

(2014) 09 CAL CK 0123

Calcutta High Court

Case No: C.O. No. 3655 of 2013

Om Prakash Saxena

APPELLANT

Vs

The Board of Trustees for the
Port of Calcutta

RESPONDENT

Date of Decision: Sept. 9, 2014

Acts Referred:

- Public Premises (Eviction of Unauthorised Occupants) Act, 1971 - Section 10, 2(g), 4, 5, 8

Citation: (2014) 4 CALLT 74 : (2015) 5 CHN 399 : (2015) 2 WBLR 563

Hon'ble Judges: S. Banerjee, J

Bench: Single Bench

Advocate: Haradhan Banerjee and Amitava Pain, Advocate for the Appellant; Jaydip Kar and Somnath Bose, Advocate for the Respondent

Judgement

Sanjib Banerjee, J.

The petitioner seeks to challenge an order passed in an appeal arising under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. In the petition filed before the Estate Officer, the case of the Board of Trustees for the Port of Kolkata (KoPT) was that the petitioner herein was granted a lease of ten years in respect of a property in the once important business area of Shibpur, Howrah at a monthly rental of Rs. 9552/- from February 21, 1990. It was the further case of KoPT that the petitioner herein failed to pay the monthly rents. The schedule to the petition indicated the period of arrears covering the entire tenure of the lease.

2. KoPT claimed that by a letter of February 18, 2003 it determined the lease and required the petitioner herein to vacate the premises. The proceedings under the 1971 Act were instituted in March, 2003. The notice under section 4 of the 1971 Act was issued on May 3, 2006.

3. In the written statement filed by the petitioner herein, the petitioner clearly asserted that no notice of determination of the tenancy had been issued to or received by the petitioner. In addition, the petitioner herein claimed that "at the initial stage the opposite party was a lessee under the petitioner for a period of ten years but after expiry of the said lease period of ten years, the opposite party became a monthly tenant under the petitioner by the subsequent acts of the petition (sic, petitioner)."

4. The petitioner says that despite the Estate Officer being requested to call upon KoPT to adduce oral evidence in support of KoPT's assertion of having issued the alleged notice of February 18, 2003, the Estate Officer disregarded such submission. The petitioner demonstrates that notwithstanding the categorical averment in paragraph 13 of the petitioner's written statement that such notice had not been received by the petitioner, the Estate Officer held the alleged notice of February 18, 2003 to be valid and binding, though such notice was neither proved nor required to be proved. The petitioner asserts that in the absence of the notice determining the petitioner's right to remain in occupation of the concerned public premises, the Estate Officer could not have assumed jurisdiction under the 1971 Act to adjudicate on the claim of KoPT.

5. The petitioner emphasises that such fundamental issue was lost on the Appellate Officer in course of the appeal arising out of the Estate Officer's order. The petitioner says that the Appellate Officer proceeded on an erroneous basis that since the lease had expired, the failure by KoPT to serve any notice determining the petitioner's right to continue in occupation of the concerned public premises was not fatal to the claim. The petitioner now seeks to assert that since the relevant document which granted a lease of ten years from February 21, 1990 was unregistered, neither the Estate Officer nor the Appellate Officer could have looked into it or relied on the contents thereof.

6. It does not appear from the petitioner's written statement before the Estate Officer that it was urged by the petitioner that the document was unregistered. This was a question of fact that the petitioner could have urged, but did not and it cannot be agitated at the present stage merely by asserting that it* is a legal issue. The effect of an unregistered document may be a legal issue but as to whether a document is registered or not is a purely factual question. If the fact was alleged, the legal effect thereof could have been permitted to be canvassed at this stage; but it does not appear that it was asserted before the Estate Officer that the lease could not be looked into as it was an unregistered document.

7. In any event, it would be evident from paragraph 10 of the written statement that the petitioner admitted that the tenure of the lease had expired. The petitioner claimed to continue in occupation of the relevant public premises thereafter allegedly as a monthly tenant though there was no assertion in the written statement of the petitioner having tendered any rent or occupation charges

therefor.

8. Section 2(g) of the 1971 Act defines "unauthorised occupation" as follows:

"(g) "unauthorised occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever."

9. What is clear from the aforesaid provision and the definition of "unauthorised occupation" in the 1971 Act is that a person occupying any public premises after the expiry of the period for which such party was inducted thereat would amount to unauthorised occupation of the relevant public premises; and, the continuance in occupation after the expiry of the relevant period would also amount to unauthorised occupation. It necessarily follows that it is not imperative that a notice to quit has to be issued by the owner of the public premises before proceeding under the 1971 Act. The notice has to be issued only if the right of a party to occupy the public premises is determined during the period that the party is authorised by any grant or any other mode of transfer to occupy the public premises; for, without the notice there would be no determination of the grant. In other words, there are two classes of cases of unauthorised occupation which are made out by the definition in section 2(g) of the 1971 Act: the first category being where a party continues in occupation after the expiry of the period covered by the grant or any other mode of transfer by which such party entered upon the premises; and, the second category being where a party's authority to continue in occupation of the public premises is determined during the tenure or currency of the grant or any other mode of transfer.

10. In the light of the distinction made between the two situations of unauthorised occupation in section 2(g) of the 1971 Act, it is evident that upon the expiry of the period covered by the grant or any other mode of transfer, the party in occupation of the public premises would be deemed to be in unauthorised occupation thereof; but in the case of a party in occupation of any public premises during the period covered by the grant or any other mode of transfer, such party may not be seen to be in unauthorised occupation of the relevant public premises till such time the grant or any other mode of transfer is determined. The determination of the grant or any other mode of transfer may be for any reason whatsoever: where the reasons would be justiciable; but that is not relevant for the present purpose.

11. There is good reason for the distinction. In the former case, a party in occupation of the public premises after the expiry of the tenure of the grant or any other mode of transfer would be overstaying the welcome and, as such, seen to be in unauthorised occupation thereof. In the latter case, the party's occupation of the

public premises would not be unauthorised till the determination of the grant or any other mode of transfer. A notice for determination of the grant or any other mode of transfer is relevant in matters covered by the latter class as evident from the definition. But a notice for determination of the grant or other mode of transfer would be wholly unnecessary when the period covered by the grant or any other mode of transfer has expired by efflux of time. *Ipsa facto*, upon the tenure running out, the party in occupation of the public premises would be deemed to be in unauthorised occupation thereof by virtue of the relevant provision. The statute does not mandate that a person in unauthorised occupation of any public premises has to be issued a specific notice to quit and vacate the premises before such party is proceeded against under the 1971 Act.

12. The structure of the Act, as evident from section 4 thereof, requires a notice to be issued by the Estate Officer to a person in unauthorised occupation of any public premises to show cause why such person should not be evicted therefrom. Evidently, as the scheme of the 1971 suggests, such notice would be issued at the invitation of the owner of the public premises and after a *prima facie* view is taken by the Estate Officer which is subject to further consideration upon the cause being shown by the noticee. Section 5 of the Act obliges the Estate Officer to consider the cause shown by any person in pursuance of a notice issued under section 4 of the Act. In course of such consideration, the Estate Officer is called upon to assess any evidence produced by the noticee in support of the cause shown and accord a personal hearing to the noticee if such hearing is sought. The cause that can be shown by a person in occupation of any public premises who has been issued a notice under section 4 of the said Act is to dispel the contention of the owner of the public premises that such person was in occupation of the relevant public premises "without authority for such occupation". The defence has to be assessed by the Estate Officer with reference to the meaning of the relevant expression in section 2(g) of the Act.

13. The 1971 Act has been judicially recognised to be a complete code in itself. Section 8 of the Act vests the same powers as in a civil court under the Code of Civil Procedure, 1908 on an Estate Officer for the purpose of holding any inquiry under the 1971 Act in matters pertaining to, *inter alia*, summoning and enforcing the attendance of any person and examining him on oath and requiring the discovery and production of documents. Section 9 of the 1971 Act provides for appeals from orders passed by the Estate Officer. Section 10 of the Act statutorily recognises the finality of orders made by an Estate Officer or an Appellate Officer under such Act and prohibits such orders being called into question in any original suit, application or execution proceedings.

14. The avowed purpose of the 1971 Act is to rid public premises, as defined in the Act, of unauthorised occupants. The Act provides a separate forum for the adjudication of matters thereunder, primarily to obviate the usual delay of such

matters in a regular civil court. As to whether a person in occupation of any public premises is in unauthorised occupation thereof needs necessarily to be assessed in the light of the definition of the expression in section 2(g) of the Act.

15. In the backdrop of the purpose of the Act and the manner in which eviction of unauthorised occupants at public premises may be achieved thereunder, concurrent findings of the Estate Officer and the Appellate Officer ought, ordinarily, not to be interfered with in this extraordinary jurisdiction unless there is manifest miscarriage of justice or material irregularity which has seriously prejudiced the party invoking this jurisdiction.

16. There is no doubt that the Estate Officer in this case committed an error in disregarding the categorical assertion of the petitioner herein that the notice of February 18, 2003 had not been received by him and holding such notice to be valid without requiring the same to be proved. But, clearly, the Estate Officer had barked up the wrong tree in considering the notice to be of any relevance in the facts of the case, particularly as it was the contention of KoPT that the right to remain in occupation of the public premises conferred on the petitioner by the lease stood expired by efflux of time. Such assertion, as to the tenure of the lease and its expiry by efflux of time, was unequivocally admitted by the petitioner herein at paragraph 10 of the written statement; with a rider that the petitioner had the right to continue in occupation of the public premises, but without any document or other material in support of such case. On affidavit evidence itself, which had to be assessed in the light of the definition in Section 2(g) of the Act, there was no defence. Thankfully, the Additional District Judge in seisin of the appeal did not fall for the petitioner's invitation to look for the red herring as he found that the class of cases covered by the first limb of section 2(g) of the 1971 Act did not require any notice to be issued, to the person in occupation of the public premises after the expiry of a lease, to deliver vacant possession thereof as a condition precedent to the 1971 Act being invoked for the eviction of such person from the public premises.

17. On facts, it would appear from the written statement that the petitioner herein accepted that the petitioner's right to occupy the public premises was for a fixed tenure and that, after the expiry of the period, the petitioner continued to occupy the same. In the light of such admitted position, and the failure of the petitioner to demonstrate any right to continue in occupation, whether or not KoPT asserted that it had issued a notice determining the petitioner's right to occupy the public premises, it was irrelevant in the context of section 2(g) of the 1971 Act. The fact that KoPT had alleged to have issued a notice -whether mistakenly or by design to help out the petitioner - and such notice had not been proved - again, whether by oversight or to bail the petitioner out of an indefensible position - cannot detract from the rights of KoPT under the first limb of the definition in section 2(g) of the 1971 Act to have the petitioner herein declared as an unauthorised occupant and face the consequences thereof.

18. There does not appear to be any basis to the petitioner's grievance that the Appellate Officer erred in holding that irrespective of whether the notice dated February 18, 2003 had been issued by KoPT or received by the petitioner, since the petitioner's authority to occupy the public premises in question had extinguished upon the expiry of the tenure of the lease by efflux of time, the petitioner was in unauthorised occupation of the relevant public premises and justifiably required to be evicted therefrom. The appellate order cannot be questioned on the ground that it supplemented the Estate Officer's order in upholding the finding therein. The appellate court has considered the matter in a different light in accordance with law and has given cogent reasons in support of the conclusions therein. The order impugned dated September 27, 2013 does not suffer from any illegality or irregularity warranting interference in this extraordinary jurisdiction.

19. There may have been divers grounds invoked by KoPT for the petitioner's eviction from the public premises, but once it is found on inquiry that the primary ground of the petitioner being in unauthorised occupation of the public premises is established, the other grounds - which the petitioner exploited with maladroit aplomb as a life-line to obfuscate the main issue - need not be gone into for the purpose of determining the petitioner's liability to vacate the public premises in question. The Estate Officer will now proceed to complete the remainder of the exercise for determining damages in accordance with the final paragraph of his order of April 24, 2007.

20. Two judgments have been cited on behalf of the petitioner: one reported at New India Assurance Company Ltd. Vs. Nusli Neville Wadia and Another, for the proposition recognised in paragraph 31 thereof that, depending on the grounds urged for eviction of an unauthorised occupant, in some cases production of positive evidence on the part of the landlord would be necessary; and, another reported at Jiwan Dass Vs. Life Insurance Corporation of India and Another, for the enunciation of the principle therein that a notice had to be issued under section 2(g) of the 1971 Act in some cases, but the notice would not be required to give any reasons in support thereof.

21. The dictum in the first judgment cited does not apply in the present case since the petitioner admitted that the lease for ten years had expired by efflux of time and the petitioner continued to remain in occupation of the public premises even thereafter. The second case cited by the petitioner does not suggest that without any notice determining a party's right to occupy the premises, proceedings under the 1971 Act cannot follow. As noticed above, there is a distinction between the two classes of cases recognised in section 2(g) of the 1971 Act. While the issuance of a notice is sine qua non for a person covered by the second category to be alleged to be in unauthorised occupation of any public premises; the issuance of a notice is completely unnecessary in the case of a person continuing in occupation of the public premises after the expiry of the period of grant or invitation.

22. KoPT has not been called upon to address the court.

23. CO. 3655 of 2013 is dismissed.

24. The interim orders stand vacated.

25. The petitioner will remain liable as of this moment to vacate the premises in question and deliver possession thereof to KoPT. Since an ad interim stay was granted at the time that this petition was received, the petitioner is not required to pay any costs that he would otherwise, on his conduct, have been required to pay.

Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.