

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

WPA 28374 of 2024

(Ashok Biswas alias Ashok Kumar Biswas Vs.
Shyama Prasad Mookherjee Port & Ors.)

Mr. Subir Kr. Bhattacharyya

..... For the petitioner

Mr. Subhankar Nag

Mr. Debayan Sen

..... For the respondents

Affidavit-of-service, as filed, be kept on record.

Although the matter was directed to appear today in the list in terms of the last order so as to enable the parties to argue on the point of maintainability that had been raised on behalf of the respondents when the matter was taken up last, yet, the matter has been listed under the heading "To Be Mentioned" today marked "For Correction" in view of it being brought to the notice of the Court that the date in the last order has been incorrectly typed as '08.04.2024' instead of '08.04.2025'. The date of the order passed on the last occasion should be corrected by incorporating the corrected date i.e. '08.04.2025' in place and stead of '08.04.2024'. The other portion of the order dated 08.04.2025 shall remain unchanged. The matter could not be heard on 08.04.2025 as the petitioner was unrepresented. Today the petitioner is present.

Mr. Nag, learned advocate appearing for the respondents raises a preliminary issue of maintainability of the writ petition. He submits that on

the petitioner's own rendition of his case in paragraphs 4 and 6 of the writ petition, the petitioner has no semblance right in respect of the premises in question inasmuch as the petitioner claims to be a tenant under the respondent no. 4 although the premises is owned by Syama Prasad Mookerjee Port.

Mr. Nag further submits that the petitioner is a rank trespasser and in that view of the matter, the petitioner is not entitled to any relief.

In order to prop his aforesaid submission, he relies on a judgment of the High Court of Kerala at Ernakulam in the case of ***“Harris T. K. Vs. Greater Cochin Development Authority, represented by the Secretary and Another”*** reported at **2023 SCC OnLine Ker 1371**. He relies on paragraphs 1 and 3 of the said judgment to drive home the point that as there is no contractual or jural relationship between the petitioner and the respondent no. 1 therefore the petitioner should be similarly treated by this Court as the petitioner before the High Court of Kerala was treated. In the case of Harris T. K. (supra) the petitioner was held to be a rank trespasser and his writ-appeal was dismissed with costs.

He further submits that even otherwise in terms of Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereafter “the said Act of 1971”), the remedy of a person aggrieved by an order passed by the Estate Officer either under

Section 5 or Section 5B or Section 5C or Section 7 of the said Act of 1971 lies before the appellate authority/appellate officer.

The learned advocate appearing for the petitioner while answering the preliminary point raised by Mr. Nag submits that the petitioner has been in occupation of the premises in question for more than 40 years and that such occupation of the petitioner was on the basis of the petitioner's understanding that the respondent no. 4 was a landlord. It is further urged that the petitioner's plight, which is genuine, must be taken note of by this Court in the right earnest inasmuch as the petitioner uses the subject premises to earn his livelihood. It is further submitted that the petitioner's right to livelihood should be protected by this Court by passing appropriate orders.

Having heard the submissions made by the learned advocates for the respective parties and having considered the material on record, this Court is of the view that the instant writ petition cannot be entertained.

The question as to whether the petitioner has a semblance of right in respect of the property which the petitioner is now occupying, cannot be decided by this Court in a proceeding under Article 226 of the Constitution of India.

The writ petitioner by dint of his own averments in the writ petition has demonstrated that he has not

been occupying the property on the strength of any permission granted by the respondent no. 1 or on the strength of any agreement between the petitioner and the respondent no. 1.

Further, as has been rightly pointed out by Mr. Nag since there is a provision for statutory appeal against the order passed by the Estate Officer, the instant writ petition should not be entertained on that ground as well.

For all the reasons aforesaid, the writ petition being WPA 28374 of 2024 is not entertained and the same is dismissed while leaving the petitioner free to avail of such remedy as would be available to him, in accordance with law. No costs.

Mr. Nag hands up a copy of a notice served by his advocate-on-record upon petitioner's learned Advocate after the petitioner went unrepresented on April 08, 2025. The same is taken on record.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Om Narayan Rai, J.)