

**In The High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

**WPO NO.728 OF 2006
IA NO: GA/2/2020 (OLD NO.GA/943/2020)
GA/3/2020 (OLD NO.GA/944/2020)
KANOI TEA PRIVATE LIMITED AND ANOTHER
VS.
BOARD OF TRUSTEES FOR THE PORT OF CALCUTTA**

WITH

**WPO NO.506 OF 2006
KANOI TEA PRIVATE LIMITED AND ANOTHER
VS.
BOARD OF TRUSTEES FOR THE PORT OF CALCUTTA**

For the petitioners : Mr. Partha Sarathi Sengupta, Sr. Adv.,
Mr. Shyamal Sarkar, Sr. Adv.
Mr. Sankarsan Sarkar, Adv.
Mr. Meghajit Mukherjee, Adv.
Ms. Priyanka Prasad, Adv.

For the respondent : Mr. Kishore Datta, Sr. Adv.,
Mr. Ashok Kumar Jena, Adv.

Hearing concluded on : 04.04.2023

Judgment on : 16.05.2023

The Court:

1. The Estate Officer of the Kolkata Port Trust (KoPT) passed an order on December 5, 2005 in Proceeding No. 398 of 2001 directing the petitioner-Company to pay arrear rent of Rs.1,20,00,000/- at the rate of Rs.5,00,000/- per month. The said order has been challenged in WPO No.506/2006.

2. In the same eviction proceeding, the Estate Officer passed an order of eviction on May 15, 2006, which has been assailed in WPO No.728 of 2006. The said order has been passed by the Estate Officer “subject to decision in” WPO No.506 of 2006 or order passed by competent court of law.
3. Learned senior counsel appearing for the petitioner argues that the eviction proceeding was bad, being without any notice to quit terminating the tenancy of the petitioner.
4. It is argued that the lease of the petitioner expired on June 1, 1985 and by a letter dated August 18, 1986, the KoPT granted a monthly tenancy to the petitioner with effect from June 1, 1985, which has not been determined till date. Hence, the petitioner never was or is an unauthorised occupant, which is a *sine qua non* for initiation of any proceeding under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (in brief, “the 1971 Act”). Hence, the Estate Officer had no jurisdiction to initiate or continue any proceeding under the said statute against the petitioner.
5. Section 2(g) of the 1971 Act defines “unauthorised occupation”, inter alia, as the occupation of a person after the authority to occupy the premises has expired or has been determined.
6. The purported letter dated September 9, 1999, it is argued, is not a proper notice to quit. It has alleged that due to non-payment of the requisite amount within the stipulated time in terms of the order of the Division Bench, the petitioner was to hand over possession of the

premises to the KoPT at 11 a.m. on October 1, 1999. The petitioner argues that violation of an order of the Division Bench might, at the worst, attract contempt but cannot be a ground of eviction within the meaning of the 1971 Act or otherwise.

7. The pre-condition of formation of an opinion under Section 4, it is argued, as envisaged in *AIR 2008 Cal 285 [Smt. Arati Ghosh and others Vs. Satyanarayan Tripathi]*, has not been satisfied in the present case.
8. It is argued that the Estate Officer has to form an opinion that the occupant is an unauthorised occupant for proceeding under Section 4.
9. The notice under Section 4 of the 1971 Act dated February 2, 2001 alleged that the petitioner has violated the “fundamental condition for grant of tenancy”, failed to pay rental itself after expiry of the lease period on May 31, 1985, that the petitioner is in occupation without any authority under the law and that the petitioner had failed to comply with the Order dated February 9, 1999 passed by a Division Bench of this court. Again, the KoPT alleged in the same notice that the petitioner was in unauthorised occupation on and from October 1, 1999.
10. The petitioners argue that the allegation of “violation of the fundamental condition for grant of tenancy” is vague and does not make any sense or is a ground under Section 4 of the 1971 Act.
11. The letter dated August 18, 1996 issued by the KoPT granting monthly tenancy to the petitioner was deliberately suppressed

according to the KoPT and was not considered by the Estate Officer, thereby vitiating the entire eviction proceeding against the petitioner.

12. The allegation in the Section 4 notice that the lease of the petitioner expired on May 31, 1985 and, in the same breath, that the petitioner is in unauthorised occupation on and from October 1, 1999, are clearly contradictory to each other.
13. There is also no explanation as to why suddenly the authorised occupation of the petitioner became unauthorised on October 1, 1999.
14. It is further argued by the learned Senior Advocate for the petitioner that the impugned order of eviction is violative of principles of natural justice and suffers from procedural impropriety and illegal contravention of the Wednesbury principle. The impugned order dated May 15, 2006 was passed *ex parte* without any prior notice of *ex parte* hearing and is bad, being in violation of principles of natural justice. For such proposition, the petitioner relies on *AIR 2005 Cal 353 [Srikumar Lahiri Vs. Smt. Sonali Lahiri]*.
15. Apart from that, the petitioner did not appear in the proceeding on April 18, 2006 and, without communicating the next date to the petitioner, the *ex parte* order dated May 15, 2006 was passed, which was, thus, violative of the principles of natural justice and null and void. The petitioner places reliance on *B.R. & Co. Rice & Oil Mills Vs. Union of India and another*, reported at *1991 SCC OnLine P&H 146* in support of such proposition.

16. Judicial discipline demanded that the Estate Officer, being a *quasi judicial* authority under the supervision of this Court, should have waited for the outcome of the first writ petition in which the Estate Officer was a party. However, the order of eviction was passed despite the pendency of the same. When a proceeding is pending before a superior forum, it is argued, it is expected that a subordinate *quasi judicial* authority should stay its hands. For such proposition, the learned Senior Advocate relies on *(2021) 375 ELT 633 Bom (DB) [Parle International Limited Vs. Union of India and others]*, *2007 SCC OnLine Bom 102 [Kishor s/o Bhikansingh Rajput Vs. Preeti w/o Kishor Rajput]* and *(1976) 1 SCC 975 [S. Abdul Karim vs. M.K. Prakash and others]*.
17. The KoPT had to prove its case of unauthorised occupation by the petitioner by adducing evidence, which the Estate Officer was obliged under Rule 5 of the Rules framed under the 1971 Act to record summarily, to be a part of the record.
18. The Estate Officer was also obliged under Section 8 of the 1971 Act to summon or enforce attendance of any person and examining him on oath, requiring discovery and production of documents and/or exercise of the powers of the Civil Court under Section 5 of the said Act.
19. None of above procedural safeguards was observed, it is contended. The petitioner relies on *(2008) 3 SCC 279 [New India Assurance Company Limited Vs. Nusli Neville Wadia and another]* in such context.

- 20.** It is next argued that the Estate Officer merely acted as a recovery agent passing directions on how arrears would be paid by the petitioner. It was an exercise under Section 7 of the 1971 Act, although no proceeding under Section 7 has been initiated till date, nor has any notice under the said Section been given to the petitioner. Hence, the impugned order of payment made against the petitioner was bad in law.
- 21.** Regarding the availability of alternative remedy as a bar to the writ petition, it is argued that in view of the pendency of the writ petition for the last sixteen years, it should not be thrown out at this stage merely on the ground of maintainability. The learned Senior Advocate relies on *(2012) 4 SCC 786 [Krishan Lal Vs. Food Corporation of India and others]* and *(1991) 1 CLJ 538 [Srikanta Bar Vs. State of West Bengal and others]* in support of such proposition.
- 22.** The impugned order of eviction, being incomplete/conditional and subject to the outcome of the first writ petition, was not a final order under Section 5 of the 1971 Act and hence not appealable under Section 9 of the said Act. Hence, the issue of alternative remedy cannot be argued by the respondent.
- 23.** The issue of alternative remedy should be raised and decided at the earliest opportunity so that a litigant is not prejudiced by the action of court since the objection is in the nature of a demurrer. In the present case, the plea of alternative remedy having not been raised at the threshold, the same cannot be taken at this belated stage. The petitioner cites *(2004) 4 SCC 268 [U.P. State Bridge Corporation Limited*

and others Vs. U.P. Rajya Setu Nigam S. Karmachari Sangh] for such proposition.

- 24.** It is argued that the respondents have filed affidavit and taken advantage of the interim order of payment of the writ petitioners of Rs.1,25,00,000/- and are estopped from raising the plea of alternative remedy after sixteen years. The learned Senior Advocate for the petitioner, in support of the same, cites *(2010) SCC OnLine Cal 2555 [M/s. Paramount Leathers Vs. Regional Provident Fund Commissioner and another]*.
- 25.** The petitioner has paid huge sums of rent/occupation charges from time to time and the order impugned in the first writ petition has worked itself out. Hence, no ground for eviction subsists in any event.
- 26.** Learned counsel for the respondent refutes the contentions of the petitioner and submits that the lease-deed dated April 6, 1977 expired by efflux of time and was not renewed any further.
- 27.** Hence, the petitioner is an unauthorised occupant within the meaning of Section 2(g) of the 1971 Act.
- 28.** The judgment of a co-ordinate Bench dated January 5, 1999, declaring the petitioner as an unauthorised trespasser, has attained finality. Hence, the petitioner, after withdrawing the Special Leave Petition against the same, cannot argue that the petitioner is not an unauthorised trespasser.
- 29.** There is no denial of the charges claimed by the respondent by the writ petitioner. Hence, the petitioner has admitted the demand raised

by the respondent, which has been recorded by the Estate Officer in the final order of eviction dated May 5, 2006.

- 30.** It is argued that the order dated January 5, 1999 of this Court granted liberty to the respondent to take steps for recovery of reasonable charges for occupation. Thus, nothing much was left to be adjudicated by the Estate Officer.
- 31.** The petitioner itself offered a scheme of liquidation of dues, it is submitted. Such an offer presupposes unequivocal admission of the dues. On the basis of such admission of default in payment of rent, the petitioner is not entitled to invoke the equity jurisdiction of this Court, it is argued.
- 32.** Next dealing with the submissions of the petitioner, learned counsel for the KoPT argues that the lease expired by efflux of time on May 31, 1985. There was option for renewal and it was never renewed. Although the respondents offered for renewal of lease by a letter dated September 27, 1985, by a reply dated October 24, 1985, the petitioner sought to accept such offer conditionally, which was rejected on December 6, 1985 by the respondents.
- 33.** Upon a subsequent request by the petitioner for reconsideration, the same was also rejected on July 11, 1986, a review of which was sought by the petitioner on July 31, 1986.
- 34.** The petitioner, expressing its inability to pay the premium demanded by the respondents, requested by a letter dated January 12, 1987 for

treating the relationship between the parties as a month to month tenancy.

- 35.** The petitioner also filed a writ petition bearing WP No. 2115(W) of 1987 challenging the enforcement of the Rent Schedule, which was dismissed by a co-ordinate Bench of this Court *vide* order dated January 6, 1999. In the said order, it was observed that the petitioner is an unauthorised trespasser and that the respondents would be at liberty to take steps for eviction against the petitioner in the same manner as against an unauthorised trespasser as well as to take steps for recovery of reasonable charges from the petitioner for occupation from 1985 till that date.
- 36.** An appeal was preferred, in which an order was passed on February 9, 1999, granting stay of operation of the order for one month on condition that the petitioner deposits a sum of Rs.10,00,000/- and occupation charges for February, 1999 to the tune of Rs.96,988/- within one month thereof. The petitioner was also directed to deposit a further sum of Rs.30,00,000/- in three equal monthly instalments each, along with monthly occupation charges of Rs.96,988/-, the first of which was to be deposited by April 15, 1999 and thereafter within the fifteenth day of each succeeding month till the amount of Rs.40,00,000/- was liquidated. Even thereafter, the petitioner was to go on paying the occupational charges at the rate of Rs.96,988/- within the fifteenth day of each succeeding month till disposal of the appeal or until further orders, whichever was earlier. The Division

Bench observed that in default of compliance with the order, the stay would automatically stand vacated.

- 37.** A special leave petition filed against the same was dismissed as withdrawn on July 10, 200.
- 38.** The KoPT argues that the petitioner failed to pay in terms of the order of the Division Bench, for which the stay stood vacated and the order of the co-ordinate bench dated January 6, 1999 became enforceable. Upon such failure of the petitioner to comply with the order dated February 9, 1999, the respondents issued a notice on September 9, 1999 directing the petitioner to hand over vacant and unencumbered possession of the property on October 1, 1999.
- 39.** Thereafter a proceeding for eviction against the petitioner was initiated before the Estate Officer on December 12, 2000.
- 40.** On February 2, 2001, the Estate Officer issued a notice under Section 4 of the 1971 Act. The petitioner filed an application for extension of time to file written objection on February 23, 2001. However, the Estate Officer heard the submissions of both sides and reserved final orders. Ultimately, on March 8, 2001, the eviction order was passed by the Estate Officer.
- 41.** A challenge was preferred against the eviction order in WP No.520 of 2001, upon which a co-ordinate bench, *vide* order dated March 28, 2001, set aside the eviction order and remanded the matter to the Estate Officer, further directing *status quo* to be maintained.

- 42.** After remand, the Estate Officer, by an order dated May 7, 2001, fixed May 18, 2001 for production of documents, giving evidence and for hearing. On June 15, 2001, the petitioner made a proposal for settlement and submitted a Pay Order for Rs.10,00,000/-.
- 43.** For consideration of the settlement proposal, the proceedings were adjourned before the Estate Officer on seven dates. The matter was also adjourned for other reasons, according to the KoPT, on twelve other occasions. On November 21, 2004, the Estate Officer directed the petitioner to submit a scheme for liquidation of dues or to contest the eviction proceeding. Thereafter several adjournments were sought by the petitioner. The petitioner also failed to appear on certain occasions. Again, on May 17, 2005, the Estate Officer directed the petitioner to file a comprehensive scheme for liquidating the dues of the respondents, and, upon non-appearance of the petitioner on August 22, 2005, it was recorded on September 6, 2005 that the petitioner had failed to liquidate the respondents' dues.
- 44.** On February 8, 2005, the petitioner filed a scheme for liquidating the dues before the Estate Officer. A revised scheme was filed on December 5, 2005, which was rejected by the Estate Officer with a direction on the petitioner to pay Rs. 4,00,000/- towards occupation charges for December, 2005 and at the rate of Rs.5,00,000/- per month from January, 2006. Thereafter, several other directions ensued regarding payment, but the petitioner failed to make such payments. Ultimately, the petitioner filed WPO No.506 of 2006

challenging the order dated December 5, 2005. Finally an order of eviction was passed by the Estate Officer on May 15, 2006.

- 45.** On behalf of the respondents, it is argued that the lease dated April 6, 1977 expired by efflux of time and was not renewed any further, rendering the petitioner an 'unauthorised occupier' within the meaning of Section 2(g) of the 1971 Act.
- 46.** Secondly, it is argued that the order dated January 5, 1999 of the co-ordinate Bench attained finality. In the said order, the petitioner was declared as an unauthorised trespasser, which also attained finality upon withdrawal of the special leave petition by the petitioner.
- 47.** Learned counsel appearing for the KoPT next argues that there is no denial of the charges claimed by the respondents by the petitioner. Hence, the petitioner has admitted the demand raised by the respondents, which was recorded by the Estate Officer in his final order of eviction dated May 15, 2006.
- 48.** Further, in the order dated January 5, 1999, the co-ordinate Bench granted liberty to the respondents to take steps for recovery of reasonable charges for occupation. Hence, not much was left for adjudication by the Estate Officer. Hence, it is argued that the impugned order does not call for interference.
- 49.** The petitioner having offered a scheme for liquidation of dues also presupposes that there was unequivocal admission of dues. On such admission of default in payment of rent, the petitioner, it is argued, is not entitled to invoke the equity jurisdiction of this Court.

- 50.** The KoPT refutes the argument of the petitioner that the letter of the respondents dated September 9, 1999 directing handing over possession amounts to contempt of the order of the Division Bench, on the ground that the order dated January 5, 1999 is clear in respect of the dues and attained finality in view of the non-interference by the Division Bench and the Supreme Court.
- 51.** The petitioner had argued that several letters of different dates show that the tenancy was continuing on month to month basis with effect from June 1, 1986, which is controverted by the KoPT on the ground that such letters are prior to the order of the co-ordinate Bench dated January 5, 1999. Learned counsel appearing for the KoPT places reliance on the judgment of *Delhi Development Authority Vs. Anant Raj Agencies Private Limited*, reported at (2016) 11 SCC 406 to controvert the petitioners' submission that there was no determination of tenancy.
- 52.** Regarding the contention of the petitioners that there was no notice to quit, the KoPT places reliance on the notice dated September 9, 1999 in conjunction with *Delhi Development Authority (supra)*.
- 53.** The respondents argue that no formation of opinion was required under Section 4 of the 1971 Act, since the petitioner neglected to pay rental dues but is continuing to occupy the premises after the expiry of the lease on and from May 30, 1985.
- 54.** From October 1, 1999, it is argued, the petitioners' occupation is totally unauthorised, having been declared as an unauthorised

trespasser. As far as the petitioners' argument regarding non-service of a prior notice under Section 7 of the 1971 Act is concerned, it is argued by the KoPT that the Estate Officer did not assess the amount of damages but only recorded the default in payment of rent.

55. Learned counsel for the KoPT also distinguishes the judgments cited by the petitioner and argues that none of those come in aid of the petitioner.
56. Upon hearing learned counsel for the parties, it is clear that one of the plinths of the submissions of KoPT is the order of the co-ordinate Bench dated January 5, 1999. In the said judgment, it was observed that, had it not been for interim orders passed in aid of the writ, the petitioners' possession would have been that of rank trespassers. The premise of such order was that the lease expired in the year 1985. It was also observed by the learned Single Judge that the Port Authorities would be at liberty to take steps against the writ petitioner for eviction "in the same manner as against an unauthorised trespasser". It is argued by the KoPT that, in view of the observations, the petitioner was rendered an unauthorised occupant of the disputed premises.
57. In such context, a perusal of the definition of "unauthorised occupation" under Section 2(g) of the 1971 Act would be useful. As per such definition, '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.

- 58.** In the present case, admittedly, a lease had been executed in favour of the petitioner which had expired by efflux of time in the year 1985.
- 59.** In the Show Cause Notice dated February 2, 2001, the KoPT stated that on and from May 31, 1985, after the expiry of the lease, the petitioner was rendered an unauthorised occupant.
- 60.** However, in the same breath, the KoPT also mentioned that the petitioners' occupation became "totally unauthorised" on and from October 1, 1999.
- 61.** The petitioner has alleged that subsequent to such expiry, the petitioner was treated to be a monthly tenant by the KoPT, on which premise it has also been argued that the petitioners' occupation was not unauthorised within the contemplation of the statute.
- 62.** Insofar as the allegation of the KoPT that the petitioners' occupation became totally unauthorised on and from October 1, 1999, however, the entire premise of such argument is the order of the learned Single Judge dated January 5, 1999. A close scrutiny of such order indicates that the occasion to prefer the challenge in the writ petition, which was decided on January 5, 1999, was the challenge of the petitioner to the imposition of premium, which was held to be valid, being in accordance with the gazetted scheme. However, the observations of the learned Single Judge to the effect that the

petitioner was to be treated as an 'unauthorised trespasser' could not, by any stretch of imagination, be treated to be a conclusive adjudication on the question of whether the petitioners' occupation was 'unauthorised' within the contemplation of Section 2(g) of the 1971 Act.

63. Hence, the reliance placed on such observation by the KoPT, in the absence of anything else, is not sufficient for the purpose of ascertaining whether the petitioners were in unauthorised occupation for the purpose of the 1971 Act.
64. It has been rightly argued by the petitioners that violation of the direction of the co-ordinate Bench to pay a particular amount could at best draw the consequences of vacating the stay and/or contempt, but, *per se*, could not be a valid ground for holding the petitioners to be in unauthorised occupation. Moreover, the learned Single Judge had clearly given the liberty to the KoPT to take steps against the writ petitioner for eviction "in the same manner as against an unauthorised trespasser". Such liberty itself indicates that the KoPT was to follow-up by initiating due proceedings as envisaged in the 1971 Act. However, the earlier mention in the show cause notice of unauthorised occupation of the petitioners on and from May 31, 1985 could have been a ground for holding the petitioners to be in unauthorised occupation.
65. Even if the subsequent mention of unauthorised occupation from October 1, 1999 is held to be superfluous, the same cannot render the entire notice invalid on such score alone. The said mention, at best,

was over and above the earlier pleading that the unauthorised occupation commenced from May 31, 1985. It is well-settled that, while construing a notice, it has to be seen whether the same was sufficiently intelligible to the noticee. A hyper technical approach while interpreting a notice has been deprecated by courts time and again.

- 66.** Hence, the question which remains for consideration is whether the petitioner was in unauthorised occupation on and from May 31, 1985, that is, after the expiry of the lease by efflux of time.
- 67.** A cardinal issue in that regard which comes in the way of the KoPT is whether a valid monthly tenancy was created subsequent to the expiry of the first lease between the petitioner and the KoPT.
- 68.** The petitioner has relied on certain communications between the parties to argue that such monthly tenancy was, in fact, given to the petitioner.
- 69.** On January 12, 1987, a letter was written by the petitioner to the Land Manager, KoPT stating the petitioners' inability to pay the premium of Rs. 5,88,347,68p and the petitioner also asked for the tenancy to be continued on month to month basis with effect from June 1, 1985. The petitioner also denied having received any bill in that regard. Hence, as on that date, there was admittedly no consensus between the parties regarding the creation of a monthly tenancy.

- 70.** The petitioner has annexed in its list of dates a purported letter written by the Land Manager of the KoPT to the petitioner dated August 18, 1986 where it was intimated to the petitioner that rent bills are being issued in the name of the petitioner at the standard rate of rent, treating the tenancy to be continuing on month to month basis with effect from 1st June, 1985. However, it is clear from the letter dated January 12, 1987 that even thereafter, the petitioner disputed the premium claimed by the KoPT, which claim was held to be valid by the learned Single Judge in the order dated January 5, 1999. Not only that, the petitioner also indicated that they had not received any bill as pleaded by the KoPT in the letter dated August 18, 1985. Hence, by the denial of receipt of such bills and to pay the premium, the petitioner expressed its admission that there was no consensus on the continuation of a month to month tenancy till then.
- 71.** Subsequently, the order dated January 5, 1999 was passed. Thereafter, an order has been passed by a Division Bench making the operation of the order of the learned Single Judge subject to deposit of certain amounts. The petitioners having not complied with such order, the interim order stood automatically vacated in terms of the said order. By a letter dated September 9, 1999, the KoPT intimated the petitioner that due to failure to pay the requisite amount, authorised representatives of the KoPT would visit the site on October 1, 1999.

- 72.** Apparently, such mention of the said date was the premise of the KoPT claiming that the petitioner rendered to be in “totally unauthorised” occupation subsequent to the said date, although the petitioners were actually in unauthorised occupation from much prior to that. The use of the term “totally” in the notice, to prefix “unauthorised”, was definitely to add effect to the already unauthorised occupation since the year 1985, which was merely recognised from time to time by different forums. However, such mention cannot be said to be so contrary to the earlier mention of ‘unauthorised occupation’ from 1985 in the same notice which would vitiate the notice itself.
- 73.** In any event, a perusal of the entire subsequent communications between the parties does not indicate anything to hold that, at any point of time, there was consensus between the parties regarding the grant of a monthly tenancy by the KoPT to the petitioner. In the absence of unequivocal consensus, the petitioners’ argument that there was a grant of monthly tenancy cannot be accepted.
- 74.** In *Delhi Development Authority (supra)*, the Supreme Court categorically observed, by placing reliance on *Ashoka Marketing Limited and another Vs. Punjab National Bank and others* [(1990) 4 SCC 406], that the provisions of the 1971 Act, to the extent they cover premises falling within the ambit of the Rent Control Act, override the provisions of the Rent Control Act and a person in unauthorised occupation of public premises cannot invoke the protection of the Rent Control Act. In paragraph no. 27 thereof, it was found by the

Supreme Court that the Transfer of Property Act, 1982 is a general law governing the landlord and tenant relationship in general and that the specific Rent Control Acts are an advancement over the Transfer of Properties Act, providing more protection to the tenant. In the light of such observations, it was concluded by the Supreme Court in *Delhi Development Authority (supra)* that the Transfer of Property Act is not applicable in respect of public premises.

- 75.** Such being the latest position on the issue, it cannot be said by any stretch of imagination that the petitioner would get the protection either of the Rent Control Act or the Transfer of Property Act, insofar as the provisions regarding eviction are concerned. The Show Cause Notice of the KoPT, as held earlier, was in full compliance of Section 4 of the 1971 Act. The superfluous mention of the petitioner becoming “totally unauthorised” from October 1, 1999 cannot vitiate the entire notice insofar as the specific date of expiry of the previous lease was also mentioned as a ground.
- 76.** The Estate Officer duly formed an opinion as envisaged under Section 4 of the 1971 Act and, as such, cannot be faulted. Insofar as the argument that no Section 7 notice having been issued, there was no occasion for the Estate Officer to assess damages or arrear rents and, such notice was not necessary at all. What the Estate Officer did was to act on the prayer of the petitioners themselves for a settlement on the issue of rent. Hence, the same could not vitiate the proceedings before the Estate Officer. In such circumstances, the proceeding

under Sections 4 and 5 of the 1971 Act undertaken by the Estate Officer was perfectly justified and cannot be faulted in law.

- 77.** Insofar as the order of the Estate Officer dated December 5, 2005, directing the petitioner to pay arrear of rent and impugned in WPO No.506 of 2006, is concerned, the petitioners themselves submitted before the Estate Officer asking for instalments and seeking numerous adjournments for arriving at a resolution on the issue of payment of rents.
- 78.** The Estate Officer, after giving several opportunities to the petitioner to resolve the issue, ultimately passed the order dated December 5, 2005 to pay the amount. By asking for instalments and not denying the arrears, the petitioners admitted the rates of occupation charges. In any event, there was already an adjudication by a co-ordinate Bench to the effect that the KoPT has been charging occupation charges at gazetted rates, which had attained finality. Thus, there was no occasion for any adjudication by the Estate Officer under Section 7 of the 1971 Act, to necessitate any prior notice under the said Section.
- 79.** Hence, *per se*, such order cannot be faulted as being without jurisdiction.
- 80.** The petitioners' argument regarding the order challenged in the first writ petition having worked itself out is also not tenable in law. The deposits made by the petitioners were paid as occupation charges for the continuance of possession of the petitioners even after being rendered unauthorised occupants. In any event, the said deposits

have “worked themselves out” as adjustments against the occupation charges payable by the petitioners during the entire tenure of their occupation.

- 81.** Moreover, the deposits were made in a *sub judice* matter, pursuant to the Court’s direction and were without prejudice to the rights and contentions of the parties.
- 82.** Equally untenable is the petitioners’ argument that the eviction order impugned in the second writ petition was incomplete, being made “subject to” the order of the prior writ. Such rider in the order was, at best, redundant since the eviction order was otherwise well-supported by reasons and the proceeding was undertaken in due process of law, being preceded by due show cause notice under Section 4 of the 1971 Act. Non-compliance of the co-ordinate Bench’s order or the Estate Officer’s order was not a ground of eviction by themselves, but only endorsed further the fact that the petitioners were defaulters in payment of occupation charges. The eviction order, thus, did not hinge on the outcome of WPA 506 of 2006 but was justiciable on its own strength.
- 83.** As far as the eviction proceeding is concerned, the grounds discussed by the Estate Officer were well within the ambit of the 1971 Act. As discussed above, the petitioners were patently in unauthorised occupation of the property within the contemplation of Section 2(g) of the 1971 Act since the expiry of the first lease of the petitioners and, hence, there was no illegality or irregularity in the procedure adopted by the Estate Officer.

- 84.** The argument of the petitioners' that the notice under Section 4 and the subsequent eviction proceeding amounted to contumacious action is not tenable in the eye of law since the Estate Officer acted well within his jurisdiction in giving adequate opportunity of hearing to both sides and finally passing the order of eviction in accordance with law. The conditional stay order initially passed by the co-ordinate Bench stood automatically vacated on the failure of the petitioners to duly deposit the amount, which was a condition for such stay. Hence, there was no bar to the Estate Officer proceeding with the eviction proceeding and passing the final eviction order.
- 85.** Thus, there is no scope of interference in either of the writ petitions. Accordingly, WPO No.728 OF 2006, along with IA NO: GA/2/2020 (OLD NO.GA/943/2020) GA/3/2020 (OLD NO.GA/944/2020) as well as WPO No.506 of 2006, are dismissed on contest without any order as to costs.
- 86.** Urgent certified copies of this order shall be supplied to the parties applying for the same upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

Later

A prayer for stay of operation of the above judgment and order is made after the passing of the judgment.

Since the refusal of such prayer may have the effect of the petitioners being ousted from the premises with immediate effect, such stay is granted for a period of 30 days from date.

Let this be treated to be a part of the above judgment.

(Sabyasachi Bhattacharyya, J.)