

(1999) 02 CAL CK 0021

Calcutta High Court

Case No: W. P. No. 2941 of 1994

Sri Pradyut Roy and Another

APPELLANT

Vs

The First Land Acquisition
Collector and OthersRESPONDENT

Date of Decision: Feb. 9, 1999**Acts Referred:**

- West Bengal Premises Tenancy Act, 1956 - Section 17(3)

Citation: 104 CWN 149**Hon'ble Judges:** B.M. Mitra, J**Bench:** Single Bench

Judgement

B.M. Mitra, J.

In the writ petition it has been averred that number of persons as mentioned in paragraph 1 of the said petition are the joint owners of Premises No. 57, Jatindra Mohan Avenue, Calcutta. A suit for partition being Suit No. 1993 of 1968 was filed in the Ordinary Original Civil Jurisdiction of this Court and in the said suit, respondents No. 4 and 5 were appointed as Joint Receivers. Sometime on 21-8-61 the State of West Bengal through the Chief Secretary, Road Development Directorate and the Joint Secretary, Development (Roads) Development entered into an agreement of tenancy in respect of the aforesaid premises for accommodation of their office of the Public Works Department. On or about 9-7-84 the said Joint Receivers instituted the suit being Suit No. 484 of 1984 for a decree of vacant possession of the said property by evicting the State Government from the said premises and for other reliefs. As the State Government figuring as defendant did not file the written statement and in Suit No. 484 of 1984 an application u/s 17(3) of the West Bengal Premises Tenancy Act was pressed for striking out the defence against delivery of possession which was allowed on 20-3-85. Against the same an appeal was taken on 10-4-85 which was not proceeded with by the State Government and the decree passed in the ejectment suit dated 19-5-86 was allowed to stand. A further decree

was passed for mesne profits on 13-11-87. Thereafter on 28-3-89 the aforesaid Joint Receivers made the application for execution of said decree and that was allowed by this Court by an order dated 30-3-89. The State Government preferred an appeal and prayed for stay of the operation of the order dated 30-3-89. Ultimately, such application was dismissed by the Court of Appeal on 7-7-89. The State of West Bengal then filed a SLP before the Hon"ble Supreme Court praying for stay of the execution of the decree dated 19-5-86 and an order of status quo was granted by the Apex Court in September, 1989. On 17-4-90 the said SLP was dismissed by the Supreme Court. On or about 6-7-90 the State Government filed a suit being Suit No. 536 of 1990 against the Joint Receivers inter alia for setting aside the decree dated 19-5-86. During the pendency of the said suit an application was made on 10-7-90 for police help to recover possession of the said property. The application for police help as well as the application for stay of the execution of the decree were analogously heard and the Court refused to grant any prayer for stay of execution of the ejectment decree. On or about 13-9-90 the State of West Bengal made an application in the earlier partition and administration suit for leave to requisition and acquisition of the said premises and prayed for stay of execution of the decree. Thereafter on 3-10-90 the State Government prayed for stay in appeals arising out of order dated 16-7-90. The Appeal Court refused to grant stay of execution. On or about 25-2-91 an order was passed by the First Land Acquisition Collector purporting to requisition and acquisition of the said premises allegedly in exercise of the powers conferred under Sub-section (1) of Section-3 of the West Bengal (Requisition and Acquisition) Act, 1948. The same was challenged and by an order dated 27-11-91 the matter was disposed of by Altamas Kabir, J. Against the same an appeal was preferred with a prayer for obtaining an ad-interim order of stay which was refused by the Appeal Court. Against the same another SLP was moved before the Supreme Court and by an order dated 14-9-92 the Supreme Court did not interfere with the interim order with a condition that the respondents before the Supreme Court would not alienate the property in question in favour of the third person till the final disposal of the appeal before the Division Bench of the High Court at Calcutta.

2. In the notice dated 25-2-91 the grounds of challenge of the purported action of the State Government for acquisition were set out in the body of the writ petition. The same was challenged inter alia on the grounds that it was not for public purpose and the same is not preceded by formation of opinion by the State Government through Land Acquisition Collector but an officer of the Public Works Department has initiated the proceeding under the said Act. It has been alleged that the Land Acquisition Collector did not even ascertain the names of the owner and the notice was not issued against all the co-owners of the property and it was mechanically issued without any application of mind. The further ground was that in order to offset the effect of a decree of eviction on 19-5-86 the State Government Initiated such action.

3. On or about 19-11-94 some of the owners have been served with a copy of the purported order dated 11-11-94 being a notice under Subsection (1) of Section 3 of the West Bengal Land (Requisition and Acquisition) Act, 1948. In terms of the notice the petitioners were informed that the property would be placed for taking over by the First Land Acquisition Collector on 21-11-94 at 10 A.M. when the Office of the First Land Acquisition Collector would take charge of the property.

4. Before going into further detailed analysis of the controversies and pleadings taken in numerous affidavits in detail, it is worthwhile to make an endeavour to narrow down the range of controversy in a limited compass. It has come for consideration by this Court that the West Bengal Land (Requisition and Acquisition) Amendment Act pursuant to which Section 3 of the principal Act was omitted with effect from 1-4-94. Thus, Section 3 of the principal Act ceased to exist in the statute on and from 1-4-94. However, proviso to the said Section 3 of the amend Act contains stipulation inter alia to the effect that such omission shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under the said section so omitted. In the instant case, though Section 3 stood repealed on and from 1-4-94 but the State Government purported to exercise power u/s 3 of the principal Act by initiating proceeding only on 11-11-94 to requisition the premises in question u/s 3(1) of the principal Act. On the face of the order as reflected from the annexures brought on the materials on record, it is clear that the authority had exercised powers u/s 3(1) of the principal Act on 11-11-94 when the aforesaid Section 3 of the principal Act was no longer there in the statute having been repealed on and from 1-4-94. The respondents have contended that a right or privilege has accrued in their favour and by virtue of the provisions to Section 3 of the amended Act they have right to issue notice u/s 3 of the principal Act in spite of the repeal. A reference may be made in this context to the case of Hiranmoyee Devi vs. Sourendra Chandra, reported in AIR 1957, Calcutta, 257 where in para 9 thereof it has been observed that, "the object of introducing such saving clause is to save pending proceedings and to authorise a new institution for enforcement of right and liability accrued under the Act notwithstanding with the repeal or expiry of the Act." Thus, only the accrued right and liability as said in the instant case the Court had found consistently that there is no right in favour of the occupiers and/or requisitioning authority at the material point of time and therefore nothing has accrued in favour of the contesting State respondents before the Act stood repealed. Here, the concerned Section stood repealed prior to the issuance of purported notice u/s 3(1), dated 11-11-94, on that day, no right has accrued in favour of the State Government. Had the notice under the principal Act been given prior to the repeal, then, by virtue of the proviso State respondents could have proceeded with further proceedings under the Act. Here, the State respondents have not been able to show any right being accrued in their favour under the statute before the repeal came into force. It has been contended on behalf of the State respondents that they have some accrued right and as such they are protected

under the proviso to Section 3 and in support of the same Mr. Das. the learned Counsel referred to numerous decisions. Mr. Das has referred to the case of Amadolavalasa Co-operative Agricultural and Industrial Society Ltd. & Anr. vs. Union of India & Anr., reported in AIR 1976 SC 958 where it has been laid down that, "the principle behind Section 6 of the General Causes Act is that all the provisions of the Act would continue in force for the purpose of enforcing the liability incurred when the Acts were in force and any investigation, legal proceedings, remedy may be instituted continued or enforced as if the Acts are not expired." This Court is made to wonder as to how the said decision comes in aid of the respondents because, admittedly, on the date when the notice has been issued the relevant Section of the principal Act has ceased to exist. A reference may be made to the decision of PWH Analgem and Systems GMVH vs. Damodar Ropeways and Constructions Pvt. Ltd., reported in 1996(2) CHN 97 where a Single Bench of this Court has held that, "the effect of repealing Act on the repeal enactment cannot be decided only with reference to the saving clause of the repealing Act. The matter can be resolved by considering the language of the repeal in statute and not the repeal in Section alone. The question is not whether the new Act expressly keeps alive old rights and liabilities but whether the new Act manifests an intention to destroy the old rights and liabilities." There is no quarrel with regard to the proposition expounded by the learned Single Judge but here, in the instant case, the language to be construed is as to the question of affectation of rights and liabilities either acquired, accrued or incurred under the said Section so omitted and the rider super-added to the repealing provision is required to be appreciated in the context purpose and in terms of language as mentioned keeping in view of the legislative object behind the same. On the date when the notice of requisition has been issued, there has been no question of accrual or incurring of any liability or privilege which seems to have been destroyed before the passing of the impugned notice due to spate of litigations mention of which has already been made. The reference about the case of Isha Vali Mohamad & Anr. vs. Hari Ghulam Mohamad and Haji Dada Trust reported in AIR 1974 SC 2061 does not throw any light on the present controversy. Here, in the cited decision, the factum of creation of sub-tenancy by the tenant confers an accrued right in favour of the landlord which does not appear to be here in the instant case as there is no perpetuation of accrual of any right. This Court is conscious of the line of distinction sought to be drawn between the right acquired or accrued and privilege, hope and expectation to get a right as rightly pointed out by the High Court in the impugned order. A reference may be made in this context to the case of Gujraj Singh & Ors. vs. State Transport Appellate Tribunal & Ors.. reported in 1997(1) SCC 650 where it has been observed, "Whenever an act is repealed it must be considered except as to transactions past and closed as if it has never existed. The effect therefore is to obliterate the Act completely from the record of Parliament as if it had never been passed. It never existed except for the purpose of those actions which were commenced, prosecuted and concluded while it was an existing law. Legal fiction is one which has not an actual reality and which

the law recognises and the Court accepts as a reality. Therefore, in case of legal fiction the Court believes something to exist which in reality does not exist. It is nothing but presumption of the existing state of affairs which is actually non-existent. As such the instant case is also about acquisition, accrual or something to be incurred by the dimension of the rider as appended to the repealing provision of the amend Act which is non-existent to be borne out if the court is to unfurl the entire chapter relating to state of legal proceedings for considerable period of time. Therefore, for this reason alone that the notification as appended to annexure "F" to the writ petition is hit by the provisions of West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1994 by which Section 3 of the parent Act of 1948 was omitted with effect from 1-4-84 excepting to the rider comprehended by the proviso incorporated under Clauses (a) to (c) of Section 3 of the amend Act. Accordingly, for this reason alone the notice as appended to the writ petition vide annexure "F" is not sustainable and the same is liable to be set aside. This Court does not intend to go in for analysis of other facets of the controversy which pale into insignificance because they appear to be academic having no germane bearing of the controversy in view of the finding arrived at to the effect that the impugned notice vide annexure "F" is not sustainable in terms of the Act as mentioned therein on which requisition cannot be sustained. Therefore, a Writ in the nature of Mandamus is hereby issued commanding upon the respondents to revoke, rescind and/or cancel the impugned notice vide annexure JT and as such the respondents are directed to give vacant possession of the premises in question being Premises No. 57, Jatindra Mohan Avenue, Calcutta, within 3 (three) months from this date.

5. In view of the prayer for stay being made by Mr. Das. the learned Counsel appearing for the State respondent, this Court is not inclined to grant that stay in view of the time being granted to the State Government to vacate the premises in question within a period of three months from date. If certified xerox copy of this judgment is applied for, the office is directed to issue the same at an early date.