

ML 19
06.08.2024
Court. No. 9
GB

W.P.A. 8963 of 2024

Basari Mohan Das & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Yashraj Roy

...for the Petitioners.

*Ms. Spira Mazumdar,
Ms. Prativa Ghatak*

...for the State.

1. Affidavit-of-service filed in Court today, is taken on record.
2. The writ petition has been filed alleging that the respondent no.3 had issued illegal notices to the petitioner, thereby, initiating a proceeding for eviction under the West Bengal Government Premises (Tenancy Regulation) Act, 1976.
3. It is contended that no enquiry was held to ascertain whether the petitioner was in physical possession of the tenanted property in the government housing estate. It is next contended that the tenant being an elderly gentleman, does not have a registered mobile number linked to his Aadhaar card and updation of the registered mobile number could not be done. The rent could be paid only through the online mode and the OTP could not be generated. This resulted in non-payment of rent. Further submission is that 95 occupants have been allowed to continue to be in possession of the property, without payment of rent. The authorities should accept the rent due from the

petitioner no.1 by any other mode as linkage of the Aadhaar card with the mobile number was contrary to the decision of the Hon'ble Apex Court in the matter of ***Justice K.S. Puttaswamy versus Union of India*** reported in **(2019) 1 SSC 1**. Further allegation is that any enquiry done in a free and fair manner, would indicate that the petitioner no.1 was in continuous possession of the tenanted premises and the same was not abandoned by him.

4. The learned advocate for the State respondents has submitted a synopsis, prepared by the Estate Manager, Estate Directorate and Ex-officio Deputy Secretary, Housing Department.
5. It appears that the petitioner no.1 was a tenant in respect of Flat No.D-31 at Cossipore IHE PHHE at 87B, Cossipore Road, Kolkata – 700002. The tenement was allotted on October 16, 2003 at a monthly rental of Rs.90/-. On and from 2015, online payment of rent had been introduced. All the tenants were asked to register their mobile numbers in the portal of the Estate Directorate under the Housing Department for e-payment of rent. The petitioner no.1 was also asked to submit a mobile number and he did so. He paid the rent through the said mobile number till the month of December 2023. On November 15, 2018, the petitioner no.1 wrote to the Estate Manager to register a new mobile number being 9007440667 in place of the earlier mobile number. The Estate Manager asked the

concerned circle to cause an enquiry. The circle reported that the petitioner no.1 did not live in the allotted flat. Hence, his prayer was turned down. A notice was issued to the petitioner to appear for a hearing, but the petitioner refused. Thereafter, series of queries were made by the tenant and his son under the Right to Information Act and replies were received.

6. It is the further contention of the authorities that a tenant would have to submit his Aadhaar linked mobile number for online payment of rent, but the petitioner no.1 did not submit any such number. Thus, the petitioner no.1 was found to have violated the statute. He had also committed breach of Clause No. 19 of the tenancy agreement.
7. It appears from the record that a notification for online payment through an Aadhaar linked phone number was published long time ago as per the memorandum of the Housing Department and the petitioner no.1 was paying rent in the said mode. The prayer for updation of a new mobile number was not accepted as the authority made an enquiry and found that the petitioner no.1 was not residing in the premises. Moreover, the number proposed by the petitioner was not linked to his Aadhaar Card.
8. The fact whether the petitioner no.1 was using the premises, can be substantiated by documents like utility bills, letters received at the residence and also by oral evidence. The High Court cannot direct the

authorities to change the mode of acceptance of rent from the official policy that they were following. Landlord and tenant relationship is a contractual one and the High Court cannot mandate the authority to change the mode and/or method of payment of rent. The petitioner no.1 seems to have replied to each of the allegations made by the authority and has also filed an answer to the show cause notices. The allegation of the petitioner no.1 that he was not being given a hearing by the authority is taken note of and this Court is of the view that before any order is passed, a proper procedure has to be followed. The petitioner no.1 should be allowed to adduce evidence, both oral and documentary, of the fact that he was residing in the premises. The petitioner no.1 must also be given an opportunity to adduce evidence to show that his request for updation of a mobile number which was linked to the Aadhaar card of the petitioner no.3, was turned down and he was unable to pay the rent for valid reason. The authority may also allow payment of the defaulted amount under the 1976 Act and the tenant may continue to remain in the premises. The petitioner no.1 must appear before the Estate Manager with all documents like voter card, aadhaar card, copy of the last rent receipt, etc. The proceeding will continue from the stage of adducing evidence.

9. The contention of the petitioner that the alleged enquiry was held after the notice was issued to the

petitioner, must also be allowed to be agitated. The authority should take into consideration how the matter can be resolved, if it appears from the evidence that there are signs of occupation of the premises by the petitioner no.1 and 3. The petitioner no.2 is not residing in the premises and his case is not considered by the Court. As the authority is following a policy that the registered mobile number should be linked to the Aadhaar of the tenant, the authority should also consider whether such opportunity should be given to the petitioner no.1, to link his Aadhaar card to a mobile number and registration of such mobile number can be allowed for payment of rent. Audio visual recording of the house and the petitioner's presence can be additional evidence, but the occupation will have to be proved on the basis of the utility bills and other documents like acceptance of letters, etc. at the said address.

10. Till the matter is decided, no coercive action shall be taken against the petitioner nos.1 and 3. The petitioner will approach the authority within a week from date, with a comprehensive answer and with all documents he wishes to rely upon. The authority will call upon petitioner nos.1 and 3 for a hearing and pass necessary orders as directed, upon allowing them sufficient time to adduce both oral and documentary evidence. Evidence of neighbours must also be accepted.

11. Accordingly, the writ petition is disposed of.

12. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)