

S/L 28
19.09.2025
Court. No. 19
Suwayan

**WPA 60 of 2024
With
CAN 1 of 2025**

**Swapan Kumar Chakraborty
Vs.
The State of West Bengal & Ors.**

*Mr. Pradip Kumar Roy, Sr. Adv.
Ms. S. Mukhopadhyay
Ms. Shruti Mitra*

...for the petitioner.

*Mr. Tapan Kumar Mukherjee, AGP
Mr. Pinaki Dhole
Mr. Somnath Naskar*

...for the State.

1. The writ petitioner and the respondents/State are represented by their respective Counsels.
2. The subject matter of the instant writ petition is the notice dated 12.09.2023 as issued by the respondent no. 3/authority and the memo dated 06.11.2023 as passed by the Special Secretary to the respondent no. 1/authority.
3. By the aforementioned impugned notice dated 12.09.2023 and by the aforementioned memo dated 06.11.2023 the writ petitioner was directed to vacate the flat bearing no. 15, Block – D, Entally LIG Government Housing Estate, Dr. Sundori Mohan Avenue, Kolkata – 700014 (hereinafter referred to as the ‘said premises’ in short).
4. At the time of hearing, Mr. Roy learned Senior Advocate appearing on behalf of the writ petitioner at the very outset draws attention of this Court to the aforementioned impugned notice and order. It is

submitted by Mr. Roy that on careful perusal of the said notice and the memo it would reveal that the respondent no. 2 and the special secretary to the respondent no. 1 have wrongly invoked the provision of Section 3(2)(ia) of the West Bengal Government Premises (Tenancy Regulation) Act, 1976 (hereinafter referred to as the 'said Act' in short) and thus misdirected themselves to come to a finding that the writ petitioner and/or a member of the writ petitioner's family has built up or acquired a house or an apartment within a reasonable distance from the Government premises where the writ petitioner is residing as a tenant under the respondents/authorities.

5. It is submitted by Mr. Roy that the finding of the respondents/authorities that the writ petitioner is residing at Sitanath, Flat no. 1924, 2nd Floor, Milon Park, Mukundapur, Kolkata – 700099 which is claimed to be within 25 kilometer from the tenanted premises is a myth since such finding is based on no document. It is further submitted by Mr. Roy that the decisions as arrived at by the respondents/authorities are based on extraneous materials and the same is required to be set aside in a judicial review.
6. On being asked by this Court as to whether in the instant writ petition any documents have been placed on behalf of the writ petitioner to substantiate that the writ petitioner and/or his family members are continuously residing at the said premises, Mr. Roy seeks time to file those documents by way of

supplementary affidavit and accordingly he prays for an accommodation.

7. When such prayer for accommodation is rejected by this Court, Mr. Roy requests this Court to release this Court from this Court.
8. Such prayer for release is also considered and rejected by this Court since this Court has substantially heard Mr. Roy on merit in connection with the instant writ petition and this Court has already applied its judicial mind over the instant *lis*.
9. *Per contra*, Mr. Mukherjee, learned AGP appearing on behalf of the respondents/State submits before this Court in absence of any perversity in the said notice as well as in the said memo there cannot be any justification to interfere with the said two order and memo which are impugned before this Court.
10. This Court has meticulously gone through the entire materials as placed before this Court and this Court has also given its due consideration over the submissions of the learned Advocates for the contending parties.
11. For effective adjudication of the instant *lis*, this Court at the very outset proposes to look to the provision of Section 3 of the said Act which is quoted hereinbelow in verbatim:

“3. Termination of Tenancy. (1) Every tenancy held by a tenant in respect of a Government premises shall stand terminated upon the expiry of the period referred to in a notice to quit served upon such tenant in the prescribed manner.

(2) A tenancy in respect of a Government premises shall stand automatically terminated without any notice to quit where the tenant has ,-

(ia) Subsequently built a house or acquired (by purchase, gift, inheritance, lease, exchange or otherwise) a house or an apartment, either in his own name or in the name of any member of his family, within a reasonable distance from such Government premises.

Explanation.-For the purposes of this section and section 3A,-

(a) “apartment” shall have the same meaning as in the West Bengal Apartment Ownership Act, 1972;

(b) “family” shall include parents and other relations of the tenant who ordinarily reside with him and are dependant on him;

(c) “reasonable distance” shall mean any distance not exceeding twenty-five kilometers, or

(ii)

(3) (a).....

(b) A tenant shall be deemed to be ordinarily resident of a Government premises if he or any member of his family generally resides in such Government premises for not less than ninety days in a period of four consecutive months.

(c) The provisions of this sub-section shall have effect notwithstanding anything contained in this Act or in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act, or in any decree or order of any court, tribunal or other authority, and nothing contained in the Transfer of Property Act, 1882, or the Indian Contract Act, 1872, or the West Bengal Premises Tenancy Act, 1956, shall apply, or shall be deemed over to

have applied, to the tenancy as aforesaid and such tenancy shall take effect, and shall be deemed always to have taken effect, as if the Transfer of Property Act, 1882, or the Indian Contract Act, 1872, or the West Bengal Premises Tenancy Act, 1956, had not been passed.”

12. Keeping in mind the aforementioned legislative provision if I look to the factual aspects of this case it reveals from page no. 18 of the instant writ petition that the respondent no. 2/authority issued a notice dated 23.02.2016 to the predecessor-in-interest of the writ petitioner for vacating the said premises since on account of a door to door to survey it was noticed that the lawful tenant is not residing in the said premises.
13. It further appears that pursuant to subsequent hearing notices the writ petitioner appeared before the respondent no. 2/authority and in course of hearing in a proceeding for eviction the respondent no. 3/authority noticed that the writ petitioner has a paternal house at AE-110, Salt Lake City, Kolkata – 700064 and apart from that he owns a flat at Sitanath, Flat no. 1924, 2nd Floor, Milon Part, Mukundapur, Kolkata – 700099 in his own name which is situated within 25 kilometers from the said premises.
14. Based on such factual findings the impugned notice dated 12.09.2023 was issued by the respondent no. 2/authority. It further reveals from page no. 31 that the special secretary to the respondent no. 1/authority also came to a factual finding that after death of the original recorded tenant the writ petitioner approached

the estate manager for mutating his name but on account of non-availability of 'no objection' to the other legal heirs of the original tenant such mutation cannot be effected. The said special secretary further came to a finding that the writ petitioner before him could not substantiate that his paternal property at Salt Lake was sold out.

15. This Court being a writ court sitting in a judicial review is not expected to act like an appellate court and, therefore, there is hardly any scope on the part of this Court to re-appreciate the evidence as has been done by the respondent no. 2/authority in a proceeding for eviction as has been initiated against the writ petitioner.
16. In absence of any perversity, this Court thus finds no reason to interfere with the finding of the respondent no. 2/authority as well as with the finding of the special secretary of the respondent no. 1/State.
17. This Court has noticed that in the instant writ petition no document has been filed to substantiate that since the lifetime of his father till date the writ petitioner and/or his family members are residing at the said premises within the meaning of Section 3(b) of the said Act.
18. In view of such, this Court finds no reason to hold that the finding of the respondents/authorities were vitiated on account of consideration of some extraneous materials which are not on record or non-consideration of any materials which are on record.

19. In view of such, this Court thus finds no merit in the instant writ petition and accordingly, WPA 60 of 2024 is hereby dismissed.
20. Consequently, this Court directs the respondent no. 2/authority to execute its order/notice dated 12.09.2020, a copy of which has been annexed at page no. 30 of the instant writ petition forthwith and if necessary with the assistance of the respondent no. 4 who is directed to deploy sufficient numbers of police personnel, if such a requisition is made by the respondent no. 2.
21. Learned Advocate for the respondents/state is hereby requested to communicate the server copy of this order to the respondent nos. 2 and 4/authorities for their immediate compliance.
22. With the dismissal of the instant writ petition, the pending interlocutory application being CAN 1 of 2025 is also dismissed.
23. However, there shall be no order as to costs.
24. Urgent Xerox certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Partha Sarathi Sen, J.)