HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction
(ORIGINAL SIDE)

A.P.O. 109 OF 2020
With
W.P.O 728 OF 2006
(G.A. 01 OF 2020)

BOARD OF TRUSTEES FOR THE PORT OF KOLKATA AND ORS.
.... Appellant (s)

Through: Mr. Joydip Kar, Sr. Adv.
Mr. Probal Mukherjee, Sr. Adv.
Mr. Amit Nag, Adv.
Mr. M. Roy, Adv.
Mr. S. Basak, Adv.

V/s

KANOI TEA PRIVATE LTD. AND ORS.

....Respondent(s)

Through: Mr. S.K. Kapur, Sr. Adv.
Mr. Shyamal Sarkar, Adv.
Mr. Sankarsan Sarkar, Adv.
Ms. Priyanka Prasad, Adv.
Mr. Meghajit Mukherjee, Adv.

Date: 12th July, 2021

Coram: HON'BLE JUSTICE RAJESH BINDAL, CHIEF JUSTICE (ACTING)
HON'BLE JUSTICE ARIJIT BANERJEE

ORDER

<u>Arijit Banerjee, J.:</u>

1. This appeal is directed against an order dated August 13, 2020, passed by a Learned Single Judge of this Court in G.A. No.943 of 2020 and

G.A. No.944 of 2020 filed by the Board of Trustees for Port of Calcutta (in short 'CPT') in a writ petition filed by the respondent Nos.1 & 2 herein.

2. The respondent no.1 company occupies premises as a tenant under CPT. It appears that, inter alia, because of default in payment of rent, the company suffered an order of eviction and also order for payment of arrear of rent passed by the concerned Estate Officer. Such orders were challenged by the company by filing the said writ petition. A prayer was also made for a direction upon the CPT Authorities to consider the scheme submitted by the company for liquidation of the dues of CPT.

3. On the writ petition, an order dated August 22, 2006 was passed, the operative portion whereof reads as follows:

> *"Since I find that the total amount due and payable excluding interest is in the tune of Rs.1.25 crores approximately, the petitioner no.1 is directed to liquidate the same in the manner following:-*
>
> *(i) The petitioner no.1 shall pay a sum of Rs.20 lakhs in three equal instalments on or before 25th of each month starting from the month of September, 2006.*
>
> *(ii) The petitioner shall also pay concurrently a sum of Rs.2.60 lakhs by 25th of each month for liquidating the dues starting from the month of September, 2006.*

> *(iii) The petitioner no.1 shall also go on paying the monthly rent regularly to the respondents.*
>
> *If the petitioner no.1 goes on depositing the amount and the monthly rent as directed, the impugned orders dated 5th December, 2005, 22nd March and 15th May, 2006 shall remain stayed. However, in case the petitioner fails to deposit anyone of the instalments or the current rent as directed, interim order shall stand automatically vacated and the order passed by the Estate Officer shall stand revived. Let affidavit in opposition be filed by 20th September, 2006. Reply, if any, by 10th November, 2006. Thereafter, parties are at liberty to mention for hearing upon notice."*

4. By an order dated November 10, 2006 the aforesaid order was modified to the following extent:

> *"Heard learned advocates for the parties. Since it has been submitted that the petitioners have deposited the amount mentioned in 'I' and 'III' of the order dated 22nd August, 2006 and deposit of Rs.2.60 lacs has been made for the months of September and October, 2006, in view of the submissions made in paragraphs 7, 8 and 9 of the writ petition, the order dated 22nd August, 2006 is modified only to the extent that the payments for the*

> *months of November and December, 2006 shall be deposited with the Kolkata Port Trust authorities by 1st March, 2007. It is made clear that the petitioners shall also go on depositing Rs.2.6 lacs by 25th of each month, beginning from January, 2007 in liquidation of the dues."*

5. Nothing significant happened in the matter for fourteen years thereafter.

6. In 2020 CPT approached the Learned Single Judge with an application praying for a direction on the said company to pay arrear of port charges to the tune of ₹16,84,76,089.23 and to vacate and hand over the premises in question to CPT. On the said application the impugned order was passed on August 13, 2020, the relevant portion whereof reads as follows:

> *"The application appears to be a periodic exercise and nothing but a show of diligence on the part of the Port in a matter in which it appears that Port officials are complicit with the writ petitioners in avoiding the just dues of the revenue.*
>
> *It is inconceivable that the Port would suffer such an order for 14 years and not take appropriate steps to realise its dues unless its officials were in league with the writ petitioners. The present application which has been filed is without reference to the current dues at the old rates. While it is submitted on behalf of the Port that the*

writ petitioners have failed to pay even at the admitted rates, the calculations furnished in the application are on the basis of the increased rates which would not be applicable because of the pendency of the writ petition and the subsisting interim order.

On behalf of the writ petitioners every trick is resorted to, to ensure that the application is not taken up. Specious excuses are proffered to ensure that the hearing of the writ petition is not immediately commenced.

Leave is given to the Port to file a supplementary affidavit within a week from date indicating the dues that remain outstanding at the admitted rates and not at the enhanced rates. In the event it is discovered that money due in terms of the subsisting interim order has remained unpaid, the writ petitioners may face immediate eviction without any further indulgence being afforded. It will be open to the writ petitioners to remedy any breach in payment before the matter appears next."

7. Being aggrieved, CPT is before us by way of the present appeal.

8. Appearing for CPT, Mr. Joydip Kar, Learned Senior Counsel submitted that the Learned Single Judge erred in holding that the calculations furnished in the application of CPT on the basis of increased rates would not be applicable because of the pendency of the writ petition and the subsisting

interim order and in holding that the writ petitioners are liable to pay the outstanding port dues at the admitted rates. It was submitted that the relationship between CPT and the writ petitioner company as lessor and lessee ceased to exist after expiry of the lease in 1985. Thereafter, no lease deed was executed by and between the parties and as such, the question of there being any admitted rate of rent does not and cannot arise. It was further submitted that the interim order dated August 22, 2006 passed in the writ petition must be read as directing the writ petitioner company to pay monthly rents as per Schedule of Rents determined by the Tariff Authority for Major Ports of India as revised from time to time. It was submitted that the Schedules of rents are prepared in exercise of statutory power under Section 49 of the Major Port Trusts Act, 1963 and have the force of law. Hence, for occupying the concerned premises under CPT, the writ petitioner company will have to pay charges in accordance with the Schedules of rents applicable from time to time, particularly for the period after expiry of the lease.

9. Mr. S.K. Kapur, Learned Senior Advocate appearing for the respondent/writ petitioner company submitted that the company has been making payment of rent to CPT at the rate of ₹1,18,461 per month. This was the agreed lease rent. The interim order dated August 22, 2006 directed the company to pay the monthly rent regularly to the respondents. This the company has been doing. The interim order did not contemplate payment of any higher rent by the company to CPT. The matter being pending before this Court, no enhancement in the Schedule of Rates can have any bearing

on the matter and cannot impose any additional monetary burden on the company. The Learned Single Judge rightly held that the increased rates would not be applicable because of the pendency of the writ petition and the subsisting interim order. CPT is at best entitled to receive arrear of rent at the admitted rates and not at enhanced rates as observed by the Learned Single Judge. There is no error in the order impugned. The appeal should be dismissed.

10. We have considered the rival contentions of the parties.

11. The Board of Trustees for the Port of Calcutta (CPT) is constituted under Section 3 of the Major Port Trusts Act, 1963 (in short in 'MPT Act'). Section 5 of the Act provides that the Board shall be a body corporate having perpetual succession with power to acquire, hold or dispose of property. Section 49 of the Act reads as follows:-

> ***"49*. *Scale of rates and statement of conditions for use of property belonging to Board.–**(1) [The Authority shall from time to time, by notification in the Official Gazette, also frame a scale of rates on payment of which, and a statement of conditions under which, any property belonging to, or in the possession or occupation of, the Board, or anyplace within the limits of the port or the port approaches may be used for the purposes specified hereunder:–]*

(a) Approaching or lying at or alongside any buoy, mooring, wharf, quay, pier, dock, land, building or place as aforesaid by vessels;

(b) Entering upon or playing for hire at or on any wharf, quay, pier, dock, land, building, road, bridge or place as aforesaid by animals or vehicles carrying passengers or goods;

(c) Leasing of land or sheds by owners of goods imported or intended for export or by steamer agents;

(d) Any other use of any land, building, works, vessels or appliances belonging to or provided by the Board.

(2) Different scales and conditions may be framed for different classes of goods and vessels.

[(3) Notwithstanding anything contained in sub-section (1), the Board may, be auction or by inviting tenders, lease any land or shed belonging to it or in its possession or occupation at a rate higher than that provided under sub-section (1).]

12. 'Authority' has been defined in Section 2(aa) of the MPT Act to mean the Tariff Authority for Major Ports (in Short 'TAMP') constituted under Section 47- A of the MPT Act.

13. It thus appears that TAMP is a statutory authority constituted under the MPT Act which has the power and obligation, from time to time to frame a scale of rates according to which CPT is entitled to charge rent from persons to whom CPT lets out its land for any purpose. These scales of rates framed from time to time by TAMP are binding on CPT and any person who occupies CPT land as a lessee or in any other capacity. CPT is a public authority rendering public service and its land must be put to such use as would generate maximum revenue for general public benefit.

14. In the present case, the petitioner company was admittedly a lessee in respect of CPT land. The lease expired on May 31, 1985. In spite of negotiations, no fresh lease came to be executed in favour of the company. The company continued to enjoy the land in question. There were defaults on its part in payment of occupational charges. The company faced eviction proceedings under the provisions of the Public Premises (Eviction of Unauthorised Occupants), Act 1971. It suffered an eviction order. It challenged the order by way of a writ petition, in which the interim order dated August 22, 2006, was passed. The interim order granted protection to the company against eviction so long as the company went on paying the monthly rent to CPT. We are of the view that this would mean monthly rent/occupational charge as revised from time to time by the scales of rates framed by TAMP from time to time. We are told that the scale of rates has been upgraded in 1983, 1988, 1996, 2011 and 2016. In our considered opinion, to avail of the benefits of the interim order dated August 22, 2006, the company must pay to CPT the occupational charge as enhanced by the

successive scales of rates framed by TAMP from time to time. Any other understanding of the order will confer undue benefit on the respondent as it will be paying rent at a lesser rate despite eviction order against it as compared to a person, who is a lessee.

15. The company is enjoying valuable public property. It must pay occupational charges at the market rate as reflected in the scale of rates framed from time to time by TAMP in exercise of statutory power.

16. We are also in agreement with Learned Senior Counsel for CPT that there is no 'admitted rate' in the present case. There is absolutely no justification for the company paying monthly occupational charges at the rate of ₹1,18,461/-. It appears from an affidavit of CPT affirmed in September 2020 that applying the scale of rates of 2016, monthly rent/occupational charges payable by the company to CPT would be ₹9,16,806/-.

17. Hence we modify the order under appeal to the extent that CPT will be entitled to recover occupational charges from the writ petitioner company in accordance with the applicable scales of rates framed and notified by TAMP from time to time including any penalty, if any, for delayed payment thereof.

18. The appeal is allowed to that extent.

19. We do not interfere with the other observations of the Learned Single Judge in the order under challenge. We are also of the view that there has been complete lack of diligence and inexcusable tardiness on the part of the

concerned officers of CPT in pursuing matter of recovery of the dues of CPT from the company which are in the nature of public money.

20. The appeal and the stay application are accordingly disposed of.

21. Urgent certified photocopy of this judgment and order, if applied for, be given to the parties upon compliance of necessary formalities.

KOLKATA	**(ARIJIT BANERJEE)**	**(RAJESH BINDAL)**
12.07.2021	**JUDGE**	**CHIEF JUSTICE (ACTING)**
P. Hazra (P.A.)		