

16th May,
2024
(AK)
17

W.P.A 12595 of 2024

Vinay Kanodia and another
Vs.
Food Corporation of India and others

Mr. Suddhasatva Bannerjee
Ms. Rituparna Chatterjee
Mr. Sashwat Nayak
Mr. Zubeen Pandey

...for the petitioners.

Mr. Kamal Kr. Chattopadhyay
...for the respondent nos.1 to 3.

1. The present matter has a chequered history.
2. In the year 1977, the FCI-respondent no.1 took over the property-in-question.
3. In April 1978, the FCI granted lease in respect of the same to the petitioners' father/predecessor-in-interest. The said lease was terminated on June 28, 1978, followed by an eviction order in the year 1988.
4. Upon an appeal having been preferred by the petitioners' predecessor-in-interest against the eviction order, the appeal was allowed, setting aside the eviction order and remanding the matter to the Estate Officer in the year 1990.
5. Thereafter, the Estate Officer passed a second eviction order on May 27, 1994 which was duly challenged in a statutory appeal by the petitioner.

6. Although initially there was a stay granted in connection with the appeal, the same got vacated when the appeal stood dismissed for default.
7. The appeal and the interim order stood restored upon the condition that the petitioner pays Rs.500/- as costs.
8. However, apparently such costs having not been deposited, the stay was not revived.
9. In the year 2009, the petitioners' father was evicted forcibly from the disputed property.
10. A writ petition was filed seeking restoration of possession and against the alleged high-handed action of the respondents.
11. Upon the petitioner being dissatisfied with the order of the writ court, an appeal was preferred which culminated in a remand to the statutory appellate authority under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short the '1971 Act').
12. Subsequently, the Appellate Authority remanded the matter vide order dated March 27, 2018 to the Estate Officer.
13. The real problem of the petitioners started thereafter, since the petitioners' father repeatedly approached the respondent no.1-Authority between 2018 and 2021 till his demise, seeking the

appointment of an Estate Officer for the purpose of carrying out the order of the Appellate Authority.

14. In the absence of any such appointment, the petitioners' father and thereafter the petitioners, it is argued, could not even make any prayer for restitution of possession of the petitioners pursuant to the setting aside of the order of the Estate Officer by the Appellate Authority while remanding the matter back.
15. Upon the demise of the petitioners' father in the month of November, 2021, the petitioners took up the cudgel and moved the authorities for appointment of an Estate Officer.
16. However, it is submitted that such efforts went in vain, necessitating the filing of the present writ petition asking for such appointment by the respondent no.1-Authority.
17. Learned counsel for the petitioners submits that during pendency of the writ petition, an Estate Officer has been appointed and the petitioners seek to go back before such Estate Officer.
18. However, it is apprehended that in view of the delay, adverse orders may be passed against the petitioners.
19. It is stressed by learned counsel for the petitioners that the petitioners had no other option but to

prefer this writ petition and there was no fault on the part of the petitioners in the delay occasioned.

20. Learned counsel appearing for the respondent authorities submits that the present writ petition is not maintainable.
21. Reliance is placed on the order of the learned Single Judge dated February 19, 2009 passed in WP 66 of 2009, where it was recorded by the learned Single Judge that while restoring the second appeal preferred under Section 9 by the petitioners before the Appellate Authority, the Appellate Authority had directed the petitioners to pay cost of Rs.500/- which not having been paid, the appeal never stood restored.
22. Thus, the entire exercise thereafter was an exercise in futility.
23. Learned counsel also places reliance on certain portions of the order of the Division Bench before which an appeal was preferred against the order of the learned Single Judge and points out that the Division Bench had recorded that a perusal of the order dated May 2, 2006 restoring the statutory appeal would clearly show that it was incumbent upon the appellant to pay the cost positively before the ensuing Summer Vacation and that it was directed also that in case the appellant fails to deposit the cost, the stay order stands vacated.

24. It was observed by the Division Bench that the observations of the trial court cannot be said to be unsustainable and the Division Bench endorsed the action of the respondent authorities and affirmed the order of the Division Bench.
25. Thus, the order of the Division Bench remanding the matter to the Appellate Authority is to be read in the context of the fact that the same was never restored in view of the default of payment of cost by the petitioners.
26. However, on query of court, it is candidly submitted by learned counsel for the respondents that this point was never agitated before the Appellate Authority where the matter was remanded and ultimately the Appellate Authority remanded the matter back to the Estate Officer.
27. The next sticking point in the matter, as pointed out by learned counsel for the respondents, is that the Estate Officer was not appointed since there is no other property of the respondent no. 1-FCI but the present for which such Estate Officer is required to be appointed by the FCI.
28. It was the incumbent duty of the petitioners, it is argued, to have pursued the order of the Appellate Authority and pressed the matter of appointment of an Estate Officer.

29. It is contended that the petitioner has annexed a purported communication of 2021 to the respondent authorities for appointment of Estate Officer, the receipt of which is disputed by the respondent authorities.
30. Thus, the petitioners having failed to do their duty in the carriage of proceedings by seeking appointment of Estate Officer pursuant to the Appellate Authority's order, the writ petition should be dismissed on such count alone, since the petitioners have not come with clean hands.
31. On further query of court, learned counsel for the authorities submits that the Estate Officer has been appointed only on May 7, 2024.
32. The first objection which has been raised by the respondents is whether the appeal preferred by the petitioners at the second instance under Section 9 of the 1971 Act was ever restored, since the petitioners did not deposit the cost which was a pre-condition for such restoration.
33. However, looking at the tenor of the Division Bench judgment passed in APOT 77 of 2009 and the connected applications dated March 30, 2009, it is evident that the intention of the Division Bench, in fine, was that the issues taken in the said appeal were to be raised and were available to be raised to

the appellant therein to the appeal which was “still pending” in the City Civil Court.

34. Thus, it is apparent that the Division Bench of this court which was taking up the said appeal, had treated the appeal-in-question to be pending before the City Civil Court, which itself tantamounts to deemed restoration of the appeal.
35. Moreover, the issue now sought to be raised regarding restoration of the appeal under Section 9 of the 1971 Act was never taken by the respondent authorities throughout the pendency of the statutory appeal before the Appellate Authority.
36. Having submitted to the jurisdiction of the Appellate Authority pursuant to the Division Bench’s directions, it does not now lie in the mouth of the respondents to take such objection as to maintainability of the said appeal.
37. Thus, the first objection taken by the respondents is hereby turned down.
38. As regards the second objection as to maintainability of the writ petition, it is clear that the appointment of an Estate Officer can only be done by the respondent no.1-FCI.
39. The petitioners or the petitioners’ predecessor-in-interest cannot and could not have had any role to play at any point of time in such appointment.

40. It was the incumbent duty of the respondent no.1-Authoirty to appoint its Estate Officer to give effect and meaning to the order of the Appellate Authority dated March 27, 2018 where the Appellate Authority clearly remanded the matter to the “learned Estate Officer” for disposal in view of the observation in respect of evidence and further evidence of the learned Chief Judge, City Civil Court, Calcutta dated July 17, 1990.
41. Not stopping there, the Appellate Authority observed that the “Learned Estate Officer” shall take necessary steps for hearing and disposal of the matter as early as possible, preferably within a period of six months from the date of receipt of the records by him.
42. Upon such remand, the duty shifted on the respondent no.1 to appoint its Estate Officer to implement such order.
43. Although a specious argument has been sought to be advanced by the respondents that the petitioners were at fault for not having pressed the appointment of an Estate Officer, the respondents proceed on a mistaken notion of the concept of “carriage of proceedings”.
44. Insofar as the carriage of the eviction proceedings is concerned, the same lay with the respondent

authorities, as did “the carriage of proceedings” regarding appointment of their own Estate Officer.

45. Thus, it was entirely the fault of the respondent no.1 for having delayed inordinately the appointment of an Estate Officer pursuant to the order of the Appellate Authority under the 1971 Act, even if this is the sole property in respect of which such Estate Officer requires to be appointed.
46. Having appointed the Estate Officer only on May 7, 2024, it does not now lie in the mouth of the respondents to argue that the petitioners have not come with clean hands.
47. Hence, all the objections taken by the respondents are hereby turned down.
48. In view of there being no fault which can be attributable to the petitioners for the long pendency of the writ petition and for the petitioners not having been able to approach the Estate Officer, it is obvious that limitation has not started to run in any manner and delay cannot be attributed to the petitioners in any manner whatsoever.
49. In the light of the above observations, WPA 12595 of 2024 is disposed of by granting liberty to the petitioners to approach the Estate Officer, who has been appointed only on May 7, 2024 by the respondent no.1, for implementation of the order dated March 27, 2018 passed by the Appellate

Authority remanding the matter to the Estate Officer.

50. It is made clear that it will also be open to the writ petitioners to make interim prayers before the Estate Officer and/or seek restitution of its possession pursuant to the second eviction order having already been set aside by the Appellate Authority.
51. Upon such approach being made, the Estate Officer shall expeditiously decide the said interlocutory application(s), preferably within a month from the date of filing of such application(s) by the petitioners upon giving adequate opportunity of hearing to all parties and in accordance with law.
52. There will be no order as to costs.
53. Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)