

(1965) 08 CAL CK 0001

Calcutta High Court

Case No: Civil Revision Case No. 3877 of 1964

Satyanarayan Chatterjee

APPELLANT

Vs

Parimal Kumar Dutt

RESPONDENT

Date of Decision: Aug. 13, 1965

Acts Referred:

- Calcutta Thika Tenancy Act, 1949 - Section 2(6), 3(i), 6

Citation: 70 CWN 374

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

Bench: Single Bench

Advocate: Syamacharan Mitter and Syamaprasanna Roy Chowdhury, for the Appellant;
Nepal Chandra Roy Chowdhury, S.K. Roy Chowdhury and Dwijendra Nath Lahiry, for the
Respondent

Judgement

P.N. Mookerjee, J.

In this Rule, the tenant is the petitioner and the proceeding, out of which Rule arises, was a proceeding for ejectment of the petitioner on the ground of default in payment of rent under sec. 3 (i) of the Calcutta Thika Tenancy Act. There is no question, on the unchallengable findings, made by the two tribunals below, that the tenant was a defaulter but the point, which arises for consideration, is as to the amount, payable by the tenant, under sec. 6 of the above Act, for avoiding ejectment on the ground of default.

2. It was the landlord's case that, for the said purpose, the tenant was liable to pay only the actual rent and costs and interest and damages, as mentioned in the said section, but also the municipal taxes in respect of the disputed property, as a part of the rent under the section.

3. This contention was rejected by the learned Controller upon the view that such taxes did not form part of the rent, as contemplated by the statute.

4. On appeal, the learned appellate Judge has taken a different view, in view, presumably, of sec. 192 of the Calcutta Municipal Act, and he has included the whole of the taxes, payable for the holding in question in the amount of rent, payable by the tenant petitioner under sec. 6.

5. In my opinion, both the tribunals below have fallen into error in the matter of determination of this part of the case. The learned Controller went to one extreme in rejecting the whole of the landlord's claim in the matter of Municipal taxes. The learned appellate Judge, on the other hand, went to the other extreme of accepting the whole of the said claim. There can be no question that, to the instant case, sec. 192 of the Calcutta Municipal Act will apply, and the amount, recoverable from the tenant on account of Municipal taxes under the said section would certainly form part of the rent, payable under sec. 6, in view of the definition of "rent" in sec. 3 (13) of the Bengal Tenancy Act, which will be attracted by reason of sec. 2 (6) of the Calcutta Thika Tenancy Act. That, however, would be only a part of the taxes, payable for the holding as is clear from the wordings of the relevant statute (sec. 192 of the Calcutta Municipal Act) and this part will have to be determined on proper materials now before the Court or to be produced before it for which necessary leave is given by me.

6. In this view, I would set aside the orders of both the tribunals below and sent the matter back to the Controller for determination of the amount, payable by the tenant or recoverable from him on account of Municipal taxes of the disputed holding under sec. 192 of the Calcutta Municipal Act and for including the said amount within the amount of rent, payable by the tenant; for purposes of sec. 6 of the Calcutta Thika Tenancy Act and, thereafter, making an appropriate order under the said section.

7. In the premises, this Rule will succeed, the orders of the learned Appellate Judge and the Controller will be set aside and the matter will be sent back to the controller for further consideration in the light of the observations, made in this Judgment, and for final disposal of the proceedings before him in accordance with law in the light of the said observations. There will be no order for costs in this Court.