

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

BEFORE:

The Hon'ble Mr. Justice Ravi Krishan Kapur

WPA NO.8341 of 2021
(Via Video Conference)

Tolaram (India) Limited & Anr.
Vs.
The Union of India & Ors.

For the petitioner : Mr. Debashis Kundu

For the Union of India : Mr. Y. J. Dastoor
Mr. R. Bhattacharya

Heard on : 12.07.2021, 26.07.2021

Judgment on : 04.08.2021

Ravi Krishan Kapur, J.:

1. The petitioner assails a notice dated 7 January, 2021 ("the impugned notice") issued by the Assistant Custodian of Enemy Property, the respondent no.3, inter alia directing that Premises no.B-15, Garden Reach Road, Kolkata-700024 ("the premises") be declared to be a 'public premises' under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 ("the Act").
2. The premises measures approximately 19 bighas, 13 kattahs and 14 chittaks. In other words, the area of the premises is approximately 20 bighas more or less. It is alleged on behalf of the petitioner that the

premises falls within the purview of the Enemy Property Act, 1968. On 1 January, 2009, a formal lease agreement was executed by and between the Custodian of Enemy Property, Mumbai (the respondent no.2) and the petitioner company whereby the respondent no.2 granted a lease to the petitioner company for a period of 36 months at a monthly rent of Rs.20000/- only commencing from 1 January, 2009. It is difficult in words to describe the bounty thus leased out to the petitioner for a princely sum of Rs.20,000/- only. It is also alleged that on 1 January, 2012 there was a second renewal of the said lease granted by and between the petitioner and the respondent no.2 which has also clearly expired by efflux of time. Thereafter, it is alleged by the petitioners that they had handed over a cheque as advance payment of the lease in respect of the premises for the month of January 2021 and the same was encashed by the respondents. However, a subsequent cheque dated 04.02.2021 for a sum of Rs.24,311/- only was forwarded sometime in February, 2021 was admittedly not encashed and was sought to be refunded by the respondent no.2.

3. On 7 January, 2021 the respondent no.3 issued the impugned notice whereby the premises was declared to be a 'public premises' by the Competent Authority and the petitioner company was directed to handover vacant possession of the premises failing which the respondent would initiate proceedings under the Act for eviction of the petitioner company. It is also alleged that a jural relationship came into

existence between the petitioner company and the respondent no.2 of lessor and lessee and the same is subsisting for a period of three years beginning from 7 January, 2021. It is further contended that there are no grounds to classify the premises as a 'public premises' and no proceedings ought to be initiated under the Act against the petitioner company.

4. On behalf of the respondent Union, it is submitted that the petition is not maintainable on the ground that the petitioner has a statutory, alternative and efficacious remedy under the provisions of the Act. It is further contended on behalf of the respondent Union that by filing this petition, the petitioners are only seeking to thwart and procrastinate the proceedings under the Act.
5. I find from the impugned communication dated 7 January, 2021 that it only declares the premises to be a 'public premises' and that in the event the petitioner does not hand over possession of the premises there is a threat of initiation of the proceedings under the Act. I also find that Section 2(4) of the Act clearly defines premises to include any premises which is classified as "enemy property" as defined in Section 2(d) (c) of the Enemy Property Act, 1968. It is apparent that the proceedings are at a nascent stage and there has been no final adjudication of any kind whatsoever by the respondent authorities. In fact, on a combined reading of Sections 2, 4, 5, 8, 9, 10 and 15 of the Act, I find that the Act provides for a self-contained Code insofar as eviction of unauthorised

occupants from public premises are concerned and this appears to be the cause for the petitioners anxiety.

6. Ordinarily, a High Court does not entertain a writ petition under Article 226 when the petitioner has an alternative remedy available to them. In fact, a Writ Court would be loath to exercise authority unless exceptional circumstances are cited. Such exceptional circumstances are, (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of natural justice; or (iii) the orders of proceedings are wholly without jurisdiction or the vires of an Act is challenged. In the instant case, I am of the view that the petitioners have been unable to make out any exceptional circumstances (far less any circumstances) warranting exercise of jurisdiction of the Writ Court. Accordingly, I find that the petitioner has an available statutory, alternative and efficacious remedy under the Act. In view of the aforesaid, the writ petition stands dismissed.
7. The petitioners are left free to urge all grounds that may be available to them in law in the proceedings before the Estate Officer should any such proceeding be initiated against them. I clarify that there is no embargo on the respondent authorities in bringing the matter before the Estate Officer with utmost expedition. All points are left open to be decided by the Estate Officer without being influenced by any observation or finding in this order.

8. Accordingly, WPA 8341 of 2021 stands dismissed. There shall be no order as to costs.
9. Urgent certified photostat copies of this judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Ravi Krishan Kapur, J.)