

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble The Chief Justice SUJOY PAUL

&

The Hon'ble Justice PARTHA SARATHI SEN

MAT 1244 OF 2024

CHANDESWHVAR SHAW AND ORS.

-VS-

STATE OF WEST BENGAL AND ORS.

For the Appellants:

Mr. Saptanshu Basu, Sr. Adv.,
Mr. Supratim Dhar, Sr. Adv.,
Mr. Dhananjay Nayak, Adv.

For the Respondent No. 6:

Mr. Bikash Ranjan Bhattacharya, Sr. Counsel,
Mr. Subhankar Nag, Adv.,
Mr. Snehashis Sen, Adv.,
Mr. Abhishek Banerjee, Adv.

For the State:

Mr. K.J. Yusuf, Ld. A.G.P.,
Mr. Parikshit Goswami, Adv.

Hearing concluded on:

29.01.2026

Judgment on:

04.02.2026

PARTHA SARATHI SEN, J. : –

1. In this intra-Court appeal the judgment and order dated 20.06.2024 as passed by the learned Single Bench in WPA 15989 of 2024 is assailed. By the impugned order learned Single Bench allowed the prayer of the writ petitioner

for grant of police help for removal of the unauthorized occupants from the land of the writ petitioner being the Estate Manager (in charge) of Board of Major Port Authority for the Syama Prasad Mookerjee Port, Kolkata.

2. It is pertinent to mention herein that the appellants before this Court were not parties to the said writ petition and thus, a coordinate Bench of this Court by its order dated 28.06.2024 as passed in this appeal permitted the present appellants to challenge the order impugned by filing this intra-Court appeal.
3. At the time of hearing Mr. Basu, learned Advocate appearing on behalf of the appellants at the very outset draws attention of this court to the cause title of the writ petition being WPA 15989 of 2024. It is submitted that though the present appellants are the real aggrieved persons in view of the passing of the impugned order however, the present appellants were not made party respondents in the said writ petition and thus, the impugned order dated 20.06.2024 was practically passed in absence of the present appellants.
4. In course of his argument Mr. Basu also draws our attention to the averments made in the said writ petition before the learned Single Bench. It is submitted that from the averments made in the said writ petition, more specifically in paragraph nos. 4, 5, 6 and 12 it would reveal that it is the specific case of the writ petitioner/ respondent-Port herein that the property of the writ petitioner Port was unauthorizedly occupied by some local persons who are the appellants before this Court. It is further submitted that in view of such admitted position leaned Single Bench ought not to have passed the impugned order in view of the fact that for eviction of an unauthorized

occupant from 'Public Premises' enabling provision is available in the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to as the 'said Act' in short).

5. It is submitted by Mr. Basu that the learned Single Bench while passing the impugned order has miserably failed to visualize that the writ petitioner/respondent-Port has an alternative remedy for eviction of the unauthorized occupants and thus, the learned Single Bench ought to have come to a finding that the writ petition as filed before it is not maintainable on account of availability of alternative remedy. Drawing attention to the annexures of the stay application being I.A. No. CAN 1 of 2024 as filed in connection with the instant appeal it is further submitted by Mr. Basu that from page nos. 144 to 179 of the paper-book it would reveal that the appellants have filed sufficient materials to substantiate that they are in settled possession of the property from where they have been unlawfully evicted with the aid and assistance of the police authorities pursuant to the order of the learned Single Bench. It is further submitted by Mr. Basu that since the present appellants were not given any opportunity of hearing prior to the passing of the order of eviction, a serious miscarriage of justice occurred and therefore, it is a fit case for allowing the instant appeal by setting aside the impugned judgment.

6. It is further submitted by Mr. Basu that the writ petitioner/ respondent-Port filed the aforementioned writ petition suppressing material fact that the present appellants are in settled possession of the said public premises and thus, the impugned order has been obtained by the writ petitioner Port by

fraud with a view to deprive the present appellants from their lawful right to occupy the said public premises. It is further submitted by Mr. Basu that as per the law of the land even a trespasser cannot be evicted forcibly and thus a person even in illegal occupation has to be evicted following the procedure prescribed by law. In support of his argument Mr. Basu placed his reliance upon the judgment of ***Meghmala & Ors. Vs. G. Narasimha Reddy & Ors.*** reported in **(2010) 8 SCC 383**.

7. In course of his submission Mr. Basu also placed his reliance upon the judgment of the Hon'ble Supreme Court in the case of ***M/s. Annamalai Club Vs. Government of Tamil Nadu & Ors.*** reported in ***AIR 1997 SC 3650***. It is submitted that in the case of ***Annamalai Club (Supra)*** the Hon'ble Supreme Court observed that even after determination of license of the Government grant, the Government is not entitled to resume possession unilaterally without taking recourse of law. It is further submitted that in the case of ***Annamalai Club (Supra)*** the Hon'ble Supreme Court also noticed that since the possession of the petitioner was taken not in accordance with law, the liberty was given to the petitioner to avail of any remedy available in law for restoration of his possession.

8. It is further submitted by Mr. Basu that in the event the order impugned is set aside the appellants would avail the remedy for restoration of possession in accordance with law since as per the provisions of Section 27 of the Limitation Act, the appellants' right to recover possession in the public premises is still alive. Placing reliance upon the judgment as passed in the case of ***Kaikhosrou***

(Chick) Kavasji Framji Vs. Union of India & Anr. reported in **(2019) 20 SCC 705** it is further submitted by Mr. Basu that in the said case the Hon'ble Supreme Court had occasioned to consider the various provisions of the said Act and thus came to a finding that under the said Act a remedy is provided which is speedier than the remedy of a suit under the general law however, the provisions of the said Act do not create any new right of eviction.

9. It is submitted further by Mr. Basu that on conjoint perusal of the pleadings of WPA 15989 of 2024 and the impugned order it would reveal that the Estate Officer of the writ petitioner Port adopted a shortcut path for eviction of the appellants ignoring the specific provisions of the said Act which clearly mandates the mode eviction of an unauthorized occupier from public premises. Placing further reliance upon the judgment as passed in the case of **Lallu Yeshwant Singh Vs. Rao Jagdish Singh & Ors.** reported in **1967 SCC OnLine SC 327: AIR 1968 SC 620** it is further argued by Mr. Basu that in the case of **Lallu Yeshwant Singh (Supra)** the Hon'ble Supreme Court reiterated the view that even after expiry of a lease a lessor is not entitled in India to use force to throw out his lessee.

10. It is further submitted by Mr. Basu that from the materials as placed before this Court in this appeal it would reveal that the present appellants have been evicted by the strength of the impugned order not only by force but also without due process of law by an authority which is bound to follow the prescribed procedure for eviction of an unauthorized occupant from a public premises.

11. It is thus submitted by Mr. Basu that it is a fit case for allowing the instance appeal by setting aside the order impugned so as to enable the present appellants to approach the appropriate forum for recovery of possession in the property in question.

12. Per contra Mr. Bhattacharya, learned Senior Advocate appearing on behalf of the writ petitioner/respondent Port at the very outset draws attention of this Court to the cause title of the memo appeal as filed on behalf of the appellants. He also draws attention of this Court to the annexures to the stay application. It is submitted by Mr. Bhattacharya that on comparative study of the cause title of the instant memo appeal and the annexures to the said stay application as filed by the appellants, it would reveal that the present appellants failed to produce any scrap of papers to substantiate that at any material point of time they were in settled possession of the property in question from where they have been evicted. It is further submitted by Mr. Bhattacharya that the present appellants are found to be the residents of the 'Madhu Busty' which is far away from the property in question as would be evident from page no. 257 of the paper-book being Annexure 'H' of the affidavit-in-opposition of the respondent no. 6/ writ petitioner.

13. It is further submitted by Mr. Bhattacharya that sufficient materials have been placed by the writ petitioner/respondent no. 6 that the property in question wherefrom the present appellants were evicted is basically an approach road toward SMPK Centenary Hospital belonging to the writ petitioner Port/respondent no. 6 wherein the present appellants were found to

be encroachers for their hawking business. It is thus submitted by Mr. Bhattacharya that by no stretch of imagination the status of the present appellants can be equated with the unauthorized occupiers within the meaning of Section 2(g) of the said Act.

14. It is further submitted by Mr. Bhattacharya that since by the impugned order the learned Single Bench granted police help for removal of the encroachers from the approach road to the aforementioned hospital keeping in mind the greater interest of the public at large, there is hardly any scope to interfere with the order impugned.

15. Placing reliance upon the judgment of Kerala High Court in the case of **Harris T.K. Vs. Greater Cochin Development Authority** reported in **2023 SCC OnLine Ker 1371** it is submitted by Mr. Bhattacharya that since the appellants before this Court have failed to establish any jural relationship with the writ petitioner Port/respondent no. 6 herein, the appellants being the rank trespassers have got no recognition under the law as far as their illegal occupation is concerned and, therefore, the present appellants are not entitled to any sort of protection to accord solemnity of illegal use.

16. In course of his argument Mr. Bhattacharya further places his reliance in the judgment as passed in the case of **Janak Singh Yadav Vs. State of U.P. Ministry of Irrigation, U.P. Govt. Lucknow and Ors.** reported in **2005 SCC OnLine All 594 : AIR 2005 All 342**. It is contended that since the present appellants have miserably failed to establish their right to retain

the possession they are not entitled to any equitable relief. It is thus submitted by Mr. Bhattacharya that it is a fit case for dismissal of the instant appeal.

17. Mr. K.J. Yusuf, learned A.G.P. appearing on behalf of the respondent /State in course of his submission contended that in terms of the order impugned necessary police assistance was given to the writ petitioner Port/respondent no. 6 herein and all encroachers have been removed in the meantime.

18. We have meticulously perused the entire materials as placed before us. We have given our due consideration over the submissions of the learned Advocates in the contending parties.

19. For effective adjudication of the instant appeal we at the very outset propose to look to some of the provisions of the said Act.

20. Section 2(c) of the said Act is as under:

“(c) "premises" means any land or any building or part of a building and includes-

(i) the garden, grounds and outhouses, if any, appertaining to such building or part of a building, and

(ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof;”

21. Section 2(e) of the said Act is quoted hereinbelow in verbatim:

“2(e) "public premises" means-

(1) any premises belonging to, or taken on lease or requisitioned by, or on behalf of the Central Government, and includes any such premises which have been placed by that Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1980 (61 of 1980), under the control of the Secretariat of either House

of Parliament for providing residential accommodation to any member of the staff of that Secretariat;

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

(i) any company as defined in section 3 of the Companies Act, 2013 (18 of 2013), in which not less than fifty-one per cent. of the paid up share capital is held by the Central Government or any company which is a subsidiary (within the meaning of that Act) of the first-mentioned company;

(ii) any corporation (not being a company as defined in section 3 of the Companies Act, 2013 (18 of 2013), or a local authority) established by or under a Central Act and owned or controlled by the Central Government;

(iii) any company as defined in clause (20) of section 2 of the Companies Act, 2013 (18 of 2013) in which not less than fifty-one per cent. of the paid up capital is held partly by the Central Government and partly by one or more State Governments and includes a company which is a subsidiary (within the meaning of that Act) of the first-mentioned company and which carries on the business of public transport including metro railway.

Explanation.--For the purposes of this item, "metro railway" shall have the same meaning as assigned to it in clause (i) of sub-section (1) of section 2 of the Metro Railway (Operation and Maintenance) Act, 2002 (60 of 2002);

(iiia) any University established or incorporated by any Central Act,]

(iv) any Institute incorporated by the Institutes of Technology Act, 1961 (59 of 1961);

(v) any Board of Trustees or any successor company constituted under or referred to in the Major Port Trusts Act, 1963 (38 of 1963);

(vi) the Bhakra Management Board constituted under section 79 of the Punjab Reorganisation Act, 1966 (31 of 1966), and that Board as and when re-named as the Bhakra-Beas Management Board under sub-section (6) of section 80 of that Act;

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

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

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

(i) any premises belonging to the "[Council as defined in clause (9) of section 2 of the New Delhi Municipal Council Act, 1994 (44 of 1994) or Corporation or Corporations notified under sub-section (1) of section 3 of the Delhi Municipal Corporation Act, 1957 (66 of 1957), of Delhi, or any Municipal Committee or notified area committee;

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

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

(iv) any premises belonging to, or taken on lease by, or on behalf of any Government company as defined in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013). Explanation. For the purposes of this clause, the expression, "State Government" occurring in clause (45) of the said section shall mean the Government of the National Capital Territory of Delhi.

(4) any premises of the enemy property as defined in clause (c) of section 2 of the Enemy Property Act, 1968 (34 of 1968)."

22. Section 2(g) of the said Act is quoted hereinbelow in verbatim:

"2(g) "unauthorised occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was

allowed to occupy the premises has expired or has been determined for any reason whatsoever.”

23. Section 27 of the Limitation Act, 1963 is quoted hereinbelow in verbatim:

“S. 27. Extinguishment of right to property.—*At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.”*

24. Article 64 of the Limitation Act is as under:

Description of Suit	Period of limitation	Time from which period beings to run
<i>64. for possession of immovable property based on previous possession and not on title, when the plaintiff while in possession of the property has been dispossessed.</i>	<i>Twelve years</i>	<i>The date of dispossession.</i>

25. Keeping in mind the aforementioned legislative provisions of the said Act as well as the Limitation Act of 1963 if we look to the factual matrix as involved in the instant appeal it appears to us that it is the specific case of the writ petitioner Port/respondent no. 6 herein that the writ petitioner Port proposed to set up a new multispecialty hospital building at their premises and for approaching the said hospital the approach road and its pavements are required to be kept free and clean. It further appears to us that it was further specific case of the writ petitioner before the learned Single Bench that the approach road that is Helen Keller Sarani was found to be encroached by unauthorized occupiers at the behest of the local political party over which the

said unauthorized occupiers have got no right, title and interest and thus finding it difficult to repair the same, the writ petitioner Port/respondent no. 6 herein approached the learned Single Bench with a direction upon the police authorities to take appropriate steps for removal of the said encroachment.

26. We have meticulously perused the averments made by the appellants in the memo of appeal including the grounds of appeal as well as the averments made in the stay application. As rightly pointed out by Mr. Bhattacharya that in the pleadings of the said stay application, the appellants have categorically stated that they are the residents of 'Madhu Busty' and that they are occupying the land in question for more than 35 years. Apart from that, no other averments have been made by the present appellants with regard to the nature of land over which they claimed their unauthorized occupation.

27. At this juncture if we again look to the definition of "premises" within the meaning of Section 2(c) of the said Act, it appears to us that the approach road (Helen Keller Sarani herein) by no stretch of imagination comes under the purview of the definition "premises" within the meaning of Section 2(c) of the said Act. In view of such we have no hesitation to hold that the present appellants have miserably failed to prove that they are in unauthorized occupation of any premises within the meaning of Section 2(c) of the said Act or of any public premises within the meaning of Section 2(e) of the said Act. As rightly pointed out by Mr. Bhattacharya the annexures to the said petition as filed in connection with the instant appeal do not indicate that the present

appellants are in unauthorized occupation in relation to any public premises even prima facie.

28. In view of such we have no hesitation to hold that the Estate Officer of the writ petitioner Port/respondent no. 6 herein is not at all in obligation to initiate a proceeding for eviction after compliance of provisions of Sections 4, 5, 5A and 5B of the said Act.

29. It is pertinent to mention herein that after passing of the impugned order dated 20.06.2024, the said writ petition was again taken up for hearing by the learned Single Bench on 26.06.2024 when the present appellants approached the learned Single Bench as interveners but peculiarly enough no formal application and vakalatnama which gives them right of audience has been filed on behalf of the present appellants before the learned Single Bench claiming their unauthorized occupation over the said property as well as seeking protection from eviction ventilating the violation of provision of the said Act.

30. We are conscious that in an intra-Court appeal impugning the order of a writ Court, we are not supposed to enter into disputed questions of facts since like a writ Court this Division Bench lacks jurisdiction to determine such factual dispute.

31. In considered view of this Court the reported decision of **Lallu Yeshwant Singh (Supra)** as cited from the side of the appellants is distinguishable from the facts and circumstances of the instant appeal in view of the fact that no material could be placed before this Court to substantiate any jural relationship between the appellants and the writ petitioner Port/respondent no.

6 herein. In further considered view of ours the reported decision of ***Annamalai Club (Supra)*** is also distinguishable from the facts and circumstances of the instant appeal, in view of the fact that the appellants have miserably failed to prove their alleged unauthorized occupation over a public premises within the meaning of Section 2(e) of the said Act.

32. In view of such the writ petitioner Port/respondent no. 6 herein was under no obligation to take recourse to the provisions of the said Act for eviction of the present appellants. On such score, the reported decision of ***Kaikhosrou (Chick) Kavasji Framji (Supra)*** is distinguishable from the facts and circumstances as involved in the instant appeal.

33. At this juncture, if we look to the provisions of Section 27 of the Limitation Act, 1963 vis-à-vis Article 64 of the self-same Act, it appears that the time limit for filing a suit for recovery of possession is 12 years from the date of dispossession when the suit is based on previous possession of the plaintiff and not on title. In such a case, in the event the period of limitation is over, the right to such property of the plaintiff stood extinguished. Though Mr. Basu in course of his argument strongly contended that in the event the order impugned is set aside, his clients may avail the benefit of the aforementioned statutory provisions of the Limitation Act, however we are not at all convinced with such submission in view of the fact that we have already noticed that no materials, even prima facie, could be established that the appellants are in lawful and settled possession of any public premises within the meaning of Section 2(e) of the said Act.

34. In our considered view, the status of an ‘unlawful occupant’ of a ‘public premises’ in terms of the provisions of Sections 2(g) and 2(e) of the said Act are quite distinguishable from the ‘encroachers’ of a pathway and thus, the present appellants have miserably failed to substantiate that their valuable rights, be it legal, constitutional or fundamental have been violated.
35. In view of the discussion made hereinabove we find no merit in the instant appeal and accordingly the instant appeal is dismissed. With the dismissal of the instant appeal all pending interlocutory applications are also dismissed. There shall be however no order as to cost.
36. Urgent photostat certified copy, if applied for, be given to the parties on completion of usual formalities.

I agree.

(SUJOY PAUL, CJ.)

(PARTHA SARATHI SEN, J.)