

(1990) 08 CAL CK 0004

Calcutta High Court

Case No: C.O. No. 2758 of 1988

Balmiki Das Gupta

APPELLANT

Vs

Lt. Col. S.K. Mitra and Another

RESPONDENT

Date of Decision: Aug. 16, 1990

Acts Referred:

- Constitution of India, 1950 - Article 14, 21, 227
- West Bengal Premises Tenancy Act, 1956 - Section 13(6), 29B

Citation: 94 CWN 1129

Hon'ble Judges: Mitra, J

Bench: Single Bench

Advocate: S.P. Roy Chowdhury and Mrityunjay Das Majumder, for the Appellant; Tarun Chatterjee and Amit Pan, for the Respondent

Judgement

Mitra, J.

The caveator opposite party no. 1 instituted a proceeding u/s 29B of the West Bengal Premises Tenancy Act, 1956 before the Rent Controller, Calcutta being eviction case No. 8/1986 EVC for the eviction of the petitioner from the Premises No. 3E, Charu Avenue, Calcutta - 700033. The case as made out by the caveator opposite party no. 1 in the application u/s 29B inter alia, was that originally Jyotindra Nath Mitra, since deceased, was the owner of the disputed premises and on his death, by virtue of a compromise decree passed in Title Suit No. 113 of 1968 Smt. Profulla Bala Mitra, the widow of the said deceased Jyotindra Nath Mitra and his four sons, namely Nanda Dulal Mitra, Brojo Dulal Mitra, Shib Dalal Mitra and Murari Dulal Mitra became the owners in respect of 1/5th share each in the estate of late Jyotindra Nath Mitra. On the basis of the said compromise decree, 1/5th share of rent of the disputed premises was being realised by the heirs of Brojo Dulal Mitra, since deceased, being Proforma Opposite Party Nos. 8 to 14 to the present civil order and the remaining 4/5th share of the rent was being realised by Nanda Dulal Mitra on his own account and on account of the other co-owners till his death, and on the

death of Nanda Dulal Mitra, the said 4/5th share of rent was being realised by Shib Dulal Mitra on his own account and on account of remaining co-owners. The original tenant in respect of the suit premises was Jyotindra Das Gupta and on his death, his two sons and two daughters including the petitioner in the present civil order inherited the said tenancy as his heirs and legal representatives. On the death of Nanda Dulal Mitra, his children including the opposite party no. 1 inherited his share in the suit premises and the caveator opposite party no. 1 thus became one of the co-owners of the disputed premises. The caveator opposite party no. 1 served in the Army of the Union of India as a Medical Officer, and retired from his said service on 31st January, 1934 and as a result of such retirement, he had to vacate the residential quarter allotted by him during his service period, and accordingly, he filed the said application u/s 29B as he required the suit premises for his own use and occupation as he had no other reasonably suitable accommodation elsewhere. The petitioner opposed the said application by filing his written statement denying and disputing the allegations made by the caveator opposite party no. 1 in his said application u/s 29B. The Rent Controller, by his judgment and order dated 7th September, 1938 allowed the said application of the caveator opposite party no. 1 holding inter alia, that the disputed premises was a joint property as no partition by metes and bounds had been effected amongst the co-owners, and that one co-owner was entitled to bring an action u/s 29B of the West Bengal Premises Tenancy Act, 1956 and that the caveator opposite no. 1 had no other reasonably suitable accommodation elsewhere. The said order of the Rent Controller has been challenged by the petitioner in the present Civil Order inter alia on the grounds that the Rent Controller has acted illegally and with material irregularity in holding that one co-owner of a premises can file an Ejectment proceeding in respect of the entire suit premises without impeding all the other co-owners and since he was paying 1/4th share of the rent to some of the co-owners even after the issuance of the notice to quit u/s 13(6) of the West Bengal Premises Tenancy act, 1956, his" tenancy in respect of the suit premises had not been properly terminated and that Section 29B is ultra vires Articles 14 and 21 of the Constitution of India and as such the proceeding before the Rent Controller is a nullity.

2. So far as Section 29B is concerned, it is almost a reproduction of Section 25B of the Delhi Rent Control Act which has been found to be intra vires the Constitution of India by the Hon"ble Supreme court in the case of [Kewal Singh Vs. Smt. Lajwanti](#) . In Kewal Singh v. Mt. Lajwanti (supra), the Supreme Court dealing with question of the validity of Section 25B of the Delhi Rent Control Act (1958), held inter alia, that the classification made by Section 256 is a reasonable classification and cannot be said to be in any way discriminatory or arbitrary. Even though a summary procedure has been evolved, the tenant has been afforded full opportunity to defend his case and oppose the application made by the owner-landlord under the said section, provided, he could disclose good grounds for negating the case of the landlord. The Supreme Court further held that no litigant has a right to protract the legal

proceedings by taking frivolous, irrelevant, irrational or uncalled for pleas. This is what the section seeks to prevent.

3. The Supreme Court ultimately observed in the said decision that taking an overall picture of the situation, the circumstances under which the landlord's needs had been classified and the safeguards given by the statute it could not be said by any stretch of imagination that Section 253 of the Delhi Rent Control Act (1958) and its subsections are violative of Article 14 of the Constitution of India, or that Section 253 suffers from the vice of excessive delegation of powers. In fact Section 25B contained valuable and sufficient guidelines which completely exclude the exercise of uncanalised or arbitrary powers by the Rent Controller and the rights of the tenants were also sufficiently protected therein. So far as the provisions of Section 29B of the West Bengal Premises Tenancy Act are concerned and I also hold, relying on the ratio of the said decision of the Supreme Court in Kewal Singh's case (supra), that taking an overall picture of the situation it cannot be said by any stretch of imagination, that Section 29B of the West Bengal Premises Tenancy Act, 1956 or its sub-sections are violative of Article 14 of the Constitution of India or that Section 29B suffers from the vice of excessive delegation

4. So far as article 21 of the Constitution of India is concerned, the object of Article 21 is to prevent encroachment upon the life or personal liberty of a person by the Executive save in accordance with law and in conformity with the provisions thereof. Reference may be made to the famous decision of the Supreme Court in the case of [A.K. Gopalan Vs. The State of Madras](#), but this Article is not a limitation on the powers of the Legislature but only on those of the Executive as this Article applies to the deprivation of life or personal liberty by the State and not by a private individual as has been held by the Supreme Court in the case of Smt. Vidya Verma though next friend [Shrimati Vidya Verma, through next Friend R.V.S. Mani Vs. Dr. Shiv Narain Verma](#). By the term "life" something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limits and faculties by which life is enjoyed. But life does not include livelihood nor the word "life" does take in it. scope under Article 21 of the Constitution of India matters like individual status enjoyed by a person as has been held by the Supreme Court in the case of *In re : In Re: Sant Ram*, and [Kharak Singh Vs. The State of U.P. and Others](#). The words "personal liberty" used in the said Article 21 mean freedom from physical restraint of person by incarceration or otherwise. No doubt, the negative test of personal liberty as "absence of physical incarceration taken in Gopalan's case (supra) has been abandoned by the Supreme Court in Maneka Gandhi's case (AIR 1978 SG 597) and since then it has been adding new dimensions to the concept of liberty as enshrined in Article 21. Nonetheless, Article 21 can be invoked, as I reiterate, when the life and/or the personal liberty or freedom of an individual has, been obstructed/endangered by any Executive action, but Article 21 can in too way be invoked in judging the validity of Section 293 of the West Bengal Premises Tenancy Act, 1956 inasmuch as by Section 29B neither the life nor the personal liberty of any

person is being taken away or endangered by the Executive.

5. So far as the merits of the application u/s 293 of the West Bengal Premises Tenancy Act, 1956, as filed by the caveator opposite party no. I, are concerned, mere payment of rent for the disputed tenancy to two sets of co-owner landlords according to their shares neither constitute splitting up of the tenancy unless it is found that the co-owners had divided or partitioned the suit property by metes and bounds inasmuch as such payments are made for the sake of convenience only, nor such payment of a part of rent to one group of co-sharer landlords even after the issuance of notice to quit u/s 13(6) of the West Bengal Premises Tenancy Act, 1956 by another co-sharer landlord, who ultimately filed the application u/s 29B of the West Bengal Premises Tenancy Act, 1956. would constitute such tenancy as continuing as part payment of rent cannot be equated with full payment or payment of the entire rent. Again, it is well-settled that notice by one co-owner terminating the tenancy is valid even though the other co-owner or owners serving such notice, is entitled to file the suit for eviction of a tenant. This Hon"ble Court in the case of *Amritlal v. Krishna Kumar* reported in (1986)2 CHN 298, referring to the decision of the Hon"ble Supreme Court in the case of [Sri Ram Pasricha Vs. Jagannath and Others](#), also held an ejectment suit tenable despite the ejectment notice being served by one of many co-owners of the suit premises. In the case of [Subhendu Prosad Roy Choudhury and Others Vs. Kamala Bala Roy Choudhury and Others](#), a notice by one co-owner of a premises terminating the tenant's tenancy, was also held to be valid by the Hon"ble Supreme Court even when other co-owners did not join in the said notice. The Hon"ble Supreme Court in the case of *Anupama Sen Gupta & Ors. v. Deb Kumar Sen sarma & Ors.* (Air 1982 SC 25) affirming in appeal the decision of this Hon"ble Court reported in (1980)2 CHN 496, also held that one co-owner is entitled to file an application u/s 29B of the West Bengal Premises Tenancy Act, 1956 before the Rent Controller for eviction of a tenant and the said view of the Supreme Court has also been followed by this Hon"ble Court in the cases of *Samarendra Naith Sen v. N. P. Ghosh* (90 CWN 4) and [Nripendra Kumar Mitra Vs. Smt. Amiya Dasgupta and Others](#), . Reference may also be made to the decision of the Supreme Court in the case of [Kanta Goel Vs. B.P. Pathak and Others](#), where the Supreme Court had held in clear terms that it is quite competent for one of the co-owners to file a suit for eviction against the tenant even on the ground of reasonable requirement and the absence of other co-owners in the proceeding would not disentitle such co-owner from suing for eviction. Such being the position, in my view, the impugned proceeding for eviction filed by the Caveator opposite party no. 1 u/s 29B of the West Bengal Premises Tenancy Act, 1956, being one of the co-owners of the disputed premises, is quite valid and maintainable in law. Lastly, sitting in the revisional jurisdiction under Article 227 of the Constitution of India, I am afraid, I cannot go into the question as to whether the caveator opposite party no.1 had really required the suit premises for personal use or that he reasonably required the suit premises, by reappraising the evidence when the Rent Controller

held such point in favour of the caveator opposite party no.1. Thus I find no reason to interfere with the impugned judgment and order passed by the Rent Controller, Calcutta in Eviction Case No. 8/1986 EVC.

The Civil Order is thus dismissed without any order as to costs. Let this order be communicated to the Rent Controller forthwith.