

(2019) 08 CAL CK 0255

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 7583 (W) Of 2018

Sanatan Dutta & Ors

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 28-08-2019

Acts Referred:

West Bengal Government Premises (Regulation Of Occupancy) Act, 1984 — Section 8, 11, 11(2), 12, 13, 15, 23

Citation : (2019) 08 CAL CK 0255

Hon'ble Judges : Debangsu Basak, J

Bench : Single Bench

Advocate : Dhiman Roy, Rananjay Chatterjee, Rumana Sahin, Arka Kumar Nag

Final Decision : Disposed Of

Judgement

Debangsu Basak, J

Eviction notice under Section 13 of the West Bengal Government Premises (Regulation of Occupancy) Act, 1984 is under challenge in the present writ petition.

Learned advocate for the petitioner submits that, the notice is bad in law in view of violation of Section 11 of the Act of 1984. The petitioner is a licensee. The petitioner is paying rent which the respondents are accepting. Therefore the authorities should have invoked Section 11 of the Act of 1984, if at all, and allowed a hearing in terms of the proviso to Section 11(2) to the petitioner. Not having done so, the impugned notice is bad.

Learned advocate for the petitioner relies upon (1998) 8 SCC 477 (State of W.B. & ors. Vs. Sultan Singh) in support of the contention that, the authorities ought to have afforded the petitioner an opportunity of hearing in terms of Section 11(2) proviso before proceeding to issue a notice under Section 13 of the Act of 1984.

Learned advocate for the State relies upon (2013)12 SCC 631 (S. D. Bandi Vs. Divisional Traffic Officer, Karnataka State Road Transport Corporation & Ors.) in support of the contention that, employees overstayed their accommodation should be evicted immediately.

In the facts of the present case, the petitioner was granted a license, which expired in 2016. There is no document to establish that, the license was renewed. The petitioner claims renewal through payment of rent. Payment of rent at best is an unilateral action on the part of the occupant. Such payment at best can be construed as payment of occupation charges, unless, the authorities renew the license. Sections 11, 12 and 13 of the Act of 1984 are relevant. They are as follows:-

"11. (1) Every license in respect of it Government premises shall, subject to the provisions of sub-section (2), stand automatically terminated upon-

(i) the death of the licensee, or

(ii) the expiry of the period of validity of the license, or

(iii) the cessation or the licensee's employment under the State Government by reason of his retirement, resignation, discharge or dismissal or by any other reason, or

(iv) the licensee ceasing to hold any specified post under the State Government by reason of his transfer from any such post or by any other reason:

Provided that for the purposes of this section a person shall not be deemed to have ceased to hold any post by proceeding on leave, or on being suspended, from that post, if he does not accept any other employment during the period of his leave or suspension,

(2) A license in respect of a Government premises may be terminated, by order, by the Competent Authority in accordance with the terms and conditions of the licensee:

Provided that no such order shall be made without giving the licensee an opportunity of being heard.

(3) An appeal shall lie to the Appellate Authority against an order made under sub-section (2), or an order or the Competent Authority refusing to renew a license, within fifteen days from the date of communication of the order to the licensee.

(4) The decision of the Appellate Authority on such order shall, subject to the provision of section 23, be final."

12. Where payment of any amount as consideration for the occupation of any Government premises is tendered by the licensee or any other, person after the termination of his license, the acceptance of that amount by, or on behalf of, the State Government or any other authority shall not be construed as revalidating

or renewing or extending the license or conferring any right upon the licensee or any other person to remain in occupation of the said Government premises, but the amount may be adjusted against the compensation payable under section 15."

13. Where any person occupies, or remains in occupation of, any Government premises in violation of any of the provisions of this Act. the Competent Authority may take such steps and use such force as may be necessary to take possession of the premises;

Provided that, except in respect of a room or a .scat in a room allotted separately, no such steps shall be taken-

(a) before the expiry of a period of thirty days-

(i) from the appointed day in a case where there has been a violation of the provisions of section 8, or

(ii) from the date of termination of a license under sub-section (1) of section 11 or from the date of communication to the licensee of an order under sub-section (2) of section 11 terminating a license in any other case (not being a case where no license has been granted), or

(b) during the pendency of any appeal under sub-section (3) of section 11 and for a period of thirty days following the disposal of such appeal:

Provided further that upon an application from any person in occupation of any Government premises on grounds of extreme hardship, the Competent Authority may extend the said period of thirty days by such further period, not exceeding ninety days, as the Competent Authority may deem fit."

Section 12 lays down that, payment of any amount after termination of license will not revalidate the license. In the present case, the license expired by efflux of time in 2016. Therefore, payments made subsequent thereto will not revalidate the license. The license was not renewed.

Section 11 of the Act of 1984 and Section 13 of the Act of 1984 operate in separate fields. Section 11 operates in the field where, there is a subsisting license and such subsisting license is sought to be terminated. When the authorities are seeking to terminate such license, then, under sub-section (2) of Section 11 the authorities are required to give a notice to the licensee with regard thereto. Section 13 operates in the field, where, any person occupies or remains in occupation of any government premises in violation of the provisions of the Act of 1984. In the present case, the license existing in favour of the petitioner having expired by efflux of time in 2016, it was the incumbent duty of the petitioner to make over possession thereof to the authorities. Not having done so, the petitioner is in occupation of the licensed property, unlawfully and in violation of the provisions of the Act of 1984. Therefore, a notice under Section 13 of the Act of 1984 was warranted.

In Sultan Singh (supra) Supreme Court considers Section 11 and 15 of the Act of 1984 and in the facts of that case, is of the view that, the Government had no option than to follow the provisions contained in the Act of 1984. In that case, a demand notice was quashed by the High Court. The Supreme Court found the High Court to have fallen into patent error in quashing such demand notice. The demand was in terms of Section 15 of the Act of 1984.

In S. D. Bandi (supra) Supreme Court considers the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and issues suggestions to address the grievances of the Central and the State Government in regard to the unauthorised occupants.

In the facts of the present case, notice under Section 13 of the Act of 1984 was issued. The petitioner is in occupation of a Government premises in violations of the provisions of the Act of 1984. It is not appreciated why the authorities kept the matter pending all this time since there was no stay granted by the High Court. The authorities will therefore proceed expeditiously with eviction proceedings as it is in public interest that, occupants not entitled to remain in occupation on a Government premises, is evicted therefrom expeditiously.

WP No. 7583(W) of 2018 is disposed of. No order as to costs. Urgent certified website copies of this judgment and order, if applied for, be made available to the parties upon compliance of the requisite formalities.