

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Om Narayan Rai

WPA 27146 of 2024

Epic Marketing Company Pvt. Ltd. & Anr.

Vs.

The State of West Bengal & Ors.

For the Writ Petitioners : Mr. Indrajit Chatterjee

.....Advocate

For the State : Mr. Sk. Md. Galib

Ms. Sujata MukherjeeAdvocates

For the Respondent : Mr. Mahendra Prosad Gupta

Nos. 2 to 5 Mr. Abhishek SikdarAdvocates

Heard on : 28.03.2025

Judgment on : 10.04.2025

Om Narayan Rai, J.:-

1. The instant writ petition has been filed seeking issuance of a writ of mandamus commanding the respondent nos. 2 to 4 to refund the lease premium amount of Rs.13,40,500/- (Rupees Thirteen Lakh Forty Thousand Five Hundred) paid by the petitioner no.1 to the West Bengal Small Industries Development Corporation Limited (hereafter "the said Corporation").
2. Briefly summed up, the facts of the case (as may be garnered from the material on record and to the extent the same are relevant for deciding the case at hand), are that on or about 08.03.2005 the petitioner no.1 made an application for leasing in (taking on lease) a plot of land in the Industrial

Estate Tangra in response to an advertisement published by the State Government inviting applications from interested parties for such purpose. The petitioner no.1 was ultimately allotted a plot of land at Tangra-II, Industrial Estate being No.P-28 measuring about 3.83 Cottahs for 99 years through a formal letter of allotment dated 30.12.2005. Subsequently a formal deed of lease was executed between the petitioner no.1 and the said Corporation on 27.12.2006 which recorded that the property described in Schedule – A appended to the lease-deed had been leased out to the petitioner no.1 for a period of 99 years from 30.12.2005 to 29.12.2104. Schedule – B of the lease-deed records that a sum of Rs.13,40,500/- (Rupees Thirteen Lakh Forty Thousand Five Hundred) in aggregate had been paid by the lessee i.e. the petitioner no.1 to the lessor i.e. the said Corporation by way of three installments. The last of the said three installments was paid on 21.09.2005. In terms of clause 2(g) of the lease-deed, the petitioner no.1/lessee was required to start construction, manufacturing activities/production according to the provision of clause 2(c) thereof within a period 12 months from date of such lease.

3. The petitioners failed to take steps in terms of the said clause of lease-deed and as such a notice dated 29.04.2010 was issued to the petitioner No.1, on behalf of the said Corporation thereby calling upon the said petitioner to show cause as to why the said lease would not be terminated. The petitioner no.1 replied to the said notice by a letter dated 12.05.2010 whereby the petitioner no.1 assured the said Corporation that it would undertake construction works “within the month of Aug’ 2010”. The petitioner no.1, however, could not keep its commitment. In such view of the matter, after affording an opportunity of hearing to the petitioner no.1, the Executive Director of the said Corporation, being the Prescribed Authority appointed under Section 2(e) read with Section 8 of the West Bengal Government Premises (Tenancy Regulation) Act, 1976 issued an order of eviction dated 03.10.2012 thereby calling upon the petitioner no.1 to quit the said leased property (hereafter “the said property”) and deliver vacant possession thereof

to the said Corporation within a period of thirty days from the date of service of the said notice. In order that the said Corporation could take peaceful possession of the said property through its Officers, a letter dated 13.02.2013 was issued on behalf of the said Corporation addressed to the Officer in Charge, Entally Police Station seeking assistance of the police. Assailing the said order of eviction dated 03.10.2012 and the notice seeking police assistance dated 13.02.2013, the petitioners approached this Court by filing a writ petition being W.P. No. 18657(W) of 2013 (*Epic Marketing Company Pvt. Ltd. & Anr. Vs. The State of West Bengal & Ors*). The said writ petition was ultimately dismissed by an order dated 05.07.2013 *inter alia* with the following observations.

“This order will not prevent the petitioners from seeking any refund, if the petitioners are so entitled to in accordance with law, from the West Bengal Small Industries Development Corporation Limited.”

4. On the strength of the said observation of this Court in W.P. No. 18657(W) of 2013 the petitioners approached this Court for the second time by filing another writ petition being WPA 23044 of 2022 (*Epic Marketing Company Pvt. Ltd. & Anr. Vs. The State of West Bengal & Ors.*) which was ultimately disposed of by this Court by an order dated 11.07.2024 directing as follows:

“6. However, the reason why the money could not be refunded should be intimated to the petitioners by the Estate Manager, West Bengal Small Industries Development Corporation Limited. This direction upon the Estate Manager shall not be construed as entertaining the prayers in the writ petition by condoning the delay. The petitioners are entitled to know the reason. Such reason shall be supplied to the petitioners within two months from communication of this order.”

5. In terms of the order passed by this Court in WPA 23044 of 2022, the respondent no. 4 by a letter bearing no. SBI/1560/24-25 dated 04.09.2024 intimated the reasons for not refunding the lease premium. One of the several reasons that had been mentioned in the said letter dated 04.09.2024 was that *“there is no provision for refund of the lease premium either in normal condition or in the case of eviction due to violation of any of the*

provisions of the lease deed as prescribed in the West Bengal Government Premises (Tenancy Regulation) Act, 1976". It was also observed in the said letter dated 04.09.2024 that the writ petitioner no.1 had already been "informed about such position by several letters including the letter dated 18.01.2021 written by the Concern Estate Manager of WBSIDCL".

6. Upon being so informed about the reasons wherefor the said Corporation had not refunded the lease premium to the petitioners, the petitioners have approached this Court again by filing the present writ petition.
7. Mr. Chatterjee, learned Advocate appearing for the petitioners submits that as the lease premium was to be paid by the petitioner no.1 to the respondent in installments the same could not have been forfeited by the respondent. He submits that as payments have been made at periodic intervals, the same should be treated as advance payment of rent and not lease premium and as such the same should be treated to be refundable at least to the extent of the unexpired period of lease. He seeks to demonstrate the same by placing reliance on Schedule-B to the Lease Deed (at page 44 of the writ petition).
8. Mr. Chatterjee further submits that even otherwise, since there is no clause for forfeiture of the premium paid by the petitioner no.1, therefore, the said Corporation is not justified in forfeiting the said amount.
9. Mr. Mahendra Prasad Gupta, learned Advocate appearing for the respondent nos. 2 to 5 draws the attention of this Court to the order dated 11.07.2024 passed in WPA 23044 of 2022 and submits that the said order had granted a very limited relief to the petitioners. It is submitted that a meaningful reading of the said order dated 11.07.2024 would reveal that by the said order the petitioners were only found entitled to nothing more than the intimation of the reasons as to why the lease premium had not been refunded to the petitioners. It is further submitted that the said order cannot be construed as an order directing fresh considering of the writ petitioner's representation seeking refund.

10. Mr. Gupta hands up a copy of the earlier writ petition being WPA 23044 of 2022 and laying emphasis on prayer (a) thereof submits that on the earlier occasion too, the writ petitioner had made a similar prayer (as made in the present writ petition), seeking refund of the lease premium. It is submitted that since such prayer has not been expressly granted by this Court, the same should be deemed to have been refused by this Court. He submits that the petitioners' present writ petition therefore stands barred by *res judicata*. In order to buttress his submission he relies on a judgment of the Hon'ble Supreme Court in the case of **Dr. Subramanian Swamy vs. State of Tamil Nadu and Others**.¹.
11. Having heard the learned Advocates for the parties and having considered the material on record this Court is of the view that the instant writ petition deserves dismissal.
12. Comparison of the prayers made by the petitioners in the present writ petition and the earlier writ petition being WPA 23044 of 2022 is the first necessary step in deciding as to whether the bar of *res judicata* is attracted to the present case or not.
13. The principal relief claimed in the present writ petition as follows:
- a) *"A writ of and/or in the nature of Mandamus do issue directing the respondents in general and particularly upon the Respondent No.2 to 4 refund the Lease premium amount of Rs.13,40,500/- (Rupees Thirteen Lacs Forty Thousand Five Hundred) only in favour of the petitioner company with immediate effect"*
14. The main prayer in WPA 23044 of 2022 reads as follows:
- a. *"A writ of and/or in the nature of Mandamus do issue directing the respondents specially the respondent No.4 The Estate Manager, West Bengal Small Industries Development Corporation Limited, to refund the Consideration money deposited by the petitioners at the time of execution of the Deed of Lease dated 26.12.2006 as that*

¹(2014) 5 SCC 75

Lease has been terminated vide order dated 03.10.2012 at a premature stage by the authorities.”

15. Upon comparing the prayers made by the petitioners in the two writ petitions as aforesaid, it becomes evident that the petitioners have indeed attempted to take a second bite at the same cherry. The reliefs prayed for by the petitioners in both the writ petitions are substantially the same.
16. Having found that the reliefs claimed in both the writ petitions are substantially the same, the next step would be to check as to what directions were passed by this Court in respect of the prayers made by the writ petitioner in the earlier round. Paragraphs 3, 4 and 5 of the order dated 11.07.2024 passed in WPA 23044 of 2022 specifically deal with such prayer of the petitioners. The same are quoted herein below:

“3. The writ petition has been filed in 2024 (sic 2022) praying for such refund. It is a state (sic stale) claim. It is astonishing that the petitioners did not take any steps at all for 9 years. The cause of action lastly arose for such money claim on the liberty granted by this Court on July 5, 2013. 9 years have lapsed since then. A money suit cannot be filed. Now, the petitioner has approached the writ court by relying on two representations dated January 5, 2021 and July 7, 2022.

4. Mr. Basu, learned advocate appearing on behalf of the State respondents submits that the Estate Manager, West Bengal Small Industries Development Corporation Limited by a communication dated January 18, 2021, intimated the learned advocate for the petitioners that the question of refund of the amount and providing an alternative space, did not arise. The petitioners were advised to stop sending letters to the authority. This order has not been challenged.

5. The writ Court is not in a position to direct refund as the claim of the petitioners would be based on evidence. The writ petition is also belated. The Estate Manager has denied the claim of the petitioners by intimating the petitioners that the question of refund did not arise. The decision not to provide another space is the discretion of the authority and this writ Court cannot question such decision, especially when the petitioners had failed to comply with the terms and conditions of the lease agreement and he was evicted from the property. Such eviction was also not challenged by the petitioners. The writ Court, on an earlier occasion, did not provide any relief.”

17. This Court while directing the Estate Manager of the said Corporation to intimate to the petitioners the reasons as to why the money could not be refunded to the petitioners went on to clarify that such “*direction upon the Estate Manager shall not be construed as entertaining the prayers in the writ petition by condoning the delay*”.
18. The above-quoted observations of the Court made in the order dated 11.07.2024 leave no manner of doubt that the same relief that has been prayed for by the petitioners in the instant petition had been expressly declined by the Court while disposing of the earlier writ petition. The said order having been accepted by the petitioners has attained finality. Such being the position, the instant petition is clearly barred by *res judicata*. The observations made by the Hon’ble Supreme Court in paragraphs 39 and 40 in the case of **Dr. Subramanian Swamy**¹(supra), relied on by Mr. Gupta are highly pertinent to the present context. The same are reproduced herein below:-

“39. The scope of application of doctrine of *res judicata* is in question. The literal meaning of “*res*” is “everything that may form an object of rights and includes an object, subject-matter or status” and “*res judicata*” literally means “a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgments”. *Res judicata pro veritate accipitur* is the full maxim which has, over the years, shrunk to mere “*res judicata*”, which means that *res judicata* is accepted for truth. The doctrine contains the rule of conclusiveness of the judgment which is based partly on the maxim of Roman jurisprudence *interest reipublicae ut sit finis litium* (it concerns the State that there be an end to law suits) and partly on the maxim *nemo debet bis vexari pro una et eadem causa* (no man should be vexed twice over for the same cause)

40. Even an erroneous decision on a question of law attracts the doctrine of *res judicata* between the parties to it. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as *res judicata*. (Vide *Sha Shivraj Gopalji v. Edappakath Ayissa Bi and Mohanlal Goenka v. Benoy Kishna Mukherjee*.)”

19. By the order dated 11.07.2024 passed in WPA 23044 of 2022, the Court had merely directed the respondent authority to intimate to the petitioner the

reasons for not refunding the lease premium and nothing more. Such intimation of reasons cannot give rise to a fresh cause of action. It is settled that if a Court directs any authority to either decide a representation or intimate the reasons for doing or refusing to do something, then such authority would be bound to comply with the directions but the decision taken or the intimation of reasons by such authority in compliance with the directions of the Court would “*neither revive the stale claim nor amount to some kind of “acknowledgement of a jural relationship” to give rise to a fresh cause of action*”. **(See - C. Jacob v. Director of Geology and Mining²)**

20. The Court had specifically noticed in the said order dated 11.07.2024 that “*the petitioners did not take any steps at all for 9 years. The cause of action lastly arose for such money claim on the liberty granted by this Court on July 5, 2013. 9 years have lapsed since then. A money suit cannot be filed.*” It was also observed that the direction upon the Estate Manager to intimate the reasons would not be construed as entertaining the prayers in the writ petition by condoning the delay. It is now well settled that although the provisions of the Limitation Act, 1963 do not apply to a proceeding under Article 226 of the Constitution of India, yet the Court would be justified in refusing to exercise discretion in favour of an indolent writ petitioner who chose to approach the Court after expiry of the period of limitation within which a suit could have been filed to claim the same relief. **(See State of M.P. v. Bhailal Bhai³)**
21. When the delayed approach of the petitioners was not appreciated by this Court in the earlier round itself and the delay occasioned was not condoned, there can be no reason for entertaining the dead wood now. The writ petition therefore fails on the ground of delay as well.
22. Even factually, the terms of the lease deed do not tend to support the case of the petitioners. The same rather express a contrary intention of the parties to the lease. In such regard the last clause in the lease deed

²(2008) 10 SCC 115

³AIR 1964 SC 1006

appearing just above Schedule-A appended thereto deserves notice. The same is quoted herein below:

“FURTHER PROVIDED THAT in case the lessee agreed to pay the lease rent on installments, the lessor may determine the lease on default of any installment and can take possession of the demised premises by giving one month’s notice and the lessee is not entitled to get any refund of the sum paid prior to the determination of the lease. Delay in payment of installment will lead to imposition of interest @ 15% p.a. from the date of default to the date of payment.”

23. The underlined term clearly bars the petitioners’ right to claim refund in totality. More so when it is clear from the facts of the present case that the lease has been determined due to breach of the terms thereof by the petitioner no.1. Although the underlined portion of the term of the lease quoted hereinabove is placed together with the clause providing for the consequences of a default being committed by the lessee in payment of installments yet, this Court is of the view that the underlined clause is intended to apply in all cases where a case for seeking refund could ordinarily have been made out but for such clause. The reason for arriving at such conclusion is that if a lessee has committed default then such a lessee would already be in arrears of rent and therefore in such a case such lessee would in any way not have anything to claim refund of. Therefore, mere placement of the term that completely wrecks the lessee’s right to claim refund with a clause providing for the consequences of default would not lead to the conclusion that the parties intended that such bar to claim refund would operate only when default was committed and not in other situations. Such an interpretation would be wholly illogical and meaningless.
24. Indeed there is no clause using the expression forfeiture as submitted by Mr. Chatterjee but then when there is a clause which expressly disentitles the lessee to get any refund of any sum paid prior to the determination of

the lease then such clause would in effect operate as a clause of forfeiture only.

25. The other argument of Mr. Chatterjee that the lessee had paid rent in advance in installments and not as premium is equally without merit. Whatever may be the nomenclature, if the parties did not intend any refund to be allowed, the same cannot be allowed at all.
26. In view of all the reasons aforesaid, this Court finds no merit in the instant writ petition. The same is therefore dismissed. No costs.
27. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

(OM NARAYAN RAI, J.)