IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : PUBLIC PREMISES ACT, 1971

Judgment reserved on: 7.04.2011

Judgment delivered on: 25.07.2011

W.P.(C) No.4342/2007

DAMAYANTI VERMA (DECEASED)

THROUGH HER L.Rs ……Petitioner

Through: Mr.Bahar-U-Barqi, Adv.

Vs.

LIC AND ANR. ……Respondents

Through: Mr. Mohinder Singh,

Advocate.

W.P.(C) No.4344/2007

DAMAYANTI VERMA (DECEASED)

THROUGH HER L.Rs ……Petitioner

Through: Mr.Bahar-U-Barqi, Adv.

Vs.

LIC AND ANR. ……Respondents

Through: Mr. Mohinder Singh,
Advocate.

W.P.(C) No.13393/2009

DAMAYANTI VERMA (DECEASED)
THROUGH HER L.Rs ……Petitioner

Through: Mr.Bahar-U-Barqi, Adv.

Vs.

LIC AND ANR. ……Respondents

Through: Mr. Mohinder Singh,
Advocate.

W.P.(C) No.13628/2009

DAMAYANTI VERMA (DECEASED)
THROUGH HER L.Rs ……Petitioner

Through: Mr.Bahar-U-Barqi, Adv.

Vs.

LIC AND ANR. ……Respondents

Through: Mr. Mohinder Singh,

Advocate.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

KAILASH GAMBHIR, J.

1. This judgment shall dispose off a batch of four writ petitions bearing WPC No. 4342/07, WPC No. 4344/07, WPC No. 13393/09 & WPC No. 13628/09 filed by the same petitioner under Article 226 of the Constitution of India.

2. By WPC No. 4342/07 & WPC No. 4344/07, the petitioner seeks to set aside the common judgment and decree dated 22.5.07 whereby the appeal filed by the petitioner against the order passed by the Estate Officer dated 18.4.06 under section 5 of the Public Premises Act, 1971 was dismissed. By WPC No. 13393/09 & WPC No. 13628/09 the petitioner assails the common order dated 29.10.09 whereby the appeal filed by the petitioner against the order of the Estate Officer dated 18.4.06 under section 7 of the PP Act was dismissed.

3. Facts of the case shorn of unnecessary details forming the heart of the controversy of these petitions are that the husband of the petitioner late Sh.P.L Verma was a tenant of two premises bearing Flat no. 14/12190 admeasuring 333 sq ft and Flat no. 7/10181 admeasuring 782 sq ft. on the first floor of the building known as the Tropical Building, situated at H Block, Connaught Circus, New Delhi which are owned by the respondent Corporation. That the respondent Corporation required the premises for its own bonafide use and hence terminated the tenancy of the petitioner w.e.f 28.2.97 and served a legal notice dated 1.2.97/6.2.97 on the petitioner. That a notice dated 7.1.98 under section 4(1) & 4(2)(b)(ii) & 7(3) of the PP Act was served on the petitioner in respect of the Flat No. 7/10181 and similarly a notice dated 12.1.98 was served in respect of the Flat no. 14/12190 and

proceedings under section 5 & 7 of the PP Act were initiated against the petitioner whereby vide order of the Estate Officer dated 18.4.06 the petitioner was declared to be in unauthorized occupation of the premises w.e.f 1.3.97 and was directed to pay damages. Consequently the petitioner filed appeals against the said order which vide impugned orders 22.5.07(for eviction) and 29.10.2009(for damages) in respect of both the premises were dismissed. Feeling aggrieved with the same, the petitioner (now deceased, through her legal representatives) has preferred the present writ petitions.

4. Learned counsel for the petitioner at the outset submitted that for deciding the present petitions a brief sketch of the background which has necessitated the filing of the present petitions is important. Counsel submitted that it is an admitted position that the husband of the deceased petitioner was the original tenant of the premises who entered into tenancy of the premises in the year 1946. Counsel further submitted that in 1946 the premises which are the subject matter of the present petitions belonged to a private party and then LIC was not in existence which came into existence in the year 1966 whereafter the husband of the petitioner got retired and then expired in the year 1987. Counsel submitted that during the intermittent period, LIC had taken over the premises and claimed that the petitioner should be governed by the Public Premises Act. Counsel thus submitted that the petitioner was tenant of a private landlord and from a private landlord, respondent LIC had taken over and the petitioner therefore happened to be under the tenancy of a new landlord. The contention of the counsel for the petitioner was that the statutory provisions must be complied with by implementation of the provisions enshrined in the Public Premises Act, the guidelines issued by the Ministry of Urban Development for preventing the misuse of the Public Premises Act should alone be the guiding factor. Counsel thus submitted that neither the provisions of the Act can be implemented in isolation and similarly nor the guidelines can be enforced in isolation. Emphasizing the importance of the said guidelines, the counsel submitted that keeping in view the law laid down by different High Courts and the Hon'ble Supreme Court and the ongoing misuse of the Public Premises Act, the guidelines were debated upon in both the floors of the House and these guidelines were firstly adopted in Rajya Sabha and then the Lok Sabha and thereafter the concerned Ministry got it

published. Counsel thus submitted that these are not administrative guidelines but are legislative guidelines and therefore neither the guidelines nor the provisions of P.P. Act can be read in isolation and both should be harmonized together so as to pay sincere regard to the discussion in both the Houses of the Parliament.

5. Another argument of the counsel for the petitioner was that the petitioner has the protection of the Delhi Rent Control Act and thus the provisions of the Public Premises Act cannot be invoked against her. The counsel further submitted that as far as the termination notice under section 106 of the Transfer of Property Act is concerned, it was not a valid notice in the eyes of law. The contention of the counsel of the petitioner was that the said notice was never served upon the petitioner and therefore there is no question of termination of tenancy without the due service of notice.

6. Counsel for the petitioner further submitted that the onus was on the respondent to prove two basic issues, firstly to prove that the petitioner was the unauthorized occupant in the said premises and secondly that the respondent corporation required the premises for their own bonafide use. The contention of the counsel for the petitioner was that without properly spelling out the exact bonafide requirement of the said premises, the respondent Corporation could not have terminated the tenancy of the petitioner. In support of his arguments, counsel for the petitioner placed reliance on the following judgments:

1. Persis Kothawala vs. LIC 2004 AIHC 2613 (Bombay High Court)

2. Nusli Neville Wadia vs. New India Assurance Co. Ltd 2006(3) Mh.L.J (Bombay High Court)

3. Dunlop India Ltd. Vs. Bank of Baroda 2010 II AD(Delhi) 422

4. New India Assurance Compnay Ltd. Vs. Nusli Neville Wadia & Anr. (2008)3 SCC 279

5. The Indian Bank, Bangalore vs. M/s Blaze and Central(P) Ltd. AIR 1986 Kar 258

6.Uttam Prakash Bansal & Ors. vs. LIC 100(2002)DLT 497 (Delhi High Court)

7. Refuting the above arguments of learned counsel for the petitioner, Mr. Mohinder Singh, learned counsel for the respondent submitted that under the P.P. Act, the respondent LIC was not required to show its bona fide requirement. He submitted that in the case of The Indian Bank, Bangalore vs. M/s Blaze and Central AIR 1986 Kar 258, on which reliance was placed by the counsel for the petitioner, there the tenant did not deny that he was not an unauthorized occupant but their case was that the respondent did not have any bona fide requirement whereas in the case at hand, the petitioners denied their unauthorized occupancy but the respondent has successfully proved it and hence the said judgment would not be applicable to the facts of the present case.

8. Counsel for the respondent further submitted that this Court in exercise of its writ jurisdiction will not act as a Court of second appeal to re-examine the findings of facts arrived at by both the courts below. Counsel argued that this Court in the exercise of its writ jurisdiction will only examine as to whether the petitioner was given due opportunity to defend herself before the Estate Officer and that there is no violation of principles of audi alteram partem and also the fact as to whether the petitioner was able to establish her status as that of an authorized occupant. Counsel further submitted that on both the counts the petitioner cannot raise any grievance as the petitioner was given sufficient opportunity before the Estate Officer to establish her status as that of an authorized occupant but the petitioner failed in her attempt. Counsel thus submitted that after the termination of the tenancy of the petitioner after due service of the notice under Section 106 of the Transfer of Property Act, the petitioner clearly became unauthorized occupant in terms of Section 2(g) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and after the termination of tenancy, the petitioner derived no right to occupy the premises in question. Counsel also submitted that after the termination of the tenancy of the petitioner, the petitioner became liable to pay damages as already awarded by the learned Estate Officer in respect of both the premises under her occupation and the award of said damages has already been upheld by the learned Appellate Court.

9. Counsel for the respondent also argued that the said "guidelines" on which strong reliance was placed by counsel for the petitioner cannot come to her rescue as these guidelines have no statutory force and, therefore, cannot supplant the substantive provisions of the Public Premises Act and could not come in the way of the respondent to take recourse to the statutory remedy as provided under the provisions of the Public Premises Act. In support of his arguments, counsel for the respondent placed reliance on the following judgments:-

1. The Indian Bank, Bangalore vs. M/s Blaze and Central(P) Ltd. AIR 1986 Kar 258

2. Uttam Prakash Bansal & Ors. vs. LIC 100(2002)DLT 497 (Delhi High Court)

10. I have heard learned counsel for the parties at considerable length and given my thoughtful consideration to the arguments advanced by them.

11. The facts which are not in dispute are that late Shri P.L.Verma, husband of the petitioner was a lawful tenant in respect of Flat bearing No.14/12190 measuring 333 sq.ft. on the first floor of the Tropical Building situated at H Block Connaught Circus, New Delhi at a monthly rent of Rs.73.00 and also in respect of another flat bearing No. 7/10181, admeasuring 782 sq. ft. on a monthly rent of Rs.87.86/-. It is also not in dispute that said Shri P.L.Verma became tenant in respect of the said flats prior to his joining the respondent-LIC as an employee. It is further not in dispute that after the demise of Shri P.L.Verma, the present petitioner was accepted as a tenant in his place. As per the respondent-LIC, the said tenancy of the petitioner was terminated by the respondent under Section 106 of the Transfer of the Property Act, of which notice was served upon the petitioner through affixation after the notice sent by the registered A/D post was refused by the petitioner. Counsel for the respondent took a stand that the said notice was duly proved on record by the respondent before the Estate Officer as Ex. PW1/10. However, counsel for the petitioner strongly disputed the receipt of the said notice, but in my considered view, there is no reason to disbelieve the service of the said notice upon the petitioner which was affixed only after the same was refused as per the refusal report of the postal authorities. It is not the case of

the petitioner that the address mentioned in the notice or on the returned envelope was incorrect or that anything could have affected the normal course of business of the postal authorities to discredit their service report. With the postal receipt of the notice sent through registered A/D post carrying the correct address thereon and also the notice sent by the respondent by UPC and the subsequent notice pasted through affixation, the presumption under Section 27 of the General Clauses Act,1897 of due service of the notice would arise in favour of the respondent and, therefore, this Court would proceed to examine the submissions advanced by counsel for the parties taking the due service of the said notice upon the petitioner.

12. As per the legal notice dated 01.02.1997/6.2.1997 sent by the respondent, the tenancy of the petitioner was terminated under Section 106 of the Transfer of Property Act and the reason given for the termination of the said tenancy was that the respondent-LIC required the said premises for their own bonafide use. Based on the said termination notice, the learned Estate Officer issued notice under sub Section 1 and Clause b(ii) of sub-Section 2 of Section 4 of the Public Premises Act after forming an opinion that the petitioner became unauthorized occupant of the said tenanted premises after her tenancy was determined by the respondent through the said legal notice dated 01.02.1997/6.2.1997. Similarly notices were issued by the learned Estate Officer under sub Section 3 of Section 7 of the Public Premises Act thereby calling upon the petitioner to pay the claimed damages along with the interest.

13. The entire thrust of counsel for the respondent was on this notice of termination. With the service of the said notice, the tenancy of the petitioner got terminated w.e.f. 28.2.97 and thereafter the petitioner became unauthorized occupant in respect of the said premises from 1.3.97. Counsel also argued that neither under Section 106 of the Transfer of Property Act nor under Section 2(g) of the Public Premises Act, the respondent-LIC is required to give any reason for terminating the tenancy of a tenant. Counsel also submitted that it was for the petitioner to satisfy the learned Estate Officer as to how she could claim her status as that of an authorized occupant after the termination of the tenancy. Counsel for the petitioner, on the other hand, placed strong reliance on the 2002 Guidelines issued by the Ministry of Urban Development to prevent arbitrary use of powers to evict genuine tenants by various public sector undertakings and financial institutions. The counsel for the petitioner vehemently argued to reiterate the

contention that the said guidelines are binding upon the respondent and that there can be no laxity on the part of the respondent to act contrary to the spirit of these guidelines.

14. In the face of the factual matrix of the petitions and the contentions of the parties stated herein above, two crucial questions which arise for consideration by this Court in the present case would be:

(1) Whether the Public Sector Undertakings, Govt. Corporations and other Financial Institutions are not bound by the 2002 guidelines because they lack the statutory force?

and

(2) Whether the Estate Officer should not probe the reasons for satisfying itself before declaring a particular person as an unauthorized occupant in respect of premises in dispute?

15. So far the answer to the second question is concerned, in the case of Jiwan Das Vs. LIC 1994 Supp(3)SCC694, the Apex Court took a view that before issuing a notice determining the tenancy or revoking the 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. Relevant para of the said judgment is reproduced as under:

“4. Section 106 of the T.P. Act does indicate that the landlord is entitled to terminate the tenancy by giving 15 days' notice, if it is a premises occupied on monthly tenancy and by giving 6 months' notice and if the premises are occupied for agricultural or manufacturing purposes; and on expiry thereof proceedings could be initiated. Section 106 of the T.P. Act does not contemplate of giving any reason for terminating the tenancy. Equally the definition of the public premises "unauthorised occupation" under Section 2(g) of the Act postulates that the tenancy "has been determined for any reason whatsoever". When the statute has advisedly give wide powers to the public-authorities under the Act to determine the tenancy, it is not permissible to cut down the width of the powers by reading into it the

reasonable and justifiable grounds for initiating action for terminating the tenancy under Section 106 of the T.P. Act. If it is so read Section 106 of T.P. Act and Section 2(g) of the Act would become ultra vires. The statute advisedly empowered the authority to act in the public interest and determine the tenancy or leave or licence before taking action under Section 5of the Act. If the contention of the appellant is given acceptance he would be put on a higher pedestal than a statutory tenant under the Rent Act. Take for example that a premises is let out at a low rent years back like the present one. The rent is unrealistic. With a view to revise adequate market rent, tenant became liable to ejectment. The contention then is, action is violative of Article 21 offending right to livelihood. This contention too is devoid of any substance. An owner is entitled to deal with his property in his own way profitable in its use and occupation. A public authority is equally entitled to use the public property to the best advantage as a commercial venture. As an integral incidence of ejectment of a tenant/licensee is inevitable. So the doctrine of livelihood cannot discriminately be extended to the area of commercial operation."

In the case of Dr.KRK Talwar Vs. Union of India 1977(13) DLT 310, this court took a view that the Estate Officer rightly held that he was not to sit in judgment over the sufficiency of administrative reasons for cancellation of allotment. The Court also took a view that it is not permissible in the course of judicial review to probe into the reasons for such an action.

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 sublet by Dr. Talwar to Shri Batra. The

Lesser or the allottor 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.

16. It is now a settled legal position that unlike the provisions of the Delhi Rent Control Act, no such protection is available to the tenants under the provisions of the Public Premises Act. It is again a settled legal position that so far the case of lawful tenants under any Government Undertaking or Corporation is concerned, the tenancy of such a tenant can be terminated under Section 106 of the Transfer of Property Act and no reasons are required to be given by the owner/landlord for such termination of the tenancy. Once such a tenancy is terminated, then the lawful tenant also becomes an unauthorized occupant in terms of Section 2(g) of the Public Premises Act. It also cannot be lost sight of the fact that the case of lawful tenant or lessee cannot be treated at par with unlawful occupants or the licensees whose license comes to an end on the expiry of the license period or an employee overstaying in the public premises after his/her service comes to an end or in case of his/her transfer. In the latter category of cases, once declared as unauthorized occupant by the Estate Officer, then the tenant has to satisfy and prove before the Estate Officer that the decision of formation of such an opinion by the Estate Officer is wrong and illegal and their status is that of an authorized occupant. However, if they fail to satisfy the Estate Officer then they have no option but to face the eviction proceedings under Section 5 of the Public Premises Act. But the question is that whether the lawful tenants would also fall in the same category once their lease deed is determined by the lessor/owner under Section 106 of the Transfer of Property Act. The answer again would be in the affirmative, going by the legal position settled in the judgments referred above. Hence, the answer to the second question formulated herein above would be a simple ‘yes’ and in such like cases also with the determination of tenancy, a person would become an unauthorized occupant with no right to raise any plea to the contrary.

17. Now before furthering the discussion on the first question formulated herein above, it is pertinent to deal with the contention of the counsel for the petitioner that the petitioner has the protection of the Delhi Rent Control Act and that the provisions of the Public Premises Act cannot be invoked against the petitioner. In the celebrated pronouncement of the Constitution Bench of the Supreme Court in the case of Ashoka Marketing Ltd. and Anr. vs Punjab National Bank and Ors. AIR1991SC855, the Supreme Court in depth examined the ambit and the scope of two Statutes i.e. Delhi Rent Control Act, 1958 and the Public Premises Act, 1971 in relation to the premises which fall within the ambit of both the Statutes. The Supreme Court also traced the legislative history which led to the enactment of the Public Premises Act by the Parliament in 1971. After a detailed discussion on the provisions of both the Statutes, the Hon'ble Court came to the conclusion that the provisions contained in the Public Premises Act cannot be applied to the premises which fall within the ambit of the Rent Control Act. It was also held that the provisions of Public Premises Act, to the extent that they cover premises which are falling within the ambit of Rent Control Act, override the provisions of the Rent Control Act and a person in unauthorized occupation of the Public Premises as defined under Section 2(e) of the PP Act cannot invoke the provisions of the Rent Control Act. It would be relevant to reproduce the following paras of the said judgment here:-

"53. The Public Premises Act is a later enactment, having been enacted on 23rd August, 1971, whereas the Rent Control Act was enacted on 31st December, 1958. It represents the later will of Parliament and should prevail over the Rent Control Act unless it can be said that the Public Premises Act is a general enactment, whereas the Rent Control Act is a special enactment and being a special enactment the Rent Control Act should prevail over the Public Premises Act. The submission of learned Counsel for the petitioners is that the Rent Control Act is a special enactment dealing with premises in occupation of tenants, whereas the Public Premises Act is a general enactment dealing with the occupants of Public Premises and that insofar as public premises in occupation of tenants are concerned the provisions of the Rent Control Act would continue to apply and to that extent the provisions of the Public Premises Act would not be applicable. In support of this submission reliance has been placed on the non-obstante clauses contained in Section 14 and 22 of the Rent Control Act as well as the provisions contained in

Sections 50 and 54 of the said Act. On the other hand the learned Counsel for the respondents have urged that the Rent Control Act is a general enactment dealing with the relationship of landlord and tenant generally, whereas the Public Premises Act is a special enactment making provision for speedy recovery of possession of Public Premises in unauthorised occupation and that the provisions of the Public Premises Act, a later Special Act, will, therefore, override the provisions of the Rent Control Act in so far as they are applicable to Public Premises in occupation of persons who have continued in occupation after the lease has expired or has been determined. The learned Counsel for the respondents have placed reliance on Section 15 of the Public Premises Act which bars the jurisdiction of all courts in respect of the eviction of any person who is in unauthorised occupation of any Public Premises and other matters specified therein. It has been submitted that the said provision is also in the nature of a non-obstante clause which gives overriding effect to the provisions of the Public Premises Act. Thus each side claims the enactment relied upon by it is a special statute and the other enactment is general and also invokes the non-obstante clause contained in the enactment relied upon.

54. The Rent Control Act makes a departure from the general law regulating the relationship of landlord and tenant contained in the Transfer of Property Act inasmuch as it makes provision for determination of standard rent, it specifies the grounds on which a landlord can seek the eviction of a tenant, it prescribes the forum for adjudication of disputes between landlords and tenants and the procedure which has to be followed in such proceedings. The Rent Control Act can, therefore, be said to be a special statute regulating the relationship of landlord and tenant in the Union Territory of Delhi. The Public Premises Act makes provision for a speedy machinery to secure eviction of unauthorised occupants from public premises. As opposed to the general law which provides for filing of a regular suit for recovery of possession of property in a competent Court and for trial of such a suit in accordance with the procedure laid down in the CPC, the Public Premises Act confers the power to pass an order for eviction of an unauthorised occupant in a public premises on a designated officer and prescribes the procedure to be followed by the said officer before passing such an order. Therefore, the Public Premises Act is also a special statute relating to eviction of unauthorised occupants from public premises. In other words, both the enactments, namely, the Rent Control Act and the Public Premises Act, are special statutes in relation to the

matters dealt with therein. Since, the Public Premises Act is a special statute and not a general enactment the exception contained in the principle that a subsequent general law cannot derogate from an earlier special law cannot be invoked and in accordance with the principle that the later laws abrogate earlier contrary laws, the Public Premises Act must prevail over the Rent Control Act.

……..

62. As mentioned earlier, the Public Premises Act has been enacted with a view to provide for eviction of unauthorised occupants from public premises. In the statement of objects and reasons for this enactment reference has been made to the judicial decisions whereby by the 1958 Act was declared as unconstitutional and it has been mentioned:

The court decisions, referred to above, have created serious difficulties for the Government inasmuch as the proceedings taken by the various Estate Officers appointed under the Act either for the eviction of persons who are in unauthorised occupation of public premises or for the recovery of rent or damages from such persons stand null and void. It has become impossible for Government to take expeditious action even in flagrant cases of unauthorised occupation of public premises and recovery of rent or damages for such unauthorised occupation. It is, therefore to considered imperative to restore a speedy machinery for the eviction of persons who are in unauthorised occupation of public premises keeping in view at the same time the necessity of complying with the provision of the Constitution and the judicial pronouncements, referred to above.

This shows that the Public Premises Act has been enacted to deal with the mischief of rampant unauthorised occupation of public premises by providing a speedy machinery for the eviction of persons in unauthorised occupation. In order to secure this object the said Act prescribes the time period for the various steps which are required to be taken for securing eviction of the persons in unauthorised occupation. The object underlying the enactment is to safeguard public interest by making available for public use premises belonging to Central Government, Companies in which the Central Government has substantial interest, Corporations owned or controlled by the Central Government and certain autonomous bodies and to prevent misuse of such premises.

…

It has been urged by the learned Counsel for the petitioner that there is no conflict between the provisions of the Rent Control Act and the Public Premises Act and that both the provisions can be given effect to without one overriding the other. In this regard, it has been pointed out that since no provisions has been made in the Public Premises Act for the termination of the lease, the provisions of the Rent Control Act can be held applicable upto the stage of termination of the lease, and thereafter, proceedings can be initiated for eviction under the provisions of the Public Premises Act. In support of this submission, reliance has been placed on Dhanpal Chettiar's case (supra), wherein it has been held that in view of the special provisions contained in the State Rent Control Acts, it is no longer necessary to issue a notice under Section 106 of the Transfer of Property Act to terminate the tenancy because inspite of the said notice the tenant is entitled to continue in occupation by virtue of the provisions of the said Acts. In the said case, it has been further laid down that the relationship between the landlord and tenant continues till the passing of the order of eviction in accordance with the provisions of the Rent act, and therefore, for the eviction of the tenant in accordance with the law, an order of the competent Court under the Rent Control Act is necessary. This would mean that in order to evict a person who is continuing in occupation after the expiration or termination of his contractual tenancy in accordance with law, two proceedings will have to be initiated. First, there will be proceedings under Rent Control Act before the Rent Controller followed by appeal before the Rent Control Tribunal and revision before the High Court. After these proceedings have ended they would be followed by proceedings under the Public Premises Act, before the Estate Officer and the Appellate Authority. In other words, persons in occupation of public premises would receive greater protection than tenants in premises owned by private persons. It could not be the intention of Parliament to confer this dual benefit on persons in occupation of public premises.

….

69. For the reasons aforesaid, we are unable to accept the contention of the learned Counsel for the petitioners that the provisions contained in the Public Premises Act cannot be applied to premises which fall within the ambit of the Rent Control Act. In our opinion, the provisions of the Public Premises Act, to the extent they cover

premises falling within the ambit of the Rent Control Act, override the provisions of the Rent Control Act and a person in unauthorised occupation of public premises under Section 2(e) of the Act cannot invoke the protection of the Rent Control Act."

18. Now dealing with the first question formulated above with regard to the applicability of the guidelines issued by the Ministry of Urban Development, it is only after the above said judgment of the Supreme Court and in the background of the legal position crystallized through the above judgment, that the Ministry of Urban Development, Government of India, felt the need and initiated the process of framing the guidelines to be followed by various Public Sector Undertakings and Financial Institutions so that they are prevented from arbitrarily using the provisions of Public Premises Act to evict genuine tenants. In the case of Nusli Neville Wadia vs. New India Assurance Co. Ltd 2006(3)MH.L.J decided by the Bombay High Court (which decision was upheld by the Supreme Court on 13.12.2007 as reported in (2008) 3 SCC 279) there is a clear reference to a letter dated 14th January, 1992 written by the Ministry of Urban Development regarding issuance of such guidelines. It would be pertinent to reproduce the relevant para here:

"6. Mr. Dada, brought to our notice a letter dated 14th January, 1992 written by the Ministry of Urban Development, Government of India regarding the issuance of the Guidelines under the Public Premises Eviction Act with regard to public statutory undertakings. The said letter was issued pursuant to the Hon'ble Supreme Court's judgment in the case of Ashoka Marketing Limited v. Punjab National Bank : [1990]3SCR649 , wherein the Hon'ble Supreme Court has directed that the proper Guidelines should be provided to prevent an arbitrary use of the provisions of the Public Premises Eviction Act to evict the genuine tenants from the public premises under the control of Public Sector Undertakings and Financial Institutions. The said letter also reiterates the observations of the Hon'ble Supreme Court that every activity of the Public Authority should be guided by public interest and that they were expected to deal with their tenants distinctly from that of private landlords. The said letter also mentions that several representations against the eviction proceedings have been received by the Ministry for issuance of

Guidelines so that the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 are not indiscriminately used by public statutory organisations to oust the genuine tenants. The said letter also mentions that it has been decided to prescribe for the benefit of all these organisations a set of guidelines in order to prevent use of the provisions of the said Act to evict genuine tenants and to limit the use of summary powers primarily to unauthorised occupants and retired employees. The said letter also proceeds to lay down the broad guidelines indicating that the said Act should primarily be used to evict totally unauthorised occupants or illegal subletees or the employees who have ceased to be in their services and thus ineligible for occupation of the premises. The said letter also indicates that the persons who are in lawful occupation of the premises should not be treated or declared as unauthorised occupants merely on service of notice of termination of tenancy. When a genuine tenant is to be evicted, the genuine grounds available under the Rent Control Act of the State ought to be utilised for resuming possession."

19. A lot of debate has arisen with regard to the enforceability of the said guidelines issued by the Ministry of Urban Development, Government of India in the year 1992 and subsequent various modifications, the last such guidelines being issued in the year 2002. The Division Bench of the Bombay High Court in the case of Persis Kothawali Vs. LIC Mumbai 2004AIHC2613 has very extensively dealt with the issue of applicability and enforceability of the said guidelines on the Public Sector Undertakings and Financial Institutions, especially the LIC. The issue in the said judgment before the Division Bench of the Bombay High Court was an astronomical revision of the rent by the respondent LIC in respect of the tenanted premises in occupation of old tenants. Challenging the arbitrary, unfair and unreasonable revision of the rent, the petitioner placed reliance on the said guidelines issued by the Ministry of Urban Development, Government of India in the year 2002. The Court traced the history of said guidelines of 2002 and the following paras from the said judgment giving brief background of the guidelines are reproduced as under:-

The learned senior counsel for the petitioner briefly traced the history of the above guidelines as under:-

(a) On 14th January, 1992, the Ministry of Urban Development, Government of India had issued detailed guidelines to be followed by Public Sector Undertakings "so that the provisions of the Public Premises Act are not indiscriminately used by these organizations to the detriment of the genuine tenants interest".

(b) The most relevant paragraphs of the said Guidelines are reproduced hereunder:-

"A person in lawful occupation of any premises should not be treated or declared to be an unauthorized occupant merely on service of termination of tenancy, nor should any contractual agreement be wound up by taking advantage of the provisions of the Act. At the same time, it will be open to the public authority to secure periodic revision of rent in terms of the provisions of the Rent Control Act in each State or to move under genuine grounds under the Rent Control Act for resuming possession. In other words, the public authorities would have rights similar to private landlords under the Rent Control Act in dealing with genuine legal tenants. It is necessary not to give room for allegations that eviction were selectively resorted to for the purpose of securing an unwarranted increase in rent, or that a change in tenancy was permitted in order to benefit particular individual or institutions in order to avoid such imputations or abuses of discretionary powers. The release of premises or change of tenancy should be decided at the level of Board of Directors of the Public Undertaking".

(c) The above guidelines indicate that an inter-Ministerial meeting of Central Government was held on 28th August, 1991, to discuss in detail the question as to the use of the Public Premises Act by Public Sector Undertakings for the evicting of genuine tenants. It appears that the Union Cabinet had approved the above guidelines. By a letter dated 20th January, 1992 the Government of India had notified inter alia, the Chief Executives of Public Sector undertakings of the issue of the 1992 guidelines "for information, guidance and strict enforcement of instructions contained therein".

(d) Again by ;its letter dated 5th August, 1992, the Government of India (Ministry of Urban Development) had issued certain clarifications in respect of the 1992 guidelines, which arose in the light of discussions held at an inter departmental meeting convened by the said Ministry on 19th June, 1992 to review the progress of implementation of the 1992 guidelines. These clarifications appear to have been

issued to various Ministers and it was specifically requested "that it may be ensured that the guidelines issued by this Ministry with the approval of the Cabinet in January, 1992 along with the above clarifications are scrupulously followed by the Public Sector Undertakings/Govt. departments under the control of your Ministry".

Clarification NO. 3, clarification NO. 6 and clarification NO. 7 are reproduced hereunder, which are relevant:-

"3. Distinction has to be made between illegal occupation and unauthorized occupation and the PSU's should be allowed to proceed against unauthorized occupants.

6. The Banks/PSU's should be free to evict even authorized tenants if the premises are required for their own bonafide use including use by their employees or redevelopment of the premises or business use.

7. Whether the guidelines issued for the public sector undertakings are uniformally applicable to premises owned by the Government Departments also.

The public sector undertakings are not expected to start eviction proceedings against the genuine tenant merely by service of notice declaring him as unauthorized Occupant so long as he/she does not vitiate any of the tenancy conditions. The Act should be used by the PSU's mainly to evict those in illegal occupation of the premises or unauthorized subtenants. Hence there is no conclusion in the guidelines as interpreted by certain PSU's like public sector banks/LIC etc. Where the tenancy is illegal or where the original tenant has connived at a breach of tenancy conditions, the PSU is within its rights to issue a notice under the provisions of law.

Resorting to PPE Act to vacate authorized tenants merely to secure possession of the premises to accommodate the PSU's employees, or for the commercial redevelopment or to open a branch cannot be agreed as it will be totally against the spirit of the guidelines for protecting interests of genuine authorized tenants. The Model Rent Control Legislation permit revision of present rents to the level of market rents over a period of and annual indexation of rents. After the State Government enact the Amendments, on the lines of the Model Rent Control

Legislation, the PSU's can secure rent revision according to the new formula. As such, there is no justification for seeking eviction or original tenants merely to secure higher rents".

Guidelines issued earlier in respect of public sector undertakings should also apply in regard to the premises owned by Central Government Departments.

(e) The 1992 guidelines have been followed by various Public Sector Undertakings thereafter. However, some undertakings, such as the first Respondent (LIC) had resorted to indiscriminate increases in rent and acted in a manner contrary to the 1992 guidelines. When representations were made to it in that behalf, the Respondent LIC by its letter dated 15th October, 1997 had denied that it was resorting to indiscriminate increase in rent and that it had resorted only to enhance the rents "so as to meet the expenses of maintenance atleast" and that "every care is taken to see that the guidelines issued by the Ministry with regard to P.P. Act is strictly adhered to." By its further letter dated 8th May, 1998 (Exhibit 0-2/page 137), the Life Insurance Corporation in response to a letter addressed to it by Shri Murli Deora, Member of the Lok Sabha, has categorically stated that 'I may, however, state that the matters in regard to increase in rent, transfer of tenancy etc., are being dealt with keeping in mind the very low rent which is being paid by the tenants as compared to the market rent and the return which we expect to receive from the state. We do keep in mind the provisions of the Public Premises Act and the Government guidelines issued in this behalf."

(f) It appears that by an Office Memorandum dated 7th July, 1993, the Ministry of Urban Development sought to advice all Ministries to issue suitable instructions to the PSUs under their control "clarifying that the guidelines under the P.P. Act are meant for the benefit of genuine non-affluent tenants and these are not applicable to large business houses and commercial enterprises" (Exhibit '4' to LIC's Reply/page 18).

(g) It is vital to note that the above clarification is market "Confidential". It was not meant to, and did not, receive publicity and was not intimated to any of the tenants. The learned senior counsel for the petitioner Mr. Chagia submitted that the so-called clarification is entirely devoid of any force of law; and furthermore, that it cannot possibly derogate from the 1992 Guidelines. The purported

clarification is therefore entirely irrelevant to the issue for determination before this Hon'ble Court, namely, the applicability of the Guidelines and their binding force qua LIC.

(h) A letter dated 29th September, 2000 was addressed by the Ministry of Urban Development seeking the intervention of the Ministry of Finance for the issue of instructions to Life Insurance Corporation/Nationalized banks "to strictly adhere to these guidelines and ensure that the allotment of an accommodation is cancelled and provisions of the Public Premises Act, 1971 resorted to only in genuine and legitimate cases and that no genuine tenant should suffer at the hands of the law".

(i) In response to the aforesaid letter, the Ministry of Urban Development passed a Government Resolution dated 30th May, 2002, containing Guidelines to prevent the arbitrary use of powers under the Public Premises Act, by the PSU's, and notified them in the Gazette of India on 8th June, 2002. The guidelines are substantially the guidelines of 1992 with certain changes in form and substance which also disclose application of mind. These 2002 Guidelines, Interalia, provided as under:-

"2. To prevent arbitrary use of powers to evict genuine tenants from public premises and to limit the use of powers by the Estate Officers appointed under Section 3 of the PP(E) Act, 1971, it has been decided by Government to lay down the following guidelines:-

(i) The provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (P.P. (E) Act, 1971) should be used primarily to evict totally unauthorized occupants of the premises of public authorities or sub-letees, or employees who have ceased to be in their fjameshdji

service and thus ineligible for occupation of the premise:

(ii) The provisions of the P.P. (E) Act, 1971 should not be resorted to either with a commercial motive or to secure vacant possession of the premises in order to accommodate their own employees, where the premises "were in occupation of the original tenants to whom the premises were let either by the public authorities or the persons from whom the premises were acquired:

(iii) A person in occupation of any premises should not be treated or declared to be an unauthorized occupant merely on service of notice of termination of tenancy, but the fact of unauthorized occupation shall be decided by following the due procedure of law. Further, the contractual agreement shall not be wound up by taking advantage of provisions of the P.P. (E) Act, 1971. At the same time, it will be open to the public authority to secure periodic revisions of rent in terms of the provisions of the Rent Control Act in each State or to move under genuine grounds under the Rent Control Act for resuming possession. In other words, the public authorities would have rights similar to private landlords under Rent Control Act in dealing with genuine legal tenants;

(iv) It is necessary to give no room for allegations that evictions were selectively resorted to for the purpose of securing an unwarranted increase in rent, or that a change in tenancy was permitted in order to benefit particular individuals or institutions. In order to avoid such imputations or abuse of discretionary powers, the release of premises or change of tenancy should be decided at the level of Board of Directors of Public Sector Undertakings.

(v) All the Public Undertakings should immediately review all pending cases before the Estate Officer or Courts with reference to these guidelines, and withdraw eviction proceedings against genuine tenants on grounds otherwise than as provided under these guidelines. The provisions under the P.P. (E) Act, 1971 should be used henceforth only in accordance with these guidelines.

20. While dealing with the said guidelines, the Division Bench also held a discussion on Section 21 of the Life Insurance Corporation Act which mandates the Life Insurance Corporation to be guided by such direction in the matter of policy involving public interest as the Central Government may give to it in writing. For better appreciation, Section 21 of the Life Insurance Corporation Act 1956 is produced as under:-

Section 21:-

“In the discharge of its functions under this Act, the Corporation shall be guided by such directions in matters of policy involving public interest as the Central

Government may give to it in writing and if any question arises where a direction relates to a matter of policy involving public interest, the decision of the Central Government thereon shall be final."

Besides dealing with the said provision to determine the question as to whether the said guidelines issued by the Ministry of Urban Development have a statutory force or not, the Bombay High Court had also the occasion to examine the judgment of the Division Bench of the Delhi High Court in the case of Uttam Prakash Bansal and Ors. vs Life Insurance Corporation of India and Ors. 2002(100) DLT 297 and the judgment of the Division Bench of Calcutta High Court in Mitra Lina Pvt. Ltd. vs. Life Insurance Corporation of India 1999(2) CLJ 457. It would be relevant to reproduce the following paras from the said judgment as under:-

65. As far as the first issue is concerned, whether the aforesaid 2002 Guidelines have a statutory force or not, the learned counsel for the Respondent-LIC has strongly relied upon the judgment of the Calcutta High Court in the case of Mitra Lina Pvt. Ltyd. V. LIC of India, 1999 (2) Cal LJ 457 and another judgment of the Delhi High Court in the case of Shri Uttam Prakash Bhansal v. LILC of India, 2002 (100) Delhi LT 497. In fact the dElhi High Court has merely referred to te judgment of the Calcutta High Court and has accepted the view of Calcutta High Court to hold that the aforesaid Guidelines do not have a statutory force. It is very relevant to note that in both the above judgments, the respective High Courts were dealing with the unauthorized occupants who were not even protected by either the 1992 Guidelines or by 2002 Guidelines. As observed hereinabove, the Delhi High Court and there is no separate reasoning as to whether the Guidelines have statutory force as per Section 21 of the LIC Act. In that context, if one were to analyse the Calcutta High Court judgment, it is clear that the Mitra Lina who was the LIC's tenant had inducted an illegal licensee without consent of LIC into the premises. Therefore, the Calcutta High Court proceeded on the basis that, to evict such an unauthorized occupant under the Public Premises (Eviction) 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 LIC Act. In both the judgments, i.e. the Calcutta High Court as well as Delhi High Court, it was categorically held that

even if the Guidelines were binding, the action taken by the LIC was not in derogation of the Guidelines, since the action was against the illegal occupants. Therefore, in the present context, we are concerned with the tenant who is in authorized and recorded tenant and there is no termination of tenancy and the issue involved is with regard to the revision and recovery of the rent.

66. As rightly pointed out by Mr. Chagia, Section 21 of LIC Act contemplates that the directions by the Central Government should be in writing and such directions should direct the LIC to discharge its functions and the same should relate to the policy involving the public interest. In the present case, the Respondent LIC in its affidavit dated 11th November, 2003 in paragraph No. 4 has clearly stated "when LIC asked for increased rent in consonance with State's policy, LIC acts in its capacity as a lessor, it is incumbent on LIC to carry on its business and manage its affairs on sound commercial principles…" Similarly, in paragraph No.7 in the affidavit dated 11th November, 2003 in Writ Petition NO. 2516 of 2003, the LIC has also categorically stated that the "overwhelming public interest and the interests of crores of policy holders requires us to revise rent of our properties". If that be so, the LIC cannot turn around and say that they have no statutory force. It would be rather anomalous when repeatedly the Central Govt. For the last 10 years has been issuing letters, circulars etc. and directing various public sector undertakings to strictly adhere to the aforesaid Guidelines and finally the Central Government even thought it fit to issue a Government Resolution on 30th May, 2002 and gazette it on 8th June, 2002. In the above, the directions from Central Government are in writing. The Respondent LIC in its affidavits has admitted that the increase in rent is part of its business and also that there was overwhelming public interest to benefit crores of policy holders. It that be so, all the aforesaid three criteria contained iin Section 21 of LIC Act have been complied with, then the said Guidelines will have to have statutory force. We do not find any substance in the Argument of Mr. Singhvi that the Guidelines will have to issue only under Section 21 of LIC Act and in the instant case as the Guidelines have not been issued under Section 21, therefore, they do not have statutory force. A bare perusal of Section 21 indicates that LIC has to follow the guidelines issued by the Central Government, while LIC is discharging its functions under the Act. The aforesaid Section does not mention that the Central Government will be issuing guidelines under that section. What is important is that LIC shall be guided by the directions

issued by the Central Government, while LIC is discharging its functions under the Act. We do not find any substance that the Guidelines will have to be necessarily issued under Section 21. Hence we hold that 2002 Guidelines have statutory force.

67. With regard to the second issue, even assuming for the sake of arguments that the Guidelines do not have a statutory force, the same are otherwise very clearly binding on the LIC. The aforesaid Guidelines reflects the policy of Union of India and any failure to abide by the Guidelines would be violative of Act. 14 of the Constitution of India. Especially in the list of the Supreme Court judgment in the case of Secretary, Ministry of Chemical& Fertilizers, Govt. of India v. Cipla Ltd. (2003) 7 SCC 1: (AIR 2003 SC 3078), wherein it is held as under:-

4.1 It is axiomatic that the contents of a policy document cannot be read and interpreted as statutory provisions. Too much of legalism can not be imported in understanding the scope and meaning of the clauses contained in policy for maker and the delegate of legislative power cannot at its sweet will and pleasure give a goby to the policy guidelines evolved by itself. In the matter of selection of drugs for price control. The Government itself stressed on the need to evolve and adopt transparent criteria to be applied across the board so as to minimize the scope for subjective approach and therefore, came forward with specific criteria. It is nobody's case that for any good reasons, the policy or norms have been changed or have become impracticable of compliance. That being the case, the Government exercising its delegated legislative power should make a real and earnest attempt to apply the criteria laid down by itself. The delegated legislation that follows the policy formulation should be broadly and substantially in conformity with that policy, otherwise it would be vulnerable to attach on the ground of arbitrariness resulting in violation of Article 14.

4.2 In Indian Express Newspapers (P) Ltd. v. Union of India (AIR 1986 SC 515, Para 73) the grounds on which subordinate legislation can be questioned were outlined by this Court E.S. Venkataramiah, J. observed thus:

"73. A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statue passed by a competent legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not

conform to the statute under which it is made…. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary. In England, the Judges would say Parliament never intended authority to make such rules. They are unreasonable and ultra vires."

68. It is also well settled that even non-statutory guidelines are enforceable whenever they are deviated from, or deviation is against public interest or undermines public purpose. Such non-statutory guidelines can be enforced on the basis of promissory estoppels and legitimate expectation. In this behalf, it is relevant to quote the following judgments of the Supreme Court in Narendra Kumar Maheshwari v. Union of India, 1990 (Supp) SCC 440: (AIR 989 SC 2138, Paras 99 and 100):

106. It may, however, be stated that being not statutory in character, these guidelines are not enforceable. See the observations of this Court in G.J. Fernandez v. State of Mysore (AIR 1967 SC 1753) (Also see R. Abdullah Rowther v. State Transport Appellate Tribunal (AIR 1959 SC 396); Dy. Asstt. Iron & Steel Controller v. L. Manekchand, Proprietor (AIR 1972 SC 935). Andhra Industrial Wroks v. CCI (AIR 1974 SC 1539); K.M. shanmugam v. S. R.V.S. Pvt. Ltd (AIR 1963 SC 1626). A policy is not law. A statement of policy is not a prescription of binding criterion. In this connection, reference may be made to the observations of Sagnata Investments Ltd. v. Norwich Corpn. (1971 (2) QB 614). Also the observations in British Oxygen Co. v. Board of Trade (1971 AC 610). See also Foulkes Administrative Law, 6th edn. At pp. 181-184. In R v. Secretary of State, ex parte Khan (1985 (1) AII ER 40) the Court held that a circular or self made rule can become enforceable on the application of persons if it was shown that it had created legitimate expectation in their minds that the authority would abide by such a policy/guidelines. However, the doctrine of legitimate expectation applies only when a person had been given reason to believe that the State will abide by the certain policy or guideline on the basis of which such applicant might have been led to take certain actions. This doctrine is akin to the doctrine of promissory estoppels. See also the observations of Lord Wilberforce in IRC v. National Federation (1982 AC 617). However, it has to be borne in mind that the guidelines on which the petitioners have relied are not statutory in character. These guidelines are not judicially enforceable. The competent authority might depart from these

guidelines where the proper exercise of his discretion so warrants. In the present case, the statute provided that rules can be made by the Central Government only. Furthermore, according to Section 6(2) of the Act, the competent authority has be power and jurisdiction to condone any deviation from even the statutory requirements prescribed under Sections 3 and 4 of the Act. In Regina v. Preston Supplementary (21975 (1) WLR 624) it had been held that the Act should be administered with as little technicality as possible. Judicial review of these matters, though can always be made where there was arbitrariness and mala fide and where the purpose of an authority iin exercising its statutory power and that of legislature in conferring the powers are demonstrably at variance, should be exercised cautiously and soberly.

107. We would also like to refer to one more aspect of the enforceability of the guidelines by person in the positions of the petitioners in these cases. Guidelines are issued by governments and statutory authorities in various types of situations. Where such guidelines are intended to clarify or implement the conditions and requirements precedent to the exercise of certain rights conferred in favour of citizens or persons and a deviation therefrom directly affects the rights so vested the persons whose rights are affected have a clear right to approach the Court for relief. Sometimes guidelines control the choice of persons competing with one another for the grant of benefits, largesses or favours and, if the guidelines are departed from without rhyme or reason, an arbitrary discrimination may result which may call for judicial review. In some other instances (as in the Ramana Shetty case) (AIR 1979 SC 1628), the guidelines may prescribe certain standards or norms for the grant of certain benefits and a relaxation of, or departure from, the norms may affect persons, not directly but indirectly, in the sense that though they did not seek the benefit or privilege as they were not eligible for it on the basis of the announced norms, they might also have entered the fray had the relaxed guidelines been made known. In other words, they would have been potential competitors in case any relaxation or departure were to be made. In a case of the present type, however, the guidelines operate in a totally different field. The guidelines do not affect or regulate the right of any person other than the company applying for consent. The manner of application of these guidelines, whether strict or lax, does not either directly or indirectly, affect the rights or potential rights of any others or deprive them, directly or indirectly, of any advantages or benefit to

which they were or would have been entitled. In this context, there is only a very limited scope for judicial review on the ground that the guidelines have not been followed or have been deviated from. Any member of the public can perhaps claim that such of the guidelines as impose controls intended to safeguard the interests of members of the public investing in such public issues should be strictly enforced and not departed from; departure therefrom will take away the protection provided to them. The scope for such challenge will necessarily be very narrow and restricted and will depend to a considerable extent on the nature and extent of the deviation. For instance, it debentures were issued which provide no security at all or if the debt-equity ratio is 6000-1 (as alleged) as against the permissible 2:1 (or thereabouts) a Court may be persuaded to interfere. A Court, however, would be reluctant to interfere simply because one or more of the guidelines have not been adhered to even where there are substantial deviations, unless such deviations are, by nature and extent such as to prejudice the interests of the public which it is their avowed object to protect. Per contra, the Court would be inclined to perhaps overlook or ignore such deviations, if the object of the statute or public interest warrant, justify or necessitate such deviations in a particular case. This is because guidelines, by their very nature, do not fall into the category of legislation, direct, subordinate or ancillary. They have only an advisory role to play and non-adherence to or deviation from them is necessarily and implicity permissible of the circumstances of any particular fact or law situation warrants the same. Judicial control takes over only where the deviation either involves arbitrariness or discrimination or is so fundamental as to undermine a basic public purpose which the guidelines and the statute under which they are issued are intended to achieve.

In Dr. Amarjeet Singh Ahluwalia v. State of Punjab, (1975) 3 SCC 503: (AIR 1975 SC 984) Supreme Court held as under:-

9……Now it is true that clause (2) (ii) of the memorandum dated October 25, 1965 was in the nature of administrative instruction, not having the force of law, but the State Government could not at its own sweet-will depart from it without rational justification and fix an artificial date for commencing the length of continuous service in the case of some individual officers only for the purpose of giving them seniority in contravention of that clause. That would be clearly violative of Articles 14 and 16 of the Constitution. The sweep of Articles 14 and 16 is wide and pervasive. These two articles embody the principle of rationality

and they are intended to strike against arbitrary and discriminatory action taken by the 'State'. Where the State Government departs from a principle of seniority laid down by it, albeit by administrative instructions, and the departure is without reason and arbitrary, it would directly infringe the guarantee of equality under Articles 14 and 16. It is interesting to notice that in the United States it is now well settled that an executive agency much be rigorously held to the standards by which it professes its actions to be judged and it much scrupulously observe those standards on pain of invalidation of an act in violation of them. Vide the judgment of Mr. Justice Frankfurter in Vitara v. Seaton (1959 (359) US 535 at pp. 546-47). This view is of course not based on the equality clause of the United States Constitution and it is evolved as a rule of administrative law. But the principle is the same, namely, that arbitrariness should be eliminated in State action."

Hence, we hold that the aforesaid 2002 Guidelines are in any event clearly binding on LIC, and Respondent LIC has to follow the same.

21. Very recently, I also had the occasion to deal with the issue of applicability and enforceability of the said guidelines of 2002 in the case of Kamla Bhargava & Anr. vs Life Insurance Corporation of India & Ors. W.P. (C) No. 12718/2009 decided on 20.1.2011, and after placing reliance on the observation made in the matter of New India Assurance Vs. Nusli Neville Wadia 2008(3)SCC 279 this Court held as under:-

"15.Indisputably, the above guidelines issued by the Central Government under the Public Premises Act in the matter of eviction of tenants cannot override the statutory provisions as they are advisory in nature, the same, however, would not mean that these guidelines should be ignored blatantly by the Government or Government Corporations. In New India Assurance Company (supra), the Apex Court has clearly held that action of the State in terms of the provisions of the Act should not be arbitrary, unreasonable or mala fide."

22. The Apex Court in a plethora of judgments has taken a view that every action of the State or of an instrumentality of the State must be fair, just and

reasonable and not arbitrary, unfair, unbridled or mala fide. In New India Assurance Company (Supra) case also the tenancy of the tenant was terminated whereafter he was declared as an unauthorized occupant and necessary notices under Sections 4 and 7 of the Public Premises Act were issued and without calling upon the lessor to lead evidence, the Estate Officer called upon the lessee/petitioner to lead evidence first and challenging such an order of the Estate Officer, the lessee/petitioner raised an issue that the petitioner could be asked to give his evidence only after the evidence is led by the respondent/lessor. In this case also the eviction of the tenant was sought by the New India Assurance Corporation based on their bona fide requirement and there also the Apex Court had the occasion to deal with the said guidelines of 2002. It would be useful to refer to the following paras from the judgment of New India Assurance Company Ltd vs Nusli Neville Wadia & Anr.2008(3) SCC 279 as under:

"21. A tenant of a public premises although ordinarily does not get any protection from eviction from the tenanted premises under the provisions of the Maharashtra Rent Control Act, 1999, it is accepted that the action on the part of the landlord, which is State within the meaning of Article 12 of the Constitution of India must in this behalf be fair and reasonable. In other words the action of the State in terms of the provisions of the Act should not be arbitrary, unreasonable or mala fide. With that end in view only, and for determining the legal effect arriving thereunder, the Central Government had, from time to time, issued several guidelines. The guidelines so issued are dated 14-1-1992, 5-8-1992, 7-7-1993, 14-7-1993, 23-7-1993, 9-6-1998, 2-9-2002 and 23-7-2003. In terms of the said guidelines, however, a distinction is sought to be made between a tenant who is rich or industrialist, etc. vis-à-vis a person who is poor and uses the tenanted premises only for his residence as would appear from the guidelines dated 23-7-2003, the relevant portion whereof reads as under:

"3. The Government Resolution dated 30-5-2002 embodies the guidelines dated 14-1-1992 for observance by the public sector undertakings. However, clarification was issued vide OM No. 21011/790 Pol.1 IV.H.11 dated 7-7-1993 that the guidelines are meant for genuine non-affluent tenants and these are not applicable to the large business houses and commercial entrepreneurs."

22. Issuance of such guidelines, however, is not being controlled by statutory provisions. The effect thereof is advisory in character and thereby no legal right is conferred upon the tenant. [See (Supp) SCC at 508, Narendra Kumar Maheshwari v. Union of India1; SCC at p. 232, Bhim Singhji v. Union of India2; (SCC para 31), J.R. Raghupathy v. State of A.P.3; Uttam Parkash Bansal v. LIC of India4 and Punjab National Bank v. Lord Krishna Paper Industries5.]

……..

26. The occupants of public premises may be trespassers, or might have breached the conditions of tenancy, or have been occupying the premises as a condition of service, but were continuing to occupy the premises despite cessation of contract of service.

27. However, there may be another class of tenants who are required to be evicted not on any of the grounds mentioned hereinbefore but inter alia on the ground, which requires proof of the fairness and reasonableness on the part of the landlord which may include requirement for its own use and occupation.

28. Furthermore a proceeding may be initiated under Section 4 simplicitor. A composite proceedings may also be initiated both under Sections 4 and 7 of the Act. In the latter category of cases the landlord would be required to establish not only the bona fide need on its part but also quantum of damages to which it may hold to be entitled to, in the event that an order is passed in favour of the establishment.

29. Admittedly in these cases two notices for eviction were issued. If the contention of Mr. Lekhi is correct, the first notice was not required to be withdrawn and the second notice was not required to be issued, specifying the grounds on which the eviction of the respondents were sought for.

30. When an application for eviction is based on such grounds, which require production of positive evidence on part of the landlord, in our opinion, it would be for it to adduce evidence first; more so in a composite application where the evidence is also required to be led on the quantum of damages to be determined by the Estate Officer.

……

50. Except in the first category of cases, as has been noticed by us hereinbefore, Sections 4 and 5 of the Act, in our opinion, may have to be construed differently in view of the decisions rendered by this Court. If the landlord being a State within the meaning of Article 12 of the Constitution of India is required to prove fairness and reasonableness on its part in initiating a proceeding, it is for it to show how its prayer meets the constitutional requirements of Article 14 of the Constitution of India. For proper interpretation not only the basic principles of natural justice have to be borne in mind, but also principles of constitutionalism involved therein. With a view to read the provisions of the Act in a proper and effective manner, we are of the opinion that literal interpretation, if given, may give rise to an anomaly or absurdity which must be avoided. So as to enable a superior court to interpret a statute in a reasonable manner, the court must place itself in the chair of a reasonable legislator/ author. So done, the rules of purposive construction have to be resorted to which would require the construction of the Act in such a manner so as to see that the object of the Act fulfilled; which in turn would lead the beneficiary under the statutory scheme to fulfill its constitutional obligations as held by the court inter alia in Ashoka Marketing Ltd. (supra)."

23. The Apex Court in the case of Jamshed Hormusji Wadia vs Board of Trustees, Port of Mumbai and Anr. (2004)3SCC214, while testing the decision of exorbitant increase in rent of the Bombay Board Trust whether such a decision is violative of Article 14 of the Constitution of India being capricious and unfair held in the following paras as under:-

"14. The Bombay Port Trust is an instrumentality of State and hence an "authority' within the meaning of Article 12 of the Constitution. (See Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay1.) It is amenable to writ jurisdiction of the court. This position of law has not been disputed by either party. The consequence which follows is that in all its actions, it must be governed by Article 14 of the Constitution. It cannot afford to act with arbitrariness or capriciousness. It must act within the four corners of the statute which has created

it and governs it. All its actions must be for the public good, achieving the objects for which it exists, and accompanied by reason and not whim or caprice.

……

18. In our opinion, in the field of contracts the State and its instrumentalities ought to so design their activities as would ensure fair competition and non-discrimination. They can augment their resources but the object should be to serve the public cause and to do public good by resorting to fair and reasonable methods. The State and its instrumentalities, as the landlords, have the liberty of revising the rates of rent so as to compensate themselves against loss caused by inflationary tendencies. They can — and rather must — also save themselves from negative balances caused by the cost of maintenance, payment of taxes and costs of administration. The State, as the landlord, need not necessarily be a benevolent and good charitable Samaritan. The felt need for expanding or stimulating its own activities or other activities in the public interest having once arisen, the State need not hold its hands from seeking eviction of its lessees. However, the State cannot be seen to be indulging in rack-renting, profiteering and indulging in whimsical or unreasonable evictions or bargains.

19. A balance has to be struck between the two extremes. Having been exempted from the operation of rent control legislation, the courts cannot hold them tied to the same shackles from which the State and its instrumentalities have been freed by the legislature in their wisdom and thereby requiring them to be ruled indirectly or by analogy by the same law from which they are exempt. Otherwise, it would tantamount to defeating the exemption clause consciously enacted by the legislature. At the same time the liberty given to the State and its instrumentalities by the statute enacted under the Constitution does not exempt them from honouring the Constitution itself. They continue to be ruled by Article 14. The validity of their actions in the field of landlord-tenant relationship is available to be tested not under the rent control legislation but under the Constitution. The rent control legislations are temporary, if not seasonal; the Constitution is permanent and an all-time law.”

24. In Ashoka Marketing case (supra) while interpreting the explanation of the unauthorized occupation contained in Section 2(g) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, the Hon'ble Apex Court took a view that the definition of Section 2(g) is in two parts i.e. first part deals with the occupation of those who entered the public premises without any lawful authority as well as occupation which was permissive at the inception but then later ceased to be so, while the second part of the definition is inclusive and it covers occupation by those who entered into the occupation legally under some valid authority but their such authority either expired or has been determined in accordance with law. It would be apt to refer to the following para of the Ashoka Marketing case (supra) as under:-

"30. The definition of the expression 'unauthorised occupation' contained in Section 2(g) of the Public Premises Act is in two parts. In the first part the said expression has been defined to mean the occupation by any person of the public premises without authority for such occupation. It implies occupation by a person who has entered into occupation of any public premises without lawful authority as well as occupation which was permissive at the inception but has ceased to be so. The second part of the definition is inclusive in nature and it expressly covers 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. This part covers a case where a person had entered into occupation legally under valid authority but who continues in occupation after the authority under which he was put in occupation has expired or has been determined. The words "whether by way of grant or any other mode of transfer" in this part of the definition are wide in amplitude and would cover a lease because lease is a mode of transfer under the Transfer of Property Act. The definition of unauthorised occupation contained in Section 2(g) of the Public Premises Act would, therefore, cover a case where a person has entered into occupation of the public premises legally as a tenant under a lease but whose tenancy has expired or has been determined in accordance with law."

Hence, so far the occupation of those persons not backed by any legal authority or their permissive possession coming to an end due to the expiry of their employment or on account of lapse or expiry of the period of such permissive user is concerned, there can be no difficulty as in all such cases the onus is on the occupant to show as to how his occupation is authorized even after the cessation of the employment or on the lapse or expiry of the period of licence or permissive user or in a case where the initial occupation itself was unauthorized. But in all other cases where a person had entered into occupation legally and under a valid authority by a creation of tenancy or by any other mode of transfer and where such like possession would have been otherwise protected under the State Rent Acts, the State or any other instrumentality of the State like Public Sector Undertakings, Financial Institutions etc. would be required to prove fairness and reasonableness on its part in initiating proceedings under the Public Premises Act and as per the law laid down by the Supreme Court in the case of New India Assurance Company Ltd vs. Nusli Neville Wadia & Anr. (supra) it would be for these authorities to show as to how they meet the constitutional requirement of Article 14 of the Constitution of India.

25. Another judgment of the Apex Court in Syndicate Bank Vs. Ramachandran & Ors. 2011(1)SCALE368 is of great significance as there also the Hon'ble Apex Court had the occasion to deal with the legality and validity of the said guidelines. Commenting on the enforceability of the said guidelines, the Apex Court observed that the guidelines or the executive instructions which are not statutory in character are not laws and their compliance thereof cannot be enforced through courts. The Apex Court also observed that since the said guidelines were not issued in exercise of any statutory power under the Public Premises Act or any other Statute and even then if there are violations of non compliance with the aforesaid guidelines, the relief claimed by the bank could not be denied by relying upon such guidelines. While taking the said view the Hon'ble Apex Court clearly held that the aforesaid order should not be construed as laying down a proposition that the public sector undertakings and the financial institutions to which the guidelines were addressed could willfully ignore or violate the same. The Court also took a view that if the public sector undertakings and financial institutions are of the view that any of the guidelines are contrary to the provisions of the Act or otherwise unworkable or impracticable they can also seek

modification of the guidelines or have their own internal guidelines. The relevant paras of the said judgment are reproduced as under:

“4. If any executive instructions are to have the force of statutory rules, it must be shown that they were issued either under the authority conferred on the Central Government or a State Government or other authority by some Statute or the Constitution. Guidelines or executive instructions which are not statutory in character, are not 'laws', and compliance thereof can not be enforced through courts. Even if there has been any violation or breach of such non-statutory guidelines, it will not confer any right on any member of the public, to seek a direction in a court of law, for compliance with such guidelines. An order validly made in accordance with a statute (as in this case, the Public Premises Act), cannot be interfered with, even if there has been any transgression of any guidelines, except where it is arbitrary or malafide or in violation of any statutory provision. These are well settled principles (See: Union of India v. S.L. Abbas : 1993 (4) SCC 357, Chief Commercial Manager, South Central Railway, Secundrabad v. G. Ratnam : 2007 (8) SCC 212, and State of U.P. v. Gobardhan Lal : 2004 (11) SCC 402).

5. As the guidelines relied upon in this case were not issued in exercise of any statutory power under the Public Premises Act or any other statute, even if there was violation or non-compliance with the aforesaid guidelines by the Appellant, relief to the Appellant could not be denied by relying upon the guidelines. To do so would amount to reading the guidelines into the statute, which is impermissible? The only 'remedy' of any person complaining of noncompliance with such guidelines, is to bring such violation, to the notice of a higher authority. We therefore hold that the enforcement of any right or exercise of any power by the Appellant, under the Public Premises Act cannot be set at naught by relying upon or referring to the guidelines issued by the Central Government.

6. In this case Ramakrishna Pillai was in occupation of the shop in 1961 when the premises was purchased and he continued in such occupation and paid the rents regularly till 1997. The bank issued a notice on 5.2.1998 demanding him to vacate the premises as it required the property for demolition and reconstructions. As the demand was not met proceedings were initiated for eviction of the unauthorized occupant by the Estate Officer in the year 2002. The petition was resisted by the

legal heirs of Ramakrishna Pillai, by the Respondents by contending that (i) the premises was not a public premises; and (ii) that they had become absolute owners under the provisions of Kerala Land Reforms Act, 1963. Considerable evidence was placed before the Estate Officer and ultimately an order of eviction was passed by the Estate Officer after negativing the contentions of Respondents. The said order of eviction was affirmed by the Appellate Authority. The Respondents did not raise the ground of violation of guidelines either before the Estate Officer or before the Appellate Authority. It was not even raised in the grounds of revision filed before the High Court. Reliance was placed on the guidelines for the first time during arguments in the year 2009 and the High Court proceeded to grant relief to the Respondents as if the guidelines created a right in the Respondents to claim review by the Appellant in regard to its decision to evict them. The High Court has set aside the order of eviction affirmed by the Appellate Authority solely on the ground that the bank had not reviewed the pending case as per Para (v) of the guidelines to find out whether it should be withdrawn, and therefore the order of eviction should be set aside. The order of the High Court being contrary to the well settled principles relating to the enforceability of guidelines, is not sustainable. Even if the High Court felt that a review under para (v) of the guidelines was necessary, it could have directed the Appellant to undertake the exercise pending consideration of the revision petition instead of allowing the revision and setting aside the order of eviction. At all events, the very fact that the Respondents claimed ownership in themselves and denied their relationship and status, should have been sufficient to hold that the Respondents did not deserve any benefit under the guidelines, even if they were enforceable.

7. We may however add that this order should not be construed as laying down a proposition that the public sector undertakings and financial institutions to whom the guidelines were addressed, could willfully ignore or violate the same. Whenever any action is proposed to be taken under the Public Premises Act, the authorities concerned are bound to keep the said guidelines in view, to the extent possible on the facts and circumstances of the respective case. If any public sector undertaking or financial institution is of the view that any of the guidelines are contrary to the provisions of the Act or otherwise unworkable or impractical, they can also seek modification of the guidelines or have their own internal guidelines. What is held in this case is that an unauthorized occupant or tenant against whom

action is initiated under the Public Premises Act, cannot resist the proceedings on the ground of noncompliance with the said guidelines."

In the said case before the Apex Court, the appellant was a Syndicate Bank which had challenged the order passed by the High Court granting relief to the tenant by setting aside the order of eviction on the premise that the said guidelines created a right on the tenant to claim a review with regard to the decision of eviction taken by them. It is in this background of the facts of the said case, the Hon'ble Supreme Court held that the enforcement to any right granted by the Statute cannot be set at naught by relying upon or referring to the guidelines issued by the Central Government. Taking such a view, the court also clearly held that these guidelines cannot be willfully ignored or violated and the authorities are bound to keep the said guidelines in view, to the extent possible on the facts and circumstances of the respective case.

26. As already discussed above, so far the respondent LIC is concerned, they are bound by the mandate of Section 21 of the Life Insurance Act 1956 which clearly envisage that the Corporation shall be bound by such directions in the matter of policy involving public interest as the Central Government may give to it in writing. Certainly, so far the respondent LIC is concerned it cannot take a plea that the said guidelines issued by the Government read with Section 21 of the LIC Act have no binding effect or the same can be ignored as if they do not exist.

27. It would be relevant to mention here that in the case of Kamla Bhargava(supra) also where I had the occasion to deal with somewhat similar case wherein also the order of the Estate Officer and of the Appellate Court was under challenge in the writ petition filed by the legal heirs of an old tenant in occupation of the portion of the same building involved in the present case i.e. Tropical Building, H Block, Connaught Circus, New Delhi and this Court after placing reliance on the above cited judgment of the Apex Court in New India Assurance Company Ltd. vs Nusli Neville Wadia & Anr (supra) and in Dwarkadas Marfatia and Sons vs Board of Trustees of the Port of Bombay (1989) 3 SCC 293 held as under:-

"13.The above observations were reiterated by the Apex Court in the case of New India Assurance vs. Nusli Neville Wadia 2008(3) SCC 279 where augmenting the legal position in Dwarkadas(Supra), it further held that the landlord being a State within the meaning of Article 12 of the Constitution of India, it is not only required to prove fairness and reasonableness on its part in initiating a proceeding but also for it to show that how its actions meet the constitutional requirements of Article 14 of the Constitution of India. In the present case, the petitioners no doubt are guilty of absenting themselves before the learned Estate Officer on various dates, but the said guilt of the petitioners or negligence on their part in comparison with the guilt and conduct of the respondent looks petty and ignorable.

……

15. Indisputably, the above guidelines issued by the Central Government under the Public Premises Act in the matter of eviction of tenants cannot override the statutory provisions as they are advisory in nature, the same, however, would not mean that these guidelines should be ignored blatantly by the Government or Government Corporations. In New India Assurance Company (supra), the Apex Court has clearly held that action of the State in terms of the provisions of the Act should not be arbitrary, unreasonable or mala fide."

28. I may clarify here that in the said case also the tenancy of the petitioners was terminated by the respondent under Section 106 of the Transfer of the Property Act and the reason given by the Estate Officer under Section 4 of the Public Premises Act was the alleged bona fide need of the respondent LIC and the only distinguishing feature in the facts of the said case with that of the present case is that the Rent Negotiating Committee of the respondent had taken a decision to revise the rent of the petitioners which belied the case of the bona fide need put forth by the respondent LIC. In the facts of the present case as well, tenancy of the petitioners was terminated by the respondent under Section 106 of the Transfer of Property Act. There is no other reason given by the respondent to determine the

tenancy of the petitioners except that of putting forth the same reason of bona fide use. The premises in occupation of the petitioners are also part of the same Tropical Building, H-Block, Connaught Circus, New Delhi. As per the correspondence placed on record by the petitioners, an offer was made by the respondent LIC to the petitioners for the surrender of their tenancy No. 106007 and then for consideration of nominal increase in respect of other tenancy No. 106008. Without commenting on the said negotiations, it is quite manifest that the respondent LIC failed to prove their bonafide need of the said tenanted premises for their own use or for the use of their employees. In the notice sent by the respondent under Section 106 of the Transfer of Property Act, the respondent has failed to spell out their alleged bona fide need and similarly in the show cause notice sent by the Estate Officer under Section 4 of the Public Premises Act, the alleged bona fide need has not been specifically spelt out. Likewise even in the evidence adduced by the respondent through one Mr. Ajay Kanth, posted as Branch Inspector in the said Department there is a vague deposition that the premises are required for bona fide use for the officials of the respondent LIC and the said case of the bona fide requirement got completely shattered when the said witness of the LIC in his cross-examination deposed that he cannot say as to what the bona fide requirement of the respondent LIC was, as the same would be for the concerned officers to decide. The learned Estate Officer and similarly the Appellate Court had nowhere discussed the failure of the respondent to prove their bona fide need to seek eviction of the petitioners from the tenanted premises under their occupation. Both the Courts below have given a lot of thrust to the termination notice served by the respondent under Section 106 of the Transfer of Property Act without caring to deal with the vital aspect of determining as to whether the action of the respondent being an instrumentality of the State was fair, honest, genuine and justified on the touchstone of Article 14 of the Constitution of India or not.

29. The husband of the petitioner was an old tenant in respect of both the said premises and the said tenancy devolved upon the present petitioners after his death and the petitioners were accepted as tenants by the respondent LIC. It is not in dispute that the petitioners have been regularly paying the rent of the said tenanted premises under their occupation and the termination of the tenancy of the petitioners was not on account of any kind of default by the petitioners in the payment of the rent. The tenancy of the petitioners was terminated by the

respondent on the ground of bona fide need of the respondent. The respondent has miserably failed to prove their bona fide need to seek eviction of the petitioner from the said tenanted premises. Following the judgment of the New India Assurance Company Ltd. (supra) the action of the respondent in seeking eviction of the petitioners does not meet the Constitutional mandate of Article 14 of the Constitution of India. The action of the respondent does not satisfy the requirements of the test of fairness, reasonableness, which are the basic postulates of Article 14 of the Constitution of India and rather the action of the respondent appears to be totally arbitrary and capricious.

30. The respondent-Life Insurance Corporation of India is an instrumentality of the State and there cannot be any dispute that the actions taken by the respondent-Life Insurance Corporation against any of its lessee/sub-lessee or its employees must not be unreasonable, whimsical, unfair, unjust or tainted with arbitrariness or capriciousness. The Life Insurance Corporation cannot be heard to say that the guidelines of 2002 issued by the Ministry of Urban Development are not of any binding force, as through the said guidelines the Government has sought to achieve a special objective i.e to protect the original and genuine tenants. The said guidelines did not come in the way of these Government bodies to seek eviction of totally unauthorized occupants or subletees or those employees who have ceased to be in their service. The guidelines further mandate that the provision of P.P. Act may not be resorted to by these Government instrumentalities with a commercial motive or to secure vacant possession of the premises in order to accommodate their own employees where such premises were in occupation of the original tenants. It further states that a person in occupation of any premises should not be treated or declared to be unauthorized merely on service of notice of termination of tenancy. So far the revision of rent is concerned, these public authorities have been permitted to secure periodic revision in terms of the provisions of the Rent Control Act applicable in each State and no reasons have been advanced by counsel for the respondent as to why these guidelines should be ignored when actions are contemplated against the original and genuine tenants.

31. In the light of the above discussion, I find merit in the present writ petitions filed by the petitioners and the same are accordingly allowed and as a result thereof the order passed by the learned Estate Officer dated 18.04.2006 and the impugned orders dated 22.05.2007 and 29.10.2009 are hereby set aside.

Sd/-

KAILASH GAMBHIR, J