

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE**

Before The Hon'ble **JUSTICE SUVRA GHOSH**

WPO 844 of 2021

**DOLLAR INDUSTRIES LIMITED
VERSUS
ESTATE OFFICER, KOLKATA PORT TRUST AND OTHERS**

WITH

WPO 845 of 2021

**VIJAYSHREE TEXTILES PRIVATE LIMITED
VERSUS
ESTATE OFFICER, KOLKATA PORT TRUST AND ORS.**

WITH

WPO 847 of 2021

**M/S TURTLE LIMITED
VERSUS
ESTATE OFFICER, KOLKATA PORT TRUST AND ORS.**

WITH

WPO 848 of 2021

**EXPRESS INDUSTRIAL COMPLEX PRIVATE LIMITED
VERSUS
ESTATE OFFICER, KOLKATA PORT TRUST AND ORS.**

WITH

WPO 849 of 2021

**DESIGN GRID
VERSUS
ESTATE OFFICER, KOLKATA PORT TRUST AND ORS.**

WITH

WPO 850 of 2021

**PRAMOD KUMAR JHAWAR
VERSUS
ESTATE OFFICER, KOLKATA PORT TRUST AND ORS.**

WITH

WPO 851 of 2021

**M/S BALKRISHNA SALES CORPORATION
VERSUS
ESTATE OFFICER, KOLKATA PORT TRUST AND ORS.**

WITH

WPO 852 of 2021

**SANJOY KUMAR BAJORIA
VERSUS
ESTATE OFFICER, KOLKATA PORT TRUST AND ORS.**

WITH

WPO 853 of 2021

**M/S IRIS CLOTHING LIMITED
VERSUS
ESTATE OFFICER, KOLKATA PORT TRUST AND ORS.**

WITH

WPO 854 of 2021

**STYLISH PRECAST PRODUCTS LLP
VERSUS
ESTATE OFFICER, KOLKATA PORT TRUST AND ORS.**

WITH

WPO 862 of 2021

**PRISM KNIT-FAB (P) LTD AND ANR
VERSUS
ESTATE OFFICER, KOLKATA PORT TRUST**

WITH

WPO 863 of 2021

**HIMANSHU JHAWAR
VERSUS
ESTATE OFFICER, KOLKATA PORT TRUST
WITH**

WPO 864 of 2021

**M/S GOLDMAN TRADING PVT LTD AND ANR
VERSUS
ESTATE OFFICER, KOLKATA PORT TRUST**

WITH

WPO 865 of 2021

**RATNA TEXTILE AGENCY
VERSUS
ESTATE OFFICER, KOLKATA PORT TRUST**

WITH

WPO 866 of 2021

**M/S GULSHAN ARTS AND PRINTERS AND ANR
VERSUS
ESTATE OFFICER, KOLKATA PORT TRUST**

WITH

WPO 867 of 2021

**RAJSHREE MECHANICAL UDYOG P. LTD AND ANR
VERSUS
ESTATE OFFICER, KOLKATA PORT TRUST**

WITH

WPO 868 of 2021

**JDS TRADE LINKS PVT LTD
VERSUS
ESTATE OFFICER, KOLKATA PORT TRUST**

WITH

WPO 869 of 2021

**SHREE KRISHNA HOSIERY PVT LTD
VERSUS
ESTATE OFFICER, KOLKATA PORT TRUST**

WITH

WPO 870 of 2021

**M/S MITTAL KNITWEAR PVT LTD
VERSUS
ESTATE OFFICER, KOLKATA PORT TRUST**

WITH

WPO 871 of 2021

**M/S MANISHA CREATIONS
VERSUS
ESTATE OFFICER, KOLKATA PORT TRUST**

WITH

WPO 872 of 2021

**SPACE INTERNATIONAL PVT LTD AND ANR
VERSUS
ESTATE OFFICER, KOLKATA PORT TRUST**

WITH

WPO 873 of 2021

**HP COTTON CASUALS PVT LTD AND ANR
VERSUS
ESTATE OFFICER, KOLKATA PORT TRUST**

For the Petitioner:

Mr. Kalyan Bandopadhyay, Sr. Adv.
Mr. Nilanjan Bhattacharjee, Adv.
Mr. Arpan Guha, Adv.

For the Respondent Nos. 1 to 5:

Mr. Kishore Datta, Sr. Adv.
Mr. Subhankar Nag, Adv.
Mr. Snehashis Sen, Adv.
Mr. Abhishek Banerjee, Adv.

Hearing concluded on: 30.09.2021

Date: 07.10.2021

SUVRA GHOSH,J:-

1. As all the writ petitions pertain to an identical issue, they are disposed of by a common judgment.

2. The prayer of the writ petitioner in W.P.O. 844 of 2021 is as follows:-

a) “ A writ of and/or in the nature of Mandamus to issue commanding the respondent authorities concerned, to take appropriate steps to dispose off the representations made by the petitioners to the Estate Manager, General Administration Department, Estate Division, Kokata Port Trust, 15, Strand Road, Kolkata-700001 lastly made on June 11, 2021 at the earliest within a specific time frame;

b) A writ of and/or in the nature of Mandamus to issue commanding the concerned respondent authorities and/or their men and agents and/or subordinates to take appropriate and/or effective steps in respect of the offers made by the petitioner to the Estate Officer, ‘Kolkata Port Trust’ for the

kind consideration and for settlement of tenancy under tender cum auction procedure on long term lease under the scheme of “right of first refusal” in favour of the petitioner.

- c) A writ of and/or in the nature of Mandamus to issue commanding the concerned respondent authorities and/or their men and agents and/or subordinates from creating third party interest in respect of the subject land as described admeasuring about 595.877 and 31.89609 Square Meter at Plot No. HL 227 at Foreshore Road, Howrah, Police Station Shibpur;”

3. The admitted facts are laid down:-

The petitioners were inducted into demarcated portions of premises No. 103/24/1, Foreshore Road, Howrah, by the recorded lessee, Binani Metals Ltd. and thereafter Ashamangal Portfolio Pvt. Ltd. and have been occupying the premises for the last 20 years by paying rent for the same. The Kolkata Port Trust being the owner of the land passed an order of eviction against the petitioners under section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 on 29-01-2010 in a proceeding wherein the petitioners were not impleaded as parties and no notice under section 4(1) of the Act of 1971 was issued upon them. The

petitioners challenged the said order of eviction before a coordinate bench of this court and by a judgment passed on 24-09-2013, the learned court directed service of notice upon the petitioners under section 4 of the 1971 Act by the Port Trust Authorities and a right of audience being given to the petitioners. In compliance with the said order, notices under section 4 of the Act were issued upon the petitioners and upon hearing the petitioners, an order of eviction was passed under section 5 of the 1971 Act on 30-11-2016. The petitioners are in occupation of the property till date, such occupation being declared unauthorized by the authority.

4. Learned counsel for the petitioners submits that the petitioners have no grievance against the order of eviction passed on 30-11-2016. Drawing the attention of the court to the relevant portion of the order which gives liberty to the petitioners to approach the Estate Manager, Port Trust Authority for regularisation of their respective areas in occupation or settlement of tenancy, learned counsel submits that in terms of the said order an application for regularisation/settlement of tenancy was filed before the authority on 12-12-2016 which is still pending consideration. Learned counsel further submits that a portion of outstanding dues in respect of the land in question has been paid to the authority and the petitioners undertake to pay all the remaining dues including interest thereon. Learned counsel has also taken the court to the notice issued by the Port Trust Authority submitted by way of a supplementary affidavit which contains certain decision taken by the authority with regard to grant of first right of refusal to the occupants of the property in a tender process on

payment of all outstanding dues. The notice says that the sitting occupants may be considered for allotment of the particular land/structure in the tender cum auction procedure on lease/licence and will get the first right of refusal in the tender, upon filing an application with requisite documents within six months from the date of publication of the notice upon fulfilling the following conditions:-

- (a) The original/recorded lessee/licensee ceases to exist;
- (b) A decree/order for eviction from Competent Court of Law/Estate Officer has been obtained;
- (c) The aforesaid decree/order for eviction has been/will have to be executed by taking over symbolic/paper possession from original/recorded tenant/licensee; or KoPT takes paper possession of that land/structure under any mutual arrangement, before allotment.

5. Learned counsel submits that no such auction has been initiated by the authority till date. Reliance is placed upon judgments of the Hon'ble Supreme Court in Senior Divisional Commercial Manager, South Central Railways And Others v/s. S.C.R. Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association And Another reported in (2016) 3 Supreme Court Cases 582 and in State of U.P. v/s. Smt. Pista Devi And Others with Meerut Development Authority, Meerut v/s. Smt. Pista Devi And Others reported in (1986) 4 Supreme Court Cases 251 and also a judgment in Navroz Kershasp Mody v/s. Life Insurance Corporation of India, Mumbai

and others reported in 2013(6) Mh.L.J. 167 in support of his contention. After extensive deliberation, learned advocate for the petitioners has prayed for a direction upon the Port Trust Authority for holding the auction. He also insists on recording an undertaking that in case of failure to be the highest bidder in the auction, the petitioners shall vacate the property in question within 48 hours of completion of auction.

6. Vehemently opposing the proposal of the petitioners, learned advocate appearing for the Port Trust Authority submits that the order of eviction dated 30-11-2016 was passed upon affording opportunity of hearing to all the petitioners and in course of hearing, the petitioners made two fold prayers before the authority – firstly for regularisation of their occupation and secondly for settlement of tenancy under tender cum auction procedure on long term lease under the scheme of “ right of first refusal”. Learned advocate submits that after the order of eviction was passed the authority was under no obligation to consider the representation filed by the petitioners as the petitioners had their remedy in appeal. An amount in excess of Rs. 5, 71, 00,000 /- is outstanding from the petitioners. Though there is an observation of the Estate Officer in the order dated 30-11-2016 granting liberty to the petitioners to approach the Estate Manager for regularisation of their tenancy, nothing turns on such observation as the Estate Officer could not have made such observation dehors the circular. Referring to the circular annexed to the supplementary affidavit filed by the petitioners, learned advocate for the respondent authorities submits that eviction of the petitioners from the

property is mandatory for fetching the best price for the property in auction. The petitioners, at best, are at liberty to participate in the auction and can establish their right to the property afresh upon their success in the auction. Learned advocate has placed reliance on the judgment of an Hon'ble Division Bench of this Court passed on 24-02-2020 in F.M.A. 545 of 2020 wherein the learned court has held that the unauthorized occupants should vacate the property for the property to fetch the highest price in auction. According to learned advocate the writ petitions may be allowed so far as prayer (b) is concerned.

7. It is not in dispute that the petitioners have been occupying the plots of land for long. They have suffered an order of eviction passed by the respondent authority and have thereafter made several communications to the authority requesting the authority to intimate the outstanding dues and interest thereon to enable the petitioners to clear the same. It is a fact that in the order of eviction dated 30-11-2016 the Estate Officer granted liberty to the petitioners to approach the Estate Manager, KoPT for regularisation of their occupation "if permissible under the rule". The said liberty carries with it a rider that "this forum of law has no jurisdiction to entertain any matter regarding regularisation of occupation or settlement of tenancy as prayed for on behalf of the occupants/interested parties". Pursuant to such observation the petitioners filed a representation before the Estate Manager for regularisation of occupation and for grant of long term lease. Such option for regularisation was also given to the occupants of the property in question by the coordinate bench in judgment dated 24-

09-2013, the judgment remaining unchallenged. Admittedly the representation filed by the petitioners is still pending consideration by the authority. However, learned advocate for the petitioners has submitted that the petitioners are willing to participate in the tender cum auction in respect of the property. The circular of the authority with regard to tender cum auction procedure and grant of first right of refusal to the occupants/petitioners indicates fulfilment of certain conditions. Conditions (a) and (b) appear to have been fulfilled. With regard to condition (c) requiring execution of the decree for eviction by taking symbolic/paper possession from the original/recorded tenant/licensee, such symbolic possession may be taken by the Port Trust Authority prior to initiating the tender process. The circular does not insist on taking physical possession of the property from the occupants and indicates sufficiency of symbolic/paper possession for the purpose. The Hon'ble Division Bench of this Court, in the judgment referred to earlier, stressed on eviction of the occupants from the premises and delivery of the physical possession thereof in favour of the Port Trust Authority. The fact situation of the present case can be distinguished. The notice/circular issued by the respondent authority deals with the pre-requisites of the tender cum auction which was not the case before the Hon'ble Division Bench. In view of the provision for taking symbolic/paper possession of the property, the authority can under no circumstances insist on delivery of physical possession.

8. It is a fact that the bid for the property is likely to suffer if the petitioners continue in physical possession of the property. Fetching the best price for a Government property is the object of the auction. Nevertheless, when the circular of the authority itself provides for symbolic/paper possession of the property to be taken by the authority and delivery of physical possession is not a criteria therein, it is incumbent upon the respondent authority to abide by the terms of the circular.
9. In the judgment in Senior Divisional Commercial Manager (supra), the Hon'ble Supreme Court has encouraged allotment of railway property in favour of licensees, fixing occupation charges for the same and renewing such licensees in order to prevent deprivation of right to livelihood of self-earning small units. Regularisation of tenancy has also been encouraged in the judgment in Navroz Kershasp Mody (supra). The judgment in State of U.P. v/s. Smt. Pista Devi And Others (supra) speaks about providing a house site or shop site of reasonable size on reasonable terms to expropriated persons having no house or shop in the urban area.
10. The petitioners finally confine themselves to prayer (b) of the writ petition praying for effective steps to be taken by the Port Trust Authority for settlement of tenancy under tender cum auction procedure on long term lease under the scheme of "right of first refusal" in favour of the petitioners. Learned advocate for the authority also concedes to the proposal of the petitioners for participation in the tender cum auction.

11. Upon consideration of the entire facts and circumstances of the case and submissions made on behalf of the parties, this court is of the view that the respondent authority be directed to initiate the tender cum auction process in terms of the notice/circular issued by the authority. The authority is at liberty to take symbolic/paper possession of the land from the petitioners in terms of the said notice. The petitioners having occupied the premises in question on the basis of an arrangement with the original lessee but without any approval of the authority, shall have the right to participate in the tender with the "first right of refusal". Such participation of the petitioners shall be subject to their having cleared all the dues including interest payable to be calculated and furnished by the Estate Officer. The Estate Officer shall communicate the outstanding amount including interest payable by the petitioners to the petitioners/advocate on record of the petitioners within a fortnight from communication of this order and the petitioners shall clear the entire dues within a month thereafter, failing which the respondent authority shall be at liberty to execute the order of eviction. In the event the petitioners establish themselves as the highest bidder in the auction, their possession in respect of the property shall be regularised immediately.
12. As a pre-condition for initiation of tender cum auction, the order of eviction dated 30-11-2016 be executed in terms of the circular of the Port Trust Authority annexed to the supplementary affidavit filed by the petitioners (symbolic/paper possession). The respondent authority is restrained from creating any third party interest in respect of the property

in question till completion of the tender process. However, the order of eviction shall remain valid and shall be executed by evicting the petitioners from the property if the petitioners fail to exercise their right of first refusal in the tender process for any reason whatsoever.

13. The writ petitions are disposed of accordingly.

14. There shall however be no order as to costs.

15. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)