

(1963) 07 CAL CK 0002**Calcutta High Court****Case No:** Appeal from Original Decree No's. 165 and 166 of 1962

Saraswati Dutta

APPELLANT

Vs

Krishnaraman Nag

RESPONDENT

Date of Decision: July 29, 1963**Acts Referred:**

- Transfer of Property Act, 1882 - Section 106
- West Bengal Premises Tenancy Act, 1956 - Section 13, 13(1), 13(6)

Citation: (1966) 1 ILR (Cal) 444**Hon'ble Judges:** P.N. Mookerjee, J; D. Basu, J**Bench:** Division Bench**Advocate:** Monohar Saha, for the Appellant; Mukunda Behari Mullick and Mahendra Kumar Ghosh, for the Respondent**Final Decision:** Dismissed**Judgement**

@JUDGMENTTAG-ORDER

P.N. Mookerjee, J.

These two appeals arise out of two suits for ejectment, brought by the Plaintiff Respondent against the two Appellants, in respect of their two separate tenancies in premises No. 52/1, Beniatolla Street, Calcutta, the tenant Saraswati of First Appeal No. 165 of 1962 having her tenancy in respect of the portion in the ground floor, mentioned in the plaint of the corresponding suit, and the tenant Tarak of the other appeal, F.A. No. 166 of 1962, having his tenancy in the portion of the ground floor of the above premises, mentioned in the plaint of the suit against him. The Plaintiff claims to have terminated the two tenancies by service of appropriate notices to quit and he also claims that there was sufficient compliance with the provisions of Section 13(6) of the West Bengal Premises Tenancy Act, 1956, which governs both the above suits. The Plaintiff further claims ejectment on the ground of reasonable requirement u/s 13(1)(f) of the aforesaid Act.

2. The learned trial Judge, on the evidence before him, has decreed the two suits and has given the Defendants four months" time, from the date of his decree (October 7, 1961), to vacate their respective premises.

3. The two appeals appear to involve different considerations. On the materials before the Court, the Plaintiff has made out a sufficient case of reasonable requirement, at least, for one more bed-room, than what he has in his occupation at present, for his family, which is fairly big, as found by the learned trial Judge and, with his said finding, we entirely agree. That will involve the ejectment of, at least, one of the two tenants provided, of course, other conditions in that behalf, as required by law, are satisfied. In the case of Saraswati, however, there is one difficulty. Although the notice, as served upon her, is quite valid and sufficient, so far as Section 106 of the Transfer of Property Act is concerned, the notice, so far as Section 13(6) of the West Bengal Premises Tenancy Act, 1956, is concerned, does not appear to be quite in order. It is true that, under the Special Bench decision, recently given in Special Bench References in F.A. No. 444 of 1961 and F.A."s Nos. 101 and 102 of 1961, according to the majority view, the ground or grounds u/s 13 need not be stated in the notice. At the same time, the essential requirement in this respect appears to be that, at least, from something on the record, prior to the suit or the plaint, it must be found that the notice could be related to some ground under the Act. The notice, served upon Saraswati, does not mention any such ground and the ground appears only when we come to the plaint and there the ground stated was requirement for the Plaintiff's occupation or personal occupation. Prior to that, however, there is nothing on the record to connect the notice with any such ground. In the circumstances, it is difficult to hold that the notice, issued against Saraswati, complies with Section 13(6) of the West Bengal Premises Tenancy Act, 1956.

4. In the case of Tarak, however, the ground of personal requirement was mentioned in the notice and Tarak"’s notice, from this point of view, was perfect and one, quite in order u/s 13(6) of the West Bengal Premises Tenancy Act, 1956. Against Tarak, therefore, there can be no objection to a decree being passed in the instant case, so far as his tenancy is concerned and, as, on the evidence, we are satisfied that the Plaintiff's requirement for personal occupation would be well met by the possession of that room, Saraswati"’s tenancy may be left out of account, so far as the question of ejectment is concerned.

5. In reaching the above conclusion, we have accepted the view of the learned trial Judge on the question of the Plaintiff's personal requirement only to the extent that the said requirement has been proved in respect of one more room than what the Plaintiff now possesses. We have not, however, agreed with him in his view that the Plaintiff's requirement in this behalf is larger and our reasons are as follows:

The learned trial Judge could not definitely or firmly hold that the tiled shed in the second floor, now in the Plaintiff's occupation, could not serve as a bed-room but he rejected it on the ground that, when a better (pucca) room was available, the

Plaintiff should not be compelled to use the tiled shed as a bed-room. We do not think that this reasoning is sound or convincing. In that view, the learned trial Judge's decree for the said better (pucca) room would depend solely upon the Plaintiff's case of requirement for his business. This, however, was not a ground, mentioned in any of the notices, and it came into the picture only in the plaints, when the suits were filed. It is, accordingly, wholly irrelevant for our present purpose in view of Section 13(6) of the West Bengal Premises Tenancy Act, 1956, as construed above by us. Further, even otherwise, on the materials on record, we cannot hold that any notice to quit has been served upon the Plaintiff by his landlord in respect of the rented room under Exts. 5 and 6, where he (Plaintiff) is now carrying on his business. Only a registered cover (Ext. 7) has been exhibited but, strangely enough, without its content. There is no proof at least, no sufficient proof that it contained any notice. There is no proof, worth the name, on record that any notice was served upon the Plaintiff by his said landlord or that his said tenancy has been determined and no evidence at all that any suit for ejectment has been or is intended to be brought against him in respect of the same. The Plaintiff's plea of requirement for business must, accordingly, fail.

6. In the above view, we would affirm the decision of the learned trial Judge, so far as Tarak is concerned, and affirm the decree for ejectment, passed against him. We would, however, in the circumstances of this case, for reasons, already given, set aside the decree for ejectment, passed against Saraswati by the learned trial Judge, and allow her appeal to that extent.

7. The above, however, must be subject to the arrangement which the parties have made, amongst themselves, for enabling Tarak to vacate conveniently the portion, now occupied by him, namely, that the decree for ejectment against Tarak will not be executable until the 2nd of Baisakh next and, in the meantime, both the tenants will continue to occupy their respective portions, on payment of mesne profits at the rental rate in the case of Tarak and on payment of rents or sums, equivalent to rent, in the case of Saraswati, month by month, regularly, according to the Bengali calendar, within the 15th of the next succeeding month, according to the same calendar. On or before the expiry of the above period, that is, on or before 2nd of Baisakh next, Tarak will vacate the portion in his occupation and make it over to the decree-holder for delivery of it to Saraswati for the purpose of her occupation in lieu of the portion, now occupied by her and, on getting possession of Tarak's portion, as aforesaid, Saraswati will vacate the portion, now occupied by her, and shift to Tarak's portion, after making over vacant and peaceful possession of the same (the portion, now in her occupation) to the Plaintiff. The arrangement, being thus given effect to, Saraswati will continue to occupy Tarak's portion as a tenant at the present rental, which is being paid by Tarak, and the portion, now occupied by her, will go over to the Plaintiff.

8. Subject, as above, Tarak"s appeal is dismissed and the decree for ejection, passed against him, is affirmed and Saraswati"s appeal is allowed and the decree for ejection, passed against her, is set aside. For the purpose of the above arrangement, that is, in confirmation thereof, Tarak will give an appropriate undertaking to this Court, within five weeks from this date, as agreed to by his learned Advocate.

9. Liberty is given to the parties to mention for any other or further direction, which may be necessary.

10. There will be no order for costs in any of these appeals.

D. Basu, J.

I agree.