

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

**Before:
The Hon'ble Justice Hiranmay Bhattacharyya**

**WPA 2612 OF 2023
M/s. H. M. Construction & Co. & Ors.
Vs.
The State of West Bengal & Ors.
CAN 1 of 2023
CAN 2 of 2023**

For the Petitioners	: Mr. Udaynarayan Betal Mr. Bhaskar Hutait Mr. Mriganka Patra advocates
For the State	: Mr. Soumitra Bandyopadhyay Mr. Priyabrata Batabyal advocates
For the NHAI	: Ms. Manika Roy Ms. Ankita Chowdhury Mr. Atanu Sur advocates
Heard on	: 11.03.2026
Judgment on	: 09.06.2026

Hiranmay Bhattacharyya, J.:-

1. Petitioners have prayed for setting aside the notices dated 12.12.2022, 28.12.2022 and 06.01.2023 issued by the 6th respondent in this writ petition.
2. Petitioner claims that the 3rd respondent let out a portion of Kapasaria Stockyard under Kolaghat National Highway Sub-Division for installation of HMP in favour of the petitioner firm for the purpose of execution of work of

construction of bituminous road at Medical College Complex area, Haldia. Petitioners state that the rent for the said stockyard was fixed from time to time and the petitioners paid rent upto November, 2022. All of a sudden, the 6th respondent issued a Memo dated 12.12.2022 directing the petitioners to vacate the said land. The said Memo was followed by Memoranda dated 28.12.22 and 06.01.2023. Petitioners replied to the said letters. Petitioners challenged the action of the respondent authorities to evict the petitioner from the stockyard.

3. M/s. Eagledeep Kolaghat Haldia OMT Project Limited (for short “Eagledeep”) filed an application being CAN 1 of 2023 praying for being added as a respondent in this writ petition. Eagledeep claims to have been awarded a contract by the National Highway Authority of India (for short “NHAI”) for operation and maintenance of a stretch of Kolaghat to Haldia Highway and Eagledeep commenced the work from September, 2017. Eagledeep alleges that the proposed location for setting up of Hot Mix Plant which is within the NHAI Right of Way has been illegally encroached by the writ petitioner for which the smooth progress of the maintenance and operation of the said Highway has been affected. On the grounds as aforesaid, Eagledeep prayed for being added as a party respondent in this writ petition.
4. Project Director, NHAI, being the 5th respondent filed an application being CAN 2 of 2023 praying for vacating the interim order dated February 03, 2023 and the subsequent orders extending the said interim order. The case made out by the 5th respondent is that the concerned Executive Engineer, PWD, Government of West Bengal vide Memo dated 09.09.2022 handed over the complete stretch of Kolaghat to Haldia Highway to NHAI for construction of 4 laning work. During periodical inspection of the said Highway by the 5th respondent, it was found that the writ petitioner is in unauthorised occupation of a portion of the said Highway. Accordingly, notice under Section 26(2) of the Control of National Highways (Land & Traffic) Act, 2002 was served upon the writ petitioner calling upon him to remove the unauthorised occupation from the Highway Land. It has been alleged that

the writ petitioner neither removed the encroachment nor submitted any representation.

5. Mr. Betal, learned advocate for the petitioners contended that the petitioners have been inducted as a tenant in respect of the stockyard and the petitioners have paid rent as assessed by the competent authority. He contended that a tenant cannot be evicted without following the due process of law. He further contended that since the petitioners have been inducted as a tenant by the concerned Executive Engineer, PWD Government of West Bengal, the notice issued by the 5th respondent under Section 26(2) of the 2002 Act is bad in law. He contended that the NHAI is trying to evict the petitioners from their tenanted premises forcibly.
6. Ms. Roy, learned advocate appearing for NHAI contended that the stretch of Kolaghat-Haldia Highway was handed over to NHAI for construction of 4 laning work. She submitted that upon inspection it was found that the writ petitioner is in unauthorised occupation of the said Highway for which a notice under Section 26(2) of the 2002 Act has been issued. She submitted that the writ petitioner has neither removed the encroachment nor submitted any representation against such notice.
7. Mr. Bandyopadhyay, learned Senior Government Advocate submitted that the writ petitioners were allowed to occupy the stockyard for a specific purpose upon payment of charges for such occupation. He contended that the writ petitioners were obliged to vacate the stockyard upon being directed to do so.
8. Heard the learned advocates for the parties and perused the materials placed.
9. Record reveals that by a Memo dated 09.02.2007 permission was accorded to let out a portion of Kapasaria Stockyard under Kolaghat National Highway Sub-Division for installation of H.M.P in favour of the writ petitioner only for the purpose of execution of the work namely

“Construction of Bituminous Road at Medical College Complex area, Haldia under certain terms and conditions”.

10. Pursuant to such permission, Executive Engineer, National Highway Division no. IV, granted temporary permission in favour of the petitioner vide Memo dated 16.02.2007 to install HMP at Kapasaria Stockyard only for the purpose of execution of the aforesaid work on certain terms and conditions.
11. By the said Memo, petitioner was directed to pay a lump sum amount till the rent is fixed by the concerned authority on condition that such amount shall be adjusted against the rent fixed. Petitioner was directed to demarcate the portion of the land where HMP is to be installed and to put a fence by barbed wire temporarily which must be cleared at the time of vacating. It was specifically stated in the said Memo that the petitioner shall have to vacate the land as and when required by the Department.
12. Upon reading the terms and conditions contained in the Memoranda dated 09.02.2007 and 16.02.2007 this Court is of the considered view that the intention of the parties was temporary occupation of the land for a specific purpose and not to create any tenancy. The petitioner was also under an obligation to vacate the land as and when required by the Department. Thus, the control over the land remained with the department. This Court, therefore, holds that the relationship between the parties was that of licensor and licensee and not that of landlord and tenant. The use of the word “rent” in the aforesaid Memoranda as a consideration for such occupation of land cannot decide the nature of the relationship between the parties which has to be gathered from the intention of the parties.
13. Petitioner accepted the terms and conditions contained in the aforesaid Memoranda and occupied such land. After accomplishment of such purpose of occupation, the petitioner cannot be allowed to turn around and contend that the status of the petitioner is that of a tenant and not licensee.

14. Petitioner is bound by the terms of the said Memoranda. The said Memoranda contains a clause that the petitioner has to vacate the land as and when the same is required by the Department.
15. It is not in dispute that notices dated 12.12.2022, 28.12.2022 and 06.01.2023 have been served upon the petitioners. In spite of receipt of the same, the petitioner has failed and neglected to comply with the directions contained in the said notices.
16. Petitioner has failed to demonstrate any legal right to remain in occupation of the land in question. For such reason, this Court is not inclined to grant any relief to the writ petitioner.
17. The Project Director, NHAI in CAN 2 of 2023 has specifically stated that NHAI has no concern with the stockyard land which is the subject matter of the instant writ petition. However, the Project Director has highlighted the issue regarding alleged unauthorised occupation of the National Highway Land i.e., Right of Way by the writ petitioner.
18. Since, the subject matter of this writ petition is the stockyard land, this Court refrains from making any comment on the steps taken by the authorities of NHAI in respect of land which falls beyond the scope of this writ petition.
19. For all the reasons as aforesaid, the writ petition stands dismissed. Consequently, the applications stand disposed of. There shall be, however, no order as to costs.
20. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)