

Court No. 2
19.7.2024

(Item No. ADSL
1)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side
W.P.A. 18501 of 2024

Khokan Ghosh
VS
The State of West Bengal & Ors.

Mr. Firdous Samim
Ms. Gopa Biswas
Ms. Payel Shome
Ms. Sampriti Saha
Mr. Avijit Kar
.... For the petitioner
Sk. Md. Galib
Mr. Kapil Guha
.... For the State

Upon urgency being pleaded the writ petition has been taken up for consideration.

Mr. Firdous Samim, learned advocate appears for the petitioner. At the outset, in his usual fairness, he submits and prays for expunging the respondent No. 4 from the array of respondents and prays for deletion of the respondent No. 4 from this writ petition.

Such prayer stands allowed. The respondent No. 4 stands expunged and deleted from the array of respondents.

Sk. Md. Galib, learned counsel appears for respondent Nos. 1 to 3.

The petitioner states that the petitioner is a licensee under the respondent No. 5 by virtue of a licence granted by it, in respect of a piece of land situated within the premises of a Civil Court. The

petitioner has suffered an order of eviction from the public premises dated **January 29, 2024, annexure P-6** at **page 99** to the writ petition passed by the respondent No. 3.

Being aggrieved by the said order of eviction dated **January 29, 2024** the petitioner preferred a statutory appeal under **Section 7** of the **West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962** before the jurisdictional Collector being the respondent No. 2 herein. Simultaneously, the petitioner has also filed an application for condonation of delay for admitting the appeal at **page 105** to the writ petition.

Learned counsel for the petitioner submits that, pending the said condonation application and the appeal before the jurisdictional Collector, the respondent No. 3 had issued an eviction notice dated **July 5, 2024** pursuant to the said eviction order dated **January 29, 2024, annexure P-7** at **page 116** to the writ petition. The said eviction notice is impugned in this writ petition.

Mr. Firdous Samim, learned counsel appearing for the petitioner submits that, the statutory period for preferring the appeal is **30 days** from the date of the impugned order. The impugned order was passed on **January 29, 2024** and the appeal was filed/submitted by the petitioner and was received by

the office of the jurisdictional Collector on **February 20, 2024**, as would be evident from **page 100** to the writ petition. Therefore, there was no requirement for filing the said condonation application, however, the same was filed as an abandoned action. Since the appeal is within time, the question of any adjudication upon the said condonation application is not required. Next, he submits that, if this impugned eviction notice dated **July 5, 2024** is carried out and given effect to, then the appeal filed by the petitioner in exercise of its statutory right, will become infructuous and the petitioner shall be left with no other remedy.

He further submits that, the premises where upon the petitioner was granted licence is the premises of the judicial authority and the same cannot be construed as a public premises so that the eviction proceeding shall lie in terms of the said 1962 Act and the petitioner is not an unauthorized occupant.

Sk. Md. Galib, learned counsel appearing for the State respondents submits that, there is no appeal on the board as the condonation application is still pending. The date of receipt of the eviction notice has not been disclosed in the writ petition. No urgency is pleaded.

After considering the rival contentions of the parties and upon perusal of the materials on record,

at the threshold, this Court deals with the point raised by the learned counsel appearing for the petitioner, whether the subject land is a public land or not.

It is true that, the land in question is within the civil Court premises. The licence was granted by the respondent No. 5. The premises is certainly not owned by the judicial department and it is a State premises upon which the Civil Court has been established. There is no doubt in my mind and this Court is of the firm opinion that, the subject premises is a public premises within a meaning of the 1962 Act and eviction proceeding shall lie following the due process of law under the said 1962 Act.

In as much as, the moment the petitioner has filed the appeal being aggrieved by the order of eviction dated January 29, 2024 which was passed under the provision of the said 1962 Act, the petitioner accepted the jurisdiction of the said appellate forum under Section 7 of the 1962 Act including the operation of the said 1962 Act on the issue and then filed the said appeal.

Therefore, the issue raised by the petitioner that, the subject land is not a public land and is not governed by the provisions of the 1962 Act, is **rejected.**

When a right of appeal has been prescribed under a statute, it is a vested right. A party being aggrieved by any order passed under that statute having a statutory forum of appeal, has always a right to prefer such appeal under the statute. Such right cannot be taken away neither can be rendered infructuous.

In the facts of the instant case, admittedly the appeal has been filed with a condonation application, the appellate authority in exercise of its power under Section 7 of the 1962 Act is obliged to deal with the same and to dispose of the same strictly in accordance with law. Meanwhile, if the impugned eviction notice dated **July 5, 2024** is given effect to and the eviction of the petitioner takes place, the valuable right of the petitioner to prefer an appeal which the petitioner has already exercised with the condonation application, shall be defeated. Learned counsel for the petitioner further submits that, no further step has been taken by the appellate authority to deal with either the condonation application or with the appeal filed by the petitioner.

In view of the above, the appellate authority under Section 7 of the 1962 Act i.e. respondent No. 2 shall immediately deal with the said condonation application filed by the petitioner, if not already dealt with and shall pass a reasoned order on the same

after giving an opportunity of hearing to the parties to the appeal positively within a period of **ten days** from the date of communication of this order.

In the event, the condonation application goes in favour of the petitioner, and the appeal stands admitted, then the petitioner shall be at liberty to file an application for stay of operation of the said impugned order for eviction dated **January 29, 2024** impugned under the appeal within a period of **seven days** from the date of the order to be passed dealing with the said condonation application.

In the vent, the application for stay of operation of the impugned order of eviction is filed by the petitioner, within the time stipulated as stated above, then the appellate authority upon hearing the parties to the appeal shall deal with and dispose of the same in accordance with law positively within a period of **three weeks** from the date of filing of the said stay application by passing a reasoned order.

Depending upon the result of the stay application, the respondent authorities shall take further steps with regard to the eviction proceeding. There shall be an unconditional order of stay of operation the said impugned eviction notice dated **July 5, 2024** till the said application for condonation is decided or in the event, that condonation application is allowed and the appeal is admitted, till

the stay application to be filed by the petitioner is decided within the stipulated time frame as directed above.

It is made clear that, while deciding the said condonation application or the appeal, the statutory appellate authority shall not be influenced by any observation made by this Court hereinafter and shall decide those proceedings with its independent mind in accordance with law.

All points are kept open to be urged by the parties to the said appeal before the appellate forum.

This order shall not create any right or equity in favour of the petitioner in course of hearing of the appellate proceeding.

Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

Learned advocates appearing for the parties shall be at liberty to communicate the gist of the order to their respective clients.

With the above observations and directions this writ petition, **WPA 18501 of 2024** stands disposed of, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)