

April 6, 2022
Sl. No.7
Court No.1
s.biswas

MAT 343 of 2022
with
CAN 1 of 2022

Ravi Auto Limited and another
vs.
Board of Trustees for Syama Prasad Mookerjee Port,
Kolkata and others

Mr. Syamal Sarkar,
Mr. Sankarsen Sarkar,
Mr. Uttam Sharma, Advocates

....for the appellants

Mr. Abhrajit Mitra, Senior Advocate
Mr. Snehashis Sen,
Mr. Abhishek Banerjee,
Mr. Biswarup Paine, Advocates

... for the Kolkata Port Trust

Mr. Sunil Singhania, Advocate

... for the respondent No.4

This appeal is at the instance of the writ petitioners challenging the order of learned single Judge dated 07.01.2022 whereby WPA 19258 of 2021 has been dismissed.

The record reflects that the appellants had approached the writ Court challenging the show-cause notice dated 15th November, 2021 as also the even dated order of the Estate Officer on the basis of which the fresh show-cause notice was issued.

Initially the respondent No.3 Estate Officer had passed the eviction order on 3rd May, 2019 against the appellants and appeal against such order was dismissed for non-prosecution on 18th February, 2020. According to the appellants, the possession was surrendered to the Kolkata Port Trust on 24th February, 2020. There were some disputes about the delivery/receipt of possession

which led to filing of the writ petition being WP 6927 (W) of 2020 and in pursuance to the order dated 21st September, 2020 passed therein, the possession was handed over to the respondent Port Trust on 28th September, 2020. Thereafter the respondent Port Trust had approached the Estate Officer for recovery of damages in terms of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short 'PP Act, 1971') and initially the Estate Officer had issued the notice dated 11th November, 2020 requiring the appellants to show-cause and appear on or before 4th December, 2020.

The record reflects that after issuance of above notice the respondent Port Trust had approached the Estate Officer with the plea that the computation given at the stage of the show-cause notice was not correct and by giving a fresh computation of damages a request was made to issue a fresh show-cause notice which was accepted by the order dated 15th November, 2021 and the impugned show-cause notice was issued. Learned Single Judge by dismissing the writ petition has found that there is no infirmity in the order dated 15th November, 2021 or the fresh show-cause notice.

The submission of the learned counsel for the appellants is that, the order dated 15th November, 2021 was passed ex parte, behind the back of the appellants and that the calculation of the damages i.e. three times of

the rent mentioned in the show-cause notice is incorrect and learned Single Judge is also not justified in holding that the show-cause notice and the impugned order does not suffer from any infirmity.

Learned counsel for the respondent Port Trust has submitted that it is only a show-cause notice which is issued by the Estate Officer that has been challenged.

Having heard learned counsel for the parties and on perusal of the record, it is noticed that the first show-cause notice dated 11th November, 2020 in terms of Section 7(3) of the PP Act, 1971 was issued mentioning the amount of damages as calculated by the respondent Port Trust at the stage, requiring the appellants to show-cause on or before 4th December, 2020 as to why the order requiring them to pay the damages so calculated together with the interest be not made.

Record further reflects that before the effective proceedings in pursuance to the said show-cause notice could take place, the respondent Port Trust approached the Estate Officer with fresh calculation of damages on 15th November, 2021. The Estate Officer had considered the plea of the respondent Port Trust on 15.11.2021 though that was not the date fixed in the matter and recalled the earlier show-cause notice and had directed the issuance of fresh show-cause notice on the basis of fresh calculation.

We find that taking up the matter on the date, of which appellant has no intimation was a mere irregularity, in the facts of the present case, as no prejudice has been caused to the appellants because they have full opportunity to file response to the show-cause notice and contest it.

The Hon'ble Supreme Court in the matter of **Special Director and another vs Mohd. Ghulam Ghouse and another** reported in **(2004) 3 SCC 440** has held:

“5. This court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show-cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court. Further, when the court passes an interim order it should be careful to see that the statutory functionaries specially and

specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is not accorded to the writ petitioner even at the threshold by the interim protection granted.”

Similarly in the matter of **Union of India and another vs Kunisetty Satyanarayana** reported in (2006) **12 SCC 28** it has been held:

“13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge-sheet or show-cause notice *vide Executive Engineer, Bihar State Housing Board v Ramesh Kumar Singh, Special Director v Mohd. Ghulam Ghouse, Ulagappa v Divisional Commr., Mysore, State of U.P. v Brahm Datt Sharma, etc.*

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe

the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.”

Hence, it is settled that the scope of interference in a challenge to the show-cause notice in writ jurisdiction is very limited and unless the show-cause notice is shown to have been issued by an authority without jurisdiction or in violation of any statutory provision, no interference is required.

We also notice that the observation made by the learned Single Judge in the order under appeal to the effect that the show-cause notice does not suffer from any legal infirmity is for limited purpose of examining the grounds for interference in the impugned show-cause notice therefore that will have no effect on the case of the parties on merit.

Hence, we find no reason to interfere with the order of the learned Single Judge. The appeal and connected application are accordingly dismissed.

[Prakash Shrivastava, C.J.]

[Rajarshi Bharadwaj, J.]