

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)

MAT 1807 of 2022
with
CAN 1 of 2022

Reserved on: 18.01.2023

Pronounced on: 06.02.2023

Vinay Kumar Singh

...Appellant

-Vs-

Kolkata Port Trust and Others

...Respondents

Present:-

Mr. Debabrata Saha Ray, Sr. Adv.
Mr. Subhankar Das,
Mr. Neil Basu,
Mr. Sankha Biswas, Advocates

... for the appellant

Mr. Prabal Mukherjee, Sr. Adv.
Mr. Ashok Kr. Jena, Advocate

... for the respondent Nos. 1 to 7

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE

THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE

Prakash Shrivastava, CJ:

1. By this intra-court appeal, writ petitioner has challenged order of the learned Single Judge dated 9th of November, 2022 dismissing WPA No. 21399 of 2007 on contest.

2. Appellant had filed the writ petition with the plea that International Engineering & Construction Co. of which the appellant is one of the Director was granted lease by the respondent Kolkata Port Trust Authority for a period of 30 years with effect from 1st of February, 1972 for an area of 1271.659 sq. m in respect of the land situated at one Nimak Mahal Road, Kolkata. The lease agreement was executed on 4th

of June, 1973 for a period of 30 years with effect from 1st of February, 1972. Further plea was raised that before the expiry of the lease period, negotiations were started with the Chairman of the KoPT for extending the lease for a further period of 99 years. There was certain unauthorized construction, therefore, the authority of KoPT instructed the appellant for demolition of the construction and the same was demolished and the penalty amount was also deposited. From the writ petition, the appellant had referred to certain correspondence between the parties and had submitted that there was offer and acceptance, therefore, concluded contract between the parties had come into existence for extending lease period. The appellant was issued the quit notice dated 8th of June, 2007 by the Land Manager (I/C), KoPT with the instruction to quit the land by 12th of December, 2007. The appellant was also sent the demand notice by the Land Manager, KoPT vide bill dated 31st of August, 2007 for a sum of Rs. 12, 10, 844/- on the ground of unauthorized occupation of the land from the period from 1st of February, 2002 to 31st of August, 2007. Being aggrieved with the same, appellant had filed the writ petition with the prayer to command the respondents to withdraw the quit notice dated 8th of June, 2007 and demand notice dated 31st of August, 2007 and also seeking a writ of mandamus commanding the respondents to execute 99 years lease with the appellant.

3. Learned Single Judge by order under appeal has dismissed the writ petition on reaching to the following conclusion:

- i. There was no concluding agreement between the parties for execution of a fresh lease deed of 99 years or otherwise between the parties.

- ii. The communication sent by the KoPT dated 14th of January, 2003 has been found to be a counter proposal to the appellant with regard to 99 years of lease for all practical purposes.
 - iii. Though the communications were going on for the purpose of entering into fresh lease deed for 99 years but there was no acceptance on the part of the KoPT.
 - iv. From the end of the Government of India, no acceptance to any proposal has been issued but nearly a fresh offer has been suggested incorporating the municipal tax.
 - v. In the absence of a concluded contract at any stage, there was no scope of directing a performance of such still-born contract.
 - vi. There was no consensus *ad idem* between the parties with regard to grant/renewal of a fresh lease deed to the appellant.
 - vii. As on the date of issuance of the quit notice, the original lease between the parties had already expired on 31st of January, 2002, i.e., on efflux of 30 years after the date of its commencement on 1st of February, 1972.
 - viii. Since the lease had expired with the efflux of time, therefore, the definition of unauthorized occupation as per the PP Act was attracted as undisputedly the premises are public premises.
4. Submission of learned counsel for the appellant is that there was offer and acceptance, therefore, concluded contract exist between the parties for extension of lease. In support of his submission, he has referred to various exchanges of communications between the parties

and has also placed reliance upon Section 10 of the Contract Act, 1872 (for short, 'Act of 1972'). He has further submitted that in terms of the interim order of this Court dated 17th of September, 2007, the requisite amount has already been deposited and that writ has rightly been held to be maintainable by the learned Single Judge. In support of his submission, he has placed reliance upon the judgments of the Hon'ble Supreme Court in the matter of **Shangrila Food Products Ltd. and Another vs. Life Insurance Corporation of India and Another** reported in (1996) 5 SCC 54 and in the matter of **Anglo American Metallurgical Coal Pty. Limited vs. MMTC Limited** reported in (2021) 3 SCC 308.

5. Learned counsel for the respondent opposing the appeal has submitted that the lease had already expired and no concluded contract exist between the parties for renewal of the lease. He has also submitted that in terms of the provisions of the Major Port Trusts Act, 1963 (for short, 'Act of 1963'), approval of the Central Government is necessary which does not exist in the present case and that the petitioner is an unauthorized occupant within the meaning of Section 2(g) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short, 'Act of 1971'). He has also raised the plea that the writ petition was not maintainable because it was filed by an individual with the plea of being Director of the Company, whereas, learned Single Judge has found him to be a proprietor.

6. We have heard the learned counsel for the parties and have perused the record. A minute examination of the order of the learned Single Judge reveals that before reaching to the conclusion that there is no concluded contract for renewal or grant of fresh lease for 99 years

between the parties, learned Single Judge has duly examined the relevant correspondence between the parties.

7. Undisputedly, the 30 years lease agreement executed on 4th of June, 1973 with effect from 1st of February, 1972 has expired on 31st of January, 2002. On 25th of February, 2002, the company had sent the communication to the Land Manager referring to some earlier discussion and mentioning about the promise to disclose the amount to be paid for acquiring the premises for 99 years of lease. Vide communication dated 8th of January, 2003, Assistant Land Manager, KoPT had informed the appellant about the penalty amount of Rs. 60,019.37 for unauthorized structures and requiring them to deposit the same. A reliance has been placed by learned counsel for the appellant on the communication dated 16th of January, 2003 sent by the Deputy Land Manager of KoPT but in that communication also, it was mentioned that the sole discretionary prerogative was vested in the KoPT as lessor to renew or not to renew the lease and if extended, under what terms and conditions. The communication also takes note of the fact that the lease had expired without option of renewal. In that letter, the general inclination of the Central Government in recent times for grant of lease for 99 years on certain conditions was mentioned by observing that “subject to the approval of the Board and Central Government”. The acceptance of the appellant was sought for the purpose of placing the matter “before the appropriate authority for examination”. Mere payment of taxes and deposit of certain amount with the KoPT cannot be the basis for accepting the argument that the concluded contract had come into existence.

8. Heavy reliance has been placed in the Proceedings of the ‘Trustees’ 8th (Special) Meeting held on 15th of September, 2003 in support of the plea that Central Government had accepted the proposal but in these proceedings, only the communication of Ministry of Shipping, Government of India relating to recovery of element of municipal tax along with premium upfront is mentioned. It was resolved in that meeting to confirm the proceedings of the ‘Trustees’ 7th Meeting subject to amendment of the amount of premium upfront to Rs. 60,35,553.12 including municipal tax. From these documents, it cannot be held that any concluding contract had come into existence between the parties for grant of 99 years lease to the appellant.

9. That apart, Section 34 of the Major Port Trusts Act, 1963 provides for the mode of execution of contract on behalf of the Board. During the course of argument, the applicability of the Act of 1963 to KoPT has not been disputed. Section 34 of the Act of 1963 provides as under:

“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, authorize 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.”

10. In terms of the second proviso to Section 34(1) above, previous approval of the Central Government is required for entering into contract for lease of any property for a term exceeding 30 years. Since in the present case, appellant is seeking extension of lease for 99 years, therefore, second proviso is clearly attracted. There is no approval of the Central Government on record, hence, considering the second proviso, it cannot be held that a concluded contract for grant/renewal of lease for a period of 99 years has come into existence.

11. Thus, we find no error in the order of the learned Single Judge holding that there was no concluded contract between the parties.

12. The appellant had also challenged the quit notice dated 8th of June, 2007 issued by the Land Manager. Undisputedly, with the efflux of time, the 30 years lease in favour of the appellant had expired on 31st of January, 2002 and thereafter, the appellant was continuing in possession of the public premises. Section 2(g) of the Act of 1971 defines “unauthorized occupation” in relation to public premises to include continuance in occupation by any person after the authority, whether by way of grant or any other mode of transfer under which he was allowed to occupy the premises, had expired. Hence, appellant has rightly been found to be unauthorized occupant of the premises in question, and therefore, the quit notice does not suffer from any error.

13. So far as the demand notice dated 31st of August, 2007 subject matter of challenge in the writ petition is concerned, by that notice, a demand of a sum of Rs. 12,10,844/- was raised. Vide order dated 17th of September, 2007, passed in A.S.T. 1574 of 2007, the learned Single Bench had protected the appellant by directing if the appellant deposits a sum of Rs. 60,35,533.13 with the authorities of KoPT and deposits a further sum of Rs. 6,00,000/- with any nationalized bank, then appellant will continue with the occupation of the land in question. Learned Single Judge had permitted the adjudicating authority under the Act of 1971 to go ahead with the eviction proceeding in pursuance to the notice dated 8th of June, 2007 but had prevented passing of the final order. It has been pointed out that the appellant had deposited the amount in terms of the said order and had also furnished the bank guarantee which has now expired. Learned Single Judge while passing the impugned order has already observed that it will be open to the Estate officer in his final award to incorporate the adjustment/refund of the amount already deposited by the appellant pursuant to the earlier order in accordance with law. Hence, necessary directions in this regard have already been issued.

14. Learned counsel for the appellant has relied upon the judgment of the Hon'ble Supreme Court in the matter of **Shangrila Food Products Ltd. (supra)** in support of the plea that the question of payment of damages will arise once the appellant is proved to be in unauthorized occupation of the public premises. The said finding in the present case has already been recorded in view of the fact that after expiry of the lease in 2002, the appellant is continuing in possession of the premises. Even otherwise, learned Single Judge has already issued a

direction for adjustment/refund of the amount deposited by the appellant in the final order of the adjudicating authority. Learned counsel for the appellant has also placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Anglo American Metallurgical Coal Pty. Limited (supra)** in support of the plea that all the documents exchanged between the parties and surrounding facts and circumstances should be considered. Learned Single Judge as well as this Court has duly considered the relevant documents which have been pointed out during the course of argument and thereafter, has rejected the contention of the appellant about the existence of the concluded contract.

15. Having regard to the factual position which has been noted above specially non-compliance of second proviso to Section 34 of the Act of 1963, we are of the opinion that the argument of the learned counsel for the appellant based upon Section 10 of the Act of 1872 cannot be accepted. In the present case, it has rightly been found that no concluded contract had come into existence.

16. Having regard to the above analysis, we are of the opinion that the order of the learned Single Judge does not suffer from any error and no case for interference in this appeal is made out which is accordingly dismissed.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
06.02.2023

PA(RB)

(A.F.R. / N.A.F.R.)