

(1999) 04 CAL CK 0079
In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction W.P. No. 5722 (W) of 1999

Diptimoy Banerjee

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 07-04-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 226

West Bengal Government Premises (Tenancy Regulation) Act, 1976 — Section 3, 3(2)
(1), 3(3)

Citation : AIR 1999 Cal 240 : (1999) 2 CALLT 344

Hon'ble Judges : Bijitendra Mohan Mitra, J

Bench : Single Bench

Advocate : Mr. S.S. Ray and Ms. Anandamoyee Dutta, for the Appellant; Mr. Ashima Das, Mr. Rameswar Bhattacharjee, for the Respondent

Judgement

B.M. Mitra, J.—In this writ petition a challenge is thrown with regard to annexure "D" appended to the writ petition dated 10.3.99 on, inter alia, the ground of violation of the terms of the agreement and also it has been attributed therein that there was breach of the provisions of section 3(2)(1), 3(2)(II), 3(3)(a) of the West Bengal Premises (Tenancy Regulation) Act, 1976. The contention which has been sought to be raised in support of the writ petition are to the effect that no opportunity of hearing was afforded to the writ petitioner and as such it is in violation of the principles of natural justice. It has been contended on behalf of the writ petitioner that the impugned notice is ex facie bad as it is in derogation of the principles of natural justice. In this context it is necessary to keep in mind that the procedure of eviction as forecast under the West Bengal Government Premises (Tenancy Regulation) Act, 1976 is a summary proceeding and as such it has been provided in terms of the provisions as enumerated u/s 3 thereof and it has been specifically stipulated in section 3(2) of the said act that a tenancy in respect of a Government premises shall stand automatically terminated without any notice to quit where the tenant has either violated the terms of the lease or subsequently built a house or acquired a house by

purchase, gift or other modes either in his own name or in the name of any member of the family. The term "family" has been explained in the explanation clause super-added to section 3 of said Act which comprehends as to who are the members to be taken as to be inclusive in the family. A reference can be made to an unreported decision passed by this court on 16th January, 1996 in Matter No. 3835 of 1994 in the case of Prodyut Kumar Guha v. The Estate Manager, Estate Directorate and Ex-Officio Deputy Secretary, Housing Department, Government of West Bengal wherein in dealing with the provisions of section 3(2)(1) and (1a) of the West Bengal Premises (Tenancy Regulation) Act, 1976, this court has observed that as it is a summary proceeding, the reasons are not required to be delineated in extenso. The said view is being corroborated by series of judgments of this court. Thereafter a decision has been placed by Mr. Bhattacharjee, the learned Advocate appearing on behalf of the respondent No.3, namely, in the case of Estate Manager, Estate Directorate and Ex-Officio Deputy Secretary, Housing Department, Government of West Bengal v. Dilip Kumar De & Ors. reported in 1996 (2) CHN 515 where a Division Bench of this court has held in paragraph 25 thereof that before termination of such tenancy, no notice is to be given nor the principle of natural justice is required to be complied with. The above-noted single bench decision finds its support in the subsequent Division Bench judgment in no unambiguous terms. Mr. Bhattacharjee has further referred to in the case of State of West Bengal and Another Vs. Saral Kumar Sen Gupta and Another, and attention of this court has been drawn wherein reference was made in section 3(2) of the present Act and it has been held that the tenancy would stand automatically terminated without any notice to quit and the same has been observed in view of the acute shortage of accommodation in a metropolitan city like Calcutta and persistent demand for accommodation of new Incumbents in such flats. Therefore, this court notes a consistency in ratio of decision in construction of all the facets of section 3 of the West Bengal Government Premises Tenancy Regulation Act, 1976, However, Mr. Roy, the learned Advocate appearing on behalf of the writ petitioner, has referred to a decision reported in 1984 (2) CLJ 19 where a single Bench has held that a notice is mandatory and respondents cannot take recourse to summary procedure under the Act. The law as enunciated in such lone decision does not appear to be good law as it is in contra-distinction to series of decisions laid down not only by this court but also by apex court. However, Mr. Ray has tried to Impress this court by placement of reliance on the case of S.K. Bhargava Vs. The Collector, Chandigarh and Others, where it has been held that principle of natural justice is applicable in deciding determination of question of sum due from a defaulter as alleged by the Managing Director of Haryana Financial Corporation. Some opportunity has to be given to the alleged defaulter to exonerate the charge of default and unless he is heard out then no step can be taken as it will militate against the principle of natural justice. There is no scope of controversy with regard to such view as expressed by the apex court because it is with regard to the question of one's affixation of liability on the count of default and sum of default cannot be determined ex-parte and therefore, the same has got to be

determined on calculation of dues which is in terms of ordinary course of business between the parties. Therefore, the cited decision stands on altogether different footing in respect of an Act which is altogether different in nature and facts are dissimilar and the said decision does not lay down the ratio that in summary proceeding compliance of procedure of natural Justice in extenso to its ultimate limit has got to be adhered to. Had it been so, then it would have ceased the character of a summary proceeding. Accordingly, this court feels and holds that the judgment cited by Mr. Ray, as aforesaid, has no applicability in the facts and circumstances of the instant case.

2. In that view of the matter and after taking note of the respective submissions of the parties and on careful consideration of the same, this court is not in a position to interfere in the pending writ petition and accordingly, the same is liable to be dismissed on contest.

3. Petition dismissed on contest