

Form No. J (1)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

Present:

The Hon'ble Justice Biswajit Basu.

C.O. 947 of 2020

Bharat Petroleum Corporation Limited.
Vs.
Pradeep Kumar Agarwal and others.

For the petitioner	:	Mr. Sanjib KumarMal, Mr. Bimalendu Das, Ms.Shomrita Das.
For the opposite party no. 1	:	Mr. S. Basu, Mr. Kumar Gupta Das, Mr. SupratimLaha, Mr. Pranav Sahrma.
For the opposite party no. 2	:	Mr. Binay Kumar Jain.

Heard on : 17.08.2021

Judgement on : 15.09.2021

Biswajit Basu, J.

1. The instant revisional application under Article 227 of the Constitution of India is directed against the Order No. 4 dated February 24, 2020 passed by the learned District Judge, Alipore District- 24 Parganas (South) in P.P. Appeal

No. 5 of 2020 arising out of the order dated February 04, 2020 passed by the Estate Officer in an eviction proceeding initiated by the petitioner under Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as 'the said Act of 1971' in short).

2. The appeal Court below by the order impugned has passed an ex parte ad interim order of stay of all further proceedings of the said eviction proceeding till March 12, 2020; the said order was subsequently extended.

3. Mr. Sanjib Mal, learned advocate for the petitioner submits that the Estate Officer by the order dated February 04, 2020 has dismissed an application filed by the opposite party no. 2 to the said eviction proceeding, the opposite party no. 1 herein, for expunging his name from the said eviction proceeding. The said order not being an order passed under any of the provisions specified under Section 9 of the said Act of 1971, the appeal from the said order is not maintainable as such the appeal Court below has grossly acted with material irregularity in staying all further proceedings of the eviction proceeding in aid of the said appeal. He further submits that the opposite party nos. 1 and 2 are in unauthorised occupation of the public premises described under Schedule 'B' appended to the eviction petition and to run an eatery business under the name and style 'Drive-In Snacks', they have put in unauthorised construction on the said property. He further submits that the opposite party nos. 1 and 2 are abusing the process of law to any extent to delay the disposal of the eviction proceeding. Mr. Mal referring to the records

contends that similar type of applications filed by the said opposite parties for similar relief were dismissed earlier by the Estate Officer and the orders of the Estate Officer were affirmed in revision by the High Court.

4. Mr. Saptangshu Basu, learned senior advocate appearing on behalf of the opposite party no. 1 submits that the present application filed by his client is not only for the purpose of expunging his name from the eviction proceeding but also for the determination of the jurisdiction of the Estate Officer over the connected eviction proceeding, therefore, the allegation of Mr. Mal that earlier applications of his client was for similar relief is not correct.

5. Mr. Basu submits that an appeal is provided against every order of the Estate Officer under Section 9 of the said Act of 1971, therefore, he disputes the contention of Mr. Mal that the order of the Estate Officer dated February 04, 2020 is not open to appeal under the said provision of the said Act of 1971, to buttress his such argument, he places reliance on the decisions of the Hon'ble Supreme Court in the case of ***LIFE INSURANCE CORPORATION OF INDIA vs. NANDINI J. AND OTHERS*** reported in (2018) 15 Supreme Court Cases 356, in the case of ***THE CENTRAL BANK OF INDIA LTD vs. GOKAL CHAND*** reported in AIR 1967 SUPREME COURT 799 and a decision of the learned Single Judge of this Court in the case of ***DULI CHAND SHREELAL AND ANOTHER vs. UNION OF INDIA & OTHERS*** reported in 2017 SCC ONLINE CAL 3418.

Heard learned counsel for the parties, perused the materials-on-record.

6. The petitioner initiated the proceeding under Section 5 of the said Act of 1971 way back in the year 2012. The Estate Officer by the order dated September 25, 2013 had disposed of the earlier application of the opposite party no. 1 for expunging his name from the eviction proceeding with the following observations:-

“I have considered the submissions made by the parties and have also gone through the Application filed by Opponent No. 2 and though I am prima-facie of the view that the statutory notice under section 4 & 7 of the said Act has been served upon/received by the Opponent No. 2 but without going into the said controversy at this stage and leaving the questions raised in the said application open, I hereby decide that said issues shall be decided alongwith the main Application which procedure will also be in consonance of the fact that this proceeding is a summary proceeding as per Act.”

7. The opposite party no. 1 herein assailed the said order dated September 25, 2013 in revision being C.O. 3678 of 2013 but ultimately did not press the said revisional application. Shri. Om Prakash Agarwal, the opposite party no. 1 of the said eviction proceeding, the opposite party no. 2 herein, also filed similar application for expunging his name from the eviction proceeding which was also dismissed by the Estate Officer and the said order of dismissal of the said application was challenged by the said opposite party no. 2 in C.O. 2427 of 2013. The learned Single Judge of this Court by the judgment and order dated July 30, 2013 dismissed the said revisional application.

8. The opposite party no. 1 herein filed the present application alleging that Estate Officer does not possess the requisite qualification as prescribed under Section 3 of the said Act of 1971, he is acting in a biased manner to favour the petitioner and since no notice under Section 4(2)(ii) of the said Act of 1971 was served, the eviction proceeding cannot continue against him. In the said application, the opposite party no. 1 prayed for the following reliefs:-

- “a) The present proceedings be transferred before the Estate Officer, appointed by the Central Government to act as the Estate Officer in respect of the premises in question as per 1971, Act.;*
- b) The name of the Opponent Party No. 2 be expunged from the present proceedings;*
- c) Stay of further proceedings till the disposal of the present application;*
- d) Ad-interim orders in terms of prayers above*
- e) Such further or other orders be passed and/or direction be given as this learned Estate Officer may deem fit and proper;”*

9. The first prayer of the opposite party no. 1 is misconceived inasmuch as the Estate Officer has no power to transfer a proceeding pending before him to any other Estate Officer. The Estate Officer by his earlier order decided to consider the prayer of the opposite party no. 1 for expunging his name from the proceeding along with the main proceeding for eviction. The said order was affirmed in revision by the High Court. The Estate Officer in view of his said earlier decision has refused to entertain the same prayer of the opposite party no. 1 made in his subsequent application. Re-agitation of the same issue is wholly mala fide.

10. Under Section 9 of the said Act of 1971 an appeal shall lie from every order of an Estate Officer made in respect of public premises under Section 5, or Section 5(b) or 5(c) or Section 7 thereof. The Estate Officer exercises power to pass an order of eviction of the unauthorised occupants from the public premises under Section 5 of the said Act of 1971 and he exercises power to remove unauthorised constructions and demolition of such construction under 5(a) and 5(b) thereof respectively, whereas by virtue of Section 7 of the said Act of 1971 the Estate Officer exercises power to pass an order requiring the person in unauthorised occupation of any public premises to pay rent and damages.

11. The argument of Mr. Basu that every order of Estate Officer is open to appeal is absolutely fallacious. The decisions relied on by him are wholly misplaced. Whether the appointment of an appellate Officer referred to in Section 9 of the said Act of 1971 before whom an appeal shall lie was in the capacity of *persona designata* or as a Court was the only issue under consideration before the Hon'ble Supreme Court in the case **reported in (2018) 15 Supreme Court Cases 356 (supra)** relied on by Mr. Basu. In the said decision, it has not been held as suggested by Mr. Basu that every order passed by the Estate Officer is open to appeal under Section 9 of the said Act of 1971. The decision of the Hon'ble Supreme Court reported in **AIR 1967 SUPREME COURT 799 (supra)** also relied on by Mr. Basu is of no help for the

petitioner inasmuch as the said decision was in a case under Delhi Rent Control Act, 1958, rather in the said decision it has been held that *“In the context of S. 38(1) of the aforesaid Act , the words “every order of the Controller made under this Act” though very wide, do not include interlocutory orders, which are merely procedural and do not affect the rights or liabilities of the parties.”* The decision of the learned Single Judge of this Court reported in **2017 SCC ONLINE CAL 3418 (supra)** is nowhere related to the issue under consideration. On the contrary, in the said decision, an order passed under Section 7 of the said Act of 1971 was held to be not open to challenge in revision in view of the availability of appeal against such an order under Section 9 of the said Act of 1971.

12. The said act of 1971 was enacted to provide for speedy machinery for the eviction of unauthorised occupants from public premises. A proviso was added to Section 5 of the said Act of 1971 by the Amendment Act of 2015 whereby it has been mandated that the Estate Officer shall make an order of eviction as expeditiously as possible and every endeavour shall be made to issue such order eviction within fifteen days of the date specified in the notice under sub-section (1) or sub-section (1A), as the case may be, of Section 4 of the said Act of 1971.

13. It is although submitted on behalf of the opposite party no. 1 that the delay in disposal of the eviction proceeding has been caused due to the non-availability of the Estate Officer for a long time but the facts recorded above clearly demonstrate that the opposite party nos. 1 and 2 have been trying to

delay the disposal of the eviction proceeding in every which way by exploiting the legal system, seemingly looking innocent but in fact cultivated to sidetrack the eviction proceeding from its main course leading to pathetic miscarriage of justice. The opposite party nos. 1 and 2, if are allowed to continue with the frivolous interlocutory proceedings, the Estate Officer would be painting the Forth Bridge in bringing the said eviction proceeding to a conclusion. This Court under such circumstances can't help but to quote the following observation of the decision of the Hon'ble Supreme Court in the case of **SUBRATA ROY SAHARA vs. UNION OF INDIA AND OTHERS** reported in **(2014) 8 SCC 470:-**

“191. The Indian judicial system is grossly afflicted with frivolous litigation. Ways and means need to be evolved to deter litigants from their compulsive obsession towards senseless and ill-considered claims. One needs to keep in mind that in the process of litigation, there is an innocent sufferer on the other side of every irresponsible and senseless claim. He suffers long-drawn anxious periods of nervousness and restlessness, whilst the litigation is pending without any fault on his part. The suggestion to the legislature is that a litigant who has succeeded must be compensated by the one who has lost. The suggestion to the legislature is to formulate a mechanism that anyone who initiates and continues alitigation senselessly pays for the same. It is suggested that the legislature should consider the introduction of a “Code of Compulsory Costs”.

14. The order dated February 04, 2020 is not coming within the purview of any of the provisions specified under Section 9 of the said Act of 1971, as such, the order impugned being passed in aid of an appeal assailing the said orderis

not sustainable and is accordingly set aside. This Court is of the opinion that there is no necessity of keeping such a non-maintainable appeal pending, the P. P Appeal No. 05 of 2020 pending before the learned District Judge at Alipore, District. 24 Parganas (South) is, therefore, dismissed in exercise of the power under Article 227 of the Constitution of India with costs of Rs. 50,000/- to be paid by the opposite party no. 1, Sri. Pradeep Kumar Agarwal in favour of the Member Secretary, The Mediation and Conciliation Committee, High Court Calcutta within two weeks from date.

The Estate Officer shall ensure the payment of such costs, in default of payment of the said costs within the time stipulated above, the Estate Officer shall proceed to dispose of the eviction proceeding *ex parte* against the said opposite party no. 1. Needless to say, that the Estate Officer shall dispose of the said eviction proceeding expeditiously keeping in mind the mandate of the proviso appended to Section 5 of the said Act of 1971.

C.O. 947 of 2020 is allowed with the above terms.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(BISWAJIT BASU, J.)