

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
AN APPEAL FROM JUDGMENT AND ORDER PASSED IN ITS
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE**

**APOT/279/2024
IA No.GA/2/2024**

AVEEK MAJUMDER

-VERSUS -

STATE OF WEST BENGAL & ORS.

Present :

The Hon'ble Justice Debangsu Basak

-And-

The Hon'ble Justice Prasenjit Biswas

For the Appellant : *Mr. Parashar Baidya, Adv.*
Mr. Bhaskar Prasad Banerjee, Adv.

For the KMDA : *Mr. Naba Kumar Das, Adv.*
Mr. Diana Ghosh Dastidar, Adv.
Mr. Parvez Mallick, Adv.

For the Respondent No.6 : *Mr. Aniruddha Chatterjee, Sr. Adv.*
Mr. Abirlal Chakraborti, Adv.
Mr. Tuhin Subhra Patra, Adv.

HEARD ON : 05.08.2025
DELIVERED ON : 05.08.2025

DEBANGSU BASAK, J.:-

1. Appeal is at the behest of the writ petitioner and directed against the order dated April 25, 2024 passed in WPO/219/2024.
2. By the impugned order the learned Single Judge, after noticing that there were allegation of unauthorized occupation in respect of a public premises

held that, within the contemplation of the West Bengal Public Premises (Eviction of Unauthorized Occupants) Act, 1971, there is no scope of a third person instigating a proceeding to be initiated under the Act of 1971. In such circumstances, learned Single Judge held that there was no scope for intervention in the writ petition and, therefore, proceeded to dismiss the writ petition.

3. Learned Advocate appearing for the appellant submits that, appellant is the grandson of the original allottee in respect of flat no.18, lying and situated on the 2nd floor, Block-D, CIT Building, 31, Madan Chatterjee Lane, Kolkata- 700 007.
4. Learned Advocate appearing for the appellant submits that, such flat is presently being occupied by the private respondent illegally and unauthorisedly. He submits that, the appellant is entitled to actual physical possession of such flat by evicting the private respondent who is in unauthorised occupation. Consequently he approached the authorities for eviction and possession of such flat. However, the authorities did not act in terms of such request and, therefore, the appellant approached the High Court.
5. Learned Advocate appearing for the Kolkata Metropolitan Development Authority (KMDA), on the basis of instructions submits that, on inspection, they found the private respondent no.6 in the appeal to be in occupation along with others. He submits that, the flat in question is governed under the provisions of the Act of 1971. A tenancy agreement was executed on May 20, 1957 between KMDA and the original allottee

who expired on November 23, 1987. Thereafter, there was an application filed by one of the heirs and legal representatives of the original allottee for lease of such flat. No lease was granted.

6. Learned Advocate for the KMDA submits, on instructions that, KMDA came to learn there was an agreement between one Sujit Sengupta and the respondent no.6 with regard to the flat in question. He submits, the flat being in unauthorized occupation and Act of 1971 being attracted thereto, KMDA authorities will take appropriate steps.
7. Learned Advocate appearing for the respondent no.6 submits that, the respondent no.6 entered into an agreement with Mr. Sujit Sengupta and paid Rs.25 lakhs in respect of the flat. He submits that, the agreement between the respondent no.6 and Mr. Sujit Sengupta is that once Mr. Sujit Sengupta obtained the lease, the same will be transferred in favour of his client. He draws the attention of the Court to order No.2 dated December 6, 2019 passed in Title Suit No.1724 of 2019 by the learned City Civil Court at Kolkata.
8. Learned Advocate appearing for the respondent no.6 submits that, the appellant does not possess any right, title and interest in respect of the flat in question since the heirs and legal representatives of the deceased original allottee, namely, Mr. Prafulla Sengupta relinquished all right, title and interest in respect of such flat. He points out his client is in possession of the flat in question pursuant to a possession certificate issued by Mr. Sujit Sengupta.
9. Some of facts are admitted between the parties. The admitted facts are:

- i. Property in question belongs to KMDA and is governed by the provisions of Act, 1971.
 - ii. The original allottee in respect of such property is Mr. Prafulla Sengupta who expired on November 23, 1987.
 - iii. One of the heirs and legal representatives of the deceased original allottee applied for execution of a lease deed on June 23, 2014 which was not granted.
 - iv. The respondent no.6 claims right, title and interest in respect of the flat in question through Mr. Sujit Sengupta who is one of the heirs and legal representatives of original allottee Mr. Prafulla Sengupta.
 - v. There is a civil suit pending in which the order dated December 2, 2019 was passed.
 - vi. The appellant was impleaded as a party defendant in Title Suit No.1724 of 2019 subsequent to the death of his mother.
 - vii. KMDA is a proforma defendant in such civil suit.
 - viii. Deceased original allottee and the respondent no.6 are not related to each other.
10. Apparently one of the heirs and legal representatives of the deceased original allottee sought to transfer an immovable property governed under the Act of 1971, to the respondent no.6 herein. KMDA did not authorise such transfer. Mr. Sujit Sengupta from whom the respondent no.6 claims to derive title to the flat in question, did not himself possess any title to transfer. Right to occupy the property governed by the Act of 1971 cannot

be transferred. There is no document on record to establish any right, title and interest of the respondent no.6 in respect of the flat in question. The alleged transaction between the respondent no.6 and Mr. Sujit Sengupta does not bind KMDA.

11. In the view of KMDA the respondent no.6 and the person in occupation of such flat are unauthorised occupants within the meaning of the Act of 1971. No other view is possible in the facts and circumstances of the present case than the one taken by KMDA. In any event the same is a plausible view which KMDA is entitled to take.
12. Under such circumstances, KMDA will initiate proceedings under the Act of 1971 immediately and will endeavour to conclude such proceedings within three months from date.
13. Interim order passed in Title Suit No.1724 of 2019 is ad interim in nature. It does not prevent the KMDA authorities from invoking the Act of 1971. Moreover, there cannot be any restraint on the actual owner of the property to remove trespassers or unauthorised occupants from its property. More so when the property in question is governed by the Act of 1971.
14. With the aforesaid observation, APOT/279/2024 along with all connected applications are disposed of without any order as to costs.

(DEBANGSU BASAK, J.)

15. I agree.

(PRASENJIT BISWAS, J.)