
(2007) 08 CAL CK 0005
In the Calcutta High Court
Case No : F.M.A. No. 792 of 2007

Bholanath Mondal and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 02-08-2007

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2008) 1 CHN 219

Hon'ble Judges : Rudrendra Nath Banerjee, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Dipak Kumar Som and Laxminath Bhattacharya, for the Appellant; Soumitra Desgupta and W.A. Mondal and Atarup Banerjee, for Respondent Nos. 9 and 10, for the Respondent

Final Decision : Allowed

Judgement

Bhaskar Bhattacharya, J.—This mandamus appeal is at the instance of unsuccessful writ petitioners and is directed against the order dated December 12, 2006 passed by a learned Single Judge of this Court by which His Lordship dismissed the writ application on the ground that serious disputed questions of fact were involved therein which could not be effectively decided in the proceedings under Article 226 of the Constitution of India on the basis of affidavits.

2. The writ petitioners, two in number, approached this Court under Article 226 of the Constitution of India thereby praying for the following relief:

a) To issue a writ of and/or writs in the nature of mandamus commanding the respondent No. 6 to act in accordance with the law and to quash and/or rescind the impugned notice issued on 2.12.02 being Annexure "P-9" of this petition.

b) To issue a writ of and/or writs in the nature of mandamus commanding the respondent No. 6 not to give any effect or further effect to the impugned notice being Annexure "P-9" of this petitioner issued by him on 2.12.02.

c) To issue a writ of in the nature of mandamus commanding the respondent Nos. 6, 9 and 10 to give the petitioner all sort of assistance including the financial help for repairing the said rooms and carrying their business in the aforesaid rooms.

d) To issue a writ of in the nature of mandamus commanding the respondent Nos. 6, 9 and 10 to return all the articles lying in the petitioners' shop-room which were looted at the time of demolishing the petitioners' said shop on the basis of the notice dated 2.12.02 issued by the respondent No. 6 being annexure "P-7" of this petition.

e) To issue a writ of in the nature of prohibition, restraining the respondent No. 6 and respondent Nos. 9 and 10 and their men and agents from further demolishing the petitioners said tenanted shop-rooms.

f) To issue a writ of or in the nature of certiorari by calling upon the respondents to transmit and certify the records of the proceeding before the learned Registrar, Appellate side of this Hon'ble Court so that conscionable justice may be done by quashing the same.

g) To issue rule NISI in terms of Prayers (a), (b), (c), (d), (e), (f) and 2(g) above and if the respondents failed to show cause or sufficient cause, to make the rule absolute;

h) To pass an order of injunction restraining the respondents particularly the respondent Nos. 5, 9 and 10 from further demolishing the petitioners said shop-rooms by staying the operation mentioned the notice dated 2.12.02 issued by the respondent No. 6 being Annexure "P-9" to this petition.

i) To pass an ad interim order in terms of prayers (e)(d) and (i) supra till the disposal of the writ application.

j) To pass an ad interim order directing the respondent Nos. 6, 9 and 10 to return all the articles which were removed at the time of demolition of the petitioners' shop-rooms and restraining their from further remain of the Articles of the said business.

k) To pass an ad interim order directing the respondents authorities to restore the possession of the said shop-rooms until disposal of this application.

l) To pass such further or other order or orders and/or direction or directions as to your Lordships may deem fit and proper.

m) Costs and incidental to this applications be paid by the respondents.

3. The case made out by the writ petitioners may be precised thus:

(i) The writ petitioner No. 1 was a tenant in respect of two rooms and the writ petitioner No. 2 was also a tenant in respect of other two rooms situated at the crossing of Mathurapur Station Road and Rajapur Road on Mouza Uttar Durgapur, plot No. 168 (R.S.) Khatian No. 318, within the jurisdiction of the Mathurapur

Police Station under the landlords, namely, Radha Kanta Chowdhury, Sudhansu Kumar Chowdhury and Saroj Kumar Chowdhury.

(ii) Originally, the said property belonged to one Hrishikesh Banerjee and at that point of time, the plot number of the said land was 168 and the Khatian No. 318 under Uttar Durgapur Mouza and the said Hrishikesh Banerjee constructed several rooms on the said plot for commercial purposes.

(iii) Hrishikesh Banerjee sold the property to Radha Kanta Chowdhury, Sudhansu Kumar Chowdhury and Saroj Kumar Chowdhury by a registered deed of sale dated June 20, 1952 and from the said date, the aforesaid three persons became the absolute owners of the plot along with rooms situated on the said plot and their names were recorded in the R.S. record-of-rights.

(iv) The father of the writ petitioner No. 1 had taken two rooms from Radha Kanta Chowdhury and his two brothers as tenant in the year 1960 for carrying on business and since then the father of the writ petitioner No. 1 had been occupying the said rooms and carrying on his business by paying rent till his death. After the demise of father of the writ petitioner No. 1, he had been carrying on his business in those rooms with the consent of the previous landlords.

(v) The writ petitioner No. 2 had similarly taken the other two rooms from Radha Kanta Chowdhury and his brothers as a tenant in the year 1970 for carrying on business of readymade garments and he took his trade licence for his business carried on in those rooms and since then he had been occupying the rooms by regularly paying rent to the landlords.

(vi) Radha Kanta Chowdhury previously issued written rent receipt to the father of the writ petitioner No. 1 and to the writ petitioner No. 2 for payment of rent but from the year 1999, he refused to issue the rent receipts and thereafter, the writ petitioner No. 2 and the father of the writ petitioner No. 1 had been paying rent by money order and those rents were accepted; but from the year previous to the presentation of the writ application, he refused to accept the rent through money order. But in spite of the refusal, the writ petitioners had been regularly sending rent through money orders.

(vii) On 14th December, 2002, at about 11.00 p.m. when the petitioners went back to their houses after closing the shop-rooms, some antisocial persons attacked their tenanted rooms with deadly weapons and after breaking the padlocks of those rooms, they entered therein and robbed all articles of their shop-rooms and removed boxes containing cash, rent receipts, licenses and different valuable documents and demolished part of the wall and roof of those rooms and also the door, window and Almirah etc.

(viii) At the time of such misdeed, the writ petitioners informed the Mathurapur Police Station over telephone but the officers of Mathurapur Police Station came after two hours and arrested five persons but could not recover any of the

articles, which were robbed. Those accused persons in course of two hours partly demolished those rooms and removed all articles and all valuable things. When the petitioners were going to the Mathurapur Police Station for lodging their complaint, they saw that all the arrested persons were released from the said police station.

(ix) Due to inaction on the part of the Officer-in-Charge of Mathurapur Police Station, the respondent No. 8, in spite of lodging written complaints, the writ petitioners made application before the Sub-Divisional Police Officer, Diamond Harbour and the Sub-Divisional Officer, Diamond Harbour on 19th December, 2002. Again, on 21st December, 2002 the writ petitioners lodged a complaint before Mathurapur Police Station praying for necessary police help and for taking action against the anti-social persons on the basis of their complaint earlier made.

(x) Being dissatisfied with the inaction on the part of officers of the Mathurapur Police Station, the writ petitioners, in the past, moved an application under Article 226 of the Constitution of India before this Court being W.P. No. 1732 (W) of 2002 and by order dated December 24, 2002 Maharaj Sinha, J. passed an interim order in terms of prayer (e) of the writ application for a period of five weeks from the date of passing of the order in the presence of the learned advocate appearing on behalf of the respondents and His Lordship directed the Officer-in-Charge Mathurapur Police Station to see that peace and tranquillity were maintained in respect of the property. The said order dated 24th December, 2002 was communicated to the Officer-in-charge, Mathurapur Police Station and on 26th December, 2002, the same was communicated to the S.D.O., Diamond Harbour but in spite of such order, the rooms were again demolished with full knowledge of the said order. The Officer-in-Charge, Mathurapur Police Station did not take any step. Subsequently, the interim order was further extended by order dated 20th February, 2003.

(xi) In the said writ application, the respondent Nos. 9 and 10 filed an application being CAN No. 558 of 2003 for addition of party on the allegation that they had purchased the property from Radha Kanta Chowdhury and other owners and that the Pradhan of Debipur Gram Panchayat, the respondent No. 6, served a notice upon the respondent No. 9 to meet him for discussion about the condition of the premises of the shop-rooms and subsequently, the shop-rooms were demolished pursuant to the direction of the Panchayat Pradhan.

(xii) After receiving the copy of the said application, the writ petitioners made application before the respondent No. 7, the Upa-Pradhan of Gram Panchayat for repairing the shop-room and for giving permission for carrying on their business as a tenant in the shop-rooms and also requested him for return of all the articles which were removed at the time of demolition of those rooms. The writ petitioners, on 22nd March, 2003, also requested the respondent Nos. 9 and 10 for repairing of the shop-rooms and for returning the articles which were removed at the time of demolition.

(xiii) On April 11, 2003, the respondent Nos. 9 and 10 along with some anti-social persons again demolished the rest portion of the building on the basis of notice dated 2nd December, 2002 which was issued by the Pradhan of Debipur Gram Panchayat.

(xiv) Therefore, the respondent Nos. 9 and 10 with the help of the local Panchayat Authority illegally demolished the tenanted accommodation of the writ petitioners, although, the writ petitioners could not be evicted from the property except by due process of law.

4. The writ application was contested by the respondent Nos. 9 and 10 thereby denying the material allegations made in the plaint and their defence was that the writ petitioner No. 2 or the father of the writ petitioner No. 1 were tenants at one point of time but they had surrendered their tenancy right before the previous landlords and at the time of demolition, those rooms were lying vacant. They further stated that the property was demolished pursuant to the order passed by the Pradhan of the Panchayat and the writ petitioners having no right over the property were not entitled to maintain the application under Article 226 of the Constitution of India. The writ application was also opposed by the respondent No. 8, the Officer-in-Charge of Mathurapur Police Station, thereby supporting the claim of the respondent Nos. 9 and 10.

5. The learned Single Judge, as pointed out earlier, by the order impugned herein, has dismissed the application on the ground that disputed questions of fact as to whether the writ petitioners were in possession of the property at the time of demolition being involved, the same could not be decided on the basis of documentary evidence alone and therefore, His Lordship was of the view that the writ application should be dismissed on that ground.

Being dissatisfied, the writ petitioners have come up with the present mandamus appeal.

6. Mr. Som, the learned senior Advocate appearing on behalf of the appellants has severely criticized the order passed by the learned Single Judge by pointing out that in the case before us, the Panchayat Authority having illegally directed demolition of the building in question, there was no impediment of a Writ Court in declaring such illegal action as ultra vires the provision of Panchayat Act. Mr. Som contends that under the West Bengal Panchayat Act, no power has been given to the Panchayat to pass a direction upon the owner of a building to demolish a dilapidated building or to demolish the same by itself. Such being the position, according to Mr. Som, the Panchayat Authority acted illegally in asking the owner of the building to demolish the building and that too, without giving any notice to the occupants of the said building. Secondly, Mr. Som contends that it will appear from the materials on record that the previous owners of the building transferred the building on 17th July, 2002 in favour of the present landlords and in the deed of transfer itself, it was recorded that the entire property was in possession of the tenants. Mr. Som points out that his clients

have even sent rent after the date of transfer, namely, 17th July, 2002 to the previous owners which they refused. Mr. Som submits that the landlords failed to disclose the names of the tenants who were in possession at the time of purchase of the property and in such a case, there was no doubt that the appellants in possession of the property at the relevant point of time. The licence issued by the textile authority also indicates that the appellants were running their business from the property in question. Mr. Som, therefore, prays for setting aside the order passed by the learned Single Judge and for passing a direction for restoration of the possession in favour of his clients and rebuilding the same.

7. Mr. Dasgupta, the learned Advocate appearing on behalf of the State-respondent did not dispute the fact that under the provisions of West Bengal Panchayat Act, there is no power vested with the Panchayat Authority to direct the owner of the building to demolish the property on the ground that the building is in dilapidated condition. Mr. Dasgupta, however, contends that in the facts of the present case, the learned Single Judge rightly decided not to adjudicate the disputed questions of fact whether the appellants were in possession of the property. He, therefore, prays for dismissal of the appeal.

8. Mr. Banerjee, the learned Advocate appearing on behalf of the respondent Nos. 9 and 10, however, vehemently opposed all the contentions advanced by Mr. Som and has contended that the questions whether the appellants were in possession of the property and whether they are entitled to restoration of possession can only be decided by a Civil Court. According to Mr. Banerjee, the writ petitioner No. 1 was not a tenant though his father was a tenant of the previous owners of the building and he never approached for rent to the then landlord or the respondent Nos. 9 and 10. Mr. Banerjee further submits that the writ petitioner No. 2 had relied upon one trade licence which had been renewed prior to the purchase of the property by the respondent Nos. 9 and 10 and the same was renewed by the textile department. Mr. Banerjee submits that the trade licence ought to have been obtained from the Pradhan of the concerned Panchayat and the same had not been annexed to the writ application. Mr. Banerjee further submits that the appellants could not produce any document in respect of offering of rent to his clients after 17th July, 2002.

9. Therefore, the first question that arises for determination in this mandamus appeal is whether the Panchayat Authority had the right to pass an order of demolition or to direct the landlord to demolish the building and that top, without giving any notice to the actual occupiers thereof.

10. After going through the provisions contained in the West Bengal Panchayat Act we find that in the Act no authority has been given to any Panchayat Authority to decide whether a building is in a dilapidated condition or to pass any direction upon the owner of a building to demolish the building. Therefore, on the facts of it, the notice given by the Pradhan of the Panchayat to the landlords was without jurisdiction and being armed with such an illegal notice, the landlords

had demolished the building.

The second question is whether, the appellants were in possession of the property as tenants at the relevant point of time.

11. The learned Advocate appearing on behalf of the respondents tried to convince us that locus standi of the appellants to approach the Writ Court depended on the fact whether they were tenants in respect of the property and were in actual possession. Mr. Banerjee contends that no such evidence has been produced before the Court justifying their possession at the time of demolition of the building and therefore, even if the landlords had demolished their own building, for that reason, the appellants cannot complain before this Court.

12. In order to appreciate whether the appellants were in possession of the property as tenants, we have gone through the materials on record. It is now settled law that an alternative remedy by way of a suit is not an absolute bar in entertaining a writ application, if it appears that a citizen has been deprived of his legal right by the illegal act on the part of the State. In the case before us, if the landlords of their own dispossessed the appellants, a Writ Court would not entertain such disputes and ordinarily, would ask the tenant to approach the Civil Court for the establishment of his right. But in the case before us, the landlords had not dispossessed them of their own, but being armed with an invalid order of the Panchayat Authority. Therefore, the basis of the action by which the rights of the appellants have been invaded is an illegal order passed by the Panchayat Authority and in such a case, a Writ Court can definitely interfere provided it is established that from the materials on record that the writ petitioners had the subsisting right as tenants in respect of the property.

13. We have already indicated that the present owners are the transferees from the previous owners and by virtue of a deed dated 17th July, 2002 they have purchased the property. We have already pointed out that in the said deed, it was specifically stated that the property was fully occupied by the tenants. It appears from the affidavit given by the present landlords that according to them, the father of the writ petitioner No. 1 gave up the tenancy 2-3 years before the death of his father. Therefore, that was sometime in the year 2000. In the next paragraph it is asserted that the father of the writ petitioner No. 1 stopped payment of rent during his lifetime and illegally inducted one Subhas Mistry in the rooms as sub-tenant and the said Subhas Mistry consented to the demolition. Similarly, according to the owners, the writ petitioner No. 2 vacated the property in 1404 B.S., which is equivalent to 1997 A.D. We, however, find that in the case before us, there are materials showing that even after the aforesaid periods, rents were tendered to the previous landlords. Moreover, once it is established from the admitted document of transfer that the entire property was in occupation of the tenants on 17th July, 2002, it was the duty of the owners to produce documents showing who those tenants were and those facts could be easily proved by the production of the counterfoils of the rent receipts. The present owners have not produced such document. It is not the case of the

present owners that the appellants surrendered their tenancy after their purchase. In such a situation, there is no difficulty in arriving at the conclusion from the documents on record that the appellants were tenants in respect of the property. Once it is admitted that the writ petitioner No. 2 as well as the father of the writ petitioner No. 1 was a tenant at one point of time, according to law, the same is heritable and continuing unless there has been specific surrender by the tenant or the heirs of the deceased tenant as the case may be. In the case before us, it was the duty of the owners to show that after the death of the father of the writ petitioner No. 1, the tenancy was surrendered by his heirs or that the writ petitioner No. 2 himself surrendered the tenancy. Even if we accept the case of the owners that the father of the appellants illegally sublet the property to one Subhas Mistry, such allegation demolishes the case of the owners that he surrendered tenancy two years prior to his death and in such circumstances, the consent of the alleged sub-tenant to demolition is immaterial and is not binding upon the heirs of the real tenant. The fact that Subhas Mistry allegedly gave consent to demolition itself suggests that the tenancy of the father of the writ petitioner No. 1 was continuing and in such situation, the consent of the alleged sub-tenant was insignificant, more so, when the tenancy is governed by the Transfer of Property Act where the law does not prohibit creation of sub-tenancy but the parties by agreement may prohibit creation of sub-tenancy. No such terms of prohibition of sub-tenancy is also produced by the owners. The creation of sub-tenancy has however been denied by the appellants.

14. On consideration of the entire materials on record, we, therefore, find that it has been well-established that the predecessor-in-interest of the writ petitioner No. 1 was a tenant and after his death, the tenancy is continuing. Similarly, it is also proved that the writ petitioner No. 2 was the tenant in respect of the property and no material has been placed showing that there was surrender of such tenancy on his part. It was for the landlords to show the surrender of the tenancy but no evidence of surrender having been produced, it was the duty of the learned Single Judge to hold that the tenancy was continuing when the money order receipts show that the rents were sent to the previous owners even after the period of surrender alleged by the present owners. If in spite of the alleged mutual surrender of tenancy, a tenant sends rent by money order, it is reasonably expected that the landlord will in writing protest against such act of the tenant. No such letter sent by the owner has been produced to substantiate such defence of surrender. The specific defence of surrender taken by the owners having been falsified by the money order receipts even after the said period, the tenancy is deemed to be continuing even if the landlord has not accepted rent. The property being situated in Panchayat area, the West Bengal Premises Tenancy Act has no application and therefore, there was no scope of depositing the rent before the Rent Controller.

15. The question whether a disputed question of fact can be decided in a writ application has been recently answered the Apex Court in the case of ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India

Ltd. and Others, in the following ways:

A perusal of this judgment though shows that a writ petition involving serious disputed questions of facts which requires consideration of evidence which is not on record, will not normally be entertained by a Court in the exercise of its jurisdiction under Article 226 of the Constitution of India. This decision again, in our opinion, does not lay down an absolute rule that in all cases involving disputed questions of fact the parties should be relegated to a civil suit. In this view of ours, we are supported by a judgment of this Court in the case of Smt. Gunwant Kaur and Others Vs. Municipal Committee, Bhatinda and Others, where dealing with such a situation of disputed questions of fact in a writ petition this Court held: (SCC p. 774, paras 14-16)

14. The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit-in-reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons.

15. From the averments made in the petition filed by the appellants it is clear that in proof of a large number of allegations the appellants relied upon documentary evidence and the only matter in respect of which conflict, of facts may possibly arise related to the due publication of the notification u/s 4 by the Collector.

16. In the present case, in our judgment, the High Court was not justified in dismissing the petition on the ground that it will not determine disputed question of fact. The High Court has jurisdiction to determine questions of fact, even if they are in dispute and the present, in our judgment, is a case in which in the interests of both the parties the High Court should have entertained the petition and called for an affidavit-in-reply from the respondents, and should have proceeded to try the petition instead of relegating the appellants to a separate suit.

16. The above judgment of Gunwant Kaur finds support from another judgment of this Court in the case of Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, wherein this Court held: (SCC p. 587, para 13)

Merely because a question of fact is raised, the High Court will not be justified in requiring the party to seek relief by the somewhat lengthy, dilatory and expensive process by a civil suit against a public body. The questions of fact raised by the petition in this case are elementary.

18. This observation of the Court was made while negating a contention advanced on behalf of the respondent Municipality which contended that the petition filed by the appellant company therein apparently raised questions of fact which argument of the Municipality was accepted by the High Court holding that such disputed questions of fact cannot be tried in the exercise of the extraordinary jurisdiction under Article 226 of the Constitution. But this Court held otherwise.

19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the Court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of Gunwant Kaur this Court even went to the extent of holding that in a writ petition, if the facts require, even oral evidence can be taken. This clearly shows that in an appropriate case, the Writ Court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and/or involves some disputed questions of fact.

17. We, therefore, find that the learned Single Judge erred in law in holding that the dispute involved is of such nature that it cannot be decided in the writ application.

18. We have already pointed out that the basis of the eviction was an invalid notice issued by the Panchayat Authority; therefore, a State within the meaning of Article 12 of the Constitution of India is involved in the act of illegal demolition. Similarly, the landlords being armed with such illegal order having demolished the building, it is for them to show that the tenancies of the appellants were really surrendered.

19. We find that the documentary evidence produced before the Writ Court was sufficient to conclude that there was no surrender of the tenancy and the plea of surrender, taken by the owners from a particular time, has been found to be false and the further case of the owners that the father of the writ petitioner No. 1 created sub-tenancy and the sub-tenant consented to demolition itself, even if it is accepted for the sake of argument, suggests that the tenancy was continuing.

20. The learned Advocate for the respondents Nos. 9 and 10 has informed this

Court that his clients have constructed two rooms on a portion of the disputed plot after the demolition of the old building and they are in actual possession of those two rooms. The learned Advocate for the appellants has, however after taking instruction from his clients, stated that total four rooms have been constructed over the portions of the property in question. In view of such conflicting claims, we direct the respondent Nos. 9 and 10 to hand over one room each to the appellants for the time being which have been admittedly constructed by them and which are in their possession. The appellants would go on paying the usual rent to the respondents within 15th of each month after getting possession thereof. We appoint Mr. Dipak Chowdhury, a learned Advocate of this Court, as Special Officer of this Court to ascertain if there are two additional rooms on the land in question. If there are total four rooms as asserted by the appellants, the additional rooms would be divided between the appellants as they were tenants in respect of two rooms each.

21. We, therefore, allow this mandamus appeal, set aside the order passed by the learned Single Judge and further direct the landlords as well as the then Pradhan of the Panchayat to compensate the appellants by paying sum of Rs. 30,000/- to each of the appellants. Therefore, each of the appellants will get Rs. 60,000/- to be borne equally by the landlords and the Pradhan of the Panchayat. This direction for payment will not stand in the way of the appellants in filing civil suits against the landlords for recovering actual damages caused to them but if the actual damages are found to be in excess of the said sum, the Civil Court will adjust the amount paid pursuant to this order.

22. The landlords are also restrained from inducting any tenant in the property after further development, if any, over the plot in question before giving possession of the two rooms to each of the appellants. The appellants would be entitled to possess the tenanted rooms so long they are not dispossessed by due process of law after the termination of their tenancy in accordance with law and the respondent Nos. 9 and 10 are restrained from bringing any suit eviction of the appellants so long they are not put into possession of the two rooms each.

23. This appeal is, thus, allowed to the extent indicated above with costs, which we assess at Rs. 20,000/- to be paid by the respondent Nos. 9 and 10 to each of the appellants. The learned Special Officer is directed to file report as to the number of rooms on the disputed land within a week from today. The remuneration of the Special Officer is fixed at 300 Gms. to be borne by the appellants and the respondent Nos. 9 and 10 equally for the time being. However, the final liability will be decided on the basis of the report that will be submitted. In other words, the party whose assertions as regards the number of rooms would be found to be false would bear the entire burden of payment of the fees of the Special Officer.

R.N. Banerjee, J.

24. I agree.