

(2023) 08 CAL CK 0035

In the Calcutta High Court

Case No : M.A.T. No. 1865 Of 2022, I A CAN 2, 3 Of 2022

Indian Oil Corporation Ltd. & Others

APPELLANT

Vs

Sikha Ghosh & Ors.

RESPONDENT

Date of Decision : 14-08-2023

Acts Referred:

Constitution Of India, 1950 — Article 12, 32, 226
Transfer of Property Act, 1882 — Section 116

Citation : (2023) 08 CAL CK 0035

Hon'ble Judges : Arijit Banerjee, J; Apurba Sinha Ray, J

Bench : Division Bench

Advocate : Tilak Kr. Bose, Vineeta Meharia, K. Kejriwal, Amit Meheria, Paromita Banerjee, Subika Paul, Kalyan Bandopadhyay, Debabrata Saha Roy, Rajdeep Bhattacharya, Neil Basu, R. K. Singh, Tapojit Das, Sankha Biswas, Surya Prasad Chatterjee, Arjun Samanta

Final Decision : Allowed

Judgement

Apurba Sinha Ray, J

1. Being aggrieved by and dissatisfied with the judgment and order dated 16.08.2022 passed in WPA No. 20392 of 2021 the instant appeal was preferred by the appellant Indian Oil Corporation Ltd. (in short 'IOCL'). The matrix of the factual aspects may be encapsulated as hereunder:-

a) Two sisters-in-law Saila Rani Ghosh and Shefali Ghosh were the joint owners of an immovable property and by virtue of a registered deed of lease (executed in 1968 but with effect from 1965) the said property was leased out to IOCL for 10 years with renewal clauses for 20 years thereafter.

b) IOCL started petroleum business therein after appointing dealers for running the said business in the said property. The dealers were the family members of the said owners who granted lease to IOCL.

c) The said owners/sisters-in-law partitioned the said property by a registered

deed of partition in the year 1969 whereby Saila Rani Ghosh got Lot 'A' and Lot 'C' and Shefali Ghosh got Lot 'B' 'D' & 'E' in their exclusive possession. The petrol pump business is run from both Lot 'A' and Lot 'B' of the partitioned property.

d) On the request of the said sisters-in-law, IOCL was paying 50% of the premium as agreed in the lease deed to each of the lessors as aforesaid.

e) The materials on record show that there was a family settlement by which Shefali Ghosh and her relatives got the petrol pump business running in the aforesaid Lot 'A' & Lot 'B' (though she was not exclusive owner of Lot 'A') property, whereas Saila Rani Ghosh and her relatives got the copper business of the family in another property elsewhere.

f) A few days before expiry of the lease deed, IOCL addressed a letter to both the sisters-in-law exercising its option under lease deed for purchasing the leased property as per relevant condition of the lease deed.

g) One sister in law namely Saila Rani Ghosh (the exclusive owner of Lot 'A') did not accede to such request of IOCL and filed an eviction suit against IOCL for a decree of recovery of possession for her allotted portion i.e. Lot 'A' as per partition deed and the Learned Court of first instance decreed the said suit and IOCL was directed to vacate the portion of Saila Rani Ghosh which she obtained by virtue of the partition deed and the said decree was affirmed in the first appeal. IOCL has preferred a second appeal before the Hon'ble High Court which is pending. The other sister in law Shefali Ghosh had also asked IOCL to quit and vacate her portion of property i.e. Lot 'B' which she got by virtue of the said partition deed. However, the said Shefali Ghosh did not file any eviction suit against IOCL after expiry of the period of lease and tried to persuade IOCL to purchase her portion of land i.e. Lot 'B' at market price which was not accepted by the IOCL till date.

h) In 2021, Shefali Ghosh's successors filed a writ application praying for issuance of writ of mandamus directing IOCL to quit and vacate the portion of land comprised in Lot 'B' along with other reliefs.

i) The writ court allowed the prayer of Shefali Ghosh after opining that no complicated questions of fact are involved and also holding that the writ court under Article 226 of the Constitution in appropriate cases can issue writ of mandamus directing a statutory corporation to quit and vacate leasehold premises, and accordingly directed IOCL to quit and vacate the portion of land which Shefali Ghosh obtained by virtue of partition deed in the year 1969, by judgment and order dated 16.08.2022 (modified on 05.09.2022).

2. Against the said judgment and order passed by the Learned Single Judge on 16.08.2022 as modified on 05.09.2022 the present appellant filed the instant appeal on the grounds inter alia:-

a) The Learned Single Judge has erred in passing the final order without giving direction for filing affidavit-in-opposition.

b) The Learned Judge has also erred by relying on Judgments (not cited by either party) after the matter was reserved for judgment without giving the appellants an opportunity to deal with the same.

c) No order of eviction and payment of arrear rent on the basis of market rate could have been passed in a writ petition.

d) The said writ petition involved civil dispute arising from a contractual lease which could not be the subject matter of writ jurisdiction. It is true that in respect of Lot A of the property, Saila Rani Ghosh had filed an eviction suit against IOCL including Shefali Ghosh the owner of the self-partitioned plot B of the property as proforma defendant and the said suit resulted in an eviction decree. In the first appeal, realizing that IOCL could not be evicted from the entire property, including plot A since structure of IOCL was over the entire property, the decree was modified in the year 2006. What was totally ignored in passing the judgment was the effect of the dealership agreement and the separation of petrol pump business in favour of Shefali and the acquiescence of Saila Rani Ghosh to Shefali Ghosh and/or her husband and sons carrying on such business from the entire property. In any event the said decree which relates to only Plot A is subject matter of a second appeal. By order dated 9th July, 2010 a sum of Rs. 50,000/- is being deposited by IOCL without prejudice to its rights and contentions in the appeal. It appears that while admitting the second appeal it has been stated incorrectly that IOCL had purchased the Lot B of the property. The present officers of IOCL are not aware at all the basis on which such averments were made. It appears that such statement was made in 1994 in the written statement to the eviction suit by an officer of IOCL at the relevant time. The said officer has long retired. The second appeal filed in 2005 proceeds merely on the basis of such statement made in court as early as in 1995 which was reiterated in the stay application in the second appeal by another officer of IOCL who has also retired. Whether or not IOCL purchased Lot B was wholly immaterial for the purpose of deciding issues in the eviction suit filed by Saila Rani Ghosh. But it is a fact that discussions to purchase Lot B had reached an advance stage.

e) Without there being a marketable title for the entire property, it was not possible for IOCL to purchase the same since IOCL is a statutory corporation. Moreover, it did not have the approval to purchase only portions of the leasehold property. It is pertinent to mention that the structure of IOCL and petrol pump business comprised of the entire leased premises and is not restricted only to Lot B.

f) The reliefs granted in the final order involved disputed questions of law and fact and one based on evidence which cannot be adjudicated in a writ petition.

g) Learned Judge failed to consider that the lease deed dated 19th October, 1968 executed by Saila Rani Ghosh and Shefali Ghosh being the joint owners in favour of the appellant was with effect from 1st July, 1965 and was for the purpose of

setting up of a petrol pump thereon to enable family members of the lessors to remain in possession thereon as dealers to carry on petrol pump business.

h) The Learned Judge has failed to consider that subsequent to the setting up of the petrol pump on the lease hold land a family settlement was arrived at between Saila Rani Ghosh and Shefali Ghosh on or about 14th February, 1974 whereby Saila Rani Ghosh had relinquished her right in the petrol pump business in favour of Shefali Ghosh.

i) The Learned Judge failed to consider that in the suit for eviction filed by Saila Rani Ghosh, Shefali Ghosh opposed the eviction of the appellants on the grounds inter alia that the lease hold land was not partitioned by metes and bounds and had remained unpartitioned and the stand of her heirs in the present writ petition was at variance with such earlier stand.

j) Direction to deliver vacant and peaceful possession after removal of structures purports to interfere with the order of status quo passed in respect of Lot A by the Hon'ble Division Bench of High Court at Calcutta.

3. Learned Senior Advocate Tilak Kumar Bose appearing on behalf of the appellants has argued that no final relief can be passed in a writ petition without permitting the respondent to file an affidavit-in-opposition. As the appellants were not permitted to file affidavit-in-opposition in the writ proceedings, the impugned judgment is liable to be set aside. In support of his contention the learned counsel has referred to case laws reported at (2011) 6 SCC 695 (State of Karnataka and Others Vs. Janthakal Enterprises and Another) (paras 15, 17, 18, 21, 22, 23), (2019) 3 SCC 301 (State of Himachal Pradesh and Others Vs. Ganesh Dutt and Another) (paras 1, 2, 3 & 4), (2004) 13 SCC 781 (State of Uttaranchal and Others Vs. Rajendra Singh) (paras 1 & 2), Manu/WB/1438/2017 unreported judgment of Division Bench dated 29.03.2017 in MA No. 007 of 2017 (The Lieutenant Governor & Others Vs. M/s. RPP Infra Projects Limited & Ors.) (paras 5, 6 and 13, 14, 17).

4. Learned Counsel also argued that it is settled law that disputed questions of fact and title cannot be entertained in a writ petition. He drew the attention of this court to the case laws reported at (1976) 3 SCC 160 (D.L.F. Housing Construction (p) Ltd. Vs. Delhi Municipal Corporation and Others) (paras 19 & 20), (1980) 4 SCC 570 (New Satgram Engineering Works and another Vs. Union of India and Others) (paras 18, 24).

5. Learned Counsel further argued that the writ court should not entertain a writ application if there is suppression of material facts and there is no candid disclosure of important relevant facts. In this regard he referred to case laws reported at (2008) 12 SCC 481 (K.D. Sharma Vs. Steel Authority of India Limited and Others) (paras 34 to 39), (2007) 8 SCC 449 (Prestige Lights Ltd. Vs. State of Bank of India) (paras 33 to 36).

6. Learned Counsel of the appellants has also vehemently argued that by mere

bifurcation of rent without partition by metes and bounds the integrity of tenancy or lease is not affected. In support thereof, he referred to the case laws reported at AIR 1951 SCC 108 (Badri Narain Jha and Others Vs. Rameshwar Dayal Singh and Others) (paras 7, 9, 14, 15 & 16), (1950) 86 Cal LJ 198 (Durgarani Devi Vs. Mohiuddin and Ors.) (paras 44, 45 & 46), AIR 1979 Cal 367 (Dr. Amar Prasad Gupta Vs. Arun Kumar Shaw) (para 8)

7. Learned Counsel for the appellants then submitted that in the case of a private contract, the writ court should not direct eviction. Situation may be different in case of statutory contracts (if no disputed question of fact and title are involved). Learned counsel referred to case laws reported at (2004) 8 SCC 579 (Bharat Petroleum Corporation Ltd. And another Vs. N.R. Vairamanik and another) (paras 2, 3, 4, 6, 7, 8, 9, 10, 12, 13, 14, 15, 17, 18), (1999) 4 SCC 450 (Hindusthan Petroleum Corporation Ltd and another vs. Dolly Das) (paras 1, 2, 4, 7, 9, 11) 2015 SCC OnLine Cal 7442 (Amar Nath Roy & Ors. Vs. The State of West Bengal & Ors.,) (2021) 1 ALL LJ 285 (Bio Tech System Vs. State of U.P. and others) (paras 18, 20, 21 & 27).

8. According to learned Counsel of the appellants, though the judgment in National Company Vs. Territory Manager, Bharat Petroleum Corporation was not cited by any party, the Learned Single Judge, relying on the said judgment, without giving any opportunity to the appellants to deal with the same, passed the impugned judgment. In support of his contention he relied on the case laws reported at 2021 SCC OnLine SC 1042 (National Company Vs. Territory Manager, Bharat Petroleum Corporation Ltd.) and also (2019) SCC OnLine Mad 38941 (National Company Vs. Territory Manager, Bharat Petroleum Corporation Ltd.). According to the learned counsel of the appellants in judicial proceedings any violation of principles of natural justice renders the judgment and order void. He referred to the case law reported at (2009) 12 SCC 40 (Uma Nath Pandey and Others vs. State of UP & Ors.) (paras 3 & 4). Learned counsel also submitted that the land lord cannot approbate and reprobate after taking a contrary stand in the suit filed by the owners of the plot. In this regard case laws reported at (2006) 7 SCC 756 (Jai Narain Parasrampur and others vs. Pushpa Devi Saraf and others) (paras 32, 33, 37, 42), (2011) 7 SCC 69 (Amar Singh Vs. Union of India and others) (para 49 and 50) have been cited. Learned counsel also argued that Learned Single Judge cannot seat in appeal over an order passed by another Learned Single Judge or pass any order in conflict with such order. In this regard the learned counsel has relied upon case laws reported at (1987) 1 SCC 61 (Devaraju Pillai Vs. Sellayya Pillai).

9. Per Contra, Mr. Kalyan Bandhopadhyay, learned senior Advocate appearing for the respondents has argued that the plea of alternative remedy is not sacrosanct in the factual scenario of this case. The writ jurisdiction of the Hon'ble High Court under Article 226 of the Constitution can be exercised if there are admitted factual aspects and where no detailed evidence on facts is needed. In this regard he referred to the case law reported at (1980) 2 SCC 593 (Gujarat Steel Tube

and Others Vs. Gujarat Steel Tubes Majdoor Sabha & Ors.) where, authoring the judgment, Hon'ble Justice V.R. Krishna Iyer observed that while the remedy under Article 226 is extra-ordinary and is of anglo saxon vintage, it is not a carbon copy of English processes. Article 226 is a sparing surgery but the lancet operates where injustice suppurates. "While traditional restraints like availability of alternative remedy hold back the court, and judicial power should not ordinarily rush in where the other two branches fear to tread, judicial daring is not daunted where glaring injustice demands even affirmative action". By referring to the said judgment, Learned Counsel has also pointed out that a Division Bench of a High Court can interfere with the order appealed against not when the same is not right but only when it is clearly wrong.

9.1. Learned counsel also referred to the case law reported at (2006) 2 SCC 269 (L.K Verma Vs. HMT Limited & Anr.) wherein the Hon'ble Supreme Court observed that once a writ petition has been entertained and determined on the merits of the matter, the appellate court, except in rare cases, would not interfere therewith only on the ground of existence of alternative remedy.

10. The Learned Counsel submitted that the appellant no. 1 being a statutory corporation, has been occupying the land of the respondents without paying a single farthing since 1995 on several flimsy and technical grounds and the Hon'ble Supreme Court in many a case has deprecated such stand of statutory corporations.

11. Learned Counsel referred to the case law reported at (2006) 1 SCC 228 (para 26 & 43) (C. Albert Moris Vs. K. Chandra Shekharan & Others). In the said case the Hon'ble Supreme Court observed that "in our opinion any right which the dealer has over his site was the right which he had acquired in terms of the lease. When that lease expired and when the landlord declined to renew the same and also called upon the erstwhile tenant to surrender possession, the erstwhile lessee could no longer assert that he had any right to the site. His continued occupation of something which she had no right to occupy cannot be regarded as sources of a right to the land of which he himself was not in lawful possession. As observed by this Court in M C Chockalingam Vs. Manickavasagam litigious possession cannot be regarded as lawful possession."

12. Learned counsel also took us through the observation of the Hon'ble Supreme Court in (1999) 4 SCC 450 (Hindusthan Petroleum Corporation Limited and Another Vs. Dolly Das) wherein the Hon'ble Apex Court observed as follows:-

"i) We may now advert to the contention that the writ remedy is not appropriate in this case. Where interpretation of a contract arises in relation to immovable property and in working such a contract or relief thereof or any other fall out thereto may have the effect of giving rise to an action in tort or for damages, the appropriate remedy would be a civil suit. But if the facts pleaded, before the court are of such a nature which do not involve any complicated questions of fact including elaborate investigation of the same, the High Court could also exercise

writ jurisdiction under Article 226 of the constitution in such matters. There can be no hard and fast rule in such matters. When the High Court has chosen to exercise its powers under Article 226 of the Constitution, we cannot say that the discretion exercised in entertaining the petition is wrong.”

13. Mr. Bandhopadhyay further submitted that as the respondents’ predecessor did not accept the premium after the expiry of the lease period, it is sufficient to show that the said predecessor Smt. Shefali Ghosh had ‘no consent’ in favour of the appellants for continuation of their possession of the relevant plot of land. Moreover series of letters were issued from the side of the said predecessor intimating that she was not willing to extend the period of lease and she further asked the appellants to vacate the relevant plot of land. In this regard learned counsel referred to the case law reported at (1972) 1 SCC 388 (Bhawanji Lakhamshi & Others Vs. Himatal Jamnadas Dani & Others.) wherein the Hon’ble Supreme Court has been pleased to observe that what Section 116 of Transfer of Property Act contemplates is that on one side there should be an offer of taking a new lease evidenced by the lessee or sub-lessee remaining in possession of the property after his term was over and on the other side there must be a definite consent to the continuation of possession by the landlord expressed by acceptance of rent or otherwise. Learned counsel has also pointed out that mere acceptance of amounts equivalent to rent by landlord from a lessee in possession after a lease has been determined either by efflux of time or by notice to quit cannot be regarded as evidence of a new agreement of tenancy. However in the present case, no acceptance of rent/premium was done by the predecessor of the respondents. On the contrary, she asked the appellants to quit and vacate the premises in question.

14. Learned counsel for the respondents has submitted that it is unbecoming of a statutory corporation like IOCL to hold over the land for decades without paying a single farthing and to protract the litigation for the purpose of its business. Learned counsel has referred to the case law reported at (2018) 13 SCC 623 (Kolkata Metropolitan Development Authority Vs. Pradip Kumar Ghosh & Ors.) to persuade this court that when public duties exist, the High Court has power to issue a writ of mandamus. In the said case law the Hon’ble Supreme Court has been pleased to quote the observation made in the decision of CAG & Another Vs. K.S. Jagannathan & Another (1986) 2 SCC 679 which is as follows:-

“ 20. There is thus no doubt that High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion malafide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in

any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the parties concerned, the Court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its jurisdiction.”

15. Moreover in the said decision the Hon’ble Supreme Court has also quoted the observation made in (1989) 2 SCC 691 (Andi Mukta Sadguru Sree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust & others Vs. V.R. Rudani & Others) which is as follows:-

“20. The term “authority” use in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental right under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words “any person or authority” used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concern is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied.”

16. Learned counsel also referred to the case law reported at (2021) SCC OnLine SC 1042 (National Company Vs. Territory Manager, Bharat Petroleum Corporation Limited & Another) wherein the Hon’ble Supreme Court has been pleased to observe as follows: -

“26. Perusal of the impugned judgment rendered by the Division Bench would reveal that though an objection with regard to maintainability of the writ petition on the ground of alternate remedy was seriously raised by the respondent No. 1-BPCL, the Division Bench was not impressed much with the said submission. As a matter of fact, the Division Bench not only referred to the judgment of this Court in the case of ABL International Ltd. V. Export Credit Guarantee Corporation of India Ltd.,(2004) 3 SCC 553 but also emboldened the following observations of this Court while reproducing paragraph 19 of the said judgment, which reads thus:

“ 19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit.”

27. The Division Bench also referred to the judgment of this Court in the case of

Dolly Das (Supra), wherein this Court held that in similar facts, appellants therein were justified in approaching the writ Court under Article 226 of the Constitution of India and directed the HPCL to handover vacant possession and pay the monthly rent.”

17. Learned counsel for the respondents also cites the case law reported at (2011) 5 SCC 679 (paras 33 & 34) (Union of India Vs. Tania Construction Private Limited). The Hon’ble Supreme Court has been pleased to observe that even on the question of maintainability of the writ petition on account of there being an arbitration clause in the agreement between the parties, it is now well established that an alternative remedy is not an absolute bar to the invocation of jurisdiction of the High Court or the Supreme Court and the law is not that without exhausting such alternative remedy, a writ petition would not be maintainable. The constitutional powers vested in the High Courts or the Supreme Court cannot be fettered by any alternative remedy available to the aggrieved party. Injustice whenever and wherever it takes place, has to be struck down as an anathema to the rule of law and the provisions of the Constitution.

Court’s view

18. It is trite law that the writ court under Article 226 of the Constitution can issue appropriate writs in appropriate situations to arrest or remedy palpable injustice caused to any litigant public, and further can direct appropriate relief in favour of that person if he is entitled to the same under law. It is also settled law that a Division Bench can interfere with the judgment and order of the Learned Single Judge only if the said judgment and order is clearly a wrong one and not when it is one of the two or more possible views.

19. After considering the case laws cited by learned counsel of both sides and also after considering the submissions of learned counsels, I have come to the conclusion that the case in our hand is a unique one and the factual scenario of the cases cited from the bar are completely different from that of the present case in our hand. The instant case has some unique and extraordinary features in view of the fact that the IOCL was allowed to run petroleum supply business in the joint property of its lessors. The nature of business of IOCL requires it to arrange for storage of petroleum, dispensing units and other installations in the said joint property of the lessors for the purpose of running the business effectively.

20. Now all on a sudden, the joint lessors decided to partition their joint property, and by a registered deed they partitioned their joint property and as a result, some portions of business installations of IOCL fell in the divided property of one lessor and other installations in the portion of other lessor. Before expiry of the lease period, though IOCL exercised its option under the lease deed for purchasing the property, one lessor refused, but the other lessor was willing to sell her portion in lieu of consideration as per market value.

21. Is it feasible for a Statutory Corporation running a petrol pump in a property

taken on lease to purchase a portion of land from the said leasehold premises and to vacate the other portion of the said premises where there may be installations, equipments, storages etc for the said business?

22. By the lease deed of 1968, only one lease in favour of the IOCL was created by the joint owners, and that lease cannot be bifurcated by the reasons of partition deed only, which was executed between the co-sharers inter se. Certainly, the lessee had no exclusive right to be a confirming party thereat. But considering the nature of petroleum business, the parties to the partition deed should have taken the lessee in the loop for avoiding future complications, which are now arising inevitably.

23. Therefore, as the lessors allowed IOCL to run its business on a joint property, the action for eviction from the said property should have been taken jointly in view of nature of business of IOCL which was permitted by the joint lessors in 1968. The business of IOCL is not like an ordinary tenant or lessee since its installations, equipments are scattered over both Lot A and B which were allotted in the respective exclusive possession of the joint lessors after the partition. Therefore IOCL can certainly raise this question that these fine factual aspects have not been considered by the writ court and further sufficient evidence is required for the purpose of proper adjudication of the dispute.

24. The difficulties arose as one of the lessors filed eviction suit for evicting IOCL from her portion but the other lessor did not file any eviction suit after the expiry of lease and therefore in my considered view as the business installation of the IOCL is scattered over Lot A and Lot B, an eviction suit for a portion of leased out premises is not desirable in the factual scenario of the case since it may seriously impair the business interest of IOCL. However if the action for eviction were taken by the both the lessors, may be by two suits for eviction, one for eviction from Lot A and another from Lot B, there would have been no difficulty in adjudicating the cases. But as one of the lessors filed eviction suit soon after the expiry of period of lease and the other kept mum regarding filing of eviction suit gave rise to serious legal consequences.

24.1. It is pertinent to mention that the predecessor-in-interest of the present respondent Nos. 1 to 6 being the proforma defendant in Title Suit No. 317 of 1996 before the Learned 3rd Court of Civil Judge (Junior Division) at Sealdah disclosed her stand in relation to the proposed eviction of IOCL from Lot A property and the same may be narrated hereunder:-

"That with regard to the statement made in paragraph 2 & 3 of the plaint of the instant suit, this Defendant begs to submit that the Defendant No.1 having obtained such Lease in respect of the suit property gave agency for running a Petrol pump on the suit property, by the plaintiff and this Defendant, upon execution of documents in writing. It is mentioned here that the plaintiff and this Defendant jointly was carrying on the said petrol pump business upon the land of the suit property and also another business for dealing with Copper etc, in other

premises. The plaintiff and this defendant having felt inconvenience in joint possession and running of the said two businesses decided to divide the same, among themselves and under such settlement one Deed was executed in between the plaintiff and this defendant and under such settlement the petrol pump business under agency of the defendant No.1 in the possession of this defendant and this defendant relinquished her right upon the said Copper business which is being running at promises No. 3/23, Krishna Mollick Road, Calcutta-700 037, and the said business is at present being run by the plaintiff as her sole business. It is further mentioned here that this Defendant relinquished her right over the said copper business on the understanding of the plaintiff that the plaintiff and this defendant shall create tenancy right in favor of the defendant upon expiration of the period under the Deed of Lease dated 19.10.1963 and with such understanding this defendant relinquished her right over the said copper business and as such the plaintiff has got no right to file the particular suit for recovery of possession of the demised property under the Deed of Lease dated 19-10-1963. It is further mentioned here that the land of the suit property has not been partitioned by metes and bounds by and between the parties under the Deed of Partition dated 15-03-1963 as it has been specifically agreed upon in between the plaintiff and this Defendant that the land of the suit property shall remain unpartitioned, so long this defendant shall run over the suit property nor petrol pump business and the said understanding was all through been going on since 1965 i.e., since the date of execution and registration of the said Deed of Partition in between the Plaintiff and this Defendant. The Plaintiff has no right to evict the Defendant No.1 for causing obstruction to this Defendant in running the petrol pump business over the land of the suit property. Since it has been agreed upon that this Defendant will run her patrol pump business over the land of the suit property so long she will desire as an agent of the defendant No. 1."

24.2. From the above statement of the predecessor-in-interest of the respondent Nos. 1 to 6, it appears that the said Shefali Ghosh had tried to impress upon the court that there was no partition of the land in question by metes and bounds under the deed of partition dated 15.03.1969 as it has been specifically agreed between the parties that so long the said predecessor-in-interest of the writ petitioners shall run the petrol pump business in the said property there would be no partition of the land in actual sense. If such was the stand of the said Shefali Ghosh, since deceased, in a judicial proceeding, the same cannot be withdrawn or abandoned by the respondent Nos. 1 to 6/writ petitioners in the present proceedings including the writ application. Such statement unearths the peculiarities and complexities involved in the factual aspects of the case and to adjudicate on such factual matters, elaborate evidence is required to be adduced. It is significant that in spite of partition deed between the parties, the predecessor-in-interest of the respondent Nos. 1 to 6 had taken the specific plea that there was no partition by metes and bounds between the concerned parties. There would be serious legal consequences if there is no partition by metes and

bounds in spite of execution of a registered partition deed.

24.3. The stand of the said Shefali Ghosh, the deceased predecessor-in-interest of the respondent Nos. 1 to 6, in the said title suit being no. 317 of 1996 gives rise to important factual and legal disputes. If there was such alleged understanding that the said Shefali Ghosh shall run the petroleum business in the suit property so long she desires, then by filing the writ application being no. 20392 of 2021, are the respondent nos. 1 to 6 praying for eviction of IOCL from the entire property or from 'Lot B' only? This query is due to the averment of their predecessor which she made in the above suit to the effect, that her co-sharer had no right to evict IOCL from the suit property, and therefore, the prayer for eviction of IOCL through the issuance of writ at the instance of the respondent nos. 1 to 6 must be in respect of Lot A and Lot B. If we accept this proposition, then it would certainly give rise to another factual improbability since IOCL had already suffered a decree of eviction in respect of Lot A which was also affirmed in the First Appeal and a Second Appeal is pending before the Hon'ble High Court wherein the parties are directed to maintain status quo. On the other hand, if the respondent nos. 1 to 6 contend that the writ application as aforesaid is only in respect of Lot B, then it goes against the contention of their own predecessor that there was no partition of the case property by metes and bounds and further, if there is no partition by metes and bounds, the partial eviction of IOCL either from Lot 'A' or from Lot 'B' is not permissible under the law. Undoubtedly, there are complicated factual issues involved in our present case.

24.3.1. Moreover the Learned Single Judge holds that "...the agreement pertains to the dealership business of the dealers and has nothing to do with the plot in question. Lease of the plot was granted to the respondents and an agreement entered into by the respondents with the dealers with regard to the business has no nexus whatsoever with the property in question or the deed of lease irrespective of the fact that the dealers are none other than the husband of the petitioners/lessors. ...Therefore the agreement entered into between the respondents and dealers can under no stretch of imagination be said to be a material fact in the writ petition..." Such conclusion is apparently a correct one but the averment of the predecessor of the respondents namely Shefali Ghosh in her written statement as proforma defendant has enhanced the complexities of the factual aspects. According to such averment, Shefali Ghosh shall run the petrol pump business and Saila Rani Ghosh had no right to evict IOCL or cause obstruction to the said Shefali Ghosh in running the petrol pump business over the relevant suit property, since it has been agreed upon between the parties that Shefali Ghosh will run her petrol pump business over the land of the relevant suit property so long she will desire as an agent of the defendant no. 1. This statement in the written statement of the proforma defendant in the above title suit has deepened the factual complexities as she claimed that actually she ran the petrol pump business through members of her family, and she was the agent of IOCL.

24.4. Therefore though the writ court has enough power to issue appropriate writ under Article 226 of the Constitution after considering the pros and cons of the case, the Hon'ble Apex Court of our country does not approve the plea that the writ court has the power to issue appropriate writs as and when called for even when there are serious factual disputes which need consideration of elaborate evidence. It appears that this is not a fit case where writ court should issue a writ of mandamus directing IOCL to vacate the premises in question without considering the relevant evidence.

25. Considering all the aspects we are constrained to set aside the impugned judgment and order passed by the Learned Judge. The respondent nos. 1 to 6 are at liberty to initiate appropriate proceedings at appropriate forum for eviction of IOCL from the concerned property as they deem fit and proper.

26. However, considering the fact that IOCL has been occupying the portion of respondent nos. 1 to 6's property from 1995, without paying any occupational charges, the appellant IOCL is directed to pay a sum of Rs. 50,000/- (fifty thousand) per month to the writ petitioners/respondent nos. 1 to 6 with effect from August, 2023 as occupational charge and is further directed to deposit a sum of Rs. 40,00,000/- (forty lakhs) immediately on account of arrear occupational charges in the name of the writ petitioners/respondent nos. 1 to 6 with the office of the Registrar General of the High Court at Calcutta till the dispute between the parties come to a logical end or till any contrary order is passed by any higher forum.

27. The instant appeal be and the same is allowed. The impugned judgment and order passed in WPA No. 20392 of 2021 dated 16.08.2022 by Learned Single Judge is set aside. There is no order as to costs. The connected applications if any, are disposed of.

28. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

I agree.