

(1974) 09 CAL CK 0023

Calcutta High Court

Case No: Civil Rule No. 1132 of 1973 in Ejectment Suit No. 1677 of 1955

Amar Krishna Ghose

APPELLANT

Vs

Rajat Kanti Banerjee

RESPONDENT

Date of Decision: Sept. 19, 1974

Acts Referred:

- West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 - Section 13, 13(2)
- West Bengal Premises Tenancy Act, 1956 - Section 12, 13, 16, 16(3), 17B

Citation: (1977) 1 ILR (Cal) 351

Hon'ble Judges: Janah, J

Bench: Single Bench

Advocate: Ramaprasanna Bagchi, for the Appellant; Saktinath Mukherjee and Tarun Kumar Chatterjee, for the Respondent

Final Decision: Dismissed

Judgement

Janah, J.

This Rule was obtained by the judgment-debtor and it is directed against an order dated February 3, 1973, rejecting an application u/s 17D of the West Bengal Premises Tenancy Act, 1956. The facts relevant for the present purpose are as follows:

2. The Petitioner was a monthly tenant under the opposite party in respect of premises No. 54A Shyampukur Street, Calcutta. The Petitioner's tenancy was in respect of the entire house which consisted of three floors. In the year 1955, a suit was filed by the opposite party against the Petitioner, being T.S. No. 1677 of 1955, for the eviction of the Petitioner on the ground of default in payment of rent. The suit was decreed on May 23, 1956. One Gopendra Lal Roy was a sub-tenant under the Petitioner in respect of the ground floor of the disputed premises. The West Bengal Premises Tenancy Act, 1956, (hereinafter referred to as the 1956 Act) having

come into operation in the meantime Gopendra Lal Roy filed an application u/s 16(3) of the Said Act and an order was made thereon on May 6, 1957, declaring him to be a direct tenant under the opposite party. After the ejectment decree was put into execution by the opposite" party, one Surendra Nath Mitra, who was the father-in-law of the Petitioner, filed a suit in the City Civil Court, being suit No. 360 of 1958, for a declaration that he was a sub-tenant under the Petitioner in a portion of the disputed premises and the decree was not binding against him. That suit was dismissed by the trial Court and Surendra Nath Mitra having died in the meantime, his daughters and son preferred an appeal to this Court which was ultimately dismissed on September 1, 1969. It was found that the said Surrender Nath Mitra was not a sub-tenant as alleged by him. It is the case of the opposite party that, after the daughters and son of Surendra Nath Mitra lost the appeal in this Court, they amicably vacated two rooms on the first floor of the disputed premises in favour of the landlord opposite party, who is admittedly in possession of the said two rooms at present. Section 17D was introduced in the 1956 Act by the West Bengal Premises Tenancy (Second Amendment) Act (XXXIV of 1969) which came into force on November 14, 1969. Thereafter, on December 17, 1969, the Petitioner filed the application u/s 17D of the Act as amended by the aforesaid amending Act. This application was rejected by the trial Court on the ground that the Defendant judgment-debtor was not entitled to get any relief as possession of the major part of the premises had been delivered to the Plaintiff after the decree.

3. Mr. Bagchi, the learned Advocate appearing on behalf of the Petitioner, has in the first place contended that the landlord opposite party had taken forcible possession of the two rooms on the first floor and this possession was, therefore, unlawful possession. He argues that there are three rooms in each floor in the disputed premises and the possession of the opposite party of the two rooms on the first floor being unlawful possession, the Petitioner must deemed to be in possession of all the six rooms on the first and Second floor. He, therefore, contended, that the opposite party was not in possession of the major part of the premises as wrongly held by the trial Court. It is to be noticed, however, that the case of the opposite party has been that he obtained possession amicably from the heirs of the aforesaid Surendra Nath Mitra after the dismissal of the appeal which was filed by them in this Court. On behalf of the opposite party it was denied that they had obtained forcible possession as alleged by the Petitioner. On this point the trial Court has believed the evidence adduced on behalf of the opposite party and has found that the opposite party got delivery of possession of the two rooms on the first floor from the son and daughters of the aforesaid Surendra Nath Mitra. This is a finding of fact which is binding upon me. I must, therefore, proceed on the basis that the opposite party has obtained possession of the said two rooms on the first floor of the disputed premises amicably from the heirs of Surendra Nath Mitra. In this connection, another fact has also got to be taken into consideration. As has already been stated that one Gopendra Lal Roy was a sub-tenant under the Petitioner in respect of three

rooms on the ground floor. The ejectment decree was passed against the Petitioner on May 23, 1956. Shortly thereafter, the said sub-tenant made an application u/s 16(3) of the 1956 Act and he obtained an order in his favour. Sub-section (2) of s, 13 of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, (hereinafter referred to as the 1950 Act) provides that where the tenancy of a tenant is determined otherwise on the ground of the landlord's reasonable requirement for building or rebuilding for his own use and occupation, the sub-tenant will become a direct tenant under the landlord. A similar provision has also been made in Sub-section (5) of Section 13 of the 1956 Act. The present suit having been filed at a time when the 1950 Act was in force, there could not be any question of serving any notice by the sub-tenant u/s 16 of the 1956 Act. After the 1956 Act came into force the subtenant Gopendra Lal Roy made an application u/s 16 of the said Act and an order was made declaring him to be a tenant under the landlord opposite party in respect of the ground floor of the disputed premises. The decree for ejectment against the Petitioner having been passed before the said sub-tenant made the application u/s 16 of the 1956 Act, he became a direct tenant under the landlord opposite party by virtue of the provisions contained in Section 13(2) of the 1950 Act. The statutory provision contained in Section 13(2) of the 1950 Act became applicable to the said sub-tenant as soon as the decree for eviction against the Petitioner was passed and as soon as it was found that the aforesaid Gopendra Lal Roy was a sub-tenant under the Petitioner. It was contended on behalf of the Petitioner that the elevation of the aforesaid sub-tenant to the position of a direct tenant under the opposite party was solely the result of an order under Section. 16(3) of the 1956 Act and it had nothing to do with the decree for eviction which was passed against the Petitioner. No doubt the order that was passed was one u/s 16(3) of the 1956 Act, but as we have seen that as soon as the said Gopendra Lal Roy was-found to have been a sub-tenant under the Petitioner together with the fact that there was a decree for eviction against the Petitioner, the provisions of Section 13(2) of the 1950 Act came into play and Gopendra Lal Roy became a direct tenant under the opposite party.

4. It was argued on behalf of the Petitioner that in order to exclude the application of the provision of Section 17D of the 1956 Act the decree-holder must have recovered possession from the tenant in execution of the decree through Court. It was contended that if possession was recovered by the landlord otherwise than in execution through Court, such recovery of possession would not bar the application of Section 17D of the 1956 Act. In my view, this would amount to reading something into the section which is not there. The relevant provision of Section 17D of the 1956 Act is as follows:

17D(i). Where before the commencement of the West Bengal Premises Tenancy (Amendment) Act, 1968, a decree for recovery of possession of any premises was passed;

(a)

(b) In a suit under the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, by reason only of Clause (i) of the proviso to Sub-section (i) of Section 12 of that Act, but the possession of such premises had not been recovered from the tenant by the execution of the decree, the tenant may within a period of sixty days from the date of commencement of the West Bengal Premises Tenancy (Second Amendment) Act, 1969, make an application to the Court which passed the decree to set aside the decree....

The section speaks of a recovery of possession from the tenant by the execution of decree. It does not say that the recovery of possession from the tenant must be in execution of the decree through Court. In the present case, the decree-holder landlord has obtained amicable possession of the two rooms on the first floor on the basis of, or on the strength of, the ejectment decree. He has also obtained possession of the ground floor upon the sub-tenant Gopendra Lal Roy becoming a direct tenant under him, not only on the basis of the order passed u/s 16(3) of the 1956 Act but also by virtue of the provisions contained in 1950 Act after the ejectment decree which was passed against the Petitioner. To my mind such recovery of possession is by the execution of the decree as mentioned in Section 17D. To hold otherwise, would lead to an absurd position. For instance, a tenant who amicably makes over possession in favour of the landlord after an ejectment decree would still be entitled to apply Section 17D. In Salisbury's Laws of England (3rd ed., vol. 16, p. 2) the meaning of execution has been stated thus:

The word "execution" in its widest sense signifies the enforcement of or giving effect to the judgment or orders of Courts of justice. In a narrower sense, it means the enforcement of those judgments or orders by a public officer under the writs of fieri facias, elegit, capias, sequestration, attachment, possession, delivery fieri facias de bonis ecclesiasticis, etc.

In the wider sense the word "execution" would, therefore, mean the enforcement of or giving effect to the judgments or orders of Courts not merely through the instrumentality or with the assistance of a Court or a public officer, but by any other means. Therefore, if the right of the decree-holder under the decree is enforceable otherwise than through the instrumentality or with the assistance of a Court and in such enforcement of the right under the decree possession is obtained from the tenant, then that would amount to recovery of possession from the tenant by the execution of the decree within the meaning of Section 17B of 1956 Act.

5. There is also another aspect of the matter which should be considered in deciding whether the provisions of Section 17D of the 1956 Act can apply in the fact of the present case. The Petitioner was a tenant in respect of the three floors in the disputed premises. But, as we have already seen, he is no longer in possession of the ground floor and also two rooms on the first floor. Section 17D empowers the

Court to set aside a decree passed on the ground of default in payment of rent if the conditions mentioned in that Section are fulfilled. The object of the section is to give protection to a tenant under certain circumstances and to enable the tenant to continue in possession of his tenancy by setting aside the decree for ejectment. In the present case, if the decree is set aside then the tenant will not continue in possession of the premises which was originally the subject-matter of his tenancy, but a new tenancy consisting of one room on the first floor and three rooms on the second floor will be Substituted for the original tenancy. That would be creating a new contract between the parties, because the Petitioner never held such a tenancy under the opposite party. The learned Advocate for the Petitioner has argued that the sub-tenant Gopendra lal Roy was elevated to the position of a direct tenant under the opposite party by virtue of the order passed u/s 16(3) of the 1956 Act. It has been contended that this fact of the sub-tenant becoming a direct tenant had nothing to do with the ejectment decree that was passed against the Petitioner. This argument is not correct. As we have seen earlier that by virtue of the provisions of Section 13(g) of the 1950 Act the sub-tenant in the present case was entitled to become a direct tenant under the landlord by virtue of the ejectment decree passed against the tenant, But even assuming the argument advanced on behalf of the Petitioner to be correct, the two rooms on the first floor of the disputed premises would still be excluded from the tenancy of the Petitioner. Therefore, by setting aside the decree in the present case the tenant will not be in the same position in which he had been prior to passing of the ejectment decree. This is a position which is wholly inconsistent with the purpose of Section 17D of the 1956 Act.

6. Reliance is placed on behalf of the Petitioner upon the case of [Gour Mohan Roy and Others Vs. Sailendra Nath Saha Chowdhary](#), for the proposition that so long as the tenant is in possession of the premises he continues to be a tenant and therefore, in the present case the Petitioner having been in possession, even if of only a part of the premises, is a tenant and an order can be made in his favour. The observations made in that case upon which reliance is placed by the learned Advocate for the Petitioner were made in a different context. Moreover, those observations were made with reference to the provisions of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1948. In the said Act, the definition of a "tenant" as given in Section 2(11) includes a tenant who continues in possession after the termination of his tenancy in his favour. In my view, the observations made in that case do not help the Petitioner in any way.

7. The next case relied upon by the Petitioner is [Deoki Prosad Khaitan Vs. Dulichand Asopa and Others](#), . In that case, it is held that in spite of the change in the definition of the word "tenant" in the 1950 Act by excluding the words that "tenant includes...a person continuing in possession after the termination of his tenancy in his favour", a tenant whose tenancy has been determined is not disentitled to take or to continue a proceeding for standardisation of rent under the 1950 Act. It is to be noticed that this observation was made with reference to a question which arose in that case,

namely, whether the person against whom ejectment decree had been passed was entitled to proceed with his application for standardisation of rent when an appeal was pending against the ejectment decree. These observations were, therefore, made in the context of the particular facts of that case and the observations should not be understood as laying down a general proposition of law for all purposes, as has been contended by the learned Advocate for the Petitioner.

8. For the reason mentioned above, I am of the opinion that the Petitioner's application u/s 17D of the 1956 Act was rightly rejected by the trial Court. The Rule, is, therefore, discharged but there will be no order as to costs. Let the records be sent down forthwith.