

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

**WPO No.1276 of 2022
IA No.GA 1 of 2022
Central Warehousing Corporation
Vs.
State of West Bengal and others
With
WPA No.7972 of 2022**

**M/s. Bharat Express
Vs.
Central Warehousing Corporation and others**

For the petitioner	:	Mr. Samrat Chowdhury
For the applicant in IA.GA No.1 of 2022	:	Mr. Tapas Kr. Manna, Ms. Anindita Majumder
For the State	:	Mr. Manoj Malhotra, Mr. Suman Dey
Hearing concluded on	:	05.07.2022
Judgment on	:	12.07.2022

Sabyasachi Bhattacharyya, J:-

1. The Estate Officer, Central Warehousing Corporation (CWC), by a composite order dated February 15, 2020 passed under Sections 5 and 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short, "the PP Act"), directed eviction of the writ petitioner in WPA 7972 of 2022, namely, M/s Bharat Express and payment of a sum of Rs. 13,34,580 /- with interest as rental dues/license fees. It was recorded in

the order that despite getting several opportunities the writ petitioner did not contest the proceedings.

2. Such order was not complied with by the petitioner. The CWC filed a writ petition bearing WPO 1276 of 2022, primarily complaining of police inaction in implementing the eviction order of the Estate Officer. Vide order dated March 14, 2022, the writ petition was disposed of by directing police assistance to be given to the CWC and its agents in implementing the order dated February 15, 2020 in respect of the disputed property.
3. An appeal, bearing APO 38 of 2022, was preferred against the said order dated March 14, 2022. In the appeal, for the first time, the judgment debtor/appellant contended that the original proprietor of the judgment debtor concern had died prior to the order dated March 14, 2022 and that no notice of the writ petition had been served on the judgment debtor.
4. The appeal was disposed of on April 8, 2022 by a Division Bench, granting liberty to the appellant to file an appropriate application for recall in the writ petition; if so filed, the same was to be considered and decided in accordance with law.
5. Accordingly, G.A. 1 of 2022 was filed in connection with WPO 1276 of 2022.
6. Soon thereafter, the judgment debtor filed a writ petitioner bearing WPA No. 7972 of 2022 against the parent order of eviction dated February 15, 2020.

7. G.A. 1 of 2022 and WPA 7972 of 2022 are heard together and being hereby disposed of.
8. The first question raised by learned counsel for the judgment debtor/writ petitioner is whether the PP Act is applicable at all to the disputed premises. The term “public premises” as defined in Section 2 (e) of the PP Act contemplates premises “belonging to, or taken on lease or requisitioned by” the Central Government or the other entities mentioned therein. Such criterion, it is submitted, is not satisfied in the present case. By placing reliance on Annexure P-3 to the writ petition, that is, WPA 7972 of 2022, it is argued that the said notice to de-hire the disputed warehouse dated November 26, 2018, published by the CWC, mentions Kolkata Port Trust as “lessor” in respect of the premises. So, it is not owned by the CWC.
9. Upon hearing learned counsel for the parties and scrutinising the materials on record, it is evident that the CWC is a corporation and a Public Sector Undertaking under the governance and control of the Ministry of Consumer Affairs, Food and Public Distribution of the Central Government, operating primarily to provide storage facility of food grains and other notified commodities under the Warehousing Corporation Act, 1962. The limited storage licence granted to the judgment debtor was duly terminated by the CWC, its licensor, rendering the judgment debtor an unauthorised occupant within the purview of the PP Act.
10. Even if the Kolkata Port Trust was a lessor and the CWC a lessee, such jural relationship squarely makes the premises “public premises” in

terms of Section 2 (e) (2) (ii) of the PP Act, which includes any premises taken on lease by, or on behalf of, any corporation established under a Central Act and owned or controlled by the Central Government.

11. Hence, by all statutory parameters, the PP Act is squarely applicable to the premises-in-question. Thus, the Estate Officer of the CWC acted well within jurisdiction to pass the impugned eviction order.
12. The petitioner cites *2019(3) ICC 743 (S.C.) [Kaikhosrou (Chick) KavasjiFramji&Anr. V. Union of India &Anr.]* for the proposition that ownership and title of any immovable property can be decided only by a regular civil court and not in summary proceedings under the PP Act.
13. The proposition is well-settled, but not applicable to the present case. No title of any party was decided by the Estate Officer by the impugned order dated February 15, 2020. It was an exercise under Sections 5 and 7 of the PP Act simpliciter. The power to adjudicate such proceedings is conferred statutorily on the Estate Officer, who acted well within authority to decide the proceedings.
14. Learned counsel for the petitioner next contends that a date of hearing in the eviction proceeding was fixed by the Estate Officer on January 31, 2020; however, by virtue of a notification dated January 28, 2020 uploaded on the official website of this court, it was communicated that the Hon'ble the Chief Justice of this court had declared a holiday on January 31, 2020 for the District Judiciary in West Bengal and the West Bengal Judicial Academy. Learned counsel argues that the Estate Officer

discharges judicial duties as a court in a proceeding under Section 5 of the PP Act and, thus, the hearing could not have been taken up on the said date.

15. Such argument is absurd, since the Estate Officer has never been described as a 'court' coming within the ambit of 'District Judiciary' in any statute, be it the PP Act or the Bengal, Agra and Assam Civil Courts Act, 1887, which lays down the hierarchy of courts in West Bengal. It was categorically recorded in the impugned order of the Estate Officer that several opportunities were given to the judgment debtor to contest the proceeding, which were not availed by it. There is no reason why the presumption of due discharge, attached to judicial and official acts of the Estate Officer under the Evidence Act, should be displaced, in the absence of any material to rebut such presumption.
16. Lastly, learned counsel for the CWC, that is, the award holder, contends that the writ petition, if entertained, would permit the judgment debtor to challenge an eviction order of February 15, 2020 after more than two years, bypassing the limitation period for filing an appeal under Section 9 of the PP Act.
17. There is substance in such argument, since Section 9 (2) (a) of the PP Act stipulates that an appeal under sub-section (1) of Section 9 shall be preferred, in the case of an appeal from an order under Section 5, within twelve days from the date of publication of the order under sub-section (1) of that Section.

18. No case of palpable mala fides, arbitrariness or erroneous exercise of jurisdiction and/or gross abuse of process of law has been made out by the judgment debtor/writ petitioner at all.
19. Moreover, an appeal as provided under Section 9 of the PP Act is an equally (if not more) efficacious alternative remedy which was available to the petitioner. If preferred, such an appeal would grant the petitioner scope to argue both on facts and law, including on all the questions raised in the present writ petition. However, the petitioner chose not to take recourse to such remedy but, in order to evade the twelve days' statutory limitation, to file the present writ petition, that is, WPA 7972 of 2022, only after suffering the direction of this court for police assistance on the award holder's writ petition (WPO 1276 of 2022).
- 20. In view of the above findings, WPA 7972 of 2022 is dismissed without, however, any order as to costs.**
21. In support of GA 1 of 2022, filed in connection with WPO 1276 of 2022, learned counsel for the judgment debtor/applicant submits that a recall of the order of this court dated March 14, 2022 has been sought on two-fold grounds:
22. First, the order was passed in the name of a deceased person, since the original proprietor of M/s Bharat Express, the judgment debtor, had expired on May 3, 2021, that is, much prior to the order under recall. Hence, the order was *non est* and bad in law.
23. Secondly, no copy of WPO 1276 of 2022 had alleged been served on the judgment debtor.

24. Rule 7 of the PP Rules, 1971, which has been cited by learned counsel for the judgment debtor/applicant, provides in sub-section (1) that if any obstruction is offered, or is in the opinion of the estate officer likely to be offered to the taking possession of any public premises, the estate officer or any other officer duly authorised by him in this behalf may obtain necessary police assistance.
25. The said provision is an additional tool in the hands of the award debtor to implement an eviction order under the PP Act. However, it cannot operate as a fetter to the award holder obtaining police assistance in any event, if the judgment debtor resists execution.
26. The direction passed on March 14, 2022 in WPO 1276 of 2022 was given to the police for implementation of a valid eviction order under Section 5 of the PP Act, which had already attained finality long back, since the same had not been challenged in appeal at any point of time. WPA 7972 of 2022 was filed subsequently as an after-thought, even after the appeal preferred against the order of WPO 1276 of 2022 was disposed of.
27. The judgment debtor, in any event, is not entitled to any further notice, after passing of the eviction order under Section 5, intimating it about the execution. By the same logic, even if notice of WPO 1276 of 2022 was not served and/or directed to be served on the judgment debtor/applicant, such omission cannot vitiate the order itself. It is the statutory duty of the police authorities to honour and implement valid orders of eviction passed by a quasi-judicial authority; hence the cause of action in the said writ petition was between the court and the police

authorities. The award holder was only instrumental in bringing such notice to the notice of the writ court.

28. Thus, even if the original proprietor had expired in the meantime or no notice was served on the judgment debtor, such technicality cannot be fatal to the order.

29. That apart, even in case of a civil court's decree, Order XXII of the Code of Civil Procedure, regarding abatement, is not applicable in an execution case; nor is any separate notice of execution required to be served on the judgment debtor. Borrowing such principles, there cannot be any plausible reason to recall the order dated March 14, 2022.

30. Even if it is assumed hypothetically that the said omissions were errors vitiating the order of police help granted by the writ court and the order was to be recalled, the fate of the judgment debtor would not alter, since the parent order of eviction and rental dues stands affirmed. Therefore, till today, there has been or is no impediment whatsoever in the police rendering adequate assistance to the award debtor for the purpose of enforcing the eviction order, which has attained finality. No useful purpose would be served in undergoing the futile exercise of recalling and re-imposing the order, the composite effect of which would be akin to reviving the order under recall.

31. Hence, factoring in the above considerations, **GA 1 of 2022 is dismissed on contest without costs.**

32. Urgent certified copies, if applied for, be granted on compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)