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(1998) 03 CAL CK 0005

In the Calcutta High Court

Case No : Civil Order No. 18324 (W) of 1996

Arabinda Saha — APPELLANT

Vs

State of West Bengal — RESPONDENT

Date of Decision : 06-03-1998

Acts Referred:

Citation : (1999) 1 ILR (Cal) 213

Hon'ble Judges : Ruma Pal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ruma Pal, J.—The Petitioner is a Government servant serving as a police officer. He was posted to Howrah in 1978 and was given quarters to reside in. The quarter was flat No. P/1 in the low income group Government housing estate at 197, Andul Road (referred to as the Flat). In 1993 the Petitioner applied to the Housing Department of the State Government to become a direct tenant under the Housing Board. The Petitioner affirmed an affidavit on September 2, 1994 to the effect that he had no other flat within 25 kilometers of the Estate either in his own name or in the name of any member of his family. His family consists of his wife, Ranu Saha and his two sons, Ardhendu and Dibyendu.

2. The Petitioner was duly allotted the flat. Under the allotment the Petitioner was liable to pay a monthly rent of Rs. 102-00. According to the Petitioner he and his wife continue to live in the flat. According to the Respondents the Petitioner and his wife live in premises 18/9, Danesh Sk. Lane, Howrah.

3. The Petitioner was issued two notices by the Respondent authorities. The first notice is dated July 9, 1996/July 10, 1996 which reads as follows:

Your tenancy in respect of flat No. P-1 in the L.I.G. Estate at 197, Andul Road, Howrah-9 stands terminated with immediate effect on the ground of non-occupation/building your own house within 25 kms. from the House Estate at 18/9, Danesh Sk. Lane, Howrah-9 violation of the terms of agreement u/s 3(2)

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(1) and 3(2)(ia) of the West Bengal Government Premises (Tenancy Regulation) Act, 1976. You are requested to hand-over peaceful and vacant possession of the flat to Government with 30 days hereof, within which your are at liberty to make your submission, if any, to the undersigned.

4. On 10th July the Estate Manager being the Respondent No. 4 took possession of the flat and padlocked it. A notice dated July 3, 1996/July 10, 1996 was pasted on the outer wall stating that the possession of the flat had been taken on July 10, 1996. The Petitioner made a representation on July 11, 1996 to the Respondent No. 4 protesting the adlocking of the flat. The Estate Manager requested the Petitioner to appear before him on July 23, 1996 in connection with his representation. The Petitioner appeared before the Estate Manager and deposed at the hearing. His deposition was recorded and signed by him. In the deposition the Petitioner stated that the house at Danesh Sekh Lane belonged to his father; that none of the members of his family resided at the house and that all his household articles were at the flat at Andul Road.

He also undertook to produce the ration cards of himself and all members of his family as well as his voter''s identity card at the next hearing which was fixed on August 5, 1996.

5. On the very next day, however, i.e. July 24, 1996, the Petitioner affirmed this writ application challenging the notice of termination and also praying for a direction on the Respondents to remove the padlock from the flat.

The application was taken up on July 26, 1996. Having regard to the fact that the Petitioner had been given time till August 10, 1996, to hand over possession by the notice for termination it was held by this Court that the Respondent authorities had no right to take possession of the flat prior to that date. An interim order was accordingly passed directing the authorities to remove the padlock. The Petitioner, however, was restrained from changing the status quo in the flat. The authorities were also given the liberty to proceed with the hearing and to place the decision before this Court.

6. The hearing was accordingly concluded by the Estate Manager and the report prepared on August 5, 1996 was filed in Court. It contains the following relevant statements:

During the hearing held to-day (i.e. 5.8.96) Sri Saha submitted that the house of premises No. 18/9 is owned by his wife and the same is owned by his wife in the manner which is known by herself and not by him....

It appeared to the authority that the premises at Danesh Seikh Lane was being possessed by the applicant and accordingly the termination notice u/s 3(2)(ia) of the West Bengal Government Premises (Tenancy Regulation) Act, 1976 was issued terminating the tenancy and the said tenancy was also terminated u/s 3(2)(i) of the said Act....

During haring on 23.7.96 the applicant stated that the said premises at Danesh

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Seikh Lane belongs to his father. But on 5.8.96 in the next hearing stated that the said premises belonged to his wife and further stated that he has nothing to add further to that made in paragraph 21(a) of Writ Petition....

The said fact of acquiring the property by his wife by way of gift was also suppressed by him at the time of taking possession at the time of allotment by way of submitting a false affidavit....

Since the applicant''s wife was the owner in respect of the said house''at Danesh Sk. Lane at a distance of about 1 k.m. from the Government flat at Andul Road, the tenancy of the applicant is void ab initio under provision of Section 3A of the Act....

The distance of premises No. 18/9, Danesh Sk. Lane, Howrah-9 is only within 1 k.m. from Flat No. P-1 at 197, Andul. Road, Howrah....

However, the fact of acquiring the said premises by his wife having been suppressed at the time of allotment the same was not known to the authority and the authority believed the applicant''s declaration and as such the tenancy was terminated u/s 3(2)(i) and 3(2)(ia) of the Act with the impression that the said property was acquired subsequently....

Since the matter is pending before the Hon''ble High Court for a decision I refrain from making any other comments in this regard or issue any fresh termination notice as provided u/s 3A of West Bengal Government Premises (Tenancy Regulation) Act, 1976.

7. The Petitioner has impugned the notice of termination by claiming that the notice was vague in that it mentioned two grounds for termination namely, non-occupation and building of house within 25 kilometers.

The submission that the flat was occupied by the Petitioner because of the duties discharged by him u/s 2(a) of the Act and that therefore, the Act had no application was not pressed. It was then argued that Section 3(2)(ia) of the Act had no application because the gift of the premises at Danesh Sk. Lane by his father to his wife was not subsequent to the allotment. On the question of filing of the affidavit prior to the allotment, it was argued that the filing was not a compulsory requirement or pre-condition to the allotment. Therefore it was not a material fact nor could it be a ground for cancellation of the allotment.

8. The Respondents have submitted that the writ petition itself should be dismissed on the ground that the Petitioner had suppressed a material fact viz. that the allotment was obtained by the Petitioner by suppressing the fact that he had a house at 18/9, Danesh Sekh Lane which had been gifted to his wife in 1988. It is also argued that the allotment was a void one u/s 3A of the Act. Thirdly, it is argued that the Petitioner was not in occupation of the flat and that the Petitioner was residing at the house at Danesh Sekh Lane with his family and was seeking to transfer the flat to third parties.

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9. The relevant sections of the West Bengal Premises (Tenancy Regulation) Act, 1976 the purposes of this matter are Sections 3 and 3A. Section 3 provides;

3. Termination of tenancy.- (1) Every tenancy held by a tenant in respect of a Government premises shall stand terminated upon the expiry of the period referred to in a notice to quit served upon such tenant in the prescribed manner.

(2) A tenancy in respect of a Government premises shall stand automatically terminated without any notice to quit where the tenant has,-

i) violated the terms of the lease, or

ia) subsequently built a house or acquired (by purchase, gift, inheritance, lease, exchange or otherwise) a house or an apartment, either in his own name or in the name of any member of his family, within a reasonable distance from such Government premises.

Explanation.- For the purpose of this section and Section 3A,-

(a) ''apartment'' shall have the same meaning as in the West Bengal Apartment Ownership Act, 1972;

(b) ''family'' shall include parents and other relations of the tenant who ordinarily reside with him and are dependent on him;

(c) ''reasonable distance'' shall mean any distance not exceeding twenty five kilometers, or

xxx

Section 3A of the Act provides:

3A. Tenancy to be void if held by a tenant owing a house or apartment on the date of allotment of a Government premises. A tenancy in respect of a Government premises shall be deemed to be void where on the date of allotment of such Government premises the tenant is, or had been, the owner of a house or an apartment, either in his own name or in the name of any member of his family, within a reasonable distance from such Government premises.

10. The submission of the Petitioner that the filing of the affidavit prior to the allotment was not material is negatived by the provisions of Section 3A. Had the Petitioner disclosed the fact relating to Danesh Sekh Lane when he applied for the allotment no tenancy could have been granted to him? It is clear from the definition of the word ''family'' and ''reasonable distance'' in the explanation to Section 3 that the house at Danesh Sk. Lane was in the name of the member of the Petitioner''s family at all material times. It is also not in dispute that the house of Danesh Sk. Lane is within 25 kilometers of the Andul flat and in fact within the same postal area. In fact, the statements made by the Petitioner in this regard are contradictory. In the affidavit executed prior to the allotment he has said that no member of his family had any house within 25 kilometers of the flat at Andul Road.

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His explanation for not mentioning the fact of the Danesh Sk. Lane house in the affidavit was ''inadvertance''. At the hearing which was held on July 23, 1996 before the Respondent No. 4 he said that the house at Danesh Sekh Lane ''belongs to my father, Late Nani Gopal Sana''. In the affidavit-in-reply he has stated that the house had been gifted by his father to his wife in 1985 in paragraph 4. In paragraph 8 of the same affidavit he has stated that his wife''s father gifted the house to his wife in 1985.

11. The Petitioner also has not approached the Court with clean hands and has made mis-statements and suppressed material facts in his writ petition. He did not reveal to the Court the fact that he had a house or flat within 25 kilometers of the Andul flat in the name of a member of his family. He did not tell the Court that he had affirmed an affidavit prior to the allotment of the flat affirming on oath that there was no such residential premises.

12. Furthermore, the Petitioner has incorrectly stated that on July 23, 1996 he appeared before the Respondent No. 4 at the scheduled hour and produced all the relevant documents with regard to the allotment and payment of rent in respect of the flat but nothing was done and he was only asked to wait. It now appears from the records that the Petitioner did not produce the relevant documents. A hearing was held at which he deposed, his deposition was recorded and signed by him and he undertook to produce the relevant documents at the next hearing which was fixed for August 5, 1996.

13. On the merits also, it cannot be held that the, notice of termination is vague. Two grounds have been specified for termination viz., non-occupation of the flat and subsequent acquisition of the house at Danesh Sk, Lane. The grounds are not incompatible. Whether the Petitioner was in occupation of the flat at Andul or he Danesh Sk. Lane premises is a factual dispute which cannot be resolved in these proceedings.

14. The object of the Act as discernible from a reading of Sections 3 and 3A is to allow only those government servants with no other accommodation in the near victinity to occupy government flats. Having regard to the admission of the Petitioner that the house at Danesh Sk. Lane belongs to a member of his family, within the meaning of the definition of the word in Section 3, it is immaterial whether the house was acquired by the Petitioner''s wife subsequent to the allotment of the flat at Andul Housing Estate or not. If the acquisition was prior to the allotment then the tenancy is void u/s 3A and does not need termination. If it was subsequent to the allotment it is a ground for eviction.

Incidentally, this Court had directed the Petitioner to produce the deed of gift by which he claimed that the Danesh Sk. Lane property was gifted to his wife. The Petitioner did not choose to do so. Be that as it may, whichever way the matter is looked at, it is clear that the proceedings against the Petitioner cannot be interferred with.

15. For the reasons aforesaid the writ application is dismissed. It will be open to

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the Respondent No. 4 to proceed to pass a final order and to take steps thereon in accordance with the provisions of the Act.

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