Tarakeshwar Prasad Singh and Another Vs United Bank of India and Others

Court: Calcutta High Court

Date of Decision: March 2, 1994

Acts Referred: Companies Act, 1956 â€" Section 446
Specific Relief Act, 1963 â€" Section 9
State Financial Corporations Act, 1951 â€" Section 31(1)(a)(c)
West Bengal Land Reforms Act, 1955 â€" Section 3A

Citation: 98 CWN 736

Hon'ble Judges: Nikhil Nath Bhattacharjee, J; Mukul Gopal Mukherji, J

Bench: Division Bench

Advocate: B.K. Bachawat with Anindya Mitra, Sakti Nath Mukherjee, P. Nath and R.N. Chatterjee, for the Appellant;S.B. Mukherjee with Jayanta Mitra and Pratap Chatterjee for the Purchaser, A.C. Kar for the Official Liquidator, H.K. Mitter with T.K. Basu for the Respondent No. 1, for the Respondent

Final Decision: Allowed

Judgement

Mukul Gopal Mukherji, J.
This appeal is directed against a judgment and order dated September 6, 1991 passed by a Single Judge of this

Court in Matter No. T.C. 2 of 1966 whereby the said learned Judge in a proceeding in the nature of pro-interesse-suo taken out by the applicant

Tarkeshwar Prasad Singh and Saharsa Steel Alloy Ltd., who are not the parties to the suit being Suit No. T.C. 2 of 1966, rejected the said

application calling for intervention on the ground inter alia that they were severely prejudiced by the order passed in the suit. In the present

proceeding the said applicants specifically asked for setting aside of the orders dated August 4, 1987 and August 29, 1990. The appellants who

were the applicants before the learned Single Judge alleged that by virtue of a court sale in Execution Case No. 1 of 1969 confirmed by the

Dumka Court, Sri Tarakeshwar Prasad Singh as Chairman of the Board of Directors of Sahara Steel Alloy Ltd. bought 5.30 acres of land at

Baidyabati belonging to Sri Hanuman Foundries Ltd. Hanuman Foundries Ltd. granted a lease of 5.36 acres of land at Baidyabati as well as plants

and machinery therein to Baidyanath Iron & Steel Company Ltd. for a period of 30 years commencing on and from August 1959. The lease,

however, expired on 31st July, 1989. On 29.9.1958 Bihar State Financial Corporation granted a loan of Rs. 10,00,000/- to Sri Baidyanath Iron

& Steel Co. Ltd. To secure the repayment of the said loan Sri Baidyanath Iron & Steel Co. Ltd., hereinafter referred to for the sake of brevity as

Baidyanath executed a mortgage in favour of Bihar State Financial Corporation in respect of the Foundry at Jasidih including land, machinery,

equipments, tools and all other assets to be acquired by Baidyanath with the said loan.

2. On 24.8.59 Sri Hanuman Foundries Ltd. herinafter referred to for the sake of brevity as ''Hanuman'' granted a lease for 30 years commencing

from 1.8.59 of 5.36 acres of land being a part of its factory premises of about 21.65 acres at Baidyabati together with plants and machinery threat

to Baidyanath Iron & Steel Co. Ltd. at a rental of Rs. 2,000/- per month.

3. On 24.9.59 Hanuman mortgaged its land at Baidyabati in favour of United Bank of India by deposit of its title deeds. On 10.1.61 a

supplementary deed of mortgage was ''executed by Baidyanath in favour of Bihar State Financial Corporation in respect of its leasehold interest at

Baidyabati factory of Hanuman. All terms and conditions of the first mortgage of 29.9.58 were incorporated in the deed by reference. On 2.11.64

a special resolution was passed by the Board of Directors of Hanuman for sale of its entire assets including land and building at Baidyabati to

Baidyanath for Rs. 8,00,000/-. On 22.6.65 Bihar State Financial Corporation initiated proceeding against Baidyanath u/s 31(1)(a)(c) of the State

Financial Corporation Act, 1951 before the Additional District Judge, Dimka, being Misc. Case No. 20 of 1965. On 7.9.65,- United Bank of

India instituted a mortgage suit against Hanuman in Howrah Court being suit No. 64 of 1965. On 7.6.66 Baidyanath was directed to be wound up

by this Hon''ble Court in Company Petition No. 169 of 1965 and order was passed on 21.6.66 directing the winding up of Hanuman and on

5.9.66 an order was passed by the Hon''ble Court granting leave to Bihar State Financial Corporation u/s 446 of the Companies Act, 1956 to

continue with the legal proceedings against Baidyanath. On 11.11.68 an order was passed directing the sale of assets of Baidyanath in Misc. Case

No. 20 of 1965 of Dumka Court. On 22.7.69, Mr. N.C. Shah and Mr. R.N. Jhunjhunwalla were appinted Joint Receivers to implement the order

of the Additional District Judge, Dumka dated November 11, 1968. On 17.3.70, Notification of sale was issued in various newspapers by the

Joint Receivers for sale of assets of Baidyanath. On 18.4.71, sale notification was published by Joint Receivers in newspapers. On 7.1.72,

Saharsa Steel Alloy Ltd.''s bid for Rs. 16,55,000/- for purchase of the assets of Baidyanath was accepted and by an order in the said Misc. Case

No. 20 of 1965 sale was effected in favour of Saharsa Steel Alloy Ltd. which was confirmed by the Dumka Court. On 18.1.72, ownership

certificate was issued by Bihar State Financial Corporation in favour of Saharsa Steel Alloy Ltd. On 30.9.72, a letter from Official Liquidator was

sent to Tarakeshwar Prasad Singh that the Official Liquidator understood from the Certificate Officer, Deoghar that he purchased the assets of

Baidyanath and he was asked to direct release of the properties. On 10.10.72, Sri Tarakeswar Prasad Singh wrote a letter to Official Liquidator

confirming purchase of the properties of Baidyanath. On 1.3.74 certificate of sale was issued by the District Judge, Dumka in favour of

Tarakeshwar Prasad Singh as the Chairman of the Board of Directors of Saharsa Steel Alloy Ltd. (Appellant No. 2) which included 5.36 acres of

land with building and structures at Baidyabati. On 21.5.74, the District Judge of Dumka ordered delivery of possession of the properties at Jasidih

and Baidyabati to Tarakeshwar Prasad Singh as the Chairman of the Board of Directors of Saharsa Steel Alloy Ltd. On 26.6.74, United Bank of

India being aware of the possession of Saharsa Steel Alloy Ltd. wrote a letter to the Joint Receivers requesting them to stay their hands in giving

possession of the Baidyabati property to Tarakeshwar Prasad Singh. On 28.6.74, the Joint Receivers delivered possession of Baidyabati factory

premises to Tarakeshwar Prasad Singh and Saharsa Steel Alloy Ltd. together with plant and machineries, land and building and all other assets.

On 29.6.74, a letter was issued from the Joint Receivers to the Advocates of United Bank of India informing them that they had already handed

over possession of the factory at Baidyabai with all its plant and machinery, land and building and all other assets to Saharsa Steel Alloy Ltd. On

1.8.74, an order was passed by the District Judge, Dumka recording that a letter was received from Joint Receivers stating that delivery of

possession of the factories including buildings, plant and machinery and other assets and properties lying and situated at Jasidih and Baidyabati had

been delivered to the representative of Tarakeshwar Prasad Singh on 28.6.74. On 9.9.80, the rights and interests of non-agricultural tenants and

under tenants, according to the present appellants, vested in the State of West Bengal and the appellants thus came to be direct tenants under the

State of West Bengal in respect of Baidyabati factory u/s 3A of the West Bengal Land Reforms Act.

4. It is alleged by the appellants that during the years 1980-85 the Revisional Settlement Survey operations were undertaken by the State

Government and the name of Tarakeshwar Prasad Singh was entered into the record of rights and his name was mutated for the entire Baidyabati

land of 21.65 acres and rent was paid by him on behalf of Saharsa Steel Alloy Ltd. to the State of West Bengal ever since. It is the further

convention of the appellants that on July 30, 1987 on the application of the defendant Directors, a learned Single Judge of this Court passed an

order by which the amount lying with Receiver was directed to be adjusted against United Bank of India''s dues and the balance at Rs. 4,02,000/-

was directed to be paid. On August 27, 1987 an order was passed by the learned Single Judge on the said application of the defendant Directors

in United Bank of India''s suit modifying the decree dated 4.8.87. On July 31, 1989 it is contended that the terms of the lease dated 24th August,

1959 expired. On April 26, 1990 Sri Gour Roychowdhury, who was appointed as Receiver in the suit filed by United Bank of India visited the

Baidyabati factory premises. It is further contended that the decree in favour of United Bank of India is said to be for a sum of Rs. 4.02 lakhs. On

April 27, 1990 the appellants gave an offer for taking and transferring the decree on payment of Rs. 4.02 lakhs in lumpsum to United Bank of

India. On August 29, 1990 an order was passed by the learned Single Judge in the said application of the defendant Directors, in the suit filed by

United Bank of India confirming the sale in favour of Nani Gopal Paul and others at a price of Rs. 60,00,000/- and giving further directions on the

Receiver. On August 30, 1990 a group of persons visited the factory at Baidyabati. On September 6, 1990 an application pro interesee suo was

taken out by the present appellants before the Trial Court. An order was passed directing maintenance of status quo. On September 11, 1990, on

the returnable date of the said application, directions were given for filing of affidavits and the ad interim order was modified. That application came

up for hearing before another learned Single Judge of this Hon''ble Court who by an order dated September 6, 1991 dismissed the said application

holding inter alia that the applicants have no locus standi to bring the instant application on grounds inter alia that the lease expired on 31st July,

1989. It was further found by the learned Single Judge that the purchaser has encroached upon 16.35 acres adjoining to the leasehold land. If the

purchaser had merely stepped into the shoes to Baidyanath (debtor) who were the lessees of Hanuman Foundries Ltd. under the lease dated 24th

August. 1959, which was for a period of 30 years only and the lease having expired on 31st July, 1989, the applicants have no locus standi in the

case.

5. The contention of the appellants is that they could not be dispossessed except by due process of law. The said contention was negatived by the

learned Single Judge on the ground inter alia that the purchaser cannot claim a better title than the transferor and since Baidyanath had a leasehold

interest in the Baidyabati properties which expired on 31st Jury, 1989 and Tarakeshwar Prasad Singh and Saharsa Steel Alloy Ltd. stepped into

the shoes of Baidyanath, they could not be heard to say that they have a better claim to the property then Baidyanath. Quoting the Supreme Court

decision in Burmah Shell Oil Distributing now known as Bharat Petroleum Corporation Ltd. Vs. Khaja Midhat Noor and Others, the learned

Single Judge held that Baidyanath during the subsistence of the lease could not resist the execution of the drcree obtained against the Hanuman

Foundries Ltd. on the ground that no valid notice to quit was served upon it and it was not impleaded as a sub-lessee. It does not stand to reason

that if the lease expired, the sub-lessee would be on a stronger ground. The learned Trial Judge overruled the contention altogether about the

appellants'' right to hold over and held that since a Receiver is in formal possession of the property, the appellants ceased to have any interest

therein after 31st July, 1989 and they were merely unauthorised occupants. The purchaser, N.G. Pal having purchased the entire assets of

Hanuman in a sale effected by the Receiver appointed by the High Court in T.C. Suit No. 2 of 1966 and for a sum of Rs. 60,00,000/- and such

sale having been confirmed on 29.8.90, the leasehold right of Baidyanath in respect of 5.36 acres of land, plant and machinery which was

purchased by the appellants had already came to an end by virtue of the fact that the lease expired by efflux of time. There was no case of adverse

possession made out by the appellants since they have held the land under the lease which expired by efflux of time on 31st July, 1989. In so far as

the other portion of 21 acres of land is concerned, which was beyoned the lease, wrongly taken possession of by the appellants, the appellants

have not made out any case in the petition that they were in possession of any portion thereof for the last 12 years openly and adversely to the

owners thereof. Such a case of adverse possession in respect of 21 acres of land is not justified by the averments made in the petition.

6. It was contended before us in the first place that the Compny Court was the proper Court of appropriate jurisdiction to try and dispose of the

suit against a company in liquidation namely Hanuman Foundries Ltd. in the suit brought by United Bank of India. The learned Single Judge Ajit

Kumar Sengupta, J. had no determination to hear out such a suit and he was without any jurisdiction in passing the decree without being conferred

with any appropriate jurisdiction in this regard and as such the decree and the orders impugned as passed by His Lordship, are void. The

appellants cited in this context the decision in Sohanlal vs. State reported in AIR 1990 Calcutta 168 and the decision in Re: In Re: The Steel

Construction Company, Ltd. and brought to our notice Rule 118(3), Companies (Court) Rules 1959.

7. It was held in Sohan Lal Baid vs. State of West Bengal and Ors. (ibid) that the power and jurisdiction to take cognizance of and to hear

specified categories or classes of cases and to adjudicate and exercise any judicial power in respect of them is derived only from the determination

made by the Chief Justice in exercise of his constitutional statutory and inherent powers and from no other source and any case which is not

covered by such determination can be entertained, dealt with or decided by the Judges sitting singly or in Division Court till such determination

remains operating. Till any determination made by the Chief Justice lasts, no Judge who sits singly or in a Division Bench can take up any other

kind of judicial business. Even cases which are required to be heard only by a particular single Judge or Division Bench such as partheard matters,

review cases etc. cannot be heard, unless the Judge concerned is sitting singly or the Division Bench had assembled and has been taking up judicial

business under the extent determination. Such reconstitution of Benches can take place only if the Chief Justice specially determines such

reconstitution accordingly. The cardinal position is that before jurisdiction over the subject matter is exercised, the case must be legally brought

before the concerned Court for its hearing and determination and that a judgment pronounced by a Court without investment of jurisdiction is void.

It was further held in that case that where by a notification it was determined by the Chief Justice that on the day in question, the Judge in question

would sit singly and take partheard and contempt matters and the Judge took up an application in writ petition in respect of which there was no

direction in the order-sheet that the case was to be treated as a partheard, the Judge cannot have entertained the application and determined the

subject matter in controversy between the parties and passed judicial order granting relief in any form in the said proceeding.

8. In the matter of the Steel Construction Company Ltd. reported in 39 CWN 1259 it was held that the general practice on the Original Side is

that all matters appertaining to companies, dealt with by the Judge to whom company business has been assigned, it is the law that only that Judge

to whom company business has been asssigned has jurisdiction to deal with company matters. An order made by a Judge which has been drawn

up but-not completed or filed is an order which has not been perfected and may properly be reconstituted by the Judge and if necessary, recalled.

9. The appellants further averred that there was no application for execution of the decree, no tabular statement and no certified copy of the decree

filed which are pre-requisites for execution proceeding and in spete of these Mr. Justice ajit Kumar Sengupta directed the Receiver to sell out the

property covered by the mortgage and the Receiver sold the Baidyabati property on ""as is where is"" basis and the sale was confirmed and the

Receiver was empowered to take police help. All these are contrary to the Rules and practice relating to execution and that too without any notice

to the appellants whose property in possession was affected to the knowledge of the Official Liquidator and some of the parties to the proceedings

before Ajit Kumar Sengupta, J. The appellants cited in this context Chapter 17 Rules 10, 13, 14, of the High Court Original Side Rules and Order

21 Rules 10, 11, 22, 35, 36 of the CPC and cited before us the decision in Satyendra Nath Bose Vs. Bibhuti Bhusan Bhar and Others,

10. It was further averred that the appellants were owners of the Baidyabati property by virtue of their purchase in Dumka Court sale where

Official, Liquidator was a party. The appellants purchased the right, title and interest of Sri Baidyanath Iron & Steel Co. Ltd. also in liquidation.

Baidyanath took 5.36 acres of non-agricultural land with factory structures on lease from Hanuman for 30 years from 1959 td 1989. Baidyanath

first encroached upon the adjoining lands and occupied 21.65 acres of Hanuman''s lands and thereafter purchased the plant, building and lands of

Hanuman. All these were mortgaged to Bihar State Financial Corporation at whose instance Baidyanath''s properties were sold and the appellants

purchased the same. That baidyanath purchased plant buildings and lands from Hanuman would also appear from balance- sheet and resolution of

Hanuman and Baidyanath. The various auditor''s reports and balance-sheet and resolutions of Baidyanath and Hanuman regarding sale of buildings

and plant and the sale of its lands at Baidyabati for Rs. 8 lakhs as Hanuman surrendered its Industrial Licence and Baidyanath''s resolution

regarding purchase of Hanuman''s Baidyabati lands for Rs. 8 lakhs were pointed out in this context.

11. Baidyanath by two mortgage deeds mortgaged its assets and properties to Bihar State Financial Corporation against a loan of Rs. 10 lakhs

taken by Baidyanath. By the said deeds of mortgage Baidyanath undertook and covenanted that all future acquistions of lands and other assets

would remain mortgaged to Bihar State Financial Corporation. It was contended by the appellants that thus the entire Baidyabati property of

21.65 acres of land with structures etc. remained mortgaged to Bihar State Financial Corportation which enforced the mortgage and took

proceedings in Bihar at Dumka under provisions of State Financial Corporation Act, 1951 and go the Baidyabati property attached which was so

done in 1965. Both the companies Hanuman and Baiyanath went into liquidation in 1966. Bihar State Financial Corporation obtained leave u/s

446 of Companies Act from this Hon''ble High Court to proceed with the enforcement of mortgage proceedings in Bihar and the Official

Liquidator was a party to the Dumka proceedings.

12. The Dumka Court appointed Joint Recevers to sell the Baidyabati property. Sale notices were issued. The Dumka Court sold the property to

the highest bidder, the present appellants, for Rs. 16.55 lakhs and directed the Receiver to give possession of the Baidyabati property to the

appellants. The appellants understood that the entire Baidyabati property was being sold. The mortgage deeds also provided inter alia the

stipulation that the entire assets and lands of Baidyanath would remain mortgaged to Bihar State Financial Corporation and the appellants took the

possession of the entire 21.65 acres of land and other assets at Baidyabati and stepped into the shoes of Baidyanath.

13. Mr. Bachawat appering for the appellants contended before us that when the learned Single Judge Ajit Kumar Sengupta, J. directed sale of the

Baidyanath''s property in 1987 the lease was yet to run for another two years. Still then the appellants were not given any notice and they were not

impleaded in the proceedings at the behest of United Bank of India, though the Official Liquidator and some of the parities had knowledge of the

title and possession of the appellants as regards the Baidyabati property, when the appellants made the pro interessee suo application, the lease

had expired, The appellants became tenants by sufferance and had a legal right to remain in possession and could not be summarily evicted without

being given any notice and without being impleaded as parties to the proceedings before Ajit Kumar Sengupta, J. in the suit brought by United

Bank of India. Mr. Bachawat placed before us the decision in Mozam Shaikh vs. Ananda Prasad Bhadra reported in AIR 1942 Calcutta 341,

Lallu Yeshwant Singh vs. Rao Singh reported in AIR 1968 SC 620, K.K. Verma vs. Naraindas reported in AIR 1954 Bombay 358 at page 360

and Mohanlal vs. State of Punjab reported in 1970 Rent Control Journal 95 (SC) for the proposition that even a rank treaspasser cannot be

evicted by force, except under due process of law.

14. In Mozam Shaikh vs. Amanda Prasad Bhadra and Anr. reported in AIR 1942 Calcutta 341 it was held by a Division Bench of this Court that

when a person who has been in possession under a lawful title continued in possession after the title had determinned without the consent of the

person entitled, it is a tenancy at sufferance which may be merely a fiction to avoid a continuance in possession operating as a trespass.

15. In Brigadier K.K. Verma and Anr. vs. Union of India reported in AIR 1954 Bombay 358 at page 360 it was held that under the Indian Law

as regard the possession of tenant, our law makes a clear and sharp distinction between a trespasser and an erstwhile tenant. Wheres the

trespasser''s possession is never juridical and never protected by law, the possession of an erstwhile tenant is juridical and is protected by law.

Therefore, as far as Indian Law is concerned, as erstwhile tenant can never become a trespasser, It may or may not be that in English Law in

certain circumstances, he can become a treaspasser and it does seem that the landlord can enter the premises and deprive the erstwhile tenant of

his possesion but in India landlord can only eject his erstwhile tenant by recourse to law and by obtalining a decree for ejectment. Therefore, while

construing the expression ""unarthorised person"" we must assume that the Legislature knew the distinction that was drawn in law between la

tespasser and an erstwhile tenant, and therefore when we come up to a decision as to whether the expression ""unauthorised person"" was

contemplated by the Legislature to mean trespassers in the sense in which that word is understood in Indian Law or was also contemplating an

erstwhile tenant who cased to be a tenant by reason of the termination of his tenancy, the question was answered that the Legislature never

intended that a person who entered with title and whose title came to an end and who continued in possession protected by law was a person of

whom it could be said that he was in unauthorised occupation. In the opinion of their Lordships unless the Legislature had given indication of a

clear intention that by the expresssion ""unauthorised occupation"" it meant not only persons who had no title at all but also persons who had title at

the inception and whose title came to an end it would not be proper to give an interpretation to the expression ""unauthorised occupation"" which

would run counter to the principles of law which have been accepted in India.

16. In Lallu Yeshwant Singh vs. Rao Jagdish Singh and Ors. reported in AIR 1968 SC 620 it was held that the trespass would include forcible

entry and dispossession by the landlord. A landlord does commit trespass when he forcibly enters on the land in the possesssion of tenant whose

tenancy has expired. It noted with approval the principle propounded in AIR 1924 144 (Privy Council) where the Privy Council observed ""in India

persons are permitted to take forcible possession; they must obtain such possession as they are entitled to through a court"". Under the Indian Law

the possesion of a tenant who has ceased to be a tenant is protected by law. Although he may not have a right to continue in possession after the

termination of the tenancy his possession is juridicaland that possession is protected by statute. u/s 9 of the Specific Relief Act a tenant who has

ceased to be a tenant may sue for possession against his landlord if the landlord deprives him of possession otherwise than in due course of law,

but a trespasser who has been thrown out of possess in cannot go to Court u/s 9 and claim possession against the true owner"".

17. In Yar Mohammad vs. Lakshmi Das AIR 1959 Allahabad at page 4 the Full Bench of the Allahabad High Court observed : ""No question of

title either of the plaintiff or of the defendant can be raised or gone into in that case (under Section 9 of the Specific Relief Act). The plaintiff will be

entitled to succeeed without proving any title on which he can fall back upon and the defendant cannot succeed even though he may be in a

position to establish the best of all titles. The restoration of possession in such a suit is, however, always subject to regular title suit and the person

who has the real title or even the better title cannot, therefore, be prejudiced in any way by a decree in such a suit. It will always be open to him to

establish his title in a regular suit and to recover back possession "". The High Court further observed: ""Law respects possession even if there is no

title to support it. It will not permit any person to take the law in his own hands and to disposses a person in actual possession without having

recourse to a court. No person can be allowed to become a Judge in his own cause,. As observed by Edge, C.J., in Wali Ahamad Khan vs.

Ayodhya Kundu, (1891) ILR 13 ALL 537 at page 556. The object of the section was to drive the person who wanted to eject a person into the

proper court and to prevent them from going with a high hand ejecting such persons.

18. The Supreme Court further stated in clear terms that it does not agree with the conclusion of the Calcutta High Court in State of West Bengal

vs. Birendra Nath Basunia reported in AIR 1955 Calcutta 601 that a lessor is entitled in India to use force to throw out his lessee.

19. The Supreme Court in this context held that the law on this point has been correctly stated by the Privy Council in AIR 1924 144 (Privy

Council) and by Chagla, C.J., in K.K. Verma vs. Naraindas C.Malkani (AIR 1954 Bombay 358 at page 360) and by the Full Bench of the

Allahabad High Court in Yar Mohammad vs. Lakshmi Das (AIR 1959 Allahabad 1 at page 4).

20. In Mohanlal & Ors. vs. The State of Punjab & Ors. reported in 1970 Rent Control Journal 95 also a Division Bench of the Supreme Court

held that under our jurisprudence, even an unauthorised occupant can be evicted only in the manner authorised by law. This legal maxim is the

essence of the rule of law.

21. It was contended on behalf of the respondents that everything depends upon the discretion of the court if the proceedings arise in the course of

winding up of a company. Any question of law or of fact of whatever nature arising in the course of winding up of a company can be decided by

the court itself and this Hon''ble Court vested with the jurisdiction of hearing matters relating to winding up of a company would have to determine

the question of whatever nature that arises. Whether in determining such question the court would require a suit to be filed or the court would

decide the same in a summary proceeding, depends upon the descretionary power of the court having regard to the nature of each case. Reliance

was made on the following decisions :

54 Company Cases 359 (Dalbir Singh vs. Sakaw Industries P. Ltd.)

67 Company Cases 394/401, 403, 404, 405 (Vidyadhar Upadhyay vs. Shree Modan Gopal Jew)

1993 (1) Calcutta Law Journal 447 (Pushpa Devi Jhunjhunwalla vs. Official Liquidator)

Reliance is also placed on the judgement of the Supreme Court reported in Dhirendra Chandra Pal Vs. Associated Bank of Tripura Ltd. (In

Liquidation),

22. We are afraid, we cannot accept this question because Ajit Kumar Sengupta, J. was never vested with the jurisdiction of hearing matters

relating to winding up of a company and His Lordship transgressed the limits of his Lordship''s jurisdiction, if any, in passing certain orders relating

to summary eviction of the appellants which his Lordship was not authorised and competent so to do.

23. After passing of the decree at the behest of the United Bank of India His Lordship was also not vested with further jurisdiction to pass

subsequent orders in the manner he did. It would be sufficient for this Court if we make our observations to deprecate the way His Lordship took

up the matter on various dates subsequent to the passing of the decree and sought to pass various orders relating to sale of the property in favour

of the intending purchaser Nani Gopal Paul and others at a price of Rs. 60 lakhs, when there were other offers in the field of a higher denomination

and magnitude. Judicial propriety prevents us from making further comments in respect of the manner His Lordship directed Mr. Gour

Roychoudhury, the Receiver to make the choice relating to the intending purchaser with full rights to make a contract with the intending purchaser

in the manner it was so done. If there were other offers on the field, the Court would have been vigilant enough to scrutinise such offers whatever

they were worth and there ought to have been a due application of mind in this particular perspective. Sadly enough that was not so done in the

present case.

24. It was further urged by the appellants that when Ajit Kumar Sengupta, J. directed the sale of the Baidyabati property in the United Bank of

India suit against Hanuman Section 3A of West Bengal Land Reforms Act as amended in 1986 with effect from 9.9.80 was already in operation.

The effect of Section 3A of the West Bengal Land Reforms Act was that all right, title and interest of Hanuman as ''tenant'' of Baidyabati property

vested in the State of West Bengal and only its right to get compensation from the State was there. Hanuman not being in khas possession of any

portion of the Baidyabati property'', could not retain the same. The right, title and interest of Baidyanath also vested in the State but as it was in

khas possession of Baidyabati property, the property could. be retained by the appellants. Thus by purchese of Baidyanath''s right, title and

interest and by virtue of the vesting of all the intermediary interests in the State of West Bengal the appellants became direet tenant under the State

of West Bengal and they having paid rents to the State and having taken over possession of entire 21.56 acres of land with all structures, plant and

machinery in 1974 and having remained in possession thereafter openly and as a matter of right, they could not be evicted in any summary

preceding whatsoever or thrown out of the property through police help.

25. The Official Liquidator that had been appointed by the Company Court was only a custodian of the Baidyabati property. He did not take any

actual physical possession even though the Baidyabati property did vest in the court through the Official Liquidator. The amendment and

introduction of Section 3A to West Bengal Land Reforms Act with the assent of the President was a later Act than the Companies Act of 1956

and would prevail over the provisions of the Companies Act, being a special statute. As such the vesting of the right, title and interest of Hanuman

as tenant and of Baidyanath as an under-tenant was in accordance with law. The Official Liquidator had knowladge of such vesting. After

publication of requisite notices the appellants were recorded as in possession of the entire 21.65 acres of Baidyanath with the factory and all

appartances were accepted as tenant in possession under the State of West Bengal.

26. It was further averred that the; appellants are not liable to be evicted from the Baidyabati property summarily without any notice of hearing.

They have shown a prima-facie title to the Baidyabati property and they were proved to be in physical possession of the said property and

admittedly before orders relating to sale, appointment of Receiver and direction to take police help as were passed by Ajit Kumar Sengupta, J.

front time to time, they were deprived of an opportunity to make their submissions that the said property could not be sold in United Bank of

India"s suit inasmuch as Hanuman had no subsisting right, title and interest therein and the appellants were the owners in possession of the

property.

27. On a proper analysis of the arguments levelled on behalf of the appellants by both their Counsels Mr. Bachawat and Mr. Saktinath Mukherjee,

we find that Hanuman first granted lease of 5.36 acres of land at Baidyabati with structures, plant and machinery to Baidyanath and Baidyanath

thereafter purchased the said plant and machinery, buildings and ultimately the lands and after encroaching the lands beyond 5.36 acres, claimed to

be in possession of further 21.65 acres of lands. Be that as it may, Hanuman mortgaged the leasehold land to United Bank of India by deposit of

Title Deeds which was so done on 24.8.59 but the lease was an earlier one and that being so, the mortgage was definitely subject to the lease.

United Bank of India filed a mortgage suit on 7.9.65 being Suit NO. 64 of 1965 in Howrah Court against Hanuman. The suit on transfer to this

Hon''ble Court was numbered as Suit No. 2 of 1966. The mortgage suit was decreed on 4.8.87 by Ajit Kumar Sengupta J. without notice to the

appellants who had no knowledge of the proceedings. The appellents contended that they are not bound by the decree. According to the

principles enunciated by the Hon''ble Supreme Court in Mangru Mahto and Others Vs. Shri Thakur Taraknathji Tarakeshwar Math and Others,

they were necessary parties in a suit brought by the mortgagee against the mortgagore. The Hon''ble Supreme Court referring to Order 34 Rule 1

of the CPC in the said decision, has held that a pre-suit lessee of the mortager, is a necessary party in the mortgage suit and in the event of the pre-

suit lessee not being made a party, it would not be bound by the decree. The reason is that such a pre-suit lessee had a right of redemption and a

pre-suit lessee''s rights cannot be defeated by not impleading him in the mortgage suit. We are of the confirmed view that this is an unassailable

position in law and that being so, even in the framework by a proceeding under ""pro interesse suo"" we can safely hold that none of the parties to

the original suit or even the subsequent purchaser pursuant to the court sale as directed by the learned Single Judge, can evict the appellants in a

summary fashion or merely through police help.

28. On behalf of the respondents reliance was placed on the judgement of the Hon''ble Supreme Court in Burmah Shell Oil Distributing now

known as Bharat Petroleum Corporation Ltd. Vs. Khaja Midhat Noor and Others, in support of their contention that the decree for eviction

obtained by a lessor against a lessee is binding upon the sub-lessee even though the sub-lessee is not made a party. We are afraid that sub-lessee

in an eviction suit cannot in the facts and circumstances of the present case be equated with a pre-suit lessee in a mortgage suit in respect of the

pre-suit lessee''s rights under the law. Sublessees have also only a derivative title and except in special cases, are also bound by the decree passed

against the lessee. But a pre-suit lessee enjoys a statutory right of redemption which is co-extensive with the right of redemption of the lessor and

he cannot be bound by a mortgage decree passed in his absence.

29. In the instant case the bona fides of the appellants is claimed from the fact that on April 27, 1990 they offered to pay the balance due to the

United Bank but the said offer was not accepted.

30. The appellants submitted with much force that the order passed on August 4, 1987 by Hon''ble Mr. Justice Ajit Kumar Sengupta directing

removal of trespassers with police help as an order in execution of the mortgage decree, cannot affect the appellants and the decree is not binding

on the appellants.

31. It was argued by the respondents that on the expiry of the lease, the appellants had no locus stadi, being as such liable to be removed as

trespassers in execution of the mortgage decree at the instance of the purchaser from the Receiver. In answer to such a contention it was urged by

the appellants that as and when the decree dated August 4, 1987 was passed, the lease in favour of Saharsa Steel Alloy Ltd. was still subsisting.

The possession of a lessee whose lease expired is also protected by law. Although he may not have a right to continue with the possession after the

termination of the tenancy his possession is juridical and that possession is protected by the Statut. The decision in Yeshwant Singh vs. Jagdish

Singh reported in AIR 1968 SC 620 paragraphs 10 to 13 was referred to in this context. The decree as such cannot be executed also on the

principle laid down by the Hon''ble Supreme Court in Mangru Mahto and Others Vs. Shri Thakur Taraknathji Tarakeshwar Math and Others,

32. We wanted not enter into the other question as propounded Mr. Saktinath Mukherjee that with the publication of the record of rights under the

West Bengal Land Reforms Act, 1955 whereby the appellants are shown to be holding 21.65 acres of land at Baidyabati directly under the State

of West Bengal by virtue of the statutory presumption as held in Indra Bhusan Sana vs. Janardan Sana 28 CWN 945-947 that even though the

record or rights were prepared during the pendency of the proceedings, the appellants would be taken as lawful tenants directly under the State in

respect of the surplus lands beyond 5.36 acres. Mr. Mukherjee strenuously urged that the record of rights has been prepared u/s 3A if the West

Bengal Land Reforms Act, 1955 as amended in 1986, the Amending Act coming into force with assent of the President. With effect from 9.9.80

the non-agricultural tenancies came to be vested with the State of West Bengal and non-agricultural tenant not being in Khas possession of non-

agricultural land was not entitled to retain the same. Mr. Mukherjee''s contention further was that the vesting brought about by Section 3A of the

West Bengal Land Reforms Act takes away the rights of the original lessor, Hanuman and or the mortgagee, United Bank of India to execute the

decree passed by Ajit Kumar Sengupta, J. which principle was already settled by the Division Bench Judgment in Binod Behari Ghosal vs Shew

Kamal Singh reported in 1983 (2) Calcutta High Court Notes Page 98. Mr. Mukherjee further contended that the finally published record of rights

carried with in the statutory presumption and it is not for the appellants on the face of the record of rights showing their possession to prove the

foundation of such records and he cited in this context decision in J.N. Mallick vs S.N. Palit reported in 69 CWN 210 at 214. The respondents

however contended that the record of rights are fraudulent. But Mr. Mukherjee contended that no particulars of the alleged fraud was pleased

either in the affidavit or even in the submissions. Relying on the decision in Bansiram vs Panchami Dasi reported in 20 CWN 638 at 641 and

Armada Charan Mondal vs Atul Chandra Mallik reported in 23 CWN 1045 at 1047, Mr. Mukherjee contended that the fraud not having been

established, we should take the record of rights to be sacrosant and hold the appellants to be rightful tenants directly under the State of West

Bengal by virtue of the Provision of Land Reforms Act. We are afraid we cannot pronounce upon such intricate question of title in the present

proceedings. On the question of alleged claim of continuity of possession made by the appellants in the present proceedings in the nature of pro

interesse suo, such a pronouncement would really be unjust and not proper and we should leave the parties to agitate their contentions before a

properly framed suit, if they are so advised, Both Mr. Saktinath Mukherjee contended that the liquidation of Hanuman and Baidyanath in 1966 has

not affected the Dumka Court proceedings started in 1965 and continued to leave with right of appropriate proceedings and the official Liquidator

was a party to the proceedings. Official Liquidator never took possession of Baidyabati property. Custody of Court or official Liquidator did not

alter the status of persons who were actually on the land. Custody of Baidyabati property by the Court or by the official Liquidator would not

prevent the property from being vested in the State of West Bengal under the West Bengal Land Reforms Act. We have also to reiterate that such

questions of title in the present framework of a pro interesse suo proceedings cannot be decided finally, even though the appellants were in

possession when the decree was passed in 1987 and the lease was yet to expire and hence there was still two more years to go, it was indeed

necessary that the appellants ought to have been given an opportunity to be impleaded in the mortgage suit.

33. We are of the confirmed opinion that the appellants do have a proper case for a pro interesse suo aplication so as to assert the question that

they would not be bound by any execution proceedings through the Company Court for their eviction except in a proceeding in accordance with

law. Whenever rank trespassers cannot be forcibly thrown out of possession or be summarily evicted through police help, we may only give the

appellants such protection which is so warranted in law. The lands originally purchased from Nivedita Company were a factory land. Hanuman''s

lands leased out to Baidyanath was factory land and Baidyanath set up its M.B.C. Plant covering the entire 21.65 acres of land. The land was

never used for any other purpose except as factory land as apeared from the records, The Baidyabaiti property is a non-agricultural land. Whether

Hanuman was a non-agricultural tenant or not and whether Baidyanath was also a non-agricultural tenant can be decided only in an appropriate

proceedings in accordance with law. In the facts and circumstances of the present case we can hold that the appellants cannot be summarily

evicted without taking evidence and without a proper hearing of the appellants" case. In that view of the matter we cannot uphold the order and

judgment dated September 6, 1991 as passed by the learned Single Judge in the present proceeding under pro interesse suo. The cases relied on

by the respondents are not applicable to facts of the present case inasmuch as no notice was given to the appelants about the hearing of the Bank''s

suit. On the passing of the decree, the appointment of the Receiver and on passing of an order of sale by the Receiver of the Baidyabati property

purportedly belonging to the appellants who are also in possession thereof, the appellants had a right of audience in accordance with law.

34. It was submitted on behalf of the purchaser, Nani Gopal Paul that the appellants were not parties in the suit. Furthermore they could not have

acquired; any more title to the properties than that of their transferor namely, Hanuman. There is no challenge to this finding and in that view of the

matter this Court ought not to come to a finding that the appellants have any right, title and interest in respect of the lands beyond 5.36 acres that is

the surplus 21 acres of land. That apart the purchaser contended that the appellants had no subsisting right in the properties of Shri Hanuman

Foundries Ltd., just because the leasehold right has expired on July 31, 1989. The appellants had no subsisting rights in respect of any of the

properties on 29.8.90 that is after the order of the sale or on the date of the presentation of the application i.e. September 6, 1990. We accept this

contention as correct in the eye of law in view of the fact that even if the leasehold rights expired on July 31, 1989, the appellants are in possession

of the properties, if the order of sale has not been properly so done with due notice to the appellants, they had every right to contend that the order

of sale was not binding on them. That apart the contention made by the appellants that they have locus standi to challenge the mortgage decree, has

also some force in the eye of law.

35. The purchaser further contended that the compantes having gone into liquidation in 1966, the properties of these companies are deemed to be

in possession of the court since the order of winding up. No right under the West Bengal Land Reforms Act in respect of the land in question thus

could accrue in favour of the appellants because (i) this land had already vested in Hanuman prior to its purchase of the properties from the then

liquidator of Nivedita Cotton Mills; and (ii) there could not have been any further vesting of property in favour of the appellants. Moreover there is

nothing to show as to how the other properties of Hanuman came into possession of the appellants, admittedly none of these propertise was

purchased by them in court''s auction or otherwise nor there is anything to show that they have lawfully obtained possession of the properties. This

is indeed such a contention which cannot be decided within the four comers of pro interesee suo proceeding.

36. We refute further contention of the purchaser, Nani Gopal Paul, that the appellants not being the parties to the suit cannot impugn the decree or

the order for sale unless they can show subsisting title paramount in the assets of the company which has been directed to be sold. Even if there is

no challenge to the original decree dated July 30, 1987, the order directing the sale of the properties without due notice to the pre-mortgage lessee

is an order per se bad in law and that being so, we cannot refute the contention of the apellants as untenable in law that they have a locus standi to

bring the present action in pro interesse suo. The order passed in the suit pursuant to the decree have indeed affected their fights. We reject the

contention that it would not be justifiable on our part to pronounce our comments or give expression to our opinion between the parties regarding

the orders of sale and summary eviction.

37. Reference was made by the respondents on the following cases in support of the contention that in an application in the nature of pro interesse

suo, questions of title and possession could not relly be entered into. Reference was made to the decision in Central Bank of India vs. Srish

Cahndra Guha & Anr. reported in AIR 1972 Calcutta 345 paras 9 and 11 and Bajranglal Khemka vs. Sheila Devi & Ors reported in 74 Calcutta

Weekly Notes 444 paras 15 & 19. Wherein it was held that the proceeding in pro interessee suo is not provided for either in the CPC or in the

Rules of the Original Side of our High Court. This is a procedure imported in our country from England. In order to do justice to person, the court

allows that person to come in and be examined as to his title to the goods or property over which the court as appointed Receiver in a proceeding

between persons other than the said person, That is done so that no person may suffer because of any order that may be passed by the court. It is

a personal right of that person only, That person cannot in such a proceeding ask the court to examine some other person with regard to that

persons right to title in the goods of property over which the court has appointed a Receiver. An examination pro interesse suo is never ordered

unless the applicant shows diligence.

38. Reference was also made to Sreedhar Chaudhury vs. Nilmoni Chaudhury reported in 42 Calcutta Law Journal 197 at page 201 AIR 1925

Calcutta 681 wherein it was contended that an examination pro interessee suo is never ordered unless the applicant shows deligence. Since the

present appellants applied pro interesse suo and was kept in the dark about the suit being brought by the United Bank of India against the matter

of that Hanuman and they were never made parties to the earlier suit or in the proceedings in execution, it cannot be said that there was lack of

diligence on the part of the present applicant appellants.

39. The learned Single Judge Suhas Chandra Sen, J. has held that the appellants were in possession of 21.65 acres of land as a mere tenant. Mr.

Mukherjee contended that the presumption as to correctness of record of rights has not been properly displaced and in judgment of the learned

Single Judge it has been presumed that Hanuman had right, title and interest in the Baidyabati property after 9.9.80, the Bank as mortgagee had

right to sell the Baidyabati property. Nothing has bee stated as to why the United Bank of India refused to accept payments by the appellants of

Rs. 4.02 lakhs being the balance of the decreetal dues. We are of the view that the appellants have every justification to be added as parties to the

apreceedings in Suit No. 2 of 1966 brought by the Bank and they should be heard out first before any summary eviction proceedings are passed

against them in accordance with law and that the parties should proceed in accordance with law.

40. In the result the judgment and order as passed on September 6, 1991 by His Lordship stands set aside and the appeal stands allowed. There

will however be no order as to costs.

41. The Liquidator will however be entitled to realise the rents up to the date of expiry of the lease in accordance with law from the appellants.

N.N. Bhattacharjee, J.

I agree.