

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:
The Hon'ble Justice Sugato Majumdar

CO/3989/2024

**M/S INDIAN MARBLE TRADERS
VS
BOARD OF TRUSTEES FOR THE PORT OF
CALCUTTA AND ORS**

For the Petitioner : Mr. Mainak Bose, Sr. Adv.
Mr. Rishab Karnani, Adv.
Mr. Ranjit Kumar Basak, Adv.
Mr. D. Sharma, Adv.

For the KOPT : Mr. Somnath Bose, Adv.
Ms. Antalina Guha, Adv.
Ms. Shinjita Ray, Adv.
Ms. Trishita Ghosh, Adv.

Hearing concluded on : 29.09.2026

Judgment on : 06.10.2026

Sugato Majumdar, J. :

The instant application was filed under Article 227 of the Constitution of India challenging the impugned Order dated 07/10/2024 passed by the Learned Additional District Judge, 10th Court, Alipore, South 24 Parganas in P.P. Appeal No.11 of 2007, confirming the order of the Estate Officer, thereby dismissing the said appeal.

Short background of the case is that one Ganesh Chandra Ghosh was the original tenant under Calcutta Port Trust in respect of the Plot No.D-504 at Chetla

Station Yard from the year 1958. The said Ganesh Chandra Ghosh died intestate leaving behind him one minor son and one minor daughter. They are Shyamal Ghosh and Sharmita Ghosh respectively. Wife predeceased him. Brother of the said Ganesh Chandra Ghosh, namely, Kartick Chandra Ghosh was appointed as guardian of the aforesaid minor son and daughter by the Learned 7th Sub-Ordinate Judge, Alipore in Case No.96 of 1981. Subsequently, the said court appointed guardian Kartick Chandra Ghosh sub-let 50% area of the tenancy to the present Petitioner. Calcutta Port Trust, in terms of the letter dated 21/02/1990 authorized the court appointed guardian to sub-let that part of the premises. As such the Petitioner became sub-lessee in respect of 50% of the tenanted premises measuring about 1382.24 sq. ft.

In terms of a letter dated 21/02/1995, the Opposite Party No.3, the aforesaid daughter of late Ganesh Chandra Ghosh intimated the Petitioner that she had attained majority. She also made an application before the court of competent jurisdiction to appoint her as guardian of her minor brother Shyamal Ghosh. Order was passed by the Learned Additional District Judge, 7th Court at Alipore dated 13/09/1994 appointing the said Sharmita Ghosh as guardian of her minor brother Shyamal Ghosh.

Subsequently, the Estate Officer initiated a proceeding at the instance of Calcutta Port Trust for eviction from the said premises. The Petitioner was not aware of the proceeding since no notice had been served on the Petitioner. It came to the knowledge of the Petitioner that the Estate Officer initiated the proceeding, being the Proceeding No.815, 815/R of 2006, against the deceased Kartick Chandra Ghosh and the order of eviction was passed on 26/03/2007 against the said deceased Kartick Chandra Ghosh. The Petitioner further stated that the notice under Section 4 of the

Public Premises (Eviction of Unauthorized Tenants) Act, 1971 (hereinafter referred to as “the Act”) had been issued to the deceased Kartick Chandra Ghosh.

On being aggrieved and dissatisfied, the Petitioner preferred an appeal before the District Judge at Alipore being P.P. Appeal No.11 of 2007. The appeal was heard by the Learned Additional District Judge, 10th Court at Alipore and in terms of the impugned order, dismissed the appeal.

Hence the instant application was filed praying for appropriate order.

The principal argument of Mr. Bose, the Learned Senior Counsel appearing for the Petitioner was that a proceeding against a dead person is nullity. Attention of this Court was invited to a letter dated 24/03/1995 whereby the said Sharmita Ghosh intimated the Land Manager, Calcutta Port Trust that she attained majority with a request to record her name as a tenant in her personal capacity as well as the guardian of the minor brother. In spite of that letter the proceeding was drawn up in the name of a dead person flouting all the procedural norms and rules.

The Learned Counsel appearing for the Opposite Party No.1 & 2 submitted firstly, that the proceeding was initiated for non-payment of rents which was about Rs.30,55,789.78p. There was, therefore, a valid cause of action for initiating the proceeding. Secondly, it was argued that the proceeding was drawn up against the legal heirs of the deceased Ganesh Chandra Ghosh. The legal heirs of the deceased Ganesh Chandra Ghosh were fully aware of the proceeding but they did not contest the same waiving their right thereby. It was further argued that the representatives of the present Petitioner were present when the notice under Section 4 had been affixed; in fact they witnessed the affixation and signed as witness. It was further argued that the Estate Officer as well as the Learned Appellate Court passed the Orders based on materials on record. There is no perversity in the order. Referring

to **Essen Deinki vs Rajiv Kumar [(2002) 8 SCC 400]**, the Learned Counsel submitted that Article 227 of the Constitution of India does not vest an unlimited power of the High Court to correct all orders unless perversity or gross violation of natural justice vitiate the same. The Learned Counsel also referred to another decision of the Supreme Court of India reported as **S.R. Tewari vs Union of India [(2013) 6 SCC 602]** to substantiate his contention.

I have heard rival contentions.

Firstly, the notice under Section 4 of the Act was pasted in presence of the Petitioners herein and was also witnessed by the representatives. The Opposite Party No.1 & 2 may be assumed to have the knowledge of the occupier. In fact the Order Sheet dated 15/11/2006 recorded the presence of the Petitioners.

Secondly, the notice was against a person who was not in existence. The letter dated 24/03/1995, whereby the said Sharmita Ghosh intimated the Land Manager, Calcutta Port Trust that she attained majority with a request to record her name as a tenant in her personal capacity as well as the guardian of the minor brother. It was also intimated that Kartick Chandra Ghosh expired on 02/05/1993. The said letter was sent by registered post, pre-paid and properly addressed. That is not in dispute. Under Section 27 of the General Clauses Act, 1897, the said letter was deemed to be served on the concerned officer of the port authorities. This was noted by the Learned Appellate Court. Once it was intimated, proceeding should be drawn be against the said tenant. Nothing was done. The Opposite Party No.1 & 2 must not have taken notice of the letter and failed to record her name as tenant.

Thirdly, the Estate Officer noted in the Order No.4 dated 15/11/2006 that the postal article containing the notice of the proceeding returned with postal endorsement "deceased". It was also noted that the present Petitioner was doing

business on the land. More emphasis was given on service by affixation ignoring the fact that the proceeding was against a dead person. In that situation, the Estate Officer should have resort to substitution. Section 13 of the Act provides:

“13. Liability of heirs and legal representatives.—

(1) Where any person against whom any proceeding for the determination of arrears of rent or for the assessment of damages or for the determination of the amount payable by way of interest on such arrears of rent or damages is to be or has been taken dies before the proceeding is taken or during the pendency thereof, the proceeding may be taken or, as the case may be, continued against the heirs or legal representatives of that person.”

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The Estate Officer failed to adopt the procedure, as aforesaid, prescribed by the Act. This latch is by itself a serious infirmity of the proceeding.

Fourthly, it need not be argued too much to conclude that a proceeding against a dead person is a nullity. The proceeding itself is *non est* in the eye of law. Both the Estate Officer and the Learned First Appellate Court committed serious error in ignoring this aspect. Section 4 of the Act provides for issuance of notice against unauthorized occupants. The order of the Estate Officer being the Order No.4 dated 15/11/2006 noted presence and carrying on business activities of the Petitioners in the premises. More so, as stated above, by the letter dated 24/03/1995, Smt. Sharmita Ghosh intimated the Land Manager on death of the said Kartick Chandra Ghosh and recording her name as tenant. It appears that no attempt was made to ascertain who are the unauthorized occupiers. Keeping eyes closed, the proceeding had been drawn up, continued and concluded by passing the final order dated 26/03/2007. The Learned Counsel for the Opposite Party No.1 & 2, though argued at length, failed to explain this aspect of the proceeding, though according to him the matter has a merit in view of prolonged default.

The Learned Appellate Court committed serious error in law in ignoring the fact that the proceeding was against a dead person and such proceeding is a nullity, whatever merit the case might have. This serious infirmity demands interference of this Court.

For reasons stated above, this Court comes to the conclusion that the proceeding No.815, 815/R of 2006 as well as the Order No.5 dated 26/03/2007 in null and void and according is set aside hereby. The judgment passed by the Learned First Appellate Court is also set aside. The Port Authorities are at liberty to initiate fresh proceeding under the provisions of the Act.

The instant application is disposed of.

(Sugato Majumdar, J.)