(2002) 09 DEL CK 0255

Delhi High Court

Case No: C.W.P. No. 2804 of 1993

Uttam Parkash Bansal and Others		APPELLANT
	Vs	
Life Insurance Corporation of India and Others		RESPONDENT

Date of Decision: Sept. 19, 2002

Acts Referred:

- Constitution of India, 1950 - Article 226
- Public Premises (Eviction of Unauthorised Occupants) Act, 1971 - Section 2, 4, 5
- Transfer of Property Act, 1882 - Section 106

Citation: (2002) 100 DLT 497

Hon'ble Judges: S.B. Sinha, C.J; A.K. Sikri, J

Bench: Division Bench

Advocate: A.S. Chandhiok, Manish Goyal and Smriti Madan, for the Appellant; S.K. Taneja, Senior Advocate, Ashok Kashyap, G.P. Pandey and Puneet Taneja, for the Respondent

Final Decision: Dismissed

Judgement

S.B. Sinha, C.J.

This writ petition is directed against a judgment and order dated 19th November, 1983 passed by Mr. S.P. Singh, Additional District Judge/ Appellate Authority under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to for the sake of brevity as the ''said Act'') in P.P. A. No.(s) 21/82 and 22/82, whereby and where under the appeals filed by the writ petitioners herein purported to be in terms of Section 9 thereof arising out of an order dated 8th September, 1980 passed by Estate Officer, Life Insurance Corporation of India, in case No. 13/77 were dismissed.

2. The basic fact of the matter is not in dispute.

A mezzanine floor of the premises in question was left out by M/s. Tropical Insurance Company in favor of one Uttam Prakash Bansal in the year 1950. He entered into a partnership with one Deen Dayal Kaushik. In the premises in question office of the firm was opened.

3. According to the petitioners herein rent used to be paid by both the partners of the said M/s. Tropical Insurance Company to the landlord to which they never objected.

4. In the year 1965, in terms of the provisions of the Life Insurance Corporation of India Act, 1956 (hereinafter for the sake of brevity as the ''LIC Act'') all the Insurance Companies, including that of the Tropical Insurance Company, were nationalized. Pursuant to or in furtherance of the provisions of the LIC Act the building in question was also taken over by the respondent No. 1. Rent for occupation of the said building continued to be paid from the account of M/s. Uttam Parkash and Company.

5. Mr. Uttam Parkash Bansal thereafter from time-to-time took other partners in the said firm and old partners thereof either continued or retired.

6. Allegedly during emergency Sh. Uttam Parkash Bansal was detained under M1SA and during his period of detention cheques for and on behalf of M/s. Uttam Parkash and Company used to be signed by other partners. Although two cheques in the denomination of Rs. 280/- and Rs. 210/- were accepted, a third cheque issued by said partnership firm was not accepted. The same was returned alleging that the cheque was issued by a third party. Thereafter notice u/s 106 of the Transfer of Property Act, 1882 (hereinafter for the sake of brevity referred to as ''T.P. Act'') was served upon the aforementioned Uttam Parkash Bansal inter alias on the ground that he had sub-let the said premises unauthorisedly by inducting S/Shri Ram Dev, Vinod Kumar and Nand Kishore. By reason of the said notice vacant and peaceful possession of the premises in question was demanded by 31st May, 1976.

7. A proceeding in terms of the provisions of the said Act was thereafter initiated. Yet again a notice u/s 4 of the said Act was issued by the Life Insurance Corporation (in short ''LIC'') on or about 9th February, 1977 alleging therein that as the tenant had failed to hand over the possession, he was liable to be evicted. In the said proceedings damages for wrongful use and occupation were also sought for @ Rs. 883.20p. per month till such time the vacant and peaceful possession of the premises is handed over to the LIC. The said notices are said to have been duly replied to. However, in the second notice the purpose for which the eviction of the tenant was sought for had not been stated.

8. Notice issued u/s 4 and Sub-section (1) as also notice u/s 7, Sub-section (3) of the said Act were served.

9. In the said proceeding witnesses were examined before the Estate Officer. By the order dated 8th September, 1980 the Estate Officer passed order of eviction as also payment of damages against Shri Uttam Parkash Bansal and his partners. Against the said orders appeals were preferred by the petitioners herein. By reason of the impugned judgment, the said appeals had been dismissed.

10. Mr. A.S. Chandhiok, learned Senior Counsel appearing on behalf of the petitioners, would inter alias submit that having regard to the fact that rent had been accepted from the firm, the partnership firm itself became a tenant and, in that view of the matter, the entire proceeding was vitiated in law. The learned Counsel would contend that from the evidence of the witnesses examined on behalf of the petitioners and, particularly RW1 Shiv Lal, it would appear that the cheques issued by the partnership firm had been accepted.

11. Learned Counsel relying on or on the basis of a resolution passed on 30th May, 2002 would inter alias submit that having regard to the fact that Ministry of Urban Development and Poverty Alleviation has issued the guidelines, the same should have been followed, before a proceeding for eviction could be initiated. In any event, the learned Counsel would contend that notice u/s 106 of the Transfer of Property Act being not in accordance with law, the entire proceeding was vitiated.

12. Mr. S.K. Taneja, learned Senior Counsel appearing on behalf of the respondents, would, on the other hand, submit that in terms of the provisions of Section 106 of the T.P. Act no ground is required to be stated for eviction. It is the inherent right of the landlord to issue such a notice and, in the event, said notice is found to be legal and valid, the tenancy comes to an end, where after a proceeding under the said Act would be permissible in law. According to the learned Counsel, the guidelines issued by the Ministry is not at all binding and once it is found that the tenant has become an unauthorized occupant a proceeding under the said Act can be initiated. Reliance, in this connection, has been placed upon decisions in Jiwan Dass Vs. Life Insurance Corporation of India and Another, ; Jain Ink Manufacturing Company Vs. Life Insurance Corporation of India and Another, ; Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others, , and K.R.K. Talwar Vs. Union of India and Others, .

13. It is not in dispute that Sh. Uttam Parkash Bansal was the sole tenant Only because he entered into a partnership and rent was being paid by the partnership firm; the same, by itself in our opinion, would not mean that the partnership firm itself became a tenant. There is nothing on records to show that the right of tenancy was drawn into common hotchpotch of the partnership so as to make the said right a part of the properties belonging to the partnership firm. It is also not in dispute that, irrespective of the changes in the constitution of the partnership firm, the said Uttam Parkash Bansal continued as a partner. It is not the case of the petitioners that he upon constitution of the partnership gave up possession of the said premises in favor of the firm. No evidence either oral or documentary has been

brought on record to show that he had ever transferred his tenancy right in favor of the aforementioned partnership firm. It further stands admitted that the constitution of the partnership was changed from time-to-time. The name of the partnership firm was also changed from time-to-time. Present partnership, which had been continuing, did not exist when the disputed property was taken on rent.

14. Apart from the alleged acceptance of rent, there is nothing on record to show that the respondents herein, at any point of time, acknowledged the said partnership firm and/or partners of the said partnership firm as their tenants so as to enable the Court to arrive at a finding of fact that a relationship of landlord and tenant came into being.

15. The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 was enacted to provide for the eviction of unauthorised occupants from public premises and for certain incidental matters. "Public Premises" had been defined in Section 2(e) of the said Act to mean-

(1) any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the Central Government, and includes any such premises which have been placed by that Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1980, under the control of the Secretariat of either House of Parliament for providing residential accommodation to any member of the staff of that Secretariat;

(2) any premises belonging to, or taken on lease by, or on behalf of,

(i) any company as defined in Section 3 of the Companies Act, 1956, in which not less than fifty-one percent of the paid up share capital is held by the Central Government or any company which is a subsidiary (within the meaning of that Act) of the first-mentioned company.

(ii) any corporation (not being a company as defined in Section 3 of the Companies Act, 1956 or a local authority) established by or under a Central Act and owned or controlled by the Central Government.

(iii) any University established or incorporated by any Central Act.

(iv) any Institute incorporated by the Institutes of Technology Act, 1961.

(v) any Board of Trustees constituted under the Major Port Trusts Act, 1963.

(vi) the Bhakra Management Board constituted u/s 79 of the Punjab Reorganisation Act, 1966 and that Board as and when re-named as the Bhakra-Beas Management Board under Sub-section (6) of Section 80 of that Act;

(vii) any State Government or the Government of any Union Territory situated in the National Capital Territory of Delhi or in any other Union Territory.

(viii) any Cantonment Board constituted under the Cantonments Act, 1924 (2 of 1924), and

(3) in relation to the (National Capital Territory of Delhi)-

(i) any premises belonging to the Municipal Corporation of Delhi, or any Municipal Committee or notified area committee,

(ii) any premises belonging to the Delhi Development Authority, whether such premises are in the possession of, or leased out by, the said Authority, and

(iii) any premises belonging to, or taken on lease or requisitioned by, or on behalf of any State Government or the Government of any Union Territory.

"Unauthorised Occupation" has been defined in Section 2(g) to mean-

"(g) "unauthorised occupation", relation to any public premises, means the occupant on by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever."

16. It is not and cannot be disputed that the premises in question is a public premises. The respondent is a statutory body and is owned and controlled by the Central Government.

17. Once the premises in question is held to be a public premises within the meaning of the provisions of the said Act, a proceeding there under would be maintainable. Section 4 of the said Act provides the manner in which notice to show cause against the order of eviction is to be issued. Section 5 of the said Act authorises eviction of unauthorised occupants. Once the Estate Officer is satisfied that the public premises are in unauthorised occupation, he had the requisite jurisdiction to initiate the proceedings.

18. In S.N. Bhatia v. Life Insurance Corporation of India and Ors., reported in 2000 (1) CHN 680 it is observed :

"7. The legislative competence of the Parliament was not in dispute in this application. The object of enacting the Public Premises Act was to provide a special remedy in respect to the eviction of unauthorised occupants of Governmental premises by avoiding a long-term legal process. It must have been the intention of the Legislature in promulgating the enactment that the recovery of Government properties from unauthorised occupants required special laws expediting the process of the general law. Indeed the process of eviction under the general law was time-consuming and expensive. Therefore, there can be little doubt that the Public Premises Act had been enacted to ensure special consideration in respect to Government properties and which would be less expensive."

19. In Jeevan Das (supra) it is clearly held that before issuing a notice determining the tenancy or revoking a license, it is not necessary for the owner to assign any reason to establish that it was just and germane for the purpose, which could be tested on the touchstone of Article 14 of the Constitution of India.

20. Relying on and referring to its earlier decision in Hari Singh and Others Vs. The Military Estate Officer and Another, as also in Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others, , it was held that the scope of the provisions of the said Act cannot be cut down on the basis of the apprehension that the Corporations like the Nationalised Banks or LIC, which are trading Corporations and cannot be prescribed from buying the property in possession of the tenants at a low price and then evicting the tenants after terminating tenancy and selling the property at a much higher value because the value of property in possession of tenants is much less as compared to vacant property. It was observed :

"The consequence of giving overriding effect to the provisions of the Public Premises Act is that premises belonging to companies and statutory bodies referred to in Clauses (2) and (3) of Section 2(e) of the Public Premises Act would be exempted from the provisions of the Rent Control Act. The actions of these companies and statutory bodies while dealing with their properties under the Public Premises Act will not have to be judged by the standard that they would not act as private landlords and their actions would be informed by reason and guided by public interest. Therefore, this Court had negatived the possibility of taking action against the tenants for letting out for higher rent or selling the property at a higher value."

21. Referring to the provisions of Section 106 of the T.P. Act as also the definition of "unauthorised occupation" as contained in Section 2(g) of the said Act, it was observed:

"When the statute has advisedly given wide power to the Public Authorities under the Act to determine the tenancy, it is not permissible to cut down the width of the power by reading into it the reasonable and justifiable grounds for initiating action for terminating the tenancy u/s 106 of the T.P. Act."

22. In M/s. Jain Ink Manufacturing Company (supra), the Apex Court held that the scope and object of the premises Act is different from that of the Rent Act. It was observed :

9.....The Rent Act is of much wider application than the Premises Act inasmuch as it applies to all private premises which do not fall within the limited exceptions indicated in Section 2 of the Premises Act. The object of the Rent Act is to afford special protection to all the tenants or private landlords or landlords who are neither a Corporation nor Government or Corporate Bodies. It would be seen that even under the Rent Act, by virtue of an amendment a special category has been carved out u/s 25B which provides for special procedure for eviction of landlords

who require premises for their personal necessity. Thus, Section 25B itself becomes a special law within the Rent Act. On a parity of reasoning, Therefore, there can be no doubt that the Premises Act as compared to the Rent Act, which has a very broad spectrum, is a special Act and override the provisions of the Rent Act.

10. It was also suggested by Mr. Rao that in view of Section 3(a) of the Rent Act, which is extracted below, it would appear that the intention of the Legislature in passing the Rent Act was merely to exclude from its operation only premises belonging to the Government and if the intention was to exclude other premises belonging to corporate Bodies or Corporations, then Section 3(a) should have been differently worded :

''3. Nothing in this Act shall apply:

(a) to any premises belonging to the Government.''

Thus, in our opinion, does not advance the case of the appellant any further because once the Premises Act becomes a Special Act dealing with premises belonging to Central Government, Corporations and other statutory Bodies, the Rent Act stands superseded. We have to consider the provisions of the two Acts, they having been passed by the same Legislature, viz., Parliament, and the rule of harmonious construction would have to apply in such cases."

23. We may notice that in Dr. K.R.K. Talwar (supra), this Court clearly held :

6. Let us consider the validity of each of these orders and the scope of judicial review in respect of each of them-

(A) the definition of unauthorised occupation in Section 2(e) of the Act is the occupation by any person of the public premises after the authority under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. The authority for the occupation of Dr. Talwar was the original allotment or lease granted to him. When this lease was terminated or allotment was cancelled, that authority disappeared and he became a person in unauthorised occupation of the premises. The non-payment of rent by the petitioner for a long time was an overwhelmingly sufficient reason for the termination of the lease and the cancellation of the allotment. The petitioner''s Counsel contended that the real reason for such action was the suspicion of the authorities that the premises had been sub-let by Dr. Talwar to Shri Batra. The Lesser or the allotter has an absolute right to terminate the lease or cancel the allotment. It is not permissible in the course of judicial review to probe into the reasons for such action. The justifiability of such an action is not open to judicial review at all. Moreover, the non-payment of rent for a long time was a complete justification for such an action.

(B) The order of eviction was passed after Dr. Talwar had the fullest opportunity of showing cause why he should not be evicted from the premises. Before the Estate Officer, Dr. Talwar pleaded that his allotment should not have been cancelled. But

the Estate Officer rightly held that he was not to sit in judgment over the sufficiency of administrative reasons for cancellation of allotment. He found that a notice for more than 15 days had been given to Dr. Talwar for the termination of the tenancy. This was done when the Transfer of Property Act had not been made applicable to Delhi.

(C) The duty to hear an appellant is required by the same basic rule of natural justice which requires every person to be heard before an order affecting his rights can be passed. At the appellate stage this duty is not more onerous than it is at the stage of the original hearing. The rule of audialteram partem only requires that an opportunity to be heard should be given to the person concerned. It does not require that even if the said person does not avail himself of the opportunity an order against him cannot be passed without hearing him. Such an interpretation of the rule would mean that the person concerned may simply refuse to say anything against the order proposed to be passed against him and may thereby stultify the proceedings against him completely with the effect that no order against him can be passed merely because he does not allow it to be passed by merely refusing to defend himself. The same principle should normally apply to an appeal by a person aggrieved by an order against which the appeal is preferred. Petitioner''s Counsel has, however, argued that an appeal u/s 9 of the Act could not be dismissed without an order on merits by the appellate officer. His arguments in support of this proposition run as follows: Firstly, the procedure in appeal is laid down in Rule 8 of the Rules framed under the Act. It says that an appeal preferred u/s 9 shall be in writing and set forth the grounds of objection of the order appealed against. On receipt of the appeal and after calling for and perusing the record of proceedings before the Estate Officer, however, the appellate officer shall appoint a time and place for the hearing of the appeal and shall give notice thereof to the Estate Officer against whose orders the appeal is preferred, to the appellant and to the department or authority in administrative control of the premises. Secondly, the order so passed by the appellate officer shall be final and shall not be called in question in any original suit, application or execution proceeding in view of Section 10 of the Act.

As for the first reason, the whole subject as to the duty of an Appellate Court was considered by the Supreme Court in Thakur Sukhpal Singh Vs. Thakur Kalyan Singh, In that case, the appellant though present did not argue his appeal as he could not do so in the absence of his Counsel or co-operation from his Counsel. Apart from the question as to whether an adjournment should have been given or not, it was urged that the relevant rules of Order XLI of the CPC required that the appeal should be fixed for hearing and that the appellant shall be heard in support of the appeal (Rule 16). It was also argued that the Appellate Court had, after hearing the appeal, to pronounce a judgment in open Court (Rule 30). These provisions are, to some extent similar to the provisions of Rule 8 cited before us. The Supreme Court held that these provisions of Order XLI applied only when the appellant argued his

case. They were not called into action if the appellant did not argue his case and did not show any cause as to why the order appealed against should be interfered with in appeal. The first reason given by the petitioner''s Counsel does not, Therefore, show that the appeal could not be dismissed for default.

(D) xxx xxx xxx

(E) In view of the finding that the appellate officer had acted within his jurisdiction and according to law in dismissing the application for restoration, no case had properly been made out for review of his order and the order of the appellate officer dismissing the review application was within his jurisdiction and passed according to law and is justified in the circumstances of the case. The same does not call for any interference."

24. Therefore, there cannot be any doubt whatsoever that the said proceedings were maintainable.

25. The submission of Mr. Chandhiok to the effect that for initiating a proceeding of this nature the guidelines issued by the Ministry of Urban Development and Poverty Alleviation should have been followed, cannot be accepted on more than one ground. Firstly, the Life Insurance Corporation of India is a statutory Corporation. Secondly, the guidelines have been issued only in the year 2002 whereas the proceeding had been initiated in the year 1976.

26. Even otherwise having regard to the clear and ambiguous provisions of the statute such not following of the said guidelines cannot be raised as a defense.

27. In Paluru Ramkrishnaiah and Ors. v. Union of India and another , it has been held thai executive instructions could be issued only if there had been no statute or statutory rules operating in the field stating :

"11...Notwithstanding the issue of instruction dated 6th November, 1962, Therefore, the procedure for making promotion as laid down in Rule 8 of the Rules had to be followed. Since Rule 8 in the instant case prescribed a procedure for making promotion the said procedure could not be abrogated by the executive instruction dated 6th November, 1962. The only effect of the circular dated 6th November, 1962 was that Supervisors "A'' on completion of 2 years satisfactory service could be promoted by following the procedure contemplated by Rule 8. This circular had indeed the effect of accelerating the chance of promotion. The right to promotion on the other hand was to be governed by the Rules. This right was conferred by Rule 7 which inter alias provides that subject to the exception contained in Rule 11, vacancies in the posts enumerated herein will normally be filled by promotion of employees in the grade immediately below in accordance with the provisions of Rule 8. The requirements of Rule 8 in brief have already been indicated above. Rule 12 provides that no appointment to the posts to which these rules apply shall be made otherwise than as specified in these rules. This right of promotion as provided

by the Rules was neither affected nor could be affected by the circular....."

28. Yet again in Ratan Kumar Tandon and others Vs. State of Uttar Pradesh, the Apex Court observed :

"12.....He placed reliance on paragraph 6 of the instructions. It is seen that the Government has given instructions to the respective authorities u/s 35 of the Ceiling Act that where the authorities were not able to dispose of the matter under the Ceiling Act and land is required for public purpose, it would be necessary to drop the proceeding under the Ceiling Act and to proceed under the Land Acquisition Act. These are only administrative instructions. They do not have any statutory effect on the operation of law. In case of yawning gaps, they may guide the officers. In view of the law laid down by this Court, the instructions do not have any overriding effect on the operation of the Ceiling Act and the law declared by this Court under Article 141. Therefore, it is not necessary for the State to proceed with the determination of the compensation u/s 23(1) of the Act to the extent of the excess land found under the Ceiling Act. Compensation shall be paid only as per Section 116 of the Ceiling Act."

29. In Mirta Lina Pvt. Ltd. v. Life Insurance Corporation of India and Ors. reported in 1999 (2) CLJ 457, a Division Bench of the Calcutta High Court having regard to the provisions of Section 6 and Section 21 of the Life Insurance Corporation of India Act, 1956 held:

"12. Acquiring, holding or disposing of any property as mentioned in Clause (c) of Sub-section (2) is relatable to the purpose of carrying on the business of life insurance by the Corporation under 1956 Act. It is in furtherance of this purpose that u/s 21 of the Act, the Central Government may issue directions with regard to matters of policy involving public interest and that such directions shall have a binding effect upon the Corporation since the Corporation is required to be guided by such directions. We have no doubt in our mind that the guidelines in question were neither issued by the Central Government u/s 21 of 1956 Act nor did these guidelines relate to any functioning of the Corporation under 1956 Act or any policy matter involving public interest relating to the business of life insurance as conducted by the Corporation. Similarly, we have no doubt that Clause (c) of Sub-section (2) of Section 6 of the Act has no manner of application to the present case since the holding of the property as mentioned in Clause (c) has to be in relation to the purpose of the business of the Corporation. To evict an unauthorised occupant from a shop under 1971 Act is totally alien to the concept of holding, acquiring or disposing of any property under Clause (c) of Sub-section (2) of Section 6 of the Act. These guidelines Therefore cannot at all be termed to be relatable to 1956 Act and hence the Corporation cannot be held to be bound by these guidelines on that score as well, particularly, when these guidelines have not been issued under 1956 Act.

13. Let us now consider a hypothetical situation where we hold that the guidelines were binding upon the respondents. Even if we assume that the guidelines had a binding effect and that the respondents were under an obligation to follow the guidelines, and if we apply the parameters laid down in the guidelines, we find that the action initiated by the respondents under the 1971 Act was justified and came squarely within the scope of the guidelines since the appellant was declared an unauthorised occupant of the premises in question on the basis of his tenancy having been determined on the ground of his having given on license a portion of the premises in question to Bata India Ltd. Without the consent of the respondents, The respondents were thus entitled to invoke the provisions of 1971 Act and initiate proceedings there under against the Appellate. Such action of the respondents cannot be termed as being in derogation of the guidelines."

30. In this view of the matter we are of the opinion that the guidelines, in view of the clear statutory provisions, would not stand as a bar in initiation of the proceeding under the said Act.

31. The sole question, however, which remains for consideration is, as to whether the tenancy was validly terminated. The notice u/s 106 of the Transfer of Property Act dated 13th April 1976 is in the following terms :

"Life Insurance Corporation of India

(seal)

Sh. Krishna Gupta,

M.A.LL.B.

Advocate C/o

Northern Zonal Officer- Post Box No. 160
Lakshmi Insurance Building,
Asaf Ali Road,
New Delhi-1
Telephone 279231

Registered A.D.

Ref. 296

Sh. Uttam Prakash,

15/13187, Tropical Building,

Connaught Circus,

New Delhi

Sir,

Under instructions from and on behalf of my clients, the Life Insurance Corporation of India, having its Northern Zonal Office at Lakshmi Insurance Building, Asaf AH Road, New Delhi, through its Zonal Manager, Sh. S.C. Subramanayan, I do hereby serve you with the following notice :

1. That you are a tenant under my said client in respect of the Mezz. floor bearing No. 15/12187 in the building known as Tropical Building, Connaught Circus, New Delhi, at a monthly rent of Rs. 64/- besides water charges of Rs. 6/- per month.

2. That the tenancy in respect of the said premises commences on the 1st day of each English Calendar month and expires on the last day of that month.

3. That you are liable to eviction from the said premises inasmuch as you have illegally, wrongfully and without the written permission of my said clients, sublet and unauthorisedly inducted Servshri Ram Dev, Vinod Kumar and Nand Kishore in the said premises, which you had absolutely no right to do so.

4. That under the above circumstances, my clients do not want to keep you as their tenants any longer in the said premises and terminate your tenancy with respect to the said premises with effect from 31st May, 1976 by means of this notice and you are hereby called upon to vacate and hand over peaceful physical possession of the said premises to my clients by the said date i.e. 31st May, 1976 and to pay the arrears of rent and water charges due and recoverable from you up to the said date, together with cost of this notice amounting to Rs. 30 /- failing which my clients shall be constrained to initiate proceedings against you for your eviction and for recovery of the said amount and other dues in accordance with the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act as applicable to the said property of my clients, at your risk, cost and responsibility which please note.

A copy of this Notice has been duly kept in my office for record.

Yours faithfully

(S.K. Gupta)''

Advocate.

Section 106 of the T.P. Act, which reads as follows :

"106. Duration of certain leases in absence of written contract or local usage-

In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lesser or lessee, by six months'' notice expiring with the end of a year of the tenancy; and a lease of immovable property for any other purposes shall be deemed to be a lease from month to month, terminable, on the part of either Lesser or lessee, by fifteen days'' notice expiring with the end of a month of the tenancy.

Every notice under this section must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property."

32. Section 106 of the Transfer of Property Act primarily envisages (i) that a clear 15 days notice should be given; (ii) that the tenancy should be terminated on the expiry of the tenancy month. By reason of Clause 4 of the said notice the tenancy has been terminated w.e.f. 31st May, 1976. By reason of the said notice, notice to quit is not required to be stated.

33. Thus the basic requirement of law has been complied with. It is true that part of the notice whereby and whereunder possession has been demanded by 31st May, 1976 may not be correct as the tenant was entitled to remain in the tenanted premises till the said date viz., 31st May, 1976 and as such he could have been asked to deliver vacant possession only on 1st June, 1976. However, it is now well known that a notice need not be construed too strictly- If 15 days clear notice had been given and the tenancy has been terminated with the expiry of the tenancy month, the basic requirement of notice is fulfilled .In Union of India (UOI) Vs. Firm Kiroo Mal Nawal Kishore and Another, it has been held :

16. ''Ejusdem generis'' rule has been the subject-matter of decision in some of the English cases. And at page 170 Craies has stated the law in the following words :

"There must be a category. The "ejusdcm generis'' rule is one to be applied with caution and not pushed too far, as in the case of many decisions, which treat it as automatically applicable, and not as being, what it is a mere presumption in the absence of other indications of the intention of the Legislature. The modern tendency of the law, it was said, is to attenuate the application of the rule of ''ejusdem generis''. To invoke the application of the ''ejusdem generis'' rule there must be a distinct genus or category. The specific words must apply not to different objects of a widely differing character but to something which can be called a class or kind of objects. Where this is lacking, the rule cannot apply. ''Unless you can find a category'', said Farwel L.J. ''there is no room for the application of the ''ejusdem generis'' doctrine, and where the words are clearly wide in their meaning they ought not to be qualified on the ground of their association with other words. For instance, where a local Act required that ''theatres and other places of public entertainment'' should be licensed, the question arose whether a ''fun-fair'' for which no fee was charged for admission was within the Act. It was held to be so, and that the ''ejusdem generis rule did not apply to confine the words ''other places'' to places of the same kind as theatres. So the insertion of such words as "or things of whatever description'' would exclude the rule."

From this it is clear that the rule must apply where there is a distinct category or genus and from the fact that in the Third Division relating to applications there are applications under the CPC as well as Arbitration Act, it cannot be said that Art. 181 will be applicable only to applications under the CPC and not to applications under the Arbitration Act."

See Navin Chander Vs. Mulu,

34. A notice to quit must be construed utres magis valeat quanta pereat, i.e. an Act may avail rather than perish.

35. In Bengal Electric Lamp Works Ltd. Vs. Sukdev Chandra Sinha, , the law has been stated in the following terms:

"48..... Its validity ought not to turn on the splitting of a straw nor should it be read in a hyper-critical manner nor its interpretation should be affected by pedagogic pendantism or over-refined subtlety. It must be construed in a common sense way. Considering Exhibit l(b) in the light of the above observations, we must hold that Exhibit l(b) was a good and valid notice to quit given by the appellant to the respondent expiring with the end of a month of its tenancy in accordance with the provisions of Section 106 read with Section 111(h) of the Transfer of Property Act and Section 13(l)(j) of the West Bengal Premises Tenancy Act, 1956. Whether the tenancy created in 1973 continued or there was a fresh tenancy from March, 1975 is, in our opinion, wholly immaterial. By Exhibit l(b) the appellant determined its tenancy and gave notice to quit on the expiry of Feb., 1977 unequivocally and in no uncertain terms, be the same, tenancy created in 1973 which continued or be the same, a fresh tenancy from Mar., 1975. Further the said notice having been accepted by the respondent landlord which is manifest from the respondent having instituted the suit herein on the basis of the said notice, the appellant was bound to vacate the demised flat and make over possession thereof to the respondent landlord."

36. Furthermore, in this case a notice u/s 4(1) of the said Act had also been served on 12th September, 1978, The Estate Officer has passed the order of eviction on 8th September, 1980. The learned Estate Officer although raised a issue as regards the question as to whether tenancy of the 1st respondent petitioner herein had been properly terminated but before the Estate Officer the said point was not pressed. It was observed :

"The respondent No. 1 in his reply dated 17th October, 1978 to the show-cause notice has maintained that the notice of termination dated 13.4.1976 was invalid, illegal and based on false and frivolous grounds. During the arguments, the Counsel for the respondents did not touch upon the question as to whether the termination of tenancy has been rightly done. The representative of the complainant Corporation submitted that the tenancy was terminated on the grounds of induction of persons unauthorisedly in the said premises. The notice of termination was duly

received by respondent No. 1 but he neither sent any reply nor vacated the premises."

37. The petitioners, Therefore, waived the question of validity of notice. Before the Appellate Authority also the question raised was as to whether the case of sub tenancy had been proved. Before the learned Court of Appeal no contention has been raised before us by Mr. Chandhiok that possession should have been asked for only on expiry of 31st May, 1976 had not been raised. The Appellate Court noticed:

"Notice u/s 106 of the T.P. Act was served upon the tenant. The language of the said notice clearly shows that the tenancy was terminated in the year 1976 and it was a clear intention of the landlord to terminate the tenancy. I do not find any illegality or irregularity in the term nation of the tenancy or in the notice served by the LIC upon the tenant. It was argued on behalf of the appellants that even after the service of the notice u/s 106 of the T.P. Act, the tenancy of the appellant was not terminated and the tenancy continued and the possession was not unauthorised. In this connection, appellant''s Counsel relied on ruling reported in All India Rent Control Journal 1979 page 358 re: V. Dhanapal Chettier v. Yasodai Kamal in which it has been held as under:

''Need of quit notice to a lessee under T.P. Act not applicable to a tenant under Rent Act. Only determination of contractual tenancy necessary for filing suit for possession against lessee under the T.P. Act position is different in a suit for eviction of a tenant under a Rent Act whether in order to get a decree of order for eviction against a tenant under any State Rent Control Act it is necessary to give a notice u/s 106 T.P. Act.?''

In the said ruling it has also been held that it does not permit the landlord to shape his relationship with the tenant merely because his act of serving a notice to quit on him, and in spite of the notice, the law says that he continues to be a tenant and he does so enjoying all the rights of a lessee and is at the same time deemed to be under all the liabilities such as payment of rent, etc. in act of once with the law. In my opinion, the argument of the learned Counsel for the appellant that even after the service of the notice u/s 106 of T.P. Act, the tenant continues to be a tenant and he did not become unauthorised occupant is misconceived and cannot be accepted. The aforesaid ruling is distinguishable and is not applicable in the circumstances of this case. In the said case the tenancy was governed under the Rent Control Act and even after termination of tenancy the protection to tenant continued and the status of tenant was protected under the statute. But in the present case, the protection to the tenant was not under the D.R.C. Act. The Public Premises (Eviction of Unauthorised Occupants) Act was applicable in the instant case. After the termination of the tenancy as provided u/s 106 of T.P. Act, the status of the tenant became unauthorised and he did not enjoy the status of statutory tenant after determination of the tenancy."

38. Before the Court of Appeal the only question which was raised was that as the petitioner firm had continued to remain in possession despite termination of tenancy, which had not been accepted, and rightly so before the learned Court of Appeal below. In this view of the matter, we are of the opinion that the petitioner must be deemed to have waived the said contention. He, Therefore, cannot be permitted to raise the said question before this Court for the first time.

39. It is, Therefore, not a fit case wherein this Court should exercise its discretionary jurisdiction under Article 226 of the Constitution of India.

40. For the reasons aforementioned, we do not find any merit in this writ petition, which is accordingly dismissed with costs of Rs. 10,000/-.