

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

v.

KALIPADA BHAKAT & ORS.
(Civil Appeal No. 9387 of 2014)

OCTOBER 9, 2014

[SUDHANSU JYOTI MUKHOPADHAYA AND
PRAFULLA C. PANT, JJ.]

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 – s.4 – Land allotted on lease – Termination of the tenancy – In eviction proceedings, R-1 appeared as power of attorney holder of R-2 (the allottee) – Eviction order – Challenged by R-1 and not R-2 – Locus of R-1 to maintain the statutory appeal – Held: R-1 being power of attorney holder of R-2, cannot be allowed to maintain the appeal on his own behalf – s. 4(2) is not applicable to such unauthorised occupants, who enter into possession after initiation of eviction proceedings against their predecessor in possession.

Allowing the appeal with costs, the Court

HELD : Respondent No. 1, who was power of attorney holder of Respondent No. 2, cannot be allowed to maintain the appeal on his own behalf to protract the eviction proceedings. The proceeding has been drawn against unauthorised occupant (respondent No. 2) and to escape eviction, she appears to have handed over possession of the premises to Respondent No.1, as such, the subsequent occupier cannot be entitled to, fresh notice. Sub-section (2) of Section 4 of the Act cannot be restored to, to protect the interest of such unauthorised occupants who enter into possession, after eviction proceeding has been initiated against their predecessor in possession. [Para 7] [191-B-E]

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9387 of 2014.

From the Judgment & Order dated 05.02.2010 of the High Court at Calcutta in CO No. 3991 of 2009.

B Parag Tripathi, A.V. Rangam, Buddy A.R., Arunabh Ganguli for the Appellant.

Susmita Lal for the Respondents.

C The Judgment of the Court was delivered by

PRAFULLA C.PANT, J. 1. Leave granted.

2. This appeal is directed against the judgment and order dated 5.2.2010 passed by the High Court of Calcutta whereby D said Court, exercising powers under Article 226 of the Constitution of India, has allowed the application of the respondent No.1, for condonation of delay filed before the appellate authority (District Judge/ Additional District Judge, Alipore) and leave is granted to the said respondent to file the appeal under the Public Premises (Eviction of Unauthorised E Occupants) Act, 1971 (hereinafter to be referred to as 'the Act').

3. Brief facts of the case are that a plot of land measuring 133.41 sq. meters at 33 Coal Depot, Chetla Railway Siding also known as Chetla Station Yard was allotted by the Port Trust to Raj Virmani (present respondent No.2), on a month to month lease basis, and the lease deed was executed on 1.2.1972. The tenancy of the said tenant was terminated by the appellant vide notice dated 1.7.1983. Thereafter, appellant, Board of Trustee of the Port of Calcutta initiated eviction proceeding F against respondent No.2, Raj Virmani. In the year, 1992 the present respondent No.1, Kalipada Bhakat, in said eviction proceedings, appeared as power of attorney holder on behalf of Raj Virmani. In the year 1994 respondent No.1 applied to the Board of Trustee of the Port of Calcutta to induct him as a G tenant (which was not accepted). The Estate Officer, H

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respondent No.3 by its order dated 4.8.2008 directed eviction of the unauthorised occupant from the premises with further direction for payment of arrears of rent and mesne profits. Said authority, in its order, observed that present respondent No.1 has a right to establish his authority to occupy the premises but failed to establish the same. From the order dated 4.8.2008 passed by the Estate Officer it is clear that Raj Virmani parted with the possession of the public premises unauthorisedly to respondent No.1 who is running his business in the name and style of M/s. Bhakat Motors. Respondent No.2, Raj Virmani never filed any appeal against the said order passed by the Estate Officer. However, Respondent No.1, Kalipada Bhakat attempted to file an appeal along with an application for condonation of delay with the same. Said application was contested before the appellate authority by the present appellant. The plea taken by the respondent Kalipada Bhakat before the appellate authority was that he had no knowledge of the order sought to be challenged. The appellate authority after hearing the parties, rejected the application vide its order dated 13.11.2009 with further observation that the present Kalipada Bhakat has no locus standi to maintain the appeal. The appellate authority further observed that there is no document showing that Kalipada Bhakat had any authority to occupy the premises as he could not file any document showing that he was the licensee or authorised to occupy on behalf of the tenant, Raj Virmani. Aggrieved by said order of appellate authority present respondent No.1 approached the High Court.

4. The High Court in the impugned order observed that the question whether the applicant has any right or not to maintain the appeal is required to be decided by the authority concerned at the appropriate stage. It further observed that in view of Section 4 of the Act, the Estate Officer should have given opportunity by issuing show cause notice to the unauthorised occupant. The High Court took the view that since the applicant (the present respondent No.1) would be

A evicted by the eviction proceedings, as such, it cannot be said
 that he had no locus to maintain the appeal. With the above
 observation, the High Court allowed the application for
 condonation of delay moved before the appellate authority, and
 granted leave to file the appeal. Aggrieved by the said order
 B dated 5.2.2010 passed by the High Court in CO No.3991 of
 2009, the present appeal has been filed before this Court.

5. Learned counsel for the appellant submitted that the
 respondent no.1 is rank trespasser in the public premises
 originally let out by the Port Trust to Raj Virmani. Respondent
 C No.1 has admittedly entered into possession of the public
 premises unauthorisedly under an arrangement with the original
 tenant, without permission of the Port Trust. It is further pointed
 out that since Respondent No.1 appeared before the Estate
 Officer as constituted attorney of Raj Virmani, as such, there
 D was no illegality in the order passed by the appellate authority
 in dismissing the application of Respondent No.1 in personal
 capacity challenging the order of the Estate Officer.

6. On the other hand learned counsel for the Respondent
 E No.1 argued that Respondent No.1 cannot be denied right of
 appeal as he is in possession of the premises, and the
 impugned order passed by the High Court suffers from no
 illegality.

7. We have considered rival submissions of the parties. It
 F is not disputed that Respondent No.1 contested the eviction
 proceedings initiated by the appellant, against Respondent
 No.2, Raj Virmani, as her power of attorney holder. It is also
 not disputed that Raj Virmani was the tenant in the premises
 in question, and her tenancy was terminated. Respondent No.1
 G failed to explain as to how thereafter he occupied the premises
 without the consent of the Port Trust. From the record it also
 reveals that the Respondent No 1 had the knowledge of the
 eviction proceedings, and he contested on behalf of
 Respondent No.2. As such, in our opinion, the appellate
 H authority has rightly questioned the locus of Respondent No.1

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in maintaining the appeal along with application for condonation of delay. The eviction order drawn against Respondent No.2 attained finality, who never filed nor attempted to file any appeal against the order dated 4.8.2008 passed by the Estate Officer. As such, respondent No.1 who was power of attorney holder of Respondent No. 2, cannot be allowed to maintain the appeal on his own behalf to protract the eviction proceedings. No doubt, sub-section (2) of Section 4 of the Act requires issuance of notice to those in occupation of public premises before the eviction order is passed against such persons, but in the present case before us, since the proceeding has been drawn against unauthorised occupant (Raj Virmani), and to escape eviction, she appears to have handed over possession of the premises to Respondent No.1, as such, the subsequent occupier cannot be said to be entitled to fresh notice. If such person is allowed to maintain the appeal, by the time the eviction proceedings are over against him, he might hand over the possession of the premises to third or fourth party. Sub-section (2) of Section 4 of the Act cannot be restored to protect the interest of such unauthorised occupants who enter into possession, after eviction proceeding has been initiated against their predecessor in possession.

8. Therefore, in our opinion, High Court erred in law in allowing the application of condonation of delay moved by the respondent no.1 before appellate court, and granting him leave to appeal, against order of Estate Officer. Accordingly, we allow the appeal with costs, and set aside the impugned order of the High Court passed on 05.02.2010 in C.O.No.3991 of 2009. However, on furnishing undertaking within a period of fifteen days, by the respondent No.1, to vacate the premises and hand over the possession to the appellant within six months from today, we allow such time on condition that the respondent No.1 shall deposit occupational charges with the Estate Officer or the appellant, for the period from August, 2008 to September, 2014 at the rate of Rs.10,000/- (Rupees ten thousand only) per

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- A** month within a period of one month from today. In case the Respondent No.1 fails to furnish such undertaking or fails to comply the condition as above, the Estate Officer may execute the order dated 04.08.2008, forthwith. In case premises are not handed over as under taken, contempt proceedings may also be drawn.
- B**

Kalpana K. Tripathy

Appeal allowed.