

(1976) 03 CAL CK 0028

Calcutta High Court

Case No: Civ. Rev. Case No. 3966 of 1972

Pathidhar Saw Mill

APPELLANT

Vs

Bimal Krishna Pal and Another

RESPONDENT

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**Date of Decision:** March 20, 1976**Acts Referred:**

- Calcutta Thika Tenancy Act, 1949 - Section 10, 2(5), 3, 4, 5
- Constitution of India, 1950 - Article 227
- Transfer of Property Act, 1882 - Section 106

**Citation:** 80 CWN 577**Hon'ble Judges:** S.K. Datta, J**Bench:** Single Bench**Advocate:** Amarendra Mohan Mitra and Bijitendra Mohan Mitra, for the Appellant; Bhupendra Kumar Panda and Mrinal Kanti Roy, for the Respondent

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**Judgement**

S.K. Dutta, J.

This rule under Article 227 of the Constitution of India was obtained by the Thika tenant against an appellate order dated October, 5, 1972 passed by the Additional District Judge, 11th Court, Alipore affirming the order of the Munsif, 4th Court Sealdah acting as the Thika Controller under the Calcutta Thika Tenancy Act, 1949 allowing an application u/s 5 of the said Act. The relevant facts are that premises No. 22/4 also known as 22/6, Galif Street belonged to the opposite parties and the premises was let out by their father to one Nagendra Nath Ghose as a thika tenant in respect of 11 cottah of land comprising the premises at a rental of Rs. 200/- payable according to Bengali calender month. The land was taken by Nagendra for running a business of Surki Mill at the premises. Nagendra sold his interest to the petitioner in this rule by a registered deed dated November 30, 1959, who thereby acquired interest of Nagendra in the said premises and there is no dispute that the petitioner accordingly became the thika tenant of the said premises under the same terms and conditions. On June 8, 1960 the opposite parties who became the

landlords after their father filed an application u/s 5 of the Calcutta Thika Tenancy Act, 1949 for recovery of possession of the said tenanted premises on eviction of the petitioner on the ground of their own use and occupation for the purposes of their business. It was said that the tenancy of the petitioner was duly terminated by a valid notice dated January 27, 1960 corresponding to Magh 13, 1366 B.S. calling upon the petitioner to quit and vacate and deliver khas possession of the premises on the expiry of the last day of Baisak 1366 B.S. This notice was duly received by the petitioner but as there was no delivery of possession of the premises as required, the application aforesaid was filed for an order of ejectment of the petitioner.

2. The petitioner filed a written objection denying the allegations about the requirement of the premises made by the opposite parties and also contended that the notice was not legal, valid or sufficient. It was further stated that the petitioner had made certain permanent structures in the premises for the residence of his staff and accordingly no order of ejectment could be passed against him at least in respect of such portion of land.

3. It appears that an application for amendment of the main application was filed by the opposite Party No. 1 on December 12, 1966 stating that there had been a partition amongst the opposite parties in the mean time and the disputed premises as also the business, for which the ejectment was sought for, had been allotted to the opposite party No. 1 who accordingly became entitled to carry on the proceedings alone. It was stated in that application that the said opposite party had two sets of business, one under the name of National Traders as dealers, of Konarak Brand Cement and the other being the business of transport and contractors under the name of Builders Stores at various places. For running the aforesaid business a number of Godowns and Offices at different places of Calcutta and suburbs had been taken on rent for which large amount of rent had to be paid. He had lorries for transport and also a private motor car for his business which had to be garaged. Further the places of business had been scattered at many places and it became thus difficult to make effective supervision of the business. It was also necessary to make constructions at the tenanted premises for the residence of his staff for proper management of the business. The petitioner had submitted a plan to the Corporation for proposed construction but as the temporary structure constructed by the petitioner was there in the premises, the Corporation would not grant sanction for the construction. The petitioner submitted that the said application was to be made part of the original petition. This application, it appears, was allowed on January 28, 1967 and the opposite party No. 2 was made a proforma party in the proceedings.

4. A Commissioner was appointed for local inspection and for report on the nature of the structure on the disputed premises and on the accommodation used by the opposite party at various premises. The Commissioner filed his report stating that the structure raised on the disputed premises by the petitioner were of temporary

nature and there was no indication that this premises was ever used for purpose of residence of his staff as there was no latrine and water connection in the said premises nor any ration card of such staff was produced. The Commissioner also inspected various premises like 26, Chitpur Road, 6/8, Chitpur Bridge Approach, 63, G. T. Road, 1/2, Nayan Sur Lane, 25/2, B.T. Road, 247, B.T. Road etc. tenanted for the business of the said opposite party. It appears from the report that some of the premises were used as godowns and offices and other premises were used for garage while some premises also accommodated some staff (porters) in connection with the business. The Thika Controller, on the trial of evidence held that the opposite party No. 1 had proved his case of personal requirement and the application was maintainable against the petitioner under Order 30, Rule 10 of the Code of Civil Procedure. It was further held that the notice of ejectment was legal and valid and the opposite party No. 1 was entitled to an order for eviction of the petitioner. The application was accordingly allowed and it was provided in the order as follows: --

The petitioner do get khas possession of the said premises by evicting the opposite party subject to provision to Section 10 of the Calcutta Thika Tenancy Act. It was further ordered that the landlord petitioner will pay compensation for the structure raised by the opposite party on the premises in suit as may be determined by appointment of an Engineer Commissioner.

This order was affirmed on. appeal by the Appellate Court as noted above.

5. Mr. Amarendra Mohan Mitter appearing with Mr. Bijitendra Mohan Mitter learned advocates on behalf of the petitioner took several points in support of the rule. It was contended firstly that the application u/s 5 of the Act could not be allowed when there was no deposit of compensation as provided in section 5(2) of the Act. This according to him was a pre-requisite under the Act in absence whereof no order of eviction could be passed. This point in my opinion is without substance. In Section 4, proviso, it is laid down that no tenant shall be ejected from his holding on ground specified under Clause (ii) of Sub-section (1) of Section 3 except on payment to the thika tenant or deposit with the Controller for payment to the thika tenant, such compensation as may be agreed upon between the landlord and the thika tenant, or in the cases where they do not agree, as may be determined in the prescribed manner by the Controller. This is what has been actually done by the Thika Controller in the impugned order of eviction. It is obvious that under the provision of the Act the Controller is to find first if the landlord is entitled to an order of eviction and such eviction can only be given effect to on the payment or deposit of compensation in accordance with law. I therefore find nothing wrong or illegal in the said order which is clearly in accordance with law.

6. Mr. Mitter next submitted that there were two joint landlords and the case was for occupation of the disputed premises by both the landlords but the application for amendment of the original application was made by one and such proceeding could

not be carried on by one landlord alone. It is true that the notice was served on behalf of the joint landlords but in view of the subsequent fact that there was a partition and thereby the opposite party No. 1 became solely entitled to the premises there is nothing illegal for him to continue the proceedings accordingly. I do not think that there was any infirmity in respect of the notice and the carriage of proceedings by the opposite party No. 1 in the circumstances even though an appeal was once filed by the said opposite party alone in course of proceeding.

7. Mr. Mitter next contended that admittedly the tenancy was a manufacturing one and under provision of Section 4, the notice terminating the tenancy has to be given to the thika tenant in the manner provided in Section 106 of the Transfer of Property Act 1882. He submitted that for manufacturing lease notice of six months expiring with the year of the tenancy is to be given and accordingly the instant notice was invalid in law.

8. In [Surajmull Ghanshyamdass Vs. Samadarshan Sur](#), it was held that the tenancy, in any event, has to be determined under the Transfer of Property Act or under the contract of lease but in addition requirement of the Calcutta Thika Tenancy Act have also to be complied with. It is difficult to reconcile this decision as also the definition of "thika tenant" in section 2(5) with provisions of section 4 of the Calcutta Thika Tenancy Act which provides in clauses (a) and (b) for notices expiring with the end of a month of the tenancy. Be that as it may, in the petition for ejectment the tenancy was described as carrying a rent of Rs. 200/- according to Bengali month. There is no denial by the tenant petitioner of the allegation about the tenancy as alleged in the petition in the written objection nor was any issue framed or evidence led to establish that the tenancy was otherwise or one from year to year as a manufacturing lease. Provision of Section 106, which provides for deeming a manufacturing lease as bring from year to year, will be applicable, as its terms indicate, in the absence of a contract or local usage to the contrary. The petitioner cannot be permitted to take a contrary position which involves questions of fact, for the first time in this Court. I accordingly hold that the notice is valid in the attending circumstances and there is no dispute about its service.

9. It was next submitted that before an order of eviction was passed, the conditions imposed by Sub-section (2), (3) and (4) of Section 3 have to be satisfied. Sub-section 2 provides that when the landlord requires the premises for his own occupation it is to be shown that even if he has a house of his own in the city the accommodation therein is not reasonably sufficient for him and his family. This clause is applicable where the landlord's requirements is for the residence of himself or his family. In respect of subsection 3 it appears that the landlord would not be entitled to a decree in respect of entire area if his requirement could be substantially satisfied by ejecting the thika tenancy from a part of his holding allowing him to continue in occupation of the rest if the tenant as agreeable to such occupation. On the evidence on record and particularly in view of the Commissioner's report it is not

possible to hold that the landlord's requirements would be satisfied by a portion of the disputed premises. The opposite party has produced ample evidence in support of his requirement and the evidence has been accepted by the Tribunals below. Under Article 227 it is not permissible to reassess the findings of fact when there is evidence on record in respect of such findings. The High Court's power of interference under Article 227 is limited and cannot extend to reassessment of the findings on facts arrived by the Tribunal below on evidence adduced as has been held in AIR 1975 1297 (SC) . As to Sub-section 4, Mr. Mitter's grievance is that the tenant has constructed a pacca structure for residence of his staff for which there was evidence in support, and the onus in respect thereof was shifted on the petitioner. Further the Commissioner's report was merely accepted by the appellate authority without considering the evidence on record which in effect amounted to the decision by the Commissioner and not by the Court. He referred to the decision in [Sasanka Sekhar Pal and Others Vs. Dinanath Gorain and Others](#), in support. The appellate authority accepted the report of the Commissioner to the effect that there was no pucca structure and the structure was, in absence of latrine, water connection and absence of ration cards of the alleged residents, never used for residential purposes. Though the appellate authority has merely accepted the report, in my opinion, this amounts to the finding that there was no pucca structure there nor the premises was ever used for residential purposes. For all these reasons I am of opinion that this rule has no merits and must be discharged. The rule accordingly discharged and all interim orders are vacated. There will be no order for costs in this Rule.

Let the records be sent down at once.