IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

BEFORE:
THE HON'BLE JUSTICE OM NARAYAN RAI

WPA 16303 of 2025

Pankaj Chakraborty
Vs.
Union of India & Ors.

For the Petitioner : Mr. Arabinda Chatterjee, Sr. Adv.
Ms. Kakali Dutta, Adv.

For the Respondents : Mr. S.N. Dutta, Adv.
Mr. Arun Bandyopadhyay, Adv.

Hearing Concluded on : 29.01.2026

Judgment on : 27.02.2026

Om Narayan Rai, J.:-

1. This writ petition has been filed assailing the impugned taking over of the possession of the plot of the petitioner on July 04, 2025 in terms of eviction order dated February 02, 2025 under Section 4 and 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereafter the said Act of 1971) by the respondent authorities.

CASE RUN IN THE WRIT PETITION:

2. A brief summary of the facts gathered from the writ petition may first be noticed:-

a. It is the petitioner's case that a plot of land measuring about 133.780 square meters was allotted to him by the Board of Trustees of the Port of

Calcutta about 50 years back treating him as a tenant for the purpose of his business of coal storing as well as supplying.

b. At the relevant point of time, a railway track was functioning at such yard. Such track was removed in the year 1982 and thereafter the petitioner changed his business from coal to paint.

c. One Dial Automobiles (Pvt.) Ltd. has been supplying paint to the petitioner and he has been carrying on his business of painting since 1988.

d. The respondent authorities used to raise monthly rent bills upon the petitioner in respect of the said tenancy and the petitioner paid the same regularly without fail. Such bills were raised upto January, 1992 but not thereafter. The petitioner visited the office of the respondent nos. 3 and 4 time and again for such purpose but to no avail.

e. On February 11, 2022 the petitioner received a caveat under Section 148A of the Code of Civil Procedure, 1908 (hereafter the Code) filed by Board of Trustees of Port of Kolkata. It appeared to have been lodged in respect of order no. 18 dated February 02, 2022 arising out of Proceeding No. 1820 of 2020 and Proceeding No. 1820/B of 2020 in respect of the said piece or parcel of land measuring 133.780 sq. meters.

f. The petitioner made immediate enquiries upon receiving the said caveat in order to take appropriate steps against the relevant order but nothing was informed to the petitioner from the side of the respondents and no document in respect of either the proceedings that led to the order dated February 02, 2022 or the said order itself was supplied to the petitioner.

g. Suddenly a Memo bearing No. 3184/135/29/10691 dated December 16, 2024 was issued to the petitioner by the Executive Engineer for the Estate Manager (I/C) whereby the petitioner was informed that a sum of Rs.9,58,270.02/- being the arrears of rent and taxes upto August 31, 2024 was due in respect of the said plot and that further interest thereon was also payable by the petitioner in respect thereof. The said communication also indicated that the petitioner was occupying the property/properties of the Syama Prasad Mookerjee Port, Kolkata (hereafter SMPK) unauthorisedly and he was liable to pay compensation and/or damages as per the schedule of rent notified by SMPK from time to time for unauthorised use and occupation of public premises upto the date of peaceful handing over the property to SMPK in vacant and unencumbered condition.

h. After receiving the said memo the petitioner requested his paint supplier to help him to liquidate the dues as also inform the respondent authorities that the petitioner could not make payments earlier as his business had suffered due to the Covid-19 pandemic and that he wished to pay off the dues in instalments.

i. Accordingly Dial Automobiles (Pvt.) Ltd. made payment of an aggregate sum of Rs.5,50,000/- in tranches under cover of letters dated January 09, 2025, February 11, 2025, March 11, 2025, April 11, 2025, May 15, 2025 and June 10, 2025.

j. It is the petitioner's case that Dial Automobiles (Pvt.) Ltd. had informed the respondent authorities that the petitioner was unable to pay the rent

and taxes and that Dial Automobiles (Pvt.) Ltd. would pay the same every month to SMPK together with the arrears to avoid litigation.

k. The SMPK authorities accepted the letter along with cheque with the caveat that the cheque had been received from Dial Automobiles (Pvt.) Ltd. without prejudice to the right and contentions of the Board of Trustees of the Port of Kolkata.

l. Although the notice dated December 13, 2024 did not indicate that possession would be taken over, yet, on July 04, 2025, the SMPK authorities suddenly took over possession of the property that was under the occupation of the petitioner and affixed a notice indicating that *"possession taken over by the Authorised Officer appointed by Public Premises Court on 04.07.2025 in terms of Eviction Order dated 02.02.2022 in Proceeding no. 1820 of 2020 (Syamaprasad Mookerjee Port, Kolkata -vs- Pankaj Chakraborty)"*.

m. Such possession was taken over by the respondent SMPK despite having received a sum of Rs.5,50,000/- out of Rs.9,58,270.02/- till June 10, 2025.

n. Feeling aggrieved by such act of taking over possession of the plot of land as aforesaid in violation of Sections 4 & 5 of the said Act of 1971, the petitioner has approached this Court by way of the present writ petition.

RESPONDENTS' CASE IN THE AFFIDAVIT- IN-OPPOSITION:

3. Briefly summed up the respondents' case in the affidavit- in-opposition is as follows:-

a. The predecessor in interest of the petitioner had been let in possession of the subject property on monthly rent on certain terms and conditions embodied in SMPK's offer letter dated December 04, 1973.

b. Due to non-payment of rent, a notice to quit dated May 13, 1992 was sent to the tenants but the same returned unserved. The same was thereafter affixed on the tenanted premises.

c. Since the tenants did not abide by the notice and did not vacate the tenanted premises, an application was filed before the Estate Officer on May 31, 1993.

d. The Estate Officer directed issuance of notice under Sections 5 and 7 of the said Act of 1971 and fixed September 28, 2021 as the returnable date. The said notice returned unserved and as such notice was affixed at the tenanted premises by the process server.

e. In terms of the direction of the Estate Officer, the notice was thereafter published in the English daily - Times of India on October 27, 2021 and was also put up on the website of the SMPK in terms of the directions of the Estate Officer.

f. Since the tenants failed to appear before the Estate Officer despite notices as aforesaid, the Estate Officer ultimately heard the matter on November 23, 2021 and passed two reasoned orders both dated February 02, 2022 under Sections 5 and 7 of the said Act of 1971 with directions for eviction of the tenants as well as for damages.

g. As the Authorized Officer who had been appointed to execute the order of eviction failed to do so in view of resistance being put up at site, police assistance was sought.

h. The Estate Officer allowed the application seeking police assistance on June 28, 2022 whereafter possession was taken by the Authorised Officer.

i. It is the respondents' case that bills had been duly raised from January 1992 to June 1992 but since notice to quit had been issued by the respondent Port Trust on May 13, 1992 therefore there was no reason to raise any bill after June 1992.

PETITIONER'S CASE IN REPLY:

4. The petitioner has denied all the material allegations in the affidavit-in-opposition and has asserted that no notice whatsoever starting from the alleged notice to quit till the last notice of hearing before the Estate Officer was ever served upon the petitioner.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

5. A summary of the arguments made by Mr. Chatterjee learned Senior Advocate appearing for the petitioner (both orally and in writing) is as follows:-

a. The respondent SMPK authorities have acted in abject violation of the provisions of the said Act of 1971.

b. Upon perusal of the various documents annexed to the affidavit-in-opposition and the supplementary affidavit filed on behalf of the respondents, it would be evident that the notice to quit had been served upon Pradip Kumar Chakraborty whereas the license in respect of the subject plot stood in the name of the petitioner. In such view of the matter, the notice to quit cannot be said to have been served upon the petitioner.

c. It stands admitted by the respondents that the notice under Section 4(1) of the said Act of 1971 returned unserved with the endorsement *"insufficient address"*.

d. The affidavit-in-opposition and supplementary affidavit taken together also reveal that most of the documents pertaining to service of notice upon the petitioner could not be traced out by the respondents.

e. The report of the process server does not conclusively prove that notice has been served upon the petitioner.

f. The petitioner has duly received the notice of demand as well as the caveat and other documents sent to the petitioner's address at 23/A, Bejoy Bose Road, Kolkata – 700025 which means that if notice had been sent to the petitioner at his actual address the same would have reached him. The said fact also establishes that no notice as regards the proceeding under the said Act of 1971 was ever served upon the petitioner.

g. Since the entire proceeding has been initiated, continued and concluded without any notice and in abject violation of principles of natural justice, the same is bad in law and is liable to be set aside.

h. Reliance was placed on a judgement rendered by the Hon'ble Division Bench of this Court in the case of ***Ramesh Kumar & Company Private Limited & Another vs. The Board of Trustees for the Port of Kolkata & Others***[1] to assert that in a similar situation, the Hon'ble Division Bench while dealing with appeals filed against orders passed in writ petitions where orders of eviction passed under Section 5 of the said Act

[1] 2016 SCC OnLine Cal 4455

of 1971 had been challenged, had directed restoration of possession to the appellants.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

6. The arguments made by Mr. Dutta learned Advocate appearing for the respondents (both orally and in writing) are summarised below:-

a. The writ petition should not be entertained at all inasmuch as the petitioner has alternative remedy of statutory appeal under Section 9 of the said Act of 1971.

b. The question as to whether service has been effected or not lies in the domain of disputed questions of fact which cannot be decided by way of summary proceedings.

c. The petitioner has admitted in the writ petition that before his eviction the subject property was under the possession of Dial Automobiles (Pvt.) Ltd. who was carrying on a different type of business other than the business for which the property had been let out. Such change of business was never intimated to SMPK and such change was done illegally. The respondents got knowledge thereof for the first time from the writ petition.

d. The annexures to the affidavit-in-opposition and the supplementary affidavit would clearly reflect that all procedures have been followed in proceedings for eviction before the Estate Officer and there was due affixation of notice by the process server as also due publication thereof in an English Daily having circulation in the locality. The notice was also put up on the website of SMPK.

e. Referring to annexures to the opposition especially Annexure R-4 (i.e. order dated September 28, 2021 passed by the Estate Officer) and

Annexure R-6 (i.e. order dated November 23, 2020 passed by the Estate Officer) as also to Annexure R-12 to the supplementary affidavit being the process server report, it was contended that taken cumulatively, the same would adequately establish that due process of law was followed and notices were served.

f. Reliance was placed on the judgment of the Hon'ble Supreme Court in the case of ***United Bank of India vs. Satyawati Tondon & Others***[2], for the proposition that a writ Court should refrain from exercising jurisdiction in cases where effective alternative remedy is available.

ANALYSIS AND DECISION:

7. This case presents an interesting paradox. While it initially suggests violation of principles natural justice by the respondents, grave enough to warrant annulment of the proceedings, upon a closer examination it reveals nothing more than unpardonable indolence on the part of the petitioner.

8. To begin with, the following facts would reveal serious procedural lapses on the part of the respondents:-

a. The notice to quit is addressed to both the petitioner as well his brother Shri Pradip Kumar Chakraborty but no postal document is available insofar as the petitioner is concerned. Returned envelope and A/D card evincing that notice had been sent to Shri Pradip Kumar Chakraborty are available.

b. There is only one document available on record (Annexure R-11 to the supplementary affidavit filed on behalf of the respondents) that would indicate that a notice alleged to have been issued under Section 4(1) of

[2] AIR 2010 SC 3413 : (2010) 8 SCC 110

the said Act of 1971 was sought to be served upon the petitioner at the address of the subject property and the same returned unserved.

c. There is an averment in the supplementary affidavit that a letter was sent to the petitioner at his residential address, (where the petitioner has admittedly received the caveat and the notice of demand as aforesaid) but there is no document in support thereof.

d. All the subsequent notices viz., the notice of lodging of caveat, notice demanding outstanding dues and notice demanding compensation have all been served upon the petitioner at his residential address.

9. It may be reasonably inferred therefrom that the petitioner may not have had notice of the eviction proceedings and as such was deprived of an opportunity to state its case before the Estate Officer.

10. However, that is not the "be-all and end-all" of the matter. The opposing perspective also needs to be considered. It is an admitted position that the petitioner received the notice of caveat on February 11, 2022. The notice of caveat reveals that the caveator is the Board of Trustees of the Port of Kolkata (under whom the petitioner claims to be a tenant). It clearly refers to an order dated February 02, 2022 passed in respect of the same property in respect whereof the petitioner claims tenancy.

11. There appears to be no effort worth the word undertaken on the part of the petitioner to assail the order dated February 02, 2022. This Court is alive to the fact that the petitioner has averred that the petitioner went to the office of the respondents but no information was provided to him. Such statements fail to inspire confidence and lack acceptability. There is not a single document on record to suggest that the petitioner ever wrote to the

respondents and sought for a copy or other details of the said order dated February 02, 2022. It is unbelievable that a person in receipt of a notice of caveat referring to an order passed in respect of a property where he claims to be running his business would stay quiet after making a few visits to the office of the notice issuing authority without writing any letter to such authority.

12. Later down the line on December 13, 2024, the petitioner received the notice demanding outstanding dues whereby he was *inter alia* put on notice that he was in unauthorised occupation of the property. The said notice further indicated that any payment made by the petitioner "*on account of outstanding dues would be deemed to have been tendered as compensation for wrongful use and occupation and acceptance of such payment will be without prejudice to the rights and contentions of SMPK".* It is the petitioner's own case that the petitioner started making payment towards liquidation of the arrears upon receipt of the said notice. No objection was registered by the petitioner being termed as unauthorised occupant in the said notice. No step was taken by the petitioner to challenge the said notice.

13. Inaction of the petitioner despite receipt of notice of caveat and silent acceptance of the notice demanding outstanding dues clearly establish acquiescence on the part of the petitioner. This Court is of the considered view that once the petitioner received the notice of caveat he ought to have taken proactive steps to challenge the order of eviction dated February 02, 2022. Simply stating that the petitioner was not given any information about the order despite the petitioner's visits would not do. If not anything else, there was no reason why the provisions of the Right to Information Act,

2005 were not resorted to by the petitioner for obtaining the requisite information. The petitioner has failed to demonstrate even the minimum due diligence required for asserting ones rights. This Court can hardly lend its hand in support of such a litigant.

14. In the instant case, the petitioner has approached this Court more than three years after getting knowledge of an order having adverse consequences on him. In such context the following observations of the Hon'ble Supreme Court in the case of ***Mrinmoy Maity vs. Chhanda Koley & Others***[3] deserves notice:-

> *"**11.** For filing of a writ petition, there is no doubt that no fixed period of limitation is prescribed. However, when the extraordinary jurisdiction of the writ court is invoked, it has to be seen as to whether within a reasonable time same has been invoked and even submitting of memorials would not revive the dead cause of action or resurrect the cause of action which has had a natural death. In such circumstances on the ground of delay and laches alone, the appeal ought to be dismissed or the applicant ought to be non-suited. If it is found that the writ petitioner is guilty of delay and laches, the High Court ought to dismiss the petition on that sole ground itself, inasmuch as the writ courts are not to indulge in permitting such indolent litigant to take advantage of his own wrong. It is true that there cannot be any waiver of fundamental right but while exercising discretionary jurisdiction under Article 226, the High Court will have to necessarily take into consideration the delay and laches on the part of the applicant in approaching a writ court.*
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> ***12.** This Court in Tridip Kumar Dingal v. State of W.B. [Tridip Kumar Dingal v. State of W.B., (2009) 1 SCC 768 : (2009) 2 SCC (L&S) 119] has held to the following effect: (SCC p. 784, paras 56-58)*
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> *"56. We are unable to uphold the contention. It is no doubt true that there can be no waiver of fundamental right. But while exercising discretionary jurisdiction under Articles 32, 226, 227 or 136 of the Constitution, this Court takes into account certain factors and one of such considerations is delay and laches on the part of the applicant in approaching a writ court. It is well settled that power to issue a writ is*

[3] (2024) 15 SCC 215

discretionary. One of the grounds for refusing reliefs under Article 32 or 226 of the Constitution is that the petitioner is guilty of delay and laches.

57. If the petitioner wants to invoke jurisdiction of a writ court, he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction. The underlying object of this principle is not to encourage agitation of stale claims and exhume matters which have already been disposed of or settled or where the rights of third parties have accrued in the meantime (vide State of M.P. v. Bhailal Bhai [State of M.P. v. Bhailal Bhai, (1964) 15 STC 450 : 1964 SCC OnLine SC 10 : (1964) 6 SCR 261 : AIR 1964 SC 1006] , Moon Mills Ltd. v. Industrial Court [Moon Mills Ltd. v. Industrial Court, 1967 SCC OnLine SC 117 : AIR 1967 SC 1450] and Bhoop Singh v. Union of India [Bhoop Singh v. Union of India, (1992) 3 SCC 136]). This principle applies even in case of an infringement of fundamental right (vide Tilokchand Motichand v. H.B. Munshi [Tilokchand Motichand v. H.B. Munshi, (1969) 1 SCC 110 : (1970) 25 STC 289] , Durga Prashad v. Controller of Imports and Exports [Durga Prashad v. Controller of Imports and Exports, (1969) 1 SCC 185] and Rabindranath Bose v. Union of India [Rabindranath Bose v. Union of India, (1970) 1 SCC 84]).

58. There is no upper limit and there is no lower limit as to when a person can approach a court. The question is one of discretion and has to be decided on the basis of facts before the court depending on and varying from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose."

13. *It is apposite to take note of the dicta laid down by this Court in Karnataka Power Corpn. Ltd. v. K. Thangappan [Karnataka Power Corpn. Ltd. v. K. Thangappan, (2006) 4 SCC 322 : 2006 SCC (L&S) 791] whereunder it has been held that the High Court may refuse to exercise extraordinary jurisdiction if there is negligence or omissions on the part of the applicant to assert his right. It has been further held thereunder: (SCC pp. 325-26, paras 6-9)*

"6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in Durga Prashad v. Controller of Imports and Exports [Durga Prashad v. Controller

of Imports and Exports, (1969) 1 SCC 185] . Of course, the discretion has to be exercised judicially and reasonably.

7. What was stated in this regard by Sir Barnes Peacock in Lindsay Petroleum Co. v. Prosper Armstrong Hurd [Lindsay Petroleum Co. v. Prosper Armstrong Hurd, (1874) LR 5 PC 221 : 22 WR 492] (LR PC at p. 239) was approved by this Court in Moon Mills Ltd. v. Industrial Court [Moon Mills Ltd. v. Industrial Court, 1967 SCC OnLine SC 117 : AIR 1967 SC 1450] and Maharashtra SRTC v. Balwant Regular Motor Service [Maharashtra SRTC v. Balwant Regular Motor Service, 1968 SCC OnLine SC 54 : (1969) 1 SCR 808 : AIR 1969 SC 329] . Sir Barnes had stated: (Lindsay Petroleum case [Lindsay Petroleum Co. v. Prosper Armstrong Hurd, (1874) LR 5 PC 221 : 22 WR 492] , LR pp. 239-40)

'Now, the doctrine of laches in courts of equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedy.'

8. It would be appropriate to note certain decisions of this Court in which this aspect has been dealt with in relation to Article 32 of the Constitution. It is apparent that what has been stated as regards that article would apply, a fortiori, to Article 226. It was observed in Rabindranath Bose v. Union of India [Rabindranath Bose v. Union of India, (1970) 1 SCC 84] that no relief can be given to the petitioner who without any reasonable explanation approaches this Court under Article 32 after inordinate delay. It was stated that though Article 32 is itself a guaranteed right, it does not follow from this that it was the intention of the Constitution-makers that this Court should disregard all principles and grant relief in petitions filed after inordinate delay.

9. It was stated in State of M.P. v. Nandlal Jaiswal [State of M.P. v. Nandlal Jaiswal, (1986) 4 SCC 566] that the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If

there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction."

14. *Reiterating the aspect of delay and laches would disentitle the discretionary relief being granted, this Court in Chennai Metropolitan Water Supply & Sewerage Board v. T.T. Murali Babu [Chennai Metropolitan Water Supply & Sewerage Board v. T.T. Murali Babu, (2014) 4 SCC 108 : (2014) 1 SCC (L&S) 38] has held: (SCC p. 117, para 16)*

"16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant — a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis."

15. It is well settled that writ remedy is discretionary. Entertainment of writ petition is somewhat inhibited by the availability of alternative remedy. Such inhibition is greater when alternative remedy has strict timelines which the writ suitor has failed to adhere to. Furthermore relief is more often than not

refused when there is inordinate unexplained delay. The present case combines all the three factors.

16. An order passed by the Estate Officer is appealable under Section 9 of the said Act of 1971. It is trite law that alternative remedy is not a bar and a writ petition can still be entertained if the case presented before Court satisfies any of the four tests i.e. violation of principles of natural justice, infringement of fundamental rights, an act wholly without jurisdiction and challenge to the vires of any statute or a provision thereof. In the case at hand the first exception has been seemingly answered affirmatively. Therefore, the writ petition could be entertained and would not warrant dismissal on the mere ground of availability of alternative remedy. However, the Court is still not minded to entertain the writ petition on the ground of acquiescence, delay and laches.

17. The petitioner has risen from slumber only after he has been dispossessed. In fact in the writ petition he has not challenged the order of eviction passed by the Estate Officer but has only challenged the act of taking over the possession. In such context, the prayers made in the writ petition may be noticed:-

> *"a) A writ in the nature of Mandamus commanding the respondent authorities each of them their men, agents, servant particularly the respondent Nos. 3 and 4 to rescind, cancelled and/or quashed impugned taking over the possession of the Plate No. 458/2 on 04.07.2025 and further directing the said authority to hand over the possession of Plate No. 458/2 at Shyamaprasad Mukherjee Port Trust, Kolkata (erstwhile Kolkata Port Trust) immediately;*
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> *b) A writ in the nature of Mandamus commanding the respondents authorities, each of them, their men, agents, servants particularly the respondent nos. 3 and 4 not to part the possession of the plate D 459/2 at Shyama Prasad Mukherjee Port Trust in Kolkata in favour of any 3rd party and to hand over the same in favour of the petitioner*

if authorities found that the impugned taking over the possession of Plate No. D 459/2 at Shyama Prasad Mukherjee Port Trust, Kolkata forthwith;

c) A writ in the nature of Certiorari do issue commanding the respondent authorities each one of them, their men, agent, servants, subordinates and/or assigns to produce the records relating to the reasoned order No. 18 dated 02.02.2022 in proceedings No. 1820 of 2020 and proceeding No. 1820/D of 2020 in respect of piece or parcel of land measuring about 137.780 sq. meter situated at Chetla Station Yard, District- South 24-Parganas;

d) Rule NISI in terms of prayer (a) to (b) as above;"

18. Such a course is not permissible. In the case at hand taking over of possession by SMPK was only a consequential act after the order of eviction dated February 02, 2022 being passed. It is well settled that there can be no challenge to a consequential action if the basic order or main order is not challenged. (See- ***Edukanti Kistamma vs. S. Venkatareddy***[4]).

19. Yet again, it is noticed that despite it being within his knowledge that he has defaulted in payment of rent, he has still not been able to pay up the entire dues of the respondent Port trust.

20. The case of ***Ramesh Kumar & Company Private Limited*** (supra) relied on by the petitioner would not come to his aid inasmuch as in the said case the petitioners/appellants were vigilant and had preferred timely appeals to protect their rights. In the case at hand the petitioner has been sitting tight with full knowledge about infringement of his rights. In this connection the following observations of the Hon'ble Supreme Court in the case of ***U.P. Jal Nigam and Another vs. Jaswant Singh and Another***[5] may be noted:-

*"**12.** The statement of law has also been summarised in Halsbury's Laws of England, para 911, p. 395 as follows:*

[4] (2010) 1 SCC 756

[5] (2006) 11 SCC 464

"In determining whether there has been such delay as to amount to laches, the chief points to be considered are:

(i) acquiescence on the claimant's part; and

(ii) any change of position that has occurred on the defendant's part.

Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches."

21. The observations made by the Hon'ble Supreme Court clearly apply to the case at hand. After having acquiesced with the SMPK and not having challenged the order of eviction, the petitioner cannot now be heard saying that he should be given the possession back at this distance in time (i.e. more than three years after the order of eviction was passed).

CONCLUSION:

22. For all the reasons aforesaid, this Court is not minded to entertain the writ petition. Hence, WPA 16303 of 2025 stands dismissed with the above observations. No costs.

23. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all formalities.

(Om Narayan Rai, J.)