

State Of West Bengal

v.

Bireswar Dutta Estate Private Ltd

(Supreme Court Of India)

HON'BLE MR. JUSTICE R.V. RAVEENDRAN HON'BLE MR. JUSTICE A.K. PATNAIK

State Of West Bengal v. Bireswar Dutta Estate Private Ltd

Civil Appeal No. 4419 Of 2001 | 18-11-2010

1. Premises No.32A, Brabourne Road, Kolkata originally belonged to the respondent. The entire six storey building (excluding the ground floor and a portion of the first floor) measuring 20093 sq.ft. had been requisitioned by the appellant under the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947 ('Act' for short) for providing barrack accommodation for the police and for Traffic Police Guard Headquarters on 1.10.1958. The premises stood derequisitioned on 7.1.1994 by virtue of the provisions of Sections 10A and 10B of the Act.

2. The appellant, thus became liable to vacate and deliver vacant possession on 8.1.1994 but continued in unauthorized possession. By order dated 8.7.1994, made in a contempt petition filed by the respondent, the High Court granted three months time to the appellant to initiate acquisition proceedings if it wanted to retain the premises and the said period of three months expired on 7.10.1994. Therefore, the respondent filed a suit (CS No.235/1996) seeking physical possession of the derequisitioned property. A learned Single Judge of the High Court decreed the said suit on 9.9.1998 holding that the occupation of the appellant was illegal with effect from 8.10.1994 and consequently directed the appellant to pay compensation at the rate of Rs.7230/- per month from 8.1.1974 to 7.10.1994 and mesne profits at the rate of Rs.1,10,000/- per month from 8.10.1994 to 31.8.1998 and from 1.9.1998 to date of delivery of possession.

3. The said decree was challenged by the appellant by filing an intra court appeal. The respondent filed cross objections being aggrieved by the quantum of the mesne profits. A Division Bench of the High Court, by judgment dated 29.7.1999 upheld the decision of the learned Single Judge that appellant was in wrongful possession of premises and was liable to be evicted. Thereafter, it heard the parties on the issue of mesne profits and by further order dated 10.8.1999 set aside the decree of the learned Single Judge in so far as the determination of mesne profits for the second and third periods (that is from 8.10.1994) and referred the matter to a Commissioner (retired Judge) for quantifying the mesne profits. The said order of the Division Bench attained finality as it was not challenged by the appellant.

4. The Commissioner appointed by the Division Bench issued notice to the parties for determination of the mesne profits. In spite of repeated opportunities, the State did not participate in the proceedings. After considering the evidence placed by the respondent, the Commissioner submitted his report dated 21.2.2000 under which he determined the mesne profits at Rs.8/- per sq.ft. from 8.10.1994 to 31.8.1998 and at the rate of Rs.9/50 per sq. ft. from 1.9.1998 till the date of recovery of possession. The appellant challenged the said report inter alia on the ground that it did not have an opportunity to let in evidence. The Division Bench considered and overruled the objections of the appellant by the impugned judgment dated 7.7.2000. It accepted the report of the Commissioner and directed that a final decree be prepared in terms of the report of the Commissioner (that is adopting the rate of rent and the periods for which such rates would apply). The Division Bench also directed that the respondent will be entitled to interest at 12% per annum on the arrears of rent and as also further rent. The said judgment is challenged in this appeal by special leave.

5. Learned counsel for the appellant submitted that the property was acquired in pursuance of preliminary notification dated 28.9.1994 issued under Section 4(1) of the Land Acquisition Act, 1894 ('LA Act' for short) and final declaration dated 11.8.1997 issued under Section 6 of the LA Act and an award was passed by the Land Acquisition Officer on 24.2.2000. Possession of the acquired premises was formally taken over under Section 16 of LA Act on 24.2.2003. The validity of the said acquisition was upheld by this Court in Civil Appeal No.638 of 2005 decided on 21.10.2010 [State of West Bengal & Ors. Vs. Bireswar Dutta Estate Pvt. Ltd. & Ors.]. It was further submitted that in view of the pendency of the proceedings for acquisition, the appellant was under the bona fide impression that it need not participate in the proceedings before the Commissioner and the High Court ought to have set aside the report of the Commissioner and given an opportunity to the appellant to place the necessary material relating to determination of mesne profits.

6. We find that the appellant was given sufficient number of opportunities by the Commissioner to place its evidence in regard to mesne profits and the appellant did not do so. We also find from the report of the Commissioner which has been accepted by the High Court that the Commissioner has determined the mesne profits with reference to the rent that was being paid by the ground-floor tenant after making appropriate adjustment for the fact that the valuation related to the upper floors. It is not in dispute that the premises is situated in the heart of Kolkata in a commercial area. The High Court, having regard to these facts had accepted the Commissioner's report and directed that mesne profits should be paid at Rs.8/- per sq.ft. for the period from 8.10.1994 to 31.8.1998 and Rs.9/50 per sq.ft. from 1.9.1998 to the date of delivery of possession. We find that the award of compensation/mesne profits as above does not suffer from any infirmity nor call for interference. The appellant has not been able to demonstrate any prejudice on account of the report of the Commissioner.

7. Learned counsel for the appellant next contended that the High Court was not justified in granting interest at the rate of 12% per annum on the amounts found due and that too without

specifying the date from which the interest will be due. He also submitted that there was no contract for payment of interest.

8. On the facts and circumstances, particularly in the absence of any contract for payment of interest, we are of the view that the interest awarded should be only from the date of the judgment of the High Court, that is 7.7.2000, at the rate of 8% per annum.

9. In view of the above, we partly allow the appeal as follows :

(i) The judgment dated 7.7.2000 of the High Court in regard to the quantum of mesne profits and the period for which it is found payable, is upheld.

(ii) The appellant shall pay compensation and mesne profits to respondent as under :

(a) Compensation for the period from 8.1.1974 to 7.10.1994 at the rate of Rs.7230/- per month.

(b) Mesne profits for the period from 8.10.1994 to 31.8.1998 at the rate of Rs.8/- per sq. feet.

(c) Mesne profits for the period from 1.9.1998 to 24.2.2003 (the date of possession) at the rate of Rs.9/50 per sq. ft.

(iii) The respondent shall be entitled to interest at 8% per annum from 7.7.2000 on the amounts due as on that date till date of payment. Respondent will also be entitled to interest on mesne profits accruing every month after 7.7.2000 from the respective due dates to date of payment.

(iv) The appellant will be entitled to adjustment of the payments made by it on account, on the respective dates of payments. Such payment shall be adjusted towards the principal (that is towards mesne profits and not accrued interest) so that interest will be due only on the balance.

(v) The appellant shall also be liable to reimburse the respondent, the proportionate property tax in respect of the portion of the property in its occupation, as directed in the interim order dated 18.7.2001 of this Court.

(vi) Parties to bear respective costs.

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