

(1962) 03 CAL CK 0021
In the Calcutta High Court
Case No : Matter No. 56 of 1961

Parbati Prosanna Ghosh

APPELLANT

Vs

The Rent Controller of Calcutta and Another

RESPONDENT

Date of Decision : 16-03-1962

Acts Referred:

West Bengal Premises Tenancy Act, 1956 — Section 16, 16(3), 34, 34(1)

Citation : 66 CWN 530

Hon'ble Judges : Banerjee, J

Bench : Single Bench

Advocate : R.C. Reb, for the Appellant; Arun Kumar Dutta (Sr.), for the Respondent

Judgement

Banerjee, J.—Can a sub-tenant, upgraded as a direct tenant u/s 16(3) of the West Bengal Premises Tenancy Act, 1956, compel the landlord to effect repairs, under the provisions of section 34 of the Act, to the premises in his occupation? That is the question which calls for my decision in this Rule. Sub-section (3) of section 16 and the material portions of section 34 of the West Bengal Premises Tenancy Act, 1956, are set out below:

Section 16(3). "Where in any case mentioned in sub-section (2) there is no consent in writing of the landlord and the landlord denies that he gave oral consent, the Controller shall, on an application made to him in this behalf either by the landlord or the subtenant within two months of the date of the receipt of the notice of sub-letting by the landlord or the issue of the notice by the subtenant, as the case may be, by order declare that the tenant's interest in so much of the premises as has been sub-let shall cease and that the sub-tenant shall become a tenant directly under the landlord from the date of the order. The Controller shall also fix the rents payable by the tenant and such sub-tenant to the landlord from the date of the order. Rents so fixed shall be deemed to be fair rent for purposes of this Act.

2. Section 34(1). "The Controller shall, on application made to him in this behalf

by any tenant in possession of any premises, cause a notice to be served in the prescribed manner on the landlord thereof requiring him to make such repairs in the premises or to take such measures for the due maintenance therein of any essential supply or service, such as measures for the maintenance for the supply of water, gas or electricity, the maintenance of conservancy or sanitary service or the maintenance of any lift, as the landlord may be bound to make or take, as the case may be, under the conditions of the tenancy or when the conditions of the tenancy do not include any provisions for repairs as the Controller may consider essential.

(2) "If after the service of such notice the landlord fails to show proper cause or neglects to make such repairs or to take within reasonable time such measures, as the case may be, the tenant may submit to the Controller an estimate of the cost of such repairs or measures, and may apply to him for permission to make such repairs or to take such measures himself and, thereupon, the Controller may after giving the landlord an opportunity of being heard and after considering such estimate of the cost of making such enquiries as he may consider necessary, by an order in writing, permit the tenant to make such repairs or to take such measures at such cost as may be specified in the order and it shall thereafter be lawful for the tenant to make such repairs or to take such measures himself and to deduct the cost thereof which shall in no case exceed the amount so specified, from the rent or otherwise recover it from the landlord:

provided * * *

(3) "Notwithstanding anything contained in any law for the time being in force and in the absence of any agreement to the contrary, it shall be the duty of every landlord to keep any premises let out for residential purposes wind and water tight, If the landlord fails to do so, the provisions of sub-section (1) and sub-section (2) shall apply. In such a case, however, the landlord shall be entitled to apply to the Controller to revise the rent payable for the premises and to fix the fair rent after taking into consideration the cost of such repairs. Rent so fixed shall be deemed to be fair rent for purposes of this Act."

(4).....

3. The circumstances under which the application for repairs came to be made are as hereinafter stated. By partition with his co-sharers, the petitioner became the sole owner of premises No. 10/1, Rainey Park, also known as 62/4, Ballygunge Circular Road, in the town of Calcutta (hereinafter referred to as the premises). From prior to the partition, one Beharilal Khandelwal was a tenant under the petitioner and his co-sharers in the premises. The said Beharilal Khandelwal, without the knowledge and consent of his landlords, sublet the premises to C. S. Mehta, respondent No 2. After the West Bengal Premises Tenancy Act. 1956 (hereinafter referred to as the "Act") came into operation, the said respondent No. 2 made an application, u/s 16(3) of the Act, asking for a declaration that the interest of the said Beharilal Khandelwal in the premises

shall cease and that the applicant (respondent No. 2 herein), shall become a tenant directly under the landlords. The said application was allowed by the Rent Controller, on December 18, 1958. This is how the respondent No. 2 became a direct tenant under the landlords.

4. After partition, in the year 1960, the petitioner became liable to remove himself from his old joint family dwelling house at No. 75B, Boadon Street, Calcutta, within a given time. He therefore, asked the respondent No. 2 to quit and vacate the premises, so that he might occupy the same for his own residence. The respondent No. 2 put off the request on diverse pretexts. At last, the petitioner caused a notice to be served on the respondent No. 2. and, on November 18, 1960, instituted a suit for his eviction, being Title Suit No. 88 of 1960, of the Court of a Subordinate Judge at Alipore. On the very next day, the petitioner was served with a notice of an application made by respondent No. 2, before the respondent Rent Controller, Calcutta, u/s 34 of the said Act, for an order directing the petitioner to make eleven items of repair to the said premises.

5. Apart from the objection that the application was not maintainable at the instance of respondent No. 2, who was merely a statutory tenant, the petitioner characterised the application as a counter-blast to his claim for possession of the premises.

6. The Rent Controller, however, over-ruled the objection as to maintainability of the application with the following observations:

It appears that the O. P. wants to make a distinction between a direct tenant and a tenant who has been made a direct tenant under the provisions of section 16(3) of the West Bengal Premises Tenancy Act of 1956. In this connection he referred to the ruling reported in K.M. Motwani Vs. Albert Sequeira and Another, . It appears that the facts of the above case are different from the present case and in my opinion the ruling does not apply here. In the Act of 1956 no distinction has been made between a tenant and also a statutory tenant so made under the provisions of section 16(3) of the Act of 1956. It will appear that for the purpose of fixation of fair rent the tenant includes a sub-tenant So, if a sub-tenant wants repairs u/s 34 of the Act, he is entitled to get it from his landlord. When the present petitioner was a sub-tenant, he had, therefore, right to get repairs as given to a tenant. It is something unusual that when a sub-tenant becomes a direct tenant, i.e., when he acquires higher status, he will be debarred from getting benefits which he was getting when he was a sub-tenant. In my opinion when he is given the seal of a higher tenant by the Rent Controller he becomes a full-fledged tenant entitled to all the reliefs granted to a tenant in the Act and accordingly, I find that the petition is maintainable.

7. In the view taken, the Controller directed an Inspector to inspect the premises and to report on the essential repairs required to be effected.

8. The propriety of the order is being disputed at the instance of the petitioner, who has asked for a Writ in the nature of prohibition prohibiting the respondent,

the Rent Controller, from further hearing or determining the said application and for a Writ of Mandamus commanding him to forbear from giving effect to the order already made.

9. Mr. R. C. Deb, learned Advocate for the petitioner, contended with considerable emphasis, that the respondent No. 2, who was originally a subtenant, but was upgraded as a direct tenant under the petitioner, under the provisions of section 16(3) of the Act, had no locus standi to maintain an application u/s 34 of the Act. Elaborating his argument, Mr. Deb contended that as between a subtenant and the owner-landlord of the premises, there cannot conceivably be any privity of contract embodying the conditions of the tenancy, because the owner-landlord does not induct him in the tenancy. When such a tenant becomes a direct tenant, under the provision of section 16(3) of the Act, he becomes a statutory direct tenant and no contractual relationship comes to exist between such a statutory tenant and the landlord. Since u/s 34(1) of the Act the landlord's liability to repair is limited by the condition of the tenancy as to repairs or when the conditions do not include any provision for repairs is limited to such repairs as the Controller may consider essential, it was not open to a person, who becomes a direct tenant under the provision of section 16(3) of the Act, to maintain an application u/s 34 of the Act.

10. The argument is attractive but is of little substance. A person originally a subtenant but who becomes a direct tenant under the landlord is, no doubt, imposed upon the landlord under the provisions of law. He is a statutory tenant in the sense that the statute creates a direct relationship of landlord and tenant between himself and the owner-landlord. He is not a statutory tenant in the sense of an ex-tenant continuing in possession, after the termination of tenancy, but under the protection enjoyed by him under the Act. It is true that as between a direct tenant, so made u/s 16(3) of the Act, and the landlord there exists no contract embodying conditions of tenancy. Nevertheless, the expression "when the conditions of the tenancy do not include any provision for repairs", as used in section 34(1) of the Act, is not necessarily referable to absence of provision for repairs in contractual conditions between the landlord and the tenant. As between a sub-tenant, upgraded as a tenant, u/s 16(3) of the Act and the landlord, there come to exist also certain conditions of tenancy, for example, conditions as to payment of rent. The expression "when the conditions of the tenancy do not include any provision for repairs", may be reasonably taken to include those provisions as well. Therefore, where provisions for repairs are not to be found either in contractual conditions or in statutory conditions governing the relationship of landlord and tenant, the Rent Controller may direct such repair as he may consider essential.

11. Under the scheme of the West Bengal Premises Tenancy Act of 1956, a subtenant, who becomes a direct tenant under the landlord, is entitled to all the advantages under the Act, including the advantage of having repairs effected at the cost of the landlord. It will be unwise to read, in section 34 of the Act,

exclusion of the right of a direct tenant, u/s 16(3) of the Act, to take advantage of the provisions of the former section.

12. The language of section 34(1) of the Act, it is true, is not very explicit as to the right of direct tenants, so made u/s 16(3) of the Act, to take advantage of the section. But since the Act has to be interpreted as a whole as a beneficial statute and since there is no indication in the Act which disentitles a person, made a direct tenant u/s 16(3) of the Act, to have all the advantages of a tenant,

13. I repel the argument advanced by Mr. Deb and discharge the Rule. I, however, make no order as to costs.