

THE STATE OF WEST BENGAL AND ANR.

A

v

M/S BANALATA INVESTMENT PVT. LTD. AND ANR.

APRIL 30, 2001

[D.P. MOHAPATRA AND UMESH C. BANERJEE, JJ.]

B

*West Bengal Government Premises Tenancy Regulation Act, 1976 (Act of 1976)—Sections 6A, 12(2)—West Bengal (Public Land Eviction of Unauthorised Occupants) Act, 1962 (Act of 1962)—State Government evicted the respondents from the premises under the provisions of the Act of 1976—High Court held that the eviction is possible only under the provisions of the Act of 1962 and not under the Act of 1976—Held, the provisions of the Act of 1976 is applicable for eviction.*

C

Respondents were in possession of disputed premises in Calcutta. Appellant-State government took over possession of the premises under the provisions of the West Bengal Government Premises Tenancy Regulation Act, 1976 (Act of 1976). The respondents filed Writ Petitions before High Court challenging the possession of the premises by the appellant as arbitrary and without process of law. The High Court held that the respondents were tenants of the owners of the premises and not of the State Government and therefore the provisions of the Act of 1976 cannot be applied by the State Government for taking over possession of the premises from the respondents. The High Court, however, held that the possession of the premises by the respondents cannot be disturbed without taking recourse to the provisions of the West Bengal (Public Land Eviction of Unauthorised Occupants) Act, 1962 (Act of 1962). Hence this appeal by the State Government.

D

E

F

Allowing the appeals, the Court

**HELD:** 1.1. In sub-section (2) of Section 12 of the West Bengal Government Premises Tenancy Regulation act, 1976 (Act of 1976), the legislature has clearly laid down that the West Bengal (Public Land Eviction of Unauthorised Occupants) Act, 1962 (Act of 1962) shall not be made applicable to any premises to which this Act of 1976 applies. Therefore any proceeding for eviction of unauthorised occupants of premises in question has to be initiated only under the Act of 1976. The judgment of the High Court

G

H

**A** is in conflict with the express statutory provision in Section 12(2) of the Act of 1976. Therefore the High Court clearly erred in holding that the proceeding under the Act of 1976 was not maintainable and that proceeding for eviction, if any, may be taken under the Act of 1962. [245-C-D]

**B** CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3426-28 of 1995.

From the Judgment and Order dated 12.1.94 of the Calcutta High Court in F.M.A.T. Nos. 920-922 of 1991.

**C** Tapas ray, Avijit Bhattacharjee, Atanu Saikia and Ms. Madhumita Bhattacharjee for the Appellants.

S.B. Upadhaya and Sujit K. Singh for the Respondents in C.A. No. 3427-3428/95.

**D** The Judgment of the Court was delivered by

**BANERJEE, J.** The State of West Bengal is in appeal against the Judgment and Order of the Calcutta High Court recording a finding that the dispossession of the Writ Petitioner/Respondents herein on 19th March, 1991 was arbitrary and without process of law. The High Court further directed in its Order that the State authorities will not in any way disturb the possession of the Writ Petitioners without taking recourse to the provision of the West Bengal (Public Land Eviction of Unauthorized occupants) Act 1962 or such other provision as may be available to them.

**F** The contextual facts depict that the Writ Petitioners were in possession of three out houses in premises No. 62 Syed Amir Ali Avenue, Calcutta. The High Court while dealing with the facts came to the conclusion, however, that possessory right ought not to prevent the vesting of the entire property in the State Government and thus came to a finding that the entire premises No.62. Syed Amir Ali Avenue Calcutta came to be vested on to the State Government on and from 5th December, 1983. The High Court's finding on this score remains un-challenged as such we need not delve into its factual acceptability.

**H** On the further factual score, the High Court observed that whether the Writ Petitioners/respondents herein can at all be said to be tenants in respect

of the premises under their occupation under heirs of S.K. Ghose, since diseased or under V.C. Sood as claimed by the Writ Petitioners could not be of any concern of the Court in the appeal before it, but as consequence of the State Government's acquiring of title to the premises, continued occupation without the sanction of the later was unauthorised. This aspect of the factual finding also has not been challenged as such we need not dilate on this score as well.

The High Court however, even though as noticed above came to the conclusion that the above noted entire premises came to vest in the State Government on and from 5th December, 1983, but recorded a finding that taking recourse to the provisions of the West Bengal Government Premises Tenancy Regulation Act, 1976, for the purpose of obtaining possession of the premises in question does not and can not arise. The High Court as a matter of fact observed that it is no body's case that the Writ Petitioners were inducted as tenants by and on behalf of the State Government and as such the provisions of 1976 Act can not be said to be extended to the petitioners who claimed to be the tenants not of the State Government, but of the owners of the property and it is on the wake of the aforesaid finding that the High Court denounced invocation of the powers under Section 6(A) of the 1976 Act and directed not to disturb the possession of the Writ Petitioners in the premises in question. It may be noticed herein that the above noted directions concerning non-disturbance however was subject to taking recourse to the provisions of West Bengal Public Land (Eviction of un-authorised Occupants) Act, 1962 or such other legal possession as may be available to them. In short thus, the High Court's finding is to the effect that whereas the provisions of 1976 Act cannot be made applicable in the facts and the matter under consideration, but leave was granted to take recourse to the Act of 1962.

Before proceeding further, be it noted that 'Government premises' stands defined in the Act of 1976 as meaning "any premises, which is owned by the State Government or by Government undertaking, but does not include...."

Whereas, Section 3 of the Act of 1976 deals with the termination of tenancy, section 4 provides for restoration of possession. This statute provides in section 4 that upon termination of tenancy under any of the provisions of Section 3, the tenant has to restore vacant possession forthwith of the premises occupied by him in favour of the prescribed authority, but in the event, the tenant fails to restore the possession of the premises, the prescribed authority may take such step or steps or use such force as may necessary

- A to take possession of the premises and may also enter into such premises for the aforesaid purpose.

Further, the statute whereas in Section 6 provides penalty for failure to deposit rent in time, Section 6(A) provides as below:-

- B “6A. Eviction of unauthorised occupants and penalty for such occupation. Where any person not being a tenant occupies, or remains in occupation, of any Government premises without the written order of the prescribed authority,-

- C (a) the prescribed authority, or any officer authorised by it in this behalf, may take such steps and use such force as may be necessary to take possession of the premises and may also enter into the premises for the said purpose; and

- D (b) such person shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

- E Incidentally, authorisation to Act in terms of provision of 1962 Act obviously finds place in the judgment itself by reasons factum of the respondents’ tenancy being declared unauthorised and to appreciate the same, a look at the 1962 Statute would be convenient. The Act of 1962 has been introduced in the statute book to provide speedy eviction of unauthorised occupants from public lands, which however includes buildings and other things attached. Similar however, is the provision for issuance of notice and the statutory sanction in terms of section 4 provides eviction of the persons in unauthorised occupation on public land. The High Court obviously preferred earlier statute to apply in the contextual facts, rather than later statute, but that can not however be accepted as fair reading of the law and the fact-situation of the matter in issue. In this context, section 12 of the Act of 1976 ought to be noticed. Section 12 provides:-

- G “12. *Act to override other laws.* (1) The provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force, or in any contract, express or implied, or in any custom or usage to the contrary.

- H (2) In particular and without prejudice to the generality of the foregoing provisions, the West Bengal Public Land (Eviction of

Unauthorised Occupants) Act 1962 shall not be applicable to any premises to which this Act applies." A

The overriding effect of the Act thus can not be whisked away as adumbrated above. Needless to record here that the principal section 12 stands re-numbered as sub-section 1 and sub-section 2 has been inserted by West Bengal Act 30 of 1985. Statutory intent thus stand clarified that the Act of 1962 shall not be applicable to the government premises to which the Act of 1976 applies. The definition of Government premises within the meaning of Section 2(A) as noticed above is rather of widest possible amplitude. The discussions in the impugned judgment do not show that it was the case of any of the parties that the building in question is not 'Government premises' as defined in the Act of 1976. In sub-section (2) of Section 12 the legislature has clearly laid down that the Act of 1962 shall not be applicable to any premises to which this Act (Act of 1976) applies. The conclusion therefore is inescapable that any proceeding for eviction of unauthorised occupants of the premises in question has to be initiated only under the Act of 1976. The judgment of the High Court is in conflict with the express statutory provision in Section 12 (2) of the Act of 1976. Therefore, the High Court clearly erred in holding that the proceeding under the Act of 1976 was not maintainable and that proceeding for eviction, if any, may be taken under the Act of 1962. In any event, by reasons of specific finding of the High Court as to whether the Writ Petitioner can at all be said to be tenants in respect of the premises under the heirs of S.K. Ghose or V.C. Sood is not the concern of the Appellate Bench, the finding or at least the recording of observation about the non applicability of the Act of 1976 does not and can not arise. In our view the High Court is clearly in error having regard to the finding as recorded therein in the judgment impugned before this Court. In any event, the effect of Section 12 of the Act of 1976 has not been noticed at all and the interpretation offered and the meaning imputed to the words used in the 1976 legislation, in our view has been totally mis-placed. B C D E F

On the wake of the aforesaid, we are unable to record our concurrence with the judgment under appeal. G

Considering, however the duration of occupation being for quite a number of years, we deem it fit in the interest of justice to allow the respondents herein to vacate the premises by 31st October, 2001. It is placed on record that this order is passed without however any prayer for the same being made by the respondents. The extension of time is granted in terms of this order, however shall be subject to filing of the usual undertaking before this Court H

A within a period of four weeks in default of which the appellant would be at liberty to take steps in accordance with law.

The appeals are thus allowed. The judgment of the High Court thus stands set aside. Parties to bear their costs.

B B.S.

Appeals allowed.