

ORDER SHEET

WPO/2080/2022

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

CENTRAL WAREHOUSING CORPORATION
-VS-
STATE OF WEST BENGAL AND ORS.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : July 12, 2022.

Appearance:

Mr. Samrat Chowdhury, Adv.
...for the petitioner

Mr. Arijit Bardhan, Adv.
Mr. Vivekananda Bose, Adv.
Mr. Ratikanta Pal, Adv.
... for the respondent

Mr. Sagnik Chatterjee, Adv.
...for the State

The Court: Learned counsel for the petitioner contends that although an order of eviction was passed against the respondent no.5 by the Estate Officer, the petitioner has not been able to have the order executed. Subsequently, the concerned Estate Officer vide communication dated March 13, 2020 sought police assistance from the Deputy Commissioner of Police (Port Division) for the purpose of vacating the property, but to no effect. Such communication is annexed at page 84 (Annexure P/8) of the writ petition.

It is contended that in view of such circumstances, the present writ petition has been filed in order to seek a direction on the police

authority to give police assistance to the Estate Officer for the purpose of evicting the respondent no.5.

Learned counsel appearing for the respondent no.5 contends that the writ petition is not maintainable, since specific power has been conferred on the Estate Officer under Rule 7 of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 (hereinafter referred to as 'the Rules'), read with the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (in short 'the 1971 Act') to implement an eviction order.

Hence, the Writ Court could not have been approached directly for police assistance to aid the Estate Officer in evicting the respondent no.5.

It is further contended that an appeal bearing Miscellaneous Appeal 12/2020 is pending at the behest of the respondent no.5 against the eviction order passed by the Estate Officer. The said appeal was directed to be heard expeditiously by a Co-ordinate Bench of this Court on the application of the respondent no.5 under Article 227 of the Constitution of India. Moreover, it is contended that Section 9 of the 1971 Act specifically stipulates a time limit, which has long been exceeded, for disposal of an appeal under the said provision.

In reply, learned counsel for the petitioner places a copy of the Gazette Notification dated July 10, 1993 which indicates, inter alia, that the Regional Manager of Central Warehousing Corporation shall act in the capacity of Estate Officer under the 1971 Act.

Learned counsel places reliance on Annexure P/9 at page 85 of the writ petition to reiterate that the Regional Manager of the petitioner Corporation had also sought police help to vacate the premises in question.

Upon considering the submissions of the parties, there cannot be any doubt with regard to the fact that Rule 7 of the 1971 Rules empowers the Estate Officer or any other officer duly authorized by him in this behalf to obtain necessary police assistance.

However, the said provision does not contain a negative clause and is not exhaustive in nature. Nowhere in the said Rule is it reflected that the said power given to the Estate Officer precludes the Writ Court from granting police assistance, which is in aid of Rule 7.

That apart, in the present case, Annexure P/8 dated March 13, 2020 to the writ petition indicates clearly that the Estate Officer himself had sought police assistance for the purpose of implementing the eviction order against the respondent no.5. Rule 7 does not specifically contemplate an application to be filed by the Estate Officer, rather, in the present case it was the Estate Officer himself who sought the police assistance as long back as on March 13, 2020. The Regional Manager of the petitioner, who is also empowered under the Notification dated July 10, 1993 to function as an Estate Officer, also sought such police assistance vide communication dated November 12, 2020.

Hence, the requirement of Rule 7 of the 1971 Rules has been substantially satisfied in the present case.

Inasmuch as the pendency of the appeal of the respondent no.5 is concerned, it is cliché that mere pendency of an appeal does not operate automatically as stay of the order impugned in the appeal.

Moreover, it is seen from the order sheet of the said appeal, annexed to the writ petition, that the respondent no.5 sought adjournments in the appeal on several (at least five) occasions. Hence, the respondent no.5/appellant cannot be permitted to take advantage of its own wrong by resiling from such position and turn back to seek stay of operation of the eviction order on the ground of pendency of the appeal itself.

The late disposal of the appeal, if any, was solely due to the procrastinating attitude and conduct of the respondent no.5. As such, the Estate Officer cannot be indicted unnecessarily for having failed to comply with the time-stipulation of Section 9 of the 1971 Act.

Inasmuch as satisfaction of the Estate Officer under the purview of Rule 7 is concerned, sufficient satisfaction was recorded in the communication of the Estate Officer to the police authorities, dated March 13, 2020.

In such view of the matter, the efforts of the respondent no.5 to delay the implementation of the order of eviction against it is crystal clear from the conduct as evidenced from the materials on record.

Hence, there cannot be any impediment in directing the police to implement the eviction order.

Accordingly, WPO/2080/2022 is allowed, thereby directing respondent nos. 3 and 4 to render necessary assistance to the Estate

Officer in implementing the order dated February 15, 2020 passed in the eviction proceeding bearing order no.05/2019.

Such assistance shall be provided as and when sought by the Estate Officer i.e. the respondent no.6 in the writ petition.

Needless to say, the observations made above shall not influence the Appellate Court in deciding the appeal preferred by the respondent no.5 under Section 9 of the 1971 Act in any manner whatsoever and/or any interlocutory application filed in connection therewith.

It is further clarified that in the event the respondent no.5 succeeds in its appeal, it will be open to the respondent no.5 to seek restitution in accordance with law.

The Police report filed by learned counsel for the State be kept on record.

No order as to costs.

(SABYASACHI BHATTACHARYYA, J.)