

ORDER SHEET
WPO 556 of 2019
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SUPRIYA MANCHERJI
VS
THE STATE OF WEST BENGAL AND ORS

BEFORE:
The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date : January 28, 2021.

Appearance:
Mr. Srijib Chakraborty, Adv.
Ms. Sudeshna Basu Thakur, Adv.
... for petitioner

Mr. Supratim Dhar, Adv.
Mr. Paritosh Sinha, Adv.
Mr Tirthankar Das, Adv.
...for the State respondent.

The Court : The grievance of the petitioner, who is in possession of the property-in-question under a leave and license dated January 28, 2012 given by the erstwhile owner of the property, is that the Collector under the West Bengal Escheats and Forfeitures Act, 2012, is attempting to take possession from the petitioner *de hors* the law.

Learned Counsel for the petitioner submits that, upon publication of a notice, as envisaged in Section 6 of 2012 Act, the petitioner filed her claim

before the Collector. However, without deciding such claim, the Collector has sought to dispossess the petitioner under Section 7 of the Act.

That apart, it is argued that the notice given in the form of the order dated September 30, 2019, under Section 7 of the 2012 Act, as annexed at page 83 of the writ petition, is bad in law in so far as the Collector himself authorized certain persons to enter into possession, which is contrary to Section 7 (2) of the 2012 Act, which specifically stipulates that physical possession has to be delivered to the Collector or any such person authorized by the State Government.

Learned Counsel further argues that alternative accommodation ought to be given to the petitioner prior to taking over possession from the petitioner, within the contemplation of Section 7 of the 2012 Act.

Learned Counsel for the respondent authorities submits that the Collector was authorized as a Competent Authority under the 2012 Act and relies on the relevant notification in that regard, annexed to the affidavit in opposition. That apart, it is argued, delivery of possession under Section 7 of the Act is not dependent upon a prior decision on the claim made by any person under Section 6 of the Act.

Upon hearing Counsel for both sides, it appears that in the present case the Collector of Stamp Revenue of Kolkata authorized certain persons, purportedly under Section 7(1) of the 2012 Act, vide order dated September 30, 2019 (Annexure p7 at page 83 of the writ petition) to take possession of the disputed property.

Section 7(2) categorically provides that physical possession shall be delivered to the Collector or any such person authorized by the State Government.

“State Government”, as defined in Section 2 (k) of the 2012 Act, means the State Government of West Bengal and “State” means the State of West Bengal.

Hence, it is clear from the language of the statute that the Collector herself/himself does not have any authority to sub-delegate the power to take delivery of possession to a third party. Such authorization has to be issued by the State Government, in the event the Collector herself/himself does not take such delivery of possession.

As regards the argument of prior disposal of the petitioner’s claim under Section 6 of 2012 Act, the same cannot be accepted in view of the *non obstante* clause in Section 7(1) of the Act. Consideration and adjudication of claims made under Section 6 of the 2012 Act is not a pre-condition for the Collector or any authorized agent of the State to take possession under Section 7.

With regard to the claim of the petitioner that prior alternative accommodation has to be given before evicting the petitioner from the premises, the same does not appear to hold good in view of the specific language of Section 7(2) and the proviso thereto. Sub-Section (2) of Section 7 clarifies that any person or persons whosoever, in possession of the escheats property, shall forthwith deliver the physical possession of the same to the

Collector or any such person authorized by the State Government. The proviso says that if any person has been in exclusive possession of any property, which is to be escheated under the Act, for not less than five years (which criterion is fulfilled by the petitioner), the State may arrange for such compensation or alternative accommodation in respect of such person as it may, by order, determine.

A conjoint reading of the said provisions indicate that the remedy of the displaced person may be either in the mode of compensation or alternative accommodation at the discretion of the State Government, to be determined by an order. However, the delivery of possession shall be forthwith. Although a tinge of absurdity might have been attributed to Section 7 in view of such summary curtailment of the prior rights of a person in possession, such absurdity is somewhat alleviated by several stages of notice being contemplated in the 2012 Act prior to such dispossession.

Be that as it may, in the present case, the action of the Collector in attempting to take possession under Section 7 of the 2012 Act is vitiated by the authorisation of third parties to take such delivery of such possession. Section 7 is very clear in its language, in so far as the Collector and/or any authorized agent of the State Government are the only authorized persons to enter into possession. The Collector can not sub-delegate her/his powers under Section 7 to any third party, since that would tantamount to sub-delegation *de hors* the law. Such authority, at its discretion, may only be

conferred by State Government itself and not the Collector, in the event the Collector chooses not to take possession herself/himself.

In such view of the matter, the order dated September 30, 2019 (Annexure P7 at page 83 of the writ petition) is set aside in so far as it relates to the Collector authorizing Shibsankar Dutta, Ramesh Chandra Sarkar and Surajit Chatterjee of the office of the Kolkata Collector, to enter into possession of the property-in-question.

The Collector shall have to take such possession either herself/himself or the State Government may authorize someone to take such possession.

Accordingly, WPO 556 of 2019 is disposed of, setting aside the portion of the impugned order dated September 30, 2019 (annexure P7 of the writ petition) in so far as it relates to authorization of third parties by the Collector of Stamp Revenue, Kolkata to enter into possession of the property-in-question and to assume to administration/ management thereof and make an inventory of the escheats property.

It is made clear that this order will not prevent the Collector or a duly authorized agent of the State Government to proceed to enter into such possession upon notice to the petitioner.

There will be no order as to costs.

Urgent certified website copies of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(SABYASACHI BHATTACHARYYA, J.)

SK.