

CASE NO.:
Appeal (civil) 6899 of 1999

PETITIONER:
STATE OF WEST BENGAL & ORS.

Vs.

RESPONDENT:
VISHNUNARAYAN AND ASSOCIATES (P) LTD. & ANR.

DATE OF JUDGMENT: 19/03/2002

BENCH:
Syed Shah Mohammed Quadri & S.N. Phukan

JUDGMENT:

With
CA.Nos.6900/1999, 6901/1999, 6902/1999, 6903/1999,
6904/1999, 6905/1999, 6906/1999, 6907/1999, 6908/1999,
6909/1999, 6910/1999, 6911/1999 & 6912/1999

J U D G M E N T

Phukan, J.

These appeals by special leave arise from the judgment of the Division Bench of the Calcutta High Court by which a batch of Writ petitions filed under Article 226 of the Constitution was disposed of. By this judgment we dispose of all these appeals.

The undisputed facts are as follows:

The management of the Undertaking of the Company namely the Great Eastern Hotel Ltd. was taken over by the State Government by invoking the provisions of the Great Eastern Hotel (Taking over of Management) Act, 1975. Subsequently, by the Great Eastern Hotel (Acquisition of Undertaking) Act, 1980 (for short the 'Act of 1980'), the Undertaking of the Company i.e. the Great Eastern Hotel was taken over by the Government. The Government transferred the undertaking of the Company to the Great Eastern Hotel Authority (for short Hotel Authority), which was set up under Section 5 of the Act of 1980 except the lands and the building. On December 12, 1994, according to the direction of the State Government, the Great Eastern Hotel Authority issued a circular to various occupants of the premises of the hotel giving them an opportunity to establish if they had any right to remain in occupation but there was no response. On June 28, 1997, as the occupants failed to deliver possession, the representative of the Government went to the hotel premises and gave oral notice to the occupants to deliver possession. They were also informed that possession if not delivered, would be taken over by force. On June 29, 1997 the State Government removed the occupants from the hotel premises and took possession with the help of police.

Some of the occupants of the hotel who were evicted by use of force are respondents in all these appeals. It is the undisputed case of the parties that the respondents were tenants of shops, offices and go-downs in the

hotel under the erstwhile company and were in occupation of their respective portions. The respondents filed Writ Petitions before the High Court challenging the action of the Government in dispossessing them by force and prayed for restoration of possession claiming that they were lawful tenants having been inducted by the previous owners and even after coming into force of the Act of 1980, the Hotel Authority had dealt with them as tenants by accepting rent and that there was no lawful termination of their tenancy. It was also pleaded that such action of eviction by force with the help of police resorted to by the appellants lacked legal authority and was illegal, further it was also in violation of the principle of natural justice as the respondents were not given an opportunity of showing cause against their eviction.

On behalf of the appellant-State, writ petitions were resisted before the High Court, inter alia, on the following grounds:

1. that the tenancy of the respondents stood automatically terminated under the Act of 1980 and
2. that under the provisions of the said Act they were legally bound to deliver possession of the suit premises to the State Government and on their failure to do so, they could be evicted by force by invoking the provisions of West Bengal Government Premises (Tenancy Regulation) Act, 1976 (hereinafter referred to as the 'Act of 1976').

It was also pleaded that as the suit premises were required for public purpose, so the government could resort to use of force for evicting the respondents.

To appreciate the contention raised before us, it would be necessary to extract the definition of the expression 'undertaking' in clause (f) of Section 2, Sections 3 and 4 of the Act of 1980:

"Section 2: Definitions. In this Act, unless the context otherwise requires, -

(a) to (e)

(f) "undertaking of the company" means the properties, both movable and immovable, cash balances, reserve funds and other assets of the company including lands, buildings, machineries, plants, furniture, equipments, stores and any other property which may be in the ownership, possession, custody or control of the company in relation to its undertaking immediately before the appointed day and all books of accounts, registers and other documents of whatever nature relating thereto.

Section 3: Acquisition of the undertaking of the company

(1) On and from the appointed day, the undertaking of the company shall, by virtue of this Act, stand transferred to, and vest absolutely in the State Government.

(2) Upon the vesting of the undertaking of the company in the State Government under sub-section (1), the State Government may, for efficient management and administration thereof, provide by notification for the transfer of the undertaking of the company (save the lands and buildings forming part thereof) to, and vesting thereof in, the Hotel Authority with effect from such date as may be specified in the

notification.

(3) The State Government may allow the lands and buildings mentioned in sub-section (2) to be used by the Hotel authority for the purpose of giving effect to this Act on such terms and conditions as may be provided by notification with effect from the date of issue of the notification under sub-section (2).

Section 4 : General effect of vesting :

(1) The undertaking of the company which has vested in the State Government under sub-section (1) of Section 3, shall, by force of such vesting, be freed and discharged from any trust, obligation, mortgage, change, lien and all other encumbrances affecting it, and any attachment, injunction or decree or order of any court or tribunal restricting the use of the whole or any part of the undertaking of the company in any manner shall be deemed to have been withdrawn.

(2) Any contract, whether express or implied, or other arrangement, whether under any statute or other wise, in so far as it relates to the affairs of the company in relation to its undertaking and in force immediately before the appointed day shall be deemed to have terminated on the appointed day.

(3) Where any license or other instrument in relation to the undertaking of the company had been granted at any time before the appointed day to the company by the Central Government or the State Government or any other authority, the State Government shall, on and from the appointed day, be deemed to be substituted in such license or other instrument in place of the company referred to therein as if such license or other instrument had been granted to it.

(4) On and from the date of transfer of the undertaking of the company to, and vesting thereof in, the Hotel Authority, that Authority shall be deemed to be substituted in the license or other instrument referred to in sub-section (3) in place of the State Government as if such license or other instrument had been granted to the Hotel Authority.

(5) Any liability incurred by the company (including the liability, if any, arising in respect of any loans or amounts advanced by the State Government to the company together with interest thereon) after the management of the undertaking of the company had been taken over by the State Government shall, on and from the appointed day, be the liability of the State Government and shall, on and from the date specified in the notification under sub-section (2) of section 3, stand transferred to, and shall vest in, the Hotel Authority.

(6) If, on the appointed day, any suit, appeal or

other proceeding of whatever nature in relation to any matter or business in respect of the undertaking of the company, instituted or preferred by or against the company, is pending, the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the undertaking of the company or of anything contained in this Act and the suit, appeal or other proceeding may be continued, proceeded with and enforced by or against the State Government and on and from the date specified in the notification under sub-section (2) of section 3, the Hotel Authority.

(7) Any person in possession or custody or control of the whole or any part of the undertaking of the company on the date immediately before the appointed day shall, on the appointed day, deliver the possession of such undertaking of the company or part thereof to the State Government or to such person as may be specified by the State Government in this behalf.

(8) The State Government may take, or cause to be taken, such steps as it considers necessary for securing the possession of the undertaking of the company which has vested in the State Government under sub-section (1) of Section 3."

The High Court rejected the contention that the eviction of the respondents was carried out for a public purpose as the respondents were dispossessed for improvement of the hotel, which was purely a commercial venture and, therefore, there was no element of public interest. The High Court also held that the Act of 1980 does not provide for use of force for eviction of tenants in the hotel premises and this Act is a self contained one. According to the High Court the Act of 1976 applies in respect of only residential properties of the government and cannot be used for eviction of the respondents by force as the premises were used for non-residential purpose.

We have heard Mr. Mukul Rohtagi, learned Additional Solicitor General appearing for the State of West Bengal, Mr. Vishwanathan, learned counsel for the respondents in all the appeals except Civil Appeal No.6910 of 1999 and for this appeal learned counsel Mr. Mukund made his submission.

The question, which needs our consideration is whether the action of the State Government in taking possession of the suit premises by using force was lawful.

It is the settled position of law that the State or its executive officers cannot interfere with the rights of others unless they can point to some specific provision of law, which authorises their acts. A Constitution Bench of this Court in *Bishan Das & Ors. versus The State of Punjab & Ors.* [1962 (2) SCR 69] held that State or its executive officers did not have any right to take law into their own hands and remove a person by an executive order. The Court further observed, 'before we part with this case, we feel it our duty to say that executive action taken in this case by the State and its officers is destructive of the basic principles of the rule of law'.

In *State of U.P. & Ors. versus Maharaja Dharamander Prasad Singh & Ors.* [(1989) 2 SCC 505] an apprehension was raised by the learned counsel that if the State Government, on the self assumed and self assessed validity of its own action of cancellation of the lease, attempts at and succeeds in, a resumption of possession extra judicially by force, it would cause great hardship and injustice. The court held that possession can be resumed by the government only in a manner known to or recognised by law and it cannot resume possession otherwise than in due course of law and, therefore,

prohibited the government from taking possession otherwise than in due course of law.

Now let us consider whether the Act of 1980 authorises the State Government to use police power for eviction of the respondents. Sub-sections (1) and (2) of Section 3 and sub-sections (1), (2), (7) and (8) of Section 4 of the Act of 1980 are relevant for the present purpose. Sub-section (1) of Section 3 of the Act of 1980 provides that the undertaking of the company shall stand transferred to and vested absolutely in the State Government on the appointed day. From the definition of the undertaking as contained in clause (f) of Section 2 of the Act of 1980, the undertaking of the company also includes lands, buildings, etc. By sub-section (2) of Section 3, the State Government may for reasons stated in the said sub-section transfer the undertaking of the company to the Hotel Authority except the lands and buildings forming part thereof. Clause (a) of sub-section (2) defines 'appointed day' to mean the date on which the Act came into force. Therefore, on the date the notification under sub-section (1) of Section 3 of the Act of 1980 was issued, the undertaking land and buildings vested in the State Government absolutely. Sub-section (1) of Section 4 provides that the undertaking which vested in the State Government shall be freed and discharged from any trust, obligation, mortgage, change, lien and all other encumbrances affecting it. We are not concerned with the second part of the said sub-section which relates to any attachment, injunction or decree or order passed by any court or tribunal. According to sub-section (2) of Section 4 any contract, whether express or implied, or other arrangement, whether under any statute or otherwise, in so far as it relates to the affairs of the erstwhile company in relation to the undertaking and in force immediately before the appointed day shall be deemed to have terminated on the date of vesting. Under sub-section (7) of Section 4 any person in possession or custody or control of the whole or any part of the undertaking on the date immediately before the appointed day shall deliver the possession of such undertaking of the company or part thereof to the State Government or to such person as may be specified by the State Government in this behalf. Sub-section (8) of Section 4 empowers the State Government to take or cause to be taken such steps as it considers necessary for securing the possession of the undertaking of the company which vested in the State Government under sub-section (1) of Section 3. By a notification issued under sub-section (2) of Section 3, the State Government for efficient management and administration, transferred the undertaking (save lands and buildings) to the Hotel Authority constituted under Section 5 of the Act of 1980.

Mr. Mukul Rohtagi, learned Additional Solicitor General has submitted that as there was no transfer of the lands and buildings to the Hotel Authority, in view of the specific bar in sub-section (2) of Section 3 of the Act of 1980, any action of the Hotel Authority vis-à-vis the respondents would not be binding on the government. We shall deal with this submission at a subsequent stage.

Mr. Mukul Rohtagi, learned Additional Solicitor General has further submitted that as in terms of sub-section (1) of Section 3 of the Act of 1980, the vesting of undertaking absolutely was complete on the appointed day and on such vesting it be freed and discharged from any trust, obligation, mortgage, change, lien and all other encumbrances affecting it, the tenancy between the respondents and the erstwhile company came to an end. It was further submitted that the word 'contract' occurring in sub-section (2) includes tenancy right and by virtue of the said sub-section (2), the tenancy between the respondents with the erstwhile company came to an end. According to the learned Additional Solicitor General as the tenancy had come to an end, the respondents were in default of their legal liability to hand over the possession of premises in question as per sub-section (7) of Section 4 of the Act of 1980 so the State Government by invoking the provision of sub-section (8) of the said Section could take such steps as it considered necessary for securing possession and such steps would include eviction by force.

It is not disputed that there was a relationship of landlord and tenants between the erstwhile company and the respondents. The rights and

obligation of the landlord and tenant would be governed either by the Transfer of Property Act or by rent law in force and the tenancy of the demised premises could be terminated by taking action under the provisions of either of these two Acts and possession thereof could be recovered in accordance with law. Though under sub-section (1) of Section 4 of the Act of 1980, the undertaking vested in the State Government free from any trust, obligation, mortgage, change, lien and all other encumbrances, we are unable to agree with the learned Additional Solicitor General that under the said sub-section (1) the relationship of landlord and tenant in the case in hand was put to an end inasmuch as the tenancy could not be treated as trust, obligation, mortgage and change, etc. as stated in the said sub-section. In regard to sub-section (2) which provides that any 'contract' in relation to the undertaking shall be deemed to have terminated on the appointed day, on the same analogy, we hold that by this deeming provision does not relate to the relationship of landlord and tenant which could not be said to have come to an end. Consequently, we find no force in the submission of Mr. Mukul Rohtagi and we hold that even after taking over the undertaking by virtue of the Act of 1980, the relationship of the landlord and the tenant continued and in place of the erstwhile company, the State Government stepped into the shoes of landlord.

The Management of the hotel was handed over to the Hotel Authority. The said Authority also accepted rents from the respondents and on December 12, 1994 on a direction by the State Government, the said Authority issued a circular to the respondents asking them to establish their rights, if any. As mentioned earlier, Mr. Mukul Rohtagi has submitted that as there was no transfer of lands and buildings to the Hotel Authority, the acceptance of rent by the said Authority would not bind the Government. We are unable to accept the contention as in our opinion the Authority acted on behalf of the government both while accepting rent and also issuing notices to the respondents. The premises in question are located within the hotel premises and on handing over the Management to the Authority, it acted on behalf of the Government.

Let us examine the scope and ambit of sub-section (7) and (8) of Section 4 of the Act of 1980 assuming that the tenancy came to an end as urged by Mr. Mukul Rohtagi. Under sub-section (7) any person in possession or custody or control of the whole or any part of the undertaking of the company before the appointed day, shall deliver such possession to the State Government or any person as may be specified by the State Government and in view of this statutory obligation, the respondents were bound under the law to hand over the possession and on failure to do so, the State Government could take steps for securing possession by use of force. Under sub-section (8) of Section 4 of the Act of 1980, such steps as may be considered necessary, may be taken for securing possession. In our considered view such steps cannot and would not include use of force. As laid down by this court in *Bishan Das & Ors. (supra)* and *Maharaja Dharamander Prasad Singh & Ors. (supra)* possession can be resumed by the State Government only in a manner known to or recognised by law and it cannot resume possession otherwise than in due course of law. In view of the ratio laid down in the aforementioned case, such legal steps would mean action by the State Government under any relevant law for obtaining possession and not by using police power. We make it clear that we are not expressing any opinion whether such steps may include action under the Act of 1976 or any other law in force in the State of West Bengal. We are of the opinion that the action of the appellants by removing the respondents from the premises in question with the help of police is destructive of the basic principle of rule of law.

Mr. Mukul Rohtagi has further tried to defend the action of the appellants on the ground of public interest. We may quote below long title of the Act of 1980 which runs as follows:-

"Whereas it is expedient to provide for the acquisition of the undertaking of the Great Eastern Hotel Limited for the purpose of ensuring better facilities for board and lodging to the members of the public and for matters connected therewith or incidental thereto."

By the long title the legislature made it clear that the Great Eastern Hotel was acquired by the Act of 1980 for purpose of ensuring better facilities for boarding and lodging to the members of the public and for matters connected therewith. As held by the High Court the hotel, which is a star hotel is meant for use by the affluent section of the society and not for general public. The term 'members of the public' would mean occupants of the hotel, who can use the hotel on payment and not general public. Therefore, this is purely commercial venture and there was no element of public purpose or public interest. Therefore, the contention of Mr. Rohtagi is rejected.

In the absence of specific statutory provision can a person, on the ground of public interest, be evicted by force by the State or its executive officers without following due course of law? In view of the ratio laid down in *Bishan Das & Ors. (supra)* and *Maharaja Dharamander Prasad Singh & Ors. (supra)*, we hold that such an action of eviction by force cannot be justified in law and for taking possession, action has to be taken in accordance with the law.

A stand has been taken by Mr. Rohtagi that powers given to the government and its officials by sub-section (8) of Section 4 of the Act of 1980 is akin to Section 47 of the Land Acquisition Act of 1894. Under Section 16, collector can take possession after the award is made and under Section 17, possession can be taken after notice under sub-section (1) of Section 9 of the Act of 1980 is issued. For taking the possession of the land from the landowner, in our view Section 47 cannot be invoked. As on June 28, 1997, the representative of the government gave oral notice to the respondents to deliver possession, Mr. Mukul Rohtagi has contended that the respondents had sufficient notice. We are unable to accept the contention inasmuch as direction was given to vacate the premises in question without any opportunity to show cause.

Lastly, it was contended by Mr. Mukul Rohtagi that as the respondents were trespassers, the government could evict them by invoking Section 6A of the Act of 1976. The said sub-section runs as follows: -

"6A. Eviction of unauthorised occupants and penalty for such occupation. Where any Person, not being a tenant, occupies, or remains in occupation of, any Government premises without the written order of the prescribed authority, -

(a) the prescribed authority, or any officer authorised by it in this behalf, may take such steps and use such force as may be necessary to take possession of the premises and may also enter into the premises for the said purpose; and

(b) such person shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

Section 6A can be invoked against any person, who is not a tenant or who remains in occupation of any government premises without written order of the prescribed authority. The respondents were tenants under the erstwhile company and continued to do so as held by us. Therefore, they cannot be evicted by invoking powers conferred on the Authority under Section 6A of the Act of 1976. However, we are not deciding the controversy as to whether this Act would apply only to residential premises, as held by the High Court.

For what has been stated above we hold that the action of the State Government cannot be justified in law and accordingly we uphold the impugned judgment of the High Court. In the result appeals are dismissed. Cost on the parties.

[Syed Shah Mohammed Quadri]

J.
[S.N. Phukan]

March 19, 2002

JUDIS