
(1955) 02 CAL CK 0028
In the Calcutta High Court
Case No : Civil Revn. Case No. 104 of 1955

Soorajmall Nagarmall

APPELLANT

Vs

Indian National Drug Co. Ltd.

RESPONDENT

Date of Decision : 09-02-1955

Acts Referred:

Transfer of Property Act, 1882 — Section 108
West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 — Section 38, 38(3)

Citation : AIR 1956 Cal 187 : 59 CWN 1023

Hon'ble Judges : R.P. Mookerjee, J

Bench : Single Bench

Advocate : Debi Prosad Pal, for the Appellant; Gopalchandra Narayan Choudhury, for the Respondent

Judgement

R.P. Mookerjee, J.—This Rule was obtained by the landlord against an order passed by the Additional Rent Controller on an application filed by the tenant u/s 38, West Bengal Premises Rent Control (Temporary Provisions) Act, 1950. The Additional Rent Controller has directed,

"..... ;that the leaky roof must be repaired. Damaged iron rafters must be replaced by good ones and the minor portions of the roof which are likely to collapse should be replaced by way of renewal. Thus, in conclusion I think that the landlord is bound to make repairs to items Nos. 1, 2, 3, 4, 5 and 7 of the inspector's report marked Ex I and these items will come within the purview of Section 38 (3) of the Act,"

The principal argument advanced on behalf of the petitioner in support of the Rule is that u/s 38, Sub-sections (1) and (2) only "repairs" can be directed to be made by the Rent Controller. No reconstruction or fresh construction can be directed to be put up. Further, the directions which the Rent Controller can issue under Sub-section (3) of Section 38 of the Act also cannot be in the nature of requisitions for demolition and fresh construction.

2. The direction given by the Rent Controller is not contested before me so far as items Nos. 4, 5 and 7 are concerned. The objection raised refers to items Nos. 1, 2 and 3 of the inspector's report. They are held by the Additional Rent Controller to be repairs or measures coming under Sub-section (3) of Section 38 without which the premises cannot be habitable or usable except with great inconvenience,

3. Under Sub-section (3) of Section 38 the premises must be kept "wind and water-tight." As to what is the implication of the provision may be explained with reference to Stroud's Judicial Dictionary, Third Edn, Volume 4, p. 3312 where "it is observed that where the obligation is on the part of a tenant to keep his tenement "wind and water tight" it "ought to be construed strictly in favour of the tenant.

To put an example, it would seem that the broken glass of windows need not be replaced by new glass, but that an exclusion of wet by boards or other unsightly modes would be sufficient." The same test may be applied on such party as may be responsible to keep the premises "wind and water tight".

4. It is, however, argued on behalf of the tenant that the opening words in Sub-section (3) of Section 38 indicate that it is not only repairs which are required to be done but as also "measures" without which the premises are not habitable or usable except with great inconvenience.

It is, on the other hand pointed out and in my view rightly that the nature of the repairs or measures to be undertaken are exemplified by the words following the expression above quoted, viz., "like keeping them wind and water tight".

Reference may also be made to the provisions contained in Section 12 of the same Act. Under proviso (h) to Sub-section (1) of Section 12 of the Act liberty is given to the landlord to evict the tenant not otherwise evitable under the special law if the premises are reasonably required by the landlord either for the purpose of building or for rebuilding or for his own occupation etc.

5. It is to be noticed also that the extent of the repairs which can be directed by the Rent Controller to be undertaken under Sub-section (1) and (2) of Section 38 of the Act cannot under the proviso to Sub-section (2) aforesaid exceed one-twelfth of the rent payable for one year; the expenses to be incurred for repairs or measures to be undertaken under Sub-section (3), however, are not limited to the amount as under Sub-section (1) and (2).

6. The principal point to be decided, therefore, in this state of the provisions contained in the different parts of the Act is whether Sub-section (3) of Section 38 gives a right which is larger than the rights given under the ordinary law. Under the provisions of the Transfer of Property Act, it is the duty of the landlord to keep the property in a tenable condition if there is such a condition incorporated in the lease.

In certain other cases the liability is that of the tenant. What is the nature of the

measures which can be compelled by one as against the other? It appears that under the general law it is not competent for a party to compel rebuilding or reconstruction, and I do not think that the provisions contained under Sub-section (3) of Section 38 gives any higher rights to the tenant than what are to be found in the ordinary law.

7. It is next to be pointed out that the directions given by the Rent Controller cannot be given effect to without making very substantial reconstruction. It is inconceivable how damaged steel tee irons can be taken out of a roof and replaced by new ones without taking out the roof above it or at least damaging the same.

If there are separate sets of tee irons for each one of the rooms, the roof over that particular room must be taken out. Consolidating a part of one roof under which there are separate rooms is also an engineering -venture which may or may not be possible in particular cases. There is no evidence on the record about the feasibility of such partial reconstruction. If the roof is leaking the landlord may be called upon to stop the leaks and that can be done either by having a special coating over the roof as is now available or feasible or by some other means. If there is any portion of the roof which is likely to collapse, that is a matter which may be reported to the Corporation for taking necessary steps as against the defaulting party. But it is outside the scope of Section 38, Rent Control Act, and beyond the competence of the Rent Controller.

8. This Rule is accordingly made absolute in part. The directions given by the Rent Controller so far as items Nos. 4, 5 and 7 of the inspector's report, dated 16-9-1954, must stand. The directions given about items Nos 1, 2 and 3 must be set aside. The matter will be placed before the Rent Controller again for necessary directions after proper enquiry as to the manner in which the leaky roof (item 1) may be repaired.

9. There will be no order for costs in this Court.

10. Let this order be communicated to the Court below without delay.