

(1969) 05 CAL CK 0009

In the Calcutta High Court

Case No : Appeal from Original Order No. 168 of 1967

Jatindra Nath Kamila

APPELLANT

Vs

Junior Land Reforms Officer

RESPONDENT

Date of Decision : 29-05-1969

Acts Referred:

Constitution of India, 1950 — Article 14, 226

West Bengal Public Lands (Eviction of Unauthorised Occupants) Act, 1962 — Section 3, 4(1), 5

Citation : (1969) 05 CAL CK 0009

Hon'ble Judges : D. Basu, J;Ajoy K. Basu, J

Bench : Division Bench

Advocate : Saradindu Samanta, for the Appellant;Prafulla Kumar Chatterjee, for the Respondent

Final Decision : Dismissed

Judgement

D. Basu, J.—This is an appeal against a summary dismissal of the Appellant's petition under Article 226 of the Constitution by B.C. Mitra, J. There was an order passed against the Petitioner by the Collector of Midnapore dated June 10, 1966, for eviction u/s 4(1)(a) of the West Bengal Public Lands (Eviction of Unauthorised Occupants) Act, 1962. From that order the Appellant preferred an appeal to the Commissioner, which also had been rejected by the order dated January 6, 1967, which is at annEx. F to the petition under Article 226. Thereafter, he brought this petition under Article 226 in February 1967. The first ground relied upon before us in support of the petition was that the relevant provisions of the West Bengal Act in question are unconstitutional, being violative of Article 14 of the Constitution and on this point Mr. Samanta, on behalf of the Appellant, placed reliance upon the decision of the Supreme Court in Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another, . On a perusal of that decision, which has later been followed by a Division Bench of this Court in another case under the Central Eviction Act, of a similar nature, it would appear that the language of Section 4(1)(a) of the Bengal Act is different from that of

the corresponding Section 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1955, which came up before the Supreme Court in the cited case. Section 5 of that Punjab Act does not make it satisfied that the occupant is in unauthorised occupation but makes it discretionary with him to make an order of eviction under that Act or to relegate the State to a regular suit for eviction in the Civil Courts, by use of the word "may". In other words, Section 5 provides that--

If after considering the cause and the evidence produced by such person and after giving him reasonable opportunity of being heard, the Collector is satisfied that the public premises are in unauthorised occupation, he may make an order of eviction.

Under the Bengal Act, on the other hand, the language is as follows:

If after considering the cause, if any, shown by any person in pursuance of a notice issued u/s 3 and any evidence adduced in support thereof...the Collector is satisfied that no bona fide dispute regarding the title to the public land exists and that the public land is in unauthorised occupation, he shall make an order of eviction directing all persons in such unauthorised occupation to vacate the public land and deliver possession thereof to the owner within such time as may be specified in the order.

Under the Punjab Act, it was said that since it was left to the discretion of the Collector either to make an order of eviction under that Act or to leave the State to find its remedy under the general law, it was violative of the guarantee of equal protection of the laws under Article 14. That conclusion cannot be made u/s 4(1)(a) of the Bengal Act inasmuch as it is obligatory upon the Collector to make an order of eviction under this Act as soon as he is satisfied as to the two conditions--(i) that no bona fide dispute regarding title exists and (ii) that the land is in unauthorised occupation. The ground of unconstitutionality accordingly fails.

2. The second argument of Mr. Samanta is based on the first condition just mentioned, namely, that no bona fide dispute regarding title to the disputed public land exists. On this point, the case of the Petitioner, as disclosed in para. 2 of the petition under Article 226 of the petition, is that between the years 1951 and 1953 the Petitioner had purchased the disputed land by registered kobalas at different dates and since then he has been in possession by raising structures, etc. Unfortunately, however, this case has not been pursued with any amount of diligence as might be expected from a litigant before Tribunals vested with judicial powers and this negligence becomes more conspicuous by reason of the fact that in the revisional settlement there was no mention of the factum of possession or purchase alleged by the Petitioner. Be that as it may, since the Petitioner did not eventually appear before the Collector on the date fixed, the kobalas referred to do not appear to have been produced before the Collector nor did he produce them before the Commissioner in appeal. Even in the petition

under Article 226 the dates of the alleged kobalas were not given nor were copies made annexures thereto. In these state of affairs one would have expected that the original registered kobalas should be produced before us at least to show that he had a prima facie case on this point to be investigated into by the Court under Article 226 of the petition. But that has not been done. On the other hand, a plain copy of one of the kobalas was shown to us by Mr. Samanta, which disclosed no sign of registration. In the circumstances, it is difficult to hold that the summary dismissal has been unjustified. The appeal accordingly fails, but at the same time we may draw the attention of the Collector to the fact that the Commissioner in dismissing the appeal has made the following observation:

It is for the Collector to consider if any portion of the land in question may be settled with the Appellant on suitable terms in due course without prejudice to public interest in the road alignment and the flank.

3. The Collector's attention is particularly drawn to the averment in para. 3 of the petition under Article 226 where the Petitioner has alleged that he has installed deities whose puja is being performed daily. If this be a fact and if this lies outside the road and its flanks, as is referred to by the Commissioner, it may be reasonably expected that the Collector would try to spare the deities, if possible and if the Petitioner-Appellant comes to reasonable terms.

4. The appeal is dismissed. There will be no order as to costs.

Ajoy K. Basu, J.

5. I agree.