
(2018) 06 CAL CK 0176

In the Calcutta High Court

Case No : Writ Petition 8482 (W), 8485 (W) of 2018

Dipendra Nath Basu And Others

APPELLANT

Vs

State Of West Bengal And Ors.

RESPONDENT

Date of Decision : 20-06-2018

Acts Referred:

West Bengal Cooperative Society Act 2006 — Section 103, 145(2)
U. P. Town Planning and Development Act, 1973 — Section 15, 82, 137, 163
Constitution of India, 1950 — Article 12

Citation : (2018) 06 CAL CK 0176

Hon'ble Judges : RAJASEKHAR MANTHA, J

Bench : Single Bench

Advocate : Saptansu Basu, Sayan Sinha, Subroto Bose, Sandipto Bose, Devranjan Das, Abhijeet Ganguly, Saunavo Basu, Samrat Sen, Jisnu Chowdhury, A. Panja Mollick

Final Decision : Dismissed

Judgement

The writ petitioners claim to be the persons who are paying rent in lieu of being allowed hoarding or advertising space visual and or audio in and

around the passenger transportation barges/ferries/ launches and the river side jetties/establishments operated by a Cooperative Society called

Hooghly Nadi Jalapath Paribahan Samabay Samity Ltd. The said Cooperative Society admittedly operates the said barges/ferries/launches as

one of the many means of Transport from one side of the Hooghly River to other side connecting the City of Calcutta with Howrah.

The writ petitioners rely upon rent receipts and claim to be lawful occupants having a possessory right over such hoardings and advertising spaces that

are permanently embedded on the launches, jetties permanent counters river side and other offices, station or either side of the river. The writ

petitioners are aggrieved by a Notice Inviting Tender dated June 5, 2018 for issuance of license against a fee to ensure maximum revenue for such

hoarding and/or advertising space.

The said license fee has been described in the Bengali vernacular as 'Anumati fee'. The writ petitioners contend that they are existing

licensees. They also contend by reason of the receipts issued by the respondent Cooperative Society, they have been recognized as tenants. The

principal contention is that the notice inviting tenders is in derogation of their right to continue in occupation and under license and/or tenancy and/or

lease with the said Cooperative Society.

Per contra, Mr. Subroto Bose, Learned Senior Advocate appearing for the Society and Mr. Jishnu Chowdhury appearing for the State of West Bengal

contend that a Writ Petition is not maintainable against the Society. They contend that the Society may be discharging a public utility service but it is

wholly and completely controlled by some members of the general public and the employees of the said Society who jointly manage the same. The

Society further contends that there is absolutely no State control either administrative or financial on the said Society. Even in Disciplinary Control of

the employees Society the State has no role to play. In addition to that it is also submitted by Mr. Bose that the State Government itself runs separate

ferry service. In support of this contention, Mr. Chowdhury, learned counsel for the State relies upon a decision of the Supreme Court in the case of

Federal Bank Vs. Sagar Thomas reported in 2003(10) SCC 73.

In reply to this preliminary objection the learned counsel appearing for the writ petitioner relies upon decision of the Supreme Court in the case

Akalakunnam Village Service Cooperative Bank Ltd Vs. Binu N and Ors. reported in (2014) 9 SCC 294 wherein it is held that the Cooperative Bank

is 'State' within the meaning of the Article 12 of the Constitution. A large number of other decisions have been relied upon by the writ petitioner

including (2016) 8 SCC 535 BCCI Vs. Cricket Association of Bihar particularly paragraph 53 thereof.

In the case of Federal Bank Case (Supra) degree of State Control was in issue. Whereas in the BCCI case (supra) the nature of function of the body

was in issue. What emerges from the aforesaid decisions is that both the nature and function as well as the degree of State control, over a body would

have to be considered to determine as to whether it is "State" within the meaning of the Article 12 of the Constitution of India.

Admittedly, the Society performs a public utility service of transporting passengers from one side of the river to the other. A similar function of public transportation within the city is also provided by a large number of privately owned buses, taxis and other modes of transportation. Such persons, by reason of performing the Public Utility Function of transportation therefore do not automatically, become amenable to the writ jurisdiction under the Constitution of India. Solely applying the public utility test, therefore, may not be render the Society an "other authority" under Article 12 of the Constitution of India.

Let us consider the operation and effect of the decision of the Hon'ble Supreme Court in the case of Akalakunnam Service Cooperative Bank

Case (supra). It was indeed held in such a case that the Cooperative Bank therein was amenable to writ jurisdiction. However, one cannot lose sight

of the decision decision of the Supreme Court in the case of Thalappalam Service Cooperative Bank Ltd. Vs. State of Kerala reported in (2013) 16

SCC 82 wherein it was held that the said Cooperative Bank is not "State" within the meaning of Article 12 of the Constitution of India. In the

Thalappalam Service Cooperative Bank decision (supra), the Supreme Court was considering application of the Right to Information Act 2004.

What follows from the above is that not every Cooperative Society in "State" within the meaning of Article 12 of the Constitution of India. Both

the degree of State Control and the Public Utility Service, tests must be applied. The Public Utility function of a Society by itself would not bring it

under the expression "other authority" within the meaning of Article 12 of the Constitution of India. In view of the above, I am not satisfied that a

writ could be maintained against the respondent no. 4, Cooperative Society.

Even assuming for the sake of argument that a Writ Petition may lie against the Cooperative Society in question, it is observed that the writ

petitioners' cause of action is based on an alleged private license/tenancy/lease the indirect termination and/or inference with such private right

being the primary grievance of the writ petitioner. But for such assertion of private right, the petitioners could not assail the tender process in question.

The writ petitioner relies upon the decision of the Supreme Court in the case of

State Of U.P. & Ors Vs Maharaja Dharmander Prasad Singh

reported in (1989) 2 SCC 505, in support of his argument that even a private lease cannot be terminated and/or revoked contrary to the due process of

law. The said case involved a statutory lease under Section 15 of the U. P. Town Planning and Development Act, 1973. Such being the factual basis

of the case, the same can have no relevance in the facts of the instant case.

The writ petitioner next relied upon the decision of the Apex Court in the case of Lallu Yeshwant Singh(Dead) by his Legal Representative Vs. Rao

Jagadish Singh and Others reported in AIR 1968 SC 620. In the said case the Supreme Court was dealing with the statutory rights under provisions of

Sections 82, 137 and 163 of the U.P.Quanoon Ryotwari Statute. The same being a Statutory Right, the facts of the said case are distinguishable and

hence the decision therein cannot come to the aid to the writ petitioner.

The petitioner next relied upon the decision of the Supreme Court in Krishna Ram Mahale (Dead) by his LRS. Vs. Mrs. Shobha Venkat Rao reported

in AIR 1989 SC 2097. In the said case the Supreme Court was considering a private relationship between the two individuals, under an alleged

license. The occupation in question was a domestic and or residential occupation. The decision arose out of a suit and or private Civil proceeding. A

decision rendered on such facts cannot also come to the aid of the petitioner who claims a public law remedy.

The writ petitioner next relied upon an unreported decision of a Division Bench of this Honâ??ble Court dated 14th July 2017 in F.M.A 726 of 2017

in the case of Anirban Dutta Vs. HRBC and Anr. In the said case while an order of injunction in similar facts was upheld by a Division Bench of this

Court one cannot lose sight of the fact that the same was a First Appeal arising out of an order passed in a suit then pending before the City Civil

Court at Calcutta in which a title and/or possessory right was claimed. The said decision also cannot come to the aid to the writ petitioner.

I am however inclined to apply the decision of the Supreme Court in the case of Pimpri Chinchwad Municipal Corporation and others Vs. Gayatri

Construction Company and another reported in (2008) 8 Supreme Court Cases 172 as also in the case of Supriyo Basu Vs. W.B.Housing Board

reported in (2005) 6 SCC Pg 289. These have been cited by the 4th Respondent and the State. In both the case the ratio laid down by the Supreme

Court is in harmony with a large number of its earlier and subsequent decisions. The ratio in the said decisions was inter alia that even if a State

authority is charged with violation of any right such right must be in the nature of a public right and arising out a public function.

The basis of the petitioners' cause of action is an alleged private licence. There are no particulars whatsoever of the terms and conditions and

extent of such license. The petitioners also claim to be tenants based on the fact that the structures on which they claims right are embedded

permanently. The value of the rent being paid monthly as indicated in the writ petition and the commercial purpose of user of such property in any

event takes it out of the scope of the West Bengal Premises Tenancy Act, 1996.

The said alleged contract of license and or tenancy is a purely a private contract having no public element at all. Finally, the writ petitioners would

argue that the statutory provision violated here is the Transfer of Property Act. A private right or a lease or a license or a tenancy even assuming that

the same is recognized under the Transfer of Property Act cannot assume any Statutory Colour. The petitioners lastly contended that the remedy of

dispute resolution under Section 103 of the West Bengal Cooperative Society Act 2006 is not efficacious as the proceedings can take 6 months. A

plain reading of Section 103 indicates that the same is a complete code and a comprehensive remedy. The Bar under Section 145(2) of the said Act

cannot therefore prejudice the petitioner. For the reasons above, I am of the view that the writ petition is not maintainable. In those circumstances, W.

P. 8482(W) of 2018 is hereby dismissed.