

**W.P.A 19258 of 2021**

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

**(Via Video Conference)**

Mr. Surajit Nath Mitra  
Mr. Sankarsan Sarkar  
Mr. Uttam Sharma  
...for the petitioners.

Mr. Abhrajit Mitra  
Mr. Snehasis Sen  
...for the Kolkata Port Trust.

Mr. Sunil Singhania  
...for the respondent no.4.

Shorn of unnecessary details, the facts of the case are as follows:

The Estate Officer, Kolkata Port Trust (KoPT) passed an eviction order against the petitioners on May 3, 2019 in respect of two plates of land with structure. An appeal preferred against the said order was dismissed for non-prosecution on February 18, 2020. The writ petitioners claim that, as per mutual settlement, the petitioner communicated its readiness to surrender the premises in favour of the KoPT on February 24, 2020; however, KoPT failed to take possession.

Ultimately, *vide* order dated September 21, 2020 passed by a co-ordinate Bench of this court in

W.P.A. 6927 of 2020, possession was handed over to the representatives of the KoPT on September 28, 2020. In the said order, it was recorded that the KoPT had claimed that it was entitled to huge arrear dues from the writ petitioners, which was denied by the latter. The learned Single Judge observed further that in the event the Port Trust authorities were entitled to any amount on account of the premises or the writ petitioners are entitled to any refund or adjustments, it would be open to the parties to take appropriate steps in accordance with law.

On November 11, 2020, the Estate Officer, KoPT issued a notice, on the basis of an Order No. 90 passed by the Estate Officer on the same date, to the petitioners calling upon the petitioners to show cause on or before December 4, 2020 at 11.30 AM why an order requiring the petitioners to pay damages together with interest should not be made. The petitioner filed an application before the Estate Officer in connection with the proceeding, bearing No. 672/D of 2005, seeking recall of the *ex parte* Order No. 90 dated November 11, 2020. The KoPT took several adjournments for filing its comments on the said application, but failed to file the same.

In the said proceeding, the KoPT filed on January 19, 2021 an application disclosing a fresh computation of outstanding compensation charges due from the petitioners. *Vide* Order No. 104 dated November 15, 2021, the Estate Officer observed that the earlier Show cause

Notice dated November 11, 2020 was recalled as cancelled and directed the parties not to act on such notice, simultaneously directing the KoPT to issue a fresh show cause notice on the basis of the revised calculations in terms of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short, “the PP Act”) fixing December 8, 2021 for production of documents, evidence, hearing, etc.

Consequently, a fresh show cause notice was issued on November 15, 2021 itself by the Estate Officer of the KoPT to the petitioners under sub-section (3) of Section 7 of the PP Act, on the basis of the fresh calculations.

The present writ petition has been moved against the said show cause notice and order of the Estate Officer, both dated November 15, 2021, also seeking a writ in the nature of Mandamus desisting the respondents from claiming any charges from the petitioner no. 1 after February 24, 2020.

The learned Senior Advocate appearing for the petitioners contends that the Estate Officer acted *de hors* the provisions of Section 7 of the PP Act in holding the petitioners to be “unauthorized occupants” within the purview of Section 7 (3) of the said Act by an *ex parte* order, without giving any prior opportunity of hearing to the petitioners and/or without any show cause notice.

By placing reliance on the provisions of Section 7 and the relevant proforma given in the PP Rules, 1971,

the learned Senior Advocate for the petitioners argues that it was the incumbent statutory duty of the Estate Officer to give a prior hearing to the petitioners by issuing a show cause notice, before arriving at the conclusion that the petitioners were unauthorised occupants in respect of the premises.

Learned counsel argues that, borrowing the principle incorporated in Order XXIII of the Code of Civil Procedure, 1908, the KoPT was precluded from continuing with the proceeding under Section 7 of the PP Act in view of having recalled its earlier notice without specific leave to initiate a fresh proceeding. The proceeding, it is contended, has become infructuous.

The learned Senior Advocate appearing for the KoPT controverts the petitioners' arguments and contends that the Estate Officer of the KoPT was justified in law in issuing the fresh notice under Section 7 (3) of the PP Act, dated November 15, 2021, on the basis of the revised calculations of arrears arrived at by the Estate Officer by the order of even date.

It is argued that, in the order dated November 15, 2021 itself, direction was given by the Estate Officer to issue a fresh show cause notice on the basis of the revised calculations.

Upon hearing learned counsel, it is germane to explore the power conferred on the Estate Officer under

Section 7 of the PP Act to require payment of rent or damages in respect of public premises.

Sub-section (2) of Section 7 provides that where any person is, or has at any time been, in unauthorised occupation of any public premises, the estate officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such instalments as may be specified in the order.

Sub-section (2A) of the said section empowers the estate officer, while making an order under sub-sections (1) or (2), to direct that the arrears of rent or damages shall be payable together with compound interest at such rate as may be prescribed, not being a rate exceeding the current rate of interest within the meaning of the Interest Act, 1978.

Sub-section (3) of Section 7 categorically provides that no order under sub-sections (1) or (2) shall be made against any person until after the issue of a notice in writing to the person calling upon him to show cause within seven days from the date of issue thereof, why such order should not be made and until his objections, if any, and any evidence he may produce in support of the same, have been considered by the estate officer.

Both Form D and Form F of the PP Rules, 1971 give formats for notice under sub-section (3) of Section 7 of the PP Act. It is evident from the respective tenors of the said formats that while Form D provides the proforma of notice consequent upon a calculation of arrears under sub-sections (1) and/or (2A) of Section 7 of the PP Act, Form F pertains to calculations under sub-sections (2) and/or (2A).

Forms E and G of the PP Rules provide formats for orders under sub-sections (1) and (2A) and under sub-sections (2) and (2A) of Section 7 respectively.

Since the scope of sub-section (1) is a claim of arrears of rent of a person merely in occupation of public premises but that of sub-section (2) is a claim of damages from an occupant after her/his occupation becomes unauthorised, the corresponding forms of notices and orders in the PP Rules differ accordingly.

Since Forms D and E provide formats for a notice and order respectively, both in the context of sub-section (1) of Section 7, the language used vis-à-vis the occupant is “in occupation”, whereas as in case of Forms F and G, they respectively cover a notice and order under sub-section (2) of Section 7, the language used in both is “in *unauthorised* occupation”.

[Compound interest under sub-section (2A) of Section 7, of course, is common between both sub-sections (1) and (2)].

In the present case, the expression “unauthorised occupation” has been used both in the impugned order and show cause notice dated November 15, 2021 since the claim pertains to sub-section (2), and not sub-section (1) of Section 7 of the PP Act. Such language is in exact consonance with the formats given in Forms F and G of the PP Rules and is, thus lawful.

There is no scope of doubt, in the above context, that the impugned notice dated November 15, 2021 itself is the show cause contemplated in sub-section (3) and the satisfaction recorded therein, that the petitioner no. 1 is “in unauthorised occupation” is only tentative and *prima facie*, arrived at by the Estate Officer for the limited purpose as contemplated in sub-sections (2) and (2A) of Section 7 of the PP Act.

Section 7 does not envisage any further notice or hearing even prior to the show cause notice, as such a provision would give rise to the fallacy of infinite regress, necessitating the absurdity of a show cause notice for a show cause notice for a show cause notice and so on...

As far as the petitioners’ argument in respect of applicability of the Order XXIII principle is concerned, the same does not hold water either. Since Order No. 104 dated November 15, 2021 clearly provides for recall of the earlier notice with a further direction to issue a fresh show cause notice on the revised calculations, the previous notice stands waived, paving way for the Estate

Officer to validly issue the fresh notice under Section 7 (3) dated November 15, 2021.

The impugned notice merely asks the petitioner no. 1 to show cause and grants an opportunity of hearing to the petitioner no. 1 as a prelude to an order under sub-sections (2) and (2A) of Section 7 of the PP Act. Thus, there is no legal infirmity whatsoever in the impugned order and show cause notice, both dated November 15, 2021.

In view of the above considerations, WPA 19258 of 2021 is dismissed on contest without, however, any order as to costs.

Urgent certified server copies, if applied for, be given to the parties upon compliance of all formalities.

**(Sabyasachi Bhattacharyya, J.)**