

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. 1150 Of 2010 Order Sheet No. 20

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/S Gorsia VS Terminal Services

20
02-07-2018

Present: S. Dasgupta, Resolution Officer (Legal)
R.P. Mazumdar, Jr. Land Inspector
For Kolkata Port Trust (KoPT)

D. Banerjee, Adv. for O.P.

Representatives of KoPT file an application dated 02.07.2018, with copy served on the O.P.

Ld Advocate on behalf of O.P. submits that the case is hopelessly barred by Limitation. A number of judgments are filed in support of his argument. Let the judgments be kept on record.

Considered the application filed by KoPT today. In my view, the question of veracity of KoPT's notice to quit dated 13.11.2009 needs to be decided first. My order is reserved. Department to put up the file upon requisition. All concerned are directed to act accordingly.


ESTATE OFFICER

ORDER

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The matter is taken up on requisition. To summarise, it is the case of Kolkata Port Trust (KoPT), the applicant herein, vide application dated 30.04.2010, that land measuring about 3708.80 sqm or thereabout situated at Dhobitalao, District-24 Parganas, comprised under Plate no. D-300/55 was allotted to M/s Gorsia Terminal Services, the O.P. herein, on certain terms and conditions as short term lessee in respect of the property in question and O.P. defaulted in payment of rent and taxes for a prolonged period. It has been submitted by KoPT in the said application that the said short term lease was determined vide notice to quit dated 13.11.2009. It is also the submission of KoPT that O.P. has no authority to occupy the public premises after determination of the lease and O.P.



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is very much liable to pay damages for unauthorized occupation in the public premises.

This Forum of Law formed its opinion to proceed against O.P. on 19.02.2018 under the relevant provisions of the P.P. Act and issued a Show Cause notice under Sec. 4 of the Act for adjudication of the prayer of KoPT, as per Rules made under the Act.

It reveals from record that O.P. contested the matter and filed a reply to Show Cause on 04.04.2018. An application was also filed on behalf of O.P. on 04.05.2018. On 09.05.2018, KoPT filed its comments against the Reply filed by the O.P., followed by another application from KoPT on 02.07.2018. In my view, the crux of the matter revolves around the question whether the Notice to Quit dated 13.11.2009 is enforceable, in the facts and circumstances of the case.

It is seen from record that in its application dated 30.04.2010, KoPT has claimed that the O.P. was a short term lessee. In the Notice to Quit dated 13.11.2009 also, the occupation of the O.P. has been described as short term lease. There is no doubt or confusion that KoPT has determined a short term lease through the said notice to quit. Subsequently on 09.05.2018, KoPT for the first time submitted in writing that the O.P. was a month to month licensee of KoPT and not a short term lessee. In support of this, KoPT has produced an offer letter dated 22.01.1986 of KoPT through which said month to month licence was offered to the O.P. and subsequently accepted by the O.P. KoPT has mentioned in the said application dated 09.05.2018 that it was this relationship of month to month licence which was revoked by KoPT vide its Notice to Quit dated 13.11.2009. On specific query of this Forum as to the availability of any short term lease, KoPT again submitted vide application dated 02.07.2018 that it was month-



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to-month licence which was revoked vide said Notice to Quit dated 13.11.2009.

I am not at all satisfied with the submission of the KoPT. Determination of relationship between the landlord and the tenant through issuance of Notice to Quit is a fundamental requisite for initiation of proceedings before this Forum, otherwise the question of being in "unauthorized" occupation cannot arise. That being so, law accords special status and sanctity to a Notice to Quit, which is required to be accurate and a clear reflection of the intention of the landlord. Such a Notice must not only contain accurate and correct description of the property but also the correct relationship between the parties. It has been pronounced by different Courts that in case the error in such a notice is merely clerical, then the notice may be deemed to be valid. A mere typographical mistake can possibly be overlooked but if the relationship itself is not established, then I must say that such a Notice cannot be given effect to. In the instant case, KoPT has mentioned in the notice to quit dated 13.11.2009 as well as its original application dated 30.04.2010 that the relationship of short term lease was sought to be determined but it was only vide application dated 09.05.2018 that KoPT came up with the submission that it had actually revoked a short term license and not a short term lease. In fact, KoPT is silent about any short term lease to O.P. at any point of time. As per law, lease and licence are quite different and are not synonymous with each other. It is very difficult to believe that KoPT vide its notice dated 13.11.2009 had revoked a short term licence which it had granted to the O.P. In my view, such an error cannot be said to be mere typographical mistake by any stretch of imagination. I take note of the fact that from 13.11.2009 onwards KoPT maintained silence and only on 09.05.2018 (i.e.

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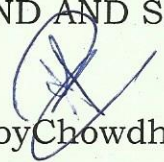
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after about 9 years) KoPT came up with a different submission. In such a situation, in my view, adverse inference must have to be drawn against KoPT for being so lackadaisical with an important document such as notice to quit. I am fortified by the decision of the Hon'ble Delhi High Court dated 28.10.1987 (Bhagat Singh v. Delhi Development Authority) where the action of the statutory authority came to be quashed in similar circumstances. In my view, in the instant case, the actual relationship between the parties has not been determined/revoked as yet, and hence there is no scope to continue with the instant proceedings against the O.P.

In the above facts and circumstances, I find no option but to dismiss the instant proceedings against O.P., with liberty to KoPT to institute fresh proceedings against the O.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 ***