

Appellant Vs. Respondent

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Court : Kolkata

Decided On : Jan-28-2013

Judge : Girish Chandra Gupta

Appellant : Appellant

Respondent : Respondent

Judgement :

1 28.01.2013 A.P.O 10.of 2010 With G.A. 1167 of 2010 With WP 76.of 2009 Mr. S.K.Kapoor, Sr. Adv. Mr. Hirak Mitra, Sr. Adv. Mr. A.K.Jana,Adv. for the Kolkata Port Trust of India/Appellant. Mr. Mr. Mr. Mr. Partha Sengupta, Adv. Aniruddha Roy,Adv. Ratnesh Rai,Adv. Nirmalya DasguptaAdv. For the Universal Autocrafts Pvt. Ltd. & Anr. Mrs. Kanta Roy, Adv. for the Union of India. The subject matter of challenge in the writ petition is a Notice dated 30th January, 2009 by which lease for a period of 30 years was terminated. The contention of the writ petitioner before the learned Trial Court was that the Notice purporting to have been issued by the Land Manager of the Kolkata Port Trust was without authority. The learned Trial Court has set aside the Notice with liberty, to the Chairman, to himself issue the same. The reasons assigned by the learned Trial Court are as follows: It is thereafter that Land Manager issued the impugned Order on 30.1.2009 but he nowhere referred to the Order of the Chairman. On the contrary, he has also added grounds which do not find place in the Notings. This Court is therefore satisfied that the submission of the learned Counsel for the Petitioners that once the power to issue Notices was vested in the Chairman, he alone could have

issued the Notice of ejectment and the Land Manager could only thereafter have followed it up but he could not have independently issued an order to quit, vacate and deliver vacant possession as has been done in the impugned Order dated 30.1.2009. Consequently this Court holds that the Land Manager could not have issued the impugned independent communication and it was only the Chairman who could not have done so. The second question is also answered in the affirmative by holding that the principle of *Delegatus Non-Potest Delegare* applies in this case. However, this Court does not find any illegality with the power exercised by the Chairman in approving the proposal for issuance of eviction Notices and therefore, the Act of the Chairman in approving the proposal by putting his signature and saying immediate issuance of ejectment Notice. on 15.07.2008 is held to be proper being strictly within the confines of the powers delegated upon him. Consequently, the impugned Order dated 30.1.2009 is set aside but in view of the fact that the approval made by the Chairman is being upheld by this Court, the matter not stands remanded to him for passing a fresh Order in accordance with law and by himself issuing the Notices in terms of Resolution No.82.

. Mr. Sengupta, learned Advocate, appearing on behalf of the writ petitioner/respondent, in support of the impugned judgment and order made the following submissions: (a) He drew our attention to Resolution 82 appearing at page 117 and 118 of the paper book which reads as follows: Item No.1 Subject: Delegation of Powers to Chairman to issue ejectment notices in respect of Trustees land, godowns etc. leased out. As the Trustees are aware, leases of Port Trusts land godowns etc. are granted with the prior approval of the Board and where the period exceeds 30 years also with the approval of the Central Government.

2. Similarly, when any lease is required to be terminated, sanction of the appropriate authority is also obtained.

3. During the currency of the lease period, frequently it becomes necessary to issue ejectment notices to the lessees for breach of lease terms. Such ejectment notices are issued for determination of the leases. It is felt that if in each and every

case where ejectment notice is required to be issued for determining a lease and sanction of the Trustees is required to be obtained before issue of such notice, it would become extremely cumbersome and difficult. Accordingly, for administrative convenience it is proposed to delegate to the Chairman, by invocation of Section 21(a) of the Major Port Trusts Act, 1963, the power to terminate leases sanctioned by the Trustees under Section 33 of the Act and to authorise issue of ejectment notices. The proposal has been vetted by the legal Advisor.

4. Sanction of the Trustees is requested to delegate full powers to the Chairman to determine the said leases, subject to approval of Government. Deputy Chairman explained the need for the proposed delegation of powers to the Chairman. The Trustees felt that prompt action was necessary in such cases for issue of ejectment notices and accordingly they agreed to sanction the proposal. Resolution No.82.- Resolved to sanction the proposal for delegation of powers to the Chairman by invocation of Section 21(a) of the Major Port Trusts Act, 1963, the power to terminate leases sanctioned by the Trustees and to authorise him to issue ejectment notices, subject to the sanction of Government. (Quoted). He also drew our attention to the letter dated 21st September, 1989 by which the decision of the Central Government was conveyed sanctioning Resolution 82 which reads as follows: I am directed to refer to your letter No.6460/3/G dated 8th June, 1988 on the subject noted above and in conveying the sanction of the Central Government under Section 21(a) of the Major Port Trust Act, 1963 to the proposal contained in the Trustees Resolution No.82 dated 26th May, 1988.

2. This sanction issues with the concurrence of the Finance Wing of this Ministry vide their Dy. No.2627- TFI/89 dated 27th June, 1989.

. Mr. Sengupta, submitted that proposal no doubt was that powers should be delegated to the Chairman to authorise issuance of ejectment Notices. But the Board of Trustees in their wisdom did not agree with the proposal and sanctioned only the power to the Chairman himself to issue ejectment Notices and the Central Government has sanctioned the Resolution No.82 as would be evident from the letter dated 21st September, 1989 quoted above. Therefore, the submission was that it is only the Chairman who could have issued the ejectment Notice. The

ejection Notice in this case has admittedly been issued by the Land Manager and therefore the Notice is without authority. (b) The second submission advanced by Mr. Sengupta was that the legislature has empowered under, section 34 of the Major Port Trust Act, the Chairman to enter into a contract either by himself or through an officer authorised by him not below the rank of the Head of the department on behalf of the Board of Trustees. But similar power has not been granted to the Chairman far less to anyone authorised by him in the matter of termination of the contract. The Board of Trustees also understood the law in the same way and therefore took steps to delegate necessary power to the Chairman as would appear from a chart containing powers delegated, the relevant portion whereof reads as follows: Sl.No .

20. Reference To section M.P.T. Act

21. a)To issue ejection Nature Power of Chairman Powers delegated Trustees Resolution not Governme -nt sanction Full powers Resolution No.82 PR17012/1/ notices in respect of Trustees land, godowns etc. leased out. dated 26.5.88 87-PC dated 21.9.89 The power to issue ejection Notice has been delegated to the Chairman. He has been given full power in that regard and therefore it is only the Chairman who could have issued the ejection notice and no one else. Both Mr. Mitra and Mr. Kapoor, learned Senior Advocates, appearing for the appellant disputed the submission made by Mr. Sengupta. Mr. Mitra, Contented that judicial powers cannot be delegated but the same principle does not apply either to the case of legislative powers or to the case of administrative powers. He submitted that in the administrative field delegation is required of necessity. He in support of his submission drew our attention to a Judgment in the case of Carltona Ltd vs. Commissioners of Works and Ors. reported in All England Law Reports (1943)2 563. In the administration of government in this country the functions which are given to ministers (and constitutionally properly given to ministers because they are constitutionally responsible) are functions so multifarious that no minister would ever personally attend to them