

(1977) 07 CAL CK 0002

Calcutta High Court

Case No: Civil Revision No. 2390 of 1976

Bachan Singh

APPELLANT

Vs

Ranjit Kumar Mitra

RESPONDENT

Date of Decision: July 15, 1977

Acts Referred:

- Calcutta Rent Act, 1920 - Section 4(1)
- Calcutta Thika Tenancy Act, 1949 - Section 2(5)
- Transfer of Property Act, 1882 - Section 111, 116
- West Bengal Premises Tenancy Act, 1956 - Section 17, 17(2), 17(2A), 3, 3(1)

Citation: (1977) 2 ILR (Cal) 331

Hon'ble Judges: A.P. Bhattacharya, J

Bench: Single Bench

Advocate: S.P. Roy Chowdhury and Phani Bhusan Das, for the Appellant; J.N. Bakshi, for the Respondent

Judgement

A.P. Bhattacharya, J.

This Rule was obtained by the Petitioner who is Defendant in Title Suit No. 122 of 1974--a suit for ejectment by the opposite party. The suit premises used to be held by the Petitioner under a lease the particulars of which will be set forth hereinafter. The Petitioner, namely, the Defendant tenant is aggrieved by the order of the Munsif passed on his application u/s 17(2) and (2A) of the West Bengal Premises Tenancy Act, 1956, made on the allegation that the provisions of the West Bengal Premises Tenancy Act, 1956, applied to his tenancy. The learned Munsif has also framed an issue, namely, issue No. 2 in the suit itself to the following effect, namely, whether the instant suit was governed by the provisions of the West Bengal Premises Tenancy Act or not. The decision of the Court was that the provisions of West Bengal Premises Tenancy Act did not apply to the instant suit. In that view of the matter the petition filed by the Petitioner u/s 17(2) and (2A) stood dismissed. The aforesaid decision is challenged in this Rule on the ground that the decision is

patently illegal.

2. The relevant facts are within a narrow compass. On March 29, 1955, a registered lease was executed inter-parties which was for a period of 16 years stipulating monthly rent of Rs. 90 and the said period of 16 years was to expire by the end of Falgun, 1377 B.S. Thereafter, on Chaitra 1, 1377 B.S., corresponding to March 19, 1971, another registered lease was executed inter-parties for the period upto the end of Falgun, 1380 B.S. It is significant to point out that in the earlier lease dated March 29, 1955, there was a clause for renewal of the lease and in pursuance of the aforesaid clause contained in the earlier lease the subsequent lease referred to above was entered into by the parties. It is contended on behalf of the opposite party that the subsequent lease does not create a new tenancy but that the original tenancy continues for the extended period of 3 years under the subsequent document. In effect it was a lease for 19 years and there had been no determination of the lease on expiry of Falgun, 1377 B.S., as alleged by the Petitioner. The Petitioner, according to the opposite party, holds under the original lease the period of which has been extended by the subsequent document.

3. On the other hand, the Petitioner claims that he holds under the subsequent lease dated March 19, 1971, which is a lease for 3 years and as such, the provisions of the West Bengal Premises Tenancy Act are applicable to the instant suit for ejectment and he is entitled to the protection thereunder. The controversy, therefore, is whether the Petitioner holds under a fresh lease for the period of 3 years from Chaitra 1; 1377 B.S., to the end of Falgun, 1380 B.S. under the registered lease dated March 19, 1971, or he holds under the original lease with, the extended period thereof by the subsequent registered lease executed in pursuance of a clause for renewal appearing in the original lease of March 29, 1955.

4. Mr. Roy Chowdhury in support of his contention has placed before me a number of decisions to support his claim. Before proceeding to consider those decisions I may advert to the provisions of the West Bengal Premises Tenancy Act, 1956. Section 3 of the said Act is relevant for our purpose. The combined effect of Sub-sections (1) and (2) of Section 3 is that the Act shall apply to all lease for less than 15 years and that for leases for 15 years or more if for residential purpose and entered into after December 1, 1948, but before August 24, 1965, only some provisions of the Act will, apply, that is, provisions relating to rent and Sections 31 and 36 of the Act. In the instant case, if it is held that the lease under which the Petitioner holds at present was for 15 years or more then only the provisions relating to rent and Sections 31 and 36 of the Act would apply so that the provisions of Section 17 of the West Bengal Premises Tenancy Act would not apply. Mr. Roy Chowdhury contends that the Petitioner is holding under the lease dated March 19, 1971 and that is, for a period of 3 years. While on the other side Mr. Bakshi's contention is that the lease dated March 19, 1971, is not a fresh lease but that it was executed in exercise of the option of renewal given, so that in fact the Petitioner

holds under the old lease which was for a period of 16 years and that period has been extended by 3 years by the subsequent document in pursuance of the renewal clause appearing in the original lease. Mr. Roy Chowdhury in the first place has referred to the decision of a Division Bench of this Court in *Basanta Charan Sinha v. Rajani Mohan Chatterji* (1922) 26 C.W.N. 711, where the facts were as follows : Shortly before the passing of the Calcutta Rent Act of 1920 the Petitioner in the Rule entered into an agreement with the opposite party for a lease of certain premises at a stipulated rent for three years with option in the Petitioner to renew it for a further period of three years. After the passing of the Rent Act, an application was made to the Rent Controller for fixing a standard rent. This was refused on the ground that the lease was one for five years and upwards. The Rent Controller was of the view that the lease was for a period of six years having regard to the fact that there was an option for renewal. If it is held that the lease was for a period of or upwards five years the provisions of the Calcutta Rent Act would not apply in view of Section 4(1) proviso (iii) of the Calcutta Rent Act of 1920. The Division Bench held that this was not the correct view. It was observed that the demise was clearly for renewal for a further period of three years does not make the lease one for five years and upwards within the meaning of that section. The facts appearing in the reported case go to show that the option of renewal was not exercised on the relevant date. The mere fact that a renewal clause appears in the lease originally granted does not make it a lease for the period of six years in the circumstances of the case. There is another Division Bench decision which is decisive on the point raised in this Rule. Mr. Roy Chowdhury also refers to the said decision in *Satadal Basini Dasi v. Lalit Mohan Dey* (1964) 68 C.W.N. 1036. The Division Bench has considered an identical point in the said case. The facts appearing therein are that the tenant held under a lease which was for a period of 20 years with renewal clause appearing therein. That registered lease was executed on September 26, 1929, commencing from September 15, 1929. The rent reserved was Rs. 27-5-0 per month at the rate of Rs. 12-8-0 per cottah per month on the total demised area of 2 K 17 sq.ft. There was a renewal clause in the following terms:

If the lessee shall be desirous of taking a renewal of the said demised premises for a further term of six years, commencing from the expiration of the term, hereby granted, the lessor shall execute and register and grant unto the lessee a renewal or fresh lease of the said premises for a further term of six years commencing from the expiration of the term, hereby granted, at an enhanced rent of Rs. 15 (Rupees fifteen) per cottah per month and subject to the same covenants, conditions and provisions as are herein contained saving the present covenant for a renewal at the present rate of rent.

5. It was the Plaintiff's case in that suit that the lessee exercised her above option of renewal and paid the enhanced rent of Rs. 30-5-9 per month at the above enhanced rate per cottah and remained in possession on the expiry of the said renewal or renewed period for 20 years. The lessee did not quit possession on the expiry of the

said renewal or renewed period, not with standing Plaintiff's demand for possession and accordingly the suit was instituted by the Plaintiff on September 15, 1958, for ejectment and mesne profits. The main defence in the suit was that the Defendant was a thika tenant under the Calcutta Thika Tenancy Act which protected her from eviction. The protection was sought u/s 2(5) of the Calcutta Thika Tenancy Act. Thika tenant has been defined in Section 2(5) of the Calcutta Thika Tenancy Act but the definition does not include a person who holds such land under that another person under a registered lease in which the duration of the lease is expressly stated to be for a period of not less than 12 years, Clause (b). The question arose whether the tenancy after expiry of 20 years was a new tenancy or it was the old tenancy under the above registered lease continued under its renewal clause and subject to its terms. The theory of a new tenancy was pressed by the Defendant in order to get benefit of the provision of the Calcutta Thika Tenancy Act. On behalf of the Plaintiff the contention was that it was not a new tenancy but that it was a continuation of the old tenancy. On behalf of the Defendant it was, further, urged in that case that the tenant did not exercise the option of renewal but held over on payment of rent with the assent of, the landlord giving rise to a new tenancy by "holding over" u/s 116 of the Transfer of Property Act. The second branch of argument was that if it was held that she exercised the option of renewal, there being admittedly no fresh document--far less any registered document for this renewed period, the tenancy or renewal would be a new tenancy--not under any document on registered document, far less under a registered lease for not less than 12 years. The argument on the other side that the tenant did exercise her option of renewal and paid rent in terms thereof so that there was no room for any contention of a tenancy by "holding over" u/s 116 of the Transfer of Property Act and the tenancy arising, as above, under the renewal clause of the registered lease, would be the old tenancy under the said lease continued for the renewal period by virtue of the said clause. The Court's finding was that in the premises the renewal clause or the agreement for renewal could not be disregarded but must be given its full effects and it might well be said that the old relationship of landlord and tenant between the parties continued and did not come to an end and the lease between them did not determine, merely by reason of expiry of the original period of 20 years but survived in or by reason of its renewal clause, aforesaid, which as one of its terms, still retained its full vigour. It was further held that it was not a case of holding over u/s 116 of the Transfer of Property Act. The tenancy according to the Division Bench arose under the lease itself under the renewal clause by reason of exercise of lessee's option thereunder. The continuance of possession was held to be under the original lease which has not expired or determined but survives by reason of renewal clause which sustains the said holding over on continuance of possession, the same being under and referable to the said clause or for the matter of that the original lease itself. In case of holding over and continuance of possession referable to the same, namely Section 116 of the Transfer of Property Act, that would be a new lease. The burden of the decision to which reference had

been made is that if option of renewal is exercised in terms of the original lease the possession of lessee during renewed terms would be on the basis of the original lease. In that view of the matter the lease, in the instant case, subsequently executed for a period of three years is not a new lease but is a continuation of the old lease for 16 years under the registered lease dated March 29, 1955. Mr. Roy Chowdhury contends that this decision of the Division Bench has not considered the principle referred to in Basanta Charan Sinha's case Supra to which I have referred earlier. I do not think that this decision of the Division Bench is in any way in conflict with the decision reported in Basanta Charan Sinha's case. In the earlier case the Division Bench had not occasion to consider a case of renewal clause where there had been exercise of the option of renewal. That point was not considered in the earlier Division Bench case as there was no issue on that point. I do not, therefore, find that these two decisions are in conflict with each other. Mr. Roy Chowdhury has placed before me another Bench decision of this Court in Purushottam Das Murarka v. Harendra Krishna Mukherjee 1975 (1) C.L.J. 581. I do not think that the decision in that case would be of any assistance to me in deciding the issue. It was a case where question of applicability of Section 2(5)(b) of the Calcutta Thika Tenancy Act came to be considered. Originally, there was a lease for five years commencing from January 1, 1952 and terminating on December 1, 1956. There was a clause for renewal to the effect that the lessor should grant a fresh lease for a term of seven years at the rate then prevailing if the lessee so desired. A fresh lease was granted and executed for a term of seven years as provided for in the original lease. It was argued on one side that the second lease was nothing but an extension of the term of the original lease. In other words, the further period of seven years was an accretion to the original lease and both the leases should be regarded as one and the same. On this point the Court proceeded to consider the provisions of Section 2(5)(b) of the Calcutta Thika Tenancy Act. The relevant provision is as follows : The definition of thika tenant does not include a person who holds such land under that another person under a registered lease in which the duration of the lease is expressly stated to be for a period of not less than 12 years, Clause (b). So there must be express statement in the registered lease itself stating that it was for a period of not less than 12 years. Their Lordships considered the aforesaid provision and held that neither of the two leases fulfilled the condition. It cannot be said that either of the lessee expressly states the duration to be for a period not less than 12 years. In that view of the matter the contention was disposed of. There is no answer in that decision to the issue which is raised in this Rule.

6. There is, however, another Bench decision of this Court which would support the opposite party's contention and also follows the principle laid down in Satadal Basini Dasi's case Supra. It is in [Syed Ali Kaiser Vs. Mstt. Ayesha Begum](#), their Lordships considered the provisions of Section 3(1)(b) of the West Bengal Premises Tenancy Act as in this case. It was a case where original lease was for a period of 15 years with option of renewal which does not constitute a fresh lease for one year.

The subsequent period of one year for which the lessee had exercised his option in terms of the lease could not be called to be a fresh lease. It was a continuation of the lease as originally executed. The lessee was, therefore, not entitled to any protection under the West Bengal Premises Tenancy Act because such lease was outside the provisions of the said Act by virtue of Section 3(1)(b) of the Act. A similar contention was raised in the case. It was that this exercise of option for renewal constitutes a fresh lease for one year and therefore, it was not covered by Section 3(1)(b) of the Premises Tenancy Act. There also reliance was placed on Basanta Charan Sinha's case Supra to which I have referred. Their Lordships have distinguished that case on facts. On behalf of the other side the decision in Satadal Basini Dasi's case Supra of the Division Bench was also referred and discussed. After considering all the decisions in this respect cited before their Lordships it was held in the aforesaid manner. This decision of the Division Bench is, therefore, in support of the contention raised by the opposite party that the subsequent lease by the registered deed of lease dated March 19, 1971, was not a new lease but a continuation of the old lease in exercise of option of renewal contained in the original lease. Mr. Roy Chowdhury has raised a contention that in the case of Satadal Basini Dasi the facts disclosed that there was no subsequent registered deed of lease and that makes a difference. I do not think that this is a point for distinction. Their Lordships have considered the fact and a contention was raised in that case to which I have referred that there was no existence of a registered lease for the renewed period. But nevertheless the option of renewal had been exercised as evidenced by the fact of continuance in possession of payment of the enhanced rate of rent in terms of the renewal clause. The fact that a subsequent registered lease has been executed in pursuance of the renewal clause appearing in the original lease does not, therefore, make any difference. The subsequent lease was a renewal for the extended period and it had the effect of extending the period of the original lease. It is not, therefore, a new lease but a continuation of the old lease.

7. Mr. Roy Chowdhury has placed before me the relevant provisions of the Transfer of Property Act regarding leases and contended that there cannot be any lease outside those provisions. Chapter V deals with leases of immoveable property in the Transfer of Property Act, 1882. The statute undoubtedly covers all cases of lease. Mr. Roy Chowdhury contends that u/s 111 of the Transfer of Property Act a lease of immoveable property determines under Clause (a) by efflux of the time limited thereby and that being so by operation of law the original lease dated March 29, 1955, is bound to expire on expiry of the period of lease, viz., 16 years. The lease having been determined in terms of Section 111 of the Transfer of Property Act cannot be said to continue thereafter and there can only be existence of a fresh lease under a fresh deed of agreement or there may be a case of holding over u/s 116 of the Transfer of Property Act. If it is contended that after the determination of the original lease the lessee remains in possession, it cannot but be a case of holding over u/s 116 of the Transfer of Property Act. It is, further, contended that if

the decision in Satadal Basini Dasi's case Supra is accepted then a type of lease comes into existence which is not warranted by the statute. I do not think that this is a sound contention. It is true that the statute provides that a lease determines by efflux of time limited thereby u/s 111 of the Transfer of Property Act. The original lease determines on expiry of 16 years, namely, the period of the lease. But the renewal clause appearing in the deed of lease itself and the subsequent exercise of the said option of renewal has the effect that the determination of the lease does not come into force but the period of the lease is extended for the renewed term and determination would take place thereafter. That is the burden of decision of the Division Bench case in Satadal Basini Dasi's case. It does not in fact bring into existence any new type of tenancy not covered by the statute. I am unable to accept Mr. Roy Chowdhury's argument that in every case there must be determination and if the lessee remains in possession thereafter it must be a case of holding over u/s 116 of the Transfer of Property Act. If the term of the lease does not expire there is no question of the lessee being in possession after determination of the lease. Of course, there is no quarrel with the proposition that if it was a tenancy by holding over u/s 116 of the Transfer of Property Act it would be a fresh lease by holding over and that is the settled law. But I have already held that it was not a case of holding over u/s 116 of the Transfer of Property Act. But it is a case of continuance of the old tenancy by virtue of the renewal clause appearing in the original lease where there had been exercise of the said option of renewal by the lessee. The contention of Mr. Roy Chowdhury cannot, therefore, be accepted as sound.

8. Mr. Roy Chowdhury has, lastly, contended that having regard to the conflict of decisions on this point I should refer the case to a larger Bench. I do not think that there is any conflict of decisions and as such no question of reference arises.

9. In the result, the Rule must fail and I must hold that the order of the Court below was a proper order. The Rule is, accordingly, discharged.

10. I make no order as to costs in this Rule.

11. Let the records be sent down to the Court below forthwith.