

OD- 8 & 22

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
(Via Video Conference)

IA No. G.A. No. 2 of 2019
(Old G.A. No. 1714 of 2019)
In W.P.O. No. 533 of 2017

VIJAI SHREE PRIVATE LIMITED
VERSUS
BOARD OF TRUSTEES OF THE PORT OF KOLKATA & ORS.

C.C. No. 36 of 2019

VIJAI SHREE PRIVATE LIMITED
VERSUS
VINIT KUMAR, CHAIRMAN, KOLKATA PORT TURST AND ANR.

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

Date: 23rd March, 2021.

Appearance:
Mr. Utpal Majumdar, Adv.
Mr. P. Kar, Adv.
Mr. Teesham Das, Adv.
Ms. D. Chomal, Adv.
...for the petitioner

Mr. Snehashis Sen, Adv.
Ms. S. Ghosh, Adv.
...for the respondents

The Court: - A recalling application and a contempt petition are taken up for consideration analogously as they emanate out of the same order dated March 6, 2019 passed in W.P.O. No. 533 of 2017.

Learned Senior Advocate appearing for the Kolkata Port Trust (KoPT) submits that, the predecessor-in-interest of the writ petitioner was allotted plate

nos. 201 and 202 amongst others. There are encroachments in these two plates. He refers to the present land policy governing the field. He submits that on March 6, 2019, the KoPT Authorities were not aware of the encroachment in respect of the two plates. Subsequent inspection as directed by the Court revealed such a position. Therefore, he submits, the portion of the order dated March 6, 2019 requiring in the KoPT Authorities to undertake an auction process reserving rights of the writ petitioner of first refusal will be vitiating the land polity which has statutory force.

Learned Advocate appearing for the writ petitioner submits that, the KoPT Authorities are changing their stand at every stage. Initially, they demanded a particular amount. When confronted their demand came down. The writ petitioner paid the actual demand. Subsequent to the payment of the actual demand, the order dated March 6, 2019 was passed. He submits that, so far as the two plates are concerned in respect of plate no. 201 the encroachments are by outsiders and that the writ petitioner has nothing to do with it. So far as plate no. 2020 is concerned he submits that it is the allegation of KoPT Authorities that there is a encroachment of allegedly 47 meter. Such allegation remains unsubstantiated.

Learned Advocate appearing for the petitioner draws the attention of the Court to the fact that, the writ petitioner filed a contempt petition against the Chairman of KoPT on July 3, 2019 and that it is only thereafter that the KoPT Authorities applied for recalling of the order dated March 6, 2019 on September 27, 2019. He invites the Court to direct any further enquiry to find out as to whether there subsists any encroachment as to the two plates as alleged or not.

The writ petitioner came to Court for the purpose of having a lease executed as agreed. In such context, the order dated March 6, 2019 was passed in presence of the learned Advocate for the KoPT. It is subsequent thereto and when the parties started implementing such order, the KoPT Authority claimed to find out that, there are encroachments in plate nos. 201 and 202 allotted to the predecessor in interest of the writ petitioner. There is of course the land policy of the KoPT Authorities which has statutory force. The presently prevailing land policy states that, a person who is guilty of encroachment need not be afforded the benefit of participating in a public auction.

There is substance in the allegation of the writ petitioner that, the issue as to whether there is any encroachment or not with regard to the two plates are concerned should be considered. This Court presently does not have the jurisdiction to hear and determine the main writ petition. The Court is concerned with the application for recalling.

In such circumstances, the KoPT Authorities, being the applicant, having made out a case for recalling the order dated March 6, 2019, the same is recalled.

IA No.: G.A. No. 2 of 2019 is disposed of accordingly.

In view of the order dated March 6, 2019 is recalled.

C.C. No. 36 of 2019 is also disposed of.

(DEBANGSU BASAK, J.)