

(2018) 06 CAL CK 0237
In the Calcutta High Court
Case No : W.P.No.22795(W) of 2015

Azizul Haque Laskar (Babla)	Vs	APPELLANT
State Of West Bengal & Ors.		RESPONDENT

Date of Decision : 27-06-2018

Acts Referred:

West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 — Section 3, 3(1)
Constitution of India, 1950 — Article 14, 19(1)(a), 226

Citation : (2018) 06 CAL CK 0237

Hon'ble Judges : PROTIK PRAKASH BANERJEE, J

Bench : Single Bench

Advocate : Amal Baran Chatterjee, Satyajit Mondal, Amar nath Sen, Chandi Charan De, Anirban Sarkar

Final Decision : Allowed

Judgement

Protik Prakash Banerjee, J.

This application under Article 226 of the Constitution of India has been filed challenging in effect an order of the learned Commissioner, Presidency

Division passed on August 5, 2015 in Appeal Case No. Misc. 02 of 2015-16 upholding an order dated April 20, 2015 passed by the Collector in Case

No.3/(Eviction)/SDO/DH of 2015. Though the writ petitioner has taken many grounds including the erstwhile lease, I choose to hear it on the grounds

of lack of jurisdiction and gross violation of the basic principles of natural justice.

It is the express case of the writ petitioner that a proceeding was initiated under section 3(1) of the West Bengal Public Land (Eviction of

Unauthorised Occupants) Act, 1962 as appears from Annexure P11 at p.67 of the writ petition. The notice, issued by the Collector and Sub-Divisional

Magistrate, Diamond Harbour, South 24-Parganas, being the sixth respondent, dated April 9, 2015, refers to an order dated March 10, 2015 passed by this court in WP No.5813(W) of 2015 as the reason for starting of the proceeding anew.

The said March 10 order on page 60 of the writ petition shows that in the first round of the case being Misc. Case No.02 of 2014-15 a similar order as the order assailed in this petition had been challenged by the writ petitioner and a direction to hear afresh after service had been given by a co-ordinate Bench after quashing and setting aside the order of the sixth respondent herein and of its appellate authority on the grounds of violation of the principles of natural justice by not furnishing a copy of the enquiry report or complaint on whose basis of which initial order of demolition had been passed.

In the second round, the writ petitioner has complained that while a fresh hearing was given, a copy of the complaint on the basis of which the sixth respondent moved under the Act of 1962 was not made over to the writ petitioner. This appears from his representation in Bengali at Annexure P13 at p.73 of the writ petition. Therefore, the petitioner submits that he was denied an effective opportunity of being heard; and that despite the earlier order of the coordinate Bench, all the relevant documents were not handed over to him.

Mr De, learned Additional Government Pleader assisted by Mr Sarkar appearing for the State, on the other hand, submits that Annexure P11 contains a statement that a copy of the complaint was furnished. However, in Annexure P11 the list of enclosures does not include any copy of the complaint on which proceedings under section 3 aforesaid were drawn. The enclosure list shows only copies of the inquiry reports and a copy of the land reforms record of rights. Mr De also submits that pp.68 and 69 of the writ petition amount to complaints within the meaning of section 3 of the 1962 Act.

Page 68 is a complaint from the Sub-divisional Officer of Diamond Harbour Irrigation Sub Division to the inspector in charge of Diamond Harbour police station and not to the Collector. Page 69 is either a private complaint to the Sub-divisional Land and Land Reforms Officer of Diamond Harbour or an enquiry report from one Kamal Krishna Mondal which appears to be a

report of an inquiry. None of these is a complaint or an application made by an officer of the owner of the public land to the Collector. Section 3 of the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 reads as follows:â?

â??S.3 Issue of notice to show cause against order for eviction of unauthorised occupant from Public Land. If, in respect of any public land, the Collector is of opinion, upon application made by an officer of the owner of the public land authorised in this behalf by such owner or upon information received otherwise, that the public land is in unauthorised occupation of any person or persons, the Collector shall issue a notice in such form and containing such particulars as may be prescribed calling upon all persons concerned to show cause before such date, not being less than fifteen days after the date of the notice, as may be specified in the notice why an order under clause (a) of subsection (1) of section 4 should not be made, and shall cause it to be served in the manner referred to in sub-section (2). Intimation of the date so specified shall be given to the owner of the public land and to its officer authorised under this sub-section.

(2) A notice issued under sub-section (1) shall be served by affixing it on a conspicuous part of the public land concerned and in such other manner as may be prescribed.

(3) A notice served in the manner referred to in sub-section (2) shall be deemed to have been served.â??

From the above it is very clear that no application was made to the sixth respondent by any officer of the owner of the public land. The proceedings under section 3 were, therefore, clearly and wholly without jurisdiction on the face of the records; and furthermore, by proceeding to hear the matter anew without serving on the writ petitioner any copy of the complaint, if at all there was any, there was gross violation of the basic principles of natural justice and thus Article 14 of the Constitution of India.

Since the appellate order also has not considered this aspect, it too suffers from the vice of upholding an order passed without jurisdiction. Thus, the

order passed by the sixth respondent impugned before the appellate forum dated April 20, 2015 was passed without application of mind. The sixth

respondent being a creature of the statute could not have issued such notice under section 3(1), except on complaint of an officer of the owner of the

public land, but he did so. As a creature of the statute, he could only have acted in the manner prescribed or not at all.

Therefore, it was procedurally ultra vires. Hence the appellate decision was also a nullity, since learned Additional Government Pleader has drawn my

attention to pp.68, 69 and 70 as the only complaints which were made on the basis of which the sixth respondent issued notice under section 3(1) and

none of these is an application made by the officer of the owner of the public land to the Collector, which the appellate authority did not even reflect

upon. The entire proceedings, admittedly, thus were wholly without jurisdiction and being nullity cannot be validated.

The proceedings of Case No.3/(Eviction)/SDO/DH of 2015 before the Collector and the Appeal Case No. Misc.02 of 2015-16 before the

Commissioner, Presidency Division are, therefore, quashed and the orders passed therein dated April 20, 2015 and August 5, 2015 respectively are set

aside as void ab initio. Since the above position is admitted on the face of records, there is no question of calling for affidavits. I am told that in the

meanwhile after filing of this writ petition, the respondent-authorities have caused demolition of the structures standing on the land constructed by the

petitioner. They have done so pursuant to such void proceedings and orders which were nullities and void ab initio.

Though the writ petitioner is still in possession of the land, because of the acts without jurisdiction by the State he is deprived of the use of the

structure in which he carried on the activities of a news club which relate to the rights guaranteed to the writ petitioner under Article 19(1)(a) of the

Constitution of India. The sixth respondent shall at his own cost reconstruct the structure on the said land without dispossessing the writ petitioner,

within a period of a fortnight from the date of communication of this order.

Even though the costs for such construction shall be borne from the State treasury, it shall be open to the State to deduct the costs from the salary of

the sixth respondent for having dared to demolish the structure of a citizen after violation of the basic principles of natural justice in proceedings which

are void and in consequence of an order which was a nullity. The writ petition is accordingly allowed. No costs. Certified website copy of this order, if

applied for, shall be given to the parties.