
(1984) 08 GAU CK 0006
In the Gauhati High Court
Case No : S.A. No. 109 of 1971

Ram Akhaibat Upadhay

APPELLANT

Vs

Srikrishna Prasad Shah and Others

RESPONDENT

Date of Decision : 07-08-1984

Acts Referred:

Assam Non-Agricultural Urban Areas Tenancy Act, 1955 — Section 5(1)(b)

Citation : AIR 1985 Guw 22

Hon'ble Judges : T.N. Singh, J;K.N. Saikia, J;B.L. Hansaria, J

Bench : Full Bench

Advocate : P.K. Goswami, for the Appellant; J.P. Bhattacharjee and D.R. Dey, for the Respondent

Judgement

Dr. T.N. Singh, J.—What precisely has fallen for the consideration of this bench is the interpretation of the term "reasonable improvements" to be found in Section 5(1)(b) of the Assam Non-Agricultural Urban Areas Tenancy Act, 1955, for short the Act or 1955 Act. We may however quote the relevant provisions of both clauses of Sub-section (1) to appreciate the underlying legislative intent of the concerned provision and the term used therein.

5. Protection from eviction-

(1) Notwithstanding anything in any contract or in any law for the time being in force-

(a) Where under the terms of a contract entered into between a landlord and his tenant whether before or after the commencement of this Act, a tenant is entitled to build, and has in pursuance of such terms actually built within the period of five years from the date of such contract, a permanent structure on the land of the tenancy for residential or business purposes, or where a tenant not being so entitled to build, has actually built any such structure on the land of the tenancy for any of the purposes aforesaid within the knowledge and acquiescence of the landlord, the tenant shall not be ejected by the landlord from

the tenancy except on the ground of non-payment of rent. (Provisos not relevant)

(b) Where a tenant has effected improvements on the land of the tenancy under the terms whereof he is not entitled to effect such improvements, the tenant shall not be ejected by the landlord from the land of the tenancy unless compensation for reasonable improvements has been paid to the tenant.

We may also quote the provisions of Section 6 of Act which has a material bearing on the question :

6. Compensation for improvements: In a suit for ejectment against a tenant if any question arises-

(a) Whether the tenant has effected any improvements on the land of the tenancy, or

(b) Whether such improvement is reasonable improvement, or

(c) Whether any compensation may be paid for such an improvement, and if so, how much, the question shall be decided by the Court having regard to the circumstances of each case.

Explanation : Any structure which a tenant is under the terms of a contract referred to in Clause (a) of Sub-section (1) of Section 5 entitled to build but has actually built after the expiry of the period of five years referred to in that clause shall be deemed to be reasonable improvement within the meaning of this section.

2. The instant appeal had come up for hearing before a learned Single Judge of this Court on 25-2-1974 when the counsel for the appellant submitted that Section 5(1)(b) of the Act did not exclude from the purview thereof a tenant who had effected "improvement by constructing a structure, whether permanent or temporary", on the tenanted land, whether within or beyond five years of tenancy; and that he was entitled to be paid compensation therefore in terms of the said provision. He relied on an unreported Bench decision of this Court rendered on 31-3-1959 in S. A. No. 130 of 1959 (Gayaram v. Kanhaiyalal) to support his contention but also submitted that it would be necessary for the Court to reconsider its decision reported in AIR 1966 Gau 118 (Mira Khumbi v. Usha Ranjan). Accordingly, the matter was listed for hearing before a larger bench. On 2-4-1975, when the matter came up before a Division Bench, it was ordered that a Special Bench should hear the matter as the decision in Mira Khumbi was rendered by a Division Bench and the question was whether it required re-consideration. This is the genesis of this reference.

3. Respondents' counsel Mr. J. P. Bhattacharjee, contended before us that legislature having advisedly not defined the term "reasonable improvement" in the Act itself we may not embark upon this venture. However, he submitted, the term "improvement" which also the Act had not defined, needs an interpretation because Section 6(b) precludes such an exercise only in respect of the term

"reasonable improvement" by reserving to the Court making determination u/s 6 the right to interpret the terms. He also did not dispute that the decision in Mira Khumbi (supra) did say something on Section 5(1)(b) of the Act which was perhaps not warranted on the facts and in the circumstances of that case. While pressing, though, for our acceptance the interpretation that the term "improvement" used in Clause (b) of Section 5(1) in the context and setting meant a permanent structure built by the tenant for which only he is entitled to claim compensation, learned counsel has fairly placed before us the cognate provisions of parallel enactments and relevant case-law on which he could lay hands. To assist the Court discharge objectively an onerous obligation, as the provision contains a wholesome piece of social legislation, Mr. Bhattacharjee took pains and we feel happy to record our appreciation of his noble effort.

4. Learned counsel for the appellant. Mr. P. K. Goswami, pressed in service Mr. Bhattacharjee's research to bolster his grievance and contended forcefully that the impugned holding in Mira Khumbi tended to create a formula which ill-suited the contemporary social need and resulted in defeating the legislative intent underlying the provision. He submitted, in that case this Court held that the explanation to Section 6 controls the provisions of Section 5(1)(b) which was a constricted, and for that matter an erroneous, view of the latter provisions. We find sufficient force in the submission of Mr. Goswami and turn immediately therefore to consider the impugned holding which is projected at para 9 of the judgment extracted below :

"9.....The lower appellate Court has held that Section 5 of the Act gives a right to the tenant to claim compensation for any improvement made on the land. Only in the cases where the construction has been made . beyond five years under the contract that the construction itself has been regarded as an improvement by virtue of Section 6. But in other cases the construction cannot be regarded as an improvement. What the tenant is entitled is only to get compensation for the improvement of the land. Both the courts below have found as a fact that the defendants failed to prove the amount of compensation. That is a clear finding of fact and whatever view of Sections 5 and d may be taken, in this case the defendants are not entitled to any compensation as they have failed to prove the amount spent in improving the land".

(Underlining is our)

5. Mr. Goswami tried to impress us stressing the fact that Mehrotra, C. J., who spoke for the court in Mira Khumbi had, earlier in Gayaram's case, after analysing in detail the concerned provisions, expressed a different view and our attention in this connection was rivetted on the following portion of the judgment in Gayaram.

"The word "improvements" would include permanent structures and but for a limited class of cases coming under Clause (a) of Sub-section (1) of Section 5, all other permanent structures will be regarded as improvements and the tenant will

only be entitled to compensation. It cannot be argued by the landlord that the word "improvement" does not include putting up of permanent structures, and the scope of Clause (b) is different from that of Cl, (a) and the word "improvement" in Clause (b) means construction other than permanent constructions. We do not think that this -construction is proper. Explanation to Section 6 of the Act which reads that any structure which a tenant is, under the terms of a contract referred to in Clause (a) of Sub-section (1) of Section 5 entitled to build but has actually built after the expiry of the period of five years referred to in that clause shall be deemed to be reasonable improvements within the meaning of this section, will also show that the only permanent structure which has been taken out of the purview of the word "improvement" is one constructed within five years of the contract of the tenancy; even constructions made beyond five years of the contract of tenancy under which the tenant was entitled to make construction will be regarded as reasonable improvement within the meaning of the section."

In his separate judgment, Deka, J. (as his Lordship, then was), viewing the provisions of Section 5(1 Mb), albeit from a different angle, spoke very little on the interpretation of the term "improvement" but observed nonetheless :

".....any tenant building a permanent structure under the terms of the contract but beyond five years thereof, is not entitled to protection from eviction u/s 5(1) (a) but is only entitled to protection u/s 5(1)(b)."

This was said having regard to the words in the Explanation above quoted to Section 6.

6. We have no doubt that counsel justifiably took a common, consistent and correct stand that in *Mira Khumbi AIR 1966 Gau 118* though it was not necessary to pronounce on the import of the term "improvement" occurring in Sections 5(1) (b) and 6, on the facts of the case, the view taken by the Bench in that case that constructions other than those not covered by the Explanation to --S. 6 "cannot be regarded as improvement" does not state the law correctly. A plain reading of the relevant provisions does not, in our opinion, support the narrow interpretation suggested by the said holding. Indeed, the view taken by Mehrotra, C. J. in *Gayaram* that the term "improvement" occurring in Section 5(1) (b) had a wider import and embraced "permanent structures" merely in an inclusive fashion and that "constructions" other than constructions of the nature of "permanent structures" would be covered in the broad sweep of the term, appears to us to be a reasonable view with which we express our respectful agreement. We would also agree with his Lordship's view that only those "permanent structures" which the tenant built within five years of the contract of the tenancy, the legislature intended to take out of the purview of the term "improvement", inasmuch as for such structures, not compensation, but a better or larger right in the shape of protection against eviction was envisaged in Clause (b) of Section 5(1). To this effect, it may be noted, is also the holding of Deka, J. in the same decision.

7. One thing, however, needs elucidation. Though the said Clause (a) refers expressly only to "permanent structures" it also postulates that the structure must be such (1) as the tenant was entitled to build under the terms of the tenancy and (2) if not so entitled must be built with the knowledge and acquiescence of the landlord. In the case where the structure to be considered as an "improvement" under Clause (b) was built neither in virtue of contractual entitlement nor with the knowledge and acquiescence of the landlord, would the position be different? To this category of cases would also, in our opinion, Clause (b) is clearly attracted as is manifested in its language. To wit "under the terms whereof he is not entitled to effect such improvements", which requirement is not saddled by any other consideration whatsoever including that of "knowledge and acquiescence".

8. On a consideration of decisions of this Court in *Mira Khumbi* AIR 1966 Gau 118 and *Gayaram* we are of the view that the term "improvement" used in Clause (b) of Section 5(1) will include both classes of structure, "permanent" and non-permanent, built by the tenant, beyond the period of five years of tenancy if it was "permanent", and at any time, if not so, and the same need not have been built either under contractual entitlement or with the knowledge and acquiescence of the landlord. This, according to us, also follows from a plain reading of the provisions. But, neither *Mira Khumbi* nor *Gayaram* amplified the concept further to state the full scope of the term "improvement" nor shed any light on the interpretation of the term "reasonable improvement" which term, and not the term "improvement", in our opinion, has a crucial significance in the context of tenant's right envisaged under Clause (b). It is indeed for this reason that legislature made appropriate and supplemental provisions in Section 6 which, apparently, have not received adequate consideration in earlier decisions. Mr. Bhattacharjee placed before us the decision of the Supreme Court in appeal from the judgment of the Court in *Mira Khumbi* which is reported in ILR (1970) 22 Gau 82, but the question of compensation in terms of Section 5(1)(b) does not appear to have been agitated at all in appeal before that Court. "

9. Because an important right is created by Clause (b) of Section 5(1) the legislature deliberately made provisions in Section 6 to make possible effective exercise of the right and it is our duty, we consider, to remove shadows of lingering doubt thwarting legislative purpose. It is necessary, therefore, to construe relevant provisions rather than suffer stultification of legislative effort assiduously undertaken to meet the challenge of a contemporary social problem of undoubted importance. Indeed, this choice is also forced on us by the legislature itself as appears to us from a close reading of Section 6. What would be the scope of enquiry by court thereunder when question of payment of compensation for improvement made by tenant, envisaged u/s 5(1)(b), is agitated in any case? This indeed, is, also the moot question in the context of Mr. Bhattacharjee's objection that we may not say anything on the term "reasonable improvement". Section 6 appears to us to be inartistically drafted as a result of which a shadow of doubt has been cast on the duty and function of this Court in

the matter of interpretation of the term "reasonable improvement". Indeed, the same doubt, also seriously impairs tenant's right u/s 5(1)(b) for the same reason. What the legislature intended to be determined "having regard to the circumstances of each case", according to us, could only be (1) ascertainment of the factum of alleged improvement; (2) whether the improvement was "reasonable"; and (3) quantification of compensation payable for such improvement. Because determination of these matters would involve always issues of fact, the same must invariably depend on the "circumstances of each case". Section 6 does not run counter to the well established principle that interpretation of a statutory provision or of any term used therein is always a pure question of law on which all courts in all cases will have jurisdiction to speak when any question involving such interpretation crops up in the course of deciding any matter if jurisdiction to deal with the matter is not expressly barred. In the case of a High Court or the Supreme Court, according to us, this exercise is a constitutional duty as the High Court, within its territorial jurisdiction, and the Supreme Court for the whole country, is not only authorised but constitutionally obligated to expound the law.

10. In our view, legislature never intended to preclude judicial interpretation not only of the term "improvement" but also of "reasonable improvement" and as observed above the rationale of the force of choice is to be found in the provisions of Section 6 itself, particularly in the "Explanation" appended thereto. The latter, though so labelled, really embraces a substantive provision, albeit a deeming provision. That the proper function of an "Explanation" is merely to make plain or elucidate what is enacted and not to add or subtract from it, is well established. A plain reading of the "Explanation" in the instant case is suggestive of the interpretation that it contains not only an illustrative definition of the term "reasonable improvement" but a legislative mandate that the Court shall, in the cases covered thereby, quantify compensation in terms of Clause (c) of Section 6 and order of payment thereof to galvanise tenant's right under Clause (b) of Section 5(1). Indeed, Clause (c), which overtly invests the court with an option to quantify and order of payment of compensation "reasonable improvement", cannot, in our opinion, be construed in a sense which will defeat the positive mandate and object of Section 5(1)(b). Therefore, unless the term "reasonable improvement" is interpreted, in virtue of the option ingrained in the plain language of Clause (c) the possibility of the wholesome object of Section 5(1)(b) being defeated in any case, which is clearly written on the face of Clause (c), would remain a continuing threat to nullify the legislative endeavour. In the "Explanation" legislature provided for a particular class of cases in respect of which judicial option under Clause (c) was negatived. We must therefore explore and indicate, if and in what other cases or circumstances the option is inoperative.

11. We address ourselves, therefore, first to the interpretation of the term "improvement". In Black's Law Dictionary (5th Edn) it is suggested that "improvement" means inter alia a valuable addition made to property or

amelioration in its condition amounting to more than mere repairs or replacement, costing labour or capital, and intended to enhance its value, beauty or utility or to adapt it for new or further purposes. In the Assam (Temporarily Settled Districts) Tenancy Act, 1935 (since repealed and replaced by 1971 Act) the term "improvement" is defined in Section 66. In its successor enactment of 1971 the term "improvement" is defined in Section 3(5). Though these enactments relate to land tenanted for agricultural pursuits, we may read the new definition repositied in Section 3(5) of 1971 Act which, while illustratively indicating the works to be considered as "improvements" in line with the old provision, carry in its opening part the main burden, using almost same language, of the old Section 66 [1], and speaks as follows :

S. 3(5) "improvement" means any work which adds to the value of the holding, which is suitable to the holding and which is executed directly for the benefit of the holding, and includes-

(a) construction of wells, tanks, water channels, or other works for storage, supply or distribution of water for the purpose of agriculture or for drinking or for the use of men and cattle employed in agriculture;

(b) drainage, reclamation from rivers or other waters or protection from flood erosion or other damage by water, or land used for agricultural purposes or waste land which is culturable;

(c) erection of dwelling house for tenant and his family together with all necessary outhouses. (Underlining is our)

The underlined expression, in the old Section 66(1) read as-

"..... which is suitable to the holding and consistent with the purpose for which it was let, and which, if not executed on the holding, is either executed directly for its benefit, or is, after the execution made, directly beneficial to it".

Section 69(old) provided that every tenant ejected from a holding was entitled to compensation for "improvements" made by him or his predecessor, if the said remained unpaid, and the court making the decree shall determine the amount of compensation and make the order of ejectment conditional on payment to the tenant of that amount. In the new Act, in Section 52, a similar provision is made for a conditional order when a decree for ejectment against the tenant is passed.

12. Mr. Bhattacharjee also drew our attention to Section 51 of the Transfer of Property Act but, in our opinion, the provisions thereof deal with a different situation in that question of title or ownership, not of tenancy right is the subject matter thereof. Nevertheless, the underlying equitable principle of the provision has its importance to which we shall advert in due course. Even so, we do not consider that the Privy Council decision relied on by Mr. Bhattacharjee supports his contention. In ILR(1913) 40 Cal 555, Kedarnath v. Mathumal, the Privy Council was required to consider the question of compensation for improvements made to be paid to the person who had held the land under defective title and

was ejected therefrom at the instance of the rightful owner. The court below had assessed the sum of Rs. 1,400/- as a fair sum to the extent of which the property, as a vendible subject, had been enhanced in value by the operations of the last holder, against the claim of Rs. 7,000/- which included the cost of erection of a temple on the land. Their Lordships upheld the decision of the Chief Court of Punjab and observed that no argument was advanced before them that erection of the temple could of itself enhance value of the property adding further that the real question was, whether the property, "as a marketable subject", was enhanced in value or not? This decision, in our opinion, is no authority to hold that as a rule of universal application in no case, and under no law, not even u/s 51 of the T. P. Act, erection of a structure used as a temple cannot, as contended, be regarded as an "improvement" for the purpose of compensation.

13. We have little doubt that the relevant provisions of Assam (Temporarily-Settled Districts) Tenancy Act, 1935 and its successor Act of 1971 shed valuable light on the interpretation of the term "improvement" as also "reasonable improvement" used in the Assam Non-Agricultural Urban Areas Tenancy Act, 1955. Because, under all these enactments the relevant provisions deal with the same situation arising between parties in respect of "tenancy right" although in one case the subject matter of tenancy is land situate in urban area let out for business or residential purpose while in the other case the land is tenanted for agricultural pursuit (see, Section 3(6) of 1955 Act and Section 3(6) of 1971 Act). If we look at the illustrative definition of the term "improvement" which finds place in Section 66(2) of 1935 Act, or for that matter in Section 3(5) of 1971 Act extracted above, it becomes clear that the works contemplated thereunder as "improvements" are such as are unquestionably suitable for beneficial enjoyment of the tenanted land consistent with the purpose for which the land was let out. In Section 5(1)(a) of 1955 Act, explicit reference is made to the purpose of tenancy, namely, "residential or business purposes". It is clear therefrom that whatever other work a tenant may not be "entitled" aliunde to undertake as "improvement" on the tenanted land u/s 5(1)(b), construction of a structure for residential or business purpose cannot be such a work. It is not in our contemplation to define the term "improvement" illustratively, but we, may say that any structure, permanent or temporary, if erected, which was suitable for residential or business purpose, would be an "improvement" within the meaning of Clause (b) of Section 5(1) and Section 6 of the Act. However, such structure, if temporary, must have been built by the tenant either within or beyond five years of the creation of the tenancy but. if the structure be a "permanent structure" the same must have been built beyond five years. Indeed, the main holding in Gayaram (supra) is substantially to the same effect. What other works carried out on the tenanted land by the tenant should be regarded as "improvements" under the Act must be answered similarly with reference to the same test, namely, whether such work was suitable, for the beneficial enjoyment of the land for residential and business purposes.

14. We do not think if the test enunciated above would conflict with the general test laid down by Privy Council in *Kedur Nath* (supra). Because, in our opinion if the vacant land was let out as envisaged u/s 5(1)(a) of the Act, the value thereof in no case can be said to be not enhanced if some structure, whether temporary or permanent, is erected or any other work is carried out thereon, to make the land suitable for either residential or business purpose we must remember that we are construing a tenancy legislation which deal with the right of occupation and enjoyment of the tenanted premises. What would be marketable therefore under these enactments, would be tenancy right and not ownership of the property. Although, Section 5(1)(b) does not, in term confer, unlike 1935 and 1971 Acts, right on the tenant to make an "improvement", the right is implicit in the provision itself inasmuch as compensation therefore is provided notwithstanding absence of contractual entitlement in respect thereof. We, therefore, find it difficult to accept the suggestion that in some cases such structures may become encumbrance on the land and reduce, instead of enhancing, its value as a "marketable subject" and for that reason the same should not be considered "improvements". If the land with structures ("improvements") is re-tenanted it could not be said that one who comes to use the land for residential or business purpose would not find it in an improved state or with an enhanced value. We may mention in this connection that Clause (g) of Section 3 of the Act contemplates the case of a derivative tenant. Therefore, the test we have enunciated, keeping in view this position; deserved to be accorded primacy.

15. The answer to the next question depends obviously on the meaning to be attributed to the term "reasonable" by which the word "improvements" is qualified in Section 5(1)(b). The word "reasonable" has, as indicated in the *Black's Law Dictionary*, several connotations in legal parlance. Both qualitative and quantitative content of a thing or idea are embraced by the term. *Black* suggests that the word "reasonable" means "fair, proper just, moderate, suitable under the circumstances" and also "not immoderate or excessive being synonymous with rational, honest, equitable, fair, suitable, moderate, tolerable". In our opinion, therefore, "the term is relatable to the description, nature or character and also to the corpus, of the work or improvement."

16. For the above view we find support from the intrinsic evidence manifested in the language of Clause (b) itself. The following conditions -- precedent for payment of compensation thereunder (pursuant to "determination" No. 6) are expressly stated therein :

- (a) There must be a "tenancy" in respect of the "land", let out for residential or business purpose, as envisaged u/s 3(b):
- (b) Works claimed as "improvements" effected on the "land" must have been executed by the tenant sought to be evicted; and
- (c) Under terms of the "tenancy" there must not exist positive entitlement for

execution of such works by the tenant.

However, what would follow as important corollaries to the above conditions, it is also necessary to indicate and explain. There can be no doubt that absence of a positive entitlement authorising the tenant to execute the works shall entitle him to claim compensation therefore but it is equally important to note that presence of an express prohibition in the terms of tenancy in respect of the same works shall disentitle him. This distinction is of vital importance and must be noted. Because, it would be patently unjust unfair and unreasonable to allow the tenant to do which, of his own volition he agreed, not to do. Legislature cannot be presumed to abrogate, in our opinion, express contract between parties. It is well settled that undue legislative interference with freedom of contract is not to be presumed in the absence of express or necessary intendment. Besides, following *V. Dhanapal Chettiar Vs. Yesodai Ammal*, we have to read the provision (which embodies a special law) in a manner as may not abrogate wholly the general law (T. P. Act/Contract Act) but as may merely supplement or modify the same. Indeed, landlord's right to eject a tenant under T. P. Act, in cases not covered by Cl (a), is expressly protected in Clause (b) though it is modified to the extent that the right is saddled by the requirement of payment of "compensation" envisaged thereunder. We would, therefore, also presume that although the term "tenant" defined in Section 3lg) includes a tenant who continues in possession of the land even after termination of the tenancy, in so far as the right to compensation u/s 5(1)(b) is concerned, the work or works in question must have been executed by the claimant during the currency of the tenancy and not after its termination. To hold otherwise would result obviously in undue and unwarranted interference with landlord's right to evict the tenant. Those who failed by their own default to avail the protection of Clause (a) cannot indirectly extract the same protection under Clause (b) from the landlord. To allow them to do so would be allowing them to profit by their default which would run counter to legislative intent and purpose and would be overtly unjust, unfair and unreasonable as it would amount to opening doors to unscrupulous tenants to play sharp practice.

17. So far we have said about the qualitative character of the work in respect of which compensation may be claimed by the tenant. Indeed, what we have said is that the works executed by the claimant (tenant) must not only be suitable for beneficial enjoyment of the land for residential or business purpose, as the case may be, the same must not also suffer the disqualifications herein indicated. It is to be reiterated in this connection that one of the disqualifications, as alluded, also relate to the corpus of the work which is manifested in the use of the plural form of the noun. (improvement) which the term "reasonable" qualified. It shall be open to the Court to determine, u/s 6, not only what amount is to be quantified but also for what works. The court shall see, therefore, what relation the work executed by the tenant bears to the purpose and the terms of the tenancy, because the court is legislatively mandated to ensure that landlord's right to eject the tenant under Clause (b) is not defeated as a result of

unreasonable (unbearable) financial burden imposed on the landlord on account of compensation adjudged as payable by him. Whether the tenancy was for business or residential purpose, its tenure, rent reserved and also the relative economic status of the parties have to be considered to gather their intention and conduct from the terms and conditions of the tenancy and surrounding circumstances to determine reasonableness of the burden for quantifying the compensation. It would be necessary to do so to adjudge suitability of "beneficial enjoyment" which would depend upon various facts and has to be determined on the facts and circumstances of each case. Naturally, each and every item of work executed by the tenant may not be, in the facts and circumstances of the case, suitable for beneficial enjoyment of the land for the purpose for which it was let out. Lavish expenditure or those made on unsuitable or unwarranted works are not to be compensated for. Such work as may not enhance value of the tenancy or add to the beneficial enjoyment thereof would evidently be an unwarranted work. Instead, tenant may be allowed to remove any structure or part of it (claimed as "improvement") if that is possible. Indeed, a temporary structure, per se, in the facts and circumstances of the case, may be such an "improvement" for which compensation may not be "determined" and the tenant may be allowed to remove the same. It has to be made clear that in the right to compensation is implicit the option either to accept the same or to remove the concerned structure (s). As such, if the tenant insists on "determination" court cannot refuse although the tenant may not accept the amount quantified and exercise his option to remove the structure(s). The Court must carry out the legislative mandate and ensure that landlord's right to evict the tenant is not defeated by placing such financial burden on him as may be "unreasonable" in the facts and circumstances of the case.

18. The object and purpose of the Act, as can be gathered from its different provisions in the perspective of constitutional imperatives of the Directive Principles, clearly indicate that legislature meant to solve thereby not only the pressing problem of accommodation in urban areas but also fulfil wholesome social object by encouraging productive investment for shelter or employment while discouraging land owners to keep their lands fallow merely for speculation or status. Indeed, in so far as the latter object is concerned even the tenant is also similarly treated vide Clause (b). Provisions of Clauses (a) and (b) balance evenly the rights and obligations of landlords and tenants against this perspective to effectuate the legislative intent. The tenant's "protection" under both clauses is, therefore, circumscribed but Clause (b) also takes care of equitable interest accrued to him in the land by virtue of his investment while conceding to the landlord the right to eject the tenant who had not used the land within a reasonable time (five years) by erecting "permanent structures" thereon for the purpose for which the same was tenanted. We have to take note of this balancing of conflicting interests reflected in CL (b) necessitating such construction on the word "reasonable" to be placed as will not run counter to legislative intent to "protect" landlord's interest thereunder by allowing him to

effectively exercise his right to eject the tenant Excessive investment, as may defeat his right, has therefore to be disallowed and for this, indeed, legislature itself made provision in CL (c) of Section 6 which empowers courts deciding the lis to quantify the compensation "having regard to the circumstances" of the case.

19. We have no doubt that the provision of Clause (b) of Section 5(1) is based on equitable principle and in this respect it bears some resemblance to the remedy envisaged by Section 5(1) of the Transfer of Property Act. The equitable doctrine contemplating the right ingrained in both Section 51 of the Transfer of Property Act and Section 5(1)(b) of the Act appears to us to be the same, namely, one who will have equity must do equity. The tenant having been inducted on the land to use the same for residential or business purpose if he had carried out any work thereon by which he was left loser as a result of his ejection and the landlord gained by evicting him and also depriving the benefit from tenant's work, it would but be fair and equitable that the latter must compensate the former therefore however to such extent only as may be "reasonable" and not excessive, in the facts and circumstances of the case.

20. Now, a short summary or recapitulation of conclusion at the end of the long odyssey of random rationalisation of judicial views and legislative Ventures-

(a) The decision in *Mira Khumbi*, AIR 1966 Assam 118 did not state the law correctly by holding that only in cases where any construction had been made beyond five years of the contract such construction itself shall be regarded as an "improvement" within the meaning of Section 5(1)(b) and that only in such cases the question of payment of compensation to the tenant shall arise.

(b) The tenant shall be entitled to claim compensation for any work executed by him on the tenanted land for the beneficial enjoyment of the land for residential or business purpose and such work may include any temporary structure erected by him either before or after, and permanent structure erected after, a five years of the creation of the tenancy, subject to the conditions indicated below.

(i) The work must have been executed during the currency of the tenancy and there must not exist in the terms of the tenancy express prohibition against execution by the tenant of such works.

(ii) Compensation shall be payable not for all works executed but for those works as are adjudged by the Court in making determination u/s 6 of the Act, in the facts and circumstances of the case, to be really suitable for beneficial enjoyment of the land for the purpose for which it was let out having regard to the relevant factors including terms of the tenancy and surrounding circumstances so that the amount quantified is reasonable and does not impose unreasonable burden on the landlord defeating his right to evict the tenant reserved u/s 5(1)(b) itself. In some cases, for some structures (like a temporary structure) or part thereof, which the tenant may remove, without undue loss or hardship, determination of compensation need not be made unless insisted upon by the tenant.

Let the appeal be now posted for hearing and disposal before any Single Bench.

K.N. Saikia J.

21. I agree.

Hansaria J.

22. I have my general agreement to what has been stated by my learned brother after "long odyssey". But I have two reservations in the main. First, in so far as condition (c) in para 16 is concerned, it should read as below according to me:

"Under the terms of tenancy there must not exist positive disentitlement for execution of such works by the tenant."

Secondly, reasonableness, of which mention has been made in para 20(b)(ii) must refer primarily to improvement, and not to the amount quantified which has, of course, to be properly tailored to the reasonable improvement made on the land. I do not also propose to say anything for the present about non-determination of compensation in those cases where the structure could be removed by the tenant "without undue loss or hardship".