

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

MAT 1015 of 2022

The Secretary, Judicial Department, Government of West Bengal & Ors.

Vs.

Uttam Kumar Das & Ors.

For the appellants

:Mr. Amitesh Banerjee,

Ld. Sr. Standing Counsel

Mr. Ram Mohan Pal, Advocate

For the private respondents/
Writ petitioners

:Mr. Subir Sanyal, Advocate

Mr. Sayantan Hazra, Advocate

For the High Court Administration :Mr. Saikat Banerjee, Advocate

Ms. Juin Dutta Chakraborty, Advocate

For the respondent no.26/State:Mr. Himadri Sikhar Chakraborty, Advocate

Ms. Susnita Saha, Advocate

Heard & Judgment on : September 19, 2024

DEBANGSU BASAK, J.:-

1. Appeal is directed against the judgment and order dated January 6, 2022

passed in W.P.A. No.7956 of 2020.

2. Appeal is at the behest of the State of West Bengal and its functionaries.

3. Private respondents as writ petitioners approached the Writ Court seeking, *inter alia*, rehabilitation at Malda Court premises and a direction for renewal of their licences. They claimed that they are in possession of respective areas in respect of which they were granted licence to occupy. On expiry of such licence they applied for renewal which was not granted.
4. By the impugned judgment and order, the learned Single Judge directed the State to provide adequate alternative accommodation, commensurate with the proportion of the stalls occupied by the private respondents within a reasonable vicinity, not more than within one kilometer radius around the Malda Court premises within the time specified. In default, private respondents were permitted to claim adequate compensation.
5. Learned Senior Standing Counsel appearing for the appellants submits that admittedly, the licences of the private respondents expired in the year 2011. He draws the attention of the Court to the pleadings of the writ petition of the private respondents in this regard. He submits that, appellants received communication from the judiciary requiring fencing of the Court premises in order to prevent encroachment. Appellants erected a fence on the property belonging to the judicial department. Appellants acted in terms of orders issued by the judiciary. Appellants did not evict the private respondents.
6. Learned Senior Standing Counsel submits that, none of the private respondents established any right to occupy the Court premises subsequent to the 2011. Licences expired in 2011 and were not renewed.

Private respondents are in unauthorized occupation of the Court premises. No right of the private respondents stood infringed by the action of the State in erecting a boundary fence in order to protect the Court premises.

7. Learned Senior Standing Counsel appearing for the appellants submits that, on a portion of the land belonging to the judicial department, a new building was erected in order to house some of the existing Court rooms. He points out that, the direction contained in the impugned judgment and order is unworkable. It also tantamounts to converting an illegal occupation into a legal occupation and that too at the expense of the State.
8. Learned Advocate appearing for the private respondents submits that, all the private respondents were licensees till 2011, whereafter the private respondents applied for renewal of licence and the authorities did not renew the same. He submits that, all the private respondents are engaged in the business of providing support to litigants and advocates with regard to the filing of proceedings in the Court. The services rendered by the private respondents are required for the proper functioning of a Court.
9. Learned Advocate appearing for the private respondents draws our attention to the notice dated July 15, 2014 whereby which the learned District Judge required certain information. In response thereto, the private respondents submitted various documents. He refers to the

representations made on behalf of the private respondents to the authorities.

10. Learned Advocate appearing for the private respondents submits that, on February 26, 2020, the State authorities started erecting a fence thereby effectively blocking the ingress and egress of the private respondents to their respective area under occupation. He submits that, by reason of such erection of fence, the business of the private respondents stood adversely effected. He refers to the prayers made in the writ petition. He submits that, apart from compensation, the State authorities should be directed to provide alternative accommodation to the private respondents near about the vicinity of the Court premises. He submits that, the learned Trial Judge did so. It is the incumbent duty of the State authorities to provide alternative accommodation while undertaking a drive for eviction.
11. Learned Advocate appearing for the private respondents draws the attention of the Court to the averments made by the State authorities in the affidavit filed before the learned Single Judge. He also relies upon a sketch map of the Court premises and submits that, there is no scarcity of space. He points out that, a new Court building stands erected and that the inauguration thereof is scheduled for September 20, 2024. Allowing the private respondents to occupy their respective spaces will not hamper the functioning of such Court.

12. In support of such contention that, the State authorities are obliged to rehabilitate the private respondents and that, an eviction proceeding known to law needs to be initiated, learned Advocate appearing for the private respondents relies upon **(1985) 3 Supreme Court Cases 545 (Olga Tellis and Others vs. Bombay Municipal Corporation and Others), AIR 1997 Supreme Court 152 (Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan and Others) and AIR 1997 Calcutta 234 (South Calcutta Hawkers Association v. Government of West Bengal and Others).**
13. Relying upon **(1990) 1 Supreme Court Cases 422 (Saheli, A Women's Resources Centre, Through Ms. Nalini Bhanot and Others vs. Commissioner of Police, Delhi Police Headquarters and Others) and (2023) 4 Supreme Court Cases 1 (Kaushal Kishor vs. State of Uttar Pradesh and Others),** learned Advocate appearing for the private respondents submits that, State is liable for tortious acts of its employees. The erection of fencing which prevented the business of the private respondents is an act of tort for which the private respondents are entitled to compensation apart from anything else.
14. Learned Advocate appearing for the private respondents submits that, over and everything, the private respondents should be rehabilitated and that appropriate direction should be issued in this regard by the Appeal Court. He submits that, the direction of the learned Single Judge to provide alternative accommodation within one kilometer of the radius of

the Court premises is required to be sustained. He repeats that, there is no dearth of space for the State to accommodate the private respondents within one kilometer radius of the Court premises.

15. Learned Advocate appearing for the High Court Administration submits that, at present, there are 17 Courts functioning at the Court premises. He submits that, out of such 17 Courts, 10 Courts would be shifted to the new building which is to be inaugurated tomorrow, that is, September 20, 2024. To accommodate the balance 7 Courts, new building is required to be erected. The space occupied by the private respondents is required for the purpose of ingress and egress of all stakeholders including vehicular traffic. He points out that, there is no space in between the buildings and the fence erected for the movement of the fire tenders. The present illegal occupation of the private respondents hampers free movement of fire tenders and all vehicular traffic. Therefore, according to him, it is not feasible to allow the private respondents to continue to occupy any part or portion of the Court premises.
16. As noted above, private respondents claim themselves to be licensees with a right to occupy a portion of the Malda Court premises. Their licences, however, admittedly expired in 2011. Applications for renewal of licences were made by the private respondents and not accepted by the authorities. At least, there is no material on record to suggest that, licences of any of the private respondents was renewed beyond 2011.

17. Ideally, on the expiry of the licence granted, the private respondents should have voluntarily vacated the area under occupation of the Court premises. They, however, did not do so. They continued to remain in possession. With the expiry of the licence, the continued occupation of the private respondents undoubtedly became unauthorized.
18. On February 26, 2020, State authorities commenced erecting a fence in order to protect the entirety of the Court premises. Private respondents were occupying a portion of the Court premises. The erection of the fencing, however, prevented ingress and egress of the private respondents to their area under occupation.
19. State authorities erected fencing on the property belonging to the judicial department. None of the private respondents are claiming right, title and interest over or in respect of any part or portion of the property on which the fencing stands erected. Therefore, we are not in a position to direct dismantling of fencing at the behest of persons who do not possess any right, title and interest over the land on which the fencing was erected.
20. 17 Courts are functioning at the Court Complex presently. A new building stands erected and is scheduled to be inaugurated on September 20, 2024. The new building will house 10 of the existing 17 Court rooms. Further 7 Court rooms are required to be housed in a new building to be erected. That apart, new Courts are required to be established in order to cater to the growing needs of all stakeholders. All that requires space. Space admittedly is a constraint. A hand sketch map was made over to

the Court on behalf of the private respondents. It shows that the private respondents are occupying an area presently which is lying between the newly constructed building and a public road. The distance between the area that the private respondents presently occupy and the outside wall of the newly erected Court building is such that no vehicular traffic can pass. Vehicular traffic can pass if the private respondents are removed.

21. Safety and security of a Court premises is sacrosanct. It is required to be maintained. Maintenance of safety and security of the Court premises enures to the benefit of the public at large and all stakeholders. Maintenance of safety and security of the Court premises will obviously require erection of a boundary wall and easy access around the Court building by vehicular traffic including fire tenders.
22. ***Olga Tellis and Others*** (*supra*) requires that evicting an unauthorized occupant should be made through a process known to law. In addition thereto, it notes that, the authorities therein stated in affidavits that they were in a position to rehabilitate the unauthorized occupants. In such context, particularly in view of the stand taken on affidavit by the State authorities, did the Supreme Court direct the State authorities to uphold their stand as made out in their affidavit.
23. In ***Ahmedabad Municipal Corporation*** (*supra*), pavement dwellers in the unauthorized occupation on footpaths were sought to be evicted. In the facts of that case, Hon'ble Supreme Court found policies governing such eviction process and required the authorities to follow such policies.

24. The Coordinate Bench of this Court in ***South Calcutta Hawkers Association*** (*supra*) noted ***Ahmedabad Municipal Corporation*** (*supra*) amongst others and proceeded to issue certain directions with regard to rehabilitation. It noted that, although State is under no obligation to provide alternative accommodation before evicting and removing the hawkers, it is expected and desirable that the State being a welfare State should formulate schemes and policies for the purpose of rehabilitation.
25. We repeatedly requested the learned Advocate appearing for the private respondents to draw our attention to any existing policies governing the plea. He submits that, there is no such policy disclosed on record.
26. ***Saheli, A Women's Resources Centre, Through Ms. Nalini Bhanot and Others*** (*supra*) notices the proposition of law that, State is liable for tortious act committed by employees in course of their employment. Similar view is expressed in ***Kaushal Kishor*** (*supra*).
27. In the facts of the present case, none of the State authorities or its employees committed any tort as against any of the private respondents. All that the State did was erect a fence to protect the Court premises. Erection of the fence on the property belonging to the judicial department over which, none of the private respondents are claiming any right, title and interest cannot be construed as an act of tort as against the private respondents particularly when they are unauthorized occupants.
28. Essentially, the private respondents seek to convert their illegal and unauthorized occupation to one which is clothed with legality. As noted

above, there is no existing policy of the State in this regard or for rehabilitation at the present moment.

29. Materials on record do not disclose that, the State initiated any proceeding for evicting the private respondents. Our attention was drawn to the provisions of the West Bengal Public Land (Eviction of Unauthorized Occupants), Act, 1962 and submission was made on behalf of the State that since the area under occupation of the private respondents is required for the Court Complex, appropriate steps under such Act would be taken and that eviction process up to the appeal stage under such Act would be completed six months from date.
30. In such circumstances, we permit the State to initiate appropriate proceedings under the Act of 1962 and complete such proceedings within six months from date including appeal thereunder.
31. Impugned judgment and order dated January 6, 2022 is set aside.
32. **MAT 1015 of 2022** is allowed without any order as to costs.

(Debangsu Basak, J.)

33. I agree.

(Md. Shabbar Rashidi, J.)