

(1988) 07 CAL CK 0005
In the Calcutta High Court
Case No : C.O. No. 4148 (W) of 1988

Sm. Anjali Sen

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 07-07-1988

Acts Referred:

Citation : 93 CWN 196

Hon'ble Judges : Susanta Chatterjee, J

Bench : Single Bench

Advocate : Asok De and Saradindu Kundu, for the Appellant; Samaraditya Pal and P.K. Das, for the Respondent

Judgement

Susanta Chatterjee, J.—An application for vacating the interim order of injunction and/or for further necessary orders filed by the added respondent has been considered by this Court. This case has really a chequered background. The writ petition has been filed by one Sm. Anjali Sen claiming to be the owner of flat no. 9B, Naba Kailash Cooperative Housing Estate at 55/4, Ballygunge Circular Road, Calcutta-19. It is alleged in the writ petition that in the month of April, 1986 the petitioner had let out the said flat for a period of two years to Indian Market Research Bureau having their office at 30, Bondel Road, Calcutta-19 and the alleged lease expired on the 30th April, 1988. It was stated further in the writ petition that the respondent no.4 Srijeeb Moitra of 30, Bondel Road, is a man desperate in nature having good connection with the anti-socials and some influential persons to occupy forcibly the petitioner's flat by applying physical force. It was further stated that on 2.5.88 at about 8.30 p.m. that when the petitioner was living in the said flat The respondent no.4 along with 4/5 unknown persons forcibly entered into the flat and tried to take possession of the said flat, but at the intervention of some local friends and well-wishers they could not take possession of the said flat. Consequently the petitioner moved the court of the learned executive magistrate at Alipore on 6.5.88 for drawing up proceedings against the respondent no.4 and others in order to restrain them from entering

into the said flat in question and the said application was registered as Case No. M.P.802 of 988. According to the petitioner the Learned Magistrate directed the Officer-in-Charge, Ballygunge Police Station to see that no breach of peace takes place in the meantime and further directed that no wrongful activities are done against the petitioner in respect of prayer marked "A", of the petition. Since respondent no.3, Officer-in-Charge, Ballygunge Police Station, was found not implementing the order passed by the learned Executive Magistrate, the petitioner moved a writ petition on 10th May. 1988. Upon hearing the learned lawyer for the petitioner, Bhagabati Prasad Banerjee J. was pleased to entertain the writ petition and directed that the matter will appear in the list as "application" one week after the Summer Vacation and an interim order was passed directing the police authorities to carry out the order passed by the learned executive magistrate on 6.5.88. Mr. M. Haque, a learned Advocate of this Court, was appointed as Special Officer to see that the order passed by the learned Magistrate is carried out and to take steps for implementing the order. The Special Officer agreed to perform the duty without any remuneration. Subsequently by an order dated 1.6.88 the Indian Market Research Bureau was added as respondent no.5 in the main writ petition. Leave was granted to the added respondent no. 5 to file an application for vacating the interim order. It will appear from the said order dated 1.6.88 that Mr. Nilava Mitra was appointed as Joint Special Officer along with Mr. M. Haque. There was a direction that both the Special Officers shall visit the flat in question and shall make inventory of the articles and things that may be found in the flat in question and that such inventory shall be made by the Joint Special Officer after giving notice to both the parties. It was made clear by a subsequent order made on the same day that in case of difficulty the Special Officers will act jointly or separately. By another order dated June 2, 1988 the matter was taken on the day's list on mentioning and direction was made that the Special Officer Mr. M. Haque and the Joint Special Officer Mr. Nilava Mitra shall act jointly and if not possible, severally and they will visit the flat in question with police help and for that purpose the Officer-in-Charge, Ballygunge Police Station was directed to render all possible assistance to the Special Officer and/or the Joint Special Officers in terms of the order passed by this Court. It was, however, made clear that at the time of visit by the Special Officers the petitioners as well as the added respondent may be represented by their own representatives and may also be assisted by lawyers of their own.

2. Again the matter was considered on June 3, 1988 and it will appear from the order that the Special Officers visited the flat in question and made some inventories and found that some of the articles and things are still there belonging to the added party. Leave was granted to the learned lawyer for the added party to take steps in the matter as regards the articles in question and the order was passed without prejudice to the rights and contentions of the parties.

3. It transpired further from the next order dated 7.6.88 that there was a

direction to file affidavit against the application for vacating the interim order and/or further order filed by the added respondent, Indian Market Research Bureau. The writ petitioner was further directed not to remove any of the articles mentioned in the report of the Special Officer(s) or not to part with and/or deliver possession of the flat in question to any other person.

4. It will appear from the application filed by the added respondent no.5 that by an agreement dated 28th April, 1986 Sm. Anjali Sen leased out the said flat no.9B on the 9th floor of Naba Kailash at premises No. 55/4, Ballygunge Circular Road on the terms and conditions as mentioned. in the agreement dated 28th April, 1983. The added respondent deposited a sum of Rs.7,000/- with the said Sm. Anjali Sen and paid the monthly rents. The aforesaid tenancy in respect of the said flat was obtained by the added respondent for the purpose of residence of its Executive Officer currently Research Director Srijeeb Moitra, respondent no.4 in the main writ petition and since inception of the tenancy, said Srijeeb Moitra was residing at the said Flat No.9B, with his family. Since about beginning of the year 1988 said Sm. Anjali Sen entered into negotiation with the added respondent through its Deputy General Manager Sri Sudipta Sinha for enhancement of rent and service charges when the added respondent agreed to a reasonable enhancement of the amount and requested Sm. Anjali Sen to indicate the figure of such enhanced rate. Instead of making any further negotiation by a letter dated 2.2.88 addressed to the added respondent no.5 Sm. Anjali Sen purported to serve a notice upon the added respondent no.5 for vacating the said flat. By a letter dated 2.2.88 the respondent no.5 categorically stated that being a monthly tenant and not being in default in the compliance of any of the terms, the tenant was not liable to be evicted from the said flat. It will also appear from the said application that Sm. Anjali Sen sent a cheque for Rs.7,000/- and the same was returned by the added respondent no.5 in the manner as stated in the said application. Immediately after the cheque was sent back by a separate registered cover, no step was taken by Sm. Anjali Sen for the purpose of eviction of the tenant in question and the tenancy was not determined in due course of law. It is alleged further in the said application that Srijeeb Moitra, the resident of the said flat no.9B, Nabakailash, left for the office at about 10.30 a.m. in the morning of 28.5.88, which was a Saturday, leaving the said flat under the care of one maid-servant engaged by the said Srijeeb Moitra for doing household works. Within a short while after Srijeeb Moitra left the said flat some persons accompanied by police came to the said flat when the said persons forcibly entered into the said flat and physically assaulted the said lady and removed her from the said flat. Upon receipt of information about the incident the management of the added respondent along with Srijeeb Moitra went to the said flat No. 9B, Naba Kailash when it appeared that the collapsible gate in front of the flat had been locked with a Godrek padlock, the wooden door in front of the flat also remained closed and the name plate of Srijeeb Moitra had been removed and instead a name plate of Sm. Anjali Sen had been fixed. Mentioning all these allegations, the application further disclosed that from the

list of the inventories it would appear that several items including Godrej Steel Almirah, Gas Cylinder, Gas Burner, Coloured Television Set, Voltage Stabilizer, telephone, Refrigerator, inverter etc., belonging to Srijeeb Moitra were found in the flat in question. Stating all such facts it was alleged that possession of the flat has been taken illegally and forcibly in a circuitous process by taking advantage of filing a frivolous application before the Learned Executive Magistrate and filing the present writ petition before this Court even without impleading the tenant in question i.e. respondent no.5. Consequently a specific prayer was made that the interim order passed by this Court may be vacated simultaneously possession of flat in question together with all the belongings of Srijeeb Moitra, respondent no.4. be restored to the petitioner and other consequential reliefs. The said petition is strongly contested by the main writ petitioner Sm. Anjali Sen.

5. Mr. Dey, Learned Advocate for the petitioner, Sm. Anjali Sen has very strongly submitted that true it is a dispute between a landlady and a tenant. There is a disputed question of fact as to whether there is at all a surrender of tenancy by the tenant in question and/or whether the tenant has been forcibly removed without determining the tenancy in due course of law and without taking steps in accordance with law. This disputed question may be decided by the competent civil court and the parties may be directed to approach the proper forum for effective adjudication without disturbing the possession of the flat enjoyed by the writ petitioner Sm. Anjali Sen. In support of his contention he has stated that the question of surrender is implied or the situation of such an event can be inferred. In support of his contention he has referred to a case reported in AIR 1981 SC 1725 (Shaik Hussain & Sons v. M. G. Kannaiah & Anr.). It will appear that with regard to the procedure whether a writ petition was allowed and an appeal was filed and there was a request by the petitioner that he would like to withdraw the writ petition in order to avoid public inconvenience High Court did not allow the application and dismissed the appeal on merit. It was held that the High Court was not justified in not considering withdrawal applicant or passing orders thereon. It was observed that despite a clear prayer made by the respondents, the High Court did not allow the respondents to withdraw the writ petition, but proceeded to hear the appeal on merit and dismissed the appeal maintaining the order of the single Judge. The step taken by the High Court was not appreciated and the result was that the writ petition before the High Court was allowed to be treated as being withdrawn as not pressed.

6. Mr. Pal appearing for the added respondent has drawn the attention of this Court to various averments made in the application filed by the added respondent and laid much emphasis that if a party files a writ petition and thereafter obtains an order from this Court and taking advantage of the said order enjoys certain benefits and thereafter wants to withdraw the writ petition and/or not to press the writ petition without disturbing the relief he has enjoyed, then it will be prejudicial to the interest of the person who has suffered due to the order passed by this Court. It is for this Court to see that things are set at

right and the person who has wrongly enjoyed the fruit should be directed to restore the possession as it was before the date of filing the writ petition. Mr. Pal has further submitted that, as a matter of fact, the respondent no.5, an admitted tenant, was in lawful possession of the flat in question and without determining the tenancy in due course of law, the petitioner has unlawfully removed the present employee of respondent no.5 namely Srijeet Moitra and now wants to refer t(sic) matter to the civil court without restoring the possession to the tenant in question.

7. With all anxieties this Court has considered the submissions of Mr. Dey and Mr. Pal. This court with all anxieties has also gone through the entire materials on record, averments made in the application, report of the Special Officers and the various orders passed by this Court. It is very unfortunate that a landlord who wants to evict a tenant would take such a step by force and to cover such illegal act will approach the Court to obtain suitable orders. If the court finds upon discovery that a person has taken law in his own hands and the court becomes helpless to remove the misdeeds, then it would be a very dark day indeed. If such things happen, then no one is safe and secure. This Court does not appreciate as to why a landlord having given a notice of ejectment to a tenant goes to file a case in a criminal court not against the tenant but against the person who is an employee of the tenant being admittedly in possession of the property and obtains an order and rushes o(sic) this Court and gets an order directing the police to implement the order of the learned Magistrate and also gets the help of a special officer doing the service without remuneration. It is very mysterious and raises suspicion. Suspicion leads to lack of confidence and once confidence is lost, people will lose faith upon the institution itself. In this background it is to be seen that things are properly done in the manner as it is expected to be done. This Court prima facie finds with all seriousness that the writ petitioner has not determined the tenancy in due course of law. She has taken forcible possession. The question is as to whether the added respondent is without remedy. It is also true that this writ Court will not entertain the disputed questions of fact. This writ court will also not consider a case when there must be effective adjudication by allowing parties to adduce evidence and to get the witnesses examined and cross-examined; but at the same time this court is not helpless if it finds that a person has illegally and purposely taken advantage of a wrong act and until adjudication, he or she should be allowed to enjoy the fruit thereof. True, a question has arisen in this case as to whether a tenant has lawfully surrendered the tenancy or that there is a case of implied surrender or that whether a tenant has been wrongfully removed and where an appropriate step has got to be taken to recover possession and to pass necessary and effective orders. All these questions must be answered by the competent civil court at the instance of either the petitioner or the added respondent: but for the fitness of things and for the ends of justice this court believes that until effective adjudication by the civil court and/or any suitable order is passed, this court believes that a person should be appointed as a receiver to take possession of

the flat in question and if the possession remains in the hands of a court officer, the interest of both sides would be protected and preserved and upon effective adjudication by the civil court there will be no answer to the problem in question.

8. For the aforesaid reasons leave is granted to the added respondent to file a proper suit in the appropriate civil court for recovery of possession of the flat in question and/or for a declaration of the right of tenancy if any and the petitioner is entitled to contest the said suit in accordance with law keeping all his defence in tact. In the said civil suit the petitioner is also entitled to pray for any interlocutory order, but before driving the parties to civil suit to contest the question in its proper perspective, this Court appoints the respondent no.4, Srijeeb Moitra a Receiver to take immediate possession of the flat in question. The petitioner is directed to hand over possession of the flat to Srijeeb Moitra within a week from date, and for obtaining possession of the said flat the police will render ail assistance to the said respondent no.4. The said respondent no.4 will take charge of the items as per inventory as a receiver. The said respondent no.4 is also directed to give an undertaking to this Court that in the event of any order of the competent court possession would be delivered to the person in question without any condition whatsoever.

9. The said receiver will discharge the function without any remuneration and the civil court would be entitled to regulate function of the said receiver in accordance with law. In the event the suit is not filed within four weeks from date, the appointment of receiver would be revoked and the petitioner would be entitled to receive back the possession from the said respondent. The application by the added respondent is disposed of.

10. The main writ appear for further orders six weeks hence. The said respondent no. 4 will verify the articles mentioned in the inventory in presence of the special officer and after prepration of the fresh inventory the service of the special officers will be dispensed with.