
(1957) 04 CAL CK 0008
In the Calcutta High Court
Case No : Civil Rule No. 2170 of 1956

Debendra Nath Ghorai

APPELLANT

Vs

Official Receiver

RESPONDENT

Date of Decision : 12-04-1957

Acts Referred:

Bengal Tenancy Act, 1885 — Section 178
Calcutta Municipal Act, 1923 — Section 3(1), 3(11)
Calcutta Official Receivers Act, 1938 — Section 10(2)
Calcutta Thika Tenancy Act, 1949 — Section 1(2), 3
Constitution of India, 1950 — Article 227

Citation : 61 CWN 745 : (1958) 1 ILR (Cal) 559

Hon'ble Judges : P.N. Mookerjee, J;P. Sarkar, J

Bench : Division Bench

Advocate : Sarat Chandra Jana and Arun Kumar Janah, for the Appellant;Sushil Kumar Biswas and Kamalesh Banerjee, for the Respondent

Judgement

P.N. Mookerjee, J.—This rule is directed against an appellate order of ejectment, passed by the learned Subordinate Judge, Second Court, Alipore, sitting as an appellate officer under the Calcutta Thika Tenancy Act. The Controller under that Act ordered ejectment, subject to payment of compensation by the landlord to the tenant u/s 3(iv) of the Act. That order was upheld in appeal and the tenant has now come up in revision to this Court.

2. The disputed holding which comprises an area of about 8 bighas of land, having some structures standing thereon, and which was originally within the Cossipore-Chitpore Municipality, now forming part of the added area of the Calcutta Corporation, is numbered 26/A/H/8 Dum Bum Road in the Municipal Register. The Petitioner was the admitted tenant and he resisted eviction under the Calcutta Thika Tenancy Act by setting up, inter alia a plea that he was not a tenant under the Act and was not electable thereunder or by the Controller, appointed under the said Act, that his was a permanent tenancy; that, in any event, his tenancy was governed by the Bengal Tenancy Act, under which

he had occupancy raiyati right; that the Official Receiver who was the person in charge of the landlord's estate had instituted the proceedings without taking the necessary permission u/s 10(2) of the Calcutta Official Receiver's Act; and that the landlord's plea of requirement for building upon the land or otherwise developing it by discontinuing letting to thika tenants, which was the ground put forward under the Thika Tenancy Act in support of the claim for ejectment, was not bona fide and had no substance.

3. None of these pleas succeeded before the Controller and they also failed before the learned Appellate Judge.

4. The Petitioner, however, has not abandoned any of these pleas except the plea of permanent tenancy and, on his behalf, all the above contentions have been urged in this Court and they have been sought to be supplemented by a further argument that the Calcutta Thika Tenancy Act has no application to the case as it is not in operation in the area where the holding in dispute is situate. We shall examine the last contention first and then we shall take the other pleas.

5. The disputed holding, as we have said above, was within the Cossipore-Chitpore Municipality which later became an added area and thus a part of Calcutta, as defined in the Calcutta Municipal Act, 1923 (vide Sections 3(11).) To the whole of this Calcutta as defined in Section 3(1) of the Calcutta Municipal Act of 1923, the Calcutta Thika Tenancy Act applies (vide Section 1(2)). This was not disputed before us. There is no substance therefore, in the Petitioner's contention that the disputed land is outside the local extent of that Act and thus outside the field of its operation.

6. The Petitioner's plea under the Bengal Tenancy Act is equally unsustainable. Admittedly, the Petitioner never paid any cess for the disputed land nor was any cess ever demanded from him and there is a clear admission on his part in a compromise decree inter partes of the year 1938 that his tenancy is governed by the Transfer of Property Act and not by the Bengal Tenancy Act. The compromise decree was passed in a suit, brought by the present Petitioner against the opposite party landlord, for declaration of his occupancy right in the disputed land. The suit was contested by the landlord who contended, inter alia, that the Petitioner's tenancy was one under the Transfer of Property Act and not under the Bengal Tenancy Act. The suit eventually ended in a compromise, wherein the Petitioner accepted the position that his tenancy was governed by the Transfer of Property Act and not by the Bengal Tenancy Act, and he expressly admitted that his allegations in the plaint to the contrary were untrue. The Controller and the learned Appellate Judge were, therefore, amply justified in rejecting the Petitioner's plea under the Bengal Tenancy Act.

7. The Petitioner tried to wriggle out of the difficulty, created by the above compromise decree, by invoking the aid of Section 178 of the Bengal Tenancy Act and Mr. Janah contended on his behalf that, as the Petitioner had in law occupancy-raiyati right at the date of the compromise and as the effect thereof

was to denude him of that right, the compromise was hit by the said Section 178 and the compromise decree, which had in law no greater validity than the compromise, was invalid and of no effect. This plea, however, cannot stand scrutiny. In the suit of 1938, the Petitioner claimed occupancy-rayati right but that claim was disputed. Indeed, the dispute was of a more fundamental character and the very applicability of the Bengal Tenancy Act to the Petitioner's tenancy was denied. It is this dispute which was settled by the Petitioner's admission in the compromise petition that his tenancy was governed not by the Bengal Tenancy Act but by the Transfer of Property Act. To such a compromise or settlement Section 178 of the Bengal Tenancy Act has, in our opinion, no application. That section does not invalidate an admission that a particular tenancy is governed not by the Bengal Tenancy Act but by the Transfer of Property Act, nor a settlement on that line of a bona fide dispute on the point no matter that its ultimate effect may be to affect the tenants occupancy-raiyat right, if he really had any. To hold otherwise would be to give to the section a much more extended meaning than what can be justified under the statute. We do not think, therefore, that the compromise decree, referred to above, is at all affected or impaired by Section 178 of the Bengal Tenancy Act. and it must have full effect against the Petitioner disentitling him. from raising any plea under the Bengal Tenancy Act. In this, view (which was also the view, taken in the Patna Case, C.G. MacDonald and Ors. v. Teknarain Roy and Ors. (1923) 75 I.C. 997.) it is unnecessary to consider the other reasons, given by the two tribunals, below in support of their finding that the disputed tenancy is not governed by the Bengal Tenancy Act. The plea of permanent tenancy, as we have said above, was not raised before us and as a matter of fact, it was not pressed even before the learned Appellate Judge. Clearly also, the Petitioner is a thika tenant under the Calcutta Thika Tenancy Act. He is undoubtedly a tenant of the bare land, the structures whereon belonged to him. Those structures again appear to have been erected by him for residential purposes. He thus satisfies the definition of a thika tenant and cannot claim that his tenancy is not governed by the Calcutta Thika Tenancy Act.

8. We pass on now to the alleged defect of non-compliance with Section 10(2) of the Calcutta Official Receivers Act. That section requires that the Official Receiver must have express permission from the "Court" for suing and, necessarily therefore, for instituting proceedings for ejectment, etc. That, however, does not necessarily mean that express specific permission for each individual proceeding or tenant is necessary. The order, Ext. 5A shows that the "Court" in this case granted express permission, though in general terms, to the Official Receiver to eject tenants of this particular estate. Whether the permission was properly given or not is not a matter which can be raised in the present proceedings. That express permission, though couched in general terms, ought to be sufficient. Moreover, even if express specific permission against this particular tenant be required under the law, the present proceedings cannot fail for lack of such permission, as, on a proper reading of Ext 5A, such express specific permission

must also be held to have been given in this case as this tenant's name is specifically mentioned in the list of tenants annexed to the said order, against whom permission to eject was sought for, although the holding mentioned against him was No. 26/A/H/I instead of the correct number 26/A/H/8. That, however, was obviously a mistake as it appears from the Corporation papers on record and the evidence of the Corporation officer that the Petitioner held only holding No. 26/A/H/8 under the opposite party's estate. The Petitioner's objection on this ground, is, accordingly, overruled.

There remains now only the question u/s 3(iv) of the Calcutta Thika Tenancy Act, namely, whether the disputed land is required for purposes of building upon it or for developing it by discontinuing letting to thika tenants. This section and the allied sections under the different Rent Control Acts have often come up for judicial consideration, but courts have always found it extremely difficult to lay down any hard and fast rule for determination of the exact requirements under the said sections. That seems almost to be an impossible task and the court has to consider the circumstances of each particular case with reference to certain practical tests, not by any means exhaustive, to find out whether the requirements of law have been satisfied to entitle the landlord to an order for eviction under the particular section. The section (Section 3(iv) of the Calcutta Thika Tenancy Act) with which we are here concerned uses the expression "require" and the court has often felt worried over the meaning of that expression. The distinction between this word "require" and the word "desire" has been emphasised in many decisions, including one *Grirish Chandra Majhi v. Girish Chandra Maity* (1951) 56 C.W.N. 320 to which I myself was a party, and the Judges have practically been unanimous in holding, in view of this distinction, that there must be some element of need to satisfy the word "require". As a bare proposition, this is quite intelligible and it may not be open also to such dispute, but it is not always easy to apply this test of need in particular cases. Sometimes the need may spontaneously arise from desire or intention and the line of demarcation may be so thin in a particular case that, to laymen in particular, no distinction may appear to exist. That, however, is not the real position and some distinction would always remain and the two words would not really correspond or coincide in any case, although, in a particular context, requirement may follow almost as a matter of course from a genuine desire. Leaving aside cases where some need is clearly established, the word "require" in the last part of Clause (iv) of Section 3 would, in our opinion at least cover cases where there is a genuine desire on the part of the landlord to built on the land or otherwise develop it by discontinuing letting to thika tenants and he genuinely intends to put that desire into immediate action provided he gets possession of the land. In view of the landlord's specific case in the point we are not called upon in this case to consider any more extreme contentions. The question of the landlord's means would, of course, have to be considered to judge the genuineness of his desire or intention, as, unless he has the means or is in a position to provide for it; it will be difficult to hold that the requisite element of genuineness is satisfied. From

the very nature of things again, the requisite test in the case of requirement for the landlord's own occupation, as mentioned in the earlier part of the clause, would not necessarily be the same and it may not be incorrect to say that, in such cases, the need must be of a somewhat greater intensity than what has been hinted above. That, however, does not affect the sufficiency of the test as laid down above for satisfying requirement under the latter part of the clause. For purposes of this Rule, we need not say anything more as the landlord has made no other case on the point and we proceed at once to consider whether the above test on which alone the landlord relies for establishing his case of requirement has been satisfied in the present case.

9. That the landlord has the means to give effect to his requisite intention, if he has the same, is well-established in this case and the concurrent finding by the two tribunals below in the landlord's favour on this point must be accepted and affirmed. That will undoubtedly be an element in favour of the landlord for proving genuineness of his desire to build upon or otherwise develop the land, as contemplated in the clause under consideration and his present intention to give effect to the same, but that is not the only element necessary for the purpose. The genuineness of his desire to build or develop, as stated above, and his present intention to give effect to the same would depend on many other factors and the circumstances of the case will have to be carefully considered from that point of view. To arrive at the right conclusion on the point, the tribunal or tribunals must examine the whole of the relevant evidence and should not base its decision on a part only of the same without adverting at all or paying proper attention to the rest. Otherwise in our opinion, this Court would be entitled, and, indeed, bound, to interfere under Article 227 of the Constitution, unless it feels that such non-consideration or inadequate consideration has not substantially affected the doing of justice between the parties. In the present case the tribunals below have no doubt found in favour of the Landlord on the question of his having the relevant genuine desire and present, intention, but it seems to us that, in so holding, they whole omitted from consideration a part of the relevant evidence, In any event, there is no indication in their orders that the whole of such evidence has been considered by them. We also feel that, if that be the real position, there is ample ground for holding, in the circumstances of this case, that substantial justice has not been done. We would, however, make it perfectly clear hat we are not expressing any opinion as to the sufficiency or otherwise of the evidence on record to establish the above elements and the tribunal below will be perfectly entitled to affirm its present finding if, on a consideration of the entire relevant evidence, it sees no reason to differ from its present conclusion.

10. All that we need say and, indeed, we have no desire to say anything more is that the whole of the relevant evidence does not appear to have been considered by the tribunals below and the part, apparently left out, does not appear to us to be so insignificant as not to have any appreciable bearing on the final conclusion and the circumstances of this case are such that a wrong final conclusion, one way or the other, may be productive of great injustice to one or the other of the

parties. That sufficiently brings the case within Article 227 of the Constitution. We need only add that, if *Tirthanath Ghosh v. Sri. Iswar Bamlingadeb and Anr.* (1956) 61 C.W.N. 170, cited by Mr. Biswas, meant to lay down anything to the contrary we would respectfully dissent from it.

11. In the above view, we hold that the case should go back to the learned Appellate Judge for further consideration of the two questions, namely, (i) whether the landlord's desire to build upon the land or otherwise develop it by discontinuing letting to thika tenants is genuine or not and (ii) whether he genuinely intends to give immediate effect to that desire if he is able to get possession of the land. No other question will be open for argument at this re-hearing which will be, unless the tribunal below thinks fit to admit any additional evidence on the point, or points, referred to above, on the evidence already on record and, if the landlord succeeds on the above two questions, an order for ejectment, subject, of course to payment of compensation, as stated in Clause (iv) of Section 3, would be made. If the landlord fails on either of the above two questions, his prayer for ejectment would be refused.

12. We, accordingly, make this Rule absolute, set aside the order complained of and send back the case to the learned Appellate Judge for further hearing, as directed above, in the light of this judgment.

13. Costs of this Rule will abide the final result.

P. Sarker, J.

14. I agree.