

Form No. J(2)

In the High Court at Calcutta

Civil Appellate Jurisdiction

Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya

And

The Hon'ble Justice Supratim Bhattacharya

F.M.A. 695 of 2025

Estate of Narayan Chandra Ghosh

Vs.

Board of Trustees and others

For the appellant : Mr. Haradhan Banerjee
Mr. Pradeep Kumar
Mr. Suresh Kumar Sahoo

For the respondents : Mr. Subhankar Nag
Mr. Snehashis Sen
Mr. Adipta Kumar Pandit

Heard on : 22.01.2026

Judgment on : 22.01.2026

Sabyasachi Bhattacharyya, J.:-

1. The present appeal has been preferred against the judgment of a learned Single Judge of this Court dismissing a writ petition of the appellant.
2. The present appellant/writ petitioner filed the application under Article 226 of the Constitution of India on behalf of the estate of late Narayan Chandra Ghosh, alleging that the officers of the respondent-authority, that is, the Board of Trustees, Kolkata Port Trust (now Shyama Prasad Mukherjee Port, Kolkata) evicted the appellant from the subject property without due process of law.
3. The learned Single Judge proceeded on the premise that a deed of trust was executed by Narayan Chandra Ghosh, the original lessee, on October 14, 1938, by virtue of which one Pannalal Ghosh, second son of Narayan Chandra Ghosh and Raj Krishna Ghosh, sixth son, became the joint trustees.
4. On the death of one of the trustees, the remaining trustee would be the sole trustee.
5. However, after recording the same, the learned Single Judge proceeded on the premise that the materials-on-record suggests

that an order of eviction was passed against the legal heirs of late Narayan Chandra Ghosh under Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

6. The learned Single Judge held that since Section 9 of the said Act provides for an appeal against the order of eviction passed under Section 5, the appellant had an equally efficacious alternative remedy by way of such appeal.
7. Accordingly, on the ground of availability of such alternative remedy, the writ petition was held to be not maintainable and consequentially dismissed.
8. Learned senior counsel appearing for the appellant submits that during pendency of the writ petition, by way of a supplementary affidavit, the writ petitioner had clarified that he was grandson of the original tenant Narayan Chandra Ghosh and one of his surviving heirs.
9. Thus, even as an heir of Narayan Chandra Ghosh, the writ petitioner/appellant was entitled to inherit the tenancy along with the other heirs of the original tenant late Narayan Chandra Ghosh.
10. It is submitted that the writ petitioner had filed the writ petition in representative capacity on behalf of all the co-lessees, being

heirs of the original lessee Narayan Chandra Ghosh (since deceased).

- 11.** Thus, it is argued that the learned Single Judge proceeded on a perverse premise by holding that an order of eviction was passed against the legal heirs of Narayan Chandra Ghosh, whereas the respondent-authorities themselves admitted in a written information given on June 2, 2017 that no proceedings have been initiated against the legal heirs of late Narayan Chandra Ghosh, although the tenancy of such heirs had been terminated.
- 12.** Thus, the ouster of the legal heirs of late Narayan Chandra Ghosh, being the current lessees of the subject property, without following due process of law, was vitiated in law.
- 13.** Accordingly, it is argued that the impugned order ought to be set aside and possession restored to the said surviving lessees.
- 14.** Learned counsel appearing for the respondent-authorities submits that by operation of Section 111(f) of the Transfer of Property Act, 1882, it has to be construed that there was implied surrender of the subject property by the heirs of late Narayan Chandra Ghosh in favour of the lessor/respondent no.1.
- 15.** It is argued that since the property was found to be vacant on inspection by the respondents, the principle of Section 111(f) applies.

- 16.** In support of his contention, learned counsel cites a Division Bench Judgment of the Delhi High Court in the matter of *Municipal Corporation of Delhi vs. Ashok Kumar Mishra and another* reported at *ILR (2007) II Delhi 259*.
- 17.** Upon hearing learned counsel for both sides, we find from the impugned judgment that the learned Single Judge proceeded to hold that there was material to suggest that an order of eviction was passed, without any such material actually being on record and contrary to the admission of the respondents that no eviction proceedings were initiated against the heirs of late Narayan Chandra Ghosh, the original lessee, thus rendering the impugned order perverse.
- 18.** On the contrary, from the written information furnished by the Senior Assistant Estate Manager and CPIO, Estate Division of the Kolkata Port Trust dated June 2, 2017, it is evident that no proceedings had been initiated against the legal heirs of late Narayan Chandra Ghosh in respect of the premises-in-question.
- 19.** Coupled with the same, it is found from an eviction notice dated June 15, 1983, which was also produced before the writ court, that the heirs and legal representatives of late Narayan Chandra Ghosh, including the present petitioner, by admitting them to be the monthly tenants of the respondent no.1, were asked by the

respondent-authorities to quit, vacate and deliver up the vacant and peaceful possession of the subject property.

- 20.** From a bare perusal of the same, it is evident that the argument of the respondents as to implied surrender falls flat, since the respondents themselves, in the quit notice, categorically admitted that the heirs of late Narayan Chandra Ghosh had become monthly tenants.
- 21.** Furthermore, the issuance of the notice to quit and vacate itself pre-supposes that the possession of the said heirs of the original lessee, late Narayan Chandra Ghosh, in respect of the subject property was admitted by the respondent authorities.
- 22.** Even otherwise, the law of evidence is well-settled that once the commencement of a lessor/lessee relationship is established/admitted, it is the burden and the initial onus of the person disputing the continuance of such relationship to prove the cessation of the said jural relationship.
- 23.** In the present case, there is precious nothing on record to establish the respondents' plea of implied surrender by the said heirs of late Narayan, who are admitted co-lessees in respect of the property-in-question.
- 24.** In the cited judgment of the Delhi High Court, the facts were completely different.

- 25.** In paragraph no. 5 of the said judgment, the admitted position was recorded to be that the building-in-question was declared as dangerous building and the Municipal Corporation of Delhi (MCD) had itself demolished the building in the year 1970, after which the MCD had shifted its school situated there to some other site and at that time all the belongings of the MCD were removed and there was nothing in existence as on that date. Moreover, the MCD had stopped paying rent also from the year 1970 onwards, after the demolition of the property, and the land was taken possession of by the then owner and new structure constructed thereon. Only in such factual backdrop did the Division Bench of the Delhi High Court observe that there was implied surrender under Section 111(f) of the 1882 Act.
- 26.** However, as opposed thereto, in the instant case, not an iota of evidence of implied surrender has been furnished on behalf of the respondents.
- 27.** Rather, by issuance of the eviction notice, it was categorically admitted by the respondents not only that the heirs of late Narayan Chandra Ghosh were in possession of the property but that they were also monthly tenants until the notice to quit was issued to them.

- 28.** Hence, the only remedy in law which was available to the respondent authorities was to initiate an eviction proceeding under Section 5 the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 after issuing a proper show cause notice under Section 4 of the said Act.
- 29.** Having not done so, the eviction of the petitioner as well as the other heirs of late Narayan Chandra Ghosh (who were admitted in the quit notice dated June 15, 1983 to be lessees in possession of the subject property) by the respondent-authorities without due process of law was palpably illegal and *de hors* the law.
- 30.** Thus, the learned Single Judge acted in a perverse manner and failed to exercise jurisdiction vested in him by law in not allowing the writ petition, thereby directing the possession of the disputed premises to be restored to the writ petitioner/appellant as well as other heirs and legal representatives of the deceased Narayan Chandra Ghosh on the patently erroneous premise that an eviction order had been passed against them under Section 5 of the 1971 Act.
- 31.** We make it clear that although several capacities were disclosed in respect of himself by the writ petitioner/appellant in the writ petition initially, in some places as manager of the estate of the

deceased Narayan Chandra and in others as trustee, ultimately, by a supplementary affidavit, it was clarified that the petitioner, being the grandson of late Narayan Chandra Ghosh, was one of the heirs of the said deceased and was acting in representative capacity for all the other heirs, that is, the estate of the deceased original lessee.

- 32.** Keeping in view of such factual premise, it would only be appropriate to direct restoration of possession to all the co-lessees, being the surviving heirs of late Narayan Chandra Ghosh, as per the admission in the quit notice dated June 15, 1983 issued by the Land Manager of the Board of Trustees, Port of Kolkata.
- 33.** However, for the sake of convenience, such possession ought to be handed over to the present petitioner/appellant, who will receive the same on behalf of himself and the other co-lessees.
- 34.** Such possession, as and when handed over, shall be deemed to be the joint possession of all the co-lessees, as named in the quit notice dated June 15, 1983, appearing at page- 66 of the Paper Book of the instant appeal.
- 35.** By no stretch of imagination, such possession, when handed over, shall be construed to be exclusive to the writ petitioner in view of our above observations.

- 36.** Accordingly, FMA No. 695 of 2025 is allowed on contest, thereby setting aside the impugned judgment and order dated August 31, 2023 passed in WPA No. 2099 of 2011 and directing the respondent-authorities to hand over peaceful and unencumbered vacant possession of the subject premises, as described in the quit notice dated June 15, 1983, to the writ petitioner/appellant within ninety days from this date.
- 37.** It is made clear that such possession, as and when handed over, shall be construed to be accepted by the writ petitioner/appellant on behalf of all the other surviving co-lessees, being the surviving heirs of late Narayan Chandra Ghosh, the original lessee, as described in the aforementioned quit notice dated June 15, 1983.
- 38.** Interim order, if any, stands vacated.
- 39.** It is made clear that nothing in the above judgment will prevent the respondent authorities from initiating appropriate proceedings in accordance with law for eviction/recovery of arrears of rent and/or other dues, if the respondents are so entitled, against the petitioner as well as the other heirs and legal representatives of late Narayan Chandra Ghosh (co-lessees in respect of the subject property) without being prejudiced in any manner by any of the observations made in this judgment.

- 40.** There will be no order as to costs.
- 41.** Urgent photostat copies of this judgment, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)

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