

(2004) 08 CAL CK 0040

Calcutta High Court

Case No: M.A.T. No. 1689 of 2004

The Kolkata Port Trust

APPELLANT

Vs

Santanu Das and Others

RESPONDENT

Date of Decision: Aug. 11, 2004

Acts Referred:

- Constitution of India, 1950 - Article 14, 226
- Customs Act, 1962 - Section 126
- Major Port Trusts Act, 1963 - Section 59

Citation: (2004) 3 CALLT 420 : (2005) 125 ECR 248 : (2005) 185 ELT 346

Hon'ble Judges: Tapan Kumar Dutt, J; Asok Kumar Ganguly, J

Bench: Division Bench

Advocate: S.K. Roychowdhury, A. Sengupta, P. Sanyal, Goutam Chakraborty and J.N. Mukherjee, for the Appellant; Goutam Chakraborty and J.N. Mukherjee for the Respondent Nos. 1 and 2, Debal Banerjee, Sakya Sen, Sudhangsu Sil and B. Mondal for the Respondent No. 6 and Mukti Chandra Ghosh and Sabyasachi Sen for the Respondent No. 7, for the Respondent

Final Decision: Dismissed

Judgement

A.K. Ganguly, J.

This Court has heard the parties at length. With the consent of the parties, the appeal is treated on the day's list and the appeal along with the stay application is disposed of by the following order:

2. This appeal has been filed by the Kolkata Port Trust (KPT) challenging the order dated 13.05.2004 passed by the learned Judge of the Writ Court in W.P. No. 1663 of 2000. By the said order under appeal the learned Judge of the writ Court, after hearing the learned counsel for the parties, directed the respondents including the appellants to deliver the goods covered under Lot Nos. 851 and 881 of the Tender Notice No. 6 of 2003 to the writ petitioners without asking for rent and demurrage

charges, allegedly claimed by the KPT in respect of the lots sold on auction. The undisputed facts of the case are as follows:

A Tender Notice dated 19.11.2003 was published by the Assistant Commissioner of Customs, Appraising Disposal Unit, inviting tenders for sale of various types of confiscated goods and time expired bonded goods. In the said Notice, it was made clear that the details of terms and conditions of the said Tender would be available at the Customs House Notice Board.

3. The writ petitioners duly satisfied the eligibility criteria under the said Tender Notice and deposited the earnest money along with the Tender Form and they were ultimately informed by the Customs authorities that their offer was accepted with regard to Lot Nos. 851 and 881 and the writ petitioners were asked to deposit the balance amount of the sale price and the sales tax thereon within the time mentioned in the said terms and conditions.

4. Pursuant thereto, the writ petitioners paid the amount to the Customs authorities towards sales price of the said lots along with the sales tax and a sum of Rs. 3,95,825/- was deposited. Thereafter, the Customs authorities issued two delivery orders addressed to the Central Warehousing Corporation, a Government of India undertaking and Balmer Lawrie, another Government of India undertaking, with whom the goods were lying and directed them to deliver the goods to the writ petitioners.

5. It is not in dispute that Balmer Lawrie delivered the goods pursuant to the letter of the Customs authorities, but, in so far as the respondent No. 6, Central Warehousing Corporation, is concerned, the goods were not delivered, inter alia, on the ground that the Port Trust authorities have not given a "No Objection Certificate" to them and a letter was addressed by the respondent No. 6 to the Deputy Container /Terminal Manager, KPT asking them to collect all their dues from the writ petitioners. Thereafter, the writ petitioners filed the writ petition seeking an order upon the respondents to deliver their goods.

6. The learned Judge of the writ Court held, upon a consideration of the facts and circumstances and the relevant provisions of the statute, that the writ petitioners, who purchased the goods in auction by the Customs authorities are not liable to pay the rent and demurrage charges in respect of those goods from the date of their landing in the premises of the Port Trust.

7. The learned Judge of the writ Court held, and in our view rightly, that the writ petitioners purchased the goods on the basis of the clause contained in the Tender Notice and two relevant clauses, which were considered by the learned Judge of the writ Court, are set out below:

8. If the party does not take delivery of the goods even after payment of sale proceeds and applicable sales tax within 15 days from the date of confirmation of

the sale and in case such goods remain in the premises of CPT, rent/demurrage will be charged by CPT with their scale of rates for such charges and party will be solely responsible for payment of the same.

9. Similarly, if party do not take delivery of goods even after full payment of scale along with applicable sales tax within 15 days from the date of confirmation of sale and in case such sold goods remain in the premises of Warehouse or in Custom House, demurrage/rent will be charged in accordance with the prevailing scale of rate for such charges and party will be liable to pay the same.

8. This Court also, when the matter was heard, asked the learned counsel for the appellants how in spite of these clauses, the Port Trust authorities can demand their rent and demurrage charges from the writ petitioners, who purchased the goods on the basis of the aforesaid clauses of the Tender Notice. In reply thereto, it was submitted by the learned counsel that the appellants have a statutory lien in respect of their charges on the goods and referred to section 59 of the Major Port Trust Act, 1963 (MPTA).

9. There is no doubt that u/s 59 of the Act of 1963, the Port Trust has a lien on the goods, on the amount of rate levied by the Port for the rent due to it in respect of any goods, which landed and kept in its premises.

10. But, so far as the present goods are concerned, the provisions of section 59 of the Act of 1963 cannot apply against the writ petitioners. It is clear from the conditions referred to in the notice for auction sale that the Port Trust authorities can levy the rent and demurrage charges along with their scale of rates from the party, if they do not take delivery of the goods within 15 days from the date of confirmation of the sale.

11. In the instant case, the writ petitioners wanted to take the delivery of the goods, but they were prevented from doing so at the instance of the respondent No. 6.

12. Once goods are confiscated under the Customs Act, 1962, as has been done in the instant case, such goods vest in the Central Government. Section 126 of the Customs Act, 1962 is clear on this point.

13. Once the Customs authorities become the owner of the goods, it becomes the owner along with all liabilities attached to the said goods. Therefore, lien of the Port Trust, if any, can be realized from the sale proceeds, which the Customs authorities have received after selling the goods. In a case where the purchaser has failed to take delivery of the goods within the time stipulated in the conditions mentioned in the notice for auction sale the purchaser may be liable. Here, it is nobody's case that the writ petitioners have failed to take delivery of the goods within the time mentioned in those conditions. Therefore, the Port Trust authorities appellants herein, cannot ask the writ petitioners/purchasers to pay its charges on account of rent and demurrage of the goods. In fact, the learned counsel for the respondent

No. 6 has very fairly submitted that in the facts of this case the appellants cannot enforce clause (iii) of the terms and conditions between the Central Warehousing Corporation and the Port Trust authorities. The said clause is as follows:

"(iii) The said company shall preserve all rights of the trustees on any cargo or container as contained and enumerated under sections 59, 61, 62 of the M.P.T. Act, 1963, and shall ensure payment of all dues of the Trustees as per Scale of Rates before effecting actual delivery of cargo to the consignee and shall not deliver any cargo so shifted in their premises in the operation of this agreement, first, without payment of the dues of the Trustees. In terms of section 59 of M.P.T. Act, 1963, the Board will have a lien on goods removed to CFS for amounts of rates leviable on them. This lien will be exercised in all cases of disposal of unclear cargo/cargo confiscated by Customs. M/s. Central Warehousing Corporation, agree to ensure that in such cases CPT's dues are duly paid to it. In the event of destruction or non disposal of cargo/container owing to theft or in the event of non fulfillment of aforesaid obligation, M/s. Central Warehousing Corporation agrees to pay to CPT from their own amounts due to the Board."

14. The learned counsel for the respondent No. 6 was right in pointing out that the said clause (iii) cannot apply in the case of an auction sale of the Customs authorities and also in the case of delivery of goods, by the respondent No. 6 in this case.

15. In fact, in order to tackle such situation, the Government of India, Ministry of Transport & Aviation, Department of Transport & Shipping, prepared certain guidelines. The claim of the Port Trust about its charges can be sorted out on the basis of those guidelines in connection with the confiscated goods and it is clear that the Port Trust may realize its dues from the sale proceeds. In such a case of dispute between the Port Trust and the Customs authorities, a formula was arrived in the internal departmental meeting and the relevant excerpts of the minutes of the said meeting are set out below:

"(b) Confiscated goods.

(i) Expenses of sale.

(ii) Customs duty.

(iii) Port Commissioners' landing charges (including warefage, river dues, double removal) at the single rate and not penal rate limited to a period of four months from the date of landing of goods,

(iv) Surplus, if any to Customs.

6. The ministry of Transport has accepted these decisions and instructions have been issued by them to the Port Trust authorities for implementing the above decisions.

7. This note has been seen and concurred in by the Ministry of Transport."

16. In view if the aforesaid internal departmental procedure, the stand of the Port Trust authorities not to allow delivery of the goods to the writ petitioners/purchasers is an unreasonable stand. The Court specifically asked the learned counsel for the Port Trust why his client is not following this internal procedure and the only reply is that it is time consuming.

17. Therefore, the learned Judge of the writ Court passed the order correctly and there is no reason for this Court to interfere with the same. This Court holds that in the facts and circumstances of the instant case and for the reasons aforesaid, the action of the Port Trust authorities is unfair and unreasonable and is opposed to the principle of Article 14 of the Constitution of India. The appeal, is therefore, dismissed and the judgment and order of the learned Judge of the Writ Court is affirmed. This Court directs that the judgment and order passed by the learned Judge of the writ Court should be carried out forthwith.

No order as to costs.

T.K. Dutt, J.

18. I agree.