(2008) 1 CHN 388

Calcutta High Court

Case No: G.A. No. 3213 of 2007 and A.P.O.T. No. 529 of 2007

Naushad Ahmed		APPELLANT
	Vs	
Nirmala Agarwal and Others		RESPONDENT

Date of Decision: June 12, 2007

Acts Referred:

- Calcutta Municipal Corporation Act, 1980 - Section 401
- Civil Procedure Code, 1908 (CPC) - Order 40 Rule 1(2)

Citation: (2008) 1 CHN 388

Hon'ble Judges: Pranab Kumar Chattopadhyay, J; Kalidas Mukherjee, J

Bench: Division Bench

Advocate: Surajit Mitra, S. Dutt and S. Maitra, for the Appellant;Shakya Sen, C.K. Dutta and P. Saha for Respondent No. 1, Gour Roychowdhury, Jugal Ch. Porel and Debangshu Mondal for the K.M.C. and T.K. Chatterjee, for the Respondent

Final Decision: Allowed

Judgement

Pranab Kumar Chattopadhyay, J.
This application has been filed in connection with the appeal preferred from the order dated 24th August, 2007 whereby and whereunder the learned Single Judge finally disposed of the writ petition filed by the respondent No. 1 herein along with two other applications filed in connection with the said writ petition.

2. Admittedly, the appellant herein was not impleaded as a party to the writ petition although the said appellant was dispossessed by the Special Officer pursuant to the interim order passed by the learned Single Judge before finally deciding the said writ petition.

3. From the order under appeal we find that the learned Single Judge finally disposed of the writ petition without deciding anything and kept all the points open. The application

filed on behalf of the appellant herein for being added as a party respondent to the said writ petition and also for discharging the Special Officer upon handing over the possession of the flat in question to the said appellant was not considered by the learned Single Judge by the aforesaid order under appeal. The other application filed on behalf of the appellant herein in connection with the said writ petition for permitting him to carry on business from the tenanted portion of the premises in question was also not allowed by the said learned Single Judge by the order under appeal and most surprisingly, the said appellant was asked to make similar prayer by making separate application before the Building Tribunal of the Kolkata Municipal Corporation.

4. From the records we find that the respondent No. 1 herein filed the writ petition as a tenant in respect of a portion of Premises No. 13, British India Street, Kolkata under the respondent No. 7 for issuance of appropriate direction upon the authorities of the Kolkata Municipal Corporation for the purpose of taking appropriate steps in relation to the alleged unauthorised construction of the mezzanine floor on the first floor of the said premises in question. The prayers made in the said writ petition are set out hereunder:

a) A writ or and/or in the nature of Mandamus do issue commanding the respondents to forthwith take necessary steps as required under the Corporation Act for causing the illegal unauthorised construction of the mezzanine floor carried on at the first floor of the said premises at the instance of the private respondent to be stopped forthwith;

b) A writ or and/or in the nature of prohibition do issue restraining the respondents from taking any steps for carrying on the illegal construction of the mezzanine floor on the first floor of the said premises and/or any unauthorised construction at the said premises without obtaining any sanction plan from the Corporation Authorities;

c) A writ or and/or in the nature of Certiorari do issue commanding the respondents to forthwith transmit to this Hon''ble Court all the records pertaining to the instant case so that conscionable justice made be rendered upon perusal of the same;

d) Rule NISI in terms of prayers above;

e) An order of injunction do issue commanding the respondents to forthwith take necessary steps as required under the Corporation Act for causing the illegal unauthorised construction of the mezzanine floor carried on at the first floor of the said premises at the instance of the private respondent to be stopped forthwith;

f) An order of injunction do issue restraining the respondents from taking any steps for carrying on the illegal construction of the mezzanine floor on the first floor of the said premises and/or any unauthorised construction at the said premises without obtaining any sanction plan from the Corporation Authorities;

g) The Deputy Chief Engineer (North)(Building) be directed to cause inspection of the unauthorised construction of the mezzanine floor carried out by the said private

respondent at the first floor of the said premises and to submit a report before this Hon''ble Court;

i) Ad interim orders in terms of prayers above;

j) Such further or other order or orders be passed, direction or directions be given as to this Hon''ble Court may deem fit and proper.

5. On 21st July, 2005, the learned Single Judge passed an interim order appointing a learned Advocate of this Hon''ble Court as Special Officer in order to take symbolic possession of the disputed structure even though it was specifically submitted by the learned Counsel of the Kolkata Municipal Corporation that necessary notice u/s 401 of the Kolkata Municipal Corporation Act has been served in connection with the said unauthorised construction and guards have also been posted to prevent further unauthorised construction. The said order dated 21st July, 2005 passed by the learned Single Judge is set out hereunder:

This application has been taken out on the allegation that the landlord/private respondent has started unauthorised construction without having any permission and/or sanction to the building plan. On 13th July, 2005 matter was moved before the learned regular Bench. His Lordship Mr. Justice Soumitra Pal was pleased to direct the learned Counsel Mr. Gour Roychowdhury to produce records. Records have been brought here today. Mr. Roychowdhury has examined the records and from the records he submits that this construction is wholly unauthorised. Necessary notice has been served u/s 401 of the Kolkata Municipal Corporation Act and statutory guard has also been posted. In spite of all this, Mr. Sen, learned Counsel appearing for the petitioner submits that the private respondent has overnight completed the construction of mezzanine floor. Significantly, the learned Counsel for the private respondent unlike previous occasion is absent today. Under such circumstances, Mr. Sen prays that a complete situation and position giving the picture of the offending structure has to be brought before the Court. He also prays for further order that there should not be any further construction and change in the nature, character and user of the offending structure.

In that view of the matter, I appoint Mr. Indrajit Sarkar, learned Advocate of this Court, as Special Officer at initial remuneration of 500 Gms. to be paid by the petitioner at the first instance. The Special Officer shall visit the premises in question without notice to the private respondent, however, with the help of the learned Advocate on record of the petitioner as well as the learned Advocate on record of the Kolkata Municipal Corporation. He shall take photographs of the offending structure and submit a report. If necessary, he shall ask the person/persons responsible for the construction as to whether there has been any valid sanction or permission or not. He shall proceed immediately on receipt of the signed copy of this order. He shall take symbolic possession of the offending structure.

Meanwhile, I direct the respondents concerned shall not part with the possession of the offending structure and shall not change the nature and character of the same prevailing as of today. The Kolkata Municipal Corporation is directed to proceed with this matter as expeditiously as possible. The guard posted by the Corporation authority shall remain and for his or their assistance the Officer-in-Charge of the local police station shall render all help so that this order is carried out and there may not be any further construction. If such police assistance is required, the costs of such police assistance shall be realised from the person/persons who shall be violating the notice of the Kolkata Municipal Corporation as well as the order of this Court.

Matter to appear before the regular Bench for hearing. However, meanwhile let the matter appear on Tuesday next.

All parties concerned are to act on a xerox signed copy of this dictated order on the usual undertakings.

6. From the aforesaid order it appears that the learned Counsel representing the writ petitioner did not even pray for appointment of Special Officer for taking possession in respect of any part or portion of the premises in question. In any event, pursuant to the aforesaid order of the learned Single Judge, Special Officer visited the first floor of the premises in question on 25th July, 2005 and prepared a report wherefrom it appears that the Sub-Assistant Engineer, Building Department, Kolkata Municipal Corporation informed the said Special Officer about issuance of stop work notice by the Kolkata Municipal Corporation authorities and lodging of complaint with the local police station in connection with the alleged unauthorised construction. It has also been recorded in the said report that the employees of the appellant herein informed the Special Officer that the respondent No. 7 (respondent No. 6 in the writ petition) granted tenancy in his favour in respect of the disputed mezzanine floor where the alleged unauthorised construction took place. The relevant portion from the said report of the Special Officer is set out hereunder:

In compliance with the order dated July 21, 2005, passed by the Hon''ble Justice Mr. Kalyan Jyoti Sengupta in the Writ Petition and referred hereinabove, the Special Officer visited the first floor of the premises in question situated at 13, Abdul Hamid Street, Kolkata-700069 on July 25, 2005.

On his visit, he has been told by one Sabil Ahmed and Dipankar Dutta, identified themselves as employees of Naushad & Co. that Naushad & Co. is the tenant of Reliable Hides Pvt. Ltd. Being the respondent No. 6 herein since April 04, 2005 and such tenancy has been received with the mezzanine floor and a separate room in the hall.

Mr. Abhijit Bhowmick, Sub-Assistant Engineer, Building Department, Borough-VI, Ward-46, K. M. C. states that the mezzanine floor has been constructed recently and without permission of K.M.C. It is also stated by him that K.M.C. has already issued "Stop

Work" notice and the said notice has been received by Dipankar Dutta on June 28, 2005. In view of such notice, it is crystal clear that on June 28, 2005, the construction was going on and the said construction has been completed on June 30, 2005.

It is recorded that on July 26, 2005, K.M.C. produced two (2) documents before the Special Officer in his Chamber wherefrom it is evident that "Stop Work" notice has been issued on June 28, 2005 by K.M.C. and on the same date K.M.C. reported to Hare Street Police Station about such unauthorised construction. Xerox copies of both the documents are annexed hereto and marked as Annexure "X" collectively....

7. From the aforesaid report of the Special Officer we find that the stop work notice issued by the Kolkata Municipal Corporation authorities was received on behalf of the appellant herein on June 28,2005 and the construction was completed on June 30, 2005. However, we could not understand on what basis the learned Special Officer came to the aforesaid finding that the alleged construction was completed on June 30, 2005.

8. On 24th August, 2005, the writ petition was again taken up for consideration by the learned Single Judge when Mr. Sen, learned Counsel representing the writ petitioner submitted before the said learned Single Judge that despite the actions taken by the Kolkata Municipal Corporation authorities, alleged construction was being carried on and considering the aforesaid submission, learned Single Judge directed the Special Officer to take physical possession of the premises in question. The relevant portion of the said order dated 24th August, 2005 passed by the learned Single Judge is quoted hereunder:

It is submitted by Mr. Sen that despite action being taken by the corporation authorities, construction is still going on. In that view of the matter, I direct the Special Officer appointed by this Court to take physical possession forthwith and he will remain in possession of this construction and shall see that no one makes any attempt to make any construction at the structure until the corporation decides this matter in accordance with law. The Officer-in-Charge of Hare Street Police Station is directed to render all assistance to the Special Officer, if so needed.

9. In the aforesaid order dated 24th August, 2005, learned Single Judge specifically recorded the submission of the learned Counsel of the writ petitioner that construction was in progress despite action being taken by the corporation, but the details of the nature of the alleged construction were not mentioned in the aforesaid order. The learned Special Officer in his report dated 25th July, 2005 specifically mentioned that the construction was completed on June 30, 2005 and, therefore, we could not understand what further construction could be in progress on 24th August, 2005 as was submitted by the learned Counsel of the writ petitioner without furnishing any detail about the said alleged illegal construction. However, the said learned Single Judge pursuant to the aforesaid submission of the learned Counsel of the writ petitioner directed the Special Officer to take physical possession of the portion of the premises in question under occupation of the appellant herein which caused tremendous harm and prejudice to the

said appellant. In view of the aforesaid order, learned Special Officer took actual physical possession of the portion of the premises under occupation of the appellant herein. The appellant herein specifically submitted before the Special Officer at the time of taking actual physical possession as hereunder:

Mr. Naushad Ahmed, sole proprietor of Naushad & Co. submits that he is not a party in the litigation and he has no dispute with anybody, therefore, why he will suffer business loss if his tenancy was put lock and key by the Special Officer with regard to the dispute between the writ petitioner and his landlord.

10. The aforesaid submission of the appellant was duly recorded by the learned Special Officer in the minutes of the proceedings dated 9th September, 2005.

11. In the subsequent order dated 14th September, 2005, learned Single Judge also recorded that the Special Officer had taken possession. The relevant portion of the aforesaid order dated 4th September, 2005 passed by the learned Single Judge is set out hereunder:

Special Officer has been able to take possession, it has been reported though Special Officer is not present. If the tenant approaches the Special Officer for bringing out any materials and articles from the disputed room then the Special Officer upon serving notice to all the parties concerned and upon proper verification and inventory being made shall allow to take out the materials. Thereafter he shall re-lock the room in question. If no such request or approach is made then he need not do anything else....

12. Mr. Surajit Mitra, learned Senior Counsel representing the appellant herein urged before this Court that the order passed by the learned Single Judge appointing the Special Officer over the tenanted portion of the appellant herein in respect of the premises in question and subsequently, directing the said Special Officer to continue even after final disposal of the writ petition must be held to be illegal and without jurisdiction. Mr. Mitra further submits that the learned Single Judge should not have directed the appellant herein to make separate application before the learned Building Tribunal of the Kolkata Municipal Corporation for allowing the said appellant to carry on business in the aforesaid tenanted premises in question since, according to Mr. Mitra, said Building Tribunal has no authority to decide the aforesaid prayer of the appellant herein. Mr. Mitra also urged before this Court that after disposal of the writ petition, learned Single Judge cannot retain any jurisdiction over the subject-matter of dispute raised in the writ petition.

13. It has been specifically submitted by the learned Counsel of the appellant that the order appointing Special Officer for taking symbolic possession and subsequently, actual physical possession are wholly beyond the scope of the writ petition. Mr. Mitra also submits that there was no prayer in the writ petition for appointment of Special Officer. Referring to the writ petition Mr. Mitra submits that the subject-matter of dispute in the writ

petition was the offending structure being the mezzanine floor and the stair case inside Suite No. 3 on the first floor of Premises No. 13, Abdul Hamid Street, Kolkata700009. Thus, the Special Officer could not have taken possession of the entire office premises and physically dispossessed the appellant from the office room.

14. The learned Senior Counsel of the appellant submits that the learned Single Judge had neither any scope nor any occasion to appoint Special Officer at the tenanted portion of the appellant in respect of the premises in question while entertaining the writ petition filed by the respondent No. 1 herein as the said respondent No. 1/writ petitioner never prayed for appointment of any Special Officer in the matter. Furthermore, the learned Counsel representing the Kolkata Municipal Corporation authorities also categorically submitted before the learned Single Judge upon producing relevant records that stop work notice had already been served and guards had also been posted to prevent any unauthorised construction at the said premises in question.

15. Mr. Mitra submits that the appellant herein was dispossessed from his tenanted premises without observing due process of law and even without granting any opportunity of hearing by the learned Single Judge which is highly illegal and, therefore, this Court should issue appropriate direction for restoration of the possession of the said tenanted premises to the appellant herein without any further delay.

16. Mr. Sen, learned Counsel representing the respondent No. 1/writ petitioner raised a preliminary objection regarding maintainability of the appeal on the ground that the said appellant had already acted in terms of the order under appeal. Mr. Sen further submits that the learned Single Judge had no other option but to direct the Special Officer to take physical possession of the premises in question since the construction was carried on in spite of the prohibitory order passed by the learned Single Judge.

17. We are, however, not at all impressed by the aforesaid submissions made by the learned Counsel representing the respondent No. 1/writ petitioner.

18. Mr. Gour Roychowdhury, learned Counsel representing the Kolkata Municipal Corporation authorities submitted before this Court that the learned Single Judge was duly informed about the steps taken by the said Kolkata Municipal Corporation authorities to prevent unauthorised construction at the premises in question by issuing stop work notice and also appointing guards apart from lodging complaint with the local police station which were duly recorded in the orders passed by the said learned Single Judge from time to time. The learned Counsel representing the respondent No. 7 herein submits that no construction was carried on at the premises in question after issuance of stop work notice by the Kolkata Municipal Corporation authorities.

19. Mr. Mitra, learned Senior Counsel of the appellant submits that the order under appeal is nullity being without jurisdiction as there was no scope for appointment of Special Officer while entertaining the writ petition filed on behalf of the respondent No. 1

herein specially when the affected party, namely, the appellant herein was not impleaded as one of the respondents in the writ petition. Mr. Mitra referred to and relied on a decision of the Supreme Court in the case of Hasham Abbas Sayyad v. Usman Abbas Sayyad and Ors. reported in AIR 2007 SC 1077 (Paragraph 22) and submits that there can be no application of the principles of waiver, acquiescence and estoppel in respect of an order which is nullity in the eye of law.

20. Mr. Sen, learned Counsel of the respondent No. 1/writ petitioner referred to a decision of this Court in the case of Banku Chandra Bose v. Murium Begum reported in 21 CWN 232 and submits that the appellant herein after filing an application before the Building Tribunal in terms of the order under appeal cannot challenge the said order by filing the present appeal.

20A. There is no doubt that respondent No. 1 herein did not pray for appointment of Special Officer in the writ petition. The learned Single Judge appointed Special Officer by the interim order passed in the writ petition on 21st July, 2005 without even appreciating the fact that the Kolkata Municipal Corporation authorities already issued stop work notice and posted guards at the premises in question to prevent any unauthorised construction. Furthermore, the learned Special Officer was appointed by the said learned Single Judge even though no prayer was made on behalf of the writ petitioner.

21. We do not understand what prompted the learned Single Judge to appoint the Special Officer on 21st July, 2005 when the learned Counsel of the writ petitioner did not even pray for such appointment and the Kolkata Municipal Corporation authorities took necessary steps to prevent any unauthorised construction.

22. Pursuant to the aforesaid order dated 21st July, 2005, when the Special Officer visited the premises in question appellant herein categorically informed the said Special Officer in respect of his tenancy right at the said premises and the learned Special Officer recorded the aforesaid claim made on behalf of the appellant herein in his report dated 25th July, 2005 which was subsequently submitted before the learned Single Judge.

23. The learned Single Judge even thereafter did not consider it necessary to implead the appellant herein as a party to the writ proceeding and admittedly, passed several interim orders thereafter directing the said Special Officer to take actual physical possession of the portion of the premises in question as a result whereof the appellant herein was dispossessed from the entire tenanted area of the first floor although the allegation was made by the writ petitioner only with regard to the alleged unauthorised construction of the mezzanine floor carried on at the first floor of the premises in question. The Special Officer at the instance of the writ petitioner put a padlock at the entrance of the first floor dispossessing the appellant herein from the entire tenanted portion of the premises in question although Mr. Sen, learned Counsel of the writ petitioner, very fairly submitted before this Court that the entire tenanted portion of the first floor was not unauthorisedly constructed and the allegation of unauthorised construction was limited to the mezzanine

floor allegedly constructed on the first floor of the said premises.

24. In the aforesaid circumstances, the Special Officer had no authority to oust the appellant herein from the entire tenanted portion of the first floor of the premises in question by putting lock at the main door of the hall and also at the entrance of the front side of the balcony of the said hall ignoring the objections of the appellant as well as the respondent No. 7 herein.

25. Scrutinising the minutes of the meeting of the Special Officer held on 3rd September, 2005 we find that the Director of the respondent No. 7 herein also submitted before the learned Special Officer that the appellant herein had been running business from the hall and if the said hall is kept under lock and key by the said Special Officer then the entire business of the tenant, namely, the appellant herein would be in jeopardy. Unfortunately, neither the Special Officer took any note of the aforesaid objections made on behalf of the appellant as well as the landlord namely, the respondent No. 7 herein nor even the learned Single Judge thereafter, passed any direction appreciating the sufferings of the appellant herein.

26. The appellant herein filed a specific application bearing G.A. No. 804 of 2006 in connection with the writ petition for being added as a party respondent to the said writ petition and also for discharge of the Special Officer after handing over the physical possession of the flat in question to the said appellant. The said application of the appellant herein was heard along with the writ petition and finally disposed of by the learned Single Judge by the order under appeal dated 24th August, 2007 without discussing and/or deciding anything in respect of the prayers made in the said application by the appellant herein.

27. In the aforesaid peculiar circumstances, the appellant herein remained dispossessed from his tenanted property although no relief was claimed against the said appellant in the writ petition filed by the respondent No. 1 herein and the said appellant was not even impleaded or subsequently added as a party respondent in the writ petition.

28. We express our grave concern towards the facts leading to the dispossession of the appellant herein from the premises in question pursuant to an interim order passed by the learned Single Judge in a writ proceeding where the appellant was not even impleaded as a party and no prayer was also made by the writ petitioner for appointment of Special Officer for the purpose of taking possession of any part or portion of the premises in question. Order 40 Rule 1(2) of the CPC reads as follows:

(2). Nothing in this rule shall authorize the Court to remove from the possession or custody of property any person whom any party to the suit has not a present right so to remove."

We see no reason why similar principle should not be followed by the Writ Court. It is nobody''s case that the writ petitioner had any right to remove the appellant from the

tenanted portion of the premises in question.

29. From the undisputed facts disclosed before us, we are convinced that the appellant herein was dispossessed from his tenanted area of the premises in question in a most high-handed manner at the instance of the writ petitioner. We are also of the considered opinion that the learned Single Judge could not have passed an interim order appointing the Special Officer and subsequently, directing the said Special Officer to take physical possession resulting in dispossession of the appellant from the tenanted portion of the premises in question when neither any prayer was made on behalf of the writ petitioner nor any application was submitted to that effect.

30. The learned Single Judge, in our opinion, should have disposed of the writ petition without issuing any further direction on 21st July, 2005 upon appreciating the fact that the Kolkata Municipal Corporation authorities had already issued stop work notice and posted guards to prevent any unauthorised construction which was also not disputed by the learned Advocate of the writ petitioner before the learned Single Judge. Most surprisingly, the learned Single Judge passed an order appointing Special Officer and thereafter, issued direction to the said Special Officer to take physical possession of the tenanted premises of the appellant herein without even impleading the said appellant as a party respondent. By the aforesaid direction of the learned Single Judge, the appellant herein was dispossessed from his tenanted premises without observing due process of law.

31. No dispute was, admittedly, raised before the learned Single Judge regarding possession of the appellant in respect of his tenanted portion at the premises in question and, therefore, there was no occasion for the learned Single Judge to appoint a Special Officer for taking either symbolical or actual physical possession in respect of the same. The learned Single Judge in doing so totally travelled beyond the ambit and scope of the writ petition. The orders passed by the learned Single Judge appointing Special Officer in the writ proceeding initiated by the respondent No. 1 herein for taking symbolic possession at the first instance and thereafter directing the said Special Officer to take actual physical possession of the tenanted area of the appellant herein were totally unwarranted and uncalled for. The learned Single Judge did not assess the real prejudice and harm caused to the appellant herein in the wake of the aforesaid order directing the Special Officer to take actual physical possession of the tenanted area of the appellant herein.

32. In the order under appeal passed on 24th August, 2007, learned Single Judge specifically held:

...When the action has been taken by the corporation authority I do not think that I should pass any order....

33. In our opinion, the learned Single Judge should have passed necessary order in the aforesaid manner on 21st July, 2005 upon appreciating the action taken by the Kolkata

Municipal Corporation authorities regarding service of stop work notice and posting of guards at the premises in question which were specifically submitted by the learned Counsel of the Kolkata Municipal Corporation. The learned Single Judge while passing a specific order directing the Special Officer to take possession of the tenanted area of the appellant herein unfortunately ignored the action taken by the Kolkata Municipal Corporation authorities, but while considering the application of the said appellant in connection with the writ petition for removal of the Special Officer upon handing over possession of the premises in question, the said learned Single Judge refused to pass appropriate order on the ground that the Kolkata Municipal Corporation had taken necessary steps in the matter.

34. There is no sound logic in the said order passed by the learned Single Judge.

35. For the reasons discussed hereinabove, we strongly disapprove the conduct of the respondent No. 1/writ petitioner in the matter of dispossessing the appellant herein from his tenanted property without observing due process of law and this Court cannot permit the due process of law to be ridiculed in the eye of the members of the public. No one can be permitted to take recourse to law in such a manner so as to make the Court instrumental to avoid the due process of law.

36. The preliminary objection raised by Mr. Sen on behalf of the respondent No. 1/writ petitioner regarding maintainability of the instant appeal is devoid of any merit since we find that the orders passed by the learned Single Judge regarding appointment of the Special Officer and the dispossession of the appellant by the said Special Officer pursuant to the subsequent order of the said learned Single Judge are clearly without jurisdiction and, therefore, a nullity in the eye of law. By the order under appeal, learned Single Judge while finally disposing of the writ petition and the connected applications also did not upset his earlier orders and most surprisingly, directed the appellant herein to pursue his remedy for carrying on business in the tenanted premises by filing an appropriate application before the Building Tribunal without appreciating that the said Tribunal had no authority or jurisdiction to entertain such prayer specially when the appellant herein was dispossessed by the learned Special Officer pursuant to the order passed by the learned Single Judge. The learned Single Judge also retained control and jurisdiction over the Special Officer even after final disposal of the writ petition.

37. The decision of the Supreme Court in the case of Hasham Abbas Sayyad (supra) cited by Mr. Mitra is very much relevant in deciding the aforesaid preliminary objection raised on behalf of the respondent No. 1/writ petitioner herein. Paragraph 21 of the aforesaid decision is set out hereunder:

21. The core question is as to whether an order passed by a person lacking inherent jurisdiction would be a nullity. It will be so. The principles of estoppel, waiver and acquiescence or even res judicata which are procedural in nature would have no application in a case where an order has been passed by the Tribunal Court which has no

authority in that behalf. Any order passed by a Court without jurisdiction would be coram non judice being a nullity, the same ordinarily should not be given effect to. See Chief Justice of Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others, and MD Army Welfare Housing Organisation v. Sumangal Services (P) Ltd. 2004 (8) SCC 619.

38. The appellant herein by filing the application before the learned Tribunal did not earn or enjoy any benefit and/or advantage by virtue of the order under appeal passed by the learned Single Judge. In the aforesaid circumstances, we fail to understand how the decision cited by Mr. Sen, learned Counsel of the respondent No. 1 herein in the case of Banku Chandra Base (supra) can be of any help to the respondent No. 1 herein.

39. For the aforementioned reasons, we are constrained to hold that thereunder appeal passed by the learned Single Judge was without jurisdiction and a nullity in the eye of law. The present appeal is, therefore, very much maintainable in the eye of law.

40. The preserve the faith in the rule of law and in order to do substantial justice we hold that it is a fit case where appropriate direction should be issued for restoration of the possession of the appellant herein to his tenanted property in the premises in question immediately after removing the lock. Accordingly, the Special Officer is directed to remove the lock from the entrance of the first floor of the premises in question at once in order to put the appellant in possession of the tenanted portion of the premises in question within 24 hours positively.

41. Under the aforesaid circumstances, this application stands allowed. The Special Officer appointed by the learned Single Judge will stand discharged immediately after removing the lock from the entrance of the first floor of the premises in question in terms of this order.

42. We, however, direct the Building Tribunal to decide the pending appeal at an early date on merits upon granting adequate opportunity to the concerned parties including the appellant and the respondent No. 7 herein. All the parties herein are also directed to cooperate with the learned Building Tribunal for early disposal of the pending appeal by the said Tribunal.

43. We also find that no purpose would be served in keeping the appeal pending, as no other issues remain to be decided in the said appeal. Therefore, the appeal is also treated as on day''s list. The order under appeal passed by the learned Single Judge is set aside and the appeal, thus, stands allowed.

44. In the facts and circumstances of this case and also considering the conduct of the writ petitioner, we direct the respondent No. 1 herein to pay costs assessed at Rs. 10,000/- to the appellant herein without any further delay but positively within four weeks from date.

45. Let xerox copies of this judgment duly countersigned by the Assistant Registrar of this Court be supplied to the parties herein on undertaking to apply for the certified copy of the same immediately.

Kalidas Mukherjee, J.

I agree.