

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. 1693 Of 2019 Order Sheet No. 5

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

Smt. Gharvarni ^{VS} Devi (Plat No- D-438)

07
23-04-2019

FINAL ORDER

Matter is taken up for consideration today. In a nutshell, the instant proceedings being no. 1693 of 2019 has been initiated on the strength of KoPT's application dated 18.12.2018, praying for order of eviction, recovery of dues, taxes and interest etc from Smt. Gharvarni Devi, the O.P. herein, under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. It is the allegation of KoPT that the O.P. was granted a monthly lease in respect of the public premises in question, measuring about 133.78 sqm situated at Chetla Railway Siding (under occupation no. D-438) and the O.P. violated the conditions of such lease by way of defaulting in payment of monthly rent and taxes and also failed to pay the compensation for unauthorised use and occupation of the land. It is further the submission of the Port Authority that a Notice to Quit dated 28.10.1995 was issued upon the O.P. asking the O.P. to vacate the premises on 31.12.1995. However since no heed was paid by the O.P. it is now prayed by the KoPT for eviction of the O.P. alongwith recovery of dues etc.

A careful perusal of the documents relied upon by KoPT before this Forum reveals that KoPT has chosen not to file any lease deed with the said Smt. Gharvarni Devi. Even KoPT has not filed any offer letter or acceptance letter indicating a specific relationship between the parties. It is the claim of KoPT that the relationship was in the nature of "monthly lease" but the meagre documents filed by KoPT do not give any indication whatsoever as to the nature of contract between the parties. I cannot turn a blind eye to this fact, as the nature of relationship (long term lease, short term, license, grant etc whatever it may be) is very pivotal to decide whether the same has been rightly determined or not. It is the categorical admission of KoPT (vide application

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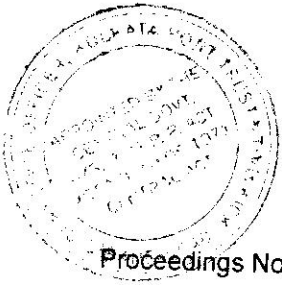
Smt. Gharvarni^{VS} Devi (Plate No-D-438)

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dated 02.04.2019) that there is no record of lease registration but "exchange of letters" establishes the contractual relationship between the parties. I have gone through each and every communication placed before me and there is nothing in the said communications as to the nature of the relationship that was/is subsisting. Even the Notice to Quit dated 28.10.1995 throws no light in this respect. In my considered view, unless the true and correct relationship is disclosed by KoPT, it is very difficult to proceed against the tenant namely Smt. Gharvarni Devi inasmuch as the validity of the said Notice to Quit needs to be tested against the substantive law in force.

Even if for the sake of argument I choose to ignore the above primary deficiency in the claim of KoPT, I find that the allegation of KoPT against the tenant is default of payment of rent and taxes. The Notice to Quit in question mentions this fact. It also finds a mention in KoPT's original application dated 18.12.2018 wherein KoPT has claimed that till 31.12.1995, a sum of Rs 36,549/- was due from the tenant as rent. However, the accompanying statement in the form of "tenantwise accounting status detail as on 19-Nov-18" shows that nothing is due from the tenant on account of rent. I have given opportunity to the Port Authority to clarify and/or explain such anomaly, when KoPT came up with a detailed statement of accounts (as on 13-Feb-19) the first entry of which starts from bill date 31.01.1996. As such, there is no answer to the query of this Forum. Representatives of KoPT have claimed that apart from these, nothing else is available on their record and that they have nothing more to submit before this Forum. I find that there is complete lack of information as to whether anything was at all due from the party at the time of issuance of the Notice to Quit, and if so, then how come the same is reduced to "Nil" in the statement of

VS



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accounts. I also do not understand from the documents placed before me what is the basis of KoPT's claim of Rs 36,549/- against the party when KoPT is not able to furnish a single scrap of paper justifying such claim.

As per the amended P.P. Act, 1971 this Forum is to issue Notice u/s 4 upon "information" from the statutory authority but in this case, the information provided is not only deficient in all respects but also misleading and confusing. This Forum is not a blind adjudicator and cannot call upon anybody to show cause based on illogical and half-baked information having no documentary credence. As such, I am forced to conclude that the submissions of KoPT does not inspire confidence to issue any Notice to anybody in the instant case and I have no alternative but to reject the instant proceedings.

ACCORDINGLY, the instant proceedings against Smt. Gharvarni Devi is dropped and the instant proceedings no. 1693 of 2019 is disposed of, with the liberty to KoPT to initiate fresh proceedings against Smt. Gharvarni Devi, if so desired, in accordance with law.

All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL


(NIRMALYA BISWAS)
ESTATE OFFICER

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