

ORDER SHEET

GA No.878 of 2011

-With-

WP No. 52 of 2008

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

ORIGINAL SIDE

OM PRAKASH PRASAD

-VS-

OFFICIAL TRUSTEE OF WEST BENGAL & ORS.

Before:

The Hon'ble Justice Tapabrata Chakraborty

Date: 8th July, 2014.

Appearance:

Mr. Soumya Majumdar, Advocate.

Mr. Anindya Lahiri Advocate.

Mr. Prajnadeepta Roy, Advocate.

...for the petitioner.

Mr. Ashok Banerjee, Senior Advocate.

Mr. Taleq Siddique, Advocate.

Mr. Dhruva Ghose, Advocate.

Ms. Ahana Sikdar, Advocate.

Ms. Tapati Chatterjee, Advocate.

... for the respdt. No.4

Mr. Indranil Nandi, Advocate.

... for the respdt. No.1

The Court: This writ application has been preferred challenging the order dated 7th September, 2007 and the memorandum dated 27th September, 2007 issued by the respondent no.1.

Mr. Majumdar, assisted by Mr. Lahiri, learned Advocates appearing on behalf of the petitioner, submits that the petitioner was appointed as a Durwan-cum-Caretaker of the trust property of William Michael Coria at premises no.2, Royd Street, Kolkata (hereinafter referred to as the said premises) by a letter dated 14th October, 1977 issued by the respondent no.1 and on the basis of the same, the petitioner was continuing in the said post. In a portion of the said premises, the petitioner's mother was also given a right to stay as a licensee during her lifetime. In the year 1986, the respondent no.2 was granted lease of the said premises by the Official Trustee. After execution of the said lease deed, the respondent no.2 attempted to forcibly dispossess the petitioner and that as such the petitioner was constrained to prefer a Title Suit No.1513 of 2000 and initially an order was passed on 11th of September, 2000 directing the parties to maintain status quo.

Mr. Majumdar further submits that subsequent thereto, the petitioner was asked to appear before the respondent no.1 to substantiate his claim and recognition as "Caretaker" of the said premises. Pursuant to the said notice dated 24th August, 2007, the petitioner appeared before the said respondent no.1 and upon hearing the petitioner and a Power of Attorney Holder of the lessee, the said respondent no.1 passed an order on 7th September, 2007 and thereafter the said respondent no.1 issued a memorandum dated 27th September, 2007 intimating, inter alia, that his appointment as Darwan-cum-Caretaker stands terminated on and from the expiry of the month of October, 2007.

Mr. Majumdar draws the attention of this Court to a letter dated 29th June, 1977 and submits that there was a specific expression of desire on the part of the Managing Trustee that the petitioner would be continued in his services and would avail appropriate salary for his work.

According to Mr. Majumdar, from the year 1977, the petitioner has continued in such service and that there has been no allegation pertaining to the work as discharged by the petitioner and he was allowed to continue upon payment of salary.

According to Mr. Majumdar, a perusal of the impugned order dated 7th September, 2007 would reveal that the respondent no.1 has proceeded in hot haste, without granting any appropriate opportunity of hearing though the order is stigmatic.

Mr. Majumdar further submits that the respondent no.1 has no jurisdiction and/or authority to issue the impugned order dated 7th September, 2007 and the memorandum dated 27th September, 2007.

A perusal of the averments made in the writ application and the affidavits filed in connection thereto would reveal that the respondent no.1 granted permission to the respondent no.2 by a letter dated 29th January, 2008 for demolition of construction in the said premises subject to furnishing of a bank guarantee. However, the respondent no.2 could not repay the loan as availed from the bank for construction of a building of the said premises and such failure led to initiation of a proceeding by the bank before the learned Debts Recovery Tribunal and in the same the respondent no.4 herein

intervened and repaid the loan and thereafter obtained an assignment of the unexpired term of the original lease dated 17th of June, 1986 and to that effect a deed of assignment was executed in favour of the respondent no.4 by the respondent no.2.

The facts further reveal that the order impugned was passed in the month of September, 2007 and the petitioner preferred the instant writ application in the month of January, 2008 and initially, the writ application was admitted and an interim order was passed on 8th February, 2008.

The challenge against the impugned order dated 7th September, 2007 and the memorandum dated 27th September, 2007, as argued by Mr. Majumdar, is primarily threefold : -

- I. The order dated 7th of September, 2007 was passed without grant of appropriate opportunity of hearing and it contains a stigma;
- II. The respondent no.1 had no jurisdiction to issue the impugned order dated 7th of September, 2007 and the memorandum dated 27th September, 2007;
- III. The said impugned order had been passed with an intent to frustrate the proceedings in Title Suit No.1513 of 2000.

In support of his argument, Mr. Majumdar has relied upon a judgment delivered by the Hon'ble Supreme Court in the case of Bishan Dass Vs. State of Punjab, reported in AIR 1961 SC 1570 but the same is distinguishable on facts inasmuch as steps taken by the executive to remove the trustee were assailed in the said proceeding whereas the lis involved in the present writ application

pertains to termination of temporary service of a Darwan, occupying a portion of the trust property.

Though Mr. Majumdar has further argued that the impugned order has been passed collusively and through misrepresentation and fraud, such argument does not stand supported through any specific averment to that effect and the power of attorney holder of the respondent no.2 has also not been made a party in the instant writ application.

Mr. Majumdar further submits that though the petitioner did approach the competent civil forum to avail protection against dispossession, there can no bar to adjudicate the issue of sustainability of the impugned order and the impugned memorandum in the instant writ application.

Mr. Banerjee, learned Senior Advocate appearing for the added-respondent no.4, submits that the petitioner has no legal right to possess any portion of the construction existing in the premises in question on the basis of his temporary engagement as a Durwan.

Mr. Banerjee further contends that the petitioner illegally occupied the property and to avail protection against dispossession the petitioner has also approached the competent civil forum and the interim order passed in the same was vacated and the suit was dismissed. The fact of such dismissal of the suit has not been disputed by the petitioner.

Mr. Banerjee further submits that the petitioner has failed to produce any document to show that there is any requirement for continuance of his service by the respondent no.1 after execution of the lease deed dated 17th

June, 1986. The petitioner also could not produce any document in support of his continuance of service save and except receipts of annexures P-3 and P-4 of the writ application, a perusal of which reveals an alleged payment of a pension amount.

Mr. Banerjee further argues that the petitioner, in the guise of an alleged relationship of temporary engagement with the respondent no.1, has sought to continue in possession of a portion of the said premises, which was temporarily occupied by her mother, as a licensee, during her lifetime and she has also expired.

Mr. Banerjee further submits that appropriate opportunity of hearing was granted to the petitioner and there is no error in the decision making process which has led to termination of the petitioner's temporary service.

In support of his argument, Mr. Banerjee has placed reliance upon a judgment delivered in the case of Maria Margarida Sequeira Fernandes and Others Versus Erasmo Jack De Sequeira (Dead) Through LRS., reported in (2012) 5 SCC 370 and has drawn the attention of this Court particularly to the contents of paragraph 97 which runs as follows :-

97. Principles of law which emerge in this case are crystallised as under :

(1) No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property.

(2) Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand.

(3) The courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.

(4) The protection of the court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or licence agreement in his favour.

(5) The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession.

Mr. Nandi, learned Advocate appearing for the respondent no.1, submits that the temporary service of the petitioner was terminated by the impugned order upon grant of appropriate opportunity of hearing to the petitioner and that having continued in service on the basis of the appointment letter issued by the respondent no.1, the petitioner cannot dispute the jurisdiction of the selfsame respondent no.1 towards issuance of the impugned orders.

I have heard the learned Advocates appearing for the respective parties and I have considered materials on record.

As the dispute towards occupation in a portion of the said premises is civil in nature, the petitioner himself approached the competent civil forum and filed the Title Suit No.1513 of 2000 but the same has been dismissed by an

order dated 21st August, 2012, which has been brought on record by a supplementary affidavit.

A perusal of the impugned order dated 7th of September, 2007 reveals that there is no requirement towards continuance of temporary service of the petitioner under the respondent no.1 and the said order is an order of termination simpliciter. The impugned order is an innocuously worded order terminating the temporary service of the petitioner and the same does not contain any allegation or stigma. The desirability towards termination of the service is not based on any misconduct on the part of the petitioner. In the order of appointment it clearly stood recorded that the petitioner's service is purely temporary and is liable to be terminated on one month's notice without assigning any reason. Unless a stigma is attached to the termination, the appointing authority is not required to give any explanation or reason for terminating the service. It is not a case of removal as sought to be made by the petitioner but is a case of simple discharge from service. It is only a termination simpliciter and not removal from service on the ground of disciplinary conduct.

It is well-settled that when a person is discharged from service with a stigma attached to it, he should be given adequate opportunity to defend himself in the said proceeding so that he can come out of the said stigma honourably. In my opinion, the contents of the order dated 7th September, 2007 do not contain any stigma. The petitioner was given adequate opportunity of hearing and the order impugned was issued on the basis of the

finding that the service of the petitioner is no longer required, as there is no necessity towards continuance of a Durwan in the said premises.

The petitioner, having not disputed and denied the authority of the respondent no.1 towards appointment to the concerned post, cannot turn back and challenge the jurisdiction of the said respondent no.1 towards issuance of the impugned order and the memorandum.

For the reasons stated above, no interference is called for and the writ application is, accordingly, dismissed.

The operation of this order shall, however, remain stayed for a period of three weeks from date to enable the petitioner to approach the higher forum, if so advised.

Urgent certified photocopy of this order, if applied for, be supplied to the parties upon compliance of requisite formalities.

rnc.

(Tapabrata Chakraborty, J.)