

Hindustan Steel Works Construction Limited Vs Board Of Trustees For The Syama Prasad Mookerjee Port, Kolkata & Ors

Court: Calcutta High Court (Appellate Side)

Date of Decision: Jan. 21, 2025

Acts Referred: Constitution of India, 1950 " Article 226

Major Ports Trust Act, 1963 " Section 34

Specific Relief Act, 1963 " Section 5

Public Premises (Eviction of Unauthorized Occupants) Act, 1971 " Section 2(E), 3(a), 4, 9, 10, 13, 15

Hon'ble Judges: Jay Sengupta, J

Bench: Single Bench

Advocate: Sardar Amjad Ali, Puranjan Pal, Abhrajit Mitra, Samrat Sen, Subhankar Nag, Swarajit Dey, Debarati Das

Final Decision: Dismissed

Judgement

Jay Sengupta, J

1. This is an application under Article 226 of the Constitution of India thereby praying for direction upon the respondent authorities to rescind and/or

recall the impugned final order dated 04.12.2024 passed by the respondent no.5 in proceeding nos. 2087 and 2087D of 2024.

2. Learned senior counsel appearing on behalf of the petitioner submitted as follows. The petitioner is a public sector undertaking. In the instant

proceeding, it has challenged the validity of two proceedings being 2087 and 2087D of 2024 purportedly initiated under the Public Premises (Eviction

of Unauthorised Occupation) Act, 1971 (PP Act, for short) In view of the decision of the Hon'ble Apex Court in Kaikhosrou (CHICK) Kavasji

Framji Vs. Union of India and Anr., reported at (2019) 20 SCC 705, a proceeding under PP Act is not maintainable as the petitioner has a bona fide

dispute. The decision, relied on, an earlier decision of the Hon'ble Supreme Court in Express Newspaper's case

reported at (1986) 1 SC 133. In fact, the proceeding under the PP Act is ex facie illegal when the issue regarding the validity of the conditional offer

for lease by letter dated 20.11.2013 for 10 years and/or 30 years is pending before this Court in WPA No. 15475 of 2003. As the respondent Port

Authorities had issued a notice to quit and vacate the lease sites under the Transfer of Property Act, they had no right to abdicate the move midway

and opt for a summary proceeding of eviction under the PP Act. That apart, the initiation of impugned proceeding was ex facie illegal in view of the

(a) provisions of second proviso to Section 34 of the Major Port Trust Act, (b) express clearance by the Ministry of Shipping by letter dated

13.12.2010 and 01.05.2017, (c) the resolution dated 03.02.2014 of the Board of Trustees of the SPMP, Kolkata and (d) the SPMP, Kolkata,

having acceptance of the payment of registration of the lease deed as evident from the letter of the authority dated 26.11.2013. Instead of a

proceeding under the PP Act, at best the respondents, if at all, could have instituted a proceeding under the general law i.e., under the Specific Relief

Act or Code of Civil Procedure for eviction of the so called unauthorised occupant. The Estate Officer acted in gross abuse of his powers without

following the procedures relating to service of notices. He had no authority to ignore the law laid down by the Hon'ble Supreme Court. Not only

was the writ petition pending, but also an appeal being FMA No. 133 of 2024 taken by the respondent as claimed by the learned counsel for the

respondent was pending. The order in FMA No. 133 of 2024, particularly the order dated 29.11.2024 were/was non-est as the same was passed

without any jurisdiction. The disputed question of facts as to whether the respondents were obliged to grant a lease for 30 years for which payment of

upfront premium was made by two pay orders refused arbitrarily by the respondent Port is pending before this Court. The SPMP Port Authority

continues to use the service of the petitioner for weighment services and also certified all bills from December, 2023 till dated, but also continues to

collect rent on the five land sites, although it has increased the compensation to three times the rent from December, 2023. Reliance is placed on the

decision in Kaikhosrou (supra) on that there was no bar of entertaining a writ petition in an appropriate case to question the legality and correctness of

notice issued under the Act. On the question of entry upon forfeiture of lease, Section 5 of the Specific Relief Act needs to be complied with. On this

reliance is placed on Bihari Lal vs. Mst. Kalyani (1986) 1 SCC 132. Moreover, it is well established principle that defect of jurisdiction cannot be

cured by consent or waiver. On this reliance is placed on Sushil Kumar Mehta vs. Gobind Ram Bohra reported at 1990 (1) SCC 193. In fact, an

alternative remedy is not an absolute bar in appropriate cases. Reliance is placed on Whirlpool Corporation vs. Registrar reported at (1988) 8 SCC 1,

Haribans Sahani vs. Indian Oil (2003) 2 SCC 107. Reliance is also placed on Shyama Prasad Raje vs. Ganpat Rao, AIR 2000 SC 3094 on that the

jurisdiction of High Court over findings of inferior Tribunal is not appellate but supervisory. It is also urged that whether public functionaries are

involved in the matter relating to violation of fundamental rights or the enforcement of public duties, the remedy is still available under the public law

notwithstanding that a suit could be filed for damages under private law and reliance is placed on Chairman, Railway Board vs. Chandrima Das,

reported at (2000) 2 SCC 465.

3. Learned senior counsel appearing on behalf of the Board of Trustees and of the respondent nos. 1 to 4 denied the allegations and submitted as

follows. The short question for consideration is whether this Court, in exercise of its writ jurisdiction, would interdict the proceeding under the PP Act

in respect of the five sites at the Kolkata Dock system which had been let out on lease by the SPMP Port, Kolkata (SPMPK, for short). The lease

was for 10 years and it expired on 09.12.2023. Incidentally, on 20.11.2023, the SPMPK issued an offer letter to the petitioner for grant of lease for 10

years without any option for renewal relating to the five sites for installation of five weighbridges. On 21.11.2023, the petitioner unconditionally

accepted the offer for grant of lease for 10 years without any option of renewal. The contract was accordingly concluded. On 26.11.2023, the

petitioner made payment of the agreed upfront premium for grant of the lease only for 10 years. On 10.12.2023, the possessions of the five sites were

handed over. The petitioner continued with the offer on the basis of the terms contained in the offer letter dated 20.11.2023. On 30.06.2023, the

petitioner filed WPA No. 15475 of 2023 praying for direction upon the respondent no. 1 to execute a lease for 30 years. On 04.09.2023, NIT was

issued by SPMPK in connection with the installation of the five new weighbridges. An application being CAN 1 of 2023 filed by the petitioner in

connection with the pending writ petition challenging the tender process in connection with the installation of five new weighbridges together with the

pending writ petition was heard and the Single Bench did not pass any interim order in view of the undertaking given by SPMPK that the tender

process did not involve the subject land sites and five new weighbridges. On 22.11.2023, a contempt application was dropped and closed. The parties

were directed to maintain the status quo on 25.09.2023 over and in respect of the land sites and five weighbridges to the extent of the issues and

subject matter involved in the interlocutory application. On 09.12.2023, the said 10 years lapsed by efflux of time. On 02.01.2024, in an appeal

preferred by the respondents being FMA No. 133 of 2024, the Division Bench passed an ad-interim order of stay of the order dated 22.11.2023. On

05.07.2024, SPMPK filed an application seeking eviction of the petitioner in terms of the PP Act before the Estate Officer. On 27.09.2024, the

Division Bench passed an order in the appeal appointing a Special Officer to inspect the five sites. On 29.11.2024, the Division Bench dismissed CAN

2 of 2024 filed by the petitioner seeking stay of the eviction proceeding passed by the Estate Officer under the PP Act. On 14.11.2024 an order of

eviction was passed by the Estate Officer. Thereafter, the present writ petition was filed. On the question of law, the PP Act applies only if the

subject property is public premises within the meaning of Section 2(E) of the PP Act. The Estate Officer is the authority to exercise the jurisdiction

under the PP Act if the property is admittedly of public premises. In the event of any dispute arises on the questions of ownership of the subject

property qua the Central Government/Board of Trustees, such disputed question relating to title to the subject property would have to be decided by a

Civil Court. In Kaikhosrou (supra), the Hon'ble Supreme Court expounded on the above well settled principle and only held that in a situation

where there is a bona fide dispute on the question of ownership of the subject property qua the Government vis-à-vis the person whose eviction is

being sought, in such case the Estate Officer would have no jurisdiction under Section 4 of the PP Act. In the instant case, no dispute whatsoever and

howsoever has been raised by the petitioner on the question of ownership of the subject property qua the Government. Therefore, the bar contained in

Kaikhosrou (supra) does not apply in the facts of the present case. The said judgement referred to State of Rajasthan vs. Padmavati Devi reported at

1995 Supp (2) SCC 290. Even the said decision pertains to disputed question regarding ownership of subject property. In respect of matters which fall

within the ambit of the PP Act, the Estate Officer has exclusive jurisdiction. In fact, the jurisdiction of civil Court is specifically barred under Section

15 of the PP Act. Likewise, by virtue of Section 10 of the PP Act, every order made by the Estate Officer or the Appellate Officer under the PP Act

is final and could not be called into question in a suit application of other proceedings. As regards the pending writ petition, there is no stay granted by

the Single Bench or by the Division Bench. In fact, the order of status quo passed by the Single Bench was stayed by the Division Bench on

02.01.2024. On 29.11.2024, the Division Bench specifically recorded that initiation of the proceeding on the Act of 1971 against respondent no. 1

cannot be faulted. It may not be out of place to note that the unequivocal terms of lease agreement showed it was for 10 years and the lease period

has admittedly lapsed. The mere pendency of an earlier writ petition praying for extension of lease of 30 years without any stay order being granted

cannot entitle the writ petition to circuitously obtain stay under the PP Act. Having accepted a lease of 10 years without any option for renewal, the

petitioner cannot approbate and reprobate. During the hearing, the writ petitioner argued that the Estate Officer was a captive Tribunal. It is well

established that any allegation of bias or malice in fact has necessarily to be pleaded. The writ petition contains no such pleading and no such ground.

The contention is not tenable in view of the second proviso of Section 3(a) of the PP Act. The Hon'ble Supreme Court in several decisions has

upheld Section 3 as well as composition and competence of the Estate Officer under Section 3 of the PP Act. On this reliance is placed on the

Accountant and Secretarial Services Pvt. Ltd. And Anr. vs. Union of India and Ors., (1988) 4 SCC 324 and Crawford Bayley and Co. and Ors. vs.

Union of India and Ors., (2006) 6 SCC 25. In a catena of decisions, both of the Hon'ble Supreme Court and this Court, the invocation of the

writ jurisdiction in case under the PP Act has been deprecated. On this reliance is placed on Ashoka Marketing Ltd. and Anr. vs. Punjab National

Bank and Ors., (1990) 4 SCC 406. Judicial prudence requires that where the statute contains provisions for an alternative remedy, the High Court

would not intervene under Article 226 of the Constitution of India. On this reliance is placed on State of Maharashtra Vs. Greatship (India) Ltd.,

reported at (2022) 17 SCC 332. It was also a well settled that the Writ Court for discharging its powers under Article 226 of the Constitution was not

a court of appeal. On this, reliance is placed on Sarvepalli Ramaiah (dead) as per legal Representatives and Ors. vs. District Collector, Chittor District

and Ors., reported at (2019) 4 SCC 500, Municipal Council, Neemuch vs. Mahadeo Real Estate and Ors., reported at (2019) 10 SCC 738 and

Surender Singh Thakur vs. Union of India and Ors., reported at 2024 SCC Online Cal 9902.

4. I heard the learned counsels for the parties and perused the writ petition and the written notes of submissions.

5. In the present case, certain facts are quite undisputed. First, there was a grant of lease on 20.11.2013 by the SPMPK in favour of the petitioner for

five sites and for installation of five weigh bridges for a period of 10 years, without an option of renewal. It appears that the petitioner had accepted

the offer on such terms without any objection. It is also an admitted fact that the 10 years lease expired on or about 09.12.2023 by efflux of time.

6. One thing is quite certain that the petitioner was fully aware of the terms on which it was operating its business at those five sites. That is why it

subsequently made a prayer for renewal of lease. But, a mere request for renewal of the lease period, despite there being a condition about no option

for renewal, would hardly confer any right upon the petitioner to demand such renewal as of right. Thus, the pendency of a writ petition in respect of

such proposed renewal, that too without there being any order of stay, would not act as a bar to adjudicate the present writ petition.

7. Incidentally, the letters of the respondents dated 13.12.2010 and 01.05.2017 only make reference to the policy guidelines as a matter of principle

vis-a-vis the proposal under consideration. The resolution dated 03.02.2014 too merely makes an allusion to the request for renewal of lease for 30

years remaining pending. Actually, it primarily deals with the additional income in the form of retention of 1% weightment charges. None of these,

prima facie, amount to granting or even promising extension of lease in favour of the petitioner.

8. Incidentally, a Division Bench while sitting in the appeal in FMA 133 of 2024 categorically recorded that “It may not be out of place to note the

unequivocal terms of the lease agreement shows it was for 10 years and the lease period has admittedly lapsed.” It also recorded that as the Division

Bench had suspended the impugned order of status quo passed by the Single Bench, the initiation of the proceeding under the Act of 1971 against the

respondent no. 1 could not be faulted with. It is significant to note that this order has not been interfered with.

9. Therefore, one may fairly argue that pendency of such petitions sans a stay order would not come in the way of deciding this application.

10. It is settled law that the PP Act would apply if the subject property is a public premises. In the instant case, it is admittedly so. Therefore, the

Estate Officer would also have the authority to exercise jurisdiction under the PP Act.

11. It has been rightly contended on behalf of the respondent authorities that no pleading is available regarding any personal bias or malice on the part

of the Estate Officer. The Hon’ble Apex Court as on several occasions affirmed the powers of the concerned authority in taking steps under the

PP Act.

12. In Kaikhosrou (supra), the Hon’ble Supreme Court, inter alia, hold as under “

“.....

50. Keeping in view the statement of law laid down by this Court in cited decisions supra, when we examine the facts of the case in hand, we have no hesitation in

holding that the appellants have raised a bona fide dispute on the question of ownership of the suit property qua Respondent 1 (Union of India)

51. A fortiori, in such case, Respondent 2 has no jurisdiction to invoke the powers under Section 4 of the PP Act by resorting to a summary procedure prescribed

in the PP Act by sending a notice under Section 4 of the PP Act for the appellant’s eviction from the suit property. This we say for the following six reasons.

“.....”

13. Thus, in Kaikhosrou (supra) the Hon’ble Apex Court had clearly laid down that an Estate Officer would have no jurisdiction under Section 4

of the PP Act only if there is a bona fide dispute on the question of ownership of subject property qua the Government vis-à-vis the person whose

eviction was being sought. Here, there is no such dispute pertaining to the ownership of the subject property qua the Government.

14. Even in Padmavati Devi (supra), the facts related to dispute about ownership of and/or holding of patta to the property in question. There, the

claimant stated that after expiry of lease, he was granted "patta".

15. A lessee of a property, that too on an agreement with a non-renewal clause, cannot be permitted to call a dispute a bona fide one that it seeks to

raise simply by unilaterally sending a letter stating that he wanted to have the lease extended. It will not be such a dispute even if such a request

simply remains pending consideration.

16. In the present case, the petitioner has failed to show, even prima facie, that he has a bona fide dispute either relating to ownership or holding on to

possession of the property in question.

17. On the other hand, Section 13 of the PP Act specifically excludes the jurisdiction of Civil Court. Section 10 of the PP Act also provides that every

order made by the Estate Officer or the Appellate Officer under the PP Act was final and could not be called in question in a suit or other proceeding.

18. Pertinently, Section 9 of the PP Act provides for preferring an appeal against an order passed by the Estate Officer. Therefore, it would be open

to the petitioner to take recourse to such procedure.

19. In view of the fact that there is no bona fide dispute pertaining to ownership of the property in question qua the Government vis-à-vis the person

whose eviction is being sought, the Estate Officer would have had ample jurisdiction in the instant case to proceed with under Section 4 of the said

Act.

20. Therefore, there is no reason to interfere with the reasoned order passed by the Estate Officer.

21. In view of the above, the writ petition is dismissed, however, without any order as to costs.

22. The petitioner is, however, granted liberty to prefer a statutory appeal against the impugned order passed by the Estate Officer in accordance with

law. The Appellate Authority, in the event such an 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 this Court seeking relief and thereafter, decide the

matter in accordance with law.

23. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all

formalities.