

ORDER SHEET

WPO/7/2021

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SAMUEL FITZE AND CO PVT LTD AND ANR
VS.
THE STATE OF WEST BENGAL AND ORS

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date: 9th February, 2021

Appearance:

Mr. Ashok Kr. Banerjee, Sr. Adv.

Mr. Soumya Majumder, Adv.

Mr. M. S. Yadav, Adv.

...for the petitioners

Mr. T. M. Siddiqui, Adv.

Mr. Paritosh Sinha, Adv.

Mr. N. Chatterjee, Adv.

...for the State

The Court: Affidavit-of-service filed in Court is taken on record.

The present writ petition has been filed challenging a notice bearing Memo no.406/ME/J/2020 dated December 8, 2020, whereby the Estate Manager, Murshidabad Estate claimed arrears of rent from the petitioners since the year 1994.

Learned senior counsel appearing for the petitioners places reliance on a judgement dated November 6, 1990 passed in CO No. 1245(W) of 1985, where Sections 9, 10 and 12 of the Murshidabad Estate (Management of Properties) and Miscellaneous Provisions Act, 1980 were

declared ultra vires. The State respondents therein were further restrained from enforcing or implementing Section 11 of the said Act until rules were properly framed under Section 15 of the Act for the proper administration of the Murshidabad Estate with definite guidelines to the Estate Manager and until the provision of appeal was made in the said Act by suitable amendment.

Learned senior counsel argues that, in view of the striking down of the said Sections, the present claim is not maintainable, since proper guidelines/rules have not yet been framed pursuant to the said order till date.

Learned senior counsel further relies on an order dated September 8, 2000 wherein a learned Single Judge of this Court, in WP No.16027(W) of 2000 (AST 2986 of 2000), recorded that the Secretary, Judicial Department of the Government of West Bengal, took a specific stand that the order impugned therein had been issued by mistake and there was a subsequent order of withdrawal of the said notice. The writ petition was thus dismissed.

It is submitted that the notice impugned therein was of similar nature as the present one.

Not stopping there, the respondent issued another notice subsequently, which was struck down by a co-ordinate Bench of this court vide order dated December 19, 2000 passed in WP No. 3309 of 2000.

It is submitted that the present impugned notice is, thus, barred by the principle of *res judicata*.

Learned senior counsel further argues that the next date of hearing on the question of the quantum of arrear rents was fixed lastly by the respondent authorities on 8th January, 2021. However, the impugned notice was issued to the petitioners much prior to that, that is, on December 8, 2020, on the self-same issue of arrears of rent. Not only that, in the impugned notice, the respondent issued a warning that in the event of non-compliance of the direction to deposit the arrear dues within 30 days from the date of the notice, a show cause notice as to eviction would be issued to the petitioners under the 1980 Act, failing which, necessary steps would be taken as per provisions of law without further correspondence.

It is submitted that the very act of issuing the notice, virtually deciding the arrears of rent, prior to the assigned date of hearing, was palpably without jurisdiction and has to be struck down.

Learned counsel appearing for the respondent authorities submits that the entire proceeding regarding the hearing of the petitioners on the question of arrear rent was initiated on September 3, 2020. Subsequently, several dates were fixed in such regard, lastly on January 8, 2021. However, due to the correspondence of the petitioners with the income tax authorities in the meantime regarding the arrear rents, the respondent authorities were constrained to issue the impugned notice dated December 8, 2020. It is submitted that the issuance of the notice is independent of the hearing which is going on regarding arrears of rent.

Learned counsel for the respondent authorities further submits that Sections 9, 10 and 12, which were declared ultra vires, and even Section 11, the operation of which was put on hold, to be relived subject to

framing of rules, do not have any direct bearing on the current matter, since arrears of rent are at issue in the present matter, which is not governed by the said sections. As such, the question of operation of the principle of *res judicata* does not arise in the present case.

Upon hearing the parties, it is evident that the impugned notice was issued on December 8, 2020, claiming arrears of rent from the year 1994. The notice itself mentions that it was issued in the light of an earlier order dated April 19, 1994, regarding arrear rents. As such, the claim of arrears of rent, as made in the impugned notice, was time-barred beyond the period of three years prior to the date of issuance of the impugned notice, i.e., December 8, 2020. It is the incumbent duty of the Court to assess whether a claim is barred by limitation, irrespective of such point not being argued by counsel.

Although Article 52 of the Limitation Act, being promulgated under the authority of the Constitution of India, cannot circumscribe a Constitutional relief under Article 226 of the Constitution, in the present case, since the respondent authorities were barred by law, that is Article 52 of the Limitation Act, 1963 from filing any suit for arrears of a period prior to three years from December 8, 2020, they could not have issued the impugned notice for the said prior period as well. It is well-settled that what cannot be done directly cannot also be resorted to indirectly. Applying such proposition, in any event, the claim of arrears for the period prior to 8th December, 2017 is palpably time-barred. The impugned notice thus suffers on that score.

As regards effect of declaration of certain sections of the 1980 Act ultra vires, the petitioners' contention cannot be accepted, since the provisions of the 1980 Act which were struck down by the relevant order do not pertain to rent or arrear rent. The instant issue concerns recovery of arrears of rent, whereas Section 9 of the Act pertains to eviction of unauthorised occupants, Section 10 relates to alternative accommodation for the surviving sons and daughter of the late Nawab Bahadur and Section 12 relates to application of income from estate properties. Even Section 11, the operation of which was restrained till rules were framed, relates to the power of the Estate Manager to dispose of immovable properties. Hence, none of the above provisions have any relevance to the present case.

The other co-ordinate Bench judgements relied on and annexed to the writ petition by the petitioners pertains to show cause notice for eviction under Section 8 of the 1980 Act. The same also does not have any bearing upon the present case and is not germane for the present adjudication. Thus, the question of *res judicata* does not arise in the present case.

As far as the other question raised by the petitioners is concerned, it is evident from a perusal of the materials on record that the hearing, which was to take place on January 8, 2020 vide order dated December 2, 2020 (Annexure P-37 at page 190 of the writ petition) relates back ultimately to the notice dated September 3, 2020 (annexure P-32 at page 184 of the writ petition). The said notice dated September 3, 2020 squarely pertains to the arrear rents as claimed by the respondents. Upon stating a tentative amount of such arrear rents by way of total dues from the

petitioners, the Estate Manager, Murshidabad Estate directed the petitioners by the notice dated September 3, 2020, either to make necessary arrangement to pay the entire due amount by September 16, 2020 positively or to attend hearing in person on September 16, 2020 with all necessary documents for payment of rent. The petitioners chose the second option and subsequently hearing dates were being fixed, lastly on January 8, 2020.

Thus, the respondents' action in issuing the impugned notice dated December 8, 2020, prior to the next date of hearing on the self-same question, was patently *mala fide* and arbitrary and has to be struck down on such ground as well.

In view of the above discussions, WPO/7/2021 is allowed, thereby quashing the notice dated December 8, 2020, bearing Memo no.406/ME/J/2020.

However, this order will not prevent the petitioners from depositing arrears of rent as per the impugned notice for the period of three years anterior to December 8, 2020. In the event of non-deposit of such amount, the respondents shall be free to issue a further notice, only upon conclusion of hearing on the issue of arrear rents, which was lastly fixed on January 8, 2021, for recovery of arrear rents for the period of three years immediately preceding December 8, 2020 without being prejudiced in any manner by the present order.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(SABYASACHI BHATTACHARYYA, J.)

RS