

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)

Reserved on: 10.01.2022
Pronounced on: 18.01.2022

MAT 2 of 2022
With
CAN 1 of 2022

(Through Video Conference)

Ujjal Kumar Paul & Ors.

...Appellants

-Vs-

The State of West Bengal & Ors.

...Respondents

With

MAT 4 of 2022
With
CAN 1 of 2022

(Through Video Conference)

Kamal Krishna Mukherjee & Ors.

...Appellants

-Vs-

The State of West Bengal & Ors.

...Respondents

Present:-

Mr. Bikash Ranjan Bhattacharyya, Sr. Adv.
Mr. Jamiruddin Khan,
Ms. Sayanti Sengupta, Advocates
... for the appellants

Mr. S. N. Mookherjee, AG
Mr. Anirban Ray, GP
Mr. Pinaki Dhole,
Mr. Debasish Ghosh,
Mr. Avisek Prasad,
Mr. Pranab Halder,
Mr. Bipin Ghosh, Advocates
... for the State

**Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE**

Prakash Shrivastava, CJ:

1. This order will govern the disposal of MAT 2 of 2022 and MAT 4 of 2022 as in both the appeals identical order in similar fact situation are under challenge.

2. These appeal are directed against the order of the learned Single Judge dated 23.12.2021 whereby the interim order dated 2nd of November, 2021 passed in WPA 17445 of 2021 and WPA 20086 of 2019 have not been extended any further.

3. The appellants had filed the petition challenging the notice dated 8th of October, 2021 stating that the appellants were in unauthorized occupation the quarter in question after their retirement on superannuation and that licence for the Government premises were terminated in terms of the Act of 1984 and, therefore, appellants were to deliver the possession of the premises within 30 days failing which the matter was to be processed with in terms of law. Initially by orders dated 01.11.2021 and 02.11.2021 the learned Single Judge had directed that the notice dated 8th of October, 2021 will not be given effect to till the next date of hearing. On 23.12.2021 learned Single Judge on the basis of certain admission made by the learned Counsel for the appellants did not find it to be a fit case for exercising the discretion for extending the interim order. Hence, learned Single Judge has declined to extend the interim order.

4. Submission of the learned Counsel for the appellants is that the premises in occupation of the appellant is not a Government

premises in terms of Section 2(D) of the West Bengal Government Premises (Regulation of Occupation) Act, 1984, but it is a public premises in terms of Section 2(K) read with schedule 2, therefore, the action is bad in law.

5. Learned Advocate General has opposed the appeal by submitting that order has been passed by the learned Single Judge on the basis of the admissions made by the Counsel, therefore, it is not open to the Counsel for the appellant to make submission contrary to the said admission. He has submitted that the action is taken under the West Bengal Government Premises (Tenancy Regulation) Act, 1976 and that Act has overriding effect as has been settled by the Hon'ble Supreme Court in the matter of **State of W.B. and Another vs. Banalata Investment Pvt. Ltd., (2001) 4 SCC 700**. He has also referred to the order passed in WPST 4 of 2021 in the case of Chandrawati Devi vs. The State of West Bengal and Ors. and has submitted ex-employees are required to be evicted from the Government accommodation allotted to them during service.

6. Having heard the learned Counsel for the parties and on perusal of the record, it is noticed that before the learned Single Judge, Counsel for the appellants had admitted that the property did not belong to the appellants and it was an official accommodation given to the appellants in course of employment and as perk. It was an admitted position before the learned Single Judge that the appellants did not have any right title and interest in respect of the property in question and that the property belonged to the State. Mere mention of the incorrect Act in the notice has been found to be inconsequential by the learned Single Judge. On the basis of the admitted facts learned

Single Judge has reached to the conclusion that the appellants have no right to stay and continue in occupation after expiry of their employment or engagement with the State.

7. The issue which the learned Counsel for the appellants has risen before this Court that the appellants had not receive the premises in question during the course of employment as official accommodation, is contrary to the admitted position before the leaned Single Judge. If any wrong admission has been made before the learned Single Judge by the Counsel for the appellants then the remedy lies in filing an appropriate application before the concerned Court for clarification/modification/recall of the order. Learned Single Judge has not committed any error in discontinuing the interim order on the basis of the admission made before him. Hence, we find no reason to interfere in the order of the learned Single Judge. The appeal is accordingly dismissed, however, with liberty to the appellants to file appropriate application before the learned Single Judge and also with liberty to mention before the learned Single Judge after filing such an application.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
18.01.2022

PA(SS)