In The High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.O. No.1134 of 2007

M/s. Vijaysree Industries Pvt. Ltd. and another
Vs.
The Chairman, The Kolkata Port Trust and others

For the petitioners	:	Mr. Mr. S.N. Mitra, Sr. Adv., Mr. Sabyasachi Chaudhury, Adv., Mr. Rajarshi Dutta, Adv., Mr. M.S. Tiwari, Adv., Ms. Shweta Poddar, Adv.,
For the respondent Nos.1 and 2	:	Mr. Subhankar Nag, Adv., Mr. Ashok Kumar Jena, Adv.
Hearing concluded on	:	14.03.2023
Judgment on	:	28.03.2023

The Court:

1. The present writ petition has been moved primarily for a declaration that the purported contract dated August 18, 2000 entered into between the parties is valid and binding upon the respondents and for a direction upon the Kolkata Port Trust (KoPT) to grant direct tenancy in favour of the petitioner no.1 in respect of the premises mentioned in Schedule B in terms of such agreement.

2. The Learned Senior Advocate appearing for the petitioners argues that a concluded contract was reached between the petitioner no.1 and the KoPT for grant of a direct tenancy in favour of the petitioner no.1. It is contended that the communications annexed to the writ petition clearly indicate that a binding and concluded agreement had been entered into in that regard between the parties.

3. The petitioner had communicated to the KoPT on June 3, 1998 indicating the terms of agreement to settle tenancy in favour of the petitioner no.1. Again, *vide* Communication dated August 18, 2000, the KoPT accepted such proposal and, in turn, gave a proposal of settlement of tenancy of the land, asking for unconditional acceptance in writing to put the proposal before the Board of Trustees for their approval.

4. In a reply thereto dated August 31, 2000, the petitioner no.1 had confirmed to the KoPT the acceptance of the petitioners of the terms and conditions given by the Port Trust and requested for an offer letter to be sent to the petitioners.

5. However, subsequently, the Port Trust communicated on July 22, 2003 that the proposal to grant direct tenancy was disapproved.

6. Meanwhile, an eviction proceeding under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 was initiated by the KoPT against the petitioners.

7. The Learned Senior Advocate for the petitioners contends that the KoPT is bound by the principle of *promissory estoppel* from resiling from the contract entered into between the parties. In support of his contention, the Learned Senior Advocate cites two judgments of the Supreme Court in *M/s. Motilal Padampat Sugar Mill Co. Ltd. Vs. State* *of Uttar Pradesh and others*, reported at *(1979) 2 SCC 409* and *Manuelsons Hotels Private Limited Vs. State of Kerala and others*, reported at *(2016) 6 SCC 766*.

8. It is next contended on behalf of the petitioners that the interest of the workers employed in the industry, who are more than two hundred in number, as well as the interest of the industry in general is required to be seen by the KoPT, which is a public authority. In support of the contention that the workers also have a right to justice, the Learned Senior Advocate cites *Board of The Trustees, Port of Kolkata Vs. Efclon Tie-Up (P) Ltd. and others*, reported at *(2006) 9 SCC 763*.

9. It is next contended by the petitioners that the writ is maintainable in the present case since the KoPT, being a public authority, is expected to act reasonably, unlike a private landlord.

10. Moreover, it is argued that a public law element is involved inasmuch as the activities of the KoPT are concerned.

11. By reiterating the letter dated August 18, 2000 issued by the KoPT, annexed at page 50 (Annexure P-14) of the writ petition, the learned Senior Advocate argues that the same amounted to a concluded contract between the parties which is binding on the KoPT.

12. Moreover, although an eviction order was passed against the original tenant, no steps pursuant thereto were taken by the KoPT all along. Hence, it is submitted that the KoPT be directed to execute the necessary documents of direct tenancy in favour of the petitioner no.1.

13. By placing particular reliance on the statements made in paragraph 25 of the writ petition, it is submitted that on and from the year 1978, the petitioner is carrying on its business in the premises and has invested huge amounts towards the structure shed and plant and machinery, since the petitioner was inducted at the inception lawfully with the concurrence of the respondent nos.1 and 2. The petitioner no.1 has been in possession of the said premises for several decades now and, as such, the KoPT is acting *de hors* its jurisdiction in refusing to grant direct tenancy to the petitioner no.1.

14. The Learned Senior Advocate for the petitioners places reliance on Section 34 of the Major Port Trusts Act, 1963 (hereinafter referred to as "the 1963 Act") in support of his contention that every contract entered into by the KoPT has to be executed on behalf of a Board, by the Chairman or any 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 a common seal of the Board. In the present case, it is contended, since the Board itself took the decision of accepting the petitioner's proposal and entering into a concluded contract to grant direct tenancy to the petitioner no.1, such position cannot be resiled from subsequently by the KoPT on the flimsy pretext that the concerned Ministry of the Government of India has not given due sanction in that regard.

15. Learned counsel appearing for the KoPT submits that there was no concluded contract between the parties at any point of time.

16. It is argued that the petitioner had given a counter-offer to the proposal of the Port Trust instead of an unconditional acceptance as sought by the KoPT. The petitioners, in fact, in their communication dated August 31, 2000, had requested the KoPT not to insist upon payment of the interest, amounting to Rs.5 lakh, by way of a lump-sum payment as mentioned in the terms and conditions given by the KoPT. Hence, the same tantamounts to a fresh/counter-proposal and did not give rise to any concluded contract at any point of time.

17. The 'proposal' given by the KoPT, as annexed at page 50 of the writ petition, it is submitted, clearly mentioned that the same was subject to the approval of the Board, which also goes on to show that there was no concluded contract at that juncture or at any time subsequent thereto.

18. In this context, learned counsel appearing for the KoPT relies on *Triloki Nath Singh Vs. Anirudh Singh (Dead) through legal representatives and others*, reported at *(2020) 6 SCC 629*, for the proposition that the Court can be instrumental in having an agreed compromise effected. However, the court should never be party to imposition of a compromise upon an unwilling party.

19. It is next contended by learned counsel for the KoPT that a policy decision of the State ought not to be interfered with by the Court.

20. The ground cited for refusal to give a direct tenancy to the petitioner no.1 was that the controlling Ministry (Ministry of Shipping, Government of India) had since disapproved of the proposal to grant direct tenancy to the existing occupier. It is argued that the writ court ought not to interfere with such policy decision of the concerned Ministry of the Central Government.

21. Since there was no approval of the Central Government at any point of time, the negotiations could not go through and ought not to be forced upon the KoPT by the Court.

22. By placing reliance on Section 35 of the 1963 Act, learned counsel contends that the power of the Board to execute works and provide appliances pertains to functioning of a port. Hence, no element of public law is involved at all in the present transaction between the parties. The same is at best a non-port related activity and, as such, the concerned Ministry is in charge and not the Board.

23. It is submitted that Section 34 of the 1963 Act has to be read in such context.

24. Learned counsel next argues that the eviction order passed in the year 1991 against the original tenant, through whom the petitioners claim possession, has attained finality, since the same remained unchallenged all along. Hence, the petitioner has no independent right in respect of the property at all, protection of which could be sought by way of a writ petition. It is submitted that the petitioners have no *locus standi* to maintain the present writ petition at all.

25. Learned counsel appearing for the KoPT then argues that in the garb of a writ petition, the petitioners have sought reliefs which can only be granted by a competent Civil Court having jurisdiction to grant specific performance of contract. As such, even if the petitioner was to be entitled to any relief, the same ought to have been sought before the competent Civil Court having jurisdiction within the period of limitation as stipulated in law. Having not done so, the petitioners are not entitled to get such reliefs from the Writ Court.

26. It is lastly submitted on behalf of the KoPT that no public law element is involved in the present case and, as such, the Writ Court ought not to entertain the present writ petition. In support of such contention, learned counsel places reliance on *Kisan Sahkari Chini Mills Limited and others Vs. Vardan Linkers and others*, reported at *(2008) 12 SCC 500*.

27. While distinguishing the judgments cited by the petitioners on *promissory estoppel,* learned counsel for the Port argues that there was no 'promise' or concluded contract in the present case to attract the principle of *promissory estoppel*, nor was there any act done by the petitioners to the detriment of their interest, based on any assurance given by the KoPT.

28. While dealing with *Efclon Tie-Up (P) Ltd. and others (supra)*, also cited by the petitioners, it is contended by the KoPT that paragraph nos.21, 22, 34 and 35 thereof clearly show that the issues involved therein were entirely different from the present context. In the said case, it is submitted, the workmen themselves were parties, for which the observations therein were rendered by the Supreme Court.

29. It is further submitted that after the enactment of the Companies Act, 2013, workmen are not secured creditors. As such, in any event, the ratio laid down in the said judgment cannot have any relevant bearing on the present adjudication.

30. The question of maintainability of the writ petition is required to be dealt with first. The KoPT has cited *Kisan Sahkari Chini Mills Limited and others (supra).* In the said case, the Supreme Court reiterated that there can be interference under Article 226 of the Constitution of India where the contractual dispute has a public law element.

31. A judicial review is maintainable if the administrative action is not a full-fledged adjudication of contractual rights.

32. In the present case, counsel have relied on the provisions of Sections 34 and 35 of the 1963 Act. Section 35 stipulates illustrations of works which might be executed by the Board of Trustees, KoPT. The said works primarily relate to activities revolving around the Port. However, the same is not an exhaustive list. In fact, the language of sub-section (2) of Section 35 indicates that the said description of works is only inclusive.

33. Again, Section 49 of the 1963 Act provides that the Authority shall from time to time also frame scale of rates of payment and statement of conditions under which any property belonging to or in the possession or occupation of the Board or any place within the limits of the Port or Port approaches may be used for the purposes specified thereunder. Clause (d) thereof includes "any other use of any land, building, …… belonging to or provided by the Board". Hence, it is within the authority of the KoPT itself to deal with properties belonging to or provided by the Board with regard not only to framing scales of rates but also statement of conditions under which such property may be used.

34. Thus, broadly speaking, such activities are also included within the ambit of the functioning of the KoPT.

35. It is well-settled that a public authority like the KoPT, which discharges functions of the State, has to act more reasonably and on a higher footing, adhering to principles of natural justice, than an ordinary private landlord.

36. As such, in the present case, the involvement of a public law element regarding the user and leasing-out of KoPT-properties cannot be ruled out altogether.

37. Insofar as the necessity of approval from the concerned Ministry of the Central Government is concerned, it is rightly argued by the petitioners that Section 34(1) of the 1963 Act stipulates that 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 a Chairman by general or special order may authorise in this behalf and shall be sealed with the common seal of the Board. The second proviso thereto stipulates that no contract for the acquisition or sale of immovable properties or for the lease of any such property for a term exceeding 30 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.

38. Nothing has been established by the KoPT in regard to whether the second proviso is satisfied in the present case.

39. In fact, Section 34, read with Section 49(1)(d), of the 1963 Act leaves ample scope for the KoPT itself to enter into agreements for grant of lease.

40. It does not lie in the mouth of the KoPT, after having approved of a contract, to cite non-approval by the Central Government to negate such approval subsequently. As such, the reasons cited by the KoPT, being disapproval of the controlling Ministry *vide* letter dated July 22, 2003, cannot *ipso facto* be a bar for executing a lease-deed in favour of the petitioners.

41. The KoPT has argued that a suit for specific performance was required to be filed instead of a writ petition for the reliefs claimed herein. However, since the petitioners allege high-handed action on the part of the KoPT, which is an instrumentality of the State, if the materials on record clearly indicate the existence of a valid contract, there cannot be any reason why the writ court, sitting in judicial review, cannot direct the KoPt to execute such deed.

42. However, the moot question which falls for consideration in the present case is whether there was any concluded contract at all at any point of time between the parties.

43. The first relevant document in that regard is the communication made by the petitioner no.1 to the Land Manager, KoPT dated June 3, 1998 which contained a preliminary proposal to settle a tenancy in favour of the petitioner on long-term basis. In the said letter, the petitioner no.1 also indicated the dues payable by it to the KoPT.

44. However, even as per the argument of the petitioners, the contract started taking shape by virtue of the proposal dated August 18, 2000 made by the KoPT (Annexure P-14 at page 50 of the writ petition), whereby a conditional offer was given to the petitioners. Such conditions were clearly stipulated in the proposal itself. The caption of the said letter was “proposed settlement of tenancy on land in favour of M/s. Vijaysree Industries Pvt. Ltd.”. Several amounts of money, under different heads, were specified therein which, together, made up the proposed consideration.

45. More importantly, in paragraph no.4 of the said letter, the KoPT clearly mentioned that the petitioners were to formally forward their “unconditional” acceptance in writing to enable the KoPT to put the proposal before the Board of Trustees for their approval. An important component of the said letter, thus, was that even if the petitioners unconditionally accepted the entire proposal in writing, the same would be put before the Board of Trustees for approval. Hence, mere unconditional acceptance was not the only remaining step to enter into a concluded contract.

46. In the alleged ‘acceptance’ of the petitioners *vide* their letter dated August 31, 2000 (Annexure P-15 at page 51), the petitioners clearly qualified the terms and conditions in the second paragraph of the same. The language of the said paragraph indicates that the petitioners accepted the terms and conditions as mentioned in the letter for settlement of tenancy, but at the same time requested the KoPT not to insist the petitioners to pay the interest amounting to Rs.5 lakh as lump-sum payment as mentioned therein. Again, in the third paragraph, it was indicated that the KoPT may consider the petitioners' "appeal" and "immunise" the petitioners from payment of such amount of interest as mentioned in the KoPT's letter.

47. It is relevant to note that Clause (i) of paragraph no.3 of the terms and conditions stipulated in the August 18, 2000 letter of the KoPT, it was mentioned in unequivocal language that the petitioner no.1 "shall" pay all outstanding dues, occupation charges, which were quantified, plus a lump-sum money of Rs.5 lakh as interest on dues.

48. Law is well-settled in India that there would be a concluded contract between the parties, enforceable in law, only if there was consensus *ad idem* in respect of all the essential clauses of the proposal.

49. Since the payment of Rs.5 lakh was an integral part of the consideration amount contained in the proposal given by the KoPT, the request of the petitioners to the KoPT to deviate from the same by not insisting them to pay such amount of interest tantamounted to deviation from an essential condition of the proposal.

50. Although, in the penultimate paragraph of the letter dated August 31, 2000, the petitioners tried to make up by stating that they had confirmed their acceptance of the terms and conditions and requested the KoPT to send their offer letter for necessary execution, the said letter of the petitioners, read as a whole, shows a clearly intended deviation from the essential contracts as proposed by the KoPT.

51. Moreover, even in the petitioners' letter dated August 31, 2000, a further offer letter was requested from the KoPT, which also strengthens the view that there was no concluded contract at that juncture.

52. The proposal of the KoPT was qualified to the extent that only in the event of "unconditional" acceptance in writing from the petitioners, the proposal would be put before the Board of Trustees "for their approval".

53. Hence, in the absence of a concluded contract in the first place, it cannot be said that the KoPT was bound to comply with its own agreement.

54. Although the cheques sent by the petitioners were not returned by the KoPT, neither were the same encashed by the KoPT. As such, the cheques ultimately lapsed. Unless encashed, the cheques could not constitute a payment of consideration, more so, in the context of subsequent refusal by the KoPT to enter into a concluded contract.

55. Inasmuch as the principles of *promissory estoppel* are concerned, even the judgments cited by the petitioners in such context observe that the true principle of *promissory estoppel* is where one party has, by his words or conduct, made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is, in fact, so acted upon by the other party, when the promise would be binding on the party making it and he would not be entitled to go back upon it.

56. The foundation of a promissory estoppel as per *Manuelsons Hotels Private Limited (supra)*, also cited by the petitioners, is that an unconscionable departure by one party from the subject matter of an assumption of fact or law, present or future, which has been adopted by the other party as the basis of some course of conduct, act or omission, should not be allowed to pass muster.

57. In the present case, however, the petitioners were already in possession of the premises when the purported proposal was made and there is nothing on record to show that the petitioners did anything extra (to their detriment or otherwise) on the premise of the proposal or promise of the KoPT. That apart, there was no "unconscionable departure" by the KoPT from any subject matter of assumption of fact or law which was adopted by the petitioners as the basis of any course of conduct, act or omission.

58. In the absence of such essential ingredients, the doctrine of *promissory estoppel* cannot be invoked in the present case.

59. Inasmuch as the judgment of *Triloki Nath Singh (supra)* is concerned, the same lays down that the court should never be party to imposition of a compromise upon an unwilling party.

60. In principle, the said ratio is applicable to the present case, as the KoPT never arrived at any concluded contract with the petitioners, as evinced from the discussions as made above.

61. The line of argument advanced by the petitioners with regard to the interest of workmen, as rightly contended by the KoPT, as laid down in *M/s. Motilal Padampat Sugar Mill Co. Ltd. (supra),* is not applicable in the present case. In the said judgment, the workmen were parties and were represented through counsel. It was submitted on behalf of the workmen that their livelihood depended on the renewal of the lease. In the present case, however, no workman was impleaded at any point of time. Moreover, the subject-matter of dispute herein has no direct nexus with the employees of the petitioner no. 1.

62. The limited question involved herein is, whether there was any concluded contract and if so, whether the KoPT can be bound to the same. Such components having been negated, the principle of the workmen's interest cannot be imported here. Moreover, no such case was made out in particular in the pleadings and/or materials annexed.

63. In the light of the above observations, there is no scope of granting the relief sought in the present writ petition.

64. Accordingly, WPO No.1134 of 2007 is dismissed on contest without any order as to costs.

<u>Later</u>

65. After the above judgment is passed, learned Counsel for the petitioners prays for an order of status quo in respect of the property with regard to which the above judgment has been passed. It is submitted that the petitioners are concerns having several employees, who could be ousted immediately as a consequence of this judgment. Keeping in view such prospective plight of the employees, the operation of the above judgment and order is stayed till March 24, 2023.

66. 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.)