

ORDER SHEET

WPO/2275/2022

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WOOD AND WOOD PRODUCTS AND ANR.
VS
THE BOARD OF TRUSTEES FOR THE
SYAMA PRASAD MOOKHERJEE PORT, KOLKATA AND ORS.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : June 21, 2022.

Appearance:

*Mr. Soumya Majumdar, Adv.
Mr. Hare Krishna Haldar, Adv.
Mr. Koushik Bhattacharyya, Adv.
...for the petitioners*

The Court: Learned counsel for the petitioners contends that the notices issued by the Kolkata Port Trust authorities under Sections 4 and 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 are vitiated due to several reasons. It is first argued that pursuant to an order passed by a co-ordinate Bench in a previous writ petition, three equated monthly instalments of rent were paid by the petitioner to the Port authorities, which were accepted by the Port, thereby substituting the original contract between the parties. Such acceptance, it is contended, tantamounts to acquiescence to the effect that the writ petitioners remain valid tenants under the respondents.

However, thereafter, by the impugned notices, the Kolkata Port Trust authorities have initiated proceedings for eviction and for recovery of alleged

arrear rents on the premise that the petitioner was a defaulter for the relevant period. However, in view of the acceptance of the payments made by the petitioner, as indicated above, it is argued that such notices are patently vitiated.

Learned counsel further submits that the claim for damages from the year 2009 are clearly time-barred in 2022. It is, thus, argued that the impugned notices ought to be set aside.

However, upon considering the documents annexed to the writ petition, it is *prima facie* apparent that the learned Single Judge, by the order directing the authorities to consider the offer of the writ petitioners to pay the arrear rents, did not confer any specific right or equity in favour of the petitioner. Moreover, since the Kolkata Port Trust accepted such amounts 'without prejudice', as mentioned in its contemporaneous communication, it cannot be said that the said acceptance amounts *ex facie* to acceptance of the writ petitioners as continuing tenants.

At best the said contention may give rise to mixed questions of law and fact.

Insofar as the contention of the petitioners that the damages are time-barred, since the claim for damages is a continuing cause of action, it cannot, in any event, be said at least that the portion of the claim immediately preceding three years of the claim made by the notices were time-barred. Hence, the petitioners can at best argue that a portion of the claim for damages is time-barred. However, even if, for argument's sake, it is deemed that a portion of the claim for damages is time-barred, since the rest is not, the same also cannot be thrown out at the outset.

Since the 1971 Act is a complete procedural code in itself and confers sufficient right on the occupant to raise all such issues in the proceedings for eviction itself, both as regards the contention of the owner that the occupant is not an unauthorised occupier and that no damages are due from the occupants, it would be rather premature to interfere with the notices under 226, which would nip the proceedings in the bud.

In view of the above considerations, WPO/2275/2022 is disposed of without interfering with the impugned notices. However, it is made clear that it will be open to the petitioners to raise all contentions, including those taken in connection with the present writ petition, in the proceedings initiated by the Kolkata Port Trust authorities under the various provisions of the 1971 Act, including Section 5 and 7 thereof. In the event such contentions are raised, the Estate Officer and/or the Appellate Authority shall consider the same and decide those in accordance with law without being influenced in any manner by any of the observations made herein.

No order as to costs.

(SABYASACHI BHATTACHARYYA, J.)