

(2022) 01 CAL CK 0009
In the Calcutta High Court
Case No : Writ Petition No. 7956 Of 2020

Uttam Kumar Das And Others

APPELLANT

Vs

State Of West Bengal And Others

RESPONDENT

Date of Decision : 06-01-2022

Acts Referred:

Constitution Of India, 1950 — Article 19, 226

West Bengal Public Land (Eviction Of Unauthorised Occupants) Act, 1962 — Section 3

Citation : (2022) 01 CAL CK 0009

Hon'ble Judges : Sabyasachi Bhattacharyya, J

Bench : Single Bench

Advocate : Subir Sanyal, Sayantan Hazra, Sagnik Roy Chowdhury, Sutapa Sanyal, Susnita Saha, Saikat Banerjee, Juin Dutta Chakraborty

Final Decision : Disposed Of

Judgement

Sabyasachi Bhattacharyya, J

1. The petitioners claim to be licensees who have been carrying on their respective businesses in their allotted stalls in the Malda District Court

compound. The last of such licences admittedly expired on March 31, 2011. From March 24, 2011 to March 26, 2013, the petitioners apparently

submitted various representations to respondent nos. 4 and 5 to renew their licences.

2. On July 15, 2014, respondent no.4 issued a notification vide Memo No.858(B)/N directing all the stall-owners to submit their particulars as proof of valid occupation of the stalls.

3. On September 10, 2018, police personnel were allegedly deployed in the Malda Court compound and asked the petitioners to vacate their stalls, on

which the petitioners allegedly submitted further representations to the

respondent nos. 4 and 5. It is relevant to mention that respondent no.4 in the writ petition is the Office of the District Judge at Malda and respondent no.5, the District Magistrate and Collector at Malda. The writ petition alleges that on February 26, 2020, the Executive Engineer, Malda Division, Public Works Department (PWD), being respondent no.8, with his men and agents allegedly blocked the front area of the stalls with tin barricades.

4. On February 29, 2020, the petitioners submitted further representations, but to no avail.

5. The petitioners contend that they have been carrying on business relating to DTP, Cyber Caf  , Photocopy, food, tea, snacks, etc., which catered to the litigants and practitioners in the Malda Court. The petitioners claim to have been paying rent to the authorities regularly at all material times by

virtue of challans. Copies of the petitioners   licenses and challans have been annexed respectively as Annexures P-1 and P-2 collectively to the writ petition. The petitioners carried on paying electric bills regularly in respect of their connections to the said stalls, also at all material times.

6. It is alleged that, by dint of barricading the stalls by tin barriers during the imposition of lock down throughout the country due to the pandemic, the petitioners have virtually been evicted from the said stalls without due process of law. The provisions of Section 3 of the Public Land (Eviction of Unauthorised Occupants) Act, 1962 (hereinafter referred to as     the 1962 Act    ) were given a go-by while so ousting the petitioners.

7. The present writ petition has been filed against such allegedly unlawful actions of the administration.

8. Respondent no.3, the Registrar (Inspection-II) of the High Court at Calcutta, and respondent no.9, the High Court at Calcutta (through the Registrar General) have filed a joint affidavit-in-opposition to the writ petition. The High Court administration has taken the stand, inter alia, that the alleged action was not an exercise of permanent eviction but an exercise of temporary fencing of the land in question, where Court rooms are intended to be constructed under the National Court Management Systems (NCMS) Norms and is, thus, credible and valid.

9. It is further contended that the petitioners   licenses were admittedly not renewed beyond the year 2011, which rendered the petitioners illegal occupants on the date of the fencing. As such, it is argued that the petitioners

have no right, title and/or interest in the stalls-in-question and, therefore, lack the locus standi to file the writ petition.

10. Learned counsel for the High Court Administration cites Shiv Dass vs. Union of India and others, reported at (2007) 9 SCC 274 and New Delhi

Municipal Council Vs. Pan Singh and others, reported at (2007) 9 SCC 278 in support of the proposition that belated writ petitions ought not to be

entertained in view of the laches on the part of the petitioners. In the present case, the petitioners have failed to explain the inordinate delay in

presenting the writ petition after the cause of action arose, since sufficient notice has been given to the petitioners regarding vacating the stalls since

long back.

11. Learned counsel for the respondent no.3 and 9 next cites State of Jammu and Kashmir and others vs. Ajay Dogra, reported at (2011) 14 SCC 243

to advance the proposition that relief cannot be granted in an application under Article 226 of the Constitution of India in the absence of specific

pleadings on such score. Learned counsel further cites Union of India and others vs. Jai Prakash Singh and another, reported at (2007) 10 SCC 712, in

support of the proposition that the High Court cannot travel beyond the pleadings and grant relief in exercise of the power under Article 226 of the

Constitution of India. Learned counsel further places reliance on V.K. Majotra Vs. Union of India, reported at (2003) 8 SCC 40, wherein it was held

that while deciding an application under Article 226 of the Constitution, only the issues-in-question are to be construed and the disposal of the case on

a point not raised by the parties and omission to decide the question raised is improper.

12. On the basis of the said reports, learned counsel for respondent nos. 3 and 9 argues that the petitioners have failed to aver and/or plead the

violation of Section 3 of the 1962 Act within the four corners of the writ petition. As such, this Court ought not to accept the arguments advanced by

learned counsel for the petitioner at the hearing stage for the first time on such aspect of the matter.

13. Respondent no.4 that is the Office of the District Judge at Malda has also filed an independent Affidavit-in-opposition to the writ petition, uniting

with respondent nos. 3 and 9 in its contentions.

14. The premise of the respondents' arguments is that the barricading-in-

question was done due to non-availability of adequate space in the Malda Court complex for construction of a composite court building in consonance with the NCMS Norms and Guidelines, which was approved by the Hon'ble the Chief Justice of India on May 2, 2012. It is argued that, against a sanctioned strength of 18 judicial officers in the judgeship of Malda, as well as the requirement of a child-friendly court and a family court, merely 13 court rooms are available in the court precincts. An area of about 31,200 sq. ft. was illegally occupied by unauthorised occupants, which also created obstruction to the professional work of the members of the Malda Bar Association. The said Association, vide its letter dated September 27, 2018 written by its Secretary, requested for eviction/removal of the unauthorised shops located in the Malda Court compound.

15. Vide Memo No. 649/G dated January 15, 2019, the District Judge, Malda informed the High Court Administration about non-availability of space in the Malda Court complex. The Judge-in-Charge of Malda was pleased, by a communication dated April 30, 2019, to direct the Registry to take up the issue with the Government Authorities. In pursuance thereof, vide Memo No. 1773-G dated May 7, 2019, the Secretary, Judicial Department was requested to move the Government for taking necessary steps in the matter. The Secretary, Judicial Department, vide Memo No.151-JD/X/1J-03/2019 dated May 28, 2019, requested the Principal Secretary, Department of Home and Hill Affairs, Government of West Bengal to take necessary action on an urgent basis for the removal of such occupants.

16. By Memo No. 7482/G dated July 2, 2019, the then District Judge, Malda informed the Registry of the High Court that no steps had been taken despite the Home Secretary having been requested by the Judicial Secretary for removal of the unauthorised occupants.

17. Again, vide Memo No. 3723-G dated August 21, 2019, the Registrar (Inspection-II), allegedly under direction, requested the Judicial Secretary to expedite the procedure of eviction against illegal occupants.

18. Vide Memo No.232-JD/X/1 J - 03/19 dated August 30, 2019, the Joint Secretary, Judicial Department, again requested the Home Secretary to take necessary action on the issue on an urgent basis.

19. Vide Memo No.11142-G dated September 24, 2019, the District Judge, Malda informed the Registry of the High Court about further developments

and suggested that, subject to approval by this Court, the land within the Malda premises, occupied in an unauthorised manner by shopkeepers,

temporary vendors, hawkers and law clerks, be guarded and protected by temporary fencing till the occupants are permanently removed.

20. The said Memo was placed before the Hon'ble Judge-in-Charge (Zonal Judge) for the District of Malda by the Registrar (Inspection-II) of this

Court by a Lay Note dated September 30, 2019, upon which the Hon'ble Zonal Judge approved such proposal on October 1, 2019. The Registrar

(Inspection-II) communicated the said direction to the District Judge at Malda vide Memo No. 4528-G dated October 25, 2019. Lastly, vide Memo

No. 12554/G dated November 4, 2019, the District Judge at Malda conveyed the direction of this Court to the Executive Engineer, PWD (Civil),

Malda Division, that is, respondent no.8 and requested the said authority to set up temporary fencing to guard the land-in-question. The Executive

Engineer, PWD (Civil), Malda Division erected the temporary fencing in dispute on November 4, 2019.

21. A perusal of the aforesaid series of communications brings to light that the erection of barricades at the behest of the Executive Engineer was

done on the basis of instructions of this Court to construct new court buildings within the Malda District Court compound under the NCMS Norms,

which is under the overall control of the Hon'ble Chief Justice of India.

22. However, there was a patent communication gap among the respondent-authorities on such score.

23. Prior to September 24, 2019, the communication shuttled around the issue of urgent removal of the unauthorised occupants at the Malda District

Court premises. The communications from all concerned revolved around the said issue alone.

24. However, from the Memo No.11142/G dated September 24, 2019, that is, the communication by the then District Judge at Malda to the Registrar

(Inspection-II), High Court, Appellate Side, the communications took on a different complexion. For the first time, the discussion took the shape of an

endeavour to erect temporary fencing till the allegedly illegal occupants are permanently removed and evicted from the Malda Court premises.

25. The subsequent communications all revolved around the said proposal, culminating in the ultimate erection of the barricade by tin fencing on

November 4, 2019.

26. It is an admitted position that the licenses in favour of the petitioners expired last on March 31, 2011. The petitioners failed to produce any licence

and/or rent challan subsequent to March 31, 2011 to establish the payment of any rent and/or renewal of licence after the said date.

27. Although, admittedly, the petitioners were virtually ousted by erection of the fencing only on November 4, 2019, the physical occupation of the petitioners at that juncture was ex facie unauthorised.

28. Section 3 of the 1962 Act categorically provides the procedure for initiating eviction proceedings against unauthorised occupants of public lands.

The subsequent sections of the said Act provide the modalities of such procedure further. It is clear from the language of Section 3 of 1962 Act that,

even to evict unauthorised occupants, the due process of law, as stipulated in the 1962 Act, has to be complied with to the letter. However, in the

present case, the petitioners were ousted from their possession in respect of the stalls-in-question without taking recourse to due process of law by the

oblique method of erecting 'temporary' tin barricades surrounding the said stalls to preclude the petitioners' egress and ingress in respect of the said

stalls.

29. The allegation of laches on the part of the and/or delay in filing the writ petition is unacceptable, since the petitioners have, all along, been

presenting their representations to the appropriate forums and running from pillar to post for redressal of their grievance. The writ petition was filed in

September, 2020 by the present petitioners, who are allegedly some of the stall-owners.

30. Hence, the time-lapse between the filing of the writ petition, and the continuance of the cause of action was sufficiently proximate not to reject the writ petition at the threshold on the ground of delay.

31. The stand of the High Court Administration, that all the alleged 300 persons whose livelihood was affected by the eviction have not preferred the

writ petition, is neither here nor there.

32. Since no specific action had been taken prior to the erection of the barricades-in-question, there arose no occasion for the petitioners to approach

this court earlier. The mere number of the writ petitioners cannot justify the illegal manner in which the petitioners were evicted by dint of erection of

fencing without taking resort to due process of law and without any notice being served within the contemplation of Section 3 of the 1962 Act.

33. Although the High Court was fully justified in asking the appropriate authorities to take immediate steps for removal of unauthorised occupants in

order to give shape to the NCMS Scheme which was within the periphery of legality, from September 24, 2019, the endeavour of the authorities, that

is, the Malda District Court Administration in tandem with the State Administration, to erect fencing for preventing the petitioners from having access

to their stalls and in the process, standing ousted therefrom, was entirely de hors the law and divorced from the directions of this Court to follow the

NCMS Norms. In the name of complying with the NCMS Guidelines, the District Judiciary and the State Administration resorted to patent illegality

ousting the petitioners for all practical purposes from the stalls which were previously in their occupation.

34. Hence, the manner in which such fencing was erected cannot but be seriously deprecated. The State Administration could very well have adhered

to the provisions of the 1962 Act in its effort to urgently evict the petitioners from their unauthorised occupation of the stalls. However, such course of

action was not resorted to in the name of compliance of the NCMS directions.

35. It may be noted here that the writ petition, supported by affidavit of the petitioners, is not supposed to contain legal arguments or propositions of

law. As such, the absence of any specific pleading in the petition as regards violation of the provisions of the 1962 Act cannot be a justification to

dismiss the writ petition at the outset. In any event, the powers of the High Court under Article 226 of the Constitution of India pertain to judicial

review, which is embedded in the basic fabric of the Constitution of India and has to be exercised for the ends of justice and equity to prevent the

violation of fundamental rights and gross illegalities.

36. In the present case, the right of the petitioners to carry on business under Article 19 of the Constitution of India was squarely violated by the

impugned action.

37. However, the predicament which arises before this Court is in respect of the appropriate relief which ought to be granted to the petitioners, who

were illegally evicted. The fact that the petitioners were in patently unauthorised occupation on the date of erection of the fencing prevents the

petitioners from asserting any legal right in respect of the stalls-in-question. On the other hand, the unlawful and inequitable manner in which the

petitioners were ousted cannot stand the scrutiny of judicial review as well. The present scenario at the locale, as it appears from the respective

arguments of the parties and the materials-on-record, is that the sheds housing the stalls have been demolished and plans are underway to comply with

the NCMS norms for constructing a new composite building within the Malda Court premises at the site where the stalls used to be located.

38. Directing restoration of possession to the petitioners would lose out in the balance of convenience and inconvenience, since the petitioners, in the

first place, had no legal right to assert any lawful right in respect of possession of the said stalls at the relevant juncture.

39. However, the argument of the respondent-authorities, that the impugned action was justified to implement the legal necessity of adhering to the

NCMS Guidelines, cannot be accepted in any context. Even dispensation of justice cannot justify injustice.

40. In the present case, the means by which the petitioners were denied from having further access to their stalls was patently unjust, despite the

petitioners not having any legal right to the stalls at the relevant juncture. Such means, in the present case, do not justify the otherwise noble end of

proper administration of justice.

41. Although the object of such removal might have been legally valid inasmuch as it conforms to the NCMS Guidelines for the benefit of the public at

large, such legality, by itself, cannot be sufficient reason to flout all norms of civilized society and the rule of law.

42. Keeping on balance the respective interests of the public at large towards proper administration of justice and that of the contesting parties, the

appropriate measure would be to somewhat compensate the errant method adopted in ousting the petitioners by giving sufficient and adequate

rehabilitation to the petitioners within a reasonable vicinity of their original place of business, that is, the Malda Court premises.

43. The State Administration cannot shirk its responsibility to follow the rule of law in resorting to an eviction mechanism which is de hors the law.

44. Although no useful purpose would be served by directing restoration of possession to the petitioners at the present stage when the NCMS Scheme

is already underway for implementation at the locale, adequate redressal, in the present case, should take the shape of sufficient rehabilitation being provided to the petitioners.

45. In such view of the matter, W.P.A. No.7956 of 2020 is disposed of by directing respondent nos. 1 and 5 to immediately arrange for suitable

alternative accommodation in lieu of the original stalls to the petitioners and other stall-owners who were in possession of the stalls as on November 4,

2019, within reasonable vicinity, not more than within one kilometer (approximately) radius around the Malda Court premises, upon prima facie proof

of such possession on November 4, 2019 being furnished by the petitioners and other stall-owners. For such purpose, the respondent no. 1 and/or 5

shall issue public notice inviting the stall-owners to furnish adequate document to prove such possession prima facie, to be published in at least one

vernacular and one English daily newspaper in reasonably good circulation in the locality of the Malda Court premises and also to be displayed at a

conspicuous place in the immediate vicinity of the precincts of the Malda Court compound, nearabout the former location of the erstwhile stalls.

46. Such adequate alternative accommodation, commensurate with the proportions of the former stalls, shall be provided by respondent nos. 1 and 5 to

the petitioners and the other vendors displaced from the Malda Court premises at the earliest, positively by September 30, 2022. In default, it shall be

open to the petitioners to claim adequate monetary compensation and/or damages from the respondent nos. 1 and 5 herein on and from October 1,

2022 before the competent court and/or appropriate forum. If so approached, such court/forum will decide the claim of the petitioners for

compensation and/or damages in accordance with law, without being influenced, in any manner, on merits by the observations made in the present

order.

47. There will be no order as to costs.

48. Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.