

Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises
(Eviction of Unauthorised Occupants) Act 1971

Proceedings No. 995, 995/D Of 2008 Order Sheet No. 66

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Balmer Lawrie & Co. Ltd (Biceo & Lawrie) (Held party)
VS

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25-04-2018

Present : Samir K. Chowdhury, AEM
R. Biswas, Resolution Officer (Legal)
..... For Kolkata Port Trust (KoPT)

Representatives of KoPT file an application dated 25.04.2018. As per the said application, the issue regarding clarification of KoPT's stand with regard to maintainability of the present proceedings is under process and decision of KoPT will be furnished to this Forum at the earliest.


Considered the matter on the basis of said submission of KoPT and the documents on record. Department is directed to put up the file upon requisition, for passing appropriate order.


Estate Officer

FINAL ORDER

53
20-06-2018

The matter is taken up on requisition for passing final order. It is the case of Kolkata Port Trust (KoPT), the applicant herein, that land measuring about 48015.70 sqm or thereabout situated at the crossing of Hide Road & Hoboken Road, comprised under Plate no. D-301 was allotted to M/s Balmer Lawrie & Co. Ltd, the O.P. herein, on certain terms and conditions as long term (30 years) lessee in respect of the property in question and said long term lease expired on 31.07.1991. An application dated 22.08.2006 was filed before this Forum of Law with the prayer to issue order of eviction against O.P. and for realization of dues and damages etc. In the said application, KoPT has claimed that the O.P. has made several breaches like unauthorized construction and unauthorized parting of possession to one Biceo Lawrie & Co. Ltd, and for these reasons a Notice to Quit dated 06.09.2000 has been served on the O.P.



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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Balumar Lawrie & Co. Ltd. (Biecco & Lawrie) ^{VS.} *(Additional Party)*

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20.6.2018

This Forum of Law formed its opinion to proceed against O.P. under the relevant provisions of the P.P. Act and issued two Show Cause notice/s under Sec. 4 & 7 of the Act for adjudication of the prayers, both dated 17.11.2008, as per Rules made under the Act.

It reveals from record that O.P. contested the matter and filed an Objection on 12.01.2009. The O.P. also filed its Rejoinder to KoPT's reply on 11.05.2009 followed by Written Notes of Arguments on 07.02.2012. During course of hearing, it transpired that the O.P. was in possession/occupation of about 17,766.53 sqm of the said 48,015.70 sqm of public premises and the balance about 30249.17 sqm was in possession of Biecco Lawrie & Co. Ltd. For the sake of natural justice, Biecco Lawrie & Co. Ltd was made Additional Party (A.P.) to the instant proceedings. Said A.P. filed a Petition for dropping the proceedings on 29.07.2013. Subsequently, O.P. filed letters dated 03.05.2014 and 16.06.2014 and KoPT also filed applications dated 16.02.2018 and 09.04.2018. Considering the matter in its entirety, I have now taken up the matter for final disposal.

I have carefully considered the documents on record and the submissions of the parties. It is seen that O.P. and A.P. have both referred to certain decisions of different Ministries and/or the Cabinet at different points of time, with prayer for dropping the proceedings citing availability of Permanent Machinery of Arbitration of the Central Government. I have not gone through such point of maintainability of the instant proceedings, as in my view the proceedings can be disposed of without discussing such defence taken by the parties. It is seen that KoPT's cause of action for initiation of the instant proceedings arose upon issuance of Notice to Quit on 06.09.2000 when O.P. failed to communicate their acceptance of KoPT's offer letter dated 29.07.1999. Now, the

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BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Balumar Lawrie & Co. (Brics & Lawrie) (Addl. Secy)
VS.

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20.6.2008

crux of the matter revolves around the question as to whether said Notice to Quit dated 06.09.2000 can be said to be still valid in the eye of law. It is seen from KoPT's applications dated 16.02.2018 and 09.04.2018 that KoPT has made a fresh offer to O.P. for grant of 30-years lease in respect of the area of 17,766.53 sqm under occupation of O.P. vide its letter dated 24.03.2015 and O.P. has in turn accepted the terms and conditions of the offer as laid down in the offer letter dated 24.03.2015. KoPT has also mentioned that the O.P. has also submitted four cheques towards transfer fee, unauthorized construction, security deposit and lease cost after deducting the TDS amount.

In my view, with such offer by KoPT and acceptance by the O.P. followed by payment of consideration by the O.P., a new contractual relationship has come into being between the parties. As per Sec. 105 of the Transfer of Property Act, 1882, a "lease" is defined as follows:

"105. Lease defined.—A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms."

Therefore, the basic ingredient of a lease is acceptance of the transfer by the transferee in consideration of a price paid or promised. In my view, the said condition is very much fulfilled in the instant case as the O.P. has paid the consideration and accepted the transfer on the terms offered by KoPT. It is quite another thing that lease deed has not been yet been executed/registered between the parties. As per law, a lease can be entered into even without any



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Balmar Lawrie & Co. Ltd. (Breed & Lawrie) (Real Party)
^{VS}

written instrument. Therefore, non-execution/non-registration of the deed cannot come in the way of formation of a new contractual relationship between the parties. As such, it is my firm view that with the formation of a new contractual relationship, the Notice to Quit dated 06.09.2000 very much stands waived and hence the instant proceedings cannot continue against the O.P. There is no question of continuance of proceedings against A.P., inasmuch as KoPT instituted the proceedings only against O.P. and not A.P. and A.P. was added as a party to the proceedings by this Forum for the sake of natural justice. When the proceedings cannot continue against the O.P., it is legally not feasible to continue the same against the A.P. which derives its right, if any, through the O.P.

In the above facts and circumstances, the instant proceedings against O.P. and A.P. is dismissed, with liberty to KoPT to institute fresh proceedings against the O.P. and/or A.P., if so felt, based on fresh cause of action, in accordance with law. I make it clear that I have not gone through any of the rival contentions of the parties, and hence all issues are kept open for decision in fresh proceedings, as and when instituted.

All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL



(S. Roy Chowdhury)
ESTATE OFFICER

*** ALL EXHIBITS AND DOCUMENTS
ARE REQUIRED TO BE TAKEN BACK
WITHIN ONE MONTH FROM THE DATE
OF PASSING OF THIS ORDER ***