

Amiya Kumar Chandra Vs. the State of West Bengal and ors.

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Court : Kolkata Appellate

Decided On : Jan-10-2011

Judge : Jayanta Kumar Biswas, J.

Appeal No. : W.P. No.38 (W) of 2011

Appellant : Amiya Kumar Chandra

Respondent : The State of West Bengal and ors.

Advocate for Def. : Mr. Prasenjit Basu; Mrs. Nilima Das, Advs

Advocate for Pet/Ap. : Mr. Salil Kr. Sarkar, Adv

Judgement :

1. The petitioner in this art.226 petition dated January 3, 2011 is seeking the following principal reliefs:

(a) A Writ of or in the nature of Mandamus commanding the respondents, their men, agents and subordinate to enhance the Fair Rent towards the said tenanted portion and fix the same according to the present market value of the locality without giving effect the Circular dated 3rd August, 1993 as in Annexure-P13 this application;

(b) A Writ of or in the nature of Mandamus commanding the respondent authorities to enhance the rate of Rent towards the tenanted portion @ 30% per sq.ft. and further commending the respondent authorities asking them why the impugned

order dated 16th June, 2009 shall not be quashed;

2. The District Registrar, Hooghly rented the entire first floor of a property of the petitioner in 2004. By a letter dated September 12, 2006 the District Registrar requested the Land Acquisition Collector, Hooghly to assess the fair rent for the premises. The Collector assessed the fair rent at Rs. 6309 per month.

3. The petitioner wrote a letter dated September 27, 2007 requesting the District Registrar to increase the rent. The parties then entered into a tenancy agreement dated May 26, 2008(at p.36) fixing monthly rent for the premises at Rs.6309.

4. The petitioner went on requesting the District Registrar to increase the rent. By a letter dated March 12, 2009 the Special Land Acquisition Collector, Hooghly informed the District Registrar that there was no scope for fixing rent for the premises once again. Contending that in terms of a circular of the Government of West Bengal, Land & Land Reforms Department No.590(96)-L.R. dated August 3, 1993 he is entitled to a higher rent, the petitioner approached the District Registrar by making a representation dated July 20, 2009. Now alleging inaction he has brought this petition.

5. The question is whether a mandamus should be issued directing the respondents to fix fair rent for the premises rented by the District Registrar.

6. Admittedly, to the tenancy the provisions of the West Bengal Premises Tenancy Act, 1997 are applicable. Section 17 of this Act provides that the Controller shall, on application made to him either by the landlord or by the tenant in the prescribed manner, fix the fair rent for any premises in accordance with the provisions of the Act. Under the Act the State Government (or the Collector, for that matter) is not the authority to fix fair rent for the premises.

7. The guidelines applying which the Collector assessed rent for the premises at the instance of the District Registrar are not statutory provisions empowering the Collector to fix the fair rent for any premises rented by the Government. They have been framed only for guiding the officials of the Government while determining what rent the Government will offer for properties rented by it. A person renting out

his property to the Government is not bound by them.

8. In the absence of any statutory obligation of the Collector to fix fair rent for the premises, I am of the view that an order cannot be made by the Writ Court directing him to fix the fair rent for the premises. By an order under art.226 a statutory power cannot be conferred on a person not empowered to exercise the power. The case of the petitioner that with respect to fixation of rent for his premises he has been discriminated against is to be stated by him before the Controller, the statutory authority empowered to fix the fair rent for the premises.

9. For these reasons, the petition is dismissed.

10. No costs. Certified xerox.

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