

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

Present: Hon'ble Justice Shampa Sarkar

WPO 728 of 2024

Indus Institute of Information Management and anr.
Vs.
The state of West Bengal and ors.

For the petitioners : Mr. Anidya Kumar Mitra, Sr. Adv,
Mr. Bikash Ranjan Bhattacharya, Sr. Adv.
Mr. Biswaroop Bhattacharyya,
Mr. Pratik Majumdar,
Mr. Snehasish Dey.

For the State : Mr. Amitesh Banerjee, Sr. Adv.,
Mr. Debangshu Dinda.

For the respondent Nos. 5 and 6 : Mr. Joydip Kar, Sr. Adv.,
Mr. Sakya Sen,
Mr. Niladri Bhattacharjee,
Mr. Soham Banerjee,
Ms. Deblina Chattaraj,
Mr. Aditya chaturvedi,
Mr. Pratik Acharjee,
Mr. Ananta Sanghi.

Hearing concluded on: 26.09.2024
Judgment on: 19.12.2024

Shampa Sarkar, J.:-

1. The writ petition has been filed challenging the communication dated June 7, 2024 and the orders dated June 7, 2024 and July 19, 2024 being Annexure P-21, P-22 and P-31 of the writ petition.
2. The order dated July 19, 2024 was passed in Appeal case No. MISC-01 of 2024-25. The said appeal was filed under Section 7(1) of the West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962

(hereinafter referred to as the said Act), against the order dated June 7, 2024 passed by the First Land Acquisition Collector, Kolkata (hereinafter referred to as the Collector) in Eviction Case No. 001-EVICT-XIII/2024 dated February 02, 2024.

3. By the order dated July 19, 2024, the Commissioner, Presidency Division, Kolkata, (appellate authority) dismissed by the appeal filed by the petitioners on the ground that the petitioners had failed to make out a case for setting aside the order of eviction passed by the Collector and had also failed to establish that the jural relationship of landlord and tenant had continued between the petitioner No.1 and the respondent No.5. According to the appellate authority, in the proceeding for eviction under the said Act, all that was required to be examined was that no *bona fide* dispute regarding title to the public land existed and that the persons who were in possession were unauthorized occupants. It was further held that the records did not reveal that an offer of taking lease of the property had been made and the landlord had been accepted the offer and taken rent.

4. It was observed that the Youth Services Department, Government of West Bengal, the lessee in respect of the premises in question, had surrendered the lease to the landlord, that is, the West Bengal Transport Corporation Limited (WBTC) and had asked the petitioners to vacate the government accommodation at 101A, Manicktala Main Road and also to deposit 10% of the fees collected from the trainees since its inception. Such action of the Youth Services Department, as per the appellate authority, amounted to determination of the original lease and extinguishment of all rights consequent thereto. According to the appellate authority, the

petitioners were not in occupation of the premises on the basis of any valid contract/authorization.

5. The first contention of the petitioners was that the Kolkata Improvement Trust (KIT) was the owner of the property and not the WBTC. WBTC was wrongly treated as the landlord by the authorities. The WBTC was only in permissive possession of the property from the original owner. First floor of the property was leased to the Youth Service Department, Government of West Bengal. The petitioner No.1 was inducted by the said department and was allowed to occupy and run an office and a training centre from a space measuring about 5,000 sq.ft. The arrangement between the Youth Services Department and the petitioner No.1 was that the petitioner No.1 would be the Information and Technology Wing (ITW) of the said department and impart computer training to government employees.

6. It was also contended on behalf of the petitioners that both the authorities were at first required to determine whether WBTC was the owner of the property and upon such question being answered, whether the proceedings under the said Act against the petitioners had been lawfully initiated. The erstwhile Calcutta Tramways Company (CTC) now WBTC was neither the owner nor the lessee of the property. The lease agreement between the KIT and CTC was never registered. The provisions of the Transfer of Property Act 1882 as also the Indian Registration Act, 1908 had not been complied with. The transfer to CTC by KIT was invalid. Thus, WBTC could not initiate proceedings to evict the petitioners as it did not have any legal right over the property.

7. The petitioners were not in unauthorized occupation of the said premises. Reference was made to the Note Sheet at pages 33 and 34 of the compilation filed by the petitioners. Mr. Anindya Kumar Mitra, learned Senior Advocate for the petitioners placed the relevant paragraphs which would indicate that the first floor of the building was under the possession of the Youth Services Department and the said department had given rent free accommodation to the petitioners. The arrangement was made in concurrence with the finance department and a part of the said premises was also used as the office of the Youth Services Department. The note clarified that the owner of the land was KIT now (CIT) and the lease agreement between the CIT and CTC now WBTC had not been executed. Thus, the legitimacy of the right of CTC over the land and the building was questionable.

8. Referring to the said Act, Mr. Mitra submitted that Section 3 specifically provided that if the Collector, upon an application made by the owner of the public land or any officer authorized in this behalf by such owner or upon information received otherwise, was of the opinion that the public land was in unauthorized occupation of any person or persons, the Collector could issue notice in the prescribed form, containing such particulars as may be prescribed, calling upon all such persons concerned to show-cause before the date mentioned in the form, not being less than 15 days after the date of the notice, why an order of eviction under Sub-Section (1) of Section 4 should not be made. In this case, the Collector did not record his satisfaction that WBTC was the owner.

9. According to Mr. Mitra, Section 3 of the Act also contemplated that an intimation of the date specified in the notice should also be given to the owner of the public land or its officer. Such provision was indication of the fact that the owner of the premises might not want to evict the occupier and enter into a negotiation with the occupier.

10. A bare reading of the said provision, according to Mr. Mitra, would indicate that the Collector was first required to satisfy himself that either the owner or an officer of the owner authorized in this behalf had approached the Collector for initiation of the proceedings under the said Act. Neither CIT nor any officer authorized by the said trust approached the Collector. WBTC approached the Collector, although it was not the owner. Mr. Mitra referred to the notice issued by the Collector to substantiate that the proceeding was initiated on the basis of the application filed by the WBTC and not on information received otherwise. Thus, WBTC would not be in a position to urge that even if it was not the owner, the Collector could have issued the notice on information derived from WBTC. The proceeding was initiated strictly on the understanding that WBTC was the owner and had approached the Collector. Unless the lease deed was executed and registered between the erstwhile CTC and erstwhile KIT, CTC would not or could not fall within the definition of 'owner' as envisaged in Section 2(4) of the said Act. The form of the notice issued under Section 3(1) was placed in support of the contention that the application of WBTC before the Collector was misconceived and no proceedings could not be initiated on the basis thereof.

11. According to Mr. Mitra, unless there was a specific adjudication as to whether CTC, now WBTC, had a legal right to possess the premises, the

order of eviction could not have been passed. Although the case of CTC was that it had acquired the land from another government department, that is, the KIT upon payment of proper consideration and the physical possession thereof was handed over upon issuance of certificate of possession in 1982, neither the possession nor the certificate of handing over possession of the land could establish ownership of CTC, now WBTC, in respect of the premises.

12. Mr. Mitra referred to pages 115 and 116 of the writ petition being a letter dated April 12, 2024 written by the Managing Director, West Bengal Transport Corporation opposing the prayer for adjournment made by the petitioners in the proceedings before the Collector, in order to substantiate that WBTC did not ever raise a plea that it had become a lawful lessee under KIT.

13. Mr. Mitra submitted that unless the Collector formed an opinion that the owner had complained of an unauthorized occupation of the premises, the notice could not have been issued. Reliance was placed on the application filed before the Collector. It was urged that the said application was bereft of any averment that WBTC was the owner of the premises in question.

14. The next contention of Mr. Mitra was that without evicting the original lessee, that is, the Youth Services Department, the petitioner No.1, who was the sub-lessee of the Youth Services Department, could not be evicted. There existed no privity of contract between WBTC and the petitioner No.1. Mr. Mitra submitted that even if the government had withdrawn the status of Information and Technology Wing of the said department from the petitioner

No.1, such withdrawal of status would not *ipso facto* create a privity of contract between WBTC and the petitioners. WBTC did not have any cause of action against the petitioners. In this connection, Mr. Mitra referred to the some decisions and also the 13th edition of the Transfer of Property Act, 1882, to substantiate that the sub-lessee was not liable to the lessor as there was no privity of contract between the sub-lessee and the original lessor. The lessor could enforce payment of rent and other rights, against the lessee and not the sub-lessee. At best, WBTC could proceed against the Youth Services Department.

15. According to Mr. Mitra, a specific question with regard to the locus of WBTC was raised before the authorities. Such question was not answered. The contents of the Note Sheet were also placed in detail in the written statement of defence, but the issues raised were not decided by the authorities. The petitioners contended that it was an educational society promoted by the Government of West Bengal and as such could not be treated as an unauthorized occupant. In view of the arrangement with the Youth Services Department, rent free accommodation was given to the petitioner No.1, by the department without any time limit. The finance department, by its orders, had concurred to such occupation over a period of time. Several such concurrences and decisions of the finance department, were referred to in the proceeding. The note sheet enclosed to the letter from the Superintending Engineer, PWD dated December 26, 2008 clearly indicated that CTC was aware of the developments and the arrangements between the petitioners and the Youth Services Department. The transport department also agreed to the proposal of allowing vertical extension of the

building. Reference was then made to the decision of the Hon'ble High Court in W.P. 28600(W) of 2013 dated September 30, 2013. According to Mr. Mitra, a learned Single Judge had recorded that the State Government had decided not to press their contention about withdrawal of the status of the petitioners as the Information of Technology Wing of the government and had submitted before the Court that due steps against the petitioners would be taken in accordance with law. However, no proceedings had been initiated against the petitioners by the Youth Services Department. According to Mr. Mitra, only the Youth Services Department could evict the petitioners, which they did not.

16. Payment of sewerage bills and electricity bills by the WBTC, would not *ipso facto* create ownership of the property in question. The request made by the Youth Services Department to the petitioners to vacate the premises and pay up the rent could not be treated as termination of tenancy. The petitioners enjoyed the property as a tenant of the Youth Service Department. In this regard, reliance was placed on the definition of lease under Section 105 of the Transfer of Property Act, 1882.

17. Mr. Jaydip Kar, learned Senior Advocate appeared on behalf of the respondent Nos.5 and 6. It was urged that by a lease agreement executed on August 1, 2000, between CTC, now WBTC and the Governor of West Bengal, represented by Youth Service Department, Government of West Bengal, a space measuring 5900 square feet, in the entire first floor of Kankurgachi Substation Building on Maniktala Main Road, was let out to the Department of Youth Services, for a period of three years, at a monthly rent of Rs.47,200/- and proportionate municipal tax. The rent was received up to

February 2003. Thereafter, the Youth Services Department defaulted in payment of rents and several reminders were sent to the said department to either renew the license by paying off the entire dues or to vacate the premises.

18. The notices dated March 18, 2011, August 26, 2011, April 2, 2012 and August 26, 2013, were relied upon by Mr. Kar in this regard. Mr. Kar urged that the notices would indicate that the lease had expired and the Youth Services Department continued to be in unauthorized occupation of the premises. They failed to pay a single farthing towards rent. Hence, WBTC, as the lessor of the property and “owner” as defined under the said Act, asked the department to quit and vacate the premises, by handing over clear possession thereof to WBTC.

19. The Youth Services, Directorate by a communication dated May 14, 2012, informed the managing director, CTC, that the department was going to shift their office which was housed in the subject premises to Moulali State Youth Center very shortly and the issue of payment of arrear rent would be taken up separately. As such, the directorate expressed disinterest in renewing the lease

20. Mr. Kar drew the attention of the court to a communication dated August 6, 2013, by which the Joint Secretary, Department of Youth Services, informed the Secretary of the petitioner No.1 that they should vacate the government accommodation at 101A Maniktala Main Road, Kolkata. Apart from such request to vacate, other issues with regard to collection of fees, etc., also formed a part of the said letter. The letter was copied to the Personal Assistant to the Secretary, Department of Transport,

Writer's Building. A request was made to expedite the matter, as the property at 101A Maniktala Main Road, Kolkata 700054, was owned by the Calcutta Tramways Company.

21. Mr. Kar submitted that the Youth Services Department had withdrawn its permission by which the petitioner No.1 was allowed to use a space on the rented premises. The letter to the Secretary of the petitioner No.1 to vacate the premises by issuing a notice, was adequate to prove that the lessee had terminated the arrangement with the petitioner No.1. The ownership of CTC was accepted by the lessee/ Youth Services Department. Under such circumstances, the petitioner No.1, who was just a permissive occupier of the premises under the Youth Services Department, did not have any right to continue. All relationships between the Youth Services Department and the petitioner had been severed.

22. In support of such contention, further attention of the court was drawn to a public notification dated November 11, 2013, issued by the Joint Secretary and Ex-Officer Director, Department of Youth Services, Government of West Bengal. The said notification provided that, since August 6, 2013, the Department of Youth Services had no further relationship with the activities of Indus Institute of Information Management (IIIM)/the petitioner No.1. A notification issued by the Secretary to the Government of West Bengal dated August 6, 2013, was also brought to the notice of the court, which stated that the Governor had withdrawn the status of Information Technology Wing of the Youth Services Department, Government of West Bengal, from (IIIM), in the interest of public service.

23. Attention of the court was drawn to the order of a learned Single Judge of this court passed in WP 28600 (W) of 2013, to emphasise that the notice dated August 6, 2013, which was issued by the Joint Secretary and Ex-Officer Director of the Department, inter alia, withdrawing the status of Information Technology Wing of the Government of West Bengal from the petitioner, had not been interfered with by the High Court. Rather, the court only permitted the petitioner No.1 to issue the certificates countersigned by the Director of Youth Services to those candidates who had completed the course till October 1, 2012. The Department of Youth Services, thereafter, surrendered the premises and shifted to another location. Thus, the petitioner continued to remain in the premises as an unauthorised occupant as it was neither a tenant nor a licensee nor a permissive occupier of the CTC (now WBTC). It was a wing of the government, but the government severed all connections, thereby, withdrawing the status from the petitioner No.1, by issuing a public notification. The said decision was not interfered with by the High Court. The department of Youth Services also reserved its right to take steps accordingly in respect of the issues involved. The order of the High Court also put a restriction on the use of the National Emblem as the government had withdrawn its role from the activities of the petitioners.

24. On February 2, 2024, an application was filed by the respondent No.6 before the Collector to initiate proceedings under the provisions of the said Act. In exercise of power conferred by sub Section (1) and Section 3 of the said Act, a notice was issued to the petitioners to appear before the Collector, Kolkata, and show-cause why order under sub Section (1) of Section 4 of the said Act should not be passed against the petitioners.

25. According to Mr. Kar, the arrangement between IIIM and the Youth Services Department was not binding on the owner of the premises. Even if, the lease deed between the then CIT and CTC was not registered, the fact that CTC had taken the premises on lease upon paying a consideration of Rs.11.11 lakhs was on record. The adjudicating authorities were satisfied with regard to the ownership of the respondent Nos.5 and 6, in respect of the premises in question. Under the relevant statute, the definition of “owner” included a lessee. Even if, the lease deed was not registered, CTC had become a monthly tenant. The said lessee had inducted the Youth Services Department in the property. The relationship with the Youth Services Department was severed as the tenancy was surrendered. The department shifted their office from the premises and asked the petitioner No.1 to vacate the premises. Thus, any entity, who may have been using the space on the basis of a Memorandum of Understanding (MoU) with the Youth Services Department, would not be treated as a lawful occupant, but as an unauthorized occupant, once the Youth Services Department severed all connections and surrendered the premises. Accordingly, the notice was issued by the Collector.

26. All that the authority was required to ascertain was whether the premises was public land in terms of the definition of “public land” in the statute and whether the petitioner No.1 was an unauthorized occupant. In this regard, it was urged that the tenant could not question the title of the landlord. Such restriction also bound any person claiming under the tenant or the lessee. In this case, the petitioners claimed to be permissive occupiers on account of a sanction by the Youth Services Department.

27. Section 116 of the Evidence Act corresponding to Section 122 of the Bharatiya Sakshya Adhiniyam, 2023, was placed. Thus, according to Mr. Kar, the petitioners were estopped from raising a question with regard to the validity of the lease agreement entered into between CTC and CIT. Once the Department of Youth Services had revoked its consent or permission, thereby, asking the petitioners to hand over vacant possession of the premises in question and the Youth Services Department had shifted from the premises thereby giving up all their claims of tenancy or lease in respect of the concerned premises, the petitioners did not have any right to occupy the premises in question and their status was that of unauthorized occupants.

28. Controverting the judgments relied upon by Mr. Mitra, Mr. Kar submitted that those judgments were not applicable in the instant case. The WBTC, did not seek to enforce the covenants of the lease deed against IIM. Instead, the lessor/owner of the premises sought to evict an unauthorized occupant from the public land under the appropriate law. None of the judgments laid down the proposition that the owner or the landlord was debarred from initiating proceedings against an unauthorized occupier. The Collector satisfied himself that the premises was a public land and that an officer of WBTC, (owner as per the definition in the said Act) had applied for initiation of the proceeding. Upon being satisfied that there was, a prima facie, case for issuance of a notice under the said Act, the notice was issued by the Collector. No further satisfaction, prior to issuance of the notice was necessary.

29. Relying on the findings of the authorities, Mr. Kar submitted that the Collector recorded that not a single scrap of paper could be shown which enabled the petitioners to continue to occupy the property for the past twelve years, free of cost. In the context of the said Act, ownership was not required to be proved. The law was otherwise clear that neither a tenant nor a sub-tenant could raise the question of title of the landlord. The only test in this case was whether a public land was being unauthorizedly occupied by any person. Ownership was a non-issue. Once the authorities arrived at the findings that the premises in question, was a public land and the petitioners did not have any document in support of their continuous occupation of the premises in question, but solely relied on a permission granted by the Youth Services Department, who had already surrendered the tenancy and withdrawn all connection from the petitioners having asked the petitioners to vacate the premises in question, the occupation of the petitioners could not be termed as anything but unauthorized.

30. Mr. Amitesh Banerjee, learned Senior Standing Counsel, appeared for the State and adopted the submissions of the respondent Nos.5 and 6. He submitted that the State Government recognized WBSTC as the owner of the premises in question. The Department of Youth Services was a lessee under WBSTC and paid rent. When the department defaulted, they were asked to vacate the premises. The department shifted from the said premises and surrendered the tenancy. The department did not recognize the petitioners as a wing under them since August 6, 2013. The petitioners were asked to vacate the premises by the Youth Services Department. The petitioners were allowed to use a space and impart computer training to government

employees. The fact that the Youth Services Department did not have any connection with the petitioners since August 2013, also bears the sanction of the High Court as the High Court did not interfere with the challenge to the notifications of the Department and also prevented the petitioners from using the National Emblem in the certificates to be issued.

31. Considered the rival contentions of the parties. The West Bengal Public Land Eviction of Unauthorized Occupants Act, 1962, was promulgated to provide speedy eviction of unauthorized occupants from public lands. The definition of “land” in Section 2 (2) of the said Act includes buildings and other things attached to earth or permanently fastened to things attached to the earth. Thus, the premises in question, being the entire first floor of the building at Kakurgachi sub-station situated on Maniktala Main Road near Kakurgachi railway over bridge measuring an area of 5900 sq. ft. falls within the definition of ‘land’. Section 2(4) of the Act provides the definition of ‘owner’. Section 2 (4) (b) of the said Act is relevant in this case. Section 4 (2) (b) of the said Act defines ‘owner’ as a local authority, a company or a corporation, which had taken such land on lease. Section 2 (7) defines ‘public land’ as any land taken on lease by the State Government or a local authority, a government company or a corporation owned or controlled by the Central Government or State Government. In this case the definition of land and public land applies to the premises in question. Section 2(8) of the said Act defines “unauthorized occupation”. Unauthorized occupation in relation to any public land would mean use or occupation by any person of such public land without authority in writing

by or on behalf of the owner and includes the continued use and occupation of such land on the expiry or termination of such authority.

32. Thus, a combined reading of the above definitions clearly indicates that the premises in question is a public land and WBTC (lessor) of the premises in question is the owner and the petitioners have been in unauthorized occupation as they had not got any permission in writing either from the owner or any person authorized by the owner to continue to occupy the premises.

33. Section 3(1) of the said Act, provides that if the Collector was of the opinion, upon an application made by the owner or an authorized officer of the owner of the public land or upon information received otherwise, that the public land was in unauthorized occupation of any person or persons, the Collector could issue notice in the prescribed form, asking the unauthorized occupier to show cause as to why order of eviction under Section 4(1) should not be passed. In this case, an application was filed by the Managing Director, West Bengal Transport Corporation Limited under Section 3(1) of the said Act, and, the eviction notice was issued. The order dated February 2, 2024, passed by the Collector clearly indicates that the contents of the application had been considered and the Collector formed an opinion that there were, *prima facie*, grounds to proceed with the matter under Section 3 of the said Act. Accordingly, notices were issued. The date of hearing was fixed on February 19, 2024.

34. The contention of the petitioners that the notice and the proceeding suffered from non-application of mind and contravention of the Act, is unsubstantiated. The order dated February 19, 2024, passed by the

Collector, recorded that the Secretary of the petitioner No.1 submitted that he could not produce any documents in support of his lawful occupation of the premises. However, he denied the allegation that the petitioner No.1 was no longer an I.T. partner of the Youth Services Department, Government of West Bengal. The records reveal that the first floor of the building measuring 5900 sq. ft. was leased out to Youth Services Department, Government of West Bengal, on August 1, 2000, for a period of three years. As per the lease deed, the lease expired on July 31, 2003. The Youth Services Department continued to occupy the premises till August 1, 2013. The Youth Services Department allowed the petitioners to run a programme from a part of the said premises without any consent of WBTC (erstwhile CTC), although, the lease deed prohibited subletting of the property. Vide letter dated August 6, 2013, read with the notifications of August 6, 2013, public notification dated November 11, 2013 and the press release in the Anandbazar Pratrika dated December 6, 2013, the petitioners ceased to be the IT wing of the Department of Youth Services and there was total cessation of relationship between the petitioners and the Youth Services Department. There was no subsisting agreement between the petitioner No.1 and WBTC. The petitioner No.1 continued to occupy the premises without any authority or permission. The surrender of tenancy by the Department of Youth Services to the respondent Nos. 5 and 6, upon withdrawing its IT wing from the petitioner No.1 amounted to severance of relationship between the department and the petitioner No.1. The petitioner No.1 did not have any further right to occupy the premises. The petitioner No.1 became an unauthorized occupant.

35. The law is well settled. Neither a tenant nor a subtenant can question the title of the landlord. The said Act does not require the Collector, to decide the title of WBTC. The fact that the premises was a public land and WBTC was a lessee in respect thereof, is not in dispute. Even the tenant, that is, the Department of Youth Services, accepted the ownership of CTC, now WBTC. The same appears from the communications which have been relied upon by Mr. Kar.

36. The records also reveal that after 2013, the government did not have any representation in the petitioner No.1. Only on the strength of a Memorandum of Understanding between the petitioners and the Department of Youth Services, the occupation of the petitioners in respect of the premises in question cannot be said to be lawful. Moreover, the said memorandum was valid for five years and was not extended thereafter.

37. The scope of judicial review is limited. This court can only analyse the decision-making process and not the merits of the decision. If the decision making process is not flawed, and does not suffer from violation of the basic principles of natural justice or from non-consideration of relevant materials or lack of jurisdiction, the court should restrain itself from interfering with such a decision. The court, in the garb of judicial review, cannot usurp the jurisdiction of the decision-maker and make the decision. Judicial restraint in exercise of the powers of judicial review has been time and again reiterated by the Hon'ble Apex Court. Unless there is patent illegality, irrationality or procedural impropriety, the writ court should stay its hands from probing deeper into a decision passed by the Collector, which has subsequently been upheld by the appellate authority. The court cannot sit

as an appellate authority and enter into the arena of disputed facts and figures to opine on such matters. If the court finds that the statutory authority has exercised its jurisdiction properly, the court should loathe to interfere. The orders passed by the Collector and the appellate authority and the reasons assigned, do not shock the conscious of the court.

38. With regard to the procedure followed, it is found that all relevant documents/copies, including the copy of the application filed by WBTC, asking the Collector to initiate proceedings under the said Act had been supplied to the petitioners. Adjournments were allowed on their prayer.

The Collector framed the issues as hereunder:-

- (i) Whether property at premises no. 101A, Manicktala Main Road is a public property as defined under Section 2(7) of the said act.
- (ii) If the property is a public land, then whether IIIM which is occupying portion of the said property is an unauthorized occupant.

39. Thereafter, the Collector recorded the arguments put forward by the petitioners, WBTC and the Department of Youth Services. It had been recorded by the Collector that the Department of Youth Services submitted a copy of the Memorandum of Understanding between the Youth Services Department, the petitioner No.1 and Indus Consulting Worldwide, whereby proposal for establishment of a computer training institute in a joint initiative between the two entities had been taken. The representative of the Youth Services submitted a copy of the indenture dated August 18, 2000, on

the basis of which the petitioner No.1, was to set up a top level IT training programme for the employees of the department.

40. The MoU provided that the same would be valid for five years from the date of final execution and was renewable from time to time on the mutual consent of the signatory parties. The department submitted that no formal renewal of the agreement was done after 2005. Youth Services Department specifically submitted that it had no legal compulsion to abide by the terms of the agreement and had withdrawn from the joint venture initiative unambiguously, on and from August 6, 2013, by making relevant declarations and by issuing notifications. Finally, the petitioners were asked to vacate the premises which had been permitted for the operation of the centre. The Youth Services Department further submitted before the Collector that it had no liability for the continuous occupation of the premises by the petitioners after 2013, that is, the year when all sorts of association with the petitioner No.1 had been severed by public notifications in widely circulated new papers and also by issuing letters and by asking the petitioner No.1 to vacate the premises.

41. The Collector, recorded his decision with reasons and held as follows:-

“It is also an admitted fact that the property was a public property as both the organizations are public undertakings or State Government Undertakings which are owned and controlled by the Government. As per Section 2(1) of the Said Act. the Land Acquisition Collector, Kolkata is the Collector for initiating the proceedings u/s 3(1) of the Said Act. The contention that WBTC has no locus standi to make application u/s 3(1) of the said Act is found to be baseless and as such is rejected. The Managing Director, WBTC who has made the application before the Adjudicating Authority is competent lawfully to make application.

Hence, there is no infirmity in the proceedings undertaken by the First Land Acquisition Collector, Kolkata at the instance of the WBTC.

2. As regards the point whether IM is an authorised or unauthorised occupant of the premises, a careful examination of the documents, office records and papers submitted by both WBTC and Youth Services & Sports as well as the arguments put forwarded by them reveal the following:

a) A Memorandum of Understanding (MOU) was signed on 07.12.1999 between the Youth Services and Sports and Indus Consulting Worldwide for establishment of a software training institute as a joint venture initiative between these parties. As a result of which Indus Institute of Information Management (IIIM) came into existence in the year 2000. For operation of IIIM a site was selected by Youth Services and Sports at 101A, Manicktala Main Road, Kolkata-700054. The space was taken on lease by the Youth Services & Sports on a rental basis. An office of the Youth Services & Sports as well as an office of the IIIM started functioning from that premises. IM was established as an entity under Registration of Societies Act, 1961 in the year 2001. Initially it was decided that for smooth functioning of the institute and for achieving the objectives as contemplated in the agreement, a government official should be in the Committee of the IIIM. It was further decided that the Youth Service & Sports will be entitled to receive 10% of fees collected by IIIM from the trainees availing the training. Though the tenure of the agreement lapsed in the year 2005, the Youth Services and Sports allowed it to continue with the existing terms and conditions for some time thereafter. The joint venture initiative came to an end with Youth Services & Sports withdrawing its participation in the initiative. The Youth Services & Sports formally disassociated itself from the IIM by way of notification in the newspaper on 06.12.2013. The IIIM moved before the Hon'ble Court against the decision of the Youth Services and Sports. It is evident that the Hon'ble Court considering the interest of the trainees directed the Director of Youth Services and Sports to counter sign the certificates of training issued by the IIIM till October 1, 2012. It is also evident that the Hon'ble Court was more concerned about the validity and recognition of the certificates received by the trainees from IM. However, the Hon'ble Court by fixing a particular date in this regard abstained from deciding the matter of termination of agreement made between the Youth Services and Sports and IIIM. It is noted that after withdrawal of status of IT Partner of Youth Services and Sports from IIIM and after severance of ties with it the IIIM continues to run the institute by using the name of the government unlawfully and occupying the premises at 101A, Maniktala Main Road unauthorisedly. The records also show that even after 2013 no Govt, official represented in the Committee of the IM and as per provisions of Registration of Societies Act, 1961 any society registered under this Act is required to submit list of members of Managing Committee annually before Registration Authority. The bye-laws of IIIM also stipulate that the members of the committee shall be elected for every two years. However, it is also understood that list of members of

governing body of IIIM did not include name of any official from Youth Services and Sports after 2013. Hence it is unlawful on the part of the IIIM to use the term "promoted Govt. of West Bengal." All the evidence both written and verbal suggest beyond doubt that Youth Services and Sports is not associated with the IIM after 2013.

After careful consideration of all records and submissions of all parties I am of the opinion that:

- a) 101A, Maniktala Main Road is public land as defined under section 2(7) of the said act and;
- b) WBTC is the lawful owner of the said premises and;
- c) WBTC at no point of time inducted IIIM at its premises and;
- d) The agreement made between WBTC and Youth Services and Sports stood terminated with expiry of validity of agreement and more evidently with Youth Services and Sports vacating the said premises in the year 2012 and;
- e) IIIM has no lawful right to occupy the land of WBTC especially when Youth Services and Sports has directed it to vacate the premises at 101A Maniktala Main Road hired by it and when Youth Services and Sports by public notification severed all ties with IIM.

In view of the above findings, objections raised by the Secretary, IIM and the Advocates appeared on his behalf are proved unfounded and untenable and IIIM is found to be an unauthorised occupant of the portion of the premises at 101A, Manicktala Main Road, Kolkata-700054, which is a public land as defined u/s 2(7) of the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962.

Now, in exercise of power vested upon me w/s 4 of the said Act, I, do hereby order the Secretary, IIIM to vacate the portion of the premises occupied by IIIM and deliver the possession thereof to the authorised representative of the Managing Director, WBC within a period of 07 (Seven) days from the date of communication of this order. If the Secretary, IIM refuses or fails to comply with the order within the specified period, the Officer-in-Charge, Manicktala P.S. who is in this regard authorised by me, in my exercise of power vested on me u/s SCI) of the said Act, shall evict the IIIM from the area occupied by it in the said premises and deliver possession of the said occupied area to the representative of the Managing Director, WBTC after evicting the unauthorised occupant, within a period of 07 (seven) days after expiry of the specified period. The Officer-in-Charge, Manicktala P.S. can take such steps or use such force as may be necessary for eviction of the unauthorised occupant from the occupied area."

42. The appellate authority considered all the points raised by the petitioners while assailing the order dated June 7, 2024, passed by the First

Land Acquisition Collector, Kolkata, by which the petitioners were found to be in unauthorized occupation of a portion of the premises situated at 101A Maniktala Main Road, Kolkata, 700054, and had directed the authority to vacate the public premises and deliver possession to the authorized representative of WBTC under Section (4) of the said Act. Page 2 of the said order of the appellate authority dated July 19, 2024, records the submissions of the parties. Page 3 of the order of the appellate authority records that the Director of Youth Services by a letter dated May 14, 2012, had informed CTC (now WBTC) that it was not interested in renewing the lease and was going to shift from the premises. The order records that the Managing Director, CTC had asked the Youth Services Department to pay the outstanding bills and vacate the premises, as there was no renewal of the lease after expiry of July 31, 2003.

43. The order further records that the Director of Youth Services informed WBTC that they were not interested in renewing the lease and would shift their office to another premise. Accordingly, in 2012, the Youth Services Department surrendered the tenancy and left the premises. The order also records that the Youth Services Department had withdrawn the status of the Information and Technology Wing of the said Department from the IIIM and directed IIIM to vacate the premises. Due process of law was followed in this case. The appellate authority heard the parties and came to the conclusion that if there was no bona fide dispute with regard to the title over the public land and the persons in occupation were found to be unauthorizedly occupying the premises, an order of eviction could rightly be passed. Here,

title was clear, as the land was owned by KIT, which had been leased to WBTC.

44. The arguments with regard to the applicability of the Transfer of Property Act, 1882 was not accepted by the appellate authority, inter alia, holding that unless the landlord either by consent or by conduct permitted continuation of the sub-tenant and accepted the rent, the occupation of such sub-tenant could not be said to be either valid or legal. Section 116 of the Transfer of Property Act, 1882 was discussed. The order records that there was no valid contract between the CIT now WBTC and the petitioners.

45. With regard to the decisions cited by Mr. Mitra, this court finds that the said decisions were rendered under different facts and the proposition of law laid down in those decisions will not be applicable here. The contention of Mr. Mitra that the Collector did not form an opinion is incorrect and the relevant portions of the order have been discussed herein above.

46. The second contention of Mr. Mitra that WBTC (erstwhile CTC), not being the owner of the property could not request for initiation of proceedings for eviction of the petitioners, is also incorrect as a permissive occupier of Youth Services Department, who claims through the said department, cannot challenge the title of the landlord. The illustration of rights and liabilities of lessor and lessee under Section 108 of the Transfer of Property Act does not help the petitioners. It is an accepted proposition that a sub-lessee is not liable to the lessor as there is no privity of contract or estate between the two. In the instant case, the WBTC is not making the sub-lessee liable for any terms and conditions of the contract. Rather, WBTC has sought for eviction of the petitioners who are in unauthorized

occupation of the premises after the lessee had already vacated the premises upon severing all relationship with the sub-lessee. The tenancy and the leased property were surrendered by the Youth Services Department. The petitioner No.1 was in permissive occupation of a part of the public land as the Youth Services Department allowed the petitioner No.1 to run its IT wing from the premises.

47. The decision in *Baban Purnaji Kale vs. Champabai and others* reported in **AIR (86) 1949 Nagpur 336** does not help the petitioners as WBTC is not claiming any arrear rent from the petitioners.

48. The decision in *Hiralal Vallabhram vs Kastorbhai Lalbhai & Ors.* reported in **1967 SCC online SC 273** also does not come to the aid of the petitioners inasmuch as, in the present case, the tenant has already surrendered the premises and the person who is in occupation of the premises does not continue to occupy the same on the basis of any sub-lease or sub-tenancy. The lessee (Youth Services Department) had also asked the petitioners to vacate the premises, after withdrawing from the business relationship it had with the petitioner No.1. Once the lessee surrendered and vacated the premises, the question of suing the lessee along with the sub-lessee would not arise. The surrender of tenancy itself negates such requirement and the WBTC can proceed under the Act for eviction of the petitioners, who have been in occupation of the premises since 2013 without any consent either from WBTC or from the lessee.

49. The decision in *The Ganges Manufacturing Company, Ltd. vs Sreemati Radharani Dassi* reported in **1944 SCC online Cal 127** also does not apply, inasmuch as, in the case in hand, the original lessor has not

proceeded against the under lessee for breach of any positive covenant of the original lease deed.

50. The decision in ***Jagdish Chandra vs Muhammad Bukhtiyar Shah and Ors.***, reported in ***1952 SCC online Patna 30*** cannot to pressed into service by the petitioners. The original lessor was not trying to enforce the covenants in the principal lease between CTC and the Youth Services Department. WBTC had not initiated the proceeding for breach of any positive covenant contained in the principal lease deed.

51. The proposition of law that neither the lessee nor the sub lessee can challenge the title of the landlord has been laid down in different decisions by the Hon'ble Apex Court. Some of them are ***S. Thangappan vs P. Padmavathy*** reported in ***(1999) 7 SCC 474***, ***Jaspal Kaur Cheema and Anr. vs Industrial Trade Links and Ors.*** reported in ***(2017) 8 SCC 592***.

52. In ***Anthony vs. K.C. Ittoop & Sons and Ors.*** reported in ***(2000) 6 SCC 394***, it was held that if a lessee is in possession of a property on the basis of an unregistered lease deed and the period of lease extends beyond one year, the relationship would be that of a landlord and tenant, and the lessee will be a monthly tenant.

53. With regard to the right of WBTC in respect of the premises on the basis of an unregistered lease deed, the principles of law is discussed below. In the decision of ***Park Street Properties Private Limited vs Dipak Kumar Singh and Anr.*** reported in ***(2016) 9 SCC 268***, that it was held that in the absence of a registered instrument, the courts were not precluded from determining the factum of tenancy from the other evidence

on record as well as the conduct of the parties. Relevant paragraphs are quoted below:-

“19. It is also a well-settled position of law that in the absence of a registered instrument, the courts are not precluded from determining the factum of tenancy from the other evidence on record as well as the conduct of the parties. A three-Judge Bench of this Court in *Anthony v. K.C. Ittoop & Sons* [*Anthony v. K.C. Ittoop & Sons*, (2000) 6 SCC 394] , held as under: (SCC pp. 399 & 400, paras 12-13 & 16)

“12. ... A lease of immovable property is defined in Section 105 of the TP Act. A transfer of a right to enjoy a property in consideration of a price paid or promised to be rendered periodically or on specified occasions is the basic fabric for a valid lease. The provision says that such a transfer can be made expressly or by implication. Once there is such a transfer of right to enjoy the property, a lease stands created. What is mentioned in the three paragraphs of the first part of Section 107 of the TP Act are only the different modes of how leases are created. The first paragraph has been extracted above and it deals with the mode of creating the particular kinds of leases mentioned therein. The third paragraph can be read along with the above as it contains a condition to be complied with if the parties choose to create a lease as per a registered instrument mentioned therein. All other leases, if created, necessarily fall within the ambit of the second paragraph. Thus, dehors the instrument parties can create a lease as envisaged in the second paragraph of Section 107 which reads thus....

13. When lease is a transfer of a right to enjoy the property and such transfer can be made expressly or by implication, the mere fact that an unregistered instrument came into existence would not stand in the way of the court to determine whether there was in fact a lease otherwise than through such deed.

16. Taking a different view would be contrary to the reality when parties clearly intended to create a lease though the document which they executed had not gone into the processes of registration. That lacuna had affected the validity of the document, but what had happened between the parties in respect of the property became a reality. Non-registration of the document had caused only two consequences. One is that no lease exceeding one year was created. Second is that the instrument became useless so far as creation of the lease is concerned. Nonetheless the presumption that a lease not exceeding one year stood created by conduct of parties remains un rebutted.”

(emphasis supplied)

Thus, in the absence of registration of a document, what is deemed to be created is a month-to-month tenancy, the termination of which is governed by Section 106 of the Act.”

54. Once there is a transfer of the right to enjoy a property, a lease stands created. Section 107 of the Transfer of Property Act provides the modes of creation of lease. A condition has been imposed for creation of a lease by a registered instrument, if the lease extends beyond a period of one year. All other kinds of leases if created, without any registered instrument, will fall within the second paragraph of Section 107 of the Transfer of Property Act. Thus, parties also can create a lease without an instrument. An unregistered instrument would not stand in the way of the court to determine whether there is in fact a lease, otherwise than through such deed.

55. Mr. Mitra's contention that the payment of utility bills would not create a lease in terms of the provisions of the Transfer of Property Act, is not acceptable. In view of the proposition of law laid down in ***Park Street Properties (supra)***, both the authorities found that CIT had granted lease in favour of the CTC in respect of the premises in question upon accepting Rs.11.11 lakhs as consideration and all the utility bills etc., were being paid by CTC (now WBTC). There was handing over of possession upon issuance of a possession letter. Such facts were adequate to prove that WBTC was the owner as per the definition of the term in the said Act. The Department of Youth Services also recognized WBTC as the owner.

56. Under such circumstances, this court does not find any reason to interfere with the decisions of the statutory authorities.

57. The orders are upheld. The writ petition is dismissed. The petitioners are unauthorized occupants, who have enjoyed the property without paying a single penny. They did not have any right to remain in the property as the Department of Youth Services shifted its office to Moulali upon surrendering the premises in question.

58. The order of eviction passed by the First Land Acquisition Collector directing the Secretary, IIIM, i.e., the petitioner No.2 to vacate the portion of the premises occupied by the petitioner No.1 and deliver the possession thereof, to the authorized representative, i.e., the Managing Director of WBTC is also upheld. Such possession shall be delivered within a month from date of communication of this judgment. In case the petitioners fail or refuse to comply with such direction, the concerned authority may proceed in accordance with Section 5 of the said Act.

59. There will be no order as to costs.

60. Parties are directed to act on the server copy of this judgment.

61. Urgent photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of all formalities.

(Shampa Sarkar, J.)

Later:-

Learned Advocate for the petitioners pray for stay of this judgment. Such prayer is considered and rejected.

(Shampa Sarkar, J.)