
(2015) 01 CAL CK 0013
In the Calcutta High Court
Case No : C.O. 4117 of 2014

Satish Chandra Upadhyay

APPELLANT

Vs

The Estate Manager, Indian Maritime University

RESPONDENT

Date of Decision : 05-01-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 3, Order 8 Rule 5
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 2(g), 4, 9

Citation : (2015) 01 CAL CK 0013

Hon'ble Judges : Harish Tandon, J.

Bench : Single Bench

Advocate : Tilak Mitra, Barun Chatterjee and Dipanwita De, for the Appellant

Final Decision : Dismissed

Judgement

Harish Tandon, J.—Affidavit of service filed in Court today is taken on record.

2. The revisional application is directed against a judgment and order dated 11th November, 2014 passed by the learned Additional District Judge, First Court at Alipore in P.P. Appeal No. 8 of 2013, by which the said appeal was dismissed.

3. The learned advocate for the petitioner was very vocal in contending before this Court that once the accommodation provided to the petitioner was in lieu of the condition of service, the authorities cannot initiate a proceeding under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to as "said Act").

4. According to the petitioner, he was initially appointed on ad-hoc or temporary basis for a period of one year to the post of Engineer and Ship Surveyor in the Mercantile Marine Department, Calcutta. In the year 1995, the petitioner was allotted a E/3 type quarter on payment of licence fee. Subsequently, the ad-hoc and/or temporary appointment was not extended rather the authorities sought to terminate the service of the petitioner, which constrained him to move before the Central Administrative Tribunal.

5. By an order dated 16th December, 1997, the Central Administrative Tribunal categorically observed that the ad-hoc or temporary appointee cannot be thrown out of service on retaining the juniors, as the said post is no longer required, and directed the authorities to treat the petitioner's service in continuation since 17th May, 1996 i.e. till the order of reversion issued by the competent authority was passed. The order of the Central Administrative Tribunal was challenged in a writ petition (W.P.C.T. 490 of 1998) before this Court. The Division Bench on 30th July, 2008 modified the order to the extent that the respondent authority shall consider the re-engagement of the applicant on ad-hoc basis as it was done previously in view that some other candidates who were junior to the applicant were allowed to continue. It was further observed that the petitioner will be entitled to participate in the selection process, to be held in future, before the Union Public Service Commission. The said order was further carried by the Union of India to the Hon'ble Supreme Court in filing Special Leave Petition, which stood dismissed not only on the ground of limitation but also on merit. Alleging the violation of the directions passed by this Court, the petitioner filed the contempt application, which is still pending.

6. Amidst the pendency of the contempt proceedings, a notice under Section 4 of the said Act was issued upon the petitioner demanding the recovery of possession of the quarter allotted to him. The proceeding, initiated on the basis of the said notice, culminated into an order of eviction before the Estate Officer and affirmed in an appeal filed under Section 9 of the said Act.

7. The challenge is basically made to the order of the Estate Officer as well as the appellate authority in this revisional application on the plea that when the allotment of quarter is in terms of the service conditions and when this Court directed the authorities to re-engage the petitioner, unless the conscious decision is taken thereupon, the petitioner shall be deemed to be in service and any attempt to evict the petitioner from the allotted quarter is in contravention with and/or contrary to the order passed by this Court. It is further submitted that the petitioner is still residing in Kolkata in the said allotted quarter and, therefore, the order of eviction passed against him is illegal and unsustainable.

8. According to the learned advocate for the petitioner, the provisions contained under the said Act can be invoked only in the event the person is found to be an unauthorized occupants within the definition assigned under Section 2(g) of the said Act. Taking aid of the aforesaid definition clause, it is submitted that if the allotment of quarter is made on the basis of the conditions of service, the authorities cannot treat the petitioner as unauthorized occupants and the order passed by the Estate Officer is unjustified, illogical and contrary to the express findings made by this Court in the earlier writ petition.

9. I am not impressed with the aforesaid submissions of the petitioner. It is undisputed that the premises in which the quarter has been allotted to the petitioner is a public premises and the eviction can only be sought by taking aid of the Public Premises Act. Admittedly, the petitioner was appointed as ad-hoc or

temporary employee and the said appointment was ultimately terminated. The petitioner assailed the aforesaid action of the authorities on the ground that once the juniors have been allowed to retain on the posts, the service of the petitioner cannot be terminated as the post on which the petitioner was appointed is no longer required. Though a specific order was passed by the Central Administrative Tribunal treating the petitioner's service to have continued, but the said order is modified by the Division Bench of this Court to the extent that the authorities shall take steps for re-engagement of the petitioner to the said post and the petitioner was further given liberty to apply his candidature in a recruitment process undertaken by the Union Public Service Commission in future.

10. It is tried to impress this Court that the proceeding under the said Act could not have been initiated against the petitioner while in service and, more particularly, when there is a specific direction passed by this Court in an earlier writ petition by which the service of the petitioner is deemed to have continued, this Court feels that the petitioner is factually incorrect. The concluding portion of the order of the Division Bench, by which the order of the Central Administrative Tribunal is modified, was expressive and categorical that the authorities were directed to consider the re-engagement of the applicant on ad-hoc basis as it was done previously. It would be relevant to quote the relevant portion, which runs thus:

"The respondent authority shall consider the re-engagement of the applicant on ad hoc basis as it was done previously keeping in view that some other candidates who were junior to the applicant were allowed to continue. This shall be done within a period of one month from the date of communication of this order. If for any reason it is not possible then the same shall be communicated in writing to the applicant. The applicant will be entitled to participate in the selection process, to be held in future, before the Union Public Service Commission. In that case Union Public Service Commission is to relax his age by three years if he exceeds maximum age limit." 11. The Apex Court while dismissing the Special Leave Petition did not make any observations except that the case is bereft of merit. The notice issued under Section 4 of the said Act is not solely based on the facts as sought to be canvassed before this Court, but specific plea was taken therein that on and from 1st July, 2004 the petitioner joined as a faculty in Fosma Maritime Institute and Research Organization, Mumbai. It is relevant to quote paragraph 7 of the said notice, which is as follows:

"Further on 4th May, 1998 you accepted employment and joined as a faculty in Indian Institute of Port Management, Kolkata. Thereafter on 1st July, 2004 you joined as a faculty in Fosma Maritime Institute and Research Organization, Mumbai, in the circumstances." 12. The reply to the said show-cause notice lacks any specific denial to those specific allegations. The length and breath of the reply proceed simply on the past proceeding initiated by the petitioner by the

Central Administrative Tribunal, the High Court and the Supreme Court and the contempt application being pending before this Court.

13. The Estate Officer in his order records that the schedule premises was meant for the benefit of the employees of the Indian Maritime University and since the petitioner has joined another organization in Mumbai, is not entitled to retain the said allotted quarter. The petitioner has not challenged the finding of the Estate Officer in an appeal under Section 9 of the said Act, even the Memorandum of Appeal filed before the appellate authority did not contain any specific statement that the petitioner has not joined the another organization on and from 1st July, 2004.

14. The learned advocate for the petitioner was very much categorical in submitting on instruction that the petitioner is still residing in the said quarter and those statements have no semblance of truth in it.

15. The cause of action is not a stray fact nor has been defined in any statute. It is a bundle of facts narrated by a person approaching the Court and if proved, would entitle the said person to have the judgment on the relief claimed therein. The facts pleaded by an initiator of the proceeding are to be specifically dealt with by a person against whom such proceeding is initiated. Order XIII Rule 3 of the Code of Civil Procedure requires the denial of each allegations to be specific as non-denial of the allegations may be treated as admitted under sub-rule (1) Rule 5 Order VIII of the Code of Civil Procedure. The only exception carved out therein is that the person under disability is immuned from such provision. The eviction of the petitioner was not sought simply on the ground that his service is terminated but on the ground that having joined another organization on and from 1st July, 2004, he became disentitled to remain in occupation of the allotted quarter. Such a specific allegation goes unchallenged and uncontroverted. The Court can safely apply the doctrine of Non-traverse and treat these allegations to have been admitted by the petitioner. The petitioner was silent on the said averments through out the proceedings and it is only for the first time before this Court, in this revisional application, the statement has come at the Bar that the petitioner is still residing in the said quarter. The facts, which are not denied in pleading, cannot be allowed to be denied at the Bar.

16. Both the Estate Officer as well as the appellate authority have proceeded on the basis that the petitioner, who has joined the another organization at Mumbai, is, therefore, not entitled to occupy the allotted quarter. The definition engrafted under Section 2(g) of the said Act clearly stipulates that a person who was allowed to occupy the public premises by an authority becomes the unauthorized occupant, the moment authority has expired or terminated or withdrawn.

17. This Court, therefore, does not find that the submissions of the petitioner that the authorities were denuded from initiating a proceeding for eviction of the petitioner from the allotted quarter, more particularly, when there is an order of this Court passed in an earlier writ petition, is not tenable and legally sustainable.

18. This Court, therefore, does not find any merit in the revisional application and the same is hereby dismissed.

19. Urgent photostat certified copy of this judgment, if applied for, be given to the parties on priority basis.