

CO 451 of 2014

In the matter of : The Board of Trustees of the Port of Kolkata,
Kolkata Port Trust.

Mr. Probal Kumar Mukherjee, Sr. Adv.
Mr. Nikhil Jhunhunwala
Mr. Sachin Sukla ... for the petitioner

1. Despite service, opposite party is not represented.
2. This is an application under Article 227 of the Constitution of India by which the petitioner impeaches the order and judgement passed by the learned Additional District Judge, 5th Court, Alipore in P.P. Appeal No. 7 of 2012 thereby setting aside the order passed by the Estate Officer of Kolkata Port Trust in proceeding number 746 of 2006.
3. Briefly stated that the petitioner is a statutory body constituted under the Major Port Trust Act 1963 (now Major Port Authority Act, 2021).
4. M/s. Amkar Furnishers was granted lease of ten years w.e.f. 01.9.1966 in respect of 554.17 sq. mtrs. of land at Block – B/1, Hide Road, Police Station - South Port, District – 24 Parganas (south) under Plate No.H-48 on certain terms and conditions.
5. The lessee was allowed to sublet the premises in favour of M/s. Vinar Ltd. w.e.f. 01.07.1973 and thereafter in

favour of M/s. Siddarth Apparels w.e.f. 01.9.1975 under Plate No. SF 89/1.

6. The lease was further renewed for ten years but it was not registered and the occupation was treated as on monthly tenancy basis since 01.9.1976.
7. The tenant had the obligation to pay the rent subject to periodical enhancement as per Central Government notification and to pay municipal taxes.
8. The tenant, however, failed to discharge it's obligation in terms of the agreement and was asked to quit and vacate the premises by notice dated 16.5.2005 signed by the land manager of the trustee and it was duly received by the tenant but not adhered to. Hence the proceeding is taken up for eviction before the learned Estate Officer under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 being proceeding no. 746, 746-R of 2006 for recovery of vacant and peaceful possession of the said premises as well as for recovery of dues.
9. Learned Estate Officer in the said proceeding was pleased to pass an order of eviction against the tenant and direction was given upon the tenant to pay compensation.
10. The tenant challenged the said order of learned Estate Officer under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to P.P. Act.) before the learned District Judge, Alipore which was registered as P.P. Appeal No. 7 of 2012.

11. Subsequently, the appeal was transferred to the Court of learned Additional District Judge, 5th Court, Alipore. Learned Appellate Court, however, was pleased to accept the appeal and thereby was pleased to set aside the order of Estate Officer passed in proceeding no. 746 of 2006.
12. Heard Mr. Mukherjee, learned counsel representing the petitioner.
13. It is adverted by Mr. Mukherjee, that the learned Appellate Court observed that the notice served upon the tenant / appellant was bad in law. It was held that-
“Without notice under Section 106 of the Transfer of Property the tenancy could not have been terminated.”
14. Contrary to the provision of Section 106 of the T.P. Act the land manager issued the notice on 16.5.2005 whereby the tenant was asked to deliver the possession on 26.5.2005.
15. The notice did not provide clear 15 days time only instead of 10 days time was given, which according to the learned Appellate Court was bad in law and could not have been acted upon.
16. Drawing my attention to the provision of Section 106 of the Transfer of Property Act Section 5 of the P.P. Act, Mr. Mukherjee submits that the Estate Officer has the jurisdiction to pass an order of eviction if the Estate Officer has the information that the person is in unauthorized occupation of any public premises.

17. Section 2(g) of the said P.P. Act defines unauthorized occupation :

“2(g) “unauthorised occupation”, in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises, has expired or has been determined for any reason whatsoever.”

18. It is indicated that continuance in occupation by a person of the public premises after the authority to occupy such premises has expired or has been determined for any reason whatsoever becomes unlawful and such person is liable to be evicted.

19. Provision of Sections 106 and 107 of the Transfer of Property Act has no manner of application in the proceeding under the P.P. Act.

20. Learned Appellate Court reversed the order of the Estate Officer on the ground that there was no resolution taken by (Board of Trustees) Kolkata Port Trust (now Shyamaprasad Mukherjee Port Trust) to terminate the tenancy of the appellant or to empower or authorize the land manager to take step accordingly. In absence of any resolution delegating such power, the land manager could not have issued the notice in the breach of Section 21 of the Major Port Trust Act, 1963.

21. According to Mr. Mukherjee, such finding of learned First Appellate Court, is perverse being factually incorrect.

22. To buttress his point, Mr. Mukherjee, relies upon the judgement of Hon'ble decision in **Siddharata Sarawgi vs.**

Board of Trustees for the Port of Kolkata and Others

reported in **(2014) 16 SCC 248** in paragraphs 12, 13, 14, 15 enunciated that :

“12. Section 21 of the Act provides for delegation of powers of the Board with the approval of the Central Government on the Chairman and specification of exercise of such powers conferred on the Chairman by the Deputy Chairman or any other officer of the Board. The provision reads as follows:

“21. Delegation of powers.-A Board may, with the approval of the Central Government, specify-

a) the powers and duties conferred or imposed upon the Board by or under this Act, which may also be exercised or performed by the Chairman; and

b) the powers and duties conferred or imposed on the Chairman by or under this Act, which may also be exercised or performed by the Deputy Chairman or any officer of the Board and the conditions and restrictions, if any, subject to which such powers and duties may be exercised and performed:

Provided that any powers and duties conferred or imposed upon the Deputy Chairman or any officer of the Board under clause (b) shall be exercised and performed by him subject to the supervision and control of the Chairman.”

13. Section 34 of the Act provides for the mode of executing contracts on behalf of Board. It is provided therein that every contract is to be made by the Chairman or any other officer of the Board not below the rank of the Head of a Department as authorized by the Chairman, on behalf of the Board. The provision reads as follows:

“34. Mode of executing contracts on behalf of Board.-

(1) Every contract shall, on behalf of a Board, be made by the Chairman or by any such officer of the Board not below the rank of the Head of a Department as the Chairman may, by general or special order, authorise in this behalf and shall be sealed with the common seal of the Board:

Provided that no contract whereof the value or amount exceeds such value or amount as the Central Government may from time to time fix in this behalf shall be made unless it has been previously approved by the Board:

Provided further that no contract for the acquisition or sale of immovable property or for the lease of any such property for a term exceeding thirty years, and no other contract whereof the value or amount exceeds such value or amount as the Central Government may from time to time fix in this behalf, shall be made unless it has been previously approved by the Central Government.

(2) Subject to the provisions of sub- section (1), the form and manner in which any contract shall be made under this Act shall be such as may be prescribed by regulations made in this behalf.

(3) No contract which is not made in accordance with the provisions of this Act and the regulations made thereunder shall be binding on the Board.”

14. In exercise of the power under Section 21 on delegation of powers, the Board of the Kolkata Port Trust passed Resolution No. 82 dated 26.05.1988 delegating the power to terminate any lease on the Chairman. The Chairman was also authorized by the said Resolution to issue ejectment notices. The text of the Resolution reads as follows:

“.. Resolution No. 82- Resolved to sanction the proposal for delegation of powers to the Chairman by invocation of section 21(a) of the Major Port Trust Act, 1963, the power to terminate leases sanctioned by the Trustees and to authorizing him to issue ejectment notices, subject to the sanction of the Government.”

15. It is the contention of the petitioners that the power to terminate the lease having been specifically conferred on the Chairman, the steps now taken by the Land Manager by issuing the impugned notices for eviction, are clearly without jurisdiction and, hence, illegal and inoperative. On behalf of the Board of Kolkata Port Trust, it is contended that the decision to terminate the lease has actually been taken by the Chairman and the issuance of notice of termination in furtherance of the decision taken by the Chairman alone, has been delegated to the Land Manager. Our attention is also invited to Office Order No. 6480/3/0 dated 22.01.1990, which reads as under: -

“CALCUTTA PORT TRUST
No. 6480/3/0 January 22, 1990
OFFICE ORDER

Henceforth ejectment (sic) notices in respect of leases determined with my approval may be signed by any one of the undernoted officers:

Calcutta

- 1) Deputy Chairman (Calcutta)
- 2) Land Manager Haldia
- 1) Deputy Chairman (Haldia)
- 2) General Manager (Mas)
- 3) Manager (I&C.F)”

23. It is rightly adverted by Mr. Mukherjee that issuance of notice is merely a ministerial exercise towards the implementation of the decision as per specific

authorization in that regard done by the chairman conferring the power upon the land manager. Therefore, notice issued by land manager cannot be held to be invalid and the learned First Appellate Court was not justified in holding the notice given by the land manager calling upon the tenant to quit and vacate the premises is bad in law.

24. Mr. Mukherjee, further submits that the learned Appellate Court failed to appreciate that the tenancy was in respect of a plot of land measuring about 554.17 sq. mtrs. on Plate No.H-48 and Plate No. SF 89/1. That is how the property was identified. This plate number and SF Number are not two separate plots or piece of land. It is one unit and was terminated rightly by the land manager of Kolkata Port Trust.

25. Under the P.P. Act unlike provision of Section 106 of the Transfer of Property Act there is no statutory mandate to issue notice. Obligation is upon the Estate Officer to satisfy himself subjectively that the person occupying the premises have become unauthorized and in that event, the Estate Manager shall have to issue over of eviction within seven working days from the date of receipt of such information.

Therefore, the appellate Court failed to appreciate the provision of law, so far the notice to quit is concerned.

26. Under this Act the Board of Trustee has no obligation to terminate the tenancy as it is done under the Transfer of Property Act or rent Act.
27. Learned Appellate Court committed further error in holding that the land manager did not have the authority to issue such notice bereft of any resolution.
28. This finding of the learned Trial Court is factually incorrect and it has led to manifestation of erroneous exercise of jurisdiction and the order is imbued with perversity which in my humble opinion should not be allowed to remain in force and should be set aside which I accordingly do.
29. Consequently, the order passed by the Estate Officer on 08.8.2012 is restored.
30. The unauthorized occupant meaning thereby the opposite party before this Court is directed to quit and vacate the suit property and to deliver the peaceful vacant possession of the same to the Kolkata Port Trust Board of Trustees (now Shyamaprasad Mukherjee Port Trust) immediately and also to pay the damages as calculated as on the 1st day of July, 2010 and further amount accrued till the date of delivery of the possession. Failing which Board of Trustees, Kolkata Port Trust (now Shyamaprasad Mukherjee Port Trust) will be at liberty to recover the possession with the help of police as delineated under the Act,

31. With this observation, the revisional application is disposed of along with application, if any.
32. Let a copy of the order be sent to the learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury, J.)