

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

BEFORE :-

THE HON'BLE JUSTICE SHAMPA SARKAR
&
THE HON'BLE JUSTICE ARJUN RAY MUKHERJEE

MAT 1487 of 2026

with
IA No: CAN 1 of 2026

**The State of West Bengal & Ors.
vs.
Bartaman Magazines Pvt. Ltd. & Anr.**

For the Appellants	: Mr. Surajit Nath Mitra, Ld. A.G. Mr. Falguni Bandyopadhyay, Adv. Mr. Pratip Mukherjee, Adv. Ms. Sreetama Neogi, Adv.
For the Respondent No. 1	: Mr. Bikash Ranjan Bhattacharyya, Sr. Adv. Mr. Saptangshu Basu, Sr. Adv. Mr. Ayan Dutta, Adv. Mr. Ajoy Sankar Sanyal, Adv. Ms. Shreyasi Sanyal, Adv. Mr. Sounak Bhattacharya, Adv.
Judgment reserved on	: 22.09.2026
Judgment pronounced on	: 25.09.2026
Judgment uploaded on	: 25.09.2026

Shampa Sarkar, J.

1. The appeal arises out of an order dated July 21, 2026 passed by the learned Single Judge in WPA No. 16715 of 2026 with CAN 1 of 2026.

2. By the order impugned, the learned Judge restrained the respondents/appellants from evicting the writ petitioners from the premises till September 15, 2026 or until further orders, whichever was earlier. Learned Advocate General has assailed the order impugned on the following grounds:-

- a) The learned Judge failed to appreciate that the subject matter of dispute between the parties was a commercial dispute, squarely falling within the meaning of Section 2(1)(c)(vii) of the Commercial Courts Act, 2015.
- b) Only a commercial court of competent jurisdiction could adjudicate the issues involved. The dispute was civil in nature.
- c) Although, the appellants were the State of West Bengal and its authorities, but as the dispute arose out of contractual terms and/or breach thereof, the writ court under Article 226 of the Constitution of India could not assume jurisdiction. The learned Judge exceeded his jurisdiction by restraining eviction proceedings against the writ petitioners, although, the lessor/State of West Bengal always reserved the right to initiate such proceeding in terms of the lease deed.
- d) Unnecessary weightage on Section 106 of the Transfer of Property Act in the order impugned, was misplaced.

e) His Lordship erred in holding that, in view of the pendency of the request for permission to allow a sub-lease in favour of Aditya Birla Capital, the notice dated July 7, 2026 requiring Aditya Birla Capital to vacate the 5th Floor, was bad in law. The writ court was not empowered to interpret clause 27 of the lease agreement and pass orders, thereby, rewriting the covenant in the lease deed and limiting the rights of the lessor provided under the said deed.

f) The interim order could not have been passed without deciding the point of maintainability of the writ petition. There was no public law element involved in the issue in hand and the appellants had exercised the rights conferred upon them by the said lease deed.

3. Learned Advocate General elaborately placed the deed and the correspondence exchanged by and between the parties, in support of his contentions. While the appellants alleged breach of some of the covenants of the deed of lease, the writ petitioners tried to justify their actions of inducting sub-lessees to the property on the basis of post-facto approvals.

4. When the writ petitioners refused to adhere to the recommendation of the lessor with regard to the nature of possession to be granted to Aditya Birla Capital, disputes arose. Issues were also pending with regard to the clinics to be run from the premises. The competent authority on behalf of the lessor asked the writ petitioners to cancel the lease agreement

executed between the writ petitioner No. 1 and Aditya Birla Sun Life Insurance Co. Ltd. The writ petitioners were directed to furnish a tenancy agreement between Bartaman Magazines Pvt. Ltd. and Aditya Birla Sun Life Insurance Co. Ltd., which the writ petitioners failed to do. They were also asked to submit an undertaking in the form of affidavit in respect of Concord Diagnostic Center and Lumina Health Center, declaring that all requisite formalities under the Clinical Establishments Act, had been obtained and further that, it would be entirely the responsibility of the lessee and/or the tenants to comply with the requisite norms.

5. These issues and disagreements could not be resolved. A show cause notice was issued by the Special Secretary, Government of West Bengal, Department of Urban Development and Municipal Affairs dated June 23, 2026 to the Director Bartaman Magazines Pvt. Ltd, alleging violation of the terms and conditions of the lease deed in respect of lease hold property being DK-03, Sector-2, Salt Lake. The writ petitioners were asked to remedy the breaches arising out of violation of clauses 2(7), 2(8) and 2(9) of the lease deed, within three days from the date of issuance of the notice. It was provided that, in the event of failure of the lessee to remedy the breach within the stipulated period, the lease granted by the Government in respect of plot No. DK- 03, Sector II, Salt Lake in favour of Bartaman Magazines Pvt. Ltd. would stand determined and the

Government would re-enter into and take possession of the aforementioned property.

6. On receipt of such notice, the writ petitioner No. 1 by a letter dated June 25, 2026 requested the Special Secretary, Government of West Bengal for some time to file a proper reply. By an e-mail, a representative of the writ petitioner No. 1 alleged that the notice dated June 23, 2026 was sent out of vengeance, because of the news publication on June 19, 2026, pertaining to Yoga Diwas. It was alleged that an official from the Urban Development and Municipal Affairs Department entered into the premises at 11 am of the morning of June 20, 2026, purporting to carry out an inspection, but they refused to disclose their identity. On July 7, 2026, the Special Secretary to the Government of West Bengal issued a notice to the Director, Bartaman Magazines Pvt. Ltd. inter alia, alleging that a unit on the 5th Floor of the building had been let out to one Aditya Birla Sun Life Insurance Co. Ltd. on June 10, 2026, by executing a lease agreement which was signed by the writ petitioner No. 1, both as a lessor and absolute owner of the property. Aditya Birla Sun Life Insurance Co. Ltd. signed the said document as a lessee. When such issue had been brought to the notice of the writ petitioner No. 1 on an earlier occasion, the writ petitioner No. 1 justified such action by taking a plea that inadvertently the expression “sub” before the word “lessor” had not been included in the agreement.

7. According to the appellants, a fresh field enquiry was made and it was found that Aditya Birla Capital was running a business from the 5th Floor without any approval from the department. Such action of the writ petitioners in permitting Aditya Birla Capital to run a business from the said premises without any approval from the department amounted to violation of some of the clauses of the lease deed. The appellants were of the opinion that, as lease rent had already been collected from Aditya Birla Capital, such wrong could not be remedied, and as such, six months' time to remedy the situation would not be viable. Under such circumstances, the lessee/writ petitioner No. 1 was asked to get the unit which was unauthorisedly being occupied by Aditya Birla Capital, vacated within five days.

8. These two notices were under challenge in the writ petition.

9. Mr. Bikash Ranjan Bhattacharya, learned Senior Advocate for the writ petitioners submitted that the appellants proceeded arbitrarily and tried to forcefully enter into the premises. They had acted in violation of the terms and conditions of the lease deed and also the general law governing the relationship between a lessor and a lessee or landlord tenant. Even under the Transfer of Property Act, proper notice was to be given to the writ petitioners requiring them to quit and vacate the premises in question. According to Mr. Bhattacharya, the lease deed was actually a tenancy from month to month, as it was unregistered. Under such circumstances, the notice dated July 7, 2026 was issued in

violation of Section 106 of the Transfer of Property Act. Relying upon paragraph 38 of the writ petition, it was further submitted that an unknown person had called up the writ petitioners and threatened to take possession of the 5th Floor without following due process of law.

10. The learned Single Judge had passed a limited interim order upon appreciating the ground reality and the predicament of the writ petitioners and the occupants of the said building. The attempt at forcefully entering into the said business premises under the guise of inspection was violative of Article 19(1)(g) of the Constitution of India. The writ petitioners were being forced to take back the unit let out to Aditya Birla Capital which would result in loss of revenue and the lessor could not dictate terms to the writ petitioners. The issue of grant of permission was pending. The writ petitioners had not been informed that the permission to grant lease to Aditya Birla Capital had been rejected during the pendency of the request for permission. Such harsh and coercive steps could not be taken by the State. Learned senior Advocate referred to certain documents annexed to the writ petition in support of his contention that, parties were in the process of negotiation and as such, the notice dated July 7, 2026 could not have been issued by reacting negatively to the news publication. The allegation of violation of the lease deed was false. The appellants wanted to wreak vengeance, as a retaliation to the news publication made by the writ petitioner No. 1. No cause of action to initiate any proceedings for breach of the contract

arose. The transfer of different units of the structure standing on the premises in question to other users, had been granted post-facto approval by the lessor upon charging huge fees. Under such circumstances, the lessor, could not have taken a U-turn and decided to proceed in terms of the lease deed by re-entering into the premises in question, upon termination of the said deed.

11. The issue before us is whether the learned Single Judge, under the facts and circumstances of the case, could not have restrained the appellants from evicting the writ petitioners from the premises in question, by passing an interim order.

12. A deed of lease was entered into between the writ petitioners and the Government of West Bengal on November 25, 2021 in respect of land measuring 31.3162 cottahs in plot No. 18/9, D.D Block, Sector 1, Bidhan Nagar, North 24 Parganas. The said deed was not a registered document. It is a tenancy by month to month. The relevant clauses of the said deed are quoted below for appreciation of the factual disputes which arose between the parties :-

“(7) The Lessee shall not sub-divide or sub-let the demised land or the building to be constructed without the consent in writing of the Government first had and obtained and the Government shall have the right and be entitled to refuse its consent at its absolute discretion.

(8) The Lesser shall not assign or transfer the demised land or any part of the demised land and/or the structure erected thereon without the previous permission of the Government in writing. In case of transfer or assignment or the lease the Lessor shall have the right of pre-emption and upon the exercise of this right the building constructed by the Lessee on the land shall be taken over by the Lessor at a valuation of the building made by the Lessor on the basis

of the costs of construction of the building less depreciation at the usual rate or the market value thereof, whichever is less. The value of the land will be the amount of the salami or premium paid by the Lessee. In the event of difference between the parties as to the value of building, the matters in dispute shall be referred to the arbitration of an arbitrator if the parties can agree upon one or otherwise to two arbitrators, one to be appointed by each party with an Empire. The award of the arbitrator or arbitrators or the Umpire, as the case may be, shall be final and binding on both the parties.

(9) Not to use or allow to be used the land and/or the structure thereon or any part thereof for any purpose other than for the purpose stated above without the prior permission in writing of the Government or other authority prescribed in that behalf.”

13. The records reveal that construction was made and portions of the property were let out to M/s. Max Life Insurance Company Limited, Concord Diagnostic Center and Lumina Health Center and also Aditya Birla Sun Life Insurance Co. Ltd. In respect of Max Life Insurance Company Limited, a post facto approval was accorded. With regard to letting out to Concord and Lumina, payment of charges for grant of permission to transfer was claimed. At that juncture the appellants were informed that Concord and Lumina had vacated the premises.

14. Aditya Birla Capital's occupation of the 5th Floor unit as a lessee became the genesis of the dispute which led to the filing of the writ petition. It is true that parties were negotiating and the appellants advised the writ petitioners to enter into a tenancy agreement with Aditya Birla Sun Life Insurance Co. Ltd. instead of a lease agreement depicting the writ petitioner No. 1 as the lessor/owner. By a letter dated April 9, 2025, the Additional Secretary, Government of West Bengal

asked the Director, Bartaman Magazines Pvt. Ltd. to submit certain documents and take necessary action in respect of the proposals made for grant of post facto approval for letting out the property to Aditya Birla Sun Life Insurance Co. Ltd., Concord and Lumina. Relevant portions of the said letter are quoted below :-

“(i) to cancel the “Lease Agreement” executed on the 16th Day of November, 2023 between Bartaman Magazines Pvt. Ltd. and Aditya Birla Sn Life Insurance Co. Ltd. and to submit a copy of Tenancy agreement between Bartaman Magazines Pvt. Ltd. and Aditya Birla Sun Life Insurance Co. Ltd. to this Department.

(ii) to submit an undertaking in the form of an affidavit in respect of Concord Diagnostic Center and Lumina Health Center declaring that all the requisite formalities under the Clinical Establishment Act, Government of West Bengal such as obtaining licence from the competent authority to start such clinics as well as following all rules and regulations for running such establishments have been duly followed and it would be entirely the responsibility of the lessee and/or the tenant to comply with all the requisite norms and the UD & MA Deptt. would not have any responsibility in case of any default/violation on part of the lessee or the proposed tenant.”

15. In our, prima facie, view the said letter clearly indicated the fate of the permission that was pending and the learned Judge did not consider such document. Instead, it was held that, when the request for permission filed by the writ petitioners to the respondent authorities in respect of letting out the premises was pending before the authorities, the notices could not be issued without following the procedure prescribed under the Transfer of Property Act.

16. In our prima facie, view the document dated April 9, 2025 indicated the compliances to be made by the writ petitioners on the basis of which consent would be given. We also find that a notice was issued on June

23, 2026, requesting the Director, Bartaman Magazines Pvt. Ltd. to remedy the breaches caused within three days from the date of issuance of the notice. These disputes fall within the realm of the contractual relationship between the parties.

17. The relationship between the appellants and the writ petitioners are governed by the agreement. Even if the said tenancy is governed by the Transfer of Property Act, the lessor has the right to determine the lease by issuing proper notice. The agreement provided that the land shall not be used for any purpose, other than the purpose stated in the said agreement, without the prior permission in writing of the Government. According to the appellants, the said clause was violated and hence the notices were issued. Clause 18(4) also provides that, if there was breach of any term or condition or covenant of the said deed by the lessee, the lessor would have the right to re-enter into the premise. However, the lessor should not exercise the right without serving the lessee a notice in writing, giving him sixty days' time to remedy the breach. According to the appellants/lessors the breach had not been remedied and the notice dated April 9, 2025 had not been complied with by the said notice. The appellants had asked the Director, Bartaman Magazines Pvt. Ltd. to carry out certain actions. That was the first opportunity given to the writ petitioners to remedy the breach.

18. Thereafter, the appellants issued a show cause notice upon the writ petitioners to remedy the breaches mentioned in the said notice by

granting three days time. However, the notice does not indicate that the appellant would enter into the property without following the law. Even the notice dated July 7, 2026, would not authorize the appellants to enter into the premises without due process of law. The appellants have been asked to clear out the unit used by Aditya Birla Capital. Such a direction does not amount to forceful entry into the premises, in derogation to the right of the lessee.

19. According to the appellants, Aditya Birla Capital could not continue to stay in the premises as the same was let out to the said company in breach of the terms and conditions of the lease deed. Thus, a blanket order restraining initiation of any eviction proceeding against the petitioners could not have been passed. It is entirely the desire of the landlord/lessor. Whether the notices could be the basis of any eviction suit or not, must be decided by the Civil Court. If the notices are found to be bad in law the suit will fail. At this stage, no such eviction proceeding has been initiated. His Lordship also erred in holding that any eviction proceeding would be in violation of the principles of natural justice. Every lessor has a right to determine the lease/tenancy and such decision will stand the scrutiny of a Civil Court, in an appropriate proceeding.

20. Under such circumstances, we allow the appeal and set aside the order impugned. We leave it open to the learned Single Judge to decide

the writ petition on its own merits, upon exchange of affidavits, with regard to the other issues raised by the appellants.

21. In ***Radha Krishna Agarwal and Others vs. State of Bihar and Others*** reported in **(1977) 3 SCC 457**, the Hon'ble Apex Court held that when the State or Governmental authorities were acting in contractual fields, they could not be controlled by Article 14 of the Constitution. The dispute as to whether there was breach or not, should be ordinarily determined by the Civil Court.

22. When the contract entered into between the State and the person aggrieved was non-statutory, the rights and liabilities would be governed by the terms of the contract. The writ court lost all its jurisdiction to exercise prerogative powers under Article 226 of the Constitution of India. Unless and until the breach involved violated certain legal and public duties, the writ court could not remedy any breach in exercise of powers under Article 226 of the Constitution of India.

23. In this case, the contract was non-statutory and the rights and liabilities of the parties were governed by the agreement. In a writ petition challenging the contents of the notices issued by the lessor, a blanket protection to the lessees, restraining eviction proceedings was unwarranted.

24. In ***Kerala State Electricity Board and Another vs. Kurien E. Kalathil and Others*** reported in **(2000) 6 SCC 293**, it was held that disputes arising out of the terms of the contracts or alleged breaches

have to be dealt by the ordinary principles of law of contract. The fact that one of the parties to the agreement was a public body or a statutory body, would not itself affect the principles to be applied.

25. In this case, the appellant as private parties had entered into a lease agreement with the writ petitioners. The said action did not involve any public law element. The contract between the parties, is in the realm of private law.

26. In ***Joshi Technologies International INC. vs. Union of India and Others.*** reported in **(2015) 7 SCC 728**, Hon'ble Apex Court enumerated the legal position which emerged from various judgments of the Apex Court dealing with different situations/areas, relating to contracts entered into by the State or public authority with private parties. The relevant portions are quoted below:-

“70.4. Writ jurisdiction of the High Court under Article 226 of the Constitution was not intended to facilitate avoidance of obligation voluntarily incurred.

70.5. Writ petition was not maintainable to avoid contractual obligation. Occurrence of commercial difficulty, inconvenience or hardship in performance of the conditions agreed to in the contract can provide no justification in not complying with the terms of contract which the parties had accepted with open eyes. It cannot ever be that a licensee can work out the licence if he finds it profitable to do so : and he can challenge the conditions under which he agreed to take the licence, if he finds it commercially inexpedient to conduct his business.

70.6. Ordinarily, where a breach of contract is complained of, the party complaining of such breach may sue for specific performance of the contract, if contract is capable of being specifically performed. Otherwise, the party may sue for damages.

70.7. Writ can be issued where there is executive action unsupported by law or even in respect of a corporation there is denial of equality before law or equal protection of law or if it can be shown that action

of the public authorities was without giving any hearing and violation of principles of natural justice after holding that action could not have been taken without observing principles of natural justice.

70.8. If the contract between private party and the State/instrumentality and/or agency of the State is under the realm of a private law and there is no element of public law, the normal course for the aggrieved party, is to invoke the remedies provided under ordinary civil law rather than approaching the High Court under Article 226 of the Constitution of India and invoking its extraordinary jurisdiction.

70.9. The distinction between public law and private law element in the contract with the State is getting blurred. However, it has not been totally obliterated and where the matter falls purely in private field of contract, this Court has maintained the position that writ petition is not maintainable. The dichotomy between public law and private law rights and remedies would depend on the factual matrix of each case and the distinction between the public law remedies and private law field, cannot be demarcated with precision. In fact, each case has to be examined, on its facts whether the contractual relations between the parties bear insignia of public element. Once on the facts of a particular case it is found that nature of the activity or controversy involves public law element, then the matter can be examined by the High Court in writ petitions under Article 226 of the Constitution of India to see whether action of the State and/or instrumentality or agency of the State is fair, just and equitable or that relevant factors are taken into consideration and irrelevant factors have not gone into the decision-making process or that the decision is not arbitrary.

70.10. Mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirements of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness.

70.11. The scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes.”

27. In our view, the writ petition should have been restricted to the consideration of the executive highhandedness alleged by Mr. Bhattacharya in paragraph 38 of the writ petition. We have only laid

down the principles of law, without making any comment on the factual issues which have been raised in the complaint.

28. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties, upon fulfilment of requisite formalities.

(Shampa Sarkar, J.)

I agree.

(Arjun Ray Mukherjee, J.)