

(1962) 12 CAL CK 0002
In the Calcutta High Court

Mathura Nath Banerjee

APPELLANT

Vs

Raghunath Prosad Gupta

RESPONDENT

Date of Decision : 12-12-1962

Acts Referred:

Constitution of India, 1950 — Article 277
General Clauses Act, 1897 — Section 3(31), 3(6)

Citation : 67 CWN 583

Hon'ble Judges : R.N. Dutt, J; Bachawat, J

Bench : Division Bench

Advocate : Lala Hemanta Kumar and Prithish Chandra Roy, for the Appellant; Ranjit Kumar Banerjee, Suproakash Banerjee and Bidyut Kumar Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

Bachawat, J.—This case raises a question of construction of Section 30 of the Calcutta Thika Tenancy Act, 1949. A small parcel of land adjoining premises Nos. 86, 87 and 89 Khengra Patty Street now known as Purushottam Roy Street and belonging to the Board of Trustees for the Improvement of Calcutta is held by Gope Krishna Arora, Mulchand Arora, Radha Krishna Arora and Jay Krishna Arora as tenants under the aforesaid Board of Trustees. The opposite party was a sub-tenant of the land under the Aroras. All the Aroras are parties to suit No. 1100 of 1954 pending on the Original Side of this Court. The receiver of the tenancy raiyats of the Aroras in the land appointed in that suit instituted a proceeding u/s 5 of the Calcutta Thika Tenancy Act, 1949 before the Thika Controller for ejectment of the opposite party. The proceeding is being continued by the Petitioner who is now the receiver appointed in Suit No. 1100 of 1954. On November 5, 1960 the Thika Controller passed an order for eviction of the opposite party. An appeal preferred from this order by the opposite party was summarily dismissed; but this order of dismissal was later set aside by this Court. Subsequently on December 6, 1961 the appellate authority reheard the appeal and by its order dated December 6, 1961 set aside the order of the Thika

Controller and dismissed the proceeding. The Petitioner now asks the Court to revise the order dated December 6, 1961. The appellate Authority held that land in dispute comes within Section 30(b)(iv) and 30(c) of the Calcutta Thika Tenancy Act, 1949 and as such the Thika Controller has no jurisdiction to entertain the proceeding. The first question in issue before us is whether the land is "vested in or in the possession of a local authority" within the meaning of Section 30(b)(iv) of the Calcutta Thika Tenancy Act, 1949. The expression "local authority" is not defined in that Act. Unless there is something repugnant to the subject or context of Section 30 of the Calcutta Thika Tenancy Act, 1949 the expression "local authority" in that section must have the meaning given to it by Section 3(23) of the Bengal General Clauses Act, 1899. Now Section 3(23) of the Bengal General Clauses Act, 1899 corresponds to Section 3(31) of the Central General Clauses Act, 1897 and Section 3(6) of the Central General Clauses Act, 1887, and is as follows:

Local authority shall mean a Municipal Committee, District Board, body of Port Commissioner or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund.

2. The point in issue is whether the Board of Trustees for the Improvement of Calcutta is an "authority legally entitled to, or entrusted by the Government with the control or management of a municipal or local fund." Now the preamble of the Calcutta Improvement Act, 1911 shows that the Act was passed to provide for the improvement and expansion of Calcutta. By Section 1(3), the Act extends to the Calcutta Municipality but the provisions of the Act may by subsequent notification be extended to contiguous areas. The Board of Trustees for the Improvement of Calcutta constituted under the Act is the authority vested with the powers and charged with the duty of carrying out the improvement of the local area. The Board is authorised to levy duty and taxes within the area. Sections 115 to 124 and other sections of the Act show that the Board is also entitled to the control and management of a fund derived from contributions from the municipal funds, taxes, grants from Government, betterment fees, loans, rents and income from properties and other sources. The entire fund is set apart for the benefit of the local area. By Section 177 of the Act on dissolution of the Board all properties and funds vested in the Board shall vest in the Corporation of Calcutta. Sections 4, 37, 54, 88 and 105 of the Act show that the Calcutta municipal authorities are otherwise intimately connected with the funds and properties of the Board. In all these circumstances I am satisfied that the fund vested in the Board is a local fund. The Board is therefore a body legally entitled to the control and management of the local fund and accordingly it satisfies the test of a local authority given in Section 3(23) of the Bengal General Clauses Act, 1899.

3. The Board is not expressly mentioned in the definition of the expression "local authority" in Section 3(23) of the Bengal General Clauses Act, 1899, Section 3(31) of the Central General Clauses Act, 1897 and Section 3(6) of the Central

General Clause Act, 1887 because the Board was constituted long after those Acts we passed. For this reason by way of abundant caution several Acts, e.g., the explanation to Section 1(3) of the West Bengal Premises Tenancy Act, 1956 give inclusive definitions of the expression so as to expressly include the Board within it. Again for purposes of acquisition of land for the Board, a similar inclusive definition is inserted in the Land Acquisition Act, 1894 by Section 71 of the Calcutta Improvement Act, 1911 read with the schedule to it. The Local Authorities Loans Act, 1954 (Act IX of 1954) by Section 2 gives its own special definition of the expression "local authority" and that definition does not expressly include the Board, Section 6 of the Act read with the schedule thereto refers to the Board as a local authority. But the point in issue is whether apart from these inclusive or special definitions, the Board satisfies the test of local authority as defined in Section 3(23) of the Bengal General Clauses Act, 1899. In my opinion, the Board satisfies that test. In this connection it is interesting to notice that Sub-section (7) of Section 83 and Sub-section (3) of Section 84 of the Calcutta Improvement Act, 1911 providing for the continuance of the tax and the duty livable under Sections 83 and 84 of that Act were inserted by the Adaptation of Indian Laws Order, 1937 upon the assumption that the Board levying the aforesaid tax and duty is a local authority or body as contemplated by Section 143(2) of the Government of India Act, 1935 and similar adaptations were made in those sections by the Adaptation of Laws Order, 1950 upon the footing that the Board is a local authority or body as contemplated by Article 277 of the Constitution of India.

4. For all these reasons I have come to the conclusion that the Board of local authority within the meaning of Section 3(23) of the Bengal General Clause Act, 1899. There is no ** repugnant to this meaning in the subject or context of Section 30(b)(iv) of the Calcutta Thika Tenancy Act, 1949, I am therefore satisfied that the Board of Trustees for the Improvement of Calcutta constituted by the Calcutta Improvement Act, 1911 is a local authority within the meaning of Section 30(b)(iv) of the Calcutta Thika Tenancy Act, 1949. P.B. Mukharji, J. came to a similar conclusion in Sanat Kumar Ganguly Vs. Gulfan and Others, .

5. The land in dispute is owned by the Board. The Board has given to Aroras an option to purchase the land but the purchase price has not been paid and the land has not yet been conveyed to the Aroras. The board is also in possession of the land through its tenants, namely the Aroras. I have, therefore, come to the conclusion that the land in dispute is vested in or in the possession of a local authority within the meaning of Section 30(b)(iv) of the Calcutta Thika Tenancy Act, 1949.

6. Mr. Lala referred us to the preamble of the Calcutta Thika Tenancy Act, 1949, to show that the Act regulate only the relationship of landlord and tenant in respect of thika tenancies and he argued that in the light of this preamble, Section 30(b)(iv) must be read as applicable only to the immediate tenancy of the land under a local authority. I am unable to accept this contention. Section

30(b)(iv) places outside the purview of the Act "any land vested in or in the possession of local authority" and not merely the immediate tenancy of the land under the local authority. The preamble cannot control the plain meaning of Section 30(b)(iv). Moreover the operation of Section 30(c) cannot be limited to the immediate tenancy of the land under any authority, and there is no reason why the operation of Section 30(a) or 30(b) should be limited to the immediate tenancy of the land under the authorities mentioned therein. In this connection I may notice that in (2) The State of Punjab Vs. Ajaib Singh and Another, , the Supreme Court refused to give a similar restricted meaning to the expression "any premises belonging to the Government or a local authority" in Section 4(1) of the Bombay Rents, Hotel and Lodging House Rate Control Act, 1946 (Act 57 of 1947) in the context of the Act and in the context of the other words in the section.

7. In view of this conclusion I do not consider it necessary to decide whether the land in dispute is required for carrying out any of the provisions of the Calcutta Improvement Act, 1911 within the meaning of Section 30(c) of the Calcutta Thika Tenancy Act, 1949. I need only add that land not vested in or in possession of the Board and not within Section 30(b)(iv) may still be land required for carrying out any of the provisions of the Calcutta Improvement Act, 1911 and as such within Section 30(c). In (1) Sanat Kumar Ganguly v. Sk. Gulfan and Ors., 65 CWN 45, a Division Bench of this Court held that land subject to betterment fees comes within Section 30(c). That question does not arise in this case. The land in dispute in the instant case is not charged with any betterment fee.

8. It must follow that the Calcutta Thika Tenancy Act, 1949 does not apply to the land in dispute and consequently the Thika Controller has no jurisdiction to entertain the proceedings for ejectment of the opposite party. The appellate authority therefore rightly dismissed the proceeding.

9. The Rule is discharged. There will be no order as to costs.

R.N. Dutt, J.

10. I agree with my Lord that the Rule should be discharged.

11. This Rule is directed against an order of the Appellate Tribunal under the Thika Tenancy Act, 1949 dismissing the Petitioner's application u/s 5 of the Act for ejectment of the opposite party. Joy kissen Arora and three others - hereafter described as "Aroras" - are the lessees of the disputed land under the Board of Trustees for the Improvement of Calcutta - hereafter described as the Board. The opposite party is a thika tenant under them. Radha Kissen Arora was appointed receiver of this property in Title Suit No. 1100 of 1954 of the Original Side of this Court amongst the "Aroras". He filed an application u/s 5 of the Act for ejectment of the opposite party on the ground of default in payment of rent. During pendency of the application the Petitioner was appointed receiver in place of Radha Kissen and was substituted in place of Radha Kissen as the applicant. But the Appellate Tribunal has dismissed the application for ejectment on the

ground that the provisions of the Thika Tenancy Act are not attracted to the land in question in view of Section 30 of the Act.

12. On behalf of the Petitioner Mr. Lala has argued that neither Clause (b) nor Clause (c) of Section 30 of the Act is attracted to the facts of the present case. His first contention is that the Board is not a "local authority" and that the land in question is not "land vested in or in the possession of the Board". Mr. Justice P.B. Mukharji has held in (1) Sanat Kumar Ganguly Vs. Gulfan and Others, that the Board is a local authority within the meaning of Clause (b). Mr. Lala has argued that this decision cannot be sustained in law. The expression "local authority" has not been defined in the Thika Tenancy Act. The Bengal General Clauses Act defines the expression as "a Municipal Committee, District Board, body of Port Commissioners or other authority legally Government, with the control or management of a municipal or local fund." P.B. Mukharji, J. has considered this definition and has come to the conclusion that the Board is a local authority inasmuch as the Board is entrusted with the control and management of a local fund. The explanation to Section 1 of the West Bengal Premises Tenancy Act, 1956 specifically states that the expression "local authority" shall include the Board. The Land Acquisition Act, 1894 was for purposes of the Calcutta Improvement Act, 1911 amended so as to specifically state that the expression "local authority" shall include the Board. These Acts have been enacted long after the Bengal General Clauses Act and Mr. Lala contends that if the interpretation made by P.B. Mukharji, J. of the expression "local authority" as used in Section 3(23) of the General Clauses Act was correct, there was no necessity for such specific provision in the West Bengal Premises Tenancy Act, 1956 and the Land Acquisition Act, 1894. Section 3(23) of the Bengal General Clauses Act states that the expression "local authority" shall mean "a Municipal Committee District Board, body of Port Commissioners or other authority legally entitled to, or entrusted by the Government, with the control or management of a municipal or local fund" u/s 88 of the Calcutta Improvement Act, 1911 the Board is entitled to a certain contribution from the municipal fund of the Calcutta Corporation. The Board is also entrusted by Government with certain funds. Sections ** to 85 of the Calcutta Improvement Act, 1911 make provision for funds for the Board. It will be clear from this that certain funds accruing from certain sources within a specified area are entrusted to the Board for being specially for the welfare of that area. The dictionary meaning of "local" is "belonging to a place; confined to a place" and of "fund" is a "sum of money on which some enterprise is found or expenses supported; a supply or source of money". Here the Board has a source of money and its enterprise or expenses are confirmed within a specified area. The Board is thus entitled to the control and management of a local fund and is a "local authority" within the meaning of Clause (b) of Section 30 of the Thika Tenancy Act.

13. Mr. Lala has argued that if the Board was included within the expression "local authority" as used in Clause (b) of the section, there was no necessity for Clause (c) of the section. But Clause (c) is wider in scope than Clause (b) which

merely refers to "any land vested in or in the possession of the Board". Clause (b) has been inserted in general terms not only to include the Board but other local authorities. Clause (c) has been inserted to include certain other categories of land in which the Board is interested but not covered under the terms of Clause (b). The intention of the Legislature is to preserve these other categories of land required for the purposes of the Calcutta Improvement Act, 1911.

14. Mr. Lala has next argued that the land in question is not "land vested in or in the possession of the Board". It is not disputed that before the application u/s 5 of the Act was made, the Board had leased out the land to the Petitioner. It is argued that at the same time of the application the land was not vested in the Board. Reference is made to Section 81 of the Calcutta Improvement Act, 1911 in support of the argument. Section 81 states that the Board may retain, let on, lease, sell, exchange or otherwise dispose of any land vested in the Board. The Board has, it is said, in this case disposed of the land by lease and hence the land was no longer vested in the Board. The Board has no doubt let out the land on lease to the Petitioner but the ownership still continues in the Board. The Board has the right to receive rent from the Petitioner. The Board has still the power to dispose of the property. There is a subsisting agreement between the Board and the Petitioner for sale of the land to the Petitioner. Title to the land will vest in the Petitioner only when the sale is completed. It cannot, therefore, be said that the land has ceased to be vested in the Board. Moreover, possession does not mean actual physical possession. Possession may mean actual or constructive possession. Here in this case the Board is in possession of the land through its lessee, the Petitioner. The land in question is still vested in the Board and the Board is still in possession of the same within the meaning of Clause (b) of Section 30. Clause (b) of Section 30 is therefore attracted to the land in question.

15. Mr. Lala has next argued that since the land in question has already been leased out to the Petitioner on the ground that it was no longer required by the Board, it cannot be said that this is a land "required for carrying out the provisions of the Calcutta Improvement Act, 1911". A Division Bench of this Court has held in (1) Sanat Kumar Ganguly Vs. Gulfan and Others, that a land for which betterment fee is payable under the Calcutta Improvement Act, 1911 is land which is required for carrying out the provisions of the said Act. Here the land is vested in the Board. There is a contract for sale of the land to the Petitioner. The Board has the right to sell the land and utilize the sale proceeds for carrying out the provisions of the Calcutta Improvement Act, 1911. The word "require" here does not mean actual physical requirement "require" means requirement for any purposes of the Calcutta Improvement Act, 1911. The Division Bench has given a wide interpretation of the word "require" and with respects I agree with this interpretation. The land in question, therefore, comes under Clause (c) of Section 30 also.

16. Mr. Lala has lastly argued that Section 30 of the Thika Tenancy Act is

attracted only in respect of proceedings between the Board and its tenant but not between the tenant and his sub-tenant. Section 30 does not refer to proceedings or tenancies but refers to lands, viz., (a) Crown lands (b) any land vested in or in the possession of a local authority and (c) any land required for carrying out the provisions of the Calcutta Improvement Act, 1911. Thus what is exempted from the operation of the provisions of the Thika Tenancy Act is the "land" and not tenancies or proceedings between a local authority and its tenants. There are good grounds for this because the intention of the Legislature is to keep such lands unencumbered and free from rights created by the Act in favour of tenants. A similar question was raised in respect of the Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947). The Supreme Court has held in (2) Messrs Bhatia Co-operative Housing Society Ltd. v. D.C. Patel, that Section 4(1) of the said Act did not exempt the relationship of landlord and tenant but conferred from the operation of the Act. This decision is an authority for the conclusion that Section 30 confers immunity not on the tenancies between the Board and its tenant but on the land itself.

17. The provisions of the Thika Tenancy Act, 1949 are not attracted to the land in question and the Petitioner's application u/s 5 of the Act was rightly dismissed as not maintainable.