

(2015) 06 CAL CK 0049
In the Calcutta High Court
Case No : Writ Petition 16492 (W) of 2014

Abdul Matleb

APPELLANT

Vs

Haldia Dock Complex and Others

RESPONDENT

Date of Decision : 18-06-2015

Acts Referred:

Citation : AIR 2015 Cal 205

Hon'ble Judges : Biswanath Somadder, J

Bench : Single Bench

Advocate : Robiul Islam and Jayed Hossain, for the Appellant; Pradip Roy, Advocates for the Respondent

Judgement

Biswanath Somadder, J—In terms of the order dated 14th May, 2015, the writ petitioner accompanied by an authorized officer of the Haldia Dock complex visited and inspected the relevant quarter in order to ascertain whether the same has been vacated or not. The inspection report handed over to the Court by the learned advocate representing the Kolkata Port Trust may be taken on record.

2. The inspection report reveals that the quarter is under lock and key and upon query, the next door neighbour has revealed further that the wife of the petitioner resides in the quarter. The writ petitioner confirmed that he had failed to surrender the quarter - though he tried to do so on several occasions - since his wife continues to reside in the quarter.

3. It is the admitted position that the petitioner and his wife are estranged and matrimonial proceedings are pending. It is also on record that a civil suit has been initiated by the estranged wife against her husband as well as the authorities of the Port Trust/Haldia Dock Complex in respect of the quarter, which continues to be occupied by her.

4. Undoubtedly, the writ petitioner and his wife used to reside in the official accommodation/quarter allotted to the writ petitioner by the Haldia Dock Complex/Port Trust Authorities. The official accommodation/quarter, during the

period of allotment, therefore, was the couple's home. However, the wife cannot claim possession of the official accommodation/quarter, once the writ petitioner became disentitled to occupy the same. A spouse's right to enjoy occupation of an official accommodation/quarter and even calling it his/her matrimonial home co-exists with the right of the allottee spouse to enjoy occupation of such accommodation/quarter, but cannot travel beyond the allottee spouse's entitlement or right to enjoy occupation of the official accommodation/quarter. In other words, the spouse's right or entitlement vis-a-vis the allottee spouse's right or entitlement is inalienable in nature.

5. The wife, being the respondent No. 5, however, remains unrepresented in spite of being put on notice and in spite of specific observation of this Court as contained in the order dated 18th June, 2014.

6. Ordinarily, the wife should vacate and/or shift since neither the writ petitioner nor his wife can claim to have any legal right to occupy the official accommodation/quarter, once disentitled.

7. In such facts and circumstances, the writ petition is disposed of with a direction upon the Kolkata Port Trust and/or the Haldia Dock Complex to initiate action against the private respondent No. 5 under the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971, in the event she does not vacate and/or shift within three weeks from date since she has no legal right nor is entitled to remain in occupation of an official accommodation/quarter allotted to her husband by the respondent authorities during the course of his employment, especially in a fact situation where her husband has already moved out consequent upon his voluntary retirement.

8. It will be open to the Kolkata Port Trust/1 the Haldia Dock Complex authorities to realize their dues with regard to the occupation charges from the private respondent No. 5 in accordance with law, since it is the admitted position that the writ petitioner is not in physical possession of the quarter in view of the inspection report filed before this Court today.

9. The concerned authority of Kolkata Port Trust and/or the Haldia Dock Complex shall take steps to release the retiral dues of the petitioner as expeditiously as possible, since it is palpably evident that he is not in occupation of the official accommodation/quarter, which continues to be wrongfully occupied by his estranged wife even after he has physically vacated the official accommodation/quarter. Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.