

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/692/2024

SHRI DINESH GUPTA

-VERSUS-

THE WEST BENGAL SMALL
INDUSTRIES DEVELOPMENT
CORPORATION LIMITED AND ORS.

WPO/693/2024

M/s. PROGRESS ELECTRONICS

-VERSUS-

THE WEST BENGAL SMALL
INDUSTRIES DEVELOPMENT
CORPORATION LIMITED AND ORS.

WPO/694/2024

M/s. INDU FURNITURE

-VERSUS-

THE WEST BENGAL SMALL
INDUSTRIES DEVELOPMENT
CORPORATION LIMITED AND ORS.

WPO/695/2024

ASISH CO

-VERSUS-

THE WEST BENGAL SMALL
INDUSTRIES DEVELOPMENT
CORPORATION LIMITED AND ORS.

WPO/699/2024

M/s. VISHAL STEEL FURNITURE

-VERSUS-

THE WEST BENGAL SMALL
INDUSTRIES DEVELOPMENT
CORPORATION LIMITED AND ORS.

WPO/701/2024

M/s. GUPTA BROTHERS

-VERSUS-

THE WEST BENGAL SMALL
INDUSTRIES DEVELOPMENT
CORPORATION LIMITED AND ORS.

WPO/702/2024

M/s. MEGHDOOT STEEL FURNITURE

-VERSUS-

THE WEST BENGAL SMALL
INDUSTRIES DEVELOPMENT
CORPORATION LIMITED AND ORS.

WPO/703/2024

M/s. NILAM INDUSTRIAL
CORPORATION

-VERSUS-

THE WEST BENGAL SMALL
INDUSTRIES DEVELOPMENT
CORPORATION LIMITED AND ORS.

WPO/715/2024

DEB NARAYAN MUKHERJEE

-VERSUS-

THE WEST BENGAL SMALL
INDUSTRIES DEVELOPMENT
CORPORATION LIMITED AND ORS.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date : 6th August, 2024.

Appearance:

Mr. Shiv Shankar Banerjee, Adv.

Ms. Arijita Ghosh, Adv.

Mr. Nilanab Pau, Adv.

.... for the petitioners.

Mr. Debabrata Banerjee, Adv.

Mr. Mahendra Pratap Gupta, Adv.,

Mr. Hemanta Kumar Das, Adv.

...for WBSIDCL.

The Court: All the writ petitions are disposed of together, as similar questions are involved. Each of the petitioners in the matters taken up, is a unit holder/occupier in respect of shop rooms at premises No.31, Blackburn Lane, Shilpa Bhawan, Kolkata-700012. Initially, the unit holders were aggrieved by the retrospective enhancement of rent to Rs. 80 per sq. ft. including GST. Accordingly, the petitioner did not pay such rent on protest. As the rent was not paid at the rate as demanded by the Authority, the unit holders were treated as defaulters and show cause notices were issued to them.

The proceedings continued and the petitioners were asked to appear before the prescribed Authority. The petitioners were asked to deposit the outstanding amount along with statutory dues. They moved the Writ Court and the writ petitions were dismissed. The petitioners preferred an appeal and the Hon'ble Division Bench of this court directed the matter to be moved before the appellate authority.

Accordingly, the appellate authority has passed the order. It appears from the order of the appellate authority that the West Bengal Government Premises (Tenancy Regulation) Act, 1976 governs the relationship between the parties. The Appellate Authority dismissed the appeal with cost of Rs.25,000/-. The appellate authority was conscious of the fact that in view of the successive letters given by the unit holders and their prayer for mercy and sympathy and the specific assurance that they were ready and willing to deposit arrear dues in respect of each unit, an opportunity should be given to them to pay up the dues and remain in possession.

Accordingly, the appellate authority took into consideration the successive requests and treated the letters and requests as undertakings. The unit holder was allowed to pay the outstanding dues in terms of the demand raised by the WBSIDCL, within a period of a fortnight from the date of receipt of the order. The unit holder was also allowed an opportunity to approach the WBSIDCL for renewal and/or execution of the lease agreement as the case may be. Upon such application and payment being made, the matter was to be placed before the Board of Directors, WBSIDCL for appropriate decision with regard to continuation of the said unit holder in respect of the shop rooms in accordance with the provisions of the Act. It was made clear that if the unit holder failed to deposit the amount lying in arrears, in terms of the demand made by the WBSIDCL, steps in accordance with law would be taken for resumption of the units.

Under such circumstances, it appears that the appellate authority took into consideration certain facts which were specific to each unit holder and passed the following order :-

“Since the undersigned is of the opinion and ordered that a sympathetic approach is being taken in the facts and circumstances, the same is only attributable in the facts and circumstances of the present case and the same cannot be cited the said example in other proceeding. The unit holders are directed to pay their dues within a period of fortnight from the date of receipt of this order, failing which action proceed as per law in provision.

In view of the above in the prevailing facts and circumstances taking into consideration the undertaking and successive letters unconditionally made by the unit holders as also written notes of argument filed by the unit holders.

The undersigned in exercise of its discretion gave an opportunity to the unit holders directing them to pay their outstanding dues in respect of their units in terms of demand made by WBSIDCL within a period of fortnight from the date of receipt of the impugned order failing which in view of the 30 days Notice issued by the WBSIDCL dated 29.01.2024 will proceed in accordance with law for resumption of possession.

It is also needless to say that a sympathetic approach being taken, does not create any right in favour of the parties concerned nor the same is enforceable in law as such the order, considering the payment, is only applicable in the facts and circumstances of the present case and not otherwise.”

As has already been stated in the order impugned by the appellate authority, the matter would be placed before the Board. On the earlier day, the matter was adjourned to enable the respondent no. 1 to come back with a decision in this regard and also with instruction as to whether the payment was made by the petitioners. The categorical submission of Mr. Banerjee was that each of the unit holders had fulfilled their obligation under the order. The payments made by the unit holders were accepted and it is expected that the matter will be placed before the Board for necessary approval, very soon.

This Court disposes of the writ petitions with a direction upon the Board to hold a meeting and consider the case of each of the unit holders in the light of the decision of the appellate authority. Prayer for execution of fresh lease and/or renewal of the existing lease as the case may be, must also be considered by taking into account the issue of life and livelihood. The appellate authority has taken a pragmatic and fair view. Thus, the said order cannot be interfered with. The law permits condonation of default upon payment of the outstanding amount and continuation of occupation of such unit holder/defaulters, in accordance with law. The appellate authority has already permitted the petitioners to make such prayer for execution of fresh lease.

The appellate authority was of the view that on the basis of the undertakings given by the unit holders, that they would not raise any protest with regard to the enhancement of rent etc., the renewal of lease or fresh execution of lease may be permitted. The Board is requested to take a sympathetic view, which will be equitable and just. Supplementary affidavit and affidavit of service filed in Court be taken on record.

The Board will decide the matter within two months and communicate a reasoned order. Till such decision, no coercive action will be taken.

All parties are to act on a server copy of this order.

(SHAMPA SARKAR, J.)