

(1960) 02 CAL CK 0005

In the Calcutta High Court

Case No : Civil Rules No's. 2027 and 2028 of 1957

Ramesh Chandra Majumdar

APPELLANT

Vs

Jajneswar Majumdar

RESPONDENT

Date of Decision : 11-02-1960

Acts Referred:

Calcutta Municipal Act, 1951 — Section 202
Calcutta Thika Tenancy Act, 1949 — Section 253, 27, 3, 5, 53
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Transfer of Property Act, 1882 — Section 116

Citation : 65 CWN 488 : (1961) 1 ILR (Cal) 287

Hon'ble Judges : S.K. Sen, J

Bench : Single Bench

Advocate : Jitendra Nath Guha, for the Appellant; Apurbadhan Mukherjee and Somendra Chandra Bose, for the Respondent

Judgement

S.K. Sen, J.—These two revisional applications are directed against an appellate order allowing two applications u/s 5 of the Thika Tenancy Act for ejectment of the thika tenant of each case. In C.R. Case No. 2027 of 1957, the land of the tenancy is situated at No. 1/H/2, Sura Second Lane, Beliaghata. One Shyamapada Sen Gupta became a tenant under the opposite party Jajneswar Majumdar under a registered deed of lease dated October 7, 1948, corresponding to Aswin 21, 1355 B.S. for the period of 4 years and 7 months beginning from Aswin 1355 B.S. and expiring with the last day of Chaitra, 1359 B.S. in respect of a plot of land measuring 4 1/2 cottas, at the monthly rent of Rs. 22-8-0. On November 13, 1950, the Petitioners Ramesh Chandra Majumdar and Nagendra Nath Majumdar purchased the lease-hold interest of Shyamapada Sen Gupta. There was a condition embodied in the lease deed that on the expiry of the term of the lease, the lessee could get a renewed lease for a further term of five years on executing a fresh lease deed and on agreeing to the increased rent of Rs. 45 per month.

2. In C.R. Case No. 2028 of 1957 we are concerned with a similar plot of land

measuring about 3 1/2 cottas, and situated at No. I/H/3, Sura Second Lane, Beliaghata. In this case, the Petitioner Nirmal Chandra Ghose by executing a registered deed of lease on October 7, 1948, corresponding to Aswin 21, 1355 B.S. took lease of the land for the period of 4 years and 7 months beginning from Aswin 1355 B.S. and ending with the last day of Chaitra 1359 B.S. at the monthly rent of Rs. 17-8-0, and there was a similar condition in the lease deed that on the expiry of the term of the lease the lessee could take a renewed lease for fresh term of five years on executing a fresh lease deed and on agreeing to the increased rent of Rs. 35 per month.

3. In each case, on the expiry of the term of the lease, the lessee did not approach the landlord for a renewed lease at the increased rate of rent stipulated. The landlord served notice on the tenant of the each case stating that it was open to him to renew the lease for a period of five years by executing a fresh lease deed at the increased rate of rent, but the tenant in neither case responded. Thereupon, the landlord filed the two applications u/s 5 of the Thika Tenancy Act for ejectment under Clause (vi) of Section 3 of the Thika Tenancy Act, i.e., on the expiry of the term of the lease when there is a registered lease deed.

4. The tenants contested the applications, contending that the registered deeds of lease were executed after they had been inducted into the suit land, and the terms contained therein were not intended to be acted upon. There was a further defence that the tenants should be deemed to be in occupation of the suit lands as lessees for the fresh term of five years in exercise of the right of renewal of the lease, although fresh lease-deeds had not been executed. It was also averred that after the expiry of the original term of the lease the landlord had filed suits in the first court of Munsif, Sealdah, being Title Suits Nos. 1093 and 1094 of 1954, for realisation of arrears of municipal taxes payable by the opposite parties for the period ending with the 3rd quarter of 1954-55; that the original term of the leases expired on the last day of Chaitra 1359 B.S. i.e., on April 13, 1953; but the landlord had sought to recover arrears of municipal taxes up to the 3rd quarter of the years 1954-55, i.e., up to the December, 1954; and that since he had asked for recovery of the taxes and obtained decrees for the realisation thereof for a period after the expiry of the term of the original leases, it must be held that the landlord had consented to the tenants continuing as lessees by holding over, and therefore, the landlord could not sue on the plea that the term of the registered deeds of lease had expired.

5. The last defence, viz., that by instituting the suits for recovery of arrears of municipal taxes up to December, 1954, the landlord tacitly recognised the Petitioners as lessees even after the expiry of the original term of the lease, found favour with the learned Controller, and on that ground the learned Controller dismissed the applications for ejectment. The landlord filed appeals which were heard by Shri S.P. Chatterjee, Subordinate Judge, Alipore. The learned Subordinate Judge admitted into evidence certified copies of the plaints

of Title Suits Nos. 1093 and 1094 of 1954 showing that therein, even though suing for arrears of municipal taxes up to December, 1954, the landlord had expressly stated that he did not recognise the Petitioners as tenants after the expiry of the term of the original lease but treated them as trespassers. In view of that express recital in the plaints of the suits in question and in view of other evidence already before the Controller, the learned Subordinate Judge came to the conclusion that there had been no creation of new tenancies by holding over with the tacit consent of the landlord under the provisions of Section 116 of the Transfer of Property Act, and that the lease in each case had come to an end on the expiry of the original term mentioned in the registered deed of lease, and therefore the landlord was entitled to an order for ejectment. Accordingly, the learned Subordinate Judge allowed the appeal in each case and directed that the applications for ejectment be allowed.

6. Against that decision the tenants have filed these revisional applications. In the applications themselves, stress was laid on the ground that the learned Subordinate Judge had admitted additional evidence and relied on the additional evidence, viz., the copies of the plaints of Title Suits Nos. 1093 and 1094 of 1954, and it was contended that the learned Subordinate Judge had acted without jurisdiction in admitting such fresh evidence in contravention of the provisions in Order XLI, Rule 27 of the CPC Code. Mr. Jitendra Nath Guha, appearing for the Petitioners, has not however urged this point at all, and quite rightly, because the additional evidence is taken by the Appellate Court in a thika tenancy case, not Order XLI, Rule 27 of the CPC Code, but u/s 27(4) of the Thika Tenancy Act., which provides that the appellate court may not only admit fresh evidence but even hold personal inquiry for doing justice in the case. Thus in admitting the fresh evidence in the interest of justice the learned Subordinate Judge was acting within provisions of the law and not acting without jurisdiction.

7. The main point urged by Mr. Guha is that the municipal tax realised from a thika tenant is part of the rent and as the landlord after the expiry of the original term of the lease filed suits for recovery of municipal taxes for a period after the expiry of the term of the lease, it must be held that the landlord had practically asked for and obtained decrees for rent for a period after the expiry of the lease and thereby recognised the Petitioners as tenants; and he could therefore no longer seek to eject them on the ground that on the expiry of the original term of the lease they had become trespassers. So the point of consideration is whether the municipal taxes which are realised from thika tenants can be treated as rent. Mr. Guha has referred to the recital in the deeds of lease themselves, that 1/3rd of the quarterly municipal taxes assessed by the municipality would be paid monthly by the tenant of each case along with the rent, and that in default of regular payment the landlord would be entitled to damages at 25 per cent. both on the arrears of rent and arrears of municipal taxes. Mr. Guha has urged therefore that by the terms of the lease, the taxes were put on the same footing as the rent proper, and that therefore the taxes must be deemed to be part of the rent. But as pointed out by the learned Subordinate Judge, the taxes and the

rent for the land were mentioned in separate paragraphs of the lease deeds and they were all through kept separate. Although it was provided that 1/3rd of quarterly municipal taxes would be payable monthly along with the rent, there was no fixation of one consolidated rent including the taxes. Accordingly, I do not think that from the terms of the lease deeds it can be held that the municipal taxes were treated as part of the rent. Mr. Guha has referred to a decision of Rama Prosad Mukherjee, J. in *Tarakeswar Bysack Vs. Sakina Bibi*, . Therein his Lordship held that where the property is a part of a bustle which is assessed to municipal rates and the municipal rates are payable by the owner of the hut in addition to the cash money lawfully payable as rent of the land, the sum total of the two constitutes the consideration payable from time to time to the landlord by the tenant for obtaining the land in question, and therefore in calculating the arrears of rent due u/s 6 of the Thika Tenancy Act, it is necessary to include the amount of taxes payable by the tenant. I would, however, agree with the learned Subordinate Judge in holding that this decision did not purport to lay down the proposition generally that municipal taxes in such cases form part of the rent, but only that for the purpose of ascertaining the amount payable by the tenant in order to avoid an ejectment decree on account of default in payment of rent, it is necessary that the tenant should pay not only the arrears of rent proper but also the municipal taxes legally payable by him. His Lordship in the case cited pointed out that "rent" was not defined in the Calcutta Thika Tenancy Act, but it was provided that the terms not defined in the Thika Tenancy Act would have the same meaning as in the Transfer of Property Act or in the Bengal Tenancy Act. In Section 3, Clause (13) of the Bengal Tenancy Act rent is defined as follows:

Rent means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of use or occupational of the land held by the tenant; and in Sections 53-68 both inclusive, Sections 72-75 both inclusive, Chapter XIV and schedule III of the Act, rent includes also money recoverable under any enactment for the time being in force as if it was rent.

8. It is clear, therefore, that for different purposes, rent means different things under the Bengal Tenancy Act. For certain purposes it includes other money recoverable legally as rent, like road cess and public works cess, but for certain other purposes rent only means rent proper payable for the land without inclusion of the additional moneys legally recoverable for the land. Under the Calcutta Municipal Act, the owner of bustee lands has initially to pay the whole consolidated rate levied on the bustee, but Section 202 of the Calcutta Municipal Act, 1951, provides that the owner of the land may recover from the owner of each hut in the bustee half of the consolidated rate payable in respect of the portion of the land on which the hut stands and the entire consolidated rate payable in respect of the hut. Availing of this statutory provision it was provided in each of the lease deeds that whatever consolidated rate was recoverable from the tenant quarterly would be paid by him in monthly instalments along with the rent proper. The amount of the consolidated rate was not mentioned in the deeds of lease, because the consolidated rate assessed by the Corporation might vary

from time to time. Thus for the purpose of Section 6 of the Thika Tenancy Act, it might be quite proper to hold that the arrears of rent in default would also include the arrears of consolidated rate payable by the tenant: such arrears are payable by the tenant in order to avoid ejectment decree already passed, and it is natural to provide that the tenant should pay all the arrears due from him, but that does not mean that for all purposes, rent includes municipal taxes or the consolidated rate. Rent is the money fixed by contract payable periodically for the use and occupation of the land. The fact that the rent may be fixed under the present law by the court on an application for assessment of fair rent does not make any difference. Other statutory charges which are payable under any other law like the Municipal Act cannot in any way come under the designation of rent.

9. I hold, therefore, that the consolidated rate or municipal taxes which may be legally recovered from the tenant is not part of the rent, and that by seeking recovery of the consolidated rates for the period from April 14, 1953 to December, 1954, the landlord opposite party cannot be said to have asked for recovery of rent and thereby tacitly consented to the tenant holding over after the expiry of the original term of the lease. The certified copies of the plaints of Title Suit Nos. 1093 and 1094 of 1954 show that in para. 5 the Plaintiff expressly stated that the Plaintiff was seeking to recover arrears of taxes accrued due during the period of the lease, on the basis of the Defendant's liability created under the terms of the lease; and that subsequent arrears of taxes accrued during the period after the expiry of the lease was being claimed on the basis of his statutory liability created under the Calcutta Municipal Act. I have already referred to Section 202 of the Calcutta Municipal Act under which the owner of the land may recover from the owner of the hut standing on the land the consolidated rate which is in the first instance recovered from the owner of the land; for this purpose it does not matter whether the occupier or the owner of the hut is occupier as a trespasser or occupier as a lessee. In any case, the owner of the land is entitled to recover from the occupier the consolidated rate which in the first instance is recoverable by the Corporation from him. It is clear from the recitals in the plaints of the suits Nos. 1093 and 1094 of 1954 that the landlord expressly purported to treat the Petitioners as trespassers after the expiry of the term mentioned in the lease deeds, and though municipal taxes for a subsequent period were claimed, this was done on the basis of statutory liability and not under any liability accruing from the lease deeds themselves. It cannot therefore be said that there was any waiver on the part of the landlord or any recognition of the tenancy by holding over under the provisions of Section 116 of the Transfer of Property Act.

10. Mr. Guha has pointed out that in the plaints of the suits Nos. 1093 and 1094 of 1954 though the Plaintiff specified separately the arrears of taxes with damages due for the period of currency of the lease and the taxes and damages for the period subsequent to lease the Plaintiff still prayed for the declaration that both the amounts formed a first charge on the structures of the Defendant standing on the land, and the decrees passed by the Munsif show that decrees in

preliminary form for the entire claim was passed, and that in default of payment within 5 months it was provided that the Plaintiff might apply for the sale of the structures existing on the thika land of the two suits. Mr. Guha has urged that the declaration of charge on the property of the Defendants followed from the terms of the lease deeds and such charge could not be availed of after the lease had expired; but as the Plaintiff sought a declaration of charge even in respect of the arrears of taxes accrued after the expiry of the lease, it followed that he was availing of the terms of the lease even for the period after the expiry of the lease, and thereby tacitly recognising the continuance of the lease. It is true that under the statutory provisions of the Calcutta Municipal Act, the owner of the land though he may recover the consolidated rate from the occupier of the land, i.e., the owner of the huts situated in the bustees, cannot have a charge on the property. Section 253 which provide that the consolidated Tate is a first charge on the premises, is a provision in favour of the Calcutta Corporation itself, and it cannot be availed of by the landlord. The charge in the case only followed from the contract contained in the lease deeds; therefore on the expiry of the lease deeds the provision as to charge could not have effect. The Plaintiff therefore must be deemed to have acted inconsistently when he claimed to treat the Defendants as trespassers after the expiry of the lease, and to recover the consolidated rate accrued after the expiry of the lease under the statutory provisions of the Calcutta Municipal Act and at the same time claimed to have a declaration of a charge in respect of the amounts accrued after the expiry of the lease. The learned Subordinate Judge mentioned in his judgment that the order for creation of the charge was misconceived. I would hold that in view of the distinct averments in the plaints as to the status of the Defendants, the prayer for the declaration of the charge and the order declaring the charge for the amount of taxes which had accrued due after the expiry of the term of the lease, were both misconceived. But I do not think that on account of this mistake made by the Plaintiff and by the learned Munsif who decreed the suits, it can be held that the Plaintiff thereby must be deemed to have recognised the continuance of the leases. It is clear that the Plaintiff all along wanted to treat the Petitioners as trespassers after the expiry of the lease, and he was careful to state that the taxes due after the expiry of the lease were being sought to be recovered only under the statutory provisions of the Calcutta Municipal Act. Thus the Plaintiff's intention was never in doubt. Hence in spite of the mistake made in asking for a declaration of charge in respect of the entire amount of municipal rates which fell due, I agree that it cannot be said that the Plaintiff tacitly recognised the Petitioners as continuing to occupy the suit land as lessees by holding over; and therefore Section 116 of the Transfer of Property Act does not apply to the case and the landlord was therefore entitled to an order for ejectment under Clause (vi) of Section 3 taken with Section 5 of the Thika Tenancy Act.

11. Accordingly, the ejectment orders passed by the learned Subordinate Judge must be affirmed. Mr. Guha has finally urged that the Petitioners have erected structures on the land and have been occupying them from 1948 and that in the

circumstances they should be given sufficient time in which to vacate. I think that the prayer is a reasonable one and 6 months" time from this date may be allowed to the Petitioners to vacate the suit land in each case, on condition of depositing damages and taxes before the Controller during the period.

12. Accordingly, it is ordered that the Rules be discharged and the order of ejectment passed by the learned Subordinate Judge be affirmed, but the Petitioners be granted 6 months" time in which to vacate and the decrees shall not be executed before the expiry of the 6 months" from this date provided that damages at the original rates of Rs. 22-8-0 and Rs. 17-8-0 respectively and municipal taxes at one-third of the latest quarterly rates mentioned in the plaints of suits 1093 and 1094 of 1954 be deposited with the Controller month by month by the 15th of each following month, beginning from 15 Phalgun for the month of Magh 1366 B.S. In default of any such deposit the opposite party shall be entitled to execute the order forthwith. Let the order be communicated at once to the Controller concerned.

13. The parties shall bear their own costs in this Court.