

D/L - 15
24/03/2025
Court. No. 28
S.Kundu

WPA 26254 of 2024

**Shri Bishnu Pada Naskar
Vs.
State of West Bengal & Ors.**

Mr. Falguni Bandyopadhyay,
Ms. Riya Ballav

...for the petitioner.

Mr. Naba Kumar Das,
Mr. Pathik Bandhu Banerjee

...for the respondent no. 2.

Mr. Amal Kr. Sen,
Mr. Lal Mohan Basu

...for the State.

The writ petitioner has approached this Court seeking a direction on the respondent nos. 2, 3 and 4 to rehabilitate the petitioner in an alternative shop room having an area of approximately 170 sq. ft. at the ground floor of the building known as Devlok Market at 70/1, Dhakuria Station Road, Kolkata – 700031. The petitioner impugns the order dated August 29, 2024 whereby the petitioner has been allotted shop room no. 29 and his request to allot another space/shop room measuring 170 sq. ft. at the ground floor of the building called Devlok Market has been declined.

The writ petitioner was originally a tenant in respect of a shop room which the petitioner had to vacate owing to the demolition of the building which housed the writ petitioner's tenanted shop pursuant to

a scheme for broadening of Dhakuria Station Road. The writ petitioner was not provided any rehabilitation and as such he approached this Court by filing a writ petition being WPA No. 6308 of 2010. The said writ petition was disposed of by this Court by an order dated December 14, 2022 by directing the respondent authorities “to allot the particular designated shop room, allotted in the name of Bishnu Naskar subject to the petitioner proving his identity by sufficient documents to the satisfaction of the respondents.” It can be culled out from the said order that it was the case of the writ petitioner before the Court, when the order dated 14th December, 2022 came to be passed, that the writ petitioner’s name figured at serial No. 22 in the list of allottees at 70/1, Dhakuria Station Road to indicate that the allotment was made in favour of the petitioner as long back on September 26, 2007.

In terms of the order passed by this Court on December 14, 2022 in WPA 6308 of 2010, the respondents have allotted shop no. 29 which appears as the shop number against serial no. 22 in the list of allottees which was placed before this Court by way of a supplementary affidavit and was taken note of by the Court while passing the said order dated 14th December, 2022.

The petitioner today complains that the said shop room being shop no. 29 is lesser in area and that the

said shop room is situated at the first floor of the building which is not suitable for the petitioner to carry on his business of hardware. The petitioner submits that the tenanted shop room that he had lost owing to the demolition of the building, was one having an area 170 sq. ft. and it was on the ground floor of the building. The petitioner submits that the present allotment of the shop room no. 29 to the petitioner at the first floor of the building would not serve his purpose and therefore, the petitioner has no option but to assail the order dated August 29, 2024 by which the petitioner's request to allot another shop room measuring 170 sq. ft. at the ground floor of the said building i.e. Devlok Market has been turned down.

The learned advocate appearing for the respondent nos. 2, 3 and 4 who are the answering respondents (i.e. KMDA authorities), submits that shop room no. 29 has been allotted to the petitioner in terms of the direction passed by this Court on 14th December, 2022 in WPA 6308 of 2010. He further submits that upon the direction contained in the order dated 14th December, 2022 being complied with no cause of action survives for the petitioner and as such this writ petition should not be entertained.

The learned advocate appearing for the KMDA authorities further submits that it is not possible for the KMDA authorities to provide any other shop room

measuring 170 sq. ft. in the said market as there is no such space available in the said market. It is submitted that such fact has already been indicated in the order dated 29th August, 2024 which has been impugned in the writ petition.

Having heard the learned advocates appearing for the respective parties and having perused the material on record, this Court finds that the order dated 14th December, 2022 was passed on the basis of the petitioner's representation that the petitioner was entitled to the shop room designated for the petitioner in terms of the list of allottees of shops at 70/1, Dhakuria Station Road (which has been annexed at page 62 of the writ petition). The said list shows that the petitioner's name figures at serial no. 22 and the designated shop room against the petitioner's name is shop no. 29.

Today, during the course of hearing, the petitioner sought to insinuate that shop no. 29 is not the designated shop room for the petitioner inasmuch as the name of the allottee appearing at serial no. 22 is Sri Bishnu Naskar while the name of the petitioner is Sri Bishnu Pada Naskar. I am afraid, such submission of the writ petitioner cannot be countenanced at this stage. In fact the same submission which is being made by the writ petitioner today, was made on 14th December, 2022 by the respondent when WPA 6308 of

2010 was being heard by this Court. Such fact would be apparent from the third paragraph at page 2 of the said order. The writ petitioner did not take such stand before the Court when the order dated 14th December, 2022 came to be passed. He rather represented that the name appearing at serial no. 22 was his name only. Yet when this Court found that there could be reason to contend otherwise, this Court in its order dated 14th December, 2022 clarified that the petitioner would be required to prove his identity with the allottee as mentioned in serial No. 22 of the list of allottees annexed to the supplementary affidavit. The petitioner went ahead with the said order and proved his identity but at the same time he also sought to take a second bite at the same cherry by requesting for a shop room measuring 170 sq. ft., other than shop no. 29. Having once exercised an option of getting the designated shop room in terms of the list of allottees and having persuaded this Court to pass the order dated December 14, 2022, the writ petitioner cannot today be heard to take a contrary stand. This Court is, therefore, unable to accede to the request made by the petitioner to issue a writ of mandamus as prayed for. The writ petition is, therefore, not entertained.

It will, however, be open to the petitioner to make an application to the respondent KMDA authorities for allotment of a different shop room of adequate size of

170 sq. ft. at the ground floor of the same premises or some other premises in place and stead of shop no. 29 or to shift the petitioner from the said shop no. 29 to a different shop room measuring 170 sq. ft. at the ground floor of Devlok Market, if it is so feasible for the KMDA authorities. The KMDA authorities would be free to take a decision as regards such re-allotment or shifting on the basis of availability of space strictly in accordance with law.

WPA 26254 of 2024, thus, stands disposed of.

There shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance with requisite formalities.

(Om Narayan Rai, J.)