

29.01.2026
Item No.4 (DL)
Court No.551
AJ.

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

W.P.A. 27928 of 2025

**Manoj Beriwalla
-Vs-
Union of India & Ors.**

Mr. Sakabda Roy.
...for the petitioner.

Mr. Swatarup Banerjee,
Mrs. Priti Jain.
....for the Union of India.

Mr. Subhankar Nag,
Mr. Snehashis Sen,
Mr. Abhishek Banerjee.
....for the Port Trust Authority.

1. This writ petition seeks *inter alia* restoration of possession of the petitioner as well as annulment/setting aside of an order dated April 10, 2025 passed by the Estate Officer, Syama Prasad Mookerjee Port, Kolkata (hereinafter 'the said Port').

2. It is the petitioner's case that the petitioner has been in occupation of a space measuring about 453.482 Sq. Mtr. situated at 103/20, Foreshore Road, Shibpur, Howrah, West Bengal – 711102 belonging to the said Port (hereafter "subject property").

3. The petitioner claims to have been put into possession of the subject property in the year 1991 by one Mr. Ramaoudh Pandey who,

according to the petitioner, was the “*erstwhile tenant recognized by the Port Authorities*”.

4. It is also alleged that upon taking possession, the petitioner made efforts to pay rent which was not accepted and that the Respondent Port Authorities are well aware of the petitioner’s possession. The petitioner has annexed copies of petitions filed before the learned Executive Magistrate in the year 2009 as well as 2011 to demonstrate the fact that his possession was known to the Port authorities.

5. The petitioner claims to have been in continuous occupation of the subject property and alleges that on August 29, 2025 the petitioner was dispossessed from the premises and a padlock was put therein.

6. The petitioner has also alleged that during one of the recent visits to the property the petitioner found that a portion of the wall of the said unit was broken and materials have been stolen therefrom and that the petitioner has lodged a complaint with the police authorities as regards the same.

7. The petitioner has also asserted that he made a detailed representation on November 11, 2025 to the Port Authorities and requested them to allow the petitioner to carry on with the petitioner’s business, however, since the said

representation was not considered, the petitioner has approached this Court by way of the present writ petition.

8. Mr. Roy, learned Advocate appearing for the petitioner submits that the petitioner has been dispossessed from the said property without putting the petitioner on notice about any proceeding that may have been initiated in respect of the subject property.

9. He submits that the petitioner could not have been evicted on the basis of an order dated April 10, 2025 passed by the Estate Officer against one M/s. V. Madhukar & Co. It is further submitted that even if it is assumed that the petitioner has been in unauthorized occupation of the subject property, then also the respondent authorities could not have evicted the petitioner without initiating appropriate proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereafter 'the said Act of 1971'), against the petitioner upon issuance of appropriate notice to the petitioner in terms of the said Act of 1971.

10. He invites the attention of the Court to the petition filed before the learned Executive Magistrate (2nd Court) at Howrah being Misc. Petition No. 69 of 2011 and submits that on a perusal thereof it will be clear that the

respondent Port Authorities were aware of the fact that the petitioner was and had been in occupation of the subject property. It is submitted that since the petitioner's occupation was in the knowledge of the Port Authorities, they could not have proceeded to evict the petitioner without conducting eviction proceedings against the petitioner in terms of the said Act of 1971.

11. Mr. Roy has cited two orders, dated **August 18, 2011** and **September 24, 2025** passed by the **Hon'ble Division Bench of this Court** in **F.A. 24 of 2004** in a bid to demonstrate that the Port Authorities' attempt to evict a third party on the basis of an order passed against M/s. V. Madhukar & Co., had been interdicted by this Court.

12. Mr. Roy has further taken this Court through several letters ranging from 19th February, 1992 till February 01, 2002 to indicate that the petitioner has all along tried to act *bona fide* and has all along made efforts to make payments to the Port Authorities. It is submitted that repeated requests by the petitioner for granting lease in respect of the subject property which was in possession of the petitioner, were also not acceded to.

13. He has also drawn the attention of this Court to a proceeding initiated by the petitioner in the year 2009 against alleged miscreants, who, according to the petitioner, sought to forcibly dispossess the petitioner from the subject property under occupation of the petitioner.

14. He has relied on a judgment of the Hon'ble Supreme Court in the case of ***Union of India & Ors. -Vs- Mahendra Singh*** reported at ***2022 SCC OnLine SC 909*** for the proposition that if a statute requires a particular thing to be done in a certain way that thing should be done in that way only or not at all.

15. He has also relied on a judgment of a co-ordinate Bench of this Court in the case of ***the State of West Bengal -Vs- M/s. Bansilal Leisure Parks Ltd. & Anr.*** reported at ***(2019) 4 CHN 582*** for the proposition that even a rank trespasser ought not to be evicted without following due process of law. He has next relied on a judgment of the Hon'ble Supreme Court in the case of ***M/s. Jain Ink Manufacturing Company -Vs- Life Insurance Corporation of India & Anr.*** reported at ***(1980) 4 SCC 435*** for the proposition that once a person enters into possession or occupies a property then such occupation becomes a continuous process right

from the time of entry into possession or occupation and it continues till the premises is left.

16. It is submitted by Mr. Roy that since the petitioner has been evicted unheard, this Court should intervene and pass appropriate orders restoring possession to the petitioner.

17. Mr. Nag, learned Advocate appearing for the respondent Port Authorities submits that this writ petition should not be entertained inasmuch as the petitioner has an equally efficacious alternative remedy in the form of an appeal before the Appellate Authority under Section 9 of the said Act of 1971. It is further submitted that the petitioner should be deemed to have been put on notice inasmuch as the notice issued in terms of the said Act of 1971 was affixed on a conspicuous part of the subject property and the said notice was not only addressed to the M/s. V. Madhukar & Co. but also to all interested parties in the premises in question.

18. Inviting the attention of this Court to several letters issued by the petitioner to the respondent Port Authorities, he has sought to demonstrate that the petitioner was well aware that the property which the petitioner was occupying was previously occupied by M/s. V.

Madhukar & Co. since the petitioner had mentioned the name of M/s. V. Madhukar & Co. in the said letters. It is further submitted that the petitioner cannot be heard at all as the petitioner has in any event enjoyed the property without paying anything.

19. Mr. Nag further submits that when the petitioner had clear knowledge of the fact that the subject premises were under the occupation of M/s. V. Madhukar & Co. and that the petitioner had been occupying the same without authority, then notice given to M/s. V. Madhukar & Co. would also govern the petitioner. It is submitted that in any case upon the notice being pasted/affixed at a conspicuous place of the subject property, the petitioner should be deemed to have got knowledge of the proceedings and it was open to the petitioner to appear and state his case before the Estate Officer.

20. Mr. Nag further submits that possession of the property was taken in August, 2025. It is submitted that the subject property is only a part of a large area measuring about 3289.99 Sq. Mtr. and therefore it is not admitted that possession of the property was taken from the petitioner.

21. Mr. Nag has produced a copy of the notice issued to M/s. V. Madhukar & Co. and has submitted that the said notice was also published in newspapers. It is demonstrated that the notice was not only addressed to M/s. V. Madhukar & Co. but also to “any person interested in the property as mentioned” in the notice. He seeks dismissal of the writ petition.

22. Heard learned Advocates appearing for the respective parties and considered the material-on-record.

23. It is now well settled that mere existence of an alternative remedy would not preclude a writ court from exercising its discretion to entertain a writ petition under Article 226 of the Constitution of India if the case presented before it complains of or pertains to any one or more of the following:-

- i) violation of principles of natural justice;
- ii) infringement of fundamental rights;
- iii) challenge to the vires of any Act or statutory provision;
- iv) an act wholly without jurisdiction.

It is also equally settled that a person approaching a Writ Court bypassing an alternative remedy must demonstrate reasonably expeditious approach.

24. In the case at hand, even if the petitioner's case is taken as face value and is accepted, the petitioner had knowledge of some proceedings by dint whereof, the petitioner was evicted at least on August 29, 2025 when according to the petitioner itself, the petitioner was dispossessed. It is the petitioner's case that the petitioner has been in continuous possession of the subject property since 1992 and has been doing business therefrom yet, the petitioner approached this Court after being dispossessed only on December 04, 2025.

25. There is no explanation in the writ petition as to why has the petitioner approached this Court after expiry of four months. There is no contemporaneous objection to the petitioner's alleged eviction on August 29, 2025.

26. The objection that the petitioner raised coupled with a request for regularization of tenancy was made as late as on November 11, 2025.

27. Section 9 of the said Act of 1971 provides that the Appellate Authority should be approached within a period of twelve days from the date of communication of the order to the appellant from the date of publication of the order under Section 5(1) of the said Act of 1971. It is trite law that even if a writ petition is

delayed, the Writ Court can still entertain the same provided there is sufficient explanation for the delay occasioned in approaching the writ court. In a case where there is no explanation at all, even a slight delay may be fatal.

28. In the case at hand the petitioner has been evicted on the strength of the order dated April 10, 2025 passed by the Estate Officer in a proceeding under the said Act of 1971. The petitioner is therefore a person aggrieved by such order and the appellate remedy was available to him. Not having approached the appellate forum in time, the petitioner cannot now seek redress from the Writ Court upon approaching it, after expiry of the time prescribed for preferring statutory appeal, without explaining the delay.

29. It is settled law that if a person has disabled himself from availing of the alternative remedy by his own fault by not approaching the statutory authority within the time he, cannot be permitted to urge that as a ground for the Writ Court to exercise its discretion in his favour (See- **A.V. Venkateswaran, Collector of Customs, Bombay -Vs- Ramchand Sobhraj Wadhwani & Anr., AIR 1961 SC 1506**).

30. Furthermore, even if the delay occasioned by the petitioner is ignored, then also, there is yet another factor which dissuades this Court from entertaining the writ petition.

31. The petitioner's case of "no notice-no hearing" falls in the domain of disputed question of facts for various reasons.

32. While the petitioner has alleged that the petitioner has been in continuous possession of the subject property since 1991, there is nothing on record to evince that the petitioner has been in continuous possession of the subject property at least after 2011 when proceedings under Section 144 had been initiated before the Executive Magistrate on behalf of the Port Authorities against certain persons including the petitioner. Unless the petitioner's occupation at the time of initiation of the proceedings under the said Act of 1971 is established he may have no right to notice.

33. The eviction order dated April 10, 2025 that has been annexed to the writ petition shows that certified copy thereof has been obtained on the same day on which the order was passed. In answer to a query of the Court in this regard, Mr. Roy submitted that the orders were supplied to the petitioner subsequently. However, there is nothing on record to demonstrate that certified

copies the orders passed in the proceedings under the said Act of 1971 were supplied to the petitioner later. There is no averment in such regard in the writ petition.

34. The issue as to whether the petitioner actually had notice of the proceedings or not and the issue as regards affixation thereof is again in the zone of dispute. If the notice was indeed affixed at the conspicuous part of the premises, then the petitioner may not be entitled to allege non-service of notice.

35. All these questions lie in the realm of disputed questions of fact which a writ court should not venture into. It would not be possible for the Writ Court to thrash out the truth on the basis of affidavit evidence in a proceeding under Article 226 of the Constitution of India.

36. For all the reasons aforesaid, this Court is not inclined to entertain the writ petition.

37. The judgments cited by Mr. Roy state salutary principles that must be followed but since this Court is not entertaining the writ petition and not deciding the same on merits, the said judgments do not aid the petitioner in the present proceeding.

38. WPA 27928 of 2025 is dismissed, without any order as to costs.

39. This order shall however not preclude the petitioner from approaching the Appellate Authority in accordance with law.

40. It is recorded that in course of arguments, Mr. Roy has handed up to Court a copy of an order dated December 11, 2025 passed by the Estate Officer wherefrom it appears that the petitioner's representation dated November 12, 2025 has been forwarded by the Estate Officer to the Port Estate Division for "*needful action*". The same is taken on record. It is also clarified that nothing in this order shall prevent the Port Authorities from considering the petitioner's representation dated November 11, 2025 made to them in accordance with law.

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

(Om Narayan Rai, J.)