

(1967) 12 CAL CK 0003
In the Calcutta High Court

Case No : Appeals from Original Decrees No's. 536 to 547 of 1961

Monoharlal Mehta and Others

APPELLANT

Vs

Raj Mohan Pandey and Others

RESPONDENT

Date of Decision : 05-12-1967

Acts Referred:

West Bengal Premises Tenancy Act, 1956 — Section 13, 13(1)(f)

Citation : 72 CWN 393

Hon'ble Judges : D.N. Sinha, C.J.;Arun K. Mukherjea, J

Bench : Division Bench

Advocate : C.C. Ganguly and Bankim Roy, for the Appellant;Bansanta Kumar Lal, for the Respondent

Final Decision : Allowed

Judgement

D.N. Sinha, C.J.—These are 12 appeals from a decision in 12 ejectment suits in which there has been a common judgment passed by the 4th Bench, City Civil Court, Calcutta dated the 21st December, 1960 all the suits having been tried together for the sake of convenience. The facts are as follows: The appellants who are the plaintiffs in all the 12 suits (Ejectment suits Nos. 174, 277, 282, 284, 286, 287, 288, 439, 992, 993, 997 and 998 of 1959) are the trustees of the trust estates of Ballavramji Mehta alias Baldeoram Mehta and Saligramji Mehta. The disputed property is premises No. 52, Strand Road, Calcutta which belongs to the said trust estates. At 42, Strand Road, Calcutta there is a four storeyed building facing Strand Road. At the back of this property, there is a godown comprising of premises No. 52/1, Strand Road, Calcutta which also belongs to the appellants. The defendants in these various suits (respondents in the appeals) are ten-ants in respect of different parts of premises No. 52, Strand Road, Calcutta particulars whereof are set out below:--

Appeal No.

Particulars of tenancy

536 of 1961

One room in the third floor.

537 of 1961

One room in the third floor.

538 of 1961

One underground room.

539 of 1961

One room in the third floor.

540 of 1961

One room in the third floor.

541 of 1961

One room in the ground floor.

542 of 1961

One room in the ground floor.

543 of 1961

One room in the ground floor.

544 of 1961

Two rooms in the third floor.

545 of 1961

One room in the first floor.

546 of 1961

One underground room.

547 of 1961

Five rooms in the second floor.

There is a Book of Plans placed before us which clearly shows the existing structures to be as follows : Premises No. 52, Strand Road, Calcutta faces the Strand Road on the west. There is a single line of rooms extending from north to south flanked with verandahs towards the west on the Strand Road side. At the back of this set of rooms, (east) there is a narrow verandah, with a staircase room at one end (north) and a privy block at the other (south). Between these two extremities, there is an open courtyard. At the back of the premises No. 52, Strand Road there is premises No. 52/1, Strand Road, on which there is a big

godown with a roof of corrugated iron sheets. What the trustees propose to do is to amalgamate premises No. 52 and No. 52/1, Strand Road. They propose to demolish the godown, and the construction in premises No. 52, Strand Road is to be enlarged into a large structure which will almost fill the remaining portion of the two premises, keeping only a back space of approximately 11 feet wide and side space of approximately 4 to 6 feet wide. It is proposed to demolish the staircase room with the staircase and the privy block. The staircase room is to be enlarged and a new staircase built inside it. The privy block is to be shifted to the back of the Consolidated premises, at the south-eastern corner. This privy block would be for the common use of all the tenants en-titled to use them. Evidence was taken in the court below and the learned Judge was satisfied that there was a sanctioned plan for the proposed alterations and new constructions. According to the appellants, they reasonably require the rooms in the occupation of the respondents for the purposes of building and re-building. They accordingly served ejectment notices on the said respondents determining the tenancies and asking them to quit and vacate the rooms in their possession on the expiry of the month of Ashar, Sudi 15th S. Y. 2015 corresponding with 1st July, 1958. As the respondents failed to comply with the said notices the appellants filed the said suits for ejectment. The relevant provision in the West Bengal Premises Tenancy Act, 1956 (hereinafter referred to as the "Said Act") is section 13(1) (f). Section 13 gives protection to tenants against eviction, but one of the exceptions is contained in clause (f) of sub-s. (1) of s. 13 which provides that where the premises let out are reasonably required by the landlord, either for the purposes of building and re-building or for making there to substantial additions or alterations, the protection is lost. In other words, in such a case, the ordinary law, as provided for in the Transfer of Property Act will prevail. At the trial, three issues were raised which are as follows:

1. Are the suit premises reasonably required by the plaintiffs for the purpose of building and re-building?
2. Have the plaintiffs sufficient means to construct the proposed building?
3. Was a legal and sufficient notice to quit served on the defendant in Suit No. 998?

2. As regards service of notice the issue was not disputed except in suit No. 998 of 1959 which is the subject-matter of Appeal No. 542 of 1961. As the defendant was absent in the court below, the learned Advocate appearing for him was not in a position to admit the service of notice. It was, therefore, formally proved. Before us Mr. Das who has appeared for the respondent in appeal 542 of 1961 has not disputed the service. The finding in the court below on issue No. 3 is, therefore, up-held. So far as issue No. 2 is concerned, the learned Judge in the court below found that the appellants owned 3/4th share in the firm of Baldeo Lal Ram Behari Lal. This firm held shares worth over one crore of rupees in running concerns. It holds shares in Messars Jardine and Henderson Limited worth over 25 lakhs of rupees. Also it has been found that the cost of construction of the

proposed building would be about Rs. 1,78,000 according to the estimate of Messrs. Guin & Company Limited, Architect and Contractor. The learned Judge in the court below has rightly come to the conclusion that there can be no doubt whatsoever that the appellants have sufficient means to construct the proposed building. He has, therefore, rightly answered the issue No. 2 in the affirmative. In this background, we have to deal with issue No. 1 which is the real issue in these appeals. As will appear from the particulars set out above, some of the tenants are in occupation of rooms in the ground floor and underground (basement), others live on the first, second and third floors. Obviously, if the existing staircase is demolished in order to build a new staircase, then the tenants in the first, second and third floors will have to leave. In other words, if the demolition of the staircase is real, then it cannot be doubted that the appellants required the rooms occupied in the first, second and third floors for the purpose of building and re-building. Also there is the question of the privy block. As I have stated above, it is a common privy block which can be used by all the tenants. If the existing privy block is demolished and a new privy block is to be built, then the tenants of the first, second and third floors who admittedly used the existing privies can no longer use them until a new privy is built. The new privy when built will not be part of their original tenancy as a matter of course, but can only be so by agreement. It will be a new tenancy. However, it seems that the tenants on the ground floor and the basement stand on a different or a special footing. All of them say that they have never used the existing privy block and do not claim to do so in future. In other words, they would not claim the use of a privy at all. In their case, therefore, there is neither "any difficulty about the staircase because they do not use it and agree not to claim the user thereof, nor is there any difficulty about the privy block because they do not use it and do not put forward any claim for its user. Under those circumstances we agree with the finding of the court below that no ground has been made out for ejecting them. In other words, it has not been proved to the satisfaction of the court that the appellants reasonably required the rooms occupied by the respondents in appeal Nos. 538, 541, 542, 543 and 546 of 1961 for building and re-building. The suits against which these appeals have been preferred have, therefore, been rightly dismissed and the appeals are also dismissed. Subject to this that it is recorded that it has been stated before us that the respondents in all these appeals do not use any privy or the staircase and will not at any time claim to use the old or new privies or the old or new staircase that are going to be demolished or built. I now come to the remaining appeals in which the respondents occupy rooms in the first, second and third floors. In their case, the learned Judge in the court below came to a very surprising finding. He has held, that so far as the privy block is concerned, the appellants must build the ground floor of the privy block on the south-eastern corner, that is to say at the south-eastern corner of premises of No. 52/1, Strand Road and then demolish the existing privy block so that the tenants of the first, second and third floors might continue the user of privies in the new privy block. So far as the staircase is concerned, he has held that the tenants should be

permitted to build a temporary staircase by fixing a spiral staircase temporarily by cutting through the existing verandahs or alternatively, in the courtyard, although it meant that the design of the building was to be "slightly" changed. The learned Judge has referred to the evidence of two engineers. The first is the evidence of Shri Bimal Chandra Choudhuri, Consulting engineer of N. Guin and Company. In his evidence he says that according to the sanctioned plan a new staircase will have to be constructed at the site of the old staircase and the construction of the staircase has to be simultaneously taken up with that of the rest of the building. He has further stated that the existing staircase and privy block are out of repair and are insecure. In his evidence at page 16 of the paper-book, he has stated that "the present staircase occupies double the area of the proposed staircase". Mr. Lal strongly relies on this evidence. It is an obvious error, in recording the evidence. The sanctioned plans which are in the book of plans exhibited in these case show exactly the opposite. The present staircase occupies about half the area of the proposed staircase. Anyhow, the witness has said that it is not possible to retain the present staircase. In order to do so, a column would have to be built on its side. He further said that the building was to be on a raft foundation and as such the foundation must be built at once. If the staircase is built later on, there would be cracks. He said that a spiral staircase could be fixed, but only by cutting through the verandahs. Next there is the deposition of Mr. S. C. Basu who gives evidence on behalf of the defendant. He said that if the spiral staircase was fitted on the lift wall, the present staircase would first have to be demolished, but the staircase may remain if the spiral staircase be built on the courtyard. He, however, admitted that if a spiral staircase is built, open to the sky, fresh sanction of the Corporation is necessary. On this evidence, the learned Judge in the court below came to the conclusion that "either the existing staircase might be retained or the tenants allowed to build a spiral staircase by cutting through the verandahs or by building one in the courtyard and even if all these require change in the plan the landlord must not object. In view of this conclusion, he has dismissed the suits holding that the landlords could not show reasonable requirement for building and re-building. In our opinion the entire reasoning is wrong and must be set aside. All that the landlord is called upon to show u/s 13 (1) (f) of the said Act is that he is genuinely building or re-building and in doing so he reasonably requires the eviction of the tenants. There is no law by which the court can direct the landlord to alter his plans or allow the tenants to make alterations in the building. It has no right to direct the landlord to construct new structure and let it out to the tenants. It certainly has no right to require the landlord to alter his plans in spite of the fact that it will make the building insecure. All that the court is required to do is to satisfy its conscience that the proposed building and re-building is not a ruse to get rid of his existing tenants. As I have stated above, the court was perfectly satisfied that the proposal to build was a genuine one and that the landlord has ample means of making the construction. Thus, if the plan requires that the existing staircase should be demolished and the landlord proposes to demolish it and re-build it, it is not for the court to lay down that the

existing staircase which is out of repairs should be retained or built afterwards, which would weaken the structure, or direct the landlord to permit tenants to make any structure by cutting verandahs. It would be outrageous to suggest that the court can direct the landlord to alter his plans to suit the tenants or to make a new construction which is not apart of the old tenancy and to include the new structure in the old tenancy. The learned Judge has realised that this may need fresh sanction which may or may not be granted. He meets the situation by saying that he "believes" that such sanction will be readily granted. This again is a very speculative belief. Further, the court has no right to suggest that the present staircase should be retained or lift fitted in a particular manner. In our opinion, therefore the whole approach of the learned Judge was wrong and cannot be supported. In our opinion, so far as the Appeal Nos. 536 of 1961, 537 of 1961, 539 of 1961, 540 of 1961, 545 of 1961 and 547 of 1961 are concerned, it must be held that the appellants had proved to the satisfaction of the court that they reasonably required the premises involved in the said cases for building and re-building and it comes within the exception provided in section 13(1) (f). These appeals must, therefore, be allowed and in these appeals the decrees in the court below must be set aside and the suits decreed.

The parties throughout should bear their own costs.

Arun Kumar Mukherjea, J.

3. I agree.