
(2013) 10 CAL CK 0012
In the Calcutta High Court
Case No : C.O. No. 2170 of 2007

Basant Pran and Co.

APPELLANT

Vs

R.C. Walia and Another

RESPONDENT

Date of Decision : 09-10-2013

Acts Referred:

Citation : (2013) 4 CALLT 524 : (2014) 1 CHN 675 : (2014) 1 WBLR 692

Hon'ble Judges : B. Somadder, J

Bench : Single Bench

Advocate : Aninda Mitra, Mr. Samit Talukdar, Mr. Bhaskar Mukherjee and Ms. Debjani Ghosh, for the Appellant; B.K. Ghosal Mr. Somenath Bose, Priyabrata Mukherjee, Joydeep Sen and Mr. Shakeet Mohammed Akhter, for the Respondent

Final Decision : Allowed

Judgement

B. Somadder, J.—The instant revisional application has been filed under Article 227 of the Constitution of India by a registered partnership firm and the subject matter of challenge is a judgment and an order dated 24th May, 2007 passed by the learned Judge, 12th Bench, City Civil Court at Calcutta in a statutory appeal preferred by the petitioner against an order dated 21st April, 1999 passed by R.C. Walia, Estate Officer, Directorate of Estates, Ministry of Urban Affairs and Employment, Government of India, under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short, "the Act of 1971"). It is contended by the learned counsel for the petitioner that since 1948, the petitioner was a tenant of room No. 71 at premises Nos. 9, 10, 11 and 12, Old Court House Street, Kolkata - 700001, which belonged to F & C Osier (India) Limited and which is now in liquidation. Room No. 71 is on the southern side of the premises Nos. 9, 10, 11 and 12, Old Court House Street, Kolkata - 700001. After F & C Osier (India) Limited went into liquidation and premises Nos. 9, 10, 11 and 12, Old Court House Street, Kolkata - 700001 were put up for sale by the official liquidator, the said premises were acquired jointly by the President of India and Raneegunge Coal Association Limited, a private corporate body. It was

further contended that while northern portion of premises Nos. 9, 10, 11 and 12, Old Court House Street, Kolkata - 700001 was purchased by the Raneegunge Coal Association Limited, the southern portion was purchased by the President of India. As the President of India had purchased the southern portion of the premises Nos. 9, 10, 11 and 12, Old Court House Street, Kolkata - 700001, the petitioner paid rent for room No. 71 in favour of the President of India. By a letter dated 22nd July, 1963, the Deputy Director of Estates, Directorate of Estates, Ministry of Works, Housing and Rehabilitation, Government of India, called upon the petitioner to quit and vacate the room by the expiry of 31st August, 1963, on the ground that the room was urgently required by the Government of India for its own use for allotment to Central Government offices after re-modeling the building. In the said letter, it was mentioned that in the event possession was not made over within 31st August, 1963, steps would be taken under the Public Premises (Eviction of Unauthorised Occupants) Act, 1958.

2. According to the petitioner, the President of India entered into a registered Memorandum of Agreement on 1st June, 1965, which was registered on 24th June, 1965, with Raneegunge Coal Association Limited, wherein it was agreed, inter alia, that Raneegunge Coal Association Limited would convey and transfer in favour of the Government - the northern portion of the premises Nos. 9, 10, 11 and 12, Old Court House Street, Kolkata - 700001 and in turn, the Government would convey and transfer in favour of Raneegunge Coal Association Limited - the southern portion of premises Nos. 9, 10, 11 and 12, Old Court House Street, Kolkata - 700001, free from encumbrances and for the same, the Government would initiate necessary proceeding for obtaining vacant possession of the southern portion of premises Nos. 9, 10, 11 and 12, Old Court House Street, Kolkata - 700001.

3. After expiry of approximately 32 years from the date of the letter issued in July, 1963 calling upon the petitioner to vacate the room in its occupation, R.C. Walia, as the Estate Officer, again by a letter dated 18th May, 1995, again called upon the petitioner to forthwith vacate the public premises under its occupation. It is contended by the learned counsel for the petitioner that even after the two letters, the petitioner all along paid rent in respect of the premises under its occupation and such rent was accepted. It is further contended that on 12th October, 1998, a show cause notice was issued by the respondent No. 1 u/s 4(1) and section 4(2)(b)(ii) of the Act of 1971, to the petitioner as to why an order of eviction should not be passed against the petitioner. The writ petitioner showed cause. However, the respondent No. 1 proceeded to pass an order of eviction on 21st April, 1999, wherefrom an appeal was preferred before the statutory appellate authority, being the learned Judge, 12th Bench, City Civil Court at Calcutta, which ultimately led to the impugned judgment and order dated 24th May, 2007.

4. It was submitted by the learned counsel for the petitioner that although by a letter dated 22nd July, 1963 the tenancy of the room in question under the

occupation of the petitioner was terminated on the expiry of 31st August, 1963, yet, rent was regularly received from the petitioner even thereafter. Thus, on and from 1st September, 1963, a new monthly tenancy was created in respect of the premises in occupation of the petitioner. In this context, learned counsel has referred to section 116 of the Transfer of Property Act, 1882.

5. It was further submitted that it would be clear from the show cause notice issued u/s 4 of the Act of 1971, that the entire eviction proceeding has been initiated on the basis of the letter dated 22nd July, 1963, determining the tenancy of the room in question on the expiry of 31st August, 1963. As a new monthly tenancy has been created after 31st August, 1963, because of acceptance of rent from the petitioner even thereafter and since the monthly tenancy has not been determined, the proceeding under the Act of 1971 was premature. Without determining the monthly tenancy, which has been created after expiry of 31st August, 1963, no proceeding under the Act of 1971 was maintainable. Learned counsel for the petitioner, in this context had placed reliance on the definition of the term "unauthorised occupation" as appearing u/s 2(g) of the Act of 1971.

6. The alternative submission advanced by the learned counsel for the petitioner was that the tenancy having been terminated on the expiry of 31st August, 1963, the eviction proceeding under the Act of 1971, initiated by the show cause notice dated 12th October, 1998, u/s 4 of the Act of 1971, was clearly barred by limitation. Learned counsel for the petitioner referred to Article 67 of the Limitation Act, 1963. On the question of whether Limitation Act, 1963 applies in respect of proceedings under the Act of 1971, the learned counsel for the petitioner relied on a Division Bench decision rendered by the Supreme Court in *New Delhi Municipal Committee Vs. Kalu Ram and Another*, It was also submitted that the eviction proceeding initiated in 1998, on the basis of a show cause notice dated 12th October, 1998 u/s 4 of the Act of 1971, after termination of the tenancy on the expiry of 31st August, 1963, by a letter dated 22nd July, 1963 was clearly arbitrary and not maintainable. There was no existence of any reason as to why after lapse of 35 years, an eviction proceeding should be initiated on the basis of a letter dated 22nd July, 1963, terminating the tenancy on the expiry of the month of August, 1963. In this context, learned counsel for the petitioner relied on a decision rendered by this Court in the case of *Lee and Muihead (I) Pvt. Ltd. Vs. The Board of Trustees for The Port of Calcutta and Others*, . Learned counsel for the petitioner further relied on the Supreme Court decision rendered in the case of *Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay*, and submitted that it was held by the Supreme Court in that matter that public authorities should not act as private landlords and must act for a public purpose. He also relied on *Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others*, wherein vires of the Act of 1971 was challenged. He submitted that although the vires was upheld, it was, inter alia, on the ground that it was accepted that public bodies would act reasonably and not as a private landlord. Referring to the facts of the instant case once again, he submitted that

the motive to evict the petitioner from the southern portion of premises Nos. 9, 10, 11 and 12, Old Court House Street, Kolkata - 700001 was only to enable the Government to hand over the vacant portion of the entire southern portion of the premises Nos. 9, 10, 11 and 12, Old Court House Street, Kolkata - 700001 in favour of Raneegunge Coal Association Limited in terms of the registered Memorandum of Agreement. In view of the registered Memorandum of Agreement, it was also clear that the reason for terminating the tenancy on the expiry of the month of August, 1963, on the ground that the room was required by the Government of India for its own use, was not correct.

7. It was further submitted by the learned counsel for the petitioner that the Government cannot use the provisions of the Act of 1971 to earn profit. The proceeding before the Estate Officer, under Act of 1971, was a quasi judicial proceeding inasmuch as the order in the proceeding affects the vital interest of the petitioner. In this regard, reliance has been placed on *The Purtabpore Co., Ltd. Vs. Cane Commissioner of Bihar and Others*, *Radeshym Khare and Another Vs. The State of Madhya Pradesh and Others*, and *State of Himachal Pradesh Vs. Raja Mahendra Pal and Others*. It was submitted that inasmuch as the Estate Officer discharges quasi judicial functions, it was incumbent upon the said officer to give reasons for his decision. According to the learned counsel for the petitioner, section 5 of the Act of 1971 also clearly says that Estate Officer, on being satisfied that the public premises was in unauthorised occupation, will make an order of eviction for reasons to be recorded therein. However, in the facts and circumstances of the instant case, the order of the Estate Officer dated 21st April, 1999 was a cryptic order containing no reasons. In the judgment and order rendered by the statutory Appellate Authority, namely, the learned Judge, 12th Bench, City Civil Court, Calcutta, it was also held that the Estate Officer need not to give any reason. Thus, the order of the Estate Officer as well as the judgment and order passed by the Appellate Authority were both bad in law and were liable to be set aside.

8. Learned counsel for the petitioner finally referred to a resolution dated 30th May, 2002, issued by the Directorate of Estates, Ministry of Urban Development and Poverty Alleviation, wherein it has been stated that a public undertaking should immediately review all pending cases before the Estate Officer on the basis of the guidelines which said that provisions of the Act of 1971 should be used primarily to evict unauthorised occupants or sub-lessee or employees who have ceased to be in service and the provisions of the Act of 1971 should not be used with the motive or to secure vacant possession of the premises in order to accommodate own offices.

9. On the other hand, it was submitted on behalf of the Union of India that the petitioner cannot go beyond the pleadings while invoking the jurisdiction of this Court under Article 227 of the Constitution of India. According to the learned counsel for the Union of India, a new argument was sought to be advanced before this Court, which was neither taken in the reply to the quit notice and/or

the show cause notice. It was however submitted that the High Court cannot assume appellate powers. The Act of 1971 was a special Act which overrides the Transfer of Property Act as well as the West Bengal Premises Tenancy Act. The West Bengal Premises Tenancy Act, itself, excludes Government premises. The Limitation Act was not applicable since the Estate Officer was not a Court. It was specifically submitted that the Estate Officer may take steps for evicting an unauthorised occupier from the public premises at any point of time as no limitation has been prescribed in the special statute. The only point to be considered by the Estate Officer was whether or not the occupant concerned had any authority to stay in the premises in question. There are two classes of occupants in a public premises. One who is there with authority and the other, without any authority. Duties of the Estate Officer has been well defined in the provisions of the Act of 1971 and the Rules framed thereunder. In exercise of the powers vested u/s 3 of the Act of 1971, the Central Government may appoint a gazetted officer as the Estate Officer for the purpose of the Act and the same officer was empowered to issue notice to show cause against the order of eviction u/s 4 of the Act of 1971 and also to record final order u/s 5 of the said Act in accordance with the format prescribed in the Rules.

10. According to the learned counsel for the Union of India, Rules of natural justice supplement the law and does not supplant it. Sections 3, 4 and 5 of the Act of 1971 are exemptions to the rule of natural justice. The statute provides that a gazetted officer shall only be appointed as Estate Officer in respect of public premises with power to pass final order of eviction and it does not violate the doctrine, "no man can be a judge of his own cause". The said doctrine comes into play when it is shown that the officer concerned has personal bias or personal interest. No such case has been made out in the facts of the instant case. The genesis of the Act of 1971 pre-supposes that the premises must be a Government premises which is now in possession of an unauthorised occupier and the Government wants the occupier to be evicted. According to the learned counsel for the Union of India, section 2(g) of the Act of 1971 is an inclusive definition and consists of two separate limbs in relation to any person in occupation of a public premises without authority for such occupation. One limb is where a person is in occupation without any authority and the other, where such a person continues to be in occupation even when the authority, if any, has expired or has been determined for any reason whatsoever. It was also submitted by the learned counsel for the Union of India that the judgment annexed to the affidavit-in-opposition, rendered by a Division Bench of this Court on 28th May, 1982 in Civil Rule 158 of 1982, was binding.

11. He further submitted that under the Act of 1971, an authorized occupier has to pay rents, whereas an unauthorised occupier is liable to pay damages. Even if the concept of "holding over" within the meaning of section 116 of the Transfer of Property Act would have been applicable, no case has been made out obviously because the petitioner did not continue in possession with the consent of the landlord after determination of tenancy. The guidelines dated 30th May, 2002

relied on by the learned counsel for the petitioner were not applicable, inter alia, for the reason that they were not meant for Government premises. So far as the agreement between the President of India and Raneegunge Coal Association Limited, registered on 24th June, 1965 was concerned, it was submitted that the said agreement was not acted upon and was revoked on 20th July, 1980 and hence, it carries no effect.

12. After considering the submissions made by the learned counsel for the parties, it is now required to be examined as to whether the judgment and order dated 24th May, 2007, passed by the learned Judge, 12th Bench, City Civil Court, Calcutta, could be sustained in the eye of law or not. It appears that the learned Judge, while considering the provisions of sections 4 and 5 of the Act of 1971, has observed, inter alia, that section 4 provides for formation of opinion by the Estate Officer as to whether a prima facie case was made out or not. According to the learned Judge, if a prima facie case was made out, no reason was required to be given in the order passed by the Estate Officer about the requirement of public premises for the use of public. Relevant portion of the learned Judge's observation reads as follows:

Therefore, non-assignment of reasons of regional (reasonable) requirement in the judgment will not vitiate by the Judgment passed by the Estate Officer.

13. Learned Judge, thereafter, went on to observe that the Estate Officer thoroughly discussed and considered the evidence on record and also the reasons for eviction. He also observed that there was no violation of the principles of natural justice since after receiving the show cause notice u/s 4 of the Act of 1971, the appellant (being the petitioner herein) appeared and contested the proceeding. There was no provision under the Act of 1971 that the Estate Officer has to give reasons for the requirement of the respondent while deciding the question of eviction.

14. It may not be out of place at this juncture to set out the "reasons" provided by the Estate Officer, while issuing the eviction order u/s 5(1) of the Act of 1971.

Whereas, the monthly tenancy of the Public Premises viz. Room No. 71 at Old Court House Street, was determined by the Govt. and you have been occupying the above room unauthorisedly and without having any valid authority from the Government since 1.9.1963.

And whereas, you did not vacate the Public Premises even thereafter, as Show-Cause notice was served on you and all others on 12.10.98 pursuant (pursuant) to sub-section (1) of section (4) of the Public Premises Act, 1971.

And whereas, you filed written statement in response to the aforesaid show-cause notice dated 12.10.98 to justify your retention of public premises after the date of termination of monthly tenancy and therefore you were given sufficient opportunity of being heard in the matter and the personal hearing(s) fixed on 25.11.98 was attended by Shri Jashpal Singh Narula, one of the partner of M/s.

Basant Pran & Co. During the course of hearing, he stated that the said company is willing to become the Govt. tenant on payment of reasonable licence fee as may be fixed by the Govt. but the Govt. representative did not agree to this proposal as the same is not found acceptable and the public premises is required for the use of Govt. offices.

And whereas, on consideration of the facts relating to the case, I am satisfied that the said Public Premises are being used unauthorisedly from 1.9.1963. I being competent authority in exercise of powers conferred on me under sub-section (1) of section 5 of the aforesaid Act, hereby order you and all others who are in unauthorised occupation of the said public premises or any part thereof to quit, vacate and deliver vacant and peaceful possession of the said premises to the authority concerned within fifteen (15) days from the date of issue of this order and on failure to comply with this order within stipulated period as specified above, you and all others persons concerned will be evicted from the said public premises by the use of force if required and with the help of police.

15. The provisions of sub-section 1 of section 5 of the Act of 1971 is set out hereinbelow:-

If, after considering the cause, if any, shown by any person in pursuance of a notice u/s 4 and any evidence produced by him in support of the same and after personal hearing, if any, given under clause (b) of sub-section (2) of section 4, the estate officer is satisfied that the public premises are in unauthorised occupation, the estate officer may make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated, on such date as may be specified in the order, by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises.

16. A plain reading of the "reasons" provided by the Estate Officer in the order dated 21st April, 1999, reveals that for the purpose of coming to a finding that the petitioner was in unauthorized occupation, he relied on such reasons and was "satisfied" that the public premises in question was being used unauthorisedly from 1st September, 1963, "on consideration of the facts relating to the case." Section 5 of the Act of 1971, makes it mandatory on the part of an Estate Officer to record his reasons before making an order of eviction, directing that the public premises in question be vacated. Merely by stating that he has arrived satisfaction "on consideration of the facts relating to the case", cannot be any reason for eviction, unless the reasons shown are cogent and palpable. It is noticed that the Estate Officer - in effect - has given no reasons, whatsoever, other than merely stating to the effect that the monthly tenancy of the public premises in question was determined by the Government and the room was unauthorisedly occupied since 1st September, 1963. Such reasoning is nebulous and cannot fit into the facts relating to the case. The learned Judge, while sitting in appeal over the order of the Estate Officer, did not even take into consideration the statutory requirements u/s 5 of the Act of 1971, which casts an

obligation upon the Estate Officer to give reasons, which are required to be recorded in his order. The learned Judge has even gone a step further by observing that if a prima facie case was made out, no reason was required to be given in the order passed by the Estate Officer about the requirements of the public premises for the use of public. It is a complete misunderstanding of the true scope, purport and effect of the provision of section 5(1) of the Act of 1971, and is a concept alien to the law as laid by the Supreme Court on the subject.

17. In *Dwarkadas Marfatia & Sons (supra)*, it has been held, inter alia, in paragraph 27:-

.....every activity of a public authority especially in the background of the assumption on which such authority enjoys immunity from the rigours of the Rent Act, must be informed by reason and guided by the public interest. All exercise of discretion or power by public authorities as the respondent, in respect of dealing with tenants in respect of which they have been treated separately and distinctly from other landlords on the assumption that they would not act as private landlords, must be judged by that standard.

18. The above observation of the Supreme Court was referred to and relied on in its latter decision rendered in *Asoka Marketing Ltd.'s case (supra)*. This Court, in *Lee and Muihead (I) Pvt. Ltd. (supra)*, while relying on *Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*, , has observed, inter alia, in paragraph 10 of its judgment, as follows:-

In my opinion, Mr. Roy correctly submits on the basis of the aforesaid authorities that by reason only of the existence of a contract between the State or other public authority and the affected party, the State is not relieved from all public law duties. Even in case of contracts terminable at will, the State is not to effect such termination whimsically and without any cause. Unless some reason exists, and can be seen to exist, from the records or affidavits in the proceeding, an action by a State would be of the category of unreasonable action.

19. The unreported Division judgment of this Court referred to and relied on by the Union of India, which was rendered in Civil Rule 158 of 1982 (*Union of India v. M/s. Manton Company Limited*) on 28th May, 1982, is not an authority for the proposition that no reasons are required to be supplied by the Estate Officer while passing an order of eviction u/s 5(1) of the Act of 1971. The said judgment has no manner of application in the facts and circumstances of the instant case.

20. As observed hereinbefore, the reason for issuing the order of eviction by the Estate Officer is neither cogent nor palpable. At least, the same is not manifest from a plain reading of the order of eviction dated 21st April, 1999, passed by the Estate Officer. The observations of the learned Judge, 12th Bench, City Civil Court, Calcutta, in the impugned judgment and order dated 24th May, 2007, to the effect that no reason was required to be given by the Estate Officer while passing an order of eviction if a prima facie case was made out, is not a correct appreciation of the law as provided u/s 5(1) of the Act of 1971, as has been

discussed earlier.

21. For reasons stated above, the impugned order of the learned Judge, 12th Bench, City Civil Court, Calcutta dated 24th May, 2007, as well as the order of eviction dated 21st April, 1999, passed by R.C. Walia, Estate Officer, are liable to be set aside and are accordingly set aside. The entire matter will now be heard afresh by the present Estate Officer, in accordance with law. All points which have been raised by the petitioner during the course of hearing of the instant proceeding and which have not been decided by this Court, are kept open to be agitated at the time of de novo adjudication by the Estate Officer. The application stands disposed of accordingly.

Urgent photostat certified copy of this judgment and order, if applied for, be supplied to the parties on priority basis.