
(1987) 02 CAL CK 0023
In the Calcutta High Court
Case No : C.R. No. 11449 (W) of 1984

Dulal Chandra Roy Chowdhury	Vs	APPELLANT
State of West Bengal and Others		RESPONDENT

Date of Decision : 27-02-1987

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 309
West Bengal Government Premises (Regulation of Occupancy) Act, 1984 — Section 3
West Bengal Government Premises (Tenancy Regulation) Act, 1976 — Section 3
West Bengal Services Rules — Rule 225

Citation : AIR 1988 Cal 90

Hon'ble Judges : Shyamal Kumar Sen, J; A.M. Bhattacharjee, J

Bench : Division Bench

Advocate : Sakti Nath Mukherjee and A.K. De, for the Appellant; R.N. Bajoria, Amal Baran Chatterjee and J.P. Khaitan, for the Respondent

Final Decision : Allowed

Judgement

Sen, J.—The petitioner at all material time was holding the post of Professor of Medicine, Medical College and Hospital, Calcutta. By an order dt. 28th Dec., 1967 the ground-floor, Flat No. 3, Block-I, Gariahat Housing Estate was allotted in his favour for use as his residence on payment of rent and taxes under R. 225 of the West Bengal Service Rules, Part-I (Revised) with effect from the date of occupation. Pursuant to such allotment order the petitioner took possession of the said flat on 1st Feb. as a monthly tenant. By a subsequent order the petitioner was also allotted a garage being garage No. 22 of the said estate for the purpose of parking his car. On the prayer of the petitioner he was subsequently allowed to shift to flat No. 44 (1st Floor, Block-V) of the said Housing Estate and an order was also issued to that effect on 6th July, 1970 permitting him to shift to the new flat. Since 6th July, 1970 the petitioner has been in possession and/or occupation of the said flat No. 44, 1st Floor, Block-V at the said Housing Estate. On or about April, 1984 the petitioner retired from the Medical Service on superannuation. It is the case of the petitioner that while he

was in Government service he started from 1973 correspondence with the Secretary, Public Works Department, Government of West Bengal and made a prayer that his existing flat be converted from the pool of the Public Works Department to the pool of the Housing Department and he may be treated as a monthly tenant in respect of such flat on payment of standard rent. The petitioner has further submitted that the Government earlier on various occasions have allowed such conversion to be made from the pool of the Public Works Department to the pool of the Housing Department and have allowed such facilities to the occupant thereon to continue in occupation as a monthly tenant on payment of standard rent. The petitioner in this connection has submitted a chart showing number of such tenants who have been given the privilege of such conversion. A chart showing the names of such persons who have been given such facilities or privileges has been incorporated in Para 10 of the petition. Apart from his representation for conversion on 30th Mar., 1973 to the Secretary, Public Works Department, Government of West Bengal the petitioner also made subsequent representations on 29-10-76, 1-11-76, June 1977, 30th May, 1978, 8th Dec., 1979 and 20th April, 1983 and repeatedly prayed for conversion and submitted that he was also to be accepted as a monthly tenant since other similar allottees were accepted as monthly tenants as mentioned in the chart referred to hereinbefore. It is the case of the petitioner that the inaction on the part of the respondent-authorities in not considering his representation amounts to discrimination and violates the provisions of Article 14 of the Constitution since under similar circumstances various other allottees were given such benefits. It is the admitted position that no reply was given to any of the petitioner's representations starting from 30th Mar., 1973. In 1976 the State Government enacted West Bengal Government Premises (Tenancy Regulation) Act, 1976 (West Bengal Act XIX of 1976) (hereinafter referred to as the Regulation Act of 1976) to provide for the regulation of certain incidence of tenancy in relation to Government premises in West Bengal. In the said Act the expression "Government Premises" has been defined as any premises which is owned by the State Government or by a Government undertaking, but not to include the official residence of any person authorised to occupy the premises in consideration of the office which he holds under the State Government or a Government undertaking for the time being.

2. In Section 3 of the said Act it had been provided inter alia that tenancy in respect of the Government premises shall stand automatically terminated without notice to quit where the tenant has (i) violated the terms of lease, or (ii) made default in making payment of the rent for 3 consecutive months.

3. On 31st Mar., 1984 the Deputy Secretary II, Government of West Bengal, Public Works Department, Common Service Branch issued an order directing that 10 flats mentioned in the said order dt. 31st Mar., 1984 which are now in the pool of Public Works Department, will revert to the Housing Department of the Government with the existing occupants with effect from 1-4-84.

4. Byanorderdt. 13th June, 1984Deputy Secretary, Government of West Bengal, Department of Housing passed an order that ten flats mentioned in the said order dt. 13th June 1984 situated in the Government Housing Estate at 28/1 A, Gariahat Road, Calcutta 19 which were in the pool of Public Works Department have come under the administrative control of the Housing Department of the Government with the existing occupants with effect from 1-4-1984. It was further provided that the said ten flats would continue to be Government Premises meant exclusively for serving the State Government employees.

5. It is the case of the petitioner that the State Government has kept 10 flats out of 50 flats in the said Housing Estate and that the said flat which has been allotted in favour of the petitioner is outside the said strength of 10 flats because already 10 flats have been taken away by the State Government. Therefore, the flat allotted in favour of the petitioner may be converted into a tenanted flat as prayed for and the petitioner may be given a status of tenant in respect of the existing flat. It is contended on behalf of the petitioner that there are large number of precedents in the said Housing Estate where identical relief and/or benefit was accorded to a substantial number of allottees. It is the further case of the petitioner that the State Government was duty bound to act and/or take a decision on the basis of the representations repeatedly made by the petitioner since Mar. 1973. The petitioner cannot be made to suffer because of the alleged omissions on the part of the Government. The Government in a welfare State cannot act in a discriminatory manner in relation to its citizen. The petitioner has submitted that Government cannot act in a manner differently towards the petitioner although others have been favoured under similar circumstances.

6. Schedule 2 to the West Bengal Government Premises (Regulation of Occupancy) Act, 1984, item No. 11-IV, provides that the flat being Nos. 42, 44, 45 and 47 of Block No. V have been left out of the public premises under the control of the Department of Housing of the State Government. It is the case of the petitioner that since he had all along been making his representations since Mar. 1973, had his representations for conversion of his flat from Public Works Department to the Housing Department been favourably considered he would not have come under the said Regulation, it is his further case that many other State Government employees were favoured with such treatment but he had been denied the facility of the same. The State Government initially did not choose to file any affidavit in opposition in this matter, but subsequently on their prayer they were allowed to file an affidavit in opposition. In the said affidavit in opposition filed on behalf of the State no reason was assigned as to why the said representations of the petitioner could not be considered by the State nor was it disputed that the said representations were not considered by the authorities concerned. It has, however, been stated by the State Government in the affidavit in opposition that the petitioner has constructed a building of his own at Salt Lake area and as such he is not entitled to get any relief in this petition.

7. Mr. Sakti Natn Mukherjee. learned Advocate for the petitioner submitted that

although some other persons have also , constructed their own building they have been allowed the facility which the petitioner is claiming and they are still occupying the flats under the Government under similar circumstances. In this connection he has referred to the affidavit in reply being the affidavit of the petitioner affirmed on 10th Dec., 1986. In para 3(a) of the said affidavit in reply filed on behalf of the petitioner the particulars of the said several persons in whose case such conversion was made and allowed have been set out. It has also been stated in the said affidavit in reply that even the Government premises has been transferred in the names of legal heirs or representatives of the original allottees and that has also been allowed. The said averments have been made in sub-para "C of para 3 of the said affidavit in reply. It has been strongly contended that even after retirement of the officers concerned, the Government has converted the respective flats from the Public Works Department pool to the Housing pool. It has been stated on behalf of the petitioner that Shri S. B. Roy has constructed a residential building at New Alipore and even then he is still now staying at Gariahat Housing Estate in his flat. It has further been stated in the said affidavit in reply that Shri Chittaranjan Guha Majumder has also constructed a two storeyed building at Salt Lake but even then he is residing at Gariahat Housing Estate. It is the further contention of the petitioner that if the flats allotted to Shri S. B. Roy, Shri Chittaranjan Guha Majumder, Shri Sudhir Chowdhury, Shri P. C. Mukherjee, Shri C. N. Pen Antony and Shri Biren Bhattacharjee were treated as public premises on the eve of their retirement or after their retirement then it is not understood as to why similar treatment was not given to the petitioner. The petitioner made his application for conversion of his flat as early as on 30th Mar. 1973 followed by repeated reminders and even though conversion orders were admittedly made in respect of other persons after their retirement or on the eve of their retirement, but no reasons were assigned as to why the representations of the writ petitioner were not considered although he submitted his application long ago and claimed similar relief from the Government. In the premises it is the contention of the writ petitioner that the authorities concerned should be directed to consider his representation and to take steps in accordance with law.

8. Mr. Bajoria, learned Advocate for the State Government did not really dispute the statement made in the affidavit in reply to the effect that similar facilities were allowed to be enjoyed by such other persons as named in the said affidavit of the writ petitioner. He, however, submitted that if the writ petition of the petitioner is allowed the same would open the floodgate of litigation and would amount to wrongs being continued and/or being perpetrated. It is the further submission of Mr. Bajoria that the Government is prepared to take action against those persons named in the affidavit and the court should not grant any relief to the writ petitioner since he has already constructed a building. Mr. Bajoria further contended relying upon the provisions of the West Bengal Government Premises (Regulation of Occupancy) Act, 1984 that no relief can be granted to the writ petitioner at this stage in view of the statute which has become applicable and in

view of the fact that the Supreme Court has already upheld the statute which was challenged by several other writ petitioners.

9. Learned Advocate for the petitioner Mr. Sakti Nath Mukherjee on the other hand strongly contended that the State cannot act arbitrarily in the matter of allotments and must act fairly and it is the duty of the court to interfere whenever such discrimination and arbitrary acts are apparent. He also urges that the State cannot allow some persons to get the benefits and deprive others on the allegation of wrongs committed by them when such wrongs have also been committed by those who have received the benefit from the State. In this connection he relied upon the decision of the Supreme Court in the case of *Sengara Singh v. State of Punjab* reported in AIR 1984 SC 1499. In this case the State of Punjab initiated disciplinary action and dismissed about 1100 members of the police force on the ground that they had participated in an agitation which was impermissible under the rules governing the discipline of the police force in the State of Punjab. A number of criminal prosecutions were filed against the participants in the agitation. Some of the members of the police force who were dismissed from service filed writ petitions in the High Court of Punjab and Haryana but those were dismissed. After the dismissal of the writ petitions, 1000 of them were, however, reinstated and criminal cases pending against some of them were also withdrawn. A committee consisting of the superior ranks of the police force was constituted by the State Government to review the cases of dismissed agitators and reinstatement followed on the recommendations of the committee. It was conceded that amongst 1100 dismissed agitators 1000 were reinstated and the rest were left to fend for themselves. Those who were thus weeded out by the committee filed writ petitions in the High Court. The High Court dismissed the writ petitions. The petitioners came up to the Supreme Court. The Supreme Court held that the order of the High Court dismissing the petitions was liable to be quashed. It was further held by the Supreme Court that logically the petitioners must receive the same benefit which those reinstated received in the absence of any distinguishing feature in their cases. Accordingly the petitioners were held to be entitled to reinstatement in services. It was further held in that case if the indiscipline of large number of personnel amongst those dismissed could be condoned or overlooked and after withdrawing the criminal cases against them they could be reinstated, there was no justification in treating the petitioners differently without pointing out how they were guilty of more serious misconduct or that the degree of indiscipline in their case was higher than compared to those who were reinstated. It was further held in conclusion that the treatment meted out to the petitioners suffered from the vice of arbitrariness and Article 14 forbids any arbitrary action which would tantamount to denial of equality as granted by Article 14. In the case before us it has not been stated on behalf of the State Government as to what are the special reasons for not granting writ petitioner the benefit which he has asked for when the others are being allowed the same facilities although they stand on the same footing. The writ petitioner has specifically mentioned the names of the

persons who are enjoying such benefit although they have also constructed their own building. Applying the law laid down in the aforesaid Supreme Court decision it appears to us that the treatment meted out to the petitioner suffered from the vice of arbitrariness and violated Article 14 of the Constitution which forbids any arbitrary action which would tantamount to denial of equality as granted by Article 14.

10. It has been urged on behalf of the State that if the writ petition is allowed this would open the floodgate of litigation and would create enormous problems. The spectre of floodgate of litigation being open if a particular writ petition is allowed has been laid to rest by the observations of the Supreme Court in the case of S.P. Gupta Vs. President of India and Others, . Bhagwati J. as his Lordship then was quoted from Professor K. E. Scott's Book "Standing in the Supreme Court: A Functional Analysis" at page 194 of the said report to the effect as follows : --

"When the floodgates of litigation are opened to some new class of controversy by a decision it is notable how rarely one can discern the flood that the dissenters feared".

11. Merely because there is apprehension on the part of the State that if the application is allowed that will open the floodgate of litigation does not mean that the Courts will not interfere with the State actions even if they are arbitrary, discriminatory, capricious or whimsical in character. On the contrary we are of opinion that the courts have a duty to protect the rights of citizens if it appears that the action of the State which has been complained of suffers from the vice of arbitrariness and violates the fundamental right to equality and infringes Article 14 of the Constitution of India.

12. The other points urged by Mr. Bajoria is that no relief can be granted to the writ petitioner in view of the fact that West Bengal Government Premises (Regulation of Occupancy) Act 1984 has already come into force. On an examination of the relevant provisions of the said statute it appears to us that sufficient power has been given to the State Government to provide and/or grant necessary relief. Section 3 of the said Act provides as follows :

(1) "The State Government may, from time to time, by notification subject to such terms and conditions as it may deem fit, declare any State premises to be public premises".

(2) "Notwithstanding the provisions of Sub-section (1). it is declared that the State premises mentioned in Schedule II are public premises".

13. It is open to the State Government under the aforesaid provisions of the said statute to declare any State premises to be public premises by notification, as the State Government may deem fit. In view of the aforesaid, it cannot be urged that the State Government has no power to grant any relief to the petitioner and that the writ petition has become infructuous. The said West Bengal Government

Premises (Tenancy Regulation 2nd Amendment) Act 1980 has amended the Sub-section (2) of Section 3 of the West Bengal Government Premises (Tenancy Regulation) Act, 1976 (herein referred to as the principal Act); for Clause (ia), the following clause has been substituted as follows :

"Subsequently built a house or acquired (by purchase, gift, inheritance, lease, exchange or otherwise) a house or an apartment, either in his own name or in the name of any member of his family, within a reasonable distance from such Government premises".

14. The explanation was also added being Sub-section (C) as follows :

"reasonable distance" shall mean any distance not exceeding twenty-five kilometres, or

15. Sub-section (3A) of the amended Act provides as follows :

"A tenancy in respect of a Government premises shall be deemed to be void where on the date of allotment of such Government premises the tenant is, or had been, the owner of a house or an apartment, either in his own name or in the name of any member of his family, within a reasonable distance from such Government premises".

16. Considering the aforesaid provisions it appears to us that if the newly constructed building is not within 25 Kms, from the Government premises at present occupied by the writ petitioner that will not be within the mischief as contemplated under the provisions of the amendment Act of 1980. Accordingly we direct the State Government to consider the representations by the petitioner made since March 1973, and, to give a hearing on the basis of the said representations and thereafter to dispose of his case in accordance with law particularly considering the said amended West Bengal Premises (Tenancy Regulation) Act, 1976 as substituted by the West Bengal Premises (Tenancy Regulation 2nd Amendment) Act, 1980 and the provisions thereof. The State Government is directed to dispose of the case preferably within a period of 3 months from date and to come to a decision in accordance with law. This Rule is made absolute to the extent indicated as above. There will be no order as to costs.

Bhattacharjee, J.

17. I agree.