
(2019) 12 CAL CK 0069

In the Calcutta High Court

Case No : Civil Order/Misc.Cas (CO)No. 058 Of 2019

K Eswar Rao

APPELLANT

Vs

Estate Officer

RESPONDENT

Date of Decision : 10-12-2019

Acts Referred:

Public Premises (Eviction Of Unauthorised Occupants) Act, 1971 — Section 4(1), 9

Citation : (2019) 12 CAL CK 0069

Hon'ble Judges : Debangsu Basak, J

Bench : Single Bench

Advocate : M.K.Thakur, S.K.Mandal

Final Decision : Dismissed

Judgement

Debangsu Basak, J

Although a petition under Article 226 of the Constitution of India was filed, apparently, since, an order of the appellate authority exercising jurisdiction under the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 is under challenge, the petition is allowed to be converted to be one under Article 227 of the Constitution of India, on the prayer of the petitioner. The department is directed to act accordingly.

The revisional application is directed against the order dated July 22, 2019 passed by the Additional District Judge, Andaman & Nicobar Islands, Port Blair in Estate Appeal No. 02 of 2012 dismissing the appeal of the petitioner under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

Learned advocate appearing for the petitioner submits that the petitioner was dismissed from service wrongfully. The order of dismissal was challenged unsuccessfully before Court. Special Leave Petition with regard to the order of dismissal is still pending. He relies upon (2004) 2 SCC 747 (Union of India & others vs. West Coast Paper Mills Ltd. and another) in support of the proposition that, an appeal was a continuation of the original proceeding. He submits that,

since Special Leave Petition is pending, the authorities should not dispossess the petitioner.

The revisional application is opposed by the opposite party.

Learned Senior Advocate appearing for the opposite party, submits that, the petitioner was dismissed from service in 2006. The petitioner is withholding the quarter allotted to the petitioner in service unlawfully. He points out the fact that, the petitioner is yet to pay the costs imposed by the impugned order.

Learned advocate appearing for the petitioner in reply submits that his client is ready and willing to pay the occupation charges at the market rate.

During his service, the petitioner was allotted a government quarter at Shadipur on August 31, 2000. The petitioner was dismissed from service on September 4, 2006. He continues to occupy the same till date. He preferred an appeal against the order of dismissal. The appellate forum upheld the order of dismissal. The order of dismissal is presently under challenge in a Special Leave Petition which is pending before the Hon'ble Supreme Court of India.

The authorities initiated proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 to evict the petitioner from the government quarter allotted to him. Notice to evict the quarter was issued to the petitioner on September 12, 2006. The allotment of the quarter was cancelled by the opposite party on November 15, 2006 after the petitioner failed to vacate the quarter. The department thereafter initiated proceedings under the Act of 1971 before the Estate Officer. Notice under Section 4 (1) of the Act of 1971 was issued to the petitioner on December 12, 2006. The petitioner appeared before the Estate Officer with a prayer for retaining the government quarter. An order of eviction was passed on July 23, 2007. On appeal, against the order of eviction, by impugned order the appellate authority exercising jurisdiction under the Act of 1971 after discussing the factual scenario, found the petitioner to be no longer in service and that he deliberately failed to vacate the quarter in compliance of the order of eviction. Learned Judge by the impugned order, dismissed the appeal on contest with costs of Rs. 20,000/-. West Coast Paper Mills Ltd. (supra) recognizes the principle that, an appeal is continuation of the original proceedings. The Court is informed that an SLP is pending against the order of affirmation against the order of dismissal of the petitioner. There is no material placed on record to suggest that the Hon'ble Supreme Court was pleased to admit the SLP and treat the same as an appeal.

The petitioner was allotted a government quarter when he was in employment. On his service being terminated, he became obliged to vacate the allotted quarter. He did not do so. A proceeding under the Act of 1971 was taken. The petitioner failed to substantiate any material irregularity vitiating the proceeding under the Act of 1971 upto the appellate forum stage.

In such circumstances, I find no material irregularity in the impugned order

warranting interference under Article 227 of the Constitution.

CO No.058 of 2019 is accordingly dismissed. No orders as to costs.