

(1984) 07 CAL CK 0023

Calcutta High Court

Case No: C.R. No. 266 of 1983

Jyoti Bhusan Naha

APPELLANT

Vs

Archana Datta

RESPONDENT

Date of Decision: July 6, 1984

Acts Referred:

- Constitution of India, 1950 - Article 227
- West Bengal Premises Tenancy Act, 1956 - Section 13, 13(6), 29B

Citation: 88 CWN 933

Hon'ble Judges: Amitabha Datta, J

Bench: Single Bench

Advocate: Joy Gopal Ghosh, for the Appellant; Ajit Kumar Roy and Raj Kumar Gupta for the Opposite Party No. 1, for the Respondent

Final Decision: Dismissed

Judgement

Amitabha Dutta, J.

This is an application under Article 227 of the Constitution of India and it is directed against an order dated 12.11.1982 in case no. R.C. 66 of 1982 passed by the Rent Controller in the district of 24-Parganas by which the petitioner's application u/s 29B of the West Bengal Premises Tenancy Act, 1956 for recovery of possession of premises no. 51, Sitala Tala Street, Belghoria occupied by the opposite party as a monthly tenant, has been dismissed. The controller has dismissed the petitioner's application u/s 29B of the Act on two grounds, firstly, that the petitioner had already retired from Government service when he made the application and, secondly, because the petitioner is a part owner of the aforesaid premises occupied by the opposite party as monthly tenant.

2. The learned Advocate appearing for the petitioner has contended that the Controller has committed an error of law by dismissing the petitioner's application u/s 29B of the Act as both the grounds on which the Controller's decision is based,

are not tenable in law. In this connection, reliance has been placed on the decision of a learned single Judge of this Court in the case of Parimal Das Gupta Vs. Deb Kumar Sen Sarma, 1980(11) CHN 496 which has been affirmed by the Supreme Court in the reported decision in Anupama Sen Gupta Vs. Deb Kumar Sen Sarma, AIR 1982 SC 25.

3. The facts of the present case are that the petitioner was an employee of Government of West Bengal under the Directorate of Fire Services and was allotted staff family quarters at Budge where he was posted as a Station Officer, Budge Fire Station. He retired from Government service on 31.5.1982. He was to vacate the Government quarters after retirement. Prior to his retirement the petitioner served a notice on the opposite party on 4.12.1981 to quit and vacate the disputed premises as the petitioner required the same for his own use and occupation. After retirement, the petitioner was granted time to vacate the Government quarters, for six months by the Director of West Bengal Fire Services in his letter dated 20.7.1982. The petitioner made the application before the Controller u/s 29B of the Act on 8.6.1982, that is to say, about a week after his retirement.

4. On these facts, the main point that arises for decision is whether the Controller is right in holding that the petitioner's application is liable to be dismissed as he made the application after his retirement. In my view, the provisions of section 29B of the Act are quite clear on this point. In the case of a Government employee other than a member of the naval, military or air force of the Union of India, the applicant must be a Government employee in service when he makes the application. Chapter VIA of the Act was inserted to provide a special machinery for enabling an employee of the Central or State Government or any local authority, who being in occupation of any residential premises allotted to him by his employer was required 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, to recover possession or any premises on the ground specified in clause (ff) of sub-section (1) of section 13 of the Act. The new chapter appears to be a complete Code for that purpose. In the present case, as the petitioner had already retired when he made the purported application u/s 29B of the Act, the Controller, in my view, has rightly held that the petitioner was not competent to make such application.

5. It has been submitted on behalf of the petitioner that the petitioner had already served a notice u/s 13(6) of the Act as required by sub-section (7) of section 29B of the Act on the opposite party while the petitioner was still a Government employee and service of such notice being a part of the proceeding u/s 29B of the Act, the subsequent application before the Controller even after the retirement of the petitioner was maintainable as the proceeding should be deemed to have been started with the service of notice to quit on the opposite party. But in my view, this

submission is not well founded and cannot be accepted. It is not warranted by the provisions of section 29B of the Act to treat the date of service of notice under 13(6) of the Act to be the date of application before the Controller for recovery of possession of the premises in question from the tenant. The expression "any application by a landlord being a Government employee" in section 29B(1) of the Act makes it clear that at the time of the application, the landlord applicant not being a member of the armed forces of the union must be in Government service. A learned single Judge of this Court in the decision in the case of A.K. Sen Vs. S.N. Goswami, 87 CWN 956 has taken the same view and has brought out the distinction between the provisions of the West Bengal Act and the similar provisions of the Delhi Act. The learned Judge has held that the West Bengal Act requires the applicant to be a Government servant on the date of his application before the Controller. The Delhi Act does not require this. The decisions relied on by, the learned Advocate for the petitioner are of no assistance to the petitioner in this case, as in those decisions the point that mainly arose is whether a Government servant who made the application u/s 29B of the Act while he was in service, will be entitled to the benefit of the said section if he retires from service during the pendency of the proceeding and it has been held by the learned single Judge of this Court as well as by the Supreme Court that inspite of retirement of the Government servant during the pendency of the proceeding, he will be entitled to recover possession of the premises in question as his right which accrued when he made the application as a Government servant will not be defeated by such retirement.

6. I however do not agree with the view of the Controller, that a landlord in Government service will not be entitled to get the benefit of the provisions of section 29B of the Act if he is part owner or a co-owner of the premises in occupation of a tenant. This view is contrary to the aforesaid decision of the Supreme Court

7. In the result, I find that the present application under Article 227 of the Constitution of India cannot succeed. The application is therefore, dismissed and the Rule is discharged. It is however made clear that the petitioner will be entitled to pursue his remedy under the provisions of other Chapters of the West Bengal Premises Tenancy Act, 1956 by filing a suit in the Civil Court for recovery of possession of the disputed premises. There will be no order as to costs.

Let the records be sent down as early as possible.