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C.O. 1178 of 2022

**Board of Trustees for the Syama Prasad Mookerjee
Port, Kolkata
Vs
Inland Vikash Limited & Anr**

Mr. Subhankar Nag,
Mr. Snehasish Sen,
... for the petitioner.

Mr. Saptangsu Basu, Sr Adv
Mr. Kumar Gupta,
Mr. Supratim Laha,
Mr. Binay kumar Jain,
Mr. Piyush Jain,
... for the opposite party No. 1.

The subject matter of challenge in this revisional application is against a stay order being granted in an appeal preferred before the appellate authority, under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

Mr. Subhankar Nag, learned advocate appearing for the petitioner advertng to Section 9(3) of the Act referred hereinabove, submits that the Court below has granted stay order in Misc Appeal No. 61 of 2021, making infraction of the provisions of law without imposing any conditions in due adherence to the said provisions. More so, no reason has been assigned by the Court below, while granting stay of operation of the impugned order, Mr. Nag argues.

It is thus contended by Mr. Nag that there has been gross infraction of the provisions of law by the

appellate body, while granting stay order, and this should not be allowed to continue any more.

Per contra, Mr. Saptangsu Basu, learned senior advocate appearing for the opposite party No. 1, at the very threshold of this case disputes with the maintainability of instant revisional application, upon producing a copy of the notification published by the Ministry of Ports, Shipping and Waterways. Let the same be taken on record.

Mr. Basu, regarding the maintainability of the revisional application, submits that as per the provisions of the Major Port Authorities Act, 2021, the Major Port Trust Act, 1963, has already been repealed, and on the strength of the Major Port Authorities Act, 2021, the Board of Trustees is no more authorised to file the instant revisional application. Referring authorisation letter, issued by the Chairman of the Board of Major Port Authority, Mr. Basu, submits that it is the Executive Engineer, Estate Division, Syama Prasad Mookerjee Port, Kolkata who is the only authorised person to take out the instant revisional application, and nobody else.

Mr. Basu thus contends that the maintainability of the revisional application having suffered from defects, the point involved in this revisional application should not be gone into upon exercise of authority available under Section 227 of

the Constitution of India.

As against the submission of Mr. Basu, Mr. Nag in reply submits that in the event of such technicalities being drawn over here, the appeal preferred by the opposite parties/appellants would also suffer from defects, and the same is no longer maintainable.

Having considered the submissions of both the sides, it appears that the maintainability of the revisional application is challenged upon resorting to the provisions available under Section 3 of the Major Port Authorities Act coupled with a notification, mentioned hereinabove, published by Ministry of Ports, Shipping and Waterways.

Admittedly, the stay order was granted in connection with an appeal under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 197. The appeal was admitted on 8th December, 2021, i.e., after the notification referred hereinabove was published.

Upon perusal of the impugned order, it appears that the stay of operation of the impugned order has been granted. The only contention thus raised by Mr. Nag is that there has been no due adherence to the provisions available under Section 9(3) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, imposing some conditions necessary therefor.

The reasons, according to the petitioner, in support of the stay order have not been assigned by the Court below.

Fundamentally, the stay order granted by Appellate Body is challenged in this case.

In the meantime, the stay order granted by the appellate body has already been suffered by the petitioner/respondent for some considerable period of past.

There is a provision incorporated in sub-section (4) of Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 for expeditious disposal of the appeal, which may be mentioned as hereinabove:

“4. Every appeal under this section shall be disposed of by the appellate officer as expeditiously as possible and every endeavour shall be made to dispose of the appeal finally within one month from the date of filing the appeal, after providing the parties an opportunity of being heard.”

The stay order thus having suffered for about last six months, the appeal needs to be disposed of doing due adherence to the provisions laid down in Section 9(4) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

As regards the maintainability of the instant revisional application, this Court is of the view that when the petitioner has already suffered stay order for

the last six months at this stage, this Court should not go deep into the determination of test of maintainability question, which is however left to be determined by the First Lower Appellate Court, where the appeal is pending otherwise maintainability issue may invite complication in pending appeal. Petitioner is as such given liberty to raise such point pertaining to the maintainability of the appeal, if there be any.

It is, however, clarified that in the event of any issue being raised challenging the maintainability of the appeal, the same shall be decided by the Court below in accordance with the provisions of the law, bearing in the mind the provisions of Section 3 of the Major Port Authorities Act read with notification published to that effect.

As the petitioner is aggrieved with the mode and manner of stay order being granted, this Court perceives that in the event of appeal being disposed of expeditiously in accordance with the provisions of the law, all points thus raised by either of the parties to this case may be streamlined and resolved.

The revisional application is thus disposed of directing the Court below to dispose of the appeal expeditiously as possible, doing adherence to the provisions available under sub- Section (4) of Section 9 of Public Premises (Eviction of Unauthorised Occupants) Act, 1971, preferably within a period of

eight weeks from the date of communication of this order.

With this observation and direction, the revisional application stands disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Subhasis Dasgupta, J)