(1998) 05 CAL CK 0017

Calcutta High Court

Case No: Appeal No. 2614 of 1997

Commissioner of Police		APPELLANT
	Vs	
Dwarika Prosad Gupta		RESPONDENT

Date of Decision: May 11, 1998

Acts Referred:

- West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947 - Section 10A, 10B

Citation: (1998) 2 CALLT 141

Hon'ble Judges: Samir Kumar Mookherjee, J; Nure Alam Chowdhury, J

Bench: Division Bench

Advocate: Alok Kumar Biswas and Mrs. Rekha Sarkar Ghosh, for the Appellant;S.B. Mukherjee and Mt. T.C. Dey, for the Respondent

Judgement

S.K. Mookherjee, J.

The present appeal is at the instance of Commissioner of Police, Calcutta and is directed against the judgment and order dated 17th June, 1997, passed by a learned single Judge, in writ petition No. 171 of 1997. The learned trial Judge by the said order disposed of the writ application, inter alia directing the present appellant to hand over vacant possession of the premises in question namely 4/H/1, Shew Prasad Street, Calcutta, within one week from the date of the order. The prayer of the writ petitioner/respondent No. 1, in the present for damages for wrongful occupation after the order of derequisition had, however, been left open and the said writ petitioner/respondent No. 1, had been given opportunity to claim such damages in a properly framed suit.

2. Undisputed facts are that the writ petitioner is the owner of the said premises which was requisitioned under the provisions of West Bengal Premises Requisition and Control (Temporary Provisions Act, 1947) (hereinafter referred to as the said Act) on the basis of the memo dated 7th November, 1970 of the first Land

Acquisition Collector, respondent No. 3 and possession thereof had been delivered on 9th of November, 1970, since then the premises has been utilised for providing accommodation to eight families of Police personnel of the Calcutta Police. Over payment of rent compensation and interest thereon, proceedings were initiated for arbitration and against the decisions therein, appeal before this court are pending. The Land Acquisition Collector, derequisitioned the premises by order No. 741-REQ dated 21.11.95 and directed the Secretary to the Government of West Bengal to make over possession on 5th January, 1996. Records reveal that similar direction was also issued by the then Commissioner of Police. Such direction for re-delivery of possession had to be repeated. Since possession was not delivered and correspondences from the side of the petitioner for the purpose of obtaining re-delivery of possession emphasising the expiry of 25 years which was the maximum period in terms of section 10B of the said Act, proved abortive, the petitioner was compelled to seek relief by way of handing over of vacant possession and payment of compensation through the writ application out of which the present appeal arises. On 20th May, 1997, the court, inter alia, passed on order directing the application to come up on 10th of June, 1997 and also directing the Commissioner of Police to be impleaded as a party to the application. The application thereafter appeared on 17th of June, 1997, when the order impugned in the appeal had been passed. The operation of the order, however, remained stayed in terms of the order of this court on the application preferred in connection with the present appeal with a direction for hearing of the appeal and the application together on the fixed date. We have heard out the appeal and the application.

3. It is pertinent to note at this stage that between the appearance of the application first before the learned trial Judge on 20th May, 1997 and disposal thereof on the 17th of June, 1997, no affidavit could be filed on behalf of the present appellant-no direction having been issued by the court to that effect. As annexures to the stay application before us on behalf of the appellant, a letter of the Commissioner of Police, addressed to the Home (Police Department) of the State Government, dated 10th of June, 1997, has been disclosed, embodying a proposal for acquisition of the premises in question, which had been claimed as ideal for serving the purpose, and the fact of non-availability of any suitable alternative accommodation, enclosing therewith also a site plan. Copies of the said letter were forwarded to the Deputy Secretary, Land and Land Reforms Department of the State Government as also to the First Land Acquisition Collector, Calcutta. In addition to the above, the appellant has also annexed judgments of the apex court as also of this court in justification of their contention that in similar cases opportunities had been granted to the Requiring Authority by such courts for acquiring the required premises or property through a proper proceeding for acquisition. On behalf of the appellant, it has been streneously submitted before us that since the application for writ had been disposed of at a very early stage and even before the expiry of the time fixed by the relevant rules of this court for filing of the affidavit-in-opposition, these materials

could not be disclosed and brought to the notice of the learned trial Judge for being properly considered. Lastly, it has been contended on behalf of the appellant that the order impugned in the appeal is not a speaking order.

4. On behalf of the contesting respondent No. 1, great emphasis has been laid on the mandate embodied in section 10B of the said Act and the injustice which the said respondent No. 1, has to suffer for failure of the requisitioning Authority to deliver back possession of the premises after expiry of the statutory period from the date of requisition.

5. On consideration of the two rival contentions and the provisions of the statutes in the context of the materials made available to us, purporting to indicate that the proposed acquisition proceeding can at best, be said to be at its embryonic stage and also raising doubt as to the availability of such procedure in the context of the present facts, particularly when section 10B is attracted, the claim of the respondents, prima facie, appears to be just and legal. We have purposely used the word ''prima facie'' as the appellant, as a respondent in the writ petition, cannot be said to have been given adequate opportunity of being heard after filing an affidavit by the learned trial Judge so as to hold that principles of procedural justice had been fully observed. The decisions of the apex court as also of this court, it can be said without fear of contradiction, on the first look, appear to lend relevance to them for consideration as to whether the appellant deserved to be given a fixed time for acquiring the premises in question. In this connection we would like to refer to the case of S.L. Kapoor Vs. Jagmohan and Others, , wherein the concept of ''open'' and ''shut'' cases had been introduced and it was observed as follows :-

"Megarry J. discussed the question in John v. Rees, (1970)1 Ch 345. He said (at p. 402) :

"It may be that there are some, who would decry the importance which the courts attach to the observance of the rules of natural justice. ''When something is obvious'', they may say, ''why force everybody to go through the tiresome waste of time involved in framing charges and giving an opportunity to be heard? The result is obvious from the start''. Those who take this view do not think, do themselves justice. As everybody, who has anything to do with the law, well knows the path of the law is strewn with examples of open and shut cases which, somehow, were not of unanswerable charges which, in the event, were completely answered; of inexplicable conduct, which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change. Nor are those with any knowledge of human nature who pause to think for a moment likely to underestimate the feelings of resentment of those who find that a decision against them has been made without their being afforded any opportunity to influence the course of events."

6. In Margarite Fuentes et al. v. Robert L. Shevin, (1972) 32 L Ed 2d 556, it was said (at p. 574) :

"But even assuming that the appellants had fallen behind in their instalment payments, and that they had no other valid defences", that is immaterial here. The right to be heard does not depend upon an advance showing that one will surely prevail at the hearing. "To one who protests against the taking of his property without due process of law, it is no answer to say that in this particular case due process of law would have led to the same result because he had no adequate defence upon the merits!"

7. In Chintapalli Agency Taluk Arrack Sales Cooperative Society Ltd. and Others Vs. Secretary (Food and Agriculture) Government of Andhra Pradesh and Others, there was a non-compliance with section 77(2) of the Co-operative Societies Act which provided that no order prejudicial to any person shall be passed unless such person had been given an opportunity of making his representation. The argument was that since the facts were clear the non-compliance did not matter. It was also said that the appellant had of his own motion made some representation in the matter. This court rejected the arguments observing (at pp. 567, 569-570) :

"It is submitted that the Government did not afford any opportunity to the appellant for making representation before it. The High Court rejected this plea on the ground that from a perusal of the voluntary applications filed by the appellant it was clear that the appellant had anyhow met with the points urged by the respondents in their revision petition before the Government. We are, however, unable to accept the view of the High Court as correct."

"As mentioned earlier in the judgment the Government did not give any notice communicating to the appellant about entertainment of the application in revision preferred by the respondents. Even though the appellant had filed some representations in respect of the matter, it would not absolve the Government from giving notice to the appellant to make the representation against the claim of the respondents. The minimal requirement u/s 77(2) is a notice informing the opponent about the application and affording him an opportunity to make his representation against whatever has been alleged in his petition. It is true that a personal hearing is not obligatory but the minimal requirement of the principles of natural justice which are ingrained in section 77(2) is that the party whose rights are going to be affected and against whom some allegations are made and some prejudicial orders are claimed should have a written notice of the proceedings from the authority disclosing grounds of complaint or other objection preferably by furnishing a copy of the petition on which action is contemplated in order that a proper and effective representation may be made. This minimal requirement can on no account be dispensed with by relying upon the principle of absence of prejudice or imputation of certain knowledge to the party against whom action is sought for.

It is admitted that no notice whatever had been given by the Government to the appellant. There is, therefore, clear violation of section 77 (2) which is a mandatory provision. We do not agree with the High Court that this provision can be by-passed by resort to delving into correspondence between the appellant and the Government. Such non-compliance with a mandatory provision gives rise to unnecessary litigation which must be avoided at all costs."

8. Applying the aforesaid principle, though apparently the language of sections 10A and 10B of the said Act may rule out necessity of affording an opportunity to the appellant or to the requiring Authority, in view of the ratio propounded by the apex court as above and also as because the order impugned in the appeal does not reflect as to what reasons weighed with the learned trial Judge or as to what to him would have been the relevance and affect of the decisions of the apex court and of this court if brought to the notice of the trial court by the appellant on an opportunity to file an affidavit-in-opposition and what would have been their binding effect in the facts of the present case. We also, as appeal court, are not in a position to perform our duties by adjudicating on the propriety of the decision of the learned trial Judge in the absence of the aforesaid materials. The above points can be said to raise arguable issues. Reference in this connection may be made to the case of Hindustan Times Ltd. v. Union of India (1998) III SCC 242. Accordingly, we propose to allow the appeal, set aside the order of the learned trial Judge and following the procedure approved by the apex court in the case of Rajasthan Rajya Salakari Bhoomi Bikash Bank Ltd. & another v. M.D. Omana(Ms) reported in 1997(II) SCC 635, we remit the matter back to the learned trial Judge for re-consideration according to law and/or on merit, keeping in view the observations of ours in the foregoing part of this judgment. It is needless to add that the learned trial Judge will make it convenient to expedite the disposal of the application as far as practicable so that the respondent No. 1, may be exposed to the least of unavoidable prejudice. There will be no order as to costs.

All parties to act a signed copy of the operative past of this Judgment and order on the usual

undertaking.

N.A. Chowdhury, J.

9. I agree.