
(1996) 10 CAL CK 0014
In the Calcutta High Court
Case No : Writ Petitioner No. 716 of 1996

Kalyan Kumar Mallick and Others

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 15-10-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 227

West Bengal Premises Tenancy Act, 1956 — Section 8

Citation : (1998) 1 CALLT 272

Hon'ble Judges : Bijitendra Mohan Mitra, J

Bench : Single Bench

Advocate : Shri Hirak Mistra, Sri Sunil Kumar Mitra and Sri Achintya Kumar Sen, for the Appellant; Sri Somendra Nath Dutta, for the Respondent

Judgement

The Court

1. The writ petitioners along with other co-sharers are the landlords/owners of premises No.60A, Collutola Street, Calcutta-700 073. Sometime in June, 1962 Late Kalldas Mallick, the then Trustee and Predecessor-in-interest, inducted Executive Engineer, Urban Drainage Outfall Division, Government of West Bengal. In respect of second and third floor of the building in question being the subject matter of the Instant writ petition at the rate of rental of 0.70 p. per sq. ft. per month exclusive of any Municipal or other taxes. The said third floor is occupied by the office of the Joint Director of Fisheries, Government of West Bengal, at present. At the time of Induction of the aforesaid tenants rent was fixed as payable at the rate of 0.70p. per sq. ft. per month. At the aforesaid rate the rent was paid by the tenant upto 30.9.87. It has been asserted that ever since Induction the building in question is being maintained and Municipal taxes are defrayed by the joint owners of the property and the same also include provision of amenities including that of maintenance of lift in the said building. It has been alleged that respondent No.4 being the occupant in respect of third floor of the said building has not paid the proportionate share of Municipal taxes including

surcharges and other taxes. The escalation of the rate of Municipal taxes during the period was by way of considerable hike from Rs. 27,818.52p. per year upto Rs. 97,088,00p. per year. There has been further escalation because of introduction of multistoried taxes and rise of maintenance cost. The petitioners have come up with the case by way of pleadings that to cope with rise of cost they were constrained to make request for enhancement of rent.

2. That as the said persuasion and/or request did not yield any result, therefore an application was required to be moved and by an order dated 13.1-93 the concerned authority increased the rate of rent from 0.70p. per sq. ft. to 0.98p. per sq. ft. per month with effect from 1.10-87. There was a further direction given in a contempt proceeding against respondent No.4 and recently the respondent No.4 has paid share of the occupier's Municipal taxes and surcharges upto the 2nd Quarter 1995-96. Thereafter, a notice was caused to be sent to the concerned respondents with a demand for further rise of the rate of rent and in response to the said demand the rate of rent was enhanced from 0.98p. per sq. ft. to Rs. 1.18p. per sq. ft. The said enhancement was assailed as low and inadequate in comparison with the prevalent rate of rent in the locality and it has also been suggested at the time of argument that the same has no nexus of parity with the rise of cost and prices. The petitioner's grievance is that they were not allowed to render materials and evidence in support of their contentions as according to them in the vicinity of the area, Bank of India is occupying the same at a rental of Rs. 7.00p. per Sq. ft. per month. It has been further alleged that the State Bank of India in Collutola Street Branch has also been paying monthly rental at the rate of Rs. 8.58p. persq. ft. per month inclusive of Municipal taxes. It is alleged that perpetuation of holding of tenancy at an abnormally low rate of Rs. 1.18p. per Sq. ft. per month is very much low and the same does not even include the expenses to be incurred for the up keep and maintenance of the building in question including defraying the liability of Municipal taxes. In this writ proceeding multiple prayers have been made Including a prayer for Issuance of writ of Mandamus to the concerned respondents commanding upon them to pay rent and/or occupation charges of the building in question at the rate of Rs. 10.00p. per sq. ft. and also for other ancillary reliefs.

3. That in view of the contentions and counter-contentions raised by the learned Advocate of the respective parties at the time of argument, a grievance has been ventilated that no proper hearing was given to the writ petitioners as a result of which the writ petitioners were deprived of the opportunity to render evidence and to file materials in support of their case. Even Mr. Mitra, learned counsel of the petitioners has suggested that the occupation charges and/or rates of rent in the vicinity of the area are much higher than the rate in which it was being offered to the petitioners. The further submission was to the effect that if materials collected by the writ petitioners could have been perused before the appropriate authority then the said authority would have arrived at an alternative inference. Even Mr. Mitra has referred to the Circular No. 1831 W.B.L.R. dated

23.11.94 issued by the Joint Secretary of the Land and Land Reform Department, Government of West Bengal and as per such memo it appears that the rate of rent or occupation charges is revisable in the usual manner as laid down in the Government Order No.590 L.R dated 3/11.8.93 where recommendations were made for revision of assessment in terms of the said circular and revised rent should be assessed subject to conditions or stipulations contained therein. Even there is scope for further reconsideration after enhancement of the rate. Mr. Mitra wanted to refer to different circulars issued by different Branches of the State Government and according to him if the same would have been adverted to, then the prevalence of the rate of rent in which the writ petitioner's property are being occupied will be required to be revised and enhanced. According to Mr. Mitra, the inaction on the part of the Agents of the State Authority is detrimental to the Interest of the owners whose property is being enjoyed by the State Government. Mr. Mitra has also submitted that if it is a wing of the Central Government or of the State Government or an Instrumentality of the State is the tenant and/or occupier of the premises, then it should perform its role as model tenant. Its behavioral pattern should be guided by considerations of fair play, reasonableness and balancing of Interest as it is performing a public role. Mr. Mitra has further submitted that it is strange that when the hike of the price rise has its bearing everywhere in the socio-economic structure of the country, the same is not reflected with regard to the subsisting contractual relationship of tenancy between the model tenant, namely the State and its Landlords. A reference can be made in this connection to the case of LIC of India and Another Vs. Consumer Education and Research center and Others, where the apex court has opined and has held that the actions of the State, its instrumentality, any public authority or persons whose actions bear Insignia of public law element or public character are amenable to judicial review and validity of such an action would be tested on the anvil of Article 14 of the Constitution. In the cited decision, the Supreme Court held that the writ petition is maintainable to test the validity of the conditions laid in Table 58 Term Policy Issued by LIC and the party need not be relegated to a civil action. Mr. Mitra has further submitted that the policy of the State to pay occupation charges of any premises should be uniformly valid and the same should not have been allowed to be eroded by arbitrariness and determination of rent cannot depend of the caprice of the Authority, According to Mr. Mitra, a Quasi-Judicial Authority or action of any Administrative Authority which has civil consequences should be guided and modulated by the principle of natural Justice and considerations of fair play. Therefore, it has been contended that all orders passed should be considered orders and it should be resonant with reason.

4. Mr. Dutt, learned Advocate appearing on behalf of the State respondents has submitted before this court that the rise of rent is fair and he has tried to take refuge under the shelter of the provisions of West Bengal Premises Tenancy Act. According to the submissions made on behalf of the respondents, they want to build up their case that analogous principles as valid in West Bengal Premises

Tenancy Act with regard to determination and/or fixation of fair rent in terms of section 8 of the said Act should also be adhered to but here the question arises that if it has relation to the policy pursued by the State and/or Governmental Agencies and they are required to give effect to their own circulars and at different rate of enhancement or occupation charges should not be made with regard to different occupied premises. Unless a uniform policy is adopted, it may result in violation of Article 14 of the Constitution of India and some landlords of premises may get the benefit of Governmental policy and for some other cases if they are driven to follow to formalistic procedure that may result in apparent discrimination.

5. Therefore, to obviate the possibility, this court feels that the concerned Authority should be directed to reconsider the proposed enhancement in the light of the observations as made in the Instant order.

6. Accordingly, the competent Authority namely, the First Land Acquisition Collector, Government of West Bengal is hereby directed to reconsider the question of enhancement of rent or occupation charges of premises No. 60A, Collutola Street, Calcutta-700 073 and the writ petitioners should be afforded with reasonable opportunity on due notice to participate in the hearing and also to file their supporting documents, materials and evidence in support of their plea for enhancement of the rate of rent. The said Authority will be required to give a notice in writing to the writ petitioners with a view to afford them an opportunity to file their documents and materials in advance in support of their claim and the date should be notified for hearing and the said Authority, as aforesaid, will be required to pass a reasoned order in accordance with law within a period of 3(three) months from the date of the communication of the Instant order. The said Authority will arrive at a proper figure about the rate of occupation charges of the petitioners in the premises in question and on the basis of the same the rent or occupation charges should be re-fixed. The concerned Authority will also consider that if any policy is adopted by the State Government and its Agencies in terms of different memoranda circulated from time to time. The bearing of the same on the germane Issue of controversy will also required to be assessed. The Writ petition thus stands disposed of subject to above direction with delegation of function of fact-finding scrutiny about determination of occupation charges and/or rent and also of the rate at which it should be prescribed to be paid so that it may be fair and reasonable. The writ petition thus stands disposed of.

7. Petition disposed of