

(1971) 08 CAL CK 0012
In the Calcutta High Court
Case No : Civil Order No. 2079 (w) of 1971

Dhanomoy Thapa	Vs	APPELLANT
The State of West Bengal and Others		RESPONDENT

Date of Decision : 06-08-1971

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)
West Bengal Public Lands (Eviction of Unauthorised Occupants) Act, 1962 — Section 4

Citation : AIR 1972 Cal 1 : (1972) 1 CALLT 283

Hon'ble Judges : Anil Kumar Sen, J

Bench : Single Bench

Advocate : Kashi Kanta Maitra and Ashis Kumar Sanyal, for the Appellant; B.S. Bagchi and Saktinath Mukherjee for Respondents Nos. 7, 8 and 9, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar Sen, J.—This writ petition is being heard on notice to the respondents and on contest by them. In this application the petitioner is disputing the validity of a proceeding under the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 and an order dated July 5, 1971 passed by the Appellate Tribunal u/s 7 of the Act.

2. Facts are shortly as follows: On an application by the Commissioner of Police, Calcutta a proceeding u/s 3 of the West Bengal Public Land (Eviction of Unauthorised Occupants) Act 1962 (hereinafter referred to as the said Act) was initiated against the present petitioner. The dispute relates to plot No. 54 in the Cossipore/Chitpore open space at Talla Park since renumbered as No. 6, Talla Park Avenue. There is no dispute that this plot which belongs to respondents Nos. 7 to 9 is still under requisition by State of West Bengal. In the said proceeding u/s 3, on a due notice issued to the petitioner the collector held the necessary adjudication on June 11, 1964 passed an order u/s 4 (1) (a) directing petitioner's eviction therefrom. The petitioner preferred an appeal being Appeal

Case No. 39 of 1964-65 before the Commissioner. Presidency Division. Although she succeeded at first and the appellate tribunal by an order dated February 8, 1965 set aside the order of the Collector, on review by an order dated July 31, 1965 the appellate tribunal confirmed the order of eviction passed by the collector. The petitioner moved this court under Article 226 of the Constitution and my learned brother P.K. Banerjee, J. by an order dated June 26, 1970 set aside the appellate order and directed rehearing of the appeal. The appeal being so reheard has again been dismissed by the impugned order dated July 5, 1971 and the Commissioner has now re-affirmed the original order of eviction passed by the Collector. It is this proceeding and the order which are the subject-matter of challenge in this writ petition.

3. The application is being contested both by the State as also by respondent Nos. 7-9 who were allowed to be made parties to the proceeding by the lower Appellate Tribunal.

4. The petitioner, it should be made clear in the very beginning, is not claiming any title to possess the plot and that she is in unauthorised occupation, is not seriously disputed by her. Two points have been pressed by Mr. Maitra in support of the application at the hearing. In the first place it has been contended by Mr. Maitra that the land under requisition being sought to be de-requisitioned in favour of the respondent Nos. 7 to 9 and for that purpose the present petitioner is being evicted from the said land but all these are being done without any public purpose. In particular, Mr. Maitra contends that there is no public purpose behind the present proceeding for eviction. Secondly, Mr. Maitra contends that the order should be struck down as it has been passed under the provisions of a statute which are void under the Constitution, The provisions are unconstitutional because they are violative of Article 14 and Article 19(1)(f) of the Constitution.

5. So far as the first point raised by Mr. Maitra is concerned it does not appear to me that such a contention is at all well conceived. The statute lays down no requirement that there should be a public purpose for initiating proceeding under the provisions thereof except evicting people in unauthorised occupation of public lands. Furthermore I am unable to appreciate how a person in unauthorised occupation can seek to protect such possession against eviction under the process of law by pleading that he cannot be evicted except for a public purpose. It is not a case of requisition at all. Mr. Maitra may be right that the ultimate aim of the government is to de-requisition the plot but there is nothing irregular in it and in my view it would be just and proper for the State Government to derequisition a plot and hand it back to the real owners if the purpose for its requisition has since ceased to exist and the land is being enjoyed by a person in unauthorised occupation. This being the position the first contention raised by Mr. Maitra is overruled.

6. The second point raised by Mr. Maitra is of some importance. It relates to the constitutional validity of the provisions of Sections 3 and 4 of the said Act. According to Mr. Maitra these provisions are unconstitutional from two aspects.

Firstly, it is so because it violates Article 14 and secondly because it violates Article 19(1)(f) of the Constitution. Further according to him these two provisions are discriminatory in so far as they provide for a supplementary procedure for eviction of persons from public lands which are far more prejudicial and drastic in nature than the ordinary procedure by way of a suit and the statute has left it to the discretion of the collector to decide whether he would adopt such a drastic procedure laid down in the Act in a particular case or not. Mr. Maitra also contends that the impugned provisions provide for unguided powers for collectors under the Act to evict people from properties solely on their subjective satisfaction and as such are not only discriminatory but impose unreasonable restriction on the fundamental right of citizens to hold property.

7. Giving anxious consideration to these contentions I find little substance in either of the two contentions of Mr. Maitra. To support the contention to the effect that the provisions are discriminatory Mr. Maitra naturally placed great reliance on the decision of the Supreme Court in the case of Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another, . But there the Supreme Court was considering the provisions of Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1951 which are materially different from the statute now under consideration. There the Supreme Court found that the statute not only provided supplementary remedy more drastic in nature than the ordinary available remedy by way of a suit but also found that the statute had left it to the absolute discretion of the collector to adopt one out of the two remedies. The Supreme Court observed:

"Section 5 does not lay down any guiding principle or policy under which the Collector has to decide in which cases he should follow one or the other procedure and, therefore, the choice is entirely left to his arbitrary will."

This court in the case of Rajendra Prosad Singh Vs. Union of India (UOI) and Others, adopted the same reasons in declaring Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 to be void being violative of Article 14. The relevant provisions of both the Central and the Punjab Act are on same terms and as pointed out by the Supreme Court, Section 5 left the matter entirely to the absolute discretion of the competent authority but provided no guidance.

8. But in the statute now under consideration by me the provisions are materially different. Here the adjudication is by an independent authority. u/s 3 when the collector forms an opinion on an appropriate application that the public land is in unauthorised occupation of any person or persons, he initiates the proceeding and Issues the necessary show cause notice on the person or persons concerned. On cause being shown, the collector proceeds to dispose of the application u/s 4 the terms whereof are set out herein:

"4. (1) If, after considering the cause, if any, shown by the person in pursuance of a notice issued u/s 3 and any evidence adduced in support thereof, and any

evidence which may be adduced by the owner and after making such further inquiry, if any, as he deems necessary,--

(a) the Collector is satisfied that no bona fide dispute regarding title to the public land exists and that the public land is in the unauthorised occupation of any person, he shall make an order directing such person-

(i) to vacate the public land and deliver possession thereof to the owner, and

(ii) to pay for the entire period during which he has been and continues to be in unauthorised occupation of the public land, damages at such rate, not exceeding double the rate of rent prevailing for similar lands with similar advantages in the vicinity, as may be prescribed, within such time as may be specified in the order; or

(b) the Collector is satisfied that the person concerned is not in unauthorised occupation of the public land or is of opinion that a bona fide dispute regarding title to the public land exists, he shall make an order cancelling the proceedings and referring the parties to the civil Court:

Provided that no order under this sub-section shall be made to the prejudice of any person who has had no opportunity of being heard.

(2) Where an order has been made under Clause (a) of Sub-section (1), the collector shall cause a copy of the order to be served in the manner referred to in Sub-section (2) of Section 3."

Section 7 provides for an appeal against the order of the Collector.

9. It is significant to note that here the statute had not left the matter entirely to the unguided exercise of discretion by the collector to decide whether remedy provided under the Act should be adopted and an order of eviction should be made or not. It may be true that he proceeds on his satisfaction but the satisfaction is not wholly subjective. The statute itself has laid down the guidance on two points. The statute requires that before the collector can pass an appropriate order of eviction he is first to be satisfied that no bona fide dispute regarding title to the public land exists and secondly that the person or persons are in unauthorised occupation. If on any of these two points the collector comes to an adverse decision then the mandatory direction of the statute is to refer the matter to the Civil Court. This in my view distinguishes the statute now under consideration from the one under consideration by the Supreme Court and this distinguishing feature takes it out of the mischief which led the Supreme Court to condemn the Act under their consideration. Even in that case the Supreme Court held there exists intelligible differentia between the occupiers of public premises and land and other occupiers. So if on my findings made hereinbefore the relevant provision cannot be struck down as providing arbitrary discretion, it cannot also be struck down only because it makes special provision for eviction of persons in unauthorised occupation of public land. This court in the case of *Indurani Saha v. The State* ILR (1971) 1 Cal 470 overruled similar objection to

the provisions now under consideration and I respect-fully agree with the view expressed therein.

10. On the same reason as aforesaid I must also overrule the other contention that the statute imposes any unreasonable restriction on the right of the citizens to hold property. If a person is found to be in unauthorised occupation of public land, he cannot complain that the special procedure adopted for his eviction is unreasonable so long as such procedure is not condemned as discriminatory. If he is not a person in unauthorised occupation, the statute gives him ample scope to raise even a bona fide dispute and have the matter referred to a Civil Court. Further the order made by the collector is subject to a statutory appeal u/s 7 so that if the collector goes wrong, he can be corrected by the appellate tribunal. Such being the scheme of the Act and its provisions I am unable to accept the contention of Mr. Maitra that it imposes any unreasonable restriction on the citizens' right to hold property.

11. As all the points raised by Mr. Maitra in support of this application fail, the application falls and is dismissed on contest. There will be no order as to costs.