

Board Of Trust.For The Port Of Kolkata vs Apl (India) Pvt. Ltd . on 21 February, 2019

Equivalent citations: AIR 2019 SUPREME COURT 3459, 2019 (14) SCC 374, AIRONLINE 2019 SC 499, (2019) 134 ALL LR 305, (2019) 197 ALLINDCAS 27, (2019) 2 ALL RENTCAS 385, (2019) 2 CAL HN 258, (2019) 2 RECCIVR 286, (2019) 2 RENTLR 33, (2019) 3 ICC 730, 2019 (4) KCCR SN 363 (SC), (2019) 4 SCALE 687, AIR 2019 SC (CIV) 2558

Author: S. Abdul Nazeer

Bench: S. Abdul Nazeer, Ashok Bhushan, A.K. Sikri

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3910 OF 2013

BOARD OF TRUSTEES FOR THE PORT OF
KOLKATA AND ORS.

...APPELLANTS

VERSUS

APL (INDIA) PVT. LTD. AND ORS.

...RESPONDENTS

WITH
CIVIL APPEAL NO. 3912 OF 2013
CIVIL APPEAL NO. 3911 OF 2013

JUDGMENT

S. ABDUL NAZEER, J.

1. These appeals, arising out of a reference to the Full Bench of the Calcutta High Court, raise an important question on the meaning, interpretation and applicability of Section 6 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short 'the PP Act'). The issue revolves around the right of the appellants (hereinafter referred to as the "Port Trust") to seize and dispose of goods and materials lying on the "public premises" which goods may not necessarily belong to the erstwhile tenant/licensee of such "public premises" under the PP Act.

2. The brief facts of the case necessary for disposal of these appeals are as under:

3. A piece of land altogether measuring 17238.15 sq. mtr. situated at Transport Depot Road, P.S. Taratola, Kolkata, (for short 'the premises') was allotted to M/s. Shalimar Tar Products Ltd. (hereinafter referred to as 'the STPL') by way of Deed of Assignment dated 06.12.1963. The STPL stopped the payment of rent to the Port Trust since 1973. The lease in respect of the premises granted in favour of the STPL expired by efflux of time in the year 1981. Therefore, the Port Trust issued a notice dated 31.08.2000 to the STPL to quit the premises and deliver its possession. As the STPL failed to deliver back possession of the premises, the Port Trust initiated the proceedings for eviction, as well as for recovery of arrears of rent and dues on account of unauthorized occupation before the Estate Officer under the provisions of the PP Act.

4. The Estate Officer issued a notice dated 24.01.2006 under Sections 4 and 7 of the PP Act to the STPL. All the concerned persons in occupation of the premises were also notified by affixing the aforesaid notices on the outer wall of the premises. The STPL duly appeared before the Estate Officer.

5. The Estate Officer, upon hearing the Port Trust and the STPL, passed an order of eviction on 09.07.2007, and also directed the STPL to pay damages for unauthorized use and occupation of the premises amounting to Rs.2,46,64,411/- calculated upto 30.06.2005, excluding the interest thereon. The Port Trust applied to the Estate Officer for execution of the said order and appointment of an authorized officer for recovery of the possession of the premises under the provisions of the PP Act. On 19.02.2008, the Estate Officer passed an order appointing Smt. Subarna Thakur, Officer-in-Charge (Estate) of the Port Trust as an authorized officer for recovery of possession in terms of the order of eviction dated 09.07.2007.

6. The authorized officer took possession of the premises and the containers stacked thereon. Immediately upon eviction and taking possession, the Port Trust deployed security guards for protection of the premises. Several containers remained at the premises at the time of taking possession.

7. After taking possession, the authorized officer wrote a letter dated 10.03.2008 informing the Estate Officer that the land has been recovered from the STPL on 08.03.2008 along with the containers stacked on the premises. The Estate Officer passed an order directing the authorized officer to take inventory of the materials/articles/goods lying on the premises in the presence of a competent officer of the Port Trust and also directed the issue of notice under Section 6 of the PP Act for disposal of the properties left by the unauthorized occupant and also to publish a copy of the said notice in the newspaper as per the provisions of the PP Act and the rules made thereunder for disposal of the property lying on the premises. In the said proceedings, the respondent No.6 appeared on 10.03.2008 and filed an application seeking permission to remove the huge number of containers from the premises. The Estate Officer rejected the application, which has not been questioned by the sixth respondent.

8. In terms of the aforesaid order, a notice under sub-section (1) of Section 6 of the PP Act was issued by the Estate Officer to remove or cause to be removed or disposed of by public auction any property remaining on the premises. A copy of the said notice was also issued through a local daily newspaper. The respondents/writ petitioners herein preferred a writ petition, inter alia, seeking permission to remove the containers lying on the premises by contending that they could not be restrained from removing the containers till realization of dues from the STPL. It was further contended that the Port Trust had wrongly withheld the containers belonging to them and that they had no privity of contract with the Port Trust and, therefore, not liable to pay any rent to the Port Trust.

9. The Port Trust opposed the writ petition. The learned Single Judge of the Calcutta High Court, while holding that there are different views taken by two different Division Benches of the Calcutta High Court on the scope and ambit of Section 59 of the Major Port Trusts Act, 1963, (for short 'the MPT Act'), referred the matter to the Chief Justice for constitution of a larger Bench to determine the following question:

"Whether Section 59 of the Major Port Trusts Act, 1963, read with Sections 5 and 6 of the 1971 Act confers on KPT a right of lien on, or the right to detain, seize and/or sell the goods of third parties, lying on the public premises, for realization of arrears of rent due from tenants, irrespective of whether the owner of those goods had any privity of contract with KPT".

10. The Full Bench of the High Court held that the observations of the Division Bench in *The Board of Trustees for the Port of Kolkata v. Canoro Resources Ltd. & Ors.* reported in 2008 (1) CHN 941, (for short 'Canoro Resources') on Sections 59 and 61 of the MPT Act were at best obiter dicta. While holding so, the Full Bench opined that there was no conflict between the judgments of the Division Bench in *Board of Trustees for the Port of Calcutta v. Indian Rayon Corpn. Ltd. & Ors.*, reported in 1987 (28) ELT 334 (Cal.), (for short 'Indian Rayon') and *Canoro Resources*. The observations of the Full Bench are as under:

"With due respect to the observation of the Division Bench, we are not in agreement with the same. In our opinion, Sections 59 and 61 of MPTA cannot be read into proceedings under PPA, 1971. There can be no general lien under Section 59 of MPTA which would cover the goods of a party having no privity of contract with KPT, which are sought to be sold in execution proceeding under PPA, 1971. The Division Bench in fact notices that KPT had in execution obtained possession of the land from its tenant, and seized some timbers and casing pipes which were lying on the lease hold lands at the time of taking delivery of possession. The owner had imported the goods. They were kept on open ground for the purpose of sending the same to further destination. Clearly, therefore, KPT had no claim against the goods on account of rates and rents for services rendered under Section 42 of the MPTA. In such circumstances, the provisions of Section 59 and 61 of MPTA were not at all relevant for deciding the controversy between the parties. The issue decided by the Division Bench did not arise on the pleadings. Nor was the point argued by any of the parties.

The three points argued by the parties, 1) that KPT should have been made a party, 2) under Section 6 of the PPA, 1971 KPT was entitled to sell the goods, even of a stranger, found in/on premises under unauthorized occupation and 3) that alternative remedy was available. Therefore, in our opinion, findings in paragraph 18 are at best only obiter dicta. In our opinion, the first part of para 18 of the judgment does not deal with the issue raised before the Court. Mr. Anindya Mitra had not even raised the issue about the power of KPT under Sections 59 or 61. No grievance had also been made while Mr. Jayanta Kumar Mitra, learned counsel for the petitioners submitted that the KPT had wrongly invoked Sections 59 and 61 of MPTA. The whole issue was limited only to the powers of KPT under the PPA, 1971. In our opinion, it was a territory travelled into by the Division Bench, without being invited therein, either in the pleadings or the submissions of the learned counsel. These observations, therefore, cannot be treated as a precedent on interpretation of Sections 59 and 61 of MPTA. In our opinion, the issue with regard to the ambit of Section 59 and 61 has been correctly decided by the Division Bench in Indian Rayon Corporation Ltd. (supra). This judgment is in consonance with the law laid down by the Supreme Court in M/s. Sriyanesh Knitters (supra).

For the reasons stated above, we are unable to accept the submission of Mr. Anindya Mitra that there is no conflict between the earlier. Division Bench Judgment in Indian Rayon Corporation Ltd. (supra) and the later Division Bench judgment in Canoro Resources Ltd.

(supra). The view taken in first part of paragraph 18 of the judgment in Canoro Resources Ltd. (supra) is contrary to the law laid down by the Supreme Court and therefore, cannot be said to be good law."

11. After answering the reference as above, the Full Bench directed placing of the writ petition before the learned Single Judge for decision on merits. The Port Trust has challenged the legality and correctness of the aforesaid judgment of Full Bench in these appeals.

12. Appearing for the appellants, Shri Parag P. Tripathi, learned senior counsel, submits that the premises in question is a "public premises" as defined under the PP Act. There is no bar for the Port Trust to initiate action for eviction of unauthorized occupant from the premises or to dispose of goods and materials lying in public premises which may not necessarily belonging to the erstwhile tenant/licensee of the said premises. The Port Trust has initiated action for the eviction of the unauthorized occupant under the PP Act. The Port Trust has not initiated any action under the MPT Act. Section 6 of the PP Act must be read and interpreted on its own. It is not dependent upon Sections 59 and 61 of the MPT Act. It is argued that the judgment of the Division Bench of the High Court in Indian Rayon has no application to the facts of the present case. It is unnecessary for the Court to conjointly read Sections 59 and 61 of the MPT Act and Sections 5 and 6 of the PP Act for the purpose of evicting an unauthorized occupant. It is further argued that the Full Bench ought to have held that the proceedings initiated by the Port Trust also covers the respondents/writ petitioners and that they are bound by the order of the Estate Officer passed under Sections 5 and 6 of the PP Act.

13. On the other hand, Shri Chira Ranjan Addy, learned counsel appearing for the respondents, submits that there is no privity of contract between the Port Trust and the respondents/writ petitioners and that the Port Trust does not acquire any right in respect of the goods of the third parties. Hence, the observations made in Canoro Resources cannot be justified. The respondents/writ petitioners being third parties, their goods can never be the subject-matter of lien having regard to the express language contained in Section 61 of the MPT Act. It is further argued that the writ petition is pending before the learned Single Judge of the High Court and that all contentions in relation to the application Section 6 of the PP Act can be considered by the High Court. The Full Bench has considered all the aspects of the case and has clarified the legal position. This Court in Board of Trustees of the Port of Bombay and Ors. v. Sriyaneesh Knitters, (1999) 7 SCC 359, has considered the scope of different provisions of the MPT Act and has held that these provisions do not authorize the Port Trust to have general lien over goods belonging to the writ petitioners.

14. We have carefully considered the submissions of the learned counsel made at the Bar and perused the materials placed on record.

15. It is not in dispute that the premises is a "public premises" as defined under the PP Act. The Port Trust initiated action for eviction of the STPL, an unauthorized occupant of the premises under the provisions of the PP Act. The STPL has contested the proceedings before the Estate Officer. On 09.07.2007, Estate Officer passed an order of eviction and also directed the STPL to pay the damages for unauthorized use and occupation of the premises. Notice was issued under Section 5(1) of the PP Act for evicting the STPL. It is clear from the records that all the persons concerned with the premises were also notified in accordance with law. An order was passed on 19.02.2008 appointing an authorized officer for recovery of possession in terms of the aforesaid order of eviction. The authorized officer took possession of the premises and the containers lying on the premises. The authorized officer was permitted to take inventory of the materials/articles goods lying on the premises and was also directed to issue notice under Section 6 of the PP Act for disposal of the properties left by the unauthorized occupant. A notice was also published under Section 6(1) of the Act in the local newspaper to remove or cause to be removed or dispose of by public auction any property remaining within the premises. At this stage, the respondents/writ petitioners have filed the writ petition before the High Court for a direction to the Port Trust to permit them to remove the containers belonging to them which were lying on the premises.

16. The PP Act provides for eviction of occupants from public premises and for certain incidental matters. This Act was enacted to provide for a speedy machinery for the eviction of unauthorized occupants of the public premises. It is clear from the statement of object and reasons of the PP Act that it has become impossible for government to take expeditious action even in flagrant cases of unauthorised occupation of public premises and recovery of rent or damages for such unauthorised occupation. It is, therefore, considered imperative to restore a speedy machinery for the eviction of persons who are in unauthorised occupation.

17. Section 2(g) defines the expression 'unauthorised occupation' in relation to public premises as under:□

(g) "unauthorized 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".

18. Section 5 lays down the procedure for eviction of unauthorized occupants. Section 5A was inserted by Act 61 of 1980, which has come into force with effect from 20.12.1980. This Section provides for removal of unauthorized construction on or against or in front of any public premises. The relevant provisions for the purpose of this case are sub-section (1)(b) and sub-section (3) of Section 5A, which are as under: "5A. Power to remove unauthorized constructions, etc. (1) No person shall

(a)

(b) display or spread any goods.

(c)

on, or against, or in front of, any public premises except in accordance with the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy such premises.

(2)

(3) Where any movable structure or fixture has been erected, placed or raised, or any goods have been displayed or spread, or any cattle or other animal has been brought or kept, on any public premises, in contravention of the provisions of sub-section (1) by any person, the estate officer may, by order, remove or cause to be removed without notice, such structure, fixture, goods, cattle or other animal, as the case may be, from the public premises and recover the cost of such removal from such person as an arrear of land revenue."

19. Section 6 provides for disposal of the property left on the public premises by unauthorized occupants. The relevant sub-Sections for the purpose of this case are sub-sections (1A) and (2) of Section 6, which are as under: "6. Disposal of property left on public premises by unauthorized occupants. (1)

(1A) Where any goods, materials, cattle or other animal have been removed from any public premises under section 5A, the estate officer may, after giving fourteen days' notice to the persons owing such goods, materials, cattle or other animal and after publishing the notice in at least one newspaper having circulation in the locality, dispose of, by public auction, such goods, materials, cattle or other animal.

(1B)

(2) Where any property is sold under sub-Section (1), the sale proceeds thereof shall, after deducting the expenses of the sale and the amount, if any, due to the Central Government or the [statutory authority] on account of arrears of rent or damages or costs, be paid to such person or persons as may appears to the estate officer to be entitled to the same:

Provided that where the estate officer is unable to decide as to the person or persons to whom the balance of the amount is payable or as to the apportionment of the same, he may refer such dispute to the civil court of competent jurisdiction and the decision of the court thereon shall be final".

20. It is clear from the above provisions that any person in occupation of the public premises without authority for such occupation is an unauthorized occupant. The expression 'spread on any public premises', contained in sub-Section (1)(b) of Section 5A in the context also means 'lying on any premises'. Sub-Section (3) of Section 5A authorizes the Estate Officer to remove any goods lying on any public premises after an order of eviction has been made under Section 5 of the Act. It is immaterial whether the said goods belong to the erstwhile tenant/licensee or to any other party.

Sub-Section (1A) of Section 6 authorises the Estate Officer to dispose of such goods/materials, etc. after giving fourteen days' notice to the persons owning such goods and other procedure prescribed therein. It is not necessary that the persons owning the goods lying on the premises should be erstwhile tenants/licensees. It is also not necessary that there should be a privity of contract between the Port Trust and the third party to whom such goods and materials belong for disposing of the property by the Estate Officer under Section 6.

21. In *Indian Rayon*, the Division Bench was dealing exclusively with lien under the MPT Act. It has not considered eviction of unauthorized tenants under Section 6 of the PP Act. This judgment is in conformity with the judgment of this Court in *M/s. Sriyanesh Knitters* (supra).

22. In *Canoro Resources* the Division Bench was considering the matter where an eviction order had been passed by the Estate Officer under the PP Act. In the execution of the said order, the Estate Officer obtained possession of the land from the tenant and seized the timber and casing pipes which were lying on the leasehold land. The owner of these goods, challenged the order of the Estate Officer in a writ petition by contending that there was no privity of contract between him and the Port Trust. In this background, the Division Bench held that a conjoint reading of Sections 59 and 61 of the MPT Act vis-à-vis Sections 5 and 6 of the PP Act make it clear that if any goods are found to be lying on the land of the Port Trust, and for such land any rent is due or payable, the Port Trust has not only the lien over the goods, but also the right to sell those goods so as to appropriate the sale proceedings towards the rental dues.

23. As noticed above, the proceeding initiated in *Canoro Resources* was under the PP Act. Therefore, it was not necessary for the Division Bench to read Sections 59 and 61 of the MPT Act into the proceeding initiated under the PP Act. The Full Bench, in our view, was justified in holding that those observations were, at best, obiter dicta. The Full Bench was also justified in holding that there

is no conflict between the two judgments of the Division Bench in Indian Rayon and Canoro Resources.

24. In the instant case, the contention urged on behalf of the Port Trust is that even if the goods belonging to the third parties are found lying on the premises after an order of eviction passed under Section 5, it was entitled to sell the goods and deduct from the sale proceeds any amount due to the Port Trust on account of arrears of rent or damages, etc and that the balance of the sale proceeds shall be paid to such person or persons, as may appear to the Estate Officer, to be entitled for the same. We are in complete agreement with this submission made on behalf of the Port Trust. We are of the view that Section 6 of the PP Act has been enacted with obvious purpose of enabling statutory authorities to take all consequential steps after receiving possession of public premises and for recovery of dues, etc. The said provision ought not to be interpreted in a way which defeats the very purpose of its enactment. Section 6 of the PP Act must be read independent of, and not dependant on, Sections 59 and 61 of the MPT Act. As noticed above, Section 6 of the PP Act applies, inter alia, to the persons who keep their goods in the public premises whether they are tenants/licensees, sub-tenants or any other parties. The Estate Officer, under Section 6 of the PP Act, is entitled to sell the goods even of a stranger, found in/on the premises under unauthorized occupation.

25. The Full Bench of the High Court had already directed the writ petition to be placed before the learned Single Judge for decision on merits. We request the learned Single Judge of the High Court to decide the writ petition expeditiously, preferably within a period of six months from the date of receipt of a copy of this Order, keeping in mind the observations made in this Judgment.

26. The Civil Appeals are disposed of in the above terms. There will be no order as to costs.

.....J. (A.K. SIKRI)J. (ASHOK BHUSHAN)
.....J. (S. ABDUL NAZEER) New Delhi;

February 21, 2019.