(1959) 02 CAL CK 0018

Calcutta High Court

Case No: Civil Revision Case No. 1535 of 1956

Probodh Chandra Dutt		APPELLANT
	Vs	
State of West Bengal and Others		RESPONDENT

Date of Decision: Feb. 20, 1959

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: 63 CWN 561

Hon'ble Judges: P.B. Mukharji, J

Bench: Single Bench

Advocate: Anil Kumar Sinha and Somendra Chandra Bose, for the Appellant;J. Majumdar and S. K. Roy Choudhury, for the Respondent

Judgement

P.B. Mukharji, J.

This is an extra-ordinary case The petitioner, Probodh Chandra Dutt, filed a title suit, being Title Suit No. 4 of 1953, in the Munsiff"s Court at Bongaon for a declaration of title and for possession of a small piece of land measuring about 15 feet X 15 feet only. It is less than a cotta of land, being the only passage leading to the petitioner"s dwelling house. The suit was for the removal of temporary tin sheds wrongfully raised by three defendants, Dulai Sinha, Nandalal Paul and Bejoy Kumar Sirkar, who are all respondents to this application. The value of this land does not exceed more than Rs. 75 only. On the 27th July, 1954, the suit was decreed in favour of the petitioner with costs The decree provided for the declaration of the plaintiff"s title to the land and for khas possession by eviction of the defendants and removal of the structures. For the last five years, the petitioner decree-holder has not been successful in getting possession of this land. The present application was made under Article 226 of the Constitution for a writ of certiorari against the order of the learned Munsif, the nature of which I shall presently describe.

2. As the petitioner could not execute the decree for recovery of possession, he applied for police help and was prepared to pay reasonable police charges. By an order passed by the Munsif on the 27th/28th February, 1956, the petitioner was required to deposit the exhorbitant sum of Rs. 7641/as costs for such police help. It is against this order that the petitioner has come up before the Court for a; constitutional writ to quash it. He naturally says that this is denial of bare justice to him. Indeed, I have not come across a more glaring case. If a citizen of this Republic who has obtained his decree from the lawfully constituted Courts of this country has got to deposit for police costs the sum of Rs. 7641 - for the recovery of a small area of land hardly measuring 15 feet X 15 feet and not worth more than Rs. 75- to vindicate and execute his decree then I am afraid all judicial processes, judicial pronouncements and decrees are in grave danger and the whole Government and administration are in jeopardy.

3. Startling facts are revealed in the almost pathetic letter written by the Munsiff to the District Judge of 24-Parganas dated the 27th January, 1966:

The trouble which arises in the case is that a Kalibari is reported to have been constructed on the said land and some people of the neighbourhood offer pujahs there. Moreover, Judgment-debtor No. 3 happens to be an M.L.A. of this place. The decree-holder is pressing for possession but this Court finds itself helpless in the matter of rendering him possession in the circumstances.

4. The Superintendent of Police, 24 Parganas, by his Memo. No. 2425, dated the 23rd February, 1956, made a report stating that a sum of Rs. 7641- would be necessary, covering a huge police force with three Inspectors, six Sub-Inspectors, one Head Constable, twenty four N.C.O.S. and one hundred and forty four Constables with their allowances.

5. I am satisfied that in this case this demand by the police and this order of the learned Munsiff requiring the decree-holder petitioner to deposit this enormous and exorbitant police charge are misconceived and illegal and must be set aside. Apart from the shocking enormity of the demand, it proceeds on basic misconceptions both on merits and technicality. Rule 261 of the Civil Rules and Orders have not been followed in this case. Before the Superintendent of Police is required to assess the costs, the requisition for police help must state the need for such aid, the number and rank of men required and the nature of the process and the place where it is to be executed. That has not been done in this case. Now, in doing so, it must be emphasised that a decree-holder should not be called upon to individually pay for maintenance of general law and order in the locality. He has to pay only for that special police help which he needs for executing the particular decree for possession of his particular land. In fact, Rule 261(1) of the Civil Rules and Orders makes it quite clear that :

.....Police help is to be regarded as an extreme step and it should not be recommended unless the Court is fully convinced of the existence of a grave emergency.

6. Ordinarily, a decree-holder would not need any police help. The judicial process through the bailiff or the Sheriff and the machinery of execution would be enough. Police help is to be given under this Rule to a decree holder on the ground that there exists a grave emergency. This does not mean that the presence of "grave emergency" as a ground for police help should be converted also into a ground for levying upon that decree-holder the entire general charges for maintenance of law and order in that disturbed locality where the decree is intended to be executed. The occasion of "grave emergency" for police help is not an excuse for farming all the charges for general law and order in such emergency upon the head of the individual decree-holder. In this respect, the amended Original Side Rules 14A and 14E under Chapter XVII are more intelligibly and sensibly framed than Rule 261 of the Civil Rules and Orders. Under Rule 14A, a decree-holder praying for police help has to state whether such help is required either (i) because of apprehension of violence or obstruction from the judgment debtor himself or (ii) because of conditions of a general character such as the locality where execution will have to be levied being in a disturbed state or a class of people similarly situated being likely to make a common cause with the judgment-debtor and resist execution.

7. This division into two classes is rational and sensible. Rule 14E of the Original Side Rules of Chapter 17, thereupon goes on to provide that in cases where such police help is required because of apprehension of violence or obstruction from the judgment-debtor himself, the decree-holder shall deposit with the Registrar the fees prescribed for the same. The Rules on the Original Side do not require police charges to be paid by the decree-holder because conditions of a general character in the place of execution are in a disturbed state or because a class of people makes common cause with the judgment-debtor to resist execution, but in spite of linguistic and textual difference I do not think that Rule 261 of the Civil Rules and Orders was intended to lay down any different principle on this point, although it could certainly have been framed more clearly. In the latter class of cases, it is obvious that the general duty of the police to maintain law and order and peace comes into operation and for that individual fees from the decree-holder cannot be charged. That is why the police exists and that is why it is paid for from the public revenue. It is only the special help that a decree-holder needs for executing his decree for which he can be called up to pay police charges. In this case, the general duty of the police to maintain law and order must not be confused with the particular obligation of an individual decree-holder to pay for special police charges, special only to him.

8. I therefore, think that both the order of the Munsiff dated the 27th 28th February, 1956 requiring the petitioner to deposit Rs. 7641 as well as the estimate of the Superintendent of Police for the sum of Rs. 7641 proceed on an entirely wrong and illegal basis. They confuse the general obligation of the police to maintain law and order in any area with the particular obligation of a decree-holder to pay for any individual police attention that he needs to help in the execution.

9. I, therefore, set aside and quash the order of the learned Munsiff dated the 27th 128th February, 1956 requiring the petitioner to deposit the sum of Rs. 7641 as costs of police help and also the estimate made by the Superintendent of Police. I direct that in the light of the law, indicating the difference between general charges and individual charges, the Munsiff and the Superintendent of Police will proceed according to law to make a fair assessment.

10. This is so far as the legal aspect of the question is concerned. Common sense and common fairness demand that no decree-holder should he called upon to pay so exorbitant and absurd a sum like Rs. 76411- for execution of his decree for possession of a tiny area of land measuring 15 feet X 15 feet and costing not more than Rs. 75/-. The enormity of the sum is itself its own condemnation.

11. I, therefore, make the Rule for certiorari absolute, and quash the order of the learned Munsiff based on the estimate of the police. 1 further order and direct the Munsiff to proceed to render all assistance of the Court to the decree-holder in enabling him to execute his decree which is pending before him and which execution proceedings were kept pending by an interim order granted by the Rule Nisi. There will be no order as to costs.