
(1953) 06 CAL CK 0014
In the Calcutta High Court
Case No : Civil Rule No. 2219 of 1952

Mohammad Safi

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 26-06-1953

Acts Referred:

Constitution of India, 1950 — Article 226
Government Premises (Eviction) Act, 1950 — Section 2, 3, 5
Transfer of Property Act, 1882 — Section 108

Citation : AIR 1953 Cal 729

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : Binayak Nath Banerjee and Sudhir Kumar Bose, for the Appellant; Hemendra Kumar Das and Smriti Kumar Rai Choudhury, for the Respondent

Judgement

Sinha, J.—This is an application to compel the respondents to withdraw an order of eviction passed upon the petitioner, in respect of two plots of land appertaining to shops Nos. 18 and 20 in the workmen's line market at Ichapore, situate within the boundaries of the Metal and Steel Factory at Ichapore. The facts are as follows:

2. The petitioner took the ground tenancy of two pieces of lands on 1-12-1942 and 1-8-1943, situate in the workmen's line market at Ichapore, situate within the boundaries of the Government Metal and Steel Factory at Ichapore. On this lie erected Stalls which were numbered as shops Nos. 18 and 20. Therein he carried on a cloth business under the name and style of "Nadia Cloth Store". During the communal disturbances in the locality about end of February 1950 the petitioner closed his shops. Upon the Factory authorities notifying in the newspapers that all shops must be reopened within a specified period, the petitioner reopened his shop early in June 1950. On 15-6-1950 two letters were written by the petitioner to the Estate Foreman, Metal and Steel Factory Ichapore, as follows:

"(1) I beg to bring to your kind notice that I wish to transfer shop at No. 18 at Workmen line Bazar Ichapur to Sri Kedarnath Agarwala of Ichapore Bazar from the month of June 1950. Kindly arrange to transfer the name accordingly to Sri Kedar Nath Agarwalla who is bound to pay the rent of the ground on which the said shop stands accordingly to your assessment. Please note and do the needful.

(2) I beg to bring to your kind notice that I wish to transfer my shop No. 20 at Workmen's line Bazar Ichapur to Sree Mewalal Shaw of Ichapur Bazar from the month of June 1950. Kindly arrange to transfer the name accordingly to Sree Mewalal Shaw who is to pay the rent of the ground on which the said shop stands according to your assessment. Please note and do the needful."

It appears that the Superintendent Metal and Steel Factory Ichapore got into communication with Kedar Nath Agarwal and Mewalal Shaw. On 31-6-1950, Kedar Nath Agarwal wrote to the Superintendent that he was a businessman residing at Ichapore Line Bazar and had purchased the shop for running the business and wanted to take a lease of the land upon paying a rent higher than the highest tender. On the same date Mewalal Shaw wrote a letter informing the Superintendent that he had purchased the shop from the petitioner for running the business and was continuing the business there for a long time. He also wanted a tenancy of shop No. 20 at a rent higher than the highest tender. It is not quite clear what they meant by the highest tender received. Probably the authorities had intimated to them that the lands will be let out upon the basis of fresh tenders and both these persons failed to make any offer in time and apprehended that fresh tenders had already been called and the highest tender accepted.

3. On 29-7-1950, Kedarnath's pleader wrote to the Chief Secretary, Government of India and the Collector, 24 Parganas stating that the petitioner had sold his right title & interest in the land (upon which shop No. 18 was situate) to Kedarnath, together with the structures and had put him in possession, and threatening to file a suit for a declaration of his tenancy right and damages for dispossession. On 31-7-1950 Mewalal's pleader wrote a similar letter in respect of the plot of land upon which shop No. 20 was situated. It is by no means clear how they complained of dispossession.

4. On 12-11-1950, Kedar Nath wrote a letter to the Superintendent that shop No. 18 was taken over by him to save the same being looted during the communal troubles upon condition that when the petitioner returned, the shop would be made over to him. He intimated that the shop had been made over again to the petitioner.

5. According to the petitioner he wrote a letter on 3-7-1950 to the Superintendent stating that he had changed his views due to abatement of the communal disturbances and prayed that the shops may be kept in his name as before. This letter was not received by the Superintendent but he received a copy of this enclosed with another letter dated 31-10-1950.

6. Before I proceed further, I will have to consider the terms of the petitioner's tenancy and whether he could be said to have acted in contravention of any of the terms thereof. The terms are not in writing. Paragraph 5 of the affidavit in opposition however is as follows:

"The petitioner Md. Safi took the ground tenancy of two pieces of lands on 1-12-1942 and 1-8-1943 respectively on which he created stalls on condition of carrying business there. The stalls on the aforesaid two pieces of land were numbered as shops Nos. 18 and 20 in the old Workmen's Lines, Market at Ichapur. The land is situate within the boundary of the Metal and Steel Factory Estate and belongs to the Central Government."

The allegations in this paragraph are not denied in the petitioner's affidavit in reply. Therefore it is established that one of the conditions of his tenancy was that he must carry on business there. The application of Section 108(j) of the Transfer of Property Act is thus excluded. I now come to Section 3(1) of the Government Premises (Eviction) Act 1950 (27 of 1950) which runs as follows:

"3(1) "Power to evict certain persons from Government premises"--(1) If the competent authority is satisfied-

(a) that the person authorised to occupy any Government premises has, whether before or after the commencement of this Act-

(i) sub-let without the permission of the Central Government or of the competent authority, the whole or any part of such Government premises or

(ii) otherwise acted in contravention of any of the terms express or implied under which he is authorised to occupy such Government premises, or

(b) that any person is in unauthorised occupation of any Government premises, the competent authority may, by notice served by post or otherwise, that that person as well as any other person who may be in occupation of the whole or any part of the premises, shall vacate them within fifteen days of the date of the service of this notice."

"Competent Authority" has been defined to mean any person authorised by the Central Government, by notification in the official gazette to perform the functions of the competent authority within the area notified. Such a notification, No. 13E was published in the Gazette of India (Exty.) on May 1, 1950. The notification was amended by a further notification No. S.R.O. 147 published in the Gazette of India dated 5-8-1950 whereby the Superintendent Metal and Steel Factory, Ichapore has been appointed as the competent authority within the Metal and Steel Factory Ichapore. This has been confirmed by another notification No. S.R.O. 291 gazetted on 18-11-1950 by which the area of the Rifle Factory at Ichapore has been added to his jurisdiction.

7. On 16-11-1950 the respondent No. 2 who is the Superintendent of the Metal and Steel Factory Ichapore issued two notices upon the petitioner asking him to

quit and vacate the two plots appertaining the shops nos. 18 & 20 upon the expiry of his next month of tenancy. It was stated in the notices that it appeared to the Superintendent that the petitioner had ceased to carry on business in the said shops and had sold the structures to third parties.

8. On 16-5-1952, notices were served by the respondent no. 2 upon "Jonab Mahammad Safi, his agent or whosoever be in unauthorised occupation of premises of 18 (and premises no. 20) in the Old Workmen's Lines Market at Ichapore". These notices purport to have been issued u/s 3, Government Premises Eviction Act, 1950 as amended by Section 25, Requisitioning and Acquisition of Immovable Property Act, 1952 (Act 30 of 1952) and require the abovementioned persons to vacate the premises within 15 days from the service of the notices. On the same date, notices u/s 4 of Act 27 of 1950 as amended by Act 30 of 1952 were also served for arrears of rent and damages for use and occupation.

9. As the petitioner did not vacate the lands, force had to be used and it appears that police help had to be requisitioned. In the counter affidavit it is stated in paragraph 20 that one Ganpat Lal Agarwal appeared to be in possession of the shop rooms and claimed them to be his property. In reply it is stated that Ganpat Lal Agarwal was not authorised to take possession of the land. This can only mean that he was in unauthorised possession, since his possession is not denied. The superstructure has been removed and it has been offered back to the petitioner. Thereafter this rule was taken out. It will be observed that only the notices dated 16-5-1952 are specifically challenged in this application. Mr. Banerjee had at first taken the point that the notices dated 16-11-1950 were invalid because according to the respondent No. 2 himself (counter affidavit, para 3) he was notified to be a competent authority on 18-11-1950. It transpires however that the respondent is not accurate, because there is an earlier notification in existence. (No. 13E dated 1-5-50 as amended by notification No. S.R.O. 147 dated 5-8-1950). Notification S.R. No. 291 merely increased the area of his authority. Mr. Banerjee next argued that under Act 27 of 1950, the "competent authority" must be a "person" and the appointment of the "Superintendent Metal and I Steel Factory Ichapore" was bad because it was "an office. I regret I am unable to accept this argument. It is not the office which is appointed but the official who happens to fill the office for the time being. The object of such an appointment is obvious. If officials are appointed by name, it will mean frequent change in the notifications. I cannot find any valid objection to such an appointment. The definition of "person" in the General Clauses Act (section 3(39) (now Section 3(42)) does not assist us in solving the problem. Mr. Banerjee next argues on the merits of the case. He says that the letters dated 15-6-1950 written by the petitioner, merely express a desire to transfer the shops to Kedarnath and Mewalal but it was never effected and on 3-7-1950 the petitioner clearly revoked his previous prayer for effecting the transfer.

10. Section 3 of Act 27 of 1950, makes the notice u/s 3, subject to the

satisfaction of the "competent authority", that a certain state of fact exists. In this case, the competent authority had to be satisfied that the petitioner had acted in contravention to the terms of his tenancy. I have shown above that one of the terms of the tenancy was that he should carry on business there. It is clear from the facts stated above that at some point of time previous to the service of the notice dated 16-11-1950, the petitioner had ceased to carry on business at the shops. It is, therefore, unnecessary to go into the question whether he really wished to transfer the shops or merely effected a temporary transfer to wade over the difficult times brought on by the communal disturbances. The shops are situated within an area of military importance and it is understandable that the authorities cannot allow anybody and everybody to occupy the shops and the tenancy is subject to the actual tenant, continuing to carry on business there. It is unnecessary therefore to consider the fact that Kedarnath and Mewalal have affirmed affidavits supporting the petitioner's case, except that I am unable to accept their evidence that the petitioner was in possession at all material time of the said two shops.

11. Lastly it may be mentioned that there is a right of appeal given, u/s 5 of the Act 27 of 1950. If the notice was given by a person who was not a competent authority at all, an application directly to this Court was maintainable. Since, however, it transpires that the notices were properly issued, I do not think that I should go into the disputed fact of possession, which should have been agitated before the tribunal provided for such matters by the Act itself. Mr. Banerjee has relied on the case of -- "Machindar v. The King" AIR 1950 PC 129 (A) and argues that this Court is competent to examine the reasonable probative value of the materials upon which the subjective satisfaction of the competent authority is based. Firstly that is a matter which should have been agitated before the appellate tribunal provided for by the Act. Secondly, upon an examination of the entire evidence I am myself unable to come to the conclusion that the petitioner could be said to have been carrying on business at the two shops at all material times. For these reasons this application must fail. The rule is discharged, the interim injunction vacated. There will however be no order as to costs.

12. As the petitioner intends to prefer an appeal against this order, the interim, injunction will continue for three weeks more, after which further stay, if necessary, must be obtained from the Appeal Court.