

(1999) 12 CAL CK 0017

In the Calcutta High Court

Case No : Civil Appellate Jurisdiction M.A.T. No. 1205 of 1999 C.A.N. No. 3265 of 1999

Diptimoy Banerjee

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 20-12-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 226

General Clauses Act, 1897 — Section 21

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

Citation : (2000) 1 CALLT 338 : 104 CWN 345

Hon'ble Judges : Ranjan Kumar Mazumder, J; Altamas Kabir, J

Bench : Division Bench

Advocate : Mr. Milan Bhattacharjee and Mrs. Anandamoye Dutta, for the Appellant; Mr. Rameswar Bhattacharjee, Mr. Sanjib Mishra and Mrs. Ashima Das (Sil), for the Respondent

Judgement

R. K. Mazumder, J.—On consent of the parties the appeal is treated as on day's list and is taken up for disposal along with the application for stay of operation of the order dated 7th April, 1999, passed by the learned single Judge rejecting the writ petition filed by the appellant.

2. On or about 11th February, 1970, the appellant was allotted a Government flat, being Flat No.1, in the ground floor of Block L/O at Old Dog Race Course, Police Station-Behala, Calcutta-700038, at a monthly rental of Rs. 95/-, payable according to the English calendar. The appellant, who was at the relevant point of time working as an officer in the United Bank of India, retired from service in the year 1992, but continued to occupy the said flat even after his retirement.

3. According to the appellant, after his retirement he worked as auditor for different Chartered Accountant firms and for the said purpose he had to visit different places all over India and during his absence from Calcutta his wife and daughter used to reside with his wife's parents at Dhakurla for purposes of

security as there was no other male member in the appellant's family. During such periods, the flat used to be kept under lock and key.

4. It is the appellant's further case that in June, 1994, he went to Bangalore on an assignment and during his absence the Estate Manager caused a notice dated 3rd June, 1994. to be pasted on the outer door of his flat directing him to hand over, vacant possession of the flat within 15 days as his tenancy stood terminated with immediate effect on the ground of default and on the further ground that he had built his own house within 25 Kilometres of the Housing Estate.

5. Since according to the appellant he was neither a defaulter nor did he own any house or flat in his own name or in the name of any member of his family, he challenged the said notice under Article 226 of the Constitution, being C.O. No. 9027(W) of 1994, and an interim order was passed therein on 23rd June, 1994, directing the parties to maintain status quo. The said matter is still pending final adjudication. It appears that after May, 1994, the respondents did not accept any further rent from the appellant for the aforesaid flat on the plea that his tenancy had been terminated by the notice impugned in the writ petition.

6. In February, 1999, the appellant had to go to Goalpara in Assam in connection with his work and, as in the past, his wife and daughter went to stay with his wife's parents during his absence. During the said period, he permitted one Shri N.C. Chakraborty, who was residing in an adjacent flat and was planning to whitewash and repair the same, to temporarily keep some of his household articles in the flat and for the said purpose handed over the keys of the flat to Shri Chakraborty. The appellant was absent from Calcutta between 28th February, 1999 and 13th March, 1999. On his return he found a fresh notice dated 10th March, 1999. Issued by the Estate Manager, pasted on the outer door of his flat directing him to hand over peaceful and vacant possession of the flat within 30 days of such notice since his tenancy stood terminated on the ground of non-occupation/ default/unauthorised transfer of possession to Shri N.C. Chakraborty in violation of the terms of the Agreement under sections 3(2)(i), 3(2)(ii) and 3(3)(a) of the West Bengal Government Premises (Tenancy Regulation) Act, 1976, hereinafter referred to as the "1976 Act".

7. Apart from the said notice, the appellant also found that a separate lock had been placed on the outer door of his flat by the respondent authorities and the notice contained a warning that anybody found tampering with the lock and seal and trying to gain entry into the flat by unlawful means would be criminally prosecuted.

8. In the aforesaid circumstances, the appellant filed a fresh writ application, being W.P. No. 5722(W) of 1999, challenging the said notice and for having the same set aside and/or quashed.

9. Observing that the procedure of eviction under the 1976 Act is of a summary nature and having particular regard to the provisions of section 3(2) thereof, the

learned single Judge chose not to interfere with the Impugned notice and dismissed the writ petition.

10. in dismissing the writ petition, the learned single Judge also referred to certain decisions of this court, as also the Hon''ble Supreme Court, wherein it was held, inter alia, that since the proceedings u/s 3(2)(1) and (1a) of the 1976 Act were of a summary nature, reasons for passing orders thereunder were not required to be given in extenso and it was not also necessary to give notice prior to termination of the tenancy nor were the principles of natural Justice required to be complied with. The learned Judge also observed that as had been held by the Hon''ble Supreme Court in *State of West Bengal and Another Vs. Saral Kumar Sen Gupta and Another*, in view of the provisions of section 3(2) of the above Act the tenancy would stand automatically terminated without any notice to quit in the contingencies enumerated therein having regard to the scheme of the Act

11. Appearing in support of the appeal, Mr. Milan Bhattacharya firstly submitted that in the special facts of this case, the learned single Judge had erroneously applied the ratio of the decisions cited on behalf of the respondents, Inasmuch as, the termination of the appellant's tenancy was dependant on certain facts which could not be unilaterally decided merely on the basis of the biased report of the Estate Supervisor. Mr. Bhattacharya submitted that the facts on the basis whereof the Impugned notice had been Issued by the Estate Officer were highly disputed and could be decided only after the Estate Officer had the appellant's version also. Mr. Bhattacharya urged that the question of automatic termination of the appellant's tenancy would arise only after the facts on which such termination could take place were established on the basis of a proper enquiry.

12. Mr. Bhattacharya then urged that the notice dated 3rd June, 1994, had been illegally Issued since the appellant was neither a defaulter nor had he built his own house within 25 kilometers from the housing estate. Mr. Bhattacharya submitted that, in fact, the appellant did not own any building of his own at all.

13. Regarding the second notice dated 10th March, 1999. Mr. Bhattacharya submitted that the same had also been Illegally Issued since none of the grounds Indicated therein had any factual or legal basis. Mr. Bhattacharya urged that the allegation of non-occupation was unjustified since the appellant was in continuous use and occupation of the flat except when he had to leave Calcutta for a while when for purposes of security his family members moved to his mother-in-law's house. Mr. Bhattacharya also urged that the ground of default was misconceived since it was the respondents themselves who had not accepted the monthly rents from the appellant on account of the first notice issued to him on 3rd June, 1994, Mr. Bhattacharya also denied that the appellant had transferred possession of his flat to Shri N.C. Chakraborty as alleged in the notice. Mr. Bhattacharya repeated the circumstances in which the appellant had allowed Shri Chakraborty to keep some of his belongings in the appellant's flat in the appellant's absence therefrom and submitted that the same could not possibly constitute unauthorised transfer of possession as alleged.

14. Mr. Bhattacharya then submitted that although by the notice of 10th March, 1999, the appellant was asked to hand over vacant possession of his flat within 30 days of the notice, he was forcibly dispossessed therefrom by the placement of a lock over the entrance door to his flat and a threat being incorporated in the notice that anybody trying to gain entry Inside the flat by unlawful authority would be liable to criminal prosecution. Mr. Bhattacharya contended that the said notice stood vitiated by the action of the authorities immediately after the Issuance of such notice.

15. Mr. Bhattacharya lastly submitted that since the right to be given a personal hearing had not been specifically excluded by the 1976 Act, the appellant should have been heard before the Impugned notices were Issued by the Competent Authority.

16. in support of his aforesaid submissions Mr. Bhattacharya referred to the decision of the Hon''ble Supreme Court in the case of The Scheduled Caste and Weaker Section Welfare Association (Regd.) and anothers Vs. State of Karnataka and others, , wherein while considering the provisions of section 21 of the General Clause Act, 1897, the Hon''ble Supreme Court observed that when a Statutory Authority decides to alter an original scheme to the prejudice of a class of persons in absence of statutory exclusion of the principles of natural justice, an obligation was cast on the said authority to afford the affected persons a pre-decisional opportunity of hearing.

17. A similar view was taken by the Hon''ble Supreme Court in Sukhdeo Vs. Commissioner Amravati Division, Amravati and Another, , where also it was emphasised that when any adverse remarks were made with regard to an employee''s performance, such employee should be informed of the same and be given an opportunity to improve himself before any further consequential step was taken.

18. Mr. Bhattacharya urged that the Impugned notices caused prejudice to the appellant to the extent that he stood to be removed from his tenancy without an opportunity of bringing his version of the story to the knowledge of the Estate Manager who issued the Impugned notices. Mr. Bhattacharya urged that the decisions relied upon by the learned single Judge were rendered in circumstances which were different from the facts of the instant case.

19. Mr. Bhattacharya submitted that the learned single Judge was swayed by the scheme of the 1976 Act which provides for a summary procedure for eviction and this led him to erroneously conclude that had it been the intention of the legislature that the principles of natural Justice had to be adhered to in extenso then the proceeding would lose its character of a summary proceeding.

20. Mr. Bhattacharya urged that even if the proceeding contemplated under the 1976 Act was of a summary nature, the Estate Officer would have to be satisfied on the basis of proper evidence that any of the circumstances indicated in section 3(2) of the said Act actually existed before the grounds of termination of his

tenancy were communicated to the tenant.

21. Mr. Bhattacharya submitted that the learned single Judge did not consider the matter from such angle and erroneously dismissed the writ petition on the ground that since the proceedings u/s 3 of the 1976 Act were of a summary nature and no notice to quit was required to be served, the appellant was not entitled to any hearing before being served with the grounds of termination of his tenancy. Mr. Bhattacharya submitted that the order of the learned single Judge and the grounds of termination served upon the appellant by the Estate Manager along with the direction to hand over vacant, possession of his flat, were liable to be set aside.

22. Appearing for the Estate Manager, the respondent No.3 in the appeal, Mr. Rameswar Bhattacharya submitted that the grounds of termination of his tenancy having been communicated to the appellant by the Estate Manager on his being satisfied from the enquiry reports submitted by the Estate Supervisor, Circle No. IX, that the appellant was not living in his flat and had handed over the keys thereof to one Shri Nirmal Chakraborty who was using the same, the appellant could not question the decision of the Estate Manager on the ground of denial of natural Justice and the learned single Judge had rightly dismissed the appellant's writ petition.

23. Mr. Rameswar Bhattacharya submitted that section 3(2) of the 1976 Act had been considered at length by the Hon"ble Supreme Court in Saral Kumar Sengupta's case (supra) and the Hon"ble Supreme Court had categorically held that since the tenant had ceased to occupy the flat in question himself, his tenancy stood automatically terminated u/s 3(2) of the 1976 Act and no separate notice to quit was required to be served on the tenant.

24. It was submitted that the facts of this case were similar to those in Saral Kumar Sengupta's case, inasmuch as, in this case also the appellant did not reside in the flat and the same was being used by Shri N.C. Chakraborty. Applying the same tests as in Saral Kumar Sengupta's case (supra), the appellant's tenancy stood automatically terminated and the Estate Officer was within his jurisdiction to ask the appellant to vacate the flat.

25. As to the question relating to locking and sealing of the flat even before the notice period was over, it was submitted that such a step was necessary in order to prevent the flat from being handed over to a third party.

26. Mr. Bhattacharya submitted that no interference was called for with the order of the learned single Judge as the writ petition had been rightly dismissed in keeping with the provisions of the 1976 Act.

27. Appearing for the State and the State respondents, Mr. Sanjib Mishra reiterated and adopted the submissions made on behalf of the Estate Manager. Mr. Mishra added that where Government accommodation was scarce, as a matter of policy a person should not be allowed to keep in his name a residence

not occupied by him. Mr. Mishra urged that the provisions of the 1976 Act had been made stringent and a summary procedure had been introduced by the legislature for eviction of such persons from Government tenancies.

28. Mr. Mishra repeated that the writ application had been rightly dismissed and no interference was called for in appeal against such order of dismissal.

29. From the Judgment under appeal it is quite clear that the learned single Judge had proceeded on the basis that since the procedure prescribed in the 1976 Act is of a summary nature where no notice to quit was also required to be given to the tenant before asking him to vacate the quarter under his occupation, there was no substance in the appellant's grievance that he had not been given an opportunity of hearing before being asked to vacate his flat. In arriving at such decision, the learned single Judge relied on the decision of the Hon'ble Supreme Court in Saral Kumar Sengupta's case referred to by Mr. Rameswar Bhattacharya. The facts in the said case revealed that after his marriage the tenant had left the Government premises with his wife but his brothers and sisters continued in occupation of the said premises. In view of a clause in the lease agreement that the tenant was required to reside in the flat, the Hon'ble Supreme Court came to the conclusion that since the terms of the lease had been violated, the tenancy in respect of the flat stood automatically terminated and no notice to quit was required to be given to the tenant.

30. From the materials available we are of the view that the facts in Saral Kumar Sengupta's case are distinguishable from the facts of this case and we are, therefore, unable to agree with the views expressed by the learned single Judge.

31. It is no doubt true that the procedure prescribed u/s 3 of the 1976 Act for eviction of a tenant of a Government premises is of a summary nature and no notice to quit is even required to be given in the circumstances enumerated in sub-section (2) thereof, but in our view it has to be established on proper materials that any of the said circumstances exist so as to attract the provision relating to automatic termination of tenancy. In Saral Kumar Sengupta's it was admitted that the tenant had moved out from the Government premises after his marriage leaving his brothers and sisters to continue in occupation thereof. The Hon'ble Supreme Court was, therefore, called upon to decide whether in such circumstances the tenancy stood automatically terminated without any notice to quit, thereby attracting the provisions of summary eviction set out in sub-section (2) of section 3 of the 1976 Act.

32. In the instant case it is not the admitted case of the parties that the appellant had ceased to occupy the flat in question. Such an allegation has been made by the respondents on the basis of several reports submitted by the Estate Supervisor, Circle IX, alone. Apart from the several reports submitted by the said authority, there were no other materials before the Estate Officer to corroborate the opinion expressed in the said reports that the appellant had ceased to occupy the flat and had made over possession thereof to an Shri N.C. Chakraborty who

was using and occupying the same. The aforesaid allegation has been denied by the appellant and it is his specific case that he and his family members were in use and occupation of the flat and that when he had to leave Calcutta in connection with his work, his wife and daughter went to stay with his wife's parents at Dhakurla for reasons of security. It is also the specific case of the appellant that on one such occasion he had permitted his neighbour, Shri N.C. Chakraborty, to use the flat for storing his goods since Shri Chakraborty's flat was being white-washed.

33. The stand taken by the appellant cannot be brushed aside and merits investigation which can only be done by allowing him to place his version of the story as opposed to the version advanced by the respondents. In our view, when the facts relating to occupation of the flat by the appellant are disputed, the Estate Officer should have asked for the appellant's version. Once it was established on proper evidence that the appellant had ceased to occupy the flat, the consequences of automatic termination of tenancy, as envisaged in section 3(2) of the 1976 Act would follow.

34. In fact, from the records produced by Mr. Rameswar Bhattacharya, such a procedure appears to have been followed in the case of others. In similar circumstances, in a notice issued to one Shreelekha Mishra on 10th March, 1999, the tenant while being asked to hand over vacant possession of her flat within 30 days, was also informed that she could submit her representation, if any, within the said period to the Estate Manager. The records produced by Mr. Bhattacharya also contain a synopsis of the facts relating to the appellant's flat prepared by the Estate Manager on 31st March, 1999, where after narrating the grounds as to why the provision relating to automatic termination of tenancy would be applicable to the appellant's case, the Estate Manager observed that the appellant had been given an opportunity to make his submissions in writing before the Estate Manager within 30 days of notice, although in actual fact such opportunity was not given to the appellant. The said note seems to indicate that it was the intention of the authorities to obtain the appellant's explanation as to why he should not vacate the flat and that was the course of action normally adopted.

35. In our view, such a procedure would have been the proper course of action for the respondents to follow. The amendment effected to section 3 of the 1976 Act by the Amending Act of 1994 by the addition of sub-section (3) (a) (b) and (c) will have to be read in such light.

36. For the reasons aforesaid, we are inclined to accept the submissions made on behalf of the appellant and to allow the appeal. The appeal is, accordingly, allowed, the judgment and order of the learned single judge dated 7th April, 1999, is hereby set aside. The writ application is allowed and the impugned notice dated 10th March, 1999, is hereby quashed. The respondents are directed to restore possession of the flat in question to the appellant forthwith. This order will not, however, prevent the respondents from taking fresh proceedings in

respect of the said flat in accordance with the observations made hereinbefore.

There will be no order as to costs.

37. Appeal allowed