

WPA 28514 of 2023

**SuvraAcharya and Ors.
Vs.
Union of India&Ors.**

Mr. Biswaroop Bhattacharya
Mr. L. Chatterjee
Mr. JaydebGhorai
Mr. DipteshGhorai

....for the petitioners

Mr. IndrajitDasgupta
Ms. PuspitaBhowmick

...for the respondent Nos. 4,5, & 6

Mr. Kumar JyotiTewari

...for the respondent Nos. 1 to 3

The petitioners in the present proceeding are aggrieved by the impugned order dated 04.12.2023 passed by the Estate Officers under Section 5(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 declaring the petitioners as unauthorised occupants *qua* the premises in question and asked them to vacate the said premises in question within 15 days. It is the case of the petitioners that the lease hold rights for the property in question has been granted in favour of the predecessor-in-interest of the petitioners through lease deed dated 15.12.1932 for a period of 90 years. The said lease deed was extended from time to time till 4th December, 2022. In pursuance of this specific clauses of the said lease deed, the predecessor-in-interest of the petitioner constructed a double storied building on the said property and the same is being used as residence of the petitioners.

Chief Executive Officer of the Cantonment Board, Barrackpore, vide letter dated 19.07.2023 raised a demand of Rs. 3,74,047/- towards the lease rent and annual rentals for extending the said lease deed from 04.12.2022 to 31.12.2023. It was further mentioned in the said letter that if the petitioners fail to deposit the said amount within three months, they would be deemed to be unauthorised occupant and that proceedings for eviction of the petitioners from the said premises and for recovery of outstanding lease rent in terms of the provision of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 shall be initiated.

The petitioners failed to make the said payment. The Estate Officer, Cantonment Board, Barrackpore initiated the proceeding as per the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 by issuing a notice dated 31.10.2023 under Section 4 and 4(2)(b)(ii) of the said Act.

After affording a personal hearing to the petitioner, the Estate Officer, vide order dated 04.12.2023 passed an order under Section 5(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 directing the eviction of the petitioners from the said premises in question within 15 days. Aggrieved by the said order dated 04.12.2023 the petitioners have preferred the present writ petition. At the outset itself this Court questioned the maintainability of the present writ petition as the petitioners have not availed his remedy under the said Act by filing his statutory appeal. Learned counsel for the petitioners submits that the Estate Officer has passed the impugned order dated 04.12.2023 without inherent jurisdiction. It is the contention of the learned counsel for the petitioners that in case of *ex facie* lack of jurisdiction of the authority which passed the impugned order, the writ petition is maintainable. In order to substantiate his arguments, the petitioners relied upon ***New India Assurance Co. Ltd. vs. Nusli Neville Wadia&Anr.*** reported in ***(2008) 3 SCC 279***, ***Kuldeep Singh vs. Commissioner of Police and others*** reported in ***(1999)2 SCC 10***, ***Sarvepalli Ramaiah (Dead) vs. District Collector, Chittoor District and others*** reported in ***(2019)4 SCC 500***, ***Board of Trustees for***

the Port of Kolkata & Anr. Vs. Vijay Kumar Arya & Ors. reported in **2009 OnLine Cal 266**, ***Cantonment Board and Another vs. Church of North India*** reported in **(2012) 12 SCC 573**, ***Subhas H. Pophale vs. Oriental Insurance Company Limited and Its Estate Officer***, reported in **(2014)4 SCC 657**.

This Court has heard the arguments advanced by the petitioners and respondents and has examined the documents and the case law placed by both the parties. In the present case, it is admitted position that the property in question belongs to the Cantonment Board and the same was given on lease to the predecessor-in-interest of the petitioners for a period of 90 years. The said period of 90 years expired on 04.12.2022. In order to extend the said lease, the landlord asked the petitioners to deposit the lease rent and annual charges. Even though the petitioners objected to the said demand they never challenged the said amount nor paid the same. In view thereof, the Estate Officer, appointed by the competent authority of the landlord, initiated eviction proceeding under the said Act.

It is the contention of the learned counsel for the petitioners that the jurisdiction of the Estate Officer is under challenge, however, perusal of the record shows that no specific reason is projected *qua* the said objection. In fact the petitioners raised a dispute questioning the motive and rationale of the decision taken by the Estate Officer. The petitioners further in the writ petition on oath have stated that there is no alternate efficacious remedy available to the petitioners. This Court has meticulously examined the judgments relied by the petitioners and is in respectful agreement with the ratio laid down by the Hon'ble Apex Court in this decision, however, none of the said judgments deal with the issue raised by the petitioners in the present matter. Learned counsel for the petitioners placed high reliance on ***New India Assurance Co. Ltd. vs. Nusli Neville Wadia & Anr.*** reported in **(2008) 3 SCC 279**. In this case, the interim order passed by the Estate Officer was challenged by the Bombay High Court by way of a writ petition. The said interim order was not an appealable order and hence the said case law is not applicable in the present case. In ***Kuldeep Singh vs. Commissioner of Police and others*** reported in **(1999)2 SCC 10**, ***Sarvepalli Ramaiah (Dead) vs. District Collector, Chittoor District and others***

reported in **(2019)4 SCC 500**, the issue does not relate to the unauthorised occupants under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. In **Cantonment Board and Another vs. Church of North India** reported in **(2012) 12 SCC 573** in fact statutory appeal was filed against the Estate Officers order. In **Board of Trustees for the Port of Kolkata & Anr. Vs. Vijay Kumar Arya & Ors.** reported in **2009 OnLine Cal 266**, the scheme and import of the said Act was discussed and held that the decision of the statutory landlord is not binding on the tenant unless the landlord runs it passed to the Estate Officer. Similarly the ratio of **Subhas H. Pophale vs. Oriental Insurance Company Limited and Its Estate Officer**, reported in **(2014)4 SCC 657**, is also not of any assistance in the facts of the present case. Hence, none of the case laws are applicable to the facts of the present case.

It is well settled principle of law that the High Court should not entertain a petition under Article 226 of the Constitution, if any, effective alternative remedy is available to the aggrieved person or the statute under which the action complained itself contains a mechanism for redressal of his grievances. There is no quarrel of the proposition that in case of *ex facie* lack of jurisdiction, this Court can invoke its discretionary jurisdiction under Article 226 of the Constitution of India. However, in the present case there is no specific reason and vision *qua* the jurisdiction of the Estate Officer hence from the fact and circumstances of the present case this Court is of the considered opinion that the Estate Officer has the jurisdiction to examine the present dispute. The statute itself provides for an efficacious alternative remedy for the petitioner though the petitioner was not aware of the said fact and reflected from the writ petition since the petitioners have approached this Court without availing their statutory remedy of appeal available under the said Act, this Court is not inclined to exercise its discretionary jurisdiction under Article 226 of the Constitution.

In view thereof, the present writ petition is dismissed with liberty to the petitioners to approach to the appropriate authority in accordance with law.

Since no affidavit-in-opposition has been called for none of the allegation are admitted

Urgent Photostat certified copy of this order, if applied for, be given to the parties, on priority basis.

(GaurangKanth, J.)