

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

**BEFORE:  
THE HON'BLE JUSTICE OM NARAYAN RAI**

**WPA 17068 of 2025  
The Asia Health Care Development Private Limited  
-vs-  
State of West Bengal & Others**

|                               |                                                                                                                        |
|-------------------------------|------------------------------------------------------------------------------------------------------------------------|
| For the Petitioner            | : Mr. Kumar Jyoti Tewari, Sr. Adv.<br>Mr. Amrit Sinha, Adv.<br>Mr. Aniruddha Tewari, Adv.<br>Ms. Samriddhi Nayak, Adv. |
| For the Respondent Nos. 2 & 3 | : Mr. Sakya Sen, Sr. Adv.<br>Mr. Sunil Gupta, Adv.<br>Ms. Pallavi Chatterjee, Adv.                                     |
| For the State                 | : Mr. Supratim Dhar, Sr. Adv.<br>Mr. Debottam Das, Adv.                                                                |
| Hearing Concluded on          | : 26.02.2026                                                                                                           |
| Judgment on                   | : 18.05.2026                                                                                                           |

**Om Narayan Rai, J.:-**

1. This writ petition assails the initiation of proceedings under the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 (hereafter “the 1962 Act”) and an order dated July 22, 2025 passed by the Sub Divisional Magistrate, Berhampore Sadar, Murshidabad (hereafter “respondent no.5”) by exercising the power vested in the respondent no.5 under Section 3(1) of the 1962 Act.

**FACTS OF THE CASE:**

**2.** The relevant facts leading to the institution of the writ petition may be noticed first:-

- a.** On July 09, 2004 an agreement (hereafter “lease agreement”) was entered into by and between the petitioner and the Murshidabad Zilla Parishad (hereafter the respondent no. 2) for a period of 21 years whereby a Diagnostic cum Medical Centre along with land described in the First Schedule thereof, the plant, machineries, fixtures, fittings and other installations had been let out on monthly rental basis by the respondent no.2 to the petitioner.
- b.** On March 03, 2005 a supplementary agreement was also executed between the parties whereby certain terms and conditions of the lease agreement were altered and modified.
- c.** It is the petitioner’s case that upon taking possession of the said property, the petitioner invested substantial sums and introduced several facilities including installation of high-tech machines.
- d.** During the covid-19 pandemic, the petitioner paid rent for the month of January 2020 on March 20, 2020 and by a letter dated March 27, 2020, the petitioner requested the Additional Executive Officer, Murshidabad Zilla Parishad (hereafter respondent no.3) to condone the delay in making payment of monthly lease rent on the basis of the directives issued by the Government of India during the covid period.
- e.** On January 10, 2022, the petitioner received a demand notice under Memo No. 113/1/MZP from the respondent no.3 whereby the petitioner was directed to pay the annual lease rent.

- f.** On the very next day i.e. on January 11, 2022, the respondent no.3 issued another notice being Memo No. 122/MZP thereby terminating the lease agreement by invoking Clause 26 thereof, due failure of payment of rent for a consecutive period of four months. By the said letter, the petitioner was directed to hand over peaceful vacant possession of the property within a period of 15 days from the date of receipt thereof.
- g.** The petitioner replied to the said termination notice by a letter dated February 08, 2022 asserting that the petitioner had already deposited the annual rent in the bank account of the respondent no.2 for the financial year 2022-2023.
- h.** Thereafter, by a letter dated March 12, 2022, the petitioner requested the respondent no.3 to enter into a fresh agreement with the petitioner for a fresh tenure of at least 20 years subject to renewal with mutual consent. However, no step was taken by any of the respondents in such direction.
- i.** The petitioner assailed the said letter of termination before this Court by way of a writ petition being WPA No. 26321 of 2022, however, the same was ultimately withdrawn on August 16, 2024.
- j.** In the meantime, the petitioner received another letter dated September 28, 2022 from the respondent no.3 asserting that the petitioner had failed to handover possession of the leased property to the respondent and had unilaterally transferred funds to the bank account of the respondent no.3 despite termination of the lease. By the said letter, the respondent no.3 requested the petitioner to provide its bank details so that the amounts paid by the petitioner post termination could be refunded to the petitioner. The petitioner was once again requested to vacate the property.

**k.** Thereafter another letter dated September 27, 2023 was issued by the respondent no.2 alleging that the petitioner had suppressed the actual accounts and had not made payments in terms of the lease agreement as well as the supplementary agreement. The letter alleged suppression of actual facts and submission of fraudulent and mismatching accounts that was detected by the examiner of local accounts, West Bengal, Office of the Principal Accountant General (Audit-1) during inspection of accounts of the respondent no.2. By the said letter, the petitioner was also called upon to pay a sum of Rs.292.25 lakh to the respondent no.2 in addition to Rs.35,73,094/- that had been paid by the Murshidabad Zilla Parishad towards annual land revenue to the Land and Land Reforms Department, Government of West Bengal. The petitioner denied the said allegations by its letter dated October 05, 2023.

**l.** There was exchange of correspondences on this issue between the petitioner and the respondent nos.2 and 3 whereafter, an e-auction notice dated January 30, 2024 was issued inviting bids for the Rabindranath Thakur Diagnostic and Medical Care Centre. The petitioner participated in the said e-auction and after the technical bid, the petitioner remained the sole bidder. However, since the petitioner was the sole bidder therefore tendering authority cancelled the tender. Thereafter, another NIT was issued and upon completion of the bidding process one Lila Hospital Private Limited was issued the work order.

**m.** Subsequently, a certificate was issued under the Bengal Public Demand Recovery Act, 1913 (hereafter “the 1913 Act”) calling upon the petitioner to pay a certain sum. The same was challenged before this Court by filing

WPA No.15831 of 2024. The said writ petition was disposed of by setting aside the certificate while granting liberty to the certificate officer to take fresh steps under the 1913 Act in accordance with law.

- n.** Pursuant thereto, a fresh certificate proceeding has been initiated against the petitioner, which is being contested by the petitioner.
- o.** Thereafter, the petitioner instituted a suit being Title Suit No.06 of 2024 before the Learned Civil Judge (Senior Division), 1<sup>st</sup> Court at Berhampore, Murshidabad praying *inter alia* for a decree for declaration and permanent injunction. In the said suit the petitioner filed an application for temporary injunction under Order XXXIX Rules 1 and 2 of Code of Civil Procedure, 1908 and pressed the same for ad-interim order of injunction. Such prayer was granted and an ad-interim order of injunction was passed on July 10, 2024 thereby restraining the respondent no.2 and the said Lila Hospital Private Limited from disturbing the peaceful possession of the petitioner.
- p.** The respondent no.2 entered appearance in the suit and filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 (hereafter “the 1996 Act”).
- q.** The petitioner’s application for temporary injunction and the respondent no.2’s application under Section 8 of the 1996 Act were disposed of by a common order dated March 21, 2025. By the said order, the ad-interim order of injunction granted earlier was made absolute and the respondent no.2’s application under Section 8 of the 1996 Act was rejected.
- r.** The said order of rejection was carried in appeal (being FMA No.816 of 2025) by the respondent no.2 before an Hon’ble Division Bench of this

Court. The said appeal was ultimately allowed by the Hon'ble Division Bench on July 15, 2025 by referring the dispute in suit to arbitration.

- s.** On July 23, 2025, the petitioner filed an application under Section 9 of the 1996 Act before the Learned Commercial Court at Asansol and the Learned Court passed an order of *status quo* on July 28, 2025 as regards the possession of the parties in respect of the property in question.
- t.** In the meantime, on July 26, 2025 the petitioner was served with an order dated July 22, 2025 passed by the Sub Divisional Magistrate, Berhampore Sadar, Murshidabad (i.e. the respondent no.5) treating the petitioner as an unauthorised occupant and initiated proceedings under the provisions of the 1962 Act. Furthermore, the petitioner was directed to show cause before August 07, 2025 and also to appear on August 08, 2025 to substantiate its claim of lawful possession, if any, over the public land with material evidence.
- u.** Being aggrieved by the said order dated July 22, 2025, the petitioner has approached this Court by filing the instant writ petition.
- v.** During pendency of the writ petition, an arbitrator has been appointed by a co-ordinate Bench of this Court by an order dated December 09, 2025 on an application under Section 11 of the 1996 Act being AP-COM 733 of 2025. By the said order liberty has been reserved to the respondent no.2 to raise the issue of non-arbitrability of any claim if such claim overlaps the jurisdiction of the authority under the 1962 Act.

### **SUBMISSIONS OF THE PETITIONER:**

- 3.** A brief summary of the submissions made by Mr. Tewari, learned Senior Advocate appearing for the petitioner (both orally as well as in the written notes) is as follows:-
- a.** The District Magistrate, Murshidabad (hereafter “respondent no.4”) being the owner of the property in question has misused his office to manipulate the decisions of the respondent no.5 who is the competent authority under the 1962 Act to hold the present proceeding.
  - b.** The respondent no.4 has no role in this matter considering the scheme of the 1962 Act. As per lease agreement, the respondent no.4 is the owner of the property in question.
  - c.** The 1962 Act does not permit multiple authorities to act as ‘Collector’ in the same proceeding.
  - d.** Even if it is assumed that the respondent no.4 is not the appellate authority, the respondent no.4 could not have interfered with the present proceeding and could not have dictated the respondent no.5 under any circumstances. Such dictation is in violation of the principles of natural justice.
  - e.** In such connection an order dated November 13, 2025 passed by the Collector in the proceeding under the 1962 Act was brought on record by way of a Supplementary Affidavit affirmed on November 19, 2025 and it was submitted that the Collector was acting at the instruction of the District Magistrate.
  - f.** The show cause notice has been issued with a prejudged mind on dictation. The respondent no.5 did not apply his mind properly.

Furthermore the show cause notice has been issued in respect of a different property having no connection with the petitioner. The plot numbers in the show cause notice are wrong. Thus, such show cause is defective one.

- g.** In paragraph 3 of the impugned notice, the respondent no.5 had already formulated his opinion for evicting the petitioner. In real sense, a removal order has been passed in the garb of the purported show cause. Thus, continuation of this purported proceeding would be futile exercise.
- h.** It is settled law that justice must not only be done but it must manifestly appear to be done. In the instant case, the notice issued by the respondent no.5 is nothing but a judgment in itself. In such circumstances, the writ petition is maintainable even against a show cause notice. Reliance in such regard was placed on the decision of the Hon'ble Supreme Court in the cases of ***Siemens Limited vs. State of Maharashtra & Others***<sup>1</sup> and ***Oryx Fisheries Private Limited vs. Union of India & Others***<sup>2</sup>.
- i.** In support of his contention that acting under dictation is illegal, a judgment of the Hon'ble Supreme Court in the case of ***State of Madhya Pradesh & Others vs. Sanjay Nagayach & Others***<sup>3</sup> was placed.
- j.** By an order dated July 15, 2025, the Hon'ble Division Bench has referred the entire dispute to arbitration, following which the Hon'ble Single Bench has allowed the petitioner's application under Section 11 of the 1996 Act, thereby granting liberty to the respondent no.2 to raise the issue of non-

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<sup>1</sup> (2006) 12 SCC 33

<sup>2</sup> (2010) 13 SCC 427

<sup>3</sup> (2013) 7 SCC 25

arbitrability of the claims of the petitioner, in the event such claim is overlapping with the jurisdiction of the authority under the 1962 Act. Both these orders are binding on the respondent no.2 as they have not been challenged till date. Therefore, the issue of arbitrability of the eviction proceeding under the 1962 Act should be raised before the learned Arbitrator only.

- k.** In any event, order of the Hon'ble Division Bench dated July 15, 2025 and Hon'ble Single Judge dated December 09, 2025 cannot be made nugatory by the respondent no.5 being *quasi-judicial* authority. Subject matter of the dispute before the Arbitrator includes termination notice issued by respondent no.2. Ultimately, if termination notice is set aside by the learned Arbitrator, proceedings under the 1962 Act would be meaningless.
- l.** The respondent no.2 is basically trying to non-suit the petitioner by taking the help of the state machinery. The entire dispute has been referred to the Arbitrator and as such two separate forums should not be allowed to decide the same issue.
- m.** The contention of the respondent no.2 that the bar of Section 8A of the 1962 Act shall render the award of the arbitrator, if passed at all, inexecutable before the Civil Court, is not right because such interpretation will defeat object of the 1996 Act.
- n.** This Court must interpret conflicting provisions of the two Acts harmoniously. If the bar of Section 8A of the 1962 Act is made applicable to arbitration also, then the proceeding under the 1962 Act would in effect override the arbitration proceeding also and such proposition would be

contrary to the judgment of the Hon'ble Supreme Court in the case of **Central Warehousing Corporation & Another vs. Sidhartha Titles & Sanitary Private Limited**<sup>4</sup>.

- o.** In **Vidya Drolia & Others vs. Durga Trading Corporation**<sup>5</sup>, the Hon'ble Supreme Court of India has fundamentally built upon, reinforced and refined the principles of arbitrability of a dispute that were laid down in the case of **Booz Allen and Hamilton Inc. vs. SBI Home Finance Limited & Others**<sup>6</sup> and held that while tenancy matters under special laws where tenants have statutory protection are non-arbitrable yet disputes under the general Transfer of Property Act, 1882 (hereafter "the 1882 Act") are arbitrable. In the case at hand, the 1962 Act cannot be termed as a special statute to oust the scope of arbitration because it does not confer any special right upon the tenant. On the contrary owner enjoys special privileges.
- p.** Contrarily, such legislation is giving absolute rights to the landlord. More so, the judgment of **Vidya Drolia** (supra) in its paragraph 76 has laid down a fourfold test of non-arbitrability and neither of the grounds is attracted in the present case. Additionally, paragraph 53 of the judgment of **Vidya Drolia** (supra) held that mere creation of a specific forum as a substitute for Civil Court or specifying the Civil Court may not be enough to accept the inference of implicit non-arbitrability.
- q.** Conferment of jurisdiction on a specific Court or creation of a public forum though eminently significant, may not be the decisive test to

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<sup>4</sup> 2024 SCC OnLine SC 2983

<sup>5</sup> (2021) 2 SCC 1

<sup>6</sup> (2011) 5 SCC 532

answer and decide whether arbitrability is impliedly barred. The recent judgment of the Hon'ble Supreme Court of India in the case of **Motilal Oswal Financial Services Limited vs. Satosh Cordeiro & Another**<sup>7</sup> has clarified such position by relying on paragraph 53 of **Vidya Drolia** (supra). In such view of the matter, eviction proceeding can be decided by the Arbitrator irrespective of creation of special forum by the special statute.

- r. A judgment of the Hon'ble Supreme Court in the case of **Brij Raj Oberoi vs. Secretary, Tourism and Civil Aviation Department and Another**<sup>8</sup> was relied on to contend that arbitration clause cannot be rendered otiose by a lessor by refusing to renew the lease and that all disputes between the parties to the lease with regard to renewal, non-renewal, period of renewal and quantum of rent would have to be decided by the Arbitrator.
- s. The petitioner *prima facie* is not an unauthorised occupant as the renewal of lease in respect of the subject land had never been rejected by the respondent no.2 and the petitioner's possession has been protected by the Civil Court's order from time to time. In any event, a *quasi-judicial* authority cannot comment upon the legality of such order passed by competent Civil Court. In this connection reference was made to the decision of the Hon'ble Apex Court in the case of **Anita International vs. Tungabadra Sugar Works Mazdoor Sangh & Others**<sup>9</sup>.
- t. The respondent no.2 should not be allowed to take benefits of their own faults. The suit filed by the petitioner was dismissed as the respondents

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<sup>7</sup> 2026 SCC OnLine SC 6

<sup>8</sup> (2022) 17 SCC 81

<sup>9</sup> (2016) 9 SCC 44

took the plea of arbitrability in the application filed under Section 8 of the 1996 Act. So the plea of non-arbitrability now taken by the respondent no.2 itself is *ex-facie* fraudulent. The respondent no.2 should not be permitted to approbate and reprobate. Furthermore the respondent no.2 is also bound by the principle of estoppel. A decision of the Hon'ble Supreme Court of India in the case of **Sanjit Singh Salwan & Others vs. Sardar Inderjit Singh Salwan & Others**<sup>10</sup> was relied on in support of such contention.

- u. **Escorts Heart Institute and Research Centre Limited vs. Delhi Development Authority & Others**<sup>11</sup> was cited to assert that once a suit was instituted, the petitioner could not be treated as an unauthorised occupant.
- v. The show cause notice issued by the respondent no.5 on dictation of the respondent no.4 is without jurisdiction and continuation of such proceeding before the respondent no.5 would be abuse of process of law. Accordingly, present writ petition should be allowed by quashing the impugned show cause notice and subsequent orders passed by the respondent no.5.

**SUBMISSIONS OF THE RESPONDENT NOS. 2 & 3:**

- 4. A brief summary of the submissions made by Mr. Sen, learned Senior Advocate appearing for the respondent nos. 2 & 3 (both orally as well as in the written notes) is as follows:-
  - a. The respondent no.4 is the Chief Executive Officer of Murshidabad Zilla Parishad as well as the administrative head of the Murshidabad District.

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<sup>10</sup> 2025 SCC OnLine SC 1697

<sup>11</sup> 2019 SCC OnLine SC 2299

The property in question is a public land within the meaning of Section 2(7) of the 1962 Act being land which belongs to the State Government and has been taken on lease by the respondent no.2 being a local authority. The respondent no.2 qualifies as the owner within the meaning of Section 2(4) of the 1962 Act. Thus the respondent no.4 being the Chief Executive Officer of the Zilla Parishad represents the owner for the purposes of the 1962 Act.

- b.** Section 3(1) of the 1962 Act stipulates that the Collector can form opinion in respect of public land either - a) upon application made by officer of the owner of the public land, or b) upon information received otherwise.
- c.** Records reveal that a Memo dated July 16, 2025 was issued by the respondent no.3 informing the respondent no.4 that the petitioner's license was terminated vide notice dated January 11, 2022, but the petitioner company has continued in possession of the public land. The said information as contained in Memo dated July 16, 2025 was forwarded by the respondent no.4 to the respondent no.5 being the Collector under Section 2(1)(b) of the 1962 Act.
- d.** On such information as received, the Collector has formed an opinion that the petitioner company is in unauthorised occupation of the public land and initiated proceedings under Section 3(1) of the 1962 Act requiring the petitioner to show cause in terms of Section 3 of the 1962 Act. Thus the initiation of the proceedings is in strict compliance with the provisions contained under Section 3 of the 1962 Act.
- e.** Total compliance with the provisions of Section 3 of the 1962 Act would appear from the fact that (i) the proceedings have been initiated by the

respondent no.5 as “Collector”; (ii) the land in question is a “Public Land” and (iii) the “Collector” has proceeded on the basis of information received from the memo dated July 16, 2025 issued by the respondent no.3 addressed to the respondent no.4 which was forwarded to the Collector.

**f.** There is no infirmity in issuance of the show cause notice under Section 3 of the 1962 Act.

**g.** The respondent no.4 being a named arbitrator has no connection with the initiation of proceedings under Section 3 of the 1962 Act. The show cause notice thus cannot be challenged by invoking the jurisdiction under Article 226 of the Constitution.

**h.** The submission that the respondent no.4 is an appellate authority is contrary to the provisions of Section 7 of the 1962 Act as would appear from Section 7(1)(b) of the 1962 Act, which categorically stipulated that the Collector is the Appellate Authority only where the order is passed by an officer being Executive Magistrate specially appointed by the State Government in terms of Section 2(1)(b) of the 1962 Act. The definition of Collector in Section 2(1)(b) of the 1962 Act is either the Chief Officer in Charge of Revenue Administration of the District and includes Additional District Magistrate as well as Sub Divisional Magistrate. It also includes any Executive Magistrate specially appointed by the State Government to perform the functions of a Collector. Section 7(1)(b) of the 1962 Act provides where the order is passed by Executive Magistrate specially appointed by State Government, the appeal would lie to the Collector, which in Calcutta means Land Acquisition Collector and elsewhere the Chief Officer in Charge of Revenue Administration of the District and

includes Additional District Magistrate as well as Sub Divisional Magistrate, to the Commissioner of the Division. Therefore, the jurisdiction of the Collector is being exercised by the respondent no.5 and therefore appeal will lie to the Commissioner of Division under Section 7(1)(a) of the 1962 Act.

- i. Relying on a judgment of the Hon'ble Supreme Court in the case of ***Union of India & Another vs. Kunisetty Satyanarayana***<sup>12</sup>, it was asserted that a mere charge sheet or show cause notice does not give rise to any cause of action, as it does not amount to an adverse order which affects the rights of any party unless it has been issued by a person or authority not having the jurisdiction to do so. Such notice cannot be held to be conclusive or final in nature. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.
- j. A coordinate Bench judgment on this Court in the case of ***Vasaman & Another vs. The State of West Bengal & Others***<sup>13</sup>, was placed to demonstrate the meaning of "unauthorised occupants" as contained under Section 2(8) of the 1962 Act.
- k. In the said case it was held that- a) If public land is in use and occupation of any person without authority in writing by or on behalf of the owner and includes the continued occupation or use of any land on expiry of the term of such authority is authority occupant; b) It is immaterial that an application for long term lease is pending before the State Government,

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<sup>12</sup> (2006) 12 SCC 28

<sup>13</sup> W.P.No.15091(W) of 2017, decided on August 22, 2017

until such period is extended or a fresh lease is granted in favour of the petitioner, the petitioner cannot be considered to be in lawful occupation;

c) It was further held that the Sub Divisional Magistrate is included within the periphery of Collector.

1. The petitioner was permitted to use land under reference for 21 years, however, owing to material breach on their part, the contract stood terminated by notice dated January 11, 2022. Moreover without prejudice to *factum* of such termination, even by efflux of time, the agreement under reference stood determined on July 08, 2025 well before issuance of show cause notice dated July 22, 2025, thus apparently applying principles of aforementioned judgment, the petitioner company was an unauthorised occupant at the time of issuance of said show cause.

m. A judgment of the Hon'ble Supreme Court in the case of ***Municipal Corporation of Greater Mumbai & Others vs. Vivek V. Gawde***<sup>14</sup>, was cited to contend that mere appointment of an officer of the respondent authority does not by itself bring into play the doctrine of "*nemo judex bis vexari in propria causa sua*" and that for such doctrine to come into play it must be shown that the officer concerned has a personal bias and/or interest or has personally acted in the matter concerned and/or has already taken a decision one way or the other, which the officer may be interested in supporting.

n. ***Delhi Financial Corporation & Another vs. Rajiv Anand & Others***<sup>15</sup> was also cited for the same proposition.

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<sup>14</sup> 2024 SCC OnLine SC 3722

<sup>15</sup> (2004) 11 SCC 625

- o.** The order passed by the Learned Commercial Court at Asansol directs the parties in the proceeding i.e. the petitioner and the respondent no.2 to maintain *status quo* regarding possession of the disputed property. The continuation of the proceedings lawfully initiated under Section 3 of the 1962 Act, cannot result in alteration of the *status quo*.
- p.** The proceeding initiated by notice dated July 22, 2025, if continued will at the most result in an order of eviction under Section 4(1) of the 1962 Act.
- q.** Mere passing of an order under Section 4(1) of the 1962 Act does not result in alteration of the *status quo* of possession since the Act provides for a process for recovery of possession as contemplated under Section 4 (ii) read with Section 5 of the 1962 Act. Therefore, no illegality has been committed nor any element of bias attributed to the order passed by the respondent no.5 dated November 13, 2025 whereby the respondent no.5 had held that there was no impediment to proceed with the hearing in terms of the show cause notice. The order of the learned Commercial Court cannot be construed to be a restraint on the proceedings lawfully initiated under the 1962 Act and such an interpretation would be contrary to Section 41(e) of the Specific Relief Act, 1963.
- r.** The proceedings relating to eviction under the 1962 Act, are under a special statute. The said special statute contains an absolute bar to the jurisdiction of civil courts and thus the jurisdiction in matters covered by eviction of occupants by public land under the 1996 Act, is also impliedly barred. Such implied exclusion of the 1996 Act necessarily follows in view of the provisions of Section 36 of the 1996 Act stipulating that an award

passed under the 1996 Act can only be executed through civil courts in the same manner as a decree passed by a civil court which cannot be undertaken in view of the provisions of Section 8A of the 1962 Act. ***Army Welfare Housing Organisation & Another vs. Col. R. Ganesan***<sup>16</sup> was cited for the proposition that if a special statute creates special right or liability and provides for determination of each right and liability for the specified Court or public forum so constituted, and whether the remedies beyond the ordinary domain of the Civil Courts are prescribed and the answer is affirmative, the dispute is not arbitrable.

s. This Court while appointing an arbitrator under Section 11 of the 1996 Act did not interfere with the pending eviction proceeding pending under the 1092 Act.

5. Both the parties have distinguished the judgments cited by each other.
6. The respondent State authorities have adopted the submissions of the respondent no.2 and 3.

#### **ANALYSIS & DECISION:**

7. Heard the learned Senior Counsels appearing for the respective parties and considered the material on record.
8. This Court must remember that in exercise of its highly prerogative writ jurisdiction under Article 226 of the Constitution of India this Court can entertain a challenge thrown to a notice to show-cause only *in exceptional circumstances, such as where the notice suffers from patent lack of jurisdiction, reflects non-application of mind, is issued with a pre-determined*

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<sup>16</sup> 2021 SCC OnLine Mad 16554

*or premeditated approach, amounts to an abuse of the process of law, or results in a violation of the principles of natural justice*<sup>17</sup>.

9. The impugned show cause notice is therefore required to be tested on the anvil of the aforesaid principles.
10. It cannot be doubted that the Collector under the 1962 Act has the jurisdiction to issue notice under Section 3 of the 1962 Act and pass appropriate order in accordance with law under Section 4 thereof in case a person is found to be in unauthorised occupation of public land as defined in the 1962 Act. It is not in dispute that the subject land satisfies the definition of public land and the authority who has issued the notice satisfies the definition of a “Collector”.
11. Furthermore, the petitioner’s claim is based on an unregistered lease. It is the petitioner’s case in the writ petition (paragraphs 29 and 30) that its tenancy is a month-to-month tenancy terminable on 15 days’ notice under Section 106 of the 1882 Act. In the present case, it is not in dispute that the lease was terminated by a notice dated January 11, 2022 granting the petitioner 15 days’ time to vacate the property followed by another notice dated September 28, 2022 affording further 30 days’ time to the petitioner to vacate the property. The proceeding under the 1962 Act was initiated by issuing notice to show cause on July 22, 2024. As to whether the notice was rightly issued or not or as to whether a case for termination of lease was made out or not would ultimately be a decision on the merits of the matter.

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<sup>17</sup> J. Sri Nisha vs. Special Director, Adjudicating Authority, Directorate of Enforcement & Another, reported at 2026 SCC OnLine SC 517

- 12.** In view of the above factual and legal matrix, it cannot be said that the proceeding initiated by the Collector is wholly without jurisdiction or that the Collector lacks jurisdiction to issue show cause notice.
- 13.** The other contention of the petitioner is that the Collector has been acting at the dictate of the District Magistrate and that the show cause notice is premeditated.
- 14.** The show cause notice therefore needs to be analysed from that angle. The first paragraph of the said notice briefly refers to the information provided by the Additional Executive Officer of the respondent no.2 to the District Magistrate. The second, third and fourth paragraphs of the show cause notice have been stressed upon by the petitioner to drive home the charge of a prejudged show cause notice. The same are quoted hereinbelow:-

*“2] The Additional Executive Officer, Murshidabad Zilla Parishad has placed a proposal before the District Magistrate, Murshidabad to take necessary action for eviction of the unauthorized occupants M/s. Asia Health Care Development Pvt. Limited from the premises of the Rabindranath Thakur Diagnostic and Medical Care Centre by invoking relevant section of West Bengal Public Land (Eviction of Unauthorized Occupants) Act-1962. The matter is duly been forwarded by the District Magistrate, Murshidabad to me for drawing necessary proceedings.*

*3] Hence, in my considered opinion, the illegal encroachment are required to be removed and/or evicted from the said public land for restoration to the lawful possession of Plot No.-960 (P) and 915 (P) of Mouza- Gar Berhampore, JL No.- 91, Area- 1.73, Acre, P.S.- Berhampore, Dist.-Murshidabad by the immediate owner i.e. Murshidabad Zilla Parishad.*

*4] Being satisfied to that effect, I, the Sub Divisional Magistrate, Berhampore Sadar. District-Murshidabad, being the Collector as per provision of Section 2(1) (b) of the West Bengal Public Land (Eviction of Unauthorized Occupants) Act-1962 (as amended from time to time), in exercise of the power vested in me under the provision of Section 3(1) of the Act *ibid*, do hereby treat the communication as mentioned hereinabove, the undersigned as information received otherwise and take cognizance thereof to treat it fit and proper to initiate proceedings under the Act *ibid* against all such person and/or persons claiming possession (if any) on such encroachments etc. on public land as*

*mentioned hereinabove and issue notice to show cause as to why he/she/they should not be treated as unauthorized occupants in relation to those encroachments/occupancy/encumbrances of the premises on Plot No.-960 (P) and 915 (P) of Mouza- Gar Berhampore, JL No.- 91, Area- 1.73, Acre, P.S.- Berhampore, Dist.- Murshidabad and why administrative action should not be taken up for evicting him/her/they from the public land as mentioned hereinabove and why an order under Sub Section (1) of Section 4 of the Act *ibid* should not be made against him/her/they and consequent upon that Order, why said encroachments/encumbrances/ possessions etc. on public land should not be recovered there from, **within a period of 16 (sixteen) days from the date of issue of this proceedings-cum-show cause notice (not later than 07/08/2025). He/she/they is/are also directed to appear either in person or by his/her/their authorized representatives before me at my Office on 08/08/2025 to substantiate his/her/their claim of lawful possession (if any) over the public land with material evidence.***"

15. In order to examine as to whether the impugned notice is susceptible to challenge on the ground of it being premeditated, the provisions of Section 3(1) of the 1962 Act would also be required to be considered. The same are quoted hereinbelow:-

*"3. (1) If, in respect of any public land, the Collector is of opinion, upon application made by an officer of the owner of the public land authorised in this behalf by such owner or upon information received otherwise, that the public land is in the unauthorised occupation of any person or persons, the Collector shall issue a notice a notice in such form and containing such particulars as may be prescribed calling upon all persons concerned calling upon all persons concerned to: show cause before such date, not being-less than fifteen days after the date of the notice, as .may be specified in the notice why an order under clause (a) of subsection- (1) of section . 4 should not be made, and shall cause it to be served in the manner referred to in sub-section (2). Intimation of the date so specified shall be given to the owner of the public land and to its officer authorised under this sub-section."*

(Emphasis supplied)

16. Rule 3(1) of the West Bengal Public Land (Eviction of Unauthorised Occupants) Rules, 1963 (hereafter "the 1963 Rules") prescribes the form in which such notice is to be issued. The said Rule reads as follows:-

**“3. Form and manner of service of notice under sub-section (2) of section 3.**

**(1)** *The notice referred to in sub-section (1) of section 3 shall be in the form appended to these rules or in a form substantially similar thereto and shall contain a description of the public land in unauthorised occupation and the date by which cause is to be shown by the persons concerned;.....”*

**17.** The statutory form of such notice is reproduced hereinbelow:-

“[FORM]

[Rule 3(1)]

*Form of Notice under sub-section (1) of section 3 of the  
West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962*

*To,*

*All persons concerned.*

*Whereas an application has been made before me by  
.....under sub-section (1) of section 3 of the West Bengal Public  
Land (Eviction of Unauthorised Occupants) Act, 1962 (West Bengal Act XIII of 1962) /  
information has been received by me that you have been in unauthorised occupation of  
the public land described in the schedule below;*

*Now, therefore, in exercise of the power conferred by sub-section (1) of section 3 of  
the said Act, I hereby require you to appear before me personally or by a duly  
authorised agent to show cause on or before ..... why an order directing you  
to vacate the public land and deliver possession thereof to the owner and to pay  
damages should not be made.*

*SCHEDULE*

*.....  
Collector [Signature and Seal]”*

**18.** Upon a comparison of the notice issued by the Collector and the prescribed format it will be at once clear that while the statutory form prescribed under Rule 3(1) of the 1963 Rules, explicitly contemplates a neutral, investigative query, the impugned show cause notice smacks of a prejudged notion.

**19.** This Court hastens to add that issuance of a notice not in the form prescribed by the Rules or in a form substantially different from the one prescribed by the Rules would *ipso facto* not lead to either invalidation of

the notice or a conclusion of predetermined mind set but as instructed by high authorities as would be discussed hereinbelow the language used in such notice together with the attending and following circumstances can, in appropriate cases, certainly lead to a conclusion as regards a prejudged mind.

- 20.** While formation of opinion and usage of the expression “*considered*” can be passed off as a technical reproduction of the expression used in Section 3 of the 1962 Act itself, thereby eschewing a hypertechinal reading of the notice, the follow up observation of the Collector that that the authority was “*satisfied to that effect*” makes the notice vulnerable to charge of premeditation and predetermination.
- 21.** While it is true that the aspect as to whether or not an adjudicating authority has a prejudged mind or an influenced mind at the stage of issuance of show cause may not in all situations be determined only on the basis of the language used in the show cause notice, yet, if the attending and accompanying circumstances raise a feeling that the authority is acting with a prejudged mind, the Court can certainly interfere.
- 22.** In the case at hand, the petitioner has brought on record the order dated November 13, 2025 passed by the Collector in the proceeding under the 1962 Act by way of a Supplementary Affidavit affirmed on November 19, 2025. The relevant portion of the said order must be noticed. The same reads as follows:-

*“4. The District Magistrate, Murshidabad on 04/09/2025 has endorsed a letter dated 01.09.2025 of Hasibul Islam, Ld. Advocate, High Court, Calcutta, who has explained the following-*

*“Significantly on August 22, 2025, when the matter was called an adjournment was sought for by the Ld. Advocate representing the petitioner has sought for an*

*adjournment, which was objected to by the Ld. Advocate representing Zilla Parishad on the ground that citing pendency of captioned writ proceeding, the petitioner is simply buying time and protracting proceeding drawn under the Act of 1962. At this juncture, the Hon'ble Court was pleased to make verbal observation that "what prevents authorities from proceeding with show cause hearing", since till that point in petitioners could not succeed in obtaining any formal order of injunction restraining authorities from proceeding with the Show Cause hearing.*

*That apart, as far as, order of status quo dated July 28, 2025 passed in Misc. Arbitration (Com) 11 of 2025 pending before the Ld. Commercial Court at Asansol is concerned, the same is inter se party and as such does not affect pending adjudication in terms of proceeding cum show cause notice dated July 22, 2025 issued by the Sub-Divisional Magistrate, which apparently is prior in time. More concerning is the fact that such order was obtained unscrupulously without disclosing pendency of proceeding under the Act of 1962. This is nothing sort of playing fraud upon the Court.*

*In this backdrop, in my humble opinion, there appears to be no impediment for the concerned authority to proceed with the hearing in terms of proceeding cum show cause notice dated July 22, 2025." The District Magistrate, Murshidabad thus has instructed to proceed with the West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962.*

*5. In compliance with the instruction of District Magistrate, the submission of the Ld. Advocate Mr. Bikram Jit Dutta of the O.P is not being considered as also the hon'ble High court has not passed any order for injunction or status quo on this matter"*

*(Emphasis supplied)*

- 23.** While the first two paragraphs of the order indicate that the authority concerned is proceeding in accordance with law and enquiry is being conducted, the last two sentences at paragraph 4 and the opening three sentences of paragraph 5 clearly indicate that the Collector is acting at the instructions of the District Magistrate and not on his own. Reading the impugned show cause notice in the light of the aforesaid order is also strongly indicative of the fact that the Collector is acting with an influenced mind. If a *quasi-judicial* proceeding is being conducted by a statutory authority then such authority is not supposed to be influenced by any instruction of its hierarchical higher ups regarding the conduct of such

proceeding. It is settled law that *no authority, however high, can control the decision of a judicial or a quasi-judicial authority*<sup>18</sup>.

24. This Court is conscious that in **Oryx Fisheries Private Limited** (supra) the matter had been entertained at a stage when an order had been passed upon considering the reply to the show cause notice but that *ipso facto* would not make the ratio of the said judgment inapplicable to a case where a show cause notice is demonstrably a product of an influenced mind. In such connection, the following observations of the Hon'ble Supreme Court in the case of **Oryx Fisheries Private Limited** (supra) may be noted:-

*“31. It is of course true that the show-cause notice cannot be read hypertechnically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show-cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show-cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show-cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show-cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.*

*32. Therefore, while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step against the person after giving him a show-cause notice.*

*33. The principle that justice must not only be done but it must eminently appear to be done as well is equally applicable to quasi-judicial proceeding if such a proceeding has to inspire confidence in the mind of those who are subject to it.*

*34. A somewhat similar observation was made by this Court in Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant [(2001) 1 SCC 182 : 2001 SCC (L&S) 189] . In that case, this Court was dealing with a show-cause notice-cum-charge-sheet issued*

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<sup>18</sup> Orient Paper Mills Limited vs. Union of India reported at (1970) 3 SCC 76

to an employee. While dealing with the same, this Court in para 25 (SCC p. 198 of the Report) by referring to the language in the show-cause notice observed as follows:

*“25. Upon consideration of the language in the show-cause notice-cum-charge-sheet, it has been very strongly contended that it is clear that the officer concerned has a mindset even at the stage of framing of charges and we also do find some justification in such a submission since the chain is otherwise complete.”*

After para 25, this Court discussed in detail the emerging law of bias in different jurisdictions and ultimately held in para 35 (SCC p. 201 of the Report), the true test of bias is:

*“35. The test, therefore, is as to whether a mere apprehension of bias or there being a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom—in the event however the conclusion is otherwise inescapable that there is existing a real danger of bias, the administrative action cannot be sustained.”*

(Emphasis supplied)

- 25. *Siemens Limited vs. State of Maharashtra*** (supra) also instructs and permits impeachment of a show cause notice on the ground of the same being issued with a predetermined mind.
- 26.** For all the reasons aforesaid, the impugned show cause notice deserves to be set aside. However this Court is inclined to grant liberty to the respondent authorities to proceed afresh, if the authorities so deem fit, in accordance with law following the judgment of the Hon’ble Supreme Court in the case of ***Oryx Fisheries Private Limited*** (supra).
- 27.** In the said case, the Hon’ble Supreme Court set aside the order of the Hon’ble Bombay High Court as well as the order that was impugned before the said High Court and left the authority free to proceed afresh observing as follows:-

*“45. We, however, make it clear that if the authorities are so inclined, they can proceed from the stage of show-cause notice afresh but strictly in accordance with law and following the fair procedure indicated in this judgment.”*

- 28.** However, before doing so the other contention of the petitioner that the authority under the 1962 Act cannot proceed in view of the pending arbitral proceeding, would require consideration since liberty to issue fresh notice would carry meaning only if the authority would have jurisdiction to proceed further.
- 29.** In the case at hand, it is not in dispute that the property in question is owned by the State and the same has been leased out to the petitioner by the respondent no.2. It is also an admitted fact that the District Magistrate of the relevant District is the Chief Executive Officer of the respondent no.2.
- 30.** Section 3 of the 1962 Act provides that the Collector can form an opinion on the basis of the application made by the owner of the public *or upon information received otherwise*.
- 31.** It has been argued before this Court by the respondent no.2 that the tenure of lease has in any event expired since the lease was for 21 years. The lease agreement also evinces so and therefore such position is indisputable. Such a factual position cannot be ignored by this Court. In **Vasaman** (supra) the Hon'ble Division Bench of this Court has held that the expression unauthorised occupation used in the 1962 Act imbibes three eventualities, one of which is as follows:-

*“even if the use and occupation is on the basis of an authority of the owner but the period provided therein has expired.”*

- 32.** In view of the aforesaid fact, it cannot be said that merely because an arbitral reference relating to a dispute that arose prior to the expiry of lease and that is founded upon the termination of lease (and not expiry thereof due to efflux of time), is pending therefore the authority under the 1962 Act

would stand precluded from taking any action under the 1962 Act. As already indicated by the Hon'ble Supreme Court in the case of **Central Warehousing Corporation** (supra) the subject matter of arbitration prior to the expiry of lease would not overlap with the eviction proceeding that may be initiated subsequent to the expiry thereof.

33. Furthermore, the argument that the respondent no.2 would be estopped from conducting any proceeding under the 1962 Act, since the petitioner's suit was knocked off and the dispute raised therein referred to arbitration on the respondent no.2's application under Section 8 of the 1996 Act does not impress. An application under Section 8 of the 1996 Act is a procedural election that binds the contracting parties to a chosen forum for their private law disputes.
34. It does not, however, operate as a statutory injunction capable of freezing the independent machinery of a public law enactment. Whether the underlying contractual termination and its consequences are ultimately arbitrable remains an open question that is exclusively within the domain of the learned arbitrator to decide, as already held hereinabove. However, the mere existence of that pending jurisdictional inquiry before the arbitrator does not strip the Collector of his separate statutory authority to issue a show-cause notice under Section 3 of the 1962 Act. In any case estoppel would apply only if the arbitral remedy would be validly available for resolution of the dispute in question.
35. In view of the aforesaid fact situation, **Sanjit Singh Salwan** (supra) cannot help the petitioners in building up and sustaining the defence of estoppel. As clarified by the Hon'ble Supreme Court in **Central Warehousing**

**Corporation** (supra), the two statutes (i.e. the 1962 Act and the 1996 Act) serve entirely different purposes and the former of the two provides a special statutory mechanism for the expeditious recovery of public land from unauthorized occupants, which possibly cannot be contracted away or completely eclipsed by an arbitration clause. **Army Welfare Housing Organisation** (supra) cited by the respondent also reminds us about the jurisdictional boundaries of an arbitral tribunal.

36. Before concluding, the various other judgments cited by the respective parties would also be required to be dealt with. In **State of Madhya Pradesh** (supra) the Hon'ble Supreme Court had found that there was sufficient evidence to conclude that the Registrar/Joint Registrar had acted on external influence and in defiance of binding precedents.
37. In the case of **Municipal Corporation of Greater Mumbai** (supra), the Hon'ble Supreme Court has, after considering a catena of judgments on the point of institutional bias held that *if the officers have no personal interest in the lis, bias cannot be imputed; especially since, the officer is acting not in his capacity as an executive official, but as a quasi-judicial authority.* **Delhi Financial Corporation & Another** (supra) is also an authority on the same point and has been considered in **Municipal Corporation of Greater Mumbai** (supra).
38. In the case at hand while it has been found that the Collector has acted with an influenced mind, for which reason the show cause notice has been held to be vulnerable, there is not enough material to impute personal bias or personal interest to the Collector or even the District Magistrate. In fact there is nothing on record to show that the Collector who is the ultimate

decision making authority has any personal interest in the matter. The District Magistrate who is the Chief Executive Officer of the respondent no.2 who has been shown to have chaired several significant meetings is also holding such post by dint of his office and designation as the District Magistrate of Murshidabad and there is nothing to conclude any personal interest of the District Magistrate in the matter.

39. The Hon'ble Supreme Court, in **Booz Allen and Hamilton Inc.** (supra), firmly settled the jurisprudence governing arbitrability, [a doctrine which was later crystallized and expanded in **Vidya Drolia** (supra) as also in **Motilal Oswal Financial Services Limited** (supra)] to clarify which categories of disputes may proceed to arbitration unhindered by statutory bars. In the instant case as already indicated hereinabove, this Court while appointing arbitrator under Section 11 of the 1996 Act has granted liberty to the respondent no.2 to raise the issue of non-arbitrability of any claim if such claim overlaps the jurisdiction of the authority under the 1962 Act. Therefore any such issue touching upon the arbitrability of any claim would be decided by the learned arbitrator.
40. **Kunisetty Satyanarayana** (supra) is a celebrated authority on the point that show cause notice cannot be interfered with in writ jurisdiction unless the authority issuing the same inherently lacks jurisdiction or the notice is otherwise illegal. In this case the show cause notice deserved interference on the ground of the same being a product of an influenced mind.
41. **Anita International** (supra) has laid down that the validity of an order of Court cannot be questioned by any person without laying a formal challenge to such order in accordance with law.

- 42. *Brij Raj Oberoi*** (supra) has been cited for the proposition that arbitration clause cannot be rendered otiose by the refusal to renew the lease. In the case at hand a learned arbitrator has already been appointed and as such all arbitrable issues will be decided by him. It is, however, noted that the said case was not one that involved any statute like the 1962 Act which is applicable to the present case.
- 43. *Escorts Heart Institute and Research Centre Limited*** (supra) cannot help the petitioner in the facts of the present case. In that case, initially a suit was filed and an order of injunction in favour of the lessee was operating. The public authority issued notice to show cause under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, thereafter. In that case the lease had not expired and a complex legal issue of amalgamation was required to be decided. In fact eviction was sought only on the ground of amalgamation. In the present case, the show cause notice impugned (and now interfered with) was issued after the suit ended with referral to arbitration and presently, the lease has also expired by efflux of time.
- 44.** Before parting it may be recorded that Mr. Tewari was initially vociferous that the petitioner should not be compelled to lay an unfair appeal before the District Magistrate against the order of the Collector/Sub Divisional Magistrate, since the latter has acted at the dictate of the District Magistrate. However, he yielded his stand to the submission of Mr. Sen that as no notification of special appointment is necessary for a Sub Divisional Magistrate or an Additional District Magistrate therefore they would be qualified to be called Collectors in term of Section 7(1) (a) of the 1962 Act

and an appeal from their orders would lie to the Commissioner of the Division and not to the District Magistrate. Mr. Sen submitted that a notification for special appointment is required only for authorising Executive Magistrates to act as Collector(s) under Section 2(1) (b) of the 1962 Act. In course of my research, I have come across one unreported judgment of the Hon'ble Division Bench of this Court in the case of **Debjit Saha & Others vs. The State of West Bengal & Others**<sup>19</sup> which clinches the issue. The relevant observations of the said case are as follows:-

*“..... The first issue raised by learned counsel for the appellants is that the eviction proceedings under the Act were initiated on the instruction of the Collector, therefore the remedy of appeal before the Collector is illusory remedy, hence, the writ Court ought to have been examined the issue on merit. Responding to this, learned counsel for the State has pointed out that since the order is at the instance of Collector and SDO, Contai, the appeal will lie before the Divisional Commissioner and not before the District Magistrate. The above Stand of the State adequately takes care of the apprehension of the appellants and the ground does not survive.....”*

#### **CONCLUSION:**

45. For all the reasons aforesaid, the impugned show cause notice dated July 22, 2025 is set aside. The respondent authorities shall be at liberty, if they are so inclined, to initiate fresh proceedings by issuing a fresh notice to show cause strictly in accordance with law and fair procedure as indicated in the judgment of the Hon'ble Supreme Court in **Oryx Fisheries Private Limited** (supra).
46. It is clarified that the observations made hereinabove for the purpose of deciding the writ petition would not have any bearing on the merits of the respective cases of the parties.

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<sup>19</sup> MAT 2030 of 2022, decided on January 06, 2023

- 47.** WPA 17068 of 2025 stands disposed of with the above observations. No costs.
- 48.** Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all formalities.

**(Om Narayan Rai, J.)**