
(2008) 09 CAL CK 0063
In the Calcutta High Court
Case No : S.A. No's. 191 and 192 of 1991

Smt. Monobala Karmakar and Sri Haladhar Chowdhury	APPELLANT
Vs	
Smt. Snehalata Dhar	RESPONDENT

Date of Decision : 09-09-2008

Acts Referred:

Calcutta Thika and Other Tenancies and Lands (Acquisition and Regulation) Act, 1981
— Section 3(8), 9
Calcutta Thika Tenancy Act, 1949 — Section 10, 2(5), 3, 3(1), 5
West Bengal Premises Tenancy Act, 1956 — Section 13, 13(1), 13(6), 17(1), 17(2)

Citation : (2008) 4 CALLT 165

Hon'ble Judges : Partha Sakha Datta, J

Bench : Single Bench

Advocate : Sadananda Ganguly and Subir Hazra, for the Appellant; Ram Prakash Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

Partha Sakha Datta, J.—The two second appeals are being disposed of by a common judgment and order since subject matter of the two suits is eviction of the two defendants by a common plaintiff from two portions of one and the same premises.

2. Title Suit No. 496 of 1982 was instituted against one Haladhar Chowdhury alleged to be a tenant under the Plaintiff Smt. Snehalata Dhar in respect of a room with brick built walls and roofed by tiles with a verandah and a kitchen with common user of bathroom and privy at the premises No. 50/H/13, Chaulpatty Road, Kolkata - 10. He committed default in payment of rent. The suit was on the grounds of default, of reasonable requirement of the premises by the plaintiff and of committing annoyance and nuisance by the defendant and also of damage of the suit properties. Learned Munsif, 1st Court, Sealdah decreed the suit on 4th September, 1986. The defendant Haladhar Chowdhury preferred appeal being Title Appeal No. 875 of 1986 but the Additional District Judge, 5th Court, Alipore by judgment and decree dated 9th February, 1989 dismissed the appeal and

confirmed the decree of the learned Trial Court. The Second Appeal No. 192 of 1991 arises out of the judgment and decree of the First Appellate Court as said above affirming the judgment and decree of the learned Trial Court.

3. The same plaintiff Smt. Snehalata Dhar instituted Title Suit No. 497 of 1982 against another tenant i.e. Smt. Mono Bala Karmakar on the self-same grounds for her eviction from one room with similar facilities as was available to the other tenant of the same premises. Learned Munsif, First Court, Sealdah by judgment and decree dated 29th September, 1986 decreed the suit against which appeal was preferred by Smt. Mono Bala Karmakar and the same learned Additional District Judge who disposed of the other appeal also disposed of this appeal by dismissal decree dated 9th February, 1989. The Second Appeal No. 191 of 1991 arises out of the First Appellate Court's Judgment and decree of the learned Trial Court.

4. The points on which the two appeals have been heard are as follows:

a) Whether the plaintiff was legally competent to institute the suits within two years from the date of her purchase which was 1st of October, 1980.

b) Whether in view of amendment of the Calcutta Thika Tenancy Act which came into effect from 2nd November, 1981 the plaintiff can be said to be a thika tenant under the amended Act.

c) Whether in view of the decision in B.P. Khemka Pvt. Ltd. Vs. Birendra Kumar Bhowmick and Another, the defendant can be said to be the defaulter.

d) Whether the notice was legal and valid.

5. The plaint version in both the suits is the same. It is that the plaintiff purchased more or less 1 cottah 4 chittaks of thika tenancy land with kachha structures standing thereon at the premises No. 50/H/13, Chaulpatty Road, Kolkata - 700 010 under P.S. Beleaghata for valuable consideration by registered a deed of conveyance dated 1st of October, 1980 from one Smt. Gouri Chakraborty who in turn had purchased the same from one Smt. Rani Bala Dasi. According to the plaintiff, after the recent amendment of the Calcutta Thika Tenancy Act the plaintiff has become a raiyat under the State of West Bengal in respect of the said thika tenancy land and plaintiff is the absolute owner of the structures. The defendants in both the suits were inducted as Bharatia under the said Smt. Gouri Chakraborty at a monthly rent of Rs. 14/- in case of Mono Bala and Rs. 13/- in case of Haladhar Chowdhury. Both the defendants committed default, annoyance and nuisance. The plaintiff required the premises for her own use and occupation and hence the suit.

6. The defendants in both the suits filed separate written statements in exactly identical languages and the common defence is that the suit is hit by the provisions of Calcutta Thika Tenancy (Acquisition and Regulation) Act 1981, that the plaintiff was not entitled to institute the suits before the Civil Court as the jurisdiction of thika properties is vested with the Thika Controller, that the

plaintiff has no competence to institute suit for ejectment within three years from the date of alleged purchase of the property, that the notice was not legal, valid and sufficient, that the defendants are Ghar-Bharatias under the provisions of the Calcutta Thika and other Tenancies and Lands (Acquisition and Regulation) Act, 1981, that the grounds of default, reasonable requirement etc. are all untrue and accordingly the suits were liable to be dismissed.

7. Before the learned Trial Court parties in the respective suits examined themselves. Save and except the point of legality and validity of notice which is a mixed question of law and fact hearing of the appeal has been concentrated on points of law alone.

8. I have heard Mr. Sadananda Ganguly, learned Advocate appearing for the appellants and Mr. Ram Prakash Banerjee, learned Advocate appearing for the respondent.

9. The first question that falls for consideration is as to under which of the Acts i.e. Calcutta Thika and other Tenancies and Lands (Acquisition and Regulation) Act, 1981 or the West Bengal Premises Tenancy Act 1956 would govern the suit.

10. Mr. Ganguly submitted that the very first language of the plaint in both the suits to the effect "the plaintiff purchased more or less 1 cottah 4 chittaks of thika tenancy land with kachha structures..." makes the suit not maintainable as because the thika tenancy land by virtue of the Calcutta Thika and Other Tenancies and Lands (Acquisition and Regulation) Act, 1981, (for short, the Act, 1981) vested into the State of West Bengal the plaintiff is no longer the owner of the land or of the structures. 11. My attention has been drawn in this connection to Section 10 of the Calcutta Thika Tenancy Act, 1949 (for short the Act, 1949) which is as follows:

Section 10. Consequences of the determination of interests of thika tenants in certain cases.- (1) Notwithstanding anything to the contrary contained in any contract, on the determination of the interest of a thika tenant in the land comprised in a holding as a result of ejectment from the holding of, or of surrender or abandonment of the holding by, the thika tenant or otherwise, any structure standing upon such land and existing on the date of such determination shall vest in the landlord.

(2) When any structure standing on any holding of a thika tenant vests in the landlord under Sub-section (1) otherwise than as a result of ejectment of the thika tenant from the holding on the ground specified in Clause (ii) of Sub-section (1) of Section 3, any Bharatia in possession of such structure or any part thereof, shall without any application being made be entitled to continue in such possession and shall be deemed to be a tenant in respect of such structure or part thereof, as the case may be, within the meaning of the West Bengal Premises Tenancy Act, 1956 (West Bengal, Act XII of 1956), holding under the landlord on the terms and conditions on which such Bharatia had been holding immediately before such structure vested in the landlord:

Provided that nothing in this sub-section shall prevent either the landlord or such Bharatia so deemed to be a tenant holding under the landlord, from proceeding under the West Bengal Premises Tenancy Act, 1956, for fixing the standard rent payable in respect of such structure or part thereof, as the case may be.

12. Therefore, Mr. Ganguly submits that the defendants are no longer tenants under the plaintiff-respondent but are tenants under the State of West Bengal.

13. Mr. Banerjee on the other hand submitted that the plaint has to be read as a whole and defendant cannot be allowed to take advantage of so called wrong committed by using the expression "thika tenancy land", and paragraph No. 2 of the plaint of both the suits has made the position clear to the effect that following repeal of the Calcutta Thika Tenancy Act 1949 by the Act of 1981, the plaintiff has become a raiyat under the State of West Bengal in respect of the thika tenancy land and the ownership of the structures vests with the plaintiff. It is submitted that with the enactment of 1981 Act thika tenants and Bharatiyas shall be governed by the West Bengal Premises Tenancy Act, 1956 (section 9) and accordingly, the two suits instituted under the West Bengal Premises Tenancy Act, 1956 are quite maintainable and it is misnomer to argue that the parties are still governed by either the Calcutta Thika Tenancy Act 1949 or by the Act of 1981.

14. The plaintiff's title deed which was exhibited before the learned Trial Court reveals that one Smt. Sushila Bala Dasi was a thika tenant by raising structures in the premises i.e. 50/H/13 Chaulpotty Road, Calcutta - 700 010 upon 4 cottah of land under one Bidubhusan Sarkar. Sushila Bala Dasi transferred her interest in the thika tenancy to Smt. Rani Bala Dasi on 7th of October, 1960 who in turn transferred the same to Smt. Gauri Chakraborty by a kobala dated 24th April, 1978. Gouri Chakraborty transferred the thika tenancy interest in favour of the plaintiff Smt. Snehalata Dhar by a registered kobala dated 1st October, 1980. It appears that though in the plaint it has been averred that the plaintiff purchased more or less 1 cottah 4 chittaks of thika tenancy land with structures she actually purchased the thika tenancy interest. The land belonged to Bidubhusan Sarkar. Though in the deed the land is said to have been conveyed along with the structures by Gouri Chakraborty, the plaint case proceeds on the footing that the land was a thika tenancy land. The alleged purchase of the land and the structures standing thereon-the expression used in the deed of conveyance does not make the status of the plaintiff to be anything but a thika tenant. Thika tenant under the Calcutta Thika Tenancy Act, 1949 has been defined in Section 2(5) as follows:

(5) Thika tenant" means any person who holds, whether under a written lease or otherwise, land under another person, and is or but for a special contract would be liable to pay rent, at a monthly or any other periodical rate, for that land to that another person and has erected or acquired by purchase or gift any structure on such land for a residential, manufacturing or business purpose and includes the successors in interest of such person, but does not include a

personal Who holds such land under that another person in perpetuity; or

b) Who holds such land under that another person under a registered lease, in which the duration of the lease is expressly stated to be for a period of not less than twelve years: or

c) Who holds such land under that another person and uses or occupies such land as a khattal.

15. Again under the Act 1981, Section 3(8), thika tenant has been defined as follows:

"thika tenant" means any person who occupies, whether under a written lease or otherwise, land under another person, and is or but for a special contract would be liable to pay rent, at a monthly or at any other periodical rate, for that land to that another person and has erected or acquired by purchase or gift any structure on such land for residential, manufacturing or business purpose and includes successors-in-interest of such person.

16. Thus, under both the Acts a thika tenant occupies land under another person and is liable to pay rent for that land to that another person and has erected or acquired by purchase or gift any structure for residential, manufacturing or business purpose. Thus, thika tenant is one who (a) holds land under another person and (b) who has erected structure. The occupation of the land is under another person whether under a written lease or otherwise. Herein in the instant case it appears that in the deed Sushila Bala Dasi is said to have taken settlement of thika tenancy land from one Bidubhusan Sarkar and raised a structure roofed by tiles. In fact, having read the deed of conveyance as a whole, it appears that Sushila Bala Dasi or for that matter her transferees were not the absolute owners of the land. They held land under a superior landlord but Sushila Bala Dasi had erected structure. Thus, the status of Sushila Bala Dasi was of a thika tenant under the Act 1949. The distinguishing feature of the Act 1981 which repealed the 1949 Act is contained in Section 5 which reads as follows:

With effect from the date of commencement of this Act, the following lands along with the interest of landlords therein shall vest in the State, free from all encumbrances, namely:

a) Lands comprised in and appurtenant to tenancies of thika tenants including open areas, roads, passages, tanks, pools and drains;

b) Lands comprised in and appurtenant to bustees on khas lands of landlords and lands in slum areas including open areas, roads, passages, tanks, pools and drains;

c) Other lands not covered by Clauses (a) and (b) held under a written lease or otherwise, including open areas, roads, passages, tanks, pools and drains;

d) Lands held in monthly or other periodical tenancies, whether under a written lease or otherwise, for being used or occupied as khatal:

provided that such vesting shall not affect in any way the easements, customary rights or other facilities enjoyed by thika tenants, Bharatias and occupiers of land coming within the purview of Clauses (c) and (d).

17. That is to say, the lands occupied by a person under a written lease or otherwise do not affect the interest of the holder of such lands. We do not find from the deed of the plaintiff that the land was held by Sushila Bala Dasi under any written lease. But the thing is clear that Sushila Bala Dasi had erected structures. In such circumstances, Sushila .Bala Dasi was a thika tenant and such thika tenancy came to be transferred successively to Smt. Gouri Chakraborty and then to the plaintiff. Unquestionably, the defendants do not claim that they were the occupiers of the land or they had erected the structure. They admitted that they were Bharatias under the plaintiffs. Now Section 9 of the Act 1981 provides as follows:

9. Thika tenants and Bharatias to be governed by West Bengal Act XII of 1956.-

(1) The monthly and other periodical tenancies of Bharatias in respect of structures occupied by them on payment of rents to thika tenants shall, with effect from the date of coming into force of this Act, be governed by the provisions of the West Bengal Premises Tenancy Act, 1956 (West Bengal. Act XIII of 1956), in all matters coming within the purview of the said Act and, for the purpose, the owners of the structures shall be deemed to be landlord and the Bharatias shall be deemed to be tenants under this said Act.

18. Section 10 of the Act 1949 is misplaced in this connection. Section 10 of the Act 1949 provides that in case a thika tenant is ejected from holding, the structures standing on such land shall vest in the landlord and where a structure vests in the landlord otherwise than, as a result of ejectment of the thika tenant on the grounds specified in Section 3 of that Act, then the Bharatia shall be deemed to be a tenant in respect of such structure under the West Bengal Premises Tenancy Act, 1956. There is no pleading of the defendant, no evidence, no material to hold that Sushila Bala's thika tenancy interest or such thika tenancy interest of her transferees was determined by any proceeding u/s 3 of the Act 1949. Sushila Bala Dasi was a thika tenant, so also were Rani Bala Dasi, Gouri Chakraborty and the present plaintiff. Therefore, the plaintiff was a thika tenant and now by virtue of Section 9 of the Act, 1981 she is a landlord in so far as the structures are concerned; and the defendants who were erstwhile Bharatias are tenants under the West Bengal Premises Tenancy Act, 1956.

19. It was argued that the plaintiff was not legally competent to institute the suits within two years from the date of her purchase which was 1st October, 1980 because of the bar contained in Section 13(3a) of the West Bengal Premises Tenancy Act, 1956. True it is that the suits were instituted within a period of three years from the date of acquisition of thika tenancy interest by the plaintiffs. Section 13(3a) of the Act 1956 imposes a bar on the transferee landlord to commence a suit for ejectment on the grounds mentioned in Clause (1) and (ff) Sub-section (1) of Section 13 within a period of three years.

20. The Division Bench decision of this Court in Bindeswar Prasad Gupta v. Murari Mohan Bhandari reported in Cal LT, 1992(1) HC 48 is elucidative. It has been observed that the embargo relating to Clauses (f) and (ff) of Sub-section (1) of Section 13 cannot be extended to mean that an ejectment notice cannot be issued before the expiry of the said period of three years. In this decision reference has been made to the Division Bench decision of this Court in Smt. Sudha Mukherjee Vs. Sankar Chatterjee, and Rajesh Khaitan Vs. State of West Bengal and Others, . All these decisions make it clear that while suit for ejectment under Clauses (f) and (ff) of Sub-section (1) of Section 13 is prohibited eviction on other grounds is not prohibited. The present suit for eviction is on the ground of default as also on the ground of reasonable requirement. In fact, the ground of reasonable requirement has not been pressed into service and the suits have been decided on the ground of default in payment of rent. In this connection reference also can be made to the decision in Meera Debi v. Lilabati (1979) 1 Cal LJ 196 and Parimal Mitra v. Udan Sarkar (1981) 1 Cal LJ 245. Thus the ground of reasonable requirement has to be overlooked and in fact there was no evidence adduced on that ground.

21. Now the question arises whether the defendants were defaulters or not. In the T.S. No. 497 of 1982 which was against Monobala Karmakar the defendant was alleged to be defaulter in payment of rent since the month of Magh 1384 B.S. i.e. for a period beyond the statutory period. It appears from the order No. 21 dated 15th of June, 1984 that the learned Trial Court struck out the defence against delivery of possession u/s 17(3) of the Act because of non-compliance of the provision of Section 17(1) and Section 17(2a)(b) of the West Bengal Premises Tenancy Act 1956. In respect of the other tenant i.e. Haladhar Chowdhury it appears from the record of Title Suit No. 496 of 1982 that he also did not comply with the provision of Section 17(1) and Section 17(2a)(b) of the West Bengal Premises Tenancy Act and by the order dated 16th June of 1984 defence against delivery of possession was struck off. Both the tenants as also another tenant who was similarly circumstanced filed CO. No. 2457 of 1984, C.O. No. 2458 of 1984 and C.O. No. 2459 of 1984 before this Court and the Hon'ble the Chief Justice by order dated 29th of April, 1985 upheld the order of the learned Trial Court and all the revisional applications stood dismissed.

22. Thus, striking out the defence against delivery of possession has been set at rest by the order of Hon'ble Court. It is submitted by the learned Advocate for the respondents Mr. Banerjee that after the three revisional applications of three , tenants including the present two defendant-tenants, were dismissed by the Hon'ble Court by a common judgment and order dated 29th of April, 1985 and one of the tenants i.e., Bimal Kumar Nandi preferred SLP to the Hon'ble Supreme Court and Hon'ble Supreme Court by order dated 7th of October, 1985 dismissed the SLP and a copy of the order has been produced.

23. Thus, it is submitted that the Supreme Court's order can be said to be applicable to the present two defendants since the order dated 29th of April,

1985 covering all the statutory tenants passed by this Court stood affirmed. Now, Mr. Ganguly, learned Advocate appearing for the appellant refers to the decision of the Supreme Court in B.P. Khemka Pvt. Ltd. Vs. Birendra Kumar Bhowmick and Another, to argue that in terms of the decision of the Supreme Court the words "shall order" have to be construed as directory and not mandatory and the word "shall" has to be read as "may". It has been argued that the grounds for striking out the defence of a tenant as provided in Section 17(3) of the Act is subject to discretion of the Court since under the provision of Section 17(2A) the Court has got the discretion to extend the time specified in Sub-section (1) or Sub-section (2) for the deposit of payment or any amount referred to therein. On the facts and circumstances of these cases, the decision is no longer applicable in view of this Court by order dated 29th of April, 1985 having upheld the order of the learned Trial Court striking out the defendant against the delivery of possession and attempt of a tenant who was one of the petitioners in Civil Revision Application to challenge the order before the Hon'ble Supreme Court proved abortive. The defendant did not deposit the rent though they appeared as far back as December 1981 in the case of Haladhar Chowdhury and 16th December, 1982 in the case of Monobala Karmakar.

24. The last point is as to the legality and validity of the notice of eviction u/s 13(6) of the West Bengal Premises Tenancy Act 1956. Both the learned Trial Court and the learned First Appellate Court concurrently answered the question in favour of the plaintiffs and this being a concurrent finding of fact by both the learned Courts below there is no material before this Court to say that the findings are unjust or unlawful or are contrary to the materials on record. The learned First Appellate Court observed that the specific averment of the plaintiff in the plaint that the defendants received the notices have not been specifically denied by the defendants. Simply, there was evasive denial. Acknowledgement Cards were produced before the Court and marked exhibits. Notice to quit in both the suits have been marked exhibits. Both the Courts held the notices to be legal, valid and sufficient. In the circumstances, the legality, validity and sufficiency of notice cannot be questioned. The notices issued were served by the postal man who cannot be equated with process server of the Court. Reference in this connection may be had to the decision in M/s. Madan and Co. Vs. Wazir Jaivir Chand,

25. In the circumstances, the two appeals fail and are dismissed but without costs.

26. The judgment and decree passed by the learned Additional District judge, 5th Court, Alipore, dated 9th February, 1989 in Title Appeal No. 875 of 1986 affirming the judgment and decree of the learned Munsif, 1st Court, Sealdah dated 4th of September, 1986 in Title Suit No. 496 of 1982 and the judgment and decree dated 9th February, 1989 passed in Title Appeal No. 876 of 1986 by the learned Additional District judge, 5th Court, Alipore affirming the judgment and decree dated 29th September, 1986 by the learned Munsif, 1st Court,

Sealdah in Title Suit No. 497 of 1982 are affirmed.

27. No formal decree need be drawn up.

A copy of the judgment along with the LCRs shall be sent to the learned Trial Court for information and necessary action.

28. Urgent xerox certified copies of this order, if applied for, be supplied to the parties as expeditiously as possible.