

(1953) 06 CAL CK 0034
In the Calcutta High Court
Case No : A.F.O.O. No. 130 of 1952

Rabindra Nath Chakravarty	Vs	APPELLANT
The State of West Bengal and Others		RESPONDENT

Date of Decision : 12-06-1953

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1954 Cal 394 : 58 CWN 203

Hon'ble Judges : G.N. Das, J;Debabrata Mookerjee, J

Bench : Division Bench

Advocate : P.K. Roy and Anil K. Sen, for the Appellant;J. Majumdar, Asst. Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

G.N. Das, J.—This appeal is directed against a judgment of Bose J. dated 13-5-1952. The question which was agitated before Bose J. related to the validity or otherwise of an order for requisition dated 13-8-1951, made under the provisions of Section 3(1) of West Bengal Act 2 of 1948. The allegation of the appellant was that he had no notice of the proceeding under Act 2 of 1948 and later came to know on enquiry about the said order when steps were being taken by respondent No. 3 to take possession of the appellant's property.

2. Bose J. dismissed the application principally on two grounds. In the first place he was of opinion that the title of the appellant (petitioner) was disputed and that there was no sufficient evidence before him in support of that title. It appears on a perusal of the papers that the settlement record of rights stands in the name of the vendor of the appellant (petitioner). Prima facie, therefore, the appellant (petitioner) had title. There was no clear denial that the appellant (petitioner) had purchased from Dwijapada Ballav in whose name the record stood. There is therefore, not much force in the objection which was pressed on behalf of the respondents.

3. The second objection which found favour with Eose J. was that there was no demand of justice before the filing of the application under Article 226. It appears however that in point of fact there was a resistance on behalf of the appellant (petitioner) when the respondents wanted to take possession. The appellant (petitioner) asserted his claim and made a demand of justice which was not acceded to on behalf of the respondents. It is true there was no formal demand of justice, but as has been held by the Supreme Court, in the case of -- Commissioner of Police, Bombay Vs. Gordhandas Bhanji, (A), we have to look to the substance of the matter. It cannot therefore be said that there was no demand of justice and a denial on the part of the respondents. There is no question that there was such a clear denial after the filing of the application. On all these grounds I am of opinion that there is no force in the second objection raised on behalf of the respondent which found favour with Bose J.

4. Bose J. was further of opinion that this is not a proper case where the Court should exercise its powers under Article 226 because the question of title may require further evidence. I have already dealt with the matter. In my opinion the materials on record make it fairly clear that the petitioner had title to the disputed property.

5. Bose J. in the view which he took did not deal with the constitutional question viz. whether the order of requisition was a valid order. Mr. Boy who has appeared in support of the appeal has contended that the Act itself is ultra vires of the Constitution. He has also contended that the order in this case was an invalid order. As none of these points has been considered by the learned Judge below, we are of opinion that this matter should be remitted to the Judge below for further hearing.

6. The result therefore, is that this appeal is allowed, the judgment of Bose J. is set aside and the case remitted to the Judge below for decision according to law and in the light of the observations made above.

7. Costs of this appeal will abide the result --hearing fee being assessed at three gold mohurs.

Debabrata Mookerjee, J.

8. I agree.