

(2010) 04 CAL CK 0017
In the Calcutta High Court
Case No : A.S.T. 107 of 2010

Nitosh Kumar Brahma

APPELLANT

Vs

I.I.T., Kharagpur and Others

RESPONDENT

Date of Decision : 09-04-2010

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 2, 3A, 4, 5

Citation : AIR 2011 Cal 39 : (2010) 3 CALLT 60

Hon'ble Judges : Pratap Kumar Ray, J;Mrinal Kanti Sinha, J

Bench : Division Bench

Advocate : S. Roychowdhury, for the Appellant; R.N. Majundar and Sourav Chakraborty, for the Respondent

Judgement

Pratap Kumar Ray, J.—Heard the learned Advocates appearing for the parties.

2. This Appeal and applications both are taken up for final disposal on consent of the parties by dispensing with the service of notice of appeal and all other formalities.

3. Assailing the order dated 17th March, 2010, passed in W. P. 5155 (W) of 2010, this appeal has been preferred.

The impugned order reads such:

In this writ application, the Petitioner has challenged a notice u/s 3A of the Public Premises Eviction of Unauthorised Occupants Act, 1971, calling upon the Petitioner to vacate the quarters occupied by him at the IIT campus forthwith, failing which steps would be taken for eviction of the Petitioner, if necessary, by use of force.

The Petitioner was appointed Scientific Officer of Indian Institute of Technology, Kharagpur and was allowed to occupy the said quarters for as long as the Petitioner was in the service of the Indian Institute of Technology.

By a memo dated 11th September, 2006 the Petitioner was informed that the

Petitioner would retire from service with effect from 31st October, 2008 afternoon. The Petitioner attained the age of 62 years on 31st October, 2008.

On the contention that the Petitioner is entitled to continue in service till attainment of the age of 65 years, the Petitioner has filed a writ application being W. P. No. 5199 (W) 2009 which is pending disposal.

It appears that on 6th April, 2009 His Lordship the Hon"ble Justice Dipankar Datta issued directions for affidavits. There was, however, no interim order.

From the averments in the petition it is apparent that the Petitioner has been paid his retiral benefits. It is, however, not for this Court to consider the merits of the writ application being W. P. 5199 (W) of 2009, pending in this Court.

Suffice it note that the Petitioner was allowed to occupy the quarters for as long as he was in service of the Indian Institute of Technology.

The Petitioner has apparently retired from service and is thus liable to vacate the quarters. If and when the Petitioner succeeds in his writ petition the Authorities of Indian Institute of Technology shall have to provide the Petitioner with official accommodation.

The Petitioner was allowed temporary occupation of the quarters. Section 3A is attracted. The notice u/s 3A does not call for interference of this Court. The writ application is thus, dismissed.

Affidavits not having been called for, the allegations contained in the writ application shall be deemed not to have been admitted.

The Authorities of the Indian Institute of Technology shall, however, grant the Petitioner at least 30 days" time from date to vacate the premises.

Urgent certified Photostat copy of this order, if applied for, be supplied to the learned advocates appearing for the parties on compliance with the requisite formalities.

4. It is an admitted position that the writ Petitioner is occupying the premises unauthorisedly after retirement from service though the writ Petitioner assailing the superannuation notice has already challenged the writ application which is pending, on claiming his legal right to continue after the age of 65 years. That writ application being W. P. 5199 (W) of 2009 is pending before the learned Trial Judge for appropriate decision and order. It appears from the records that the Petitioner reached the age of 62 years on 31st October. 2008. In the writ application, as pending, the Petitioner has claimed his legal right to continue in service in the post of Scientific Officer till the age of 65 years. Be that as it may, we are not concerned of that issue in this present appeal. The claim and counter claim as made in the said writ application to be decided in accordance with law.

5. This appeal arose from the impugned order of the present writ application which was filed by the Petitioner assailing a proceeding initiated u/s 3A of The

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter for brevity referred to as "the said Act") which culminated to a final order directing eviction of the writ Petitioner-Appellant before us from the premises. Learned Trial Judge did not interfere with the said order on holding, inter alia, that proceeding as initiated for eviction was proper and justified. Learned Advocate for the Appellant has raised a question about legality and validity of the proceeding initiated by the Estate Officer on the basis of the application filed by the Respondent I.I.T., Kharagpur.

6. For effective adjudication of the issue we have to consider the statutory provisions of the said Act of Section 3A. It reads such:

3A. Eviction from temporary occupation.-- Notwithstanding anything contained in Section 4 or Section 5, if the estate officer, after making such inquiry as he deems expedient in the circumstances of the case, is satisfied that any persons who were allowed temporary occupation of any public premises are in unauthorised occupation of the said premises, he may, for reasons to be recorded in writing, make an order for the eviction of such persons forthwith and, thereupon, if such persons refuse or fail to comply with the said order of eviction, he may evict them from the premises and take possession thereof and may, for that purpose, use such force as may be necessary.

7. Section 3A was incorporated in the statute effective from 1st June, 1994 prescribing a summary procedure for eviction of unauthorised occupants who were granted temporary accommodation in terms of the definition of "temporary occupation" u/s 2(fb) of the said Act.

8. Temporary occupation as defined under the said Act reads such:

((fb) "temporary occupation", in relation to any public premises, means occupation by any person on the basis of an order of allotment made under the authority of the Central Government, a State Government, the Government of a Union Territory or a statutory authority for a total period (including the extended period, if any) which is less than thirty days;)

9. There is no denial of the fact that the writ Petitioner-Appellant in terms of the service contract not only was entitled to retain the quarter allotted to him during the service tenure but even till two months from the date of retirement in terms of the Clause 10 of "Allotment Rules for Institute quarters".

Clause 10 of the said Allotment Rules reads such:

Clause 10: Events and Periods For Retention of Quarters

An employee or his family may retain the residence on the happening of any of the events specified below, for the period specified thereof, provided that he or his family resides therein. The allotment shall be DEEMED TO BE CANCELLED after the period stated therein:

(i) In case of the death of an employee, four months from the date of death of

the employee;

(ii) In case of leave on medical ground / maternity leave, for the full period of the leave;

(iii) In case of retirement, two months after the date of retirement;

(iv) In case of resignation, dismissal or removal from service, one month after the date of his resignation, dismissal, or removal;

(v) In case of E.O.L. /Sabbatical leave deputation/lien/training/higher studies / research sponsored by the Institute etc., for a period of one year provided that,

(a) Licence fee at normal rates and service charges are paid every month in

advance. In case advance licence fee is not paid for two consecutive months, Licence Fee at enhanced rate at 150% of the normal rates will be payable for the defaulting months.

(b) In exceptional case, when the employee or the family residing in the quarters applies for an extension of time to reside in the quarters, then the period of retention of quarters may be extended by Director for a period not exceeding one year, provided that the Institute has sanctioned the extension of the employee's absence beyond the initial period of one year.

Note: Those who surrender their residence while on E. O. L. etc. are eligible for out of turn allotment vide Sub-clause (iii) of Clause 16.

10. Having regard to the said provision it appears that the writ Petitioner-Appellant was legally permitted to remain in quarter till 31st December, 2008. But the fact remains that the Petitioner continued to stay in the quarter beyond the period of 31st December, 2008 though Petitioner in his letter dated 10th November, 2008 submitted an undertaking to vacate the quarter in the first week of January, 2009.

11. The letter of the Petitioner dated 10th November, 2008 as produced before us reads such:

To The Director Indian Institute of Technology Kharagpur- 721302, India. Sub: Seeking Permission for Holding of F011 Flat of IIT and Departmental Small room till end of December, 2008 and to handover both Qr-011 and Departmental small room at the beginning of New Year-2009.

Dear Sir,

At the outset I would like to inform you, that I want to hold my Flat-011 as per your Memo. dt. 20-10-2008 and the small room of the Department of Chemical Engineering to complete any academic formalities for Autumn-2008. In the mean time, I have been invited to give talk to University Foshan, World Congress of Gene, China during December, 5-7, 2008. (Invitation letter is enclosed) So After coming back from China, I have to again go to Chandigarh, for Chemcon -2008

(invitation letter and the acceptance of oral presentation are also enclosed). For all purposes I need sometime for winding my academic intellectual properties (IP), which is closed separately in a small room of the extension building of the ground floor.

My small three table fans, purchased myself, my small hp-printer and my UPS along with all my books, literature, students assessments will be recovered from the provided Almira and from the room, at the beginning of January-2009 first week, including the handover my Flat-011, if in the mean time, no further extension, till end of June-2009, is given to me to complete the course of Seminar-M Tech in Summer Course.

For verifications, you may send someone to check, I will be time to time out of station to arrange my other formalities in Kolkata and for the travel to China and Chandigarh. If you have any new thing to inform me immediately, so that I can at least take the necessary time to arrange.

Tentatively, I will be completely out of station, if I move to China from 28-11-2008 to 12-12-2008 and from 22-12-2008 to 31-12-2008. I will be back to JIT on 2-3 January, 2009 and will arrange to hand over my quarter and my teaching room of the Department of Chemical Engineering.

Thanking you and with kind regards. Sincerely.

12. This letter was nothing but in the tune of the privilege as granted under Clause 10(iii) of the Allotment Rules for Institute quarters.

13. It is an admitted position that the Petitioner did not vacate the quarter and continues to occupy it unauthorisedly, which resulted service of a request letter by the Deputy Registrar, Estate Office, I. I. T., Kharagpur dated 5th February, 2010 requesting the Petitioner to vacate the quarter within fifteen days from the date of issuance of the memo.

This letter reads such:

Indian Institute of Technology Estate Office, Kharagpur

No. IIT/EO 09-10/222

Dated: 5-2-2010.

The undersigned is directed to inform Shri N. K. Brahma. Former Scientific Officer that as per Institute Rules an employee can retain the Institute accommodation for two months after retirement. Shri Brahma has been residing in the Institute accommodation for 15 months after his retirement. Since, at the moment the Institute has huge shortage of accommodation for the faculty and staff members Shri. Brahma is requested to vacate the Institute accommodation within 15 days from the date of issue of this memo.

Shri Brahma is requested to acknowledge the receipt of this memo.

(B. K. Basu Roychowdhury)

Deputy Registrar

Estate Office

14. Learned Advocate for the Respondents has opposed this" Appeal by contending, inter alia, that the said letter as quoted above was nothing but an order of allotment allowing retention of the quarter for fifteen days to satisfy the statutory requirements to justify a proceeding u/s 3A for order of eviction in compliance with the form "temporary occupation" as defined in the statute. We are afraid to accept such a submission. Bare reading of the said letter speaks that it was nothing but a request letter directing an unauthorised occupant to vacate the quarter and it could not be said as an allotment order to term it as "temporary occupation" u/s 2(fb) of the said Act. For initiation of a proceeding u/s 3A of said Act, the sine qua non is the factum of temporary, occupation u/s 2(fb). In the instant case, such fact remains absent in view of the fact that since January, 2009 the writ Petitioner-Appellant is occupying unauthorisedly the said quarter allotted to him during the service period, which under the law, he was required to vacate after the two months from the date of superannuation in terms of the Allotment Rules". Hence, such occupation under any circumstances cannot be said as a temporary occupation for a limited period of less than thirty days but it is an unauthorised occupation u/s 2(g) of the said Act.

15. In that view of the matter, proceeding initiated u/s 3A was a proceeding de hors of the statutory provision. Furthermore, no enquiry report was served upon the Petitioner. Though it was a summary proceeding, but we are of the view that the enquiry as made by initiation of a proceeding u/s 3A of said Act, report of such enquiry was required to be served to satisfy the principle of natural justice. Be that as it may, since we are adjudicating the issue on the jurisdictional fact of initiation of a proceeding u/s 3A of said Act which as per our view was not in terms of the statutory provision by satisfying the "temporary occupation" Clause as per the definition. Hence, the entire proceeding initiated u/s 3A became illegal and of without jurisdiction.

16. Considering that, impugned decision assailed before the learned Trial Judge passed by the Estate Officer is set aside and quashed. Due to present situation wherein an employee is holding the quarter unauthorisedly even after retirement, learned Advocate for the Respondent-I.I.T., Kharagpur has invited this Court to consider the applicability of other provision of the said Act for eviction of unauthorised occupant.

17. Considering that we are of the view that the Respondent-I.I.T, Kharagpur would be at liberty to proceed in accordance with law for eviction of the writ Petitioner-Appellant and there will be no embargo to proceed. This present judgment is confined only with reference to the interpretation of the Section 3A and its applicability. Since the writ Petitioner-Appellant is occupying the premises unauthorisedly, we are of the view that the Respondent is at liberty to charge the

penal rental in terms of the contractual provision without prejudice their legal right to evict following the aforesaid proceedings under the said Act through the Estate Officer concerned. Since the writ Petitioner-Appellant has prayed before us to remain in the quarter till the finality of the decision by the Estate Officer on completion of the legal proceeding, if it is initiated by the I.I.T., Kharagpur, we have considered the prayer on the terms that subject to payment of the penal rental which will not exonerate the writ Petitioner-Appellant from the appropriate proceeding under the said Act for his eviction, if any, the writ Petitioner-Appellant should be allowed to stay in the quarter subject to the final decision as to be passed by the Estate Officer in the event of any proceeding for eviction is initiated.

18. In that view, we direct the writ Petitioner to pay the penal rental for his stay and writ Petitioner-Appellant has agreed to such and has come today with the account payee cheque. Learned Advocate for the Respondent- I. I. T., Kharagpur has submitted before us that penal rent for occupation of the quarter since January, 2009 till March, 2010 has reached to the figure of Rs. 56,671/-. The writ Petitioner is agreeable to pay such amount and has brought an account payee cheque being No. 779981 dated 9th April, 2010 drawn on State Bank of India, Kharagpur branch. Let such cheque be handed over to the learned Advocate for the Respondent-I. I.T. Appropriate receipt be granted by the Kharagpur, I. I. T. authority after encashment of the cheque to the writ Petitioner.

19. The writ Petitioner is allowed to hold and occupy the quarter on payment of the penal rent month by month till a final decision is reached by the Estate Officer, if any application is filed by the Respondent-I. I. T., Kharagpur seeking eviction of the writ Petitioner from the concerned quarter.

20. It is made clear that for payment of penal rent, writ Petitioner-Appellant will not be entitled to claim any equity. It is further made clear that due to acceptance of the penal rent, it will not be construed that the Respondent- I. I. T., Kharagpur has condoned the unauthorised occupation of the writ Petitioner-Appellant.

21. The Appeal is accordingly partly allowed and partly dismissed on the aforesaid findings and the stay application is also allowed in terms of the aforesaid orders.

Mrinal Kanti Sinha, J.

22. I agree.