

ORDER SHEET

WPO/854/2024

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

ARMEN GEORGE & COMPANY PRIVATE LIMITED & ANR.

VS

THE BOARD OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA AUTHORITY
(ERSTWHILE BOARD OF TRUSTEES' OF PORT TRUST OF CALCUTTA) & ORS.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 3rd October, 2024.

Appearance:

Mr. Subhabrata Datta, Adv.

Mr. Aranya Saha, Adv.

Mr. Ajeyo Chowdhury, Adv.

.... for the petitioners

Mr. Subhankar Nag, Adv.

Mr. Debayan Sen, Adv.

...for the respondents

The Court: The petitioner has challenged the order dated March 27, 2006 passed by the Estate Officer, Kolkata Port Trust under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as the said Act). A direction was passed for eviction of the petitioner from the premises and it was also held that the Kolkata Port Trust was entitled to claim damages for unauthorized use and occupation of the public premises, from the petitioners. Such order was not challenged before any fora until the filing of this writ petition in 2024. In the meantime, the

authority initiated a proceeding under Section 7 of the said Act and the petitioner participated in the proceeding. The petitioner submits that the proceeding under Section 7 was a consequence of the order of eviction and this Court should set aside the entire proceeding on the ground of violation of the principles of natural justice. No separate prayer for quashing of the proceeding under Section 7 of the said Act, has been made. The other submission is that the findings of the authority was perverse. The fact that the petitioner and/or the predecessor-in-interest of the petitioner had surrendered the tenancy was not taken into consideration, despite available evidence in this regard, which were produced before the authority.

Mr. Datta, vehemently urges this Court to strike down the entire proceeding only on the ground that the tenancy was surrendered some time in 1983, but the Estate Officer ignored such contention of the petitioners. According to Mr. Datta, the Hon'ble Apex Court had time and again held that an alternative remedy would not be a bar if an order was vitiated on account of violation of principles of natural justice or the order was without jurisdiction or the order was based on extraneous considerations. Reliance has been placed on the order of the Hon'ble Apex Court in *Godrej Sara Lee Ltd. vs. Excise and Taxation Officer-cum-Assessing Authority and Others*, reported in 2023 SCC OnLine SC 95. Several documents in the writ petition have been placed in support of such contention that all along, the authorities had served notices at the wrong address of the petitioner, thereby, depriving the petitioner an adequate opportunity to contest the proceeding. Further, the field enquiry

revealed that no one was found in physical possession of the property, but logs and other materials were found inside the premises. No hoarding of the petitioner was available.

Mr. Nag, learned Advocate appearing for the authorities submits that there are adequate documents to show that the proceedings were contested by the petitioner. With regard to the proceedings for damages under Section 7 of the said Act, the petitioner had also participated before the authority. The proceeding records the presence of the petitioners, and the submissions made by the petitioners. The order of the Estate officer of 2006, cannot be challenged in the writ petition in 2024.

Having regard to the rival contentions of the parties, this Court finds that the petitioner No.1 was inducted as a tenant under the erstwhile Calcutta Port Trust. Letters written by the petitioner No.1 indicate that disputes arose over enhancement of rent and there were arrears of rent. The petitioner No.1 wanted to hand over the tenancy as exorbitant rent was being charged. Request was made to the authority to give a detailed break up of rents due. The fact that there were unpaid due, is not in dispute. The quantum of rent was objected to by the petitioner No.1. Several communications in this regard have been annexed to the writ petition between 1983 and 1988. It appears that letters were exchanged between the petitioner no. 1 and land manager, with regard to the arrear rents. The petitioner no. 1 also asked for payment in instalments. There was no evidence of acknowledgement of handing over/surrender of the tenancy in favour of the respondents. In 1994, the land

manager made an application before the authority for initiation of eviction proceeding. The application narrates that the petitioner no. 1 failed to pay the rent due as per the agreement. The rent due at the relevant point of time was Rs. 1 lakh. Tenancy was determined by an ejectment notice. Despite such ejectment notice, possession was not handed over.

From the documents annexed to the writ petition, it appears that the paper publication of the proceeding was made when the petitioner could not be served at the last known address. From the order dated January 27, 2004, it appears that for effective adjudication of the dispute, the authority caused service of notice at 5, Jharwarlal Neharu Road, Kolkata-13. By a letter dated January 28, 2004, the petitioners informed the Estate officer that the authority did not have any power to either issue any notice or summons, as the tenancy was surrendered 10 years ago. The petitioners entered appearance thereafter. The petitioners filed an application praying for inspection of documents. It also appears that on the prayer of the petitioners, evidence was allowed to be adduced by filing the same in the form of affidavits. The order dated December 15, 2003 records the petitioner's contention that the tenancy had been surrendered. A field enquiry was held. During the field enquiry, it transpired that no one was present at the site. On local enquiry, it was learnt that one M/s Grand Samity works was found functioning from premises. Huge quantities of logs were found inside the premises. No hoardings of the petitioner No.1 was available. By order dated February 10, 2004, the Estate officer recorded that, as the petitioner had specifically mentioned about

surrender of possession of the property in question, the legality of such surrender of tenancy in favour of KOPT was required to be adjudicated. By order dated April 1, 2004, liberty was granted to the petitioner to take inspection of the tenancy records maintained by the land manager, KOPT and take photographs of relevant documents with regard to the surrender of tenancy. By order dated April 5, 2004, the authority allowed the parties to file affidavits enclosing all evidence. The submissions of the KOPT was also recorded in the order dated March 1, 2004. KOPT submitted that they had not received any communication from the petitioner No.1 expressing the desire to surrender the premises. By the order dated April 5, 2004, the fact that the petitioners had taken inspection of the documents, was recorded. The petitioners also sought an opportunity to cross-examine the land manager and such cross-examination was allowed. The letters of December and January 1988, 89 were revealed by way of evidence and cross-examination. Those letters indicated that petitioners wanted to pay the arrears. The petitioner No.1 also requested the land manager to allow the petitioners to deposit the rent month by month every month. The representatives of the petitioner no. 1 failed to adduce any evidence either through documents or witnesses, in support of such surrender. The question raised by the KOPT on the basis of the letter of 1987 was found to be relevant. The petitioner no. 1 wanted to deposit current rent. Evidence of the representative of the petitioner no. 1 was also recorded. A statement was made that the father of the said representative was looking after the papers and documents and the letter of surrender was not in his

possession, he could not produce the same. Question was, why a tenant who had surrendered the tenancy would keep on requesting the authority to accept rent. This issue of surrender could not be proved on the basis of evidence.

Under such circumstances and as discussed hereinabove, this Court does not find that the order is perverse. Adequate opportunity was granted to the petitioner to contest the proceeding. The Estate Manager did not rely on extraneous documents. The evidence on record were dealt with.

Under such circumstances, the remedy of the petitioner was by way of an appeal which should have been filed under the provisions of the said Act. Under such circumstances, this Court does not deem it necessary to interfere with the order of the Estate officer, under powers of judicial review. The issue of inordinate delay in filing the application is also a ground for dismissal of the writ petition. The petitioners slept over their rights.

The writ petition therefore stands dismissed.

All parties are to act on the basis of the server copy of the order.

(SHAMPA SARKAR, J.)

