IN THE HIGH COURT AT CALCUTTA

(Appellate Side)
CONSTITUTIONAL WRIT JURISDICTION

Reserved on: 11/02/2021

Pronounced on: 12/02/2021

F.M.A. 190 of 2021
(MAT 142 of 2021)
With
C.A.N. 1 of 2021

Pawan Kumar Sultania

........Petitioner

Vs.

Union of India & Ors.

........Respondent

Coram: **THE HON'BLE JUSTICE RAJESH BINDAL**

THE HON'BLE JUSTICE ANIRUDDHA ROY

Present:- Mr. Surajit Nath Mitra,
Mr. Reetobrata Mitra,
Mr. Sankarshan Sarkar,
Mr. Prangopal Das

...Advocates for Appellants

Mr. Prabal Kumar Mukherjee,
Mr. Ashok Kumar Jena,

...Advocates for Respondents

ORDER

1. The instant appeal has arisen from the impugned order dated January 28, 2021 passed by the Hon'ble Single Judge of this Court in IA 1 of 2017 (Old CAN 10033 of 2017) arising out of W.P.A. 24791 of 2017, by which the writ petition along with the interlocutory application filed therein was directed to appear on February 8, 2021 as "specially fixed matter" and the Kolkata Port Trust Authority (for short, 'KPT') was directed to cause an enquiry into the matter and apprice the Hon'ble Single Bench as to why no positive action had been taken against the appellant/writ petitioner to execute the eviction order

passed under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act 1971 (for short, the 'P.P. Act').

2. The writ petitioner/appellant is the sole proprietor carrying on business under the name and style of M/S Sultania Overseas (India). The appellant carries on business of warehousing of raw materials and finished goods of irons and steel sheets and similar material from a portion of the godown located at Premises No. 1, Oil Installation Road, Kolkata 700088, Plate Code D/000000 231 and old No. D151/1 (for short, 'the said premises').

3. The appellant was inducted into the said premises (for short, the original lessee) as a monthly tenant of one Khemchand Raj Kumar who was the original lessee under the KPT. To occupy the said premises the appellant all along paid occupational charges to the said original lessee as per the Inter se Agreement. Disputes and differences arose between the appellant and the said original lessee on account of the quantum of rent payable by the appellant. The appellant suffered an eviction notice from the end of the original lessee. However, no eviction proceeding was initiated. The appellant is carrying on his business of storing diverse materials as stated above at the said premises.

4. On or about August 1, 2017 the representatives of KPT visited the said premises and the appellant came to know that eviction proceedings under the said P.P. Act were initiated against the original lessee. Upon enquiry the appellant came to know that an order of eviction was passed on June 1, 2017 in respect of the said premises as against the original lessee under the provisions of the said P.P. Act, declaring the said original lessee as an unauthorized occupant.

5. On or about August 7, 2017 the appellant made a representation before the Chairman, KPT, requesting to regularize its tenancy by accepting rent. The appellant on or about August 24, 2017 found a notice dated August 23, 2017 being pasted on the outside wall of the premises, wherefrom the appellant came to know that the possession of the said premises was taken over by the

estate officer, in terms of the said eviction order dated June 1, 2017 under the P.P. Act. Simultaneously padlock was put on the said premises by the KPT in which the materials belong to the appellant were lying. The details and particulars of the materials are mentioned in paragraph 15 of the writ petition. The appellant was not allowed to remove his materials.

6. Challenging the said action of the KPT, the appellant on or about September 14, 2017 filed the writ petition being W.P. No. 24791 (W) of 2017 (for short, 'the writ petition') inter-alia praying for quashing and withdrawal of the eviction order dated June 1, 2017 and also for prohibitory direction from creating any hindrance or any obstruction to the appellant from removing its materials lying inside along with other consequential reliefs.

7. An order was passed on September 22, 2017 in the said writ petition by which liberty was granted to the appellant to make representation with regard to its materials lying inside the premises and the KPT was directed to remain in possession of the materials of the appellant lying in the premises till disposal of such representation. Necessary representation was made by the appellant dated October 6, 2017 whereupon the appellant was granted hearing by the KPT authority on October 16, 2017. Vide a written communication dated October 18, 2017 the said representation of the appellant was disposed of by KPT. Under the said decision the KPT claimed more than Rs. 2 crore as due and payable as on October 16, 2017 in respect of the said premises on account of arrears of rent and incidental charges and the appellant was directed to make such payment and to get their materials released. From the said written decision it appears that the appellant did not make any counter offer same and except they were ready to pay a "reasonable amount".

8. Being aggrieved by the said decision of the KPT authority dated October 18, 2017 the appellant filed an interlocutory application being CAN 10033 of 2017 in the said pending writ petition, inter alia, praying for stay of operation of the said decision dated October 18, 2017 along with other

consequential prayers. In the said application the order impugned was passed.

9. Mr. Surajit Nath Mitra, learned Senior Counsel, appearing with Mr. Reetobrata Mitra, and Shankarshan Sarkar, Advocates, submitted at the outset that, a true and proper construction of Section 6 (1A) of the P.P. Act provides for a mandatory fourteen days' notice to be served on the persons owing such goods and materials lying inside the premises. It was submitted that the materials lying in a portion of the said premises are owned by the appellant and accordingly the appellant should have been served with a notice under Section 6 (1A) of the P.P. Act and in absence thereof the action of the KPT as against the appellant stands vitiated, and is illegal and void.

10. Mr. Mitra, learned Senior Counsel, further submitted that, the total area of the said premises which is a godown/warehouse is of about 3168.08 sq. mtr, of which the appellant is in exclusive occupation of about 200 sq. mts. The demand of the KPT on account of outstanding rent alongwith other incidental charges to the extent of more than Rs. 2 crore for the entire 3168.08 sq. mtr. from the appellant, as appearing from the said impugned decision dated October 18, 2017 is not only illegal and perverse but also arbitrary and in colourable exercise of power.

11. Mr. Mitra, then submitted that, the appellant was willing to pay the reasonable amount proportionate to the area under his occupation of about 200 sq. mtr. as would be evident from the said decision of the KPT authority dated October 18, 2017 and upon receipt of such reasonable proportionate amount the materials belongs to the appellant lying in the godown may be released. He further submitted that, the appellant is a small businessman. The appellant had obtained business loans by creation of hypothecation of such materials. The appellant thus, in view of the auction to be conducted by the KPT would suffers irreparable loss.

12. Mr. Mitra, then submitted that, appellant had received notice that the said materials would be put on auction on February 15, 2021 and as such there

is an extreme urgency in the matter and the writ petition may be disposed of preferably before such date.

13. Mr. Prabal Kumar Mukherjee, Learned senior counsel with Mr. Ashok Kumar Jena, Advocate appearing for the Port Trust Authorities submitted that the KPT does not recognize the appellant. The occupation of the appellant is wholly illegal and wrongful and by tress passing into the KPT's premises. There is no privity between KPT and the appellant in any manner. Pursuant to the direction of the Hon'ble Writ Court, the KPT authority by its communication dated October 18, 2017, after giving adequate opportunity of hearing to the appellant, communicated its decision mentioned therein and the KPT still stands to that.

14. In so far as, the legal submission is made on behalf of the appellant that a notice under Section 6(1A) of the P.P. Act is mandatorily required to be served upon the owner of the goods, Mr. Mukherjee, learned senior counsel submitted that, such a notice has duly been served upon all concerned in specific compliance of the statutory provisions on the statutory format. He submitted that wide newspaper publication of such notice was also made. Such fact would also be evident from the communication of the KPT dated October 18, 2017 whereby the representation of the appellant was considered pursuant to the direction of the Hon'ble Single Bench dated September 22, 2017. In view of such public notice, the appellant cannot contend that, he had no notice under Section 6(1A) of the P.P. Act.

15. Mr. Mukherjee, Learned Senior Counsel then placed reliance on the judgment of the Hon'ble Supreme Court delivered *in the matter of: In Civil Appeal No. 3910 of 2013 Board of Trustees for the Port of Kolkata And Others -versus- APL (India) Pvt. Ltd. and others,* decided on and submitted that, sub Section 3 of Section 5A of the P.P. Act authorizes the estate officer to remove any goods lying on any public premises after an order of eviction has been made under Section 5 of the P.P. Act. It is immaterial whether the said goods belong to the erstwhile tenant/licensee or to any other party. Sub Section

(1A) of Section 6 of the said P.P. Act authorizes the estate officer to dispose of such goods and materials etc. after giving fourteen days notice to the persons owing such goods and other procedure prescribed therein. Hence, the steps taken by the estate officer to put the goods lying in the said premises into auction, which has been scheduled on February 15, 2021 is lawful, valid and should not be interfered with.

16. After hearing learned counsels for the parties and perusing the material before this Court, it appears the facts are not disputed. Pursuant to the direction of the Hon'ble Writ Court the appellant made representation before the KPT authority which was disposed of by the KPT authority by its decision dated October 18, 2017, after giving adequate opportunity of hearing to the appellant. It is, therefore, imperative at that juncture that the appellant was aware of the entire eviction proceedings and the consequential eviction thereof. The appellant had a constructive notice of the said eviction decree and the consequential eviction proceedings and the subsequent effect thereof. In as much, as recorded in the said decision of the KPT authority that on September 2, 2017 notice under Section 6 of the P.P. Act was also published in the newspaper, which is a public notice. Such finding of the KPT authority was also not challenged by the appellant. In as much as, the appellant participated in the hearing in terms of the direction of the Court so his grievance relating to Section 6 (1A) of P.P. Act notice not being served, does not survive any more. At this belated stage the appellant, therefore, cannot take the plea that he being the owner of the goods and materials lying within the premises was not served with the notice under Section 6 (1A) of the P.P. Act.

17. The Hon'ble Supreme Court while dealing with identical issue in question *in the matter of: APL (India) Pvt. Ltd. and others (supra)* had been pleased to observe as under:

> *"20. It is clear from the above provisions that any person in occupation of the public premises without authority for such occupation is an unauthorized*

occupant. The expression 'spread on any public premises', contained in sub-section (1)(b) of Section 5A in the context also means 'lying in any premises'. Sub-section (30 of Section 5A authorizes the Estate Officer to remove any goods lying on any public premises after an order of eviction has been made under Section 5 of the Act. It is immaterial whether the said goods belong to the erstwhile tenant/license or to any other party. Sub-section (1A) of Section 6 authorizes the Estate Officer to dispose of such goods/materials, etc. after giving fourteen days' notice to the persons owing such goods and other procedure prescribed therein. It is not necessary that the persons owing the goods lying on the premises should be erstwhile tenants/licensees. It is also not necessary that there should be a privity of contract between the Port Trust and the third party to whom such goods and materials belong for disposing of the property by the Estate Officer under Section 6.

24. In the instant case, the contention urged on behalf of the Port Trust is that even if the goods belonging to the third parties are found lying on the premises after an order of eviction passed under Section 5, it was entitled to sell the goods and deduct from the sale proceeds any amount due to the Port Trust on account of arrears of rent damages, etc and that the balance of the sale proceeds shall be paid to such person or persons, a may appear to the Estate Officer, to be entitled for the same. We are in complete agreement with this submission made on behalf of the Port Trust. We are of the view that Section 6 of the PP Act has been enacted with obvious purpose of enabling statutory authorities to take all consequential steps after receiving possession of public premises and for recovery of dues, etc. The said provision ought not to be interpreted in a way which defeats the very purpose of its enactment. Section 6 of the PP Act must be read independent of, and not dependant on, Sections 59 and 61 of the MPT Act. As noticed above, Section 6 of the PP Act applies, inter alia, to the persons who keep their goods in the public premises whether they are tenants/licensees, sub-tenants or any other parties. The Estate Officer, under Section 6 of the PP Act, is entitled to sell the goods even of a stranger, found in/on the premises under unauthorized occupation".

18. In any event, the appellant was not a lawful inductee in the premises, namely, the said godown. He claims to be a sub lessee under the original lessee. The KPT has also confirmed to this Court that no prior permission was obtained by the original lessee prior to creation of such subletting in favour of the appellant. From the material placed before this Court nothing appears, to prove contrary. Thus, the appellant being an unlawful inductee

in the public premises cannot claim any protection under an eviction decree already passed under the P.P. Act against the original lessee.

19. No equity can be exercised, in the facts of this case, in favour of the appellant. The proposal of the appellant to pay the reasonable amount on the basis of the area occupied by it and to get the goods released from the custody of the KPT authority is a matter not to be looked into by this Court.

20. In view of our above discussions and the reasons stated herein above, the impugned order is not interfered with.

21. M.A.T. 142 of 2021 and C.A.N. 1 of 2021 stand accordingly dismissed.

22. There shall, however, no order as to costs.

(Aniruddha Roy, J.)

I agree.

(Rajesh Bindal, J)

Kolkata

12.02.2021

PA(RM)