

Court No. 22
28.02.2023
(Item No. 72)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 28005 of 2022

Sandhya Mura
VS
The State of West Bengal & Ors.

Mr. Ekramul Bari
Mr. S. M. Ali
Sk. Imtiaz Uddin
..... for the petitioner
Ms. Chaitali Bhattacharya
Mr. Shehnaz Tareq Mina
.... For respondent Nos. 1 - 3
Mr. Jyoti Prakash Chatterjee
Ms. Shilpa Thapa
.... For the School authority

The petitioner claimed to be an Assistant Teacher at ***Machhalandapur-Simlon Siddheswari Balika Vidyalaya High School (H.S.), District – Purba Bardhaman.*** The petitioner is a ***Bengali Teacher*** joined at the School on **April 2006**. In 2013 the petitioner was accommodated by the School within the School premises with a residential accommodation. From the documents appearing at ***page 16 onwards***, it appeared that, the petitioner had allegedly paid **rent** to the School authority and the School authority had accepted the same. However, there is no formal agreement executed by and between the petitioner and the school authority for granting such residential accommodation. The rent was being regularly paid **till October 20, 2022** as would be evident from record. The School authority then by a written communication dated

November 4, 2022, by virtue of a decision of the Managing Committee, communicated the petitioner to vacate the residential accommodation before **January 1, 2023**, at **page 50** to the writ petition. The petitioner immediately made a written representation/objection dated **November 14, 2022** at **page 51** to the writ petition. From such objection of the petitioner it appeared that, the petitioner specifically contended that, the necessary rent was being regularly paid by the petitioner to the school authority and the petitioner further requested to provide her with a copy of the relevant Managing Committee resolution deciding that the petitioner should vacate the residential accommodation on or before **January 1, 2023**.

The said written objection of the petitioner dated **November 14, 2022** neither was replied to nor the copy of the necessary resolution of the Managing Committee was provided to the petitioner by the school authority.

In this back drop, the petitioner filed this writ petition challenging the authority and action of the relevant school authority and its Managing Committee asking the petitioner to vacate the residential accommodation.

Mr. Ekramul Bari, learned counsel appearing for the petitioner contended that, the moment the school authority had accepted rent and allowed the

petitioner to reside at the said **rented accommodation** within the School premises a jural relationship of landlord-tenant had been created and a valuable right had accrued in favour of the petitioner to reside at such residential accommodation until she is evicted in due process of law. He submitted that, the petitioner was entitled to receive a copy of the Managing Committee resolution under which it was allegedly decided that the petitioner should vacate the accommodation. **By not providing the same the school authority and its Managing Committee had acted in an arbitrary and wrongful manner.** Mr. Bari then submitted that, the writ petition is maintainable before this Court as the valuable right of the petitioner and her legal right had been infringed by the school authority in an arbitrary and unlawful manner. He submitted that, there was no disputed question of facts involved, as the rent receipts are on record. In support of his contention, Mr. Bari had relied upon the following decisions:

- (i) ***A judgment of a co-ordinate Bench dated January 14, 2022 delivered in the matter of: Chhanda Dutta Vs. The State of West Bengal & Ors., WPA 8794 of 2019;***
- (ii) ***A judgment of a co-ordinate Bench dated April 2, 1991 in the matter of: Smt. Suchitra Sen alias Roy reported at (1991)2 Cal LJ 355;***

Mr. Bari then submitted that, the decision of a Managing Committee of the school, if it is found to be arbitrary and illegal is always amenable to challenge under Article 226 of the Constitution of India before a Constitutional Court. In support, he relied upon judgment of a co-ordinate bench in the matter of : ***Mahadeb Khan & Anr. Vs. The State of West Bengal & Ors. reported at (1991) 1 Cal LJ 303.***

Referring to ***Clause 13*** from ***ROPA 2009***, Mr. Bari submitted that, the relevant statute governing the employment of the petitioner provided for House Rent Allowance.

So definitely the petitioner when was accommodated with the residential accommodation by the school authority avalid right of a petitioner in the tune of ***Clause 13 of ROPA 2009*** was created.

Mr. Jyoti Prakash Chatterjee, learned advocate appearing for respondent No. 5, the relevant school authority submitted that, the accommodation was all along a rented accommodation provided to the petitioner to accommodate the petitioner with all *bona fide* intention on the part of the School. However, subsequently, the said accommodation was reasonably required by the school authority for its own use for the purpose of running the affair of the school. Thus the decision was taken by the Managing Committee of the school and the petitioner was asked to vacate the residential accommodation by issuing

the said notice dated **November 4, 2022**. He submitted that, the said document at **page 50** to the writ petition can be construed as a **notice to quite** served upon the petitioner. He submitted that, to adjudicate upon the nature of disputes raised by the petitioner in the writ petition, the same required a detail trial, which can only happen before a jurisdictional Civil Court, as several disputed questions were required to be tried as triable issues. In such circumstance, the writ court shall not interfere by exercising its high prerogative writ jurisdiction and the petition shall be dismissed. In support, Mr. Chatterjee had relied upon a decision of the Hon'ble Supreme Court in the matter of: ***New Okhla Industrial Development Authority Vs. Kendriya Karamchhari Sahkari Grih Nirman Samiti reported at (2006) 9 Supreme Court Cases 524.***

Ms. Chaitali Bhattacharya, learned counsel appeared for the respondent Nos. 1 to 3.

After considering the rival contentions of the parties and upon perusal of the materials on record, it appeared to this Court that, the admitted facts were that the school authority accommodated the petitioner by providing a residential accommodation. The school authority had received and accepted rent from the petitioner. The school authority had served upon the petitioner the said written document dated **November**

4, 2022 at **page 50** to the writ petition. Neither parties had disputed the relationship, for the purpose of the disputes involved in this writ petition, between the petitioner and the relevant school authority was of a landlord-tenant and or a licensor-licensee. This jural relationship needed to be adjudicated upon first. Even, if the petitioner challenged the authority and the decision of the Managing Committee of the School in taking the said decision for eviction of the petitioner, then also the same would have to be adjudicated upon in the light of the relationship between the School authority and the petitioner as mentioned above. Even if the petitioner had a right to remain in possession at the residential accommodation provided by the school authority, the petitioner first should establish the nature of right it enjoyed whether under a tenancy or a permissive occupation. All these questions cannot be adjudicated upon by a Writ Court in exercise of its high prerogative Writ Jurisdiction under Article 226 of the Constitution of India since several triable issues are required to be adjudicated upon.

It is true that, when the writ petition was moved, at the threshold despite notice the respondent Nos. 4 and 5 were not represented, the interim order dated **December 23, 2022** was passed with a specific rider subject to the point of maintainability of the writ

petition. The relevant observation from the said order dated **December 23, 2022** is quoted below:

“It is also made clear that if ultimately it is found that there are several factual disputes which cannot be assessed by a Writ Court then the maintainability of this writ petition shall be decided at the threshold after hearing the school authority.

However, since this Court, in exercise of its equitable jurisdiction under Article 226 of the Constitution of India, at this stage, is of the view to give an immediate interim protection to the petitioner subject to hearing of the school authority and subject to the point of maintainability as noted above, the parties to this writ petition are directed to maintain status quo as on date till January 31, 2023.”

From the judgments relied upon by Mr. Bari ***In the matter of: Chhanda Dutta (supra); Smt. Suchitra Sen @ Roy (supra) and Mahadeb Khan (supra)***, and the ratios laid down in all these judgments, it is true that, the decision of a Managing Committee of the school, if it is otherwise arbitrary or wrongful is definitely amenable to Writ Jurisdiction. In the facts and circumstance under which those judgments were rendered, which admittedly were not related to a ***landlord-tenant*** and/or a ***licensor-licensee*** relationship between ***the school authority and one of its Teacher***. Hence, the ratios decided in those judgments are not of any assistance in the facts of this case.

On a close scrutiny of assessment of the case made out in the writ petition, this Court is of the firm view that, a ***landlord-tenant and/or licensor-licensee*** dispute was sought to be converted into a disputes between the ***school and its Teacher*** relating to the employment of a Teacher, which is not permissible in law.

For the foregoing reasons and discussions this Court is of the firm view that, this petition cannot be entertained in the writ jurisdiction of this Court.

It is made clear that, this Court has not gone into the merits of the allegations made by the petitioner in so far as her right of occupation is concerned neither this Court had gone into the merits of the claim for recovery of possession by the relevant school landlord.

In view of the above, this writ petition being **W.P.A. 28005 of 2022** stands dismissed, without any order as to costs.

Interim order passed on **December 23, 2022** extended from time to time **stands vacated**.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)