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Sl-12
Ct.11
(S.R.)

**WPA 9798 of 2020
with
CAN 1 of 2023**

**Sri Suresh Chandra Shaw
v.
Life Insurance Corporation of India & Ors.**

Mr. Krishna Das Poddar
Mr. Amit Kumar Dutta ... for the petitioner.

Ms. Tanushree Dasgupta ... for the respondents.

Affidavit-in-opposition filed by the respondents be
kept on record.

This writ petition has been filed primarily praying
for the following relief: -

“i) A writ of Mandamus may be issued calling upon the Respondent as to why the rent in respect of the Premises No.9, Jawaharlal Nehru Road, Kolkata – 700013, as occupied by the petitioner @ Rs.58.46 per month shall not be accepted by issuing proper receipt including all arrears as on today, by the concerned respondent;”

Mr. Das Poddar, learned advocate appearing for the petitioner submits that the petitioner is the lawful tenant in respect of one side space and godown-cum-kitchen located on the ground floor of the premises vide no.9, Jawaharlal Nehru Road, Kolkata – 700013, which is owned by the Life Insurance Corporation of India (in short, LIC), at a monthly rental of Rs.58.46 paise payable according to English Calendar month. He contends that initially, one Tarak Nath Shaw was inducted as tenant

and then on demise of Tarak Nath , tenancy was devolved upon the petitioner's father and then on demise of his father, the petitioner has become tenant in respect of the premises. He claims that the premises is lying in their occupation for more than 100 years. He further submits that the LICl filed one suit vide no.1002 of 1964 before the Hon'ble High Court at Calcutta and the judgement and decree passed in the suit was carried in an appeal *vide*. APO no. 520 of 1985 before the Hon'ble Division Bench of this Court and one of the appellant, namely, Sunder Kumar Shaw added the present petitioner as a party to the said proceeding and he submits that on number of occasions, the petitioner took effort to pay rent to the competent authority of the LICl but that authority has refused to accept the rent without assigning any cogent reason and hence, the petitioner has been constrained to invoke the extra-ordinary jurisdiction of this Court by preferring this present writ petition. He submits that a direction should be given upon the LICl to accept the rent from the petitioner and to issue rent receipt.

Ms. Dasgupta while representing the LICl vehemently opposes such prayer made on behalf of the petitioner. She submits that the writ petition is not maintainable. According to Ms. Dasgupta, the dispute involved in the writ petition is purely civil dispute. She

further contends that the petitioner is nothing but an unlawful occupier and the petitioner has already approached the rent controller with similar prayer and the applications filed before the rent controller concerned have been registered as R.C. Case Nos.32 of 2019 and 33 of 2019 and the present petitioner has renewed the same prayer before this Court, which cannot be entertained.

Heard the learned advocates. Perused the materialson record.

From the observations made by the Hon'ble Division Bench of this court headed by the Hon'ble Justice Ashim Kumar Banerjee (as His Lordship then was) in APO no. 520 of 1985 , which arose out of a suit being C.S. no. 1002 of 1964, it would be explicit that one Hindusthan Co-Operative Insurance company Limited (in short, Hindusthan). Hindusthan let out the entire premises being no. 9, Chowringhee Road, Kolkata to one Dr. Smith Brothers prior to 1956. Dr. Smith Brothers inducted many persons being defendant nos. 2 to 24 to the suit as sub-tenants.

Subsequent thereto, Hindusthan merged with the LIC and hence the LIC became the owner of the premises. LIC filed an ejectment suit against Dr. Smith Brothers and the other occupants on the grounds of default in payment of rent and illegal sub-letting. Dr. Smith Brothers did not contest the suit. Subsequently,

the LICI made some concession in favour of some tenants who cleared off their dues. Ultimately, the suit was decreed against defendant nos. 1,6,13, 15, 17, 22, 23 and 24 to the suit. The judgment and decree passed in the ejectment suit were impugned in that appeal vide. APO no. 520 of 1985. Ultimately, defendant nos. 6 and 7 pressed the appeal. Finally, the appeal was dismissed.

Plaint of the suit has not been placed before me. From the averment made by the petitioner in the writ petition, it transpires that one Tarak Nath Shaw, petitioner's elder brother was inducted as sub-tenant by Dr. Smith Brother and upon demise of Tarak Nath, petitioner's father was substituted as Tarak Nath's legal representative in the suit and the petitioner's father has died. Now, the petitioner has been claiming to be a lawful tenant in respect of a portion of the premises. The petitioner has already approached the rent controller concerned with similar prayer.

Needless to observe that dispute involved in the writ petition is a dispute cropped up in between the landlord and the occupant of the premises and hence, the dispute is a civil dispute which must be resolved by a civil suit. There are many disputed questions of fact also and hence, to determine those disputed questions of fact, oral and documentary evidence are required to be considered. In a summary proceeding, which is followed by a writ

court, there is no scope of acceptance of such evidence.

In view thereof, no interference is called for in the writ petition. Consequently, the writ petition and the connected application are dismissed.

However, it is expected that the respondents shall not evict the petitioner without following the due process of law.

There shall, however, be no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Partha Sarathi Chatterjee, J.)