(2009) 08 CAL CK 0056

In the Calcutta High Court

Case No : Writ Petition No. 1148 of 2007

Eid Parry (India) Limited and Another — APPELLANT

Vs

Kolkata Port Trust and Others — RESPONDENT

Date of Decision : 18-08-2009

Acts Referred:

Contract Act, 1872 — Section 25
Limitation Act, 1963 — Section 18
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 15, 4, 5, 7, 7(2)
Transfer of Property Act, 1882 — Section 116

Citation : (2009) 08 CAL CK 0056

Hon'ble Judges : Sanjib Banerjee, J

Bench : Single Bench

Advocate : Saktinath Mukherjee, Mr. Pranab Dutta, Mr. Kaushik Dey and Mr. Shovendu Banerjee, for the Appellant;Subir Sanyal and Mr. Somnath Bose, for the Respondent

Final Decision : Dismissed

Judgement

Sanjib Banerjee, J.—The petitioners question the propriety of an order passed by an estate officer under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 both as to the basis and the substance thereof. A company by the name of Parry & Company Ltd. obtained lease of a property from the then Calcutta Port Trust in or about the year 1979. The lease was subsequently renewed for a period of 10 years till September 30, 1999. The petitioners say that they were in negotiation with the respondent authority for renewal of the lease subsequent to the expiry of the tenure on September 30, 1999. The petitioners suggest that the body of correspondence exchanged between the petitioners and the Port Trust would reveal that the petitioners or the petitioner company continued in permissive occupation of the premises, pending finalisation of the terms and conditions of a fresh lease or a renewal of the original lease. The petitioners contend that upon the relevant parties failing to agree to the specifics in the proposed new lease, the negotiations fell through and the petitioner company surrendered possession of the premises. The petitioners argue that the subsequent notice issued by the estate officer u/s 7 of the said Act of 1971 was without jurisdiction and the order passed by the estate officer, in complete disregard to the challenges launched by the petitioners to his assumption of jurisdiction, betrays a closed mind.

2. The several letters that the petitioners have appended to the petition and placed for consideration need to be noticed.

3. Nearly two years after the determination of the earlier lease by efflux of time, Parry & Company Ltd. wrote to the Port Trust on July 18, 2001 that due to reasons beyond the control of such company it had failed to submit a proposal for renewal of the lease for a further period of 10 years. By such letter the said company made a prayer for renewal of the tenure and offered to pay all outstanding rent.

4. On January 18, 2002 the petitioner company wrote to the respondent authority in continuation of the erstwhile lessee company''s letter of July 18, 2001. The petitioner company represented that it belonged to the same group as the erstwhile lessee and that since the erstwhile lessee was unable to carry on business from the godown at the premises in question, the petitioner company was desirous of obtaining the renewal in its favour. The petitioner company relied on a no-objection certificate issued by its group concern and took upon itself the obligation to discharge all past and future liabilities in respect of the premises. The erstwhile lessee''s letters of February 4, 2002 and April 19, 2002 spoke of it being a wholly-owned subsidiary of the petitioner company. Following a complaint by the authority that the erstwhile lessee had engaged in unauthorised construction at the premises, a second letter of April 19, 2002 issued by the erstwhile lessee admitted the transgression complained of, sought condonation thereof and requested the tenure of the lease to be extended in favour of its holding company.

5. The petitioners refer to a letter issued by the Estate Department of the Port Trust on April 26, 2002 by which the authority summarised the commercial terms offered to Parry & Company Ltd. for a lease of 15 years with effect from October 1, 1999. The letter required the addressee to remedy the breach complained of and, in effect, invited a response to the terms offered.

6. The petitioners submit that in the unauthorised structures being regularised by the Port Trust''s letter of May 6, 2002 issued to the erstwhile lessee and in the following assertion contained therein, there was implicit permission for the erstwhile lessee to continue in occupation of the premises:

3. Please note that you shall be required to pay all the aforementioned amounts once the terms and conditions for grant of such lease, as approved by appropriate authority, is communicated to you.

7. The erstwhile lessee responded to the Port Trust letter of May 6, 2002 by a writing of May 10, 2002, requesting waiver of the fees for transfer of the lease upon its renewal in favour of the holding company. The Port Trust refused to waive the transfer fee and suggested by its letter of July 16, 2002 that in order to enable the Port Trust to assess whether the grant of the tenancy in favour of the petitioner company would amount to a transfer, it needed to study the memorandum and articles of association of the two companies and their audited annual accounts for the two previous financial years. The letter signed off by reminding the erstwhile lessee that the Port Trust could not be expected to wait indefinitely and if the erstwhile lessee did not intimate its stand on the Port Trust offers of April 26, 2002 and May 6, 2002 within 21 days from the date thereof, "it will be presumed that you are no longer interested in continuance in the occupation and in that event you will be required to vacate the premises on payment of occupational charges upto the date of vacation.

8. The petitioners seek to latch on to such closing words of the Port Trust letter to establish that the authority had accorded due permission to the erstwhile lessee or its associates to continue in permissive occupation of the public premises. The petitioners also rely on another letter of August 23, 2002 to the same effect and containing the identical exit line to assert that the earlier letter did not reflect a stray or a careless stand but it was the Port Trust''s understanding that the erstwhile lessee had due permission to remain on the land.

9. It was only under cover of a letter dated August 30, 2002 that the petitioner company forwarded the audited balance sheets of the two companies for the financial year 2001-02 and copies of the memorandum and articles of association of the two concerns. As to the substance of the Port Trust''s offer, the petitioner company promised "to revert to you shortly."

On January 3, 2003 the Port Trust expressed its exasperation at the erstwhile lessee''s failure to respond to the terms offered and repeated that upon further silence of the erstwhile lessee on such score, "it shall be presumed that you are not interested in continuance of the occupation any more and in such case, you shall be required to vacate the premises on payment of occupational charges upto the date of vacation." Reminders of January 14, 2003 and February 17, 2003 elicited stoic silence on the erstwhile lessee''s part, but the petitioners are scarcely concerned now with the anguish reflected in such Port Trust letters but brandish these writings as further confirmation of the erstwhile lessee''s permissive occupation of the premises inasmuch as the earlier threat was repeated in such letters. It is the wording of the threat that the petitioners attempt to use as their shield against the subsequent assertion of the Port Trust that the erstwhile lessee was in unauthorised occupation of the premises for the period beginning the determination of the lease by efflux of time on September 30, 1999. For similar purpose, the petitioners seek to press into service the Port Trust letter of April 16, 2003 wherein the Port Trust warned that in the absence of a response from the erstwhile lessee to the terms offered, "eviction proceedings shall have to be initiated against you without any further reference." 10. On March 25, 2004 (erroneously referred to as May 25, 2004 at paragraph 11 of the petition) the petitioner company wrote to the Port Trust that its occupation of the premises after September 30, 1999 should be "deemed to be (on the basis of) a lease from month to month." The petitioner company informed the Port Trust that it had ceased to have any operations at the premises and would surrender the possession thereof on May 31, 2004. The Port Trust responded by its letter of May 28, 2004 requiring the erstwhile lessee (though inexplicably addressed to Parry (India) Ltd.) to pay occupational charges amounting to Rs. 30,34,712/- for the land and the godown prior to surrendering possession thereof. The Port Trust insisted that should the occupational charges as demanded not be paid, appropriate legal proceedings would be instituted. Two pages of calculations were appended to the letter. A reminder followed from the Port Trust on July 7, 2004. The petitioners do not refer to any contemporaneous response to such demands for payment.

11. By its letter of December 30, 2004 issued to the erstwhile lessee, the Port Trust recorded that despite the representation made on behalf of the erstwhile lessee that the premises would be handed over to the Port Trust on May 31, 2004, the premises were not handed over. The Port Trust requested that the possession be made over on January 10, 2005 and the payment due on account of occupation charges till such date to the tune of about Rs. 35 lakh be paid immediately. Again, the petitioners do not refer to any immediate response from their side to the Port Trust demand.

12. On May 25, 2005 the Port Trust wrote to the erstwhile lessee that "all your relationship with the (Port Trust) stands determined from the date of expiry of the lease i.e. 01.10.99..." The notice called upon the erstwhile lessee to vacate the premises and iterated that any payment tendered by the erstwhile lessee for the period subsequent to the expiry of the earlier tenure "will be deemed to have been tendered by you as compensation for wrongful use and occupation and acceptance of such payments will be without prejudice to this notice to quit and also to Kolkata Port Trust''s right to take further action in the matter."

13. The petitioner company responded to the notice of May 25, 2005 by its letter of May 31, 2005. It is in such letter that it was first asserted that the erstwhile lessee had amalgamated with the petitioner company. The petitioner company claimed that on the expiry of the lease granted in favour of its erstwhile subsidiary, the petitioner company was "tenants holding over and the lease shall be deemed to be a lease from month to month." The petitioner company suggested that in the absence of any increase in rent on mutually agreed terms, the petitioner company was liable to pay "monthly charges in accordance with the said agreements, dated 27.11.1992 and not on the current rates as mentioned in the letter."

14. On June 7, 2005 the petitioner company complained that its representatives

were ready on such date to hand over possession of the premises to the Port Trust, but that no representative of the Port Trust had turned up to take possession. The Port Trust responded on June 15, 2005 claiming that the contents of the petitioner company''s letter were untrue. The Port Trust said that its representative attended the site at the appointed hour on June 7, 2005 and found the premises to be locked.

15. On July 4, 2005 the petitioner company repeated its assertion that there was default on the part of the Port Trust to obtain possession of the premises on June 7, 2005. The petitioner company invited the Port Trust to take immediate possession of the premises and emphasised that it was not liable to make any payment in respect of the premises from March 25, 2004. To complete the narration and to notice the last of the letters-which are scattered in the annexures to the petition and arranged neither chronologically nor thematically-issued prior to possession of the premises being taken over, the Port Trust wrote to the erstwhile lessee on July 6, 2005 that the erstwhile lessee continued in unauthorised occupation of the premises. The Port Trust demanded that the possession be made over by the morning of the following day.

16. The petitioners say at paragraph 21 of the petition that the possession of the premises was made over to the Port Trust on July 11, 2005.

17. After a hiatus of about a year, the estate officer of the Kolkata Port Trust appointed by the Central Government under 3 of the said Act of 1971 issued a notice on March 2, 2006 demanding damages to the tune of Rs. 31,15,980.65p. The contents of the notice and the basis for the demand made therein have been challenged by the petitioners as being without jurisdiction. The said notice provided,

"Whereas I, the undersigned, am satisfied that you were in unauthorized occupation of the public premises mentioned in the SCHEDULE-I below on and from 30.09.1999 that is to say after expiry of the period of lease in respect of the premises as granted by KOPT.

And, whereas, in exercise of the powers conferred on me by Sub-section (2) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, I consider the damages amounting to Rs. 31,15,980.65 (Rupees Thirty One lakhs fifteen thousand nine hundred eighty and paisa sixty five only) are due for the period(s) and at the rate(s) shown in SCHEDULE-II below on account of unauthorized use and occupation of the said premises;

And, whereas, in exercise of the powers conferred on me by Sub-section (2A) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, I consider that you are also liable to pay simple interest to the Government/ Statutory Authority (Kolkata Port Trust) at the rate determined by undersigned till its final payment.

Now, therefore, under the provisions of Sub-section (3) of Section 7 of the Act, I hereby call upon you to show cause on and before 16.3.2006 why an order requiring you to pay the said damages together with interest should not be made.

SCHEDULE-I

The piece or parcel of land msg. 1858.15 s.q.m. or thereabouts is situated at Block "H" Hide Road, P.S. South Port Police Station, Dist 24 Pgs (South) Registration District Alipore. It is bounded on the north by the Trustees land leased to Bengal Bonded Warehouse Association on the east partly by the Trustees Hide Road and partly by the Trustees land lying vacant on the south by the Trustees land lying vacant and on the West by the Trustees land and partly by the Trustees verandah space leased to the lessee.

And the Trustees Godown space measuring 540.42 s.q.m. or thereabouts together with enclosed Verandah space measuring 325.16 s.q.m. or thereabouts is situated at Block "H" Hide Road, Thana South Port Police, Kolkata, Dist 24 Pgs. (South) Registration Dist. Alipore. It is bounded on the North by the Trustees Godown and Verandah space leased to Bengal Bonded Warehouse Association, on the east by the Trustees land leased to the lessees, on the South by the Trustees Godown and Verandah space lying vacant and on the West by the Trustees plat Form a long side their Railway siding. Trustees means the Board of Trustees for the Port of Kolkata.

SCHEDULE-II

Period Rate at which Amount Balance in assessed paid arrears -------- ------------- ------------ ------- ---------

1.10.99 As per the rate 31,15,980.65 Nil 31,15,980.65 to specified in the 11.7.2005 Kolkata Port Trust''s Schedule of Rent charges effective from 19.9.96 (Notified in Calcutta Gazette)

There is a further matter that needs to be referred to before the challenge to the steps taken by the estate officer and the final order passed can be addressed. The petitioners say that by an order of September 30, 2003 passed by the Madras High Court, Parry & Company Ltd. (the erstwhile lessee) stood merged in EID Parry (India) Ltd. (the petitioner company herein). The petitioners submit that the Port Trust failed to appreciate that the rights and liabilities of the erstwhile lessee stood vested in the petitioner company following the amalgamation and the Port Trust''s intransigence in recognising the same would be reflected in its insistence in addressing the erstwhile lessee despite such company ceasing to exist after the order of amalgamation came into effect. There may not have been any arbitrary conduct on the part of the Port Trust in view of the law on the subject that has been recognised in the Supreme Court judgment reported at General Radio and Appliances Co. Ltd. and Others Vs. M.A. Khader (Dead) by Lrs., . But such aspect is irrelevant in the context of the present proceedings since the possession of the premises has been surrendered. However, notwithstanding it being the settled position in law that the merger of a company with another may still be seen as a legal transfer of its rights as lessee to another-and, therefore, subject to the agreement or the law governing the lease-the liability of the merged lessee would undoubtedly be the liability of the transferee company.

The petitioners claimed before the estate officer that the deed executed by the erstwhile lessee in 1992 provided that if there was any debt remaining on account of the lessee, the lessor could recover the same under the Bengal Public Demands Recovery Act, 1913. The petitioners urged that since the relationship and the right to occupy the premises could last be traced to the deed of 1992, the terms of such document would govern the claim and the procedure under the 1971 Act could not be invoked. Such argument has, however, been abandoned by the petitioners in the present proceedings.

The petitioners say that the show-cause notice of March 2, 2006 betrayed a closed mind in that the estate officer had already decided that the petitioner company was liable in damages for the quantum specified in the notice. The petitioner company replied to the notice by way of an application before the estate officer filed on or about July 28, 2006. The petitioner company contended that the show-cause notice was meaningless since it was apparent therefrom that the estate officer had formed a firm opinion on the matter. The petitioner company protested the estate officer''s presumption that the noticee was in unauthorised occupation of the premises. It suggested that since the notice referred to damages as having been determined, it implied that the exercise had already been completed and only a formal opportunity had been afforded to the noticee. The petitioner company reminded the estate officer that he discharged quasi-judicial functions and could not have concluded that the noticee was in unauthorised occupation or was liable in damages without the noticee being permitted to contest either ground. The petitioner company questioned the basis of the computation of damages and suggested that upon the erstwhile lessee having ceased to exist, it also ceased to have any liability. The petitioner company complained that there was no impediment in the Port Trust taking over possession of the premises on May 31, 2004 and the Port Trust''s failure to obtain possession for more than a year thereafter should not be held against the petitioner company. The petitioner company insisted that neither it nor its erstwhile subsidiary was in unauthorised occupation of the premises since they were in negotiation with the Port Trust and claimed that during the negotiations the erstwhile lessee continued as a tenant holding over and was, thus, liable to pay rental on monthly basis in accordance with the terms of the lease last executed. The petitioner company denied that it was liable to make any payment subsequent to its offer to surrender possession of the property. The objection by way of the application contended that the Act of 1971 was not applicable in the circumstances and that the word "damages" was not defined in the said Act.

On August 2, 2006 the estate officer passed an order on the very day when it was recorded that a reply had been filed to the show-cause notice. The estate officer directed the petitioner company to pay a sum of Rs. 7.5 lakh by way of a first installment by September 7, 2006. The order was carried by the petitioner company and another in WP No. 1697 of 2006 to this Court. The petition was allowed on November 30, 2006 by observing that the objection of an alleged unauthorised occupant had to be considered by the estate officer. The estate officer''s order was set aside as it did not reveal any deliberation on the objection. The estate officer was directed to proceed de novo and decide the matter within a period of 12 weeks from the date of communication of the order by a reasoned order after allowing the petitioner company to be heard. The petitioners stress on the following sentence appearing in the operative part of the order of November 30, 2006:

It is made clear that parties shall not pray for unnecessary adjournments and the adjudication shall be completed within the time as specified.

18The petitioners say that the certified copy of the order was received on January 22, 2007 and communicated to the estate officer under cover of the letter dated January 25, 2007 issued on behalf of the petitioners.

19. The petitioners say, at paragraph 40 of the petition, that when the matter was first heard by the estate officer on February 22, 2007 after his earlier order had been set aside, the petitioner company challenged the maintainability of the show-cause notice and the proceedings before the estate officer. Written notes of submission were filed. The company contended that the show-cause notice was barred by the laws of limitation; that the liability of the erstwhile lessee could not be fastened on the petitioner company; that the Port Trust ought to have first proceeded under Sections 4 and 5 of the 1971 Act before invoking Section 7 thereof; that the show-cause notice demonstrated a closed mind; and, that such preliminary objections should first be considered by the estate officer. Detailed arguments were made, complete with judicial precedents.

20. The petitioner company filed a supplementary affidavit before the estate officer on March 2, 2007. It insisted that the noticee was never in unauthorised occupation of the relevant premises. It submitted that the said Act of 1971 was a complete code that provided for assessment of substantive rights by following the prescribed procedure. Most of the supplementary affidavit covered legal submission.

21. The petitioners say, at paragraph 43 of the petition, that upon the conclusion of the hearing for the day on February 22, 2007, the estate officer gave the petitioners an impression that he would decide on the question of maintainability and invited a written reply on such aspect from the Port Trust. The petitioners aver that the Port Trust served an affidavit on merits on March 28, 2007. The petition states that at the next hearing before the estate officer on March 29, 2007 the company complained before the estate officer that the Port Trust reply of March 28, 2007 served on the company was without annexures whereupon the estate officer required the Port Trust to serve the copies of the documents to

the company and observed that a further date of hearing would be fixed. The petitioners state that the documents were supplied only on March 29, 2007.

22. The petitioners say that up until such time, it was only the preliminary objections that the petitioners had raised that were being looked into by the estate officer and the petitioners had urged that the preliminary objections had to be dealt with before the merits of the matter could be addressed. The petitioners say that it came as a complete surprise that the estate officer disposed of the matter on merits by an order of August 27, 2007 and had the formal order drawn up on September 3, 2007 without the matter having progressed beyond the preliminary objections. They question the veracity of the recording of the order dated June 21, 2007. They say that it was only upon getting a copy of the order sheet after the conclusion of the proceedings that they found that it had been recorded on June 21, 2007 that the matter had apparently been fixed for final hearing (implying a hearing on merits) on July 26, 2007. The petitioners contend that on July 26, 2007 submission was made on their behalf only in furtherance of the preliminary objections and the estate officer was reminded that in view of the direction contained in the High Court order of November 30, 2006, requiring the disposal of the matter by the estate officer within the time stipulated therein, the estate officer could not proceed with the matter without obtaining an enlargement of time.

23. The four heads of argument made at the final hearing of the writ petition are that the petitioners were under a genuine impression that only the preliminary objections had been heard and were awaiting a verdict thereon but they received a final order on merits; that the estate officer is a court and the provisions of the Limitations Act, 1963 would apply to proceedings before such officer; that the schedule of rent relied upon by the Port Trust and the estate officer did not include any pre-assessed quantum of damages which could have been made the basis of the assessment found in the order; and, that neither the petitioner company nor the original lessee was in unauthorised occupation of the premises as they were in permissive possession thereof during the time that the negotiations continued for extension of the tenure.

24. The concept of "permissive occupation" that has been bandied appears to be founded on the principle of holding over found in Section 116 of the Transfer of Property Act, 1882. The relevant provision provides that if a lessee remains in possession of a property after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee, or otherwise assents to the lessee continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or month to month, according to the purpose for which the property is leased.

25. The petitioners refer to a judgment reported at Bhawanji Lakhamshi and Others Vs. Himatlal Jamnadas Dani and Others, and rely on paragraph 9 of the report:

9. The act of holding over after the expiration of the term does not create a tenancy of any kind. If a tenant remains in possession after the determination of the lease, the common law rule is that he is a tenant on sufferance. A distinction should be drawn between a tenant continuing in possession after the determination of the term with the consent of the landlord and a tenant doing so without his consent. The former is a tenant at sufferance in English Law and the latter a tenant holding over or a tenant at will. In view of the concluding words of Section 116 of the Transfer of Property Act, a lessee holding over is in a better position than a tenant at will. The assent of the landlord to the continuance of possession after the determination of the tenancy will create a new tenancy. What the section contemplates is that on one side there should be an offer of taking a new lease evidenced by the lessee or sub-lessee remaining in possession of the property after his term was over and on the other side there must be a definite consent to the continuance of possession by the landlord expressed by acceptance of rent or otherwise. In Kai Khushroo Bezonjee Capadia v. Bai Jerbai Hirjibhoy Warden the Federal Court had occasion to consider the question of the nature of the tenancy created u/s 116 of the Transfer of Property Act and Mukharjee, J., speaking for the majority said, that the tenancy which is created by the "holding over" of a lessee or under-lessee is a new tenancy in law even though many of the terms of the old lease might be continued in it, by implication; and that to bring a new tenancy into existence, there must be a bilateral act. It was further held that the assent of the landlord which is founded on acceptance of rent must be acceptance of rent as such and in clear recognition of the tenancy right asserted by the person who pays it. Patanjali Sastri, J., in his dissenting judgment, has substantially agreed with the majority as regards the nature of the tenancy created by Section 116 of the Transfer of Property Act, and that is evident from the following observations:

Turning now to the main point, it will be seen that the section postulates the lessee remaining in possession after the determination of the lease which is conduct indicative, in ordinary circumstances, of his desire to continue as a tenant under the lessor and implies a tacit offer to take a new tenancy from the expiration of the old on the same terms so far as they are applicable to the new situation, and when the lessor assents to the lessee so continuing in possession, he tacitly accepts the latter''s offer and a fresh tenancy results by the implied agreement of the parties. When, further, the lessee in that situation tenders rent and the lessor accepts it, their conduct raises more readily and clearly the implication of an agreement between the parties to create a fresh tenancy.

26. In the present case, the parties were in negotiation as to the terms of a renewed or new lease. There was no question of any tacit offer by the lessee to continue in possession on the old terms, far less any tacit concurrence of the lessor to such a state of affairs. There was also no rent or occupation charges offered for any period after September 30, 1999 and none accepted. For the initial years there was no assertion of any tenancy right by the lessee or the petitioner company and, consequently, no question of assent thereto by the

lessor. The petitioner company asserted monthly tenancy in the later years which was not only not accepted by the lessor but greeted with invitations to quit.

27. The petitioners also refer to a judgment reported at B.K. Thapar and Others Vs. Sudhir Kumar and Others and the following passage from paragraph 16 thereof:

16.... Furthermore, it was submitted before us by Mr. Das that under the terms of the lease the tenants had deposited a certain sum of money as security which was to be returned to them after the expiry of the lease and after they delivered possession of the properties. In the instant case, the applicants decree-holders did not appear to have given any notice after the expiry of the lease calling upon the judgment-debtors to take back their security and to deliver possession. On the other hand, they filed a petition for execution of the decree on 3-1-1963. This conduct on the part of the applicants decree-holders taken along with the issuing of passes also goes a long way to prove that the applicants intended to continue the lease. Once such an assent is given, the lease is automatically renewed from month to month or year to year as the case may be. The lessee cannot be ejected without bringing a suit for ejectment after giving a fresh notice. On this ground also, the decree has become inexecutable.

28. The security deposit that the lessor obtained from the lessee under clause 18 of the 1992 deed of lease was, indeed, liable to be refunded after adjusting any amount due to the lessor. For about five years after the expiry of the tenure of the lease, the lessee and the petitioner company led the Port Trust to believe that were interested in continuing to remain on the premises subject to the agreement on the terms relating thereto. The petitioners kept the Port Trust hanging, so to say, without clearly responding to the terms offered or suggesting alternative terms. They merely sought waiver of the transfer fee and insisted that the erstwhile lessee and the petitioner company were really one entity even before the erstwhile lessee merged into the petitioner company. During the entire duration that the petitioners dragged their feet over the matter they did not tender a farthing by way of occupation charges. There was no question, in such circumstances, for the Port Trust to have offered refund of the security deposit. As a proposition of law, it cannot be that if a lessor does not return the security deposit after the determination of a lease by efflux of time such lessor would be deemed to have assented to the lessee continuing in possession such that the lease would be deemed to have been renewed. The failure to return the security deposit could be one of the factors that would weigh in the assessment of the lessor''s conduct but its impact would depend as much on the surrounding circumstances as the attendant facts.

29. The petitioners rely on the several letters exchanged between the Port Trust and the petitioner company or its erstwhile subsidiary to suggest that the lessor had acquiesced in the petitioners'' possession of the premises.

30. The letters, however, suggest otherwise. None of the letters relied upon by

the petitioners can be said to amount to the Port Trust assenting to the lessee continuing in possession of the property. The assent of the kind required by Section 116 generally requires an overt act and not a passive act of the lessor not taking steps to have the lessee removed from the premises immediately upon the determination of the lease by efflux of time. An overt act on the lessor''s part may be unnecessary where a lessee aggressively asserts tenancy and there is tacit acceptance thereof by the lessor. The contemporaneous conduct of the parties must admit of a reasonable conclusion that the lessor voluntarily relinquished the right to have the lessee removed from the property upon the determination of the lease. It is evident from the correspondence between the parties that the Port Trust, at the highest, voluntarily postponed its right to have the lessee removed from the property during the time that the parleys continued as to the terms of the renewal or fresh grant.

31. Section 116 of the Transfer of Property Act has two parts to it. The first limb covers a situation where the lessor accepts rent from the lessee. The second part relates to the lessor otherwise assenting to the lessee''s continued possession. For a lessee to obtain the benefit u/s 116 of the said Act it has to come under either limb. It is not the petitioners'' case here that the Port Trust accepted any payment on account of rent or occupation charges from the lessee, far less from the petitioner company, after the tenure under the lease ran out. The petitioners cannot take advantage of the petitioners'' invitation to the lessor to extend the tenure of the original lease or grant a fresh lease to now suggest that it amounted to the lessee holding over.

32. The petitioners submit that the estate officer''s reliance on the judgment reported at L.S. Nair Vs. Hindustan Steel Ltd., Bhilai and Others, and particular reference to paragraph 10 thereof was misplaced. Paragraph 10 of the report holds that the estate officer would not be a court for the Limitation Act to have any manner of application before him:

10. It was also submitted that the recovery of damages for a period beyond 3 years was time barred. The Limitation Act has no application to proceedings before the Estate Officer who is not a Court. Learned counsel for the petitioner relied upon the case of Kalu Ram Vs. New Delhi Municipal Committee and Another, in support of his submission. There is nothing in S. 7(2) which authorises the Estate Officer to assess the damages on account of the use and occupation of the premises and by order require the person to pay the damages, to show that there is any rule of limitation by which the Estate Officer is governed. As the Limitation Act has no application to proceedings before the Estate Officer and as the jurisdiction of Civil Court is entirely barred in matters governed by the Public Premises Act, it is difficult to accept the argument that there is any period of limitation for recovery of damages. The Punjab case on which reliance was placed, constructed the words "rent payable" as they occurred in S. 7(i) of the Public Premises Act, 1958, and construed them to mean "rent legally recoverable by a suit." The case has no application for construing S.

7(2) (of) the Public Premises Act, 1971, which deals with the power to assess and order payment of damages and where the language used is entirely different. Further, S. 15 of the 1971 Act now bars a suit and the remedy under the Act is the only remedy which can be availed of. In such a situation, the Limitation Act cannot be inferentially applied to proceedings before the Estate Officer.

33. The petitioners suggest that in view of the Supreme Court judgments reported at New Delhi Municipal Committee Vs. Kalu Ram and Another, , Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another, and K. Shamrao and Others Vs. Assistant Charity Commissioner, , the estate officer has the trappings of a court and the provisions of the Limitation Act would apply. The issue as to whether the estate officer is a court need not be adjudicated to assess the challenge on the ground of limitation. The petitioners'' contention is that the claim made in the show-cause notice was barred by the laws of limitation.

34. The petitioners say that a period of more than three years had elapsed from the date of the expiry of the lease on September 30, 1999 before the demand was made on March 2, 2006. The petitioners say that the letters issued by the petitioners to the Port Trust would not amount to an acknowledgement of indebtedness within the meaning of Section 18 of the Limitation Act, 1963 and rely on the judgments reported at Khan Bahadur Shapoor Fredoom Mazda Vs. Durga Prosad Chamaria and Others, and Tilak Ram and Others Vs. Nathu and Others, for such purpose.

35. Section 18 of the Limitation Act does not require either an admission of the exact quantum of indebtedness or a promise to pay the amount due. All that Section 18 of the Act requires is the acknowledgement of the jural relationship as debtor in any writing issued by the debtor within the prescribed period of limitation, for a fresh period of limitation to be computed from the time that the acknowledgement is made. There are four conditions that are required to be met for Section 18 of the Limitation Act to be attracted. There has to be an admission or acknowledgement; the acknowledgement must be in respect of a liability concerning a property or right; the acknowledgement must be made before the expiry of the period of limitation; and, it should be in writing and signed by the party against whom the property or right is claimed. The explanation in the section makes it implicit that the acknowledgement need not specify the exact nature of the property or the right claimed.

36. Only a few of the letters issued by the lessee and the petitioner company need to be seen to assess whether there is any merit in the argument that the claim made by the show-cause notice was barred by the laws of limitation. In the letter of January 8, 2002, issued within three years of the date of expiry of the lease on September 30, 1999, the petitioner company referred to a letter dated July 18, 2001 issued by the erstwhile lessee for renewal of the lease and suggested that it was "agreeable to pay all the outstanding Rent etc.

accumulated so far and will be paid as and when demanded." The letter added, for good measure, that the petitioner company would abide by the rules and regulations of the Port Trust. A copy of a letter issued by the erstwhile lessee was appended to such letter. On February 4, 2002, again within three years from September 30, 1999, the erstwhile lessee wrote to the Port Trust that it had no objection to the lease being granted in favour of the petitioner company herein and that the petitioner company had agreed to pay all outstanding rent accumulated. There is no further acknowledgement in writing necessary, within the meaning of Section 18 of the Limitation Act, for a fresh period of limitation to be computed from the date of the erstwhile lessee''s said letter. There is even better. A second letter of February 4, 2002 was issued by the erstwhile lessee where it said that the petitioner company herein undertook to pay all sums outstanding in respect of the premises on behalf of the erstwhile lessee.

37. If a fresh period of limitation were to be computed from February 4, 2002 and it is the admitted position that the erstwhile lessee merged in the petitioner company in 2003, the subsequent letters issued by the petitioner company would amount to acknowledgement made on behalf of the lessee and would keep the claim on account of occupation charges for the premises alive for the Port Trust. Whether or not a transferee company, upon the sanction the scheme of amalgamation, can take over the rights of a lessee which has merged therein, the liability of the transferor company is surely the transferee company''s upon the amalgamation. The erstwhile lessee and the petitioner company acknowledged, in the several letters upto the year 2004, the jural relationship of the Port Trust being the land-owner and the erstwhile lessee or the petitioner company being the occupier. The letters contained promises to pay occupation charges. These promises can be seen in the context of Section 25 of the Contract Act that recognises the right to enforce a claim on a promise to pay a debt barred by limitation law. That the petitioners acknowledged their status as occupiers and acknowledged their obligation to pay charges as occupiers are writ large in the letters issued by or on their behalf between 2002 and 2004 and there is no merit in the contention that the acknowledgement of the obligation to pay occupation charges cannot be construed as an acknowledgement of the Port Trust''s right to subsequently claim damages.

38. The petitioners have relied on two orders of February 22, 2007 and July 7, 2007 recorded by the estate officer to bring out the apparent contradiction therein and to suggest that it was only the preliminary objections that had been heard and not the Port Trust''s entitlement to, or quantum of, damages. The two orders record as follows:

39 Order dated February 22, 2007:

... Heard the submissions of both sides and considered the matter on the basis of materials on record. I will deliver my order with regard to the question of maintainability of this proceedings. KoPT is directed to file their reply for my consideration within a fortnight from the date of passing of this order. O.P. should file the reply thereof, if any, within the fortnight thereafter. I propose to take up the matter on 29.3.2007 at 3 P.M. All concerned are directed to act accordingly.

40. Order dated July 7, 2007:

Heard the submissions/arguments of both sides. Considered the matter on the basis of materials on record. Let the Final Order be reserved.

41. The petitioners contend that, at the very least, they were entitled to urge before the estate officer that the Port Trust was not entitled to any damages or occupation charges subsequent to May 31, 2004 as they had offered to surrender possession (by the letter dated March 25, 2004) at the end of May, 2004. They say that they could have brought witnesses to establish that the Port Trust was at fault for not deputing any representative to take possession on such day. It is necessary to see as to how the estate officer went about assessing the claim against the petitioner company. The following issues were framed:

1. Whether preliminary objection as raised on behalf of O.P. should be decided first before entering into the merit of the case or not.

2. Whether this Forum of Law acted illegally in issuing Show Cause Notice u/s. 7(3) of the Act without proceeding u/s. 4 & 5 of the Act and without coming into a decision that M/s. Parry & Co., O.P. herein was an unauthorized occupant.

3. Whether the initiation of proceedings u/s. 7(3) of the Act with the conclusion/ satisfaction that O.P. is an unauthorized occupant and thereupon determining the damages at the initial stage of proceedings, vitiates the entire proceedings u/s. 7(3) of the Act or not.

4. Whether O.P. can claim as tenant "Holding Over" after determination of lease by efflux of time or not.

5. Whether the Show Cause Notice issued on 2nd March 2006 for damages is barred by limitation or not.

6. Whether this Forum of Law is a Court to be governed by the CPC or the Estate Officer, the Adjudicating Authority under the Act acts as a Quasi-Judicial Authority with limited power of Civil Code.

7. Whether after amalgamation of M/s. Parry & Co. with M/s. EID Parry (I) Ltd., there can be any liability towards payment of......... charges on account of Parry (I) Ltd. as it sees to exist on and from 1st April 2003 in terms of the order of amalgamation as passed by the Hon''ble High Court at Madras dated 13.9.2003.

8. Whether the Govt. guideline/Office Memorandum dated 17.2.1992 being No. 2(6)/2-DPE(WC) as cited on behalf of O.P. in supplementary reply as filed on 22.2.2007 has any application to this proceedings or not.

9. Whether the damages claimed by KoPT is just and reasonable or not.

10. Whether the Bengal Public Demand Recovery Act, 1913 has got any

overriding effect over the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 in the facts and circumstances of the case." The issues and the discussion over the several pages thereafter demonstrate that the estate officer took into account relevant considerations in rendering the final decision. In exercise of the power of judicial review in this jurisdiction, which is quite distinct from the duty discharged by an appellate forum, the primary consideration is the decision-making process and not necessarily the decision itself.

42. The estate officer had erred in making the initial order of August 2, 2006 by requiring an initial payment to be made by the petitioner company on account of damages for unauthorised occupation of the premises by the company. Things were set right by this Court''s order of November 30, 2006 on WP No. 1697 of 2006. The estate officer thereafter proceeded in right earnest to consider the matter before him in accordance with the authority available u/s 7 of the 1971 Act that provides as follows:

7. Power to require payment of rent or damages in respect of public premises.--(1) Where any person is in arrears of rent payable in respect of any public premises, the estate officer may, by order, require that person to pay the same within such time and in such installments as may be specified in the order.

(2) Where any person is, or has at any time been in unauthorised occupation of any public premises, the estate officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such installments, as may be specified in the order.

(2-A) While making an order under sub-section (1) or sub-section (2), the estate officer may direct that the arrears of rent or, as the case may be, damages shall be payable together with simple interest at such rate as may be prescribed, not being a rate exceeding the current rate of interest within the meaning of the Interest Act, 1978 (14 of 1978).

(3) No order under sub-section (1) or sub-section (2) shall be made against any person until after the issue of a notice in writing to the person calling upon him to show cause within such time as may be specified in the notice, why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same, have been considered by the estate officer.

Section 7 of the Act, as in the case of the other substantial provisions of the statute, merely takes the process of adjudication out of the regular judicial system and places it before a separate forum. The estate officer has applied the proper principles in assessing the defence and arriving at the conclusion. The estate officer has found, as a matter of fact, that the possession was made over only on July 11, 2007. Whether or not it was the Port Trust''s fault for not having taken possession earlier was a matter which could have been urged by the petitioners before the estate officer and the fact that the petitioners waited for a verdict on their preliminary objections-possibly, to carry such decision in appeal or for judicial review-would not be sufficient justification for their not having made the point vociferously before the estate officer.

There does not appear to be any manifest error in the decision-making process culminating in the order dated August 27, 2007 and the finding that the petitioners were in unauthorised occupation of the premises. There is little difference between an unauthorised occupant and an encroacher, in the context, save that one expression sounds more polite. The schedule of the Port Trust''s rates has not been challenged by the petitioners except on the ground that it did not provide for the quantum of damages leviable on an unauthorised occupant. But the estate officer committed no error in calculating damages on the basis of an unauthorised occupant being an encroacher.

In essence, the petitioners say that the estate officer acted in derogation of the principles of natural justice in effectively shutting them out on merits. Not every feature of the rules of natural justice needs to be rigidly to be complied in every instance, nor will the writ court make such an exacting demand. What is imperative is that unless the rules of procedure permit a summary process, there has to be substantial compliance with the rules of fair play that any form of justice would demand. There was substantial opportunity afforded by the estate officer to the petitioners and the involved discussion in the order reveals that all relevant matters were taken into consideration.

The final point that has been made is that in view of the time stipulated by the order of November 30, 2006 in WP No. 1697 of 2006, the order could not have been made by the estate officer beyond the time without obtaining previous leave of Court. The earlier order of this Court required the matter to be addressed expeditiously and cannot be seen to have rendered the estate officer functus officio after the expiry of the relevant period.

There is no merit in any of the grounds urged by the petitioners. WP No. 1148 of 2007 is dismissed with costs assessed at 600 GM. Urgent certified photostat copies of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

