Jibandhan Dey Vs United Exhibitors

Court: Calcutta High Court

Date of Decision: July 24, 1972

Acts Referred: Bengal Tenancy Act, 1885 â€" Section 5(1)
Transfer of Property Act, 1882 â€" Section 108
West Bengal Estates Acquisition Act, 1953 â€" Section 2, 6(1)

Citation: (1972) 1 CALLT 265 : (1974) 2 ILR (Cal) 107

Hon'ble Judges: M.M. Dutt, J; Arun K. Mukherjea, J

Bench: Division Bench

Advocate: A.D. Mukherjee and Nirmal Kumar Ganguli, for the Appellant; P.N. Mitter and Samarendra Krishna Deb, for the Respondent

Final Decision: Dismissed

Judgement

M.M. Dutt, J.
This appeal is at the instance of the Plaintiff and it arises out of a suit for ejectment and for recovery of arrears of rent and

mesne profits.

2. The Plaintiff"s case is that the Plaintiff is the owner of a plot of land measuring 1 bigha 3 cottahs 6 chhataks situate within the Municipality of

Baranagar and numbered as premises No. 290 Gopal Lal Tagore Road, Baranagar. There were some structures on the land. By an agreement

dated October 16, 1945, executed by and between the Plaintiff and one Nil Krishna Talukdar, a partner of the Defendant firm, the Plaintiff agreed

to lease the said premises to the said Nil Krishna Talukdar or his nominee on certain terms and conditions. It was agreed that the Plaintiff would

evict the existing tenants from the premises and make over possession of the same to the lessee. The lessee would demolish the existing structures

and construct on the land a Cinema House with attached buildings necessary for carrying on the exhibition of cinema shows. On account of the

existing structures on the land, the lessee was to pay to the lessor a sum of Rs. 4,000. The lessee would also keep in deposit with the lessor, at the

time of the execution of the lease, a further sum of Rs. 4,000 which would be refunded by the lessor to the lessee after the execution of the lease

and after the buildings and structures are erected by the lessee on the land. The property stood in benami of the lessor"s wife and it was stipulated

by the lessor that the lessor would take steps to get a decree from a competent Court declaring the title of the lessor in the property and that within

fifteen days of the date of the decree the lessor would execute the lease in favour of the lessee. The period of the lease was for thirty five years with

an option of renewal to the lessee for a further period of ten years. The rent reserved was Rs. 350 per month for the first period of the lease,

namely, for the first thirty five years and thereafter for the next ten years at the rate of Rs. 400 per month. It was stipulated that, if the rent was not

paid for more than six months, the lease would be treated as cancelled and the lessor would be entitled to possess the lease-hold property without

notice. Clause (5) of the lease provides that the lessor will get back the cinema buildings on the lease-hold property which will be built by the

lessee together with all fixtures and appurtenances save and except the machineries and movables after the period of the lease free from all

incumbrances, and that the lessee will not get any compensation nor will he be entitled to claim any price therefor.

3. The existing tenants were evicted by the lessor and the lessor also obtained a compromise decree whereby the lessor"s title was declared. The

existing structures were demolished by the lessee and the lease was executed by the lessor in favour of the Defendant firm, who is the nominee of

the said Nil Krishna Talukdar, on May 30, 1947, and registered on the same day. The lease contains substantially the same terms as in the

agreement excepting that there were some modifications. As the buildings which the lessee was required to erect were almost complete on the date

of the lease, the lessee was not required to deposit the sum of Rs. 4,000 in terms of the agreement. The Plaintiff claims that he is the owner of both

the land and the buildings and structures including the Cinema House erected by the Defendant at his own cost.

4. The further case of the Plaintiff is that the Defendant paid rent to the Plaintiff upto March 1955, but the Defendant stopped payment of rent from

April 1955 and did not pay rent to the Plaintiff since then. At the time of the preparation of the revisional record-of-rights under the West Bengal

Estates Acquisition Act, 1953, the Defendant illegally contended before the Revenue Officer that he was a lessee of the land and not of the

buildings and structures and that the Plaintiff was an intermediary and his interest in the land vested in the State under the said Act. In the revisional

record-of-rights the Defendant was, recorded as the lessee of the land under the order of the Revenue Officer. The Plaintiff moved this Court in

revision against the order of the Revenue Officer and this Court by its order dated March 26, 1963, directed the record to be modified in the

manner that in the remarks column of the khatian it should be noted that ""the lessor has some rights to the structures during the period of lease and

he becomes the full owner of the structures after the period of the lease."" This Court, however, made it clear that the modification and the

determination made by this Court were for the purpose of the proceeding under the West Bengal Estates Acquisition Act. The Plaintiff claims that

the Defendant not having paid rent for a period of more than six months, the lease stands forfeited and he is entitled to evict the Defendant from the

suit property and recover khas possession thereof.

5. The suit was contested by the Defendant. The defence of the Defendant is that the Defendant is a non-agricultural tenant in respect of the land

and that the buildings and structures erected by the Defendant on the land belonged to the Defendant. As to the Plaintiff"s case of non-payment of

rent, the defence is that the State of West Bengal have been claiming rent from the Defendant since April 1958 and that with a view to avoiding

trouble the Defendant has been depositing the monthly rent at the rate of Rs. 350 in the Court of the Munsif at Sealdah in accordance with the

provisions of the West Bengal Non-Agricultural Tenancy Act, 1949. It has been alleged by the Defendant that the Plaintiff was an intermediary and

his interest in the land vested in the State of West Bengal and that, accordingly, the suit was not maintainable at the instance of the Plaintiff. Further,

it has been contended by the Defendant that the State of West Bengal is a necessary party to the suit and that in the absence of the State of West

Bengal the suit must fail.

6. The learned Subordinate Judge came to the finding that the Plaintiff was an intermediary, but he took the view that the Plaintiff having the vested

remainder in the buildings and structures standing on the land was entitled to retain the land under the provisions of Section 6(1)(b) of the West

Bengal Estates Acquisition Act. The learned Subordinate Judge, however, found that the Defendant was justified in depositing rent in the Court of

the Munsif in accordance with the provisions of the West Bengal Non-Agricultural Tenancy Act in favour of the Plaintiff and the State of West

Bengal and that, accordingly, the Defendant did not commit any breach of the term of the lease relating to payment of rent. In that view of the

matter, the learned Subordinate Judge dismissed the suit. Hence, this appeal by the Plaintiff.

7. Mr. Mukherjee, learned Advocate appearing on behalf of the Plaintiff-appellant contended that the term of the lease would clearly show that the

buildings and structures including the Cinema House erected by the Defendant belonged to the Plaintiff and that the lease was in respect of both the

land and the said buildings and structures. Mr. Mukherjee further contended that the Plaintiff was not an intermediary, but he was a non-agricultural

tenant and his interest did not vest in the State. In any event, Mr. Mukherjee submitted that even assuming that the Plaintiff was an intermediary the

Plaintiff being the owner of the buildings and structures, the Plaintiff was entitled to retain the land comprised in the said buildings and structures u/s

6(1)(b) of the West Bengal Estates Acquisition Act, 1953.

8. Regarding the first contention of Mr. Mukherjee, we have carefully considered the terms and conditions of the agreement and also of the lease

and we do not find any statement in either of the same that the buildings and structures which were to be erected by the lessee would belong to the

Plaintiff or that the lease was in respect of both the land and the said buildings and structures. In K.A. Dhairyawan and Others Vs. J.R. Thakur and

Others, the Supreme Court has held that unless there is a positive statement in the lease that the building to be erected would be in the ownership

of the lessors or that the building would be deemed to have been leased to the lessees along with the land, it cannot be said that the building

belonged to the lessors or that the lease was also in respect of the building. The lease which is Ex. 2 starts with the statement--

this deed of lease in respect of bastu lands with rights and appurtenances for a period/duration of 35 years certain and thereafter for a period of 10

years only according to the option of the recipient of the lease, is executed to the following effect.

The opening words of the lease, as quoted above, show in unmistakable term that the lease was in respect of the land only. The premises in

respect of which the lease was granted is described in sch. "ka" to the lease. That schedule only gives a description of the land and its boundaries.

The schedule does not make any reference to the buildings and structures erected by the lessee. Mr. Mukherjee, however, strongly relied on

Clause (5) and Clause (12) of the lease. Clause (5) of the lease is as follows:

The structures and buildings which have been and will be constructed on the lease-hold property by the lessee for the purpose of cinema business,

the same excepting the machineries and movable goods with all the fixtures along with the furniture and other materials, after the period of the

lease, will be obtained by the lessor as included in the said lease-hold property in vacant possession and free from incumbrances, as his property,

without any interruption, and the lessor will be entitled to possess the same without any notice, and for that reason the lessee will not be entitled to

claim compensation or price etc.

9. In our view, Clause(5) instead of supporting the contention of Mr. Mukherjee goes against the same. The opening words of Clause (5) --""the

structures and buildings which have been and will be constructed on the lease-hold property etc.,"" makes a distinction between the lease-hold

property and the structures and buildings. Further, it has been provided in Clause (5) that the lessee will not be entitled to claim compensation or

price for the buildings and structures. If the buildings and structures should be deemed to belong to the lessor, then there was no necessity for

making such a provision in the lease. It is clear from Clause (5) that the buildings and structures erected by the lessee belonged to the lessee and

not to the lessor. Clause (12) of the lease, relied on by Mr. Mukherjee, also makes a distinction between the lease-hold property and the buildings

and structures when it says that if the lessee within the term or period sells the building with improvements, additions, alterations, adjustments etc.

together with the lease-hold interest or any potion thereof etc. Neither Clause (5) nor Clause (12) supports the contention of Mr. Mukherjee that

the buildings and structures which were to be erected by the lessee should be deemed to belong to the Plaintiff or that the lease was in respect of

the buildings and structures. u/s 108(h) of the Transfer of Property Act, the lessee is entitled to remove the structures erected by him during the

continuance of the lease. It is true that under Clause (5) the lessee agreed to deliver possession of the buildings and structures to the lessor, but the

matter is entirely one of contract between the parties as pointed out by the Supreme Court in interpreting a similar clause in Dr. K.A.

Dhairyawan"s case Supra referred to above.

10. The rent receipts which have been filed by the Defendant also indicate that the lease was in respect of the land and not of buildings and

structures. In the rent receipts the word "house" has been deleted from the column "house rent" and in its place the word "lease" has been written.

If the lease was in respect of the buildings and structures, the word "house" would not have been deleted.

11. For the reasons aforesaid, we hold that the Defendant and not the Plaintiff is the owner of the buildings and structures erected by the

Defendant and that the lease was not in respect of the buildings and structures. The Defendant was only a lessee of the land demised under the

lease, Ex. 2.

12. Next, we are to consider the question of vesting of the Plaintiff"s interest in the State under the West Bengal Estates Acquisition Act, 1953.

According to the Defendant, the Plaintiff was an intermediary and his interest vested in the State. There can be no doubt that the onus lies on the

Defendant to prove that the Plaintiff was an intermediary. Mr. Mitter, learned Advocate for the Defendant-respondent, submitted that the Plaintiff

was a tenure-holder in respect of the demised land and, as such, the Plaintiff was an intermediary. Mr. Mukherjee, on the other hand, contended

that the Plaintiff was not a tenure-holder but a non-agricultural tenant and that, even assuming that the Plaintiff was a tenure-holder, the land being

admittedly non-agricultural land and used for non-agricultural purposes from long before the date of vesting, the Plaintiff answered the description

of a non-agricultural tenant as defined in Section 2(k) of the West Bengal Estates Acquisition Act. u/s 2(k) ''non-agricultural tenant'' means a tenant

of non-agricultural land who holds under a proprietor, a tenure-holder, a service tenure-holder, and under tenure-holder. Mr. Mitter, however,

submitted that a tenure-holder being an intermediary within the definition of the term u/s 2(i) of the Act, he could not be a non-agricultural tenant, or

in other words, a person cannot both be an intermediary and a non-agricultural tenant who is not an intermediary.

13. The whole basis of Mr. Mitter''s argument is that the plain-tiff is a tenure-holder. There is nothing on record to show that the Plaintiff is a

tenure-holder. Exhibit O which is the tenant''s khatian being C.S. Khatian No. 3544, records the name of the Plaintiff as the landlord of the

Defendant firm. Mr. Mitter, however, submitted that as the land is situate in Baranagar which consists of only Government khasmahal lands, each

holding in Baranagar is a tenure. In support of that contention Mr. Mitter relied on the following observations in Sarada Charan Mitter''s Land Law

of Bengal (2nd ed., p. 40):

Serampore and Baranagar were acquired from the Danish Government in 1845. These are also Khasmahals. The holding being generally

permanent, hereditary and transferable like the holdings in Calcutta, Panchannagram and Chinsura. These holdings are tenures within the meaning

of Act VII (B.C.) of 1868, and rent is recoverable practically as revenue under the procedure laid down in that Act and Act XI of 1859....

The observations quoted above relate to the period before the enactment of the Bengal Tenancy Act, 1885. The term ''tenure-holder'' has not

been defined in the West Bengal Estates Acquisition Act, but Section 2(p) of that Act provides that the expressions used in the Act and not

otherwise defined have in relation to the areas to which the Bengal Tenancy Act, 1885, applies the same meaning as in that Act. u/s 5(1) of the

Bengal Tenancy Act, ''tenure-holder'' means primarily a person who has acquired from a proprietor or from another tenure-holder a right to hold

land for the purpose of collecting rent f or bringing it under cultivation by establishing tenants on it and includes also the successors-in-interest of

persons who have acquired such a right. In order to decide whether a person is a tenure-holder or not, the most important fact or which has to be-

considered is the purpose for which the lease was granted. Exhibit O refers to the khatian of the Plaintiff. The status of the Plaintiff could have been

easily proved by the production of the Plaintiff"s khatian. The Defendant did not take any steps to produce that khatian either in the trial Court or in

this Court. There is no explanation by the Defendant for the non-production of the khatian. In the circumstances, it will not be unreasonable to

presume from the failure of the Defendant to produce that khatian, that if the khatian had been produced it would have shown that the Plaintiff is

not a tenure-holder in respect of the demised land.

14. A reference may be made to another fact that the disputed land which is non-agricultural in character forms the holding No. 126 of the

Khasmahal Touzie No. 1068/2833 and is situate within the Baranagar Municipality. The Plaintiff"s tenancy, therefore, comprises only non-

agricultural land. It is inconceivable that a "tenure" within the meaning of Section 5(1) of the Bengal Tenancy Act can be created in respect of non-

agricultural land only. This fact also suggests that the Plaintiff is a non-agricultural tenant. In the absence of any evidence that the Plaintiff is a

tenure-holder, it cannot but be held that the Plaintiff, who is a tenant of non-agricultural land holding under the proprietor, namely, the State of

West Bengal, is a non-agricultural tenant within the meaning of Section 2(k) of the West Bengal Estates Acquisition Act. In that view of the matter,

we hold that the interest of the Plaintiff has not vested in the State.

15. The circumstances appearing from Exs. K(1) to K(14), which are the admitted correspondences between the Defendant, the officers of the

State of West Bengal and the Plaintiff, clearly justify the conduct of the Defendant in depositing rent with the Court of the Munsif as a non-

agricultural tenant under the West Bengal Non-agricultural Tenancy Act, 1949. Clause (d) of Sub-section (1) of Section 51 of the West Bengal

Non-agricultural Tenancy Act provides that when the non-agricultural tenant entertains a bona fide doubt as to who is entitled to receive the rent,

the non-agricultural tenant may present to the Court having jurisdiction to entertain a suit for the rent of his tenancy, an application in writing for

permission to deposit in the Court a sum not less than the amount of the money then due. In view of the fact that the State of West Bengal had

been demanding rent from the Defendant on the ground of vesting of the Plaintiff"s interest in the State, the Defendant had ample justification to

deposit the monthly rent with the Court of the Munsif. The Defendant cannot, therefore, be held to be a defaulter in payment of rent or to have

committed any breach of the term of the lease as to the payment of rent. We, therefore, hold that there has been no forfeiture of the lease and the

Plaintiff is not entitled to get a decree for eviction on the ground of forfeiture. The Plaintiff shall, however, be entitled to withdraw the rent that has

been deposited by the Defendant with the Court of the Munsif.

16. This appeal was placed in the list for judgment some time ago, when we were about to deliver this judgment, it was prayed on behalf of Mr.

Mukherjee, who was not then attending Court, that Mr. Mukherjee would make some further submissions in the matter. Accordingly, we

adjourned the delivery of judgment. On July 19 last, the matter again came up for judgment. On that day, Mr. Mukherjee submitted that on the

materials on record it could not be held that the Defendant had any bona fide doubt as to who was entitled to receive rent and that, accordingly, his

action in depositing rent in Court u/s 51(1)(d) was not at all justified. In support of his contention Mr. Mukherjee relied on two decisions, one of

this Court in Lodai Mollah v. Kally Dass Roy ILR 8 Cal. 238 and the other of the Privy Council in Kumar Raj Krishna Prosad Lal Singh Deo v.

Baraboni Coal Concern Limited and Ors. 64 I.A. 311. These two decisions lay down the circumstances under which a lessee is entitled to deny

the title of his lessor. We do not see how these two decisions can be of any help for the determination of the question whether the Defendant

entertained a bona fide doubt as to who was entitled to receive rent. So far as the materials on record are concerned, we have already referred to

Exs. K(1) to K(14). It appears from Ex. K(7) that at one point of time the J.L.R.O., Khardah, threatened the Defendant with a certificate

proceeding in case the Defendant would not pay the arrears of rent to the State Government. In our opinion, in view of the facts appearing from

Exs. K(1) to K(14), it cannot be said that there was no scope for the Defendant to entertain a bona fide doubt as to who was entitled to receive

the rent. We, therefore, reject the said contention of Mr. Mukherjee.

17. For the reasons aforesaid, subject to the observation made hereinabove regarding the withdrawal of rent by the Plaintiff, the judgment and

decree of the learned Subordinate Judge are hereby affirmed and the appeal is dismissed. In view of the peculiar facts and circumstances of the

case, we direct each party to bear his costs in this Court. The cross-objection is dismissed without any order as to cost.

Arun K. Mukherjea, J.

I agree.