

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

The Hon'ble **Justice Arijit Banerjee**
And
The Hon'ble **Justice Kausik Chanda**

I.A. No.G.A.1 of 2021
In
APOT No.173 of 2021

THE BOARD OF TRUSTEES FOR PORT OF KOLKATA
-VERSUS-
DOLLAR INDUSTRIES LIMITED AND OTHERS

AND

I.A. No.G.A.1 of 2021
In
APOT No.174 of 2021

THE BOARD OF TRUSTEES FOR PORT OF KOLKATA
-VERSUS-
VIJAYSHREE TEXTILES PRIVATE LIMITED AND OTHERS

AND

I.A. No.G.A.1 of 2021
In
APOT No.175 of 2021

THE BOARD OF TRUSTEES FOR PORT OF KOLKATA
-VERSUS-
M/S TURTLE LIMITED AND OTHERS

AND

I.A. No.G.A.1 of 2021
In
APOT No.176 of 2021

THE BOARD OF TRUSTEES FOR PORT OF KOLKATA
-VERSUS-
EXPRESS INDUSTRIAL COMPLEX PRIVATE LIMITED AND OTHERS

AND

I.A. No.G.A.1 of 2021
In
APOT No.177 of 2021

THE BOARD OF TRUSTEES FOR PORT OF KOLKATA
-VERSUS-
M/S DESIGN GRID AND OTHERS

AND

I.A. No.G.A.1 of 2021
In
APOT No.178 of 2021

THE BOARD OF TRUSTEES FOR PORT OF KOLKATA
-VERSUS-
PRAMOD KUMAR JHAWAR AND OTHERS

AND

I.A. No.G.A.1 of 2021
In
APOT No.180 of 2021

THE BOARD OF TRUSTEES FOR PORT OF KOLKATA
-VERSUS-
M/S BALKRISHNA SALES CORPORATION AND OTHERS

AND

I.A. No.G.A.1 of 2021
In
APOT No.181 of 2021

THE BOARD OF TRUSTEES FOR PORT OF KOLKATA
-VERSUS-
SANJOY KUMAR BAJORIA AND OTHERS

AND

I.A. No.G.A.1 of 2021

In

APOT No.182 of 2021

THE BOARD OF TRUSTEES FOR PORT OF KOLKATA
-VERSUS-
M/S IRIS CLOTHINGS PRIVATE LIMITED AND OTHERS

AND

I.A. No.G.A.1 of 2021

In

APOT No.183 of 2021

THE BOARD OF TRUSTEES FOR PORT OF KOLKATA
-VERSUS-
STYLISH PRECAST PRODUCTS LLP AND OTHERS

AND

I.A. No.G.A.1 of 2021

In

APOT No.185 of 2021

THE BOARD OF TRUSTEES FOR PORT OF KOLKATA
-VERSUS-
PRISM KNIT FAB (P) LIMITED AND OTHERS

AND

I.A. No.G.A.1 of 2021

In

APOT No.186 of 2021

THE BOARD OF TRUSTEES FOR PORT OF KOLKATA
-VERSUS-
HIMANSHU JHAWAR AND OTHERS

AND

I.A. No.G.A.1 of 2021

In

APOT No.187 of 2021

THE BOARD OF TRUSTEES FOR PORT OF KOLKATA
-VERSUS-
M/S GOLDMAN TRADING PRIVATE LIMITED AND OTHERS

AND

I.A. No.G.A.1 of 2021
In
APOT No.188 of 2021

THE BOARD OF TRUSTEES FOR THE PORT OF KOLKATA
-VERSUS-
M/S GULSHAN ARTS AND PRINTERS AND OTHERS

AND

I.A. No.G.A.1 of 2021
In
APOT No.189 of 2021

THE BOARD OF TRUSTEES FOR PORT OF KOLKATA
-VERSUS-
RAJSHREE MECHANICAL UDYOG (P) LIMITED AND OTHERS

AND

I.A. No.G.A.1 of 2021
In
APOT No.190 of 2021

THE BOARD OF TRUSTEES FOR PORT OF KOLKATA
-VERSUS-
RATNA TEXTILE AGENCY AND OTHERS

AND

I.A. No.G.A.1 of 2021
In
APOT No.191 of 2021

THE BOARD OF TRUSTEES FOR PORT OF KOLKATA
-VERSUS-
JDS TRADE LINKS PRIVATE LIMITED AND OTHERS

AND

I.A. No.G.A.1 of 2021
In
APOT No.192 of 2021

THE BOARD OF TRUSTEES FOR PORT OF KOLKATA
-VERSUS-
SHREE KRISHNA HOSIERY PRIVATE LIMITED AND OTHERS

AND

I.A. No.G.A.1 of 2021
In
APOT No.193 of 2021

THE BOARD OF TRUSTEES FOR PORT OF KOLKATA
-VERSUS-
M/S MITTAL KNITWEAR PRIVATE LIMITED AND OTHERS

AND

I.A. No.G.A.1 of 2021
In
APOT No.194 of 2021

THE BOARD OF TRUSTEES FOR PORT OF KOLKATA
-VERSUS-
M/S MANISHA CREATIONS AND OTHERS

AND

I.A. No.G.A.1 of 2021
In
APOT No.195 of 2021

THE BOARD OF TRUSTEES FOR PORT OF KOLKATA
-VERSUS-
SPACE INTERNATIONAL PRIVATE LIMITED AND OTHERS

AND

I.A. No.G.A.1 of 2021
In
APOT No.196 of 2021

THE BOARD OF TRUSTEES FOR PORT OF KOLKATA
-VERSUS-
HP COTTON CASUALS PRIVATE LIMITED AND OTHERS

For the appellants	: Mr. Kishore Datta, Sr. Adv., Mr. Subhankar Nag, Adv., Mr. Aditya Sarkar, Adv.
For the respondents	: Mr. Kalyan Bandopadhyay, Sr. Adv., Mr. Nilanjan Bhattacharjee, Adv., Mr. Arpan Guha, Adv.
Hearing concluded on	: 22.04.2022
Judgment on	: 16.09.2022

Kausik Chanda, J.:-

In view of the common set of facts and law points involved in this batch of appeals, they were heard together and are disposed of by this common judgment.

2. It appears that the premises in question situated at 103/24/1, Foreshore Road, Shibpur, Howrah, was allotted to M/s. Binani Metals Ltd. on long term lease for ten years commencing from April 1, 1980, without any option for further renewal by the Kolkata Port Trust, presently known as Syama Prasad Mookerjee Port, Kolkata (in short SMPK). After the expiry of the said lease period on 31st March 1990, on July 21, 1997, SMPK demanded possession from said M/s. Binani Metals Ltd. with the claim for occupation charges for the period March 31, 1990, to July 31, 1997. Ultimately three eviction proceedings

being nos.752, 753, and 754 of 2006 were initiated by the SMPK against said Binani Metals before the Estate Officer under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. In the said proceedings M/s. Ashamangal Portfolio Pvt. Ltd. (Ashamangal in short) sought to intervene by making out a case that a proposal for settlement of the tenancy in its favour was approved by SMPK and it unconditionally accepted the offer in the year 2000 for settlement of tenancy.

3. The said eviction proceedings were challenged by Ashamangal by filing three writ petitions being WP No.857 of 2009, WP No. 860 of 2009, and WP No.861 of 2009 under Article 226 of the Constitution of India. An interim order dated September 2, 2009, was passed in the said writ petitions with the following observations:

“In view of the above-noted situation, I admit the writ petition and order that during its pendency the respondents shall not take any steps for dispossessing the petitioners of the immovable property in question. On what terms and conditions this interim order will continue will be examined next day when Mr. Mukherjee shall inform this court the amounts for arrears and current the petitioners should pay for enjoying the possession and use of the property. The petitioners are given liberty to apply before the Estate Officer for appropriate order citing pendency of the writ petition. List the matter as new motion next Monday (07/09/2009).”

4. Subsequently, on the said writ petitions another Coordinate Bench of this Court by an order dated November 15, 2016, directed as follows:

“In view of defaults made by the petitioners to comply with the order dated September 27, 2016, it would be appropriate to direct the occupants as disclosed in the affidavit dated November 3, 2016 as also any other occupants of the plots concerned to make over all payments to the Kolkata Port Trust Authorities on and from the month of November, 2016. The occupants also will make such payment wholly without prejudice to their rights and contentions. The Kolkata Port Trust Authorities will accept such payment from such occupants wholly without prejudice to their rights and contentions. Neither the payments nor the acceptance of such payments will create any receipt or equity in favour of the occupants or any of them in any manner whatsoever. These payments will not in any manner diminish or extinguish any obligation of any of the petitioners to pay the Port authorities. All the parties before the Estate Officer being present in Court, it would be appropriate to direct the Estate Officer to continue with the hearing of the proceedings on a day to day basis commencing from tomorrow (November 16, 2016). He will not adjourn the hearing on any ground whatsoever. In the event, the Estate Officer is required to grant any party time to file any pleading or documents he will not grant time for such purpose in excess of three working days from the date of the first request for such purpose.

In view of defaults made by the petitioners in paying the November instalment, it would be appropriate to attach the assets and properties of all the petitioners as also the Directors of the petitioners. The Directors of the petitioners owe responsibility to the Court to comply with the orders obtained by the first petitioner from the Court. The petitioners along with the Directors named in the affidavit dated November 3, 2016 will file an affidavit stating the assets available at their disposal.”

5. The said three proceedings being nos.752, 753, and 754 of 2006 were disposed of on January 29, 2010, by the relevant Estate Officer appointed under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

The Estate Officer was of the opinion that the proposal for allotment of the premises in favour of Ashamangal had not matured and translated into a valid grant. The application of SMPK for recovery of possession of the public premises from unauthorised occupation of Binani Metals being the former lessee in respect of the land in question was entertained. The Estate Officer held that after the expiry of the period of lease in question Binani Metals has lost its authority to occupy the public premises and was liable to pay damages for such unauthorised use or occupation.

6. In the said order, the Estate Officer, however, observed that all persons who were in occupation except Ashamangal Portfolio Pvt. Ltd. were liable to be evicted by his order and the partial order of eviction would be valid till the subsistence of an interim order of the Writ Court in respect of actual area in occupation of Ashamangal since the possession of Ashamangal had been protected by the writ Court of this Court on certain terms and conditions, and the action taken by the SMPK was directed to abide by the decision of the Writ Court.

7. The said order of eviction dated January 29, 2010, was challenged before this Court by some of the occupants of the said premises by filing WP Nos. 277, 278, 279, and 280 of 2010, and a learned Single Judge of this Court in the said writ petition by an order dated September 24, 2013, directed service of notice upon the said unauthorised occupants under Section 4 of the 1971 Act.

8. Accordingly, notices under Section 4 of the said Act were issued upon the unauthorised occupants of the said premises including the petitioners, and again an order of eviction was passed on November 30, 2016, against petitioners and other unauthorised occupants. In the said order, however, liberty was given to the occupants/interested parties in respect of the said premises to approach the Estate Manager, SMPK for regularisation of their respective areas in occupation for settlement of tenancy as prayed for in terms of SMPK's existing practice and procedure in dealing with such cases, if permissible under the rule.

9. It has not been clearly spelt out in the writ petition how and by whom the petitioners were inducted in the premises in question. In paragraph 4 of the writ petition vaguely, it has been asserted that it was "inducted into the demarcated portion of the premises no.103/24/1 Foreshore Road, Howrah by the recorded lessee, Binani Metals Ltd. and thereafter Ashamangal Portfolio Pvt. Ltd. and have been paying rent for last twenty years."

10. In paragraph 11 of the writ petition again it is averred that the petitioners are in occupation of the said land for the last twenty years "with an arrangement with recorded tenant Binani Metals" without any supporting document.

11. The appellants in their application for stay in connection with these appeals suggest that after the said order of eviction several unsuccessful attempts were made to evict the writ petitioners. The writ petitioners suggest

that they had been insisting on payment of outstanding dues including interest in respect of the proportionate area of the subject land against regularisation and being inducted as a tenant as per the SMPK norms. By way of several letters, the writ petitioners submitted several cheques from time to time for rent, municipal taxes, and service taxes.

12. The writ petitioners in the aforesaid factual backdrop approached the learned Single Judge with the following prayers:

“a) “A writ of and/or in the nature of Mandamus to issue commanding the respondent authorities concerned, to take appropriate steps to dispose of the representations made by the petitioners to the Estate Manager, General Administration Department, Estate Division, Kolkata 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;”

13. Before the learned Single Judge, by referring to a notice appearing at page 343 of the stay application with regard to grant of first right of refusal to the occupants of the property in a tender process (hereinafter referred to as “the notice for first right of refusal”) on payment of all outstanding dues, it was prayed that a direction should be passed upon the SMPK authority for holding the auction in terms of the said notice. The writ petitioners insisted on recording an undertaking that in case of failure to be the highest bidders in auction, the petitioners shall vacate the property in question within 48 hours of completion of the auction.

14. By the order impugned learned Single Judge observed that indisputably the petitioners have been occupying the land in question for long, they suffered an order of eviction. The notice for the first right of refusal does not insist on taking physical possession of the property from the occupants and indicates the sufficiency of symbolic/paper possession for the purpose. In view of that, the authority under no circumstances can insist on the delivery of physical possession. The learned Judge was of the view that the SMPK should be directed to initiate the tender process in terms of the said notice for the first right of refusal. The learned Single Judge observed that the authority would be at liberty to take symbolic/paper possession of the land from the petitioners in terms of the said notice/circular. The petitioners should have the right to participate in the tender with the “first right of refusal” subject to having cleared all their dues including interests. In the event the petitioners establish themselves as the highest bidders in the auction, their possession in respect of

the property should be regularised immediately. The SMPK was restrained from creating any third-party interest in respect of the property in question till the completion of the tender process. It was further observed that if the petitioners fail to exercise their right of first refusal in the tender process for any reason whatsoever the order of eviction should be executed by evicting the petitioners from the property.

15. Assailing the order of the learned Single Judge, it has been submitted by Mr. Kishore Datta, learned senior advocate appearing for the appellants that the eviction order dated November 30, 2016, was passed after hearing all the parties. The writ petitioners accepted the order of eviction and without challenging the eviction order, the writ petitioners have no right to remain in possession.

16. He has submitted that by the order dated 15th November 2016, this Court directed that the payments to be made to the appellants should be made without prejudice to the rights of the parties and no equity will be created in favour of the occupants.

17. Mr. Datta has, further, argued that the writ petitioners cannot claim “first right of refusal” in terms of the notice for auction as they are not covered under the same on the following grounds:

- (i) As on 2nd January 2014, there was no order of eviction passed against the writ petitioners. The order of eviction was passed against them on 30th November 2016. Therefore, the

writ petitioners were not “sitting occupants” to come within the scope of the said notice for auction.

- (ii) The writ petitioners did not remedy the breach including non-payment of outstanding dues.

18. It has been submitted by Mr. Datta that the learned Single Judge in passing the impugned order did not take into consideration the unreported decision of a Division Bench of this Court dated 24th February 2020 passed in F.M.A. No. 545 of 2020 (*The Board of Trustees for the Port of Calcutta & Anr. v. Grand Smithy Worlds LLP & Ors.*) where it has been held that if the property is in occupation, the auction would not fetch the highest possible value of the property.

19. He has, further, submitted that under Article 298 of the Constitution of India, the executive power of the Union and of each State shall extend to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose. A citizen cannot have any fundamental right to trade or carry on business in the properties belonging to the Government and there cannot be any infringement of Article 14 if the Government tries to get the best available price for its valuable properties. He relied upon paragraph 13 of the judgment of the Supreme Court reported at **(1972) 2 SCC 36 (State of Orissa v. Harinarayan Jaiswal)** in this regard. He further submitted that the said judgment has been

followed in the judgment reported at **(2013) 5 SCC 182 (Uttar Pradesh Avas Evam Vikas Parishad v. Om Prakash Sharma)**.

20. By placing reliance upon paragraph 14 of the judgment reported at **AIR 1960 SC 801 (Parbhani Transport Cooperative Society Ltd. v. Regional Transport Authority, Aurangabad)**, Mr. Datta further argued that there is nothing in law to prevent the Government from entering a business in competition with private citizens.

21. Mr. Datta has concluded his argument by submitting that it is not the function of the Board to manage its affairs to earn the maximum profit; even as a private corporate body may be inspired to earn huge profits with a view to paying large dividends to its shareholders. But it does not follow that the Board may not and need not earn profits for the purpose of performing its duties and discharging its obligations under the statute. The judgment reported at **(1986) 4 SCC 198 (Kerala State Electricity Board v. S.N. Govinda Prabhu and Bros.)** has been relied upon by him in this regard.

22. Mr. Kalyan Bandopadhyay, learned senior advocate appearing for the writ petitioners, on the other hand, has argued that the order of eviction against the petitioners has been subsisting since January 29, 2010, when the order of eviction was passed by the relevant Estate Officer in proceeding nos. 752, 753, and 754 of 2006. Therefore, it cannot be said that the notification for auction is inapplicable to the writ petitioners. The writ petitioners have been requesting the Estate Manager of SMPK for the last few years to intimate the

outstanding dues including interests in respect of the proportionate area of the subject land against regularisation of their tenancy. The writ petitioners had also paid the rent for the month of November 2021 to the appellants. Prior to August 2016 the respondents paid rent to Ashamangal and from September 2016 the respondents paid rent to the appellants.

23. Mr. Bandopadhyay has submitted that the writ petitioners have no grievance against the order of eviction dated November 30, 2016, since it gives liberty to the petitioners to approach the Estate Manager of SMPK for regularisation of their respective areas in occupation or settlement of tenancy. Their prayer for regularization/settlement of tenancy is pending before the authority.

24. Mr. Bandopadhyay has argued that the said notice for auction permits the sitting occupants to be considered for allotment of a particular land/structure with the first right of refusal in the tender.

25. It has been forcefully argued by Mr. Bandopadhyay that the petitioners should not be asked to vacate the relevant premises before their participation in the auction on the ground that the same would fetch a better price for the SPMPK. He suggests that there are about ten thousand direct or indirect employees involved in the business of the petitioners which they run from the premises in question. The eviction of the petitioners from the relevant premises would lead to the loss of livelihood of those employees and their family members.

26. Mr. Bandopadhyay has submitted that the petitioners undertake to vacate the premises in question within 48 hours of completion of the auction if they are not successful in the tender process.

27. Mr. Bandopadhyay has relied upon the following judgments of the Hon'ble Supreme Court to suggest that the action of a welfare State or its instrumentality must be governed by Article 14 of the Constitution and for the public good, achieving the objects for which it exists.

- I. (2007) 11 SCC 447 (*Kusheshwar Prasad Singh v. State of Bihar*).
- II. (1989) 3 SCC 293 (*M/s Dwarkadas Marfatia v. Board of Trustees of the Port of Bombay*).
- III. (1984) 3 SCC 410 (*Sadhuram Bansal v. Pulin Behari Sarkar*).
- IV. (2004) 3 SCC 214 (*Jamshed Hormusji Wadia v. Board of Trustees, Port of Mumbai*).
- V. (2016) 3 SCC 582 (*Senior Divisional Commercial Manager, South Central Railways v. S.C.R. Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association*).
- VI. (1986) 4 SCC 251 (*State of U.P. v. Smt. Pista Devi*).
- VII. (2013) 6 Mh. L.J. 167 (*Navroz Kershasp Mody v. Life Insurance Corporation of India*).

28. From the facts narrated above and from the submissions of the respective parties, the only issue that arises for consideration is whether the writ petitioners being the unauthorised occupants of the relevant premises are covered under the said notice and if so, whether they should vacate the said premises before the auction takes place.

29. It is necessary to quote the said notice for auction as appearing at page 343 of the stay petition in extenso. The said notice reads:

“N O T I C E

Kolkata Port Trust (KoPT) has decided to grant "first right of refusal" to the sitting occupants (i.e. who had entered into a particular KoPT property on the basis of certain arrangement with the recorded tenant/licensee but without any approval of KoPT and who are not rank outsiders or encroachers in respect of that KoPT property) as on 2.1.2014, in the tendering process to be taken up for allotment of the particular land/structure (both under **Kolkata Dock System** and **Haldia Dock Complex**), in respect of such land/structure of KoPT provided, they file their application complete in all respect along with requisite documents within six months from the date of publication of this Notice upon fulfilling the conditions as detailed below

- 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.

2. The occupations enjoyed by sitting occupants may be considered for allotment through tender-cum-auction procedure on lease / licence, as the case may be, in the following manner -

a) The sitting occupants of **land** as on 2.1.2014, will get first right of refusal in the tender-cum-auction for lease/licence, provided,

- The sitting occupants remedy all breaches including non-payment of outstanding dues (which includes Municipal Tax & other statutory taxes) at applicable rate not less than prevailing SoR and interest, before commencement of tender-cum-auction process;
- The valuation of structure, if any, has to be paid to KoPT by the successful bidder (even if the existing sitting occupant is the successful bidder) since the structure belongs to KoPT or will belong to KoPT after taking over symbolic/paper possession;
- The sitting occupants withdraw all court cases and reimburse the legal cost incurred by KoPT, before commencement of tender-cum-auction process;
- Dues of recorded tenant will include onetime damages for unauthorised subletting equivalent to rent charges for one year and the same will be collected at current updated SoR on the area occupied by sitting occupant;
- If there is more than one sitting occupant, lease/licence in respect of areas occupied by respective sitting occupants will be processed for willing occupants only, on recovery of dues on pro-rata area basis, provided each space has separate access.

b) Sitting occupants in KoPT **structures** as on 2.1.2014, will also get first right of refusal in the tender-cum-auction for 11 monthly licence and /or lease, provided,

- The sitting occupants remedy all breaches including non-payment of outstanding dues (which includes Municipal Tax & other statutory taxes) at applicable rate not less than applicable SoR and interest, before commencement of tender-cum-auction process;

- The sitting occupants withdraw all court cases and reimburse the legal cost incurred by KoPT, before commencement of tender-cum-auction process;
- Dues of recorded tenant will include onetime damages for unauthorised subletting (in case, structure was originally leased out) equivalent to rent charges for one year and the same will be collected at current updated SoR on the area occupied by sitting occupant
- If there is more than one sitting occupant, licence/lease to respective areas shall be processed for willing occupants only, on recovery of dues on pro-rata area basis, provided each space has separate access.

3. Interested sitting occupants are requested to meet/contact the following officers to understand the scheme before submitting applications:

a) For land/structure under Kolkata Dock System:

Shri Santanu Mitra,
Sr. Ex. Engineer, Estate Division
Annex Building, 5th Floor
Kolkata Port Trust Head Office
15, Strand Road
Kolkata - 700 001”

30. The said notice for first right of refusal was issued with the object to expedite the commercial exploitation of the land belonging to the SMPK in respect of which they have obtained a decree of eviction, but the possession thereof was with an unauthorised occupant sitting on the said land. The notification entails a limited right to such an unauthorised occupant sitting on the said land or property as on January 2, 2014, to participate in the auction with the right to first right of refusal in the auction.

31. A bare reading of the aforesaid notice, in particular, paragraph-2(a) thereof, does not support the contention of Mr. Datta that the said notification

only applies to a sitting occupant as on January 2, 2014, against whom an eviction decree was passed, and since the eviction decree was passed against them only on November 30, 2016, they could not avail the benefit of the said notice.

32. The opening paragraph of the said notice read with sub-paragraph (a) thereof makes it clear that the said notice applies to an unauthorised occupant, who has been found to be in possession of an SMPK property as on January 2, 2014, on the strength of certain arrangement with the recorded tenant/licensee but without the approval of the SMPK. It will be further apparent that the conditions mentioned in Sub-paragraph (a) and (b) thereof are not applicable to the said sitting occupants. The said two conditions are relatable to the land or the property in question.

33. Paragraph 2(a) of the said notice clearly provides that the same would be applicable to “the sitting occupants of land as on 2.1.2014,” it does not suggest that there has to be an eviction decree against such sitting occupants as on 2.1.2014.

34. The combined reading of the said first paragraph and paragraph 2(a) of the said notice would suggest that in order to come within the purview of the said notice, it is not necessary that there has to be an eviction decree passed against the “sitting occupants” as on 2.1.2014. It only provides that there has to be a subsisting decree of eviction in respect of the land/property in question and not necessarily against the sitting occupants.

35. It has already been noted that in respect of the said premises an eviction decree was initially passed on January 29, 2010, against the original lessee and again on November 30, 2016, against the petitioners. Since the writ petitioners were admittedly in possession of the said premises as on 2.1.2014, the said notice for first right of refusal applies to them.

36. Again, it has to be noticed that paragraph 1(c) of the said notification does not provide for any additional condition to come within the scope of the said notice for the first right of refusal. It provides for the manner in which SMPK requires to take possession of the land in question before the allotment of the land in the auction. The said paragraph 1(c) makes it clear that before the allotment by way of a tender process, SMPK may take the symbolic/paper possession from the original/recorded tenant/licensee as and by way of execution of the eviction decree or it may take paper possession of the relevant land/structure under any mutual agreement. Therefore, the appellants, in my view, cannot insist on vacating or delivery of the physical possession of the relevant land or property before the same is allotted by way of auction.

37. The first right of refusal in the tender-cum-auction is further subject to the compliance of the conditions enumerated in paragraph 2 of the said notice. It has all through been the stand of the writ petitioners that they are willing to comply with the conditions under said paragraph 2 of the said notice. I may hasten to add that though the said notice for first right of refusal indicates that to avail the benefit of the same an unauthorised occupant needs to apply within six months from the date of publication of the notice, neither the

appellants nor the writ petitioners indicated the date of publication of the notice. The appellants have not taken the ground that the said notification is no more in force or the application of the writ petitioners has become time-barred.

38. In view of the above, I am of the opinion that the writ petitioners do come within the purview of the said notice for first right of refusal and SMPK cannot insist on vacating the said premises as a condition precedent to avail the benefit that flows from the said notice.

39. The Division Bench of this Court (to which I was a party) had no occasion to consider the applicability of the said notice for first right of refusal in the judgment delivered in FMA 545 of 2020 (*The Board of Trustees for the Port of Calcutta & Anr. v. Grand Smithy Worlds LLP & Ors.*). Therefore, the propositions laid in the said judgment do not apply to this case.

40. I do not have any quarrel with the propositions of law as laid down in the other judgments cited by Mr. Datta and Mr. Bandopadhyay. Therefore, there is no necessity to discuss the said case laws separately.

41. The order of the learned Single Judge, therefore, does not call for any interference and the same is accordingly upheld. It is only added that the SMPK will be at liberty to initiate the auction process at their earliest upon taking the symbolic/paper possession of the relevant premises from the writ petitioners. It is clarified that in the event, the writ petitioners do not become successful in the auction, they will vacate the property under their occupation

within 48 hours of completion of the auction. Otherwise, the SMPK will be at liberty to recover the possession from them by executing the eviction order.

(Kausik Chanda, J.)

Arijit Banerjee, J.:

1. I have had the benefit of reading the detailed judgment of my learned Brother. I completely agree with the reasons recorded and conclusion arrived at by my Brother. However, I take this opportunity to add a few words.

2. The short question in the case is whether or not the undated notice for auction wherein KoPT has recorded its decision to grant “first right of refusal” to the sitting occupants, would apply to the present writ petitioners. It is not in dispute that as on 2.1.2014, the writ petitioners were “sitting occupants” of the property in question. It is also not in dispute that the concerned Estate Officer had passed an order for eviction in respect of the concerned premises on January 29, 2010. Such order having been passed without serving notice under the relevant provisions of the Public Premises (Eviction of Unauthorised Occupants) Act 1971 on the present writ petitioners, some of them challenged the order by filing W.P. No. 277 of 2010. A learned Single Judge by judgment and order dated September 24, 2013, in effect held that without service of such notice, the writ petitioners could not be evicted. Without formally setting aside the eviction order, the learned Judge directed the Estate Officer to give a hearing to the writ petitioners and take a final decision in the matter. In other

words, to my mind, the eviction order was put in abeyance pending final decision by the Estate Officer.

3. It is also not in dispute that after issuing notices under Section 4 of the 1971 Act and of all the unauthorised occupants of the concerned premises, the Estate Officer passed an order of eviction on November 30, 2016 against all unauthorised occupants of the concerned premises.

4. In view of the aforesaid it appears that as on January 2, 2014, the present writ petitioners were “sitting occupants” of the concerned premises and there was an eviction order in respect of such premises. Therefore, in my opinion, the writ petitioners are covered by the aforesaid Notice issued by KoPT.

5. In view of the aforesaid I am also of the view that the learned Single Judge’s judgment and order does not call for interference. It is a well considered and sufficiently reasoned order. The view taken by the learned Judge, in my opinion, is a plausible and probable view which does not warrant interference in an intra Court appeal. The appeals and the connected applications are accordingly dismissed.

6. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Arijit Banerjee, J.)