

(2014) 08 CAL CK 0080
In the Calcutta High Court
Case No : W.P. No. 2208 of 2002

Kamalesh Gurmukh Advani	Vs	APPELLANT
The West Bengal Small Industries Development Corporation		RESPONDENT

Date of Decision : 08-08-2014

Acts Referred:

West Bengal Government Premises (Tenancy Regulation) Act, 1976 — Section 3(1), 3(2)

Citation : (2015) 1 CHN 226

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : Haradhan Banerjee and Biswanath Ghosh, Advocate for the Appellant; J. Kar, Sr. Advocate and S. Sarkar, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

Arindam Sinha, J.—The petitioner's father had obtained a lease on 14th November, 1969 from the State in respect of plot nos. Z-6 and Z-7 in Howrah Industrial Estate situated in Mouza Baltikuri in Howrah. By Government Order dated 5th December, 1994 administrative control of the said Industrial Estate was transferred to the respondent no. 1. The father of the petitioner died on 12th August, 2001 and the petitioner says he inherited the tenancy.

2. A notice u/s 3(1) of the West Bengal Government Premises (Tenancy Regulation) Act, 1976 dated 2nd October, 2001 was issued by the prescribed authority under the said Act calling for delivery of vacant possession of the demise within one month from the date of service of the same alleging violation of the terms of the lease vide clause no. 3B. The said clause is reproduced below.

3. "If the rent hereby reserved or any part thereof shall remain unpaid for six months after becoming payable or if any covenants on the part of the Lessee herein contained shall not be performed observed or if the demised premises be not used by the Lessee for purposes mentioned in clause 2(f) hereof for a continuous period of six months then and in any such event, it shall be lawful for

the Lessor or the Government/at any time thereafter to determine the Lease and to re-enter upon the demised premises or any part thereof in the name of the whole and thereupon this demise shall absolutely determine without prejudice to the rights of the Lessor or the Government in respect of breach of the Lessee's covenants herein contained."

The notice appears to be in printed form in which the line regarding default of payment of rent was scored through thus indicating the ground to be violation of all or any of the remaining terms in the said clause. By this writ petition, the petitioner had challenged, inter alia, the said notice. On behalf of the petitioner only the prayer regarding challenge to the said notice was pressed at the time of hearing.

4. Mr. Banerjee, learned Advocate appearing on behalf of the petitioner relied on the decision reported in 2000(1) CHN 319 (D. Banerjee Vs. State of West Bengal) delivered by a Division Bench of this court. Referring to paragraphs 29 and 30 of that decision he submitted the notice was bad, as it had been issued without investigation as to whether any breach of a clause of the lease had been committed by the Lessee. Such investigation could only have been done by allowing the petitioner to place his version of the story as opposed to the version advanced by the respondents. He submitted further there was no admitted position on facts regarding the allegation of breach but what could not be disputed was no investigation had been made by, inter alia, calling for an explanation from the petitioner.

5. Mr. Kar, learned Senior Advocate appearing on behalf of the respondents submitted no interference could be made by this court by reason of evidence that there was no activity for the purposes of manufacture or manufacturing process by the petitioner in the demised premises for a continuous period of six months prior to issuance of the impugned notice. He drew the attention of this court to the disclosures by pages 13 and 14 of the affidavit in opposition used by the respondent no. 1. Page 13 is a copy of a letter dated 16th July, 2001 written by an officer to the Estate Manager, both of the said respondent, furnishing information that the said demised premises was closed since a long period. The disclosure at page 14 of the said affidavit appears to be a status report of the units at Baltikuri, Howrah which mentions, as serial no. 4 therein the unit in the demised premises as closed since 10 years. He submitted further corroboration of such evidence was furnished by the Special Officer's report dated 5th October, 2002 filed pursuant to order dated 19th September, 2002 made in the writ petition. The Special Officer had reported, inter alia, there was no electricity line and on inquiry had been told about 15 years ago electricity line was disconnected. According to Mr. Kar no manufacturing process could be carried on in the absence of electricity. That the petitioner's unit was closed was still further demonstrated by the inability on his part to disclose any document relating to payment of excise duty or wage register of the relevant period. On those facts the petitioner was liable to be evicted as was the law laid down in the decisions

reported in 1996(2) CHN 515 (Estate Manager.....Hsg. Dept. Vs. D.K. De.) paragraphs 24 and 25, Associated Indem Mechanical Private Limited and Another Vs. West Bengal Small Industries Development Corporation Limited and Others, and Associated Indem Mechanical Pvt. Ltd. Vs. West Bengal Small Scale Industrial Development Corporation Ltd. and Others,

6. By the judgment in D. Banerjee a Division Bench of this court had found in that case it was not admitted the tenant had ceased to occupy the flat in question. Such allegation had been made by the respondents on the basis of several reports submitted by the Estate Supervisor, Circle IX, alone. There was no other material before the Estate Officer to corroborate the opinion expressed in the said reports, that the tenant had ceased to occupy the flat or had made over possession to someone else. The allegation was denied by the tenant who had made out a specific case that when he had to leave Kolkata in connection with his work, his wife and daughter went to stay with his wife's parents for reasons of security and on one such occasion he had permitted his neighbour to use the flat for storing his goods since the neighbour's flat was being white-washed. The Division Bench of this court held when the facts relating to possession of the flat by the tenant were disputed, the Estate Officer could have asked for the appellant's version. Once it was established on proper evidence the tenant had ceased to occupy the flat, the consequences of automatic termination of tenancy as envisaged in Section 3(2) of the said Act would follow.

7. In Estate Manager..... Housing Department another Division Bench of this court had held before termination of a tenancy u/s 3(2) of the said Act, no notice is to be given nor the principles of natural justice required to be complied with. Though the aforesaid two decisions by different Division Benches of this court were relied on the opposite sides of the Bar but this court does not find any conflict in the interpretation of Section 3(2) of the said Act as made by them. D. Banerjee does not say before termination of such tenancy notice has to be given or the principles of natural justice are required to be complied with. This court understands the judgment in D. Banerjee to have held, the conclusion by the authority that a tenancy was terminable in terms of Section 3(2) of the said Act had to be arrived at upon good evidence, which could be on admission. Where there was no admission, material relied upon by the authority to conclude there had been a breach, without the same being tested by giving opportunity to the tenant to place his version, could not be said to be good evidence to invoke exercise of power u/s 3(2) of the said Act.

8. In Associated Indemn Mechanical (P). Ltd. dealt with by a Division Bench of this court the facts were found to be final notice dated 13th September, 1999 was issued pursuant to which possession was taken on 25th February, 2000. In that case there was no challenge to the final notice or possession taken thereafter. The authority then gave a fresh chance to the tenant to restart manufacturing activity. However, fresh inspections disclosed the appellant had not commenced any manufacturing activity and the unit remained a non-

functioning unit. There was clear reference to all this in the orders of the Chairman dated 11th September, 2002. Learned counsel on behalf of the tenant could not controvert the factual position. That decision was confirmed by the Hon"ble Supreme Court as reported in (2007) 3 SCC 4607 (Associated Indemn Mechanical (P) Ltd. Vs. W.B.S.I.D.C. Ltd.).

9. This court finds in concluding the petitioners unit was closed the authority relied on the said two disclosures at pages 13 and 14 of the affidavit in opposition used by the respondent no. 1 without further inquiry from the petitioner. The petitioner in paragraph 19 of the writ petition had alleged no notice or opportunity of being heard to adjudicate as to whether the petitioner or his father was guilty of violation of the essential terms of the contract was given. In reply to the impugned notice the petitioner had asserted they continued to operate from the demised premises though quite recently the activities were restricted by reasons of suspension of water supply etc. By that reply the petitioner had enclosed copies of Sales Tax returns and Income Tax returns. The petitioner had alleged further in his affidavit taking exception to the report of the Special Officer, his unit was operative in continuing manufacturing process by alternative arrangement for electricity.

10. As held in D. Banerjee, the stand taken by the petitioner cannot be brushed aside and merits investigation which could only be done by allowing him to place his version of the story as opposed to the version advanced by the respondents in the absence of which the challenge of the petitioner succeeds.

11. The impugned notice is set aside and the writ petition allowed to that extent.

12. Urgent photostat certified copy of this judgment, if applied for, be given to the parties on usual undertakings.

Later

13. Mr. Sarkar, learned Advocate appears on behalf of the respondents and prays for stay of operation of the judgment just now delivered.

14. Such prayer is considered and refused.