

Supreme Court of India

Styabrata Biswas vs Kalyan Kumar Kisku on 27 January, 1994

Equivalent citations: 1994 AIR 1837, 1994 SCR (1) 413

Author: S Mohan

Bench: Mohan, S. (J)

PETITIONER:

STYABRATA BISWAS

Vs.

RESPONDENT:

KALYAN KUMAR KISKU

DATE OF JUDGMENT 27/01/1994

BENCH:

MOHAN, S. (J)

BENCH:

MOHAN, S. (J)

ANAND, A.S. (J)

CITATION:

1994 AIR 1837

1994 SCR (1) 413

1994 SCC (2) 266

JT 1994 (1) 325

1994 SCALE (1) 286

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by MOHAN, J.-Leave granted.

2. The short facts leading to this appeal are under. The premises in dispute is a Church property situate at No. 16 Sudder Street, Calcutta including the outhouse. The first respondent, Kalyan Kumar Kisku, filed a suit bearing No. 328 of 1988 before the High Court of Calcutta, for declaration of title, in his capacity as Secretary of Durgapur Diocese. It was claimed in the said suit that the Durgapur Diocese consisted of three rooms and inter alia it was claimed that the possession of Durgapur Diocese may not be disturbed. The suit was directed against the Church of North India and the Durgapur Diocese.

The prayers in the said suit are as follows: "(a) A decree be passed declaring that the premises being No. 16, Sudder Street, Calcutta 16 including the outhouse and garages of which the Durgapur

Diocese is in possession and/or occupation, belong to the said Diocese of Durgapur to the exclusion of Diocese of Calcutta and the Durgapur Diocese alone has the executive right and title to use and enjoy the same;

(b) A decree be passed declaring that until the properties of the Durgapur Diocese are demarcated and/or transferred and/or handed over to the Diocese of Durgapur in terms of the resolution of the CNI Synod from the Calcutta Diocese, the power of attorney executed by the Trustees of the Calcutta Diocese Trust Association in favour of the Durgapur Diocese be restored and the Durgapur Diocese will be legally entitled to collect all rents, issues and profits of the assets belonging to the said Diocese of Durgapur;

(c) A decree be passed declaring that the CNI Synod office bearers have no authority to extend the date of holding the Episcopal Election and in the event of any delay in holding such election the said CNI Synod office bearers have no right and/or authority to appoint Moderator Commissary and/or Episcopal Commissary and the Executive Committee as well as the Diocesan Council of Durgapur cannot be dissolved and/or superseded and/or disturbed and the said council as well as Executive Committee would be allowed to function to its full tenure, i.e., September 8, 1989;

(d) An order be passed granting leave under Order (1) Rule 8 of the Civil Procedure Code;

(e) Permanent injunction be granted restraining the defendants from interfering with the functions of the Diocesan Council as well as the Executive Committee of the Durgapur Diocese till the full tenure is over, i.e. September 8, 1989;

(f) Permanent injunction be granted restraining the defendants and their servants and agents from interfering with the peaceful possession and use and occupation of the premises being No. 16, Sudder Street, Calcutta 16 including the outhouse and garages by the Durgapur Diocese;

(g) Permanent injunction be granted restraining the defendants and their servants and agents from collecting rent, issues and/or profits of the properties belonging to the Durgapur Diocese in terms of the CNI Synod resolution and by operation of the power of attorney executed and/or to be executed by the Calcutta Diocesan Trust Association until the properties belonging to the Diocese of Durgapur are handed over and/or transferred to the Durgapur Diocese by the Calcutta Diocesan Trust Association (Private).

(h) Permanent injunction be granted restraining the defendants and particularly the CNI Synod office bearers in the matter of Episcopal Election and further restraining the defendants from appointing Moderator Commissary and/or Episcopal Commissary over the Durgapur Diocese;

(i) Ad-interim Injunction;

(j) Receiver;

(k) Costs;

(1) Such other relief or reliefs."

Pending this suit an interlocutory application was filed and an order dated May 20, 1988 was passed directing the maintenance of status quo in respect of running of Durgapur Diocese till further orders.

3. On June 1, 1988 this order was modified stating that the order dated May 20, 1988 will not stand in the way of retirement of the Bishop which was due on June 4, 1988 or the appointment of the Commissary by the Moderator of the Church of Nottingham. The defendants were directed to appoint a new Bishop within 5 weeks from the date of the said order. We may at this juncture point out that these two orders are not material for our purposes. However, what is important is the order dated September 15, 1988. That order is extracted in full:

"This application will stand adjourned for one week from date. Affidavit-in-opposition and affidavit-in-reply to be filed in the meantime. So far as the fixed properties are concerned there would be an order of status quo as of today till the disposal of the application. There would also be an order not to dissolve the committee in the meantime. It is recorded that Mr Bishop Ghose has already taken over the charge. All parties are to act on a signed copy of the minutes of this order."

4. From the above it is seen that in relation to the properties an order of status quo as of today, (that is, September 15, 1988) had been passed by the court. It is complained that there is a violation of these three orders by the six respondents, Satyabrata Biswas, Rev. Bilash Chandra Das, Salil Biswas, Sushil Sharma, Rt. Rev. Dinesh Chandra Gorai and Rt. Rev. John E. Ghosh. The contempt was for (1) putting a padlock to the main entrance of the premises on July 3, 1993; (2) disconnecting water supply; (3) obstructing sewerage line; and (4) preventing the appellants from getting the rooms repaired.

5. By an order dated July 20, 1993 the court directed to make an inventory of the rooms lying on the first floor of the suit premises and also to find if there was any padlock. The Special Officer was appointed under that order. He was permitted to break open the padlock and put his own padlock after the inventory was made.

6. On August 4, 1993 the Special Officer was directed to continue the inquiry and complete the same as per order dated July 26, 1993. The keys to the main door were to remain with the officer-in-charge, Taltola Police Station.

7. On August 16, 1993 the said order dated July 26, 1993 was modified to the effect that the Receiver would make the inventory of the articles in terms of the earlier order, but would not put the main entrance gate under lock and key. A modification to the said order dated August 16, 1993 was sought to the effect that the Special Officer should allow representatives of each of the parties and should not allow anybody from among the occupiers at the time of making inventory. This modification was refused. Until this, Somani Builders (Respondent 2 herein) was not a party to any of the proceedings nor did it move an application to implead itself. Yet an oral prayer made by Somani Builders was

allowed on August 20, 1993 *inter alia* in the following terms:

"It is submitted by Mr Ghosh that even after the inventory is complete the Receiver has put padlock. Mr Bhattacharjee, learned Receiver is present. It is submitted by the Receiver that the inventory is complete. Receiver is directed to remove the padlock, if any, put by him by tomorrow."

8. Aggrieved by these proceedings an appeal came to be preferred by the appellants. It was contended by the learned counsel appearing on behalf of the appellants that the said A.K. Ghosh was neither a tenant nor did he have the competence or authority to let out any portion of the premises in question. Therefore, the said A.K. Ghosh did not have authority to be there as a tenant. It was further urged that the creation of tenancy was an afterthought and no order should have been passed in favour of the said Somani Builders who had intervened in this proceeding. On this plea the court *inter alia* observed as follows:

"Whether or not the Somani Builders Pvt. Ltd.

is a lawful sub-tenant cannot be decided in this proceeding. It is for the landlord to initiate appropriate proceedings for their ejection. But at this stage, the question is whether Somani Builders Pvt. Ltd. is in occupation or not. On the facts and in the circumstances of this case, we are *prima facie* satisfied that the company was in occupation of the disputed premises. Even a trespasser can be evicted only by due process of law."

9. Thereafter it proceeded to appoint Joint Receivers with a direction to obtain the keys from the officer-in-charge Taltola Police Station. They would make an inventory of the rooms stated to have been occupied by Somani Builders Pvt. Ltd. opening the padlock which was fixed by the Special Officer. After making the inventory the Joint Receivers were directed to take possession of the said premises. They were also directed to allow Somani Builders to occupy the said premises for the purpose of carrying on business in the usual course. The occupation charges would be paid by Somani Builders to the Joint Receivers without prejudice to the rights and contentions of the parties.

10. Under these circumstances the present civil appeal by special leave has come to be preferred. It is urged on behalf of the appellants that in view of the *statu quo* order dated September 15, 1988 regarding the fixed property in possession of the Durgapur Diocese no tenancy or sub-tenancy rights could be created. It was also urged that the said Somani Builders became sub-tenant under an agreement dated May 10, 1993. Such a subtenancy cannot be valid in view of the *status quo* order. It is somewhat strange that Somani Builders should make an oral application before the learned Single Judge. On the basis of that oral application, the order came to be passed in favour of Somani Builders directing the Special Officer to remove the padlock. As to what was the nature of the prayer, that too by a person who was not a party to anyone of these proceedings, is not known. Therefore, the removal of padlock at its instance, as directed by the learned Single Judge, was not warranted. As though to add insult to injury when the appellant was complaining about this order, the Division Bench went one step further and directed that possession be given to Somani Builders. This

direction would amount to putting a premium on the illegality committed by the former alleged tenant A.K. Ghosh.

11. First of all, he had no authority to grant a tenancy. Even otherwise, since status quo order had been passed by the Court on September 15, 1988 the creation of sub-tenancy under the agreement dated May 10, 1993 would not confer Somani Builders with any right whatever. In contempt Jurisdiction an utter stranger to the proceedings cannot be put in possession, while the sole question was whether the parties had violated the order dated September 15, 1988. Therefore, the order is liable to be set aside.

12. Learned counsel for Respondent 1, Kalyan Kumar Kisku submits:

"The appellants herein are fully aware that they cannot succeed in the suit filed by Respondent 1 and, therefore, they have taken a short-cut method to obtain their objective by adopting illegal and unfair means, thereby dispossessing all occupants of the first floor without sanction of law.

It was held by this Hon'ble Court in the case of Bharat Coking Coal Ltd. v. State of Bihar' that according to the ordinary legal connotation, the term status quo' implies the existing state of things at any given point of time. It is submitted that in view of the definition of 'status quo' as aforesaid, the Durgapur Diocese was entitled to continue its existing activities as on May 20, 1988 regarding running of its activities including the functioning of the Executive Committee of the Diocesan Council.

This Court as a matter of practice does not interfere in the interlocutory orders under Article 136 of the Constitution of India. Reliance is placed on two decisions: (i) State of A.P. v. T. Aandagopal², (ii) State of Maharashtra v. Dadamiya Babumiya Sheikh³."

13. Learned counsel for the respondent-tenant, A.K. Ghosh, would urge that he was the tenant of the premises from 1988 onwards. He had been specifically authorised to create a sub-tenancy by a resolution of Durgapur Diocese dated March 11, 1988 to grant the sublease. The order of status quo was against the parties who had been impleaded in the interlocutory application.

14. Mr P. Chidambaram, learned counsel for Somani Builders would submit that the application for contempt was directed against the respondents therein. Where, therefore, they were directed to maintain the status quo, there was no legal disability on the part of the tenant A.K. Ghosh to sub-let the property. Hence, if the sub-tenant had been lawfully inducted he can lawfully remain in possession of the premises as the same was directed to be handed over to the Joint Receivers by the learned Single Judge. It became necessary on the part of the Somani Builders to mention before the learned Single Judge because its possession came to be disturbed by the Special Officer 1 1987 Supp SCC 394 2 1986 Supp SCC 568 3 (1972) 3 SCC 85: 1972 SCC (Cri) 405 fixing the padlock. Till then the question of impleading itself did not arise. only when it was affected oral mention had to be made. The appellate court found that there was disturbance of possession which came to be restored to Somani Builders. Inasmuch as the inventory disclosed, its properties were found in the premises. In the written submissions, it is further urged:

"Actus curiae neminem gravabit meaning thereby an act of Court shall prejudice no man:

(a) This principle of law has been applied by the English Courts as well as by the Hon'ble Supreme Court of India. (See Alexander Rodger, Charles Carnie and Richard James Gilman v. The Compotoir D'Escompte De Paris and The Chartered Bank of India, Australia, and China 4, Jagat Dhish Bhargava v. Jawahar Lal Bhargava 5 and Jang Singh v. Brij Lal6.

(b) In Jagat Dhish Bhargava v. Jawahar Lal Bhargava' the Hon'ble Supreme Court has stated 'the litigant deserves to be protected against the default committed or negligence shown by the court or its officers in the discharge of their duties.' In a contempt proceedings, which was not even initiated against Respondent 2 or any of its officers, the said respondent was dispossessed :

(a) The Court has no jurisdiction to direct dispossession of anyone in a contempt proceedings. Neither the Contempt of Courts Act, 1971 nor Article 215 authorises the Court to pass any order of dispossession in a contempt proceedings;

(b) In any event, in a contempt proceedings, no order can be passed against a person, who is not a party thereto and without giving any notice to him and affording an opportunity of hearing to such person. (See Section 14 of the Contempt of Courts Act, 1971);

(c) The said contempt petition was filed by Respondent 1 against some of the special leave petitioners contending that the special leave petitioners have violated the order of Court.

(d) Therefore, the Court had no jurisdiction to pass an order of dispossession against Respondent 2 in such proceedings.

No order passed in suit can bind a person, who was not a party thereto:

(a) The tenant Ashok Kumar Ghosh and his sub- tenant Somani Builders Private Limited were not parties to the suit instituted in the High Court of Calcutta. Therefore, none of the orders 4 LR(1871)3PC 465 5 AIR 1961 SC 832: (1961) 2 SCR 918: (1961) 1 Ker LR 437 6 AIR 1966 SC 1631: (1964) 2 SCR 145: 65 Punj LR 884 passed in the said suit was ever or is at all binding on any of them;

(b) The tenant; was inducted prior to 'the institution of the suit. The suit 'was instituted on April 29, 1988 and prior thereto, the tenant was inducted;

(c) On May 20, 1988 the tenant was authorised to grant subtenancy;

(d) The suit was for a declaration that premises No. 16, Sudder Street, Calcutta including its outhouse and garage belongs to the Diocese of Durgapur and Diocese of

Durgapur has alone exclusive right, title and interest to use the same;

(e) On May 20, 1988, the Parties to the suit were directed to maintain status quo in respect of running of Diocese of Durgapur till further order;

(f) On September 15, 1988, the Calcutta High Court passed an order of status quo as of the said date in regard to the fixed properties of Diocese of Durgapur;

(g) The said orders were not, nor can claim to be binding on the tenant Ashok Kumar Ghosh;

(h) In any event, the status quo order passed on September 15, 1988 which specifically mentioned that the same should be maintained as of September 15, 1988 cannot curtail the right of the tenant, which has been granted to him on May 20, 1988;

(i) A status quo order with a specification that the same should be as of that date under no stretch of imagination can be stretched or given effect to retrospectively;

(j) Thus, the tenant's right to grant sub-tenancy accorded to him on May 20, 1988 was not nor could be affected by the said order of status quo dated September 15, 1988."

Therefore, no exception would be taken to the impugned order.

15. In order to appreciate the respective contentions it is necessary to state that violation of the following three orders were complained of:

(1) May 20, 1988 (2) June 1, 1988 (3) September 15, 1988

16. As stated above, we are not concerned with the first of the two orders since they do not relate to the property. It is the violation of the order dated September 15, 1988 (already extracted) which gives rise to contempt. The contempt was chiefly about the respondents putting padlock on the entrance of the suit premises on July 3, 1993, disconnecting water supply for the first floor and blocking sewerage etc. Therefore, all that was required to decide was whether the respondents therein had maintained the status quo or not. If there was any kind of disobedience, that would amount to contempt. Thus, it is a simple case of contempt. Unfortunately, it has taken a devious course and peculiar orders have been passed both by the learned Single Judge as well as the Division Bench. The learned Single Judge directed by order dated July 26, 1993 the Special Officer to make an inventory of the state of affairs. Where was the need to make the inventory of things is difficult to understand having regard to the nature of violation alleged in the petition for contempt. The Special Officer had put his own padlock after inventory had been taken. Whether it was the main entrance or not was an ancillary issue. It is at this stage that Somani Builders entered the scene. It made an oral application for the removal of the padlock. What was the nature of prayer is not discernible

anywhere. Even the order of the learned Judge does not make mention about this prayer. It has to be carefully noted that Somani Builders based its claim on the strength of the agreement dated May 10, 1993, claiming a right of sub-tenancy from A.K. Ghosh.

17. First of all, whether A.K. Ghosh was a tenant is itself in dispute. Secondly, whether A.K. Ghosh had a right to create a sub-tenancy is again in dispute. Thirdly, more than above all this, when the right of sub-tenancy was sought to be founded on an agreement dated May 10, 1993, it should have occurred to the learned Single Judge that such a creation of sub-tenancy was clearly violative of the order of status quo passed as early as September 15, 1988. It is extremely unfortunate that the learned Judge had not even cared to bestow a thought and entertained an oral application at the instance of a person who had nothing to do till then with the application for contempt. He had not even taken out an application to implead himself as a party. If mere oral mention could be enough to direct a Special Officer to remove the padlock, one has to put aside the law of procedure altogether and render justice as the court conceives, conferring benedictions on parties who cannot have any legal basis to found their claim.

18. Still worse was to follow. When the appellants before us complained of this direction by the learned Single Judge to remove the padlock, the Division Bench followed a novel procedure. We have already extracted its finding in relation to the validity of sub-tenancy. Having held in no uncertain terms whether or not the Somani Builders is lawfully a sub-tenant, cannot be decided in the proceeding, it should have thrown out the plea of Somani Builders. Why then the Joint Receivers were directed to allow Somani Builders to occupy the premises for the purpose of carrying on business passes our comprehension? The status quo is not a status quo as on the date of inventory but the status quo as of September 15, 1988. The order of that date states unequivocally "status quo as of today". That could only mean September 15, 1988 and there cannot be the state of affairs after five years of that order.

19. In Wharton's Law Lexicon, 14th Edn. at p. 95 1, status quo has been edefined as meaning:

"The existing state of things at any given date; e.g., Status quo ante bellum, the state of things before the war."

20. According to Black's Law Dictionary, 6th Edn. the relevant passage occurs:

"The existing state of things at any given date. Status quo ante bellum, the state of things before the war. 'Status quo' to be preserved by a preliminary injunction is the last actual, peaceable, uncontested status which preceded the pending controversy."

21. This Court in *Bharat Coking Coal Ltd. v. State of Bihar* stated thus: (SCC p.398, para 5) "According to the ordinary legal connotation, the term status quo' implies the existing state of things at any given point of time."

22. When the removal of padlock was complained of in the appeal filed by the appellants herein, strangely delivery of possession was ordered! The said order clearly betrays lack of understanding as

to the scope of contempt jurisdiction and proceeds upon a total misappreciation of the facts. We are obliged to remark that both the learned Single Judge as well as the Division Bench had not kept themselves within the precincts of contempt jurisdiction. Instead peculiar orders have come to be passed totally alien to the issue and disregarding the facts. The orders of the learned Single Judge and that of the Division Bench cannot stand even a moment's scrutiny. Therefore, it is idle to contend that no interference is warranted under Article 136.

23. Apart from the fact whether A.K. Ghosh had a legal authority to sublease or not it was not open to him to grant a sublease in violation of the order. It is no use contending as Mr Chidambaram, learned counsel for the respondents does, that there was a bar to such a sublease under the terms of the status quo order. It has the effect of violating the preservation of status of the property. This will all the more be so when this is done without the leave of the court to disturb the state of things as they then stood. It would amount to violation of the order. The principle contained in the maxim '*actus curiae neminem gravabit*' has no application at all to the facts of this case when in violation of status quo order a sub-tenancy has been created. Equally, the contention that even a trespasser cannot be evicted without recourse to law is without merit, because the state of affairs in relation to property as on September 15, 1988 is what the court is concerned with. Such an order cannot be circumvented by parties with impunity and expect the court to confer its blessings. It does not matter that to the contempt proceedings Somani Builders was not a party. It cannot gain an advantage in derogation of the rights of the parties, who were litigating originally. If the right of subtenancy is recognised, how is status quo as of September 15, 1988 maintained? Hence, the grant of sublease is contrary to the order of status quo. Any act done in the teeth of the order of status quo is clearly illegal. All actions including the grant of sublease are clearly illegal.

24. We hereby set aside the order of the Division Bench dated October 5, 1993 and the orders of the learned Single Judge dated July 20, 1993 (except that part relating to appointment of Special Officer), August 4, 1993, August 6, 1993, August 11, 1993, August 16, 1993 and August 20, 1993 as well.

25. The parties are relegated to the position as on September 15, 1988. Somani Builders are hereby directed to deliver vacant possession to the Special Officer within one month from today. The learned Single Judge is directed to dispose of the application for contempt in its proper perspective confining himself to contempt jurisdiction. The Special Officer shall continue to be in possession till the disposal of contempt proceedings. This direction becomes necessary in view of the scramble for possession.

26. For the foregoing reasons, the civil appeal is allowed with costs which shall be borne equally by Respondents 1 and 2 in this appeal.