

(2012) 10 CAL CK 0040
In the Calcutta High Court

Case No : Writ Petition No. 8405 (W) of 2011 and C.A.N. No. 7142 of 2012

Subhajit Sarkar

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 17-10-2012

Acts Referred:

Citation : (2012) 10 CAL CK 0040

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : B.P. Subba, for the Appellant; Susovan Sengupta for the State, for the Respondent

Judgement

Hon"ble Mr. Justice Jayanta Kumar Biswas

1. The CAN has been filed for restoration of the WP that was dismissed for non-appearance of the petitioner. The CAN has been assigned to me. After hearing Mr. Subba appearing for the petitioner and Mr. Sengupta appearing for the respondents, I am of the view that it will be appropriate to allow the CAN and restore the WP to file.

2. I have been requested to hear the WP itself. It has been submitted that the WP was ready for final hearing and was appearing as such on the list at the date it was dismissed for non-appearance of the petitioner. Since I have determination to take up the WP for final disposal, I have permitted Mr. Subba and Mr. Sengupta to make their submissions.

3. The WP is dated May 12, 2011 and it was filed questioning a decision of the Estate Manager, Estate Directorate and Ex-Officio Deputy Secretary, Housing Department, Government of West Bengal dated November 23, 2009 (WP p.28).

4. The relevant part of the decision is quoted below:-

With reference to above this is to state that his prayer for the transfer of tenancy of flat no. L-5 in Manicktala M.I.G. Govt. Housing Estate in his favour from his

deceased mother Uma Sarkar cannot be acceded to because he has not been regularly and permanently residing at the flat in question. He is hereby called upon to hand over the peaceful vacant possession of the aforesaid flat within 15- (fifteen) days from the date of the receipt of this letter positively failing which appropriate legal steps will be taken to bring the same under Government possession without further reference.

5. The petitioner's father was occupying the premises in question as a tenant of the Government of West Bengal. On his death his wife, who is the petitioner's mother, applied for the tenancy. By an order dated June 7, 1974 the tenancy was granted. She died on August 28, 2006 and was survived by the petitioner and his elder brother. The elder son applied for the tenancy.

6. Since the elder son left the premises, the petitioner submitted application for transfer of the tenancy to him. With his application dated August 18, 2008 he submitted all requisite documents including no objection of his elder brother. His request has been rejected on the grounds that he was not regularly and permanently residing in the premises.

7. Mr. Subba has submitted that the Estate Manager rejected the request for transfer of the tenancy without giving the petitioner any opportunity of presenting his case and hearing. Correctness of this submission is not disputed by Mr. Sengupta. He, however, has relied on s.3 of the West Bengal Premises (Tenancy Regulation) Act, 1976.

8. I am unable to see how the provisions of s.3 of the Act were applicable to the petitioner's case. The petitioner was not a person occupying the premises as a tenant. He submitted application for transfer of the tenancy as a son of the person who was occupying the premises as a tenant of the Government. The provisions of s.3 apply only to a tenant.

9. In this case the Estate Manager was to decide whether the petitioner was entitled to an order transferring the tenancy to him. For the purpose the Estate Manager was to decide whether the petitioner had been regularly and permanently residing in the premises in question till the date of death of his mother.

10. The question could be decided only after taking down evidence. It is not known what evidence the Estate Manager took down, but the admitted position is that he did not give the petitioner any opportunity of adducing evidence to prove that he had been regularly and permanently residing in the premises in question.

11. I am, therefore, of the opinion that the Estate Manager gave the decision in gross violation of the principles of natural justice.

12. The case of the respondents is that they took possession of the premises by putting a padlock over the existing padlock. The petitioner's case is that at the date the respondents took possession of the premises he was in physical possession thereof, and that his belongings are still there in the flat.

13. This being the position, I am of the view that while the Estate Manager should be directed to decide afresh the petitioner's request for transfer of the tenancy to him, an order should be made directing the respondents to give possession of the premises to the petitioner after preparing an inventory.

14. For these reasons, I allow the CAN, restore the WP to file, set aside the decision dated November 23, 2009, allow the WP to this extent and order as follows.

15. After preparing an inventory, in presence of the petitioner, the Estate Manager shall give possession of the premises to the petitioner with a copy of the inventory, within a week from the date this order is served. The Estate Manager shall decide afresh the petitioner's request for transfer of the tenancy to him giving him opportunity of adducing evidence in proof of his case that till the date of death of his mother he had been regularly and permanently residing in the premises. No Costs. Certified xerox.