
(1982) 03 CAL CK 0047
In the Calcutta High Court
Case No : L.P.A. No. 53 of 1972

Smt. Hironmoyee Debi and Others

APPELLANT

Vs

Somendra Chandra Nandy and Others

RESPONDENT

Date of Decision : 05-03-1982

Acts Referred:

West Bengal Premises Tenancy Act, 1956 — Section 13(2), 16(2)

Citation : AIR 1982 Cal 391 : 86 CWN 559

Hon'ble Judges : B.C. Chakrabarti, J; Anil K. Sen, J

Bench : Division Bench

Advocate : Amarendra Nath Basu, for the Appellant; Amarendra Narayan Bagchi and Tarak Nath Roy, for the Respondent

Final Decision : Dismissed

Judgement

Anil K. Sen, J.—This is an appeal under Clause 15 of the Letters Patent and is directed against the judgment and decree dated March 15, 1971 (reported in) Bholanath Chatterjee and Another Vs. Somendra Chandra Nandi and Others, , passed by our learned brother S. K. Dutta, J., thereby dismissing an appeal from appellate decree No. 218 of 1964 preferred by defendants Nos. 3 and 4 in a suit for eviction, The said defendants are the appellants now before us. The short point which arises for our consideration in this appeal is as to whether the said defendants who have been found to be in occupation of different parts of the suit premises as sub-tenants since before the West Bengal Premises Tenancy Act, 1956 but who had not given any notice of such sub-tenancy u/s 18(2) of the said Act, would be entitled to protection against eviction,

2. The respondents Nos. 1 and 2 before us (hereinafter referred to as the plaintiffs) instituted Title Suit No. 251 of 1957 for eviction against their tenant, the respondent No. 3 before us (hereinafter referred to as the defendant No. 1) on two fold grounds of default and wrongful subletting. In this suit the present appellants defendants Nos. 3 and 4 (hereinafter referred to as the said defendants) were made parties as they claimed to be sub-tenants in respect of

the suit premises though they had not given any notice of their sub-tenancy u/s 16 (2) of the said Act.

3. In the suit two sets of written statements were filed -- one on behalf of the defendant No. 1 and the other on behalf of the said defendants. The defence of the defendant No. 1 was struck off under the provision of Section 17 (3) of the said Act and the suit was contested by the said defendants, They claimed themselves to be sub-tenants -- the sub-tenancy in their favour being created by the erstwhile tenant since before 1956 with the consent and knowledge of the plaintiffs and, as such, they are entitled to protection against eviction.

4. The two courts below concurrently found that the said defendants came to occupy the suit premises as sub-tenants since before the West Bengal Premises Tenancy Act, 1956, and that again to the knowledge of the plaintiffs and their employees. But as the said courts further found that these defendants had failed to comply with the mandatory provision of Section 16 (2) of the said Act, they were not entitled to any protection against eviction under the provision of Section 13 (2) of the said Act, which protects only such subtenants as had given notice of their sub tenancies under the provision of Section 16 of the said Act, The two courts thus concurrently decreed the plaintiffs' suit against all the defendants including the said defendants and they preferred the above second appeal to this court. Our learned brother concurred with the view expressed by the two courts below and dismissed the second appeal. The said defendants, however, obtained leave under Clause 15 of the Letters Patent and on the basis thereof the present appeal has been preferred by them. The material issues of fact being concluded by the concurrent findings of the courts below, the only point for our consideration now is as to whether under the law the said defendants can claim any protection against eviction by virtue of their position as sub-tenants under the defendant No. 1.

5. Mr. Bose appearing in support of this appeal has raised two points. In the first place it has been contended that the objects of a notice u/s 16 (2) of the Act being one to apprise the landlord of the existence of the sub-tenancy that was otherwise fulfilled upon the findings of the courts below that the plaintiffs had due knowledge of the existence of such sub-tenancy since before the 1956 Act, Hence, according to Mr. Bose irrespective of whether a notice u/s 16 (2) of Act was served on the landlord or not, the said defendants are entitled to protection u/s 13 (2) of the said Act, Alternatively, it has been contended by Mr. Bose that in view of the amended provision of Section 40 of the said Act, the said defendants are entitled to protection against eviction under the provision of Section 13 (2) of the W.B. Premises Rent Control Act, 1950 (hereinafter referred to as the Act of 1950). Both the points thus raised by Mr. Bose have been strongly contested by Mr. Bagchi appearing on behalf of the plaintiffs/respondents,

6. So far as the first point raised by Mr. Bose is concerned, Section 13 (1) of the said Act, in Clause (a) contemplates that a tenant is liable to be evicted where he

transfers, assigns or sublets in whole or in part the leasehold premises without the previous consent in writing of the landlord. Section 13 (2), however, provides as follows :

"(2) Sub-tenants, if any, referred to in Section 16 who have given notice of their sub tenancies to the landlord under the provision of that Section shall be made parties to any suit or proceedings for the recovery of possession of the premises by the landlord :

Provided that except in cases covered by Clause (f) or Clause (g) of Sub-section (1), no decree or order for ejectment shall be passed against any such sub-tenant unless any of the grounds mentioned in Clauses (b) to (e) and (h) apply to him."

7. On the terms of Sub-section (2) of Section 13 as aforesaid, the legislature had made it incumbent for the sub-tenants to give notice of their sub-tenancies in order to be entitled to claim protection thereunder. In our view, no court can dispense with fulfilment of such a statutory requirement by taking the view that since the landlords were aware of the sub-tenancy it is immaterial whether a notice under Sub-section (2) of Section 16 of the Act had been given or not. To apprise the landlord of such sub-tenancy is not the only object behind the provision in Section 16. Had it been so Sub-section (1) of Section 16 would not have provided that even where a subletting is made with the consent of the landlord in writing after the Act, such a sub-tenant also is to give notice of such subletting in the manner prescribed. The more important object behind the provision is to render the issue of subletting whether pre-Act or post Act uncontroversial so that none can set up a frivolous claim of subletting when; he has not given any notice nor can a landlord who has been served with such a notice wrongfully deny the subletting. In cases of pre-Act subletting Sub-section (3) again goes on to provide that where such subletting is without any consent in writing of the landlord and the landlord denies to have given any oral consent the Controller shall on an application made to him in this behalf either by the landlord or the sub-tenant within two months from the date of receipt of the notice by the landlord or the issue of the notice by the sub-tenant as the case may be by order declare that the tenants interest in so much of the premises as has been sublet shall cease and that the sub-tenant shall become a tenant directly under the landlord. Thus in cases of pre-Act subletting where there is no consent of the landlord in writing, the statute made a further provision for determination of any dispute regarding such sub-tenancy being with or without the consent of the landlord by the Controller and the landlord's right to dispute the sub-tenancy under Sub-section (3) is dependent upon service of the notice on him. The object of Section 16, on the whole was to provide a scheme and a machinery to render it certain as to who are the subtenants that would be entitled to relief under the other provision of the Act, namely, Section 13 (2) thereof. Such being the legal position, in our view, our learned brother S. K. Dutta, J., and so also the courts below were right in their views that in the

absence of any notice given u/s 16 (2) of the said Act, the pre-Act sub-tenants like the said defendant are not entitled to the protection u/s 13 (2) of the said Act. The first point raised by Mr. Bose, therefore, must fail and is overruled.

8. We now proceed to consider the second point raised by Mr. Bose. According to Mr. Bose, unlike Section 14 of the present Act, there was no statutory bar to sub-letting under the provisions of the Act, of 1950 by a tenant of the first degree. Section 13 (2) of that Act further provided that "where any premises or any part thereof have been or has been sublet by a tenant of the first degree.....if the tenancy of such tenantis lawfully determined otherwise than by virtue of a decree. In a suit obtained by the landlord by reason of any of the grounds specified in Clause (h) of the proviso to Sub-section (1) of Section 12, the sublessee shall be deemed to be a tenant in respect of such premises or part, as the case may be, holding directly under the landlord of the tenant whose tenancy has been determined, on terms and conditions on which the sub-lessee would have held under the tenant if the tenancy of the latter had not been so determined." According to Mr. Bose this provision of the Act of 1950 confers a right upon a sub-tenant like the said defendants to be deemed to be a tenant directly under the landlord in the event there is a decree for eviction against the original tenant as in the present case not based on a ground contemplated by Clause (h) to the proviso to Sub-section (1) of Section 12 of the Act of 1950. Mr. Bose contends that such a right has been saved by the amended provision of Section 40 of the said Act of 1956. Reliance is placed upon Sub-section (2) of Section 40 which reads as follows :

"Notwithstanding the repeal of the said Act (a) any proceeding pending on 31st day of March 1956 may be continued, or

(b) any proceeding or remedy in respect of any right, privilege, obligation, liability, penalty, forfeiture or punishment under the said Act and relating to the period before such repeal may be instituted or enforced as if the said Act had been in force and had not been repealed or had not expired."

According to Mr. Bose when the said defendants had a right under the Act of 1950, to be deemed to be tenants directly under the landlords on lawful determination of the tenancy in favour of defendant No. 1 otherwise than by virtue of a decree for eviction obtained by reason of the grounds specified in Clause (h) to the proviso of Section 12 (1) of the 1950 Act, the necessary proceeding or the remedy provided in the said Act is saved by Clause (b) of Sub-section (2) of Section 40 of the said Act of 1956. Reliance is placed by Mr. Bose on a Bench decision of this court in the case of Ram Khilan Das Vs. Sm. Radharani Dasi and Others, .

9. On a careful review of the legal position we are, however, unable to accept the above contention raised by Mr. Bose, Since the Act repealed was itself a temporary statute the legislature instead of relying upon the usual saving clause as contained in Section 4 of the Bengal General Clauses Act, incorporated a

special saving clause in Sub-section (2) of Section 40 of the said Act. It was pointed out by the Special Bench of this Court In the case of Tarak Chandra Mukherjee and Others Vs. Ratan Lal Ghosal and Others, that the object of introducing such a saving clause is to save pending proceedings and authorise new institutions for the enforcement of rights and liabilities accrued under the Act of 1950 notwithstanding the repeal or the expiry of that Act. Section 40 (2) (b), therefore, intended to keep alive such of the provisions of the Act of 1950 as provided for proceedings or remedies In respect of any right, privilege, obligation, liability, penalty, forfeiture or punishment which accrued or were incurred under the Act of 1950 for the limited purpose of enforcing such rights, privileges, obligations etc. This is clear on the language of the clause itself when it refers to "any right, privilege, obligation, liability, penalty, forfeiture or punishment under the said Act and relating to the period before such repeal". On the facts of the present case, we fail to appreciate what right had accrued in favour of the appellants under the Act of 1950 and before its repeal and what are the provisions thereof which the appellants can avail of for enforcement of any such accrued right. It may be that under the provisions of the proviso to Sections 12 (1) (c) and 13 (2) of the Act of 1950 a sub-tenant under a tenant of the first degree would become a tenant directly under the superior landlord when the tenancy in favour of the tenant of the first degree is lawfully determined otherwise than by virtue of a decree in a suit obtained by the landlord by reason of any of the grounds specified in Clause (h) of the proviso to Sub-section (1) of Section 12. But such a right did not accrue in favour of or vest in the sub-tenant on the subletting itself but was contingent upon a lawful determination of the tenancy in favour of the tenant of the first degree and obviously having regard to the other provisions of the Act of 1950. Undisputedly in the present case the tenancy in favour of the appellants landlord, that is the tenant of the first degree (as contemplated by the Act of 1950) was not so determined when the Act of 1950 was in force. It was determined only by a decree obtained by the landlord under the provisions of the new Act, viz., the said Act of 1956, long after the repeal of the Act of 1950. In that view, it cannot be said that any right under the proviso to Section 12 (1) (c) or Section 13 (2) of the 1950 Act did at all accrue in favour of the appellants on the date that Act was repealed so that the provisions of Section 40 (2) of the said Act could be invoked for initiating any proceeding for enforcement of such a right.

10. Strong reliance is placed by Mr. Bose on a Bench decision of this court in the case of Ram Khilan Das Vs. Sm. Radharani Dasi and Others, which no doubt lends some support to the contention of Mr. Bose. We have carefully read the said decision more than once but with due respect to the learned Judges it appears to us that they have not given any independent reason of their own when they held, "The sub tenancy in question did not cease and rights and obligations of sub-tenants u/s 12 (1) (c) and Section 13 (2) of the 1950 Act remained unimpaired", but appears to have held as such approving the decision of a learned single Judge on the point at issue rendered in the case of Samad

Mistri v. Md. Omed, (unreported judgment in C. R.No. 1992 of 1974). In the case before the learned single Judge the point at issue, however, was not the same. In Samad's case the decree for eviction against the tenant of the first degree was one passed in terms of the provisions of the Act of 1950 which was held to be applicable to such a suit. The determination of the tenancy in favour of the tenant of the first degree having been made under the provisions of the Act of 1950, it was held by the learned single Judge that the right u/s 13 (2) of the Act of 1950 vested in the subtenant. The fact that in the said case the tenancy in favour of the tenant of the first degree was lawfully determined under the provisions of the Act of 1950, is a point of important difference which was unfortunately overlooked by the learned Judges deciding the case of Ram Khilan Das when they thought that the point raised before them was the same as was raised before the learned single Judge. Though normally we would have been bound by the Bench decision as in the case of Ram Khilan Das, we do not feel ourselves so bound because the said decision is based upon non-consideration of the Special Bench decision referred to hereinbefore which according to us clearly explains the effect and implication of Section 40 (2) of the said Act and which we prefer to follow in deciding the point.

11. In the result, both the points raised by Mr. Bose in support of this appeal fail, the appeal fails and is dismissed. There will be no order as to costs.

B.C. Chakrabarti, J.

12. I agree