
(2013) 09 CAL CK 0066
In the Calcutta High Court
Case No : W.P. No. 21455 (W) of 2013

Ajit Kumar Ghosh

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 18-09-2013

Acts Referred:

Citation : (2014) 1 CHN 320

Hon'ble Judges : J. Bhattacharya, J

Bench : Single Bench

Judgement

J. Bhattacharya, J.—In spite of service, none appears on behalf of the private respondents to oppose this writ petition at the time when this application is taken up for hearing. Under such circumstances, this writ petition is taken up for hearing in the presence of the learned advocate appearing for the Municipal authority, but ex parte so far as the private respondents are concerned. Let the affidavit-of-service filed in Court today, be kept with the record.

2. The petitioner claims that the petitioner being an occupier of the 1st Floor of premises No. 96, K.B. Bose Road, Barasat, applied for water connection before the Municipal authority.

3. Mr. Roy Chowdhury, learned advocate appearing for the "Municipal authority submits that an eviction suit, filed by the owner of the said premises against the petitioner, is pending before the Civil Court. He further submits that the petitioner has failed to submit any rent receipt to support his claim for his legal possession in any portion of the said premises.

4. According to Mr. Roy Chowdhury, an illegal occupier of a premises cannot get water connection from the Municipal authority. He referred to the definition of "occupier" as defined in section 2(43) of the West Bengal Municipal Act, 1993 to demonstrate that since the petitioner is neither a tenant nor a licensee nor an owner of the said premises, he cannot claim water connection from the Municipal authority.

5. Section 2(43) of the West Bengal Municipal Act, 1993 is set out here under:

Section 2(43). "occupier" includes any person for the time being paying or liable to pay to the owner the rent or fee or contractual payment of adjustment of rent or fee or any portion thereof or damages on account of the occupation of any land or building, and also includes a rent-free tenant:

Provided that an owner living in or otherwise using his own land or building shall be deemed to be the occupier thereof.

6. On reading the definition of "occupier", this Court is of the view that a person who is liable to pay damages on account of occupation of the land or building to the owner of any premises is also an "occupier" within the meaning of "occupier" as defined in section 2(43) of the said Act. Thus, the West Bengal Municipal Act, 1993 not only recognises the owner and/or tenant and/or licensee as an occupier of a building, but also recognises the unauthorised occupier who is liable to pay damages on account of such illegal occupation of a land or building to the owner thereof.

7. As such this Court holds that even if the petitioner is an unauthorised occupier of the premises in question, the Municipal authority cannot refuse to grant water connection to the petitioner.

8. This Court thus disposes of this writ petition by directing the Municipal authority to ascertain as to whether the petitioner is in possession of any portion of the said premises or not and in the event it is found that the petitioner is in possession of any portion of the said premises, the Municipal authority, without making any attempt to enquire into the legality of the petitioner's possession, will give water connection to the petitioner, as the right of an occupier to get water supply from the Municipal authority is recognised u/s 231 of the West Bengal Municipal Act, 1993.

9. In the event the petitioner is entitled to get such connection by virtue of his occupation of any portion of the said premises, the Municipal authority will provide such water connection to the petitioner positively within a week from the date of compliance of necessary formalities by the petitioner in this regard and necessary formalities to be complied by the petitioner should be communicated to him within two weeks from the date of communication of this order.

10. The writ petition is, thus, disposed of. Urgent photostat certified copy of this order, if applied for, be furnished to the applicant as early as possible.