

S/L 9
04.07.2025
Court. No. 19
Suwayan

**WPA 21016 of 2023
With
CAN 1 of 2025**

**Asimul Islam
Vs.
Union of India & Ors.**

*Mr. Taimur Hossain
Mr. Ziaul Haque*

...for the petitioner.

*Mr. Sanjit Kumar Ghosh
Mr. Siddharth Gupta*

...for UOI (Rail).

1. The writ petitioner and the respondents/railway authority are represented by their respective Counsels.
2. The subject matter of challenge in the instant writ petition is an order under Section 5 (1) of the Public Premises (Eviction of Unauthorized) Occupants Act, 1971 (hereinafter referred to as the 'said Act' in short) as has been passed by the respondent no. 2/authority whereby and whereunder one Sri Mozzafar Hossain was directed to vacate the suit premises within 30 days from the date of publication of the said order.
3. In course of hearing Mr. Hossain, learned Advocate appearing on behalf of the writ petitioner submits before this Court that the writ petitioner is the nephew of the said Mozzafar Hossain who is no more in the earth and the present the writ petitioner is carrying on his business of hardware over the suit property by constructing by a 'pakka' structure by virtue of an agreement dated 12.07.2010 a copy of which has been

annexed at page nos. 17 to 20 of the instant writ petition.

4. It is further contended by Mr. Hossain that in respect of the proceeding as initiated by the respondent no. 2/authority no notice was served upon the writ petitioner herein.
5. It is thus submitted by Mr. Hossain that since the respondents/authorities more specifically the respondent no. 2/authority who is an authority under Article 12 of the Constitution is duty bound to follow the principle of natural justice and since the order under challenge has been passed in violation of the principle of natural justice, appropriate relief/reliefs may be granted to the writ petitioner in terms of the prayers made in the instant writ petition.
6. *Per contra*, Mr. Ghosh, learned Advocate appearing on behalf of the respondents/authorities and its functionaries at the very outset draws attention of this Court to Sections 5 and 9 of the said Act. It is submitted by Mr. Ghosh that on conjoint perusal of Sections 5 and 9 of the said Act it would reveal that an order under Section 5 is appealable in nature. It is thus submitted by Mr. Ghosh that on account of availability of alternative remedy by no stretch of imagination it can be said that the instant appeal is maintainable.
7. It is further submitted by Mr. Ghosh that there was serious discrepancy in the instant writ petition inasmuch as in the cause title as well as in the pleading of the instant writ petition it is the categorical stand of

the writ petitioner that the writ petitioner is the nephew of one Mozzafar Hossain who was the licensee of the writ petitioner whereas in the affidavit portion of the writ petition the writ petitioner described himself as son of the said Mozzafar Hossain (since deceased),

8. It is thus submitted that because of such discrepancy and also considering the fact that the writ petitioner has not approached before this Court with clean hand the writ petition is liable to be dismissed.
9. On careful consideration of the entire materials as placed before this Court and after hearing the learned Advocates for the contending parties it appears to this Court that admittedly the order under challenge has been passed by the respondent no. 2/authority under Section 5 of the said Act. It further appears that the said Act also provides an appellate provision under Section 9 that is to say that an order passed by an estate officer under Section 5 of the said Act is appealable under Section 9 of the said Act.
10. At the time of hearing Mr. Hossain, learned Advocate appearing on behalf of the writ petitioner contended that the respondent no. 2/authority while passing the order under challenge failed to observe the principle of natural justice and thus there cannot be any predicament in entertaining the instant writ petition.
11. This Court is respectful disagreement with the submission of Mr. Hossain inasmuch as in an appeal the ground of lack of service of notice can very well be taken.

12. At this juncture, this Court proposes to consider as to whether the instant writ petition is at all maintainable especially when there is availability of alternative efficacious statutory remedy.
13. It is trite law that normally a High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided, the High Court should ensure that he has made a strong case or there exists good ground for invoking the extraordinary jurisdiction.
14. Such view was taken by the Hon'ble Supreme Court in the reported decision of ***U.P. State Spinning Co. Ltd. vs. R. S. Pandey & Anr.*** reported in **2005 (8) SCC 264**.
15. It further appears to this Court that it is never the case of the writ petitioner that action as taken by the respondent no.2 under an Act is ultra vires.
16. It further appears that the respondent no.2 before initiation of the process under Section 5 of the said Act served notice under Section 4 of the said Act which was duly received by the writ petitioner.
17. Keeping in mind the above proposition of law and in view of the facts as discussed in the foregoing paragraphs this Court finds that the writ petitioner has failed to make out any case for entertaining the instant writ petition instead of availing adequate efficacious alternative statutory remedy.

18. This Court thus finds that the instant writ petition is not at all maintainable.
19. Consequently, WPA 21016 of 2023 is hereby dismissed.
20. Consequently, the interim order as passed earlier stands hereby vacated.
21. With the disposal of the instant writ petition the pending interlocutory application being CAN 1 of 2025 is also disposed of.
22. There shall be, however, no order as to costs.
23. 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.)