

(1988) 12 CAL CK 0027
In the Calcutta High Court
Case No : C.O. No. 12421 (W) of 1987

New Howrah Transport Company and Another	APPELLANT
Vs	
State of West Bengal and Others	RESPONDENT

Date of Decision : 12-12-1988

Acts Referred:

Constitution of India, 1950 — Article 14
West Bengal Premises Tenancy Act, 1956 — Section 13(1), 29B, 29B(2), 29B(2)(1)

Citation : AIR 1989 Cal 179

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Advocate : Saktinath Mukherjee and B.K. Banerjee, for the Appellant; Sukumar Ghosh, for Respondent No. 4, S. Dutta and M. Bagchi, for the Respondent

Final Decision : Partly Allowed

Judgement

Susanta Chatterji, J.—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 (2)(c) 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 and 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 to the Constitution of India. It is asserted that the provisions of Section 29B of the said Act purport to curtail the legal rights of tenant and to deprive them of their rights for remedy under the law of the land in violation of the provisions of Articles 14 and 20 of the Constitution.

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

..... 4. The main challenge is against the certificate issued by the Area or Sub-Area Commander as contemplated in Section 29B of West Bengal Premises Tenancy Act and as to the jurisdiction of the Area or Sub-Area Commandar to issue the certificate indicating that the premises is required by the certificate holder for his or her own occupation and for the occupation of his or her family and the expression made in Section 29B(2)(c) of the Act that such certificate-shall be conclusive evidence of the fact stated therein. It appears that Section 29B of West Bengal Premises Tenancy Act as amended provides special procedure for disposal of applications for eviction on the ground of bona fide requirement. It is provided that no Civil Court shall entertain any application by landlord being a Government employee; and 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 dependant child at or near the place where he is posted for the time being, [or by landlord who has 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 a minor child or the widow) and a dependant of a member of the Naval, Military or Air Force of the Union of India and ordinarily resides with him or a minor child or the widow of such member who dies while in service or 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 13 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 come to the tenant or subtenant 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-sections (2), (3), (4) and (6) of Section 13 shall so far as may be, apply to a proceeding under Chap. 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 by the Controller under this Section is according 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 Chap. 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 laws 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 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 dependant child at or near the place where he is posted for the time being.
- (d) 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 1978 and XLI of 1979. The amending Act of 1978 provided same relief inter alia to the retiring or retired members 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 3 years of retirement. To achieve this purpose the amending Act XLI of 1979 was passed.

7. The only question raised before this Writ Court is 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 T.K. Ghosh Vs. 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 Re: Romit Chatterji v. Shefali Chowdhury & Ors.) presided by Hon''ble Chief Justice Chittatosh 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 counsel 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 a certificate but before issuing a certificate incorporating facts of requirement as understood u/s 13(1)(ff) of the West Bengal Premises Tenancy Act and an enquiry has to be made. Section 13(1) of the West Bengal Premises Tenancy Act as amended indicates inter alia notwithstanding anything to the contrary in any other law, on order or decree for the recovery of possession of any premises'' shall be made by any Court in favour of the landlord against a tenant except 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 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. If 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 (is) that before issuing the certificate by the appropriate authority as provided in Section 29B of the Act (he) 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 as given in the certificate would be a conclusive evidence. This is obviously 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 or law. This portion of the Act of Section 29B creates an unreasonable classification and a special clause 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 herein" 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 certificates 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.