

**In The High Court at Calcutta  
Constitutional Writ Jurisdiction  
Original Side**

**The Hon'ble Justice Sabyasachi Bhattacharyya**

**IA NO.GA/4/2021**

**In**

**WPO/533/2017**

**VIJAI SHREE PRIVATE LIMITED**

**Versus**

**BOARD OF TRUSTEES OF THE PORT OF KOLKATA & OTHERS**

**IA NO.GA/2/2019 (Old No.GA/1714/2019)**

**In**

**WPO/533/2017**

**VIJAI SHREE PRIVATE LIMITED**

**Versus**

**BOARD OF TRUSTEES OF THE PORT OF KOLKATA & OTHERS.**

**WPO/1281/2021**

**VIJAI SHREE PRIVATE LIMITED**

**Versus**

**SYAMA PRASAD MOOKERJEE PORT, KOLKATA AND OTHERS.**

For the petitioner : Mr. Abhrajit Mitra,  
Mr. Abhishek Halder,  
Mr. Utpal Majumdar,  
Mr. Pushan Kar,  
Mr. Sagnik Majumdar,  
Mr. Dwaipayan Ghosh,  
Ms. Dikshita Ghosal

For the respondents : Mr. Jishnu Saha,  
Mr. R. Banerjee

Hearing concluded on : 14.03.2022

Judgment on : 04.04.2022

**The Court :**

1. The petitioner was granted a monthly tenancy on November 8, 1989 by the Kolkata Port Trust (KoPT) in respect of Plate Nos. HL-201, HL-

202, HL-223, HL-224 and six Way Leave Plates under Plate Nos. HL-192/1, HL-193, HL-219, HL-220, HL-221 and HL-222. The petitioner contends that the KoPT offered to grant 99 years' lease to the petitioner with effect from October 1, 2003, subject to certain conditions. Subsequently, upon communications being exchanged between the parties, the petitioner accepted such offer on June 28, 2004 on the terms as recorded in the communication of even date.

2. Subsequently, Proceeding No. 1415 of 2013 was initiated for eviction of the petitioner by the KoPT under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short, "the 1971 Act"). However, on May 29, 2015, the Estate Officer dismissed the same upon holding that the petitioner's monthly lease/tenancy was subsisting and the petitioner was not an unauthorised occupant.
3. Subsequently, the petitioner renewed its prayer for grant of long-term lease. The respondents claimed an amount of Rs. 70,74,845/- as outstanding rent. On December 18, 2015, the respondents agreed in writing to grant the petitioner First Right of Refusal (FROR) for 30 years' lease in case the petitioner cleared all outstanding amounts. The petitioner, on January 25, 2016, paid off the amount. From August, 2016, the respondents started raising bills for compensation charges on the ground of unauthorised occupation of the petitioner at three times the normal rate of rent.
4. WPO No.533 of 2017 was filed on September 4, 2017, *inter alia*, praying for a writ of mandamus directing the respondents to start the process of granting lease in favour of the petitioner, for declaration

that all bills raised by the KoPT, treating the petitioner as unauthorised occupant, are bad and illegal and to be quashed and for ancillary reliefs. On September 13, 2017 a co-ordinate Bench of this Court passed an interim order in WPO No.533 of 2017, permitting the petitioner to pay rent at the single rate to the KoPT-authorities and to deposit a sum of Rs. 18,00,000/- (Rupees Eighteen Lakh) with the KoPT-authorities within September 18, 2017. The petitioner was thereafter permitted to continue to pay the single rate of rent within seven days from the date of raising of the bills. It was further stipulated that, in the event of failure of payment of any rent as directed, the KoPT-authorities would be at liberty to initiate appropriate proceedings for eviction of the petitioner. The entire directions of payment and deposit were, however, clarified to be wholly without prejudice to the rights and contentions of the parties.

5. Such payment was made by the petitioner subsequently and on November 10, 2017, the respondents disclosed in paragraphs 3(xi) to 3(xiv) of their affidavit-in-opposition filed in WPO No.533 of 2017 that the subject property would be placed for auction on the upcoming date and the petitioner would have FROR for granting 30 years of long-term lease. On March 6, 2019, WPO No.533 of 2017 was disposed of by the learned Single Judge by recording the agreement of the respondents to grant such FROR for 30 years' lease to the petitioner and laying down the timelines for grant of fresh lease.
6. Subsequently, a contempt petition was taken out by the petitioner for alleged non-compliance of the order dated March 6, 2019 by the

respondents. The respondents, on the other hand, filed an application, bearing GA No.1714 of 2019, thereby seeking a modification of the order dated March 6, 2019 by directing the petitioner to pay Rs.69,92,790.97p. The respondents also prayed for extension of the time for initiation of the tender-cum-auction process till the petitioner pays off the outstanding dues for enabling the KoPT to start the process of lease.

7. On July 29, 2019, the Expression of Interest (EOI) was published by the respondents in respect of the subject property, containing the FROR as a rider.
8. On February 12, 2021, an inspection of the premises was carried out by the respondents' officials, when they observed that there was an RCC Beam with low height pillar under construction without permission from the respondents on the subject plots and that 47 sq. mt. of land forming part of the Plate No. HL-202 was encroached by way of boundary wall constructed by the adjoining owner. It was further observed that there was unauthorised construction, allegedly of 15.16 sq. mt., on Plate No. HL-201. It was alleged that the directors of the encroaching entity and the petitioner were common.
9. On March 23, 2021, GA No.1714 of 2019 was disposed of by recalling the order dated March 6, 2019.
10. While so disposing of, the learned Single Judge neither re-imposed the interim order dated September 13, 2017 nor recalled the same specifically.

- 11.** Subsequently, on September 17, 2021, the KoPT issued an eviction notice to the petitioner. On November 24, 2021, the Estate Officer passed order in Proceeding No.1888, 1888/R of 2021, arising out of the termination notice dated September 17, 2021. In the said order, the Estate Officer, *inter alia*, observed that a notice under Section 4 of the 1971 Act be issued to the present writ petitioner for production of documents, evidence and hearing, etc. It was observed further that all the points were left open for discussion on merits of the case on the basis of the show-cause notice under Sections 4 and 7 of the 1971 Act. The parties were directed to appear before the forum of the Estate Officer.
- 12.** WPO No.1281 of 2021 was consequently moved by the petitioner, in which an interim order was passed, observing that it appeared from the materials-on-record that the limited scope of the order dated September 13, 2017 passed in WPO No.533 of 2017 was to the effect that the KoPT would be at liberty to initiate appropriate proceedings for eviction of the petitioner only in the event of failure of payment of any of the single rate rents, as directed in the said order. Since the petitioner had apparently been complying with such directions, it was observed, there could not have arisen any occasion to issue an eviction notice against the petitioner.
- 13.** Learned counsel appearing for the petitioner argues that the Land Policy of the KoPT clearly provides for an FROR to be given in case of existing lessee, irrespective of any provision for renewal in such lease.

14. Since the respondents admitted in the pleadings in their affidavit-in-opposition to WPO No.533 of 2017 that they would put up the subject property on auction with FRoR, it is contended that the respondents are barred by *estoppel* from refusing to confer such right on the petitioner.
15. It is argued that the Land Policy does not exclude or disqualify a lessee who has allegedly committed a breach of lease. The subsequent attempt by the KoPT to expand the scope of the third column of the Land Policy to exclude lessees not covered by the exclusion clauses, it is argued, is illegal.
16. The Land Policy further provides for imposition of penalty or cancellation of lease as a penal measure, consequent upon the nature/magnitude of the breach by the petitioner, that too, after giving a reasonable opportunity of hearing to the lessee. However, in the present case, it is submitted by learned counsel for the petitioner, the said provisions were flouted by the KoPT by initiating an eviction proceeding against the petitioner and denying the petitioner the FRoR as previously admitted by the KoPT.
17. It is further argued that the provision of three times rent, as per the Land Policy, can come into operation only after expiry of three months from the expiry/termination of lease. The respondents started raising such bills at the rate of three times of the rent from August, 2016, that is, after dismissal of the respondents' earlier eviction case before the Estate Officer by order dated May 29, 2015. The respondents contend that the petitioner's monthly lease was terminated by a notice

dated September 17, 2021. Therefore, if at all the petitioner is entitled to three times rent in terms of Clause 11.3(i) of the Land Policy, the same can be only from December 18, 2021 and not August, 2016.

- 18.** Learned counsel for the petitioner next argues that the termination notice dated September 17, 2021, issued by the respondents against the petitioner, is on the wrong premise that the petitioner was granted monthly lease with effect from November 8, 1989 on the terms and conditions mentioned in the respondents' letter dated January 17, 2019 and that the petitioner had acted in breach thereof. The letter, apart from stating that the rent would be at a single rate, and that 30 years' lease would be given through tender process, where the petitioner would be given an FRoR, does not state any other terms or conditions.
- 19.** Such case of the respondents is contrary to the case made out in the Modification Application bearing GA No.1714 of 2019, it is argued.
- 20.** There was no default in payment of rent on the part of the petitioner, neither was the petitioner responsible for alleged third party encroachment. In any event, without considering the nature/magnitude of the alleged breach, the KoPT decided to cancel the lease, which was the maximum possible consequence for alleged breach, without any opportunity of hearing being given to the petitioner.
- 21.** It is further argued that the alleged encroachment of 47 sq. mt. by the adjoining owner Clubtown Riverdale Housing Complex is not a breach in terms of the lease of the petitioner. The argument of the

respondents that the promoter of Clubtown Riverdale Housing Complex is the same as the person in control of the petitioner is beyond the case made out by the respondents in their Modification Application or Termination Notice, it is argued; moreover, the alleged unauthorised encroachment was known to the respondents at least from the dates of their alleged inspection on July 16, 2019 and July 18, 2019, as evident from the respondents' letter dated July 22, 2019. Yet, thereafter, on July 29, 2019, the respondents published the tender in respect of the subject property with FRoR to the petitioner.

- 22.** Applying the doctrine of proportionality, it is argued that the extent of unauthorised construction (15.16 sq. mt.) and encroachment (47 sq. mt.), even if a breach of terms and conditions of the January 17, 2019 letter, could not have warranted cancellation of the lease, which is an extreme measure, particularly in view of Clause 12(G) of the Land Policy, which gave the respondents the option to choose between penalty and cancellation, taking into consideration the nature/magnitude of the breach/violation, which was not done in the present case.
- 23.** Learned counsel appearing for the respondents argues that WPO no.533 of 2017 essentially seeks specific performance of an alleged agreement between the petitioner and the respondent Port Trust to grant a lease of the land-in-question in favour of the petitioner for 30 years. It is argued that, while recalling the order dated March 6, 2019 passed in WPO 533 of 2017, the interim order was never re-imposed.

- 24.** Upon a site visit, it was discovered that the petitioner was guilty of several acts of breach of the agreement between the parties. The right of FRoR, without seeking to assert the same on the basis of the Land Policy Guidelines in the writ petition, was asserted in the course of final hearing of the writ petition. The said Guidelines, it is submitted, do not confer any right on the petitioner to obtain such lease as the petitioner was admittedly a tenant from month-to-month and had no right to seek renewal as an existing lessee for any fixed tenure, in terms of Clauses 11.3(a), (c) and (d).
- 25.** That apart, it is argued that Clause 12(G) of the Land Policy Guidelines also provides for cancellation of the lease. In such event, the lessee would not have the right of first refusal in a tender-cum-auction, which is also clear from the synopsis of Land Policy Guidelines and directives after November 26, 2015.
- 26.** The ground of challenge in WPO 1281 of 2021 is essentially the subsistence of the order dated February 13, 2017, which prevented the respondents from serving notice forfeiting the petitioner's lease. The prayer of the petitioner is essentially one for perpetual injunction restraining the initiation of proceedings for eviction of the petitioner, which is contrary to the provisions of Section 41 of the Specific Relief Act, 1963. It is reiterated by the respondents that the order dated September 13, 2017 was interim in nature and did not prevent the respondents from taking steps for the eviction of the petitioner on violation of the terms of the lease and/or prevent the raising of bills or demanding occupation charges at penal rates in the event of the

petitioner's wrongful occupation in the land-in-question after the commission of any breach in terms of the lease or termination of the petitioner's right to occupy the land. The respondents refer to Clause 11.3(h) and (i) and Clause 12(G) of the Land Policy Guidelines in such context.

- 27.** It is further contended that the petitioner's lease was duly terminated by the respondents by an Ejectment Notice dated September 17, 2021, requiring the petitioner to hand over possession of the land-in-question on October 3, 2021. Following such termination, in view of the petitioner's failure to hand over the land, proceedings were initiated by the respondents before the Estate Officer, who proceeded to pass a detailed order for issuance of notice under Section 4 of the 1971 Act, which specifically kept all points open for discussion on merits of the case on the basis of the Show-Cause Notice under Sections 4 and 7 of the Act. As such, it is argued that the petitioner has ample opportunity to contest the proceedings before the Estate Officer which is the appropriate forum for adjudication of questions of fact, including whether the petitioner has acted in breach of the terms of the monthly lease and has become liable to be evicted and to pay occupation charges at penal rates in terms of the Land Policy Guideline. On such grounds, the respondents seek dismissal of the writ petitions.
- 28.** Certain provisions of the Policy Guidelines for Land Management by Major Ports, 2014 – Clarifications and Amendments are required to be looked into for a proper appreciation of the dispute at hand.

29. Clause 11.3(c) of the same, *inter alia*, provides that in cases of renewal of existing leases without renewal option at the end of the lease-term, the land will be put to tender-cum-auction with the First Right of Refusal to be extended to the existing lessee. The existing lessee should be allowed to match the H-1 bid.
30. Sub-Clause (h) of Clause 11.3 stipulates that, after the expiry/termination of lease and despite receiving the notice thereof, or forfeiture of lease on account of change of user, assignment etc., if the lessee continues to occupy it unauthorisedly, the lessee shall be liable to pay compensation for wrongful use and occupation at three times the annual lease rent based on the latest SoR till vacant possession is obtained by the port.
31. Clause 12(G) of the said Guidelines provides that if a lessee breaches/violates any provision of the lease agreement, the Port Trust Board would reserve the right to impose appropriate penalty on the lessee or cancel the lease, depending upon the nature/magnitude of the breach/violation. Such penalty may be imposed after giving a reasonable opportunity to the lessee to present his case.
32. The admitted position in the present case is that the petitioner has been enjoying a monthly lease under the KoPT in respect of plates-in-question. Thus, in terms of Clause 11.3(c) of the Land Policy and Guidelines, since there was no question of any renewal option and the lease operated from month-to-month, it can very well be deemed that the petitioner's lease, without renewal option, would be covered by the provision that the land will be put to tender-cum-auction with the

First Right of Refusal to be extended to the existing lessee and the petitioner should be allowed to match the H-1 bid when the auction takes place.

33. It is seen from the Auction Notice dated July 29, 2019 that the KoPT, pursuant to the FROR as stipulated in Clause 11.3(c) and as recorded in the order of the Co-ordinate Bench, incorporated an FROR on long-term lease of 30 years, referable to the petitioner, in the said Notice Inviting Tender (NIT). Hence, it cannot be said that the KoPT flouted such provision for reserving FROR in any manner whatsoever.
34. As regards the veracity of the KoPT's claim for occupation charges at the rate of three times the annual rent from the petitioner, the KoPT relies on the report of its inspection in respect of the Plates occupied by the petitioner, which clearly indicates that there was a breach of the contract between the parties, at least *prima facie*, insofar as the construction of RCC pillars and encroachment, allegedly with the connivance of the petitioner by third parties, is concerned. Such report lends sufficient legitimacy to the said claim of the KoPT for three times occupation charges.
35. Insofar as the order dated September 13, 2017 passed by the learned Single Judge in WPO No.533 of 2017 is concerned, it is clearly mentioned in the said order itself that the same was passed by way of an interim measure directing the petitioner to deposit a sum of Rs. 18,00,000/- (Rupees Eighteen Lakh) with the KoPT-authorities within September 18, 2017 and to continue to pay the single rate of rent to

the KoPT-authorities within seven days of the date of raising of the bill.

- 36.** Subsequently, the said order merged into the final order dated March 6, 2019 passed in WPO No.533 of 2017 (with GA No.3068 of 2018) whereby the said writ petition was disposed of by directing the parties to enter into a suitable registered deed of lease containing the terms and conditions as enumerated in the writing dated June 15, 2015, purportedly of the first petitioner, with liberty to the KoPT-authorities to undertake tender-cum-auction process where the petitioner would have the right of first refusal, as contained purportedly in the writing dated June 15, 2015. The deed of lease was to be executed within four weeks from the date of the order.
- 37.** However, *vide* order dated March 23, 2021 passed in WPO No.533 of 2017 (with IA No: GA No.2 of 2019), the same learned Single Judge was pleased to recall His order dated March 6, 2019, on the grounds as mentioned in the order dated March 23, 2021.
- 38.** It is relevant to note that the order dated September 13, 2017, which was merely an interim measure which merged into the final order disposing of the writ petition, that is WPO No.533 of 2017, dated March 6, 2019 and, thus, spent its force with the disposal of WPO No.533 of 2017 by the final order dated March 6, 2019 and could not be said to subsist thereafter.
- 39.** However, when the recall application of the KoPT was allowed and the order dated March 6, 2019 recalled *vide* order dated March 23, 2021, the previous interim order was never re-imposed, nor was any fresh

interim order passed by the learned Single Judge. As such, in the absence of any specific revival of the interim order and/or imposition of a fresh interim measure, it cannot be deemed that the previous interim order dated September 13, 2017, which had already expired, would be revived automatically.

- 40.** In the absence of any such interim order upon the order dated March 6, 2019 being recalled on March 23, 2021, the claim of the KoPT with regard to three times the occupation charges for occupation of the petitioner which, in the perception of the KoPT had been rendered unauthorised in view of the breach of the agreement between the parties, was justified.
- 41.** Hence, as per Clause 12(G) of the Policy Guidelines of 2014, the Port Trust Board acted well within its jurisdiction and authority to cancel the lease since, according to the KoPT, the nature/magnitude of breach/violation justified such action.
- 42.** By the order dated November 24, 2021 passed by the Estate Officer of the KoPT in respect of the plates occupied by the petitioner, the Estate Officer also acted within his jurisdiction and authority in terms of Sections 4 and 7 of the 1971 Act in observing that notice under Section 4 of the said Act be issued to the writ petitioner for production of documents, evidence and hearing, etc. It is relevant in the context that, in the said order dated November 24, 2021, the Estate Officer specifically left all points open for discussion on the merits of the case on the basis of such show-cause notice under Sections 4 and 7 of the 1971 Act. Since the specific notices and the Show-Cause as

contemplated under Sections 4 and 7 of the 1971 Act derive their legitimacy from the order dated November 24, 2021 passed by the Estate Officer, there cannot be any reason to pre-empt the outcome of the proceedings under Section 5, which is to follow such notices, at this premature stage, since it is open for the petitioner, in terms of the order of the Estate Officer dated November 24, 2021 and even otherwise as per law to urge its entire defence and all points - legal and factual, in denial of the allegations made in the show-cause notice, within the contemplation of the 1971 Act.

- 43.** Hence, it would be a premature exercise to interfere with the Show-Cause notice and the claim of three times the rent, made by the KoPT on a *prima facie* legitimate premise of an allegation of breach of contract by the petitioner, at this inchoate stage, since the petitioner has a more efficacious remedy of arguing all questions of law and fact in rebuttal of the show-cause notice issued by the Estate Officer in the proceeding(s) under Sections 5 and 7 of the 1971 Act.
- 44.** Since the jural relationship of lessor and lessee between the parties was severed by the show-cause notices, issued under Sections 4 and 7 of the 1971 Act, to the petitioner, there remains no further obligation on the part of the KoPT to extend the FRoR any longer to the petitioner, although incorporated in the NIT.
- 45.** Such course of action is fully sanctioned by Clause 12(G) of the 2014 Policy Guidelines of the KoPT.
- 46.** The veracity and legality of the claim of the KoPT of breach of agreement by the petitioner and the claim of the KoPT of three times

occupation charges on the ground of unauthorised occupation of the petitioner are, in any event, kept open for being decided finally by the Estate Officer of the KoPT in the proceedings under Sections 5 and 7 of the 1971 Act.

- 47.** Apart from the above considerations, WPO No. 533 of 2017, which was revived by the subsequent recall order of the Co-ordinate Bench, virtually seeks specific performance of a contract between the parties which, under normal circumstances, cannot be enforced by the writ court. Moreover, in view of the perceived breach of agreement by the petitioner, which is the subject-matter of dispute before the Estate Officer in the proceedings under Sections 5 and 7 of the 1971 Act, Clause 12(G) of the Land Policy Guidelines empower the KoPT to refuse the petitioner its first right of refusal.
- 48.** In such view of the matter, WPO No.533 of 2017 along with IA No. GA 2 of 2019 (Old No.GA 1714 of 2019) and IA No. GA 4 of 2021 and WPO No.1281 of 2021 are dismissed on contest, with the observation that it will be open for both the parties to urge all their contentions, as taken in the present writ petition, on all questions, before the Estate Officer in the proceedings under Sections 5 and 7 of the 1971 Act. The petitioner shall participate in such proceedings by filing a reply to the show-cause notices of the KoPT. It is further clarified that the merits of the said proceedings have not been entered into by this Court and it will be open to the Estate Officer and, subsequently the Appellate Authority, if any appeal is preferred from the order of the Estate Officer, to decide such questions in accordance

with law without being influenced in any manner by any of the observations made herein.

49. There will be no order as to costs.
50. Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

**( Sabyasachi Bhattacharyya, J. )**