
(2006) 05 CAL CK 0018
In the Calcutta High Court
Case No : Writ Petition No. 1610 of 1995

Ganesh Chand Roy and Others	Vs	APPELLANT
State of West Bengal and Others		RESPONDENT

Date of Decision : 17-05-2006

Acts Referred:

Calcutta Municipal Act, 1951 — Section 167
Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981 — Section 1, 4, 5
Calcutta Thika Tenancy Act, 1949 — Section 2(5)
Charitable and Religious Trusts Act, 1920 — Section 7
Constitution of India, 1950 — Article 14, 20(1), 21

Citation : (2006) 4 CHN 828 : 110 CWN 531

Hon'ble Judges : Arun Kumar Mitra, J

Bench : Single Bench

Advocate : P.K. Das, Rama Banerjee and Barin Banerjee, for the Appellant; Tapan Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

Arun Kumar Mitra, J.—The writ petitioners moved the instant writ petitioner with the following prayers:

A. A writ in the nature of mandamus do issue calling upon the respondents and their agents to--

(i) cancel and revoke and further not to give any effect and/or further effect to the order passed by the respondent No. 1 (date not disclosed) purporting to vest the land comprising of 10 cottahs 9 chittacks 22 sq.ft. situated at No. 56/1A/1, B. T. Road, under the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981.

(ii) cancel and/or delete the name of the "State of West Bengal represented by the Controller, thika tenancy" from the records of the Calcutta Municipal Corporation and re-insert the names of the trust estate and/or trustees in the said record and also to delete the names of the respondent Nos. 4 and 5 who

have been shown to be owners of the structures.

B. A writ and/or in the nature of certiorari do issue calling upon the respondents and/or their agents to produce all the records of the case relating to the vesting of 10 cottahs 9 chittacks and 22 sq.ft. of land situated at No. 56/1A/1, B.T. Road, Calcutta purported to be vested under the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981, and all records relating to mutation of the records of the Corporation and all other conscionable justice may be rendered by quashing and/or setting aside the same.

C. A declaration do issue declaring that the land and structures standing at No. 56/1A/1, B.T. Road, are not thika tenancies and as such could not be vested under the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981, as illegally sought to be done.

D. A declaration do issue declaring that Section 4 of the impugned Act, is ultra vires Articles 14 and 20(1) of the Constitution of India

D1. A declaration do issue that the lands and structures standing at 56/1A/1, B. T. Road, is not, a thika tenancy and could not be vested even under the amended Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981.

D2. In the alternative a declaration do issue that the Section 5 and Section 1 of the amended Calcutta Thika Tenancy Act is arbitrary, irrational and ultra vires Articles 14, 20(1) and 21 of the Constitution of India;.

2. The writ petitioners are the owners of the land comprising of 10 cottahs 9 chittacks and 22 sq.ft. at premises No. 56/1A/1, B. T. Road. The writ petitioners are owning the property in their capacity as trustees of Gopeswar Dutt Charitable Dispensary and Atithisala. Suddenly, the writ petitioners found that the municipal records has been changed ex parte without any notice to them and the changed records of the Calcutta Municipal Corporation read as "State of West Bengal represented by the Controller of Thika Tenancy, owner of the structure Sri Prahladrai Khetwat". One Smt. Jarat Kumari Dasi created a trust by the name of Gopeswar Dutt Charitable Dispensary in respect of several premises and she created a trust by the name of Gopeswar Dutt Charitable Dispensary in respect of premises No. 56/1A, Barrackpore Trunk Road, Calcutta in the year 1945.

3. By virtue of the said trust deed the trust property was absolutely transferred to the trustees who were to hold the same in trust exclusively for the purposes mentioned in the said trust deed dated 4th July, 1945. Copy of the said trust deed has been made Annexure "A".

4. By a Notification dated 21.02.1953 issued in exercise of powers conferred by Section 167 of the Calcutta Municipal Act, 1951, the Government of West Bengal declared that besides other premises, the premises situated at 56/1A, B.T. Road, Calcutta is a property used solely for the purpose of medical relief. Copy of the said Notification dated 21st February, 1953 has been made Annexure "B".

5. A part of the property was leased out to augment the income of the trust for the purpose of supporting and maintenance of the said charitable trust. In such circumstances the petitioners made an application to the High Court at Calcutta in 1979 u/s 7 of the Charitable and Religious Trust Act, 1920 for obtaining High Court's leave for leasing out 10 cottahs 9 chittacks of land within the premises No. 56/1A, B.T. Road for a term of 30 years.

6. By an order dated 7th August, 1979, the Hon'ble Justice Padma Khastagir was granted sanction to the trustees for granting such lease. In view of the said order registered lease dated 22nd August, 1979 was executed by which the trustees granted lease of a portion of premises No. 56/1A (subsequently numbered as 56/1A/1) B.T Road, Calcutta in favour of M/s. M.S. Vawada (P)Co. Ltd. Copy of the lease deed has been made Annexure "C"

7. Subsequently, by a registered deed of assignment dated 14th August, 1981 the said M/s. M.S. Vawada (P)Co. Ltd, with the consent of the petitioners assigned and transferred the said land and structures to the respondent Nos. 4 and 5 herein to hold the same of the residue of the said term of 30 years under the original lease. Copy of the said deed of assignment dated 14th August, 1981 has been made Annexure "D".

8. Due to the aforementioned lease and assignment M/s. M.S. Vawada (P) Co. Ltd. became the occupiers of the said land with structures and their names were duly mutated in the assessment records of the Municipality. The name of Jarat Kumari Dasi, the original owner of the said premises and creator of the trust has all along been recorded as the owner of the said premises. Copies of municipal bills have been made Annexure "E" to the writ petition collectively.

9. In December, 1994 the petitioners were informed by the respondent Nos. 4 and 5 that the leased out premises situated at 56/1A/1, B.T. Road, Calcutta has been vested under the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981. On such sudden information the petitioners were surprised to find that the name of State of West Bengal represented by the Controller of Thika Tenancy had been inserted as the owner of the land and the names of the lessees i.e. the respondent Nos. 4 and 5 remain as the owners of structures. The petitioners have since obtained bills for the period July-September, 1994 which shows that the respondent No. 1 was all of a sudden became the owner of the land. Copies of the bill have been marked collectively as Annexure "F" to the writ petition.

10. According to the petitioners the respondent Nos. 4 and 5 not being thika tenants and the tenancy not being under the Calcutta Thika Tenancy Act, the action of the respondents is ultra vires of the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981.

11. The petitioners challenged this mutation for changer of name in the municipal records with the abovequoted prayers.

12. Two separate affidavit-in-opposition has been filed on behalf of respondent

Nos. 2 and 3 as well as respondent Nos. 4 and 5.:

13. In the said opposition affirmed on behalf of Calcutta Municipal Corporation it has been stated that the property has been vested under the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981 and bill issued showing the respondent No. 1 as owner of the premises. In the opposition of the C.M.C. it has further been stated that vesting has been done by the Government of West Bengal and recording the name of State of West Bengal represented by Controller of Thika Tenancy and the municipal authorities have nothing to do.

14. It has further been stated in the opposition that Section 2(5) of the Calcutta Thika Tenancy Act, 1949 referred to therein is inconsistent.

15. On behalf of the Calcutta Municipal Corporation it has further been stated that the vesting part belongs to the Government and the C.M.C. has got nothing to do.

16. In the opposition of the C.M.C. it has further been stated that bill of the petitioners" is the Occupier's Tax Bill. The Calcutta Municipal Corporation in its affidavit also stated that paragraphs 15A, 15B, 15C and 15D of the petition makes it clear that the municipal authorities are in no way concerned. In the opposition it has been repeatedly stated that the vesting part is the Governmental action and the Corporation has got nothing to do with it.

17. In the affidavit-in-opposition filed on behalf of respondent Nos. 4 and 5 it has been stated that pursuant to an order dated 7th August, 1979 passed by this High Court the petitioners had registered a deed of lease dated 23rd August, 1979 and demised a portion now numbered as 56/1A/1, Barrackpur Trunk Road, Calcutta containing an area of 10 cottahs 9 chittacks and 22 sq.ft. with structures standing thereon in favour of M/s. M.S. Vawada (P) Co. Ltd. for a term of 30 years commencing from 1st August, 1979 on the terms and conditions mentioned in the deed of lease.

18. Subsequently, a registered deed of assignment of lease dated 14th August, 1981 was executed by M/s. M.S. Vawada (P) Co. Ltd. with the consent of the petitioners and assigned and transferred the said demised land with structures in favour of the affirming respondents. In view of that deed of assignment of lease dated 14th August, 1981 the affirming respondent Nos. 3 and 4 became the lessees in respect of the demised premises and the names of respondent Nos. 4 and 5 were mutated in the assessment records of the Municipal Corporation as occupiers thereof and the name of Jarat Kumari Dasi, creator of debutter estate and all along been recorded as the owner of the said premises and rate bills showing the names of the respondent Nos. 4 and 5 as occupiers of the demised premises were being issued by the municipal authorities. Since the said assignment, the respondent Nos. 4 and 5 claim that they have been paying monthly rents to the trustees due and payable by us tinder the said long term lease and the rate bills were being served upon them ty the Calcutta Municipal Corporation for payment thereof.

19. In or about December, 1994 the rate bills in respect of the demised premises were served upon the respondent Nos. 4 and 5 and the demised land had been vested in the State of West Bengal as the owner thereof under the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981.

20. According to the respondent Nos. 4 and 5 they were holding the premises under the original lease granted in favour of said M/s. M.S. Vawada (P) Co. Ltd.

21. Heard the learned Counsel for the parties, considered their respective submissions and considered the averments made therein. It is the case of the petitioners that they are the owners and nine names were mutated in the Calcutta Municipal Corporation and they have been paying the tax bills and suddenly behind them the mutation were done and their names were deleted and instead the names of respondent Nos. 4 and 5 were introduced. This is in violation of the principles of natural justice since before changing the names; the Calcutta Municipal Corporation should have given hearing to them.

22. Contrary stands regarding the fact comes also from the averments of the respondent Nos. 4 and 5 and also the respondent Nos. 2 and 3.

23. The petitioners in their written submission themselves referred to a decision reported in 1999 (1) CLJ 250 and submitted that the Thika Tenancy Controller under the statute of 1981 has no right to adjudicate whether a person is a thika tenant or not.

24. The petitioners also referred to another decision reported in 1999(2) CLJ 79 on the same principle.

25. It is admitted that the names have been changed. It is also not clear as to who is in possession. The documentations are admitted and in that view of the matter unless the whole thing is tested through evidence the fact cannot be brought to light. The petitioners admittedly, claim personal hearing by the Calcutta Municipal Corporation. Assumingly, C.M.C. gives a personal hearing but then and also the C.M.C. authorities cannot decide the question of title or whether the land is a thika tenancy land or not. In that event also evidence is required.

26. Facts are disputed and in that view of the matter in a Writ Court disputed questions of fact or question of title cannot be decided.

27. The writ petition is, therefore, dismissed.

28. The petitioners are however, given liberty to approach the appropriate Civil Court for redressal of their grievances, if they so feel.

29. There will be no order as to costs.

30. Urgent xerox certified copy, if applied for, will be given to the parties as expeditiously as possible upon usual undertaking.