

(1997) 03 CAL CK 0009

Calcutta High Court

Case No: F.M.A.T. No. 4018 of 1988

Smt. Malina Dutta

APPELLANT

Vs

New Howrah Transport Co. and
Another

RESPONDENT

Date of Decision: March 19, 1997

Acts Referred:

- Constitution of India, 1950 - Article 14, 226
- Evidence Act, 1872 - Section 4
- West Bengal Premises Tenancy Act, 1956 - Section 29B

Citation: (1997) 1 CALLT 423

Hon'ble Judges: Nripendra Kumar Bhattcharjee, J; Bhagabati Prosad Banerjee, J

Bench: Division Bench

Advocate: Samaraditya Pal and Shyamal Sarkar, for the Appellant; S. Mukherjee, for the Respondent

Final Decision: Allowed

Judgement

Bhagabati Prosad Banerjee, J.

This is an appeal against the judgment and order, dated December 12, 1988 passed in C.O. 12421 (W) of 1987 declaring the provisions of Section 29B of the West Bengal Premises Tenancy Act (Act XII of 1956) as ultra vires the provisions of Article 14 of the Constitution of India.

2. The material portion of the provisions of Section 29B read as follows:

"29B.-- Special procedure for disposal of applications for eviction on the ground of bona fide requirement. ♦

(1) No Civil Court shall entertain any application by a landlord being a Government employee, and who being in occupation of any residential premises allotted to him by his employer, is required by, or in pursuance of, an order made by such employer

to vacate such residential accommodation, or in default, to incur certain obligations on the ground that he owns a residential accommodation either in his own name or in the name of his wife or dependent child at or near the place where he is posted for the time being or by a landlord who has retired, or will retire within a period of less than one year, as a member of the naval, military or air force of the Union of India, or by a landlord who is the parent or the wife of such member of the naval, military or air force of the Union of India, or by a landlord who is a relation (other than a minor child or the widow) and a dependent of a member of the naval, military or air force of the Union of India and ordinarily resides with him or a minor child or the widow of such member who dies while in service or within five years of retirement), for the recovery of possession of any premises on the ground specified in Clause (ff) of Sub-section (1) of Section 13 but such application shall be dealt with by the Controller in accordance with the procedure specified in this section.

(2). Whenever any application is filed before the Controller by a landlord referred to in Sub-section (1) for the recovery of possession of any premises on the ground specified in Clause (ff) of Sub-section (1) of Section 13, the Controller shall issue summons, in the form specified in the second schedule :

Provided that

(a) Where the landlord has retired, or will retire within a period of less than one year, as a member of the naval, military or air force of the Union of India, a certificate by the Area or Sub-Area Commander within whose jurisdiction the premises are situated or by the Head of the Service or by his Commanding Officer that he has retired, or will retire, as such member and that he requires the premises for his own occupation and for the occupation of his family after retirement or

(b) where the landlord is the parent or the wife of such member of the naval, military or air force of the Union of India as aforesaid, a certificate by the Area or Sub-Area Commander within whose jurisdiction the premises are situated that he or she is the parent or the wife, as the case may be, of such member of the naval, military or air force of the Union of India and that he or she requires the premises for his or her own occupation and for the occupation of his or her family after the retirement of such member, or

(c) where the landlord is a relation (other than a minor child) or the widow, and a dependant of a member of the naval, military or air force of the Union of India and ordinarily resides with him or a minor child or the widow of such member who dies while in service or within five years of retirement, a certificate by the Area or Sub-Area Commander within whose jurisdiction the premises are situated that he or she is the relation and depended as aforesaid or the minor child or the widow, as the case may be, of the deceased member of the naval, military or air force of the Union of India and that he or she requires the premises for his or her own occupation and for the occupation of his or her own family, shall be produced

before the Controller while filing the application, and such certificate shall be conclusive evidence of the fact stated therein..."

3. The reason given by the learned trial Judge was that the certificate so produced before the Controller would be treated as an evidence and its probative value would be considered by the Controller according to law in the proper perspective and that there is no provision for an enquiry by the Certifying Authority nor the parties likely to be affected by the certificate are given any opportunity of hearing and/or placing the materials for proper consideration as to reasonable requirement as required u/s 13(1)(ff) of the said Act. Further it was observed that the certificate issued under the relevant provisions of Section 29B of the Act is conclusive evidence of the facts stated therein and, as such, the certificate is immune from Judicial checking. The Controller cannot question the facts stated in the certificate. The learned Judge further held that the result would be disastrous in-as-much as the tenant would might get leave to contest u/s 29B of the Act would be helpless to contest the case nor to challenge the case of reasonable requirement as made out by the landlord fortified by the certificate.

4. The fact of the case is that the appellant Smt. Malina Dutta is the widow and aged about 78--80 years. She is the owner of a two storied building at premises No. 21B, Motilal Nehru Road, Calcutta. She let out ground-floor flat of the said building to the writ petitioner New Howrah Transport Company, a partnership firm. The said premises is used as a residence of the partner of the said firm. Smt. Molina Dutta has two sons, the eldest son Lt. Col. J. K. Dutta was an officer in the Indian Army who retired from Military Service on June 29, 1979. He is married and has two children, both daughters. The second son of Malina Dutta is residing in the United Kingdom. He is also married. He and his wife visits India almost every year and stays with Smt. Malina Dutta.

5. Malina Dutta is in occupation of the first floor of the building. Col. Dutta does not have any separate residential accomodation of his own at Calcutta or elsewhere. Smt. Dutta is dependent on her eldest son Col. Dutta. She needs to be looked after. However, the accommodation available in the first floor which is in her possession is not remotely adequate for the mother and son and his family residing together.

6. in the circumstances. Smt. Dutta had served notice on April 10, 1984 determining the tenancy of New Howrah Transport Company and asked the company to quit, vacate and deliver up vacant and peaceful possession of the tenanted ground floor of the flat on the expiry of last day of May, 1984. Since New Howrah Transport Company failed to deliver up the possession, Malina Dutta initiated proceedings before the Rent Controller, Calcutta (being Rent Control Case No. 7 of 1984) u/s 29B of the Act praying for an order and/or decree for recovery of possession of the ground floor flat. With the application Malina Dutta filed a certificate issued by Lt. Col. Y.P. Varma, Officiating Commander as per requirement of Section 29B (2)(B) of the Act.

7. Before the Rent Controller parties adduced evidence. The Rent Controller also had the premises inspected and an inspection report was filed before the Rent Controller. After considering the evidence adduced and other relevant materials the Rent Controller by his order, dated December 10, 1987 granted the prayer for recovery of possession and directed New Howrah Transport Company to quit and vacate and make over peaceful possession of the ground floor flat to the landlady Malina Dutta within two weeks from the date of the order and on failure to do so he granted liberty to the landlady to apply for execution of the order in terms of Rule 11A of the West Bengal Premises Tenancy Rules, 1956. It is the order which was challenged by the New Howrah Transport Company and its partner in the writ petition.

8. On behalf of the appellant it was submitted that the learned trial judge was wrong in declaring a portion of Section 29B of the said Act as ultra vires and submitted that the said Judgment stands impliedly overruled by reasons given in the order of the Supreme Court in Appeal Nos. 974-77 of 1990 (Brig. Atindra Mohan Bhattacharyya v. Mr. Bhomkesh Chakraborty). Further it was submitted by the appellant that assuming that the concluding portion of Section 29B(2) of the Act raises an irrebuttable presumption as to the correctness of the facts stated therein, it does not follow that the certificate is beyond Judicial scrutiny or "checking" and the judgment is based on this fundamental error.

9. The question in this appeal is whether portion of Section 29B(2)(c) of the Act provides that such certificate shall be "conclusive evidence" on the facts herein are ultra vires or not. The background and reasons for which the Legislature has enacted the provisions of Chapter VIA including Section 29B of the said Act is that if a Government employee or a member of Naval, Military or Air Force of the Union of India has been provided with a Quarter or who being in occupation of any residential premises allotted to him by his employer by virtue of his employment, he is required to vacate the said premises on his retirement in order to make available to the same to the successor-in-office by the order of the employer or in default to incur certain obligations on the ground that he owns a residential accommodation either in his own name or in the name of his wife or dependent child at or near the place where he is posted for the time being, no civil court shall entertain any application by a landlord being a Government employee. Sub-section (2) provides that whenever application is filed before the Controller by a landlord referred to in Sub-section (1) for the recovery of possession of any premises on the ground specified in Clause (ff) of Sub-section (1) of Section 13, the Controller shall issue summons, in the form specified in the Second Schedule:

"Provided that❖

(a) Where the landlord has retired, or will retire within a period of less than one year, as a member of the naval, military or air force of the Union of India, a certificate by the Area or sub-Area Commander within whose Jurisdiction the

premises are situated or by the Head of the service or by his Commanding Officer that he has retired, or will retire, as such member and that he requires the premises for his own occupation and for the occupation of his family after retirement ; or

(b) where the landlord is the parent or the wife of such member of the naval, military or air force of the Union of India as aforesaid, a certificate by the Area of sub-area Commander within whose jurisdiction the premises are situated that he or she is the parent or the wife, as the case may be, of such member of the naval, military or air force of the Union of India and that he or she requires the premises for his or her own occupation and for the occupation of his or her family after the retirement of such member, shall be produced before the Controller while filing the application, and such certificate shall be conclusive evidence of the fact stated therein."

10. It is the policy of the Government to find out the procedure for eviction ensure in respect of such persons otherwise official quarters which is occupied by such officer after retirement could not be recovered from him if the landlord is to wait for several years for getting a decree for eviction as provided under the Act and if that event it will be difficult to get the officer evicted from the quarter on humanitarian or other grounds and that the officer concerned who has worked for the defence of the country cannot be allowed to live in the street when accommodation is available, but the same is occupying by a tenant.

It appears that the purpose and object behind such amendment was to make a procedure easier and simplify.

11. Mr. Samaraditya Pal, learned Counsel appearing for the appellant relied on a decision of a Division Bench of this court in the case of [T.K. Ghosh Vs. Anil Krishna Ghosh](#), wherein it was observed as hereunder:

"In relation to a landlord who is a member of the Defence force (which includes inter alia the parent, wife or dependant relations of such member) the requirement for the applicability of Section 29B is that the member has retired or is due to retire within less than one year or who dies while in service. In this category, the landlord has to file along with the application for ejection, a certificate is to state that he has retired or due to retire or that he is dead; and he requires the premises for his own occupation and for the occupation of his family. Section 29B further provides that such a certificate shall be produced before the Rent Controller while filing the application and such certificate shall be conclusive evidence of the fact stated therein.

The Rent Controller is precluded from enquiring into the genuineness or correctness of landlord's requirement as mentioned in the certificate."

12. Reference was also made to the decision of Kalyanmoy Ganguli, J. (as His Lordship then was) in the case of Ranjtt Kumar Sinha v. Brig. Atindra Mohan

Bhattacharjee, dated June 6, 1989 where it was held as hereunder:

"Mr. Das Gupta has referred to the case of New Howrah Transport Company and Anr. v. State of West Bengal and Ors., reported in 92 CWN 325. In the aforesaid Judgment Sushanta Chatterjee, J. held that this part of the said section is discriminatory and should be struck down being violative of Article 14 of the Constitution of India. His Lordship further held that expression "such certificate shall be conclusive evidence of the facts stated therein" occurring in Section 29B (2) (c) of the Act being struck down, the Rent Controller is to consider the certificate granted and find if there is a case of reasonable requirement in favour of the landlord and/or if any ... contemplated u/s 13(1) (ff) of the Act exists. I respectfully agree with the aforesaid observation."

13. The Supreme Court set aside the observation of Kalyanmoy Ganguli, J. and consequently automatically it flows that the Supreme Court disapproved the views expressed by Sushanta Chatterjee, J. in the said judgment as because Kalyanmoy Ganguli and Sushanta Chatterjee, JJ. took similar views and the views expressed by Kalyanmoy Ganguli, J. (as His Lordship then was) was overruled by the Supreme Court on the Special Leave Petition. This learned trial Judge has held that if the certificate in question is held to be "conclusive evidence" on the facts stated therein, in that event tenant's right to controvert the same has to be taken away. The learned Judge held that there is no provisions for giving any opportunity to the tenant as to reasonable requirement as required u/s 13(1)(ff) of the Act and the certificate issued under the relevant provisions of Section 29B of the Act is conclusive evidence of the facts stated therein, and such certificate is immune from Judicial "checking", otherwise the result would be disastrous inasmuch as the tenant who might get leave to contest u/s 29B of the Act would be helpless to contest the case nor to challenge the case of reasonable requirement as made out by the landlord fortified by the certificate.

14. The Supreme Court in the case of [Smt. Somavanti and Others Vs. The State of Punjab and Others](#), has considered the effect of declaration u/s 6 of the Land Acquisition Act as conclusive proof. Section 6 of the said Act if issued, in that event, it would be conclusive proof that the land was required for public purpose. In that connection the Supreme Court observed that in between two words "conclusive proof" and "conclusive evidence" there is no difference as it was held that "since evidence means and includes all statements which the court permits or requires to be made, when the law says that a particular kind of evidence would be conclusive as to the existence of a particular fact it implies that the fact can be proved either by that evidence or by some other evidence which the court permits or requires to be advanced. Where such other evidence is adduced it would be open to the court to consider whether, upon that evidence, the fact exists or not. Where, on the other hand, evidence which is made conclusive is adduced, the court has no option but to hold that the fact exists. Statutes may use the expression "conclusive proof" where

the object is to make a fact non-Justiciable. But, the legislature may use some other expression such as "conclusive evidence" for achieving the same result. There is thus no difference between the effect of the expression "conclusive evidence" from that of "conclusive proof, the aim of both being to give finality to the establishment of the existence of a fact from the proof of another.

15. Following the principles laid down by the Supreme Court in the above case, there is nothing wrong in treating the facts states in such certificate exists. In this connection, we do not find that providing a separate chapter being chapter VIA and other provisions of the Act introducing two different procedures for trial and providing summary trial in certain cases it amounts to discrimination inasmuch as ordinary landlord and the landlord for which summary trial has provided in chapter VIA are quite distinct and separate and they do not belong to any particular class. Article 14 of the Constitution embodies principles of classification, namely, that classification must be founded on intelligible differentia and the differentia must have a rational relation to the object sought to be achieved by the Statute in question; and the classification may be founded on different bases, such as, geographical or according to object or occupations or the like.

This principle is well-settled by the various decisions of the Supreme Court, such as, in the case of [Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others](#), ; in re : [The State of West Bengal Vs. Anwar Ali Sarkar](#), : In re : [Budhan Choudhry and Others Vs. The State of Bihar](#), ; in re : S.M. Transports (P) Ltd. v. Sankaraswamigal Mutt, reported in AIR 1963 SC 865, etc.

16. In the instant case on the basis of occupation a classification has been made by the Legislature and the Classification has been founded on rational basis an objects sought to be achieved by the statutes in question for the purpose of securing accommodation to the members of Army, Naval and Air Force after their retirement and after they have to quit and vacate the official quarters and residences and that admittedly the purpose is a public purpose and the policy which is embodied by the legislature cannot be challenged or questioned and the question of discrimination causing mischief to the interest of the tenants does not and cannot arise at all.

By same provisions of the Act a tenant has given some protection against eviction and that protection against eviction is that the tenant cannot be evicted unless the landlord bonafide requires the premises for his own use and occupation and that the court has to decide on the basis of evidence if the suit is filed by the owner--landlord for eviction.

17. The question of discrimination may arise where two alternative courses of action or two sets of rules are there and that there is no rational basis for any classification.

18. In the case of State of Orissa v. Dhirendra Nath Das. reported in AIR 1961 SC 1715, the Supreme Court considered the effect of two sets of rules under which enquiry could be ordered and that it was open to the Government to direct an

enquiry against a public servant under any of the rules and as because there was a substantial difference in the protection to which the public servant concerned was entitled, a clear case of discrimination arose. Article 14 of the Constitution enjoins the State not to deprive any person of equality before the law and if against two public servants similarly circumstanced, enquires may be directed according to procedure substantially different at the discretion of the executive authority, exercise whereof is not governed by any principles having any rational relation to the purpose to be achieved by the enquiry, the order selecting a prejudicial procedure, out of the two open for selection, is hit by Article 14 of the Constitution of India.

19. In the instant case, it is not in dispute that special procedure under Chapter-VIA of the Act was meant only to officers in Government service, military and navy personnel who were occupying government quarters and who, consequent to retirement, had to vacate the quarters. Their cases of eviction were sought to be dealt with in a summary procedure in which one thing is clear that when they were in service, they were occupying official residence and consequent upon retirement they have to vacate official residence or quarter and that they bonafide required a premises for their own use and accommodation of which he/ members of his family is the owner. The purpose of issue of certificate is to make it clear that they were in occupation of Government quarters or residence and on their retirement they bonafide required an accommodation and on the strength of such certificate, an eviction proceeding is filed before the Rent Controller and that in that proceeding the certificate is used as a piece of evidence.

20. "Conclusive proof has been defined u/s 4 of the Indian Evidence Act and it is provided therein that" when one fact is declared by this Act to be conclusive proof of another, the court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

21. In [Jamna Pandey Vs. Sahdeo Pandey and Others](#) it was held that an artificial probative effect is given by the law to certain facts, and no evidence is allowed to be produced with a view to combating that effect. It can be said to be well-settled that these cases generally occur when it is against the policy of the Government or the interest of the society, that a matter should be further open to dispute. Thus, judgments of certain courts are conclusive proof of the matters stated therein. A birth of a child during a valid marriage is with certain exceptions, conclusive proof of legitimacy. In several instances, certificates or other such documents are by special acts, made conclusive evidence of the facts stated in therein.

22. So, a conclusive proof of the fact stated in the certificate is nothing new in law, and by treating the same as a conclusive proof, it does not import as a arbitrary means of proof. It is well recognised principle of proof which finds place in various other statues. Certificate of registration given by the Registrar in respect of a company is conclusive evidence that each subscriber wrote opposite his name the

number of shares he took. Voter List drawn up under the law is a conclusive evidence of one's right to vote.

23. Accordingly, the probative value of a certificate by attaching finality has not been introduced by the legislature nothing new or unknown. This is a well-recognised principle that a tenant cannot complain that the ordinary procedure laid down under the Act cannot be taken away by introduction of a chapter laying down a special and summary procedure in respect of certain specified cases. Under the Transfer of Property Act, there is no such protection against eviction as provided under the Act. But, on that ground it could not be said that a tenant, governed by the provisions of the Transfer of Property Act, has been discriminated by not extending the provisions of the West Bengal Premises Tenancy Act and giving equal protection, as enjoyed under the Act, to the persons governed under the Transfer of Property Act.

24. Under the provisions of the Transfer of Property Act there was no protection to the tenants even if after compliance with the provisions of Section 106 of the Act by issuing a notice to quit. But, the West Bengal Premises Tenancy Act provides the provision that before eviction not only notice to quit has to be served, the landlord-owner has to establish that he reasonably requires the premises for his own use and occupation and by introducing chapter VIA which overrides other provisions of the West Bengal Premises Tenancy Act, if a summary procedure has been laid down for evicting of a tenancy by adoption of a procedure, in that event it cannot be said that protection given to the tenant has been taken away as the legislature intended that in such a case the landlord requires a procedure which is simply and summary in order to cut-short the life of litigation. Issue of a Certificate has not interfered with by any substantive right. It is a procedural aspect of the matter and simplifying a procedure in some cases does not and cannot amount to a discrimination, when there is a reasonable basis of making such classification. The object of chapter VIA wherein Section 29B is incorporated is to confer a right on certain landlords to recover such a premises which are in occupation of their tenants on the ground that allottees of the Government should not be at the mercy of law's delay. The allottee in the circumstances has been afforded a quick and expeditious remedy against his own tenant. By given the chapter a over-riding power a tenant cannot complain that his right has been taken away. A statute may confer certain right, but at the same time the statute may negative or over-ride that right by giving over-riding effect on the ordinary provision of the enactment.

25. Further in view of reversal of the decision of K.M. Ganguly, J. (as His Lordship then was) in the case of *Ranjit Kumar v. Brig. Atindra Mohan Bhattacharjee* (supra) by the Supreme Court, the view taken by the learned trial Judge cannot be sustained. The said provisions which have been declared ultra vires by the learned Judge is declared not ultra vires nor arbitrary and it cannot be said that a tenant has a vested right to the procedure as the legislature has no right to lay down a different

procedure for different classes of landlords.

26. Accordingly, we are of the view that the learned Judge was wrong in declaring that a portion of Section 29B(2)(c) of the Act that "such certificate shall be conclusive evidence of the facts stated therein" is ultra vires. In our view, the same cannot be declared ultra vires to any of the provisions of the Constitution far-less the provisions of Article 14 of the Constitution. It has to be borne in mind that the legislature has conferred power to issue certificate on some Area Commander or Sub-area Commander, These officers are top and high ranking officers and it is well settled principle that when power is conferred upon the top and higher officials, in that event chance of abuse is less.

27. Accordingly, the appeal is allowed. The order of the learned trial Judge appealed against is quashed and set aside with the above observation. The writ application is dismissed.

There will be, however, no order as to costs.