THE HIGH COURT OF MEGHALAYA

WP(C) No.210/2010

Smti. Chitra Dey,
D/o late Niranjan Das,
Stall No.277 (1st Floor),
Jail Road, Shillong, East Khasi Hills District
Meghalaya. **::::** Petitioner

-Vs-

1. The Shillong Municipal Board,
Bishop Cotton Road, Shillong,
East Khasi Hills District, Meghalaya.

2. The Chief Executive Officer,
Shillong Municipal Board,
Shillong, East Khasi Hills District,
Meghalaya.

3. H.M. Cements Pvt. Ltd.,
represented by the Managing Director,
Shillong. **::::** Respondents.

WP(C) No.211/2010

Smti. Jayshree Ghosal
W/o late Purnendu Kumar Ghosal,
Jail Road Stall No.229 (1st Floor),
Shillong, East Khasi Hills District
Meghalaya. **::::** Petitioner

-Vs-

1. The Shillong Municipal Board,
Bishop Cotton Road, Shillong,
East Khasi Hills District, Meghalaya.

2. The Chief Executive Officer,
Shillong Municipal Board,
Shillong, East Khasi Hills District,
Meghalaya.

3. H.M. Cements Pvt. Ltd.,
represented by the Managing Director,
Shillong. **::::** Respondents.

WP(C) No.213/2010

Madhu Sudhan Paul,
Stall No.234 (1st Floor),

Jail Road, Shillong,
East Khasi Hills District, Meghalaya. **::::** Petitioner

-Vs-

1. The Shillong Municipal Board,
Bishop Cotton Road, Shillong,
East Khasi Hills District, Meghalaya.

2. The Chief Executive Officer,
Shillong Municipal Board,
Shillong, East Khasi Hills District,
Meghalaya.

3. H.M. Cements Pvt. Ltd.,
represented by the Managing Director,
Shillong. **::::** Respondents.

WP(C) No.214/2010

Shri. Pradip Dutta,
Stall No.272 (1st Floor),
Jail Road, Shillong, East Khasi Hills District
Meghalaya. **::::** Petitioner

-Vs-

1. The Shillong Municipal Board,
Bishop Cotton Road, Shillong,
East Khasi Hills District, Meghalaya.

2. The Chief Executive Officer,
Shillong Municipal Board,
Shillong, East Khasi Hills District,
Meghalaya.

3. H.M. Cements Pvt. Ltd.,
represented by the Managing Director,
Shillong. **::::** Respondents.

WP(C) No.164/2012

Shri. Karuna Sindhu Ghosh,
S/o late K.R. Ghosh,
R/o Lower New Colony, Shillong,
East Khasi Hills District, Meghalaya. **::::** Petitioner

-Vs-

1. The Shillong Municipal Board,
Shillong, East Khasi Hills District, Meghalaya.

2. The Chief Executive Officer,
Shillong Municipal Board,

Shillong, East Khasi Hills District,
Meghalaya **::::** Respondents.

WP(C) No.165/2012

Shri. Gopinath Saha,
S/o late D.C. Saha,
R/o Jail Road, Shillong,
East Khasi Hills District, Meghalaya. **::::** Petitioner

-Vs-

1. The Shillong Municipal Board,
Shillong, East Khasi Hills District, Meghalaya.

2. The Chief Executive Officer,
Shillong Municipal Board,
Shillong, East Khasi Hills District, Meghalaya **::::** Respondents.

BEFORE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH
CHIEF JUSTICE (ACTING)

For the Petitioners : Mr. K Paul, Adv.

For the Respondents : Mr. K Baruah, Adv for respdt.No.1&2
Mr. S Sen, Adv for respdt.No.3

Date of hearing : ***30.06.2014***

Date of Judgment & Order : ***19.08.2014***

JUDGMENT AND ORDER

Heard Mr. K Paul, learned counsel for the petitioners, Mr. K Baruah, learned counsel for the respondent No.1 & 2 and Mr. S Sen, learned counsel for the respondent No.3.

2. These writ petitions, assailing the eviction notices issued by the respondent No.2 i.e. Chief Executive Officer, Shillong Municipal Board, Shillong, East Khasi Hills District, Meghalaya, having the same date i.e. 02.07.2010 to each of the writ petitioners for eviction from the Stalls of the Shillong Municipal Board occupied by them for development purposes, are jointly heard for disposal by a common judgment and order.

3. When the hearing of these writ petitions are concluded, learned counsel for the petitioners submitted that there is a possibility of amicable settlement of the disputes between the parties in the present writ petitions and accordingly, prayed for some weeks' time for such amicable settlement. This Court allowed the learned counsel for the petitioners to inform the Court the result of the endeavour made by the parties for settlement of the disputes amongst themselves amicably any time and accordingly, the common judgment of these cases was kept reserved for few weeks, so that the parties may have the chance for amicable settlement. In spite of reserving the judgment for 1½ months, the parties are not informing the Court about the amicable settlement, if there be any; in such circumstances, the Court has no alternative but to decide these writ petitions on merit and accordingly, these writ petitions are disposed of by this common judgment and order.

4. The writ petitioners i.e. (i) Smit. Chitra Dey of WP(C)No.210/2010, (ii) Smti. Jayshree Ghosal of WP(C)No.211/2010, (iii) Madhu Sudhan Paul of WP(C)No.213/2010, (iv) Shri. Pradip Datta of WP(C)No.214/2010, (v) Shri. Karuna Sindhu Ghosh of WP(C)No.164/2012 and (vi) Shri. Gopinath Saha of WP(C)No.165/2012, had entered into agreements i.e. (i) agreement dated 18.03.1999, (ii) agreement dated 09.01.1991, (iii) agreement dated 25.03.1999, (iv) agreement dated 10.01.1991, (v) agreement dated 03.09.1983 and (vi) agreement dated 31.07.1991 respectively with the Shillong Municipal Board (for short 'SMB') for running their businesses on the terms and conditions mentioned in the agreements in the Stalls i.e. (i) Stall No.277 (1st Floor, 140 sq.ft.), (ii) Stall No.299 (1st floor, 150 sq.ft.), (iii) Stall No.234 (160 sq.ft.), (iv) Stall No.272 (1st floor, 150 sq.ft.), (v) Stall No.242 (1st Floor, 100 sq.ft.), and (vi) 105 sq.ft. at the First Floor at the Jail Road respectively. The writ petitioners are not

paying the rents/fees for occupying the said stalls to the SMB for the last many years and the writ petitioners of WP(C)No.210/2010, WP(C)No.211/2010, WP(C)No.213/2010 and WP(C)No.214/2010 are occupying the said stalls without paying the rents/fees i.e. in respect of writ petitioner of WP(C)No.210/2010, last payment of rent/fee for occupying the stall was on 27.03.2009, in respect of writ petitioner of WP(C)No.211/2010, last payment of rent/fee for occupying the stall was in the month of March, 2008, in respect of writ petitioner of WP(C)No.213/2010, last payment of rent/fee for occupying the stall was on 09.04.2009 and in respect of writ petitioner of WP(C)No.214/2010, last payment of rent/fee for occupying the stall was on 08.07.2010. The writ petitioners of WP(C)No.164/2012 and WP(C)No.165/2012 are the habitual defaulters in payments of rents/fees and they also did not pay rents/fees before they were evicted.

The writ petitioners of WP(C)No.164/2012 and WP(C)No.165/2012, had already been evicted in consequence of the impugned notice dated 02.07.2010 and the prayer sought for in those two writ petitions i.e. WP(C)No.164/2012 and WP(C)No.165/2012 are "*issue Rule calling upon the respondents to show cause as to why a writ of mandamus be not issue directing the respondents to forthwith restore the possessions of the stalls with the petitioners*." Therefore, the impugned eviction notice dated 02.07.2010, had already been implemented and executed so far as WP(C)No.164/2012 and WP(C)No.165/2012 are concerned.

5. Only the concise fact sufficient for deciding the writ petitions on merit is noted.

6. It is an admitted case of the parties that the stalls mentioned above which were allowed to occupy by the writ petitioners for running their

businesses belong to the SMB or property of SMB. Under Section 62 of the "Meghalaya Municipal Act, 1973" (for short "the Municipal Act, 1973') the Municipal property includes property of whatever nature or kind which may become vested in the Board, be under its direction, management and control. Section 62 of the Municipal Act, 1973 reads as follows:-

"*Municipal Property*

62. Municipal property – (1) Subject to any reservation made by the State Government all property of the nature hereinafter in this section specified and situated within the municipality shall vest in and belong to the Board and shall, with all property of whatever nature or kind which may become vested in the Board, be under its direction, management and control, that is to say –

(a) all public roads including the soil, the pavements, stones and other materials thereof and all drains, bridges, trees, erection materials, implements and other things provided for such roads;

(b) all public streams, channels, water-courses, springs tanks, reservoirs, cisterns, wells, aqueducts, conduits, tunnels, pipes, pumps and other water-works whether made laid are created at the cost of the Board or otherwise and bridges, buildings, engines, works, materials and things connected therewith or appertaining thereto and also any adjacent land, not being private property, appertaining to any public tanks;

Provided that water-pipes and any water-works connected therewith or appertaining thereto which with the consent of the Board are laid or set up in any street by the owners of any mill, factory, workshop or the like primarily for the use of their employees shall not be deemed to be public water-works by reason of their use by the public;

(c) all public sewers and drains, all works materials and things appertaining thereto and other conservancy works;

(d) all sewage, rubbish and offensive matter collected by the Board from roads, latrines, sewers, cess-pools and other places;

(e) all public lamps, lamps-posts and apparatus connected therewith or appertaining thereto and all public gates, markets, slaughter houses and public buildings of every description which have been constructed or are maintained out of the municipal fund;

(f) all land or other property transferred to the Board by the Government or acquired (by the Board) by gift, purchase or otherwise for local public purposes.

(2) The State Government may, by notification in the official gazette, direct that any property which has vested under sub-S. (1) in the Board shall cease to be so vested, and thereupon the property specified in the notification shall cease to be so vested and the State Government may pass such orders as it thinks fit regarding the disposal and management of such property.

Provided that in case the Board has already invested any money or made any commitment, the State Government shall not pass any order divesting the Board in respect of the property without consulting the Board."

7. The agreements mentioned above, entered into between the parties and the SMB are similar in terms and conditions. As the present writ petitions are to be decided taken into consideration of the terms and conditions of the said agreements, it would be more beneficial to quote one of the agreements hereunder:-

"***LEASE/AGREEMENT***

The Shillong Municipal Board represented by the Chief Executive Officer grants unto you SMTI. CHITRA DEY D/o (Lt) Niranjan Das, of Jail Road, Shillong a Stall No.277 (1st Floor) an area of 140 Sq.ft. (one hundred forty square feet) over the existing Municipal Stalls at Jail Road for business purpose and to observe/comply with and strictly fulfilling the terms and conditions prescribed by the Shillong Municipal Board as may be from time to time be amended by the Board as appearing here-in-below:-

1. That the Lessee shall pay rent @ Rs.280.00 (Rupees two hundred eighty) only per month or Rs.3,360.00 (Rupees three thousand three hundred sixty) only per year. The Shillong Municipality reserve every right to re-assess the Stall rent from time to time;

2. That the Lessee shall use the Stall for her own business of Godown purposes and for no other purpose and it shall not be used for residential purpose;

3. That you are permitted to install electric fittings in the Stall at your own cost provided the Shillong Hydro Electric Co. grants permission and you shall have to obtain separate meter of your own and shall have to pay the monthly consumption of current;

4. That the overall control and superintendence of the said plot of land and the Stall thereon shall remain vested in the Board whose duly authorized official(s) shall at all reasonable hours be entitled to inspect the said stall about its bonafide user its stage of repairs and cleanliness;

5. That the Lessee shall not deal with any other business except the purpose for which the stall is allotted and under no circumstances they shall have right to sublet, transfer or sell the stall or any part of it to anybody;

6. That the Lessee shall have no interest in the said plot of land nor she be deemed to have exclusive possession thereof. Lease shall not be hereditary but on production of a succession certificate the Board may consider cases individually;

7. That the Shillong Municipal Board reserve the right to extend the period of Lease;

8. That on expiry of the Lease, the Lessee shall be given the first preference in case of renewal of the Lease to use the plot of land and the stall thereon for further period provided the Lessee had conformed to all the terms and conditions, rules prescribed thereof during her prior occupation of the plot of land and the stall thereof;

9. That on expiry of the period of Lease, if not renewed or on the revocation thereof under the terms and conditions prescribed herein, the Shillong Municipal Board shall take exclusive and absolute possession of the land and deal with it in such manner as it may deem fit;

10. That the Lessee shall keep the Stall neat and clean and carry out annual repairs and painting at her own cost;

11. That you shall have to obtain the requisite license from the Board on payment of prescribed fees in carrying on such business which the Shillong Municipal Board imposed license fee;

12. That you shall not stock or deal in any dangerous or inflammable articles or any articles prohibited by Law;

13. That the Lessee shall abide by all reasonable rules and regulations that the Board may come up from time to time or adopt for the interest of the Board;

14. That the Lessee shall get the underground water pipe lines if any passing through the site be shifted at her own cost by engaging a Registered Plumber under the overall supervision of the Water Works Department;

15. That in default of your monthly payment of rent as stipulated at above or infringement of any of the conditions appearing hereinbefore shall entail the revocation of the License and the Legal consequences as aforesaid, shall follow;

16. That the Lessee shall abide by the Municipal Rules and Orders issued from time to time and in the event of the breach of any of the terms and conditions hereinbefore stipulated in this Lease it shall be void and liable to be cancelled forthwith.

In witness whereof I do hereunto sign and set my hand this the 18th day of March, '99.

Sd/-
Chief Executive Officer,
Shillong Municipal Board.

Fully understanding and agreeing the terms and conditions embodied I subscribe my hand this the 18th day of March, 1999.

Sd/-
(SMTI.CHITRA DEY)
LESSEE.

Witnesses:-

1. Prananta Dey"

8. On bare perusal of the said agreement, more particularly, conditions No.4, 6 & 15, it is clear that the overall control and

superintendence of the said stalls, shall remain vested to the SMB and the writ petitioners, shall have no interest in the said plots of land/stalls nor they be deemed to have exclusive possessions thereof and also in default of monthly payments of rents/fees or infringement of any of the conditions, the licence shall be revoked and legal consequences shall follow. The notice dated 02.07.2010 was issued by the Chief Executive Officer, SMB to the writ petitioners informing them that the Stalls occupied by them are required to be taken back by the office of the SMB for development purposes and therefore, as per the terms and conditions of the Stalls agreements/allotment orders, the writ petitioners were requested to handover the unencumbered possessions of the Stalls/Space and vacate the same by 15.07.2010. One of the notices dated 02.07.2010 issued to the writ petitioners is reproduced hereunder:-

"*Office Of The*
SHILLONG MUNICIPAL BOARD
Bishop Cotton Road (Opp. Sherwood Bungalow)
Shillong-793001, Meghalaya
http://smb.gov.in

No. SMB/L/315/2010-11/185 Dated Shillong, the 2.7.2010.

To,
SMTI. C. DEY
STALL No.277 1st Floor
Jail Road, Shillong 1.

Sub: Handing over of Municipal Stall at Jail Road, Shillong.

With reference to the subject indicated above, I am to inform you that the Stall occupied by you is required to be taken back by the Office of the Shillong Municipal Board for development purposes. Therefore, as per terms and conditions of the Stall agreement/allotment order you are hereby requested to handover the unencumbered possession of the Stall/Space to this office and vacate the same by 15/7/2010.

Sd/-
Chief Executive Officer,
Shillong Municipal Board"

9. The petitioners further stated that the move of the respondent-Municipality is covered by veil of secrecy designed to benefit a business house and also that the respondent-Municipality had reportedly entered into an agreement with M/s H.M. Cement Pvt. Ltd. (Company for short) for the construction of a commercial complex-cum-Five Star Hotel on the Shillong Municipality premises. The Company had demolished the old office building and barricaded it from all sides by tin sheets and had started ground work for raising the multi-storied-multi million rupee business empires. The writ petitioners further stated that row of small RCC stalls on the eastern side of the Municipal building had been demolished and the entire row is now multi-storied. The occupants of small shops/stalls are running their businesses under the permission of the Municipality. The petitioners also further stated that the respondent-Municipality's impugned action i.e. notice dated 02.07.2010 for vacation of the Stalls is bias and malafide and by taking vague ground of developmental purposes, the respondent-Municipality had short circuited the due process of law.

10. The Chief Executive Officer, Shillong Municipal Board i.e. the respondent No.2 and the respondent No.3 M/s H.M. Cements Pvt. Ltd. filed their separate affidavits-in-opposition. In the affidavit-in-opposition filed by the respondent No.2, it is clearly stated that the writ petitioners have not been paying their rents/fees from the dates mentioned in the aforesaid paras i.e. Para No.4, and they are defaulters in payments of rents/fees and also without paying any rents/fees, the writ petitioners occupied the stalls. The writ petitioners of WP(C)No.164/2012 and WP(C)No.165/2012, who were the habitual defaulters in payments of rents/fees had already been evicted. The Urban Affairs Department, Govt. of Meghalaya, Shillong and the SMB had taken the policy decision to enhance the revenue and also for development of the SMB under PPP Scheme (Public Private Partnership). Accordingly, an

agreement had entered into with the respondent No.3 i.e. M/s H.M. Cements Pvt. Ltd. on 25.06.2010, in order to provide much needed infrastructure and revenue to the SMB and also for the development of municipal area. The said policy decision is also for enhancement of funds for the public service in the interest of public in the municipal area.

11. From the submissions of the learned counsel appearing for the parties, it appears that this Court is called for a decision of the point/issue as to whether or not the said agreements between the parties so called lease deeds/agreements, one of which is quoted above, are lease or licence? (Defined as "license" under Section 52 of the Indian Easements Act, 1882. But "licence" under Oxford Advanced Learner's Dictionary/ U.K. Conventions). Mr. K Paul, learned counsel for the petitioners vehemently submitted that the said agreement is lease and therefore, the revocation of the lease should be in accordance with law and the right under the said lease/agreement is hereditable. To the contra, Mr. K Baruah, learned counsel appearing for the respondents No.1 & 2 contended that since the period/term of the agreement is more than a year, if it is a lease, the procedural requirements as to how the lease is to be made provided under Section 107 of the Transfer of Property Act, 1882 are required to be followed. Lease is defined under Section 105 of the Transfer of Property Act, 1882 and the procedures how the lease is to be made is provided under Section 107 of the Transfer of Property Act, 1882. Rights and liabilities of lessor and lessee are provided under Section 108 of the Transfer of Property Act, 1882. For easy reference, Sections 105, 107 and relevant portions of Section 108 of the Transfer of Property Act, 1882 are quoted hereunder:-

> "***105. Lease defined**.—A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a*

price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Lessor, lessee, premium and rent defined.—The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.

107. Leases how made.- *A lease of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made only by a registered instrument.*

[All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

[Where a lease of immovable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee:]

Provided that the State Government may from time to time, by notification in the Official Gazette, direct that leases of immovable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession.]

108. Rights and liabilities of lessor and lessee.- *In the absence of a contract or local usage to the contrary, the lessor and the lessee of immovable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased:-*

(A) Rights and liabilities of the lessor

(a) The lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, of which the former is and the latter is not aware, and which the latter could not with ordinary care discover;

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(o) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell [or sell] timber, pull down or damage buildings [belonging to the lessor, or] work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto;

(p) he must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes; …….."

12. Section 17 of the Registration Act, 1908 provides that the documents of which registration is compulsory. Section 17 of the Registration Act, 1908 reads as follows:-

"***17. Documents of which registration is compulsory.-*** *(1) The following documents shall be registered, if the properties to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, of the Indian Registration Act 1866, or the Indian Registration Act 1871, or the Indian Registration Act 1877, or this Act came or comes into force, namely:-*

(a) instruments of gift of immoveable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) leases of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

(e) non-testamentary instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property:]

Provided that the [State Government] may, by order published in [Official Gazette], exempt from the operation of this sub-section any lease executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rent reserved by which do not exceed fifty rupees. ….."

13. Undisputedly, the said agreements between the parties were not registered and the procedures for making a lease as provided under Section 107 of the Transfer of Property Act, 1882 were not followed. It is an

admitted case of the parties that no doubt the Indian Easements Act, 1882 is not extended to the State of Meghalaya but the spirit of the Indian Easements Act, 1882 is followed in the State of Meghalaya inasmuch as what is meant by licence and rights and liabilities of the licensee and grantor are decided in the matters/cases arising in the State of Meghalaya by looking into the provisions of Indian Easements Act, 1882 by the Gauhati High Court/Authorities of the State of Meghalaya. Sections 52, 61, 62 & 63 of the Indian Easements Act, 1882 read as follows:-

> "***52. "License" defined.-*** *Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license.*
>
> ***61. Revocation express or implied****.-The revocation of license may be express or implied.*
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> *Illustrations*
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> *(a) A, the owner of a field, grants a license to B, to use a path across it. A, with intent to revoke the license, locks a gate across the path. The license is revoked.*
>
> *(b) A, the owner of a field, grants a license to B to stack hay on the field. A lets or sells the field to C. The license is revoked.*
>
> ***62. License when deemed revoked.-*** *A license is deemed to be revoked –*
>
> *(a) when, from a cause preceding the grant of it, the grantor ceases to have any interest in the property affected by the license;*
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> *(b) when the licensee releases it, expressly or impliedly, to the grantor or his representative;*
>
> *(c) where it has been granted for a limited period, or acquired on condition that it shall become void on the performance or non-performance of a specified act, and the period expires, or the conditions is fulfilled;*
>
> *(d) where the property affected by the license is destroyed or by superior force so permanently altered that the licensee can no longer exercise his right;*
>
> *(e) where the Licensee becomes entitled to the absolute ownership of the property affected by the license;*

(f) where the license is granted for a specified purpose and the purpose is attained or abandoned, or becomes impracticable;

(g) where the license is granted to the licensee as holding a particular office, employment or character, and such office, employment or character ceases to exist;

(h) where the license totally ceases to be used as such for an unbroken period of twenty years, and such cessation is not in pursuance of a contract between the grantor and the licensee;

(i) in the case of an accessory license, when the interest or right to which it is accessory ceases to exist.

***63. Licensee's rights on revocation**.-Where a license is revoked, the licensee is entitled to a reasonable time to leave the property affected thereby and to remove any goods which he has been allowed to place on such property*."

14. The Apex Court, by referring to the judgment rendered by **Lord Denning** in ***Errington v. Errington and Woods: (1952) 1 KB 290: (1952) 1 All ER 149 (CA)***, held in ***Associated Hotels of India Ltd. v. R.N. Kapoor: AIR 1959 SC 1262: (1960) 1 SCR 368*** held (AIR pp.1269-70, para 27) that:

"*27. ……. The following propositions may, therefore, be taken as well established: (1) to ascertain whether a document creates a licence or lease, the substance of the document must be preferred to the form; (2) the real test is the intention of the parties – whether they intended to create a lease or a licence; (3) if the document creates an interest in the property, it is a lease; but, if it only permits another to make use of the property, of which the legal possession continues with the owner, it is a licence; and (4) if under the document a party gets exclusive possession of the property, 'prima facie' he is considered to be a tenant; but circumstances may be established which negative the intention to create a lease." (SCR pp. 384-85 of the Report).*"

15. On perusal of the ratio laid down by the Apex Court in ***R.N. Kapoor's*** case ***(Supra)*** relying on the decision rendered by **Lord Denning** in ***Errington's*** case ***(Supra)***, it is clear that a crucial point for distinction between the lease and licence is if under the document a party gets exclusive possession of the property. The Apex Court in ***Sohan Lal***

Naraindas v. Laxmidas Ragunath Gadit: 1971 (1) SCC 276 had discussed the distinction between the lease and licence and held that the crucial test is if under the document a party gets exclusive possession of the property. Paras 9 & 10 of the *SCC* in ***Laxmidas Ragunath Gadit's*** case ***(Supra)*** read as follows:-

> "*9. Intention of the parties to an instrument must be gathered from the terms of the agreement examined in the light of the surrounding circumstances. The description given by the parties may be evidence of the intention but is not decisive. Mere use of the words appropriate to the creation of a lease will not preclude the agreement operates as a licence. A recital that the agreement does not create a tenancy is also not decisive. The crucial test in each case is whether the instrument is intended to create or not to create an interest in the property the subject-matter of the agreement. If it is in fact intended to create an interest in the property it is a lease, if it does not, it is a licence. In determining whether the agreement creates a lease or a licence the test of exclusive possession, though not decisive, is of significance.* ***Mrs. M.N. Clubwala v. Fida Hussain Saheb and Others: 1964 (1) SCR 270: AIR 1963 SC 1279****.*
>
> *10. The Trial Court regarded exclusive possession of the premises given to the defendant as conclusive of the question whether the loft was in the occupation of the defendant as tenant. The Court observed that on a consideration of the clauses of the agreement it was unable to reach a conclusion whether the agreement was intended to operate as a lease or as a licence but since exclusive possession was given it must be regarded a lease. The High Court considered all the covenants and the attendant circumstances and reached the conclusion that having regard to the exclusive possession given to the defendant it was intended to confer an interest in the loft and on that account the agreement operated as a lease and not as a licence.*"

16. The Apex Court by taking cue of the decision of Lord Denning in ***Errington's*** case *(Supra)* and ***Cobb v. Lane: (1952) 1 All ER 1199 (CA)*** held in ***NewBus-Stand Shop Owners Association v. Corporation of Kozhikode & Anr: (2009) 10 SCC 455*** that the crucial test for distinction between the lease and licence is if under the document a party gets exclusive possession of the property. Paras 18, 19, 20 & 22 of the *SCC* in ***NewBus-Stand Shop Owners Association's*** case *(Supra)* read as follows:-

"*18. Reference in this connection may be made to the decision of the Court of Appeal in* ***Errington v. Errington and Woods: (1952) 1 KB 290: (1952) 1 All ER 149 (CA)****. Lord Denning in deciding the issue whether an agreement is a lease or licence referred to the decision given by Vaughan, C.J. in the seventeenth century in* ***Thomas v. Sorrell: 1673 Vaugh 330: (1558-1774) All ER Rep 107****. In the said judgment (****Sorrell*** *case:* ***1673 Vaugh 330: (1558-1774) All ER Rep 107****), Vaughan, C.J. outlined certain features of lease which are as follows*: ****Ed:*** *As observed in* ***Errington v. Errington and Woods: (1952) 1 KB 290 at pp.296-97****.*

> *"…….. 'A dispensation or licence properly passeth no interest nor alters or transfers property in any thing, but only makes an action lawful, which without it had been unlawful'. The difference between a tenancy and a licence is, therefore, that, in a tenancy, an interest passes in the land, whereas, in a licence, it does not. In distinguishing between them, a crucial test has sometimes been supposed to be whether the occupier has exclusive possession or not. If he was let into exclusive possession, he was said to be a tenant, albeit only a tenant at will (see* ***Doed Tomes v. Chamberlaine: (1839) 5 M & W 14 and Lynes v. Snaith: (1899) 1 QB 486: (1895-99) All ER Rep 997 (DC)****), whereas if he had not exclusive possession he was only a licensee:* ***Peakin v. Peakin: (1895) 2 IR 359****."*

Relying on the said principle, Lord Denning explained that the difference between a tenancy and a licence is that, in a tenancy, an interest passes in the land, whereas, in a licence, it does not.

19. The position has been further elucidated by saying that it has to be ascertained whether the occupier has exclusive possession or not. The learned Judge also explained that the test of exclusiveness sometimes gives rise to misgivings and that the test of exclusive possession is by no means decisive. In the instant case we have found from the conditions of licence that exclusive possession is not given to the members of the appellant Association and possession is always retained with the Corporation. Even though exclusive possession is not a decisive test, but the absence of exclusive possession is certainly one of the indications to show that the agreement is one of the licence and not of lease.

20. Relying on ***Errington: (1952) 1 KB 290: (1952) 1 All ER 149 (CA)****, the Court of Appeal again dealt with this question in* ***Cobb v. Lane: (1952) 1 All ER 1199 (CA)****. Here also Lord Denning held that the distinction between lease and licence has become very important as several Rent Restrictions Acts have come into operation. The learned Judge held whether the agreement is a lease or a licence must depend on the intention*

of the parties. Therefore, in all such cases the following question should be posed by the court:

> *"……. Did the circumstances and the conduct of the parties show that all that was intended was that the occupier should have a personal privilege with no interest in the land?" (All ER p.1202 C of the Report).*

If we follow the said principles in the instant case, we find that what was given to the shop holders was merely a licence and not a lease.

22. If we apply the aforesaid principles in the facts of the case in hand, we are bound to hold that the agreement between the parties merely falls under the category of licence as the licensee is never given the exclusive possession. The Corporation retained the exclusive possession of the shops and this is clear from the conditions of the licence discussed above."

17. It is fairly well settled law that while deciding the types of agreement or interpreting the agreement, the name of the agreement of the terms use "lease" or "licence", "lessor" or "licensor, "rent" or "licence fee" are not decisive factors. The nature of the document is to be determined by finding the real intention of the parties from a total reading of the document and also by considering the surrounding circumstances. Para 27 of the *SCC* in ***NewBus-Stand Shop Owners Association's*** case ***(Supra)*** reads as follows:-

> "*27. In a rather recent judgment of this Court in* ***C.M. Beena v. P.N. Ramachandra Rao: (2004) 3 SCC 595*** *the learned Judges relied on the ratio in* ***Associated Hotels of India Ltd.: AIR 1959 SC 1262: (1960) 1 SCR 368*** *in deciding the difference between lease and licence. In Para 8 of the said judgment, learned Judges held that the difference between lease and the licence is to be determined by finding the real intention of the parties from a total reading of the document, if any, between the parties and also considering the surrounding circumstances. The learned Judges made it clear that use of terms "lease" or "licence", "lessor" or "licensor, "rent" or "licence fee" by themselves are not decisive. The conduct and intention of the parties before and after the creation of relationship is relevant to find out the intention. The learned Judges quoted from the treaties of Evans and Smith on The Laws of Landlord and Tenant and of Hill & Redman on Law of Landlord and Tenant in support of their proposition.*"

18. On bare perusal of the said documents i.e. so called lease/agreement between the SMB and the writ petitioners, it is crystal clear that the exclusive possessions of the said Stalls were never handed over by the SMB to the writ petitioners and the right under the said agreements are not hereditable.

19. For the foregoing discussions, this Court is of the considered view that the said so called lease deeds/agreements between the SMB and the writ petitioners are not lease deed and those are licence. Under condition No.15 of the said licence, the licence shall stand revoked in default of monthly payment of rent/fee or infringement of any of the conditions. Where a licence is revoked, the licensee is entitled to a reasonable time to leave the property and to remove any goods which it has been allowed to place on such property. Accordingly, the writ petitioners shall be entitled to a reasonable time to vacate the Stalls and handed over the unencumbered possessions to the SMB.

20. There is no question of statutory tenant in the case of licence. It is well settled that the statutory tenants are also liable to pay rent. The terms "statutory tenant" denote a tenant whose contractual tenancy has been terminated but who has become entitled to continue to remain in possession by virtue of the protection afforded to him by the statutes in question. Even the statutory tenant/tenant-in-substance has the liabilities to pay rent. The Constitution Bench in ***Gian Devi Anand v. Jeevan Kumar & Ors: (1985) 2 SCC 683*** held (*Paras 15 & 30 of the SCC*) that:

> "*15. We do not consider it necessary to refer to the various English cases and the other English authorities cited from the Bar. The English cases and the other authorities turn on the*

provisions of the English Rent Acts. The provisions of the English Rent Acts are not in pari materia with the provisions of the Act in question or the other Rent Acts prevailing in other States in India. The English Rent Acts which have come into existence from time to time were no doubt introduced for the benefit of the tenants. It may be noted that the term "statutory tenant" which is not to be found in the Act in question or in the other analogous Rent Acts in force in other States in India, is indeed a creature of the English Rent Act. English Rent Act 1977 which was enacted to consolidate the Rent Act 1968, parts III, IV and VIII of the Housing Finance Act, 1972, the Rent Act 1974, sections 7 to 10 of the Housing Rents and Subsidies Act 1975 and certain related enactments, with amendments to give effect to recommendation of the Law Commission, speaks of protected tenants and tenancies in Section1 and defines statutory tenant in Section 2. English Rent Act, 1977 is in the nature of a complete Code governing the rights and obligations of the landlord and the tenant and their relationship in respect of tenancies covered by the Act. As the provisions of the English Act are materially different from the provisions of the Act in question and other Rent Control Acts in force in other States in India, the decisions of the English Courts and the passages from the various authoritative books including the passages from Halsbury which are all concerned with English Rent Acts are not of any particular assistance in deciding the question involved in this appeal. As we have already noticed, the term 'statutory tenant' is used in English Rent Act and though this term is not be found in the Indian Acts, in the Judgments of this Court and also of the various High Courts in India, this term has often been used to denote a tenant whose contractual tenancy has been terminated but who has become entitled to continue to remain in possession by virtue of the protection afforded to him by the statutes in question, namely, the various Rent Control Acts, prevailing in different States of India. It is also important to note that notwithstanding the termination of the contractual tenancy by the Landlord, the tenant is afforded protection against eviction and is permitted to continue to remain in possession even after the termination of the contractual tenancy by the Act in question and invariably by all the Rent Acts in force in various States so long as an order or decree for evictions against the tenant on any of the grounds specified in such Acts on the basis of which an order or decree for eviction against the tenant can be passed, is not passed.

30. These observations were made by a seven-Judge Bench of this Court. It is not doubt true that these observations were made while considering the question of requirement of a notice under section 106 of the Transfer of Property Act before the institution of suit for recovery of possession of premises to which the Rent Act applies. These observations, however, clearly go to establish that mere determination of the contractual tenancy does not in any way bring about any change in the status of a tenant. As aptly observed in this decision, "it will suffice to say that the various State Rent Control Acts make a serious encroachment in the field of

freedom of contract. It does not permit the landlord to snap his relationship with the tenant merely by his act of serving a notice to quit on him. Inspite of the notice, the law says that he continues to be a tenant and he does so, enjoying all the rights of a lessee and is at the same time deemed to be under all the liabilities such as payment of rent etc. in accordance with the law."

21. In the given case, the petitioners have no protection under the Meghalaya Urban Areas Rent Control Act, 1972. The protection under the Meghalaya Urban Areas Rent Control Act, 1972, would be available to the tenant paying rent to the full extent allowable under the Act. In the present case, the petitioners who are only licensees are not even paying the license fees. Section 5 of the Meghalaya Urban Areas Rent Control Act, 1972 reads as follows:-

"***5. Bar against passing and execution of decree and orders for ejecment.*** *(1) No order or decree for the recovery of possession of any house shall be made or executed by any Court so long as the tenant pays rent to the full extent allowable under this Act and perform the conditions of the tenancy:*

Provided that nothing in this sub-section shall apply in a suit or proceedings for eviction of the tenant from the house –

(a) where the tenant has done anything contrary to the provisions of Cl. (m), Cl.(o) or Cl.(p) of S.108 of the Transfer of Property Act, 1882 (Central Act 4 of 1882) or to the spirit of the aforesaid clauses in the areas where the said Act does not apply; or

(b) where the tenant has been guilty of conduct which is a nuisance or an annoyance to the occupiers of the adjoining or neighbouring houses; or

(c) where the house is bona fide required by the landlord either for purposes of repairs or rebuilding, or for his own occupation or for the occupation of any person for whose benefit the house is held or where the landlord can show any other cause which may be deemed satisfactory by the Court; or

(d) where the tenant sub-lets the house or any part thereof or otherwise transfers his interest in the house or any part thereof without permission in writing from the landlord; or

(e) where the tenant has not paid the rent lawfully due from him in respect of the house within a fortnight of its falling due; or

(f) where the tenant has built, acquired or been allotted a suitable residence."

22. This Court is not interfering with the policy decision of the respondents i.e. respondents No. 1 and 2 discussed in the aforementioned paras as much as it is fairly settled that it is neither within the domain of the courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the courts inclined to strike down a policy at the behest of the petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical. The Apex Court in ***Villianur Iyarkkai Padukappu Maiyam v. Union of India & Ors: (2009) 7 SCC 561*** held that:

"*169. It is neither within the domain of the courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the courts inclined to strike down a policy at the behest of the petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical. Wisdom and advisability of economic policy are ordinarily not amenable to judicial review. In matters relating to economic issues the Government has, while taking a decision, right to "trial and error" as long as both trial and error are bona fide and within the limits of the authority. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts.*"

23. The Apex Court also reiterated the ratio laid down in ***Liberty Oil Mills vs. Union of India (2009) 7 SCC 561*** and ***Villianur Iyarkkai Padukappu Maiyam's*** case *(Supra)* in ***Arun Kumar Agarwal v. Union of India & Ors: (2013) 7 SCC 1***. Paras 43, 44, 45, & 46 of the *SCC* in ***Arun Kumar Agarwal's*** case ***(Supra)*** read as follows:-

"*43. In* ***Metropolis Theatre Co. v. Chicago: 57 L Ed 730: 228 US 61 (1913)*** *the Supreme Court of the United States held as follows: (L Ed p. 734)*

"……. *The problems of Government are practical ones and may justify, if they do not require, rough accommodation, illogical, if may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not always discernible; the wisdom of any choice may be disputed or condemned. Mere errors of Government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void. ….*"

44. In ***LIC v. Escorts Ltd: (1986) 1 SCC 264****, this Court held that: (SCC p.344, para 102)*

"*102. …. The Court will not debate academic matters or concern itself with intricacies of trade and commerce*."

The Court held that: (SCC p.344, para 102)

"*102. …. When the State or an instrumentality of the State ventures into corporate world and purchases the shares of a company, it assumes to itself the ordinary role of a shareholder, and dons the robes of a shareholder, with all the rights available to such a shareholder. There is no reason why the State as a shareholder should be expected to state its reasons when it seeks to change the management, by a resolution of the company, like any other shareholder*."

45. In ***Liberty Oil Mills v. Union of India: (2009) 7 SCC 561*** *this Court held that expertise in public and political, national and international economy is necessary, when one engage in the making or in the criticism of an import policy. Obviously, courts do not possess the expertise and are consequently, incompetent to pass judgments on the appropriateness or the adequacy of a particular import policy."*

46. In ***Villianur Iyarkkai Padukappu Maiyam v. Union of India & Ors: (2009) 7 SCC 561*** *this Court held as follows: (SCC p.605, para 169)*

"*169. It is neither within the domain of the courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the courts inclined to strike down a policy at the behest of the petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical. Wisdom and advisability of economic policy are ordinarily not amenable to judicial*

review. In matters relating to economic issues the Government has, while taking a decision, right to "trial and error" as long as both trial and error are bona fide and within the limits of the authority. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts."

24. The Apex Court in ***Ekta Shakti Foundation v. Govt. of NCT of Delhi: 2006 AIR SCW 3601*** held that:

*10. While exercising the power of judicial review of administrative action, the Court is not the appellate authority and the Constitution does not permit the Court to direct or advise the executive in matter of policy or to sermonize any matter which under the Constitution lies within the sphere of the Legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power. (See **Ashif Hamid v. State of J&K (AIR 1989 SC 1899)**, **Shri Sitaram Sugar Co. v. Union of India (AIR 1990 SC 1277**). The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or is violative of the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the Court it cannot interfere.*

11. The correctness of the reasons which prompted the government in decision making, taking one course of action instead of another is not a matter of concern in judicial review and the Court is not the appropriate forum for such investigation.

12. The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering all the points from different angles. In matter of policy decisions or exercise of discretion by the government so long as the infringement of fundamental right is not shown courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the Court cannot interfere even if a second view is possible from that of the Government.

*13.The Court should constantly remind itself of what the supreme Court of the United States said in **Metropolis Theatre Company v. City of Chicago (1912) 57 L Ed 730**. "The problems of Government are practical ones and may justify, if they do not require, rough accommodations, illogical it may be, and unscientific. But even such criticism should not be hastily expressed. What is the best is not always discernible, the wisdom of any choice may be disputed or condemned. Mere*

*errors of government are not subject to our judicial review. [See: **State of Orissa and others v. Gopinath Dash and Others: (2005) 13 SCC 495**].*

25. The Apex Court in ***Sanchit Bansal & Anr. v. Joint Admission Board & Ors: (2012) 1 SCC 157*** held that:

> "*26. This Court has also repeatedly held that courts are not concerned with the practicality or wisdom of the policies but only illegality. **In Directorate of Film Festivals v. Gaurav Ashwin Jain: (2007) 4 SCC 737** this court held: (SCC p.746, para 16)*
>
> > "*16. .... Courts do not and cannot act as appellate authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review*". *(emphasis supplied)*

26. The Apex Court in ***Bangalore Development Authority v. Aircraft Employees' Cooperative Society Limited & Ors: (2012) 3 SCC 442*** held that:

> "*65. The principle which can be deduced from the abovenoted precedents is that while examining challenge to the constitutionality of a statutory provision on the ground of excessive delegation, the Court must look into the policy underlying the particular legislation and this can be done by making a reference to the Preamble, the objects sought to be achieved by the particular legislation and the scheme thereof and that the Court would not sit over the wisdom of the legislature and nullify the provisions under which the power to implement the particular provision is conferred upon the executive authorities.*"

27. It is fairly settled law that it is the State to decide whether the scheme framed by the State would directly or indirectly improves living standards or means of livelihood of the public in the State so long as the scheme comes within the realm of public purpose and monies for the schemes are withdrawn with passing appropriate Appropriation Bill. Judicial interference is permissible when action of Govt. is unconstitutional and not when such action is allegedly not wise. Distribution of State largesse is to be made by the State Govt., there can be distribution of State largesse for the Govt. public welfare scheme. The Apex Court in ***S. Subramaniam Balaji v. State of Tamil Nadu & Ors: (2013) 9 SCC 659*** held that it is the State Govt. who is to decide if the scheme of the State Govt. would directly or indirectly improves living standards or means of livelihood of the public in the State so long as the scheme comes within realm of public purpose, monies for the schemes are withdrawn with passing appropriate Appropriation Bill. The concepts of livelihood and standard of living are bound to change in their content from time to time.

28. It is fairly well settled law that wherever public interest to such a large extent is involved and it may become necessary to achieve an object which serves the public purposes, individual rights may have to give way. The Apex Court in ***Mardia Chemicals Ltd.& Ors. v. Union of India & Ors: (2004) 4 SCC 311*** held (*Para 66 of the SCC*) that:-

> "*66. …… Therefore, wherever public interest to such a large extent is involved and it may become necessary to achieve an object which serves the public purposes, individual rights may have to give way. Public interest has always been considered to be above the private interest. Interest of an individual may, to some extent, be affected but it cannot have the potential of taking over the public interest having an impact on the socio-economic drive of the country. ……..*"

29. For the foregoing reasons, this Court is of the considered view that these writ petitions are devoid of merit and accordingly dismissed. The

writ petitioners of WP(C)No.210/2010, WP(C)No.211/2010, WP(C)No.213/2010 and WP(C)No.214/2010 are to handover the unencumbered possessions of the stalls mentioned above to the respondent No.1-SMB in pursuance of the impugned letter/notice dated 02.07.2010 within a reasonable time of three weeks' from the date fixed by the SMB pursuance to this common judgment and order. It is left with the SMB to take up necessary steps for recovering the arrear fees from the writ petitioners.

30. In the result, these writ petitions are dismissed. However, parties are to bear their own costs.

CHIEF JUSTICE (ACTING)

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