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Court : Kolkata

Decided On : Aug-08-1995

Reported in : (1995)2CALLT406(HC)

Judge : Bhagabati Prasad Banerjee and ;Ram Prakash Gupta, JJ.

Acts : Constitution of India - Article 226

Appeal No. : F.M.A.T. No. 1795 of 1995

Appellant : Ranjan Kumar Haldar and ors.

Respondent : Calcutta Metropolitan Development Authority and ors.

Advocate for Def. : S.C. Ukil, Anil Kumar Mallick, ;Manasi Bhattacharya and ;Chabi Das, Advs.

Advocate for Pet/Ap. : S.C. Bose, ;N.L. Pal and ;Naresh Chandra Roy, Advs.;Bikash Bhattacharya, ;Sharti Das, ;L.C. Bihani and ;Suchandra Mukherjee, Advs.

Disposition : Appeal dismissed

Judgement :

1. This appeal was preferred along with the application for stay of the operation of the order dated 15th June, 1995 passed by the Id. Judge. The appellants/petitioners are claiming to be the occupants of the flats constructed by the Calcutta Metropolitan Development Authority and Ors. in Baishnavghata Patuli Project. The said flats for new township was constructed under the scheme framed by the said authority for accommodating the Lower Income Group people. After the construction of the said flats in the said township the same was allotted to saveral allottees and the allottees had paid money for the purpose of owning the said flats under the said scheme.

2. The appellants/petitioners case is that the said flats were lying unallotted and vacant and accordingly they have entered into possession and they were continuing in possession. It is also stated that the appellants made representation by way of appeal before the authority concerned to protect them against their unlawful eviction and allot the said flats to them for which they were ready and willing to pay the requisite allotment fees as per Rules but the authorities it is stated did not pay any heed to their prayer. It is stated that instead of allotting the same to them the said authorities were trying to evict them forcibly with the help of police.

3. The learned trial Judge by the order dated 15th June 1995 held that as the petitioners have no locus standi the writ application was not maintainable and the same was accordingly dismissed.

4. Mr. S. C. Bose, learned Sr. Advocate appearing on behalf of the appellant/petitioners submitted that the appellant/petitioners who were not claiming their right title and interest in the property could not be evicted except by due process of law and that the Calcutta Metropolitan Development Authority had no jurisdiction under the law to evict them except in accordance with law.

5. On behalf of the respondents it is submitted that the said flats had since been allotted to the several allottees the C.M.D.A. Authorities are unable to hand over vacant and peaceful possession which have been acquired by the appellant/petitioners. It is the case of the appellant/petitioners that there are instances of many allottees who are enjoying illegal occupation for years together

ibut they were sought to be evicted. It was further submitted that they were carrying on their livelihood from that place. It is submitted that right to livelihood is treated as a part of the constitutional right to life and accordingly the same could not deprived except in occordance with law.

6. In order to move the writ application particularly for Mandamus or any order or direction excepting in case of habeas corpus or quo warranto there must be a clear legal right in the petitioners and a corresponding duty on the person to whom the writ or order is directed. Mandamus is not a writ of right. Its issuance unquestionably lies in the sound judicial discretion of the Court and it is controlled by equitable principles. Before granting the writ or order, the Court may and should look to the larger public interest with which it may be concerned. It is in every case a discretion is determined upon all the surrounding facts and circumstances. As the issuance of the writ lies in the sound discretion of the Court, the Court has the rights to consider the real, although indirect, cause of the action and the made out by the parties which requires a determination. When a party comes to the Court stating that he had no right, title or interest in the properties in question but still wants a protection from the Court cannot entertain a petition where there was no prima facie case or an issue which may be required to be tried. Even in case of a suit if a plaint does not disclose any cause of action the plaint is liable to be dismissed. While granting injunction the Court should consider first the prima facie case and the balance of convenience and/or inconvenience. In a case where parties have no right which may be protected under the law, the Writ Court cannot entertain the writ application and grant any relief whatsoever far less grant an interim order of injunction inasmuch as the interim order of injunction is passed in aid of the main relief in the writ application. The Writ Court cannot declare the right, title and interest of private persons in the properties and when a party admits that he had no right in that event, the Court cannot and should not exercise any judicial discretion in favour of that party. Mandamus will not lie where there is no occasion for its issuance. Mandamus should be refused where the result would be injurious and unreasonable or detriment to public and/or public interest. It is well-settled principle that Mandamus may be refused when the wrong or injustice is done. The purpose of Mandamus is to remedy a wrong and not to promote one.

7. With regard to the submissions made by the petitioner that the Writ Court should protect the possession of the persons even though he is a trespasser, in our view, this point has got some difficulties and the question is whether the writ jurisdiction could be invoked at the instance of trespassers. It is one of the cardinal principle that one who seeks to invoke the writ jurisdiction must come with clear hand. In K. K. Verma's case : AIR1954 Bom358 Chagla C.J. observed that 'Under Section 9 of the Specific Relief Act a tenant who has ceased to be a tenant may sue for possession against his landlord if the landlord deprives him of possession otherwise than in due course of law, but a trespasser who has been thrown out of possession otherwise than in due course of law, but a trespasser who has been thrown out of possession cannot go to court under Section 9 and claim possession against the true owner'. This observation of Chagla C.J. of Bombay High Court had been approved by the Supreme Court in the case of Lallu Yeshwant Singh v. Rao Jagdish Singh reported in AIR 1968 SC 620. If the position is that if a trespasser who had been, thrown out of possession cannot go to Court for restoration of posession, in that event in our view a trespasser cannot move the court for protection of his possession. The only protection which the trepasser can get is that if the trespasser can establish that he has acquired title by adverse possession.

8. Accordingly the disputed question of right title and interest can only be decided by due process of law by filing a suit and not a writ petition.

9. The Supreme Court in the case of Yeshwant Singh v. Jagdish Singh reported in AIR 1968 SC 620 has approved the Full Bench decision, of the Bombay High Court and also the Bench decision of the Allahabad High Court in the case of Yar Mohammad v. Laxmi Das reported in : AIR1959 All1 .

10. In that case the Supreme Court held that if the trespasser is dispossessed in that event the trespasser cannot file a Suit and get injunction against the owner. Accordingly it cannot be said that forcible dispossession by the owner without following the due process of law cannot be said to be void and the trespasser could not be put back to possession. In our view a trespasser cannot get an injunction against the apprehended dispossession when the trespasser admittedly

had no right, title and interest in the property. It is not a case whether the initial entry into the land or the building was lawful like a tenant and after termination of the tenancy the tanent cannot be evicted except in accordance with law and the tenant can seek protection against any unlawful eviction. In our view the rank trespasser cannot invoke the writ jurisdiction which is public law remedy to protect his/or their unlawful and forcible possession against true and lawful owners particularly against public authorities who had constructed such flates and who are bound to hand over possession to the allottees from whom they have taken money. Law never comes to the aid of wrong doer.

11. Accordingly in the instant case and in view of the averments made by the appellant/petitioners in the pleadings we are clearly of the view that the petitioners are not entitled to any relief unless the petitioners could show that they have any right title and interest in the property. Existence of a legal right and infraction thereof by the respondents gives cause of action to the persons concerned who have public duty to move the writ court otherwise the person cannot be said to have any locus standi to invoke the writ jurisdiction.

12. Accordingly we do not find any reason to interfere with the order passed by the learned trial Judge.

13. Accordingly the application for stay as well as the appeal which is to be treated as on day's list are dismissed.

14. There will be no order as to costs.

If an urgent certified copy is applied for the same may be made available to the parties upon compliance of all the formalities.

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