

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

HEARD ON: 30.06.2026

DELIVERED ON: 30.06.2026

CORAM:

THE HON'BLE JUSTICE PARTHA SARATHI SEN

W.P.A. 12272 of 2026

Md. Idrish & Ors.

Versus

Union of India & Ors.

Appearance:-

Mr. Kaustav Banerjee, Adv.

Ms. Ria Kundu, Adv.

.....for the Petitioners

Mr. Subhankar Nag, Adv.

Mr. Ashok Kr. Jena, Adv.

Mr. Snehasis Sen, Adv.

Mr. Abhishek Banerjee, Adv.

Mr. Debducta Mukhopadhyay, Adv. .for the Kolkata Port Trust

Mr. Tirtha Pati Acharya, Adv.

.....for the Union of India

JUDGEMENT (ORAL):

1. By filing the instant writ petition, the writ petitioners have prayed for issuance of appropriate writ/writs against the respondent authorities commanding them to quash the process of demolition as undertaken by them in respect of residential quarters/dwelling units and structures named as Calcutta Dock Labour Board (CDLB) quarters and Calcutta Port Trust (CPT) quarters located at

Brook Lane, Garden Reach, Kolkata along with other ancillary reliefs.

2. At the time of hearing, Mr. Kaustav Banerjee, learned advocate appearing on behalf of the writ petitioners at the very outset, draws attention of this Court to page nos. 26 to 75 of the instant writ petition being copies of different Aadhar Cards. It is submitted that from the copies of the aforementioned Aadhar Cards, it would reveal that the present petitioners are presently residing and occupying at the premises/quarters over which the respondent authorities have initiated demolition process.
3. Attention of this Court is drawn to section 2(g) of the Public Premises (Eviction of Unauthorised Occupants) Act 1971 ('Act of 1971' in short).
4. It is submitted that section 2(g) of the Act of 1971 clearly defines 'unauthorised occupation' in relation to public premises. It is further submitted that on perusal of section 4 and section 5 of the Act of 1971, it would reveal further that prior to eviction of an unauthorised occupier, the Estate Officer is duty bound to serve notice to the unauthorised occupier of a public premises and in the event, the cause shown is found to be not satisfactory, he has to initiate a proceeding under section 5 of the Act of 1971.

5. It is further submitted that it is the specific case of the writ petitioners that the respondent authorities without following the procedure of law, as enacted in the said Act of 1971, most unauthorisedly and illegally started the demolition proceeding in the said building/quarters resulting eviction of the writ petitioners from the public premises in violation of the provisions of the Act of 1971.
6. It is further submitted that in the supplementary affidavit, as filed today, the writ petitioners categorically indicated the specific portions under their occupation.
7. It is further submitted that in absence of any contrary material, there cannot be any justification to disbelieve the contention of the writ petitioners since the respondent authorities have chosen not to file any affidavit in opposition and/or report in the form of affidavit.
8. It is, thus, submitted that it is a fit case for granting the relief, as prayed for in the instant writ petition.
9. At the time of hearing, learned advocate for the writ petitioners has placed his reliance upon the judgment, as passed in the case of ***Board of Trustees for the Port of Kolkata & Anr. vs. Vijay***

Kumar Arya & Ors. reported in ***2009 SCC OnLine Cal. 266 : (2009) 2 CHN 274 (DB).***

10. *Per contra:* Mr. Nag, learned senior advocate appearing on behalf of the Port Trust Authorities submits before this Court that the writ petitioners before this Court have miserably failed to produce a single scrap of paper to substantiate their settled position in the premises/quarters in question.
11. Attention of this Court is drawn to a copy of memo dated 22.05.2025, as issued by the Deputy Commissioner of Police, Port Division, Kolkata. It is submitted by Mr. Nag that from the said memo dated 22.05.2025, it would reveal that the said Deputy Commissioner of Police ventilated before the Chairman of the Kolkata Port Trust regarding imminent risk of collapse of the said residential quarters at Brook Lane, posing serious threat to the life and property.
12. It is, thus, submitted by Mr. Nag that the action on the part of the Port authorities is justifiable and cannot be questioned in the instant writ petition.
13. This Court has meticulously gone through the entire materials, as placed before this Court. This Court has given due consideration over the submissions of the learned advocates for

the contending parties. For effective adjudication of the instant lis, this Court, at the very outset, proposes to look to the provisions of section 2(g) of the Act of 1971, which runs as under:

“(g) “unauthorised occupation”, in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.”

14. This Court further considers that for effective adjudication of the instant writ petition, section 4 and section 5 of the Act of 1971 are required to be looked into and those are quoted hereinbelow *in verbatim*.

“4. Issue of notice to show cause against order of eviction.—*(1) If the estate officer has information that any person is in unauthorised occupation of any public premises and that he should be evicted, the estate officer shall issue in the manner hereinafter provided a notice in writing within seven working days from the date of receipt of the information regarding the unauthorised occupation calling upon the person concerned to show cause why an order of eviction should not be made.*

(1A) If the estate officer knows or has reasons to believe that any person is in unauthorised occupation of the public premises, then, without prejudice to the provisions of sub-section (1), he shall forthwith issue a notice in writing calling upon the person concerned to show cause why an order of eviction should not be made.

(1B) Any delay in issuing a notice referred to in sub-sections (1) and (1A) shall not vitiate the proceedings under this Act.

(2) The notice shall—

- (a) specify the grounds on which the order of eviction is proposed to be made; and*

- (b) require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in, the public premises,—
- (i) to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not later than seven days from the date of issue thereof, and
 - (ii) to appear before the estate officer on the date specified in the notice along with the evidence which they intend to produce in support of the cause shown, and also for personal hearing, if such hearing is desired.

(3) The estate officer shall cause the notice to be served by having it affixed on the outer door or some other conspicuous part of the public premises, and in such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly given to all persons concerned.

5. Eviction of unauthorised occupants.—(1) If, after considering the cause, if any, shown by any person in pursuance of a notice under section 4 and any evidence produced by him in support of the same and after personal hearing, if any, given under sub-clause (ii) of clause (b) of sub-section (2) of section 4, the estate officer is satisfied that the public premises are in unauthorised occupation, the estate officer shall make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated, on such date as may be specified in the order but not later than fifteen days from the date of the order, by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises:

Provided that every order under this sub-section shall be made by the estate officer as expeditiously as possible and all endeavour shall be made by him to issue the order within fifteen days of the date specified in the notice under sub-section (1) or sub-section (1A), as the case may be, of section 4.

(2) If any person refuses or fails to comply with the order of eviction on or before the date specified in the said order or within fifteen days of the date of its publication under sub-section (1), whichever is later, the estate officer or any other officer duly authorised by the estate officer in this behalf may after the date so specified or after the expiry of the period aforesaid, whichever is later, evict that person from, and take possession of, the public premises and may, for that purpose, use such force as may be necessary.

Provided that if the estate officer is satisfied, for reasons to be recorded in writing, that there exists any compelling reason which prevents the person from vacating the premises within fifteen days, the estate officer may grant another fifteen days from the date of expiry of the order under sub-section (1) to the person to vacate the premises.”

15. Keeping in mind the aforementioned legislative provisions, if I look to the factual matrix, as involved in the instant writ petition, it appears to this Court that in paragraphs 2, 4 and 5 of the instant writ petition, it has been specifically contended on behalf of the writ petitioners that the present writ petitioners are occupying various residential quarters/dwelling units and structures, wherein the respondent authorities made an endeavour to carry out a demolition proceeding. From annexures to the instant writ petition, it reveals that a bunch of photocopies Aadhar Cards have been filed to show that the writ petitioners' addresses are at the said quarters/residential units.
16. At this juncture, if I look to the supplementary affidavit, as filed today on behalf of the writ petitioners, it would reveal that in such supplementary affidavit, the writ petitioners have indicated the respective portions of the building in which they were residing. On perusal of the 2nd paragraph of the order dated 15.06.2026, as passed by a coordinate Bench of this Court in connection with the instant writ petition, it reveals that the said coordinate Bench directed the writ petitioners to indicate in the supplementary affidavit with regard to their authority also to occupy the portions of the said premises.

17. In course of hearing, despite repeated questions put by this Court, learned advocate for the writ petitioners could not satisfy this Court as to how the writ petitioners came into possession of the aforementioned premises/quarters/dwelling units under the respondent authorities.
18. Apart from photocopies of the said bunch of Aadhar Cards, no cogent materials could be placed before this Court that the writ petitioners are actually occupying and/or residing in the residential quarters/dwelling units/structures, as owned by the respondent authorities. On careful scrutiny of the said bunches of Aadhar Cards no materials could be found regarding the alleged occupation and/or possession of the writ petitioners as indicated in the supplementary affidavits filed today in Court.
19. In view of such, this Court has no other alternative but to come to a conclusion that the writ petitioners have miserably failed to substantiate their alleged 'unauthorised occupation' in the said premises/quarters/residential units.
20. Such being the position, this Court is constrained to hold that in absence of any cogent evidence regarding 'unauthorised occupation' of the writ petitioners in the aforementioned premises in question, as owned by the respondent authorities, the

provisions of section 4 and section 5 of the Act of 1971 have got no manner of application.

21. The reported decision of *Vijay Kumar Arya (supra)*, as placed on behalf of the writ petitioners has also got no manner of application inasmuch as from the paragraph 2 of the said reported judgment, it would reveal that the Port authority granted 30 years lease to the respondent therein, however, the said lease was subsequently revoked by issuing a notice of eviction but the lessee refused to vacate the lease hold property which is a 'public premises' within the meaning of Section 2(e) of the Act of 1971. It thus, appears to this Court that the facts, as involved in the case of *Vijay Kumar Arya (supra)* is quite distinguishable from the facts and circumstances, as involved in the instant writ petition since despite giving due opportunity to the writ petitioners vide order dated 15.06.2026, the writ petitioners failed to indicate in their supplementary affidavit regarding their authority to occupy the premises/quarters/residential units, as owned by the respondent authorities.

22. In view of the discussions made hereinabove, this Court thus, finds no merit in the instant writ petition.

23. Accordingly, W.P.A. 12272 of 2026 is hereby dismissed.

24. Interim order, if there be any, stands hereby, vacated.
25. There shall be, however, no order as to costs.
26. Since no affidavit has been used in this writ petition, the assertions made in the instant writ petition are deemed to have been denied.
27. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(PARTHA SARATHI SEN, J.)