

(1988) 12 CAL CK 0054

In the Calcutta High Court

Case No : C.O. No. 12421 (W) of 1987 and 325 of 1988

New Howrah Transport Co. and Another

APPELLANT

Vs

State of West Bengal and Others
 Samarendra Mohan
Gupta and Another Vs Sm. Manjushree Hore

RESPONDENT

Date of Decision : 16-12-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 151

Constitution of India, 1950 — Article 14, 20

West Bengal Premises Tenancy Act, 1956 — Section 12, 13, 13(1), 13(1)(ff), 29B

Citation : 93 CWN 325

Hon'ble Judges : Susanta Chatterjee, J

Bench : Single Bench

Advocate : S. Dutta and M. Bagchi, Saktinath Mukherjee, Chandranath Mukherjee II, D. Mazumder and B. K. Banerjee, for the Appellant; Sukumar Ghosh, S. Dutta and Sudhir Ranjan Khastgir, for the Respondent

Judgement

Susanta Chatterjee, J.—This civil order is taken up for hearing along with another writ petition (In Re : Punam Chand Gupta). For effective adjudication as agreed by the Learned lawyers appearing for the respective parties both the matters were taken up for consideration. Similar points cover both the cases. Both the writ applications raise a constitutional question as to the vires of Section 29B(2) (c) of West Bengal Premises Tenancy Act.

2. It is asserted that the appropriate authority issuing the certificate as contemplated u/s 29B of Sub-Section (2Xc) of West Bengal Premises Tenancy Act has had no basis to arrive at the finding of facts as to the requirement of the landlord concerned and there is non-application of mind both at the time of issuing the certificate and at the time of passing the order by the Rent Controller. Section 29B Sub-Section (2)(c) of the West Bengal Premises Tenancy Act provide for enquiry or inspection. There is also no provision for verification of the case of the landlord. The said section provides merely a show of an adjudication. Even though the authority is not required to have it verified from the tenant, yet a

certificate is being made conclusive. The tenant/is being deprived of his property, namely his tenancy right, without any opportunity to question the case of the landlord. It is further submitted that in such view of the matter the said Section is arbitrary, unreasonable, unfair and ultra vires the Constitution of India. It is asserted that the provisions of Section 29B of the said Act purport to curtail the legal rights of tenants and to deprive them of their rights (sic) or remedy under the law of the land in violation of the provisions of Articles 14 and 20 of the Constitution of India.

3. The facts of the cases as to the claim for evictions are different (sic) but the question as to the vires of the section is the same. This question (Sic) only taken up for consideration for the purpose of disposal of The present (Sic) writ petition.

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4. The main challenge is against the certificate issued by the Area Sub-Area Commander as contemplated in Section 29B of West Bengal (sic) Premises Tenancy Act and as to the jurisdiction of the Area or Sub-Area (sic) Commander to issue the certificate indicating that the premises is required the certificate holder for his or her own occupation and for the occupa-(sic)tion of his or her family and the expression made in Section 29B(2)(c) of (sic) the Act that such certificate shall be conclusive evidence of the fact stated (Sic) therein. It appears that Section 29B of West Bengal Premises Tenancy Act amended provides special procedure for disposal of applications for evic(sic)tion on the ground of bona fide requirement. It is provided that no Civil (sic) Court (Sic) entertain any application by a landlord being, a Government (Sic) servant who being in occupation of a residential premises allotted to him by his employer, is required by, or in pursuance of, an order made by such employer to vacate such residential accommodation or in default, to incur certain obligations on the ground that he owns a residential accommodation either in his own name or in the name of his wife or dependent child at or near the place where he is posted for the time being, or by landlord who was retired, or retired within a period of less than one year, as a member of the Naval, Military or Air Force of the Union of India or by a landlord who is the parent of the wife of such member of the Naval, Military or Air Force of the Union of India or by a landlord who is a relation (other than minor child or the widow) and a dependent of a member of the Naval, Military or Air Force of the Union of India and an ordinarily resides with him or a minor child or the widow of such member who dies while in service of within 5(five) years of retirement, for the recovery of possession of any premises on the grounds specified in Clause (ff) of Sub-Section (1) of Section 12 but such application shall be dealt with by the Controller in accordance with the procedure specified in this Section. The said Section further provides in details as to how the Controller shall grant to the tenant or sub-tenant leave to contest the application. It would further appear that where leave is granted to the tenant and sub-tenant to contest the application the Controller shall commence the hearing of the application and the provisions of Sub-Section (2), (3), (4) and (6) of Section 13 shall so far as may be, apply to a proceeding

under Chapter VIA but nothing contained in sub-Section (3A) of Section 13 shall apply to such proceeding. It is clearly laid down that the Controller shall by holding an enquiry in a proceeding, to which this Chapter applies, follow the practice and procedure of a Court of Small Causes, including the recording of evidence. Admittedly, no Appeal or Second Appeal shall lie against an order for the recovery of possession of any premises made by the Controller in accordance with the procedure specified in Section providing that the High Court may, for the purpose of satisfying itself that an order made the Controller under this Section in accord to law, call for the case and pass such order in respect thereto as it thinks fit.

5. Looking closely to the provisions of Section 29B of the West Bengal Premises Tenancy Act in its entirety one will appreciate that the object of Chapter VIA wherein Section 29B is incorporated, confers a right on certain landlords to recover immediate possession of premises belonging to them and which are in the possession of their tenants. The theory is that an allottee from the Government should not be at the mercy of legal delay while being faced with instant eviction by his landlord save on penal rent. The allottee in the circumstances has been afforded a quick and expeditious remedy against his own tenant. This chapter provides for summary trial of certain obligations and the provisions of Chapter will have overriding effect. A certain class of Government employees which includes employees of Central Government, State Government or any Local Authority has been given special benefit, they can take advantage of the provisions of this Chapter, if the following conditions are satisfied :

(a) The landlord is a Government employee.

(b) He is in occupation of a residential premises allotted to him by his employer.

(c) He is required by the order made by such employer to vacate such residential accommodation on the "ground that he owns a residential accommodation in his own name or in the name of his wife or dependent child at or near the place where he is posted for the time being.

(f) He reasonably requires the premises for his own accommodation and he has no reasonably suitable accommodation as mentioned in Clause (ff) of Section 13(1) of the Act.

6. Section 29B has been amended twice by Act XXXVI of 1973 and XLI of 1979. The amending Act of 1978 provided same relief, inter alia, to the retiring or retired member of the Naval, Military or Air Force of the Union of India in the matter of getting back possession of their premises let out to tenants by a special procedure laid down in Section 29B. Thereafter, it was considered necessary that the same relief should also be extended to the parent of the wife of such member of the Naval, Military or Air Force of the Union of India (other than a minor child or the widow) of the minor child or the widow of a member of the Naval, Military or Air Force of the Union of India who dies while in service or out of 5 years of retirement. To achieve this purpose the amending Act XLI of

1979 was passed.

7. The only question that is raised before this Writ Court as to whether the certificate required to be issued by the appropriate authority as envisaged in Section 29B of the Act and indicating the requirement of the premises for the certificate holder as to his or her occupation and for the occupation of his or her family will be conclusive. The attention of the Court has been drawn to the decision reported in AIR 1986 Cal. 273 (T. K. Ghosh v. Anil Krishna Ghosh), wherein Hon''ble Chief Justice Satish Chandra (as His Lordship then was) found that the Controller cannot adjudicate as to whether there is requirement of premises or not in view of the facts stated in the certificate would be deemed to be conclusive. A similar question was raised before the Division Bench in Ramit Mitra's case (unreported judgment) presided over by the Hon''ble Chief Justice Chittotosh Mukherji. Both the matters arose out of civil revision cases challenging the order of the Controller u/s 29B of the Act. In both the cases there was no scope for consideration of vires as to the provisions of Section 29B of the West Bengal Premises Tenancy Act and in fact the said question was kept open by the Division Bench while considering the order passed by the Controller.

8. After the arguments of the Learned Counsels of both sides and making close scrutiny of Section 29B(2)(c) of West Bengal Premises Tenancy Act it has to be considered whether the appropriate authority has mentioned in the said Act to issue a required certificate is vested with the jurisdiction to certify the requirement of a person and the members of his family relating to the premises concerned is bona fide and thereafter the conclusiveness of such facts stated in the certificate before the Controller who is going to dispose of the application for eviction u/s 29B of the Act. There is nothing wrong to confer jurisdiction to issue certificate but before issuing a certificate incorporating facts of requirement as understood u/s 13(1)(ff) of the West Bengal Premises Tenancy Act an enquiry has to be made. Section 13(1) of the West Bengal Premises Tenancy Act, as amended, indicated inter alia notwithstanding anything to the contrary in any other law, no order or decree for the recovery of possession of any premises shall be made by any Court in favour of one or more of the grounds (a) to (1) as mentioned therein. Section 13(1)(ff) is one of the grounds providing inter alia that subject to the provision of Sub-Section (3A) where the premises are reasonably required by the landlord for his own occupation if he is the owner or in the occupation of any person for whose benefit the premises are held and the landlord or such person is not in possession of any reasonably suitable accommodation. It is, however, found that nothing contained in sub-section (3A) of Section 13 shall apply to a proceeding u/s 29B of the Act but apart from Sub-section (3A), the consideration of 13 Section 13(1)(ff) is a must. To enable the Controller to pass an appropriate order for eviction or to refuse the same has to'' consider the ground of reasonable requirement as contemplated in Section 13(1)(ff). No consideration can be made without a proper enquiry or investigation, however, summary it may be. It is found that the facts stated in the certificate are conclusive, the Controller and/or any authority above him are not entitled to

question its legality, validity and sufficiency. The certificate is immune from judicial checking. The person concerned who is supposed to issue the certificate has to initiate a proper enquiry for the purpose of granting the same. Law absolutely is silent as to the procedure to be adopted by the appropriate authority before issuing such certificate. No enquiry is envisaged nor the parties who are likely to be affected by the certificate, are given any opportunity of hearing and/or for placing the materials for proper consideration as to reasonable requirement as required u/s 13(1)(ff) of the Act. The only conclusion that can be drawn before issuing the certificate by the appropriate authority as provided in Section 29B of the Act does neither hold any enquiry nor gives any opportunity to any person of hearing or placing the views whose interest would be affected by the certificate. Its impact is very much dangerous indeed. The certificate once issued is immune from judicial checking as the hands of the Controller are tied and the Controller cannot question as the certificate shall be conclusive evidence of the facts stated therein. If such a conclusion is drawn then result is disastrous inasmuch as the tenant who might get leave to contest the application filed by the landlord u/s 29B of the Act will be helpless to contest the case in order to challenge the case of reasonable requirement as made out by the landlord fortified by the certificate and such certificate shall be conclusive evidence of the fact stated therein. The tenant becomes helpless and so the Controller is and this part of the finding cannot be challenged in revision in The High Court even as found in the aforesaid reported decisions as indicated above. This writ Court has considered with all its anxieties the precarious position of the tenant concerned who will not get justice before the Controller and the Controller is helpless to adjudicate the petition u/s 29b of the Act when the fact of reasonable requirement has given in the certificate would be a conclusive evidence. This is obviousIt not a reasonable restriction. This is not only violation of natural justice but there is violation of a substantive right of a person to defend his right in a Court of law where no right of a person can be determined save under due process of law. This portion of the Act of Section 29B creates an unreasonable classification and a special class of landlords will get undue advantage against the aggrieved tenants who will not have any say before, notwithstanding at the time of hearing issuance of the certificate and there will be no adjudication before the Controller or before the authority above it. This part of the legislation is certainly contrary to and inconsistent with the fundamental rights guaranteed to a citizen under the Constitution of India. This part of the provision is discriminatory and causing serious mischief to the interest of the aggrieved tenant.

9. With greater anxiety, this Court finds that the portion as incorporated in Section 29B(2)(c) of the Act providing and "such certificate shall be conclusive evidence of the facts stated therein" shall be struck down. In my view, the certificate so produced before the Controller shall be treated as an evidence and its probative value would be considered by the Controller according to law in the proper perspective. In the result, the writ petitions succeed in part. Let an

appropriate writ of Mandamus be issued commanding the respondents from not giving any effect and/or further to the portion of Section 29B(2)(c) of the West Bengal Premises Tenancy Act, providing "and such certificate shall be conclusive evidence of the facts stated therein". There will be no order as to costs. It is made clear that excepting the consideration of the question of vires as to the specific portion of the said legislation, this Court has not considered the merit of the case of the respective" parties and the cases before the Rent Controller concerned will have to be considered according to law and in the light of discussion made above.

10. There will be stay of operation of this order for a period of a fortnight from date.

SAMARENDRA NATH GUPTA & ANR. Petitioners

v

SMT. MANJUSREE HORE Opp. Party

11. The present revisional application has been filed by the petitioner tenants challenging an order dated 5th of February, 1988 passed by the Rent Controller, Calcutta in Ejection Suit No. 1 of 1985. The aforesaid case arises out an application u/s 29B of West Bengal Premises Tenancy Act made by Smt. Manjusree Hore the landlady against the tenants. The case was disposed of on 14.8.1986. The tenants were directed to quit and vacate and make over peaceful possession of the disputed premises at no. 114, Amherst Street, Calcutta known as Raja Ram Mohan Sarani, Calcutta-9. The tenants being aggrieved came to this Court in revision that the landlord did not declare that she had no other reasonable accommodation as required u/s 13(1)(ff) of the West Bengal Premises Tenancy Act. The Hon"ble High Court in revision remanded the case and directed him to dispose of the case afresh after considering the amended pleadings and further evidence. In compliance of the direction of the Hon"ble Court the landlord"s application for amendment of the pleading under Order 6 Rule 17 C.P.C. read with section 151 C.P.C. was allowed and the tenants were given an opportunity to file an additional written statement. On the prayer of the report is Exhibit No. 7(2). The Learned Rent Controller having set out the facts in detail found the certificate u/s 29B(2Xb) marked as Exhibit No.4 has to be considered in the light of the judgment reported in AIR 1986 Cal. 2873 that the facts stated in the certificate are to be taken as conclusive evidence and the Rent. Controller is precluded from enquiring into the genuineness and correctness of the landlord"s requirements as mentioned in the Certificate. The Rent Controller found that Court shall proceed on the irrebuttable presumption that the landlord requires the premises for his own occupation and that of his family. The learned Rent Controller further found that if it be that "own occupation" means and includes the residential purpose, yet the conclusive evidence clause shuts an enquiry into it. In that view of the matter the Learned Rent Controller allowed the application of the landlord for eviction u/s 29B of the

West Bengal Premises Tenancy Act. Being aggrieved the petitioners tenant have again come to this Court on the ground that the opposite party landlord has not fulfilled the requirement of Section 29B(2) proviso (b) of the West Bengal Premises Tenancy Act to invoke the summary jurisdiction as provided in Chapter VIA of the said Act. It is contended that the plaintiff being not the owner cannot claim any relief as envisaged u/s 13(1)(ff) of the West Bengal Premises Tenancy Act and there is no enquiry as to reasonableness of the requirement of the opposite party landlord as required to be done u/s 13(1)(ff) of the West Bengal Premises Tenancy Act.

12. In this case, the only point for consideration before this court is as to whether the Learned Rent Controller will have to make an independent enquiry u/s 29B of the Act and has to find out the case of reasonable requirement to allow the prayer for eviction the grounds as mentioned in Section 13(1)(ff) of West Bengal Premises Tenancy Act will be considered or not. The Learned Rent Controller has referred to a decision reported in AIR 1986 Calcutta p. 273 (T. K. Ghosh v. Anil Krishna Ghosh) Hon''ble Chief Justice Satish Chandra decided that on a conspectuous of prohibition of Section 29B it appears that Section 29B including its sub-section (5) was inserted in the Act by the West Bengal Premises Tenancy (Amendment) Act, 1976, the category of landlord, namely a member of the Armed Forces along with proviso to sub-section (2) which refers to the certificate being conclusive evidence of the facts stated therein were added by the West Bengal Premises Tenancy (Amendment) Act, 1979. By the amending Act of 1979 no exception in favour of the provisions of subsection (5) was engraphed in the conclusive evidence clause of proviso. Accordingly, the conclusive evidence clause will prevail over sub-section (5). According to the said decision if the certificate state that the landlord requires the premises for his own occupation and. for the accommodation of his family the requirement cannot be re-agitated before the Rent Controller. The question whether the accommodation is fit or otherwise for the landlord''s requirement is equally a dead issue.

13. Naturally, being bound by the decision of this Hon''ble Court the Learned Rent Controller has no other alternative and he has consequently found that the certificate issued by the appropriate incorporating the facts of requirement is to be deemed to be conclusive evidence and the case of requirement as required to be enquired u/s 13(1)(ff) has not been effected. Perusing the materials on record and considering impugned order this Court finds with all anxiety that in fact there was no enquiry as to the reasonable requirement of the landlord as envisaged u/s 13(1)(ff) of West Bengal Premises Tenancy Act and at no material point of time the grievances of the petitioners tenants were considered. At the time of issuing the certificate there was no procedure of any enquiry and the appropriate authority issuing the certificate had no machinery to enquire the matter after giving an opportunity to the tenants concerned. Consequently, the said matter cannot be agitated before the Controller in view of the present amended provision of Section 29B of the Act and as properly observed in AIR 1986 Cal. p. 273 (Supra). Naturally, a question as to vires of the said portions of the amended

Act of 29B arises whether the facts stated in the certificate as to the reasonable requirement are to be taken as conclusive evidence or otherwise. This question arose in a Division bench Judgment, unreported, in Romit Mitra's case and such a question was left open to be decided by the writ court, if any proper situation arises. While this case was being considered this Court has already decided a writ application in C. O. N. 12421 (W) of 1987. The judgment passed in C. O. No. 12421 (W) of 1987 squarely covers this point. This Court has struck down the portions of Section 29B(2)(c) of West Bengal Premises Tenancy Act wherein it was provided that the certificate issued by the appropriate authority cannot be challenged before the Controller and the facts stated therein are to be taken as conclusive evidence. Since the said portion has been struck down the matter has got to be re-heard by the Rent" Controller and to enquire properly as to whether there is in case of reasonable requirement of the landlord or not and/or there is any existence of any ground as contemplated u/s 13(1)(ff) of West Bengal Premises Tenancy Act. In the result, the impugned order is set aside. The matter sent back on remand for re-hearing on the basis of the evidence already on record and the Learned Rent Controller will pass a fresh judgment by considering the cases of the parties on merit, to find out whether the ground of reasonable requirement has independently been proved and by considering the probative value of the certificate issued by the appropriate authority. There will be no order as to costs.