

OD-8

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/373/2024
IA NO : GA/1/2024, GA/2/2024

ARMEN GEORGE & COMPANY PRIVATE LIMITED & ANR.
VS
THE BOARD OF SYAMA PRASAD MOOKERJEE PORT,
KOLKATA AUTHORITY & ORS.

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 17th December, 2024

Appearance :
Mr. Subhabrata Dutta, Adv.
Mr. Debashis Sarkar, Adv.
...for appellants

Mr. Subhankar Nag, Adv.
Mr. Debayan Sen, Adv.
...for respondents

The Court : This intra-Court appeal by the writ petitioner is directed against the order dated 3rd October, 2024 in WPO 854 of 2024. In the said writ petition the appellants had challenged an order passed by the Estate Officer, Kolkata Port Trust, under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 dated March 27, 2006. To be noted that the writ petition was filed in the year 2024.

Learned Single Bench after noting the facts found that the challenge to the order passed by the Estate Officer dated March 27, 2006 cannot be entertained apart from other things being a grossly delayed attempt made by

the petitioner to challenge such an order after having slept over their avenues, which were available to them.

Learned Advocate appearing for the appellants would vehemently contend that there are several factual errors committed while dismissing the writ petition and pointed out that in page 4 of the impugned order the learned Single Bench has observed that a paper publication of the proceeding was made when the writ petition could not be served at the last known address. Referring to the order passed by the Estate Officer, it is submitted no such paper publication was made and the Estate Officer has recorded in his order dated 15th December, 2023 that publication of notice in newspaper has not been effected and direction issued to the said effect that the same has not been complied with. Further, it is submitted that there were other factual errors with regard to the service of notice on the last known address of the writ petitioner. Apart from that, the learned Single Bench has also not appreciated the facts which have been recorded by the inspecting officer of the Port Trust, who conducted an inspection and has categorically recorded that there is nothing to indicate that the appellant company was functioning in the premises. Thus, it is submitted that the writ petitioner could not be left remediless and he should be able to pursue the challenge to the order before the Writ Court.

We have heard the learned advocates appearing for the parties on the above submissions. The reasons assigned by the learned Single Judge for not entertaining a very belated challenge to the order passed by the Estate Officer dated March 27, 2006 are acceptable. Apart from that, we hasten to add that the challenge to the said order has to fail on other grounds as well as could be seen from the order which is impugned in the writ petition dated 27th March,

2006. The writ petitioner was put on notice by the port trust authorities for non-payment of rental dues in respect of the property in question. This gave cause of action for initiating proceedings for ejectment. Accordingly, an ejectment order was served on the writ petitioner on 22nd August, 1990 for delivering possession to the port trust and the port trust also held that the writ petitioner is liable to pay rental dues upto September 1990 amounting to Rs.1,82,583.50 and also damages for unauthorized use and occupation of the property in question upto the date of recovery of possession from the writ petitioner. Thereafter, a show cause notice was issued under Section 4 of the Act to the writ petitioner on 25th March, 1994 calling upon them to appear in person or through their authorised representative and produce any evidence in support of their contention. The Estate Officer has recorded that the writ petitioner all along contested the matter through its advocate and finally stuck to the contention that the question of handing over possession to the port trust in terms of the eviction notice does not arise at all, as according to them, the public premises was surrendered to the port trust long before.

The learned advocate for the appellant/writ petitioner would strenuously contend that the writ petitioner had addressed the land manager of the port trust as early as on 14th June, 1993 by way of a notice and the notice was to terminate the lease agreement between the port trust and the writ petitioner and also calling upon the port trust to provide the exact amount that is due and payable in respect of the actual rent outstanding from June 1982 to May 1983 and arrears of rent from June 25, 1981 to May 31, 1982 in accordance with the increase in rent at the rate of 50 per cent which has been agreed upon by the writ petitioner and the port trust in terms of the amended rules and

regulations of the port trust. Further, it is submitted by the learned advocate that in the said notice of termination of the lease agreement dated 14th June, 1983 the writ petitioner had made it clear that they had surrendered and/or handed over the property to the department and there is no liability which remains outstanding in respect of the agreement between writ petitioner and the department. The appellant/writ petitioner has precluded from relying upon the said notice dated 14th June, 1983 for more than one reason. It is much after the said notice, the proceedings have been initiated for ejectment which ultimately resulted in an order dated 22nd August, 1990 by which the appellant/writ petitioner was directed to deliver possession of the property to the port trust and also made liable to pay the damages for unauthorised use and occupation till the date of recovery of possession from the writ petitioner. Thus, as long as the initial order of ejectment dated 22nd August, 1990 remains unassailed, question of challenging the subsequent proceedings filed by the port trust under Section 4 of the Act which is in the nature of a consequential proceeding for recovery of the arrears of rent for unauthorized use and occupation does not arise. So far as the Estate Officer is concerned in the second round of proceeding, he has examined the contention raised by the writ petitioner as to whether there was surrender of possession or not. After appreciating the stands taken by the writ petitioner, the Estate Officer has recorded an admitted finding that the writ petitioner has failed to produce any evidence or any witness in support of their contention regarding surrender of possession of the public premises in question. Thus, the order came to be passed on 27th March, 2006 which was belatedly challenged by the writ petitioner in the year 2024. Admittedly, the Estate Officer is not a civil court.

Thus, what we require to examine is whether there is any error in the decision making process and it is not for the Court to sit over the appellate forum over the decision itself. In our view, the proceedings cannot be faulted for any error in the decision making process and we find that the conclusion arrived at by the Estate Officer has been supported by reasons. Thus, apart from the grounds on which the learned Single Judge has rejected the challenge, the above grounds are also good and sufficient to reject the appeal.

Accordingly, the appeal fails and the same is dismissed. The connected applications stand closed

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

(HIRANMAY BHATTACHARYYA, J.)