

(2010) 12 CAL CK 0025

Calcutta High Court

Case No: C.O. No. 3360 of 2010

Mohanlall and Bros.

APPELLANT

Vs

Board of Trustees of the Port of
Calcutta

RESPONDENT

Date of Decision: Dec. 22, 2010

Acts Referred:

- Major Port Trusts Act, 1963 - Section 49
- Public Premises (Eviction of Unauthorised Occupants) Act, 1971 - Section 10, 7

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Jiban Ratan Chatterjee and Kaushik Dey, for the Appellant; Joydip Kar, Santosh Kr. Ray and N. Kauser, for the Respondent

Final Decision: Dismissed

Judgement

Prasenjit Mandal, J.

This application is at the instance of the Respondent and is directed against the order No. 14 dated May 4, 2010, order No. 15 dated July 12, 2010 and order No. 16 dated August 23, 2010 passed by the Estate Officer in proceeding Nos. 178 and 179 of 1993 pending before the Estate Officer, Kolkata Port Trust.

2. The opposite party herein instituted the proceeding Nos. 178 and 179 of 1993 before the Estate Office, Kolkata Port Trust against the Petitioner praying for eviction of the Petitioner from the tenanted premises and for recovery of arrears of rent and damages. The Petitioner is a tenant under the opposite party in respect of the plot Nos. JS18A and JS18B at a monthly rental of Rs. 944.79 paisa and 73.63 paisa respectively payable according to English calendar month. By the order No. 10 dated March 3, 1999, the Estate Officer directed the Petitioner to pay an account payee cheque /pay order amounting to Rs. 2,14,565.43 to the opposite party positively before April 16, 1999 for the occupational charges calculated at the rate of Rs.

560.49 paisa for the period from August 1, 1980 to January 19, 1983 and at the rate of Rs. 1018.42 paisa (Rs. 944.79 + Rs. 73.63 paisa) per month from January 20, 1993 to March 31, 1999 and also directed the Petitioner to start paying monthly occupational charges at the rate of Rs. 1018.42 paisa within 15 of the each month; that will commence from April, 1999 and the Estate Officer also observed that the aforesaid payments will be without prejudice to the rights and contentions of both parties in the instant case till disposal of the matter. Thereafter, by order No. 11 dated May 11, 1999, the Estate Officer modified the order the order No. 10 dated March 3, 1999 thereby directing the opposite party to accept the pay order being No. 297/98 revalidated from April 16, 1999 drawn on Punjab and Sind Bank, Kolkata for Rs. 1,00,154.60 paisa and a cheque being No. 169870 dated April 13, 1999 for Rs. 1018.42 drawn by the Petitioner on the Punjab and Sind Bank, Kolkata without prejudice to the rights and contentions subject to the final decision of the said proceedings and directed the Petitioner to pay the balance amount of Rs. 1,14,410.83 paisa within three months from April 16, 1999. The Petitioner has been depositing the occupational charges with the office of the opposite party regularly in compliance with the orders dated March 3, 1999 and May 11, 1999 without prejudice to the rights and contentions of the parties. The opposite party accepted the orders passed by the Estate Officer and did not take any step to assail the said orders. Thereafter by the order No. 14 dated May 4, 2010, the Estate Officer enhanced the occupational charges to Rs. 10,111.00 and Rs. 1,573.00 without any basis and without giving any opportunity of hearing to the Petitioner. The Petitioner filed an application for recalling the said order No. 14 dated May 4, 2010 passed by the Estate Officer. The Estate Officer disallowed the application of the Petitioner for recalling of the order No. 14 dated May 4, 2010 without any cogent and valid reason. Being aggrieved and dissatisfied with by the aforesaid orders of the Estate Officer, the Petitioner has preferred this application.

3. Mr. Jiban Ratan Chatterjee, learned Senior Advocate appearing on behalf of the Petitioner, submits that the Estate Officer has acted in a most arbitrary manner. At first, he determined the occupational charges by the first order dated March 3, 1999 and it was modified subsequently by the order ordered May 11, 1999 and the Petitioner has been paying the occupational charges according to such orders without prejudice to the rights and contentions in the said proceedings. Thereafter all of a sudden, the Estate Officer enhanced the occupational charges by order No. 14 dated May 4, 2010 without any basis and without giving any opportunity to the Petitioner. Such enhancement to a huge amount is not permissible by law. This is barred by the principles of res judicata. He also submits that in a proceeding, principles of res judicata applies when it relates to passing an order at the first stage of the case and when it is enhanced in the subsequent stage. Such enhancement is not permissible according to the principles of res judicata. In support of his contention, he has cited the two decisions of [Mohanlal Goenka Vs. Benoy Krishna Mukherjee and Others](#), and [Y.B. Patil and Others Vs. Y.L. Patil](#),

4. On the other hand, Mr. Jaydip Kar, learned Advocate appearing on behalf of the opposite party, submits that the opposite party is entitled to get the occupational charges as per Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The enhancement of rent has been done according to the rent schedules of the K.O.P.T. notified under the authority of law. Such rent schedules have been upheld by the Hon"ble High Court, Calcutta on challenge and such notifications (1998 and 1996) have been upheld by the Hon"ble Apex Court of India. Such enhancement is permissible in view of the provisions of Section 49 of the Major Port Trusts Act, 1963. So, the validity and enforceability of such notifications cannot be questioned. Mr. Kar also submits that if a person is aggrieved by an order u/s 7 of the said Act of 1971, the remedy lies by way of appeal and not by an application under article 227 of the Constitution of India. The order passed by the appellate authority u/s 9 is final as per provisions of Section 10 of the said Act of 1971. So, this application should be dismissed.

5. Therefore, the point that arises for decision in this application is whether the impugned orders should be sustained.

6. Upon hearing the learned Counsel for the parties and on going through the materials on record, I find that by the order No. 10 dated March 3, 1999, the Estate Officer directed the Petitioner herein to pay a sum of Rs. 2,14,565.43 to the opposite party positively before April 16, 1999 for the occupational charges calculated at the rate of Rs. 560.49 paisa for the period from August 1, 1980 to January 19, 1983 and at the rate of Rs. 1018.42 paisa per month from January 20, 1983 to March 31, 1999. The Estate Officer also directed the Petitioner to pay a sum of Rs. 1018.42 paisa per month as occupational charges within 15 of each month commencing from April, 1999. Such order is not under any challenge and there is no grievance of either of the parties with regard to the said order. By the subsequent order No. 11 dated May 11, 1999, the Estate Officer directed the opposite party herein to accept the pay order of Rs. 1,00,154.60 paisa and a cheque of Rs. 1018.42 paisa issued by the Petitioner without prejudice to the rights and contentions subject to the final decision of the proceedings. This is also not disputed by either party by challenging the same to the appellate authority. So, this order has become final. Now, the question is whether the order No. 14 dated May 4, 2010 relating to enhancement of the occupational charges should be supported. The basis of enhancement of occupational charges is the notifications of 1988 and 1996 which have been upheld by the High Court and the Apex Court. Enhancement has been done as per such notifications and thus, the Estate Officer held that such notifications are also enforceable against the Petitioner. The enhancement was done to the extent of Rs. 10,111/-per month for occupational charges of premises No. JS18A and Rs. 1,573/-for occupation of premises No. JS18B until further order of revision in accordance with law. Therefore, I find that there is basis for enhancement of the occupation charges. Section 49 of the Major Port Trusts Act, 1963 empowers the Board of Trustees to fix rates of lease.

7. Now the question is whether such enhancement is barred by the principles of res judicata.

8. Mr. Chatterjee has referred to the decision reported in [Mohanlal Goenka Vs. Benoy Krishna Mukherjee and Others](#), and [Y.B. Patil and Others Vs. Y.L. Patil](#), but both the decisions relate to the general law of res judicata and not with respect to any proceedings under the provisions of the said Act of 1971. The provisions of the said Act of 1971 is a Special Act and any proceeding under the said Act of 1971 is guided as per provisions of the said Act. Since the notifications of 1988 and 1996 have been upheld by to the Apex Court, the validity and enforceability of such notifications cannot be a matter of question before this Court of revisional jurisdiction. Therefore, the contention of Mr. Chatterjee that the subsequent enhancement is barred by the principles of res judicata, I hold, cannot be accepted. The facts of the two decisions are quite different from the present one and so the ratio of the decision will not be applicable in the instant case.

9. There is a provision for appeal against any order passed u/s 7 of the said Act and therefore, an appeal lies against the impugned orders. No revision lies against the order of the Estate Officer. Section 10 of the said Act also lays down that the decision of the appellate court is final.

10. The subsequent orders, i.e., order No. 15 dated July 12, 2010 and order No. 16 dated August 23, 2010 are consequential of the order dated May 14, 2010. The application for recall filed by the Petitioner has been rejected in view of the provisions of the notifications of 1988 and 1996.

11. This being the position, I am of the view that there is no scope of interference with the orders impugned. The Estate Officer has not failed to exercise his jurisdiction. So, I have no other alternative but to dismiss the application.

12. Accordingly, this application is dismissed.

13. Considering the circumstances, there will be no order as to costs.

14. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.