

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And
The Hon'ble Mr. Justice Supratim Bhattacharya**

**M.A.T. No. 1134 of 2025
IA No: CAN 2 of 2025
CAN 3 of 2025**

**Transportation, Planning and Traffic Engineering Directorate,
Government of West Bengal, Transport Department
Vs.**

M/s. Maharshi Commerce Limited and Others

For the appellant	:	Mr. Sirsanya Bandopadhyay, Sr. Standing Counsel, Mr. Debopriyo Karan
For the respondent no. 1	:	Mr. Avinash Kankani, Mr. Sagnik Mukherjee
For the State	:	Mr. Pantu Deb Roy, AGP, Mr. Asish Dutta
Heard on	:	29.01.2026, 12.02.2026 19.02.2026 & 23.02.2026
Reserved on	:	23.02.2026
Judgment on	:	10.03.2026

Sabyasachi Bhattacharyya, J.:-

1. The Transportation, Planning and Traffic Engineering Directorate of the Government of West Bengal, Transport Department, has preferred the present appeal against the judgment dated May 21, 2025 passed by a learned Single Judge of this Court in WPA No. 10640 of 2012. By the

impugned judgment, the learned Single Judge set aside an order dated June 24, 2011 passed by the respondent no. 4, the First Land Acquisition Collector, Kolkata in Miscellaneous Case No. 02 of 2011 and directed peaceful and vacant possession of the subject-premises to be handed over in favour of the writ petitioner/respondent no. 1 within two months from the order. A Special Officer was appointed to take symbolic possession of the premises and the writ petitioner was granted liberty to submit a comprehensive application to the respondent no. 2, the Principal Secretary to the Government of West Bengal, Department of Land and Land Reforms, seeking compensation for the period of illegal occupation of respondent no. 6 (present appellant). It was directed that upon submission of such application, the respondent no. 2 shall appoint an Arbitrator within a period of four weeks from the date of the order and referred the claim of the petitioner to the Arbitrator, whereupon the Arbitrator was to pronounce such award towards compensation as expeditiously as possible.

- 2.** A query was posed by the court during hearing as to the maintainability of the appeal at the behest of the appellant, being a Department of the State and not the State itself, despite the State being a party to the proceeding. In reply, learned Senior Standing Counsel, appearing for the appellant, submits that the appellant, although a separate Directorate under the State Government, is entitled to prefer an appeal in its independent capacity, since the impugned judgment specifically directed the appellant to quit and vacate the premises and arrived at categorical

findings against the appellant. Accordingly, it is contended that the present appellant is the party which is most affected by the impugned judgment and, as such, has the *locus standi* to prefer the instant appeal, even without the State preferring any appeal separately. That apart, the appellant was arrayed separately as a party in the writ petition, although the State was also one of the respondents. Thus, even the writ petitioner treated the appellant on a separate footing than the State.

3. While assailing the impugned judgment, learned Senior Standing Counsel contends that the writ petitioner/respondent no. 1 did not have any *locus standi* to prefer the writ petition. It is submitted that although initially a lease was entered into between the State of West Bengal (which allotted the property to the appellant) and the original owner M/s. Hope (India) Limited on February 23, 1984, before the lease expired on March 31, 1996, the property-in-question was requisitioned by the State on March 14, 1996. The said requisition, however, was subsequently set aside by an order dated December 24, 2001 passed in WP No. 805 (W) of 1996. Two appeals, preferred against the said order, were dismissed for default.
4. It is submitted that a Scheme of Arrangement was sanctioned by this Court in connection with a Company Petition in respect of various properties, including the present subject-property, whereby the disputed property was purportedly allocated to the writ petitioner/respondent no. 1-Company. It is argued that in the interregnum, as on March 31, 2008, the right to sue of the writ petitioner/respondent no. 1 stood

extinguished by operation of Section 27 of the Limitation Act, 1963 (hereinafter referred to as “the 1963 Act”). In support of the proposition of extinguishment of the right of the respondent no. 1 on the lapse of limitation fixed to institute a suit for possession of property, learned Senior Standing Counsel cites *Ravinder Kaur Grewal and others v. Manjit Kaur and others*, reported at (2019) 8 SCC 729.

5. Relying on *Prem Singh and others v. Birbal and others*, reported at (2006) 5 SCC 353, the appellant argues that limitation is a statute of repose. It ordinarily bars a remedy but does not extinguish a right. However, the only exception to the said rule is found in Section 27 of the 1963 Act, which provides that at the determination of the period prescribed thereby, the right of a person to sue for possession is extinguished.
6. It is argued that in order to avoid the bar under Section 27 of the 1963 Act, the respondent no. 1/writ petitioner resorted to Article 226 of the Constitution of India. However, by merely changing the route from the Civil Court to the Writ Court, such bar cannot be overcome.
7. Learned Senior Standing Counsel further contends that Article 226 of the Constitution is not the appropriate remedy to establish title and such power vests in the Civil Court. The High Court, it is argued, should not exercise its special jurisdiction under the Constitution unless the circumstances are exceptional. To strengthen such argument, learned Senior Standing Counsel cites *Anamallai Club v. Govt. of T.N. and others*, reported at (1997) 3 SCC 169 and *Parvatibai Subhanrao Nalawade (Smt) v. Anwarali Hasanali Makani and others*, reported at (1992) 1 SCC 414.

8. Learned Senior Standing Counsel next argues that although the appellant may not have a right to continue in possession after the termination of its tenancy, its possession is juridical and not “illegal”. *R.V. Bhupal Prasad v. State of A.P. and others*, reported at (1995) 5 SCC 698 is cited by the appellant in support of such contention.
9. It is further submitted that the writ petitioner/respondent no. 1 sought recovery of “rent payable” by filing WP No. 3552 (W) of 2010, which was disposed of by a learned Single Judge of this Court, directing the Land Acquisition Collector to dispose of the matter regarding the release of “rent” to the petitioner.
10. Another writ petition, bearing WP No. 3815 (W) of 2010, was filed by respondent no. 1 with regard to payment of electricity charges for the subject-premise, which culminated in an order dated January 14, 2011, granting the writ petition liberty to approach the Land Acquisition Collector on the issue of de-requisition.
11. Thus, the respondent no. 1 assented to the continuance of the tenancy of the appellant by claiming rent, hence conferring the character of legality on such possession.
12. Learned Senior Standing Counsel further argues that the appointment of Arbitrator by the learned Single Judge in the impugned order, without the consent of parties, was *de hors* the law. The writ court could not have appointed an Arbitrator unilaterally.

- 13.** The appellant contends that the argument that the writ petition is in execution of the earlier order passed in a previous writ petition, made before this Court, was neither pleaded nor made out in the writ petition.
- 14.** In the Scheme of Amalgamation approved by this Court on June 10, 1998, the Calcutta Metropolitan Planning Organization is described as a “tenant”. Change of ownership as landlord, it is submitted, cannot change the nature of tenancy of the appellant. Therefore, at least till June 10, 1998, the appellant was recognized as a tenant. Moreover, in a letter dated May 14, 2005, written on behalf of the respondent no.1, the possessed portion of the appellant has been described as the “tenanted” portion. Hence, the overarching point, whether the Writ Court could decide such disputed question of fact, including the title of the writ petitioner, the type of tenancy of the appellant and the character of its possession as well as quantity of damages, remains.
- 15.** Learned counsel for the respondent no. 1, on the other hand, contends that none of the judgments relied on by the appellant are germane for the present consideration. It is argued that admittedly, the appeals preferred against the order of the Writ Court setting aside the requisition of the property were dismissed for default, respectively on July 21, 2003 (APO No. 43 of 2002) and July 3, 2006 (APO No. 130 of 2002).
- 16.** Thus, the order of the Writ Court dated December 24, 2001 has attained finality.
- 17.** On November 21, 2002, it is submitted, the State of West Bengal derequisitioned the entire premises covered by the Writ Court’s order,

except an area of approximately 4449 Sq. Ft. on the first floor of the concerned premises. The derequisitioned portion was vacated and handed over on June 27, 2003. As such, the balance portion of 4449 Sq. Ft. is owned by the writ petitioner/respondent no. 1, which forms a part of the total area of 9062 Sq. Ft. allotted to respondent no. 1. The ownership of the said area by the writ petitioner/respondent is not disputed by Poddar Udyog Limited and Poddar Projects Limited, who are the allottees of the other portions. Learned counsel relies on declarations issued by both the said companies stating that they do not have any right, title or interest over the area of 9062 Sq. Ft., which solely belongs to respondent no. 1. It is pointed out that the Land Acquisition Collector, in Paragraph No. 4(iii) of its opposition, also stated that Poddar Udyog Limited confirmed that the new owner of the premises under requisition, occupied by the present appellant, is respondent no. 1.

- 18.** It is next submitted that the earlier writ petitions filed by respondent no. 1 for release of rent compensation did not amount to consent of the respondent no. 1 for the appellant to hold over the subject-property in the capacity of a tenant. By dint of the Scheme of Arrangement and Mutation Certificate, the disputed property indisputably belongs to the respondent no. 1.
- 19.** After the Writ Court's order setting aside the requisition and expiry of the lease, the appellant has been rendered an unlawful occupant of the property and the writ court, by the present impugned order, rightly directed it to vacate possession immediately. It is submitted that the

State of West Bengal, through the appellant, has failed to comply with the order dated December 24, 2001 and is still in occupation of the demised premises illegally and without any authority of law, in violation of Article 300-A of the Constitution of India.

- 20.** Learned counsel cites *B.K. Ravichandra and others v. Union of India and others*, reported at (2021) 14 SCC 703, for the proposition that the right to property is a valuable Constitutional right. It is submitted that the State's long-term possession of the land without a formal lease or acquisition is unconstitutional and the State's status stands reduced to that of an unauthorised occupant.
- 21.** Learned counsel next cites *Punalur Paper Mills Ltd. v. W.B. Mineral Development & Trading Corpn. Ltd. and others*, reported at (2021) 14 SCC 528, for the proposition that this Court can appoint an Arbitrator for computation of damages against illegal occupation.
- 22.** Placing reliance on *Union of India v. Shakuntala Gupta (dead) by LRs.*, reported at (2002) 7 SCC 98, learned counsel for respondent no. 1 argues that in the said matter the Hon'ble Supreme Court did not interfere with the decision of the High Court appointing an Arbitrator to determine the damages payable. Again, in *Union of India and others v. Krishan Lal Arneja and others*, reported at (2004) 8 SCC 453, it was held that the High Court did not lack authority to appoint an Arbitrator merely due to the absence of a formal arbitration agreement and the lack of a specific prayer in the writ petition. Similar appointments have been upheld by the Supreme Court on previous occasions, expressly clarifying that an

Arbitrator appointed by the High Court is empowered to issue an award for the court's subsequent review. It is, thus, contended that the appointment of Arbitrator in the present case was legally tenable.

- 23.** Learned counsel for respondent no. 1 next cites *General Radio & Appliances Co. Ltd. and others v. M.A. Khader (dead) by LRs.*, reported at (1986) 2 SCC 656, for the proposition that an order sanctioning amalgamation of rights, interest and liabilities of the transferor company transfers and vests the subject-property in the transferee company.
- 24.** The respondent no. 1 relies on *Vidya Devi v. State of Himachal Pradesh and others*, reported at (2020) 2 SCC 569, in support of the argument that the State cannot be permitted to perfect its title over the land by invoking the doctrine of adverse possession to grab the property of its own citizens.
- 25.** Again, in *Dharnidhar Mishra (D) and another v. State of Bihar and others*, reported at (2024) 10 SCC 605, it was held that the plea of delay and laches are inapplicable where the cause of action is of a continuing nature or where the underlying facts are so egregious that it shocks the judicial conscience.
- 26.** In *Bibekananda Mondal v. State of West Bengal*, reported at 2002 SCC OnLine Cal 571, it was held that a second writ petition is maintainable for implementation of an earlier order of the writ court and the court must issue proper direction for appropriate implementation of such previous direction.

- 27.** It is, thus, contended that the present writ petition is in the nature of implementation of the earlier order of the Writ Court directing the State to derequisition and vacate the entire property which was subject to such unlawful requisition.
- 28.** It is contended in view of the order dated December 24, 2001 passed in WP No. 805 (W) of 1996, the impugned order of the First Land Acquisition Collector, giving rise to the present proceeding, was a nullity in the eye of law. Since the order of requisition was set aside, the Collector did not have any competence to adjudicate on such issues.
- 29.** With regard to the applicability of Section 27 and Article 65 of the 1963 Act, learned counsel appearing for respondent no. 1 argues that such fetters are not applicable to Article 226 of the Constitution of India, particularly in view of the current writ petition having been filed merely for implementation of the judgment and order dated December 24, 2001.
- 30.** It is next contended that the instant proceeding is not a landlord-tenant dispute but one for obtaining possession against the State of West Bengal and others, whose entire action of requisition of the demised premises was set aside and possession was directed to be handed over, which order has attained finality.
- 31.** Learned counsel for respondent no. 1 argues that the argument of the appellant that the subject-property is being occupied with the consent of the landlord, who has accepted rent, is fallacious and untenable as it is contrary to the opposition filed by the First Land Acquisition Collector, who has denied the title of the writ petitioner.

- 32.** It is further submitted that in view of the order of requisition being quashed by this Court, the First Land Acquisition Collector did not have jurisdiction over the subject-matter. In any event, it is argued that the order approving the Scheme of Amalgamation passed by this Court was placed before the said authority.
- 33.** Thus, it is submitted that the appeal ought to be dismissed.
- 34.** Before entering into the meat of the matter, the relevant facts leading to the same are required to be noted.
- 35.** On February 23, 1984, a lease deed was executed in favour of the State of West Bengal by the original owner M/s. Hope (India) Limited for the first and second floor of Premises No. 18, Rabindra Sarani, Kolkata – 700 001, for a period of 16 years from April 1, 1980, expiring on March 31, 1996.
- 36.** Subsequently, by virtue of a Scheme of Amalgamation sanctioned by this Court in connection with a Company Petition, the right, title and interest of the said original owner was transferred and vested in Multiplex Business Limited, which was further transferred to one Poddar Udyog Limited with effect from June 17, 1998. Poddar Udyog Limited, the transferee, filed a suit for eviction against the State of West Bengal, bearing no. 1 of 1994, in view of the default in payment of lease rent.
- 37.** However, to avoid the consequences of expiry of the lease on March 31, 1996, the State of West Bengal requisitioned the tenanted premises on March 14, 1996 and notional possession was given on paper to the

present appellant, in terms of such purported requisition, on March 22, 1996.

- 38.** On June 10, 1998, a Scheme of Arrangement was sanctioned by this Court in a Company Petition, by virtue of which various properties, including the subject-property, was allocated between several entities, including the Poddar Udyog Limited, Poddar Projects Limited, Hope Cardamom Estate Limited, the respondent no. 1 and their shareholders.
- 39.** On December 24, 2001, a learned Single Judge of this Court allowed WP No. 805 (W) of 1996 and set aside the order of requisition, which decision was initially stayed in appeal by a Division Bench. However, the two appeals preferred against the order dated December 24, 2001, bearing APO No. 43 of 2002 (old no. APOT No. 53 of 2002) and APO No. 130 of 2002 (old no. APOT No. 90 of 2002) were subsequently dismissed for default on July 21, 2003 and July 03, 2006 respectively. The said appeals were never restored. Thus, the order of the Writ Court dated December 24, 2001 setting aside the requisition attained finality.
- 40.** Meanwhile, the writ petitioner/present respondent no. 1 wrote to the appropriate authorities for recovery of dues of electricity charges as well as for rent compensation for the period of unlawful occupation by the State through the appellant. Such claim, however, was refused.
- 41.** A writ petition, bearing WP No. 3552 (W) of 2010, challenging the refusal of the State-Authorities to pay Rs. 27,65,336/- as rent compensation for the period between June 27, 2003 and March 31, 2009 ,was also filed by respondent no. 1.

- 42.** Another writ petition, bearing WP No. 3815 (W) of 2010, challenging the refusal of the State-Authorities to derequisition 4449 Sq. Ft. on the first floor of the subject-premises, was also taken out.
- 43.** It is relevant to mention here that although the State had derequisitioned a substantial portion of the entire requisitioned property in terms of the order of this Court dated December 24, 2001, the balance, comprised of the present disputed property of 4449 Sq. Ft., was not derequisitioned and possession of the same was continued to be retained by the appellant.
- 44.** WP No. 3553 (W) of 2010 was disposed of January 14, 2011 by directing the First Land Acquisition Collector, Kolkata, to dispose of the matter relating to release of rent compensation to the petitioner/present respondent no. 1 by passing a reasoned order.
- 45.** On the self-same date, WP No. 3815 (W) of 2010 was also disposed of by directing the Land Acquisition Collector to dispose of the representation of respondent no. 1 by passing a reasoned order.
- 46.** Subsequently, the respondent no. 1 was heard by the Collector on several occasions and on June 24, 2011, the First Land Acquisition Collector, Kolkata forwarded his reasoned order to the respondent no. 1, holding that the latter had failed to substantiate its claim as an absolute owner and was not entitled to any rent.
- 47.** WP No. 10640 (W) of 2012 was then filed, challenging the said order of the Collector as well as seeking vacant possession of the subject-property and recovery of rent compensation for the period of illegal occupation by

the appellant. The same was disposed of on May 21, 2025, leading to the present appeal.

48. The following issues fall for consideration in the appeal:

- (i) *Locus standi of the appellant to prefer the present appeal;*
- (ii) *Locus standi of respondent no. 1 to file the writ petition from which the present appeal arises;*
- (iii) *Whether the writ petition was barred by Section 27, read with Article 65, of the Limitation Act, 1963;*
- (iv) *Whether the writ court acted without jurisdiction, in view of the limited powers of the Writ Court to decide questions of title;*
- (v) *Whether the appointment of Arbitrator by the impugned order was illegal.*

49. The Court decides the above issues in the following manner:

(i) Locus standi of the appellant to prefer the present appeal

50. The appellant cites an unreported co-ordinate Bench judgment of this Court in *MAT No. 1654 of 2023 [Block Development Officer and Another v. Surajit Pramanick and Others]*.

51. It was held therein that if the valuable right of one of the parties is decided by an order, such order is to be treated as a “judgment” within the meaning of Clause 15 of the Letters Patent of this Court and is open to a challenge in an intra-Court Appeal.

- 52.** However, the focal point of the said adjudication was whether the impugned decision was a “judgment” within the contemplation of Clause 15 of the Letters Patent, and not the *locus standi* of the appellant as such. Hence, the said judgment is not germane for the present consideration.
- 53.** In *Midnapore Peoples’ Coop. Bank Ltd. and others v. Chunilal Nanda and others*, reported at (2006) 5 SCC 399, the Hon’ble Supreme Court categorically observed that the order impugned in the appeal in the said case was passed in the course of contempt proceedings, issuing specific directions on the Chairman and the Secretary-in-Charge representing the Bank were specifically directed to do certain acts, by referring to them as “the respondent-Bank”. Since the said officials were considered as representing the Bank for issuing such directions, it was held that they could file an appeal against the directions.
- 54.** In our considered opinion, the present appellant stands on a better footing than the appellants in the said case, inasmuch as the brunt of the impugned judgment is not against the State of West Bengal but against the appellant itself. Moreover, the appellant was arrayed separately as a party to the writ petition in its independent capacity. It is the appellant which is admittedly in possession of the subject-property and was directed to vacate the same by the impugned order. Although the rent compensation to be paid might ultimately come from the coffers of the State, fact remains that the appellant is directly and substantially affected by the impugned judgment.

- 55.** That apart, although merely a Department of the State, the appellant is a Directorate in its own right, with its independent Director. Thus, a semblance of autonomy is vested in the present appellant, entitling it to maintain its own litigation in its own right and not merely through the State.
- 56.** In view of the above, this Court is of the opinion that the appellant has the *locus standi* to maintain the present appeal.

(ii) Locus standi of respondent no. 1 to file the writ petition from which the present appeal arises

- 57.** By dint of the order dated June 10, 1998 sanctioning the Scheme of Arrangement, passed in connection with a Company Petition, the respondent no. 1 became the owner of a portion of the entire premises-in-question.
- 58.** In the said order, passed in Company Application No. 226 of 1997, arising out a proceeding under Section 391(2), 392 and 394 of the Companies Act, 1956, the portion allocated to respondent no. 1 was categorically delineated.
- 59.** The right, title and interest of the original owner in respect of a demarcated 9062 Sq. Ft. of the subject-property was ultimately vested in favour of the respondent no. 1 through its predecessor-in-interest, Kolkata Metropolitan Planning Organization.
- 60.** By dint of the expiry of the State's lease on March 31, 1996 and in view of the requisition of the subject-property by the State having been set

aside by the order dated December 24, 2001 passed in WP No. 805 (W) of 1996, a valuable right accrued in favour of the writ petitioner/respondent no. 1 to seek possession of the subject-property (which comprises a part of the 9062 Sq. Ft. allocated to it) and to challenge the impugned order of the Land Acquisition Collector. In any event, in the said order, the representation of the writ petitioner/respondent no. 1 was rejected, holding it not to be the owner of the subject-property. As such, the writ petition was very much maintainable before this Court at the behest of the respondent no. 1 herein in view of the infraction of its ownership and associated rights.

(iii) Whether the writ petition was barred by Section 27, read with Article 65, of the Limitation Act, 1963

61. The language of Section 27 of the Limitation Act, which has been relied on vociferously by the appellant, is quoted hereinbelow:

“27. Extinguishment of right to property.—At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.”

62. However, Section 27 cannot be read in isolation. In the facts of the present case, the said provision has to be read in conjunction with Article 65 of the Schedule to the 1963 Act.

63. Article 65 is also set out hereinbelow:

<i>Description of Suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
65. For possession of immovable property or any interest therein based on title. <i>Explanation.</i>—For the purposes of this article— (a) where the suit is by a remainderman, a reversioner (other than a landlord) or a devisee, the possession of the defendant shall be deemed to become adverse only when the estate of the remainderman, reversioner or devisee, as the case may be, falls into possession; (b) where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies; (c) where the suit is by a purchaser at a sale in execution of a decree when the judgment debtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgment-debtor who was out of possession.	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.

64. Section 27, by itself, does not create any right but provide a fetter to the owner of the property to assert its ownership rights in respect of the disputed property by dint of expiry of the limitation period for instituting

a suit for possession. As recognised by the Hon'ble Supreme Court in *Ravinder Kaur Grewal (supra)*¹, Section 27 is an exception to the general rule of the law of limitation that although the edge of ownership for the purpose of using it as a sword to seek eviction is blunted by expiry of the limitation period, the substantive right of the owner is not automatically extinguished. In cases where Section 27 is applicable, the right of the owner to the property is itself extinguished, denuding the owner of its ownership rights altogether.

65. In the present case, the appellant seeks to rely on the said provision in conjunction with Article 65 of the Schedule to the 1963 Act. However, the key word in the said Article, under the column stipulating the point of commencement of limitation, is "adverse". The Article contemplates that the limitation period begins when the possession of the defendant becomes *adverse to the plaintiff*.
66. It is only in such cases that the right is extinguished, both in terms of Section 27 and the above decision.
67. *Prem Singh and others (supra)*² merely reiterates the principle embodied in Section 27 in general.
68. Learned Senior Standing Counsel himself, during arguments and in the written notes of arguments filed by the appellant, reiterates that the appellant is *not claiming adverse possession* but simultaneously relies on Section 27, read with Article 65 of the 1963 Act. However, such argument is a contradiction in terms, since the adverse nature of the

¹ ***Ravinder Kaur Grewal and others v. Manjit Kaur and others*, reported at (2019) 8 SCC 729**

² ***Prem Singh and others v. Birbal and others*, reported at (2006) 5 SCC 353**

possession is a *sine qua non* for the limitation even to start under Article 65.

- 69.** Apart from the appellant having not argued adverse possession and/or pleaded the same at any point of time by specifically enumerating the point of time since when the possession first became hostile and uninterrupted against the true owner, the records bear out that the possession of the State (which, in turn, allocated the property to the appellant) commenced with a lessee. It is the inception of a jural relationship which has to be considered for the purpose of determining the character of possession. Once a lessee, an entity always remains a lessee throughout the tenure of its lease and thereafter becomes a 'tenant-at-sufferance'. In fact, the appellant itself has argued in that line.
- 70.** The concept of "tenant-at-sufferance" stems from English Jurisprudence but has also been imbibed, although not in so many words, in Indian Jurisprudence. In Indian Law, once a lease is terminated, the lessee becomes liable to vacate the possession.
- 71.** It is an admitted position in the present case that the State of West Bengal entered into a lease in writing with the original owner on February 23, 1984, agreeing thereby that the lease would commence from April 1, 1980 and would expire after 16 years therefrom, that is, on March 31, 1996.
- 72.** Thus, on and from April 1, 1996, the State of West Bengal, which had allotted the property to the appellant, became a tenant-at-sufferance.

The status of a tenant-at-sufferance is of a shade somewhere between a rank trespasser and a person in lawful occupation of a property. The character of such possession is one of ‘unlawful occupier’, although not that of a ‘rank trespasser’. Even if we proceed on such premise, Section 108(q) of the Transfer of Property Act, 1982 (for short, “the TP Act”) provides that on the determination of the lease, the lessee is bound to put the lessor into possession of the property. The said provision embodies the concept of tenant-at-sufferance.

- 73.** The only exception thereto is recognized in Section 116 of the TP Act, which provides as follows:

“116. Effect of holding over.—If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 106.”

- 74.** Thus, the *sine qua non* for a lessee, whose lease has expired, to have the status of an entity “holding over”, is the assent of the lesser to such continuance in possession. The expression “accepts rent” in Section 116 of the TP Act is inextricably intertwined with the following phrase: “or otherwise assents to his continuing in possession”. The term “otherwise” unerringly indicates that the acceptance of rent has to be associated directly with the assent of the lessor for the lessee to continue in possession after expiry of its lease. The effect of holding over is that, by necessary inference, a jural relationship akin to a new tenancy is created

by legal fiction. In the absence of any such *assent*, however, the status of the lessee of an expired lease remains that of a tenant-at-sufferance who has no interest or interest in the lease-hold property and is subject to eviction by the lessor/owner.

75. In the present case, the appellant has argued that the claim of the respondent no. 1 for rent compensation and electricity charges tantamounted to recognition of the status of the appellant as a lessee by holding over. However, a bare perusal of the letter issued by respondent no. 1 in such context belies such proposition. In the letter dated January 24, 2005 issued by the writ petitioner/respondent no. 1 to the Joint Secretary of the Government of West Bengal, Urban Development Department, Town and Country Planning Branch, the said respondent claimed the due payments with regard to electricity charges during the period of unlawful occupation by the State (through the appellant) in respect of the subject-premises. However, a caveat was inserted specifically in the communication, to the effect that such claim was “without prejudice to the rights and contentions pending” in the matter. Thus, the claim of electricity dues was merely by way of recovery of money actually spent by respondent no. 1 for electricity consumption by the appellant during its unlawful possession of the property, without carrying any undertone of assent for the State/appellant to continue in possession or to create a new lease at all. The “rent compensation” claimed from the appellant was also in lieu of occupation charges, without any specific admission anywhere expressing the intention of

respondent no. 1/owner to grant a new lease or acceding to the continuance of possession by the appellant. Rather, the respondent no. 1 has been litigating all along for regaining possession of the property. The term “rent” in the expression “rent compensation” cannot be equated with the contemplation of “rent” in terms of Section 105 of the TP Act, since the rent compensation claimed by respondent no. 1 was merely in lieu of occupation charges in the nature of compensation/mesne profits/damages for the unlawful occupation of the property by the State/appellant. Such amount cannot, by any stretch of imagination, can be said to be the “periodical payment of money as a term or consideration of a transfer of the right to enjoy the property” by respondent no. 1 to the State or the appellant, as envisaged in Section 105.

- 76.** Even otherwise, the stand of the appellant, that the claim of rent compensation by respondent no. 1 recognized the status of the appellant as a lessee, is mutually destructive of the plea of adverse possession.
- 77.** In any event, at no point of time did the possession of the appellant in respect of the subject-property either become ‘adverse’ to that of the respondent no. 1/true owner or partook of the character of ‘holding over’. Thus, the foundational edifice on which the appellant seeks to invoke Section 27, read with Article 65, of the 1963 Act, is illusory and nothing better than quicksand.

- 78.** In such view of the matter, since the possession of the appellant never turned adverse to the respondent no. 1/true owner, it cannot be said that Section 27 and/or Article 65 of the 1963 Act was ever attracted.
- 79.** In *Vidya Devi (supra)*³, the Hon'ble Supreme Court recognized the legal principle that the State cannot perfect its title by claiming adverse possession by grabbing the property of a citizen.
- 80.** In the instant case, the illegality committed by the State is of a much higher order, since, in order to favour its own Department/Directorate (present appellant) the State retained its unlawful occupation of the property, thereby flouting the specific direction to vacate the premises, as embodied in the order dated December 24, 2001 passed in WP No. 805 (W) of 1996, despite such order having attained finality. The action of the State, and in reflected light, of the appellant has been not only arbitrary and unfair, but patently mala fide all through. First, the State sought to perpetuate its possession even after the due date of expiry of its lease on March 31, 1996 by issuing a requisition order on March 14, 1996 and even going to the extent of granting notional possession to the appellant on March 22, 1996. Then, when such ploy failed by the requisition being set aside by this Court on December 24, 2001, the State blatantly refused to comply with the solemn order by derequisitioning only a portion of the entire property and unlawfully retaining 4449 Sq. Ft. in the teeth of such order.

³ *Vidya Devi v. State of Himachal Pradesh and others*, reported at (2020) 2 SCC 569

81. Not stopping there, the appellant has consistently attempted to ward off all efforts of the legitimate owner/respondent no.1 to recover the property and even to compensate the owner for the period of unlawful occupation of the subject-property.
82. Such action is not only patently arbitrary but is imbued with legal malice.
83. As further held by the Hon'ble Supreme Court in *Vidya Devi (supra)*⁴, there cannot be any delay in a continuing cause of action, since it was the incumbent duty of the State and, by necessary implication, the appellant, an instrumentality of the State, to comply with the direction of the Writ Court dated December 24, 2001 and vacate the subject-premises. Instead of doing so, the State went on so far as not to derequisition 4449 Sq. Ft. of the total property. The legal malice of the State was recognized by the Writ Court in WP No. 805 (W) of 1996 while passing the order dated December 24, 2001 therein. Just before the lease executed in favour of the State having expired on March 31, 1996, the State, in a *mala fide* attempt to retain the property, issued a requisition order dated March 14, 1996 and performed a charade, an illusory handover of the property of the appellant, its own instrumentality [aptly referred to as "paper possession" in the order dated December 24, 2001 passed in WP No. 805 (W) of 1996].
84. Thus, it was not the obligation of the writ petitioner/respondent no. 1 to run from pillar to post seeking possession and compensation but, rather,

⁴ *Vidya Devi v. State of Himachal Pradesh and others*, reported at (2020) 2 SCC 569

the incumbent duty of the State, through the appellant, to hand over vacant and peaceful possession of the property in favour of the true owner pursuant to the order dated December 24, 2001. Having not done so, the State and the appellant subjected themselves to continuous liability to vacate the premises. Hence, the concept of “continuing cause of action” is squarely attracted in the present case, as also recognized in *Dharnidhar Mishra (D) (supra)*⁵.

- 85.** Thus, this issue is decided against the appellant, holding that the claim of the writ petitioner/respondent no. 1 is not barred by Section 27, read with Article 65 of the 1963 Act.

(iv) Whether the writ court acted without jurisdiction, in view of the limited powers of the Writ Court to decide questions of title

- 86.** The present writ petition, as rightly contended by respondent no. 1, is in the nature of implementation of the order dated December 24, 2001 passed in WP 805 (W) of 1996, whereby the purported requisition of the subject-property was set aside and the State was directed to vacate the property immediately.
- 87.** Upon dismissal for default of the two appeals preferred against such order, bearing APO No. 43 of 2002 and APO No. 130 of 2002, the said order of the Writ Court has attained finality. Thus, the claim of the State and the appellant by virtue of such purported requisition was set at

⁵ *Dharnidhar Mishra (D) and another v. State of Bihar and others*, reported at (2024) 10 SCC 605

naught with the dismissal of the said appeals, respectively on July 1, 2003 and July 3, 2006.

- 88.** Secondly, the writ petitioner/respondent no. 1 has not raised in intricate question of title, requiring detailed evidence to be taken or any disputed and complicated fact being adjudicated. The claim in the writ petition is simpliciter – that the Land Acquisition Collector erred in law in holding that the writ petitioner/respondent no. 1 is not the owner of the property and withholding compensation and arrear electricity charges from the said owner. In the process, the Writ Court also directed the appellant to vacate the subject-property, since its occupation of the same is unlawful.
- 89.** In the teeth of the order dated December 24, 2001, setting aside the requisition proceeding and directing the State to vacate the property as well as the expiry of the lease as long back as on March 31, 1996, the appellant and/or the State have been relegated to the status of unlawful occupants. In the absence of any ingredient of holding over being established on the basis of the materials on record, no title could be or has been claimed by the State or the appellant as such. Thus, the relief sought before the Writ Court did not involve the adjudication of any intricate question of title at all.
- 90.** In view of the appellant being an instrumentality of the State and the beneficiary of a requisition by the State which has been set at naught by a competent Court, as well as the expiry of the lease obtained by the State long back, the remedy under Article 226 of the Constitution of

India was very much available to the writ petitioner/respondent no. 1, being the true owner of the property.

- 91.** Thirdly, the respondent no. 1 produced before the Writ Court declarations issued by Poddar Udyog Limited and Poddar Projects Limited, who were the other allottees, indicating that the Kolkata Metropolitan Planning Organization had vacated their respective allocated portions of the subject-property and they do not have any right, title or interest over the remaining area of 9062 Sq. Ft. which solely belongs to respondent no. 1 now. The said declarations, read in conjunction with the order of the Company Court dated June 10, 1998 approving the Scheme of Arrangement, whereby s 9062 Sq. Ft. area (containing the 4449 Sq. Ft. in occupation of the appellant) to the respondent no. 1, leave no manner of doubt as to the entitlement of the writ petitioner/respondent no.1 to obtain peaceful and vacant possession of the subject-property and adequate compensation for the unlawful occupation of the said property by the appellant.
- 92.** Hence, the respondent no. 1 has proved beyond doubt its ownership in respect of the subject-property as opposed to the State and the appellant, who, even on the basis of the admitted facts, are unlawful occupants in respect of the said property.
- 93.** It is well-settled that State action has to be characterised by fairness and has to be on a higher pedestal than that of private individuals, both in its contractual obligations and in the public domain. Thus, in view of the palpably illegal retention of occupation of the subject-property by the

appellant in violation of Article 300A of the Constitution, the remedy under Article 226 of the Constitution of India was very much available to the writ petitioner/respondent no. 1.

94. *R.V. Bhupal Prasad (supra)*⁶ does not come to the aid of the appellant in any manner, since the assent of the owner for the appellant to continue in possession has not been established in the present case, as opposed to the factual premise of the said decision.
95. In *Anamallai Club (supra)*⁷, the Hon'ble Supreme Court merely reiterated the settled proposition of law that a person cannot be dispossessed without due process of law. In the present case, writ petition itself was filed in due process of law to obtain the eviction of the appellant, without respondent no. 1 having resorted to any tactics of force. That apart, the present writ petition is also by way of implementation of the already-existent order dated December 24, 2001 of the writ court for the State to vacate possession of the property.
96. In *Parvatibai Subhanrao Nalawade (Smt) (supra)*⁸, the Hon'ble Supreme Court was considering a consent decree of the Civil Court which was directed to be put into execution. In such context, it was held that no writ petition would be maintainable, since the appropriate remedy would be to execute the Civil Court's decree. The facts of the present case are completely different and, thus, the above proposition is not applicable here at all.

⁶ *R.V. Bhupal Prasad v. State of A.P. and others*, reported at (1995) 5 SCC 698

⁷ *Anamallai Club v. Govt. of T.N. and others*, reported at (1997) 3 SCC 169

⁸ *Parvatibai Subhanrao Nalawade (Smt) v. Anwarali Hasanali Makani and others*, reported at (1992) 1 SCC 414

97. Accordingly, the writ petition filed by the respondent no. 1 is held to have been maintainable in all respects.

(v) Whether the appointment of Arbitrator by the impugned order was illegal

98. The Hon'ble Supreme Court, in several judgments, has sanctioned the appointment of an Arbitrator unilaterally by the court for the purpose of assessment of compensation and/or for ancillary purposes. The echo of such proposition is found in *Punalur Paper Mills Ltd. (supra)*⁹, *Union of India v. Shakuntala Gupta (dead) (supra)*¹⁰ and *Union of India and others v. Krishan Lal Arneja and others (supra)*¹¹.

99. Moreover, we find that the term "Arbitrator" was used as a mere nomenclature by the Writ Court only insofar as the computation of the compensation is concerned. The learned Single Judge, in fact, granted the writ petitioner/respondent no. 1 liberty to submit a comprehensive application to the respondent no. 2, the Principal Secretary to the Government of West Bengal, Department of Land and Lard Reforms, seeking compensation for the period of illegal occupation by the present appellant, upon the submission of which the respondent no. 2 was to appoint an Arbitrator within the period specified in the order and refer the claim of the writ petitioner to the Arbitrator. Hence, the appointment

⁹ *Punalur Paper Mills Ltd. v. W.B. Mineral Development & Trading Corpn. Ltd. and others, reported at (2021) 14 SCC 528*

¹⁰ *Union of India v. Shakuntala Gupta (dead) by LRs., reported at (2002) 7 SCC 98*

¹¹ *Union of India and others v. Krishan Lal Arneja and others, reported at (2004) 8 SCC 453*

of Arbitrator was not “unilateral” insofar as the appellant is concerned; rather, the writ petitioner/respondent no. 1 might have had an objection thereto, since the respondent no. 2, being an officer of the State, has been empowered to appoint the Arbitrator. Thus, there is no impartiality or unfairness in such appointment as it is the State itself, through its functionary, which will appoint the Arbitrator for the purpose of calculation of compensation. Rather, this Court appreciates the course of action taken by the learned Single Judge in not usurping the power of the State, in the first place, to assess such compensation. The learned Single Judge, in perfect consonance with law, has merely permitted the writ petitioner/respondent no. 1 to apply for compensation before respondent no. 2 who, in turn, will appoint an Arbitrator to pronounce a formal award towards such compensation for the period during which the subject-property was in illegal occupation of the appellant.

100.Hence, we do not find any illegality in such course of action of appointment of an Arbitrator at all.

101.This issue, thus, is also decided against the appellant.

CONCLUSION

102.In view of the above findings, this Court does not find any illegality or jurisdictional error and/or perversity in the impugned order of the learned Single Judge to merit interference within the limited scope of an

intra-court appeal. Not only a plausible view but the correct view, in our humble opinion, was taken by the learned Single Judge in passing the impugned order.

103.At the same time, we take note of the immense harassment suffered by the writ petitioner/respondent no. 1 in being compelled to run from pillar to post for vindication of its legitimate and legal rights, due to the conduct of the appellant and its continuous resistance designed to thwart due process of law. Accordingly, the appellant is required to be saddled with costs. Yet, such costs should not be borne by the public coffer but liability therefor should be fixed at an individual level. Thus, we deem it appropriate to impose appropriate costs personally on the Director of the appellant-Directorate, who is in overall charge of affairs and through whom the appeal has been filed, thus making him/her liable to pay such costs.

104.Accordingly, the appeal fails.

105.M.A.T. No. 1134 of 2025 is dismissed on contest, thereby affirming the impugned judgment and order dated May 21, 2025 passed by the learned Single Judge in WPA No. 10640 of 2012, with costs assessed at Rs. 50,000/- to be paid by the Director, Transportation, Planning and Traffic Engineering Directorate, Government of West Bengal, Transport Department to respondent no.1 within a fortnight from date, that is, on or before March 23, 2026.

106.CAN 2 of 2025 and CAN 3 of 2025 are disposed of accordingly.

107.Urgent certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)