

(2004) 02 CAL CK 0068
In the Calcutta High Court
Case No : W.P.L.R.T. No. 145 of 2003

Sri Rama Krishna Seva Kendra and Another	APPELLANT
Vs	
State of West Bengal and Others	RESPONDENT

Date of Decision : 09-02-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226
Government Grants Act, 1895 — Section 2
Transfer of Property Act, 1882 — Section 111

Citation : (2004) 2 CALLT 453

Hon'ble Judges : Jyotirmay Bhattacharya, J;Altamas Kabir, J

Bench : Division Bench

Advocate : Saktinath Mukherjee, Abu Zafar M.S. Alam, Tanmoy Goswami and Alok Chattopadhyay, for the Appellant; Indrajit Sen, Durgadas Ray and Husn-Ara-Begum, Milan Bhattacharya and Biswadeep Roychowdhury for the Respondent Nos. 9, 10 and 12 and Manasi Bhattacharya for the Respondent No. 7, for the Respondent

Judgement

A. Kabir, J.—The petitioner No. 1 is a Society registered under the West Bengal Societies Registration Act, 1961, and the petitioner No. 2, a Chartered Accountant, is the Joint Secretary thereof. At the request of the State Government the Society which was operating in Tripura set up a Bull Mother Farm-cum-Rural Training and Demonstration Centre at Ramshai in Jalpaiguri for imparting rural training and cross-breeding on lands allotted by the Government of West Bengal, comprising an area measuring 96.61 acres under plot Nos. 1410 to 1425, 1677/78 and 1236, J.L. No. 83(9) under new mouza Ramshai, Thana Maynaguri in the District of Jalpaiguri. Such allotment was subsequently formalised by execution of a registered Indenture of Lease dated 18th March, 1983, whereby the West Bengal Government granted to the Society a lease of the said lands for 30 years commencing from 26th May, 1981, on payment of the stipulated premium and annual rent.

2. Apart from the above, the Society decided to establish another unit of the

Dibyadaya Krishi Vigyan Kendra in Jalpaiguri with the support of various Government institutions such as, the Indian Council of Agricultural Research. Along with some of the office bearers of the Society, the Director of Animal Husbandry and the Joint Director of Agriculture, Government of West Bengal, along with the zonal co-ordinator of the Indian Council of Agricultural Research, the Zilla Savadhipati and other members of the Block Panchayat, representatives of the farmers, are all members of the Managing Committee of the said Krishi Vigyan Kendra. The said Kendra was established mainly for training of farmers with modern technology in the field of Agriculture, Animal Husbandry and allied services and in that regard various modernised trading courses were also organised In the Krishi Vigyan Kendra. For the purpose of running the Kendra the State Government allotted a further quantum of land measuring 54.09 acres in Mouza Panibari, under Moynaguri Police Station, in the District of Jalpaiguri, on the and from 11th November, 1983. Such allotment was thereafter regularised by an Indenture of Lease dated 28th March, 1985 for a period of 30 years commencing 11th November, 1983. The said lease also contains covenants and terms and conditions similar to those contained in the earlier lease dated 18th March, 1983.

3. It is the case of the petitioner that the said Krishi Vigyan Kendra implemented various projects of the State and Central Governments through its various agencies which included the Indo-Dutch North Bengal Tarai Project with the financial assistance of the Royal Government of Netherlands for the purpose of water management. In order to run the Kendra the Society took the service of various people whose salaries were in the scale as was given to the employees of the Indian Council of Agricultural Research and the National Dairy Development Board.

4. It is the petitioner's case that in or about month of March, 1991, the petitioner Society facing labour trouble in both its units at Ramshai. According to the petitioners, certain political elements began to obstruct the smooth operation of the projects and due to serious misbehaviour and misconduct, the Society was compelled to terminate the service of two of its employees, namely, Shri Sujit Roy Chowdhury and Shri K.C. Roy Chowdhury. According to the petitioners, the said employees with the help of some of the staff forcibly took away important documents relating to accounts and other papers of the Society and began to spread rumours against the management of the Seva Kendra to make it impossible for them to resume normal work in the campus. According to the petitioner, these interested persons made it impossible for the Training Organiser to remain in the campus and he was compelled to leave the campus.

5. It is also the case of the petitioners that from 1991, no one from the Society could remain in the campus to look after the project activities and the vast assets of the Society. On account of the above, neither the petitioner No. 2 nor the other officers of the Society could enter into the campus due to the obstruction caused by the said two disgruntled employees whose services had

been terminated. The Society was compelled to file suits against the said two dismissed employees but the orders of injunction passed therein restraining them from entering into the campus was violated by the said employees and their supporters and the said order could not be implemented due to the lack of support from the District administration. According to the petitioners, in view of the support received by the said dismissed employees and their supporters from the State authority in perpetuating their wrongful activities, the petitioner Society found it impossible to conduct, pursue and monitor the various development projects being run by them in the Jalpaiguri area.

6. On 18th July, 1991, the Commissioner of Jalpaiguri Division wrote to the General Secretary of the Society indicating the high respect in which the Society was holding by the local people who would be greatly disappointed if the projects were wound up. A mass petition was also sent by the local beneficiaries of the projects being run by the Society to the Chief Minister of West Bengal requesting that necessary steps be taken to enable the Society to resume its day-to-day functions in the two aforesaid projects and to remove the hostile employees.

7. Despite the above, it became clear that there were interested persons, who with the help of some local political elements, were bent upon ousting the management from the two projects. The petitioners approached the State authority to help them to restore normalcy in the running of the Bull Mother Farm and the Krishi Vigyan Kendra, but the said authority insisted that the dismissed employees be reinstated before anything further could be done to normalise matters. Not even a First Information Report could be lodged on behalf of the Society with the Moynaguri Police Station as the duty officer refused to accept the same and such complaint had to be ultimately sent to the Police Station with a forwarding letter dated 15th May, 1992.

8. On 30th April, 1992, the District Magistrate, Jalpaiguri, sent a questionnaire to the Society regarding the lease of the land and the state of affairs in respect of the aforesaid two projects. In reply to the questionnaire the petitioners informed the District Magistrate that the lease rents had been paid up to date. The petitioners also expressed their desire and willingness to run the two projects in which they had invested a good deal of money and effort. Thereafter, by his memo dated 22nd/23rd July, 1992, the District Magistrate, Jalpaiguri, directed the Chief Executive of the petitioner Society to appear before him on 31st July, 1992. In the said notice there was no mention of the intention of the State authorities to terminate the two leases. Apart from deputing someone to represent the Society on 31st July, 1992, the former General Secretary of the Society by his letter dated 5th August, 1992, informed the District Magistrate, Jalpaiguri, that the Seva Kendra was agreeable to resume its activities in the Ramshai campus and requested him to render assistance for restoring normalcy and creating a congenial atmosphere in the campus of the Seva Kendra.

9. According to the petitioners, inspite of being informed of the aforesaid position and also being informed of the society's intention and desire to run the two

projects with the assistance of the State authorities, the District Magistrate, Jalpaiguri, on 9th August, 1992 without any hearing and/or further notice to the petitioners handed over the Krishi Vigyan Kendra and Bull Mother Farm of the Society to the Animal Resources Development Department, Government of West Bengal, on 9th August, 1992. It is the petitioners' case that they came to know of the taking over of the said two projects of the Society by the State Government and the handing over thereof to the Animal Resources Development Department through Newspaper reports. The petitioners thereupon moved this Court in its writ jurisdiction, being C.O. No. 12438(W) of 1992.

10. On 16th March, 1993, the petitioners forwarded two demand Drafts, being the Annual Rent and Cess for the year 1399 B.S. under covering letter dated 8th March, 1993 and the same was received by the Block Land and Land Reforms Officer, Moynaguri, District Jalpaiguri, on 22nd March, 1993. Since the rent receipts in respect of the said two demand drafts were not sent to the Society, a reminder was sent to the said authority on 23rd June, 1993. The said authority along with his memo dated 12th July, 1993, returned the said two Demand Drafts stating that he was not in a position to accept the same as per the direction given by the Additional District Magistrate. Surprised by the action of the authorities, the petitioners sent back the said two Demand Drafts to the Block Land & Land Reforms Officer, Moynaguri, on 19th August, 1993, but once again the same were sent back to the petitioners by the said authority along with his letter dated 21st September, 1993, wherein it was stated that the lease had been terminated by the District Magistrate, Jalpaiguri, on 31st July, 1992 vide case No. XIII-B/58 (Misc.)/1992-93 and that the lands covered by the Lease Deeds had been resumed by the Government and handed over to the Animal Resources Development Department. Contending that the aforesaid action of the State and its authorities was arbitrary, illegal and contrary to all tenets of law, the Society moved another writ application in this Court, being C.O. No. 4646(W) of 1994, inter alia, for quashing the order passed by the District Magistrate.

11. After the enactment and enforcement of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997, the writ petition stood transferred to the West Bengal Land Reforms and Tenancy Tribunal and was renumbered as T.A. No. 427 of 2000. The learned Tribunal by its judgment and order dated 18th July, 2002, dismissed the writ application upon holding that, although, after determination of the two leases an order was required to be made under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, in the instant case such step would not be required, inasmuch, as the petitioners had ejected themselves out of the land by deserting it. The learned Tribunal held further that in the circumstances, the question of formal ejectment became an empty formality and non-observance thereof in the exceptional circumstances was no irregularity whatever.

12. The aforesaid order of the learned Tribunal has now been challenged by the Society in the present writ application, being W.P.L.R.T. No. 155 of 2003.

13. Appearing for the writ petitioner Society and its authorities. Mr. Saktinath Mukherjee submitted that the learned Tribunal had proceeded on an erroneous understanding of the law governing leases executed by the State Government and the termination thereof. Mr. Mukherjee submitted that when lease of land had been granted by the State Government the provisions of the Transfer of Property Act and other similar Acts governing such leases came into operation and the provisions thereof could not be by-passed by the State Government in the arbitrary manner in which it had done so in the instant case. Mr. Mukherjee urged that even if the State Government was justified in terminating the two leases granted to the petitioner Society, it would have to take possession of the lease-hold lands not by forcibly dispossessing the petitioner Society, but in accordance with law. Mr. Mukherjee submitted that in the instant case, while recording that after the termination of the Lease Deeds the possession of the Society in respect of the lease-hold lands had become unauthorised and that an order under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, was required to be made, it tried to water down the issue by indicating that recourse to such provision was not necessary as the Society had ejected itself from the lease-hold lands. The Tribunal went on to observe that since the Society and its members had ejected themselves out of the land by deserting it, the question of formal ejectment became an empty formality and that non-observance of such a formality in the exceptional circumstances under which the lease deeds were terminated was no irregularity whatsoever.

14. Mr. Mukherjee submitted that such a proposition was unheard of and was, in any event, entirely contrary to the facts and the materials before the District Magistrate, Jalpaiguri, Mr. Mukherjee reiterated that the Society had by its several letters informed the authorities of its intention to run the two projects which had been set up by the Society and comprised large assets by way of constructions, equipment and livestock. Mr. Mukherjee submitted that from the said letters it would be very clear that the Society had no desire and/or intention to abandon the two projects but were, in fact, compelled by threat of violence and force to withdraw from the campus. Mr. Mukherjee contended that the District Magistrate and the State authorities had deliberately and/or wilfully not taken into consideration the repeated request made on behalf of the Society to help them to restore normalcy in the running of the two projects which had started facing problems immediately after the two employees mentioned hereinabove had been dismissed from service.

15. Mr. Mukherjee contended that instead of providing necessary help and assistance to the Society and its authorities to maintain peace in the campus and to run the two projects, the State authorities with a specific motive not only did not come forward to provide assistance to the Society to run the two projects and maintain discipline, but also actively helped the two disgruntled employees and their associates to cause a stalemate and a state of terror to compel the Society to withdraw from the two projects.

16. Mr. Mukherjee submitted that the notices requesting the Society to appear before the District Magistrate on 31st July, 1992, did not indicate that there was any intention on the part of the State and its authorities to terminate the two leases which had been granted to the petitioner Society. According to Mr. Mukherjee the story of alleged abandonment of the project by the Society was created to enable the State to take the arbitrary action of forcibly taking over possession of the lease-hold lands and handing over the assets? of the Society to the Animal Resources Development Department.

17. Mr. Mukherjee urged that it is now well-settled that the Government authorities cannot use force to evict persons from Government premises without taking recourse to the provisions of law relating to taking over of such possession. In this regard, Mr. Mukherjee firstly referred to the decision of the Hon"ble Supreme Court in the case of Lallu Yeshwant Singh v. Rao Jagdish Singh and Ors. reported in AIR 1968 SC 620 and in the case of State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others, , and lastly in the case of State of West Bengal and Others Vs. Vishnunarayan and Associates (P) Ltd. and Another, , involving the taking over of the Great Eastern Hotel. Mr. Mukherjee pointed out that the action taken by the State Government to forcibly evict the tenants of the said hotel upon the same being taken over by the State Government was held to be illegal and it was held further that in order to take possession, the West Bengal Government would have to take recourse to the provisions of the above-mentioned Act of 1971.

18. Mr. Mukherjee submitted that the learned Tribunal had lost sight of the aforesaid facts in coming to the erroneous conclusion that the Society had abandoned the two projects which gave the State authority the purported reason to terminate the leases and to take possession of the lease-hold lands.

19. Mr. Mukherjee submitted that the Tribunal had also, lost sight of the fact that besides the leasehold lands there were other assets of the Society thereupon which included structures, equipment and livestock, which could not be forcibly appropriated by the State Government even if it was entitled to take possession of the leasehold lands upon the determination of the leases in respect thereof.

20. Mr. Mukherjee submitted that the entire action of the State authorities was unjustified and unlawful and without legal sanction and was, therefore, liable to be quashed and possession of the leasehold lands was liable to be returned to the Society together with all its assets, both movable and immovable.

21. Appearing for the State and the State respondents, Mr. Indrajit Sen submitted that the State authorities had acted within their authority in terminating the leases and handing over possession of the lands covered by the lease deeds to the Animal Resources Development Department in order to save the livestock, equipment and other assets of the two projects which had been acquired mainly out of public funds and had been abandoned by the petitioner Society and left to their fate.

22. Mr. Sen urged that the two leases had been granted to the petitioner Society with the definite object of setting up a Bull Mother Farm and a Krishi Vigyan Kendra for training farmers in the use of modern technology in the field of agriculture, animal husbandry and other allied services. Unfortunately, however, the Society became embroiled in labour disputes and ultimately abandoned the two projects in such a manner so that there was no one to look after the livestock and other animals from about the month of May, 1991 till the leases were terminated and possession of the leasehold land was resumed and the management of the two projects were handed over to Animal Resources Development Department. Mr. Sen urged that only when the affairs had reached a breaking point and after much deliberation that a decision was taken to terminate the lease Deeds and to hand over the management of the two projects to persons who were capable of looking after the same.

23. Mr. Sen urged that after repeated requests made to the Society and its members to resume the management of the two projects and after the Society was given an opportunity of hearing by the District Magistrate, Jalpaiguri, was it decided that some steps were required to be taken to save the livestock and cattle in the farm which had been acquired with the financial assistance of institutions belonging to the Public Sector.

24. Mr. Sen submitted that as will be evident from the records, the Society was unable to implement its activities after May, 1991 and, as a result there was complete stalemate in the management of the two projects and ultimately by his memo dated 22nd/23rd July, 1992, the District Magistrate, Jalpaiguri, directed the Chief Executive of the petitioner Society to appear before him on 31st July, 1992. Mr. Sen urged that at the hearing on 31st July, 1992, it became evident that the Society was no longer in a position to implement the objects for which the two leases had been granted, namely, the establishment of a Bull Mother Farm and Krishi Vigyan Kendra. It is also evident that the Society had literally abandoned the projects which required immediate measures to be taken for ending the stalemate. Mr. Sen urged that from the reasoned order passed by the Collector, on the basis of the aforesaid hearing conducted on 31st July, 1992, a decision was taken to terminate the two leases and to hand over the lands along with the structures thereupon together with the animal sheds, animals etc. to the Animal Resources Development Department in exercise of the power reserved in paragraph 18 of the Lease Deed executed by the State Government in favour of the Society.

25. Mr. Sen urged that since the leases had been granted for specific purposes and the said objects had been rendered infructuous on account of the Society having abandoned its two projects, it was fully within the competence of the State Government to terminate the leases and to resume possession of the leasehold lands and to make over the same for proper management to the Animal Resources Development Department. Mr. Sen then urged that the provisions of the Transfer of Property Act, 1882, could not be imported in the

facts of the instant case, inasmuch as, the provisions of the said Act had been excluded by Section 2 of the Government Grants Act, 1895, which reads as follows:

"2. Nothing in the Transfer of Property Act, 1882 contained shall apply or be deemed ever to have applied to any grant or other transfer of land or of any interest therein heretofore made or hereafter to be made by or on behalf of the Government to, or in favour of any person whomsoever; but every such grant and transfer shall be construed and take effect as if the said Act had not been passed."

26. Mr. Sen submitted that the submissions made on behalf of the petitioner Society relating to re-entry was not germane to the facts of the instant case in view of the specific provisions relating thereto contained in paragraph 18 of the Lease Deeds. Furthermore, by abandoning the two projects from May 1991, onwards till possession thereof was taken over after duly July 1992, the Society had impliedly surrendered the lease of the immovable properties which stood determined as a whole.

27. In support of his said submission Mr. Sen referred to and relied on the case of T. Chengalvaraya Chettiar Vs. A. Nataraja Chettiar, , wherein it was observed that surrender could either be express or implied. It was observed further that express surrender need not be in writing but that there may be implied surrender by relinquishment of possession. Mr. Sen submitted that in the instant case the very conduct of the petitioner Society indicated that it had no desire to continue with the leases and had surrendered the same. Mr. Sen submitted that having regard to the conduct of the petitioner Society and its abandonment of two projects for which the leases had been granted, the State Government was fully justified in taking action under paragraph 18 of the Lease Deeds in terminating the same and making over possession of the lands covered by the same to the Animal Resources Development Department for looking after and taking care of the said projects.

28. Mr. Milan Bhattacharya, who appeared for the West Bengal University of Animal and Fishery Sciences and its authorities, to whom the projects had been entrusted by the Animal Resources Development Department, supported Mr. Sen's submission and urged that since 1992 the University and its authorities had been looking after the two projects and that after a decade it was hardly open to the Society and its members to claim that they had been wrongly dispossessed from the leasehold lands.

29. Mr. Bhattacharya reiterated Mr. Sen's contention that the leases had been granted by the State Government to the Society for two specific purposes and that when the Society failed to implement the said objects and/or were unable to implement the same for whatever reason, the State Government was fully justified in taking action under paragraph 18 of the Lease Deeds which empowered the State Government to determine the leases In the event there

was breach or non-observance of the terms and conditions for which the leases had been granted.

30. Appearing for the Indian Council of Agricultural Research, Mrs. Manasi Bhattacharya adopted the submissions made on behalf of the State Government and the authorities of the West Bengal University of Animal and Fishery Sciences and corroborated Mr. Sen's submissions that a major portion of the Society's activities in connection with the two projects had been funded by the Council.

31. We have carefully considered the submissions made on behalf of the respective parties and while there is substance in the allegation made by the State Government that the Society had left the two projects to their fate in or about the month of May, 1991 the same could hardly be any justification in law for forcibly dispossessing the lessees from the leasehold lands. While the State Government had every right under the Lease Deeds to determine and/or terminate the leases for breach or non-observance of any of the covenants, terms or conditions of the Lease Deeds rendering the demised lands unfit for use for the purpose of the tenancy, the same did not empower the State Government to take possession of the demised lands otherwise than in due process of law. The argument advanced by Mr. Sen regarding the exclusion of the provisions of the Transfer of Property Act by virtue of the provisions of Section 2 of the Government Grants Act, 1895, does not inspire much confidence since the lands in question were not the subject matter of any Government grant but had been leased to the Society by two Lease Deeds duly executed in favour of the Society.

32. On the other hand, we are inclined to agree with Mr. Mukherjee's submissions that even if the State Government was justified in determining the Lease Deeds in exercise of the powers reserved in paragraph 18 of the Lease Deeds, it could not reserve the right of re-entry without due process of law. The learned Tribunal duly recognised such a contingency upon holding that after determination of the Lease Deeds the petitioner Society became an unauthorised occupier and for its eviction from the premises an order under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, would be necessary, but bypassed its said finding by holding, against the weight of the materials on record, that the Society had ejected itself out of the land. Even if the doctrine of implied surrender were to be imported in the instant case, there would have to be appropriate facts to enable the Tribunal to arrive at such a finding. There is sufficient material on record to indicate that the Society had repeatedly approached the authorities for help and assistance to run the two projects in face of the obstruction being faced from the two dismissed employees and their accomplices. The doctrine of implied surrender, as envisaged in Section 111(f) of the Transfer of Property Act, 1882, contemplates a situation where for certain given reasons a lessee chooses to give up possession of the leasehold lands. Such a contingency is absent from the facts of the present case and we cannot bring ourselves to accept the proposition that the Society and its members had deliberately chosen to abandon the two projects into which a good deal of money

and effort had been put in.

33. In view of the above, more credible evidence was required to be produced in the facts of the instant case which could have left first the District Magistrate, Jalpaiguri, and, therefore, the learned. Tribunal to come to a conclusion that the Society had indeed decided voluntarily to abandon the two projects without any intention of reviving the same.

34. We are also unable to accept Mr. Sen's submissions regarding the applicability of the provisions of the Government Grants Act, 1895, to the facts of this cases since the leasehold lands were not the subject matter of any grant made by the State Government in favour of the Society but were the subject matter of two properly constituted leases executed in favour of the Society. The concern of the State Government with regard to the preservation of the livestock and the equipment of the two projects was no doubt understandable and/or even commendable, but the matter, in our view, ought to have been tackled in a different way. The action taken by the State Government is not justified in the facts and circumstances of the case and the order passed by the Collector, Jalpaiguri; pursuant to the hearing conducted on 31st July, 1992, cannot be sustained and must be quashed. Consequently, the order of the learned Tribunal, which was passed on the direction of the Collector, Jalpaiguri, must also be set aside and is accordingly quashed,

35. The writ application accordingly succeeds. The action taken by the Collector, Jalpaiguri, to determine the leases and the further order of the learned Tribunal choosing not to interfere with such decision, are hereby quashed and the respondents are directed to restore back possession of the lands covered by the Lease Deeds dated 18th March, 1983 and 28th March, 1985, with all buildings, machinery, fixtures and furniture to the petitioners as was on the date when possession of the same was taken over by the State Government.

36. However, having regard to the fact that the Society had, in fact left the campus of the two projects from May, 1991, and that the same has since been looked after by the respondents, we do not consider this a fit case for awarding any monetary compensation as asked for.

There will be, therefore, no order as to costs.

If an urgent xerox certified copy of this judgment is applied for, the same is to be supplied to the applicant expeditiously, subject to compliance with all the required formalities.

Stay as prayed for is considered and refused.

J. Bhattacharya, J.

37. I agree.