

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Before:

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

**MAT/971/2023
IA NO: CAN/2/2023
LMJ CONSTRUCTIONS PRIVATE LIMITED AND ANR.
VS
THE BOARD OF TRUSTEE FOR THE PORT OF KOLKATA AND ORS.**

For the Appellants	: Mr. D.N. Sharma, Mr. Abhirup Chakraborty....advocates
For the Respondent No. 1	: Mr. Kishore Datta, Mr. Somnath Bose...advocates
Reserved on	: 24.07.2024
Judgment on	: 19.09.2024

Hiranmay Bhattacharyya, J.:-

1. This intra Court appeal is at the instance of the writ petitioner and is directed against a judgment and order dated 28.02.2023 passed by a learned Single Judge in WPA No. 25193 of 2015.
2. The appellant approached the Writ Court praying for a direction upon the respondent nos. 1 to 4 to take a fresh decision on the representation of the appellant no. 1 dated 30.12.2014 after setting aside the decision taken by authorities of the Board of Trustees for the Port of Kolkata (for short "KoPT") vide communication dated 16.09.2015.
3. The appellant no.1 is a company engaged in the business of letting out landed properties on rental basis. Appellant no. 2 is one of the directors of

the appellant no. 1 company. The property which is the subject matter of dispute in this appeal relates to a property of KoPT bearing plot no. D297 at P-51 Hide Road Extension under Police Station Taratala, Kolkata- 700 080 measuring about 13378.03 Square Meters. The first belt comprises of 4220.40 Square Meters and the Second belt of around 9157.63 Square Meters.

4. The said property was let out by KoPT in favour Avery India Limited i.e., 5th respondent herein by an indenture of lease dated 12.01.1971 for a period of ten years with effect from 24.01.1969. The appellant no. 1 claims to have been inducted in respect of the structures on the said land by virtue of an agreement of tenancy dated 14.03.2003.
5. KoPT initiated an eviction proceeding bearing no. 394 of 2000 against the 5th respondent herein. The Estate Officer passed an order of eviction on 07.03.2011.
6. In the meantime a notice was published by the KoPT in its official website sometimes in the month of September, 2014 expressing its decision to grant "first right of refusal" to the sitting occupants in respect of lands/structure of KoPT on the terms and conditions contained in the said notice.
7. Pursuant to the said notice appellant no. 1 applied on 30.12.2024 for availing the "first right of refusal" in the tender process in respect of the land and structure which is claimed to be in the occupation of the appellant no. 1.
8. KoPT filed a writ petition being WP No. 19653(W) of 2015 for police assistance to implement the eviction order dated 07.03.2011 passed against Avery India Limited.
9. The appellants filed a writ petition being WP No. 22632(W) of 2015 alleging inaction on the part of the authorities of KoPT in processing the aforesaid application of the appellants.

10. The appellants also filed an intervention application for being added as a party in WP No. 19653(W) of 2015.
11. During the pendency of the aforesaid writ petitions the authorities of KoPT took possession of the disputed property on 13.09.2015 and put a padlock over the main gate.
12. The appellants' representation dated 30.12.2014 was rejected by the KoPT authorities by a letter issued by the Estate Manager dated 16.09.2015. The said refusal was challenged by the appellants herein in the writ petition out of which the instant appeal arose. By the impugned order, the learned Single Judge dismissed the said writ petition.
13. Being aggrieved, the writ petitioners have approached this Court.
14. The learned advocate appearing in support of the appeal contended that the learned Single Judge erred in law by holding that the expression "ceases to exist" appearing in "Clause a" of the notice issued by the KoPT shall mean the original/recorded tenant/licensee does not exist anymore. He contended that the said expression has to be read vis-a-vis the property itself i.e., the said Clause will apply only if the recorded tenant/licensee is no longer on the property. He further contended that the appellant herein was very much in possession of the property in question and only in respect of some portion of the same Sree Venkatesh Films Private Limited and Magic Moments were allowed to possess by virtue of license agreements. He submitted that no inspection was carried out on 22.04.2015 and the purported report dated 14.10.2015 was not filed in terms of the order dated 13.10.2015 passed by the Coordinate Bench. He contended that Avery India Limited was/is not in possession of the property in question. He submitted that since Avery India Limited had transferred its right to the lands and structures in favour of the appellants and Sree Venkatesh Films and Magic Moments were only licensee for a temporary period, the appellant no. 1 falls within the definition of

"sitting occupants" as contained in the notice issued by the KoPT on September, 2014.

15. The learned advocate appearing for KoPT submitted that the appellants cannot claim to be "sitting occupants" as the appellants have inducted Sree Venkatesh Films Private Limited and M/s Magic Moments Private Limited as licensee in respect of the said property. He further submitted that a Coordinate Bench in the order dated 15.10.2015 noticed that Sree Venkatesh Films was in occupation of premises measuring about 69000 sqft at the time of taking over possession of the premises. He submitted that the appellants could not produce any evidence with regard to its possession in respect of the property in question. He further contended that the agreement between Avery India Limited and the appellants was executed on 14.03.2003 i.e., after the termination of tenancy of Avery India Limited by the 1st respondent and after initiation of the eviction proceedings before the Estate Officer and, therefore, the appellants did not acquire any legal right to possess the premises.
16. Heard the learned advocates for the parties and the perused the materials placed.
17. By an indenture of lease dated 12.06.1971, KoPT let out the property bearing plot no. D297 at P51 Hide Road Extension measuring about 13378.03 sqft in favour of Avery India Limited for a period of 10 years with effect from 24.01.1969. The said lease expired on 23.11.1999. KoPT initiated an eviction proceeding bearing no. 394 of 2000 against Avery India Limited. During the pendency of the eviction proceedings, the appellants were inducted into said property as a tenant in respect of the lands and structures by virtue of a tenancy agreement dated 14.03.2003.
18. KoPT published a notice in the month of September, 2014 in its official website expressing its intention to grant "first right of refusal" to the sitting occupants of KoPT properties. From a bare reading of the said notice it is

evident that KoPT decided to grant "first right of refusal" only to the "sitting occupants" in the tendering process to be taken up for allotment of particular lands/structure in respect of lands/structures of KoPT provided they file their application complete in all respect along with requisite documents within six months from the date of publication of the said notice upon fulfilling the conditions contained in the said notice.

19. The expression "sitting occupants" has been defined in the said notice to mean such occupants who had entered into a particular KoPT property on the basis of certain arrangement with the recorded tenant/licensee but without any approval of KoPT and who are not rank outsiders or encroachers in respect of that KoPT property.
20. The expression "rank outsiders or encroachers" has also been defined in the said notice to mean an occupier who encroached into KoPT property which is not leased/licensed to anybody.
21. The property in respect of which the appellants are claiming to be "sitting occupants" was leased in favour of Avery India Limited at a particular point of time and the appellants claim to have been inducted into the said property of KoPT on the basis of certain arrangement with Avery India Limited. Therefore, the appellants do not fall within the definition of "rank outsiders or encroachers" in respect of KoPT property.
22. It is not the case of the appellants that they entered into the property in question which is admittedly a KoPT property with the approval of KoPT.
23. The issue that arises for consideration is whether the alleged entry of the appellants into the property in question was on the basis of certain arrangement with the recorded tenant/licensee.
24. The period of lease stood expired on 23.11.1999. After expiry of the lease, the continuance in occupation by Avery India Private Limited of the property in question who is a public premises amounts to "unauthorised occupation"

as defined in Section 2(g) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Thus after expiry of lease, the status of Avery India Ltd is that of an unauthorised occupant and not recorded tenant/licensee.

25. Appellants claim to have entered into the KoPT property by virtue of a tenancy agreement entered into between Avery India Limited and the appellants. The tenancy agreement was entered into after expiry of the period of lease and also after initiation of eviction proceeding against Avery. On the date of execution of the tenancy agreement, the status of Avery was that of an unauthorised occupant and not a recorded tenant. Avery did not have any legal right to execute a tenancy agreement at the relevant point of time.
26. This Court, therefore, holds that the entry into the KoPT property by the appellants cannot be said to be on the basis of certain arrangement with the recorded tenant.
27. In order to fall within the definition of sitting occupant, two conditions are to be satisfied-
 - (i) Entry into the KoPT property on the basis of certain arrangement with the recorded tenant/licensee but without approval of KoPT and
 - (ii) They are not rank outsiders or encroachers in respect of KoPT property.
28. The appellants failed to satisfy one of the aforesaid twin conditions.
29. Accordingly, the appellants cannot claim to be "sitting occupants" in respect of KoPT property.
30. By virtue of the said notice of September, 2014 only the "sitting occupants" can claim "first right of refusal" provided they file their application complete in respect along with requisite documents within six months from the date of publication of the said notice upon fulfilling the conditions which are as follows -a) the original/recorded tenant/licensee ceases to exist, b) a decree/order for eviction from Competent Court of law/Estate Officer has

been obtained, c) the aforesaid decree/order for eviction has been/will have to be executed by taking over symbolic/paper possession from original/recorded tenant/licensee or KoPT takes paper possession of that lands/structure under any mutual arrangement before allotment.

31. In the case on hand a decree for eviction has been passed by the Estate Officer against Avery India Limited. The Estate Manager, in the letter dated 16.09.2015, has specifically recorded that KoPT took over peaceful possession of the premises in question on 13.09.2015 from M/s Avery India Limited at about 7 a.m. and put its padlock on the main entrance of the premises and subsequently at about 10.30 a.m. on the same day, some persons of M/s Avery India Limited claiming to be the men and agents of M/s Sree Venkatesh Films broke open KoPT's padlock and wrongfully took possession of the said premises. It was further stated that M/s Avery India Limited, the erstwhile licensee of KoPT in respect of the said premises is still in existence and also that M/s Avery India Limited has paid compensation charges even in the last month i.e., August, 2015 in respect of the said premises. The Estate Manager recorded that Avery India Limited is still in existence.
32. The aforesaid observation made in the letter dated 16.09.2015 with regard to existence of Avery has been challenged by the appellants herein by contending that the expression "ceases to exist" shall have to be read in the context of the premises in question. As would be evident from the letter dated 16.09.2015, the Estate Manager observed that Avery India Limited is still in existence. It appears to this Court that the Estate Manager interpreted the expression "ceases to operate" to mean that the original/recorded tenant does not exist anymore.
33. It is well settled that the authority which floats the tender and has authored the tender document is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted and the Court cannot sit in appeal over the

authority. The interpretation of the expression "ceases to exist" given by the Estate Manager, who is the author of the tender document, is a possible interpretation and, therefore, this Court is not inclined to interfere with such interpretation of the expression "ceases to exist".

34. To the mind of this Court, the learned Single Judge was right in holding that the expression "ceases to exist" has to be read as unqualified to mean that the original recorded tenant/licensee does not exist anymore.
35. The learned advocate for the appellants, in course of his argument, however, did not dispute that Avery India Limited is still in existence.
36. It appears from the record that under the directions of this Hon'ble Court KoPT regained possession of the property in question on 16.11.2015 as recorded in the order dated 23.11.2015. The learned Single Judge after considering the materials on record arrived at a factual finding that the appellant was not in possession of the property in question.
37. The learned advocate for the appellant would strenuously contend that the appellant no. 1 is very much in possession of the property and would rely upon the objection taken to the report by way of an exception affidavit as well as other documents. Even if the contention of the appellant is accepted that they are in possession of property in question, such possession cannot be said to be in the capacity of "sitting occupants" as this Court has already observed that the appellants cannot claim to be a "sitting occupant" in respect of the KoPT property.
38. By virtue of the notice issued in September, 2014 only "sitting occupants" were eligible to grant "first right of refusal" in the tendering process to be taken up for allotment of land/structure of KoPT. The appellant is not a "sitting occupant". That apart one of the pre-requisite for consideration of the request for regularisation of "sitting occupants" is that the original/recorded licensee ceased to exist and such condition also has not been satisfied in the case on hand.

39. The learned Single Judge assigned cogent reasons in support of the ultimate conclusions. This Court is, therefore, of the considered view that the decision of the Estate Manager dated 16.09.2015 as well as the judgment and order of the learned Single Judge dated 28.02.2023 calls for no interference.
40. Accordingly, the appeal along with connected application stands dismissed. There shall be no order as to costs.
41. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

I agree.

(T.S. Sivagnanam, C.J.)

(Hiranmay Bhattacharyya, J.)