IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

BEFORE:
THE HON'BLE JUSTICE OM NARAYAN RAI

C.O. 973 of 2025

M/s. Calcutta Posta Sramik Sangstha, represented by its authorised representative Sri Raghunath Hazra
-Vs-
The Board of Major Port Authority for Syama Prasad Mookerjee Port, Kolkata & Others

For the Petitioner	:	Mr. Somnath Ghoshal, Adv. Mr. Satyajit Senapati, Adv. Mr. Dipanjan Karmakar, Adv.
For the Opposite Party Nos. 1 to 3	:	Mr. Subhankar Nag, Adv. Mr. Abhishek Banerjee, Adv.
Heard on	:	10.04.2026
Judgment on	:	09.06.2026

OM NARAYAN RAI, J.:-

1. This revisional application under Article 227 of the Constitution of India is directed against an order dated February 28, 2025 passed by the learned Judge, XIIth Bench, City Civil Court, Calcutta, whereby the petitioner's appeal under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereafter "the 1971 Act") has been dismissed.

FACTS OF THE CASE:

2. Shorn of unnecessary details, the relevant facts are as follows:-

a. A long-term lease for a period of ten years had been granted to the petitioner by virtue of a lease agreement entered into by the petitioner and the opposite party no.1 (hereafter "the opposite party") sometime in the year 1990 in respect of a stretch of land measuring 150.50 square metres at J.N. Ghat, Lohaputty, North Port Police Station in the Presidency Town of Kolkata.

b. On or about August 22, 2002, the opposite party wrote a letter to the Estate Officer alleging that the petitioner had defaulted in payment of monthly rent and as such a sum of Rs.2,75,226/- had fallen due; that the petitioner had "*sub-let/sold/transferred*" the tenanted property in violation of clause 10 of the lease agreement and that the leased property was *"required by the Trustee to implement the Land Use Plan adopted by the Trustees"*. The said letter asserted that the opposite party had determined the tenancy by serving upon the petitioner a written notice to quit dated March 29, 2000 thereby asking the petitioner to quit, vacate and handover peaceful vacant possession of the tenanted property on April 01, 2000, which notice had been duly acknowledged by the petitioner.

c. By the said letter, the opposite party urged the Estate Officer to take action against the petitioner under the 1971 Act.

d. Ultimately on December 23, 2020, the Estate Officer passed an order directing issuance of notices respectively under Sections 4 and 7 of the 1971 Act.

e. Accordingly, a notice under Section 4(2)(b)(ii) of the 1971 Act was issued thereby calling upon the petitioner to show cause as to why should an order of eviction would not be passed against the petitioner *inter alia* on the grounds indicated in the said notice. The said notice further stated that the grounds mentioned in the said letter dated

August 22, 2002 also formed the grounds of the show cause notice dated December 23, 2020.

f. On the same day another notice Section 7(3) of the 1971 Act was also issued calling upon the petitioner to pay damages together with interest for the period April 01, 2000 to March 31, 2019 as mentioned in the schedule of such notice.

g. By the aforesaid notices, the petitioner had been called upon to state its case and produce evidence in support thereof on January 06, 2021.

h. The petitioner thereafter filed an application challenging the maintainability of the proceedings before the Estate Officer contending, *inter alia,* that as the lease agreement for a period of ten years was unregistered, therefore, the petitioner had become a monthly tenant under the opposite party; that the opposite party had received rent even after the determination of the tenancy, which made the petitioner a tenant by holding over; and that the proceedings were barred by limitation inasmuch as, while the original application seeking initiation of proceedings had been filed with the Estate Officer in the year 2002, the Estate Officer initiated the proceedings only on December 23, 2020 i.e. after a gap of more than eighteen years.

i. The opposite party filed its written objection to the application challenging the maintainability of the proceedings before the Estate Officer. The petitioner filed its rejoinder thereto. Subsequently, the opposite party filed another objection to which the petitioner responded by a sur-rejoinder.

j. The Estate Officer thereafter heard the parties and passed the final order on February 07, 2022 directing the petitioner *"and any person/s whoever may in occupation to vacate the premises"* within a period of fifteen days while further holding that a sum of Rs.45,91,741.63 (Rupees Forty Five Lakh Ninety One Thousand Seven Hundred Forty One and Paise Sixty Three) was recoverable from the petitioner by the opposite party on account of damages/compensation.

k. The petitioner challenged the said order dated February 07, 2022 passed by the Estate Officer, by filing an appeal being Misc. Appeal No.07 of 2022 under Section 9 of the 1971 Act before the learned Judge, XIIth Bench, City Civil Court, Calcutta. The said appeal was dismissed by an order dated February 28, 2025. Hence the present revisional application.

SUBMISSIONS OF THE PETITIONER:

3. Mr. Ghoshal, learned advocate appearing for the petitioner made the following submissions (both orally as well as in writing):-

a. The Estate Officer abruptly concluded the hearing without affording the petitioner any opportunity to file a reply to the show cause notices issued by the Estate Officer.

b. A judgment of the Hon'ble Supreme Court in the case of ***New India Assurance Company Limited vs. Nusli Neville Wadia & Another***[1] was cited to demonstrate that an occupant must be afforded an effective opportunity to show cause (i.e. to file a reply to the notice to show cause) and that the show cause notice must contain full

[1] **(2008) 3 SCC 279**

particulars. Although the said judgment was cited during oral arguments, the same does not form part of the written note submitted by the petitioner.

c. The proceedings before the Estate Officer were instituted in the year 2002 but the Estate Officer sat tight over the matter and issued show cause notice only on December 23, 2020 i.e. after a period of eighteen years.

d. The 1971 Act contemplates a summary procedure. The Estate Officer was therefore required to take a decision within a reasonable time. Section 5 of the 1971 Act provides fifteen days to the Estate Officer to pass an order and as such any decision taken by the Estate Officer after 18 years is bad in law.

e. A judgment of a co-ordinate Bench of this Court in the case of ***Shalimar Paints Limited vs. The Board of Trustees for the Port of Kolkata***[2] was relied on for the proposition that Limitation Act, 1963 (hereafter "the 1963 Act") applies to proceedings before the Estate Officer.

f. The 1971 Act underwent an amendment in the year 2015 whereby *modus operandi* for issuance of notice under Section 4 thereof was changed. The petitioner could not have been issued a notice after amendment of the 1971 Act on the basis of an application filed prior to the amendment. The petitioner through its written note has contended that "*By giving ex-post facto operation of a legislation the right and interest of the petitioner cannot be taken away.*"

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[2] **(2016) 1 ICC 754 : 2015 SCC OnLine Cal 8365**

g. The show cause notice has been issued by the Estate Officer without any documentary proof regarding parting of possession, implementation of land use plan and non-payment of rent.

h. The intention of the port authority is to receive rent against the occupation. The petitioner is a bonafide occupant of the public premises and has been paying rent regularly.

i. The opposite party has received rents in respect of the subject property even after determination of the tenancy.

j. The opposite party received rent upto March 2004 despite the long term lease having expired in March 2000. By accepting rent after expiry of the long term lease, the petitioner has become a monthly lessee and the notice of eviction dated March 29, 2000 has become invalid. The proceedings instituted by the opposite party on the basis of such notice have thus lost legal foundation.

k. Since the petitioner was recognized as a monthly lessee and no separate notice of eviction was ever issued, the petitioner cannot be classified as a rank outsider, but rather remains a lessee at sufferance.

l. A judgment of the Hon'ble Supreme Court in the case of ***Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd.***[3] was cited to contend that the petitioner is still a lawful tenant. The said judgment though cited during oral arguments, does not form part of the written note submitted by the petitioner.

m. The property is under the exclusive possession and control of the petitioner and the petitioner has never parted with possession. The

[3] **(2005) 1 SCC 705**

petitioner raised construction at its own expenses only upon getting permission from the opposite party and the municipal authorities.

SUBMISSIONS OF THE OPPOSITE PARTY NOS. 1 & 2:

4. Mr. Nag learned advocate appearing for the opposite party made the following submissions (both orally as well as in writing):-

a. The petitioner got repeated opportunities to file reply to the show-cause notices issued to it by the Estate Officer but the petitioner chose not to file the same. The petitioner filed an application challenging the maintainability of the proceedings before the Estate Officer and used rejoinder as well as sur-rejoinder to the written objection and the comments filed by the opposite party before the Estate Officer. The observations of the Estate Officer in the impugned order were referred to by Mr. Nag in such context.

b. The order passed by the Estate Officer is well reasoned and the learned Appellate Court has rightly dismissed the appeal.

c. The Estate Officer is a quasi-judicial authority and a separate entity in terms of Section 3 of the 1971 Act. The opposite party had filed the application for initiation of appropriate proceedings within two years from the expiry of the lease, therefore, the proceedings were initiated within time and the mere fact that the Estate Officer issued notices under Sections 4 and 7 of the 1971 Act, eighteen years later would not attract the bar of limitation. In the instant case delay is not attributable to the opposite party.

d. There can be no case of holding over as alleged by the petitioner inasmuch as payment was accepted from the petitioner "without prejudice" and on account of occupational charges. The documents appended at pages 153 and 160 of the revisional application were shown to demonstrate the same.

e. The supervisory jurisdiction of this Court under Article 227 of the Constitution of India is not akin to appellate jurisdiction and this Court should not interfere with the impugned order given the fact that both the order of the Estate Officer as well as that of the learned Appellate Court is well reasoned. A judgement of the Hon'ble Supreme Court in the case of ***Surya Dev Rai vs. Ram Chander Rai & Others***[4] was cited in support of such contention.

ANALYSIS & DECISION:

5. Heard the learned advocates appearing for the respective parties and considered the material on record.

6. The first contention of the petitioner is that it was not afforded any opportunity to file reply to the show-cause notices issued by the Estate Officer. Such contention is wholly without basis. Both the notices (i.e., one under Section 4 and the other under Section 7 of the 1971 Act) indicate that the petitioner had been granted opportunity to show cause on or before January 06, 2021 as to why orders of eviction and damages would not be passed against the petitioner.

7. It is not the petitioner's case that the said notices were never served upon the petitioner. The petitioner was, therefore, well aware of its right to file reply to the show cause notices. The petitioner did not file any reply but filed an application challenging the maintainability of the proceeding

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[4] **(2003) 6 SCC 675**

before the Estate Officer. There was no prohibition for petitioner to file a reply to the show-cause notices as well but the petitioner did not do so. In fact the Estate Officer has in the order dated February 07, 2022 recorded as follows:-

> *"On the schedule date of appearance and filing reply to the Show Cause i.e. on 06.01.2021 O.P. entered appearance through their Representative Amit Kumar Gupta. Thereafter the said Representative of O.P. by filing his Letter of Authority, prayed one month time to file his reply to the Show Cause on behalf of O.P. Considering his submission, Forum allowed him further opportunity to file such reply. Thereafter, on 27.01.2021, One Satyajit Senapati expressing himself as an Advocate of O.P. appeared and filed his Vakalatnama to context the instant matter on behalf of O.P. along with a prayer for supplying them copy of original application dated 22.08.2002. Thereafter on 19.02.2021, Ld' Advocate of O.P. filed an application/petition challenging the maintainability of the instant proceeding. On 23.04.2021 SMP, Kolkata filed their comment against the said maintainability petition of O.P. Thereafter on 06.08.2021 the said Advocate of O.P. filed his further comments on SMP, Kolkata's application dated 23.04.2021 and SMP, Kolkata filed their rejoinder on such application of O.P. dated 06.08.2021. Ld' Advocate of O.P. prayed couple of time to file his reply to the Show Cause but when the matter was finally taken up for hearing without filing any reply to the Show Cause, O.P. filed a sur-rejoinder against the supplementary/Additional objection of SMP, Kolkata on 29.09.2021 and the matter was reserved accordingly for passing the final order.*
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> *I have duly considered the applications of O.P.as filed on 19.02.2021, 06.08.2021 &29.09.2021 and also SMP, Kolkata as filed on 23.04.2021 & 06.08.2021. After due consideration of the submissions/arguments made on behalf of the parties ...."*

8. It is therefore evident that there was ample opportunity for the petitioner to file its reply to the show cause notices but the petitioner itself chose not to file any reply. Having consciously avoided filing of reply to the show-cause notices, the petitioner cannot contend now that there has been violation of principles of natural justice.[5]

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[5] **Bank of India vs. Apurba Kumar Saha, (1994) 2 SCC 615**

9. The judgment of the Hon'ble Supreme Court in the case of ***New India Assurance Company Limited*** (supra) cannot come to the aid of the petitioner inasmuch as in the present case the show cause notices explicitly stated the grounds and as already found hereinabove, the petitioner itself failed to utilize the opportunity to file reply (ies) to those notices.

10. The petitioner's assertions that, upon the opposite party accepting rent from it, post determination of the tenancy, it became a monthly tenant and the eviction notice became invalid, are not worthy of acceptance. The demand notice appended at page 153 of the revisional application clearly indicates that the same had been issued by the opposite party towards "*Demand for Compensation for Unauthorised Use and Occupation". The* letter dated December 01, 2020 whereby the petitioner had been called upon to revalidate the payments made earlier clearly indicates that the letter was being issued *"Without prejudice"* and the payments were in respect of *"occupational charges"*.

11. Furthermore, the Estate Officer has returned a factual finding that the opposite party never consented to the petitioner's occupation of the public premises after expiry of the period mentioned in the notice to vacate the premises. Such finding has remained undisturbed in appeal. This Court exercising jurisdiction under Article 227 of the Constitution of India is not supposed to interfere with such concurrent finding of facts which has neither been demonstrated to be completely perverse nor to be based on no evidence nor resulting in a patent miscarriage of justice. The contours of this Court's power of superintendence under Article 227 have been clearly drawn by the Hon'ble Supreme Court in a number of cases. It is now well settled that while exercising such power, the High Court is not to act like an Appellate Court.[6]

12. Moreover, even otherwise, it is now well settled that the common law concept of "holding over" which gained statutory recognition in Section 116 of the Transfer of Property Act, 1882 (hereafter "the 1882 Act") cannot be made applicable to a special statute like the 1971 Act which overrides the 1882 Act.[7]

13. The petitioner's contention that—since the 10-year lease agreement was unregistered, therefore, the lease must be deemed a monthly lease—is of no assistance to the petitioner. The petitioner's lease was specifically determined by a letter dated March 29, 2000, which alleged various other grounds for eviction apart from the expiry of the lease by efflux of time. Additionally, even if it were a monthly tenancy (which would end each month), the letter dated March 29, 2000, clearly directed the petitioner to vacate the premises by April 01, 2000, i.e. upon the conclusion of the month of March. While it is true that, in terms of Section 106 of the 1882 Act, a monthly tenancy must be determined by a 15-days' notice to quit, this requirement does not apply here. As already stated in the preceding paragraph, since the present case relates to eviction of an unauthorised occupant from 'public premises' governed by the 1971 Act, the provisions of the 1882 Act are inapplicable.

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[6] **Waryam Singh & Another vs. Amarnath & Another, (1954) 1 SCC 51; Surya Dev Rai (supra); Radhey Shyam & Another vs. Chhabi Nath & Others, (2015) 5 SCC 423**

[7] **Delhi Development Authority vs. Anant Raj Agencies Private Limited, (2016) 11 SCC 406; Cantonment Board & Another vs. Church of North India, (2012) 12 SCC 573**

14. The judgment in the case of ***Atma Ram Properties (P) Ltd.*** (supra) has no manner of application to the facts of the present case. The said judgment was rendered in the context of a statutory tenant governed by rent control laws who had suffered a decree of eviction which is not the case here. In fact the said judgment also holds that "*Under the general law, and in cases where the tenancy is governed only by the provisions of the Transfer of Property Act, 1882, once the tenancy comes to an end by determination of lease under Section 111 of the Transfer of Property Act, the right of the tenant to continue in possession of the premises comes to an end and for any period thereafter, for which he continues to occupy the premises, he becomes liable to pay damages for use and occupation at the rate at which the landlord could have let out the premises on being vacated by the tenant.*"

15. The petitioner's assertion that the petitioner had not sub-let the property has been disbelieved by both the fact finding fora. In fact the petitioner's own letter dated March 30, 2000 (at page 149 of the revisional application) evinces that the petitioner was not in exclusive possession of the subject property inasmuch as the petitioner has itself admitted "*that there are some licences in the said premises for which proper intimation in writing were given to you*". It must be remembered that the present case relates to a public premises under the 1971 Act where the strict rules of evidence are not applicable. However, even in cases involving private tenancies controlled by tenant-beneficial rent control laws, it is well settled that once a *prima facie* case of a third party being in possession of even a part of the tenanted premises is made out, the onus shifts to the tenant to prove that they still retain legal possession despite the physical possession of the property being with someone else, failing which a presumption of sub-letting is drawn.[8] In the instant case, even if that standard of evidence is applied, there is nothing on record to even slightly rebut such a presumption.

16. Now the ultimate issue pertaining to the bar of limitation in the proceedings before the Estate Officer is required to be dealt with.

17. Given the fact that the present case is one where the proceedings have been conducted and concluded before the Estate Officer under the 1971 Act who is a quasi-judicial authority (and not a Court), this issue could have been answered against the petitioner immediately- in the light of the well settled legal position that provisions of the 1963 Act are applicable only to Courts and not to quasi-judicial authorities or Tribunals.[9] However, since the petitioner has relied on a co-ordinate Bench decision of this Court in the case of ***Shalimar Paints Limited*** (supra) to urge that the 1963 Act is applicable to the proceedings before the Estate Officer, the issue needs to be answered elaborately.

18. The issue has two components – the first part relates to the bar of limitation on eviction of an unauthorised occupant under of the 1971 Act and the other pertains to the bar on realization of rent-arrears and award of damages under the said Act.

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[8] **Mahendra Saree Emporium (II) vs. G.V. Srinivasa Murthy, (2005) 1 SCC 481; Celina Coelho Pereira (Ms.) & Others vs. Ulhas Mahabaleshwar Kholkar & Others, (2010) 1 SCC 217**

[9] **M.P. Steel Corporation vs. Commissioner of Central Excise, (2015) 7 SCC 58**

19. Insofar as the eviction of an unauthorised occupant after issuing show-cause notice under Section 4 of the 1971 Act is concerned, the bar of limitation would clearly not apply for more than one reason.

20. Firstly, Section 4(1B) of the 1971 Act specifically provides that any delay in issuing a notice referred to in sub-section (1) and (1A) of Section 4 would not vitiate the proceedings under the 1971 Act. This clearly obviates any bar of limitation on such proceedings.

21. Secondly, in cases relating to the 1971 Act a tenant/lessee becomes an unauthorised occupant immediately upon determination of the tenancy (which is akin to that of a trespasser) and it continues to be so in terms of Section 2(g) of the 1971 Act. Section 2(g) of the 1971 Act reads thus:-

> *"unauthorised occupation, in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and <u>includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.</u>"*

(Emphasis added)

22. A meaningful reading of the said provision would reveal that unauthorised occupation of a person as defined under Section 2(g) of the 1971 Act is a continuous act of illegal occupation of public land every moment. The said provision had fallen for consideration of the Hon'ble Supreme Court in the case of ***Jain Ink Manufacturing Company vs. Life Insurance Corporation of India & Another***[10]. In the said case the tenant remained in occupation of the premises even after its tenancy under the Delhi Rent Control Act, 1958 was determined by its landlord. Subsequently, the

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[10] (1980) 4 SCC 435

premises were purchased by Life Insurance Corporation of India (hereafter "LIC") and LIC initiated proceedings for eviction of the tenant under the 1971 Act. It was argued on behalf of the tenant that the 1971 Act could not be invoked against the tenant since it had entered into possession of the premises much before the same were purchased by LIC. The Hon'ble Supreme Court then considered the import of Section 2(g) of the 1971 Act and held as follows:-

> *"**5**. ....To begin with, it is manifest that Section 2(g) does not use the word "possession" or the words "entry into possession" at any point of time at all. The section merely requires occupation of any public premises. Entry into possession connotes one single terminus viz. the point of time when a person enters into possession or occupies the property whereas <u>occupation is a continuous process which starts right from the point of time when the person enters into possession or occupies the premises and continues until he leaves the premises</u>.........."*
>
> (Emphasis added)

23. A similar provision contained in Section 2(g) of the Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 was interpreted by the Hon'ble Supreme Court in the case of ***State of U.P. vs. Rup Lal Sharma & Others***[11]. In the said case too, it was held that *"continuance in occupation after the determination of such authority would also make the occupation unauthorised for the purpose of the said Act".*

24. Since unauthorised occupation as defined under Section 2(g) of the 1971 Act is a continuous act the same would cause a continuing wrong as defined under Section 22 of the 1963 Act. This Court may hasten to add that but for the definition of unauthorised occupation, the mere continuation in unauthorised occupation would not have resulted in a

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[11] **(1997) 2 SCC 62**

continuing cause of action. The same would just have been the effect of a complete act or injury. However since *continuance in occupation* has been statutorily defined as an unauthorised occupation, there is a recurring violation of the statute every moment without any pause, causing continuous injury to the public at large, given the nature of the premises involved in the *lis*. Such continuous act, being a continuing wrong would give rise to a continuing cause of action for the purpose of resuming public property upon evicting the unauthorised occupant in terms of the 1971 Act.

25. In paragraph 13 of ***State of U.P. & Another vs. Jagdish Sharan Agrawal & Others***[12] the Hon'ble Supreme Court employed the judgment of ***Rup Lal Sharma*** (supra) to indicate recurrence of cause of action in cases of unauthorised occupation as defined under the relevant statute. The same reads thus:-

> *"**13.** So far as the recurring cause of action is concerned this Court in State of U.P. v. Rup Lal Sharma [(1997) 2 SCC 62] held as follows: (SCC p. 64, paras 6-7)*
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> *"6. 'Public premises' is defined in Section 2(e) of the Act as meaning any premises 'belonging to or taken on lease or requisitioned by or on behalf of the State Government …'. The first respondent never disputed that the building belongs to the Government and all he has said was that it belongs to the government estate. It does not matter. The definition of public premises is so wide as to hedge in all such buildings whether it actually belongs to the Government as such or only to a government department or even a building belonging to a private individual if the Government has requisitioned it or some person on behalf of the Government has requisitioned it. Hence there is no escape from concluding that the building in question is public premises.*
>
> *7. 'Unauthorised occupation' is defined in Section 2(g). The definition comprises within its contours occupation of the public premises by any person without authority for such occupation, and also the continuance in occupation of such*

[12] **(2009) 1 SCC 689**

premises by any person after the authority (under which or the capacity in which he was allowed to hold or occupy the premises) has expired or has been determined for any reason whatsoever. Thus continuance in occupation after the determination of such authority would also make the occupation unauthorised for the purpose of the said Act."

(Emphasis added)

26. There is yet another reason justifying the inapplicability of the bar of limitation on eviction. The same applies to both the parts of the limitation-issue involved in the present case i.e. bar of limitation - (i) on eviction, as well as (ii) on realization rent-arrears and damages.

27. However, before discussing the same, the other reason that exclusively explains why limitation would not apply to the realization of damages/mesne profits in the case at hand is being cited first.

28. This Court notes that the Estate Officer has only awarded damages to the opposite party for the period April 01, 2000 to March 31, 2019 and no relief on account of rent arrears has been granted. Since the tenancy of the petitioner was determined by a letter dated March 29, 2000 with effect from April 01, 2000 itself therefore the sum awarded by the order dated February 07, 2022 pertains only to the period of unauthorised occupation by the petitioner and the same is indeed in the nature of mesne profits/ damages/occupation charges. In such view of the matter the discussion would be limited to applicability of bar of limitation to award of mesne profits/damages/occupation charges.

29. It has already been indicated hereinabove that unauthorised occupation under the 1971 Act gives rise to a continuing cause of action. In such a situation, the damages caused would also continue. The Hon'ble Supreme Court has considered such an aspect in the context of a lease under the general law in the case of ***Indian Oil Corporation Limited vs. Sudera Realty Private Limited***[13]. In the said case, a suit for money decree on account of mesne profits had been instituted by the lessor against the lessee on the original side of this Court. The lessor contended that as the lessee had remained in occupation of the premises even after expiry of the lease, therefore, the lessee was liable to pay mesne profits for the period during which it remained in occupation of the premises. The defendant-lessee initially contended *inter alia* that the suit was barred by limitation. An issue was also framed to that effect. However, later on, the plea of limitation was not pressed before the learned Single Judge. The said plea was not even raised before the Hon'ble Division Bench of this Court when the matter was carried in appeal. Subsequently, when the matter reached the Hon'ble Supreme Court the plea of limitation was raised again. In such context the Hon'ble Supreme Court held as follows:-

> *"**84.** In the trial court, the learned Single Judge framed an issue as to whether the suit is barred by limitation. The judgment would reveal that the plea of limitation was not pressed. The learned Single Judge also went on to find that the suit is within the period of limitation. Before the Division Bench, the appellant did not raise the plea of limitation. It is in this Court that the plea is sought to be resurrected. The plea is based on the case that a suit of mesne profits is governed by Article 51 of the Limitation Act, 1963, which reads as follows:*

	"Description of suit	*Period of limitation*	*Time from which period begins to run*
51.	*For the profits of immovable property belonging to the plaintiff which have been wrongfully received by the defendant.*	*Three years.*	*When the profits are received."*

[13] **(2023) 16 SCC 704**

The suit was laid on 10-4-1995. The contention is that for the period beyond 3 years before the date of the suit, the suit would be barred.

85. *The case of the respondent is that the plea of limitation was not pressed before the learned Single Judge and was also not taken up before the Division Bench. It is further contended that a claim for mesne profits involves a liability, which accrues on a day-to-day basis. In this regard, attention is drawn to Ram Karan Singh v. Nakchhed Ahir [Ram Karan Singh v. Nakchhed Ahir, 1931 SCC OnLine All 39 : AIR 1931 All 429] , which has been referred to by this Court in the judgment in Raptakos Brett & Co. Ltd. v. Ganesh Property [Raptakos Brett & Co. Ltd. v. Ganesh Property, (2017) 10 SCC 643 : (2018) 1 SCC (Civ) 69] and we may notice only para 21 of Raptakos Brett [Raptakos Brett & Co. Ltd. v. Ganesh Property, (2017) 10 SCC 643 : (2018) 1 SCC (Civ) 69] : (SCC p. 652)*

"21. In Ram Karan Singh [Ram Karan Singh v. Nakchhed Ahir, 1931 SCC OnLine All 39: AIR 1931 All 429] , a Full Bench of the Allahabad High Court while examining the issue of maintainability of second suit for pendente lite and future mesne profits where earlier suit for possession and past mesne profits has already been decided has held as follows : (SCC OnLine All)

'It seems to us that the cause of action for recovery of possession is not necessarily identical with the cause of action for recovery of mesne profits. The provisions of Order 2 Rule 4, indicate that the legislature thought it necessary to provide specially for joining a claim for mesne profits with one for recovery of possession of immovable property, and that but for such an express provision, such a combination might well have been disallowed. A suit for possession can be brought within twelve years of the date when the original dispossession took place and the cause of action for recovery of possession accrued. The claim for mesne profits can only be brought in respect of profits within three years of the institution of the suit and the date of the cause of action for mesne profits would in many cases be not identical with the original date of the cause of action for the recovery of possession. Mesne profits accrue from day to day and the cause of action is a continuing one, and arises out of the continued misappropriation of the profits to which the plaintiff is entitled. …' "

(emphasis supplied)

86. *In the said passage in Raptakos Brett [Raptakos Brett & Co. Ltd. v. Ganesh Property, (2017) 10 SCC 643: (2018) 1 SCC (Civ) 69], what has been considered, was the issue relating to the maintainability of the second suit for pendente lite and future mesne profits, in a situation, where an earlier suit for recovery of possession and for past mesne profits had been decided. We notice that what the Court has essentially held is that but for Order 2 Rule 4 CPC, as it stood specifically providing* *for joining a claim for mesne profits with one for recovery of possession of an immovable property, such a joining together of claims in one suit, may have been not allowed. It is thereafter stated that a claim for mesne profits can only be brought in respect of profits within three years of the institution of the suit. Still further, it is found that the date of cause of action for action for mesne profits may not coincide with the date of cause of action for recovery of possession. It is thereafter that the statement which is relied upon by the respondent has been made. The Court held that mesne profits accrue from day-to-day and the cause of action is a continuing one. It arises out of the continued misappropriation of the profits, which a plaintiff is entitled to.*

87. *Article 51 contemplates a period of three years from the date on which the profits from the immovable property are received by the defendant. If it is to be understood as profits actually received by the defendant, then, it is obvious that Article 51 may not apply. If a suit for mesne profits of the kind involved in this case would fall more appropriately under Article 113 of the Limitation Act, which is the residuary Article, the suit must be instituted within a period of three years from the date on which the right to sue accrues. This Article is in stark contrast with Article 58 of the Limitation Act, under which, the period of limitation is three years but from the date on which the cause of action first arises. If a claim for mesne profits is one, which accrues from day-to-day and it is a continuing one and if the suit for mesne profits would fall to be decided under Article 113 of the Limitation Act, then, since the cause of action is a continuing one, the suit may not be barred as regards any part of the claim as contended by the appellant."*

(Emphasis added)

30. In such view of the matter, it can't be said that the claim for damages/mesne profits made by the opposite party is hit by the bar of limitation.

31. It is significant to note that even in such cases, the *"claim for mesne profits can only be brought in respect of profits within three years of the institution of the suit"* as indicated in the judgment of ***Ram Karan Singh & Others vs. Nakchhed Ahir & Others***[14] that has been quoted by the Hon'ble Supreme Court in ***Raptakos Brett & Company Limited***

[14] **1931 SCC OnLine All 39 : AIR 1931 All 429**

vs. Ganesh Property[15] and ***Indian Oil Corporation Limited*** (supra). However, in the present case the requirement to apply the look-back period of three years from the date of institution of the suit would not arise. The reason therefor now needs to be noticed. In fact the reason now being cited effectively wards off the bar of limitation on eviction as well as damages/mesne profits in the present case.

32. It is an admitted position (as is evident from paragraph 8 of the revision petition) that the notice determining the petitioner's tenancy and asking it to vacate the public premises by April 01, 2000 was served on the petitioner by the opposite party on March 29, 2000. It is also not in dispute that the opposite party had filed an application before the Estate Officer on August 22, 2002 urging the Estate Officer to take action for eviction of the petitioner as also for recovery of arrears of rent as described in Schedule-B and mesne profits/occupation charges as described in Schedule-C of the said application. Thus such application was filed within a period of two years from the date of determination of the petitioner's tenancy/lease. This establishes that the petitioner had taken action timely. If despite the timely action of the petitioner, there was administrative delay on the part of the Estate Officer in issuing notices under the relevant provisions of the 1971 Act, the petitioner cannot and should not be penalized for that. It need not be overemphasized that although the 1971 Act does not specifically provide for filing of any application, yet resort to such practice by statutory organizations/ statutory bodies for invoking the jurisdiction of the Estate Officer in order

[15] **(2017) 10 SCC 643**

to reclaim public premises has been recognized by the Hon'ble Supreme Court in ***New India Assurance Company Limited*** (supra).

33. In the case of ***T.K. Warehousing Enterprise Private Limited vs. Birds Jute & Exports Limited (BJLE)***[16], a co-ordinate Bench of this Court was considering a case where a similar issue as regards bar of limitation on claim for rent arrears and damages had arisen. The parties could not apprise the Court of the date on which the application claiming arrears of rent and damages had been filed by the statutory body before the Estate Officer. This Court after considering the judgments of the Hon'ble Supreme Court in the case of ***New Delhi Municipal Committee vs. Kalu Ram & Another***[17] and ***State of Kerala & Others vs. V.R. Kalliyanikutty & Another***[18] ultimately held as follows:-

> *"**38.** Since neither of the parties could apprise the Court the date on which the application under Section 7 of the Public Premises Act was taken out by the opposite party or on which the date the notice under Section 7(3) of the said Act was issued, it is suffice it to say that the amount either on account of the arrears rent or the damages or any amount on whatsoever account is not legally payable by the petitioner beyond three years anterior to the date of the aforesaid application or notice whichever is earlier."*

34. While on this, it needs to be recorded that it would have been a different matter altogether, if there was no application filed by the statutory body before the Estate Officer and the person who had issued the notice determining the tenancy or lease was also the Estate Officer who issued the show cause notice under Section 7 of the 1971 Act. In such a case,

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[16] **2015 SCC OnLine Cal 7022**
[17] **(1976) 3 SCC 407**
[18] **(1999) 3 SCC 657**

the bar of limitation would be applicable to realization of arrears of rent in terms of the law laid down in ***New Delhi Municipal Committee*** (supra).

35. The decision of the co-ordinate Bench in the case of ***Shalimar Paints Limited*** (supra) which was rendered subsequent to ***T.K. Warehousing Enterprise Private Limited*** (supra) cannot aid the petitioner in the facts of the present case. The factual matrix of the said case does not reveal that there was any application made before the Estate Officer by the public body claiming rent-arrears and seeking award of damages. The Court has in paragraph 17 of the judgment observed thus:-

> "**17.** From *the impugned notice it appears that amount was assessed to the tune of Rs.38,04,942/- as per Calcutta Port Trust's Rent Schedule for the period from 31.03.2000 to 31.01.2008. <u>The respondent did not submit any other document than the impugned notice under Section 7 issued on 17.02.2009 to show that prior to it the respondent had ever issued any notice claiming the assessed damage by mentioning period thereto.</u> Had it been so, I arrived at the conclusion that law of limitation will apply in the case……….*"

36. Since in the case at hand an application for petitioner's eviction as well as mesne profits/damages had been filed by the opposite party before the Estate Officer within a period of two years from the date of determination of lease, therefore going by the *dictum* of ***T.K. Warehousing Enterprise Private Limited*** (supra), the opposite party's claim for damages falls within the bracket of "*three years anterior to the date of the aforesaid application*". The same would, therefore, not be barred by limitation.

37. For all the reasons aforesaid, this Court does not find any reason to interfere with the impugned order dated February 28, 2025 whereby the petitioner's appeal under Section 9 of the 1971 Act has been dismissed by the learned Appellate Court.

38. Accordingly, C.O. 973 of 2025 stands dismissed. No costs.

39. Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Om Narayan Rai, J.)