

(1974) 03 CAL CK 0031
In the Calcutta High Court
Case No : A.F.A.D. No. 1188 of 1957

Shambhunath Pal and Others

APPELLANT

Vs

Indian Iron and Steel Co. Ltd.

RESPONDENT

Date of Decision : 13-03-1974

Acts Referred:

Transfer of Property Act, 1882 — Section 106, 110, 116

Citation : AIR 1975 Cal 194 : 79 CWN 95 : (1974) 2 ILR (Cal) 644

Hon'ble Judges : Sen Gupta, J;R. Bhattacharya, J

Bench : Division Bench

Advocate : M.N. Ghosh, S.P. Ghosh and Saurindra Nath Roy Choudhury, for the Appellant; P.N. Mitter and Ajoy K. Basu, for the Respondent

Final Decision : Dismissed

Judgement

R. Bhattacharya, J.—This second appeal has been directed against the judgment and the decree passed by the Additional District Judge, Burdwan in Title Appeal No. 56 of 1956 affirming substantially with a minor modification the decision dated 30th July, 1956, passed by Sri B. C. Das Gupta, Munsif, 1st Court, Asansol, in Title Suit No. 201 of 1953. The appellants are Shambhunath Pal and others, the heirs and legal representatives of one Chandrabinode Pal, who was the defendant in the original suit. The plaintiff-respondent is the Indian Iron and Steel Company Ltd.

2. In short, the case of the Indian Iron and Steel Co. Ltd., hereafter referred to as the Company, was that Chandrabinode Pal took a monthly lease of the suit land by executing a deed at a monthly rental of Rs. 7/8/- according to English calendar month for a period of one year starting from the 1st of January, 1939 till the end of the English calendar year 1939. It was stipulated in that deed amongst other things that Chandrabinode would not be entitled to make any structure except kutcha one for the purpose of a shop. After the expiry of the period of lease for a year, Chandrabinode held over the tenancy and continued possession as a monthly tenant in terms of the lease executed previously by him.

The plaintiff, on the allegation for the improvement of the Burnpur Market, wanted to take possession of the suit land and therefore, served a notice to quit upon Chandrabinode with the expiry of the month of December, 1950. In the plaint the plaintiff Company was ready and willing to pay reasonable compensation to the defendant. The plaintiff wanted a decree for eviction amongst other reliefs.

3. To be brief, the case of the defendant Chandrabinode was that he did not execute any lease as mentioned by the plaintiff and that he was a tenant under the plaintiff with all rights to make buildings on the land and enjoy the land as he wished. The defendant further stated that with the knowledge and consent of the plaintiff he made pucca structures on the suit land and as such, he could not be evicted according to the provisions of the West Bengal Non-Agricultural Tenancy Act.

4. The learned Munsif on hearing the parties and on evidence rejected the plea of the defendant and found that the notice to quit was legal and validly served upon the defendant and that the story of the defendant that he had constructed pucca structures on the suit land with the consent and knowledge of the plaintiff was not proved. In the result the learned Munsif decreed the suit. Against that decision Chandrabinode took an appeal to the learned District Judge and it was finally disposed of, as already indicated, by the Additional District Judge, Burdwan, who held that the tenancy of the defendant was validly terminated and that the notice was quite legal and valid. He further held that the defendant's plea that he constructed the pucca structure on the suit land with the knowledge and consent of the plaintiff was unacceptable. He, therefore, dismissed the appeal with a slight modification that the trial court decision should be confirmed subject to the payment of compensation payable by the plaintiff as indicated in the judgment. Against that decision in the Title Appeal the instant second appeal has been preferred.

5. Mr. Ghosh, learned Advocate appearing on behalf of the appellants, canvassed two points challenging the decisions of the courts below. The first point is that the learned courts below ought to have held on the evidence that the plaintiff-company had the knowledge about the construction of the pucca structure on the suit land and that the defendant was entitled to get protection against eviction u/s 7(5) of the West Bengal Non-Agricultural Tenancy Act. The second ground put forward is that the learned courts below should have held that the notice to quit was invalid in law and, therefore, the suit ought to have failed.

6. Mr. Mitter appearing on behalf of the respondent-company has opposed the contentions.

7. With regard to first point urged on the side of the appellants, it has been pointed out that the first appellate Court held "it is quite likely therefore that the plaintiff's Officers were aware of the existence of these pucca constructions." Mr. Ghosh though not very confident in his address to this Court on this point has

submitted that when the learned first appellate Court below held that it was likely that the plaintiff's officers were aware of the pucca construction, it should have been held that the defendant was not liable to be evicted due to this knowledge of construction in view of the provision of Section 7 (5) of the West Bengal Non-Agricultural Tenancy Act. In this connection our attention has been drawn to the decision of Dip Narain Singh v. Kanai Lal Goswami reported in (1960) 64 CWN 293. The relevant portion on which Mr. Ghosh depends will appear at page 300 in second column wherein it is stated, "We also agree with the lower appellate Court that, for the application of Sub-section (5) of Section 7, the erection or the existence and continuance of the pucca structures must, at least, be shown to have been with the knowledge of the landlord even though it was or might have been against the landlord's will". Section 7 (5) of the West Bengal Non-Agricultural Tenancy Act says that the tenant will get protection "if the landlord has allowed pucca structures to be erected on the non-agricultural land". The question relevant for determination is whether in the instant case the plaintiff company allowed the tenant to erect pucca structures. The meaning of the word "allow" is very much important Mr. Ghosh wants us to be convinced that in view of the quotation just made from the case of Dip Narain that mere knowledge of the construction will be sufficient for the defendant to claim protection against eviction. We are afraid, if the judgment is taken as a whole, this solitary sentence cannot be construed to mean what Mr. Ghosh wants to argue. First of all in the case of Dip Narain this Court did not accept the evidence of the defendant that there was any case made out by the defendant to get protection. The Court accepted the findings of the trial court which rejected the plea of the defendant. Thereafter it is stated that to prove protection "at least" the knowledge of the landlord about the construction has got to be proved and therefore, it has been indicated thereafter whether that knowledge was or might have been against the landlord's will is to be considered later. From the reading of the entire judgment along with this portion we have no doubt to hold that it was meant in the judgment that to prove protection the tenant was to prove that the landlord allowed pucca structures. Now the word "allow" certainly implies knowledge of pucca structure and therefore the first and essential ingredient to prove protection or allowance from the side of the landlord is that the landlord had knowledge about the construction. That should be the first ingredient in the matter of proving allowance or permission. If that knowledge is proved then the question will arise whether that knowledge was or was not with the will to allow or not to allow pucca construction. If the interpretation as Mr. Ghosh made of this decision is accepted, then the question will arise, "If a landlord staying at Banaras is informed by a person that his tenant in 24 Parganas has constructed a pucca structure, will that be sufficient for the defendant to take up the plea that because the landlord had knowledge about the construction, therefore, he was entitled to get protection?" Again if the tenant constructs pucca structure during night against the will of and protest by the landlord, it is unthinkable to suggest that mere knowledge of the landlord about the said construction would mean that he allowed the same. Certainly this proposition is impracticable and absurd.

We hold that the meaning as ascribed by Mr. Ghosh is unacceptable to us because the findings of the trial court were accepted and in that position that Bench did not enter upon a thorough discussion as to the meaning of the word "allow" or ingredients of that Section 7 (5) of the Act. The portion of the judgment relied upon by Mr. Ghosh is but a passing remark and not any decision.

8. In this connection our attention has been drawn to another unreported decision of a Division Bench of this Court presided over by Das Gupta J. sitting with Bachawat J., as their Lordships then were, in the case of Narayan Chandra Sen v Sripati Charan Kumar (S. A. No. 425 of 1962) (Cal.). There the question arose as to the exact meaning of the words "allow pucca structures to be erected". There it was held that the landlord in that case must allow or permit the tenant to construct at the time of erection or before it. The word "allow" does not mean any permission subsequent to the erection because in the statute the words "to be erected" are there. The question of permission or allowing after the construction, therefore, does not arise. Another case has been placed before us. That is the case of Pundarikaksha Basu and Others Vs. Sardar Chanda Singh and Others, . It was, of course, a Single Bench decision. P. Chatterjee, J. in that case in connection with the construction of Section 7 (5) of the West Bengal Non-Agricultural Tenancy Act consulted Stroud's Judicial Dictionary and also discussed the point at length to ascertain what was really the meaning of the word "allow" in Section 7 (5) of the Act. There Chatterjee, J. has held, "..... I have further held that the word "allow" involved some positive sanction by the landlord i.e. the landlord must state positively either directly or indirectly that he would allow the tenant to raise pucca structures". In S. A. No. 425 of 1962 (Cal.) already referred to, the Court held, "On the finding arrived at by the learned court of appeal that the landlord allowed the pucca structure to be retained it is not therefore possible to agree with his further conclusion that the provisions of Section 7 (5) will apply. In order that those may apply, it is necessary for the tenant to prove that quite apart from the question of landlord allowing him to retain structure the landlord did allow the structures to be erected". On consideration of the scheme of Section 7 (5) of the West Bengal Non-Agricultural Tenancy Act and the decisions placed before us we are of the opinion that the word "allow" means some positive sanction or permission or sufferance, "Allow" means according to Dictionary "Permit" It implies some sort of volition, that is to say, some gesture or movement of the mind, may be direct or indirect to indicate the mind of the subject. Mere acquiring of knowledge about erection of the pucca structure through information or otherwise is not allowing pucca building to be erected, In the section we get "has allowed pucca structure to be erected". It clearly shows that the permission and hint to that effect must come before actual construction of pucca structure or at least during construction but before it is completed. Knowledge about the structure at the time of erection or after such construction or mere seeing of the structure cannot by itself be stated to be allowing such pucca structures to be erected. Some sort of encouragement from the landlord must come before or at the time of erection of pucca structure by

the tenant. Otherwise it cannot be said that the landlord allowed the tenant to erect pucca structure as contemplated in Section 7 (5) of the West Bengal Non-Agricultural Tenancy Act. "Allow" does not simply mean non-interference. It involves some kind of mental operation helpful or conducive to some act, here "erection of pucca structure during its operation or previous to such operation". Whether the landlord has allowed pucca structure or not will depend on facts and circumstances in each case. In the instant case there is no evidence that the plaintiff company or any of its competent and duly authorised officers had any knowledge about the construction. The story of allowing of pucca structure has been disbelieved by both the courts below and we accept that the said findings are quite correct. We, therefore, overrule the first contention urged from the side of the appellants.

9. Let us now deal with the second point canvassed before us by Mr. Ghosh on the question of notice to quit. Mr. Ghosh has submitted that in the instant case the notice to quit was with the expiry of English calendar month. His submission is that in view of Section 110 of the Transfer of Property Act the notice to quit ought to have directed the defendant to vacate the suit premises on the expiry of the first day of the following month. In this connection the learned Advocates on both the sides have placed several decisions before us. First of all, Exhibit 1, the deed of lease, executed in the year 1939 is to be looked into. It is clearly stated by the parties that the monthly tenancy will start from 1st of January, 1939 for a period of one year ending with the last day of the year 1939. Clearly, therefore, the intention of both the parties was that the period of one year of the tenancy would start from the 1st of January, 1939 and last till the expiry of 31st December, 1939, The question, therefore, arises whether Section 110 of the Transfer of Property Act is applicable. We will first discuss the case law referred to us in this connexion. The first case on this point is the case of AIR 1932 279 (Privy Council) . This is a Privy Council decision. In this case Section 110 of the Transfer of Property Act was considered. Now Section 110 speaks about the duration of the lease and the computation of the lease period. Section 110 of the Transfer of Property Act runs as follows :

"Where the time limited by a lease of immovable property is expressed as commencing from a particular day, in computing that time such day shall be excluded. Where no day of commencement is named, the time so limited begins from the making of the lease.

Where the time so limited is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day from which such time commences.

Where the time so limited is expressed to be terminable before its expiration, and the lease omits to mention at whose option it is so terminable, the lessee, and not the lessor, shall have such, option".

The case of Binoy Krishna Das was one of holding over the tenancy. In that case

there was no clear intention of the party as to the starting point and the end of the period of lease and it was held that the first date should be the last date of the period of lease in the matter of computation. We are afraid, the principle enunciated there is not applicable in the present case. We got in our case that both the parties agreed that the tenancy for one year would extend from 1st day of January to the last day of December, 1939 in computing the period of lease. Therefore, there is no necessity to add another day after the expiry of 31st December, 1939 excluding the 1st January, 1939. The next case referred to us is the case of *Susil Chunder Neogy and Others Vs. Birendrajit Shah*, . This is a decision of a Single Bench of this Court presided over by Buckland, J. There was a written lease for three years from 1-4-1918. There was also holding over by the defendant. There is no indication in the lease as to when actually or on which date the lease will expire. Consequently, in view of Section 110 of the Transfer of Property Act. it was held that the period of lease for three years expired at midnight on 1-4-21. Now after the holding over the defendant was served with a notice to quit and it was held in that case, "Holding over as monthly tenants, each month of their tenancy expired at midnight on the 1st of the succeeding month". Clearly the tenancy after holding over on the expiry of the period of lease becomes a monthly tenancy and in that case Section 110 of the Transfer of Property Act does not apply. This decision though cited by Mr. Ghosh, in our view, goes against Mr. Ghosh. It has been held in this case that the holding over tenancy did not require the first day of a new tenancy to be excluded to terminate this tenancy on the expiry of the second of every succeeding month.

10. The next case that has been brought to our notice is *Deb Das Lala v. Abdul Gani*, reported in 42 Cal WN 443 = (AIR 1938 Cal 358). This is a Single Bench decision of this Court. There was a lease for 7 years commencing from 1st of Baisakh, 1318 B. S. taut it was expressly limited upto the year 1324 B. S. Here the lease expired on the last day of 1324 B.S. and not on 1st Baisakh, 1325 B. S. There was holding over of the tenancy and it was held that after the holding over monthly tenancy commenced on the 1st Baisakh and that the notice terminating the tenancy on the last day of Ashar was quite valid. Mr. Ghosh for the appellants has referred us to another case, *Charu Chandra Ghosh v. Bankim Chandra Sett* reported at page 1115 of 42 Cal WN. It was also a decision of a Single Bench of this Court. Ameer AH J. in this case considered the case of *Sushil Chunder Neogy v. Birendrajit Shaw* decided by Burkland J. as reported in 38 Cal WN 782 = (AIR 1934 Cal 837). That decision of Buckland J. was followed in the case of *Charu Chandra Ghosh*. The next case that has been brought to our notice is *Calcutta Landing and Shipping Co. Ltd. v. Victor Oil Co. Ltd.* reported in 48 Cal WN 76 = (AIR 1944 Cal 84). Here, there was no written lease and the possession of the property in question was taken by the tenant on 1-6-36. Notice to quit was given to terminate the tenancy with the expiry of the 1st December, 1950. In that case Sections 106 and 110 of the Transfer of Property Act were considered. In this decision by the Division Bench two separate judgments were delivered--one by Rau J and the other by Mukherjea J. There, Section 110 of the Transfer of

Property Act was considered. Of course a question arose whether that section was applicable in cases of oral lease or written lease. Rau J. was of the opinion that the section referred to both oral and written leases; whereas Mukherjea J. was of the opinion that it referred to written lease. He, however, found that the point was not free from doubt. Ultimately it was held by Rau J. that the tenancy was from month to month and relying on the General Clauses Act it was found that the month meant in that case month under British calendar and, therefore, according to Rau J. the notice to quit should have ended with the English calendar. Accordingly, the notice was bad. Mukherjea J. held, "As no time was fixed by the lease itself, there could be no question of expressing it to begin from a particular date, and Section 110 of the Transfer of Property Act has in these circumstances got no application whatsoever". In this case, according to him, the tenant possessed from 1st June, 1936 and rents had been paid all along according to the month of English calendar and there was nothing to say that the first day of June was intended to be excluded from the month of tenancy. Accordingly, it was held that the 1st day of the tenancy should not be excluded and there was no question of computation of the lease.

11. The next case for consideration is Kedar Nath v. Ramendra Nath reported in 50 Cal WN 306 = (AIR 1946 Cal 460). It is also a Single Bench decision and the Bench was presided over by Henderson J. Here Section 110 of the Transfer of Property Act was considered. Of course, according to Henderson J., Section 110 relates to both oral and written lease and it was further held that as no time was limited by the lease Section 110 did not apply. He considered the decision in 48 Cal WN 76 = (AIR 1944 Cal 84) and agreed with Mukherjee J. on the principle enunciated in that case. There is another case in (1946) 50 Cal WN 461. That is the case of Usharani Debi v. The Research Industries Ltd. In this case also Section 110 of the Transfer of Property Act came to be considered and Gentle J. considered several cases including cases reported in 37 Cal WN 1 = (AIR 1932 PC 279); 42 Cal WN 1115 and 48 Cal WN 76 = (AIR 1944 Cal 84) and he held. "The provisions of Section 110 apply only to a lease in which the period of its tenure is expressed. In my view. Section 110 does not apply to a monthly tenancy....."

12. During argument two other cases were referred to. One is The Indian Iron and Steel Co. Ltd. Vs. Baker Ali, and another is Bhawanji Lakhamshi and Others Vs. Himatlal Jamnadas Dani and Others, . The first case was a decision by the Special Bench of this Court There, the question of computation of the year of tenancy in West Bengal Non-Agricultural Tenancy Act was considered and it was held. "..... where we have to construe "a year of the tenancy", the starting point would similarly be, so far as the first year is concerned, the date of commencement of the tenancy according, again, to its own calendar, and, so far as succeeding years are concerned, the dates of respective anniversaries of the said date of commencement of the tenancy" and ultimately the answer to the question referred to the Special Bench was given in the following terms :--

"That, u/s 9(1)(b)(iii) of the West Bengal Non-Agricultural Tenancy Act, 1949, in the absence, of course, of a contract to the contrary "a year of the tenancy" means a year or a period of 12 months according to the calendar of the particular tenancy, starting with its date of commencement or any anniversary thereof."

This decision was ultimately confirmed by the Supreme Court in the case which has been reported in *Indian Iron and Steel Co. Ltd. Vs. Biswanath Sonar*, . In the other case reported in *Bhawanji Lakhamshi and Others Vs. Himatlal Jamnadas Dani and Others*, the question about holding over of tenancy was considered and in that case it was held that the holding over as indicated in Section 116 of the Transfer of Property Act after the expiry of the fixed period of lease on the assent of the landlord to the continuance of possession of the property under the previous tenancy, will create a new tenancy. That is to say, after the expiry of the fixed lease, by new agreement, directly or indirectly the parties could assent to a new tenancy. Practically speaking, in our view, a tenancy held over referred to in Section 116 means continuation of possession of the demised property under a new tenancy created by the parties after the expiry of the previous tenancy in the same terms and conditions as far as practicable if not contrary to the intentions of the parties. In this case, as we have already noted, the tenancy was monthly according to the lease (Ext. 1) and the parties intended that the lease should continue for a year commencing from the 1st of January, 1939 to the last date of December, 1939. It shows that the monthly tenancy would be from the 1st of every month and after the holding over, it was clear that the defendant continued possession on the basis of a tenancy according to the same terms of tenancy and the tenancy was to take effect from the 1st January, 1940 and for every month. The parties, there is no doubt, acted according to that tenancy running month to month according to the English calendar. The new tenancy after holding over is to be deemed to have commenced on the same day of the year as in the original lease after its expiry, that is to say, here the tenancy started from 1st of January, 1940. In our view, therefore. Section 110 of the Transfer of Property Act relied upon by Mr. Ghosh is not applicable in the instant case and the tenancy being month to month according to English calendar, the notice to quit terminating the tenancy as given in this case ending with the last day of the month was quite valid and legal. In this view of the matter, we find no substance in the second contention of Mr. Ghosh as well.

13. Mr. Ghosh for the appellants has prayed that in case the appeal is dismissed his clients may be allowed some time to vacate the suit premises. Considering the circumstances of this case we allow the appellants to vacate the suit premises on or before the last day of August, 1974, failing which the landlord-respondent shall be at liberty to execute the decree according to law.

14. No other points have been urged on the side of the appellants.

15. In the result, the appeal is dismissed with costs, hearing fee is assessed at five gold mohurs. The judgment and the decree of the appellate court below are

hereby affirmed.

Sen Gupta, J.

16. I agree.