

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APO/109/2022
WITH
WPO/2428/2022

IA NO. GA/1/2022
GA/2/2023

NARESH ROAD LINES PRIVATE LIMITED
VERSUS
STATE OF WEST BENGAL AND ORS.

BEFORE:

HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
HON'BLE JUSTICE RAJARSHI BHARADWAJ

Date: 20th January 2023.

APPEARANCE:

Mr. Tapas Kr. Manna, Advocate
Ms. Anindita Majumder, Advocate
... for appellant/petitioner.

Mr. Sirsanya Bandopadhyay, Jr. Standing Counsel
Mr. Arka Kr. Nag, Advocate
... for State.

Mr. Samrat Chowdhury, Advocate
... for respondent no.2.

The Court:- By this intra-court appeal, private respondent in WPO/2428/2022 has challenged the order of the Learned Single Judge dated 22nd November 2022 whereby the petition filed by Central Warehousing Corporation has been disposed of by directing the concerned police station to render assistance to the writ petitioner in accordance with law for carrying out the order of the Estate Officer.

Facts as reflected in the writ petition are that the petitioner Central Warehousing Corporation had given the storage space to the appellant by the agreement dated 12th March 2014 for a period of three years with effect from 17th March 2014. Certain dispute had arisen and thereafter the proceedings under Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 were initiated and the Estate Officer

had passed the eviction order dated 15th February 2020 and had also directed recovery of the rental dues / license fee from 31.12.2018 to 31.10.2019. The writ petition was filed by Central Warehousing Corporation seeking police assistance to implement the order of eviction and Learned Single Judge by the impugned order had issued the necessary direction in this regard.

Submission of learned counsel for the appellant is that against the order of eviction, writ petition at the instance of the appellant is pending, which was initially dismissed in default and subsequently has been restored. Further submission is that the eviction order was passed without giving an opportunity of hearing and that though in the meanwhile the appellant has been evicted but now his possession should be restored.

Learned counsel for the respondent Central Warehousing Corporation opposing the appeal has submitted that the eviction order is appealable, therefore, the writ petition against it would not be maintainable and that even otherwise the agreement period has already expired in the year 2017 and now, the appellant has no right.

We have heard the learned counsel for the parties and perused the record. It is undisputed that though the order of eviction passed under Section 5 of the Act of 1971 is an appealable order, but the appellant has chosen to file the writ petition being WPA/4821/2020 against the said order. The writ petition was dismissed in default on 29th January 2021 and thereafter the appellant had filed the restoration application and now by order dated 2nd January 2023, the petition has been restored.

The appellant had opportunity to diligently prosecute the petition and make an effort to get interim or final order against the eviction order within time. The facts on record indicate that agreement period is already over and the order of Learned Single Judge under challenge has been

implemented and the appellant has been evicted from the premises in question.

In the said circumstances, at this stage, no case is made out to interfere in the order of the Learned Single Judge. In case the appellant succeeds in the pending writ petition being WPA/4821/2020, then it would be open to the writ court to pass appropriate orders in accordance with law. We make it clear that we have not commented upon the maintainability of the writ petition WPA/4821/2020 or on the merits of the said petition, which will be decided by the concerned Hon'ble Judge on its own merit taking into account the facts which may be placed on record.

Thus, we find no reason to interfere in the order of the Learned Single Judge under challenge in this appeal. The appeal is accordingly dismissed.

[PRAKASH SHRIVASTAVA, C.J.]

[RAJARSHI BHARADWAJ, J.]

s.kumar