

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :

The Hon'ble Justice Moushumi Bhattacharya

W.P.A. 11405 of 2023

Biplab Taludkar
Versus
The State West Bengal and others

For the petitioner : Mr. Biswaroop Bhattacharyya, Adv.
Mr. Santanu Das, Adv.

For the State : Mr. Nilotpall Chatterjee, Adv.,
Mr. Debraj Sahu, Adv.

Last Heard on : 11th May, 2023

Delivered on : 16th May, 2023

Moushumi Bhattacharya, J.

1. The petitioner seeks a direction on the respondents including the Officer-in-Charge, Barrackpore Police Commissionerate not to take action with reference to the petitioner's possession of the premises which is for consideration in the present writ petition.

2. The undisputed facts are that the petitioner was inducted as an occupier of a government premises of which the private respondent no.6 was the tenant. The petitioner was inducted in February, 2008 and continued to occupy the government premises till 2022. This is the case sought to be made out by learned counsel appearing for the petitioner.
3. The disputes arose between the petitioner and the private respondent no.6(original tenant of the premises) from 2022 on the issue of enhancement of monthly rent. Private respondent no.6 thereafter made a complaint to the State respondents and the private respondent was served with a show-cause notice on 2nd March, 2023 by the Sub-Divisional Officer, Barrackpore.
4. The affidavit of service is taken on record. The private respondent is not represented today despite being served.
5. Learned counsel appearing for the petitioner seeks an order permitting the petitioner to remain in the premises of the private respondent no.6 until a suitable government accommodation is made available to the petitioner. The petitioner is an employee of Air India Engineering Service Limited, Air India Complex, Dum Dum.
6. Learned counsel appearing for the State places the provisions of The West Bengal Government Premises (Tenancy Regulation) Act, 1976 (hereinafter referred to as the "1976 Act") and, particularly, Sections 5 and 6A of the

said Act. Counsel submits that the private respondent was issued the show-cause notice for inducting the petitioner in the government premises and relies on an order passed by a co-ordinate Bench in *W.P.25225(W) of 2014 (Mamata Dhar Vs. The State of West Bengal and others)* under similar circumstances. Counsel submits that the 1976 Act disallows subletting which is held to be unauthorised under the said Act and further submits that the petitioner does not have any rent receipts to corroborate the case sought to be made out since all the monthly payments were paid by the petitioner to the private respondent in cash.

7. Section 2(f) of the 1976 Act defines tenant as “any person by whom the rent of any premises is, or but for a special contract would be, payable”. Section 3(1) provides that every tenancy held by a tenant in respect of Government premises shall stand terminated upon the expiry of the period referred to in a notice to quit served upon such tenant in the prescribed manner. Section 5, which is relevant for the present purpose, provides for penalty for unauthorised subletting. Under Section 5, any tenant who sublets or inducts any person in the premises occupied by him in violation of the terms of lease governing his tenancy, the tenant as well as the person in unauthorised occupation of the premises shall be liable on conviction to imprisonment or fine.
8. In the present case, the records show that the petitioner was enlarged on bail by the A.C.J.M., Barrackpore by an order dated 1st February, 2023.

9. Section 6A of the 1976 Act provides for eviction of unauthorised occupants and penalty for such occupation. Section 6A(a) also authorises the prescribed authority to take any steps including use of force which may be necessary to take possession of the premises and also to enter into the premises for that purpose.
10. The undisputed facts in the present case are that the petitioner has been in occupation of the government premises of the respondent no.6 since 2008. The tenure/longibility of the occupation does not make the occupation legal or permissible under the 1976 Act. The tenant in the present case has lodged a complaint against the petitioner which further leads the court to conclude the occupation being unauthorized in nature. Section 5 as well as 6A of the 1976 Act does not permit the court to give its blessings to the petitioner for the unauthorised occupation. The plea of the petitioner of being permitted to occupy the government premises until the petitioner is able to arrange an alternative premises cannot be said to be reasonable and, in any event, is not permissible under the statutory scheme under the 1976 Act.
11. W.P.A.11405 of 2023 is, accordingly, disposed of in terms of the above with a direction on the petitioner to vacate the concerned premises within eight weeks from the date of communication of this order to the respondent no.3 being the Sub-Divisional Officer, Barrackpore, North 24-Parganas who is the prescribed authority under the Act.

12. Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)