

(1969) 09 CAL CK 0004

In the Calcutta High Court

Case No : Civil Rule No. 3571 of 1966 in Appeal Case No. 15/4 of 1965/66 in
C.R. Case No. 1741 of 1964

Bankim Chandra Mitra

APPELLANT

Vs

Divisional Forest Officer

RESPONDENT

Date of Decision : 02-09-1969

Acts Referred:

Constitution of India, 1950 — Article 227

West Bengal Public Lands (Eviction of Unauthorised Occupants) Act, 1962 — Section
2(8), 3, 3(1), 4

Citation : (1971) 1 ILR (Cal) 207

Hon'ble Judges : Laik, J

Bench : Single Bench

Advocate : Saroj Kr. Chakravarty, for the Appellant; P.K. Sen Gupta, Sr.
Government Advocate and J.K. Banerjee, for the Respondent

Judgement

Laik, J.—The Petitioner in this Rule is admittedly in occupation of a piece of land described as Fixed Demand Holding R156 since the year 1956 under a licence granted by the Divisional Forest Officer (referred to hereinafter as D.F.O.) Buxa Division, in the district 6f Jalpaiguri, with a permit for erecting a dwelling house on the land and also for carrying on a timber business. The licence originally was for a period of one year but renewable year by year. The rent per year was fixed at Rs. 23. The Petitioner thereafter constructed a house at a considerable cost and had been living there and carrying on business. The Petitioner paid rent thereafter in respect of the said land and the dwelling house at the rate of Rs. 23 per year upto the year 1962-63. It appears that the rent was thereafter increased at Rs. 72 per year. It might be mentioned that the Petitioner also deposited a sum as security. On or about December 4, 1963, the Petitioner was asked by the D.F.O. to pay the rent along with 25 % compensation ; in default, it was stated that the holding would be cancelled and that; the arrangement for realisation of arrears would be made. It appears that the Petitioner made a representation, not in the record, by his memo. No. 21 (B.M. 63/64) dated

December 8, 1963, to the D.F.O. possibly complaining about the increase of the rate of rent. The D.F.O. in his turn wrote back on December 18, 1963, that the Petitioner would "have to pay the rent including arrears as per assessment. Otherwise, action would be taken to realize the arrears if these are not cleared within 31.12 63." It further appears from the record that the D.F.O. wrote a letter to the Petitioner on April 17, 1964, in reply to the Petitioner's letter dated January 6, 1964, giving an account of the amount that is due by the Petitioner including 25 % compensation which alone gives a figure of Rs. 85-97 P. The total sum, that was shown due was Rs. 429-85 P., but the D.F.O. stated in the said letter (No. 3174/28-7) that a sum of Rs. 363 was lying in the account of the Petitioner and the same might "be adjusted against the fixed demand rent. But before adjustment please deposit the balance amount of Rs. 64-85 P. in cash to attached Forest; Rangar, Buxa Division, immediately." It further appears from the record that an application in the printed form was made for remission of rent on November 14, 1964. The said application was received on the very same date and a receipt is there in the record.

2. In this background just a week after, to be precise, on November 23, 1964, a notice was issued by Mr. N. Sarkar, Magistrate, First Class, Alipurduar, purported to be under Sub-section (I) of Section 3 of the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 (W.B. XIII of 1962) (hereinafter referred to as the Act) asking the Petitioner to appear before him on December 29, 1964, and to show cause why an order under Clause (a) of Sub-section (1) of Section 4 of the said Act shall not be made against him. The Petitioner showed cause. The Magistrate by his order dated July 3, 1965, held, inter alia, that the Petitioner cannot; be held to be an unauthorised occupant only because he failed to pay rent for the year 1963-64. In his opinion, the Act had no application in respect of the disputed holding." An appeal was taken against the said order of the Magistrate to the Collector, Jalpaiguri, giving rise to Appeal No. 15/4 of 1965-66. The Collector by his order dated August 12, 1966, set aside the order of the Magistrate and further directed that the Respondent before him, namely, the Petitioner in the Rule, would deliver vacant possession of the land in question within 15 days of the said order. Against the said order, the instant Rule was obtained, inter alia, under the provision of Article 227 of the Constitution.

3. Mr. Chakravarty, learned Advocate, in support of the Rule firstly submitted that the Petitioner cannot be regarded as an unauthorised occupant and it should be held that the Act has no application so far as the Petitioner is concerned in relation to his disputed holding. He also placed before me certain terms of the agreement particularly he relies on terms Nos. 6 and 11 which are stated below.

6. If so required by the Divisional Forest Officer the holder of this permit shall, on one month's notice being given, vacate the site covered by this permit and shall remove any building, erection, growing crop or other private property that he may have thereon within this period and shall not be entitled to receive any compensation on account of such removal or on account of any loss or damage

which he may sustain for such removal.

11. In the event of any breach of the conditions this permit shall be liable to termination and the holder thereof shall be liable to summary eviction from the depot area and any building, erection or growing crop on the site covered by this permit shall be liable to forfeitures to Government and may be disposed of as the Divisional Forest Officer may deem fit and proper in his sole discretion. An appeal against such summary eviction and forfeiture shall lie to the Conservator of Forests, West Bengal, whose decision thereon shall be final and legally binding. Any appeal so preferred shall be submitted within thirty days of the date of the order of eviction and forfeitures.

4. It is submitted that if there is any breach of the condition of the said terms procedure has been laid down in Clause 11 above. An appeal was also provided, which would lie to the Conservator of Forests, West Bengal. But he contended that the State Government or the D.F.O. or the Magistrate had no authority to avail of the provision of the Act and can turn the Petitioner out making him an unauthorised occupant under the said Act.

5. An affidavit-in-opposition has been used on behalf of the opposite party, namely, the Divisional Forest Officer. The facts are not disputed, but it was only reiterated that the Petitioner was an unauthorised occupant in respect of the public land in view of Section 2(8) of the Act which runs as follows:

"Unauthorised occupation", in relation to any public land, means the use or occupations by any person of the public land without authority in writing by or on behalf of the owner thereof and includes the continued use or occupation of any such land on the expiry or termination of such authority.

6. Mr. P. K. Sen Gupta, senior Government Pleader appearing on behalf of the Divisional Forest Officer, reiterated his submission as stated in the affidavit-in-opposition. According to him the moment the licence expires the licensee becomes an unauthorised occupant of the public land.

7. I have given careful consideration of the provisions of the Act as well as of the terms of agreement and the particular facts, appearing in this case. I am of the view that the submission of Mr. Sen Gupta is not correct, and the same cannot be accepted.

8. The meaning of "unauthorised occupation" in the said Act really refers to squatters or trespassers that is who simply squat or use or occupy the land without any authority in writing by or on behalf of the State Government or local authority and does not refer simply to those whose authority have expired or have been terminated. In the instant case, the occupation began admittedly as a licensee and on the basis of a written contract between the parties which continued for six to seven years and the Petitioner was allowed to raise the structures. It does not appear from the record as to how and on what provision of law the rate of rent was increased to Rs. 72, but the Forest Officer insisted on

payment of the said rent at that rate, including 25 % compensation, on which the Petitioner was attempting to reduce by his written application in prescribed form. During the pendency of the application, the Divisional Forest Officer applied the provision of the Act and wanted to turn him out. In my opinion, the action of the Forest Officer cannot be stated to be a straight or bona fide act. It also appears that a big portion of the amount was lying in deposit on behalf of the Petitioner. Further, there was also the security deposit. A sum of Rs. 64 and odd was only due. The Petitioner had the legitimate grievance about the increment of rent which he wanted to have it settled, but before settling the same, a notice purported to be u/s 3(1) was issued asking him to clear out. Mr. Sen Gupta no doubt stated that under Clause 11 of the agreement he is liable to summary eviction whether or not the parties to the contract can still avail of the same, I am not expressing any opinion, because all the materials are not here. But even then a proper notice would have to be served under the said para. 11. Thereafter, the Petitioner has got a right of appeal, if he is summarily evicted.

9. It is admitted that no notice was issued to the Petitioner terminating the licence or passing an order evicting the Petitioner in pursuance of the terms of the agreement.

10. The first Tribunal, namely the Magistrate, also held that the Act had no application in respect of the holding, which was allotted to the Petitioner, long before 1962 when the Act came into force.

11. The Collector in appeal, inter alia, found that the correct position of law, according to him, was that even before the Act came into force if anybody was found in unauthorised occupation of the Government land, action could be taken under the provision of the Act though it came into force later. The point is not free from doubt, but it is not necessary for me to express any opinion on this point, as I have already held that the Act has no application to the facts of this case.

12. For all these reasons, the order of Mr. J. K. Kohli, Collector, Jalpaiguri, is set aside and that of the Magistrate, First Class, Alipurduar, is restored and the Rule is made absolute. The Petitioner would get costs from the opposite party hearing fee being assessed at five gold mohurs.