

(1982) 05 CAL CK 0006**Calcutta High Court****Case No:** C.R.No. 1263 of 1980

Bakul Rani Dey and Others

APPELLANT

Vs

Nani Bala Debi and Ors

RESPONDENT

Date of Decision: May 25, 1982**Acts Referred:**

- Transfer of Property Act, 1882 - Section 108
- West Bengal Premises Tenancy Act, 1956 - Section 13, 2(h), 34

Citation: 86 CWN 943**Hon'ble Judges:** Chittatosh Mookerjee, J**Bench:** Single Bench**Advocate:** Asok Kumar Banerjee, for the Appellant; Amalendu Kumar Banerjee (not present), for the Respondent**Judgement**

Chittatosh Mookherjee, J

1. The petitioners have been substituted as defendants in a suit for ejectment instituted by the plaintiff opposite parties on the ground of alleged defaults in payment of rent. The learned Munsif by his order complained of has rejected the prayer of the defendant-petitioner for Issue of a Commission for local inspection of the suit premises to report on its present condition and about the repairs which were required to be undertaken. In my view, the learned Munsif did not commit any error of jurisdiction in not entertaining the defendant tenants' prayers for local inspection for the above premises. Their earlier application dated February 19 1979 with similar prayers for local inspection was rejected by the learned Munsif by his order dated March 7, 1979. therefore, in the absence of any change of circumstances, the same court may not ordinarily reconsider its said earlier order rejecting the defendants' prayer for local inspection. The defendants did not plead any change of circumstances which could justify re-consideration of the learned Munsif's view in the matter of local inspection. I am unable to hold that the learned

Munsif had arbitrarily exercised his discretion by not directing local inspection and he did not commit any jurisdictional error.

2. While rejecting the prayer of the defendants for local inspection; the learned Munsif has pertinently observed that the original defendant did not avail of the provisions relating to repairs contained in the West Bengal Premises Tenancy Act. Until a decree for recovery of possession under "any of the clauses of sub-section (1) of section 13 of the West Bengal Premises Tenancy Act is passed, the defendants would continue to be statutory tenants and if they are so advised, they may take recourse to proceedings u/s 34 of the West Bengal Premises Tenancy Act. Therefore, the order passed by the learned Munsif would be without prejudice to the rights and contentions of the parties in any other appropriate proceedings in accordance with law.

3. With respect I am unable to apply the ratio of the decision of B.N. Maitra J. in Sreepada Dey Vs. Amal Kr. Chatterjee, to the facts of the present case. In the first place, on facts the present case is distinguishable. While disposing of this Rule, I have to decide whether or not the learned Munsif had committed any jurisdictional error by rejecting the defendants" prayer for local inspection of the suit premises and as yet the defendants have not made any application in the trial court for a mandatory order upon the plaintiffs to repair the suit premises. 6 N. Maitra J in Sreepada Dey"s case (supra) referred to two reported decisions Loken Bose Vs. Sm. Ashima Dey and Another, and Nirendra Mohan v. Lai Mohan 1977(2) CLJ 941 Presumably, the reference of the decision in Nirendra Mohan"s case (supra) has not been correctly given by B N. Maitra, J. In his decision In Sreepada Dey"s case (supra) Secondly, the view I have taken in this case Is fully in accord with the decision of M.M. Dutt J In Loken Boss"s case (supra) In deciding the said case of Sreepada Dev (supra), B N Maitra, J. followed the said decision of M.M. Dutt, J In Loken Bose"s case (supra). I may respectfully point out that M.M Dutts, J. in Loken Bose"s case (supra), did not expressly or impliedly lay down the proposition that when a suit for eviction Is pending, an application u/s 34 of the West Bengal Premises Tenancy Act before the Rent Controller does not lie In case of Loken Bose (supra), the point for consideration was whether or not section 34 of the West Bengal Premises Tenancy Act ousted the jurisdiction of the civil court to grant relief to the defendant tenant by way of mandatory Injunction The learned Judge held that there was nothing in the West Bengal Premises Tenancy Act which appeared either expressly or impliedly to oust the jurisdiction of civil court to grant the same or similar relief to tenant M.M. Dutt, J. at page 949 light hand column of the reports observed "But if the tenant has an additional remedy under any other law, I do not think that he should be deprived of that remedy". The learned Judge had retorted to the question of multiplicity of proceedings only in the context of the question of exercise of discretionary jurisdiction of the court to grant temporary mandatory injunction and did not further lay down that when once an ejectment suit is filed the Rent Controller would be ousted of his jurisdiction u/s 34 of the West Bengal. Premises Tenancy Act and

that the defendant tenant is no longer entitled to avail of the remedy provided in the said section.

4. The West Bengal Premises Tenancy Act, 1956 provides for the regulation of certain incidents of tenancy of premises in Calcutta and some other areas in West Bengal". The said Act is a piece of welfare legislation which modifies to the extent provided therein the rights and duties of the landlords and tenants. Under the general law the rights and liabilities of the lessor and the lessee in the absence of the contract or local usage are regulated by section 108 of the Transfer of Property Act. The West Bengal Premises Tenancy Act has not made any express provision for ousting the civil court's jurisdiction to enforce the said rights and liabilities of the lessor and the lessee set out in section 108 of the Transfer of Property Act. The West Bengal Premises Tenancy Act does not create altogether new liabilities of the landlord to make repairs or to take measures for maintenance of essential services but has prescribed new remedies for enforcement of the said civil rights as modified by the West Bengal Premises Tenancy Act. Therefore, the Controller's jurisdiction u/s 34 of the said Act in the matter of repairs and taking measures for maintenance of essential services is an additional remedy. The said section does not oust the civil court's jurisdiction to enforce the rights and obligations of the landlord and the tenant in the matter of effecting repairs and maintaining essential services. Thus the two remedies before the Controller and before the civil court are concurrent, i.e, cumulative.

5. The expression "tenant" u/s 2(h) of the West Bengal Premises Tenancy Act means any person by whom or on whose account or behalf, the rent of any premises is, or but for a special contract would be, payable and (include any person continuing in possession after the termination of his tenancy or In the event of such person's death, such of his heirs as were ordinarily residing with him at the time of his death) but shall not include any person against whom any decree or order for eviction has been made by a Court of competent jurisdiction" There is nothing repugnant in the subject or in the context of section 34. of the West Bengal Premises Tenancy Act for holding that the expression tenant in possession of any premises is the said section does not include a tenant against whom a suit for eviction on any of the grounds mentioned in any decree for eviction has been instituted in a court of competent jurisdiction. Because the tenancy continues to subsist until decree for ejectment is passed. Merely because a suit for ejectment has been filed against him, a tenant is not deprived of seeking remedies prescribed by section 34 of the West Bengal Premises Tenancy Act.

6. I am not prepared to hold once a suit for ejectment is brought the Rent Controller would be deprived of his jurisdiction u/s 34 of the West Bengal Premises Tenancy Act. Such words of limitation on the Rent Controller's jurisdiction cannot be read into a statute which is a remedial one and, inter-alia, for the protection of tenants of premises governed by the West Bengal Premises Tenancy Act. The ground of

multiplicity of proceedings cannot be a ground for holding that once an ejectment suit is filed by the landlord, the Rent Controller's jurisdiction u/s 34 would be ousted and the tenant would be deprived of availing of the remedy prescribed by the said section. In view of the clear language of the section, 34 there is no scope for holding that the operation of section 34 of the West Bengal Premises Tenancy Act would be suspended once a suit for ejectment is instituted.

7. There is another aspect of the matter. The court which is in seisin of an ejectment suit has a discretion to grant in tenant's favour an order of temporary injunction against the plaintiff landlord to effect essential repairs. But the remedy provided u/s 34 of the West Bengal Premises Tenancy Act is a statutory remedy. Therefore, it is not possible to hold that existence of the discretionary power of the civil court to grant in an ejectment suit temporary mandatory injunction in tenants' favour would deprive the powers u/s 34 of the West Bengal Premises Tenancy Act vested in the Rent Controller to direct the landlord to make repairs and to take measures for maintenance of essential services. The question of multiplicity of proceedings would be more relevant in deciding whether the court should exercise its discretionary powers in a matter but could not be a ground for ousting the jurisdiction conferred by section 34 of the West Bengal Premises Tenancy Act upon the Rent Controller to direct the landlord to make repairs and to maintain essential services. Until a decree or order for ejectment is passed notwithstanding pendency of an ejectment suit against him, a tenant would have concurrent remedies before the civil court and before the Rent Controller for enforcement of the landlord's obligation to make repairs and to maintain the essential services. Only when a decree for ejectment is passed against him by a court of competent jurisdiction, a proceeding u/s 34 of the Act would no longer be maintainable. For the foregoing reasons (discharge this Rule without any order as to costs.