**(1988) 12 CAL CK 0010**

**Calcutta High Court**

**Case No:** Second Appeal No. 142 of 1987

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| Mahindra and Mahindra Ltd. | APPELLANT |
| Vs | |
| Sm. Kohinoor Debi | RESPONDENT |

**Date of Decision:** Dec. 1, 1988

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 100
- Registration Act, 1908 - Section 17(1)(b), 17(1)(d)
- Transfer of Property Act, 1882 - Section 107, 111, 111(a)
- West Bengal Premises Tenancy Act, 1956 - Section 1(3), 13, 13(1), 2(f), 2(h)

**Citation:** 93 CWN 773

**Hon'ble Judges:** Anandamoy Bhattacharjee, J; Ajit Kumar Nayak, J

**Bench:** Division Bench

**Advocate:** B.C. Dutt, Alok Banerjee and Sudhangsu Sil, for the Appellant; Shaktinath Mukherjee, Bhaskar Ghose and Amitava Chowdhury, for the Respondent

**Final Decision:** Dismissed

**Judgement**

Bhattacharjee, J.

Section 3 of the West Bengal Premises Tenancy Act, 1956, as it stood before the Amendment of 1965, rendered the provisions of the Act inapplicable to any premises held under a lease for more than 20 years whether the purpose of the lease was residential or non-residential. By the Amendment Act of 1965, this section 3 has been retained and renumbered a sub-section (1) of section 3, but a new sub-section (2) has been added to deal specifically with lease entered into after the commencement of the Ordinance on an from 24/8/1965, which preceded the Amendment Act of 1965, rendering section 3(1) inapplicable to all leases entered into after that date. Sub-section (2), so inserted, now provides that all leases entered into after 24//65 would not be exempted from, but would be governed by, the provisions of the West Bengal Premises Tenancy Act of 1956 except a lease for "a

period of not less than 20 years" provided the same is "not expressed to be terminable before its expiration at the option either of the landlord or of the tenant", in which case such as lease would be governed only by the provisions relating to rents and the provisions of sections 31 and 36 of the West Bengal Premises Tenancy Act providing of penalty for disturbances of easement etc., and for the tenant''s getting supply of electricity even without the consent of the landlord, but by no other provisions of that Act. This sub section (2), therefore, has introduced no change in the law in respect of leases entered into before 24/8/65, which are still governed by section 3 as it stood, and section 3(1), as it now stands, whereunder nothing in the West Bengal Premises Tenancy Act shall apply to "any premises held under a lease" for more than 20 years. The only question involved in this second appeal is as to whether the demised premises were held under such a lease, namely, a lease entered into before the commencement of the Amendment of 1965 on 24/8/65 and was for more than 20 years. An affirmative answer would warrant dismissal passed by the trial Court against the tenant-appellant in favour of the landlord-respondent and affirmed by the first Appellate Court, while a negative answer would require us to reverse that decree and the judgments of both the Courts below. We have decided to return an affirmative answer and to dismiss the appeal. The disputed lease was admittedly entered into by a. registered Indenture being Exhibit 1, dated 11/4/60 and was palpably "for the term of 21 years certain, commencing on and from the 15th day of December, in the year 1959 and expiring with the expiry of the 14th day of December, 1980". Some terms (not the term) and conditions of this lease, Exhibit, 1, were no doubt varied by two subsequent registered instruments, being, Exhibit 1(a) dated 5/2/71 and Exhibit Kb) dated 7/9/77, but these variations related only to the amount payable as rent for the premises, fittings and fixtures and the Municipal taxes. And in both these two instruments, Exhibit 1(a) and Exhibit 1(b), the parties clearly averred, may be cx-majori cautela, that [to quote from Exhibit 1(b), clause 5] "subject to the said variation, the Principal Deed shall remain in full force and effect and shall be read and construed and be enforceable as if the terms of these presents were inserted therein by way of addition or substitution, as the case may be". We accordingly thought that, notwithstanding these variations as aforesaid, the lease under which the demised premises were held, remained and continued to remain a lease for 21 years and as such the demised premises were not to be governed by the provisions of the West Bengal Premises Tenancy Act, 1956. because of section 3(1) thereof. We thought that to be the plain meaning of these plain English words.

2. But eminent Counsels on both sides took a good number of days to make us understand as to what was the term or the period of the lease, notwistanding the clear declaration in Exhibit 1 that it was meant to be for 21 years and was also, in fact, held for that period. That reminded us of the classical observations of Vivian Bose, J., in the Supreme Court decision in Seksaria Cotton Mills, AIR 1953 SC 278. at 281-282, that the more learned a person is in law, the more puzzled he might be "for

it is not till one is learned in the law that subtelties of thought and bewilderment arise at the meaning of plain English words which any man of average intelligence, not. versed in the law would have no difficulty in understanding". Both my Lord, Nayak, J. and I, and also the learned Judges in the Courts below, did not have any or much difficulty in under standing on a plain.reading of Exhibits 1, 1(a) and Kb) that the premises were, as avowedly expressed in Exhibit I, held under a lease for 21 years. May be, we were not that learned or versed in law and, therefore, did not suffer from any sort of amblyopia resulting from learning in law. Numerous authorities, both judicial and textual, have been referred to by the learned "Counsel for both the parties, but after wading through them as far as we could, we are satisfied that reference to many of them would not at all be necessary and would unnecessarily lengthen our, judgment for no useful purpose.

3. The first point urged by Mr. Dutt, the learned Counsel for the appellant-tenant, being the one also pressed by the appellant in and replied by the. Courts below, is that even though the lease, Exhibit 1, whereunder the premises were originally held by the tenant was for 21 years, the same was replaced by new leases, firstly by Exhibit 1(a) in 1971 and then by Exhibit 1(b) in 1977 and as a result the premises were being held from 1971. and then, from 1977 under leases for much shorter periods. Mr.. Dutt has strongly, contended that as essential terms of the lease relating, to payment of rents fixed under Exhibit I were varied by Exhibit 1(a) and Exhibit 1(b), that resulted in the death of the original lease of 1960 and in the birth of new lease successively in 1971 and 1977. After hearing Mr. Dutt and Mr. Mukherjee, the learned Counsel for the landlord-respondent for days together, we have not been able to find any authority for the view that if the rent settled under any Indenture of lease is varied, whether orally or by another Indenture, a new lease is obviously created as a result of such variation, and the original lease must invariably be taken to have died yielding place to the new one.

4. If there is a lease existing between the parties, but nevertheless the parties made a new lease in respect of the same demised property, the earlier lease must and cannot be taken to have been surrendered by implication, as the new lease cannot come into existence so long the old exists. No authority should be necessary for such an obvious proposition, but even then the Legislature itself has provided us with an authority " in the only illustration appended at the foot of section 111 of the Transfer of Properties Act for clause (f), to the effect that if "a lessee accepts from his lessor a new lease of the property leased, to take effect during the continuance of the existing lease, this is an implied surrender of the former lease and such lease determines thereupon". Jut we do not think that there is or can be any general proposition that if the lessor and the lessee vary the terms, even an essential term like the amount of rent, they cannot but be taken to have entered into a new lease. They may, in a given case, be found to have done so, but not that they must be taken to have done so invariably in each and every case of variation. The same should be the position in respect of the variation or change in respect of the other

essential elements also. Suppose, the parties are changed, the lessor by assignment of the reversion or the lessee by transfer of the remainder, in that case also the old lease may continue with the new lessor or the new lessee, unless it is manifested that a new lease was in fact entered into. Suppose, the demised property is changed say, by diminishing the extent of the demised property; there also the old lease may continue in respect of the reduced property, unless the parties demonstrate their intention to create a new one. in ail cases of such variations, the paramount question for consideration would be whether the parties intended only to introduce some alteration in the old lease or to create a new one.

5. Coming to the more precise question involved in this appeal, we had in Mulla''s Treaties on the Transfer of Property Act (7th Edition, p.646) that "the payment and acceptance of an increased or diminished rent does not of itself import a new demise". Mr. Dutt, however, placed strong reliance on the Full Bench decision of this Court in Lalit Mohan v. Gopali, 16 Calcutta Weekly Notes 55 in support of his contention that variation of rent payable under a lease would necessarily imply a surrender of the old and creation of a new tenancy. But all that appears to have been decided by this Court in Lalit Mohan (supra), is that if rent reserved under a compulsorily registrable registered Deed of Lease is sought to be altered by a written instrument, the same must also be effected by a registered instrument. But the Full Bench no where held that the latter instrument would amount to a surrender of the old and creation of a new lease, the later instrument must be registered because of sec. 17(1 )(b) of the Registration Act as enlarging or limiting the right or interest of the value of Rs. 100/- or more in immoveable property and not because it amounts to a fresh or a new lease within the meaning of section 17(1 )(d) of the Registration Act, or section 107 of the Transfer of Property Act.

6. Our attention has been drawn by Mr. Mukherjee to the decision of the Supreme Court in Gappulal v. Thakurji, AIR 1969 SC 1291 at 1293, where Bachawat, J., after adverting to certain observations in Hill & Redman''s Law of Landlord and Tenant (14th Edition, Article 385, page 493) has ruled that variation of rent made during the tenancy, whether by increase or reduction, does not necessarily mean the creation of a new tenancy with the consequential surender of the existing one "unless there is any special reason to infer a new tenancy, where, for instance, the parties make the change in the rent in the belief that the old tenancy is at an end". A Division Bench of this Court in D. S- Commercial Pvt. Ltd. v. Shewtambar Jain Sabha, AIR 1984 Calcutta 194 at 196 has relied on the Supreme Court decision in Gappulal (supra), and has accordingly ruled that every variation or alteration of the rent payable under a lease does not result in the creation of a new lease, unless the parties clearly intended to effect such novation. Our attention has also been drawn by Mr. Mukherjee to another decision of the Supreme Court in Sunil Kr. Roy, AIR 1972 SC 715 and also another latter Division Bench decision of this Court in Sankar Lal v. Satya Narain, AIR 1987 Calcutta 221, wherein Goppulal (supra), and Sunil Kumar Roy (supra), of the Supreme Court, and D- S. Commercial Pvt. Ltd. (supra), of this Court

have been referred to and relied on, and, as we read them, we have binding authorities in favour of the view enunciated by us hereinbefore to the effect that variations of essential terms of existing lease do not, either invariably or as. a matter of course ring out the old lease and bring in a new one. But they may, not necessarily must, do so depending on the bilateral manifestation of the intention of the parties demonstrated in words, deeds and other surrounding circumstances.

7. But, as already noted hereinbefore, both the parties, far from intending to give a go-by or to put an end to the existing lease under Exhibit 1, clearly and categorically asserted in'' Exhibit 1(a) and Exhibit 1(b), whereby the variations were made, that "subject to the said variation, the original Deed shall remain in full force and effect and shall be read and construed and be enforceable as if the terms of these presents were inserted therein by way of addition or substitution, as the case mat be". And relying on this and other evidence on record, both the Courts below have categorically found that the parties never intended to replace the existing lease by creating a new one. This is not, as it cannot be, a question of law, far less a substantial question of law, to justify out intervention u/s 100 of the Code of Civil Procedure, and being evidently a finding of fact, is beyond our reach in this second appeal. As posinted out by this Bench in A. K. Mukherjee v. Pradip Ranjan Sarbadhikari, 1987(2) Cal LJ 288 at 235, relying on the Privy Council decision in Balasubrahmanya v. M. Subbaya, AIR 1930 Privy Council 34 at 35 and the Supreme Court decision in I. I. (India) Private Limited v. Commissioner, Income Tax, AIR 1972 SC 524 at 1540, whether a particular intention can be inferred or is proved from the materials on record is a finding of fact. We accordingly overrule the contention made by Mr. Dutt that though originally the premises were held under a lease for 21 years from 1959 to 1980, because of the subsequent variations made in respect of the rate of rent and Municipal taxes in 1971 and then in 1977, fresh lease came into existence and accordingly the premises were no longer held by the appellant-tenant under a lease for 21 years since 1971 and 1977, within the meaning of section 3(1) of the West Bengal Premises Tenancy Act and those were accordingly governed by the provisions of that Act to disentitle the landlord-respondent from a decree of ejectment on the ground of effluxion of time limited by the lease.

8. The second point urged by Mr. Dutt is that even though a premises held under a lease for 21 years executed prior to the commencement of the Amendment Ordinance of 1965 are not to be governed by the provisions of the West Bengal Premises Tenancy Act, the lease in question, even though purporting to be for 21 years, clearly provided the lessee with the right of option to terminate the lease at any time after the expiry of 5 years from the date of commencement. According to Mr. Dutt, as a result of such right or option in favour of the lessee to terminate the lease at any time after 5 years, the demised premises could not, in law, be regarded to have been held under a lease for more than 20 years so as to entitle the landlord to invoke the provisions of section 3(1) to take out the premises outside the operation of the West Bengal Premises Tenancy Act. The question, therefore, that

arises for our consideration is whether a lease for. a certain term limited by the lease ceases to be a lease for such term, if the lessee has the unfettered right or option to terminate the same at any time before the expiry of the term so limited?

9. Section 13 of the West Bengal Premises Tenancy Act.provides that not withstanding anything to the contrary in any other law, no decree for recovery of possession of any premises shall be made against a tenant except on one or more of the grounds specified in that section. Expiry, of the period limited by the lease is not specified as a ground for eviction and the provisions of section 111(a) of the Transfer of Property Act providing for such a ground stands out-weighed by the non-obstante clause in section 13. Further, all that section 111(a) of the Transfer of Property Act provides in that a lease for a term terminates on the expiry of the term, but u/s 2(h) of the West Bengal Premises Tenancy Act, "tenant" has been defined to include "any person continuing in possession after the termination of his tenancy" until "any decree for eviction has been passed by a Court of competent jurisdiction", and as already noted, no such decree can be passed except on a ground specified u/s 13(1) of the West Bengal Premises Tenancy Act, which does not include expiration of term as a ground of ejectment. The net result, therefore, is that if the lease is one, which is not excluded from the operation of the west Bengal Premises Tenancy Act, expiration of the terth limited by the lease would not be a ground of ejectement of the lessee, notwithstanding its determination by effusion of time. As has been pointed out by the seven-Judge Bench of the Supreme Court in V. Dhanapal Chettiar v. Yasodai Ammal, AIR 1979 SC 1745 at 1751 with reference to the analogous provisions in the other State Acts, "the journal relationship of lessor and lessee will come to an end on the passing of an order or decree for eviction" and that "until then, under the expanded definition of the word ''tenant'' under the various Rents Acts, the tenant continues to be a tenant even though the contractual tenancy has been determined", whether by the expiration of the term or otherwise. To quote from the observations of Bschawat, J., in a Special Bench decision of this Court in Krishna Prasad v. Sarajubala, AIR 1961 Calcutta 505 at 507, quoted with approval by the Supreme Court in Damadilal v. Parshram, AIR 1976 SC.2229 at 2236, "the Rent Control and Tenancy Acts create a special word of their own. They speak of life after death. The statutory tenancy arises phoenixlike out of. the ashes of the contractual tenancy. The contractual tenant might die, but the statutory tenant may live long thereafter. The statutory tenant is an ex-tenant and yet he is a tenant."

10. The position, therefore, appears to be that under the expanded definition of "tenant", as in section 2(h) of the West Bengal Premises Tenancy Act, which includes a tenant continuing in passession even after the termination of his tenancy until a decree for ejectment is passed and because of section 13(1) being armed with a sweeping non-obstante clause countermanding any decree of ejectment except on the grounds mentioned therein, which do not include mere termination of tenancy as any such ground, mere termination of tenancy on any ground including effluxion of the period fixed, would not entitle a landlord to evict a tenant in a case governed

by the Act. The position appears to have been accepted by the Federal Court in Kai Khushroo Bejonzee Capadia, AIR 1949 Federal Court 124 where Mukherjee, J., speaking for the Court, observed that under the Rent Restriction Acts "a tenant may enjoy a statutory immunity from eviction even after the lease expired" and that "the landlord cannot eject him except on specified grounds mentioned in the Acts themselves". To the same effect is the decision of the Supreme Court in Sardari Lal v. Pritam Singh, AIR 1978 SC 1518 at 1520, where it has been observed that "the lessor on the.introduction of the Rent Restriction Act, could not seek to evict a lessee only on the ground that the lease determined by efflux of time."

11. That being the position, it seems that the Legislature in enacting section 3 of the West Bengal Premises'' Tenancy Act, as it stood before the Amendment Act of 1965, intended to exempt leases for more than 20 years from the rigours of the Act disentitling the lessors to evict lessees on ground other than those mentioned in section 13, like expiration of term and the like. Mr. Dutt does not, as he obviously cannot, dispute this position. But as already, noted, Mr. Dutta has urged that the lease in this case, even though admittedly for a period of 21 years, cannot be treated as such for the purpose of section 3(1) of the Act, as the lessee therunder was given a clear and unconditional right or option to terminate the same at any time after 5 years. We have given our anxious consideration to the contentions raised by Mr. Dutt, but have not been able to persuade ourselves to agree with him for more reasons than one.

12. We do not think that a premises held under a lease for a fixed term ceases to be so held for the purpose of the Transfer, of Property Act or the Registration Act or section 3(1) of the West Bengal Premises Tenancy Act solely because the lessee has been given the right or option quit the demised property at any earlier stage. A lease for immoveable property for any term exceeding one year, can, u/s 107 of the Transfer of Property Act and section 17(1)(d) of the Registration Act, only be made by a registered instrument and the same would nevertheless remain one for such period fixed, even though the- lessee has a right or option to put an end it at any time before the expiry of that period. A lease for, say, 21 years would not cease to be, but would remain, such a lease in the eye of law even if the lessee has been given an option to terminate it earlier. If a lease for a fixed term with the right or option for renewal in favour of the lessee remains a lease for that fixed term only, until the option is exercised, a lease for a fixed tern with the right or option in favour of the lessee of earlier termination should also remain a lease for the period fixed, as the option in each case creates, enlarges, limits or extinguishes no right, title or interest, until exercised.

13. A Premises in order to be excluded ''from the operation of the West Bengal Premises Tenancy Act, must, u/s 3(1) thereof, be a "premises held under a lease for a period of not less than" 15 years or 20 years, as the case may be. A house or a building becomes a premises, as defined in section 2(f) of the West Bengal Premises

Tenancy Act, only when the same is let out. A let out house becomes a premises only vis-a-vis the tenant and not vis-a-vis the landlord for whom it is still a house or a building. Therefore, the expression "premises held" in section 3(1) would obviously mean a premises held by the tenant or the lessee. As already. noted, if premises are held by a tenant under a lease for a fixed period P of more than 15 or 20 years, the premises must be deemed to be held under a lease for such fixed period, notwithstanding the fact that the tenant has also the right or option, which he may or may not exercise. If under the lease, the tenant has an unfettered right to hold the premises for the period fixed, he must be deemed to be holding the same under a lease for the fixed period for the purpose of section 3(1) of the West Bengal Premises Tenancy Act, whereunder the provision of the Act would cease to apply if the period fixed is for more than 15 or 20 years. The Legislature in enacting the tenant to hold the premises or determine it earlier, the landlord should be relieved, of the rigours of the provisions of the Act permitting ejectement only on the grounds specified in section 13(1) and should be allowed to recover possession on the expiration of such period.

14. The position continued till the Amendment of 1965 whereby sub-section (2) was inserted in section 3 to make some other provisions in respect of the leases entered into after the commencement of the Amendment Ordinance on 24/8/65. As is well-known, this West Bengal Premises Tenancy Act of 1956, like the other cognate Acts in the other States, was enacted to give protection to the tenants and, as has been pointed out by a Division Bench of this Court in Kameswar v. Sahadeb, 74 CWN 715 at 729 and also by this Bench in Ruby Banerjee v. Mechanico Enterprises, 1987(2) CHN 1 at 4, "each time the Legislature takes up the mater into its hands, the law is made more and more in favour of the tenants and prejudicial to the landlords". The Legislature in 1965 thought it fit to apply thence forward all the provisions of the West Bengal Premises Tenancy Act to all leases executed after the commencement of the Amendment Ordinance of 1965 and inserted the present sub-section (2) to section 3 by the Amendment of 1965, u/s 3(2) as it now stands, except premises belonging to or requisitioned by any Government or belonging to any local authority or any tenancy created by Government in respect of premises taken on lease by Government, as provided in section 1(3), the provisions of the West Bengal Premises Tenancy Act shall apply to all premises held under a lease entered into after 24/8/65 whatever be the periods fixed by such leases. The lease in question in the case at hand having been entered into long before 1965 in 1959, the provisions of this section 3(2) would not have c otherwise required our consideration. But drawing inspiration from the Proviso to this section 3(2), though apply-only to lease entered into alter 24/8/65, Mr. Dutt attempted to urge that this Proviso clearly indicates that in order to enjoy protection from the operation of the West Bengal Premises Tenancy Act even u/s 3(1), the leases under which the premises are held, even though for more than 20 years, must also be not "expressed to be terminable before its expiration at the option of either of the

landlord or of the tenant, and Mr. Dutt accordingly endeavoured to contended that the lease in the case at hand, even though for more than 20 years, would not go out of the operation of the provisions of the Act, as the lease was clearly "expressed to be terminable before its expiration..... at the option of the tenant". Let us have a look at the proviso to section 3(2).

15. After providing in the body of section 3(2) that, save in respect of premises belonging to or requisitioned by the Government, or belonging to any local authority or tenancies created by the Government in premises taken by it on lease, the provisions of the West Bengal Premises Tenancy Act shall apply to all premises held under a lease for any period entered into after 24/8/65, the Proviso, however, provides that :-

" if any such lease is for a period of not less than 20 years and the period limited by such lease is not expressed to be terminable before its expiration at the option either of the Landlord or of the tenant, nothing in this Act shall apply to any premises held under such lease."

Other than the provisions relating to rent and provisions of section 31 (relating to disturbance of easements) and section 36 (relating to supply of electricity without the landlord''s consent). In other words, under the Proviso, in order to exclude the provisions of the West Bengal Premises Tenancy Act (other than those mentioned above) in respect of leases executed after 24/8/65, not only the period limited must be not less than 20 years but the period limited must not be expressed to be terminable before its expiration either at the option of the landlord or at the option of the tenant.

16. There are authorities for the view that a lease, even though avowedly for a fixed term, would nevertheless be construed as a tenancy-at- will, if the same is determinable before its expiration at the option of the landlord. Not the Bombay Division Bench decision in Jagivandas v. Narayan, ILR 8 Bombay 493, cited by Mr. Dutt, but the English decision in Morton v. Woods, LR 3 Queens Bench 658 referred to therein appears to be such an authority. There may be good reasons for that view, If a landlord while purporting to grant a lease for more than 20 years reserves to himself the unconditional right to determine thesame at any time before the term fixed, the premises may not be regarded to be held under lease for the term fixed within the meaning of. section 30) in order to go out of the provisions of the West Bengal Premises Tenancy Act. The fixation of the period of the lease in that case may only be a camouflage and a manoeuvre to evade the provisions of the West Bengal Premises Tenancy Act, not to be counterminable by any Court. But the case at hand, not being of a lease determinable at the option of the landlord, but a the option of the tenant, we do not, as we need not, decide that question.

It is true that under the Proviso to section 3(2), a lease, ever for a period of more than 20 years, but determinable at the option of the tenant only, also goes out of

the Proviso and is governed by the provisions of the West Bengal Premises Tenancy Act. But that would be so only in respect of the leases executed after 24/8/65 and if may be that the Legislature, in view of its avowed policy of giving more and more protection to the tenants, has provided that even premises held under l long leases for more than 20 years would also be governed by the provisions of the West Bengal Premises Tenancy Act, even where such leases I are determinable at the option of the tenants only. But if, while deliberately engrafting such a proviso to section 3(2) while amending section 3 in 1965 to provide only for leases executed after 24/8/65, the Legislature has conspicuously refrained from incorporating any such provisions in section 3(1) governing leases entered into before that date, we do not think that it would be open to us to project the provisions of that proviso in section 3(1) also and to hold that a lease for a fixed term would cease to be so, if it is determinable before its expiration even at the option of the tenant only. We would, accordingly, overrule both the contentions made by Mr. Dutt and would dismiss the the second appeal.

The second appeal is accordingly dismissed with costs and the decree granted by the trial Court and confirmed by the first Appellate Court is affirmed. We would, however, grant the appellant-tenant time to vacate the suit premises till 31st January, 1989 provided it gives written undertaking to vacate the same within that period in the trial Court.

Nayak, J.

I agree.