

(1958) 05 CAL CK 0022

Calcutta High Court

Case No: S.A. No. 394 of 1957

Jahar Lal Dutt

APPELLANT

Vs

Jatindra Nath Lahiri

RESPONDENT

Date of Decision: May 7, 1958**Acts Referred:**

- West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 - Section 12, 13, 14, 15, 16

Citation: (1959) 2 ILR (Cal) 468**Hon'ble Judges:** Banerjee, J**Bench:** Single Bench**Advocate:** Nani Coomar Chakravarty, for the Appellant; Rajendra Bhusan Bakshi, Monohar Saha, Dwijendra Nath Lahiri and Dharendra Nath Lahari, for the Respondent

Judgement

Banerjee, J.

This appeal is directed against an appellate decree dismissing a suit for ejectment.

2. The Plaintiff Appellant is a businessman. Admittedly, he is the owner of a number of houses in Calcutta, all in occupation of tenants. He has a family consisting of his wife and of six sons and two daughters, all minors. Besides, he has in his whole time employment, one sarkar, one cook, a male servant, a female servant who all reside with him.

3. The premises in suit, No. 13, Goluck Dutta Lane, is a three-storyed building with eleven rooms. The Plaintiff purchased the premises in the year 1942 at a court sale.

4. The Plaintiff is now living in premises No. 6/2, Goluck Dutta Lane. Under a partition with his co-sharer effected in the year 1953 and evidenced by partition deed (Ex. 4) the said premises No. 6/2 was allotted to Plaintiff's brother Bhupati in its entirety, the Plaintiff being given time till August, 1954, to remove himself from the said premises. In these circumstances, the Plaintiff determined the tenancy of

the Defendant, in the premises in suit, with the expiry of the month of April, 1954, on the ground that he reasonably required the premises for his own occupation. The tenant having failed to vacate the premises, in terms of the notice to quit, the suit out of which this appeal arises was filed in September, 1954.

5. The Defendant Respondent is a retired assistant commissioner of police, now practising as a lawyer. Since the year 1947. the Defendant has been in occupation of the premises in suit. He used to pay a rent of Rs. 150 per month at first but in the year 1948 the rent was reduced to Rs. 75. He expresses his unwillingness to have the alternative accommodation offered by the Plaintiff Appellant because that would entail payment of more rent by him.

6. The Defendant Respondent contested the Plaintiff Appellant's plea of reasonable requirement on the ground that there was another house No. 14, Goluck Dutta Lane, where the Plaintiff, might have removed himself but did not do so. This house No. 14, Goluck Dutta Lane, a self-acquired property of the Plaintiff, was purchased by him in the year 1953. The location of this house is almost opposite to the premises in suit. After purchase the Plaintiff rebuilt the house and constructed a five-storied structure in the back portion of the premises, of which the second floor was completed in the month of April, 1954 and thereafter the other floors were finished. That house admittedly has been let out, in several tenancies, consisting of small flats. At the time when the Plaintiff started his attempts to evict the Defendant, he had some flats in premises No. 14. available for his occupation and more flats became available to him afterwards. Instead of occupying some of those flats himself, he let out the flats to tenants. It was further alleged that the front portion of the premises was under construction but completed up to the ground floor. It was suggested that the said front portion was another accommodation even now available to the Plaintiff. In his evidence the Plaintiff admitted the reconstruction of premises No. 14, Goluck Dutta Lane, divided it into small flats and the letting of the same to several tenants. The stand taken by the Plaintiff landlord was that he was not willing to live with the tenants specially when he had a self-contained house, viz., the premises in suit, in the neighbourhood. He further stated that he reconstructed premises No. 14, for letting out and did not intend to occupy the same himself.

7. The trial court found that the Plaintiff reasonably required the premises in suit for his own occupation. In coming to the finding the trial court observed as follows:

The Plaintiff is a rich man and has been all through living in his own ancestral house with his own parents and brothers. In the circumstances, if he does not want to live with tenants or in small flats, I do not think we can compel him to do so. In law also, the landlord cannot be compelled to build a suitable house for himself even if he has the means.

8. In the above view of the matter the trial court decreed the suit.

9. The court of appeal below reversed the decree on the findings herein after stated:

(a) It appears at first sight that the Plaintiff requires some other accommodation for his own residence. But considering his conduct subsequent to the partition, we cannot call such requirement to be genuine or bona fide or reasonable.

(b) When the Plaintiff asked the Defendant to vacate the suit premises in April, 1954, a portion of his own house in front of the suit premises was just completed and was ready for occupation.

(c) He did not want to occupy the flats as he constructed them for purpose of letting out and as he did not intend to live with tenants. None of these two grounds shown by the Plaintiff is convincing and the intention of the Rent Act is not to encourage such grounds.

(d) When the Respondent deposed that one of the grounds for his not occupying the newly constructed flats was that those flats were built for letting out, what he really meant was that he preferred the old house to the new flats because the new flats would fetch more rent than the old house and flats and it was to curb such intentions of the landlords that the Rent Acts were passed. The second ground stated by the Respondent for not occupying the new flats was that he did not intend to live with other tenants in the same building. Such exclusiveness on the part of the landlords is equally discouraged by the Rent Control Act of 1950 as would appear from the proviso to the explanation to Section 12(1)(h) of the said Act.

10. The legal validity of the aforesaid findings has been challenged before me in this appeal.

11. The West Bengal Rent Control (Temporary Provisions) Act, 1950, was passed with the express object of making better provisions for the control of rent in Calcutta. This appears from the preamble to the Act. Another object of the Act, although not expressly stated in the preamble, was to give protection to tenants from arbitrary claim for eviction by landlords. This is apparent from chapter III, Sections 12 to 18 of the Act. The relevant portion of Section 12(1)(h) of the Act is as follows:

Where the premises are reasonably required by the landlord* * * * for his own occupation or for the occupation of any person for whose benefit the premises are held provided that all subtenants in the premises are made parties to the suit, and allowed opportunity of contesting claim to decree for ejection.

Explanation.-The court in determining * * the reasonableness of requirement for occupation shall have regard to the comparative advantage or disadvantage of the landlords or the person for whose benefit the premises are held and of the tenant.

12. Provided that where the court thinks that the reasonable requirement of such occupation may be substantially satisfied by evicting the tenant from a part only of the premises and allowing the tenant to continue occupation of the rest and the tenant agrees to such occupation, the court shall pass decree accordingly, and fix a proportionately fair rent for the portion in occupation of the tenant, which portion

shall henceforth constitute the premises within Clause (8) of Section 2, and the rent fixed shall be deemed to be the standard rent fixed u/s 9.

13. This is the entire law with which I am concerned in this appeal.

14. The partition between the Plaintiff Appellant and his co-sharers has been believed by both the courts. The time limit fixed under the partition deed (Ex. 4), within which time the Plaintiff was required to vacate the premises No. 6/2 expired in August, 1954. Therefore, it must be taken that the Plaintiff Appellant is now staying in the said premises without any right to do so. Whether or not the allottee of premises No. 6/2 is pressing him to vacate is not of much relevancy because suffice it for the purpose of the Plaintiff Appellant to establish that his occupation of the house is dependent on the mercy of the allottee and that he is liable to be turned out. The court of appeal below did not disbelieve the Plaintiffs' case that he needed another accommodation. What the court of appeal below really disbelieved was that the Plaintiff required the particular house in dispute for his own occupation. In coming to its conclusion, the court of appeal below criticised the conduct of the landlord subsequent to the partition, viz., that although accommodation was readily available to him in premises No. 14, he refused to take advantage thereof but persisted in his attempts to get possession of the premises in suit. The court of appeal below repelled both the excuses put forth by the landlord, viz., that he had constructed the flats in the premises No. 14 for the purpose of letting out and that he did not intend to live with other tenants. The court of appeal below was of opinion that the Rent Control Act of 1950, particularly the proviso to the explanation in Section 12(1)(h) of the Act did not encourage such grounds.

15. There are certain objects which the legislature is presumed not to intend and the construction which would lead to any of them is therefore to be avoided. On the other hand where the main object and the intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness. The rules of etymology or grammar yield readily in such case to those of common-sense.

16. Therefore the question is whether there is anything in the Rent Control Act of 1950, indicating its discouragement of excuses put forth by the Plaintiff Appellant for refusing to occupy premises No. 14, Goluck Dutta Lane. The front portion of the said premises is built up to the ground floor and the rest is incomplete. It was not the case of the Defendant Respondent that the ground floor in that portion alone was sufficient for the landlord Appellant's requirement. The law does not compel the landlord Appellant to complete the building of the front portion of the said premises according to his requirement and then to shift there. Therefore the landlord Appellant had justifiable ground not to consider occupation of the said front portion for his own use. But the back portion of the said premises No. 14, Goluck Dutta Lane, which is a five-storyed building is certainly bigger than the premises in dispute, Prior to the institution of the suit the building was substantially constructed and was available for the landlord Appellant's occupation. The point is

whether the landlord Appellant unreasonably refused to shift there.

17. The object with which the Plaintiff Appellant purchased the premises No. 14, Goluck Dutta Lane, was not for his own occupation but for making money out of the same by letting out. That object is sufficiently indicated by the manner of its reconstruction and conversion into small self-contained flats, all of which were let out in several tenancies. There is nothing in the Rent Control Act, 1950, indicating that if the landlord requires accommodation for his own occupation he must first build for himself and for his own occupation before he may be permitted to build even for economic or money-making purposes. Therefore the landlord Appellant cannot be blamed if he did not carve a portion for his own occupation out of premises No. 14, Goluck Dutta Lane, rebuilt and reconditioned as a house to be let out in flat system.

18. The Rent Control Act, 1950, certainly disentitles landlords from seeking eviction of tenants from premises in tenants occupation with the sole object of making more money out of the said premises but the Act does not disentitle landlords from building or rebuilding other premises with the object of carrying out business in house letting and making money out of the same. Here the Plaintiff landlord does not want to make more money out of the premises in suit. Therefore the criticism that he did not occupy some of the vacant flats in premises No. 14, Goluck Dutta Lane, with the object of making money does not weaken the claim made by the Plaintiff Appellant for eviction of the tenant Defendant Respondent from premises No. 13, Goluck Dutta Lane. In the above view I am supported by a decision reported in *Sumati Bala Sen v. Hiramba Kumar Roy* (1955) 60 C.W.N. 783 in which P.N. Mookerjee, J., observed as follows:

The fact again that at some past period some rooms fell vacant and for some reason or other the Plaintiff did relet the same to other persons does not also, in my opinion, disentitle the Plaintiff from making the case of reasonable requirement.

19. "Reasonable requirement", in the Rent Control Act, 1950 has given rise to a crop of decisions in this Court not very easy to reconcile. Perhaps the best way to deal with those intriguing words is the way suggested by Lord Greener, M.R., in the case of *Cumming v. Danson* (1947) 2 All. E.R. 653 (655) : (1942) 112 L. J. K. B. 145 quoted with approval in *Bell London and Provincial Properties Limited v. Reuben* (1946) 2 All. E. R. 551 and in *Rhodes v. Cornford* (1947) 2 All. E. R. 601 which is as follows:

In considering the reasonableness * * * it is in my opinion perfectly clear that the duty of the Judge is to take into account all relevant circumstances as they existed at the date of hearing. That he must do in what I venture to call a broad common-sense way as a man of the world and come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or no weight others may be decisive but it is quite wrong for him to exclude from his consideration matters which he ought to take into account.

20. Applying the broad common-sense test, I am of the opinion that the Plaintiff landlord did not, as a prudent man of the world, act unreasonably in letting out premises No. 14, Goluck Dutta Lane, in its entirety, even at the time he was aspiring to get possession of premises No. 13, Goluck Dutta Lane, for his own occupation. In the case of [Rustomji Dinshaw Billimoria Vs. Dosibai Rustomji Master](#), which was a case of landlord living in rented premises but wanting to get possession of his own house, when there was no danger of his own eviction Macleod C.J. and Shah J., observed as follows:

The only question is whether the Plaintiff requires the premises in suit reasonably and bona fide for his use and occupation. Ordinarily speaking, an owner of premises if he says he wished to use them for his own purpose's entitled to do so. What the Rent Act endeavours to provide for, is the ease of a landlord who evicts the existing tenants in order that he may let them to another tenant at a higher rent or exact a higher rent from the tenant on a threat of eviction. It seems to me that the question in this case whether the Plaintiff was reasonably dissatisfied with the premises which he rented in Girgaon is irrelevant because in any event the Plaintiff was entitled to live in his own premises. He was not bound to continue in rented premises with all the uncertainties of that tenure. So that a great deal of irrelevant matter has been introduced into these suits, because the Plaintiff is obviously entitled to live in any portion of his own house which he chooses provided he does not seek to occupy more space than is reasonably required for himself and his family. It cannot, therefore, be said that the Plaintiff is acting unreasonably in saying that he wishes to occupy the upper storey for himself an his wife and his three children.

It has been suggested that he could live on the ground floor in the rooms 12, 13, 14, and 15 in the plan, Ex. 5. But again if he wishes to live above the ground floor, there is no reason why he should be compelled to res de on the ground floor.

With the above observation I respectfully agree.

21. The other consideration which weighed with the court of appeal below in deciding against the landlord was his unwillingness to live with the tenants. The court of appeal below disapproved of this exclusive attitude on the part of the landlord. In considering the reasonableness as a whole this may be a circumstance worthy of consideration but in view of my decision that the landlord Appellant requires the premises in suit this matter does not require further consideration. Even if I take the view that the landlord is somewhat aristocratic and exclusive in his choice, in this particular case he acted within his rights.

22. If the Plaintiff's conduct in respect of premises No. 14 is not held to be open to criticism then it must be held that he reasonably required the disputed premises for his own occupation.

23. Turning now to the test of comparative advantage and disadvantage I am of opinion that this is a case where either the landlord fails to get possession of the premises to his great inconvenience and disadvantage or the tenant loses the premises also to his great disadvantage. Neither party suffers any extra dose of disadvantage. In these circumstances this test is of irrelevant consideration, excepting as to this that the tenant's inconvenience should be minimised by granting him some time to vacate.

24. It was not argued before me that partial eviction of the tenant from the disputed premises will suffice the purposes of the landlord. The trial court held that the disputed building is a self-contained house and will be just sufficient to meet the requirements of the Plaintiff's family. The court of appeal below did not consider this aspect of the matter at all. Having examined the records of the case I am also of the same opinion as arrived at by the trial court.

25. In the above view of the matter I set aside the judgment and decree of the court of appeal below and restore those passed by the trial court. This appeal is allowed but in the circumstances of the case I make no order as to costs.

26. In order to minimise the inconvenience that may be suffered by the tenant Respondent I think that the ends of justice will be served if he is allowed time till May 31, 1959, to vacate the premises. I direct that the decree passed by me shall not be put to execution before the expiry of the month of May, 1959, if the tenant continues to deposit in the court below a sum of money equivalent to the monthly rent month by month within the 15th day of each succeeding month, the first of such payment being made by June 15, 1958. If the tenant Defendant Respondent fails to deposit such amount in the trial court as hereinbefore directed the landlord Appellant shall be entitled forthwith to execute the decree.

27. Leave to appeal under Clause 15 of the Letters Patent was asked for but is refused.