

02.12.2020
Item No.04
Supplementary List
Court No.12
Krishnendu

W.P.A. No. 16086 of 2019
(VIA VIDEO CONFERENCE)

In re: Raghabendra Nath Dutt & Anr.
- Versus -
43 Bengal Battalion, NCC & Ors

Mr. Saurabh Maitra
For the Petitioners
Mr. Kunaljit Bhattacharjee
For the Respondents 1-3

Mr. Chandi Charan De
Ms. Srilekha Bhattacharya
Mr. Anirban Sarkar
For the State

The present writ petition has been preferred primarily praying for the following relief:

“A writ of and/ or in the nature of Mandamus commanding the Respondent No.4 to forthwith and/or within such time as may be deemed fit and proper, allocate, allot and pay to the respondent no. 1 the revised monthly rents and arrears of monthly rent and outstandings on such account in terms of the calculation as shown in paragraph 11 herein and in terms of the memorandum/ certificate dated April 16th 2018, forming part of Annexure “P-1”, herein for the same to be paid in turn by the Respondent No. 1

to the petitioner no.1 within such time as may be deemed fit and proper;

Records reveal that the writ petition was admitted on 27th August, 2019 with a direction upon the parties to exchange their affidavits. As affidavits were not filed by the respondents within the time as specified and as the petitioners were suffering from extreme financial distress, applications were filed praying for urgent hearing. The said applications were disposed of by an order dated 23rd September, 2020 directing the respondent no. 1 to file an affidavit in the form of a report (in short, the report). Pursuant to such direction, the report was filed by the respondent no.1. In the midst thereof, the respondent nos. 5 and 6 also filed an opposition, to which the petitioners have used a reply. Pursuant to orders passed thereafter, Mr. Deep Chandra Pant, Lieutenant Colonel, Additional Director, NCC Directorate, West Bengal and Sikkim is present in Court today.

Mr. Maitra, learned advocate appearing for the petitioners submits that the petitioners are the owners of the property detailed in paragraph 3 of the writ petition. A portion of the ground floor of the main building, in the

said property, was hired for the accommodation of 43, Bengal Battalion, NCC (in short, Bengal Bn, NCC) in the year 1983. Since then the Higher Education Department, Government of West Bengal had been allotting the funds in favour of Bengal Bn, NCC for payment of the rental dues to the owners through the Hooghly Treasury – II. On the prayer of the owners, the rent, initially fixed, was revised from time to time on the basis of the rent certificate issued by the Special Land Acquisition Officer, Hooghly, being the respondent no.5, upon measurement and assessment. By a memo dated 11th March, 2016 issued by the respondent no. 5, the rent was revised and enhanced to Rs.2592/-. Subsequent thereto, a further application was submitted for enhancement of rent. The tenanted portion was physically measured by a representative of the respondent no. 5 on 20th March, 2018 in presence of the owner and the occupants and thereafter by a memo dated 16th April, 2018 the respondent no. 5 revised the rent to Rs. 42,831/- with effect from 1st October, 2017. In spite of such revision, fund was not allotted by the respondent no.4 and the revised rent was not disbursed in favour of

the petitioners save and except unrevised rent for a few months. Without any reason whatsoever, the respondent no. 4 had arbitrarily withheld such allotment of fund towards payment of the rent as revised *vide* memo dated 16th April, 2018. Aggrieved thereby, repeated representations were submitted to all the respondents. The respondent no. 2 forwarded the petitioners' claim to the Joint Secretary, Department of Higher Education, Government of West Bengal for allocation and allotment of the revised rent but in vain. In support of such contention, he has drawn the attention of this Court to the documents annexed to the writ petition, being memoranda dated 6th August, 2018, 4th September, 2018 and 17th December, 2018 issued by the respondent no. 2.

He submits that the petitioner no.1 is a patient of '*ulceritic colitis*' and requires funds to meet his medical needs. The petitioners are suffering from extreme financial distress. In spite of repeated reminders the petitioners' dues have been withheld by the respondent no.4. The petitioners have also not been paid the unrevised rent since April, 2018 save and except a paltry sum of Rs. 38,880/-.

Mr. Bhattacharjee, learned advocate appearing for the respondent nos. 1 to 3 submits that the Higher Education Department of the Government of West Bengal is the authority to allot fund towards payment of rent. In the absence of allotment from the Department of Higher Education, Bengal Bn, NCC is not in a position to disburse the rental dues. It is the responsibility of the Department of Higher Education to allot fund towards the rental dues. Upon such allotment, the rental dues are transferred by Bengal Bn, NCC to the bank account of the owners. In support of such contention, he has drawn the attention of this Court to the documents annexed at pages 56, 57, 65, 82 to 85 of the report filed in the form of an affidavit.

Drawing the attention of this Court to the memo dated 17th August, 2017 issued by the respondent no.2, annexed at page 18 of the report, Mr. De, learned advocate appearing for the State respondents submits that suitable accommodation had been hired by the NCC authorities for living arrangement of staff comprising of employees of Central Government. In view thereof, the respondent no. 4 cannot be saddled with the responsibility

towards allotment of fund for disbursement of rent.

Mr. De submits that the petitioners have not been able to produce any document to establish that it is obligation of the respondent no. 4 to allot fund towards payment of the rental dues and in view thereof, the petitioners' claim is not sustainable in law.

Mr. Maitra, in reply, denies the contention of Mr. De that the Central Government is the competent authority and submits that there is no averment to that effect in the affidavit-in-opposition filed by the respondent nos. 5 and 6.

The enhanced rent is due and payable to the petitioners. Such entitlement is not disputed. The sole controversy is whether the said rent is payable by the State Government or by the NCC authorities. In the affidavit-in-opposition filed on behalf of the respondent nos. 5 and 6, it had been categorically stated that the Special Land Acquisition Officer, Hooghly is the competent authority to assess the rent but the said respondent is not the competent authority to allot fund towards disbursement of the rental dues. As per the request of the competent authority, the said

respondent no. 5 had assessed and revised the rent.

No affidavit-in-opposition has been filed by the respondent nos. 4 and 7 controverting the statement made by the petitioners that the respondent no.4 is the authority competent and responsible for allotment of funds towards payment of the rental dues. On behalf of the said respondents there is also no denial of the fact that the Higher Education Department, Government of West Bengal had allotted amount towards payment of rental dues at the unrevised rate of Rs. 2592/-, as stated by the respondent no.2 in his memo dated 6th August, 2018, annexed at page 24 of the writ petition. From the memo dated 29th April, 2013, annexed at page 10 of the said report filed by the respondent nos. 1, 2 and 3, it appears that the respondent no. 5 is the competent authority to assess the rent. The document annexed at page 59 of the said report is a memo dated 19th June, 2013 issued by the Assistant Secretary to the Government requesting the respondent no.6 to conduct inspection towards revision of rent. The rent has, in fact, been revised from time to time. By a memo dated 11th March, 2016, the rent was

revised to Rs.2592/-. Accepting such assessment, necessary allotment was made by the respondent no.4 towards payment of the rental dues. Thereafter, the rent was further revised to Rs. 42,831/- *vide* memo dated 16th April, 2018. The said memo has neither been challenged nor disputed by the respondent no.4 and as such the petitioner is entitled to the entire amount of rent on the basis of such revision. No explanation is forthcoming as to why the Department of Higher Education, Government of West Bengal had not taken steps to allot fund towards disbursement of such rent.

It appears from the documents annexed at pages 54 to 57 of the said report that fund was allotted by the Higher Education Department towards payment of rent in favour of the DDO being Bengal Bn, NCC, Hooghly. The documents at pages 82 to 85 of the report also reveal that all along fund has been allotted by the Higher Education Department. It also appears that by a memo dated 17th September, 2019, annexed at page 65 of the said report, the Officer on Special Duty, Department of Higher Education, Government of West Bengal had requested of the Accounts Officer, NCC,

Higher Education Department to sub-allot funds in favour of the DDO.

In the said conspectus, this Court is of the opinion that the Higher Education Department to the Government of West Bengal is the competent authority to allocate and allot funds to enable the NCC authorities to make payment in favour of the petitioners.

The entire dues payable to the petitioners with effect from 1st October, 2017 was calculated, quantified and forwarded by the respondent no.2 to the Special Secretary, Department of Higher Education *vide* memo dated 28th August, 2020. From the said memo, annexed at page 79 of the report, it appears that upto 31st March, 2020 the amount payable to the petitioners towards rent was Rs.12,26,418/-.

Accordingly, this Court directs the competent authority of the Higher Education Department, Government of West Bengal to allocate and allot appropriate fund in favour of Bengal Bn NCC towards payment of the entire arrear dues with effect from 1st October, 2017 till 30th November, 2020, as indicated in the memo dated 28th August, 2020, issued by the respondent no. 2, within a period of four weeks

from the date of communication of this order, upon adjustment of the unrevised amount already paid for the said period, to enable the Bengal Bn NCC to transfer the entire dues to the petitioners' bank account within a week thereafter. The competent authority of the Higher Education Department, Government of West Bengal shall also allot fund in favour of the Bengal Bn NCC towards continuance of disbursement of the monthly rent payable to the petitioners at the rate of Rs.42,831/- per month on and from the month of December, 2020.

With the aforesaid observations and directions, the writ petition is disposed of.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties upon compliance of all necessary formalities.

(Tapabrata Chakraborty, J.)