

(1958) 05 CAL CK 0025

Calcutta High Court

Case No: Civil Revision Case No. 3520 of 1957

Madan Mohan Saha

APPELLANT

Vs

Ram Kumar Deb

RESPONDENT

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

- Calcutta Thika Tenancy Act, 1949 - Section 27, 3, 3(iv), 5
- Constitution of India, 1950 - Article 227

Citation: 62 CWN 654**Hon'ble Judges:** Banerjee, J**Bench:** Single Bench**Advocate:** Banim Chandra Banerjee and Radha Kanta Bhattacharjee for the Petitioner, for the Appellant; Bhabesh Narayan Bose for the Opposite Party, for the Respondent**Final Decision:** Allowed

Judgement

Banerjee, J.

The petitioner is the landlord of bustee land, being premises No.11/3, Jagannath Sarkar Lane. The Opposite Party was a tenant under the petitioner in respect of land measuring two cottahs ten chattaks eleven square-feet out of the aforesaid premises paying therefor a monthly rent of rupees ten and annas eight according to the Bengali Calendar month.

2. The case for the petitioner is that the opposite party was not occupying the entire land of the tenancy for her own residential or manufacturing purpose. Moreover the petitioner required the suit land for his own occupation. Therefore, the petitioner terminated the tenancy of the opposite party by a notice to quit. On failure of the tenant-opposite party to vacate, the petitioner started proceedings u/s 5 of the Calcutta Thika Tenancy Act.

3. The case was contested by the tenant-opposite party who disputed all the pleas on which the petitioner claimed for evict her.

4. The learned Controller negated the contention of the petitioner to the effect that the tenant-opposite party had sublet the entire or alternatively the major portion of the premises in dispute.

5. On the question of the requirement of the landlord the learned Controller came to the following finding:

"The petitioner (P.W.1) has contended that he needs the suit premises for his own residence and that he has no place for staying in P.W.1 has further contended that he would construct buildings on the suit land. The learned lawyer for the opposite party, has contended that the plea of building has not been taken in the original petition and that Court should not consider this plea in the witness-box. Even if I leave aside this plea of building, there is still one other allegation that the petitioner needs the suit premises for his residence. There is no evidence before me to the effect that the petitioner has got some other house elsewhere. The opposite party has not led any evidence on this point."

6. In the above view of the matter the learned Controller allowed the application made by the petitioner for recovery of possession subject to payment of compensation for the structures as might be agreed upon by the parties or, in default thereof, fixed by the Controller. The tenant-opposite party took an appeal to the appellate authority u/s 27 of the Calcutta Thika Tenancy Act.

7. The Appellate Tribunal came to the findings as hereinafter stated: (a) The landlord stated in his petition that he required the land for his own occupation. At the hearing, however, the landlord stated that he wanted to build a house on the land and for that purpose had submitted a plan before the Corporation. There was thus a change of the case made by the landlord at the time of hearing. If the landlord's case was that he wanted to construct a building on the land, that would show that his case that he wanted the land for his own occupation was not true. As the landlord did not bring the case on the ground that he wanted the land for the purpose of building on it, that case could not be considered in allowing the application. (b) The landlord also stated in his evidence that he had no place to stay in and that he wanted the suit land for residential purpose. He did not say that the place where he was residing was not sufficient or suitable or that he was being pressed for vacating the same. A mere statement of the landlord that he wanted the land for his residential purpose and had no other place to stay was not sufficient to prove the "must have" element in the requirement of the landlord. A mere wish will not do. Some element of need was necessary.

8. In the above view of the matter the appellate Tribunal allowed the appeal and dismissed the landlord's application for eviction of the tenant.

9. This application under Article 227 of the Constitution is directed against the appellate order. The only question for determination is whether the landlord has been able to make out requirement for his own occupation within the meaning of

Section 3(iv) of the Calcutta Thika Tenancy Act.

10. Section 3(iv) of the Calcutta Thika Tenancy Act provides:

" a thika tenant shall, subject to the provisions of this Act, be liable to ejectment from his holding on one or more of the following grounds and not otherwise, namely;

* * * * *

(iv) except during any period limited by a registered lease under which a thika tenant may hold the land comprised in the holding, on the ground that the land is required by the landlord for his own occupation or for the purpose of building on the land or otherwise developing the land by discontinuing letting to thika tenants; . . ."

11. The grounds specified in Section 3(iv) are no doubt distinct and separate grounds and have to be read disjunctively. But that does not mean that where a landlord requires the land for his own occupation the manner of his occupation may not be by building his own residential house on the land or by constructing his own business premises thereon.

12. A landlord may no doubt evict a thika tenant if he establishes his requirement to build on the land otherwise than for the purpose of his own occupation. That is what no doubt is contemplated by the second ground in Section 3(iv) of the Act. But the second ground does not control the first ground in any way. There is nothing in Section 3(iv) of the Act to indicate that if the landlord required the land for his own occupation he must not build on the land when he gets possession but merely occupy the land with such structures as may be standing thereon or as bare land without in any way making further constructions on the land.

13. In this case the petitioner stated in his evidence that he wanted the suit land for his residential purpose and had no place to stay. He was staying with his sister as a monthly tenant. The petitioner also deposed to the effect that he had means to build and in furtherance of his necessity to build he submitted a building plan to the Corporation of Calcutta for sanction.

14. The appellate Tribunal did not disbelieve the petitioner on facts but held that the evidence was not sufficient to prove requirement and the reasons assigned by the Appellate Tribunal have already been referred to.

15. I am of opinion that the Appellate Tribunal was not correct in its approach to the question.

16. In the case of Debendra Nath Ghorai v. Official Receiver, High Court, 61 CWN 745, at page 750, P. N. Mookerjee and P. K. Sarkar, JJ. observed as follows:

"Section 3(iv) of the Calcutta Thika Tenancy Act with which we are here concerned uses the term "require" and the Court has often felt worried over the meaning of that expression. The distinction between this word "require" and the word "desire" has been emphasized in many decisions, including [Girish Chandra Majhi Vs. Girish Chandra Maity](#), to which I myself was a party, and the Judges have practically been unanimous in holding, in view of this distinction, that there must be some element of need to satisfy the word "require". As a bare proposition, this is quite intelligible and it may not be open also to much dispute, but it is not always easy to apply this test of need in particular cases. Sometimes the need may spontaneously arise from desire or intention and the line of demarcation may be so thin in a particular case that, to laymen in particular, no distinction may appear to exist. That, however is not the real position and some distinction would always remain and the two words would not really correspond or coincide in any case, although, in a particular context, requirement may follow almost as a matter of course from a genuine desire. Leaving aside cases where some need is clearly established, the word "require" in the last part of clause (iv) of Section 3 would, in our opinion at least cover cases where there is a genuine desire on the part of the landlord to build on the land or otherwise develop it by discontinuing letting to thika tenants and he genuinely intends to put that desire into immediate action, provided he gets possession of the land."

17. Applying the above test I find that the petitioner, living as he does in a rented house, has a genuine desire to build and to reside in the house when so built. For the purpose of establishing his case in this respect the petitioner need not prove that there was imminent danger of his being thrown out of the rented house, his present abode. The landlord, in my judgment, is not bound to continue his residence at rented premises with all the uncertainties of such tenancy. A landlord may have an otherwise decent place to live rented by him but that alone will not prevent him from requiring possession of his own land, so that he might build his own house thereon and live there, leaving his old tenanted house. This, in my opinion, is not an unreasonable desire and not also an unreasonable requirement on the part of the landlord, provided he has means enough to build his own house.

18. I am, therefore, of opinion that the grounds on which the appellate Tribunal below came to the conclusion that the petitioner did not require the land for his own occupation are all erroneous. The learned Controller made a very sensible approach to the question and I am of opinion that he was right in allowing the application filed by the petitioner u/s 5 of the Calcutta Thika Tenancy Act.

19. I, therefore, make this Rule absolute and set aside the judgment and order of the Appellate Tribunal below and restore the order made by the learned Controller.

20. In the circumstances of the case, direct the parties shall bear their own costs in this Court.