
(1968) 09 CAL CK 0002
In the Calcutta High Court
Case No : Civil Rule No. 554 (W) of 1964

Ashiruddin, Sk.

APPELLANT

Vs

J.L.R.O.

RESPONDENT

Date of Decision : 06-09-1968

Acts Referred:

Constitution of India, 1950 — Article 14, 19

West Bengal Land (Eviction of Unauthorised Occupants) Act, 1962 — Section 3, 3(1)

Citation : (1969) 2 ILR (Cal) 1

Hon'ble Judges : A.K. Sinha, J

Bench : Single Bench

Advocate : Hari Prosanna Mukherjee and D.N. Basu, for the Appellant; C.C. Ganguli, Nirmala Chaturvedi and Harashit Chakrabarty, for the Respondent

Final Decision : Allowed

Judgement

A.K. Sinha, J.—This Rule was issued at the instance of the Petitioner, inter alia, for quashing an order passed by the Respondent No. 2, the Collector, Contai, dated April 24, 1964, for his eviction from alleged public land under the West Bengal Land (Eviction of Unauthorised Occupants) Act (W.B: XIII of 1962, hereinafter referred to as "the Act").

2. Briefly, the case of the Petitioner is that since the year 1947 he was granted by the khas mahal office, Contai, a licence to sell pan, tobacco, matches etc. near the kachari compound, Contai, for the year ending March 3, 1948, between the hours 6 a.m. to 6 p.m. daily on conditions attached to the licence to shop-keeper on plot No. 230 within mouza Hatabari, Contai. The Petitioner, it is alleged, was to pay an annual rent of Rs. 24 for the lands so occupied by him with effect from April 1, 1947, and thus he paid all rents which was increased to Rs. 36 per year upto the year 1963. There was also a removable gumti on the aforesaid plot of land with the knowledge, consent and licence of the opposite parties.

3. By a notice issued by the J.L.R.O., Contai, dated September 3, 1963, the

Petitioner was directed to deposit rent from April 1963 upto that date, failing which he was warned that certificate proceedings would be adopted against him, and it was also stated that on receipt of that notice, according to the order of the S.D.O., Contai, the Petitioner was to remove the temporary gumti from the disputed plot of land. On receipt of the said notice the Petitioner deposited Rs. 18 (I am told by Mr. D. N. Basu, learned Advocate for the Petitioner, that this must be a mistake. It would be Rs. 36) with the State Bank of India, Contai Branch; and since thereafter the Petitioner has been regularly remitting by money order to the J.L.R.O., Contai* the monthly rent for such occupation. But for reasons best known to him, he refused to accept the money so tendered.

4. On September 3, 1963, the Petitioner was served with a notice issued by the said J.L.R.O., Contai, to pay up the arrear dues, otherwise certificate case, it was also stated, would be started. There was also in the said notice a direction that the Petitioner would be evicted by October 3, 1963, and that the notice was issued under the orders of the learned S.D.O., Contai. On receipt of this notice the Petitioner deposited all arrears of dues of the Government on September 14, 1963. The Petitioner also showed cause against the said notice and ultimately the order of eviction passed by the S.D.O. was set aside on appeal by the Collector, Midnapore, on the view that the entire thing was without jurisdiction.

5. On March 7, 1964, a notice was issued by the Collector under the Act. The Petitioner came to know about this notice much later, and it is alleged that this notice of eviction under the Act was addressed to all persons concerned and served only by hanging on one of the trees nearby the land. It is stated that the Petitioner could not know about this manner of service of notice and, since he did not get any individual notice to appear in Court, he could not understand that the aforesaid notice was meant for him, and he was directed to appear again to show cause before the Collector against his proposed eviction from the disputed land. It is further stated that this confusion was again made, for, there were many other occupants on the same area in connected plots of land. The Petitioner, however, came to learn that the Collector Sri K. K. Roy Barma passed an ex parte order on April 24, 1964, for eviction of the Petitioner and asked to deliver possession of the land to the J.L.R.O., Contai, by May 10, 1964. He was also asked to pay damage at the rate of Rs. 36 so long as he would continue in unauthorised occupation of the public land.

6. It is stated that this was a manipulated order brought about by the machination of the J.L.R.O. who wanted- to allot again this disputed land in favour of one of his own men which will "appear from the petition dated October 1, 1963, made by the Petitioner in the office of the Collector, Land Reforms, Midnapore. The Petitioner thus felt aggrieved by the said ex parte order and came up to this Court and obtained this present Rule and an interim order of injunction.

7. The main grievance of the Petitioner in the Rule is that the order was passed ex parte without giving him an opportunity of making representation against the

show-cause notice issued by the Collector. It was contended by Mr. Mukherjee, learned Advocate for the Petitioner, that the notice was not served upon the Petitioner and he could not in time get any information about the service of such a notice by affixation. Another contention made by Mr. Mukherjee is that the Act is violative of Articles 14 and 19(I)(f) & (g) of the Constitution.

8. Regarding the first contention I find that this Act was substantially amended by an amendment Act known as the West Bengal Public Land (Eviction of Unauthorised Occupants) (Amendment) Act, 1963, by virtue of which the relevant Section for our purpose, namely, Section 3 was amended to the extent that "a notice calling upon all persons concerned" was substituted by the following words: "A notice in such form and containing such particulars as may be prescribed calling upon all persons concerned". I have not been shown any Rule which was prescribed even after the above amendment for the purpose of service of notice contemplated u/s 3 of the amended Act.

9. Mr. Ganguli, learned Advocate for the Respondents, however, referred to and relied on the amended Rule published in the Calcutta Gazette (Extra-ordinary), Pt. I, dated June 21, 1963, which lays down, inter alia, that the notice referred to in Sub-section (1) of section 3 shall be served by fixing it on a conspicuous part of the public lands concerned and also by proclaiming its substance by beat of drums in the locality where the public land concerned is situated.

Another form in place of the old form is also appended to this Rule. It, inter alia, provides that- the notice has to be addressed "to all persons concerned". I have great doubt whether this old Rule is still applicable for the purpose of the service of notice now provided in the amended Act to be served in the prescribed manner. Even assuming that this Rule is still applicable, in the facts and circumstances of the present case, I find that there was no service of notice even in accordance with the present Rule. I find from the original report of the process server that what he did was that a copy of this notice was affixed on a gumti of one Sk. Ashiruddin after proclaiming by beat of drums the contents of this notice on C.S. plot No. 280 within mouza Hatabari according to the identifier. The manner of service as laid down in the Rule contains two parts. Firstly, a notice addressed to all persons concerned must be served by fixing it on a conspicuous part of the public land concerned. It is not known whether this gumti stands on a part of the public land concerned or, even it be so, whether it was a conspicuous part. Nothing is mentioned in the service report. Secondly, the substance of this notice has to be proclaimed by beat of drums in the locality. It will not do to proclaim the substance of this notice by beat of drums simply on the public land concerned. So, in my view, the report of the process server reveals that there was no proper service even in accordance with the amended Rule. It cannot be denied that the right of personal service in a case of eviction from a land has been taken away by the Act. Instead of it there has been a provision for service only by affixation. In other words, the provisions for individual service, which is very essential in a case where the question of right to property is involved, has

been taken away. So, the Court will always lean in favour of the party affected and take strict view about the service of notice as provided in the Rule only by affixation. It seems to be clear that there being no proper service, even in accordance with the amended Rule, this order was made ex parte without giving any opportunity to the Petitioner and cannot be sustained as valid. On the view I have taken, it is unnecessary to go into other questions raised by Mr. Mukherjee.

10. The result is that the petition succeeds. The impugned order is quashed. The matter, however, will now go back to the Collector for his fresh decision after service of the notice of show-cause as provided u/s 3 of the Act and then he will decide the matter afresh in accordance with law and in the light of the observations made above. The Rule is made absolute. But there will be no order as to costs.

11. The order which I have made now is confined only to the Petitioner. I direct that a copy of the process server's report be kept with the record.