

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Reetobroto Kumar Mitra

MAT 123 of 2025
+
IA No. CAN 1 of 2025

Hindustan Steelworks Construction Limited
Versus
The Board of Trustees for the Syma Prasad Mookerjee Port, Kolkata
&Ors.

For the Appellant : *Mr. Sardar Amjad Ali, Sr. Adv.,*
Mr. Puranjan Pal.

For the Respondent nos. 1 & 4 : *Mr. Abhrajit Mitra, Sr. Adv.,*
Mr. Samrat Sen, Sr. Adv.,
Mr. Subhankar Nag,
Mr. Swarajit Dey,
Mr. Debarati Das,
Mr. Saptarshi Kar.

Hearing is concluded on : *20th March, 2025.*

Judgment On : **23rd April, 2025.**

Reetobroto Kumar Mitra, J.

1. This appeal carried by the writ petitioner/appellant takes exception to the order dated 21st January, 2025 passed by the learned single Judge in the writ petition being WPA 2957 of 2024.

2. The said writ petition was preferred by appellant challenging *inter alia* an order dated 4th December, 2024 passed by the respondent no. 5 in a proceeding under the provisions of the Public Premises (Eviction of Unauthorized Occupant Act, 1971)(hereinafter referred to as the 1971 Act) directing eviction of the appellant, granting 15 days' time to vacate the premises with a further direction upon the authorities of Syma Prasad Mookerjee Port, Kolkata (hereinafter referred to as the Port) to submit a statement comprising details of its calculation of damages. By the order impugned in the present appeal the learned single Judge refused to exercise discretion in favour of appellant and dismissed the writ petition with liberty to the appellant to prefer a statutory appeal against the order passed by the respondent no.5. In the said order it was further observed that *'the Appellate Authority, in the event such appeal is preferred within twelve days from this date, would be expected to admit the appeal by considering the question of delay leniently in view of the fact that the petitioner had approached the Court seeking relief and thereafter, decide the matter in accordance with law'*.

3. In connection with the present appeal, the appellant preferred an application for injunction being CAN 1 of 2025 and upon arriving at a *prima facie* satisfaction that an arguable case has been made out by the appellant, an interim order was passed on 31st January, 2025 restraining the respondent no.1 from creating any third- party interest in the property and directing the parties to maintain status quo in respect of the property till the end of the month of April, 2025. The respondent no.5 was also restrained from passing any final order as regards the claim for damages in proceeding

no. 2087/D of 2024 till the end of April, 2025 or until further orders, whichever is earlier.

4. Records would reveal that earlier the appellant preferred a writ petition being WPA 1475 of 2023 *inter alia* praying for registration of a lease for 30 years. During pendency of the said writ petition a tender being SMP/KDS/Mech/DC-III/ADV/650 dated 4th September, 2023 was issued and as such the appellant challenged the same through an application being CAN 1 of 2023. In the said writ petition and the application an order was passed on 25th September, 2003 observing, *inter alia*, that '*since the learned advocate on behalf of the respondent, SPMP, Kolkata under takes that the tender process does not involve the land sites and 5 weigh bridges for which lease was granted to the petitioner, this Court relying on such undertaking does not think it necessary to pass any interim order at this stage*'. The said writ petition is still pending. Alleging violation of the said order dated 25th September, 2003, a contempt application was preferred in which an order was passed on 23rd November, 2023 to the effect that '*the parties shall maintain an order of status quo as on September 25, 2023 over and in respect of the land sites and the five numbers of weighbridges to the extent of the issues and subject-matter involved in the interlocutory application being C.A.N. 1 of 2023 in so far as the subject tender process is concerned which is also the subject-matter of C.A.N. 1 of 2023*'. Aggrieved by the said order, the authorities of the Port preferred an appeal being MAT 2357 of 2023 in which an order was passed on 2nd January, 2024 returning a *prima facie* view that the contempt application was not maintainable and the appeal was

entertained staying the order passed in the contempt application on 23rd November, 2023. In connection with said appeal, the appellant also filed an application being CAN 2 of 2024 praying for stay of the eviction proceedings before the respondent no. 5. On 27th November, 2024, an order was passed in the said appeal, appointing a Special officer to inspect the five sites occupied by the appellant herein and also the five sites where the new weighbridges were being installed. The Special Officer inspected the sites and filed a report on 29.11.2024 and on the said date, an order was passed in the said appeal observing that the adjudication of the said issue pertaining to the tender being SMP/KDS/Mech/DC-III/ADV/650 dated 4th September, 2023 *'has no relevance to the proceeding instituted under the Act of 1971 for eviction of the respondent no. 1 from the land sites and five road weighbridges due to efflux of the lease period i.e. ten years. By taking out the interlocutory application, the respondent no. 1 has made an abortive effort to enlarge the scope and ambit of the appeal which is impermissible in law'*.

5. Mr. Ali, learned Senior Advocate appearing for the appellant argues that the offer letter dated 20th November 2013 by the Port has categorically indicated that such lease was for a period of 30 years. The Central Government is not required to give any consent, permission, or any sort of permissive consent if the lease is for a period of 30 years. Such consent is required only if the lease is for a period beyond 30 years, as would be explicit from the letters dated 13th December, 2010 and 1st May, 2017 annexed to the application for injunction. Reliance has also been placed

upon Section 34 of the Major Port Trust Act, 1963 (hereinafter referred to as the 1963 Act) to buttress such contention.

6. He contends that the letter of 20th November 2013 is itself the consent which is given by the Port for the lease of 30 years in favour of the appellant. Hence, the question of eviction cannot arise in 2023. The tribunal (Estate Officer) merely discharges statutory functions as intended in Sections 4 and 7 of the 1971 Act and could not have rendered any decision insofar as the question of the tenure of the lease, whether 10 or 30 years, is concerned.

7. The order dated 4th December, 2024 passed by the respondent no.5, according to Mr. Ali, suffers from a jurisdictional error inasmuch as the said respondent proceeded being oblivious of the fact that the appellant earned a right to 30 years of lease of the said property in view of Clause-I of the memo dated 20th November, 2013 more so when the Board of Trustees of the Port in its meeting held on 27th June, 2013 principally agreed and approved to grant lease of 30 years.

8. Mr. Ali further argues that the authorities of the Port took a conscious decision to grant lease of 30 years. However, as they did not take any follow up step the appellant was constrained to prefer a writ petition being WPA 1475 of 2023. The said writ petition is still pending. In the said conspectus and as the Hon'ble Constitutional Court is in *seisin* of the issue as regard grant of 30 years of lease, the respondent no.5 being an officer under the 1971 Act cannot usurp the jurisdiction and or pass any order pertaining to the same issue.

9. The order dated 23rd November, 2023 passed in the appeal being MAT 2357 of 2023 returning a *prima facie* view that the contempt application was not maintainable, according to Mr. Ali, was without jurisdiction since the Hon'ble Appeal Court was not hearing any contempt appeal.

10. Mr. Ali contends that fairness and reasonableness are paramount issues for administrative action. As a model employer, the State must conduct itself with high probity and candour and ensure that persons with whom the State has entered into a contract do not succumb to any discriminatory practice in the procedural rigmarole.

11. He further argues that the Estate Officer appointed under Section 3 of the 1971 Act, is a captive tribunal .Being an in-house tribunal of the Port, the said officer did not have the competence to adjudicate the issue as regards the grant of lease of 30 years in the light of the provisions of Section 34 of the 1963 Act.

12. Mr. Mitra, learned Senior Advocate appearing for the Port denies and disputes of the contention of the appellant and submits that in view of the order dated 2nd January, 2024 passed by a coordinate Bench of this Court in the appeal being MAT 2357 of 2023, it cannot be urged by the appellant that the order of the Estate Officer suffers from any jurisdictional error.

13. Mr. Mitra contends that in the proceeding under the 1971 Act, the respondent no.5 issued notice to the appellant and in response thereto, the

appellant participated in the proceedings and as such there had been no violation of the principles of natural justice. The principles of natural justice cannot be stretched to a point that it would render the in-house proceedings unworkable. Section 9 of the 1971 Act provides for an efficacious alternative remedy against the order of the Estate Officer and that as such the learned single Judge rightly dismissed the writ petition with liberty to prefer a statutory appeal. In support of such contention reliance has been placed upon the judgment delivered in the case of *Kanoi Tea Pvt. Ltd. and Ors. Vs. Major Port Authority Syama Prasad Mookerjee and Ors.*, reported in 2023 (250) AIC 329.

14. Mr. Mitra, vehemently opposes Mr. Ali's contention that an officer appointed under Section 3 of the 1971 Act functions as a captive tribunal. Personal bias cannot necessarily be attributed to such officer merely because he happens to be an officer of the institution. In support of such contention reliance has been placed upon the judgment delivered in the case of *Accountant and Secretarial Services Pvt. Ltd. and Anr. Vs. Union of India and Ors.*, reported in (1988) 4 SCC 324.

15. Placing reliance upon a judgement delivered in the case of *Ashoka Marketing Ltd. and Anr. Vs. Punjab National Bank and Ors.*, reported in (1990) 4 SCC 406, heargues that the provisions of Article 226 are not meant to short-circuit or circumvent statutory proceedings. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situation as for instance where the very *vires* of the statute is in question or where there had been a jurisdictional error, recourse may be

had to Article 226. As such conditions are not satisfied, the learned single Judge rightly refused to exercise discretion under Article 226 and there is no infirmity in the order impugned warrants interference of this Court.

16. We have heard the learned advocates appearing for the respective parties and considered the materials on record.

17. The principal dispute revolves around the question as to whether the lessee had indeed been granted for a period of 10 years, as urged by the Port, or was it for a period of 30 years, as sought to be established by the appellant.

18. The jurisdictional error on the part of the respondent no. 5 to entertain the proceeding under the 1971 Act being oblivious of the pendency of the writ petition and the fact that the Hon'ble Writ Court was seisin of the issue pertaining to the legal right of the appellant to avail 30 years of lease, as urged on behalf of the appellant, in our opinion, was rightly discounted by the learned single Judge in view of the order passed by a co-ordinate Bench of this Court on an application for interim order in the appeal being FMA 133 of 2024. In the said order dated 29th November, 2024 the Hon'ble Appeal Court arrived at a categorical finding, *inter alia*, that '*the unequivocal terms of the lease agreement shows it was for 10 years and the lease period had admittedly the lapsed*'. On the rudiments of such observation the Court rejected the interlocutory application observing that through the said application, the appellant had made '*an abortive effort to enlarge the scope and ambit the appeal which is impermissible in law*'.

19. The clauses as incorporated in the memo dated 20th November, 2013 need to be considered together and not in an isolation. A particular clause cannot be taken up and highlighted. A composite perusal of the said memo including Clause (xx) would reveal that the lease that was granted was of a period of 10 years without any option of renewal and that the appellant was requested to communicate its accept of the terms and conditions. In compliance of such provision the terms and condition were accepted and the appellant continued to enjoy the grant of lease of payments. About 9 years thereafter by a letter dated 29th July, 2022, the appellant forwarded a pay order dated 20th July, 2022 towards balance upfront lease rent, as referred to in the memo dated 20th November, 2013. In response thereto, by memo dated 30th September, 2022 it was categorically intimated to the appellant that the payment of the balance upfront lease rent for 20 years cannot be accepted. There was no contemporaneous challenge against the said letter and the same was also not the subject matter of challenge in the writ petition. In view thereof, the issue of perversity was rightly negated by the learned Court.

20. The argument of Mr. Ali that the jurisdiction of the Writ Court cannot be fettered by a mechanical tendency to retreat from exercise of the plenary powers vested in the Court by Article 226 of the Constitution is not acceptable to this Court in facts and circumstances of the case. It cannot be argued that the scope and ambit of statutory appeal is limited or cannot be construed to be an adequate and efficacious remedy. In view thereof, the

learned single Judge rightly dismissed the writ petition with liberty to prefer statutory appeal.

21. In the proceedings initiated under the 1971 Act, the appellant had participated and had never questioned the jurisdiction of the Estate Officer. The appellant for the first time in the present proceeding seeks to urge that the orders dated 2nd January, 2024 and 29th November, 2024 passed by a Coordinate Bench of this Court in the appeal being MAT 2357 of 2023/ FMA 133 of 2024 were without jurisdiction. However, the said orders have not been assailed by the appellant.

22. A contract has to be read as it is. The lease granted by the Port on 20th November 2013 in favour of the appellant states in unequivocal terms that it is a contract of lease for 5 plots of land belonging to Port for a period of 10 years only without option for renewal. The appellant accepted such offer of the Port without any protest or demur. This lease expired by efflux of time on 19th November, 2023. After the expiry of the lease, the Port initiated the proceedings under the 1971 Act for evicting the appellant. In the appeal being FMA 133 of 2024, the appellant had itself prayed for an injunction in an interlocutory application therein, being CAN 2 of 2024, seeking a stay of the proceeding before the Estate Officer and submitted to the jurisdiction of the said Co-ordinate Bench. In the order dated 29th November, 2024, the Co-ordinate Bench observed that *'it may not be out of place to note the unequivocal terms of the lease agreement shows that it was for a period of ten years and the lease period has admittedly lapsed'*. Thus,

clearly, there is a finding to the effect that the lease of 2013 expired in 2023, which has not been challenged.

23. Section 9 of the 1971 Act provides for an appellate forum to challenge any order passed by the Estate Officer. Section 13 of the 1971 Act specifically excludes the jurisdiction of the Civil Courts. Section 10 also provides that the order made by the Estate Officer or the Appellate Authority/Officer under the 1971 Act would be final and cannot be called into question in any suit or other proceeding. The *vires* of the 1971 Act has not been challenged before us. Thus, the only issue which remains is as to whether the officer concerned can be attributed with any personal bias either in favour of any of the parties thereto (appellant and the Port), merely because he happens to be such an officer. There is absolutely no such allegation of bias made against the Estate Officer. In fact, the appellant had participated in the proceedings before the said officer.

24. We are of the considered opinion that there is nothing wrong with the approach and decision of the learned single Judge. Threshold *mala fides*, intention to favour someone or arbitrariness, irrationality or perversity could not be established by the appellant warranting the Constitutional Court to interfere with the decision-making process. We find no infirmity in the judgment warranting interference in the present appeal.

25. The appeal and the connected application are, accordingly, dismissed.

26. The learned Single Judge while dismissing the writ petition granted liberty to the appellant to prefer a statutory appeal. Since the time given by the said order dated 21st January, 2025 has already expired, we extend the time to prefer the appeal for a period of twelve days from date.

27. There shall, however, be no order as to costs.

28. Urgent Photostat certified copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Reetobroto Kumar Mitra, J.)

(Tapabrata Chakraborty, J.)