
(2000) 03 CAL CK 0059

In the Calcutta High Court

Case No : Civil Revisional Jurisdiction, F.A. No. 104 of 1991

Calcutta Municipal Corporation

APPELLANT

Vs

Sibamoy Chakraborty

RESPONDENT

Date of Decision : 31-03-2000

Acts Referred:

Calcutta Municipal Act, 1951 — Section 586
Calcutta Municipal Corporation Act, 1980 — Section 124, 5, 568, 585, 586
Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 12
West Bengal Premises Tenancy Act, 1956 — Section 13(1), 13(6)

Citation : (2000) 3 CALLT 303

Hon'ble Judges : Vinod Kumar Gupta, J; Malay Kumar Basu, J

Bench : Division Bench

Advocate : Mr. L.C. Bihani, Mr. Barin Banerjee and Miss Suchandra Mukherjee, for the Appellant; Mr. Sudhis Das and Mr. Sushil Kumar Saha, for the Respondent

Judgement

M.K. Basu, J.—This appeal is directed against the Judgment dated 26.5.1989 passed by Sri M.K. Gajra, Judge, City Civil Court, fifth Bench, Calcutta in Ejectment Suit No. 1025 of 1983 of that Court. The relevant facts leading to the filing of this appeal may be summarised as follows :

2. Sri Sibamoy Chakraborty, the plaintiff of that suit and the respondent in the present appeal filed the suit for eviction and mesne profits against the tenant, Calcutta Municipal Corporation (the appellant) on the ground of his own use and requirement. His case was that he purchased the suit premises namely, Premises No. 56A, Sri Gopal Mullick Lane, Calcutta-700 012 by a registered deed dated 19.4.80 and on 15.7.83 he sent the notice to the defendant tenant terminating his tenancy on the expiry of the month of August, 1983 and the notice was duly served on the defendant but it did not vacate the suit premises and continued to occupy the same as trespasser. The plaintiff badly required the suit premises for his own use and occupation, in as much as, his joint family consisted of his widow mother, his wife, a research fellow and a school mistress, a school going

daughter, a son, his brother and two sisters and one married sister with two daughters aged about 7 to 11 years and one maid servant. Due to non availability of sufficient accommodation the members of his family were living in two separate places with great inconvenience while the suit premises consisting of 4 rooms on the ground floor and 4 rooms in the first floor would meet his need fully. He had no other alternative suitable accommodation for his purpose and the members of his family were living in tenanted houses suffering serious difficulties and hardships. Hence he filed this suit after due service of notice upon the defendant-tenant for a decree of ejectment and khas possession and also for mesne profits.

3. The defendant's case was that they were tenants in respect of the entire suit premises except one room on the second floor and the plaintiffs plea of reasonable requirement of the suit premises for his own use and occupation was a myth and his present accommodation was quite sufficient. The further case of the defendant is that the suit was bad due to non service of notices u/s 80 of the CPC and u/s 586 of the Calcutta Municipal Corporation Act and also the notice of ejectment was vague and Insufficient.

4. The learned trial Judge framed the following Issues for trial of the suit:

"1. Is the suit maintainable?

2. Is the suit bad for mis-joinder and/or non-joinder of parties?

3. Is the suit bad for non-service of notice u/s 80 CPC and u/s 568 of CMC Act of 1980?

4. Was the notice of ejectment served on the defendant?

5. Is the plaintiff owner of the suit premises? Does the plaintiff require the suit premises for his own use and occupation?

6. Has the plaintiff any other reasonable suitable accommodation?

7. Is the plaintiff entitled to get a decree for khas possession of the suit premises as prayed for?

8. To what relief, if any, is the plaintiff entitled?

5. After considering the evidence both oral and documentary adduced by the parties, the learned trial Judge was satisfied that the case of the plaintiff had been established and his plea of reasonable requirement had been proved and after deciding all the issues in favour of the plaintiff-respondent he decreed the suit and directed the defendant to make over khas possession of the suit premises in favour of the plaintiff within 3 months from the date of the judgment and also allowing mesne profits at the rate of Rs. 180/- per month with effect from the date of filing of the suit till the date of recovery of khas possession of the suit premises.

6. Being aggrieved by and dissatisfied with this Judgment the defendant-

corporation has preferred the present appeal challenging the same as illegal and unsustainable.

7. At the very outset Mr. Bihani, the learned Advocate for the appellant, has urged before us that the learned trial Judge fell into error by holding that no notice either u/s 586 Calcutta Municipal Act or u/s 80 of the CPC need be served in this suit and the suit did not suffer due to the plaintiffs' omission in this respect. According to him both these notices were required to be served on the defendant-appellant before the institution of the suit, Inasmuch as, in the first place, mandatory provisions of section 586, Calcutta Municipal Act, 1951 were applicable to this case, the appellant's holding the tenancy in respect of the suit premises being an act done or purporting to be done under the said Act; and secondly, the Corporation is to be treated as a State in view of the nature of the relief claimed and the mandatory provisions of section 80 CPC could not be dispensed with. As against this, the contention of Mr. Dasgupta, the learned counsel for the respondent is that service of either of such notices is uncalled for under the law, because, the act of being a tenant in respect of the suit premises by the appellant or of the filing of an ejectment suit against it by the respondents has nothing to do with any act done or purporting to be done under any provision of the Calcutta Municipal Act. So far as the question of applicability of section 80 CPC is concerned, his contention is that, in the first place, the defendant-appellant or for that matter the Commissioner of the Corporation does not fulfil the description or definition of a public Officer and, secondly, the Impugned Act in respect of which the suit has been filed was not done by the appellant in discharge of any official duty.

8. Mr. Dasgupta in support of his argument has referred to a Division Bench judgment of this Court in *Gowardhandas Rathi Vs. Corporation of Calcutta and Another*, . It has been held there that since the Government does not exercise any control over the discharge of duties by the Commissioner of Corporation of Calcutta as such Commissioner, nor he is in the pay of the Government he cannot be said to be a Government Servant in spite of the control which the Government has over his appointment and his removal and his functions outside the office of the Commissioner and hence no notice to him u/s 80 CPC is necessary. In the Instant case the application of this reasoning can hardly be over emphasised. Mr. Dasgupta has also relied upon two more decisions to establish the correctness of his contention. They are (1) *Amalgamated Electricity Co. (Belgaum) Ltd. Vs. Municipal Committee, Ajmer*, and (2) 1972 ALJ 52 (R.P. Pathetic v. Agra Nagar Mahapalika). In the former it has been held by a Division Bench of the apex Court that before section 80 of the CPC can be relied on in any suit against a public Officer, it must be shown that it is a suit in respect of an act purported to be done by him in his official capacity and if the suit does not relate to any act or illegal omission purporting to be done by the public Officer in his official capacity section 80 will not have any application and similarly section 233 of the *Ajmeer Marwara Municipality Regulation* under which a notice is required to be served before instituting such a suit will also not be attracted. In the latter

it has been laid down by a Division Bench of the Allahabad High Court that if the Nagar Mahapalika neglects or defaults in making the payment of rent, it would not be a neglect or default in the execution of the Nagar Mahapalika Adhiniyam and a suit for recovery of arrears of rent and possession against the Nagar Mahapalika is not covered by the provisions of section 571 U.P. Nagar Mahapalika Adhiniyam, inasmuch as, it is not in respect of an act or purported to be done in pursuance of execution or intended execution of this act and such a suit cannot be dismissed on the ground that no notice u/s 571 of the U.P. Nagar Mahapalika Adhiniyam was given.

9. Section 586 of the Calcutta Municipal Corporation Act, provides that no suit shall be Instituted in any Court having jurisdiction against any municipal authority or any officer or employee of the Corporation or any person acting under the direction of any municipal authority or any officer or employee of the corporation in respect of any act done or purporting to be done under this Act or the Rules or the Regulations made thereunder, until the expiration of the month next after a notice in writing has been delivered or left at the office of such authority or at the office or residence of such office or employee or person stating the cause of action, the name and residence of the Intending plaintiff and the relief which such plaintiff claims. The question, therefore, is whether the present suit for eviction of the appellant-corporation from the suit premises by its owners viz, the plaintiff-respondents is in respect of any act done or purporting to be done under this Act or any Rules or Regulations made thereunder.

10. The suit was for eviction of the appellant-corporation from the suit premises belonging to the plaintiff-respondent on the ground of reasonable requirement of the plaintiff and his family members. The plaintiff served a notice under the West Bengal Premises Tenancy Act terminating the tenancy of the appellant and asking him to vacate the premises. This omission of the appellant in the matter of vacating the premises cannot be taken as an act done or purporting to be done under the provisions of the Calcutta Municipal Act in any way. The fact of vacating or not of the suit premises by the Calcutta Corporation as a tenant has nothing to bear upon any mandate of the said Act, nor the Commissioner of the Calcutta Corporation or any other appropriate authority can be said to be acting in official capacity in not vacating the premises in response to the plaintiffs notice of termination of the tenancy. Therefore, the question of service of any notice u/s 586 of the Calcutta Municipal Corporation Act as also u/s 80, CPC upon Corporation before Institution of the suit by the plaintiff cannot arise. It has been, however, contended by Mr. Bihani that the holding of this tenancy in respect of the suit premises was in pursuance of the avowed policy of the Calcutta Corporation of spreading primary education amongst the illiterate masses and from that point of view vacating or not of the disputed tenancy should be taken as an act done under the Calcutta Municipal Corporation Act. He draws our attention to the provisions of section 124 of the said Act in support of this contention. But we are not impressed by this argument. Section 124 only provides for the incurring of expenditure by the Corporation as may be necessary

for carrying out various purposes of this Act. This does not imply that the fact of the Corporation's entering into a tenancy in respect of a private house for the purpose of setting up or running of primary school is in execution of the said provision of the Act. The provisions of section 124 appear to be aimed at enabling the municipal authority in general to make budgetary provision on certain heads for implementing certain objectives of the Corporation. From them it does not follow that the holding of tenancy in respect of a private house by the Corporation for the purpose of running a primary school is to be linked with the pursuance or execution of any such provision of the Act or that the failure of the Corporation to vacate the premises in question in response to the ejectment notice would be a neglect or defect in the execution of any provision of this Act. In other words, Corporation's omission to surrender the tenancy in response to a notice to quit is not contemplated under or governed by any provision of Calcutta Municipal Corporation Act. Therefore, a suit like the present one is not covered by the provisions of section 586 of this Act or of section 80, CPC and the question of giving notices under these sections does not arise.

11. In this connection some more cases cited by Mr. Dasgupta may be mentioned to strengthen the above finding. In *Kamta Prasad Singh and Another Vs. The Regional Manager, Food Corporation of India and Others*, it has been held that the statutory corporation is a body corporate having perpetual succession and common seal with the power to sue and be sued and officers under the Corporation might be paid out of the Corporation and although capital of such fund might be provided by the Government, yet the officers under such Corporation are not public officers requiring notice u/s 80 CPC. In another Judgment (*Municipal Commissioner, Howrah v. H.F.G.*) reported in (1979) 2 CLJ 140 this Court observed that for cause of action against Municipality prior to supersession and appointment of Administrator, no notice u/s 80 was necessary although the suit might be against administrator. In the suit before us the relief claimed is the eviction of the municipal corporation from the suit premises which they occupy as monthly tenant and thus the relief is not in respect of any act purporting to be done by the corporation under any provision of the CMC Act or its officer in his official capacity. It has been rightly found by the learned trial judge that in such a case the notice that was required to be served on the defendant by the plaintiff is a notice to quit u/s 13(6) of the West Bengal Premises Tenancy Act along with a similar notice u/s 106 of the Transfer of Property Act. These notices have been served (vide Exhibit-2) and the service is found to be legal valid and sufficient (vide Exhibit-3 & 4).

12. The next point urged on behalf of the appellant is that the Court below was wrong in holding that the entire suit premises were required by the plaintiff to provide accommodation to the members of his family. According to Mr. Bihani, the married sister and her children cannot be considered as member of the plaintiffs family and that the learned Judge failed to take into consideration the fact that the plaintiff had already existing accommodation of 2 rooms in another premises and was not therefore entitled to get the suit premises in its entirety

evicted by the defendants. According to Mr. Bihani, at the most, plaintiffs requirement should have been justifiably limited to 4 rooms namely, one room for himself and his wife, one room for his son and the daughter which again could be used as a guest room, one room for the mother and the married sister with her 2 daughters, if at all, and one room for the brother and his wife. His contention is that the need of the plaintiff could very well be fulfilled if the suit would have been decreed in respect of 3 rooms only. Instead of the entire premises (one room in the second floor of the suit premises being already in possession of the plaintiff) and thereby at the same time the noble object with which the appellant was using the suit premises, viz. affording the facility of primary education to about 200 poor students, could also be served.

13. The case of the plaintiff-respondent is that the suit premises which the plaintiff purchased by registered deed of conveyance dated 19.4.80 (Exhibit 1A) and which was let out to the defendant-appellant is now required by him for his own use and occupation by himself and his family members, Inasmuch as, the present accommodation of them at a tenanted premises is Insufficient and the plaintiff and his family members have been experiencing difficulty and Inconvenience in the absence of suitable accommodation. Having no other alternative before him the plaintiff requested the defendant for vacating the suit premises which consisted of 7 rooms, but in vain. Then on 15.7.83 the plaintiff sent a registered notice of ejectment which was duly served upon the defendant-corporation on 16.7.83 whereby he asked it to vacate and deliver peaceful possession of the tenanted premises on the expiry of the last day of month of August, 1983, but again to no effect. The defendant-appellant having failed to vacate the tenanted premises, the plaintiff has filed the present suit for eviction. Plaintiffs family consists of himself, his widow mother, his wife who is a research fellow and a teacher, his daughter and son who are school going, his brother, his two unmarried sisters and one married sister with 2 daughters. To provide accommodation to all such members of his family he requires at least 8 room--one bed room for himself and his wife, one bed room for his mother and his son and daughter who would stay with their grand-mother, one bed room for his married sister and her 2 daughters, one bed room for his brother and his wife, one room to be used as kitchen, one room for dining purpose, one study-cum-drawing room and one room to be preserved for accommodating his married sisters whenever they come to visit their brother's house. But the present tenanted house along with one room in the second floor of the suit house where the plaintiff and his family members have now been accommodated are incapable of providing them with sufficient accommodation--the tenanted house situated at 13/2 Sri Gopal Mallick Lane having only two rooms--one of which is being used as a bed room and another as a kitchen and the single room in the second floor of the suit house which is in the possession of the plaintiff is being used as another bed room and in the result the plaintiff has to maintain two establishments apart from suffering acute shortage of accommodation.

14. In order to get corroborated the oral evidence of the plaintiff himself, a

Commissioner's report (Exhibit-5) and a number of ration cards (Exhibit 8 series & 11 series) have been filed. The report of the Advocate Commissioner shows that a local Inspection was held by him of the suit premises at 56A, Sri Gopal Mallick Lane as well as of the tenanted premises where the plaintiff at present resides at 13/2 Sri Gopal Mallick Lane. The learned Advocate Commissioner has in his report given the number and necessary details of the rooms in both the houses including their measurement and the fact as to how many rooms of these two premises are actually in the possession of the plaintiff or his family members. It has been stated in this report that the learned Commissioner found 2 rooms of the premises No. 13/2, Sri Gopal Mallick Lane under possession of the plaintiff. He has also stated that in the suit house one room measuring 15ft. 3 Inches by 11ft. 4 inches in the second floor is in possession of the plaintiff while 4 rooms in the ground floor and 3 in the first floor of this house are under occupation of the defendant corporation. This Commissioner's report has been admitted into evidence and marked Exhibit-5 without any objection. The findings mentioned above of the learned Commissioner have not been in any way shaken in his cross-examination (vide the deposition of P.W.-2).

15. The plaintiff has examined himself as P.W.-I. In his examination-in-chief he has spelt out the nature and extent of his requirement which has already been discussed above. The ration cards (Exbt. 11 series) show that the plaintiff is the head of the family in respect of Sadhana Sarkar (worried sister of the plaintiff) and her 2 daughters, namely Rekha Sarkar and Rinki Sarkar, Debamitra Chakraborty (daughter of the plaintiff), Isan Chakraborty (son of the plaintiff) and Ruma Chakraborty (wife of plaintiff's brother, Goutam). Exhibit-8 is the ration card in the name of the plaintiff himself. Exhibit-8A is the ration card in the name of Labanya Prabha Chakraborty who is the wife of the plaintiff and obviously the plaintiff has been shown as the Head of the family in these two ration cards. However, as regards the ration cards of Goutam Chakraborty (brother of the plaintiff) and Gaytri Chakraborty (sister of the plaintiff) Exhibit-SB and 8D) the name of the Head of the family is not of the plaintiff but of one B.K. Chakraborty, their father, since deceased. But this fact by itself does not make any change in the position. The ration cards of these persons were prepared during the lifetime of plaintiff's father who was then the Head of the family. Simply because since after his death the entries have not been corrected, it cannot be presumed that they (the brother and sister of the plaintiff) have ceased to be the members of this joint family headed by the plaintiff as the eldest son after their father's death. Similarly, the fact that the suit house has been purchased by and stands in the name of the plaintiff alone cannot be taken to rule out the case of the plaintiff that he wants to go on living jointly with his younger brother's family particularly when their mother is still alive and admittedly resides with the plaintiff. It is not a case where the plaintiff is importing such a story anew. Evidently he has been living with his brother and sisters in a joint family all along. If he cherishes a desire to go on with the same joint family even though the new house in suit has been purchased by him alone and his married brother

has nothing to claim any share in it, that cannot be brushed aside as being devoid of the element of need or regarded as fanciful luxury of the Landlord. In this connection the principles laid down by the apex Court on the concept of family may be relevant. In Baldev Sahai Bangia Vs. R.C. Bhasin, a Division Bench of Supreme Court has held that the word "family" has to be given not a restricted but a wider meaning so as to include not only the head of the family, but also all the members or descendants from the common ancestors who are actually living with the same head and the term should be liberally and broadly construed so as to include near relations of the head of the family. In this judgment their Lordships cited the ruling of a Division Bench of Delhi High Court in Govind Dass and Others Vs. Kuldip Singh, as follows :--

"I hold that in the section now under consideration the word "family" includes brothers and sisters of the deceased living with her at the time of her death..... and that the legislature has used the word "family" to introduce a flexible and wide term."

16. Finally it has been held in this Ruling that the word "family" comprises all who live in one house under one head and being liberally construed includes brothers and sisters and it is a household including not only the servants but also the head of the household and all persons related to him by blood and marriage--a group of persons of common ancestry. Although this finding was pronounced in connection with a question whether the brothers and sisters of a tenant should be taken to be members of his family the principle will be equally applicable to a similar question touching the Landlord. In our present case in view of the particular context not only the plaintiffs brother and his wife should be taken as members of plaintiffs family, but also his claim that his married sister with two daughters whose father has been missing and who have no other alternative but to take refuge in his house are to be treated as his family members cannot but be acceded to. It is a well settled principle in this branch of law that regarding the question of reasonable requirement there cannot be any set formula or rigid rule. It is a question of fact to be decided in the light of facts and circumstances of each case. So far as the claim of the plaintiff for separate provision of accommodation with regard to his said married sister and her two children is concerned, it is the unchallenged evidence of the plaintiff that her husband having been missing she has been compelled to live along with her two daughters in the family of the plaintiff. On the face of such evidence plaintiffs requirement of a room to accommodate them cannot be termed as unreasonable or mala fide.

17. In this connection an earlier judgment of a single Bench of this Court passed in Sukumar Guha Vs. Naresh Chandra Ghosh and Another, wherein it has been held that the extent of the boundaries of the family depends on particular facts of each case and the structure and outlook of each family and no one can be dogmatic either way on such matters. It was further held that on the evidence in that case the Courts below acted rightly in accepting the plaintiffs case that the

two cousins of the plaintiffs were members of his family and that being so their wives and children must also be reckoned as members of that family and a paternal cousin of the aunt's son though had no blood relation with the plaintiffs had been shown in the evidence as having been living with the family of the plaintiffs and therefore could very well be considered to be a dependent on that family. In the Instant case from the evidence adduced by the plaintiff it has been established that the plaintiffs brother and his wife as well as the plaintiff's one married sister Sadhana and her two dependent daughters have become part of the plaintiffs family under peculiar circumstances and therefore, they have to be regarded as members of the plaintiffs family for the purposes of section 13(1)(ff) of the Premises Tenancy Act-18. Therefore, regard being had to all the prescribed, yard-sticks, namely, the way of living of the plaintiff, his social status, the number of family members actually living with him, the accommodation available to him and in that perspective the need of the visiting close relations like married sisters, the minimum requirement of the plaintiff-landlord for accommodation may be enumerated as follows :--

- (1) One bed room for himself and his wife;
- (2) One bed room for his mother and his children;
- (3) One bed room for his married sister along with her two daughters;
- (4) One bed room for his brother Goutam along with his wife;
- (5) One room for his married sisters or other guests who may occasionally pay visit to the plaintiffs house;
- (6) One room to be used as study-room-cum-drawing room;
- (7) One room as dining room;
- (8) One room to be used as kitchen.

19. Judged from both the angles, namely, why he should require the premises and how much he should require, the claim made by the plaintiff for accommodation appears to be quite reasonable and modest. Considering the evidence on record it is found convincing that a man of his status requires a drawing-cum-study room, he having school going children and having had to entertain guests now and then. Not a single of these requirements can be taken as exaggerated or fanciful. True that he has existing accommodation of two rooms in a rented house near the suit premises. But he cannot be compelled to accommodate some of his family members in that tenanted house and some in a part of the suit house and thereby to have two separate establishments as well as to suffer other kinds of hazard arising out of such split-up living.

20. Mr. Bihani has contended that the Corporation has been arranging for imparting education to the children of the poor people of the locality by running a primary school in the suit premises and if the plaintiff remains satisfied by taking their of the premises which is sufficient to meet his need fully, then the appellant

may not have to halt the carrying out of its noble mission. Unfortunately, in the given situation such an arrangement cannot be imposed upon the plaintiff-landlord. It has now been a settled principle that if the requirement of the plaintiff-landlord is found to be reasonable and bona fide, inconvenience caused to the tenant has hardly any part to play. Under the present law there is absolutely no scope for testing the reasonableness of the requirement of the landlord on the touchstone of the tenant's advantage or disadvantage. That apart, it may also be mentioned that the primary school which the Corporation allegedly has set up in the suit premises cannot claim performance of any high order. During hearing of this appeal local Inspection was held at the direction of this Court by an Advocate-Commissioner for an assessment of the extent and standard of schooling which is claimed to be brought about by the appellant in the suit building. Learned Advocate Commissioner's report shows that the total student strength as per the Attendance Register in respect of different classes being held in the suit premises was 40 whereas the total number of students who were found by the learned Commissioner to be present at the time of his holding the inspection on 15.12.99 were 23. In view of such a poor number of students which it has been able to attract after running the school for about twenty years at a stretch. One does not get an Impression that the appellant has achieved any appreciable measure of success in materialising its so called mission of spreading education amongst the masses. Thus even if it is assumed for a moment for the sake of argument that there is any truth in Mr. Behani's contention that the requirement of the landlord is to be weighed with any loss of benefit or welfare which the tenant might have been catering to the society or to the public at large out of the suit premises, even then from the materials on record we are not at all convinced that any such service to the public worth the name is being actually rendered out of this tenancy.

21. Be that as it may, the present law does not enjoin on the Court to take into consideration the comparative advantage or disadvantage of both the landlord and the tenant in determining the reasonableness of the requirement of the landlord for his occupation in the premises in suit. On the other hand, the sole criterion in such a suit is to ascertain on the basis of evidence on record whether the landlord-plaintiff has established his genuine need and bona fide requirement for the premises in question for his own use and occupation and it is not a clever ruse of his to get rid of the tenant. From the evidence adduced by the plaintiff-respondent discussed above it has been found that in view of the number of members of his family who are to be accommodated along with him in a house under one roof his requirement for 8 rooms is not in genuine or exaggerated, but is a hard minimum necessity and that being so, the plaintiff-landlord becomes entitled to get a decree for eviction of the tenant.

22. We, therefore, find no infirmity in the findings of the learned trial Judge who has rightly decreed the suit. In the result, the appeal falls and is dismissed. The impugned judgment and the decree of the Court below are hereby affirmed. The defendant-appellant is granted 60 (sixty) days" time from this date to vacate the

suit premises falling which the plaintiff respondent will be at liberty to get the same done by putting the decree into execution,

23. In the circumstances, there will be no order as to costs in this appeal.

V.K. Gupta, J.

24. I have gone through the elaborate, detailed and analytical judgment of my learned brother M. K. Basu, J. with which I fully concur, since however the question relating to the Interpretation of section 586 of the Calcutta Municipal Corporation Act, 1980 has assumed some importance, in this case, I wish to add a few words of my own.

25. Section 586 of the Calcutta Municipal Corporation Act, 1980 (1980 Act for short) falls under the heading "legal proceedings" in Chapter 35 of the 1980 Act which generally comprises of three sections namely sections 585, 586 and 587. Whereas section 585 permits the Municipal Commissioner to Initiate legal action in certain matters and do all such acts which may be necessary, incidental or ancillary to Initiation of such action or the Corporation's participation in such or other legal proceedings, section 587 provides for Indemnity against maintaining any suit against any Municipal Authority, officer or employee of the Corporation or any person acting under the direction of such municipal authority, officer or employee of the Corporation in respect of anything done lawfully or in good faith. Section 586, with which we are presently concerned, provides for the statutory requirement of service of a notice upon a municipal authority, officer or employee of the Corporation before any suit is Instituted against such municipal authority. Officer or employee of the Corporation in respect of any act done or purported to be done under the 1980 Act for the rules or regulations framed thereunder. Section 586 reads as under :

"586. Notice, limitation and tender of amends in suits against Corporation, etc.
(1) No suit shall be Instituted in any Court having jurisdiction against any municipal authority or any officer or employee of the Corporation or any person acting under the direction of any municipal authority or any officer or employee of the Corporation in respect of any act done, or purporting to be under this Act or the rules or the regulations made thereunder, until the expiration of one month next after a notice in writing has been delivered or left at the office of such authority or at the office or the residence of such officer or employee or person, stating :

(a) the cause of action,

(b) the name and residence of the intending plaintiff, and

(c) the relief which such plaintiff claims,

(2) Every such suit shall be commenced within four months next after the accrual of the cause of action, and the plaint therein shall contain a statement that a notice has been delivered or left as required by sub-section(1).

(3) If the municipal authority, at the office of which, or the officer or the employee of the Corporation or the person acting under the direction of any municipal authority or any officer or employee of the Corporation, at the office of the residence of whom, a notice has been delivered or left under sub-section (1), satisfies the Court having Jurisdiction that the relief claimed was tendered to the plaintiff before the Institution of the suit, the suit shall be dismissed.

(4) Nothing in the foregoing sub-sections shall apply to any suit instituted u/s 38 of the Specific Relief Act, 1963."

26. Drawing a comparison of section 586 with section 80 of the CPC one finds that the scope and applicability of section 586 is very limited and narrow, and is confined to Issues forming the subject matter of the suit if they relate to an act done or purported to be done under the 1980 Act, or the rules or regulations framed thereunder. The expression used in sub-section (1) being "In respect of any act done or purported to be done under this Act" clearly suggests that the legislature Intended that requirement of serving a statutory notice u/s 586 would be attracted only if the proposed Suit to be Instituted against the Corporation would be in respect of an act done or purported to be done under the 1980 Act. When we compare section 586 of 1980 Act with section 80 of the Code of Civil Procedure, what we find is that sub-section (1) of section 80 CPC classifies, for the purposes of the requirement of serving notice, suits against the Government and against a public Officer. Whereas in respect of the Government, institution of all suits of all types, has been barred except after service of notice, as far as a public officer is concerned Institution of only such suits against him, except after service, has been barred which are in respect of any act purporting to be done by such public officer in his official capacity. In other words, what section 80 CPC provides is that one can institute a suit against a public officer without serving a notice upon him if the suit is not in respect of any act purporting to be done by such public officer in his official capacity, but as far as the Government is concerned, no such exception is made and suits of all types, of whatever nature are barred except when instituted after service of notice. On the other hand, a plain reading of section 586 of 1980 Act suggests that the aforesaid distinction or what we may call dichotomy, as appearing in section 80 CPC does not exist in section 586 of 1980 Act because whether it is the suit against a municipal authority, or an Officer or employee of the Corporation, or any person acting under the directions of such municipal authority, officer or employee, all such suits have to be only in respect of act done or purported to be done under 1980 Act, or the rules or regulations made thereunder. This one distinction by Itself is enough to give an interpretation to section 586 of 1980 Act, in conformity with and harmonious understanding of section 80 CPC, to suggest and hold that suits of all types, as far as section 586 is concerned are not barred but only such suit are barred which relate to, or are in respect of acts done or purported to be done under the 1980 Act.

27. The point therefore which arises for our consideration is, whether the subject

matter of the suit in our case is one which comes within the confines of the aforesaid expression used in sub-section (1). Here we have a case where a landlord of a property wants the property to be vacated by the Corporation which the Corporation has been possessing as a lessee thereof. The Corporation obtained the possession of the property in its capacity a lessee thereof, continued with the possession and it is during the subsistence of the Corporation's occupation of the property that the landlord decided to institute a suit for eviction of the Corporation from the property. Which of the aforesaid transactions or series of the transactions in the cumulative chain constitutes "act done or purported to be done" in terms of the 1980 Act? Obtaining a property on lease, holding it as a lessee, refusing to vacate it after the service of the statutory notice under the West Bengal Premises Tenancy Act, 1956 and thereafter continuing to occupy the property cannot, in our opinion, be considered as acts done or purported to be done under the 1980 Act. What the legislature actually intended by incorporating section 586 in the 1980 Act is in respect of the matters specifically mentioned in the 1980 Act itself.

Viewed thus we have no hesitation in holding that in respect of a suit for eviction of the Corporation or a municipal authority or an Officer or employee of the Corporation etc. etc., there is no requirement of serving a notice as contemplated u/s 586 of the Act.

28. Appeal dismissed