
(2004) 07 CAL CK 0056
In the Calcutta High Court
Case No : A.S.T. No. 1219 of 2004

Uttam Das and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 28-07-2004

Acts Referred:

West Bengal Public Lands (Eviction of Unauthorised Occupants) Act, 1962 — Section 3(1), 4(1)

Citation : (2005) 1 CALLT 51

Hon'ble Judges : Rajendra Nath Sinha, J; Dilip Kumar Seth, J

Bench : Division Bench

Advocate : Debi Prasad Pal, Arati Dutta, Tapas Banerjee, Somnath Bbose, Sambhu Nath Dutta and Utpal Maitra, Sumit Panja and Fazlul Haque, for the Appellant; Rabibal Moitra, A.N. Banerjee and Ziaul Islam, for the Respondent

Judgement

Dilip Kumar Seth, J.—This appeal is preferred against the order dated 20th July 2004 in C.O. 5045 (W) of 1993. The appellants are claiming, they are occupiers of 0.23 acres of land in Plot No. 6004 (part) and had been residing there since 1971 after constructing their hutments. On the pretext of acquiring the said land and construction of a Water Treatment Plant, the appellants were sought to be evicted without initiating any legal proceedings. The petitioners moved a writ petition, which was disposed of by directing the authorities to evict the appellants only in accordance with law, which is annexure "B" to the writ petition. This order was passed on 4th December 1992. Thereafter notice u/s 3(1) of the West Bengal Public Land (Eviction and Unauthorized Occupants) Act, 1962 was initiated. The notice thereunder was issued on 3rd February 1993. The schedule of land mentioned therein were Dags Nos. 5939, 5940; 6002 (part) and 6004 (part). On 19th February 1993 the writ petitioners filed their objection or showed cause jointly. On 20th February 1993 an order u/s 4(1) clause (a) was passed and implemented by demolishing the houses of the appellants with the help of police. The respondents attempted to oust them on 25th February 1993, before which the present writ petition being CO. 5045 (W) of 1993 was moved on

25th February 1993. wherein an order of status quo was passed for a period of seven days. Affidavit-inopposifion and Affidavft-in-reply were exchanged and various statement. was made in the pleadings. The order of status quo was passed again on 10th September 2002 and several other orders were passed and ultimately a surveyor was appointed, -who. filed his report on 24th September 2002. By an order dated 20th July 2004 since appealed against, the police was directed to remove everyone from inside the boundary wall.

2. From the pleadings it appears that the houses were demolished but even then the appellants could not be ousted and before that the order of status quo was obtained for a period of seven days. But it does not appear that the order of status quo was continued after seven days. The order of status quo was again issued on 10th September 2002. Therefore, it appears that there was no scope of reconstruction of any house in the area where the houses were demolished and the appellants were sought to be removed or ousted. On the other hand, the learned counsel for the appellants pointed out that these appellants are residing on the said land and had produced certain photographs showing the houses therein, at the same time destruction of some houses. In the opposition to the eviction proceedings initiated though the notice No. 248(45/g) dated 3rd February 1993, the appellants had claimed that they have been living peacefully in .the said land since 1971 and specified the Dags No. of the land on which they were living. This is at page 32 paragraph 6 of the Stay application mentioning Dags No. 5937, 5938 and 6177. This was filed on 19th February 1993. Therefore, till February 1993 the appellants did not claim any right over plot No. 6004 (western part).

3. Subsequently, the appellants made an application in the writ petition being CAN 6573 of 2002 where, for the first time, as it appears before us and which could not be disputed by the learned counsel for the appellants, the claim over plot No. 6004 (part) was made. In this application in paragraph 3 clause "b" the appellants stated that the notice related to plots No. 5939, 5940, 6002 (part), 6004 (part) and 6176 Mouza Aridaha, Kamarhati. It was pointed out that the appellants were not residing on plot No. 6176 and they had nothing to do with the said plot. In paragraph 3(h), it was contended that the opposite parties/respondents had no right to disturb the appellants peaceful possession over the said laid. In paragraph 6, it was stated that the appellants were evicted from the said land being plots No. 5939, 5940, 6002 (part) and 6004 (part) and their houses thereon were demolished, by force. Therefore, a prayer was made for restoring status quo ante as on July 2002 in respect of (he appellants possession and settle in Dag Nos. 5939, 5940, 6002 (part) rind 6004 (part) and rebuild the structure and resettle the appellants and to restore possession.

4. Thus It appears from the statement made in the application being CAN 6973 of 2002 that the petitioners were not in possession in respect of the said land and that there was no structure and the petitioners were to be resettled on the said laid upon rebuilding the structure. Whereas in that objection to the

proceedings under the 1962 Act, the appellants did not claim any possession over these plots, instead they had claimed possession over the plots Nos. 5937, 5938 and 6177. The learned counsel for the appellants, however, attempted to explain this discrepancy contending through his submission at the bar that the appellants were ordinary illiterate people and did not have any idea in respect of the particular land on which they were residing, it might be due to communication gap this discrepancy might have happened. But there is no material on record to show that the appellants had attempted directly and effectively to assert their right over these plots Nos. 5939, 5940, 6002 (part) and 6004 (part) though indirectly certain statements have been made which is in conflict with the clear assertion made in the objection filed before the authority in the proceedings under the 1962 Act claiming their residence to be situated over the plots Nos. 5937, 5938 and 6177. The statements made in the application being CAN 6573 of 2002 are not as assertive as those in the objection.

5. Be that as it may, the fact remains that wrongly or rightly, illegality or legally, the appellants were evicted pursuant to the proceedings u/s 3(1) in exercise of the power conferred u/s 4(1) of the 1962 Act. On the other hand, in the affidavit-in-opposition affirmed by Mr. Himadri Roy on 1st August 2002, it has been asserted in paragraph 4(e) at page 50 that the appellants were directed to deliver peaceful possession on February 20, 1993. Since this order was not complied with, the authority had evicted the appellants and handed over the vacant possession of the land to the CMDA now KMDA. Thereafter the boundary wall had been constructed demarcating the land for Baranagar. Kamarhati Water Treatment Plant. In paragraph 4(1) it was further stated in clause (ii) that the unauthorised occupants have entered into the protected area by breaking the wall and constructed unauthorised hutments very near to the underground water reservoir. In sub-clause (iii) it has been stated that the Chairman, Kamarhati Municipality expressed his anxiety to the Sub-Divisional Officer with regard to the unauthorised occupants inside the Water Treatment Plant. The Chairman was also apprised of the fact that day-to-day the occupations were increasing and the situation was becoming very very grave and alarming. In sub-clause (v), it is stated that Officer-in-Charge, Baranagar and Belgharia police station were requested to look into the problem and that 50 ft. of the boundary wall of the Water Treatment Plant was demolished by unknown persons and the presence of these persons was endangering the safety, security of a very sensitive plant and project of essential service and thereby endangering the lives of about 12 lakhs of people who are being catered with the potable drinking water from this plant.

6. Mr. Panja in his submission pointed out that these appellants were evicted thrice. He had also placed before us some photographs annexed with the affidavit-in-opposition filed in the writ proceedings from where it appears that the boundary wall was broken. Admittedly the Water Treatment Plant was commissioned in 1994. The broken boundary wall was, however, reconstructed.

7. The learned counsel for the appellants had argued that the provisions of the

1962 Act is applicable only upon public land, but the western part of the plot No. 6004 was not acquired by the Government. Therefore, the appellants cannot be evicted from this 0.23 acres of the area of the land being the western part of the plot No. 6004 through the said eviction proceedings. Inasmuch as the said part of the land having not been acquired, it is not a public land. Therefore, the possession of the appellants cannot be disturbed and they cannot be evicted therefrom until the land is acquired.

8. Mr. Panja in his usual fairness pointed out that for some reason or other this western part of plot No. 6004 has been omitted from being acquired though at one point of time this western part of this land was included in the schedule for acquisition along with certain other lands but ultimately this Western part of the plot No. 6004 was penned-through. From the bar he tried to assert that there was a litigation pending between the Government and the owner of the land for which this was not included but in his usual fairness he pointed out that he cannot show anything in the absence of any material available with him.

9. Be that as it may, this could be a very good ground for the appellants provided they could have asserted that they were the owners of the part of the said land and that they were not evicted from the area and that they had not reentered by breaking open the wall. According to their own admission they had prayed for restoration of possession, re-building their homes and resettlement of these lands in CAN 6573 of 2002. It is not their case that they were not evicted from the western part of the plot No. 6004 at any point of time neither they were claiming that they were in possession of this western part of the plot No. 6004 in CAN 6573 of 2002 filed on 22nd July 2002 when the same was affirmed. If subsequently somehow they occupy the land that will not help them since the proceeding was concluded before their re-occupation. On the strength of this reoccupation even though the land may not have been acquired by or vested in the Government, they cannot sustain any legal right to remain over the said land which is admittedly within the project area inside the boundary wall and close to the reservoir, and over which they have no right title or interest. But then the appellants had asserted their rights over plots Nos. 5937, 5938 and 6177 and did not claim over the plot No. 6004 either of the parts. Therefore, in the absence of any title they cannot claim simply by their alleged possession that too by reoccupying the same after once being evicted.

10. Admittedly, now the wall that was demolished by the appellants has since been reconstructed and persons who forced their entry after being evicted by demolishing the boundary wall and attempted to reoccupy the land, cannot claim any legal right to maintain the writ petition, before this Court, Therefore, in our view, the learned single Judge was absolutely right in holding that the writ petition was not maintainable, and had passed an appropriate order. We would not have interfered with the order passed since appealed against, but having regard to the sensitivity of the matter and the alarming necessity of immediate steps that writ at large over the situation, having regard to the availability of

potable drinking water the plant supplies over a vast area catering to the needs of about 12 lakhs of people, surely would pose a very alarming and grave potential danger to the purity of the water supply and the possibly of its being polluted or being poisoned by the presence of these unauthorized people close to the reservoir. We cannot remain oblivious of the potential threat that hovers over this country by a section of people indulging in destructive insurgency and sabotage. Presence of people Inside protected area is a threat to the entire project. The water treatment plant is a high-risk area. We cannot afford to leave this project to such high-risk and threat from the point of view of not only of hygiene but also of life of 12 lakhs people spread over a vast area. The project is already commissioned. It involved huge cost. The project cannot be frustrated only to secure the right of residence of a section of admitted trespasser claiming such right over the land of some other.

11. Mr. Panja had also pointed out that there are proposals for construction of further project within the area in respect of which the grids of underground water channels have already been laid down, and over which the appellants are now sitting, due to which the further project could not be undertaken. This project is admittedly undertaken in 1974 and had taken a very long time in view of certain difficulties and was ultimately commissioned in 1994. Once this has been commissioned and the appellants having not been able to establish their right and having been evicted through due process of law once, now they cannot claim any legal right to stay on the land after it is commissioned.

12. It appears that KMDA had made adequate request to the police authorities intimating the situation and the potential threat and danger to the project. Mr. Moitra had pointed out that in view of the different proceedings before this Court, these people could not be removed from the area. It is not necessary for us to go into the matters as to why these people could not be removed or whether the administration had failed to discharge its responsibility and who are to be blamed for that. Admittedly, the administration appears to have been unable to maintain the project area after the eviction was effected and to prevent the breaking of the boundary wall and reentry of evicted people and to remove this people from the area. The situation is continuing for a long time. These appellants were removed in accordance with law once. These appellants knew that they were to be removed and they were so removed and they have reentered by breaking open the boundary wall and admittedly the broken wall has been re-constructed and these people are entering the area by scaling the wall and that they are themselves claiming to be occupiers of some one else's land.

13. In the circumstances there cannot be any two opinion that these people should be removed without waiting for a single minute. The learned counsel for the appellants shall inform his clients that they must make alternative arrangement and remove the structure and remove themselves from within the area within seven days. In case, they do not remove themselves from this area, in that event, the State Government is hereby directed to remove these

appellants from these lands including the western part of the plot No. 6004 after the sunrise on the fourth day from today i.e. 2nd August 2004. At this stage the learned counsel for the appellants prays that at least seven days" time may be given. Having regard to the situation, we allow the prayer and grant time to the appellants to move themselves within 4th August 2004 and after sunrise of 5th August 2004 the State Government shall take such effective steps including necessary force to remove these appellants from the acquired area within the project including and the western part of plot No. 6004 and to post such adequate force to prevent any intrusion for all times to come or until the State Government feels that posting of force is no more necessary and shall instruct the Officer-in-Charge of the local police stations around the project including Baranagar Police Station and Belgharia Police Station to keep vigil and ensure that no intrusion take place thereafter. In order to ensure implementation of this area, we feel that the Chief Secretary, Government of West Bengal. Secretary. Home Department; the Director General of Police, West Bengal and Commissioner of Police, Calcutta; the District Magistrate, 24-Parganas (North), the Superintendent of Police, 24-Parganas (North) are being added as parties to this appeal suo motu. The cause title be corrected accordingly. In case of any lapse or failure on the part of the State Government in implementing this order, each of these Officers added as parties to this appeal shall jointly and severally be held responsible personally.

14. It is also brought to our notice that part of the acquired land has since been excluded and spared and left outside the boundary wall. The State Government shall take such effective steps for taking possession and occupying the said land and include the same within the project area and cover the same by the boundary wall immediately.

15. At this stage, Mr. Moitra submits that this part of the area which has been acquired but has not been taken possession of or occupied and has been spared outside the boundary wall cannot be dealt with by this Court since this is not the subject matter of the writ petition since appealed against.

16. We are afraid that we can accede to this point. Since we have held that this writ petition is not maintainable and yet we have been passing this order on this appeal arising out of the writ petition, definitely we are passing the order in the interest of the general public and for the interest of a very sensitive and high prerogative project and we have taken up the cause in the interest of the people, son motu by ourselves and the Court is capable of passing any order which it deems fit and proper in a proceeding in an appropriate case even if it is held that the writ petition is not maintainable by the petitioners or the subject matter is outside the purview of the proceedings. But this depends on the facts and circumstances of the case. In any event in this case the question cannot be said to be outside the purview of this case. It is a question of very important and sensitive issue, the State Government cannot act discriminatorily and skip of its responsibility from taking possession of the land acquired without

derequisitioning the same. We have been informed that this part of the land has not been derequisitioned. On the other hand, Mr. Moitra submits that the compensation for this part of the land, which not been taken possession of has already been paid to the owners.

17. After having heard the learned counsel for the parties, we are of the view that after payment of compensation to the owners for the land acquired, the State Government cannot do a charity to some unauthorised occupants at the cost of the CMDA now KMDA who had funded the compensation. The State Government is not entitled to do charity at the cost of someone else.

18. Therefore, we direct that the State Government shall take possession of the said part of the land in accordance with law after initiating appropriate proceedings under the 1962 Act and complying with all formalities and thereafter handover the said land to the KMDA within six months from this date and give all assistance to the KMDA for taking possession of the said land and maintaining and utilising the land and for construction of the boundary wall, such assistance by the State Government shall include adequate police help and security support.

19. Xerox copies of the application and Affidavit-in-opposition to the application being CAN 6573 of 2002 filed today be taken on record.

20. With the aforesaid observation, the appeal is thus disposed of treating the appeal as on day's list for disposal by consent of parties. After the above order is passed, nothing remains to be decided in the writ petition and, therefore, the writ petition is disposed of in terms of the above order treating the same, by consent of parties, as on day's list before us.

21. Let this matter appear in the list for orders on 9th August 2004 for reporting compliance of the first part of this order, and on 9th of February 2005 for the rest.

22. The learned Registrar General shall forthwith communicate the operative part of this order by fax and to serve a xerox plain copy thereof upon the Chief Secretary, to the Government of West Bengal, for onward transmission and communication by the Chief Secretary to and upon the other added respondents immediately for compliance. This will be deemed to be a communicating to and service upon all the added respondents. Xerox plain copy of the operative part of this order duly counter-signed by the Assistant Registrar (Court) be given to the learned Registrar General forthwith; and to the learned counsel for the parties on usual undertaking.

Rajendra Nath Sinha, J.

23. I agree.