

(1986) 05 CAL CK 0001

Calcutta High Court

Case No: M.A.T. No. 787 of 1986

Oil and Natural Gas Commission

APPELLANT

Vs

Kanak Investment Pvt. Ltd.

RESPONDENT

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**Date of Decision:** May 13, 1986**Acts Referred:**

- West Bengal Premises Tenancy Act, 1956 - Section 34

**Citation:** 90 CWN 1076**Hon'ble Judges:** Sukumar Chakravarty, J; A.M. Bhattacharjee, J**Bench:** Division Bench**Advocate:** Sanjay Bhattacharjee, S. Roy and Chandrima Bhattacharjee, for the Appellant;  
Anindya Mitra and Jayante Sengupta, for the Respondent**Final Decision:** Dismissed

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### Judgement

Sukumar Chakravarty, J.

This appeal by the plaintiff appellant arises out of the order dated 11.3.1986 passed by Sri A. N. Mitra, learned Chief Judge, City Civil Court, Calcutta in Title Suit No. 2334 of 1985 allowing the petition for temporary injunction in part. In the Title Suit No.2334 of 1985, filed by the appellant plaintiff-tenant, Oil and Natural Gas Commission in the City Civil Court, Calcutta for permanent injunction restraining the respondent-defendant-landlord, Kanak Investment Private Ltd. from interfering in any way with the peaceful and beneficial enjoyment and possession of the plaintiff in respect of the tenanted portion in the premises No. 41, Chowringhee Road, Calcutta including all its essential services such as water, electricity, lift etc. from interfering with the installation of all connected jobs including change of cables, change of meter, fixing proper earthing for the purpose of supply of electricity to the suit premises of higher voltage, from interfering with the modification of the Generator-room by fixing a new rolling shutter and shifting the existing rolling shutter of the Generator room, from interfering with the installation of a Spiro Cone Antenna on the terrace of the "Kanak Building", from interfering with the installation

of cooling tower on the terrace of the "Kanak Building" and from interfering with the parking of 8 cars of the plaintiff at the parking space provided by the defendant in the compound of the said "Kanak Buildings" and for mandatory injunction, directing the defendant to restore the lift service to the suit premises forthwith; the plaintiff filed the petition for temporary injunction and temporary mandatory injunction to the above effect.

2. The learned Chief Judge pending the final hearing of the petition for temporary injunction and temporary mandatory injunction by his order dated 13.12.1985 granted the ad-interim order of injunction on the following terms :

(1) The defendant shall maintain uninterrupted supply of water in the plaintiff's tenanted premises during the office hours

(2) The defendant shall also maintain existing electric supply in the suit premises without any interruption or disturbances;

(3) The lift shall be repaired as early as possible and

(4) The defendant, shall allow car parking facility to the plaintiff as regards as many cars as possible in the car-parking space allotted to the plaintiff under the new agreement of tenancy.

3. The petition for temporary injunction and temporary mandatory injunction was opposed by the defendant by filing the affidavit-in-opposition.

4. The learned Chief Judge considered the relevant correspondences between the parties incorporating the agreement for tenancy and also the balance of convenience and inconvenience involved in the matter of granting temporary injunction and allowed in part the petition for temporary injunction by his order dated 11.3.1986 and made absolute the ad-interim order of injunction already granted on 13.12.1985.

5. Being aggrieved by such order, the plaintiff has preferred this appeal. Mr. Bhattacharjee, appearing for the appellant-plaintiff has submitted that in terms of the tenancy itself and for maintenance of essential service for enjoyment of the tenancy the plaintiff is entitled to get water-supply from the defendant throughout all hours and supply of electricity of higher voltage than the existing one for beneficial enjoyment of the tenancy and entitled. to the lift-service, modification of generator-room by replacing and shifting from its present place the rolling shutter, installation of cooling tower and Spiro Cone Antenna the terrace and the parking space with capacity to park 8 cars in the compound of the premises for enjoyment of the tenancy. It has been further submitted by Mr. Bhattacharjee that as the plaintiff did not agree to defendant's proposal for further enhancement of rent, the defendant is interfering with the plaintiff's enjoyment of and right to essential service. According to Mr. Bhattacharjee, the consideration of the question of the balance of convenience and inconvenience and nature of the public interest work as

is done by the plaintiff, merits the grant of temporary, prohibitory and mandatory injunction as prayed for by the plaintiff.

6. Mr. Mitra, appearing for the respondent-defendant has submitted that in a fit and proper case, regard being had" to the prima facie case, the question of balance of convenience and inconvenience and irreparable injury if any, the temporary prohibitory injunction or even the temporary mandatory injunction may be granted to prevent the disturbance or the status quo ante position of the suit property but not to bring in the new state of affairs or change in the suit property till the disposal of the suit. Mr. Mitra has accordingly supported the impugned order of the learned Chief Judge.

7. There is no dispute to the settled principles of law as adumbrated in the case of [Sm. Katyani Dutta Vs. Mantu Shaw Alias Mantu Chandra Shaw](#), following the decision in [Loken Bose Vs. Sm. Ashima Dey and Another](#), and 86 C.W.N. 946 (Bakulrani v. Nanibala) that in a suit for permanent injunction by the tenant against the landlord for uninterrupted enjoyment of the essential services incidental to the tenancy, the civil court can give same for similar relief, that is, can give necessary direction or pass necessary order in the matter of taking measures for maintenance of the essential services for uninterrupted enjoyment of the tenancy, as contemplated in Section 34 of the West Bengal Premises Tenancy Act.

8. The learned Chief Judge allowed the petition for temporary injunction in part. He directed the defendant to maintain uninterrupted supply of water in the suit premises during office hours, to maintain the existing electric supply in the suit premises without any interruption. The learned Chief Judge gave direction also upon the defendant to get the lift repaired as early as possible and to allow the plaintiff to park the cars in the car parking space allotted to the plaintiff under the new agreement of tenancy. The learned Chief Judge did not grant other reliefs as claimed in the petition for temporary injunction

9. According to Mr. Bhattacharjee, defendant's letter dated 16.11.1967 containing the proposal for tenancy and plaintiff's letter dated 11.12.1967 constitutes the terms of the original agreement for tenancy, and the defendant's letter dated 20.8.81 constitutes the new agreement for the tenancy in respect of the suit premises.

10. It is an undisputed fact that the old tenancy or the new tenancy in favour of the plaintiff was created by the letters or correspondences.

11. We have considered the defendant's letter dated 16.11.67 containing the proposal for tenancy with terms and conditions. The defendant in that letter finally expressed the hope that the conditions laid down in that letter would be found by the plaintiff to be suitable and acceptable. The defendant amongst other conditions demanded rent at the rate of Re. 1/-per sq. ft. in the said letter. The plaintiff in their letter dated 11.12.1967 mentioned some points which were discussed on 8.11.1967

between the officers of the two parties and one of the points was that rent would be at the rate of 80 paise per sq. ft. and the other points that were discussed were in addition to the conditions that were incorporated in defendant's letter dated 16.11.1967. It is true that the plaintiff's letter dated 11.12.67 did not make any reference to defendant's letter dated 16.11.1967 implying that the other conditions besides the rate of rent as proposed in the defendant's letter dated 16.11.1967 were found suitable and acceptable. The other additional points and the point regarding the variation in the rate of rent as per discussion held on 8.11.1967 which were mentioned in plaintiff's letter dated 11.12.1967 were confirmed by the defendant by their letter dated 13.12.67 as the plaintiff in their letter dated 11.12.1967 requested the defendant to confirm those points. The plaintiff therefore has succeeded to prima facie show that the old tenancy was created by the letter dated 16.11.67, 11.12.67 and 13.12.67 as referred to above and it started from 1.1.1968 although plaintiff was allowed to move to the tenanted flat on 20.12.67. It appears from the aforesaid letters that the tenanted premises will be provided with I+T and L.T.A.C. power and water supply at all hours free of charge and that the defendant would provide the plaintiff with lift service and parking space in the compound for 8 cars.

12. It is an undisputed fact that the new agreement of the tenancy in respect of the suit premises between the parties as reproduced in the defendant's letter dated 20.8.1981 became effective from 1.4.1981 while the plaintiff was in occupation of the suit premises in pursuance of the old tenancy.

13. Amongst the conditions as mentioned in the new agreement covered by the defendant's letter dated 20.8.81, one condition is that plaintiff may park cars in the space allotted to the plaintiff inside the premises free of charge and that if at any time plaintiff's car is expected to come after 10-30 P.M. when defendant closes their gate, advance intimation thereof would have to be given to the defendant during office hours and as a special case, defendant would allow the car to make its entry. The other relevant conditions necessary for our purpose are that no additions and alterations will be made without written permission of the defendant; the defendant shall provide the plaintiff with a suitable site in their premises for the construction of a generator room measuring approximately 6-1/2 X 12" on a raised platform above the level of air-conditioning pipes without disturbing the drainage system and the pipes for drainage and air-conditioning, and that the generator room shall be constructed according to plaintiff's requirement but on defendant's approval of the plan and that plaintiff shall pay Rs. 300/- per month as rent for that generator room and that the cost incurred by the plaintiff for construction of the generator room shall be treated as advance and shall be liquidated by deduction the rent for the generator room until it is fully repaid; the defendant shall provide the plaintiff with suitable place in the roof to construct the cooling tower free of charge and that as regards the plaintiff's suggestion for converting the supply to the lift from D.C. to A.C., the defendant would inform the plaintiff in due course after consultation with

their lift contractor and that the defendant has accepted the plaintiff's suggestion to give connection to the lift from plaintiff's generator.

14. This new agreement as referred to in defendant's letter dated 20.8.81 does not say that by the said agreement parking space was allotted to the plaintiff, and does not say also how many car's parking space was allotted to the plaintiff, but it clearly says that the plaintiff may park cars in the space allotted to the plaintiff free of charge. It is the plaintiff's definite case as per the affidavit filed that plaintiff had been parking 8 cars since the tenancy started from January, 1968 till the plaintiff was being allowed by the defendant for some time past before the institution of the suit to park only 4 cars. The very fact that the plaintiff was parking cars with the knowledge and consent of the defendant since long before the new agreement dated 20.8.81, goes to show that the parking space for the plaintiffs cars was allotted since the beginning of the old tenancy. This leads us to accept the plaintiff's case that by the defendant's letter dated 16.11.67 containing the proposal for tenancy, the defendant agreed to provide the plaintiff with parking space for 8 cars of the plaintiff, and that the new agreement dated 20.8.81 accepted the said space as allotted to the plaintiff.

15. The new agreement of the tenancy dated 20.8.81 speaks of car parking facility and lift service but is silent about supply of water and power, although the old tenancy agreement spelt out about the same. Regard being had to the nature of the tenancy in suit, supply of water and power at all hours, maintenance of conservancy or sanitary service and the maintenance of lift service are to be regarded to be essential service for enjoyment of the tenancy.

16. There is nothing in Section 34 of the West Bengal Premises Tenancy Act any other provision in the Act which bars, either expressly or by necessary implication, the jurisdiction of the Civil Court to grant the same or similar relief to a tenant in a pending ejectment suit instituted by the tenant against the landlord for uninterrupted enjoyment of the tenancy and the power of the court even to grant temporary mandatory injunction for restoration of essential services has not been fettered or restricted by Section 34. The decision in the case reported in [Sm. Katyani Dutta Vs. Mantu Shaw Alias Mantu Chandra Shaw](#), Lends support to the same. We are therefore of the view that the plaintiff in the instant suit can get the same or similar relief as contemplated in Section 34 of the West Bengal Premises Tenancy Act on the basis of his application for temporary prohibitory and mandatory injunction for maintenance of the essential services if the defendant as landlord interferes with such essential services.

17. According to Mr. Bhattacharjee, the learned counsel for the plaintiff, the defendant is interfering with the peaceful and beneficial enjoyment of the tenancy by disturbing the supply of water by closing the lift on the plea of repair and by not allowing the plaintiff to park 8 cars as the plaintiff did not agree to defendant's proposal for enhancement of rent. Plaintiff's further case is that the supply of

electricity which the plaintiff is getting from the existing meter is not sufficient to get the office of the plaintiff air-conditioned, to get the cooling tower installed and to get the office rooms more lighted for smooth and efficient working in the office and that accordingly, modification of the generator room already constructed by the plaintiff as per agreement dated 20.8.81, by replacing and shifting the present rolling shutter is necessary for installation of generator with higher voltage, and installation of all connected jobs including charge of cables, change of meter and fixing proper earthing for the purpose of supply of electricity of more wattage is necessary. According to the plaintiff, the defendant, is not permitting the plaintiff to take such steps and thereby is interfering with plaintiff's enjoyment of the tenancy. According to Mr. Bhattacharjee, all such steps for getting more wattage and for getting higher voltage in the generator, for air-conditioning are the measures for maintenance of essential service like the supply of electricity specially regard being had to the status of the plaintiff as tenant and Mr. Bhattacharjee relies on the decision in [Krishna Das Nandy Vs. Bidhan Chandra Roy](#), in support of his submission.

18. Mr. Mitra, however, submits that the principle of law as laid down in [Krishna Das Nandy Vs. Bidhan Chandra Roy](#), on landlord's reasonable requirement basing on his status, has got no scope of its application in a case for maintenance of essential services brought at the instance of the tenant. According to Mr. Mitra, essential services will not vary from person to person but reasonable requirement may vary. We find substantial force in such submission of Mr. Mitra. Plaintiff has been getting the electricity since the inception of his tenancy from January, 1968 from the existing cables and meter and has run his office so long in the tenanted premises, even without Mr. conditioning the entire office and without suffering any irreparable injury. To meet the situation during the load-shedding, the plaintiff has already installed the generator after constructing the generator room in terms of the agreement dated 20.8.81, and with the approval of the defendant. Such being the position we do not consider that the measures proposed to be taken by the plaintiff for making the tenanted premises air-conditioned can be treated as measures for maintenance of the essential service.

19. It is the settled principle of law that while considering the interlocutory petition for temporary, prohibitory or mandatory injunction, the court is required to consider if the plaintiff has made out a prima facie case, and if the consideration of the question of balance of convenience and inconvenience and the irreparable loss if any involved because of the withholding of injunction, merits the granting of temporary, prohibitory or mandatory injunction. We are not unmindful also of the principle of law that temporary injunction is granted not to disturb the status quo ante of the suit property as was before the institution of the suit. It is no doubt granted to restore the status quo but not to bring new state of affairs and that in a fit and proper case, even temporary mandatory injunction is granted to maintain the status quo ante of the suit property, keeping "in mind the principle of balance of

convenience and inconvenience and irreparable loss involved in denying such injunction. The decisions in AIR 1973 Mysore 199 (Bangappa Devappa Kunber case) [Durg Transport Co. Private Ltd. Vs. Regional Transport Authority and Others,](#) [Nandan Pictures Ltd. Vs. Art Pictures Ltd. and Others,](#) and [Mohd. Latif Choudhry Vs. Smt. Amritkala Baveja and Another,](#) are relied on in support of the aforesaid principles of law

20. Judging from the aforesaid points, we are of the view that the learned Chief Judge has not committed any mistake in rejecting the plaintiff's prayers for temporary prohibitory or mandatory injunction so far as they relate to the installation of all connected jobs including change of cables and meter etc. for the purpose of getting electricity of higher wattage, modification of the generator room in any way for installation of the new generator with higher voltage in place of the existing one, installation of a Spiro Cone Antenna on the terrace of the Kanak Buildings, installation of the cooling tower on the terrace of the said buildings. There is no chance of irreparable injury if the temporary injunction on such prayers is denied. The question of balance of convenience and inconvenience also does not merit the grant of temporary injunction in such cases.

21. The learned Chief Judge's order in connection with other prayers for temporary injunction, however, requires some modification and clarification to the following extent :

(1) The defendant be temporarily restrained from interfering with the uninterrupted supply of water and electricity in the plaintiff's tenanted premises at all hours and shall maintain such supply till the disposal of the suit except on the ground beyond his control.

(2) The defendant shall maintain the lift service till the disposal of the suit. The defendant is given time for a fortnight to repair the lift and to make it serviceable, failing which, the plaintiff shall do the same after intimating the estimated costs for the purpose to the trial court, and the costs incurred for the same by the plaintiff shall be adjusted to the monthly rent payable.

(3) The defendant be restrained temporarily from interfering with plaintiff's parking 8 cars in the compound of the suit premises till the disposal of the suit.

The appeal is thus dismissed subject to the aforesaid modification to the learned Chief Judge's order under consideration. We make no order as to costs.

A.M. Bhattacharjee, J.

I agree.