

Arvind Kumar Dhanuka Vs. Board of Trustees and ors.

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Court : Kolkata

Decided On : Jul-18-1977

Reported in : AIR1977Cal377

Judge : T.K. Basu, J.

Acts : [Major Port Trusts Act, 1963](#) - Sections 49 and 52

Appeal No. : Matter No. 1103 of 1976

Appellant : Arvind Kumar Dhanuka

Respondent : Board of Trustees and ors.

Advocate for Def. : R.C. Deb, Adv.

Advocate for Pet/Ap. : P.K. Das, Adv.

Disposition : Petition allowed

Judgement :

ORDER

T.K. Basu, J.

1. The petitioner is an unemployed Commerce Graduate who intends to start a new business on a plot of land which is the subject-matter of this application. The matter arises in the following manner.

2. At all material times prior to February, 1975, the port of Calcutta was governed by the Calcutta Port Act, 1890. However with effect from the 1st February, 1975, the port of Calcutta came to be governed by the [Major Port Trusts Act, 1963](#) (hereinafter referred to as the Act). By virtue of Section 133(2B) of the Act all the provisions with which we are concerned in this application came to be applicable to the port of Calcutta and the old Act of 1890 ceased to be applicable. Sections 49 and 52 of the Act with which we are concerned and in so far as is material for our purpose may be set out herein below;

'49. (1) Every Board shall, from time to time, also frame a scale of rates on payment of which and a statement of conditions under which any property belonging to, or in the possession or occupation of the Board, or any place within the limits of the Port or the Port approaches may be used for the purposea specified hereunder:

(a)

(b)

(c) leasing of land or sheds by owners of goods imported or intended for export or by steamer agents;

(d) any other use of land, building, works, vessels or appliances belonging to or provided by the Board.

(2) Different scales and conditions may be framed for different classes of goods and vessels.

52. Every scale or rates and every statement of conditions framed by a Beard under the foregoing provisions of this Chapter shall be submitted to the Central Government for sanction and shall have effect when so sanctioned and published by the Board in the Official Gazette.'

By a notice dated the 8th November, 1976, the Board through its Land Manager issued an advertisement which appeared for the first time in the Amrita Bazar Patrika of 11th November, 1976. The respondent No. 1 notified that sealed offers

quoting the rate of rent in the prescribed form were invited for the lease of certain plots. The notice prescribed the procedure for making the application and also reserved the right to reject any or all offers without assigning any reason whatsoever.

3. Pursuant to the said notice dated 8th November, 1976 the respondent No. 1 through its Land Manager issued a circular in cyclostyled form inviting sealed offers for lease of various plots including the plot No. 17 in Sonapur Road measuring an approximate area of 788.747 sq. metres. In the circular, a sum of Rs. 50 was mentioned as the reserved rent per 100 sq. metres for the same offer.

4. The petitioner, pursuant to the said notice and the circular, obtained the requisite application form and in answer to the item regarding the rate of rent the petitioner in the form stated that Rs. 50 was the maximum rate which the Port Trust was entitled to realise in respect of the plot.

5. The controversy in the present Rule arises because according to the petitioner, in terms of the provisions contained in Section 49 of the Act the respondent No. 1 has framed a scale of rates in accordance with the provisions of the Act. Such scale of rates was published in the Calcutta Gazette in terms of Section 52 of the Act. This position is not disputed by the respondents. It is not disputed either that in so far as the plot No, 17 Sonapur Road with which we are concerned the scale of rent has been fixed at Rs. 50 per 100 sq. metres.

6. The sole question to be decided is that having prescribed the scale of rent at Rs. 50 for this plot in question in terms of the statutory powers contained in the Act, is it open to the respondents now to treat Rs. 50 as reserved rent as they have purported to have done in terms of the impugned notice and the impugned circular? In other words, is it now open to the respondents to invite offers for bid above Rs. 50 per 100 sq. metres in respect of the offer in question and offer it to the highest 'bidder? It has been alleged in the petition that the respondents have received several offers of higher rates of rent and are threatening to allot the plot to the highest bidders.

7. I may mention that originally a blanket injunction was issued by Masud, J, (as he then was) at the time of the issue of the Rule restraining the operation of the entire notice and circular. This order was however modified on the 22nd December, 1976 by S. K. Mukher-jea, J. (as his Lordship then was) only to plot No. 17, Sonapur Road which is item No. 14 in the relevant circular and for which the petitioner made the offer as aforesaid.

8. Mr. R. C. Deb appearing on behalf of the respondents contends that the Board has issued certain directive principles one of which is that the scale of rents which have been already fixed are to be treated as reserved rents.

9. Mr. P. K. Das, learned counsel for the petitioner contends that having prescribed the scale of rents in exercise of statutory powers, it is not open to the respondents whose powers are circumscribed by the statute to treat them as reserved or minimum rents and accept leases at a higher scale by virtue of certain directive principles. To do so would be to override the exercise of statutory powers which have already been done.

10. After giving my anxious consideration to the entire matter, I am of the opinion that the contention of the petitioner should succeed. In other words, it must be held that having prescribed a particular scale of rent for a particular plot in the exercise of its statutory powers, the respondents now have no right, authority or jurisdiction by virtue of notifications or circulars to treat that scale of rent as the reserved rent or minimum rent and invite tenders for higher rents and offer it to the highest bidder. To allow the respondent to do so, in my view would clearly enable them to deviate from the exercise of statutory powers which have already been exercised in the present case. This contention of the petitioner therefore succeeds.

11. In the result, this application succeeds and the Rule is made absolute. There will be a Writ in the nature of mandamus directing the respondents to forthwith, recall, cancel and/or withdraw the impugned notice dated 8th November, 1976 and the circular bearing the same date and issued thereunder, only in so far as the plot No. 17, Sonapur Road which appears as item No. 14 in the said circular is concerned. I make it clear however that this order does not affect any other plot notified in the said notice or in the said circular.

12. The respondents would however be at liberty to proceed according to law.

13. There will be no order as to costs.

14. Petition allowed

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