
Samarandra Nath Sen Vs N.P. Ghose and Others

C.O. No. 1008 of 1985

Court: Calcutta High Court

Date of Decision: Aug. 30, 1985

Acts Referred:

Constitution of India, 1950 – Article 227

Citation: 90 CWN 4

Hon'ble Judges: Sukumar Chakravarty, J

Bench: Single Bench

Advocate: Ashok Chadra Lahiri, Sudipto Dutta Chowdhury, Ratnadip Mukherjee, for the Appellant; Bankim Chandra Dutta, Tarun Sankar Bose, Ashim Banerjee, for the Respondent

Judgement

Sukumar Chakravarty , J.

The caveat having been lodged, the application under Article 227 of the Constitution of India was directed to be

heard as a contested application as desired by the parties and accordingly it has been so heard.

2. By this application under Article 227 of the Constitution, the order dated 25-2-85 passed by the learned Rent Controller, Calcutta, in R C Case

No 6/79 of 1979 E.V. C under S. 29B of the West Bengal Premises Tenancy Act for eviction of the tenant petitioner from the tenanted premises,

has been challenged. The application has been treated as the application under Article 227 of the Constitution of India read with proviso to S

29(B) of the West Bengal Premises Tenancy Act (hereinafter referred to as the Act) at the time of hearing.

3. The petitioner of this application was the tenant under all the opposite parties in respect of the first floor of the premises no. 103B, Ekdalia Road,

Calcutta-19, at a monthly rental of Rs. 325/- according to English Calendar. All the opposite party landlords served a notice under S. 13(6) of the

Act for eviction of the tenant from the tenanted premises on the ground of reasonable requirement or their use and occupation and as they had no

other reasonably suitable accommodation as contemplated in S. 13(1)(ff) of the Act. The opposite party no 1 as one of the co-sharer landlords

was serving as the Deputy Chief Engineer, Construction, of the Eastern Railways and was residing in the railway government flat at Alipore. The

General manager, Eastern Railway asked the opposite party no 1 to vacate the railway flat as he had his own house along with the other co-

sharers. The opposite party no. 1 N.P. Ghosh filed the petition under S. 29B of the Act for eviction of the tenant petitioner from the tenanted

premises on the ground as mentioned above imploding the other co-sharers landlords as the Performa opposite parties.

4. The learned Rent Controller by his order-dated 6.5.82 rejected the said petition under S. 29B of the Act on the finding that the employer"s

letter, exhibit 6 to the applicant employee could not be considered as the order of the employer requiring the applicant to vacate the government

flat as contemplated in S. 29B of the Act, although the finding of the learned Rent Controller on the other hand points in issue were in favor of the

applicant.

5. The applicant Sri N.P. Ghosh moved the High Court in revision against that order dated 6.3.82 of the learned Rent Controller in Civil Rue"s

No. 1936 of 1982 and the High Court while holding that the employer"s letter, exhibit 6 in the form of the order signified the requirement of the

employer railways as contemplated in S. 29B of the Act, remitted back on remand the case to the learned Rent Controller for disposal according

to law in the light of the observation with a direction that the question of extent of reasonable requirement of the petitioner would have to be

considered in detail by the learned Rent Controller at the time of further hearing in accordance with law.

6. After such remand, the learned Rent Controller in accordance with the direction and observation in the remand order of the High Court,

disposed of the petition under S. 29B of the Act and by his impugned order dated 25.2.85 allowed the petition and order the eviction of the tenant

from the tenanted premises.

7. The tenant Samarendra nath Sen as the petitioner has moved the High Court against he impugned order in the manner as already stated.

8. Mr. Lahiri appearing on behalf of the petitioner tenant by his submission has challenged the impugned order on two grounds. The first ground is

that applicant of the petition under S. 29B of the Act being one of the co-sharer landlords in respect of the tenanted premises, this application is

not maintainable and accordingly such applicant cannot get the special relief as provided in S. 29B of the Act as the said section refers to the

landlord as a whole and not to any co-owner landlord. In support of his such submission Mr. Lahiri relies on the decision in the case of Nitindra

Nath Roy Chowdhury and Others Vs. Subhas Ch. Kar, . The second ground is that although the learned Rent Controller, found that the applicant

co-owner landlord reasonable required the tenanted premises for their use and occupation the learned Rent Controller, however did not arrive at

any finding in the impugned order or in the order before he remade by the High Court that the applicant was not in possession of any other

reasonably suitable accommodation as required under S. 13(1)(ff) of the Act.

9. Mr. Dutta appearing on behalf of the opposite party co-owner Sri N.P. Ghosh has submitted that in view principle of law as laid down in series

of decisions in Sri Ram Pasricha Vs. Jagannath and Others, and AIR 1982 SC. 25, the principle of law as laid down in Asoke Gopal Dutta Vs.

Nirmal Kumar Mitra, by S.M. Guha, J. (as he then was) is not a good law and in view of the aforesaid decisions specially the Supreme Court

decision, the decision in Asoke Gopal Dutta Vs. Nirmal Kumar Mitra, may be ignored and may not be followed. According to Mr. Dutta, the

petition under S. 29B of the Act filed by one of the co-owner landlords, who was the government employee having got the allotment of

government flat from the employed and who was asked by the employer to vacate the government flat on the ground of his owning a houses, quite

maintainable in law. As regards the second ground of attack of Mr. Lahiri, Mr. Dutta submits that this court in exercise of its power given under S.

29B(9) of the Act may uphold the impugned orders even by recoding the finding that the applicant co-owner landlord has no other reasonably

suit able accommodation as the applicant co-owner landlord has established the same both in his petition and also in evidence, although the learned

Rent Controller has not recorded any such finding in the orders.

10. Let me take first ground of Mr. Lahiri with regard to the maintainability of the petition under S. 29B of the Act. In the case reported in Asoke

Gopal Dutta Vs. Nirmal Kumar Mitra, , the petitioner of the application under S. 29B of the Act was a Central Government employed and was

residing in a government flat allotted to him as such employee by the employer. He was asked of the Government order to vacate the government

flat on the ground that he owned a house, where the opposite party was a tenant in respect of the ground floor under the petitioner and his other

co-owners. The petitioner filed the application under S. 29B of the Act for eviction of the tenant opposite party on the ground of his reasonable

requirement and non-possession of any other suitable accommodation. The petitioner was rejected by the learned Rent Controller as the petition

could not prove his reasonable requirement. On revision S.M. Guha, J rejected the revision application by holding that the petition under S. 29B of

the Act itself was not maintainable and by upholding also the finding of the learned Rent Controller on the point of reasonable requirement. While

holding the non-maintainability of the petition under S. 29B of the Act, S.M. Guha, J has given the reasons that a tenant cannot be evicted by a suit

brought by one only of the several landlords and so the action by one of the co-owners for eviction of a tenant is incompetent and this principle of

law would be applicable unless contrary provisions are made by the Legislature.

11. In the decision in the case of Jagannath Sen v Sriram Pasricha & Ors reported in 1975(1) CLJ 413, the Division Bench of this court held that

the plaintiff, though a co-sharer owner, was nevertheless the owner of the premises named the requirement for his own occupation would be a

good ground for eviction of the tenant. On appeal that decision in the Supreme Court in decision in Sri Ram Pasricha Vs. Jagannath and Others,

has held that a co-owner as such an owner of the entire property as any sole owner of the property and accordingly answered in affirmative the

question whether plaintiff being a co-owner landlord could be said to reasonable require the premises for his own occupation within the meaning of

the provisions under S. 13(1)(f) [renumbered as S. 13(1)(ff)] after amendment of the Act.

12. In the case of Anupama Sengupta & Ors v Dev Kumar Sen Sarma & Ors reported in 1981(1) CLJ 57, Monoj Kumar Mukherjee, J while

discharging the civil rules made the following observations as quoted here: -

"Keeping in view the laws of delay a summary procedure has been prescribed for the government employee to get immediate possession of his

premises in case such employee is required to vacate accommodation allow red to him by the Government on the ground that he has a premises of

his own. Once such an order is served calling upon such a Government employee to vacate Government accommodation and once it is fought that

he has a right to certain premise he can legitimately invoke the summary procedure for eviction of his tenant. That being the object and scheme of

Chapter VIA it is immaterial whether he is the owner of the entire premises or a part owner thereof. Difficulty might be encountered by

Government employee to file an application under S. 29B when he is the owner of the premises along with others who did not want tube a party to

the application to be so filed and in a given case it may have to be decided where such as application would be maintainable but that question need

not detain us here as the opposite party no. 1 along with his children were parties ""o the applications under S. 29B of the Act.

13. It may be mentioned that in the instant case before me, the opposite party no. 1 along with his children was party no 1 Sri N.P. Ghosh

impleded his other co owner landlords also as parties in the application under s. 29B of the Act.

14. On appeal against the decision in 1981(1) CLJ 57, the Supreme Court dismissed the appeal by the decision in AIR 1982 SC 25 and placing

reliance on the decision in Sri Ram Pasricha Vs. Jagannath and Others, , held that a co-owner landlord could file a petition under S. 29B of the

Act as the co-owner was as much an owner of the entire property as any sole owner of the property and owned every part of the composite

property along with others.

15. In view of the aforesaid decisions especially the decision of the Supreme Court, I agree to the views of Mr. Dutta to the effect that the principle

of law as enunciated by S.M. Guha, J. In Asoke Gopal Dutta Vs. Nirmal Kumar Mitra, is not a good law and that the same be ignored in view of

the Supreme Court decision as mentioned above without referring to the said single Bench decision of S.M. Guha, J. to any greater Bench of this

Court for their decision.

16. In view of the above discussion I find that the petition under S. 29B of the Act is quite maintainable. It may be mentioned here that in the order

dated 6.3.82 the learned Rent Controller gave a finding that the petition under S. 29B of the Act filed by the co-owner landlord Sri N.P. Ghosh

was maintainable and in the Civil No. 1986 of 1932 by which the High Court remanded the case for disposal on certain point, the said finding of

the learned Rent Controller regarding the maintainability of the petition on that ground was not challenged. Be that as it may, the first ground of Mr.

Lahiri challenging the impugned order therefore fails.

17. I have read the order-dated 6.3.82 of the learned Rent Controller before the remand and also the order dated 25.2.85 of the learned Rent

Controller after he remand. In none of the aforesaid orders the learned Rent Controller concerned has recorded any finding to the effect that the

applicant landlord. Sri N.P. Ghosh was not in possession of any other reasonably suitable accommodation. Mr. Lahiri submits that the order for

eviction is accordingly materially irregular and illegal in the absence of such finding. Section 13(1)(ff) of the Act enables the court or the Rent

Controller under S. 29B of the Act to pass an order for eviction of the tenant if the Court or the Rent Controller finds that the owner landlord

reasonably requires the tenanted premises for his own use and occupation and if he is not in possession of any other reasonably suitable

accommodation. Mr. Dutta does not dispute the requirement of law but he submits that this Court in exercise of the revision power under the

provision to S. 29B sub s. (9) Of the Act can record such finding about the applicant's non-possession of any other reasonably suitable

accommodation in view of the specific statement in the application under S. 29B of the Act and deposition of the applicant him self in this regards.

I have read the application under S. 29B of the Act and deposition as a whole and I find that the applicant landlord Sri N.P. Ghosh has established

the fact that he is not in possession of any other reasonably suitable accommodation. The case is pending for a long time although because of the

urgency the summary procedure under S. 29B of the Act was adopted to get the immediate relief. Such being the position, I feel not include

making a second remand of the case. On the consideration of the application and the evidence I record the finding that the applicant landlord Sri

N.P. Ghosh is not in possession of any other reasonably suitable accommodation. The impugned orders subject to the aforesaid finding of this

court do not appear to be illegal in any way and accordingly are not liable to be interfered with by this court in exercise of its revision power under

the proviso to S. 29B(9) of the Act or in exercise of the power of superintendence under Article 227 of the Constitution of India.

18. In the result, this application is rejected without making any order as to costs. The stay, if any is vacated.

19. The learned counsel for the tenant petitioner orally prays for leave to appeal to the Supreme Court. His prayer is refused.

Let a copy of this order along with the L.C.R. Be sent down to the learned Rent Controller concerned by a special messenger at the cost of the

landlord opposite party who is to put in the costs by next week.