

(1984) 05 CAL CK 0016
In the Calcutta High Court
Case No : Civil Rule No. 2381 (W) of 1984

Sushanta Kumar Basak

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 14-05-1984

Acts Referred:

Constitution of India, 1950 — Article 226

West Bengal Government Premises (Tenancy Regulation) Act, 1976 — Section 3, 4

Citation : (1984) 05 CAL CK 0016

Hon'ble Judges : Ajit Kumar Sengupta, J

Bench : Single Bench

Advocate : Rupen Mitra, for the Appellant; Amal Baran Chatterjee, for the Respondent

Judgement

Ajit Kumar Sengupta, J.—Pursuant to the application made by the petitioner, the petitioner was allotted in November, 1983, a flat being Flat No. 5, Block F-1 in the Low Income Group Housing Estate at Karim Box row on a monthly rent of Rs.106/-. The petitioner obtained the possession of the said Flat on 17th December, 1973 in pursuance of the allotment letter dated 20th November, 1973 addressed to the petitioner at 169B, Ramesh Datta Street, Calcutta. The terms and conditions of the tenancy are contained in an agreement executed at the time of taking possession of the said flat. The said Articles of Agreement, inter alia, provides that the tenant shall have no right or be entitled to assign and/or sub-let the said flat or any part of the same (Clause 15). Clause 16 of the said agreement provides that if the tenant, shall commit any breach of the terms and conditions, the Governor shall be entitled to terminate the said agreement which shall thereupon stand determined and the tenant shall forthwith make, quit, vacant and peaceful possession of the said flat to the Executive Engineer in-Charge of the said flat. It is also provided therein that after the termination of the tenancy under the said agreement if the tenant continues in unlawful occupation of the flat he shall be liable to pay to the person authorized by the Governor liquidated damages at the rate to be determined by the Government

for such period during which the tenant continues to be in unlawful occupation of the flat beside such other damages for which he shall be liable.

2. The said agreement provides that expression "tenant" shall unless excluded by and repugnant to the context to be deemed to include his heirs, executors, administrators, representatives and assigns.

3. On 16th October, 1981 a notice u/s 3(1) of the West Bengal Government Premises (Tenancy Regulation) Act, 1976 was issued to the petitioner terminating the said tenancy. No ground has been mentioned in the said notice, copy whereof is at Serial No. 2 in the file produced before me by the learned Advocate for the respondents. Since a copy of the said notice was issued to one Manash Dutta as unauthorized occupant of the said Flat, it may be presumed that the ground for termination of the tenancy was sub-letting or transferring of possession to an outsider. It appears from the records that the said notice of termination was issued on the basis of the report of the Care Taker-cum-Rent Controller dated 1st September, 1981. In the said report the Car-Taker said that during the enquiry the flat was found under lock and key and from the occupants of adjacent flats it was gathered that one Manash Dutta, a bank employee, was living in the flat and the petitioner and his family had left the said flat.

4. By a letter dated 2nd November, 1981 the petitioner intimated the Estate Manager that his wife was being treated at his father-in-law's house for severe ailment and accordingly he had to stay away from the flat for sometimes and his brother-in-law Manash Dutta was asked to stay in the flat to look after and take care of the flat.

5. No step was taken by the respondents in pursuance of the said notice u/s 3(1) dated 16th October, 1981. Another notice dated 5th July, 1982 u/s 3(1) of the said Act was served on the petitioner terminating the tenancy. Here also no ground is mentioned and a copy of the said notice was sent to the said Manash Dutta who according to the respondents was in unauthorized occupation of the flat. In reply to the said notice, the petitioner by letter dated 28th July, 1982 addressed to the Estate Manager, inter alia, stated that he was residing permanently in the flat and no one other than his relative is allowed to stay with him. He, therefore, requested to treat the said notice as cancelled.

6. After service of the said notice upon the petitioner u/s 3(1) of the said Act a further enquiry was held by the Estate Supervisor on 17th October, 1982. He submitted his report on 10th November, 1982. In the said report it was stated that the petitioner was found present in the flat alongwith Manash Dutta who was reported to be the brother-in-law of the petitioner. It has also been stated in the said report that no female members were found living in the flat. It has also been alleged in the said report that the petitioner could not show any document to prove his stay in the flat together with his own family members. They are staying at 169B, Ramesh Dutta Street, Calcutta. Manash Dutta, the brother-in-law, a Bank employee was staying along in the said flat.

7. On the basis of the said report it was decided not to cancel the said notice dated 5th July, 1982 for vacating the flat or withdrawal of the same. On 20th November, 1982 an order was made by the Estate Manager for Police action and to reject any prayer for regularization if any from the unauthorized occupant. On 21st November, 1982 a request was made to the Deputy Commissioner of Police to render Police assistance for eviction of the petitioner and for taking over vacant possession of the flat as the petitioner failed to vacate after the time allowed in the said notice.

8. By another letter dated 8th December, 1982 the petitioner requested the Estate Manager to accept rent and stated that his brother-in-law has been staying in the flat as care-taker in absence of the petitioner for unavoidable reasons. Thereafter, another enquiry was held by the Chief Inspector, Housing Department, who submitted a report on 18th January, 1983 stating that Manash Dutta, brother-in-law residing at Premises No. 169B, Ramesh Dutta Street, Calcutta.

9. The Estate Manager gave not on 25th January, 1983 to the Secretary, Public Works and Housing Department to the following effect :-

Flat No. F-1/5 at Karim Bux Row L.I.G. Estate was originally allotted to one Shri S. Basak. Shri Basak has left the flat allowing one Shri Manash Dutta, claimed to be the brother-in-law of Shri S. Basak, to reside in the flat unauthorisedly.

More than one enquiry was made to ascertain the correct position. The last enquiry was undertaken by our Chief Inspector and it has been ascertained the original allottee has actually residing at a privately rented house at the address of 169B, Ramesh Dutta Street. This is a clear case of violation of the terms of agreement. We have issued notice in Form "A" in terms of the provision of West Bengal Government Premises (Tenancy Regulation) Act, 1976 and all other legal formalities have also been observed.

We may now resume possession of the flat with Police assistance with the approval of Secretary.

10. The petitioner thereafter addressed a letter dated 8th April, 1983 to the Minister in-Charge. The letter was considered by the Estate Manager who reported that in view of the decision already taken and approved by the Secretary as mentioned hereinabove, order for taking possession of the flat with police assistance has been passed and nothing further can be done in this matter.

11. By a Memo No. 7284/1(1) dated 24th November, 1983 the Estate Manager informed the petitioner that his tenancy of the said flat has been terminated with immediate effect on ground of default. It is on record (Sl. No. 11 of the file) that the Estate Manager addressed a Letter No. 1291 ED dated 16th February, 1984 to the petitioner at the address of the said flat that his prayer for staying in the flat as contained in the letter dated 8th December, 1982 could not be considered as it is under unauthorized occupation of Sri Manash Dutta and by the said

possession of the flat to Government within a week on receipt of the said letter. The said letter, as it appears, was received on 19th February, 1984.

12. It appears from the records that on 9th March 1983 it was decided by the Estate Manager that the eviction should be made of the petitioner from the flat on 14th March, 1984 at 8.00 hours.

13. On the 14th March, 1984 the petitioner moved this Court under Article 226 of the Constitution. A.K. Janah, J. was pleased to issue Rule on 14th March, 1984, but no interim order was passed and liberty was given to the petitioner for interim order upon notice to the respondents on the same application. On the same date A.K. Janah, J. passed another order to the following effect :

(Later)

After the above order was dictated by me at about 12 noon Mr. Swapan Kumar Mallick, learned Advocate for the petitioner files two affidavits after the mid-day recess one affirmed by Mr. Mallick himself stating that the petitioner is in possession of the disputed flat even now. On the basis of these two affidavits Mr. Mallick renews his prayer for an interim order. In view of the additional fact that being brought on record, I pass an interim order in terms of prayers (e) and (f) of the writ petition in modification of the earlier order dictated by me. The interim order is to continue till the disposal of the rule. The test of the order passed earlier will stand.

14. Prayers (e) and (f) of the said writ application are to the following effect :

(e) Injunction restraining the Respondent and all of them and their servants agents and officers and/or any other person or body claiming through by or under Authority from them from any way disturbing the possession of the petitioner of the said Manash Dutta from the said Flat either pursuant to the said impugned notice or in any other way.

(f) Mandatory injunction directing the respondents to treat your petitioner as a tenant in respect of the said flat and to accept current and arrears rents thereof from your petitioner.

15. The said order of A.K. Janah, J. issuing rule and interim order was communicated to the Respondents on 14th March, 1984 itself by Swapan Kumar Mallick, Advocate on record of the petitioner.

16. It appears that on 14th March, 1984 the respondents took possession of the flat and the belongings thereat have been lying seized. It is not clear from the records at what point of time the actual seizure took place. The flat has been kept under lock and key and the goods belonging to the petitioner are still lying there. The seizure list was signed by the petitioner. In view of the interim order passed by A.K. Janah, J. the Respondent decided not to take any further steps regarding the opening of the lock. The petitioner in support of his contention in the writ petition that he was residing in the flat has annexed a copy of the Ration-

card which stands in his name showing address of the said flat. He has also annexed a challan showing the payment of rent on 2nd June, 1982.

17. Mr. R.N. Mitra, learned Advocate appearing for the petitioner submitted that the respondents should be directed to carry out the interim order passed by A.K. Janah, J. on 14th March, 1984 and the petitioner should be allowed to stay there inasmuch as all the belongings of the petitioner are lying there. Mr. A.B. Chatterjee, learned Advocate, appearing for the respondents has submitted that the action was taken against the petitioner only after enquires were made regarding the petitioners stay in the flat in question. He submitted that the action has been taken in accordance with the provisions of the said West Bengal Government Premises (Tenancy Regulation) Act, 1976. He has also submitted that the flat was given to the petitioner and he could not give it to anyone else.

18. I have heard the submission of the learned Advocates appearing for the parties. I have also give through the records produced before me by Mr. A.B. Chatterjee, learned Advocate appearing on behalf of the State.

19. Section 3(1) of the West Bengal Government Premises (Tenancy Regulation) Act, 1976 provides as follows :

3(1) Every Tenancy held by a tenant in respect of a Government premises shall stand terminated upon the expiry of the period referred to in a notice to quit served upon such tenant in the prescribed manner".

20. Section 3(2) of the said Act provides :

3(2) A tenancy in respect of Government premises shall stand automatically terminated without any notice to quit where the tenant has, -

i) violated the terms of the lease, or

ii) made default in payment of rent for three consecutives months :

Provided that where the tenancy has terminated on account of default in payment of rent for three consecutive months the prescribed authority may, upon application made by the tenant within such time as may be prescribed and upon deposit of all the arrears of rent together with interest at the prescribed rte, grant renewal of the tenancy in favour of the tenant :

Provided further that the prescribed authority may, on sufficient cause being shown, grant renewal of the tenancy in favour of the tenant on deposit of fifty percent, of the arrears of rent along with the application for renewal of tenancy and direct the tenant to deposit the balance of the arrears of rent with interest on the entire amount at the prescribed rate in twelve monthly installments commencing from the month following the month of such renewal of tenancy, and if the tenant fails to deposit any such installment the tenancy so renewed shall stand automatically terminated :

Provided also that notwithstanding the termination of the tenancy the State

Government or the Government undertaking, as the case may be entitled to recover all arrears of rent for the period for which the tenancy subsisted and manse profits thereafter for so long as the tenant remained in occupation of the premises".

21. The first notice of termination of tenancy was issued on 16th October 1981. The notice does not give any indication as to whether the tenant has violated any term of the agreement or whether the tenant has made any default in payment of rent. On 2nd June, 1982 the petitioner has paid the rent including the interest for the period January 1982 to June 1982 in respect of the said flat and the said rent along with interest was duly accepted by the Respondents. A copy of the said challan has been Annexed as Annexure "B" to the petition. Since the Respondents have accepted the rent and the interest on rent after the Notice dated 16th October, 1981 was issued, they must have waived the default or breach if any committed by the petitioner. Immediately thereafter-on 5th July, 1982 another notice u/s 3(1) of the said Act was issued to the petitioner. In the said notice also no ground has been mentioned. The termination of the tenancy could be made on either of the two grounds mentioned in section 3(2) of the said Act. None of the said grounds has been indicated in any of the said two notices. Although from the records it appears that certain enquiries were made and it was held that the petitioner was not staying in the said flat and his brother-in-law was staying there, but in none of the said notices no such indication was given. The petitioner has annexed xerox copy of the Ration Card in support of his contention that he has been residing in the said flat. In the Ration Card his address has been shown as F-1/5, Karim Box Row, that is to say the address of the disputed flat. None of the enquiry reports has considered the said aspect of the matter. On the contrary, in one of the reports it has been said that the petitioner has failed to produce any document in support of his stay in the flat in question. This piece of evidence should have been considered by the Respondents in deciding as to whether the petitioner was staying that in flat or not. Be that as it may. As I said, the ground had not been indicated in either of the said two notices issued to the petitioner. Notice of termination determines the tenancy and a valuable right of a tenant is thus taken away. The tenant is therefore entitled to know whey his tenancy is being terminated. Unless he is communicated the ground, he cannot challenge that no ground exists for such termination or ground shown is neither sustainable in law or on fact. A notice of termination without specifying the ground is no notice at all.

22. There is yet another aspect of the matter. On 24th November, 1983 another notice was served upon the petitioner wherein it was stated that the tenancy of the petitioner in respect of the said flat stands terminated under the said act with immediate effect on the ground of default. This is the first time that a ground has been specified for termination of the tenancy as required by Section 3(1) of the said Act. This notice must be deemed to have cancelled the earlier notices. In any event, by reason of the fact that the earlier two notices did not specify any ground as enjoined by Section 3(2) of the said Act, the said notices cannot be

deemed to be valid notice. In any event, the notice dated 16th October, 1981 must be deemed to have been waived because of the subsequent acceptance of rent from the petitioner. In judgment, it is only the third notice which is subsisting and the third notice has been issued on ground of default of payment of rent. If that be the position, then the authorities concerned may upon application made by the tenant and upon deposit of all the arrears of rent together with interest grant renewal of the tenancy in favour of the tenant. There is a discretion vested in the authorities concerned not to evict a tenant on the ground of default if the defaulting tenant makes the payment of rent including interest. From the records it is evident that the petitioner was all along willing to make payment but it was not accepted on the ground that his tenancy was terminated after 5th July, 1983.

23. The tenancy of the petitioner is governed by the agreement which has been referred to earlier. Section 3(2) provides that the tenancy can be terminated for violation of the term of the agreement. The agreement provides that the tenant shall have no right or be entitled to assign and/or sublet the said flat or any part to any other person. If the tenant assigns or sublets the said flat or any part thereof in that event there will be violation of the term of the aid agreement and on that ground u/s 3(2) of the said Act the tenancy shall stand automatically terminated. In this case there is no finding that the petitioner has sublet or assigned the tenancy in favour of his brother-in-law. His brother-in-law has been allowed to stay with the petitioner. But it does not necessarily follow that the said flat was sublet or assigned to the brother-in-law who is a bachelor. Neither the Act nor the agreement prohibits that a tenant cannot live in the flat with his brother or brother-in-law.

24. Although under the said Act tenant means any person by whom the rent of any premises is payable but in the agreement it has been provided that the tenant will include his representation also. It is true that the expression "tenant" has to be understood in the context in which it has been used, but having regard to the tenor of the agreement it cannot be said that if a relation of the tenant like a brother-in-law as in this case, stays in the flat for some time with the tenant for unavoidable reasons, there has been any subletting or assignment. Having regard to the facts and circumstances of the case it cannot be said that there has been any subletting or assignment. It is not also the case of the Respondents that there has been any subletting or assignment. This is a matter which has to be decided on evidence and as such the summary power given in Section 4 of the said Act cannot be invoked by the Respondents in restoring vacant possession of the premises on the ground of subletting or assignment. Whether in a case there has been a subletting or assignment, has to be decided on evidence and after giving reasonable opportunity of being heard to the person who will be affected by such determination. The Respondents cannot proceed solely on the basis of the enquiry made by their officers to come to a finding that there is subletting or assignment. Such finding is not sacrosanct and is liable to be challenged in appropriate form. However, as I said, in this case there is no

finding of subletting or assignment nor such case was made out in the two notices issued in October 1981 and July 1982.

25. The agreement provides that after the termination of the tenancy under the said agreement if the tenant continues in unlawful occupation of the flat he shall be liable to pay to the person authorised by the Governor liquidated damages at the rate to be determined by the Government for such period during which the tenant continues to be in unlawful occupation of the flat beside such other damages for which he shall be liable. It indicates that the tenant who is in unlawful occupation will compensate the Government by making payment of liquidated damages. In my judgment, the respondents cannot take recourse to summary procedure even for ejectment of an unauthorised occupant. The question whether there has been any subletting or assignment or whether there has been valid termination of the tenancy or whether the tenant is in unlawful occupation or not has to be decided by a Court of competent jurisdiction and not by the executive. By an executive fiat a person cannot be evicted from the occupation of a flat, far less by police force. He must be evicted by due process of law. The respondents cannot be allowed to throw a tenant out of the flat by their mere ipse dixit that there is an unauthorised occupant in the flat allotted to the tenant. There must be judicial determination as to whether the tenant is in unlawful occupation or there is an unauthorised occupant in that flat before any action can be taken to eject the tenant or the such occupant from the flat.

26. From the records certain other facts would also appear. In the case of one allottee A.K. Mitra of Flat No. D-1/3 a notice was served for unauthorised occupation which was ultimately withdrawn. From the records it appears that because ration card and some other documents of actual allottee were found with the unauthorised occupant, no further action was taken. In the case of H.C. Jain in respect of Flat No. E-1/1 one Pawan Kumar Agarwal was found in unauthorised occupation. From the records it appears that it was regularised. In the case of one other tenant Sri H. Chatterjee of Flat No. K-1/7 the unauthorised occupant applied for regularisation and no step appears of to have been taken against him. In the case of R.C. Lunia in respect, Flat No. Q-1/5, on the basis of ration card and some documents actual allottee found with the unauthorised occupant no step was taken. Similar is the case with R.K. Poddar allottee of Flat No. Q-1/6. It, therefore, appears that ration card has been taken to be one of the documents in support of the contention of the allottee that he is residing in the allotted flat. The petitioner in this case was also having a ration card a copy whereof has been annexed to the petition. As indicated above, in some cases regularisation has also been made so far as the unauthorised occupation is concerned. In this case before any application for regularisation was received, the Respondents have give a note in the file that no application for regularisation would be entertained. It is now know why.

27. In my judgment in view of the facts and circumstances mentioned hereinbefore, the petitioner ought to succeed in this application. The

Respondents are directed to open the lock and allow the petitioner to be in occupation of the flat.

28. As I have held that the third notice was on the ground of default of payment of rent, the Respondents shall allow the petitioner to pay off the arrears of rent including interest. The default in this case was due to the fact that the Respondent did not accept the rent in spite of the request made by the petitioner by his letter dated 8th December, 1983. This was presumably on the ground that on 5th July, 1983 a notice of termination was served on the petitioner. As I have already held that notice dated 5th July, 1982 is not a valid notice terminating the tenancy, the petitioner should be allowed to make payment of arrears of rent inclusive of interest as provided in section 3(2) of the said Act. There should not be any eviction on the ground of default of payment of rent if within the specified time the defaulting tenant makes the entire payment inclusive of interest as provided in section 3(2) of the said Act.

29. I, therefore, direct the Respondents to intimate the petitioner the amount of arrears of rent inclusive of interest calculated upto 30th April, 1984. The petitioner shall within two weeks from the date of such intimation pay the said amount to the Respondents.

30. In view of my findings above, it is not necessary to consider the cases cited from the Bar.

31. Mr. A.B. Chatterjee learned Advocate appearing for the respondents waives service of the Rule and has submitted that since he has produced the records, he did not file the affidavit-in-opposition and but the allegations made in the writ petition are not admitted by him.

32. On his prayer, the order as made in this application be treated as the order passed in the main Rule. Accordingly, this Rule is disposed of on the above terms.

33. The Respondents are directed to remove the padlock of the flat and make over possession to the petitioner forthwith. In the event, the possession of the flat is not made over to the petitioner as directed on or before May 16, 1984 the petitioner will be at liberty to mention this matter for further or other orders or directions.

Let a plain copy of the operative portion of this order be given to the parties duly countersigned by the Assistant Registrar (Court).