
(1975) 08 CAL CK 0003

In the Calcutta High Court

Case No : Civil Rule No's. 3288 and 3289 of 1973

Gopal Chandra Sarkar

APPELLANT

Vs

Hindusthan Steel Ltd.

RESPONDENT

Date of Decision : 01-08-1975

Acts Referred:

Constitution of India, 1950 — Article 14, 227, 254, 254(1)
Public Premises (Eviction of Unauthorised Occupants) Act, 1958 — Section 4, 4(1), 5
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 20, 5
West Bengal Public Lands (Eviction of Unauthorised Occupants) Act, 1962 — Section 2(7), 4

Citation : (1977) 1 ILR (Cal) 140

Hon'ble Judges : S.K. Bhattacharyya, J;Chittatosh Mookerjee, J

Bench : Division Bench

Advocate : Manoj Kumar Mukherjee, for the Appellant; Pasupati Nath Chunder, for the Respondent

Judgement

S.K. Bhattacharyya, J.—These two Rules were obtained by the Petitioner against an order passed by Shri S. Maiti, Subordinate Judge,, Burdwan, acting as appellate officer and affirming two orders passed by Mr. P.N. Swami, Estate Officer, Hindusthan Steel Ltd., in Case No. Estates 4 and 4A of 1970 directing the Petitioner to vacate two quarters under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958, as amended by the validating Act, of 1971 (to be hereinafter referred to as the Act).

2. The Petitioner claims to be a, lessee under Durgapur Club, who in turn was permitted to occupy the premises belonging to Durgapur Steel Plant (D.S.P.). The tenancy of the Club has, been duly terminated by the Durgapur Steel Plant authority and the Petitioner was, accordingly, served with a notice u/s 4(1) of the Act.

3. Before the learned Estate Officer, the Petitioner challenged the locus standi of the Durgapur Steel Plant to initiate the proceedings and contended that there was no valid determination of the tenancy by the Club. It was also contended

that since his suit against the Durgapur Steel Plant for illegal dismissal of service was pending, he could not be evicted from the premises. The learned, Estate Officer after hearing the parties directed the Petitioner to vacate. Against this order the Petitioner preferred an appeal before the District Judge, Burdwan and the matter was heard by the Subordinate Judge who dismissed the appeal. Against this order the Petitioner moved this Court under Article 227 of the Constitution and obtained the instant Rules.

4. Mr. Manoj Kumar Mukherjee, learned Advocate appearing for the Petitioner, has contended that the proceeding initiated on December 4, 1970, was illegal and without jurisdiction inasmuch as the provisions of Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958, was found to be discriminatory and accordingly, void in the case of Rajendra Prosad Singh Vs. Union of India (UOI) and Others, , which in turn followed the decision of the Supreme Court in the case of Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another, . In the next place Mr. Mukherjee contended that even assuming that Section 20 of the 1971 Act validated all actions purported to have been taken under the 1958 Act, it was still open to the opposite parties to have recourse to two separate proceedings for eviction, one under the Public Premises (Eviction of Unauthorised Occupants) Act and the other under the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962, inasmuch as the premises in question answered the description of "public land" under the State Act. Mr. Chunder, appearing for the opposite party No. 1, opposed the application and disputed these propositions of Mr. Mukherjee.

5. As for the first contention of Mr. Mukherjee, it is to be pointed out that the identical point was canvassed before us in the case of Indian Iron and Steel Co. Ltd. v. Union of India ILR (1976) Cal. 43 and therein we decided on a consideration of all the relevant decisions that in view of the decision of the Supreme Court in Hari Singh and Others Vs. The Military Estate Officer and Another, the Government could not have any right to institute a suit for eviction of unauthorised occupants of a public premises as from September 16, 1958 and all proceedings purported to have been taken under the provisions of 1958 Act were validated by Section 20 of the 1971 Act and the validating Act was found to have operated retrospectively by the Supreme Court in Hari Singh's case Supra. In view of this decision of ours, the first contention of Mr. Mukherjee, in our opinion, has no substance and must therefore fail.

6. Next contention urged by Mr. Mukherjee is that there are two courses open to the opposite party in proceeding against the Petitioner, one under the Public Premises (Eviction of Unauthorised Occupants) Act, 1958, as subsequently validated by the Act of 1971 and the other under the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962. Mr. Mukherjee contends that the provision of the Central Act is more onerous and as the discretion of the Estate Officer is unguided and uncontrolled and the authorities can have recourse to either of the two provisions, it is patently discriminatory and is hit by Article 14

of the Constitution. According to Mr. Mukherjee, the premises in dispute answers the description of public land within the meaning of Section 2(7) of the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 and a public land as amended and defined in Sub-section (7) of Section 2 includes any land owned by a Government company or a corporation owned or controlled by the Central or the State Government. Accordingly, Mr. Mukherjee contends that the provisions of the State Act, which provide for a less onerous procedure is clearly discriminatory and as no guidelines have been laid down for having recourse to the proceedings under the provisions of the two different Acts, the Public Premises (Eviction of Unauthorised Occupants) Act, 1958, as validated by the 1971 Act is discriminatory. It is true that Section 4(1) of the State Act provides that in case of a bona fide dispute as to the title to the public land, the Collector is required to make an order cancelling the proceeding and referring the parties to the civil Court. We have carefully gone through the provisions of Section 5 of the 1971 Act relating to eviction of unauthorised occupants of public premises and Section 4 of the State Act as amended by the West Bengal Act XXXVI of 1963, but we are unable to accept Mr. Mukherjee's contention that of the two procedures laid down therein, one is more onerous than the other. It would appear on a comparison of Section 5 of the 1971 Act with that of amended Section 4 of the State Act of 1962 that both Acts provide for affording the unauthorised occupants of a public premises or public land a reasonable opportunity of being heard and the Estate Officer or Collector, as the case may be, after being satisfied that the public premises or the public land was in unauthorised occupation of such a person, is to make an order directing such persons to vacate the public premises or land and deliver possession thereof. The 1971 Act, further provides that the Estate Officer shall have to record his reasons, whereas u/s 4 of the State Act, the Collector is not required to expressly record his reason. The fact that the State Act in Section 4 provided that the satisfaction of the Collector is to be based upon a finding that no bona fide dispute regarding title to the public land exists or that in case of a bona fide dispute regarding title to the public land, he is to make an order cancelling the proceeding, does not render the procedure less onerous under the State Act than the procedure contemplated in Section 5 of the Central Act, which also requires the Estate Officer to be satisfied after affording the unauthorised occupants of a public premises a reasonable opportunity of being heard and after considering any evidence that he may produce in support of the case. The Estate Officer may then make an order for eviction for which reasons are to be recorded. Consequently, if a bona fide dispute is raised and the Estate Officer is satisfied as to the existence of such a dispute, Section 5 of the Central Act in our view would not permit the Estate Officer to make an order for eviction. It is true that there is no provision for referring the parties to the civil Court in the case of existence of a bona fide dispute regarding title to the public land, but that would not by itself render the procedure less onerous; for under the Central Act if the Estate Officer is not satisfied that the public premises is in unauthorised occupation, he cannot make an order for eviction, whereas in the other case, the Collector is required

to refer the parties to the civil Court after cancelling the proceeding. In our opinion, it cannot be said that the procedure contemplated in Section 4 of the West Bengal Land (Eviction of Unauthorised Occupants) Act, 1962, or Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, even assuming that the opposite parties are entitled to proceed under both the Acts, are discriminatory and the vice of Article 14, as such, would not be attracted in the instant case.

7. Assuming for the argument's sake that two courses are open to the authorities for proceeding against a person in unauthorised occupation of a public premises or a public land, one more onerous than the other, without provision for any guidelines for the election of a particular procedure, the provisions of the Central Act would prevail in view of Article 254(1) of the Constitution. Article 254(1) provides that if any State law relating to a concurrent subject is repugnant to the Union law relating to that subject then whether the Union law is prior or latter in point of time, it will prevail and the State law shall to the extent of such repugnancy be void. In the instant case, there is no direct conflict between the two provisions, but they may be inconsistent even though it may be possible to comply with the requirements of one without disobeying the requirement of the other. However, certain rights have been conferred on a person in unauthorised occupation of a public premises under the State law, which is not there in the Union law. That being the position, the State law, in the instant case, would be clearly hit by Article 254(1) and in view of the provisions of Section 20 of the 1971 Central Act, it must be taken that the Union law has replaced the State legislation relating to the subject. The State law, it is not contended and it also does not appear to have been reserved for the consideration of the President and has received his assent, consequently, Clause (2) of Article 254 is not attracted but even if it were so, 1971 Central Act must be deemed to have amended, varied and replaced the State law in so far as there is repugnancy in the same field. In any view of the matter; therefore, the contention of Mr. Mukherjee cannot be accepted and the instant application, as such, would fail. The Rules are, accordingly, discharged. There will be no order for costs.

Chittatosh Mookerjee J.

8. I agree.