

IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE

PRESENT:

HON'BLE JUSTICE SUBRATA TALUKDAR

*WP No. 2038 (W) of 2020  
Ashok Kumar Shaw & Ors.*

-Vs.-

*The First Land Acquisition Collector, Kolkata & Ors.  
with*

*W.P. 2123(W) of 2020  
Ashok Kumar Shaw & Ors.*

-Vs.-

*First Land Acquisition Collector, Kolkata & Ors.  
with*

*W.P. 2124(W) of 2020  
Ashok Kumar Shaw & Ors.*

-Vs.-

*First Land Acquisition Collector, Kolkata & Ors.  
with*

*W.P.2125(W) of 2020  
Ranjit Prasad Shaw & anr.*

-Vs.-

*First Land Acquisition Collector, Kolkata & Ors.  
With*

*W.P.2126 (W) of 2020  
Usha Bhansali & anr.*

-Vs.-

*First Land Acquisition Collector, Kolkata & Ors.  
With*

*W.P.2198 (W) of 2020  
Kutubuddin Molla & Anr.*

-Vs.-

*First Land Acquisition Collector, Kolkata & Ors.  
With*

*W.P.2200(W) of 2020  
Ramesh Kumar Shaw*

-Vs.-

*First Land Acquisition Collector, Kolkata & Ors.  
With*

*W.P.2201(W) of 2020  
Rai Bahadur Singh*

-Vs.-

*First Land Acquisition Collector, Kolkata & Ors.  
with*

*W.P.2203 (W) of 2020  
Asgar Ali*

-Vs.-

*First Land Acquisition Collector, Kolkata & Ors.*  
With

W.P.2208 (W) of 2020  
M/s. Samy Sports & Sons.

-Vs.-

*First Land Acquisition Collector, Kolkata & Ors.*  
With

W.P.2209 (W) of 2020  
Paresh Shah

-Vs.-

*First Land Acquisition Collector, Kolkata & Ors.*  
With

W.P.2210 (W) of 2020  
T.P. Roy Chowdhury & Co.(P) Ltd. & Anr.

-Vs.-

*First Land Acquisition Collector, Kolkata & Ors.*  
With

W.P.2220 (W) of 2020  
M/s. Sara United

-Vs.-

*First Land Acquisition Collector, Kolkata & Ors.*  
with

W.P.2221(W) of 2020  
Sanjit Kumar Singh & Ors.

-Vs.-

*First Land Acquisition Collector, Kolkata & Ors*  
. with

W.P.2254(W) of 2020  
Kanhai Thakur & Anr.

-Vs.-

*First Land Acquisition Collector, Kolkata & Ors.*  
with

W.P.2255(W) of 2020  
Ashok Pathak

-Vs.-

*First Land Acquisition Collector, Kolkata & Ors.*  
With

W.P.2256(W) of 2020  
Meera Tiwary & Anr.

-Vs.-

*First Land Acquisition Collector, Kolkata & Ors.*  
With

W.P.2257(W) of 2020  
M/s. Lanzone Commodities P. Ltd. & Ors.

-Vs.-

*First Land Acquisition Collector, Kolkata & Ors.*  
With

W.P.2275(W) of 2020  
Rajeh Suchak

-Vs.-  
*First Land Acquisition Collector, Kolkata & Ors.*  
 With  
*W.P.2276(W) of 2020*  
*Shaw Brothers Stores Pvt. Ltd. & Another*  
 -Vs.-  
*First Land Acquisition Collector, Kolkata & Ors.*  
 With  
*W.P.2277(W) of 2020*  
*T.P. Roy Chowdhury & Co. Pvt. Ltd. & Anr.*  
 -Vs.-  
*First Land Acquisition Collector, Kolkata & Ors.*  
 With  
*W.P.2307(W) of 2020*  
*Rajesh Suchak*  
 -Vs.-  
*First Land Acquisition Collector, Kolkata & Ors.*

Mr. Shaktinath Mukherjee  
 Mr. Saptansu Basu  
 Mrs. Suparna Mukherjee  
 Mr. Abhijit Sarkar  
 Ms. Mrinalini Majumder  
 Mr. Souvik Sana  
 ... For the Petitioners

Mr. Chandi Charan De  
 Mr. Tapas Ashikari  
 Mr. Somraj Dhar  
 ... For the State-respondents

Mr. Kishore Dutta, Ld. Advocate General  
 Mr. Alok Kumar Ghosh  
 Mr. Achintya Kumar Banerjee  
 Mr. Dilip Kumar Chatterjee  
 Mr. Swapan Debnath  
 Mr. Gopal Chandra Das  
 Mr. Debangsu Mondal  
 ... For the Kolkata Municipal Corporation  
 In W.P. 2038 (W) of 2020

Mr. Shaktinath Mukherjee  
 Mr. Saptansu Basu  
 Mrs. Suparna Mukherjee  
 Mr. Abhijit Sarkar  
 Ms. Mrinalini Majumder  
 Mr. Souvik Sana  
 ... For the petitioners.

Mr. Sushovan Sengupta

Mr. Subir Pal

.... For the State-Respondents  
in WP 2198(W) of 2020.

Mr. Sushovan Sengupta

Mr. Dipankar Pal

.... For the State-responents  
in WP 2126(W) of 2020.

Mr. Kishore Datta, Ld. Advocate General

Mr. T. M. Siddiqui

Mr. Nilotpall Chatterjee

... For the State-Respondents.  
in W.P.2208 (W) of 2020.

Mr. Susovan Sengupta

Mr. Sougata Mitra

.... For the State-Respondents  
in WP 2209(W) of 2020.

Mr. Supratim Dhar

... For the State-respondents  
in W.P.2276(W) of 2020  
& W.P.2124 (W) of 2020.

Mr. Ashim Kumar Ganguly

Mrs. Karabi Roy

... For the State-respondents  
in W.P.2201 (W) of 2020.

Mr. Amit Prokash Lahiri

Mr. Suvro Prokash Lahiri

... For the State-respondents  
in W.P.2220(W) of 2020.

Mr. Soumitra Bandyopadhyay

Mr. Subhasish Bandyopadhyay

... For the State-respondents  
in W.P.2255 (W) of 2020,  
W.P.2257(W) of 2020.

Mr. Soumitra Bandyopadhyay

Mr. Aniruddha Sen

... For the State-respondents  
in W.P.2203 (W) of 2020 &  
W.P.2125 (W) of 2020

Mr. Soumitra Bandyopadhyay

Mr. Priyabrata Batabyal

... For the State-respondents  
in W.P.2221 (W) of 2020.

Mr. Rabindra Narayan Dutta  
Mr. Suprabhat Bhattacharyya  
... For the State-respondents  
in W.P.2277 (W) of 2020.

Mr. Chandi Charan De  
Mr. Anirban Sarkar  
... For the State-respondents  
in W.P.2123 (W) of 2020.

Mr. Chandi Charan De  
Ms. Sreelekha Bhattacharyya  
... For the State-respondents  
in W.P.2210 (W) of 2020.

Mr. Chandi Charan De  
Mr. Anirban Sarkar  
... For the State-respondents  
in W.P.2254 (W) of 2020.

Mr. Chandi Charan De  
Mr. Somenath Mukhopadhyay  
... For the State-respondents  
in W.P.2256 (W) of 2020.

Mr. Chandi Charan De  
Mr. Dipankar Pal  
... For the State-respondents  
in W.P.2275 (W) of 2020.

Mr. Kishore Datta, Ld. Advocate General  
Mr. Ashim Kumar Ganguly  
Mrs. Sukla Das Chandra  
... For the State Respondents.  
In W.P.2307 (W) of 2020.

Mr. Kishore Dutta, Ld. Advocate General  
Mr. Alok Kumar Ghosh  
Mr. Achintya Banerjee  
Mr. Dilip Kumar Chatterjee  
Mr. Gopal Chandra Das  
Mr. Debangshu Mondal  
... For the Kolkata Municipal Corporation.

Judgment on : 21/10/2020

**Subrata Talukdar, J:**

The petitioners in this bunch of writ petitions canvas a common cause of action. Accordingly, this bunch of writ petitions are considered analogously and decided by this common judgement.

The petitioners claim to be shop owners and residents of Premises number 4A and 4B, Chowringhee Place, Kolkata 700013 (hereinafter referred to for short as the said Premises or, only as the Premises). The history of the said Premises commenced with an Indenture of Lease dated 6<sup>th</sup> October 1906 between the then Corporation of Calcutta and one Maurice Edward Bandmann. The Calcutta Corporation being the paramount Title Holder of the said Premises granted the Lessor/Mr. Bandmann the right to hold the property in lease for a period of ninety-nine years. During the subsistence of the lease period, Edward Bandmann inducted one Arathoon as an interest holder in the said Premises. Finally, on the demise of both Bandmann and Arathoon the said Premises shifted to the Respondent No. 4 of this writ petition/ the Bengal Properties Private Limited (for short referred to only as *R4*, or as the Bengal Properties) as the new Lease Holder under the now Kolkata Municipal Corporation (*KMC*).

The petitioners claim to be sub-lessees/tenants under the Bengal Properties. With the original lease of 1906 having expired in 2005, the *KMC*, now being the paramount Title Holder, moved the

Respondent No.1/ The First Land Acquisition Collector, Kolkata (for short *R1/the FLAC*) to initiate eviction proceedings against Bengal Properties by invoking Section 3(1) of the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 (for short the 1962 Act).

Being aggrieved by the eviction proceeding, which also brought within its scope and ambit the petitioners by describing them as *Unauthorised Occupants* under the 1962 Act, the petitioners have moved the Hon'ble Court seeking quashing of the said eviction proceeding numbered as Eviction Case No. XIII/1/2019 as pending before *R1/ the FLAC* (hereinafter also referred to as the said Eviction Case).

The petitioners, on the strength of several documents purportedly reflecting resolutions/ decisions taken by *KMC qua* their status in the said Premises, point out that they cannot be treated as *Unauthorised Occupants* so long as the status of *R4/the Bengal Properties* as the original Lessee continues to be recognized by law. Mr. Shaktinath Mukherjee, Ld. Senior Counsel appearing on behalf of the petitioners, submits that the mere pendency of the said Eviction Case or, the mere subsistence of a Notice to Evict cannot automatically treat the originally lessee, in this case the Bengal Properties, to be evicted from the said Premises.

Relying on the authority of *In Re: Ganesh Trading Company Private Limited* as reported in *AIR 1985 Calcutta 37*, Ld. Senior Counsel points out that till the original lessee is actually evicted, such

original lessee cannot be deemed to have lost and/or forfeited its rights and obligations as the lessee. In other words, the original lessee would continue to exercise its functions such as collection of rents from the sub-lessees/ tenants till such time the lease is determined by actually evicting the original lessee.

Mr. Mukherjee submits that in the present case the notice of eviction has been served and the Eviction Case is pending before *R1/FLAC*. Therefore, the paramount Title Holder, in this case *KMC*, has not executed the eviction proceeding and the rights of the original lessee/ the Bengal Properties stand preserved. As a consequence thereof, the rights of the present petitioners acting as sub-lessees/tenants of the original lessee/ i.e. the Bengal Properties also stand preserved. Axiomatically, at this stage without the final determination of the status of the lessee/ the Bengal Properties, the petitioners cannot be subjected to any drastic action.

The additional point argued on behalf of the petitioners is that notwithstanding the expiry of the lease in 2005, they, as sub-lessees/tenants, have acquired an open and direct relationship with the paramount Title Holder, i.e. the *KMC*. Relying on resolutions taken by *KMC*, the petitioners submit that they cannot be classified as *Unauthorised Occupants* under the 1962 Act considering the open nature of sub-lease/tenancy enjoyed by them under the original lessee/ the Bengal Properties to the knowledge of the paramount Title Holder/*KMC*.

Accordingly, the petitioners submit that the pending Eviction Case before the *FLAC* is misconceived since the petitioners cannot be classified as *Unauthorized Occupants*. Referring to another property of the *KMC* allegedly similarly under sub-lease/ tenancy, the petitioners submit that *KMC*, in recognition of the civil nature of the status enjoyed by the sub-lessee/ the tenant, had not taken recourse to the drastic provisions of the 1962 Act but, had opted for the legally compatible relief of filing a civil suit. It is, thus argued that the petitioners have been unfairly treated.

Appearing on behalf of the *KMC*, Mr. Kishore Dutta, Ld. Advocate General (AG) submits that the rights of the sub-lessee/the tenants/ i.e. the present petitioners stand extinguished with the determination of the tenancy of the original lessee/ Bengal Properties. Relying on the authority of *AIR 1964 SC 1889*, Ld. AG submits that with the rights of the original lessee having been determined, there are no subsisting rights of the sub-lessees/tenants under the original lessee. The eviction proceeding *qua* the original lessee is binding on all. No other or further obligation/ relationship binds the paramount Title Holder/the *KMC* with the petitioners.

It is submitted that the order of eviction has been passed by *FLAC* against Bengal Properties on the 25<sup>th</sup> of February 2020. Such order of eviction holds good since Bengal Properties have recorded their intention before the *FLAC* to vacate the said Premises upon adjustment of certain dues.

It is, therefore, submitted that the present petitioners have no *locus* to maintain this writ petition. It is further submitted that the order of the Hon'ble Single Bench dated the 3<sup>rd</sup> of December, 2019 as affirmed by the order of the Hon'ble Division Bench dated 9<sup>th</sup> of January, 2020 have not interfered with the said *Eviction Case* pending before the *FLAC*. Reiterating that the 1962 Act can be applied to the present facts, *Ld. AG* relies on the authority of *2014 SCC 19 Calcutta 18078*. It is argued that this bunch of writ petitions are misconceived since a procedure for appeal under Section 7(1)(a) of the 1962 Act lies to the Commissioner of the Division against the order of the Collector, in this case the *FLAC*.

Having heard the parties and considering the materials placed, this Court finds that the issues raised in this writ petition already find their reflection in the solemn order of the Hon'ble Single Bench dated 3<sup>rd</sup> December 2019. After a threadbare discussion, the Hon'ble Single Bench concluded as follows:-

*"13. The petitioners have further alleged that there is actually change of policy of KMC in respect of them as by a notice dated 4<sup>th</sup> November, 2016 (annexed to the petition) KMC asked the occupiers of the concerned building to make application and pursuant thereto they filed application in a "Declaration Form for Occupants of Roxy Cinema Building" which has also been annexed to the writ application. In this respect the submission of the writ petitioners relying upon (2011) 8 SCC 737 (State of Tamil Nadu & Ors – versus K. Shyam Sunder) paragraph 35 is that the State should not change its stand merely in case the other political party has come into power : here, in the present case, it is reconstitution of Mayor-in-Council and change of the Mayor of KMC. The petitioners have*

*submitted that once a policy was framed to accept rent directly from the occupiers for the portion occupied by them at the rate as will be fixed by KMC, it cannot be changed with the change of the Mayor and the reconstitution of Mayor-in-Council. I find that paragraph 35 of this judgment in State of Tamil Nadu in fact goes against the petitioner as the act of KMC in taking such a policy (if it was framed as a policy at all) of payment of rent directly to KMC from the petitioners, who were not really the tenants of KMC but tenants under a lessee of KMC, has no support of statutory provision and is unreasonable as it is not understood why suddenly an endeavour was made to give a benefit of direct tenancy to the petitioners as a privileged group excluding other persons who may intend to be tenant of the building and it is against public interest also as occupation of a public premises cannot be a perpetual one in absence of any agreement, if such an agreement is permissible under the law at all. In this view of the matter the policy, if any, as reflects from the notice of KMC dated 4<sup>th</sup> November, 2016 has no support of any statutory provision, is not supported by any agreement between the petitioners and the KMC and is unreasonable as no reason is known for such a policy, if any, framed at all and also against public interest as the petitioners are enjoying pucca constructed area in the most lucrative area of the city (namely Esplanade) for doing business and also for residence by paying a meagre amount of rent/occupation charge to some other body of persons with whom lease of KMC came to an end in the year 2005 (it was a lease of 99 years) as has been intimated by the learned advocate of KMC and supported from copy of such deed of lease annexed to the writ application. Therefore, if there is any change of policy it is not only not hit by the observation of the Supreme Court in the above mentioned State of Tamil Nadu case but the present changed policy and action of KMC actually gets support from the observations made by the Supreme Court in paragraph 35 of the said judgment. KMC has rightly proceeded now against*

*the petitioners under the said Actr but whether they are to be evicted is to be decided by the Collector in the proceeding initiated.*

*14. In view of the above, I dispose of the writ application with a direction that grounds on which the order of the eviction may be made is to be intimated to the writ petitioners by two weeks from date in the manner directed hereinabove. The time period of two weeks is mandatory.*

*15. I further direct the Collector to conclude the eviction proceeding by six months from date.*

*16. The writ application is disposed of without calling for any affidavit-in-opposition and therefore the allegations made in the writ application are deemed to have not been admitted by the respondents.*

*No costs."*

The order of the Hon'ble Single Bench dated 3<sup>rd</sup> December 2019 (supra) in the bunch of writ petitions raising issues similar to the present petitions was carried in appeal before the Hon'ble Division Bench by the petitioners/sub-lessees/tenants. The Hon'ble Appellate Court found no reason to interfere with the order of the Hon'ble Single Bench dated 3<sup>rd</sup> December 2019. The Hon'ble Division Bench only directed that the said Eviction Case be proceeded with before the FLAC within a time specified by the order of the Hon'ble Division Bench.

This Court, therefore, finds that the primary issues raised in this writ petition have reached a finality with the orders of the Hon'ble Single Bench dated 3<sup>rd</sup> December 2019 as affirmed by the Hon'ble Division Bench on 9<sup>th</sup> of January, 2020 (supra). By way of the present

writ petitions identical issues settled by judicial affirmation cannot be now unsettled.

The only additional argument that merits consideration arises out of the rights of the sub-lessees/tenants/the present petitioners claimed to be subsisting in law coterminous with the rights of the original lessee/ the Bengal Properties as pointed out on behalf of the petitioners on the authority of *AIR 1985 Calcutta 37*.

However, to the mind of this Court, the ratio as laid down in *AIR 1985 Calcutta 37* is distinguishable in the facts of this case. In this regard reference may be made to the order recorded by the *FLAC* dated 22<sup>nd</sup> January 2020 in the said Eviction Case which is extracted below for the benefit of this discussion:-

*"Mr. Rahul Karmakar and Mr. S.K. Podder, the Ld. Advocates appearing on behalf of The Bengal Properties Pvt Ltd, submit that their client is ready to vacate the premises provided the amount out of Rs. 1 crore paid to KMC as per direction of the Hon'ble Court is returned back after deducting the amount payable to the KMC as rent etc."*

To the mind of this Court, the admitted decision taken by *R4*/the Bengal Properties/ the original lessee to vacate the said premises nullifies the notion of any residuary rights left with the petitioners/the sub-lessees/ the tenants which can be said to be subsisting coterminous to the rights of the original lessee. Accordingly, the principle underscored *In Re: AIR 1985 Calcutta 37*, with respect, does not apply to the present facts.

*Apropos* the above discussion, this writ petition, W.P. No. 2038(W) of 2020, fails.

The bunch of writ petitions, being analogously decided with W.P. No. 2038(W) of 2020, also fail.

**WP No. 2038 (W) of 2020 with W.P. 2123 (W) of 2020 with W.P. 2124 (W) of 2020 with W.P.2125 (W) of 2020 with W.P.2126 (W) of 2020 with W.P.2198 (W) of 2020 with W.P.2200(W) of 2020 with W.P.2201 (W) of 2020 with W.P.2203 (W) of 2020 with W.P.2208 (W) of 2020 with W.P.2209 (W) of 2020 with W.P.2210 (W) of 2020 with W.P.2220 (W) of 2020 with W.P.2221(W) of 2020 with W.P.2254 (W) of 2020 with W.P.2255 (W) of 2020 with W.P.2256 (W) of 2020 with W.P.2257 (W) of 2020 with W.P.2275 (W) of 2020 with W.P.2276 (W) of 2020 with W.P.2277 (W) of 2020 with W.P.2307 (W) of 2020 stand thus dismissed.**

The dismissal of the writ petitions shall not however bar the parties from individually renegotiating their mutual status, if and so advised.

There will be no order as to costs.

Parties are permitted to act on a server copy of this order downloaded from the official website or this Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

**(Subrata Talukdar, J.)**