

(1999) 05 CAL CK 0037

In the Calcutta High Court

Case No : Civil Appellate Jurisdiction M.A.T. No. 803 of 1997

Santanu Mukherjee and Others

APPELLANT

Vs

Asit Baran Chatterjee and Others

RESPONDENT

Date of Decision : 21-05-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226

West Bengal Government Premises (Regulation of Occupancy) Act, 1984 — Section 13, 2

Citation : (1999) 2 CALLT 596

Hon'ble Judges : Satyabrata Sinha, Acting C.J.; Samarendra Nath Bhattacharjee, J

Bench : Division Bench

Advocate : Mr. Bidyut Kumar Banerjee and Ms. Shila Sarkar, for the Appellant; Mr. Asok De and Mr. Swapan Kumar Debnath, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, ACJ.

1. This appeal is directed against the Judgment and order dated 12.3.97 passed by a learned single Judge of this court whereby and whereunder the writ application filed by the petitioner/respondent was disposed of by directing :

"Having regard to the above and since I am of the view that the premises in question do not come within the definition of "Government Premises" or "Public Premises" or "Slate Premises", and since the petitioner was removed therefrom on the basis of the Impugned memo Issued by the Sub-Divisional Officer, Barrackpore, which was wholly illegal, the same must be quashed.

Accordingly, the writ application succeeds. The impugned Memo No. 309/Con dated 10th August, 1992, being annexure "A" to the writ petition. Is quashed. The Sub-Divisional Officer, Barrackpore. as also the inspector-in-Charge, Khardah Police Station, who acted on the basis of the said Impugned order, are directed

to restore to the petitioner the premises from which he was evicted, either forcibly or otherwise, on the strength of the impugned memo, within ten days from the date of communication of this order".

2. The appellants are said to be the owners of the premises in question. The said premises had admittedly been mortgaged in favour of the State. The Sub-Divisional Officer, Barrackpore, purported to be acting in terms of the Memo dated 16th July, 1992 Issued by the Assistant Secretary, Home (P & AR) passed an order dated 10.8.92 as contained in annexure "A" to the writ application which reads thus:

"In pursuance of Assistant Secretary, Home (P & AR) Department, Government of West Bengal Memo No. 1586 PAR/WBCS/3A-31/88 dated 16.7.1992 it is learned that one Sri Ashit Chalderjee has been living as an unauthorised occupant in the premises at C-54, Amarabati, Sodepur, P.S. Khardah. The property now stands mortgaged to the Government of West Bengal and is a Government premises, in terms of section 2(d) & 2(n) of the West Bengal Government Premises (Reg. of occupancy) Act, 1984.

You are, therefore, instructed u/s 13 of the Act to remove the unauthorised occupant from the said premises and take possession of it report compliance by 13th August, 1992".

3. The purported direction made by the Assistant Secretary, Home (P & AR) appears to have been issued at the Instance of the appellant and the subsequent action taken by the Sub-Divisional Officer by directing the Inspector-in-Charge, Khardah Police Station is wholly illegal and without jurisdiction and/or authority of law. The said direction being violative of the principle of natural justice was liable to be set aside. It further appears that in relation to the premises in question a suit was also pending. An order of injunction had also been passed. Despite the same, the aforementioned Memo No. 309/Con. dated 10.8.92 had been issued. This case depicts a sordid state of affairs. The Sub-Divisional Officer has acted in a high handed manner. A contention is sought to be raised that the writ petitioner had vacated the premises out of his own volition. Such a contention coming from the mouth of the appellant herein should be rejected. We do not find any reason as to why such a contention was raised. The appellant herein admittedly had mortgaged the property. He had merely a right of redemption. However we cannot but deprecate the action on the part of the public functionary in such a high handed manner and we are of the opinion that the learned trial Judge has rightly issued the direction in his Judgment under appeal. The appellant, in our opinion, has no locus-standi to maintain this appeal as admittedly he was not in possession thereof. If the premises is a Government premises which according to the learned trial Judge was not and the directions Issued by the learned trial Judge against the State it was not for the appellant to question the correctness or otherwise of the said order only on the ground that he may exercise his right of redemption.

4. We would therefore observe that it is a fit case in which the Government of West Bengal should take appropriate action against the concerned Sub-Divisional Officer. Barrackpore, as also the Assistant Secretary, Home (P & AR), Government of West Bengal who were instrumental in issuing the aforementioned Memo dated 10.8.92 and 16th July, 1992 respectively.

5. It is not necessary for us to dilate on this aspect of the matter in details in view of the recent Division Bench decision of this court in M.A.T. No. 570 of 1998 disposed of on 10.5.99.

6. Mr. Banerjee, learned counsel for the appellant however has referred to a decision reported in Hindustan Steel Limited, Rourkela Vs. Smt. Kalyani Banerjee and Others, In that decision the apex court was considering the case u/s 10 of the Bihar Land Reforms Act. In that case an exception to the order passed by the Patna High Court had been taken, inasmuch as, in its judgment the High Court had used the expression "prima facie" in describing the state of affairs in connection with the right to grant a lease in respect of mineral rights and thus no final finding of fact was arrived at by the High Court The said decision has no application in the fact of the present case. In view of the proposition of law on precedent enunciated by a Division Bench decision of this court reported in Jaya Sen Vs. Sujit Kr. Sarkar,

7. The learned counsel for the appellant states that this appeal is maintainable at least against the direction to pay costs against his client by the learned trial Judge. That may be so but keeping in view the factual back-drop we do not intend to set aside that part of the order passed by the learned trial Judge.

For the reason aforementioned, we are of the opinion that there is no merit in this appeal which is accordingly dismissed.

There will be no order as to costs.

S.N. Bhattacharjee, J.

8. I agree.

9. Appeal dismissed