

29.10.2025

Court No.39

DL/Item No.-3

[Milan, A.R. (Ct.)]

**IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side**

CO 3566 of 2025

**Sudsons Pvt. Ltd.
versus
Sabyasachi Sen & Ors.**

Mr. Suddhasatva Banerjee,
Ms. Rituparna Chatterjee,
Mr. Avrin Chakraborty,
Ms. Ayasha Kedia,
Mr. Ekalabya Sarkar

....for the Petitioner

Mr. Sandip Kumar De,
Ms. Abhijit Sarkar

....for the Opposite Parties Nos.2, 6, 7, 8 & 10

On or about 14th August, 1957, a registered lease deed was executed by and between the predecessor-in-interest of the opposite parties and the petitioner in connection with an immovable property situate at premises no.15 Jessore Road, Dum Dum Cantonment, P.S: Dum Dum, Kolkata – 700028 (hereinafter referred to as, “the said premises”).

The lease was for a period of 20 years and, as such, came to an end on September, 1974. Despite expiry of the lease, it is the case of the opposite parties that the petitioner continued to hold on to the possession of the said premises. As a consequence whereof, a suit for recovery of possession by evicting the petitioner was filed in the year 1984. The suit was

decreed on 28th August, 1989. The decree was unsuccessfully challenged by the petitioner in Title Appeal no.443 of 1989 which was dismissed by a judgment and order dated 22nd February, 1992.

The petitioner filed a second appeal but did not pursue the same, as a consequence whereof, the same stood dismissed for default on 18th May, 2000. The belated attempt to restore the same was unsuccessful. The matter thereafter travelled to the Supreme Court. The Hon'ble Supreme Court by the judgment and order dated 9th January, 2023 dismissed the Special Leave Petition filed by the petitioner with cost holding that the action on the part of the petitioner was in abuse of process of Court.

The decree passed in the eviction suit, therefor, has achieved finality and has been put to execution by the opposite parties. At the execution stage, the petitioner had filed an application under Section 47 of the Code of Civil Procedure, 1908 (in short, "CPC"), alleging that the decree is not executable.

The principal ground on which, the petitioner contended that the decree is inexecutable is that the leased out property had stood vested in the state during the continuance of the lease pursuant to promulgation of West Bengal Estate Acquisition Act, 1954 (hereinafter referred to as, "the 1954 Act") and made applicable to the area wherein the suit property is situated. The other point is the vague description of the suit property in the

schedule of the plaint, which has been considered by the Courts while passing the decree and upholding the same in connection therewith.

The executing Court dismissed the application of the petitioner by the order impugned dated 26th March, 2025 which has given rise to this revisional application.

It is the contention of the petitioner that once the suit property had vested, the opposite parties and/or their predecessor-in-interest had not better title to the property for leasing out the same or collecting lease rent from the petitioner. Moreover, with the vesting, the petitioner had become a tenant under the estate and, as such, the suit was not maintainable. A decree therein cannot and could not have been passed directing eviction of the petitioner.

On hearing and considering the materials on record, I find that the fact of vesting was neither pleaded in the written statement nor any evidence was adduced in the suit. No ground had also been taken in the first appeal or the second appeal. The Hon'ble Supreme Court also had not occasion to deal with the vesting and as late as on 9th January, 2023 when the Special Leave Petition was dismissed with costs holding the action of the petitioner to be an abuse of process of Courts.

It is well-settled principle of law that concurrent finding by the Trial Court and First Appellate Court in respect of a question of fact cannot be reopened at the third round either in appeal or revision or in writ

petition. In this context, one can refer to the judgment of the Supreme Court reported in **2019 (5) SCC 537 [Deepak Tandon & Anr. Vs. Rajesh Kumar Gupta]**. The right between the petitioner and the opposite parties flew from the lease deed which has been considered by the Trial Court as also the First Appellate Court. This issue, however, did not fall for consideration in the second appeal as the same stood dismissed for default on having not been prosecuted diligently by the petitioner. Furthermore, the issue of vesting is not a pure question of law but is a factual issue which has to be specifically pleaded and evidence has to be adduced in respect thereof. Nothing has been done by the petitioner to this effect. That apart and in any event the tenant cannot question the title of the landlord.

It is, therefor, too late for the petitioner to allege at the Section 47 stage that the decree is not executable by referring to vesting of the suit property under the provisions of the 1954 Act. The petitioner as the lessee has enjoyed the said premises for initial 20 years under the lease deed. After expiry of the lease in September, 1974 the petitioner has continued to remain in possession thereof despite suffering a decree in 1984 which has stood confirmed upto the Supreme Court. It was incumbent upon the petitioner to make over possession of the said premises to the opposite parties. The moment the opposite parties filed the execution application another plea under Section 74 of CPC has

been urged being complete abuse of the process and Court as held by the Hon'ble Supreme Court. Assuming without admitting that the said premises had stood vested in the State. It is for the State to claim right, if any on the ground of vesting. The petitioner on having suffered the decree for eviction till upto the Supreme Court is required to be evicted in execution thereof by making over possession to the opposite parties being the decree holder and cannot continue to dodge the decree by raising the issue of vesting. The petitioner's application was, therefor, rightly dismissed.

It is also germane to note that State has made an application in the execution proceeding for adjudication of its right in respect of said premises on the ground of vesting under the provisions of the 1954 Act. This is an independent cause and is not linked with the right claimed by the petitioner.

On a perusal of the order impugned, I do not find any material irregularity or illegality to interfere with the same particularly for the reason that the rights, vis-à-vis, the petitioner and the opposite parties have stood crystallized. So far as the issue of vesting is concerned, the application filed by the State is pending, the executing Court while dealing with the said application, if necessary will take note of the vesting as alleged by the State in its application.

The executing Court, therefor, is directed to expeditiously hear out the application filed by the State

and proceed with the execution proceeding in accordance with law without granting any unnecessary adjournments to any of the parties.

Nothing further remains to be adjudicated in this revisional application.

The revisional application being CO 3566 of 2025 is accordingly disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities

(Arindam Mukherjee, J.)