

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

IA No: CAN/2/2012 (Old No: CAN/11086/2012)
In
WPA/20099/2011

**Estate of Narayan Chandra Ghosh represented
through its Manager Mr. Ranjit Kumar Ghosh**

-Vs-

Board of Trustees, Kolkata Port Trust & Ors.

For the Petitioner: Mr. Haradhan Banerjee, Sr. Adv.,
 Mr. Prodip Kumar, Adv.

For the Respondents: Mr. Kinjal Kumar Baral, Adv.,
 Mr. Kaustav Seal, Adv.,
 Mr. Shreyan Chakraborty. Adv.,

Hearing concluded on: 17 July, 2023.

Judgment on: 31 August, 2023.

BIBEK CHAUDHURI, J. : –

1. One Ranjit Kumar Ghosh, hereinafter described as the petitioner, declaring himself as the co-sharer and manager of the Estate of Narayan Chandra Ghosh in respect of 36 and 37, Banabihari Bose Road, Ramkrishtopur at Howrah has filed the instant writ petition against the Board of Trustees, Calcutta Port Trust and its officers alleging, wrongful possession by virtue of an order passed in eviction proceeding No.849 of 2006 under the public premises (Eviction of Unauthorized Occupants) Act, 1971 and other incidental reliefs.

2. It is the case of the petitioner that the above mentioned premises, formerly known as Ram Kristopur Ghat Road was acquired by the petitioner under long term lease from the respondent No.1 under the terms and conditions contained therein. The petitioner was not in exclusive possession of the said premises for more than 60 years. He was paying the agreed lease rent from time to time. However, possession of the above mentioned premises was taken forcibly by the respondent on 2nd June, 2011 by putting a padlock on the entrance gate of the same premises and affixing a notice at the gate of the godown of the petitioner. It is also stated by the petitioner that he erected structure, constructed shops and offices in the said premises and let out to the shops to the various subleasee who were in occupation and carrying on their respective business in the said shop. It is also stated by the petitioner that petitioner's premises No.36 and 37 Banabihari Road was recorded as plot Nos.HL52 and HL 183. The petitioner lastly paid rent in the month of August, 2010 through a demand draft of Rs.6866 which was duly encashed and deposited towards the lease rent in respect of the said premises. Subsequently, the petitioner was dispossessed on the ground that he defaulted in payment of rent. It is alleged by the petitioner that the respondents illegally took over possession of the godown of the petitioner with the help of police pursuant to an eviction order No.12 date 20th February, 2008 passed by the Estate Officer of the respondent in eviction proceeding No.849 of 2006 (**Board of Trustees of the Port Trust of Kolkata vs. Howrah Flower Mills Ltd**). The petitioner subsequently

received a notice on 1st July, 2011 from the respondent No.1 wherein the respondents stated that the Tariff Authority for Major Ports in terms of the order dated 19th January, 2011 approved the revised schedule of rent for land and buildings of Kolkata Port Trust. The revised schedule was duly published in the gazette of India, extraordinary (Part-III) on 8th March 2011. As per the above notification, the rates mentioned in the schedule of rent is also applicable for compensation/occupational charges for unauthorized use and occupation of port properties. Thus, the exact rate of compensation charges applicable to pot No.HL-183 was fixed at Rs.1873/- with annual enhancement of 2% per annum. The petitioner was directed to pay revised compensation bill for his occupation of the subject premises with effect from 7th April, 2011. It is also stated by the petitioner that against the order of eviction and wrongful execution of such order, the petitioner filed Misc Case No.89 of 2008 before the learned 2nd Additional District Judge at Howrah and prayed for release of its property. However, the special misc appeal has not been disposed of as yet. It is contended by the petitioner that no notice was served on the petitioner under Section 4(1) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and the petitioner was not aware of any proceeding for eviction under the said Act. Thus, the petitioner has prayed for following reliefs:-

- a. A rule do issue out of and under the seal of this Hon'ble Court asking the respondents and each one of the them to show cause as to why a writ of or a writ in the nature

of Mandamus not be issued commencing them to restore the possession of the godown situated at 34 and 36, Bon Behari Bose Road, Ramkrishnapur, Howrah-711101 forthwith to the petitioner;

- b. A rule do issue out of and under the seal of this Hon'ble Court asking the Respondent and each of them to show cause as to why the impugned eviction Order No.2 dated 20th February, 2008 passed by the Respondent No.3 in Eviction proceeding No. 849 of 2006 shall not be quashed and/or set aside;
- c. A rule do issue of and under the seal of this Hon'ble Court asking the respondents and each of them to show cause as to why a writ of in nature of Mandamus be issued directing the Respondents to allow the petitioner to enter into the premises No. 36 and 37, Bon Behari Bose Road, Howrah- 711101 and take out the relevant documents and produce the same before the Hon'ble Court at time of hearing;
- d. A rule do issue out of and under the seal of this Hon'ble Court asking the respondents and be each one of them to show cause as to why a writ of or a writ in the nature of Certiorari should be not issued commanding them to transmit to the records of the case so that conscionable justice may therein be administered and to act in accordance with law;
- e. an interim order if injunction be passed directing the respondents not to deal with and/or part with possession of the godown in question and/or not to create any third party interest therein in any manner whatsoever.
- f. Rule in terms of prayers (a), (b) and (c) above be issued;
- g. Interim order in terms of prayer (c) above;

- h. Costs of and incidental to this application be paid by the respondents;
- i. And/or to pass such other or further order or orders as to your Lordships may deem fit and proper.”

3. The petitioner has also filed a supplementary affidavit stating, inter alia, that the respondents have acted wrongfully and illegally in dispossessing the petitioner from the premises in question under the grave of execution of decree passed in eviction proceeding from 849/R of 2006 in respect of HL Plot No.184. The petitioner's plot No.HL183 is situated adjacent to the Howrah Flower Mills Limited and the petitioner was dispossessed from the plot No.HL183 in execution of the decree passed in respect of plot No.HL183. Thereafter, on 1st March, 2013 the respondent issued tender notice to let out the premises in question on short terms lease in order to protect his right, the petitioner riled a writ petition being WP 20009 of 2011 challenging the respondent authority to dispossess the petitioner from the subject property. A Coordinate Bench of this Court passed an order on 26th March, 2013 on the basis of the submission made by the learned Advocate for the respondents that the port trust will not proceed with the tender notice in respect of plot No.TN/13/1/41 till the disposal of the earlier writ petition (WP 20099(2) of 2011) filed by the petitioner. The respondent No.1, 2 and 3 have filed affidavit-in-opposition challenging the locus of the petitioner. It is specifically stated by the respondents that the Board of Trustees of Kolkata Port Trust executed a lease in the year 1924 with one Narayan

Chandra Ghosh. The said Narayan Chandra Ghosh died in June 1980. On the death of Narayan Chandra Ghosh his legal heirs did not pray for continuation of lease hold/tenancy right in respect of the premises in question. The legal heirs of Narayan Chandra Ghosh did not file the instant writ petition against the eviction order passed by the competent authority under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. The original tenant, namely, Narayan Chandra Ghosh, since deceased and after his death his legal heirs failed to deposit or pay the lease rent since 1977. Therefore, the respondent No.1 through its authorized officer issued notice to quit dated 15th June, 1983 directing the legal heirs of the said Narayan Chandra Ghosh to quit, vacate and deliver peaceful possession of the subject premises. Since possession was not delivered by the unauthorized occupants a proceeding was initiated against them and order of eviction was passed against the legal heirs of the said Narayan Chandra Ghosh since deceased in accordance with law. It is also contended on behalf of the petitioner that the subject property remained vacant and abandoned. It was a breeding ground of anti-social activity. In all the arrear dues/compensation/damages including accrued interest from 1st August, 1983 to 2nd June, 2011 in respect of the said premises was Rs.36,63,678.06/-. Therefore, the respondents initiated recovery proceeding against the legal heirs of the petitioner.

4. The petitioner has filed an affidavit-in-reply against the aforesaid affidavit-in-opposition and reiterated the case of the petitioner as made out in the writ petition. I have heard the learned Advocate for the

petitioner and the learned Advocate for the respondents. I have also perused the entire documents and papers on record. It is found from the record annexed with supplementary affidavit that Narayan Chandra Ghosh applied for tenancy of a stretch of land along with the north side of Mallick Ghat Road, west side of Stand Road for erection of a corrugated iron shed. On 22nd October, 1924 the said Narayan Chandra Ghosh was granted month's lease of 3 cottahs of land at a rent payable at the rate of Rs.10 per cottah per mensem. The land was demarcated and possession was delivered to Narayan Chandra Ghosh on 13th November, 1924.

5. It is found from the record that on 14th October, 1938 the said Narayan Chandra Ghosh executed a deed of trust in respect of the subject property as well as other properties owned by the said Narayan Chandra Ghosh. By virtue of the said deed of trust one Pannalal Ghosh, second son of Narayan Chandra Ghosh and Raj Krishna Ghosh sixth son of the said Narayan Chandra Ghosh became the joint trustee in respect of the trust property. On the death of one of the trustees, the remaining trustees would be the sole trustee. He would appoint subsequent sole trustee from the male major heirs of the descendant of Narayan Chandra Ghosh. Subsequently, on 16th June, 1998 one Bhabendra Nath Ghosh, Nripendra Nath Ghosh, Kaushik Ghosh, Soumya Kanti Ghosh, sons of Maniklal Ghosh and Paban Bijay Ghosh and Ranjit Kumar Ghosh son of Raj Kristo Ghosh executed another deed of trust appointing the petitioner as trustee in respect of land measuring 4 cottah, 9 chittak and 22 sq. ft. with partly two storied and part three storied pucca building thereon in respect of

premises No.325, Netaji Subhas Road. Thus, no deed of trust was created by Naraya Chandra Ghosh in the name of Ranjit Kumar Ghosh appointing him as a trustee.

6. The materials on record suggest that order of eviction was passed against the legal heirs of Narayan Chandra Ghosh under Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. Section 9 of the said Act provides for a provision of appeal against the order of eviction passed under Section 5 of the said Act which shall lie before the learned District Judge of the District in which the public premises are situated or such other Judicial Officer in that district of not less than 10 years standing as the District Judge may designate in this behalf. Thus, if the legal heirs of the original tenant Narayan Chandra Ghosh, since deceased were aggrieved against the order of eviction, they could have filed an appeal under Section 9 of the said Act.

7. Where the statute provides alternative efficacious relief, writ petition is not maintainable.

8. For the reasons stated above, I do not find reason to give relief to the petitioner. Accordingly, the instant writ petition is dismissed on contest. However, there shall be no order as to cost.

(Bibek Chaudhuri, J.)