
Syed Zahir Hussain Vs State and Others

Writ Petition No. 7429 (W) of 2009

Court: Calcutta High Court

Date of Decision: Aug. 18, 2009

Acts Referred:

Murshidabad Estate (Management of Properties) and Miscellaneous Provisions Act, 1980 "â€" Section 8

Hon'ble Judges: Tapen Sen, J

Bench: Single Bench

Advocate: Kaushik Dey, for the Appellant; Suchitra Saha and Sharmila Basu for the State, for the Respondent

Final Decision: Dismissed

Judgement

Tapen Sen, J.

In this writ petition the petitioner prays for an order commanding upon the Respondents to withdraw and set aside the order

dated 16th March. 2009 (Annexure P-10) passed by the respondent No. 2 Estate Manager, Murshidabad Estate) whereby and whereunder the

petitioner was directed to vacate the room meant for a pump man and situated towards the northern wall of Premises No. 26, Jawahar Lal Nehru

Road, Kolkata-87.

2. The facts which are perhaps necessary to be taken note of have been very briefly stated in paragraph 2 of the writ petition from a perusal

whereof it will appear that the petitioner was introduced to one Jahangir Hussain @ Gora Sheikh being the Rent Collector of the Murshidabad

Estate in respect of the aforementioned premises and which belongs to the said estate. It has further been stated that the said Rent Collector

inducted the petitioner as a tenant after assuring him that he would be conferred the status of a ""tenant"" and also after assuring him that rent receipts

will be issued after he was put in possession. The Rent Collector has been made respondent No. 3 and it has further been stated in paragraph 3

that the Rent Collector demanded an advance rent of Rs. 3,25,000/-. It is the further case of the petitioner that he collected the amount of Rs.

3,25,000/- and deposited the same with the respondent No. 3 with ""a high hope"" of getting possession of a tenanted room in the capacity of a

tenant"" and the respondent No. 3, on his part, after receiving the amount of Rs. 3,25,000/-, put the petitioner in possession of a small room

measuring 120-150 sq. ft. with a tin shed.

3. A copy of a money receipt said to have been issued by Jahangir Hussain @ Gora Sheikh has been brought on record vide Annexure P-1 but

before this Court proceeds to deal with this case further, it would like to clarify here at this stage that Annexure P-1 is a mere receipt on a blank

sheet of paper which does not bear the seal or the description of the Murshidabad Estate at any place.

4. The further case of the petitioner is that even after having been put in possession, the respondent No. 3 did not issue any rent receipts

whereafter the petitioner requested him several times and each time the respondent No. 3 merely gave assurances that bills/receipts will be

sent/issued but nothing happened. As a consequence and on 8th April, 2008, the petitioner wrote a letter to the Estate Manager. However, upon

going through the said letter it is evident that the petitioner did not mention anything with regard to his having paid such a huge sum of money to

Jahangir Hussain @ Gora Sheikh. On the contrary, this letter merely shows that it was a letter making a prayer/request for regularizing his

occupation of a 150 sq. ft. (more or less) area in the Murshidabad Estate at 26, Jawahar Lal Nehru Road, Kolkata-87.

5. The petitioner has then stated in paragraph 6 that on 24th June, 2008, Jahangir Hussain @ Gora Sheikh acknowledged the fact of having

receiving the amount of Rs. 3,25,000/- for creation of tenancy vide Annexure P-3 but upon a perusal thereof it is evident that it is nothing but a

statement said to have been made by Jahangir Hussain @ Gora Sheikh in which he has accepted having taken the sum of Rs. 3,25,000/- for

delivering possession in respect of one room on the ground floor of about 120 sq. ft. with tin shed at 26, Jawahar Lal Nehru Road, Kolkata-87

but since he failed to deliver possession, he gave an undertaking, through this document, in the presence of some witnesses present therein, that he

would return the money to the petitioner. This then, is a private dispute between the petitioner and Jahangir Hussain @ Gora Sheikh.

6. Moreover, upon reading Annexure P-1 along with Annexure P-3, this Court is therefore satisfied that none of these two documents show the

induction of the petitioner into the premises in question by an appropriate authority under the Murshidabad Estate in a proper manner. In fact this

Court is satisfied that these are all questions of facts and consequently, if Jahangir Hussain @ Gora Sheikh had taken such a huge amount of money

from the petitioner then it is the petitioner who is himself to be blamed because the Rent Collector cannot be said to a proper authority for inducing

a tenant. That apart, if the petitioner is said to have given Rs. 3,25,000/- to Jahangir Hussain @ Gora Sheikh then he should have atleast

mentioned that fact in his first communication to the Estate Manager but instead of doing so, he kept quiet about the whole thing and merely wrote

a letter applying for regularization of his possession. In other words the Estate Manager, while issuing the impugned letter dated 16th March, 2009,

was absolutely correct when he stated that even at the time of hearing on 5th March, 2009, the petitioner could not produce any valid papers and

documents and therefore, he passed the order directing him to vacate the premises.

7. Learned Counsel for the petitioner then submits that Annexure P-10 has been passed without complying with the provisions of section 8 of "The

Murshidabad Estate (Management of Properties) and Miscellaneous Provisions Act, 1980 (hereinafter referred to as the said Act) inasmuch as if

the Estate Manager came to the conclusion that the petitioner was an unauthorized occupant, then all the procedure including the procedure of

having to issue a notice, the procedure of conducting a hearing etc. were necessary to be followed and since these were not done, therefore the

Estate Manager, being a statutory authority, transgressed his limits.

8. Learned Counsel relies upon the judgment of Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others, , in

support of his contention that the Estate Manager, being a creature of a statute must act within the four corners of the statute and when a certain

thing is required to be done in a certain manner, then the same must be done in that manner and in no other manner.

9. this Court is not inclined to accept such a submission of Mr. Kaushik Dey inasmuch as the petitioner cannot be allowed to take the benefit of

section 8 for the reasons stated hereinafter.

10. It is in this context that this Court takes notice of section 2(i) of the said Act which reads as follows:

2(i) "unauthorized occupation", in relation to any premises or other immovable properties, means the occupation by any person of the premises or

other immovable properties without authority for such occupation, and includes the continuance in occupation by any person of the premises or

other immovable properties after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the

premises or other immovable properties has expired or has been determined for any reason whatsoever.

[Underlining by Court]

11. Upon a perusal of the aforementioned definition, it is evident that an unauthorized occupant for the purposes of this Act/statute, is a person

who, at some point of time was allowed to occupy the premises either by way of grant or some other mode of transfer which has expired or has

been determined for any reason whatsoever. In other words, if an unauthorized occupant, claims the benefit of the issuance of notice or personal

hearing as referred to in section 8, then he must be able to satisfy that he was inducted lawfully either by way of a grant or some other mode of

transfer at some point of time which, on its expiry for whatever reason, confers upon him the status of an unauthorized occupant in the event he

chooses to continue therein even after expiry or determination of the said grant or other mode of transfer.

12. In the instant case, the petitioner has not been able to show either to this Court or to the Estate Manager that he was a valid allottee or was

validly inducted either by way of grant or other mode of transfer as a tenant by a competent authority.

13. In that view of the matter, a person such as the petitioner cannot be allowed to argue that he must be given notice in terms of section 8. On the

contrary, this Court, having perused the documents brought on record, is satisfied that he is a rank trespasser and has stealthily entered into

somebody else's property in an illegal and dubious manner and is now trying to capitalize merely because he has somehow managed to enter into

the property belonging to the Murshidabad Estate. To such persons, the hands of equity will not reach out. To such persons, the law of natural

justice will not be extended. Such persons must be dealt with firmly and if the Estate Manager has taken such a step in issuing an order directing

him to vacate the premises, this Court does not find any justification to interfere with the same.

14. For the reasons stated above, this writ petition is dismissed.

15. However, in the facts and circumstances of the case, there shall be no order as to costs.

16. If urgent certified copy of this order, duly photocopied, is applied for by the parties, the same should be given expeditiously.