

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

The Hon'ble Justice Sabyasachi Bhattacharyya

WPO No. 1610 of 2023

**Gulshan Kumar Gulati and Another
Vs.
West Bengal Small Industries Development
Corporation Limited and others**

For the petitioners	:	Mr. Abhrajit Mitra, Sr. Adv., Mr. Zeeshan Haque, Adv.
For the respondents	:	Mr. Kamal Kr. Chattopadhyay, Adv. Mr. Susanta Pal, Adv.
Hearing concluded on	:	06.10.2023
Judgment on	:	13.10.2023

Sabyasachi Bhattacharyya, J:-

1. The petitioners were allotted a plot by the respondents in the Tangra Industrial Estate, Unit-II at Kolkata, for a period of 99 years commencing from December 7, 2007 till December 5, 2004, subject to the terms and conditions of the Deed of Lease dated January 5, 2007, for the specific purpose of setting up and carrying on an industry/manufacturing unit for production, manufacturing and trading activities.
2. Subsequently, the respondents issued a notice of termination dated November 2, 2012 on the ground of violation of Clause 2(g) of the Deed of Lease which required the petitioners to start construction, manufacturing and production/trading activities within twelve months from the date of commencement of the lease or within such

time as may be permitted by the lessor.

3. On November 2, 2012, an order of eviction was passed against the petitioners. The petitioners challenged the same in an appeal before the appellate authority. *Vide* order dated January 5, 2014, the said appeal was dismissed on contest by the appellate authority, which was not challenged further by the petitioners.
4. The petitioners also filed a suit bearing Title Suit No.11847 of 2014 before the Civil Judge, Junior Division at Sealdah, District – South 24 Parganas challenging the diverse steps taken by the respondents. However, the same was dismissed for default on July 31, 2015.
5. Recently, pursuant to the said eviction order passed against the petitioners, the respondents issued an order dated July 19, 2023 to the petitioners, making the order of eviction absolute and authorising the respondents' representative to enter into the said premises for recovery of the possession of the same under Section 4(2) of the West Bengal Government Premises (Tenancy Regulation) Act, 1976 (hereinafter referred to as, "the 1976 Act"), read with Rule 3(3) of the connected Rules.
6. The petitioner no.2 made a representation *vide* e-mail dated August 12, 2023, upon which the respondents issued a notice of hearing dated August 16, 2023. The hearing was scheduled on August 21, 2023. Again, on August 31, 2023, the respondents issued a notice to the petitioners stating that the submissions of the petitioner no.1 at the hearing had been considered and rejected. Challenging such action on the part of the respondents, the present writ petitioner has

been filed.

7. Learned counsel for the petitioner argues that the respondent-Authorities do not have any jurisdiction to invoke the provisions of the 1976 Act, since at the relevant juncture, when the eviction proceeding was initiated and the order was passed, the plot-in-question was a vacant land having no construction thereon and thus, did not fall within the definition “premises” as contemplated in Section 2(c) of the said Act.
8. It is argued that the respondent-authorities as well as the appellant authority, thus, lacked inherent jurisdiction to take up the matter and pass the order of eviction. Hence, the entire action on the part of the respondents is vitiated by lack of jurisdiction. It is contended that nullity of an order due to inherent lack of jurisdiction, being a pure question of law, can be set up at any point of time, even at the juncture of implementation of such order.
9. Learned senior counsel places reliance on *Zuari Cement Ltd. v. Regional Director, Employees State Insurance Corpn., Hyderabad and others*, reported at (2015) 7 SCC 690, in support of the proposition that neither an order of a High Court nor the act of the parties subjecting themselves to the jurisdiction of a particular court would confer jurisdiction upon the said court to determine the issues involved if the court lacked inherent jurisdiction to decide the issues.
10. Learned senior counsel places a Division Bench judgment of this Court in *West Bengal Small Industries Development Corp. Ltd. and others Vs. M/s. Sona Promoters Pvt. Ltd. and Another*, reported at

(2015) 1 CHN 503 (DB), where, in similar circumstances, it was held that a bare land does not come within the purview of “premises”. Unauthorized occupants of a public land, after termination of lease and/or revocation of licence, can be evicted by the lessor of public land by following provisions of the 1976 Act. However, the premises had to come within the definition of “premises” under the 1976 Act.

11. Learned counsel next cites *West Bengal Small Industries Development Corp. Ltd. and others Vs. M/s. Sona Promoters Pvt. Ltd. and others*, reported at (2020) 17 SCC 145, where the Supreme Court was considering a similar dispute with regard to the self-same industrial complex as involved in the present case.
12. In the said judgment, the Supreme Court considering the definition of “premises”. It was held that the point for consideration was when neither a building nor a part of a building nor a hut nor a part of a hut nor a seat in a room is let out to the tenant but only bare land is let out, whether such tenancy can be regarded as relating to a “Government premises” to attract the provisions of the Act. It was observed that bare land has not been independently included in the definition of ‘premises’.
13. It was observed that the lease was in respect of three plots of land which did not contain any building and those plots of land did not satisfy the requirements of definition of “government premises” within the meaning of Section 2(a) read with Section 2(c) of the Act.
14. It is argued that thus, the impugned act as well as the eviction order against the present petitioner ought to be set aside on the ground of

inherent lack of jurisdiction.

15. On merits, it is submitted that the petitioners have in the meantime started manufacture and production from the said plot and thus, the entire basis of the eviction has lost force.
16. Learned senior counsel also argues that the attempted implementation of an order of eviction after eleven long years is itself palpably arbitrary. It is submitted that during the long period in between, the petitioner has commenced business, thereby rendering the basis of the eviction order infructuous. Hence, in any event, as of today the petitioners are not liable to be evicted. The respondent acquiesced to the petitioner holding over the property and commencing and carrying on business for long eleven years. Thus, the respondents are now barred from implementing the order of eviction against the petitioners.
17. Learned counsel for the respondent-Authorities submits that the petitioner participated all along in the proceedings under the 1976 Act and cannot now resile from such position by challenging the jurisdiction of the Authorities under the said Act.
18. The petitioners even preferred a challenge against the eviction order and turned unsuccessful therein. The said orders have attained finality, the petitioners having not preferred any challenge against the same.
19. Hence, the petitioners cannot now object to the jurisdiction at all.
20. Insofar as the question of applicability of the definition of “premises” is concerned, learned counsel hands over a copy of a communication

dated August 16, 2012 issued by the petitioners to the Executive Director of the West Bengal Small Industries Development Corporation Limited where the petitioners admitted that they had already started construction work at the allotted plot. Thus, it is contended that the plot was not a vacant land at the relevant juncture and the provisions of the 1976 Act are attracted.

- 21.** That apart, learned counsel argues that the petitioners were given several opportunities but they kept the plot wasting over a decade. The purpose of the said industrial complex is to encourage industry in the State, which has been utterly frustrated by the petitioners. Even now, it is contended, the petitioners have constructed a building but are utilizing only a meagre portion of the same for their business.
- 22.** Hence, the authorities were justified in implementing the eviction order against the petitioners.
- 23.** Insofar as the judgment of the Supreme Court is concerned, it is argued that the Supreme Court observed that it was an admitted position that the plot was vacant in the said case, which is not the scenario in the present case.
- 24.** That apart, it is argued that since the plot was only a part of the entire industrial complex, which had constructed portions, it cannot be said that the property was a vacant land. Thus, 1976 Act applied all along.
- 25.** It is also contended that an equally efficacious alternative remedy by way of an appeal is available under the 1976 Act itself; as such, the writ petition ought not to be entertained.
- 26.** Upon hearing learned counsel for the parties, the last submission of

the respondent is taken up first.

- 27.** The present attempt of the respondents is to implement an eviction order already passed on November 2, 2012 and affirmed by the appellate authority. The provision for appeal has already been exhausted by the petitioners against the order of eviction. The Act does not contemplate any appeal against an implementation order. The appeal provided under Section 6(c) of the Act is against an order determining compensation and does not lie against the present impugned action. Hence, the writ petition is maintainable.
- 28.** In a nut-shell, the facts of the case are that the petitioners were allotted a plot in the Tangra Industrial Estate for setting up a manufacturing/production unit which they failed to do. Hence, as per the provisions of the 1976 Act, proceedings for eviction of the petitioners were taken out and a notice was given to the petitioners.
- 29.** On November 2, 2012, the eviction order was passed. An appeal was, in fact, preferred against the same by the petitioners which culminated in an order dated January 5, 2014, whereby the eviction order was affirmed and attained finality.
- 30.** At no point of time, the petitioners challenged the jurisdiction of the authorities to take up the matter under the 1976 Act; rather, the petitioners submitted to such authority and themselves preferred a challenge within the contemplation of the Act before the appellate authority. Thus, the present challenge of the petitioners ought not to be entertained, unless something exceptional is established.
- 31.** The petitioners seek to argue that inherent lack of jurisdiction vitiates

the entire process. The same, being a pure question of law, cannot be waived by a party.

32. Such proposition, however, has to be taken with a pinch of salt.
33. Inherent lack of jurisdiction can be of two categories. The first category comprises of cases where the inherent lack of jurisdiction is *ex facie* or admitted. An off-the-cuff example of an *ex facie* bar would be when a Civil Court's decree is challenged before a criminal forum. The second category is where the conclusion as to inherent lack of jurisdiction depends upon proof of certain facts. In such cases, if the facts are admitted, no further steps remain to decide the question of jurisdiction. However, where such facts, on which the jurisdictional issue depends, are themselves disputed, inherent lack of jurisdiction is not an automatic or a foregone conclusion. If the inherent lack is evident on the face of the records or is admitted, it cannot be waived; but factual issues leading to a bar of jurisdiction can definitely be waived.
34. In the present case, the jurisdiction of the authority, even as per the argument of the petitioners, depends on the fact whether the plot-in-question comprised of "premises" owned by the Government as contemplated in the 1976 Act.
35. The petitioners never took the objection as to jurisdiction or non-applicability of the Act before any forum. Rather, in view of the letter dated August 16, 2012 issued by the petitioners, alleging that construction had started on the plot, there could be sufficient reason for invocation of the Act.

36. The definition of “premises” in Section 2(c) of the 1976 Act includes any building or hut and includes part of a building or hut and a seat in a room let separately.
37. In the present case, the evidence is not before us nor can be considered at this stage, as to whether the construction commenced by the petitioners at the relevant juncture came within the purview of a building or a part of a building.
38. In any event, the question is arguable. An arguable question of fact can very well be waived by the parties, which was precisely done in the present case by the petitioners by participating in the proceedings under the 1976 Act and invoking the provisions of the Act by preferring challenge to the eviction order under the 1976 Act.
39. Thus, it cannot be said that the challenge on the ground of inherent lack of jurisdiction is *bona fide*. The petitioners have not come with clean hands in raising the question of jurisdiction after eleven years, after participating all along in the proceeding under the 1976 Act and letting the eviction order attain finality over the years. Only when the same was sought to be implemented did the petitioners wake up and challenged the respondents’ action on the ground of inherent lack of jurisdiction. Neither is such attempt on the part of the petitioners *bona fide*, nor can the issue be permitted to be reopened at this hopelessly belated stage. Hence, the objection as to inherent lack of jurisdiction is turned down.
40. Insofar as the judgment of the Supreme Court in *Sona Promoters (supra)* is concerned, in paragraph 29 thereof it was recorded that

when the eviction proceedings were initiated, *admittedly* the land in question did not contain any structures.

41. In such context, the Supreme Court went on to observe that the plot was a land and did not satisfy the requirement of the 1976 Act.
42. However, in the present case, there is no such admission on the part of the respondents; rather, the respondents argue that a construction was there which fell within the contemplation of “premises” under the 1976 Act.
43. Various plots, although belonging to the same industrial complex, may be different in nature and character. This Court cannot go into the factual issue as to what was the actual nature of the land/property when the eviction order was actually passed against the petitioners.
44. The said issue cannot be reopened at this juncture, since the same has become stale and cannot be revived now.
45. Insofar as the question of inherent lack of jurisdiction is concerned, even without disputing the proposition as laid down by the Supreme Court of this Court in *Zuari Cement Ltd. (supra)* and *Sona Promoters (supra)*, in view of the petitioners having never disputed the nature of the property at the relevant juncture and since the eviction order, being affirmed in appeal, has already attained finality, the said question cannot be reopened now.
46. In the present case, the petitioners’ conduct is clear. It participated in the eviction proceeding, challenged the eviction order in appeal and failed to succeed in the same. Even otherwise, the petitioners took

years to start construction on the property, thereby defeating the very purpose of grant of the plot in the industrial Scheme to the petitioners. For the long period of eleven years, the petitioners did not substantially exploit the plot, leading to the authorities seeking to implement the order of eviction against the petitioners.

47. The petitioners have failed to establish that such action is time-barred. In fact, the delay was of about nine years and not eleven, since the appellate authority affirmed the eviction order in the year 2014.
48. Thus, the impugned act of the respondent-Authorities in seeking to implement the eviction order against the petitioners under the 1976 Act is sanctioned by law and justified otherwise. Accordingly, there is no scope of interference.
49. Thus, WPO No. 1610 of 2023 is dismissed on contest, however, without any order as to costs.
50. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)