

(1995) 12 CAL CK 0030

Calcutta High Court

Case No: Civil Order No. 15051 (W) of 1994

Lilabati Dutta

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Dec. 6, 1995

Acts Referred:

- Constitution of India, 1950 - Article 226
- West Bengal Government Premises (Tenancy Regulation) Act, 1976 - Section 2, 2(1), 3, 3(2)

Citation: 100 CWN 241 : (1997) 2 ILR (Cal) 215

Hon'ble Judges: Nikhil Nath Bhattacharjee, J

Bench: Single Bench

Advocate: Sunrit Deb, for the Appellant; B. Chowdhury and Srabanti Ghosh, Rameswar Bhattacharjee and Bibhas Chatterjee for Respondent No. 3, H.K. Saharay and Dipanwita Chowdhuri for State, for the Respondent

Judgement

Nikhil Nath Bhattacharjee, J.

The subject matter of this writ application filed under Article 226 of the Constitution of India is termination of a tenancy and dispossession in respect of a one-bed room flat No. A-7, L.I.G. Housing Estate, at 30A, Ram Krishna Samadhi Road, Beliaghata, Calcutta.

2. The Petitioner's case is that she is a tenant in the said Housing Estate since 1965 having been allotted with the flat by the Respondent No. 1, State of West Bengal. It has been stated that the Respondent No. 3, the Estate Manager, has been appointed and designated by the Respondent No. 1 to supervise the administration of the said Housing Estate. It is her case that she is in continued possession of the said flat by paying monthly rent since the allotment until August 12, 1993 when the Respondent No. 3 forcibly dispossessed her taking advantage of her temporary absence from the said flat, without notice. The manner of effecting dispossession as alleged in the

writ petition is that as she had been taken out by her son to a local doctor for her treatment, the Respondent No. 3 put a padlock on her padlock on the outer door of the said flat with a notice hung up on the said door being Annexure "D" to the writ application. It appears from the said Annexure that her tenancy was declared terminated with immediate effect on the ground of non-occupation u/s 3(2)(i) of the West Bengal Government Premises (Tenancy Regulation) Act, 1976. It has been stated that the writ Petitioner is a widow aged about 83 years living in the said flat with her son continuously since 1965 and that if she goes out she does so only for temporary periods and that all her furniture, utensils, bedding and other goods of daily use are kept in the said premises.

It is her case that after returning home and finding the padlock and the notice she met the Respondent No. 3, the Estate Manager and submitted repeated representations including an affidavit but to no avail. Even a joint representation submitted by as many as 37 co-tenants to the Estate Manager intimating that she had been living in this flat for a long time past as a regular tenant and that the publicity that was sought to be given that the flat was lying unoccupied was nothing but a myth, could not alter the position. The Estate Manager was unmoved and refused to deliver back possession of the flat to her.

3. The writ Petitioner has therefore prayed for issuance of a writ of Mandamus commanding the Respondents to deliver back to her possession of the said Flat together with all her belongings lying therein and to restore water connection for her use in the said flat forthwith.

4. Both Respondent No. 1, the State of West Bengal and the Respondent No. 3, the Estate Manager contest the writ application. Although affidavit-in-opposition has been filed by the Respondent No. 3, no separate opposition has been filed on behalf of the State. The case of the Respondent No. 3 is that the writ Petitioner was no doubt a recorded allottee of the said flat, but as per report of inspection and local enquiry as it was found that she had not been living and residing in the said flat since a pretty long time, she violated the terms and condition of the tenancy and on August 12, 1993, possession of the said flat was taken over along with the termination of the tenancy u/s 3(2)(i) of the West Bengal Government Premises (Tenancy Regulation) Act, 1976. It appears that not a scrap of paper, not even the report of inspection and local enquiry has been annexed to the opposition filed by the Respondent No. 3.

5. The question for consideration is how far the said termination is lawful and in the event the action of the Respondent No. 3 is found to be illegal, high-handed, discriminatory and devoid of natural justice, it is to be considered what relief she may be entitled to in the facts and circumstances of the present case.

6. It appears that along with the writ application, the Petitioner prayed for appointment of a Special Officer to take inspection of the said flat and of the

movables and belongings of the Petitioner lying therein and to submit a report to this Court as to the damages, if any, caused thereto since August 12, 1993. Pursuant to the prayer, Mr. Rajib Bose, a practising Advocate of this Court was appointed Special Officer. It appears from his report that furniture, utensils, kitchen articles and goods of daily use as enumerated therein belonging to her were in the said flat and that water connection to the flat was lying snapped. The Special Officer found that there were two padlocks on the outer door of the flat, one belonging to her and the other of the Respondent No. 3.

7. The West Bengal Government Premises (Tenancy Regulation) Act, 1976 does not appear to have been given any retrospective operation. However, the definition clause in Section 2(a) of the said Act defines Government premises which includes every premises which is owned by the State Government or by a Government undertaking excluding official residence of any person authorised to occupy in consideration of his office. Under this definition the disputed premises may be regarded as a Government premises.

8. u/s 2(1) of the said Act a tenant means any person by whom the rent is payable and includes in the event of such person's death, such of his heirs as were ordinarily residing with him at the time of his death.

9. Section 3 provides for termination of tenancy in respect of Government premises. It starts with the words that the tenancy may be terminated at the expiry of a period referred to in a notice to quit served upon such tenant in the prescribed manner.

10. u/s 3(2)(i) a tenancy in respect of Government premises shall stand automatically terminated without any notice to quit where the tenant has violated the terms of the lease. This is the provision by virtue of which the Estate Manager terminated the instant tenancy. It has been stated in the notice for termination being Annexure-D to the writ application that because of non-occupation of the tenancy the same was being terminated. It is to be seen, therefore, what non-occupation means and whether it amounts to violation of the terms of the lease. The Respondent authority has not produced the original lease deed containing the terms of the tenancy. However, a plain xerox copy of an article of agreement has been filed in Court by the learned Advocate appearing for the Respondent No. 3 alleging that this plain xerox copy is the standard term of lease in respect of Government premises. Under term (2) of the said form of agreement appearing at page 2 it appears that the tenant shall occupy the said flat during the subsistence of this agreement and the tenant shall use the said flat for the residence of the tenant himself/herself and of the members of his/her family only. From the documents submitted by the writ Petitioner it appears that she has been in continuous possession of this flat since 1965. Her ration card bears this address. Calcutta Electric Supply Corporation bills in respect of this flat have been regularly paid. All other documents also point out that she is in occupation of this flat. In her repeated representations including an affidavit sworn by her, she repeatedly asserted that she had been in continuous

occupation of this flat. There is no denial that she has duly paying rent all along in respect of this flat. Her 37 co-tenants by a joint petition addressed to the Estate Manager stated that she had been in occupation of this flat continuously since the allotment and that during her temporary absence her son lives in this flat. Although in the affidavit-in-opposition it has been stated that as per report of inspection and local enquiry as it was found that she was not living in the said flat for a pretty long time, the tenancy was terminated. Not a scrap of paper has, however, been filed along with the opposition. No report of inspection or local enquiry is forthcoming. In such circumstances the plea that because of non-occupation she violated the terms of the agreement is nothing but a myth. Special Officer's report that all the furniture, personal belongings, kitchen articles and other articles of every day use belonging to the writ Petitioner were found in the flat which are indicative of the fact that the writ Petitioner was in occupation of the flat at least on the date the tenancy was terminated. Along with the writ petition a doctor's prescription is annexed showing that on the date of the dispossession the writ Petitioner consulted a medical practitioner. It is her case that taking advantage of her temporary absence the Estate Manager in most high-handed manner terminated the tenancy and dispossessed her by putting a padlock on the outer door of the flat thereby preventing her from entering into the flat. There is amply borne out by the materials on record.

11. From the wordings of Section 3 relating to termination of tenancy it is clear that every termination must precede a notice to quit and on the failure of the tenant to comply with the notice, the authority may have the right to enter into the premises for the purpose of taking over possession. But in this case, admittedly, no notice to quit was served and instead when the tenant who was in possession was absent temporarily the Estate Manager hung up a notice on the outer door declaring the tenancy to have been terminated by him and put a padlock on the door in order to prevent the tenant from entering into the premises. Clearly all norms, terms of the lease, statutory provision and even humanitarian considerations were thrown to the wind by the Respondent No. 3 in declaring termination and simultaneously dispossessing her from the said flat. Words fail to denounce such arbitrary and high-handed action on the part of the Estate Manager. The manner in which the termination and dispossession took place in the instant case reminds me of the autocratic actions used to be taken by the Zaminders of the 17th or 18th Century Bengal, unheard of in the modern days when every state action must be visited with the rule, of law.

12. The learned Advocate for the Respondent No. 3 has, however, relied on a decision of [State of West Bengal and Another Vs. Saral Kumar Sen Gupta and Another](#), wherein the agreement of the tenancy stipulated that the premises could be used by the tenant-employee exclusively for the purpose of his residence and not for the members of his family if he resides elsewhere. But when the tenant-employee shifted to reside elsewhere no member of his family could occupy

the said premises in violation of the condition of the tenancy agreement and thereby terms of the tenancy was violated. But in this case the facts and circumstances are different and the decision has no manner of application.

13. Upon considering the facts, circumstances and materials on records I am of the view that there was no earthly reason for the Respondent No. 3 to take such drastic action, particularly when the tenant is an old widow of 83 years" age. The writ petition succeeds. The impugned order/notice of termination of the tenancy stands set aside and quashed.

14. Let a writ of Mandamus be issued directing the Respondents to deliver possession of the flat to the writ Petitioner within seven days from this date. The water connection to the said flat be also restored forthwith. The Learned Special Officer shall supervise restoration of possession and of water connection. He shall get a further remuneration of 50 Gms. to be paid by the Respondent No. 3 personally. Compensatory justice demands and I order that an exemplary cost of 500 Gms. shall be paid to the writ Petitioner by the Respondent No. 3 personally within a period of two weeks from to date. If the cost is not paid by the said date by the Respondent No. 3, Respondent No. 1 shall pay the amount within the next two weeks and realise the same from the salary bills of Respondent No. 3 by suitable instalments. It is also to be considered by the Respondent No. 1 whether Respondent No. 3 is worthy of being retained in any responsible position besides further action as may be deemed fit and proper.

15. Registrar (Appellate Side) of this Court shall forward a copy of this judgment to the Chief Secretary, Government of West Bengal by name for information, compliance and further action, if any.