

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

BEFORE:

The Hon'ble Mr. Justice Ravi Krishan Kapur

W.P.A.10632 of 2021

Varun Jain

-vs-

The Union of India & Ors.

For the petitioner : Mr. Suddhasatva Banerjee,
Mr. Shashwat Nayak,
Mr. Aniruddha Dutta,

For the Railway Authority : Mr. Subhankar Chakraborty,
Mr. Saptashi Bhattacharjee,

Hearing concluded on : 22.07.2021, 04.08.2021

Judgment on : 14.09.2021

Ravi Krishan Kapur, J.:

1. The petitioner assails a show cause notice dated 26 March, 2021 (“the impugned notice”) issued by the Estate Officer, South Eastern Railways, Kharagpur under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (“the Act”).
2. The facts of this case pertain to a plot of land being Plot No. TE-137 situated Gole Bazar, Kharagpur, District-Paschim Medinipur (“the premises”). Admittedly, the premises is owned and managed by the respondent Railway Board. Initially, by a license the premises was licensed to one Noor Mohammad (since deceased) exclusively for

commercial use. Thereafter, in or about 1985 the said Noor Mohammad executed a Power of Attorney in favour of one Mahendra Kumar Jain (since deceased) for the purposes of carrying on distributorship business of kerosene oil from the premises. Subsequently, it is alleged that there was a sale of the premises by and between the said Mahendra Kumar Jain and his grandson, the petitioner no.1 for a consideration of Rs.5,00,000/-. It is alleged that the said Mahendra Kumar Jain also executed a Power of Attorney dated 30 January, 2013 in favour of the petitioner no.1 authorising the petitioner no.1 to use the premises for the purposes of running the said business in the name and style of M/s. Jain Traders. There have been several attempts by the petitioner no.1 to have the premises mutated in his name but admittedly there has been no mutation of the premises in favour of the petitioner no.1 till date. It is further alleged that the petitioner had written several different letters to the authorities seeking redressal of his grievances. It is also alleged that the Power of Attorney by the said Noor Mohammad has never been revoked at any point of time and the same is still valid, continuing and binding till date. It is also alleged that the petitioner and his predecessor-in-interest have continuously paid rent in respect of the premises to the respondent Railways Authorities and thus a valuable right has accrued in favour of the petitioner. Subsequently, the respondent no.5 issued the impugned notice directing the petitioner to show cause and justify the basis of his occupation in the premises. By

a further letter dated 18 February, 2021 the petitioner was held to be an “unauthorised occupant” and proceedings under the Act have been initiated against the petitioner. Hence this petition.

3. It is submitted that the petitioner is not an unauthorised occupant and has a lawful right in the premises which has also been recognised by the Railway Authorities. It is also submitted that the petitioner has obtained an indefeasible right in the premises from the original licensee and cannot be treated as an unauthorised occupant. It is further submitted that the respondent authorities have been fully aware of the rights of the petitioner and a subsisting legal relationship has been created in view of the fact that the respondent authorities have received occupational charges from the petitioner.
4. On behalf of the respondent authorities, it is submitted that in view of the clear embargo contained under the provisions of the Act, the petition is not maintainable and is liable to be dismissed. It is also submitted that the petitioner is now participating in the proceedings initiated under the Act and all questions raised by the petitioner ought to be adjudicated by the Estate Officer. Accordingly, there is no scope for entertaining the petition and the same is liable to be dismissed on the ground that the petitioner has an alternative, efficacious statutory remedy.
5. At the outset, it is fundamental that the remedy under Article 226 of the Constitution of India is in general discretionary. Ordinarily, a Writ

Court loathes to exercise its jurisdiction when the petitioner has an alternative remedy available to him unless exceptional circumstances are cited. The well settled exceptions are a) where the petitioner seeks enforcement of any of his fundamental rights, b) where there is failure of the principles of natural justice, or c) where the orders in the proceedings are wholly without jurisdiction or the *vires* of an Act has been challenged. The Act is a self contained Code and provides that the Estate Officer has sufficient powers to adjudicate all issues raised by the petitioner. This would also appear from a plain reading of Sections 2(g), 4, 5, 8, 9, 10 and 15 of the Act. Article 226 was never intended to circumvent statutory procedures. Moreover, a mere show cause notice does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed can the rights of the party be said to be infringed. Accordingly, I find that there are no grounds whatsoever which justify or warrant entertaining this petition. I am of the view that there are no exceptional grounds warranting exercising any discretion in favour of the petitioner. The attempt on the part of the petitioner to raise the issue as to whether the petitioner is an 'authorised' or 'unauthorised' occupant is in my view a question fit to be assessed exclusively by the Estate Officer.

6. In view of the aforesaid WPA 10632 of 2021 is dismissed. However, there will be no order as to costs. The petitioner is free to urge all grounds which may be available to him in accordance with law before

the Estate Officer. The Estate Officer is directed to conclude the proceedings as expeditiously in accordance with law. It is needless to mention that the Estate Officer will not be bound by any observation or finding in this order.

7. Urgent certified photostat copy of this judgment, if applied for, be given to the parties upon compliance of requisite formalities.

(Ravi Krishan Kapur, J.)