

(2010) 06 CAL CK 0033

In the Calcutta High Court

Case No : C.O. No. 2072 of 2006 and C.A.N. 2893 of 2010

Raj Kumar Agarwal

APPELLANT

Vs

Benami Commercial Pvt. Ltd. and Another

RESPONDENT

Date of Decision : 18-06-2010

Acts Referred:

Constitution of India, 1950 — Article 227

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

Citation : (2010) 06 CAL CK 0033

Hon'ble Judges : Jyotirmay Bhattacharya, J

Bench : Single Bench

Advocate : S.P. Roy Chowdhury, Jahalral Dey, Debasish Roy and B.K. Jain, for the Appellant; Malay Kumar Basu and Somenath Bose, for the Respondent

Final Decision : Dismissed

Judgement

Jyotirmay Bhattacharya, J.—This application under Article 227 of the Constitution of India is directed against an order being No. 14 dated 26th May, 2006 passed by the Learned Estate Officer, Kolkata Port Trust, Kolkata, appointed by the Central Government u/s 3 of the Public Premises (Eviction of Unauthorized Occupants) Act of 1971 in proceeding No. 582 of 2004, at the instance of the intervener/applicant.

2. Such proceeding was initiated u/s 4 of the Public Premises (Eviction of Unauthorized Occupants) Act of 1971 at the instance of the Board of Trustee of the Port at Kolkata. In such a proceeding eviction order was passed by the learned Estate Officer against the opposite party No. 2 herein, namely Shakti Transport Organization as its occupation of the public premises being compartment No. G-1 situated at the first floor of the godown known as Strand Warehouse, Kolkata and Compartment No. C/4 situated at the western half of the ground floor of Strand Warehouse, Kolkata, was found to be unauthorized.

3. The said unauthorized occupant against whom such order of eviction was passed did not challenge the propriety of the said order before the Appellate

Forum. Thus it can be safely concluded that the said order of eviction was accepted by the said unauthorized occupant. But since the possession of the said property could not be recovered due to resistance put forward by the certain others persons including the some local political leaders, police help was granted by the learned Estate Officer in aid of execution of the order of eviction.

4. The propriety of the said order is under challenge in this revisional application at the instance of a stranger who described himself as a sub-tenant under the original lessee against whom the order of eviction was passed. The applicant/petitioner claims that the petitioner applied for regularizing his occupation in the said premises in terms of the policy guidelines contained in the resolution No. 39 dated 22nd March, 2001 of the Kolkata Port Trust formulated for grant of direct tenancy to the sitting occupants. The petitioner further contends that the Central Government has also formulated a policy decision in February 2005 empowering the Kolkata Port Trust to renew lease in favour of the sitting occupants where the original lessees are no more occupying the premises. Since the said representation is still under consideration before the concerned authority, the petitioner filed an application before the learned Estate Officer inter alia praying for an injunction for restraining the Port Trust Authorities from creating any obstruction or interference or disturbance in his peaceful use and occupation of the said godown and/or from trespassing into the said godown and/or evicting the applicant therefrom in any manner whatsoever. Since the said application has not been considered by the learned Estate Officer, the petitioner has prayed for issuance of direction upon the learned Estate Officer for early consideration of the petitioner's said application on merit before this Court.

5. Mr. Ray Chowdhury, learned Senior Counsel, appearing for the petitioner, submitted that whenever any application is filed before any judicial authority, such application, be it filed by any of the parties in the proceeding or by any stranger, is required to be considered and/or disposed of on this merit. Mr. Ray Chowdhury submitted that gross injustice would be made if his client is evicted in execution of the order of eviction passed by the learned Estate Officer without considering the petitioner's said application on merit. Mr. Ray Chowdhury further pointed out that when several other sitting occupants were granted tenancy by the Port Trust Authorities by following the aforesaid guidelines and thereby the occupation of such sitting occupants was regularized even after termination of the lease in favour of the original lessee, the petitioner cannot be evicted in execution of the said order of eviction until the petitioner's representation for regularizing his occupation in the said premises is finally decided by the concerned authority.

6. Mr. Basu, the learned Senior Counsel, appearing for the Kolkata Port Trust, submitted that though a proposal was initiated for regularizing the occupation of the unauthorized occupants in the public premises by the Kolkata Port Trust but such proposal has not been finalized. Mr. Basu pointed out that the guidelines which were referred to by Mr. Ray Chowdhury being annexure "B" to this

revisional application is merely a draft policy (modified) for maritime sector issued by the Government of India, Ministry of Shipping, Road Transport and Highways, Department of Shipping. According to him, the petitioner's claim for regularization of his illegal occupation in the said premises cannot be allowed on the basis of the said draft policy. By referring to the policy which was formulated by the Central Government in this regard, Mr. Basu submitted that regularization of such illegal occupation and/or grant of tenancy in favour of such illegal occupants cannot be made as per the extant Rule operating in the field. In fact, the opposite parties in its affidavit stated in clear terms that the illegal occupation of not a single occupant was regularized as claimed by the petitioner. Mr. Basu further pointed out that the petitioner filed an independent suit for declaration of his right in the said property and for protecting his possession therein and his prayer for ad interim injunction for protecting his possession in the said property was rejected by the learned Trial Judge. Thus, Mr. Basu submitted that the execution of a lawful order of eviction which attains its finality, cannot be frustrated at the instance of the petitioner who has no independent right in the said property. Accordingly, Mr. Basu prayed for rejection of this revisional application.

7. Heard the learned Counsel of the respective parties. Considered the materials on record including the order impugned.

8. Let me now consider the merit of this revisional application in the facts of the instant case.

9. I have already indicated above that the petitioner claimed that he is a sub-tenant under the original lessee against whom an eviction order was passed by the learned Estate Officer in a proceeding u/s 4 of the said Act. It is well settled that a decree of eviction which is passed against the tenant is binding upon the sub-tenant and the subtenant has no independent right to protect his possession in the suit property. As such the order of eviction which was passed by the Estate Officer against the original lessee is binding upon the petitioner. The petitioner cannot avoid execution of the said eviction order on the strength of his existing right as a sub-tenant under the original tenant against whom an eviction order was passed by a competent forum.

10. The petitioner claimed regularization of his possession by grant of a tenancy right in favour of the petitioner as per the policy formulated by the Kolkata Port Trust which, according to the petitioner, was approved by the Central Government.

11. The petitioner further claims that, in fact, an application for grant of direct tenancy in favour of the petitioner is pending for consideration before the concerned authority.

12. It is rightly pointed out by Mr. Basu that the petitioner cannot claim his right for regularization of his sitting occupation on the basis of a draft guideline which has not yet been approved by the Central Government. The guideline, which is

still in force, provides for taking steps for eviction of the unauthorized occupants. Though names of some illegal occupants, whose possession, according to the petitioner was regularized, were mentioned in the petition, but the petitioner has not produced any material to show that illegal possession of any of such sitting occupants was, in fact, regularized. As such in view of the denial of such claim of the petitioner by the opposite party in its affidavit, this Court cannot hold that petitioner's such contention is proved.

13. Be that as it may, fact remains that the occupation of the petitioner has not been regularized till date. As such the petitioner is still in possession of the suit premises as an illegal occupant and his occupation is nothing but an occupation of a sub-tenant. Mr. Roy Chowdhury, learned Senior Counsel has also failed to show any policy, guideline, provision, scheme etc. which provides for protection of occupation of such illegal occupants pending consideration of his prayer for regularization of such sitting occupants. The tenor of the application submitted by the petitioner before the concerned authority shows that his possession in the premises in question is unauthorized. The petitioner's application for regularization of his illegal possession is still pending for consideration before the authority concerned. The proposal for regularization of the illegal occupation of such sitting occupants is still under consideration of the concerned authority.

14. Be that as it may, the petitioner has already filed an independent suit for declaration of his right and for injunction for protecting his possession in the property in question. As such the petitioner can seek appropriate remedy in the said suit. The petitioner cannot multiply litigation by filing applications in different forums, claiming identical reliefs. If filing of such applications in different forums is permitted, then there will be every possibility of conflict of decision, which is not desirable. That apart the Executing Court cannot rewrite the judgment for testing the legality of the eviction order passed by the Estate Officer. As such, this Court feels that consideration of the application filed by the petitioner in the execution proceeding on merit is not necessary.

15. However, needless to mention that since the petitioner's prayer for ad interim injunction in the suit filed by the petitioner for establishing his right in the suit property and for protecting his possession was rejected by the competent Court of law, there is presently no impediment in proceeding with the eviction proceeding by Executing Forum.

16. The revisional application has no merit and accordingly this revisional application stands rejected, with the above observations.

Re: C.A.N. No. 2893 of 2010

17. Since the main revisional application is disposed of in the manner as mentioned above no further order need be passed on the application for vacating the interim order.

18. The said application thus be treated as disposed of.

19. Urgent xerox certified copy of this order, if applied for, be given to the parties, as expeditiously as possible.