
(1992) 02 CAL CK 0028
In the Calcutta High Court
Case No : Matter No. 3333 of 1991

Radheshyam Kundu

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 28-02-1992

Acts Referred:

Citation : (1992) 2 ILR (Cal) 55

Hon'ble Judges : Altamas Kabir, J

Bench : Single Bench

Advocate : Udayan Chakravarty, Sanjuka Bhattacharya, for the Appellant;

Final Decision : Allowed

Judgement

Altams Kabir, J.—Despite the fact that at one stage the State of West Bengal and the Slate Respondents had been duly represented, today when the matter is taken up for hearing, no one appears to oppose the writ application on behalf of the Respondents.

2. The Petitioners have challenged an order passed by the Thika Tenancy Controller, Calcutta purportedly u/s 7(2) of the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981, whereby the thika tenancy of the Petitioners' lessor was sought to be terminated and the structures standing at premises No. 9, Kalimuddin Lane were declared to have vested to the Stall.

3. The Petitioners claim that the thika tenant, one Biswanath Prasad Gupta, granted a lease in respect of the structures standing on the above- mentioned premises to the Petitioners by a Deed of Lease dated December 8, 1989. The Petitioners further case is that the provisions of the aforesaid Act permitted grant of such lease and, as a result, the impugned order of the Thika Tenancy Controller was not capable of being sustained and was liable to be set aside.

4. Mr. Udayan Chakraborty, learned Advocate for the Petitioners, submitted that under the provisions of the proviso to Sub-section (1) of Section 7 of the above-

mentioned Act, any person occupying land under the State within the meaning of Sub-section (1) of Section 6 would be entitled to let out the whole or any part of the structure landing on the land so long as his thika tenancy subsists. Mr. Chakraborty further submitted that the Petitioners' lease was protected under the said proviso and the Thika Tenancy Controller erred in holding that the Petitioners' lease had, by granting lease of (he structures in question to the writ Petitioners, violated the provisions of Section 6(3) of the aforesaid Act.

5. Mr. Chakraborty next submitted that, in any event, before passing any order of vesting of the structures under the provisions of Sub-section (2) of Section 7 of the aforesaid Act, the Controller was required to give the affected parties a hearing, and in terms of the proviso to Sub-section (1) of Section 7, no order could be passed by the Controller vesting the structures, unless upon hearing the parties affected, he came to a finding that some provision of the aforesaid Act had been violated. According to Mr. Chakraborty, the impugned order has been passed by the Thika Tenancy Controller in violation of the aforesaid provisions, inasmuch as, the Petitioners were not given a proper opportunity of hearing and/or placing their case and the impugned order does not also contain any material to show the basis on which the Thika Tenancy Controller arrived at the finding that the provisions of Section 6(3) of the aforesaid Act had been violated.

6. Unfortunately, apart from the order itself, there is nothing else on record to show as to what weighed with the Thika Tenancy Controller in coming to the finding that the provisions of Section 6(3) of the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981, had been violated. As mentioned hereinbefore, the State has chosen not to contest the matter after having appeared at the initial state when the writ application was moved.

7. I am satisfied that Mr. Chakraborty's submissions have some force in that the order which has been impugned in the writ petition does not contain any material on which the Thika Tenancy Controller could have arrived at the satisfaction contemplated in the proviso to Sub-section (2) of Section 7 of the above-mentioned Act. Except for a bare statement, that it had been established on enquiry that the Petitioners' lessor had transferred his thika tenancy rights in the structure in question to the Petitioners, there is no other material in support of such statement and/or conclusion.

8. Nothing also appears from the impugned order as to whether the Petitioners and/or their lessor were given an opportunity of placing their case before the order of vesting was passed.

9. In that view of the matter, this writ application succeeds. The order passed by the Thika Tenancy Controller terminating the thika tenancy of Biswanath Prasad Gupta in the premises in question and the vesting of the structure standing thereon, as communicated to the Petitioners under memo dated August 20, 1991, being Annexure "E" to the writ petition, is hereby quashed.

10. The Thika Tenancy Controller, Calcutta, is directed to reconsider the entire

matter after giving the Petitioners and their lessor, Biswanath Prasad Gupta, a reasonable opportunity of placing their respective cases and, thereafter, to come to a proper finding whether any of the provisions of the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981, had been violated on the basis whereof an order in terms of Section 7(2) of the aforesaid Act could have been passed. The Thika Tenancy Controller, Calcutta, is directed to reconsider the matter after giving due notice to the Petitioners and their lessor and he shall dispose of the matter after giving them a hearing and by passing a reasoned order as contemplated u/s 7(2) of the aforesaid Act.

11. The writ application succeeds to the extent indicated above There will be no order as to costs.

12. All parties, including the Thika Tenancy Controller Calcutta are to act on the signed copy of the operative portion of this order, a Xerox copy whereof is to be made available to the learned Advocate-on-Record for the Petitioners on the usual undertaking.

Application allowed.