

04.08.2023
Sl. No.14(DL)
srm

C.O. No. 790 of 2023

Md. Samiuddin

Versus

The Board of Trustees for the Port of Kolkata & Ors.

Mr. Aniruddha Chatterjee,
Mr. Nilay Sengupta,
Mr. Sujit Banerjee

...for the Petitioner.

Mr. Jishnu Saha,
Mr. Snehashis Sen,
Ms. Shruti Tibrewal

...for the Opposite Party Nos.1 and 2/
Kolkata Port Trust.

Sk. Md. Galib,
Ms. Tanwishree Mukherjee

For the Board of Auqaf.

The revisional application has been filed challenging an order dated February 16, 2023 passed by the learned Wakf Tribunal, West Bengal, in Title Suit No.6 of 2023.

The developer filed the suit for declaration and permanent injunction. Allegation in the suit was that the *Mutwali* of the Auqaf estate permitted the petitioner to raise a construction on the said land and executed a general power of attorney. The Kolkata Port Trust issued a notice upon the plaintiff/petitioner under the provisions of the Public Premises

(Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as the said Act). The plaintiff filed the suit along with an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, for injunction restraining the defendant Nos.1 and 2 and their men and agents and subordinates from interfering with and disturbing the possession of the plaintiff on the basis of the notice dated November 22, 2022. When the plaintiff prayed for an ad interim order of injunction, the learned tribunal refused the same.

Aggrieved by the aforesaid order, the plaintiff/petitioner is before this Court.

Mr. Chatterjee, learned Advocate appearing on behalf of the plaintiff/petitioner submits that the order impugned is bad in law, for the following reasons:

- (a) The property was a Auqaf property as per the minutes of the meeting of the Board of Auqaf signed by the Chief Executive Officer of the Board.
- (b) In the absence of any document, the port trust could not set up a superior claim in respect of the property.
- (c) Learned tribunal could have refused the ad interim injunction when the plaintiff had produced adequate document while moving the application for

injunction, in support of the claim that the property was a waqf property.

- (d) The construction was being carried on since 2014, but the Kolkata Port Trust suddenly in 2023 issued a notice and initiated proceedings under the said Act.
- (e) The construction had been going on since long and should be permitted to continue. The learned Tribunal failed to consider the *prima facie* case, balance of convenience and inconvenience and refused to protect the plaintiff's possession and enjoyment of the Auqaf property.

Mr. Galib, learned Advocate appearing on behalf of the Board of Auqaf submits that the property was a Auqaf property in the register of the Board. The Board had permitted the plaintiff to construct. The Kolkata Port Trust could not initiate any proceeding under the 1971 Act. Section 85 of the said waqf Act would be a bar. The remedy of the Kolkata Port Trust would be to approach the learned Tribunal for declaration of their right, title and interest. That the Board of Auqaf had invited the Port Trust on various occasions to ascertain the nature and extent of the claim of the Port Trust in respect of the property in question, but the Port Trust did not

act on the basis of such notice. Such notice is part of the records of the suit.

Mr. Saha, learned Senior Advocate appearing on behalf of the Kolkata Port Trust, submits that the developer could not have filed the suit. That the Port Trust had adequate documents to show that the suit property belonged to the Kolkata Port Trust and was public premises. The issues raised by the plaintiff and the Board, should be decided at the final hearing. The ad interim order of injunction should not be granted. Further construction on the property would amount to further encumbering the property, before the right, title and interest of the parties were decided.

Considering the rival contentions of the parties and the documents which are on record as also the submission made by Mr. Galib, this Court, *prima facie*, finds that the plaintiff has a good case to go with trial and proceedings under the said Act for eviction of an unauthorized occupant should not continue till the issues are decided by the learned tribunal in the suit.

It is also directed that the balance of convenience is in favour of the plaintiff and the plaintiff's possession should not be disturbed till the disposal of the suit.

However, with regard to the prayer for continuation of the construction, this Court is of the view that the appropriate order for this Court to pass, will be to direct the learned tribunal to dispose of the application for temporary injunction on such point, preferably within a month from the next date, upon ascertaining the nature and extent of the construction already undertaken on the property in question. The extent of construction made, would be relevant for determination of the prayer of the plaintiff, to permit the construction. The defendants in the suit shall file their respective objections/response to the application for injunction within 10 days. Reply within two days. Any other application that may be necessary may be filed by the parties.

Whether further construction can be allowed and third party interest can be created, will be subject to the final decision in the application for temporary injunction. The construction raised so far, shall be subject to the final decision in the suit. The plaintiff shall not encumber the property by creating any third party interest till the application for injunction is disposed of.

The revisional application is, thus, disposed of.

There shall be no order as to costs.

Parties are directed to act on the basis of the server copy
of this order.

(Shampa Sarkar, J.)