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Vs. The Board of Trustees for the Port of Kolkata and Ors.

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Court : Kolkata

Decided On : Aug-19-2016

Judge : Bench

Respondent : The Board of Trustees for the Port of Kolkata and Ors.

Judgement :

IN THE HIGH COURT AT CALCUTTA Constitutional Writ Jurisdiction Original Side APOT63of 2016 GA662of 2016 With W.P.170 of 2016 Ramesh Kumar & Company Private Limited & Anr.

versus The Board of Trustees for the Port of Kolkata & ORS.APOT66of 2016 GA667of 2016 With W.P.169 of 2016 Ballarpur Industries Limited & ORS.versus The Board of Trustees for the Port of Kolkata & ORS.G.A.728 of 2016 With APOT60of 2016 W.P.170 of 2016 Board of Trustees for the Port of Kolkata & Anr.

versus Ramesh Kumar & Company Private Limited & ORS.G.A.730 of 2016 With APOT61of 2016 W.P.169 of 2016 Board of Trustees for the Port of Kolkata & Anr.

versus Ballarpur Industries Private Limited & Anr.

BEFORE: The Honble CHIEF JUSTICE DR.

MANJULA CHELLUR & The Honble JUSTICE ARIJIT BANERJEE For Appellants/Petitioners.Mr.Pratap Chatterjee, Sr.Adv.(in item

33) Mr.Anirban Banerjee, Adv.Ms.Alakananda Das, Adv.Ms.Arpita Banerjee, Adv.For Appellants in item 35 : Mr.Shaktinath Mukherjee, Sr.Adv.For Respondent in item 37 Mr.A.Chatterjee, Adv.Mr.Soumabha Ghosh, Adv.Mr.Lal Ratan Mondal.

Adv.For Appellant in item 34 For Respondent in item 36 : Mr.Abhrajit Mitra, Sr.Adv.Mr.Satadeep Bhattacharyya, Adv.Mr.L.Vishal, Adv.Mr.Rajesh Upadhyay, Adv.Mr.Soumasree Chatterjee, Adv.Mr.Subhadeep Basak, Adv.Heard on : 08.03.2016, 15.03.2016, 22.03.2016, 05.04.2016, 07.04.2016, 12.04.2016, 05.05.2016 & 10.05.2016 Delivered on : 19.08.2016.

Dr.

Manjula Chellur, Chief Justice: APOT60and 61 of 2016 are filed by the Board of Trustees for the Port of Kolkata and another (for short hereinafter referred to Port Trust) against Ballarpur Industries Limited.

APOT66of 2016 is filed by Ballarpur Industries Limited and others against the Board of Trustees for the Port of Kolkata.

APOT63of 2016 is filed by one Ramesh Kumar and Company Private Limited and another against the Board of Trustees for the Port of Kolkata and otheRs.Two writ petitions came to be filed, one by Ballarpur Industries Limited and others and another by Ramesh Kumar and Company Private Limited and another.

Both the writ petitions 169 of 2016 and 170 of 2016 were against the Board of Trustees for the Port of Calcutta and other.

In brief the facts led to the filing of the present appeals are as under: Premises No.5, Hide Road Calcutta was taken on a lease from Port Trust, according to writ petitioner Ballarpur Industries Limited as contended in W.P.169 of 2016.

W.P.170 of 2016 was filed by Ramesh Kumay and Company Private Limited contending that they were occupying the premises in question and doing the business in that premises under Ballarpur.

They further contend that there are about 200 employees working there and the monthly rent payable by Ballarpur to Port Trust is about Rs.4.5 lacks and is paid

by Ramesh Kumar and Company Private Limited.

Apparently, huge arrears of rent was due to the Port Trust.

The claim is about Rs.4.12 crores.

A sum of Rs.3.30 crores is the rent component of the said amount.

Initially a notice under Section 4 of the Public Premises (eviction of unauthorized occupants) Act of 1971 (for short Act of 1971) was issued by Port Trust to Ballarpur.

An eviction order came to be passed on 26.02.2013 by the Estate Officer.

Therefore, the eviction proceedings were kept pending for almost ten years. Ballarpur filed an appeal together with the stay application before the Appellate Authority that is the District Judge Alipour.

No stay was granted at the time of admission of the appeal as admitted by the parties.

Appeal and stay application were both pending before the Appellate Authority when the writ petitions came to be disposed of.

According to the writ petitioners since there was no stay of the order dated 26.02.2013, Port Trust has taken possession of the establishment by physically dispossessing the writ petitioners and the premises is kept under seal.

Ballarpur Industries contended before the Trial Judge that the issue between Ballarpur Industries and the Port Trust was with regard to non-payment of rent and even contended that they were ready to pay a substantial amount, out of the outstanding to Port Trust immediately and agreed to pay the balance in installments if their occupation was legitimized by Calcutta Port Trust by way of renewal of lease or otherwise.

It further contended that without proceeding with the appeal and stay application, suddenly levy of execution has taken the writ petitioner by surprise and further

contended that it was not at all a fair and reasonable exercise on the part of the Port Trust.

Another writ petitioner that is Ramesh Kumar and Company Private Limited contended that since the premises was in possession of Ramesh Kumar and Company Private Limited, there was no justification in proceeding with the levy of execution totally ignoring Section 4(2)(b) of the Act of 1971.

They further contended that they ought to have been notified before execution was taken up, therefore execution of the order was bad in law.

According to KOPT contention of Ramesh Kumar and Company is totally irrelevant since importer and exporter certificate was issued to one of the directors of the said company only in the year 2015, hence, it ought not to have been in the premises in question in 2004.

Learned Judge observed that there were 200 employees on the site on the date of taking possession of the premises by the Port Trust and the same has resulted in 200 employees being thrown out of employment.

Apparently, eviction order came to be passed by Estate Officer only on the ground of non-payment of rent, Learned Judge opined that since one of the appellant, Ballarpur industries was ready and willing to clear the outstanding rent, the Appellate Court could have exercised its discretion in restoring back possession to them.

It is also observed that the writ petitioner Ballarpur has to show its bona fides since huge a sum of moneys are due to Port Trust.

Accordingly, disposed of the writ petitioner with the following directions: For restoration of possession wrongfully taken by the Port Trust, the persons in occupation of the said property, i.e. Ramesh Kumar and Company have raised serious objection to the petitioners. According to them, they have no notice of the eviction proceeding.

As far as the petitioners are aware, separate proceedings are being initiated by Ramesh Kumar and Company for restoration of their possession.

To be noted is that the petitioners have no connection with Ramesh Kumar and Company.

The petitioner No.1 is a company under the control of GautamThappar of Delhi while Ramesh Kumar and Company is under the control of Ramesh Kumar Agarwal and his family. From the above order what we understand is, a sum of Rs.1 crore has to be deposited with the Kolkata Port Trust immediately by 29.02.2016.

Upon deposit of Rs.1 Crore within three working days after receiving the said deposit, Port Trust will allow the writ petitioners to carry on business in the premises in question but under the Joint Special Officers appointed by the earlier order of the said Court till appeal and stay applications were disposed of by the Appellate Authority.

No amounts whatsoever from the Bank accounts of the Company should be withdrawn except for the purpose of normal couRs.of business unless and until the balance claimed by Port Trust that is 3.12 rupees is secured in the Bank accounts of the petitioneRs.It was further directed that Appellate Authority shall dispose of the appeal and the stay application within three months from the date of communication of the order and the parties will abide by the result of the appeal so determined by the Appellate Authority.

Aggrieved by this order all the three parties to the two writ petitions that is two writ petitioners Ballarpur Industries and Ramesh Kumar and Company Private Limited so also Port Trust have come up in the above appeals.

According to private parties that is two appellants/writ petitioneRs.the proceedings before the Estate Officer were technically deficit for non-issuance of notice under Section 4 of 1971 Act.

For want of notice under Section 4 of the Act of 1971 and respective rules to the occupant that is Ramesh Kumar and Company Private Limited inspite of Port Trust

being aware of the fact that the appellant was in occupation of the concerned premises, proceedings were vitiated.

According to appellant Ramesh Kumar and Company, eviction petition is dated 16.03.2005 and said petition clearly indicate that one R Pyarilal Group was in possession as sub-tenant which was an associate of RP Logistic Private Limited and both appellant and RP Logistic Private Limited are part of R Parylal Group of Companies.

They also refer to a document dated 01.02.2007 from the office of directorate of cottage and small Industries Government of West Bengal to contend that as on that date a manufacturing unit in the premises in question was established.

According to both the private appellants the procedure under Section 4(2)(b) of the Public Premises Act of 1971 requires service of notice to all the persons who may be in occupation, or claim interest in the public premises.

Therefore, according to them each of such person who seems to have a claim or interest or who seems to be in occupation can contest the matter before the Estate Officer.

They also relied upon the case in State of Maharashtra versus Jalgaon Municipal Council reported in 2003(9) SCC731 para 29 and so also the case of Nazir Ahmed versus King Emperor reported in AIR1936 Privy Council 253 at page-257 to contend that if a statute requires a thing to do in a particular manner such thing has to be done in that manner or not at all.

The appellant Ramesh Kumar and Private Company also contend that Port Trust has failed to follow its own policy wherein even an occupant of a property of Port Trust has a right to continue in possession if such person is ready to remedy to breach committed by the recorded tenant.

They further contend that the Port Trust could not have taken assistance of the police since on earlier occasion prayer for police assistance in execution proceedings was clearly rejected.

In other words, the office recorded such assistance will be considered later on after hearing the authorized officer but later police officers assisted Port Trust officials in forceably evicting the appellants from the premises.

They also contend that rules made under 1971 Act clearly indicate police assistance is to be provided for execution of an order only if the Estate Officer is of the opinion that specific circumstances exist for such assistance.

The appellants also contend that the writ petition filed by said Ramesh Kumar and Company Private Limited is maintainable since they are questioning non-compliance of notice in terms of Section 4(2)(b) of the 1971 Act therefore principles of natural justice is vitiated.

With these arguments, learned Senior Counsel Shaktinath Mukherjee arguing for Ballarpur Industries and Mr.Abhrajit Mitra arguing for Ramesh Kumar and Company Private Limited sought for setting aside the proceedings in the execution proceedings and to restore back possession to appellants.

Per contra, Learned Senior Counsel for Port Trust Mr.Kishore Dutta contends that though initially appellant Port Trust raised the ground of subletting apart from non-payment of huge amounts of rents, subsequently, such prayer was not insisted upon therefore, question of issuing notice to so-called sub-tenant in occupation of the premises would never arise.

It was further contended that, so far as Ramesh Kumar and Company Private Limited they got the exporter and importer license only in 2015, therefore, question of issuing any notice of eviction in the year 2004 would not arise.

It was also contended that there is nothing on record to show that either RP Logistics or the appellant Ramesh Kumar and Company Private Limited were part of R Parilal and Company.

Therefore, in the absence of such material there cannot be any non-compliance of procedure or requirement.

He also contended that in the light of huge arrears of rent payable to the appellant Port Trust there was justification for proceeding with the eviction order by the Estate Officer.

He further contended that in the absence of the any stay of the eviction order passed by Estate Officer, there was no obligation on the part of the appellant Port Trust to intimate the appellants and then take possession of the properties.

With these arguments he sought for setting aside the direction to receive a sum of Rs.1 Crore and proceed with the matter in terms of directions of the Trial Court.

Learned Senior Counsel Mr.S.N.Mukherjee takes us to Section 5 (2) of the Act to contend that a date has to be mentioned in terms of Section 5(2) of the Act.

Section 5(1) (2) read as under: 1) If, after considering the cost, if any, shown by any person in pursuance of a notice under Section 4 and [any evidence produced by him in support of the same and after personal hearing, if any, given under clause (b) of sub-section (2) of section 4]., the estate officer is satisfied that the public premises is in unauthorized occupation, the estate officer may make an order of eviction, for reasons to be recorded therein directing that the public premises shall be vacated, on such date as may be specified in the order by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premise.

2) If any person refuses or fails to comply with the order of eviction [on or before the dates specified in the said order or within 15 days of the date of its publication under sub-section (1).whichever is later]., the estate officer or any other officer duly authorized by the estate officer in this behalf [may, after the date so specified or after the expiry of the period aforesaid, whichever is later, evict that person].from, and take possession, the public premises and may, for that purpose, use such force as may be necessary. Placing reliance on this provision he contended that so far as eviction of unauthorized occupants, the procedure contemplates issuance of notice under Section 4 of the Act, thereafter, after

considering the cause if any shown by the person to whom notice under Section 4 was issued, the Estate officer if satisfied that the public premises is in the hands of a person unauthorisedly occupying, the estate officer may make an order of eviction by indicating reasons in the order and can direct that the public premises shall be vacated on such and such a date as may be specified in the order.

In other words, according to him, procedure that a copy of the order is to be affixed on the outer door or some other conspicuous part of the public premises is only to make all the persons who are in occupation of the premises to know that on a particular date they have to vacate the premises.

Sub-Section 2 contemplates the procedure, how the Estate officer can take possession of the public premises by using such force as may be necessary if the person refuses to vacate in terms of eviction order on or before the dates specified in the said order or within 15 days of the date of its publication.

He also refers to Rule 24 of Order 21 of CPC which reads as under: R.

24 Process for execution- (1) when the preliminary measures (if any) required by the foregoing unless have been taken, the Court shall , unless it sees cause to the contrary, issue its process for the execution of the decree.

(2) Every such process shall bear date the day on which it is issued, and shall be signed by the Judge or such officer as the Court may appoint in this behalf, and shall be sealed with the seal of the Court and delivered to the proper officer to be executed [B,G].[(3) In every such process, a day shall be specified on or before which it shall be executed and a day shall also be specified on or before which it shall be returned to the Court, but no process shall be deemed to be void if no day for its return specified therein.]. According to the learned Senior Counsel, in the absence of the Port Trust establishing compliance of the above procedure, they ought not to have taken possession of the property, therefore, if the procedure contemplated for eviction of unauthorized occupants is not properly complied with, the action of the authorities in taking possession of the property ignoring all procedure per se is illegal.

Ongoing through the papers especially the proceedings before the Estate officer on 26.2.2013, there is a mentioning of creation of unauthorized sub-tenancy as alleged on behalf of Port Trust against the opposition party (Ballarpur Industries Limited and others) and under issue No.5 the same was to be considered with all seriousness since substantial question of law is involved in the issue.

It is further observed that during the course of hearing Port Trust has made submission that opposite party has unauthorisedly parted with possession of the public premises by way of inducting unauthorised sub-tenant in gross violation to the condition of tenancy under lease.

It is further noticed that creation of unauthorized sub-tenancy was not mentioned by the Port trust in the quit notice dated 11.10.2004.

Then the Estate Officer proceeds to say that in course of hearing it was noticed that Port Trust was not serious on the issue of unauthorized parting with possession or creation of sub-tenancy.

The Estate Officer emphatically mentions that Calcutta Port Trust has no intention to press upon the issue, therefore, he will not look into the matter so far as unauthorized occupation on merits.

He opines there is need to discuss about creation of sub-letting, how it should be dealt with, whether it is a question of fact or question of law.

He also refers to several judgments of the Apex Court and other High Courts.

Ultimately, opined that since no material has been produced on behalf of Port Trust to support their contention of sub-tenancy, he would decide the said issue in favour of opposite party.

The other parts of the discussion pertains to how the accounts have to be maintained etc. According to the two private appellants, this conduct or stand of the Port Trust in not seriously proceeding with the issue of unauthorized occupancy is only to see that they take possession of the property clandestinely without proceeding occupants/sub-tenant.

against the alleged unauthorized In other words, in order to circumvent the procedure contemplated under the Public Premises Act of 1971, the required notice under Section 4 was never issued to the alleged sub-tenant and it was not even whispered in the quit notice given in the year 2004.

However, Port Trust cannot take defence that it was option of the Port Trust on what ground they could to seek eviction of the tenant.

In the present case, apparently the eviction of the tenant is on the ground of non-payment of rents.

The specific case of creation of sub-tenancy was clearly pleaded in the eviction petition filed before the estate officer on 16.3.2005.

It is not in dispute that Section 4 notice was issued on 15.6.2005.

Specific case of subtenancy was raised before the Estate Officer by the Port Trust which the evident from the stay petition filed by the appellant Ramesh Kumar and Company Private Limited.

In the eviction petition Port Trust contended that R Pyarilal and company is in occupation of the concerned premises carrying on business at the said premises through R-P Logistic private Limited.

According to them, appellant Ramesh Kumar and Company Private Limited and another R-P Logistic private Limited are part of R Pyarilal group of companies.

In a writ petition what is required to be seen is whether there was compliance of procedure in terms of Public Premises Act in giving notice to the persons who claimed interest in the property in question.

At no point of time Port Trust has denied raising the issue of sub-tenancy committed by the tenant Ballarpur.

Apparently, both appellants claimed no notice in terms of Section 4 read with Rule 4 of Public Premises Act and Rules respectively was issued.

In 2007 office of the directorate of cottage and small industries indicate that the appellant Ramesh Kumar and Company had set up manufacturing enterprises at the premises in question.

Of course, they are claiming that they were in occupation of the premises to the knowledge of Port Trust and no notice under Section 4 (2)(b) of the Act was issued.

The very purpose of such notice is, to keep each such person said to be in occupation or claiming interest in the public premises to show cause against the proposal of eviction.

Whether Ramesh Kumar and Company Private Limited is part of R Pyarelal and when they came into occupation of the premises that is at the relevant time of eviction petition are all factual issues which have to be agitated before a Court which can look in to the facts.

The fact remains no order of eviction came to be passed on the ground of sub-tenancy.

It was only for nonpayment of rents.

If really there was a sub-tenant, unauthorisedly occupying the premises and if Ramesh Kumar and Company Private Limited is able to establish the same, since no notice required under Section 4(2) (b) of the Act was issued, definitely it would attract the settled law as indicated in the case of State of Maharashtra versus Jalgaon Municipal Council 2003 (9) SCC731 and Nazir Ahmed versus King Emperor AIR1936 Privy Council.

If the alleged sub-tenant is able to establish the contentions raised before this Court before the Appellate Court, definitely the Appellate Court can look into the factual situation and decide the matter.

Already an appeal is pending before the District Judge Alipoor who is the Appellate Authority.

Once the procedure followed establishes the alleged clandestine courses of action under taken by Port Trust, the Appellate Authority can proceed to set right the things.

Apparently, some truth seems to be there in the allegation with regard to police assistance for taking possession of the premises as contended by Ramesh Kumar and Company Private Limited.

Since the appeals are pending, it is open to the appellants to place on record all material fact before Appellate Authority.

Since there is dispossession of the occupants and premises being kept under lock and key, we have to now see what would be the best solution.

In the light of above discussion there seem to be lapses in the procedure adopted by Port Trust so far as noncompliance of the procedure in respect of sub-tenancy.

Ultimately it is the sub-tenant who is thrown out of the premises.

If it is true, without due process of law occupant is victimized.

If two grounds of eviction are available, by opting one course of action, Port Trust cannot plead and argue that they could seek eviction only on the ground of non-payment of rent since third party rights involved and are affected.

Under the facts and circumstances we are of the opinion the matter needs to be considered in depth where several facts can be established.

We are of the opinion, there was no breathing time for the respondents to deposit the money as directed by the Trial Court.

Whether Ballarpur pays amount due or Ramesh Kumar and Company Private Limited pays the dues we are not concerned.

The fact remains there has to be proper hearing of the entire matter not only with regard to the quantification of arrears of rent as contended by Ballarpur Industries but also with regard to the rights of the so-called sub-tenant said to have been

inducted by Ballarpur Industries and its protection in terms of the provisions of Public Premises Act of 1971.

One cannot ignore the fact that the property in question is a public property and if any amount due on this property or loss is caused to the Port Trust, it is nothing but financial loss so far as public entity is concerned.

In view of the above discussion and reasoning we pass the following order: The appellant Port Trust shall intimate arrears of occupation charges (excluding penal charges) payable by the occupant as on the date of taking possession of the property, within two weeks from the date of receipt of the copy of this order.

On receipt of such intimation 50% of the amount due shall be deposited with the Appellate Authority hearing the statutory appeal that is District Judge Alipore Court within four weeks from the date of intimation from Port Trust.

Upon deposit of such money, Port Trust shall give back possession of the property to tenant forthwith.

Thereafter, within two weeks from the date of taking possession of the property, the appellants can move the statutory Appellate Authority for stay of the operation of the order passed by the Estate Officer dated 26th February, 2013.

Then the Appellate Authority shall consider the stay application and also the appeal on merits and shall dispose of the matter within three months.

Non-compliance of direction either to deposit the amount or seek stay of the operation of the orders of the Estate Officer as indicated above shall result in proceeding with the execution of the order of the Estate Officer and the appellants concerned will not have benefit of this order.

Accordingly, all appeals and applications are disposed of.

(Manjula Chellur, Chief Justice) I agree.

(Arijit Banerjee, J.) Later:After Judgment is delivered a prayer for stay of the Judgment made.

But the same stands rejected.

(Manjula Chellur, Chief Justice) I agree.

(Arijit Banerjee, J.)

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