

*If bare land is let out by the government and/or the government undertaking to its tenant, the incidence of such tenancy cannot be governed by the provisions of 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 Act.*

**[CASE BRIEF] WEST BENGAL SMALL INDUSTRIES DEVELOPMENT CORPORATION LTD. & ORS. V. M/S. SONA PROMOTERS PVT. LTD. & ORS.**

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| <b><u>CASE NAME:</u></b> WEST BENGAL SMALL INDUSTRIES DEVELOPMENT CORPORATION LTD. & ORS v. M/S. SONA PROMOTERS PVT. LTD. & ORS.   |
| <b><u>CASE NUMBER:</u></b> Civil Appeal No. 2201 OF 2020   |
| <b><u>COURT:</u></b> Hon'ble Supreme Court of India  |
| <b><u>DECIDED ON:</u></b> 18.03.2020   |
| <b><u>BENCH:</u></b> Justice S Abdul Nazeer, Justice Deepak Gupta  |
| <b><u>RELEVANT STATUTE:</u></b> West Bengal Government Premises (Tenancy Regulation) Act, 1976. Companies Act 1956., Specific Relief Act, 1963 , Transfer of Property Act, 1882. |

**BRIEF FACTS AND PROCEDURAL HISTORY:**

1. This appeal is directed against the order dated **19.09.2014** in G.A. 1172/2014, A.P.O.T. No.175/2014 with Writ Petition No. 36 of 2014, whereby the Division Bench of the Calcutta High

Court has allowed the Writ Petition and has quashed the order of eviction passed by appellant No.5 against respondent No.1. Appellant No.1 herein, namely, the West Bengal Small Industries Development Corporation Ltd. (for short 'the Corporation') is a government of West Bengal undertaking engaged in developing, assisting and encouraging growth of small-scale industries within the State of West Bengal.

2. It is a government company as defined under Section 617 of the Companies Act, 1956. The entire shareholding of the Corporation is held by the State Government and/or its nominees. The Directors appointed by the Corporation are the nominees of the State Government. The other appellants are the functionaries of the first appellant Corporation. Registered small-scale industries apply to the Corporation for allotment of industrial plots which are allotted at concessional rates to assist the small-scale industries to set up factories and to operate thereon. The Corporation acts as an arm of the State Government in providing industrial plots to small-scale industries.
3. Whenever an allottee remains a non-starter or its production closes down, after giving reasonable opportunity to re-start/re-open, the plots of land and in some cases the structures, are resumed by the Corporation. The resumed plots/structures thereafter are re-allotted to other small-scale industries which are in the waitlist. Bengal Potteries Limited, a company registered under the Companies Act, owned land with factory standing thereon situated at Tangra in the city of Calcutta. The company went into liquidation and all its immovable properties, including the factory with land were put up for auction by the Calcutta High Court on "as is where is basis". The Corporation participated in the auction and its bid was accepted by the company court. The Corporation became the owner of all the buildings and structures along with all lands appurtenant thereto and all assets therein.
4. After purchase of the said property, the Corporation decided to set up a small-scale industrial zone according to the site plan which was sanctioned by the concerned authorities. Thereafter, the Corporation, after demolition of the existing structure, wherever necessary, constructed an administrative block, set up adequate infrastructure, divided the area into small plots and invited applications from small-scale industrial units for leasing out of such plots and for construction of small-scale industrial units.
5. On an application by respondent No.1, the Corporation executed a first lease deed dated **14.12.2007** in favour of the said respondent in respect of plot Nos. 7 and 15 being part of Tangra Industrial Estate, Phase-II for setting up of a small-scale industry on the terms and conditions

mentioned therein. On **17.01.2008**, the possession of these two plots was handed over to respondent No.1. Another lease deed dated **04.03.2009**, in respect of plot No.8 was executed in the same industrial area in favour of respondent No.1. Mutation process of the said three plots was completed on **26.09.2012** by the Calcutta Municipal Corporation.

6. On **10.10.2012**, the Corporation issued a notice calling upon respondent No.1 to show-cause as to why the tenancy should not be terminated for violation of the terms of the lease. This notice was issued invoking clause 3 of the lease deed. Respondent No.1 submitted a reply dated **06.11.2012** to the show-cause notice. After hearing, respondent No.1 was informed by a letter dated **12.12.2015** that three months' time had been extended to commence construction work at the plots. Since nothing was done, the prescribed authority, by notice dated **09.11.2013**, terminated the lease deed in accordance with Section 3(2) of the West Bengal Government Premises (Tenancy Regulation) Act, 1976, (for short 'the Act') read with Rule 3(1) of the West Bengal Government Premises (Tenancy and Regulation) Rules, 1976 (for short 'the Rules'). The ground of termination was violation of clauses 2(c) and (g) of the lease deed, i.e. for not taking steps for construction of the factory building. By the said notice, respondent No.1 was directed to vacate the premises within 30 days.
7. While the appeal was pending, respondent Nos. 1 and 2 filed the writ petition in the High Court seeking, inter alia, setting aside of the termination notice dated **09.11.2013**. The Appellate Authority by order dated **16.01.2014**, upheld the order of the prescribed authority. By this order, respondent No.1 was asked to vacate the plots in question by **15.02.2014**. Being aggrieved by the order of the Appellate Authority, respondent No.1 filed a general application in the pending writ petition, inter alia, seeking to set aside and/or quash the order of the Appellate Authority dated **16.01.2014**.
8. The learned Single Judge, considering the writ petition along with general application, passed ad-interim order restraining the Corporation from taking any steps for eviction of the writ-petitioners from the disputed plots of land until the disposal of the application. It was held that there was, prima facie, case made out by the writ petitioners and the balance of convenience lay in granting interim protection.
9. Being aggrieved and dissatisfied with the said order of the learned Single Judge, the Corporation and its functionaries preferred an appeal before the Division Bench. In addition, they of the order of the learned Single Judge by filing a separate application.

10. The Division Bench disposed of the appeal, as well as the writ petition by the impugned order holding that the Corporation is not a government undertaking and further held that the premises is not a government premises. Therefore, on both counts the Division Bench concluded that the Act did not apply to the premises in question. Accordingly, the appeal was dismissed and the writ petition was allowed.

**ISSUE BEFORE THE COURT:**

1. Whether Corporation can be regarded as a “Government undertaking” so as to attract the applicability of the provisions of the Act in respect of the premises held by it.
2. Whether the premises owned by the Corporation and let out to respondent No.1 are government premises within the meaning of Section 2(a) of the Act.

**RATIO OF THE COURT:**

1. Appearing for the appellants, Shri Bhaskar P. Gupta, submits that the appellant-Corporation is a Government company registered under the Companies Act, 1956. Hence, it owes its status as a body corporate to the Companies Act, 1956. The Memorandum and Article of Association of the Corporation demonstrated that it is fully under the administrative and financial control of the State Government.
2. Shri Debal Banerjee, learned Senior Counsel appearing for respondent Nos. 1 and 2 contended that the premises which is the subject matter of this appeal is not covered under the provisions of the Act. Bare land was leased out by the Corporation to respondent No.1. The said plot of land did not contain any structure.
3. The preamble of the Act makes it clear that it has been enacted to provide for regulation of certain incidences of tenancy in relation to government premises in West Bengal and for matters connected therewith or incidental thereto. Section 2 and 3 of the act were referred and analysed by the court. In the present case, the premises in question are not owned by the government.
4. It is owned by the appellant- Corporation, which is a government company incorporated under the Companies Act, 1956. It is an admitted position that the Corporation is registered under the Companies Act, 1956.
5. The Corporation is under the administrative control of the State Government and almost all shares of the Corporation, are held by the State Government, apart from a few shares held by IAS officers

in their official capacity. It owes its status as a body corporate to the Companies Act enacted by the Parliament. **In our considered view, the appellant company is a “Government undertaking” as defined in Section 2(b) of the Act.**

6. Government premises refers to any premises owned by the Government or a Government undertaking except those which are official residences of the persons authorized to occupy the said premises in consideration of the office which the government official holds under the State Government or under any Government undertaking for the time being. The expression “premises” is defined in Section 2(c) of the Act. 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, it not only includes a building or a part of it or a hut or a part of it but also 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 a seat in a room let separately. 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, such tenancy will be of a “Government premises”. However, bare land has not been independently included in the definition of “premises”. Therefore, we have no hesitation to hold that if bare land is let out by the government and/or the government undertaking to its tenant, the incidence of such tenancy cannot be governed by the provisions of the Act and as such a tenant cannot be evicted by taking aid of the provisions of the Act. The lease was in respect of three plots of land which did not contain any building and these plots of land do not satisfy the requirements of definition of “Government premises” within the meaning of Section 2(a) read with Section 2(c) of the Act. Therefore, we hold that the eviction proceedings initiated by the Corporation against respondent No.1 under the Act was without jurisdiction.

**DECISION HELD:**

To conclude, while holding that the appellant-Corporation is a government undertaking within the meaning of Section 2(b) of the Act, we further hold that the premises in question does not come within the definition of Section 2(a) of the Act. Reserving liberty to the appellants to seek eviction of respondent Nos. 1 and 2 from the land in question under West Bengal Public Land (Eviction of

Unauthorized Occupants) Act, 1962, we dismiss this appeal. However, there will be no order as to costs.

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