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Calcutta High Court

Case No: Writ Petition No. 16552 (W) of 2006

M/s. Automobile Association of Eastern India and Others	APPELLANT
Vs	
The Board of Trustees of the Port of Kolkata and Others	RESPONDENT

Date of Decision: June 11, 2008

Acts Referred:

- Constitution of India, 1950 - Article 226
- Industrial Disputes Act, 1947 - Section 33C(2)
- Public Premises (Eviction of Unauthorised Occupants) Act, 1971 - Section 4, 5, 5(2), 7, 7(1)

Citation: (2010) 4 CALLT 591

Hon'ble Judges: Indira Banerjee, J

Bench: Single Bench

Advocate: Debasish Kundu and Mr. Subhasish Chakraborty, for the Appellant; Subir Sanyal and Mr. A.K. Jana, for the Respondent

Final Decision: Allowed

Judgement

Indira Banerjee, J.
The question of law involved in this writ application is whether the provisions of the Limitation Act, 1963 apply to proceedings before the Estate Officer under sections 7(1) and 7(2) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, hereinafter referred to as the 1971 Act, for recovery of outstanding rent and/or damages for alleged unauthorized use and occupation.

2. The petitioner No. 1, a non-profit making, service oriented organization is incorporated under the Companies Act, 1956 and renders service inter alia of renewal of driving

licence, collection and deposit of road tax, repair of vehicles and the like. The petitioner No. 1 has various branches all over eastern India.

3. The petitioner No. 1 obtained lease of a plot of land measuring 2023 square meters, in the Haldia Dock Complex, from the Calcutta Port Trust, for a period of 30 years with effect from 1st March, 1979, on terms and conditions contained in a letter No. 1/E/121/1057 dated 29th July, 1978. The lease was due to expire on 1st March, 2009.

4. The petitioner No. 1 was granted lease of the said plot at a lease rent of Rs. 30 per square meter and a surcharge of Rs. 10 per month. Under the terms of the lease, the respondent Port Trust Authorities retained the right to raise the rent up to 25% every 10 years.

5. On 30th April, 1979 the petitioner No. 1 took possession of the said plot. A certificate of possession is annexed to the petition. According to the petitioners, no formal deed of lease was executed even though possession was delivered to the petitioner No. 1 way back in 1979. The petitioner No. 1 claims to have paid lease rent at Rs. 667.03 per month, along with surcharge of Rs. 60 per month, to the respondent Port Trust Authorities.

6. It is stated that the respondent Port Authorities did not provide facilities such as supply of water and electricity to the petitioner No. 1. Be that as it may, the petitioner remained in possession of the said plot. According to the petitioners, the Port Trust Authorities all of a sudden enhanced the rent thousand times, without assigning any reason, even though in terms of the letter referred to above, the lease rent could be enhanced to the extent of 25% every 10 years. The petitioner No. 1 and other lessees/tenants continued to pay rent to the respondent Port Trust Authorities at the old rate.

7. Challenging the enhancement of lease rent, the petitioners moved two writ applications in this Court being C.O. No. 12144 (W) of 1992 and C.O. No. 13171 (W) of 1996. On 17th August, 1992, N.K. Mitra, J. passed an order of status quo with regard to the rent for the said plot.

8. By an order dated 7th April, 1993, Tarun Chatterjee, J. directed the petitioner to pay all outstanding arrear rent along with surcharge and services charges at the rates agreed upon within the time stipulated in the order.

9. By an order dated 6th September, 1996 in the writ application being C.O. No. 13171 (W) of 1996, N.K. Mitra, J. gave the petitioner No. 1 a last chance to clear the arrears in terms of the earlier order of Court dated 7th April, 1993, in default whereof, the interim order of status quo with regard to the rent would stand vacated. According to the petitioners, the petitioner No. 1 paid rent pursuant to orders of this Court and the rent was duly accepted.

10. The General Manager (MNC) of the Haldia Dock Complex, however, by a letter No. ADE/121/N/1924 dated 13th November, 1998 alleged that the petitioner No. 1 had failed and neglected to utilize the said plot for the purposes for which the said plot had been allotted to the petitioner and asked the petitioner No. 1 to quit and vacate the said plot, and deliver vacant possession thereof to the respondent Port Authorities on 16th May, 1999.

11. Under cover of a letter dated 9th July, 1999, Deputy Secretary (H) of Haldia Dock Complex returned two cheques forwarded by the petitioner towards lease rent for the months of May and June, 1999. By the said letter, the petitioner was again called upon to quit and vacate the said premises and make over vacant possession thereof to the respondent authorities.

12. A notice dated 24th September, 1999 was issued to the petitioner No. 1 under Clause (b) of sub-section (2) of section 4 of the 1971 Act directing the petitioner to appear for a personal hearing on 13th October, 1999.

13. The petitioner challenged the said notice by filing a writ application under Article 226 of the Constitution of India being AST No. 3547 of 1999, which was disposed of by P.C. Ghose, J. on 4th January, 2000 by passing the following order.

1 week"s time is granted to the writ petitioners to give notice to the show-cause notice and the respondent authorities upon giving the hearing should dispose of the same by passing reasoned order in the matter within a period of 6 weeks from the date of filing of the reply by the petitioners and orders were passed by the respondent authorities should be communicated to the petitioner immediately and thereafter till the communication of the order by the respondent authorities to the petitioner no steps should be taken by the respondent authorities with regard to the land in question.

The Estate Officer passed an order of eviction dated 22nd February, 2000 the operative part whereof is set out hereinbelow:

Now therefore, in exercise of the power conferred on me under sub-section (1) of section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, I hereby order the said M/s. Automobile Association of Eastern India and all persons who may be in occupation of the said public premises or any part thereto to vacate the said public premises within 15 days of the date of publication of this order. In the event of refusal or failure to comply with this order within the period specified above, the said M/s. Automobile Association of Eastern India and all other persons concerned are liable to be evicted from the said public premises, if need be, by the use of such force as may be necessary.

14. According to the petitioners, immediately on receipt of the said letter, the petitioner No. 1 surrendered possession of the leasehold land at Haldia on as is where is basis. By a letter dated 14th March, 2000, the petitioner No. 1 informed the Junior Assistant

Manager (Administration) of Haldia Dock Complex that the petitioner No. 1 was giving up possession of the said plot, on as is where is basis, with immediate effect, without prejudice to its right to make further representation to the appropriate authorities for allowing the petitioner No. 1 use of the said plot for the remaining lease period, in terms of the letter dated 29th July, 1978, or on such fresh terms and conditions as might be mutually decided. The petitioners claim to have given up possession of the said plot on 14th March 2000.

15. In reply, the Junior Assistant Manager (Administration) directed the petitioner No. 1 to make over vacant and peaceful possession of the said plot to the Estate Officer in terms of the order dated 22nd February, 2000. Significantly, there was no direction in the order dated 22nd February, 2000 that possession should be made over to the Estate Officer.

16. By a letter dated 18th April, 2000, the petitioner No. 1 inter alia informed the said Junior Assistant Manager (Administration) that the petitioner No. 1 had already given up possession in compliance with the notice dated 3rd March, 2000.

17. After over 5 years, the petitioner No. 1 was served with a notice being E.O./289/AAE dated 28th May, 2005, under sub-section 3 of section 7 of the 1971 Act, calling upon the petitioner No. 1 to show-cause why an order requiring the petitioner to pay Rs. 7,06,196/- towards arrears of rent from December 1991, to 16th May, 1999 and damages as claimed in the said notice should not be paid.

18. By a letter No. EO/289/AAE/3467 dated 14th September, 2005, the time to show cause was extended till 9th November, 2005. The said notice was followed by another notice under sub-section 3 of section 7 of the 1971 Act being EO/289/AAEI/5970 dated 27th January, 2006.

19. The petitioner No. 1 by its letter dated 10th February, 2006 informed the Estate Officer that the petitioner had surrendered possession of the said plot 7 years ago on 14th March, 2000. The petitioners contended that no payment was due or payable by the petitioner No. 1 in respect of the said land. In any case, the dues, if any, were barred by limitation.

20. On 20th February, 2006, the Estate Officer wrote a letter purporting to inform the petitioner No. 1 that the Estate Officer had, in exercise of power conferred under sub-section (2) of section 5 of the 1971 Act, taken over vacant possession of the said plot, free from all encumbrances, without any property remaining on the said plot, on 22nd February, 2006 after evicting the petitioner No. 1.

21. By a letter dated 3rd may, 2006, the petitioner No. 1 requested the Manager (Finance) Haldia Dock Complex to withdraw its demand for damages/rent. Correspondence ensued between the petitioner No. 1 and the Estate Officer. Ultimately, the Estate Officer passed the impugned order No. EO/289/AAEI/656 dated 30th June, 2006 under sub-sections (1), (2) and (2a) of section 7 of the 1971 Act calling upon the

petitioner No. 1 to pay Rs. 7,06,196/- towards arrear rent for the period from December, 1991 to 16th May, 1999 and Rs. 24,79,540/- towards damages from 17th May, 1999 till 23rd February, 2006.

22. Mr. Debasish Kundu appearing on behalf of the petitioner submitted that the claim towards rent as also damages was ex facie barred by limitation.

23. Mr. Kundu cited the judgment of the Supreme Court in New Delhi Municipal Committee Vs. Kalu Ram and Another, in support of his submission that the machinery u/s 7 of the 1971 Act could not be invoked for recovery of time barred claims.

24. Mr. Kundu further submitted that the proceedings before the Estate Officer were barred by principles of res judicata and/or constructive res judicata and/or analogous principles since the Port Authorities had not reserved the right to file further proceedings claiming arrear rent and/or damages.

25. Mr. Kundu submitted that the Estate Officer had apparently not considered the contentions of the petitioner No. 1 with regard to the claim being barred by limitation. As such, the impugned orders could not be sustained.

26. Mr. Subir Sanyal, appearing on behalf of the Kolkata Port Trust took a preliminary objection to the maintainability of the writ petition on the ground of existence of an alternative remedy of appeal u/s 9 of the 1971 Act. Mr. Sanyal submitted that appeal lay to the District Judge of the District in which the premises was situated. As such the alternative remedy available to the petitioner No. 1, of appeal, was an equally efficacious alternative remedy. There being an efficacious alternative remedy, this Court ought not to entertain the writ petition.

27. In support of his submission, Mr. Sanyal cited A.P. Foods Vs. S. Samuel and Others, , U.P. State Spinning Co. Ltd. Vs. R.S. Pandey and Another, and Central Coalfields Ltd. Vs. State of Jharkhand and Others,

28. Mr. Sanyal further submitted that the writ petition, in any case, involved determination of disputed questions of fact. It was not for this Court exercising jurisdiction under Article 226 of the Constitution of India to decide whether the petitioner No. 1 had given up possession of the premises in question in February, 2000, as contended by the petitioner, or in February, 2006 as contended by the respondents. The correctness of the quantum of damages could not also be questioned in writ proceedings under Article 226 of the Constitution of India.

29. Mr. Sanyal argued that the judgment of the Supreme Court in New Delhi Municipal Committee v. Kalu Ram (supra), relied upon by Mr. Kundu, was rendered in the context of the Public Premises (Eviction of Unauthorized Occupants) Act, 1958, which has been repealed by the 1971 Act.

30. Mr. Sanyal further argued that under the old Act of 1958, the jurisdiction of the Civil Court to entertain suits or proceedings in respect of arrears of rent and/or damages was not barred. The Supreme Court was, therefore, of the view that remedy of recovery by way of suit having become barred by limitation, the same remedy could not be availed by invoking the 1958 Act.

31. Mr. Sanyal argued that the law of limitation applied to recovery by way of suit in a Civil Court, and not to proceedings before the Estate Officer. In support of his submission, Mr. Sanyal cited the judgment of the Division Bench of the Madhya Pradesh High Court in L.S. Nair Vs. Hindustan Steel Ltd., Bhilai and Others, . The Division Bench held the Limitation Act did not apply to proceedings before the Estate Officer, since the Estate Officer was not a Court.

32. Mr. Sanyal also cited Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others, and Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., , where the Supreme Court held that the bar of limitation prescribed under the Limitation Act, 1963 would not apply to an application u/s 33 C(2) of the Industrial Disputes Act, 1947.

33. In reply, Mr. Kundu submitted that the existence of an alternative remedy of appeal, u/s 9 of the 1971 Act did not bar the jurisdiction of this Court to entertain a writ petition.

34. Mr. Kundu argued that there were well-recognized exceptions to the rule evolved by Courts of not entertaining a writ petition, where an efficacious alternative remedy was available. This Court does not remit a writ petitioner to the available alternative remedy, when the action complained is in violation of principles of natural justice or in violation of a fundamental right under Part III of the Constitution or without jurisdiction or perverse. In support of his submission, Mr. Kundu cited State of U.P. v. Mohammad Nooh reported in AIR 1958 SC 86 and A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, .

35. Mr. Kundu submitted that the Estate Officer lacked jurisdiction to allow a claim that was ex facie barred by limitation. Moreover, the impugned order of the Estate Officer was violative of the principles of natural justice, since the Estate Officer had not dealt with the submissions of the petitioners of the claim being barred by limitation, which had duly been recorded in the impugned order. No reasons were disclosed for rejecting the contention of the petitioners, that the claim of Kolkata Port Trust to rent and damages could not be allowed by the Estate Officer, the same being barred by limitation.

36. Mr. Kundu next submitted that section 7(2) of the 1971 Act was in pari materia with section 7(2) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1958. The judgment in New Delhi Municipal Committee v. Kalu Ram (supra) was, therefore, binding on the Estate Officer.

37. Mr. Kundu finally submitted that the bar in the 1971 Act, of jurisdiction of Civil Court to entertain any suit or proceeding in respect of arrears of rent and/or damages, does not make any difference to the scope and ambit of section 7(2) of the 1971 Act which is the same as section 7(2 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1958.

38. The power of the High Court under Article 226 of the Constitution of India to issue writs and orders is plenary and unfettered. The Constitution does not impose any limit on the power of the High Court under Article 226. The High Court has absolute discretion to entertain or not to entertain a writ petition, having regard to the facts and circumstances of the case.

39. However, as a self-imposed rule of judicial discipline, the High Courts do not ordinarily entertain a writ petition when there is an effective and efficacious alternative remedy. The proposition of law laid down by the Supreme Court in its judgment in A.P. Foods v. S. Samuel & Ors. (supra), U.P. State Spinning Co. Ltd. v. R.S. Pandey (supra) and Central Coalfields Ltd. v. State of Jharkhand (supra) cited by Mr. Sanyal is well-established.

40. There are, however, well-recognized exceptions to the rule of alternative remedy as enunciated by judicial precedents. The Supreme Court has consistently held that alternative remedy would not operate as a bar in case of violation of principles of natural justice, where the order or proceedings are without jurisdiction, where the writ petition has been filed for enforcement of a fundamental right or where the vires of any statute and/or statutory rule is under challenge.

41. The existence of an alternative remedy is not an absolute bar to entertaining a writ application, as rightly argued by Mr. Kundu. This proposition finds support from the judgments cited by Mr. Sanyal referred to above. In exceptional cases, writ petitions might be entertained, notwithstanding the existence of an alternate remedy, and specially when the order impugned is found to be violative of principles of natural justice and/or without jurisdiction. In any case, once a writ application is entertained and affidavits invited, the writ application is not rejected on the sole ground of existence of alternative remedy.

42. It is true, that when the writ petition was initially moved, this Court kept the question of alternative remedy open. However, the writ application could not be taken up for hearing for almost two years. The issue is whether the writ application should be thrown out on the sole ground of alternative remedy, just because leave had been given to the respondent authorities to agitate the issue of alternative remedy after the filing of affidavits.

43. From the submissions of the parties before the Estate Officer, as recorded in the impugned order, it appears that the defence of the petitioners to the claim on account of arrear rent and damages was three-fold. First of all the petitioners contended that no rent

was outstanding from the petitioners to Kolkata Port Trust. Secondly, it was contended that the petitioners had given up possession of the said plot on 14th March, 2000. As such, there could be no question of any rent, occupation charges or damages for wrongful user for any period subsequent to 14th March, 2000. Thirdly, it was contended that the amount, if any, due and payable from the petitioner No. 1 to Kolkata Port Trust had long become barred by limitation.

44. The Estate Officer meticulously recorded the submissions of the respective parties. The Estate Officer inter alia recorded "The respondent party in their letter dated 10.2.06 has submitted that they gave up possession of the concerned premises on as is where is basis to KOPT on 14.3.2000. No amount was due or payable by them in respect of the concerned land. In any event, whatever amount, if any, at all was due and payable by them had long become barred by limitation."

45. The contention of the petitioners that the petitioner No. 1 had surrendered the said plot on 14th March, 2000 has casually been brushed aside with the vague observation that the petitioners had not observed the required formalities. There is not a whisper in the impugned order of the formalities that were required to be complied with.

46. The Estate Officer appears to have been swayed by his purported finding of failure and neglect of the petitioners to heed to notices and the alleged conduct of the petitioner of inducting unauthorized sub-lessees in the premises without prior consent/approval of Kolkata Port Trust, for which the petitioner No. 1 had suffered the order of eviction.

47. The contention of the petitioners, of the claim being barred by limitation has neither been considered nor dealt with in the impugned order. The submission of the petitioners that no rent was due has also not properly considered. There is only a sweeping remark that payments made by the petitioner No. 1 had been adjusted against its dues. No calculations have been given.

48. There is not a whisper in the impugned order as to why the contentions of the petitioner with regard to the claim being barred by limitation was not taken into consideration. The order to that extent is non-speaking and in violation of principles of natural justice. Even though there is a sweeping averment that payments made by the petitioners had been adjusted against past dues, details of the alleged adjustments have not been disclosed.

49. In New Delhi Municipal Committee v. Kalu Ram (supra) the Supreme Court held as follows:

The only contention raised before us by Mr. Hardy appearing for the appellant is that the High Court was wrong in holding that the amount in question could not be recovered u/s 7 because the time for instituting a suit to recover the sum had expired. Admittedly, any suit instituted on the date when the Estate Officer made his order u/s 7(1) would have been barred by time. Mr. Hardy argued that the Limitation Act only barred the remedy by way of

suit and did not extinguish the right, and section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act providing a different and special mode of recovery was therefore available to recover rent in arrears beyond three years. Section 7 as it stood at the relevant time reads:

7. Power to recover rent or damages in respect of public premises as arrears of land revenue. - (1) Where any person is in arrears of rent payable in respect of any public premises, the estate officer may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order.

(2) Where any person is or has at any time been in unauthorised occupation of any public premises, the estate officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such instalments as may be specified in the order:

Provided that no such order shall be made until after the issue of a notice in writing to the person calling upon him to show cause within such time as may be specified in the notice why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same, have been considered by the estate officer.

(3) If any person refuses or fails to pay the arrears of rent or any instalments thereof payable under sub-section (1) or the damages or any instalment thereof payable under sub-section (2) within the time specified in the order relating thereto the estate officer may issue a certificate for the amount due to the Collector who shall proceed to recover the same as an arrear of land revenue.

As would appear from the terms of the section, it provides a summary procedure for the recovery of arrears of rent. It was argued that since section 7 did not put a time-limit for taking steps under that section and as the limitation prescribed for a suit to recover the amount did not apply to a proceeding under this section, the High Court was in error in upholding the respondent''s objection. In support of his contention that a debt remained due though barred by limitation, Mr Hardy relied on a number of authorities, both Indian and English. We do not consider it necessary to refer to these decisions because the proposition is not disputed that the statute of limitation bars the remedy without touching the right. Section 28 of the Indian Limitation Act, 1908 which was in force at the relevant time however provided that the right to any property was extinguished on the expiry of the period prescribed by the Act for instituting a suit for possession of the property. But on the facts of this case no question of a suit for possession of any property arises and section 28 has no application. It is not questioned that a creditor whose suit is barred by limitation, if he has any other legal remedy permitting him to enforce his claim, would be free to avail of it. But the question in every such case is whether the particular statute permits such a course. Does section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 create a right to realise arrears of rent without any limitation of

time? u/s 7 the Estate Officer may order any person who is in arrears of rent "payable" in respect of any public premises to pay the same within such time and in such instalments as he may specify in the order. Before however the order is made, a notice must issue calling upon the defaulter to show cause why such order should not be made and, if he raised any objection, the Estate Officer must consider the same and the evidence produced in support of it. Thus the Estate Officer has to determine upon hearing the objection the amount of rent in arrears which is "payable". The word "payable" is somewhat indefinite in import and its meaning must be gathered from the context in which it occurs. "payable" generally means that which should be paid. If the person in arrears raises a dispute as to the amount, the Estate Officer in determining the amount payable cannot ignore the existing laws. If the recovery of any amount is barred by the law of limitation, it is difficult to hold that the Estate Officer could still insist that the said amount was payable. When a duty is cast on an authority to determine the arrears of rent, the determination must be in accordance with law. Section 7 only provides a special procedure for the realisation of rent in arrears and does not constitute a source or foundation of a right to claim a debt otherwise time barred. Construing the expression "any money due" in section 186 of the Indian Companies Act, 1913 the Privy Council held in Hans Raj Gupta v. Official Liquidators of the Dehradun Mussoorie Electric Tramway Company Ltd. that this meant moneys due and recoverable in a suit by the company, and observed:

It is a section which creates a special procedure for obtaining payment of moneys; it is not a section which purports to create a foundation upon which to base a claim for payment. It creates no new rights.

We are clear that the word "payable" in section 7, in the context in which it occurs, means "legally recoverable". Admittedly a suit to recover the arrears instituted on the day the order u/s 7 was made would have been barred by limitation. The amount in question was therefore irrecoverable. This being the position, the appeal fails and is dismissed with costs."

Section 7 of the 1971 Act is set out hereinbelow:

7. Power to require payment of rent or damages in respect of public premises. - (1) Where any person is in arrears of rent payable in respect of any public premises, the estate officer may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order.

(2) Where any person is, or has at any time been, in unauthorised occupation of any public premises, the estate officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such instalments as may be specified in the order.

(2A) While making an order under sub-section (1) or sub-section (2), the estate officer may direct that the arrears of rent or, as the case may be, damages shall be payable together with simple interest at such rate as may be prescribed, not being a rate exceeding the current rate of interest within the meaning of the Interest Act, 1978 (14 of 1978).

(3) No order under sub-section (1) or sub-section (2) shall be made against any person until after the issue of a notice in writing to the person calling upon him to show cause within such time as may be specified in the notice, why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same, have been considered by the estate officer.

50. A comparison of sections 7(1) and 7(2) of the 1958 Act extracted in paragraph 2 of the judgment in New Delhi Municipal Committee v. Kalu Ram (supra) with section 7(1) and 7(2) of the 1971 Act makes it amply clear that sections 7 (1) and (2) of the 1971 Act is in pari materia with sections 7(1) and (2) of the old Act of 1958.

51. Mr. Kundu rightly submitted that the bar of jurisdiction of the Civil Court to entertain suits or proceedings in respect of arrears of rent and/or damages does not make any difference to the scope and ambit of sections 7(1) and 7(2) of the 1971 Act, the aforesaid provisions being a verbatim reproduction of sub-sections (1) and (2) of section 7 of the old Act of 1958.

52. In P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another, , a Five Judge Constitution Bench of the Supreme Court held that it was a well known principle of construction that where the legislature used, in an Act, an expression which had received judicial interpretation, it must be assumed that the expression had been used in the sense in which it had been judicially interpreted, unless a contrary intention appeared. No contrary intention appears in the 1971 Act.

53. In New Delhi Municipal Committee v. Kalu Ram (supra) the Supreme Court considered the issue of whether section 7 of the 1958 Act created a right to realize arrears of rent without any limitation of time. The Supreme Court held that if the recovery of any amount was barred by the law of limitation, it was difficult to hold that the Estate Officer could still insist that the said amount was payable.

54. Mr. Sanyal"s submissions, with regard to the reasons which prompted the Supreme Court not to allow recovery of claims barred by limitation in Kalu Ram"s case (supra) are not borne out by the judgments of the Supreme Court. A judgment is a precedent for what it decides and not what might logically be deduced from it. The Supreme Court found, that it was not in dispute that if a creditor, whose claim was barred by limitation, had any other legal remedy, permitting him to enforce his claim, he would be free to avail of the remedy provided of course the remedy authorised the recovery of a time-barred claim. The Supreme Court raised the question of whether section 7 of the 1958 Act authorised the

Estate Officer to realize arrears of rent that were time barred. The question was answered by the Supreme Court in the negative.

55. The judgment of the Division Bench of the Madhya Pradesh High Court in L.S. Nair v. Hindustan Steel Ltd. (supra) was rendered without considering the judgment of the Supreme Court in New Delhi Municipal Committee v. Kalu Ram. Judgments rendered in Nityanand M. Joshi v. Life Insurance Corporation of India (supra) and Town Municipal Council, Athani v. Presiding Officer (supra) in the context of an application u/s 33(c)(2) of the Industrial Disputes Act, 1947 are not applicable, the judgment in Kalu Ram"s case being directly on section 7 of the 1958 Act which has almost verbatim been reenacted and reproduced in the 1971 Act, with some minor, inconsequential differences.

56. The Estate Officer thus lacked jurisdiction to entertain a time barred claim. The impugned order is also violative of principles of natural justice. It is not necessary for this Court to adjudicate the disputed question of fact of whether the petitioner gave up possession on 14th March, 2000 or in February, 2006. Nor is it necessary for this Court to decide any disputed questions of fact. The question is whether there is any infirmity in the decision making process. For reasons already discussed, this Court is constrained to hold that the decision making process itself is vitiated.

57. Admittedly, the order of eviction of the Estate Officer was made on 22nd February, 2000. The Estate Officer called upon the petitioner No. 1 and all persons who might be in occupation of the public premises or any part thereof to vacate the said premises within 15 days of the date of publication of the order of eviction, failing which the petitioner No. 1 and all other persons concerned would be liable to be evicted from the said premises, if need be, by use of such force as might be necessary.

58. There was no direction on the petitioners to make over vacant peaceful possession to the Estate Officer or to any other specific authority. The petitioners were merely directed to vacate the public premises within 15 days of the date of publication of the said order.

59. The petitioners claim to have surrendered possession on 14th March, 2000. It is not disputed that the letter dated 14th March, 2000 of the petitioners, claiming to have surrendered possession was received by the Assistant Land Manager, Haldia Dock Complex, acknowledged and replied to by a letter dated 29th March, 2000.

60. The concerned respondents insisted on delivery of vacant possession to the Estate Officer, even though there was no such direction in the order of eviction passed against the petitioner No. 1.

61. In reply to the letter dated 29th March, 2000, the petitioners wrote a letter dated 18th April, 2000 to which there was apparently no reply.

62. Admittedly, no steps were taken by the respondents for forcible eviction of occupants, if any, on the said plot. The respondents, for reasons best known to themselves, chose

not to take recourse to section 5(2) of e 1971 Act, setout hereinbelow:

5(2) If any person refused or fails to comply with the order of eviction on or before the date specified in the said order within fifteen days of the date of its publication under sub-section (1), whichever is later, the estate officer or any other officer duly authorised by the estate officer in his 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 of, the public premises and may, for that purpose, use such force as may be necessary.

63. There is no question of this Court adjudicating the factual dispute of whether the petitioners gave up possession on 14th March, 2000 or in February, 2006, as argued by Mr. Sanyal. The Estate Officer did not reject the contention of the petitioners that possession had been surrendered on 14th March, 2000, but proceeded on the basis that possession had not been made over in compliance with requisite formalities.

64. In the absence of any specific provision in the 1971 Act and/or the rules framed thereunder, prescribing any particular mode of delivery of possession, and in view of the order of eviction, whereby the petitioner No. 1 and others were merely directed to vacate within a specified date, no fault can be found with the action of the petitioners in surrendering possession by writing a letter. By the order of eviction, the petitioners and others were directed to vacate, failing which forcible eviction was threatened. No obligation was cast on the petitioner No. 1 to get others vacated.

65. No reasons are forthcoming as to what prevented the respondents from taking recourse to forcible eviction of unauthorized occupants, if any, on the said plot, immediately upon expiry of 15 days from the date of publication of the order of eviction and more so when the petitioners had informed the concerned respondents that they had surrendered the said premises. In awarding damages, the Estate Officer has ignored the contributory negligence and dereliction of duty on the part of the respondents for which the respondent authorities could not recover vacant possession of the said plot. The Estate Officer overlooked the failure of the respondent authorities to take necessary steps for mitigation of damages. The Estate Officer has apparently proceeded in a partisan and biased manner.

66. For the reasons discussed above, the impugned order cannot be sustained. The writ application is thus allowed and the impugned order is accordingly set aside and quashed.