

(2012) 07 CAL CK 0078

Calcutta High Court

Case No: C.O. No. 1671 of 2010

M/s. New Hindusthan Mercantile
Co.

APPELLANT

Vs

UCO Bank

RESPONDENT

Date of Decision: July 20, 2012

Acts Referred:

- Public Premises (Eviction of Unauthorised Occupants) Act, 1971 - Section 2(g), 3A, 4, 5
- Transfer of Property Act, 1882 - Section 106, 111(h)
- West Bengal Premises Tenancy Act, 1956 - Section 1

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: S.P. Roychowdhury and Mr. Asit Bhattacharya, for the Appellant; Aniruddha Chatterjee and Mr. Srijib Chakraborty, for the Respondent

Judgement

Prasenjit Mandal, J.

This application is at the instance of the appellant and is directed against the Order dated April 28, 2010 passed by the learned Judge, City Civil Court, 7th Bench, Calcutta in Misc. Appeal No. 17 of 2004 arising out of the Order dated July 29, 2004 passed by the Estate Officer, UCO Bank in Case No. 12 of 2002. One, Duli Chand Nawar and Brothers were the owners of the premises No. 2, India Exchange Place, Calcutta-700001 and the respondent-bank / opposite party herein purchased the said property. The appellant / petitioner herein was then in possession of the room no.4 situated on the first floor of the said premises. Thereafter, the Estate Officer issued a notice u/s 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 upon the appellant / petitioner herein and then the eviction proceeding was started against the appellant / petitioner herein under the said Act. The parties led evidence to the said eviction proceeding and thereafter, the Estate Officer passed orders of eviction against the appellant / petitioner herein. Being aggrieved by such orders of eviction, the appellant / petitioner preferred an appeal being Misc.

Appeal No. 17 of 2004 and that misc. appeal was disposed of on contest affirming the orders of recovery of possession. Being aggrieved, this application has been preferred by the appellant.

2. Now, the question is whether the impugned orders should be sustained.

3. Upon hearing the learned Counsel for the parties and on going through the materials on record, I find that the appellant is in possession of the room no.4 situated on the first floor of the premises no.2, India Exchange Place, Calcutta - 700001 and this is the premises in case. It is an admitted position that the respondent-bank / opposite party herein had purchased the premises no.2, India Exchange Place, Calcutta-700001 and the respondent-bank being a nationalised bank is a corporation established by the Central Act. So the premises belonging to the nationalised banks shall be treated as public premises. Obviously, the premises in case is a public premises. According to the decision of [Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others](#), premises belonging to a nationalised bank is also a public premises and therefore, so far as eviction is concerned, the provision of the said 1971 Act shall apply in the instant case.

4. The appellant / petitioner herein has contended that it was inducted as a monthly tenant under the original owners, namely, Duli Chand Nawar & Brothers about 50 years back and he had been paying rent to the said owners regularly and the owners granted rent receipts since 1950.

5. Mr. S.P. Roychowdhury, learned Senior Advocate appearing for the petitioner, has submitted that according to Section 1 of the West Bengal Premises Tenancy Act, 1956, the premises in case has been excluded from the operation of the West Bengal Premises Tenancy Act, 1956 and so, the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 will be applicable and the object of such Act, is to provide for eviction of unauthorised occupants from the concerned premises and for certain individual matters. Therefore, it must be determined that before issuance of notice u/s 4 of the 1971 Act, the petitioner was an unauthorised occupier according to Section 2(g) of the Act.

6. Mr. Roychowdhury has also drawn my attention as to the definition of "unauthorised occupation" u/s 2(g) of the said Act and thus, he submits that the petitioner cannot come under the category of Section 2(g) since his occupation is not at all unauthorised. He has contended that the petitioner was a tenant under the previous owners and after purchase by the respondent-bank, the bank did not determine the tenancy and so, the tenancy continues. So, the petitioner cannot be described as an unauthorised occupier of the premises in case.

7. He has also contended that the tenancy can be terminated by issuing a notice u/s 106 of the Transfer of Property Act or the termination of tenancy occurs under the provisions of Section 111(h) of the Transfer of Property Act. Thus, he submits that since the determination of tenancy did not occur in either way under the provisions

of the Transfer of Property Act as stated, the petitioner continues to be a tenant and as such, the petitioner cannot be described as an unauthorised occupier. So, the order of recovery of possession cannot be sustained, unless the tenancy is determined.

8. He has also contended that the notice issued u/s 4 of the 1971 Act is nothing but a step of show cause for initiation of a proceeding u/s 5 of the said Act for getting the recovery of possession from an unauthorised occupier. Such a notice is not the one determining the tenancy.

9. Mr. Roychowdhury has also referred to the decision of Nitosh Kumar Brahma v. I.I.T., Kharagpur & ors. reported in 2010 (2) CLJ (Cal) 463 and thus, he submits that according to the said decision, temporary occupation for a limited period of less than 30 days the proceeding u/s 3A of the said Act de hors statutory provision and so, such proceeding is illegal and without jurisdiction. On the same principle, the findings of the Appellate Court cannot be supported.

10. It may be noted herein that Mr. Roychowdhury did not assail the judgment of the Appellate Court on mesne profits.

11. Thus, Mr. Roychowdhury has submitted that the orders of eviction are not proper and so, they should be set aside.

12. Per contra, Mr. Aniruddha Chatterjee, learned Advocate appearing for the respondent-bank / opposite party herein, has contended that as per observations of the Lower Appellate Court, the petitioner was never recognised as a tenant at all. The Appellate Court has held that the appellant had failed to produce any iota of documentary evidence to show that there was any agreement between the appellant and erstwhile owners Duli Chand Nawar & Brothers. The appellant had also failed to prove any letter of attornment showing that the respondent had accepted the appellant as tenant in the premises in case. By referring the impugned judgment Mr. Chatterjee has contended that so far as the payment of electricity charge and repairing costs is concerned, it has been recorded in the notice that such steps were taken without prejudice to the rights and contentions of the parties and those were not so sacrosanct in nature that may lead to the conclusion that the appellant was a tenant under the respondent. The Appellate Court has rightly held that the petitioner cannot be considered as a tenant under the respondent under the provisions of the West Bengal Premises Tenancy Act and that as per observation of the Appellate Court, even the appellant did not file any suit claiming the tenancy right under the provisions of the West Bengal Premises Tenancy Act, 1956. Thus, Mr. Chatterjee submits that the petitioner cannot be considered as a tenant under the provisions of the said 1956 Act and it has been rightly observed by the concerned authority and the Appellate Court that the petitioner possesses the suit property as an unauthorised occupant. Thus, Mr. Chatterjee supports the impugned judgment.

13. Having heard the contentions of the learned Counsel for the parties and on perusal of the materials on record and the above decisions, I find that since the respondent-bank / opposite party herein is the owner of the premises in case, according to Section 1 of the West Bengal Premises Tenancy Act, 1956 and the decision of [Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others](#), the premises in case shall be governed by the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

14. In order to decide whether the petitioner is an unauthorised occupant, the definition of "unauthorised occupation" as provided in Section 2(g) of the said Act is very much relevant and for the purpose of adjudication of the matter in dispute the said definition is quoted below:-

Section 2(g) - "unauthorised occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.

15. From the findings of the learned Appellate Court in this respect, I find that the Lower Appellate Court has clearly observed that the petitioner had failed to produce any document to show that there was any agreement between the erstwhile owners of the premises in case and the appellant. The appellant had also failed to show any letter of attornment showing that the respondent-bank had accepted the appellant as a tenant of the premises in case.

16. The petitioner has filed one xerox copy of challan to show that rent for August 2002 had been deposited with the Rent Controller in favour of the respondent-bank. Such a deposit cannot be taken as a proof of attornment by the bank in respect of the premises in case in favour of the petitioner.

17. So far as issuance of notice u/s 4 of the said Act is concerned, at that time the Estate Officer is not required to come conclusively that the petitioner is an unauthorised occupier of the suit premises. What the Estate Officer is required to do that he must form an opinion that the petitioner is an unauthorised occupier and then is at liberty to issue a notice u/s 4 of the said Act.

18. In the instant case, I find that Section 2(g) of the Act as referred to above lays down the definition of "unauthorised occupation" in two parts and the first part is with regard to "unauthorised occupation" in relation to any public premises, means the occupation by any person of the public premises "without authority" for such occupation. On being satisfied about the possession without authority, the Estate Officer issued the notice u/s 4 of the Act and then the enquiry was held u/s 5 of the Act of 1971. I find from the materials on record, the Estate Officer was satisfied that the premises in case was in unauthorised occupation and that petitioner should be

evicted.

19. An enquiry was held by the Estate Officer u/s 5 of the Act of 1971. Parties had adduced evidence and then on the basis of the evidence on record, the Estate Officer and the Lower Appellate Court came to the concurrent findings that the appellant could not produce any iota of documentary evidence to show that there was any agreement between the appellant and the erstwhile owners, Duli Chand Nawar & Brothers. Nor did the appellant prove any letter of attornment to show that the respondent had accepted the appellant as tenant in the suit premises. I have stated earlier that the deposit of rent by a person with the Rent Controller, howsoever long period may be, does not amount to admission by the landlord as tenant. These findings are based on evidence.

20. Accordingly, I am of the view that the submission of Mr. Roychowdhury to the effect that since the appellant / petitioner herein was a tenant under the previous landlord unless the notice of the termination of the tenancy u/s 106 of the Transfer of Property Act is issued or the termination of the tenancy u/s 111(h) of the Transfer of Property Act occurs, the tenancy continues and so, unless the tenancy is terminated by the respondent-bank, the appellant / petitioner shall continue as tenant and so, the proceeding u/s 5 of the Act of 1971 is invalid, cannot be accepted.

21. In that view of the matter, I am of the opinion that the concurrent findings arrived at by the authority and the Court concerned based on evidence cannot be stated to be perverse for the reasons stated above. Accordingly, I am of the opinion that there is no scope of interference with the impugned order.

22. This application is, therefore, bereft of merits and is, therefore, dismissed.

23. Considering the circumstances, there will be no order as to costs.

24. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.

Later:

25. After passing of the order, the learned Advocate for the petitioner prays for stay of the operation of the order. Upon due consideration of the submission, I am of the view that the prayer should be rejected. Accordingly, the prayer for stay of the operation of the order is hereby rejected.