(1960) 04 CAL CK 0010

Calcutta High Court

Case No: Special Bench Reference No. 1 of 1959, arising out of S.A. No. 215 of 1956

Indian Iron and Steel Co. Ltd.	APPELLANT
Vs	
Baker Ali	RESPONDENT

Date of Decision: April 29, 1960

Acts Referred:

- West Bengal Non-Agricultural Tenancy Act, 1949 - Section 9, 9(1)(b)(iii)

Hon'ble Judges: P.N. Mookerjee, J; Guha, J; Banerjee, J

Bench: Full Bench

Advocate: Atul Chandra Gupta, Prafulla Kumar Roy and Ajoy Kumar Basu, for the Appellant;Apurbadhan Mukherjee and Sushil Kumar Banerjee, for the Respondent

Judgement

P.N. Mookerjee, J.

Only a short point arises for consideration in this reference. The point is what is the true meaning of the phrase or expression ''a year of the tenancy'' in Section 9(1)(b)(iii) of the West Bengal Non-Agricultural Tenancy Act, 1949, in relation to tenancies from month to month. the is one direct decision on this point, namely, in the case of Radha Charan Das v. Pravabati Dassi, (1) 63 CWN 535, where Banerjee, J. held inter alia, - and that is how he has explained it in the present "letter of reference", - that, under the aforesaid section, in case of tenancies from month to month, six months'''' notice must be given expiring, - and terminating the tenancy, - with "the anniversary of the expiration of the month of the tenancy" or, in other words, that a year in the above expression "a year of the tenancy" in Section 9(1)(b)(iii) of the West Bengal Non-Agricultural Tenancy Act, 1949, means a year or a period of twelve months, expiring on the anniversary of the expiration of the month of the tenancy in the succeeding year or years.

2. Thre other decisions have also been referred to in the above connection. The first is the case of Sudhindra Nath Roy and others v. Haran Chandra Mistry (2) (S.A. No.879 of 1950 decided on January 25, 1955), not yet reported, where Das Gupta, J., as he then was, sitting with Guha, J., while rejecting the argument that the above

provision [Section 9 (1) (b) (iii)] would not apply to tenancies other than yearly tenancies or tenancies from year to year, made incidentally, in the course of the judgment, the following observations:

"Even where the tenancy is from month to month, 12 months will make a year and when the 12 months have expired a year of the tenancy has expired."

3. Obviously suggesting thereby that, in the case of monthly tenancies or tenancies from month to month, the above section may well be applied by construing the phrase in question and computing or calculating "a year of the tenancy" as comprising a period of 12 months from the beginning of the tenancy and each successive period of 12 months thereafter. The second case Narayan Chandra Sen v. Sripati Charan Kumar (3) (S.A. No.425 of 1952, decided on August 9, 1955 by Das Gupta & Bachawat, JJ.), also unreported, does not add anything, material for our present purpose, but merely follows the above earlier decision upon the actual point decided, which was the same there as in the said earlier case, namely, whether Section 9(1) (b)(iii) of the West Bengal Non-Agricultural Tenancy Act, 1949, would apply at all to monthly tenancies or tenancies from month to month, and apparently also with regard to the above incidental observations, made in the said earlier pronouncement of this Court. The third case (Jagannath Upadhyay v. Amarendra Nath Banerjee and others, (4) 61 CWN 841) is a decision of Renupada Mukherjee, J., and myself, in which the validity and sufficiency of the notice to quit was challenged on the ground that the tenancy there having commenced under a Kabuliyat dated the 8th Sravan 1344 B.S. which was also the date of the tenant''s entry into possession, the notice to quit expiring with the end of Chaitra, 1856 B.S. was invalid and insufficient, or, in other words, that the disputed tenancy having commenced on the 8th of the Bengali Calender month could not be validly terminated by a notice to quit expiring with the end of such a month. This contention was overruled by the Court upon the finding that, in the particular facts and circumstances of the case, as noted in the judgment, and on a proper interpretation of the relevant Kabuliyat, the said tenancy must be deemed to have commenced on the 1st of Sravan, 1344 B.S. notwithstanding execution of the Kabuliyat and the tenant''s entry into possession on the 8th, or, in other words, that the tenancy ran according to the Bengali Calendar month and, accordingly, the notice to quit expiring with the end of Chaitra, 1356 B.S., that is, with the end of a Bengali Calendar month was valid and sufficient. The validity and sufficiency of the notice to quit, however, so far as Section 9(1)(b)(iii) of the West Bengal Non-Agricultural Tenancy Act, 1949, is concerned, was not argued in the above case, as, indeed, it could not be, in view of the peculiar circumstances thereof, which were such that this Court could not, in the facts before it, allow the said question to be raised here, except at the risk of doing grave injustice to the respondent landlord. As a matter of fact, when the second appeal in that case was heard by Guha, J., the tenant appellant appears to have sought to argue this particular question also, but he was not allowed to do so as it had not been raised at any earlier stage and, when the Letters Patent appeal was heard, the

learned Advocate for the tenant appellant did not even mention this point and the memorandum or the grounds of appeal also did not contain any indication thereof. The Letters Patent Bench, therefore, was not called upon to decide this particular point, and would not, as, indeed, it could not, have decided the same to hold that the notice was invalid, howsoever bad the notice might have been from the point of view of the aforesaid section. The mere fact, therefore, that the tenancy in that case started or as held to have started on the 1st of Sravan, and the notice given expired with the end of the Bengali month of Chaitra and that was held to be a good and valid notice for purposes of that case, would not justify and inference that the decision in the above case cited contained or involved, even remotely, any pronouncement or expression of opinion on the present question. As a point was not and could not be argued and as it was not actually entertained or allowed to be raised or argued, the validity and sufficiency of the notice from the point of view of the above section [Section 9(1)(b)(iii) of the West Bengal Non-Agricultural Tenancy Act, 1949] must be taken to have been assumed and accepted ex concessis or ex concessionia and without any decision on the merits. In the context, the above decision cannot be cited as any authority on the construction of the above section or as any authority or decision on the point, now before us, one way or the other, or as affording any foundation for any argument thereon, and it must be left out of consideration for the decision of this particular reference.

4. On the subject of decided cases on the present point, it is necessary to refer to one more decision of this Court. That is the recent Bench Decision in Dip Narain Singh v. Kanai Lal Goswami, (5) 64 CWN 293, where the validity and sufficiency of a notice under the aforesaid Section 9(1)(b)(iii) of the West Bengal Non-Agricultural Tenancy Act, 1949, appears to have been dealt with on the footing that ''a year of the tenancy'', as used in the said section, would mean and comprise, in the first instance, a period of 12 months according to the calendar, governing the particular tenancy commencing with the date of commencement of the said tenancy according to the said calendar and, thereafter, succeeding periods of 12 months each according to the same calendar.

5. These are all the decided cases on the above point, to which reference has been or can be made. We will now proceed to examine the matter on principle on the merits.

6. It was not argued before us, - and not also before the ''referring'' Bench, - that the section would not apply to monthly tenancies or tenancies from month to month and, indeed it could not be so argued after the decision in Sudhindra Nath Roy and others v. Haran Chandra Mistry, supra, and Narayan Chandra Sen v. Sripati Charan Kumar, supra, where this particular point was dealt with exhaustively and if we may say so, with respect, correctly decided. The Act in question is a comprehensive one and, having regard to its scheme, scope and object, its provisions should include and apply to all non-agricultural tenancies, unless of course, the language, in any

particular provision, be inappropriate for any particular type of such tenancies.

7. Turning now to the point before us, namely, the construction of the phrase, "a year of the tenancy", in the aforesaid Section 9(1)(b)(iii) of the West Bengal Non-Agricultural Tenancy Act, 1949, we are inclined to hold that of all the different meanings suggested the simplest and the most natural which, indeed, is its plain meaning, is the most appropriate, namely, that a year would mean a period of 12 months, or, translating it to the section, "a year of the tenancy" would mean 12 months of the particular tenancy, according to its own calendar, its starting point being, in the first instance, the date of commencement of the said tenancy, and the first year, comprising the first period of twelve months, according to the said calendar, as aforesaid, upon that footing, and subsequent years would comprise respectively similar successive or succeeding periods of 12 months each. Mr. Gupta suggested that the term ''year'' should mean the calendar year but, apart from its being an artificial or technical connotation and not the ordinary or natural sense or meaning of the said term, it seems to us to be inappropriate also so far as the above section is concerned, and there is nothing in the Act or in the section to suggest it or compel its adoption.

8. In support of his argument, Mr. Gupta referred us to the definition of the term ''year'' in the Bengal General Clauses Act [Vide Section 3(48)] where it is defined to mean "a year reckoned according to the British calendar" in the absence of anything repugnant to the subject or context, and eh also drew our attention to the expression ''more than a year'' in the opening part of Section 9 of the West Bengal Non-Agricultural Tenancy Act, 1949, and contended that, in both the above expressions ''more than a year'' and ''a year of the tenancy'' in the said section, ''year'' would mean, in the light of the above definition, the British Calendar year, - in the first, directly under the above definition, and in the second, by reason of the well known principle or canon of construction of statutes that the same word in the same section must bear the same meaning. We are unable to accept this submission of Mr. Gupta. The definition does not speak of British Calendar year but speaks only of "a year reckoned according to the British Calendar". This would directly contradict Mr. Gupta''s submission or theory of "calendar year". The definition, again, is subject to the usual reservation clause in its opening part, which makes it abundantly clear that the general meaning of ''year'' as given in the said definition, is to apply, only where there is nothing repugnant to the subject or context, or, in other words, if the subject or context so require, the meaning may well be different. Now, where the tenancy in question is according to some other calendar, a year of the same or a year of the tenant''s occupation would obviously be according to that calendar and, to that extent, the general meaning, namely, "year reckoned according to the British calendar" would have to yield as it would be repugnant to the subject or context. Testing, then, in the light of the above definition also and applying the same, the position would irresistibly be that ''year'', in both the above phrases or expressions, would mean a year according to the calendar of the particular tenancy. The year,

however, would require a starting point for its computation. So far as the opening part of the section (Section 9 of the West Bengal Non-Agricultural Tenancy Act, 1949), is concerned, where reference is to a year of occupation, the starting point, in the absence, of course, of a contract to the contrary, would obviously be the first date of occupation and, in the other part, where we have to construe ''a year of the tenancy'', the starting point would similarly be, so far as the year is concerned, the date of commencement of the tenancy according, again, to its own calendar, and, so far as succeed years are concerned, the dates of the respective anniversaries of the said date of commencement of the tenancy.

9. In support of his argument, Mr. Gupta, also referred us to Ismail Khan Mohamed v. Joygoon Bibee (6) ILR 27 Cal 570, and Arunachella Chettiar v. Ramiah Naidu and others (7) ILR 30 Mad 109. In the Madras case, their Lordships found that, although the lease was dated the 19th of July, 1889 and the tenancy actually commenced on and from that date, the month of the tenancy was intended by the parties to coincide with the English calendar month as rent was payable according to the same. Thus, it was a case of a monthly tenancy, of which the month, upon the finding of the Court, corresponded with the English calendar month and, notwithstanding the date of the lease as aforesaid, namely, 19th July, 1889, that is, the 19th of an English calendar month, and actual entry into possession and so, prima facie, actual commencement of the tenancy on and from that date, the intention of the parties was that, for determining the month of the tenancy, the tenancy was to be deemed to have commenced on the first of an English calendar month so that the month of the tenancy would correspond to and coincide with the English calendar month. The analogy would apply with similar result so as to introduce the calendar year in the case of a year of the tenancy'', where the date of commencement of the tenancy will coincide or will be deemed to coincide with the commencement of the calendar year. Otherwise, however, it would apply only to introduce a year according to the particular calendar from, again, the date of commencement of the particular tenancy. The Madras case, therefore, whatever else it might indicate, - and we refer here to the inference, drawn by their Lordships that, as the monthly rent was payable according to the English calendar, the month of the tenancy would be the English calendar month, which, however, we would just like to add, may not, without more, be always or necessarily the true or correct inference, - would not support Mr. Gupta but would rather go against his contention.

10. In the Calcutta case also, the position appears to have been substantially similar as, although the tenancy there actually commenced on and from 19th Chaitra, 1257 B.S. which was the date of the relevant Kabuliyat (vide p. 577), from the fact that the early rent was payable according to the Bengali calendar and had been paid [vide p. 577, referring to Exts. D and D(1)], for Bengali calendar years, the year of the tenancy was held by their Lordships to be the ordinary Bengali year or the Bengali calendar year and, accordingly, the notice, expiring with substantially the end of the

Bengali calendar year, was held to be good and valid. This decision also is not, in the circumstances, any authority for Mr. Gupta''s argument that the year of the tenancy in Section 9(1)(b)(iii) of West Bengal Non-Agricultural Tenancy Act, 1949, would mean a calendar year, if not a British calendar year.

11. In the light of the foregoing discussion, we would ns the question referred to us, as follows:-

That, u/s 9(1)b)(iii) of the West Bengal Non-Agricultural Tenancy Act, 1949, - in the absence of course, of a contract to the contrary, - ''a year of the tenancy'' means a year or a period of 12 months according to the calendar of the particular tenancy, starting with its date of commencement or any anniversary thereof.

12. With the above answer, the case will now go back to the learned Chief Justice for further direction according to law.

13. The costs of this Reference will abide the final result of the connected Second Appeal, hearing fee being assessed at three gold mohurs.

Gupta, J.

14. I agree.

Banerje, J.

15. I agree.

17. If I delivered a separate judgment I would have only repeated, in less felicitous language, what has already been said by My Lord.