

(2011) 12 CAL CK 0036

Calcutta High Court (Port Blair Bench)

Case No: Writ Petition 1279 of 2011

Shri. A.R.Nagarajan

APPELLANT

Vs

The Deputy Commissioner and
Others

RESPONDENT

Date of Decision: Dec. 21, 2011

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: KMB Jayapal, for the Appellant; S.K. Mandal For the Administration and Mrs. Anjili Nag For the respondent No 2, for the Respondent

Final Decision: Dismissed

Judgement

Prasenjit Mandal, J.

The writ petitioner has filed this application praying for following reliefs.

a). A writ of Mandamus and/or Writ in the nature thereof commanding the Respondent Authorities and each one of them:

(i) A Writ and/or Writ do issue in the nature of Mandamus commanding the Respondent Authorities particularly the Respondent no.2 hereinabove to provide alternative shop to the writ petitioner within the same vicinity in lieu of shop room no.1 at Aberdeen Jetty;

(ii) A Writ and/or Writ do issue in the nature of Mandamus commanding the Respondent Authorities particularly the Respondent no.2 hereinabove to allow the Petitioner to carry out necessary repair in shop room no.1 at Aberdeen Jetty.

(iii) Interim order may be passed directing the Respondent Authorities particularly the Respondent No.2 hereinabove not to disturb the peaceful possession of the Petitioner over the shop room no.1 at Aberdeen Jetty which was allotted vide Office Order No. 1286 dated 08-06-1992 till the disposal of the above writ application;

(b) A writ of Certiorari be issued commanding the Respondent Authorities and each one of them to produce the relevant records in the present proceeding for giving conscionable justice to the present petition;

(c) Cost the present application;

(d) To pass such other or further order or orders, direction or directions do issue as this Hon"ble Court may deem fit and proper.

2. The petitioner has contended that the shop room no.1 as mentioned in the petition was allotted to him under an agreement with the Port Blair Municipal Council in the year 1990. The respondents were trying to sell the shop of question in an auction sale and then the petitioner filed a writ petition which was disposed of directing the respondent no.2 to allot a alternative shop to the petitioner. The shop room suffered huge loss by the devastating earthquake in 2004.The petitioner is paying rent to the respondent regularly but all of a sudden by the notice dated December 08, 2010, the respondents are trying to take the possession of the shop in question and so the writ petition has been filed praying for the reliefs as stated earlier.

3. Now the question is whether the petition is entitled to get the reliefs as prayed for.

4. Upon hearing the learned counsel for the parties and on going through the materials on record, I find that the shop room no.1 was allotted to the petitioner long time back in the year 1988 when some shops were gutted by fire in 1988. An agreement was executed between the petitioner and the administrative authorities accordingly. Previously, the petitioner and 11 others filed a writ petition being Civil Rule No. (w) 18 of 1991 and the petitioner and others got an interim order dated November 11, 1991. Thereafter, on December 26, 2004, the devastating tsunami took place in these islands causing damages to many properties. The natural calamity took place again on November 03, 2010 when cyclone damaged some municipal shops including the shop of the petitioner. Accordingly, the Port Blair Municipal Council decided to dismantle the building immediately and the allottees of the shops were directed to hand over the physical possession to the Municipal Council immediately. Thereafter, the petitioner and others made a representation to the Chairperson, Port Blair Municipal Council on December 15, 2010. Thereafter, this application has been preferred.

5. The petitioner has contended that he has been paying rent all along but his contention is not supported by the appropriate documents showing deposit of rent all along. He has filed only two rent receipts appearing as annexure P-5 at page 23 and 24 and these two rent receipts reflect that by the rent receipts dated June 03, 2011, the petitioner deposited rent from January, 2011 to June, 2011 and by the next receipt dated September 22, 2011, he deposited rent from July, 2011 to September 2011. There is no rent receipt in support of his contention that he has been

possessing the shop in question all along. It is the specific contention of the respondents that the shop in question remained closed all along and the petitioner did not use the said shop room for a long time. Such contention of the respondent no.2 cannot be ignored as the petitioner has failed to show that he has been paying rent for the premises in question all along. He deposited the rent on the dates mentioned above to show the bonafide claim and such deposit was made when the Port Blair Municipal Council issued a notice dated December 08, 2011 asking the petitioner to vacate the shop in question. It is mentioned therein that the municipal's shop near Water Sports Complex, Aberdeen Jetty (including the shop of the petitioner) had been completely damaged the front slab was exposed and concrete had peeled off endangering the life of the occupants and the public. The present condition of the building is not only beyond economically repair but also unsafe for habitation. Under these circumstances, the Port Blair Municipal Council had decided to demolish the same. After such steps, the writ petitioner came up even after lapse of certain period after depositing rents for 9 months as stated earlier and making a representation as stated above. The claim of the petitioner is, therefore, not bonafide at all and it is only an attempt to possess shop in question anyhow. The Port Blair Municipal Council had taken a policy decision to make reconstruction of the shops which were in dangerous condition as described above.

6. Mr. KMB Jayapal, learned advocate appearing on behalf of the writ petitioner has contended that no alternative arrangement had been made by the Port Blair Municipal Council but it had asked the writ petitioner to vacate the premises and such action could be supported. This submission, I hold, cannot be accepted as the claim of the petitioner does not appear to be bonafide and there is no evidence that he has been paying rent for the shop in question all along. The respondent no.2 has filed affidavit-in-opposition denying the contention of the petitioner that the petitioner has been possessing the shop in question. It is their specific contention that the petitioner had abandoned the same. There is no affidavit-in-reply on behalf of the petitioner against such statement in the affidavit-in-opposition. So the contention of the petitioner that he has been possessing shop in question all alone cannot be accepted.

7. Under the circumstances, I am of the view that the prayer of the writ petitioner cannot be entertained at all. The writ petition is, therefore, dismissed.

8. Urgent Xerox certified copy of this judgement be supplied to the parties, if applied for, on observing all requisite formalities.