
(1997) 03 CAL CK 0012
In the Calcutta High Court
Case No : C.O. No. 12210 (W) of 1992

Ashit Baran Chatterjee

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 12-03-1997

Acts Referred:

Constitution of India, 1950 — Article 226
West Bengal Government Premises (Regulation of Occupancy) Act, 1984 — Section 2, 2(2), 3

Citation : (1997) 2 CALLT 82

Hon'ble Judges : Altamas Kabir, J

Bench : Single Bench

Advocate : Chabi Das, N. Basu and S.K. Debnath, S.C. Ukil, for the Appellant; Bandana Das, Bidyut Kumar Banerjee and Shila Sarkar for Respondent Nos. 5 and 6 and Ramdulal Manna, for the Respondent

Judgement

Altamas Kabir, J.—This writ application is directed against a Memo No. 1586.PAR(WBCS) dated 16th July, 1992, issued by the Assistant Secretary, Home (P&AR) Department, Government of West Bengal, to the SubDivisional Officer, Barrackpore, and the order passed thereon by the said Sub-Divisional Officer, Barackpore on 10th August, 1992, in his capacity as the Competent Authority under the West Bengal Government Premises (Regulation of Occupancy) Act, 1984, issued to the Inspector-in-Charge, Khardah Police Station.

2. The petitioner claims to have been inducted as a monthly tenant at C-54 Amarabati, Sodepore, under Khardah Police Station, in the District of North 24 Parganas, by Sreemati Krishna Roy, the respondent No. 7 in this application, on 1st July, 1988, at a monthly rental of Rs. 100/- payable according to the English calendar, in respect of the accommodation described in paragraph 2 of the writ petition.

3. It is also the petitioner's case that on or about 17th March, 1989, the respondent No. 7 sold the property in question to Shri Santanu Mukherjee and

Sreemati Kanika Mukherjee, the respondent Nos. 5 and 6 in this application.

4. According to the petitioner, since he was not served with any notice of Attornment in respect of the said tenancy, the petitioner approached the said respondent Nos. 5 and 6 for accepting the monthly rents from him, but the said respondents avoided acceptance of the rents and attempted to forcibly evict the petitioner from the tenanted premises.

5. On account of such threat, the petitioner appears to have filed a suit before the learned Munsif, Fourth Court at Sealdah, being title Suit- No. 292 of 1992, inter alia, for a declaration that he was a tenant in respect of the suit premises and his tenancy was valid and subsisting and that the respondent Nos. 5 and 6 were not entitled to forcibly dispossess him therefrom except in due process of law. It appears further that on being satisfied as to a prima facie case made out by the petitioner, the learned Munsif issued an ad-interim order of injunction upon the respondent Nos. 5 and 6, whereby the said respondents were prevented from forcibly dispossessing the petitioner from the said premises. According to the petitioner, the said order the injunction was duly served on the Inspector-in-Charge, Khardah Police Station, and the said respondent Nos. 5 and 6.

6. The further case of the petitioner is that despite the ad-interim order of injunction passed by the fourth Munsif, Sealdah, the Assistant Secretary, Home (P&AR) Department of West Bengal, issued the abovementioned memo dated 16th July, 1992, to the Sub-Divisional Officer, Barrackpore, requesting him to take necessary steps on the application made by the respondent No. 5, inasmuch as, the property in question allegedly stood mortgaged with the State Government. On receipt of the said memo, the Sub-Divisional Officer, Barrackpore, by his memo dated 10th August, 1992, directed the Inspector-in-Charge, Khardah Police Station, to remove the petitioner from his tenanted premises forthwith and the said respondent, in compliance with the directions contained in the said order, forcibly ousted the petitioner from his said tenancy.

7. The grievance of the petitioner, as indicated, hereinbefore, is directed against the said order passed by the Sub-Divisional Officer, Barrackpore, and the petitioner's eviction from the premises in question in consequence thereof.

8. Appearing in support of the writ petition, Mr. Basu learned advocate, submitted that the action taken by the Sub-Divisional Officer, Barrackpore, in issuing the impugned memo dated 10th August, 1992, was arbitrary and illegal and reflected the high-handed attitude of the said Officer in his purported capacity as the Competent Authority under the West Bengal Government Premises (Regulation of Occupancy) Act, 1984.

9. Mr. Basu drew my attention to the impugned memo, which has been made annexure "A" to the writ application, from which it appears that the petitioner was described as an "unauthorised occupant" of the premises in question and the Inspector-in-Charge, Khardah Police Station, was directed to remove him

therefrom u/s 13 of the above Act and to take possession of the premises and report compliance by 13 th August, 1992, since the property stood mortgaged to the Government of West Bengal and was a Government premises in terms of Section 2(d) and 2(n) of the aforesaid Act.

10. Mr. Basu urged that the petitioner was neither given any notice of any proceedings commenced under the provisions of the West Bengal Government Premises (Regulation of Occupancy) Act, 1984, nor was he given any hearing before he was forcibly removed from his lawful tenancy on the basis of the impugned order dated 10th August, 1992, passed by the Sub-Divisional Officer Barrackpore.

11. Mr. Basu urged that the impugned order of the Sub-Divisional Officer, Barrackpore, and the action taken thereupon by the Inspector-in-Charge, Khardah Police Station, were highly arbitrary and illegal and the petitioner was liable to be put back into possession of his tenanted premises forthwith.

12. No Affidavit-in-Opposition has been filed on behalf of the State in the matter and it was sought to be urged that the petitioner had not been forcibly evicted from the premises in question but that he had voluntarily surrendered possession of the premises on 14th August, 1992. The allegation of use of force was denied.

13. Since no affidavit had been filed on behalf of the State and the State Respondent, I had directed the Inspector-in-Charge, Khardah Police Station, to produce the relevant G.D. Entries showing the manner in which the petitioner had been evicted from the premises in question. Pursuant to such direction, copies of Khardah Police Station G.D. Entry Nos. 984 and 998, both dated 14th August, 1992, were produced. From the first G.D. Entry it appears that the concerned Officer left for the premises in question to take action in terms of the impugned memo dated 10th August, 1992, for removal of the petitioner from his tenanted premises in respect whereof he was described to be in unauthorised occupation. The second G.D. Entry shows that the petitioner allegedly vacated the premises voluntarily in the presence of local people.

14. In the absence of any affidavit on behalf of the State and since there was nothing on record to show the manner in which the impugned order had been passed, by the order dated 28th January, 1997, I had directed the Sub-Divisional Officer, Barrackpore, to be personally present in court with the records which prompted him to issue the orders for removal of the petitioner from his tenanted premises.

15. Pursuant to such direction, the Sub-Divisional Officer, Barrackpore, appeared on 4th February, 1997, and on his behalf two documents were produced, namely, the representation which had been made by Shri Santanu Mukherjee, the respondent No. 5, to the Deputy Secretary, Home (P&AR) Department, on 9th July, 1992, informing him that in connection with the Government loan obtained by him for purchase of the premises in question, he had executed a deed of mortgage in favour of the Government. In the said letter it had also been

mentioned that the petitioner was living in the premises as a trespasser and to take appropriate steps to have the mortgaged property free from all encumbrances. The other document was a letter from the Home (P&AR) Department forwarding the same to the Sub-Divisional Officer, Barrackpore on 16th July, 1992, requesting him to take necessary steps as the property stood mortgaged to the State Government.

16. It was stated by the learned Government Pleader, appearing for the said Sub-Divisional Officer, Barrackpore, that there was no other connected record to show that any proceeding had been taken against the petitioner for his eviction from the premises on the alleged ground that he was a trespasser in the premises which had purportedly been mortgaged to the Government.

17. Appearing on behalf of the respondents Nos. 5 and 6, Mr. Bidyut Banerjee reiterated what had been stated in the representation dated 9th July, 1992, and he also contended that the petitioner had voluntarily vacated the premises in question on 14th August, 1992, without any use of force, as alleged.

18. Section 2(d) of the West Bengal Government Premises (Regulation of Occupancy) Act, 1984, hereinafter, referred to as the "1984 Act " defines "Government Premises" to mean State premises which are not public premises. Clause (n) of sub-section (2) defines "State Premises" to mean any premises belonging to, or taken on lease or licence or requisitioned by, or on behalf of, the State Government, while clause (k) of Section 2 defines "Public Premises" to mean State Premises in respect of which a declaration has been made u/s 3 and includes the State premises mentioned in Schedule II.

19. Even if the premises involved in this proceeding has been mortgaged to the Government, as claimed by the respondent No. 5, and on the basis whereof the Sub-Divisional Officer, Barrackpore, acted, it does not bring the said premises within the said definitions. In the absence of any declaration u/s 3 and not being included in Schedule II, the premises cannot be said to be a "Public Premises", Since the same has neither been taken on lease or licence, nor has it been requisitioned by or on behalf of the State Government, it cannot also be said to be a "State Premises". It further follows that it is not also a "Government Premises".

20. In that view of the matter, the premises in question does not at all come within the scope and ambit of the 1984 Act and the action taken thereupon by the Sub-Divisional Officer, Barrackpore, in issuing the impugned order dated 10th August, 1992, is not only arbitrary, but wholly without jurisdiction and/or authority of law. It is obvious that the Sub-Divisional Officer, Barrackpore, did not at all apply his mind to the matter, as otherwise he would have satisfied himself that the petitioner was really an unauthorised occupant, instead of merely acting on the strength of the representation of the respondent No. 5 and the letter addressed to him by the Assistant Secretary, Government of West Bengal, (P&AR) Department, on 16th July. The very least that he ought to have done is

to have given the petitioner a notice to ascertain the petitioner's status in respect of the premises under his occupation and to explain the allegation made by the respondent No. 5, before issuing the order which had such drastic results.

21. Section 7 of the 1984 Act provides that no person shall occupy or remain in occupation of any Government premises except on the authority, and subject to the terms and conditions, of a valid licence granted in his favour by the competent authority.

22. Without determining the petitioner's status, the Sub-Divisional Officer, Barrackpore, should not have acted unilaterally and in doing so he has caused serious injustice to the petitioner, which must be rectified.

23. It may be mentioned that in the case of B.V. Patankar and Others Vs. C.G. Sastry, , the Hon"ble Supreme Court while considering the provisions of the Mysore House Rent and Accommodation Control Order, 1948, was of the view that when an order of delivery of possession had been passed without jurisdiction, the court could direct re-delivery of the premises under it's inherent powers u/s 151 of the Code of Civil Procedure.

24. Having regard to the above and since I am of the view that the premises in question do not come within the definition of "Government Premises" or "Public Premises" or "State Premises", and since the petitioner was removed therefrom on the basis of the impugned memo issued by the Sub-Divisional Officer, Barrackpore, which was wholly illegal, the same must be quashed.

25. Accordingly, the writ application succeeds. The impugned Memo No. 309/Con dated 10th August, 1992, being annexure "A" to the petitioner, is quashed. The Sub-Divisional Officer, Barrackpore, as also the inspector-in-Charge, Khardah Police Station, who acted on the basis of the said impugned order, are directed to restore to the petitioner the premises from which he was evicted, either forcibly or otherwise, on the strength of the impugned memo, within ten days from the date of communication of this order.

26. In view of the peculiar facts of this case, the respondent Nos. 2,3,5 and 6 shall pay to the petitioner the costs of this application assessed at 100 gms, of which 50 gms, shall be paid by the respondent Nos. 2 and 3 and the remaining 50 gms, shall be paid by the respondent Nos. 5 and 6.

27. Having regard to the nature of the directions given, let a plain copy of this order, duly counter-signed by the Assistant Registrar (court) be made available to the learned Advocate of the petitioner and the petitioner shall make available xerox copies thereof to the learned Advocates for the respective parties.