

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

Present :-

THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA

WPO 1 of 2023

Asif Latif

Vs.

The State of West Bengal & Ors.

For the petitioner : Mr. Arindam Banerjee, Adv.
Mr. Arnab Dutt, Adv.
Ms. Labani Dey, Adv.

For the respondent no. 2 : Mr. Indranil Nandi, Adv.
Mr. Sayak Konar, Adv.

For the respondent no. 4 : Ms. Reshmi Ghosh, Adv.
Ms. Barnali Gantait, Adv.

Last Heard on : 15.01.2024

Delivered on : 18.01.2024

Moushumi Bhattacharya, J.

1. The petitioner has prayed for a Mandamus directing the Administrator General & Official Trustee (AG & OT) of West Bengal (respondent no. 2) to restore possession of the shop room and certain other spaces at premises no 56C, Mirza Ghalib Street, Kolkata -16 to the petitioner. The petitioner also prays for a Mandamus and appropriate directions on the respondent no. 2 /

AG & OT and the Officer-in-Charge, Park Street Police Station (respondent no. 3) from disturbing the peaceful physical possession of the petitioner in respect of the said shop room.

2. The parties before the Court are the petitioner, Asif Latif, the respondent nos. 2 and 3, as described above and the respondent no. 4, who is the Manager of the Armenian College & Philanthropic Academy situated at 56B, Mirza Ghalib Street, Kolkata -16.

3. Learned counsel appearing for the petitioner claims that the petitioner's father, Abdul Latif, since deceased, was a monthly tenant of the shop room under the respondent no.4 and was in possession of the shop room at the time of his death. Counsel submits that the rent for the said space used to be given by Paramount Refrigeration Company which was the trade name under which the petitioner's father used to operate to the respondent no. 2 being the beneficiary in the tenancy arrangement. Counsel seeks to rely on documents of April and May, 1955 to show that a tenancy had been created in favour of the petitioner's father. Counsel claims that the respondent no. 2/AG & OT refused to accept rent after June, 1990 and that the rents were thereafter deposited to the Rent Controller by the heirs including the petitioner after his father's death.

4. Counsel complains that the heirs of Abdul Latif were in possession and occupation till 3rd December, 2022 when the respondent nos. 2 and 3 fixed a padlock on the shop room with the goods and articles related to the petitioner's business and that the petitioner was wrongfully restrained from the entering into the shop room. Counsel complains that the petitioner has

been dispossessed from the shop room by the AG & OT without due process of law. Counsel further complains that the AG & OT's demand for enhanced rent is illegal under the provisions of the West Bengal Premises Tenancy Act, 1997. It is submitted that there is no decree of eviction from any competent Court and that a suit filed for recovery of possession by the AG & OT was dismissed for default by the learned Presidency Small Causes Court on 5th May, 2006 and the application for restoration was also dismissed on 27 June, 2006.

5. Learned counsel appearing for the respondent no.2/AG & OT submits that the recorded tenant in respect of the shop room, which forms the subject matter of the present proceedings, stands in the name of Paramount Refrigeration Company which was a proprietorship business owned by Abdul Latif. Counsel submits that no rent has been deposited in respect of the said shop room for more than 30 years and that one M/s Braganza & Co. is in exclusive possession of the said tenanted possession from where it was selling musical instruments.

6. Counsel submits that Mr. Braganza has been in exclusive possession of the shop from 20.11.2012 and all the employees working in the said shop room are employees of Braganza & Co. It is also submitted that an agreement was executed between M/s. Latif Nishan (India) Pvt. Ltd. and M/s. Braganza & Co. on 28.3.2022 whereby the latter had taken the premises on a monthly rental basis of Rs. 35,000/- or 1% of the total gross sales as derived from the business. Counsel relies on the

Minutes of the meeting held in the office of the respondent no. 2 AG & OT on 5.12.2022 between Mr. Braganza, Mr. Sahid Latif and the AG & OT.

7. Learned counsel appearing for the respondent no. 4, namely, the Manager, Armenian College & Philanthropic Academy adopts and reiterates the argument made on behalf of the AG & OT with regard to the dispossession of the petitioner / present occupants of the shop. Counsel submits that the petitioner was in any event never inducted as tenant in place of the late Abdul Latif and is also not the Proprietor of M/s. Paramount Refrigeration Company as per the records of tenancy available in the office of the AG & OT.

8. Upon considering the statements made on behalf of the petitioner, the respondent no. 2 / Administrator General and Official Trustee of West Bengal and the respondent no. 4 / Manager, Armenian College and Philanthropic Academy, the prayer of the petitioner for a direction on the respondent no. 2 to restore the possession of the shop-room along with the Mezzanine and Bath at 56C, Mirza Ghalib Street, Kolkata 16 to the petitioner and removing the padlock from the said shop-room should be tested against the admitted facts and the material shown on behalf of the parties.

9. While the petitioner has described himself as one of the partners in succession of M/s. Paramount Refrigeration Company on the demise of late Abdul Latif and that the petitioner is a bona fide tenant in respect of the shop-room situated at 56C, Mirza Ghalib Street, the petitioner has failed to show any documents in support of these facts. It is further contended that

the petitioner deposited the rent with the Rent Controller after the AG & OT refused to accept rent from the petitioner in respect of the said shop room. The petitioner has stated that the petitioner has been carrying on business of musical instruments upon obtaining a valid certificate of enlistment from the Kolkata Municipal Corporation.

10. The petitioner's cause of action revolves around the incident on 3.12.2022 when the AG & OT along with the respondent no. 3 / Officer In-Charge, Park Street Police Station, forcibly put a padlock in the said shop room and deposited the keys in the Park Street Police Station. The petitioner seeks to make out a case that the incident occurred after the AG & OT called on the petitioner and demanded an enhanced monthly rent of Rs. 1 lakh / month. The principal argument of counsel appearing for the petitioner is that the petitioner could not have been dispossessed or removed from the said premises without due process of law.

11. However, as opposed to the case sought to be made out on behalf of the petitioner, the documents placed before the Court show that M/s. Paramount Refrigeration Company, a Proprietorship business of Abdul Latif (since deceased), was the recorded tenant in respect of the said shop-room. Abdul Latif, as the Sole Proprietor of Paramount Refrigeration Company, paid the rent for the shop-room to the Office of the AG & OT till June, 1990 but the rent was paid during the life time of said Abdul Latif. There is no evidence of rent being deposited in the Rent Register for the tenanted premises for more than 30 years. An inspection made by the Office Inspector of the AG & OT further revealed that one M/s. Braganza & Co. was in

exclusive possession of the tenanted premises from where the company was selling musical instruments. The inspection further revealed that a Mezzanine floor was constructed within the premises without the knowledge or consent of the AG & OT. The AG & OT visited the premises and found that one Mr. Dicky Braganza was carrying on the business in musical instruments from the said shop-room.

12. A meeting was thereafter held between the AG & OT, Mr. Braganza and one Mr. Sahid Latif on 5.12.2022 when Mr. Sahid Latif stated that he is one of the sons of Abdul Latif who was the sole Proprietor of Paramount Refrigeration Company and that Abdul Latif had died in July, 1992. Mr. Sahid Latif was also unable to produce any document from where it would appear that the writ petitioner's (Asif Latif) name was recorded as a tenant of the said shop-room in the documents maintained by AG & OT. Mr. Sahid Latif also could not produce any document to show that the legal heirs of the Late Abdul Latif had become joint partners of Paramount Refrigeration Company.

13. At the meeting, the respondent no. 2 further came to know that Mr. Braganza had been in exclusive possession of the said shop-room from 20.11.2012 and had employed a number of persons as employees of Braganza & Co. There were in fact no employees of Paramount Refrigeration Company. The AG & OT also came to know that the recorded tenant i.e. Paramount Refrigeration Company had parted with possession of the tenanted premises in favour of M/s. Braganza & Co. and had also made substantial alterations within the premises.

14. Surprisingly, it was also revealed by Mr. Sahid Latif at the meeting held on 5.12.2022 that an agreement had been executed between M/s. Latif Nishan (India) Pvt. Ltd. and M/s. Braganza & Co. on 28.3.2022 whereby the latter had taken the premises on a monthly rent of Rs. 35,000/- or 1% of the total gross sales derived from the business, whichever is higher. It was also revealed that M/s. Latif Nishan (India) Pvt. Ltd. had entered into the agreement as the Proprietor of M/s. Paramount Refrigeration Company with Mr. Sahid Latif representing himself as the director of Latif Nishan (India) Pvt. Ltd.

15. The Minutes of the meeting held in the Office of the AG & OT on 5.12.2022 forms the part of the records before this Court. Significantly, there is no evidence of the writ petitioner / Asif Latif either being a part of the said meeting or claiming to have any right either in respect of the tenancy of Paramount Refrigeration Company or the subsequent agreement between Latif Nishan (India) Pvt. Ltd. and Braganza & Co.

16. As would appear from the above facts, all of which have specifically been stated in the affidavit-in-opposition of the respondent no. 2/AG & OT, the petitioner has not been able to establish locus or any other factual basis for grant of relief. There are several reasons for this view as narrated below.

17. It is the admitted case of the parties that the recorded tenant in respect of the shop room situated 56C, Mirza Ghalib Street, Kolkata 700016, is Paramount Refrigeration Company, which was the proprietorship business of Abdul Latif. Abdul Latif died in July, 1992. The petitioner must hence show that the tenancy of the said shop room devolved on the

petitioner as the heir and legal representative of Abdul Latif. No evidence however has been presented to the Court to satisfy the aforesaid condition. The petitioner merely claims to be one of the heirs of Abdul Latif and being one of the partners in Paramount Refrigeration Company. The petitioner has not produced any documents in support of this contention.

18. The second glaring lacuna is with regard to the payment of rent by the recorded tenant after the demise of Abdul Latif in 1990. The petitioner does not have any evidence to rebut the fact of rent not having been deposited by Paramount Refrigeration Company in respect of the tenancy after 1990, that is for more than 30 years. Although the petitioner claims that the rent was deposited to the Rent Controller, the challans do not record the name of the petitioner as a tenant in place of the late Abdul Latif or even as the proprietor of Paramount Refrigeration Company. The challans simply show that the rent was deposited by the legal heirs of the Abdul Latif and not by the petitioner in his sole capacity as the tenant of the shop.

19. The factual scenario becomes even more confusing with the agreement executed between M/s. Latif Nishan (India) Pvt. Ltd. and M/s. Braganza & Co. on 28th March, 2022. This was admittedly the stand taken both by Mr. Sahid Latif and Mr. Dicky Braganza at the meeting held with the AG & OT on 5th December, 2022. The agreement reveals that M/s Braganza & Co. had taken the said premises at a monthly rent of Rs. 35,000/- or 1% of the total gross sales whichever is higher from M/s. Nishan Latif (India) Pvt. Ltd. as the proprietor of M/s Paramount Refrigeration Company. Mr. Sahid claimed to be the Director of Latif Nishan (India) Pvt. Ltd. In fact, Mr. Braganza was

present in the shop room when the alleged incident took place on 3rd December, 2022 and the keys to the premises was voluntarily handed over by Mr. Braganza to the AG & OT and his men.

20. Therefore, three important factors would appear from the agreement. First, that the recorded tenant, namely, Paramount Refrigeration Company had parted with the possession of the tenanted property in favour of M/s. Braganza & Co. Second, M/s. Latif Nishan (India) Pvt. Ltd. stepped into the shoes of M/s. Paramount Refrigeration Company and sub-let the premises to M/s. Braganza & Co. Third, the petitioner, Asif Latif, does not feature in any of these transactions. There is also no explanation either by Mr. Sahid Latif or Mr. Dicky Braganza as to the genesis of M/s. Nishan Latif (India) Pvt. Ltd. entering the picture to deal with the tenanted premises of Paramount Refrigeration Company.

21. If this be the case, the petitioner's claim or tenanted interest in the shop room ceases to have any basis. The petitioner has not shown any connection with Paramount Refrigeration Company after the demise of his predecessor-in-interest (even if that is assumed) and thereafter with Latif Nishan (India) Pvt. Ltd. which entered into a deal with the present occupant of the tenanted premises, that is Braganza & Co. The petitioner also could not produce any document including challans of rent in respect of the said shop room recording the name of the petitioner. The agreement of 28th March, 2022 does not record the petitioner's name and there is no evidence before the Court to show that all the legal heirs of Abdul Latif were inducted as joint tenant in respect of the said shop room.

22. The Certificate of Enlistment of the petitioner in respect of the said shop room read with clause 8 of the agreement dated 28th March, 2022 would show that the first party to the agreement/Latif Nishan was to obtain all licenses, permissions, approvals from the Kolkata Municipal Corporation from carrying on business at the said premises.

23. The meeting held at the office of the AG & OT on 5th December, 2022 was held by and between the AG & OT, Mr. Braganza and Mr. Sahid Latif. It is hence significant that apart from the petitioner; none of these parties have approached this Court for any relief against the alleged dispossession from the said shop. The petitioner, clearly, appears to be a stranger to the controversy who has taken on cudgels on behalf of the parties to the incident of 3rd December, 2022 without having any locus to do so.

24. In essence, the petitioner is not a recorded tenant in respect of the said shop room in the records of the AG & OT and has also failed to prove the basis of the claim related to Paramount Refrigeration Company. The petitioner is neither the landlord nor the co-owner of the property. The petitioner's predecessor-in-interest was a tenant who died in 1992 and the petitioner was not inducted as the tenant in place and stead of his predecessor-in-interest. The petitioner has also failed to show that the original tenant had any right to induct a sub-tenant. The Court accordingly finds no reason to consider grant of relief to the petitioner.

25. The decisions relied on by the petitioner proceed on the basis that a co-owner of a property can file a suit for recovery of possession against a tenant and it is not necessary for all the other co-owners / joint-tenants to

be made parties to the suit; *Kanta Goel vs. B.P. Pathak*; (1971) 2 SCC 814, *Pal Singh vs. Sunder Singh (Dead) by Lrs*; (1989) 1 SCC 444, *Sri Ram Pasricha vs. Jagannath*; (1976) 4 SCC 184. However, in the instant case, the petitioner is neither the co-owner / landlord of the property or the recorded tenant in respect of the shop-room. The petitioner has also failed to show that the original tenant / Paramount Refrigeration Company had any right to induct a sub-tenant. Therefore, the decisions relied on do not assist the petitioner. The decision of the Bombay High Court in *Mumbai International Airport Pvt. Ltd. vs. Indamer Company Pvt. Ltd.*; APO No. 418 of 2008 is on the requirement to take recourse to due process of law. In that decision, the Single Bench of the Bombay High Court however held that if a statute empowers dispossession of a party in a particular manner seeking recourse under the said provision would also constitute due process of law as it is a process recognised by law. The Court also came to a specific finding that the Mumbai International Airport or the Airports Authority of India had not been conferred with the power of dispossessing the respondent no. 1. The petitioner's failure to show any continued tenancy right in respect of the said shop-room makes the whole argument of due process of law irrelevant.

26. The Court is not inclined to grant the relief prayed for in view of the reasons stated above. The absence of any material to establish that the petitioner has a right to the tenanted premises / shop-room forms the basis of the Court's view.

27. WPO 1 of 2023 is accordingly dismissed. There shall be no order as to costs. Connected applications, if any, are also disposed of by this judgment.

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

(Moushumi Bhattacharya, J.)