IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

Before:
The Hon'ble The Chief Justice T. S. Sivagnanam
and
The Hon'ble Justice Hiranmay Bhattacharyya

APOT/171/2023
IA NO.GA/1/2023

KANOI TEA PVT. LTD. AND ANR
VS.
MAJOR PORT AUTHORITY SYAMA PRASAD MOOKERJEE PORT KOLKATA AND ORS.

APOT/172/2023

KANOI TEA PVT. LTD. AND ANR.
VS.
MAJOR PORT AUTHORITY SYAMA PRASAD MOOKERJEE PORT KOLKATA AND ORS.

For the Appellant	: Mr. Shyamal Sarkar, Sr.Adv. Mr. Meghajit Mukherjee, Mr. Sankarsan Sarkar, Ms. Priyanka Prasad, Ms. Vidisha Gupta ....advocates
For Respondent	: Mr. Kishore Datta, Sr. Adv. Mr. Ashok Kr. Jena ....advocates
Reserved on	: 14.06.2023
Judgment on	: 04.07.2023

Hiranmay Bhattacharyya, J.:-

1. These intra court appeals arise out of a common judgment and order passed by a learned Single Judge on May 16, 2023 in WPO No. 728 of 2006 with WPO No. 506 of 2006.

2. Common questions of law and fact are involved in these appeals for which the same were heard analogously and are decided by this order.

3. The Estate Officer of the Kolkata Port Trust which has since been renamed as the Major Port Authority, Shyama Prosad Mookherjee Port Kolkata passed an order dated December 5, 2005 in Proceeding No. 398 of 2001 directing the Appellant Company to pay arrear rent of Rs. 1,20,00,000/- at the rate of Rs. 5000/- per month which was challenged in WPO No. 506 of 2006.

4. In the said eviction proceeding, the Estate Officer (for short "EO") passed an order dated May 16, 2006 which was challenged by the Appellant Company in WPO No. 728 of 2006.

5. Facts relevant for the purpose of deciding these appeals, in a nutshell, are as follows:

6. Land measuring about 13,378.03 sq.m. situated at Transport Department Road was allotted to the Appellant Company by the Kolkata Port Trust (for short "KPT") on long term basis for a period of 10 years with effect from 1st June 1975. The said lease expired on and from 31.05.1985. The Appellant Company was a defaulter in payment of rent. The Appellant Company filed a writ petition before this Hon'ble Court challenging the KPT's schedule of rent charges which was in force at the relevant point of time and prayed for a direction upon the Port Authority to renew the lease on the same terms and conditions as it was prior to 31.05.1985. The said writ petition which was registered as Matter No. 2115 of 1987 was dismissed by an Order dated 06.01.1999 giving liberty to the KPT to proceed for the eviction of the Appellant Company in the same manner as against an

unauthorized trespasser. Being dissatisfied with the Order dated 06.01.1999, the Appellant Company preferred an appeal before the Hon'ble Division Bench and obtained a conditional order of stay on 09.02.1999. The Hon'ble Division Bench directed the Appellant Company to deposit occupation charges in the manner as indicated in the said order. Being dissatisfied with the order passed by the Hon'ble Division Bench, a Special Leave Petition being Special Leave to Appeal (Civil) No. CC 5523/1999 was filed by the Appellant Company. However, the said Special Leave Petition was dismissed as withdrawn on 10.07.2000 at the instance of the Appellant Company. Thereafter, a show cause notice under Section 4 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to as the "1971 Act") was issued to the Appellant Company on 02.02.2001 at the instance of KPT. An earlier order of eviction dated 08.03.2001 passed by the EO against the Appellant Company was however recalled by an order dated 07.05.2001 passed in WP No. 520 of 2001. In the said proceeding being no. 398 of 2001, the Appellant Company proposed to liquidate the KPT's claim against arrears in monthly instalment of Rs. 1 lakh along with the current rent/ charges. The said proposal was however rejected by the EO by order dated 5.12.2005, which is the subject matter of challenge in WPO No. 506 of 2006. Thereafter, the EO passed an order of eviction against the Appellant Company on 15.05.2006 which has been assailed by the Appellant Company in WPO 728 of 2006.

7. Mr. Sarkar, learned Senior Advocate appearing in support of the appeal contended that the KPT by a letter dated August 18, 1986 offered to grant a monthly tenancy to the Appellant Company which was duly accepted by the Appellant Company vide letter dated January 12, 1987. He further contended that the purported notice dated September 9, 1999 cannot be said to be a valid notice in as much as the said notice did not determine the monthly tenancy in accordance with Section 106 of the Transfer of Property Act. He further contended that the ex-parte order

passed by the EO on May 15, 2006 is bad in law as the same was not preceded by any notice upon the Appellant Company with regard thereto. Therefore, according to Mr. Sarkar, the ex-parte order dated 15.05.2006 is violative of the principles of natural justice and as such the same is null and void. On the issue with regard to entertainability of a writ petition when there is an alternative remedy of appeal provided under the 1971 Act, Mr. Sarkar contended that the instant case falls within the exceptions to the rule of exhaustion of the alternative remedy. Mr. Sarkar concluded by submitting that the Appellant Company cannot be said to be an unauthorized occupant within the meaning of Section 2(g) of the 1971 Act as a monthly tenancy was granted to the appellant company.

8. Mr. Datta, Learned Senior Advocate representing the Respondent Port Authority seriously disputed the contentions raised by the Learned Senior Advocate for the Appellant Company. He contended that the lease executed in favour of the Appellant Company stood expired by efflux of time and the same was not renewed any further. He further contended that the finding arrived at by a Learned Single Judge in the order dated January 5, 1999 declaring the Appellant Company as an unauthorized trespasser has attained finality in view of dismissal of the Special Leave Petition. He further contended that the KPT's offer for renewal of lease by a letter dated September 27, 1985 was rejected by the KPT on December 6, 1985 as the Appellant Company sought to accept the offer for renewal of lease conditionally which intention was expressed by the Appellant Company's letter dated October 24, 1985. Mr. Datta submitted that the Appellant Company is in occupation of a public premises and is exploiting the same for commercial purpose without paying the requisite charges therefor.

9. Heard the learned counsels for the respective parties and perused the materials placed.

10. It is not in dispute that the lease executed in favour of the Appellant Company stood expired by efflux of time on and from 31.05.1985. The learned Senior Advocate for the Appellant Company would contend that after the expiry of the aforesaid lease a valid monthly tenancy was created. In order to buttress such submission several documents were referred to in course of hearing of this appeal. After going through the said documents, this Court finds that the learned Single Judge took note of the letters exchanged between the rival parties as well as the order passed by a learned Single Judge on January 5, 1999 and the order of the Hon'ble Division Bench in an appeal against such order and arrived at a positive finding that the communication 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 monthly tenancy by the KPT to the Appellant Company. In the backdrop of such finding, the learned Single Judge observed that the Appellant's plea of grant of monthly tenancy in its favour cannot be accepted. The said finding, to the mind of this Court do not suffer from any perversity warranting interference in this intra-court appeal.

11. The learned Senior Counsel for the appellant contended that the allegation in the notice issued under Section 4 of the 1971 Act are contradictory in as much as in the first part of such notice it was alleged that the lease expired on and from 31.05.1985 whereas in the later part of such notice it was alleged that the appellant company is in unauthorized occupation on and from October 1, 1999. The learned Single Judge after taking into consideration the grounds specifically mentioned in the notice under Section 4 of the 1971 Act held that the said show cause notice cannot be said to be an invalid one by assigning cogent reasons in support thereof.

12. Mr. Sarkar, learned Senior Advocate submitted that the monthly tenancy granted in favour of the appellant company after expiry of the lease was not determined by

issuing a notice under Section 106 of the Transfer of Property Act.

13. From the grounds taken in the Memorandum of Appeal, it appears to this Court that the endeavour of the appellant is to avail the protection of a monthly tenant under the Rent Control Act or the Transfer of Property Act. It is not in dispute that the appellant company was inducted in a public premises by virtue of a lease deed which stood expired by efflux of time. For deciding the issue whether the provisions of the Transfer of Property Act or the Rent Control Act would govern the eviction of an authorized occupant of a public premises, it would be relevant to take note of the decisions rendered by the Hon'ble Supreme Court of India on such issue. The Hon'ble Supreme Court in the case of ***Ashoka Marketing Ltd. & Ors. Vs. Punjab National Banks & Ors.*** reported at ***(1990) 4 SCC 406*** held that the provisions of the Public Premises 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 unauthorized occupation of the public premises under Section 2(e) of the Act cannot invoke the protection of the Rent Control Act.

14. In the case of ***Delhi Development Authority us. Anant Raj Agencies Pvt. Ltd.*** reported at ***(2016) 11 SCC 406***, the issue which fell for consideration before the Hon'ble Supreme Court was whether the original lessee in respect of a public premises to which the provisions of the 1971 Act applies has acquired any right in respect of the property in question after the termination of lease by efflux of time and in the absence of renewal of lease, by virtue of payment of rent. While deciding the said issue, the Hon'ble Supreme Court held that the Transfer of Property Act which is a general law governing landlord & tenancy relation in general is not applicable in case of public premises. It was further held that termination of the lease was never required as after the expiry of the original period of lease it stands terminated by efflux of time. It was held that in the absence of renewal of lease, the status of the original lessee is that of

an unauthorized occupant as he had continued in the occupation of the property in question as an "unauthorized person" in terms of Section 2(g) of the 1971 Act. The Hon'ble Supreme Court noticed the decision in the case of ***Ashoka Marketing Ltd.*** (supra) wherein the Constitution Bench of the Hon'ble Supreme Court after interpretation of the relevant provisions of the 1971 Act and the Rent Control Act clearly held that the 1971 Act must prevail over the Rent Control Act. The Hon'ble Supreme Court held thus-

> *"26. Further, in the case of Ashoka Marketing Ltd. v. Punjab National Bank , wherein the question for consideration was whether the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 overrides the provisions of Delhi Rent Control Act, 1958, the Constitution Bench of this Court after interpretation of the relevant provisions of both the Acts has clearly held that the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 must prevail over the Rent Control Act. The relevant paras 55 and 70 of the decision read thus:*
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> > *"55. The Rent Control Act makes a departure from the general law regulating the relationship of landlord and tenant contained in the Transfer of Property Act inasmuch as it makes provision for determination of standard rent, it specifies the ground on which a landlord can seek the eviction of a tenant, it prescribes the forum for adjudication of disputes between landlords and tenants and the procedure which has to be followed in such proceedings. The Rent Control Act can, therefore, be said to be a special statute regulating the relationship of landlord and tenant in the Union territory of Delhi. The Public Premises Act makes provision for a speedy machinery to secure eviction of unauthorised occupants from public premises. As opposed to the general law which provides for filing of a regular suit for recovery of possession of property in a competent court and for trial of such a suit in accordance with the procedure laid down in the Code of Civil Procedure, the Public Premises Act confers the power to pass an order of*

eviction of an unauthorised occupant in a public premises on a designated officer and prescribes the procedure to be followed by the said officer before passing such an order. Therefore, the Public Premises Act is also a special statute relating to eviction of unauthorised occupants from public premises. In other words, both the enactments, namely, the Rent Control Act and the Public Premises Act, are special statutes in relation to the matters dealt with therein. Since, the Public Premises Act is a special statute and not a general enactment the exception contained in the principle that a subsequent general law cannot derogate from an earlier special law cannot be invoked and in accordance with the principle that the later laws abrogate earlier contrary laws, the Public Premises Act must prevail over the Rent Control Act.

70……In our opinion, the provisions of the Public Premises 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 under Section 2(e) of the Act cannot invoke the protection of the Rent Control Act."

27. The Transfer of Property Act, 1882 is a general law governing the landlord and tenant relationship in general. The specific Rent Control Acts are advancement over the Transfer of Property Act, thereby providing more protection to the tenant from arbitrary increase of rent and ejectment from the rented premises by the landlord. Thus, in the light of the aforesaid case law, it can be concluded that the Transfer of Property Act, 1882 is not applicable in respect of the public premises."

15. In the case on hand, the premises in question is a public premises in view of the provisions laid down under Section 2(c) of the 1971 Act. Therefore, neither the provisions of the Transfer of Property Act nor the Rent Control Act can be applied to the premises in question. It is not the case of the appellant company that there has been a renewal of the lease. It has been observed by the Hon'ble Supreme Court in

Delhi Development Authority (supra) that mere acceptance of the amount towards the rent after the expiry of the lease period shall not be construed as renewal of lease of the premises in question in favour of the original lessee. This Court is therefore of the considered view that after expiry of the lease period the original lessee has become an unauthorized occupant in terms of Section 2(g) of the 1971 Act.

16. The learned Single Judge took note of the decisions in the case of ***Ashoka Marketing Ltd.*** (supra) & ***Delhi Development Authority*** (supra) while returning the finding that the appellant company would not get the protection either of the Rent Control Act or the Transfer of Property Act insofar as the provisions of eviction are concerned. The learned Single Judge rightly observed that the show cause notice issued was in compliance of the provisions of Section 4 of the 1971 Act.

17. Record reveals that the appellant company prayed for a settlement on the issue of rent. On such prayer being made, the EO passed certain directions in course of the proceeding. Therefore, there was no necessity for issuance of notice under Section 7 of the 1971 Act as rightly observed by the learned Single Judge.

18. Insofar as the challenge against the order passed by the EO dated December 5, 2005 which is the subject matter of challenge in WPO No. 506 of 2006, this Court finds that the appellant company made a prayer before the EO asking for instalments. Record reveals that the EO for the purpose of deciding such prayer of the appellant company granted several opportunities to the appellant company to resolve the issue. The learned Single Judge rightly observed that the adjudication made by a learned Single Judge in the earlier round of litigation which culminated in the order dated January 5, 1999 to the effect that the KPT has been charging occupation charges at gazetted rates had attained finality. The finding of the learned Single Judge that the appellant company admitted the rates of occupation charges

by asking for instalments and not denying the arrears also does not call for any interference.

19. Mr. Sarkar would contend that there has been gross violation of the principles of natural justice inasmuch as no notice fixing the date of hearing on 15.05.2006 was served upon the appellant company. This was one of the reasons which prompted the appellant company to challenge the final order dated 15.05.2006 by filing an application under Article 226 of the Constitution of India by passing the statutory appellate remedy provided under the 1971 Act.

20. Section 9 of 1971 Act provides that an appeal shall lie from every order of the EO in respect of any public premises under Section 5 or Section 5B or Section 5C or Section 7 to an Appellate Officer who shall be the District Judge of the district in which the public premises are situate or such other judicial officer in that district of not less than ten years standing as the District Judge may designate in this behalf. Subsection 2 of Section 9 provides for the period of limitation for preferring such appeal. Subsection 3 thereof deals with the power of the Appellate Officer to stay the enforcement of the order under appeal.

21. Therefore, on a bare reading of the said provision, this Court is of the considered view that an efficacious appellate remedy against an order passed under Section 5 of the 1971 Act has been provided under the 1971 Act. It is now judicially settled that there are certain exceptions to the rule of Exhaustion of Alternative Remedy vis-à-vis the entertainability of the writ petition. One such well recognized exception is violation of the principles of natural justice. The Appellant Company sought to invoke the jurisdiction of the writ court alleging that there has been a gross violation of the principles of natural justice. However, it would be evident from the submissions advanced by the learned Senior advocate representing the Appellant Company before the writ court as would be evident from the judgment and order impugned that the appellant company apart from raising the issue of violation of the principles of

natural justice also questioned the propriety of the order dated 15.05.2006 on merits, both factual and legal issues.

22. This court has to first consider as to whether there has been a violation of the principles of natural justice as argued by the learned Senior Advocate for the appellant.

23. Record reveals that on 04.04.2006 an adjournment was prayed for by the appellant company, who was the opposite party in the proceedings before the EO, on the ground of illness of the learned advocate. The EO allowed such prayer and directed the parties to appear on 18.04.2006. However, on 18.04.2006, the Appellant Company was not represented before the EO. The EO took note of the notice dated 17.04.2006 issued by the advocate on record of the appellant company stating that a writ petition challenging the order of the EO dated 05.12.2005 is pending before this Hon'ble Court. Considering such prayer the EO fixed the next date on 15.05.2006. Mere pendency of a writ petition cannot be a ground for stay of the eviction proceedings before the EO under the 1971 Act. A notice was issued one day prior to the date fixed for hearing on 18.04.2006 and it is not the case of the Appellant Company that they were not aware of the date of hearing fixed on 18.04.2006. The Appellant Company in spite of being well aware of the date of hearing fixed on 18.04.2006, instead of appearing on the said date issued a notice dated 17.04.2006 for reasons best known to the company. The learned senior advocate for the appellant company, in course of his argument, could not satisfy this court that the law requires a notice to be issued in a case of instant nature when the date of hearing on 15.05.2006 was fixed on 18.04.2006. Record reveals that several opportunities were granted to the Appellant Company to defend themselves in the proceeding before the EO. Therefore, this Court is of the considered view that it does not lie in the mouth of the appellant company to allege that there has been a violation of the principles of natural justice.

24. At this stage, it would be relevant to consider the closing submission made by the learned Senior Advocate for the Appellant Company that a liberty may be granted to the appellant to invoke the statutory appellate remedy provided under the 1971 Act.

25. It has been observed herein before that the appellant company is in unauthorized occupation of the public premises since the expiry of the lease by efflux of time on and from 31.05.1985. It is not in dispute that the appellant company is exploiting the public premises for commercial purpose. That apart the appellant company took a conscious decision to challenge the final order of eviction dated 15.05.2006 passed by the EO by filing an application under Article 226 of the Constitution of India by passing the statutory appellate remedy provided under the 1971 Act. The appellant company instead of restricting the challenge against the order dated 15.05.2006 on the ground of violation of principles of natural justice before the writ court, enlarged the scope of the writ petition by challenging the propriety of the order dated 15.05.2006 on merits also both on factual and legal issues.

26. The learned advocates for the rival parties made elaborate arguments before the learned Single Judge on factual and legal issues as well as on the issue of violation of the principles of natural justice. The learned Single Judge dealt with all the issues raised by the appellant company and returned findings on such issues. This Court has also dealt with the submissions of the learned advocates for the rival parties and has already recorded findings thereon. It is too late in the day for the appellant company to now seek liberty of this Court to invoke the appellate remedy provided under the 1971 Act. After the issues raised by the appellant company have been decided by this court, the prayer made by learned Senior Advocate for the appellant company for grant of liberty to invoke the statutory appellate remedy under the 1971 Act is hereby rejected by this Court.

27. For all the reasons as aforesaid this Court is of the view that the appellant company has failed to make out any ground for interference with the impugned judgment and order passed by the Learned Single Judge. Accordingly, the appeals stand dismissed. The judgment and order impugned in these appeals stand affirmed. There shall be, however, no order as to costs.

28. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

I agree.

(T.S. Sivagnanam, CJ.) **(Hiranmay Bhattacharyya, J.)**

(P.A-Sanchita)