""premises"" has been

defined in an identical way in Section 2(f) of the West Bengal Premises Tenancy Act, 1956 which runs as follows:

Section 2(f) ""Premises"" means any building or part of a building or any hut or part of a hut, 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 or part of a building or hut or part of a hut but it

is not include a room in a hotel or lodging house.

40. The definition of ""premises"" under the West Bengal Premises Tenancy Act is almost pari materia with the definition of ""premises"" u/s 2(c) of the

said Act of 1976. The only difference between the two provisions is that under the West Bengal Premises Tenancy Act, seat in a room, let

separately is absent though it is present in the West Bengal Premises (Tenancy Regulation) Act, 1976. Again the exclusion part appearing in the

West Bengal Premises Tenancy Act, i.e., "" but does not include a room in a hotel or a lodging house"" is absent in the definition clause of ""premises

under the West Bengal Premises (Tenancy Regulation) Act, 1976. Again the exclusion of official accommodation in the government ""premises

from the operation of the Act of 1976 is absent in the definition clause of premises under the West Bengal Premises Tenancy Act. Ownership of

the premises of the lessor is also a criterion to be satisfied for a premises to become a Government premises under the Act of 1976 but such a

condition is not a criterion for applying the West Bengal Premises Tenancy Act to any premises let out to a tenant. Otherwise the said provisions

contained in both the acts are identical. The meaning of the expression ""includes gardens, grounds and out-houses, if any, appurtenant thereto

came up for consideration repeatedly before this Court as well as before the Hon''ble Supreme Court. It was uniformly held that definition of

premises"" given in the Act is very wide. It was held that ""premises"" will include gardens, grounds and out-houses, appurtenant to the building and it

also includes furniture supplied and fittings affixed by the landlord for use of the tenant in such building. Thus the tenancy will include the vacant land

when it is appurtenant to such building let out, but it was held by this Court in the case of Santosh v. Santosh Roychowdhury reported in (1979)2

Cal LJ 144 that if any vacant plot of land is let out to a tenant who has even erected structure thereon at his own expenses, will not come under the

definition of ""premises"". Naturally the Act does not contemplate to give relief to such tenants under the said Act. While interpreting an identical

provision under the Bombay Rent Control legislation, it was held by the Hon''ble Bombay High Court in the case of Morarji Gokul Das Deoji

Trust v. Madhab Vithal Kudwa reported in (1983) 1 RCJ 195 (Bom) (DB) that the term ''appurtenant'', which has been used in the definition

clause of ""premises"" has to be construed not in its primary sense but in its secondary non-technical sense such as ''usually enjoyed'' and it would

mean ''relating to'', ''adjoining'', ''adjunct'' or ''accessory'' to the premises let and that there has to be a fair and rational co-relation between the

two, namely, the appurtenant to premises must inevitably be necessary and essential to the use and enjoyment of the premises let. It was thus held

that the open space in the compound is neither adjunct nor accessory nor an appendage nor pertain to nor relates to the room of the 1st Floor

room let out to the defendant and as such the open land cannot be a part of the tenancy of the tenant. The Hon''ble Supreme Court in the case of

Suryakumar Govindjee Vs. Krishnammal and Others, while interpreting an identical definition of ""premises"" under T.N. Buildings (Lease Rent

Control) Act, 1960 held that the word ""appertaining"" is not just restricted to land which, on consideration of the situation, a Court may consider

necessary or imperative for its enjoyment. The Hon''ble Supreme Court held that expression should be construed as comprehending land which the

parties considered fit and proper to let along with building and that where a person leases out the building together with the land, it seems

impermissible in the absence of intention spelt out in the deed, to dissect the lease of a building from appurtenant land covered by the Rent Control

Act but if land alone is let out without any building, its tenancy cannot be regulated by the Special Rent Legislation Act. While considering the

identical provision under Delhi Rent Control Act, 1958, the Hon''ble Supreme Court in the case of Probha Mfg. Industrial Cooperative Society v.

Banwarilal reported in AIR 1989 SC 1109 held that when it has been clearly proved that open land had been allotted by the custodian of evacuee

property to the appellant who had put up a temporary shed thereon and the property later on was sold by the custodian to the respondent and as a

result of such sale, the right, title and interest only in the open land was transferred to the respondent who became owner thereof but not of the

super structure thereon and in such case the respondent could not file a suit for eviction against the appellant under the provisions of the Delhi Rent

Control Act, 1958 and for evicting the appellant from the super structure built by him on the land, a suit has to be filed by the respondent in Civil

Court under the Transfer of Property Act. Thus, if we apply those principles in the present case while interpreting the meaning of the expression

includes"" in Section 2(c) of the said Act then we have no hesitation to hold that if bare land in a Government premises is let out by the Government

and/or the Government undertaking to its tenant, the incidents of such tenancy cannot be governed by the West Bengal Government Premises

(Tenancy Regulation) Act, 1976 and as such a tenant cannot be evicted by taking aid of the provisions of the said Act. Thus, we hold that eviction

proceeding which was initiated by the appellant herein against the writ petitioner under the said Act is a nullity and as such the order of eviction

passed in such a proceeding against the petitioner cannot be retained on record.

41. Before concluding, we feel it necessary to refer to the decision of the Hon''ble Supreme Court in the case of State of West Bengal & Anr.-

Vs.-Banalata Investment Pvt. Ltd. & Anr.(Supra) cited by Mr. Mitra. We have perused the said decision carefully. That was a case where the

Government acquired a premises in which three out-houses were occupied by the tenants under the erstwhile owners of the said premises. When

the Government took steps for evicting those tenants from the said three out-houses of the said building, the tenants resisted the claim by

contending that they cannot be evicted under the West Bengal Premises (Tenancy Regulation) Act, 1976 as they were not tenants of the

Government but they were tenants under the previous owner in the said property. In this context, the Hon''ble Supreme Court considered the

provisions of the West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962 and the provisions of the West Bengal Premises

(Tenancy Regulation) Act, 1976. It was held therein that the overriding effect of the West Bengal Premises (Tenancy Regulation) Act, 1976 cannot

be whisked away; the principal Section 12 stands renumbered, as sub-Section(1) and Sub-Section(2) have been inserted by the West Bengal Act

30 of 1985. It was further held therein that statutory intent thus, stands clarified to the extent that the West Bengal Public Land (Eviction of

unauthorized Occupants) Act, 1962 shall not be applicable to the Government Premises to which Act of 1976 applies. It was held therein that the

tenancy in Government premises is rather of widest possible amplitude. The discussion in the main judgment does not show that it was the case of

any party that the building in question is not Government premises as defined in the Act of 1976. As such the Hon''ble Supreme Court concluded

by holding that any proceeding for eviction of unauthorized occupants of the premises in question has to be initiated only under the Act of 1976.

That was a case where admittedly bare land was not let out. The unauthorized occupants were in possession of three outhouses in the said building

which was acquired by the Government. Thus, the premises was owned by the Government and the unauthorized occupants were in possession of

three out-houses in the said premises. Thus, there cannot be any cloud regarding application of the Act of 1976 for evicting such unauthorized

occupants from the said premises. Though it is true that the Hon''ble Supreme Court in the case of M/s. Associated Indem Mechanical (P) Ltd.-

Vs.-West Bengal S.S.I.D.C. Ltd. & Ors. (Supra) held that the appellant herein can evict the unauthorized occupant from a Government premises

held by the said company even though the purpose of letting was not residential, but as a matter of fact, the subject matter of dispute in the said

decision concentrated on the point as to whether non-residential tenancy i.e., commercial tenancy and/or industrial tenancy can be brought under

the purview of the West Bengal Premises (Tenancy Regulation) Act, 1976 or not and eviction of such unauthorized tenant can be made under the

provision of the said Act or not. In the said case before the Hon''ble Supreme Court it was held that even the non-residential tenancies are also

covered under the said Act. On perusal of the said decision we do not find that the dispute as to whether the appellant company can be treated as

Government undertaking or not, was neither raised in the said case before the Hon''ble Supreme Court nor it was decided therein. The Hon''ble

Supreme Court while considering the said case proceeded by accepting the appellant company as a Government undertaking and held that the

unauthorized occupant who was in occupation of a Government premises for non-residential purpose can be evicted by the appellant company by

applying the provisions of the said Act of 1976. In the said case, the Hon''ble Supreme Court had no occasion to consider the problem which is

now before us and as such we cannot apply the principles laid down therein blindly in the facts of the instant case. Thus, we hold that the said

decision has no application in the facts of the present case.

42. For the reasons as stated above, we respectfully disagree with the views of the Learned Single Judge of the Court expressed in Well man

Incandescent India Ltd. (In Liquidation) (Supra) to the effect that since land has not been specifically excluded in the definition and besides that

since land and grounds are of similar import, land cannot be left beyond the purview of premises. In our view, while interpreting the said definition

of ""premises"", His Lordships missed the expression ""appurtenant thereto"" appearing in Section 2(c)(i) of the said Act of 1976. We have already

indicated above that the expression ""appurtenant thereto"" carries much importance as was held by this Hon''ble Court as well by different other

High Courts and the Hon''ble Supreme Court as mentioned above. We are sure that this conclusion was drawn by His Lordship as the provision of

the other relevant State Act i.e., The West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962, was not brought to his

Lordship''s notice and as a result His Lordship had no occasion to deal with the same.

43. Let us now consider the provision of the said Act of 1962 which is still in operation in view of Section 12(2) of the West Bengal Premises

(Tenancy Regulation) Act, 1976 which provides that in particular and without prejudice to the generality of the foregoing provisions, the West

Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962 shall not be applicable to any premises to which this Act applies.

44. We have already held that the Act of 1976 does not apply in the present case. Let us now consider as to whether the benefit of the Act of

1962 can be availed of by the appellant Company. For resolving this issue, we are required to consider some of the provisions of the Act of 1962.

45. Let us start with the Preamble Clause which says that "" an Act to provide for speedy eviction of unauthorized occupants from public land;

whereas it is expedient to provide for the speedy eviction of unauthorized occupants from public land.....

46. Let us now try to ascertain the meaning of ""public land"" as it is defined in the said Act ""Public land"" is defined in Section 2(7) of the said Act

which runs as follows:

Section 2(7): Public land means any land belonging to, or taking on lease by, the State government, a local authority, a Government company or a

corporation owned or controlled by the Central of the State Government and includes any land requisitioned by or on behalf of the State

Government, but does not include a government road or a highway within the meaning of the Bengal Highways Act, 1925 or any other law for the

time being In force on the subject:

Explanation- In this clause ""Government company"" means a Government company within the meaning of Section 617 of the Companies Act,

1956.

47. To get the complete picture of the Government Public land, we are also required to consider the provision of Section 2(2) of the said Act. We

have no hesitation to hold that the definition of ""public land"" is wide enough to include building and/or anything attached to the earth in addition to

bare land. Thus, we hold that bare land owned by the State Government or a Government company and others as mentioned in Section 2(7)

comes within the definition of public land u/s 2(7) of the said Act.

49. Now let us consider the meaning of the expression ""owned by"" appearing in Section 2(7) of the said Act with reference to the definition of

owner"" as per Section 2(4) of the said Act which runs as follows:-

Section 2(4): owner means--

(a) in relation to any land belonging to, or taken on lease by or requisitioned by or on behalf of the State Government, that Government and

(b) in relation to any land belonging to or taken on lease by a local authority, company or corporation, such local authority, company or

corporation as the case may be;

50. Thus, we hold that the demised land let out to the writ petitioner fulfils the test of public land in terms of the said Act.

51. In addition thereto, we are also required to mention here the provision of Section 2(8) of the said Act which defines ""unauthorized occupation"".

Unauthorized occupation"" is defined in the following manner:-

Section 2(8)-""unauthorized occupation, in relation to any public land means the use or occupation by any person of the public land without

authority in writing by or on behalf of the owner thereof and includes the continued use or occupation of any such land on the expiry or termination

of such authority"".

52. Considering this provision which in our view is comprehensive enough to include the unauthorized occupation of the lessee of the demised land

on termination of the lease and/or expiry of the lease period. We cannot accept the submission of Mr. Mitra that the said Act was enacted to evict

the rank trespassers only from the public land in view of the inclusive definition of unauthorized occupation which includes not only the rank

trespassers but also the unauthorized occupation of the licensee or the tenant or the lessee after revocation of the licence and/or after termination of

the tenancy. We also cannot agree with Mr. Mitra, that unauthorized occupation can at best be stretched to the licensee after revocation of licence

but it cannot be stretched to bring the lessee after termination of lease, within the ambit of this Act. We draw this conclusion because of the

inclusive definition of ""unauthorized occupation"" which includes the continued use or occupation of any land on the expiry or termination of such

authority. Use or occupation of any land on the expiry or termination of such authority suggests that initial entry was legal, but the occupation of

such land after termination or expiry of such authority amounts to unauthorized occupation. Initial entry will be legal when entry is with authority.

Entry with authority may be made either on the strength of a lease or tenancy or by virtue of licence i.e., permissive possession.

53. Thus, we conclude that unauthorized occupation of a public land after termination of lease and/or revocation of licence can be evicted by the

lessor being the owner of such public land as per Section 2(4) of 1962 Act by following the provisions of Section 3, 4 & 5 of the said Act subject

to the provisions contained in Section 7 thereof and may also recover damages for wrongful use and occupation of such public land from the

unauthorized occupants by following provisions of Section 4A, 6, 6A etc of the said Act.

54. In view of the conclusion as drawn hereinabove we feel that the other disputed facts need not be considered in the present case but still then

since we are addressed on the said dispute, we feel it necessary to touch the said point briefly.

55. The tenancies of the writ petitioner under those two lease deeds were terminated due to breach of covenant, as the lessee could not commence

the construction and/or the manufacturing process within 12 months from the date of execution of the said lease deeds in terms of the condition

contained in Clause 2(g) of the lease deeds. The condition contained in Clause 2(g) is controlled by the condition contained in Clause 2(c) of the

lease deed. Clause 2(c) provides that lessee cannot construct in violation of the building Rules. Thus, without any sanction plan, the lessee cannot

construct. Then again, unless the factory sheds are constructed, manufacturing activity cannot be commenced. Here we find that though leases

were executed in 2006, but attempt made by the lessee for amalgamating those three plots of land could not be fulfilled as the lessor failed to

amalgamate these three industrial plots which were demised under the said two lease deeds in favour of the writ petitioner. The lessor''s inability to

amalgamate these three plots were communicated to the lessee in May, 2010. Thereafter the writ petitioner approached the Municipal Authority

for amalgamation of those three industrial plots and for mutation of its name in the Municipal records so that it can obtain plan sanctioned by the

Municipal Corporation in a composite way over these three plots. Lessee''s prayer for amalgamation of the three plots was allowed by the

Municipal authority in September, 2012 and thereafter the name of the lessee was mutated in the Municipal Records by allotting separate assessee

number being 110561104979. The entire dues on account of rates and taxes of the said premises was also paid by the lessee on 10th December,

2013. The structural drawings of the building plan were also placed before the lessor for confirmation and after the lessor confirmed the same and

signed on the said building plan in March, 2012, the building plan was submitted by the lessee before the Municipal authority. However, the

Municipal authority has not yet sanctioned the said building plan; as a result, construction could not be made. Under such circumstances, the writ

petitioner has also prayed for a mandamus seeking a direction upon the Municipal authority to sanction the building plan so that construction can be

commenced by the lessee and after completion of construction the manufacturing activity can be started. Since the lessee''s right to start

construction and/or commencing of the manufacturing activity is controlled by the other condition of the lease deed, i.e., the lessee cannot raise any

construction without any sanctioned plan, we are of the view that the lessee by not raising any construction till date, has not committed any breach

of the terms of the said lease deed. As such, eviction of the lessee on the ground of forfeiture of the lease due to breach of covenant cannot be

started. That apart we like to mention here that when the lessor approved the proposed building plan in the year of 2012, the lessor deemed to

have condoned the breach, even if any, committed by the lessee at least till the date of approving the building plan submitted by the lessee. If the

steps taken by the lessee thereafter, are considered then it cannot be held that the lessee is guilty of commission of breach of covenant.

56. We, thus, dispose of the writ petition by setting aside the order of eviction passed by the respondent No. 5 against the writ petitioner and

direct the Municipal authority to consider the building plan submitted by the writ petitioner and take the ultimate decision thereon positively within

period of four weeks from the date of communication of this order, after hearing the writ petitioner and the lessor/appellant.

57. The writ petition is thus, disposed of.

58. The appeal is also disposed of without interfering with the impugned order.

Jyotirmay Bhattacharya, J.

I agree

Jyotirmay Bhattacharya, J.

60. Later

61. After delivery of this judgment, Learned Advocate appearing for the appellant prays for stay of operation of the order.

62. Having considered this prayer, we refuse to grant such stay as in the event stay is granted, the order of eviction passed by the respondent No.

5 will become operative and the writ petitioner who has succeeded in this proceeding will be evicted which we cannot permit.

Ishan Chandra Das, J.

I agree