

Corporation of Calcutta Vs Basanta Kumar Roy

Court: Calcutta High Court

Date of Decision: Feb. 13, 1990

Acts Referred: Calcutta Municipal Act, 1923 " Section 13(1), 586

Civil Procedure Code, 1908 (CPC) " Section 80

Transfer of Property Act, 1882 " Section 114

West Bengal Premises Tenancy Act, 1956 " Section 1(3), 17(1), 17(2), 17(2A), 17(4)

Citation: (1992) 1 ILR (Cal) 332

Hon'ble Judges: Mukul Copal Mukherji, J; Dilip Kumar Basu, J

Bench: Division Bench

Advocate: J.N. Bakshi, for the Appellant; R.N. Mitra and Runu Mitra, for the Respondent

Final Decision: Allowed

Judgement

Mukul Gopal Mukherji, J.

This appeal is directed against a judgment and decree passed by the learned Subordinate Judge, Ninth Court,

Alipore, on March 8, 1972, in Title Suit No. 69 of 1966. The Respondents landlords filed the suit for ejectment along with claims for arrears of

rent with interest and mense profits. The case of the Respondents, inter alia, was that they were joint owners of premises No. 20C, Convent Road,

and the Corporation of Calcutta, now known as Calcutta Municipal Corporation, took the said premises as tenant for the use of its Water Works

Department at a rental of Rs. 440 per month exclusive of the occupier's share of taxes and that the Calcutta Municipal Corporation was

represented by its Executive Engineer, Water Works Department. Rent receipts were issued by the landlord in the name of the said Executive

Engineer, Water Works Department. The tenancy in respect of the suit premises was determined by a notice dated January 29, 1966 to quit,

vacate and deliver up peaceful vacant possession to the Plaintiffs on the expiry of the last day of March 1966 which was served on the Defendants

on February 3, 1966. Since the Defendants failed and neglected to act on the basis of the notice and were wrongfully in occupation of the suit

premises the prayer for ejectment was made. It was further asserted that a sum of Rs. 22,440 has been calculated in arrear of rent for 51 months

from January 1962 to March 1966 from the Defendants. Plaintiffs claimed a sum of Rs. 3,293 as interest thereof at the rate of 6 % per annum. It

was also contended by the Plaintiffs that no part of claim for arrears of rent was barred by the law of limitation inasmuch as the Executive Engineer,

Water Works Department, acknowledged on behalf of the Defendants by letter dated February 2, 1965, the liability to pay the said arrears. The

Plaintiffs claimed sums equivalent to rent as mesne profits or damages in lieu of rent at the rate rent from the Defendants for their wrongful

occupation of the suit premises for the period from April 1, 1966 till the date on which the possession would be recovered from them. It has been

further alleged that the notice u/s 586 of the Calcutta Municipal Act as also u/s 80 of the CPC was duly served on the Defendants;

2. Various defences were taken on behalf of the Defendants in their written statement contending, inter alia, that the Plaintiffs were to prove their

status regarding the ownership of the suit property for their entitlement to receive rents and damages of the said suit property and that the principal

Defendant Calcutta Corporation was not represented by the Executive Engineer, Water Works Department, and furthermore that the notice to quit

was illegal, invalid, insufficient and bad in law which could not determine the tenancy. They contended that the ejectment could not be effected as

the Defendant No. 1 was in occupation of the premises. The claim for mesne profits was also not maintainable in view of such continuing

occupation of the Defendant No. 1 of the suit premises. There was no failure to pay rent as alleged or at all. There were proposals for adjustment

of rate bills of the other premises against rents payable in respect of the suit property. They further contended that they were precluded from

paying rent as a part of the premises was acquired by the Calcutta Improvement Trust and there was no proportionate reduction of rents though

the Defendants were entitled to such deduction. The said rent also could not be deposited with the Rent Controller as the Plaintiff No. 1 had

requested them not to deposit the rent with the Rent Controller as one of the cosharers had died and the question of heirship was yet to be settled.

They also denied the Plaintiffs right to receive a sum of Rs. 22,440 or any sum of interest thereon without proportionate deduction on the basis of

acquisition of a part of the premises by the Calcutta Improvement Trust. They alleged that a part of the Plaintiffs' claim was barred by limitation

and also barred u/s 586 of the Calcutta Municipal Act. They also challenged the notice to determine the tenancy as not being in accordance with

law since the Defendant was originally inducted under a registered lease and on the expiry of the period of the lease the Calcutta Municipal

Corporation was holding over as monthly tenant. The Defendants as such did not admit that the Plaintiffs were ever entitled to a decree for

ejectment and khas possession or mesne profits or even for arrears of rent or interest.

3. The following issues were framed on the contention of the parties:

- (1) Is there any relationship of landlord and tenant between the parties ?
- (2) Was any valid and sufficient notice served upon the Defendants ?
- (3) Are the Defendants defaulter as alleged ?
- (4) Are the Plaintiffs entitled to get a decree for ejectment against Defendants ?
- (5) Are the Plaintiffs entitled to get a decree for arrears of rents, if so, for what amount ?
- (6) Are the Plaintiffs entitled to mesne profits ?
- (7) To what other relief, if any, are the Plaintiffs entitled to?

4. The learned trial Judge found on the basis of the admission of the Executive Engineer, Calcutta Corporation, made on February 2, 1965, that

rent due was going to be cleared off and regular payment of future rent was assured at a rental of Rs. 440 per month. It was found as a fact that

the previous notice dated December 29, 1964, was waived. In view of the Defendants admission about subsistence of the lease Plaintiff were also

entitled to mense profit till delivery of possession aforesaid as prayed for. The Defendant was directed to pay Rs. 25,733 to the Plaintiff within 6

months from the date, and the Defendants were given time for one year to vacate the permises. The Plaintiffs were given the liberty to recover

mesne profits by ascertainment of the same after obtaining delivery of possession of the suit premises and on payment of proper court-fees on such

ascertained sum.

5. When the matter was taken up for hearing it was contended by the Appellant that the Defendant Calcutta Municipal Corporation was entitled to

protection against eviction u/s 17(4) of the West Bengal Premises Tenancy Act, in view of the fact that it was a case of first default within the

meaning of the West Bengal Premises Tenancy Act, 1956, and the said statute was in terms applicable because of an amendment brought in so far

as the second proviso to Section 1(3) of the West Bengal Premises Tenancy Act, 1956, is concerned. The original words were ""provided further

that this Act shall not apply to any premises belonging to or taken on lease by Government or any local authority or requisitioned by the

Government. The words "or taken on lease" by were omitted by the West Bengal Premises Tenancy Amendment Act, 1970 (W.B. XVIII of

1970). Hence, even though the premises was originally taken by the Calcutta Municipal Corporation as a local authority and the provision

regarding protection against eviction as given to a tenant under the West Bengal Premises Tenancy Act, 1956, was not applicable on that date

when the ejectment notice was served or on the date the suit was instituted against the Defendant, the protection" was clearly available to the

Defendants by virtue of the amendment incorporated in the statute by way of removal of the words "or taken on lease by" from the 2nd proviso to

Section 1(3) of the Act. Mr. Mitra, the learned Advocate for the Respondents, contended that monthly tenancy was somewhat different from an

ordinary lease, and hence relief against forfeiture was not available to a tenant. Even though Section 114 of the Transfer of Property Act was not in

terms applicable, the protection that was accorded to a tenant under the West Bengal Premises Tenancy Act, 1956, is attracted to the facts of the

case.

6. A Division Bench of our Court in *Madho Prosad Sukul v. Gangaram Saraogi* ILR 1968 (2) Cal. 183 was of the view that in any matter relating

to substantive rights, no statute can have retrospective operation unless the statute itself either expressly or by necessary implication so provides.

That was a case of landlord having brought a suit for ejectment of the tenant from a premises in Purulia under the general law, namely the Transfer

of Property Act, after the determination of the tenancy by a notice of ejectment. On the date of the institution of the suit on December 6, 1959, the

West Bengal Premises Tenancy Act was not extended to Purulia which originally formed a part of the State of Bihar. During the pendency of the

trial the said Act was extended to Purulia on October 1, 1960. The suit was decreed by the trial Court on December 23, 1960, but neither the trial

Court nor the lawyers took note of the fact of the extension of the Act to Purulia. The said defendant appealed and the first appellate Court held

that the extension of the Act to Purulia subsequent to the institution of the suit could not have retrospective operation and, accordingly, dismissed

the appeal. The High Court also dismissed the Second Appeal taking the view that no statute could have retrospective operation unless the statute

itself expressly or by necessary implication so provided.

7. In *Aswini Kumar Chatterjee v. Sukhendu Nath Guin* ILR 1977 (1) Cal. 626 another Division Bench of our Court also held a similar view to the

effect that the provision of the West Bengal Premises Tenancy Act had no application to pending proceedings in respect of recovery of possession

of the premises situated in an area to which the Act is subsequently extended when the suit was pending. It also approved the decision in *Madho*

Prosad Sukul v. Gangaram Saraogi (Supra) which was followed and the decision in *Niranjan Modak Vs. Lakshmi Narayan Guin and Others*,

was overruled.

8. However, the Supreme Court in *Lakshmi Narayan Guin and Others Vs. Niranjan Modak*, took the view that a change in the law during the

pendency of an appeal has to be taken into account and will govern the rights of the parties. Where the decree for eviction was passed by the trial

Court against a tenant under the provision of the Transfer of Property Act and statute giving protection for the Defendant against eviction was

extended to concerned area during the pendency of appeal against the decree for eviction, the appellate Court was bound to take into account the

change of law and to extend its benefits to the tenant and consequently to set aside the decree of the trial Court and dismiss the suit. The provision

u/s 13(1) of the Act does not refer to the decree of the trial Court or where an appeal has been preferred to the appellate decree. Reference is

intended to the "decree" which disposes of the suit finally. It is well-settled that when the trial Court decrees a suit and the decree is challenged by

a competent appeal, the appeal is considered as a continuation of the suit, and when the appellate decree affirms, modifies or reverses the decree

on the merits, the trial Court decree is said in law to merge in the appellate decree and it is the appellate" decree which rules. The object of Sub-

section (1) to Section 13 is to protect the possession of the tenant, subject to the exceptions specified in the said Sub-section and the protection is

ensured if the Sub-section is construed to mean that, subject to these exceptions, no effective or operative order or decree can be made by the

Court in a landlord's suit for possession against a tenant. Therefore, Sub-section (1) of Section 13 of the Act can be invoked by a tenant during

the pendency of an appeal against a trial Court decree. Section 13(1) directs the Court not to make any order or decree for possession, subject of

course to the statutory exceptions. The legislative command in effect deprives the Court of its unqualified jurisdiction to make such order or

decree. It may be that when the suit was instituted the Court possessed such jurisdiction and could pass a decree for possession. But it is divested

of that jurisdiction when the Act is brought into force in a particular area. The language of the Sub-section makes that abundantly clear and regard

must be had to the object.

9. In a Special Bench decision of *Sm. Bianpani Kundu and Ors. v. Sm. Saila Bala Dutta Banik and Ors.* 1987 (2) CRN. 328 it was held that the

provisions of the West Bengal Premises Tenancy Act would be applicable also to suits for eviction which are pending at the date the area in which

the suit premises is situated is constituted a municipality and, accordingly, it comes under the purview of the West Bengal Premises Tenancy Act,

1956. Even if a suit had been instituted before the provisions of the said Act had been extended to the area, the Defendants would be entitled to

apply under Sub-sections (2) and (2A) of Section 17 of the West Bengal Premises Tenancy Act, by directing the Defendant tenant Petitioner to

deposit in the Court below or to pay to the landlord an ad hoc sum towards arrears of rent within a stipulated period from the date of judgment.

The tenants were directed to deposit in the same manner another ad hoc sum within another stipulated period from this date of judgment and they

were further directed to deposit in the trial Court a specified sum every month within 15th day of succeeding month along with the arrears and the

Court below was directed to expeditiously dispose of the Defendant-tenant's petition under Sections 17(2) and 17(2A) of the West Bengal

Premises Tenancy Act in accordance with law. The Court below was further directed to grant instalments to the Defendants to pay the sum which

may be determined to be the total due from the tenants by taking into consideration all relevant facts and circumstances.

10. In B.P. Khemka Pvt. Ltd. Vs. Birendra Kumar Bhowmick and Another, the basic principle that all the tenants against whom suits or appeals

were pending on the date of the promulgation of the ordinance No. VI of 1967 giving protection against eviction were entitled to seek the benefit

of Section 17(2A) by filing an application within one month from the date of promulgation of the Ordinance. It was, therefore, clear according to

the Supreme Court that the intention of the Legislature was to extend the benefit of Sub-section (2A) of Section 17 to all pending suits and appeals

irrespective of the fact that the time limit of one month prescribed u/s 17(1) had expired or not. No other construction was possible because any

other construction would be rendering otiose Section 5 of the Ordinance. It is a well-known rule of interpretation of law that remedial amendments

have to be liberally construed so as not to deny its efficacy and it is the duty of the Courts to avoid a conflict between two sections.

11. In Janapada Sabha Chhindwara Vs. The Central Provinces Syndicate Ltd. and Another, the Supreme Court held as follows:

The Court will interpret a statute as far as possible agreeably to justice and reason and that in case of two or more interpretations, one which is

more reasonable and just will be adopted, for there is always a presumption against the law-maker intending injustice and unreason. A provision in

a statute will not be construed to defeat its manifest purpose and general values which animate its structure.

12. In the decision in Deputy Custodian, Evacuee Property, New Delhi and Others Vs. Official Receiver of The Estate of Daulat Ram Surana,

Delhi, it was held as follows:

It appears that the obvious aim and object of the statutory provisions would be frustrated by accepting the literal construction suggested by

Respondent, than it may be open to the Court to enquire whether an alternative construction which would serve the purpose of achieving the aim

and object of the Act is reasonably possible.

13. In our considered view even though the Defendant has not filed any application in the court below u/s 17(2) or 17(2A) of the West Bengal

Premises Tenancy Act, while the provision of the West Bengal Tenancy Act was made for the first time available by virtue of the amendment in the

statute by the West Bengal Premises Amendment Act, 1970, during the pendency of the suit and the statutory period of filing such an application

was also over, we granted leave to the Defendant-Appellant to file an application before us so as to have protection against eviction within the

purview of Section 17(4) of the Act by condoning the necessary delay in this regard. Such an application has been filed today and we accept it as

maintainable. By filing two affidavits earlier before us the Defendant-Appellant has stated before us that no arrears are due and the decretal dues

have all been paid by the Defendant-tenant inclusive of payment equivalent to monthly rent every month during the pendency of the present appeal

before this Court. If that be so, we can pass an order directing landlord Respondents to withdraw all sums so deposited by the Defendant-tenant

and further direct that if any arrears are due the same may be determined in accordance with law within a period of six months from this date so

that on deposit of the said amounts the Defendant tenant would be entitled to protection against eviction. Hence, the decree appealed against in

respect of the claim for eviction would stand set aside and the total decretal dues are to be determined by the Court below along with the disposal

of the application under Sections 17(2) and 17(2A) of the Act which we have accepted as maintainable under the facts and circumstances of the

present case on condoning the necessary delay. We pass a preliminary order on the said application directing the Appellants to deposit a sum of

Rs. 200 in the trial Court within a period of eight months. Let the suit be disposed of within a period of eight months. The Appellant Calcutta

Municipal Corporation, however, would pay a cost of Rs. 1000 to the Respondents as consolidated costs of this Court within a period of three

months from today which is to be deposited in the trial Court.

14. The appeal stands allowed with costs as indicated above. The application under Sections 17(2) and 17(2A) of the West Bengal Premises

Tenancy Act, 1956, is hereby sent back to the Court below for disposal in terms of our judgment and order as stated above.

Dilip Kumar Basu, J.

15. I agree.