

**(2011) 11 CAL CK 0044**

**Calcutta High Court**

**Case No:** A.S.T.686 of 2011 with A.S.T.A. 418 of 2011

Jitendra Nath Banerjee

APPELLANT

Vs

Eastern Coalfields Ltd. and  
Others

RESPONDENT

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**Date of Decision:** Nov. 18, 2011

**Citation:** (2012) 4 CHN 11

**Hon'ble Judges:** J.N. Patel, C.J; Sambuddha Chakrabarti, J

**Bench:** Division Bench

**Advocate:** Amit Prakash Lahiri, for the Appellant; Pradip Dutta, Pinaki Dhole For the State and Mr. Nikhil Kumar Roy For the ECL, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Sambuddha Chakrabarti, J.

Seeking rather usual reliefs, the appellant had filed a writ petition wherein the principal relief sought for was issue of a writ in the nature of Mandamus commanding the respondents authorities including their men agents etc. to vacate the quarter of the appellant so that he might get his retiral benefits. His further prayer was a Mandamus upon the respondents directing them to hand over to the appellant his household belongings allegedly lying in the quarter belonging to him.

2. The case made out by the appellant was that he was an employee of the Eastern Coal Fields Limited, i.e., respondent no. 1. He retired in the year 2009. While in service, he was allotted a quarter by his employer from which, he says, he had shifted himself to a rented accommodation in Asansol where from the year 2006 he has been permanently residing. Then the appellant made a rather queer statement that he had come to learn that one Pradip Dutta forcibly entered into the quarter with the help of the local political party.

3. The appellant states that he had lodged complaints in March and April, 2010 to the respondents for vacating the quarter and for the return of the household

articles lying in the said quarters. The appellant's present concern was that in spite of the fact that he had retired in May, 2009 he had not been paid his gratuity as he could not surrender the vacant possession of the quarter.

4. This petition was moved before the learned Single Judge and no wonder that the same was dismissed.

5. The appellant has challenged the said order of dismissal in the present appeal. We have heard the learned Advocates for the parties and hold that the writ petition was rightly dismissed.

6. The appellant relies on an order of the Division Bench of this Court dated March 5, 2010, wherein the Division Bench directed the authorities of the Eastern Coalfields Limited to take appropriate steps by serving eviction notices upon unauthorised occupants to vacate the respective premises.

7. On the strength of such order the appellant is seeking a Mandamus commanding the respondent no. 1 to initiate proceedings for vacating the quarters which was allotted to him and presently in occupation of an unauthorised occupant.

8. This order of the Division Bench was passed on March 5, 2010 and the first communication made by the appellant to the Superintendent of Police, Burdwan, as annexed to the writ petition, was also on the same date on which the order of the Division Bench was passed. This, even if coincidental, is very suggestive. It appears that the appellant did not inform the appropriate authorities about his dispossession from the quarter before the day on which the Division Bench had passed this order. The appellant has nowhere disclosed when he was actually dispossessed from his possession. In the writ petition, he said that he "came to learn" that one Pradip Dutta had forcibly entered the quarter whereas, in the letters addressed to the Superintendent of Police he wrote that "recently, it is noted that one Sri Pradip Dutta on outsider forcibly entered my quarter...

9. The conduct of the appellant raises reasonable doubt that one Pradip Dutta must have been in occupation of the concerned quarter from before the appellant retired. If such alleged forcible occupation of the quarter had taken place at any point of time proximate to the date he informed the police authorities, as suggested by the use of the word "recently" in the said letters, there was nothing preventing him from surrendering the official quarter to the appropriate authorities after his retirement. Thus, it is not clear why he did not inform the appropriate authorities about his alleged dispossession from the concerned quarter immediately after the alleged incident.

10. Similarly, it is not understandable why he continued to retain the quarter when at least from the year 2006 he had shifted to a distant place. Regard being had to the common course of human conduct, it is only expected that an employee will unnecessarily not retain a quarter which he is not occupying.

11. The learned Trial Judge was right in holding that on the strength of the Division Bench order dated March 5, 2010 the appellant cannot seek any Mandamus commanding the respondent no. 1 to initiate proceedings for evicting any allegedly unauthorised occupant from the quarter allotted to him. The appellant has no legal right or legal character of a right to seek eviction of anybody who has been unauthorisedly occupying the quarter allotted to him. This is all the more so when the conduct of the appellant himself was not above board and was clearly not in conformity with the one expected of an employee. We have already seen that there are good grounds for entertaining reasonable doubts that the private respondent no. 8 must have been in occupation of the quarter from before the appellant retired. The appellant on his part had not taken any step, did not inform his employer or the police authorities and it was only when he is not getting the gratuity that he decided to move the Court seeking a Mandamus upon his employer to initiate proceedings for eviction of the respondent no. 8. Thus, the appellant has not only no legal right to file the writ petition equity is also against him and as such he has no right to invoke the writ jurisdiction.

12. Learned Advocate for the appellant before us has quite strenuously argued that for not vacating the quarter allotted to him the amount of gratuity cannot be withheld by the employer. In support of his contention he has relied on the decision of Ramjilal Chimanlal Sharma Vs. M/s. Elphinstone Spinning and Weaving Mill Co. Ltd. and another reported in 1984 LAB. I. C. 1703, for a proposition that a right to secure gratuity amount cannot be defeated or cannot be used as a lever by the employer for securing back possession of the premises from the petitioner. This proposition of law is far too well settled. But that is not the question raised in the writ petition filed by the appellant. His main relief is an order directing the respondent no. 1 to vacate the quarter of the appellant so that he can get the retiral benefits. As such, this judgement cited by him does not help the appellant.

13. That apart the learned Trial Judge has rightly observed that if the respondent no. 1 had not paid his retiral benefits on the ground that he had not handed over vacant possession of the quarter that may give the appellant a cause of action for moving the appropriate forum. But the appellant cannot ask for initiating proceedings for eviction against the present occupiers. The order impugned in this appeal has also recorded the submission made by the respondent no. 1 that it had already deposited the gratuity amount with the Controlling Authority under the Payment of Gratuity Act, 1972.

14. The writ petition was misconceived and was rightly dismissed. The present appeal therefrom is equally misconceived, has absolutely no merit and the same is also dismissed.

15. There shall, however, be no order as to costs.

16. Urgent photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all requisite formalities.

J.N. Patel, C.J.

I agree.