

**(1985) 11 CAL CK 0008**

**Calcutta High Court**

**Case No:** Original Order Tender No. 3395 of 1985

Dipali Ghosh (Nee Routh)

APPELLANT

Vs

The State and Others

RESPONDENT

**Date of Decision:** Nov. 28, 1985

**Acts Referred:**

- West Bengal Government Premises (Tenancy Regulation) Act, 1976 - Section 3, 3(1), 4

**Citation:** 90 CWN 349

**Hon'ble Judges:** S.K. Mookerjee, J; A.K. Sen, J

**Bench:** Division Bench

**Advocate:** P.K. Roy, for the Appellant; A.B. Chatterjee, for the Respondent

### **Judgement**

Anil K. Sen, J.

The petitioner in this stay application having preferred an appeal against an order dated September 11, 1985, passed by a learned single Judge of this court dismissing her writ petition, has prayed for stay of operation of the order appealed against. Since, in our opinion, it would not be just and proper to keep the appeal pending and at the same time grant the stay prayed for, we have heard out the appeal and the application together dispensing with all the other formalities since the material respondent, namely, the State of West Bengal and the appellant are both appearing before us. The writ petition is directed against an order for recovery of possession passed by the competent authority in exercise of his powers under the West Bengal Government Premises (Tenancy Regulation) Act, 1976. That order was communicated to the appellant by the letter dated September 2, 1985. That was an order for recovery of possession of the Government premises on termination of a tenancy in favour of the appellant.

2. The facts as they appear from the records of the proceedings under the West Bengal Government Premises (Tenancy Regulation) Act, 1976, produced by the counsel for the State, cannot be disputed. Such facts may be set out shortly as

follows.

3. The appellant was admittedly a tenant in respect of flat No. L/1/15, Government Housing Estate, Tangra. She was such a tenant since the year 1969. There was a complaint lodged with the State Government that the lessee is not residing in the flat so let out to her for a long time and had kept it under lock and key. On that complaint an enquiry was acted to be made and the enquiry report shows that the lessee was found for a long time to have kept the flat under lock and key as she had been residing at her sister's flat at Bally-gung. This enquiry report was made prior to May 30, 1985, as the minutes of the proceedings indicate that some one on the basis of the said report directed the flat to be put under lock and key by the care-taker and that direction was given on May 30, 1985. There was a further direction given on May 30, 1985, to issue the necessary notice contemplating notice u/s 3 of the West Bengal Government Premises (Tenancy Regulation) Act, 1976. It is a notice terminating the tenancy the consequence whereof is that the lessee must restore vacant possession of the Government premises to the authority prescribed under the statute and failing therein, such" authority would be entitled to take forcible possession of the premises in respect of which the tenancy had been determined. That is section 4 of the Act.

4. It is, however, not disputed that the notice of termination of the tenancy in terms of section 3 was issued to the lessee on May 31, 1985. This notice was addressed to the lessee at her address at the disputed flat at the Tangra Housing Estate although the records clearly indicate that the authorities knew very well that the said flat was lying under lock and key and the lessee was residing in her sister's flat at Ballygunge. This notice was served by the process server on June 3, 1985, and the process server's report indicates that when he found the flat under lock and key, he served the notice by affixation. Acting on such service of the notice the statutory authority had proceeded to take possession of the flat. Still unfortunately the records indicate that he took possession even prior thereto when on May 30, 1985 he directed the care-taker to put a lock on the entrance to the flat which is clearly unsustainable under the provisions of the Act Itself.

5. Be that as it may, the only point, which arises for our consideration is as to whether the statutory authority was acting within its jurisdiction and in accordance with the provisions of the statute when he took possession of the disputed flat in the manner indicated hereinbefore. The provision of the statute is very stringent so far as the lessee is concerned. Section 3(1) provides that the lease can be terminated upon service of a notice and on expiry of the period referred to in the notice to quit. The only safeguard and the only protection for the lessee is service of the notice. Such service is to be effected in the manner prescribed and the manner prescribed is undisputedly by delivering a copy of the notice to the lessee personally or, in his absence, to any adult member of his family residing with him and failing in either when the lessee or the adult member cannot be found during service by affixing a

copy in some conspicuous part of the Government premises. In our reading of this prescription of the manner of service, the law requires that there should be personal service, either on the lessee or on any adult member of his family. Such implication clearly follows from the fact that section 4 of the Act imposes a personal obligation on the lessee who has been served with such a notice. Moreover, service of such a notice is the only and minimum safeguard for the lessee. Hence, in our view, any mechanical process adopted for effecting such service, would not be valid compliance with the requirement of law. Now in the present case it was well known to the State and its authorities that the lessee was not residing at the disputed flat and for a long time. It is not the case of the State and the authorities that they did not know the whereabouts of the lessee. We have referred to the enquiry report to show that the State and its authorities knew full well that the lessee was residing with her sister at her sister's flat in Ballygunge. In the impugned communication dated September 2, 1985, we find the address at No. 13, Broad Street. That being the position, issuance of the notice at an address where the lessee was known to be not residing and then affixing the same on the outer door of that flat, is not, in our opinion, due compliance with the requirement of service in the prescribed manner. The prescribed manner enjoins that there must be an honest effort to serve the lessee personally. The other alternative comes only where the personal service is not possible due to circumstances not within the control of the authorities. Therefore, we are clearly of the opinion that there being no valid service of notice of termination in the present case, the entire proceeding based on such service is beyond the jurisdiction of the authority under the statute who made the order. The learned trial Judge completely overlooked this aspect of the matter when he summarily dismissed the writ petition. Accordingly, we allow the appeal, set aside the order impugned in the appeal, allow the writ petition and set aside the order for possession made under the provisions of the West Bengal Government Premises (Tenancy Regulation) Act, 1976, as communicated by the impugned notice dated September 2, 1985 and direct the State and its authorities to restore the lessee to her possession. The State and its authorities under the statute would however, be at liberty to start a fresh proceeding in accordance with law for recovery of possession under the provisions of the said Act.

The appeal and the application are disposed of as above.

S.K. Mookerjee, J.

I agree.