

(1969) 11 CAL CK 0009

In the Calcutta High Court

Case No : Civil Rev. No. 273 of 1968 in Appeal Case (Eviction) No. 12/6667 in Case No 84/66 (E.C. 4/64)

Indurani Saha

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 26-11-1969

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 19(1)
Unauthorised Occupation of Land Act, 1951 — Section 2(1), 3(1)
West Bengal Public Lands (Eviction of Unauthorised Occupants) Act, 1962 — Section 10

Citation : (1971) 1 ILR (Cal) 470

Hon'ble Judges : S.K. Chakravarti, J;P.N. Mookerjee, J

Bench : Division Bench

Advocate : Mukul Gopal Mukherjee, for the Appellant;Ranjit Kumar Banerjee and Soumendra Nath Mukherjee, for the Respondent

Judgement

1. This Rule arises out of a proceeding for the Petitioner's eviction from the disputed land under the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962. Eviction was ordered by a Magistrate, First Class, Coochbehar, in the first instance and, on appeal by the Petitioner, that order was affirmed by the Collector of Coochbehar. Hence, the present revision application by the Petitioner in this Court.

2. Before the Tribunals below, protection was claimed by the Petitioner against eviction u/s 10 of the above Act. She also stated that she was in unauthorised occupation of the disputed land. The Tribunals below, however, rejected her contentions and ordered eviction.

3. Before us, the above contentions have been repeated, and it has further been argued that the Act in question, namely, the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962, is ultra vires the Constitution as it is violative of Articles 14, 15 and 19(1) of the same.

4. We are unable to accept any of the Petitioner's above submissions.

5 The disputed land has been recorded in the relative and relevant settlement records as land belonging to the State of West Bengal. It thus satisfied the test of public land, there being nothing in" the present record to rebut the presumption on the point arising from the said settlement records. The Petitioner's claim, again, was of title said to have been derived from one Krishna Dassi, but she has adduced no evidence to show how the said Krishna Dassi would have any title to the disputed property, nor has she produced the document under which she claimed title from Krishna Dassi. The point of title, therefore, has to be decided against the Petitioner. That being so, she will be in unauthorised occupation of the disputed land.

6. The claim of protection u/s 10 of the above Act also cannot be supported. That section is in the following terms:

The provisions of this Act shall have effect notwithstanding anything to the contrary, contained in any law for the time being in force other than the Indian Penal Code or the Code of Criminal Procedure, 1898, but shall not apply in respect of the use or occupation of any public land by a displaced person as defined in Clause (1) of Section 2 of the Rehabilitation of Displaced Persons and Eviction of Persons in Unauthorised Occupation of Land Act, 1951, in respect of which an application for eviction has been entertained under Sub-section (1) of Section 3 of that Act.

7. It is clear, therefore, that in order that the protection under the above section would be available, the owner must have filed an application for eviction u/s 3(1) of the Rehabilitation of Displaced Persons and Eviction of Persons in Unauthorised Occupation of Land Act before the competent authority.

8. In the instant case, there is no proof of this essential fact.

9. In the second place, for attracting the said section the Petitioner has to establish that she was a displaced person, as defined in Section 2(1) of the above Act, which requires a certificate from the competent authority under the Act for proving her relative status. Although some documents on the point have been filed by the Petitioner, the requisite certificate under the Act has not been placed on record. The requirement of the above section, therefore, has not been satisfied. In the above view, the above section would not apply to the instant case to afford or extend any protection to the Petitioner.

10. On the Petitioner's new contention before this Court, namely, that the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962, is ultra vires the Constitution, the position stands as follows: In the light of the object and scheme of this particular statute, the classification of unauthorised occupants of public land is a reasonable classification. Under the line of guidance, again, provided by the test of bona fide claim of occupation or bona fide dispute as to status, a division may be made by the appropriate authority of persons of this class and against persons who, in the opinion of the authority in question, has no bona fide claim or right of occupation, the claim of ejectment has to be enforced

only by the summary remedy of procedure under this Act, the matter being left to ordinary suit or suits under the ordinary law so far as others are concerned.

11. Having regard to the scheme and object of the statute and the above line of guidance, the Act cannot be held to be discriminatory in any offending manner and would not be violative of the relative Articles of the Constitution.

12. The sheet-anchor of the Petitioner's case on this point was the decision of the Supreme Court in Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another, where by majority of three to two the Supreme Court declared the corresponding provision of the corresponding Central Act of 1958 unconstitutional. That statute and the said case, however, would be distinguishable as there is a very significant difference in the language used in the present State Act which takes away the power of the State to discriminate between persons of the same class, that is, persons having no prima facie or bona fide claim to the public land in question and provides a suitable guidance by prescribing the test of bona fide claim of occupation for a division or classification amongst occupants of public lands on a reasonable basis. It is clear, therefore, that the said decision of the Supreme Court would not support the Petitioner's contention against the invalidity of the relevant provisions of this State Act. We would, accordingly, reject also this new submission of the Petitioner.

13. In the premises, all the Petitioner's contentions in support of this Rule must fail and the Rule must be discharged.

14. We would, accordingly, discharge this Rule. There will be no order for costs.