**(1984) 09 CAL CK 0024**

**Calcutta High Court**

**Case No:** A.O.D. No. 327 of 1978

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| Benoy Krishna Bhattacharyya | | APPELLANT |
| | Vs | |
| Dilip Kumar Bose and Others | | RESPONDENT |

**Date of Decision:** Sept. 26, 1984

**Acts Referred:**

- Constitution of India, 1950 - Article 227

**Citation:** 89 CWN 229

**Hon'ble Judges:** Mookherjee, J; M.G. Mukherji, J

**Bench:** Division Bench

**Advocate:** S.B. Mookherjee, P.K. Das and Pradip Kumar Ghosh No. 1, for the Appellant;Rabindra Nath Mitra and Suniti Sengupta, for the Respondent

**Judgement**

1. The short point in the present case is whether or not the defendant tenant petitioners who had been ejected in pursuance of a decree obtained by the plaintiff landlord opposite parties u/s 13(1)(f) of the West Bengal Premises Tenancy Act are entitled to restoration of possession on the ground that after obtaining delivery of possession of the premises the plaintiff landlords have not commenced additions and alterations of the suit premises.

2. Benoy Krishna Bhattacharyya, the predecessor-in-interest of the defendant petitioner and Respondent no. 2 in F.A. No. 327 of 1978 was a monthly tenant under the plaintiff respondents in respect of the two rooms, kitchen, privy and bath in the back portion of the ground floor of Premises No. 12, Kalida Singhi Lane, Calcutta. The plaintiff respondents had instituted on 12th of June, 1970 in the City Civil Court at Calcutta a suit for recovery of possession of the said premises u/s 13(1) of the West Bengal Premises Tenancy Act, 1956 and also on two other grounds which were not, however, ultimately pressed. The defendant contested the said suit. On 25th April, 1978 the learned Judge, Second Bench, City Civil Court, Calcutta decreed the said suit in plaintiffs" favour and also directed them

to effect repair within three months from the date of obtaining possession and to deliver back the same to the defendant tenant immediately after the repairs were effected. In default the defendant was given liberty to apply to the proper authority for recovery of possession forthwith.

3. Being aggrieved, thereby, Benoy Krishna Bhattacharyya, the predecessor-in-interest of the petitioner and the Respondent no. 3 filed in this Court F.A. 327 of 1978. During the pendency of the appeal, Benoy Krishna Bhattacharyya, died and thereupon the petitioner and the Respondent no.3 herein as his heirs were brought on record. On April 1, 1982 myself sitting with R.K. Sharma, J., dismissed the said appeal. We held that the court below was justified in finding that the repairs, particularly changing the beams and rafters could not be carried without evicting the tenant from the suit premises. The repairs proposed were substantial in nature. We further found that the plaintiffs did not prove that they proposed to demolish the existing structures and to build a new premise in the back portion of Premises No. 12, Kalidas Singhi Lane. The learned advocate for the plaintiff respondents had informed the court that his clients had not obtained any sanction from the Corporation of Calcutta in that behalf. The ejectment decree had been passed for effecting the repairs mentioned in the notice under Rule 5(1) of the Schedule XVII of the Calcutta Municipal Act, 1951. We also made it clear that on completion of the repair works the defendant appellant either singly or jointly with the Respondent no.3 would be entitled to apply u/s 18A(2) of the West Bengal Premises Tenancy Act, to the learned Rent Controller for directing the landlord Respondent to put him/them in possession of the premises. The trial court had already directed the plaintiffs to deliver back possession to the defendants after the effecting repairs. While dismissing the said appeal, we gave four months time to the defendant appellants to vacate suit premises. The plaintiffs were directed to repair the suit premises within three months from the date on which they would obtain delivery of possession of the suit premises. We upheld trial court''s directions upon the plaintiff to deliver back possession to the defendants after repairing the house. We restrained the plaintiff respondents from letting out the suit premises to any person other than the appellant and the Respondent no.3.

4. It is admitted that on 29th June 1982, in obedience to the said decree, the defendant petitioner had delivered to the respondents'' vacant possession of the suit premises but the plaintiff Respondent opposite party did not carry out the repairs in terms of the ejectment decree. On 22nd September, 1982 the petitioner''s learned advocate gave a written notice requesting the plaintiff landlord to re deliver possession of the premises as ordered by the trial court and affirmed by this court. The plaintiff landlord did not comply with the said notice on 12th October, 1982 the petitioner had filed an application before the learned Rent Controller, inter-alia, for a direction upon the plaintiff Respondent to put him in possession of the suit premises. The same was described as an application u/s 18(2A) of the West Bengal Premises Tenancy Act. Pursuant to the directions of the learned Rent Controller the petitioner had affirmed an affidavit stating that the landlord did not effect the repair works. In the meantime, the plaintiff landlord purported to make an

application in the City Civil Court, Calcutta for extension of one year''s time for completing the repair works, i.e. by 30th September 1983.

5. On 21st April, 1983 the learned additional Rent Controller dismissed the petitioner''s application on the ground that the same was premature. The petitioner was given liberty to file a fresh petition in case of any fresh cause of action. According to the learned Additional Rent Controller the petitioner could apply for restoration of possession only after the repairs were effected. The learned Additional Rent Controller, however, had over-looked the provisions of sub-section (1) of section 18 of the West Bengal Premises Tenancy Act.

6. The petitioner filed an application in this court for punishing the plaintiff landlord for having committed contempt by not effecting the repairs of the suit premises and by not delivering back possession to him. On 20th July, 1983 myself sitting with R.K. Sharma, J., issued a notice upon the plaintiff landlords to show cause why the judgment and decree passed in F.A. No. 327 of 1978 shall not be rescinded. While the present Rule was pending the plaintiff respondent''s application for extension of time the repair works was dismissed by the learned Judge, second Bench, City Civil Court, Calcutta.

7. The petitioner has also filed a further application in this Court for directions upon the plaintiff landlord to re-deliver the possession of the suit premises. The said matter has been assigned to this Bench for disposal. Dilip Kumar Bose, the Respondent no. 1, in his affidavit-in-opposition dated 29th February, 1984 has claimed that on 22nd February, 1984, the Calcutta Municipal Corporation issued Notice No. 467 dated 22nd February, 1984 u/s 411(1) of the Calcutta Municipal Corporation Act, 1980 requiring the landlords to demolish the two storied block on the north/east of Premises No. 12 Kalidas Singhi Lane and also to repair the rest of the building in the black portion. A copy of the aid notice has been annexed to the affidavit-in-opposition. A report of an engineer has been also made an annexure to the said affidavit. The deponent to the affidavit-in-opposition has denied that the respondents had wilfully, deliberately and contumaciously violated the order of this Court and had claimed that due to circumstances beyond their control they have been unable to repair the suit premises.

8. Mr. Mukherjee, learned advocate for the tenant petitioner submitted before us that this court has enough jurisdiction to restore possession to a tenant who had been evicted from possession in terms of an ejectment decree passed u/s 13(1)(f) of the West Bengal Premises Tenancy Act, but the plaintiff landlord did not either effect the said repairs of rebuild or after the said works were completed and did not voluntarily re-deliver possession to the tenant. According to Mr. Mukherjee, an ejectment decree passed u/s 13(1)(f) of the Act is conditional one and until the same is fully complied with the said decree is not final. After obtaining possession the landlord is to complete the repairs and/or rebuilding works within the time prescribed u/s 18(1)(a) and even after passing an ejectment decree u/s 13(1)(f) of the West Bengal Premises Tenancy Act, the court retains jurisdiction to extend u/s 18A(1) the said period within which the repairs and/or rebuilding

works are to be completed. The decree u/s 13(1)(f) of the Act in landlord''s favour is also subject to the right of the tenant u/s 18A(2) of the Act to obtain restoration of possession after the repairs or rebuilding works are completed. When after obtaining delivery of possession in pursuance of a decree u/s 13(1)(f) of the West Bengal Premises Tenancy Act, the landlord does not commence the repairs or rebuilding works within the time stipulated u/s 18(1) of the said Act, the learned Rent Controller, on tenants application may restore him to possession or award damages. Mr. Mukherjee has submitted that in this respect an ejectment decree u/s 13(1)(f) of the West Bengal Premises Tenancy Act is similar to a decree for specific performance of a contract Mr. Mukherjee has drawn an analogy with a decree for specific performance of a contract, and in this connection has relied upon the Supreme Court decision in the case of Jai Narain Ram Lundia Vs. Kedar Nath Khetan and Others, . He has submitted that similar to a decree for specific performance, an ejectment decree u/s 13(1)(f) imposes obligation on both sides and is so conditioned that performance by one is conditional on the performance of the other. According to Mr. Mukherjee, since under a decree passed u/s 13(1)(f) of the Act there are reciprocal obligations and the landlord cannot recover possession in execution of the said decree but refuse to perform his obligation under the said decree to effect repairs and/or rebuilding works and thereafter to restore back possession to the dispossed tenant. Mr. Mukherjee has further submitted that in the exercise of its inherent powers this Court ought to direct restitution of possession to the defendant tenant petitioner. Mr. Mitra, learned advocate on behalf of the plaintiff-landlord, however, submitted that after passing of the ejectment decree this court had become functus officio and therefore it could no longer direct restitution of possession to the defendant tenant. According to Mr. Mitra, by reason of the subsequent events, directions for restoration of possession contained in the aforesaid ejectment decree in question had become infructuous and, therefore, his clients were not obliged either to repair the suit premises or to restore back possession to the defendant tenants.

9. For the reasons presently given, in the exercise of powers under article 227 of the Constitution we propose to set aside the aforesaid order of the learned Additional Rent Controller dismissing the defendant tenants application for restoration of possession. In our view, the learned Rent Controller has enough powers u/s 18(1) of the Act to make such restoration order and, therefore, it is not necessary for us to decide in the present case whether or not the court which passes an ejectment decree u/s 13(1)(f) of the West Bengal Premises Tenancy Act retains jurisdiction either to vacate an ejectment decree passed by it u/s 13(1)(f) or to order restoration of possession to a tenant who has been evicted in pursuance of the said decree u/s 13(1)(f) of the Act.

10. On 11th September, 1984 we had called upon the learned advocate for both parties to make their submissions on the question whether in suo moto exercise of our powers under Article 227 of the Constitution we ought to interfere with the aforesaid order dated 21st April 1983 passed by the learned Additional Rent Controller, Calcutta in Case No. 402 of 1982 (Misc.) dismissing as premature the defendant tenants application for

restoration of possession. Both Mr. Mukherjee, learned advocate for the defendant tenant petitioner and Mr. Mitra, learned advocate for the plaintiff landlord opposite party, submitted that since the parties are already present, it would be unnecessary to formally issue any Rule upon them under Article 227 of the Constitution and they proceeded to make their respective submissions on the point whether this Court ought to interfere under Article 227 of the Constitution with the aforesaid order of the learned Additional Rent Controller, Calcutta in Case No. 402 of original records of the said case No. 402 of 1982 (Misc.) and have perused the same.

11. We are satisfied that the learned Additional Rent Controller committed errors of jurisdiction by dismissing as premature the defendant tenant petitioner''s application for restoration of possession on the ground that after obtaining possession the plaintiff landlord did not effect repairs of the suit premises and had thereby disobeyed the directions contained in the decree passed in their favour by the City Civil Court, Calcutta and affirmed by this Court in F.A. No. 327 of 1979.

12. Mr. Mitra has submitted that by reason of the passing of a demolition order by the Corporation of Calcutta the plaintiff landlords were not in a position to carry out the repairs and/or substantial additions and alterations for which they had obtained the ejectment decree against the defendant tenant petitioner and his brothers. According to Mr. Mitra, by reason of the said subsequent events the ejectment decree had become infructuous and neither this court in the exercise of its powers cannot rescind the said decree and put back the defendant tenants in possession of the suit premises nor the learned Additional Rent Controller in the exercise of his powers either u/s 18(1) or u/s 18A(2) of the West Bengal Premises Tenancy Act can restore possession to the defendant tenant. Thus, the curious argument is that the plaintiff landlords would be permitted with impunity to disobey the directions contained in the ejectment decree for restoration of possession to the defendant tenants after completion of the repairs and/or rebuilding works and at the same time neither the court nor the Rent Controller have powers to order restoration of possession. In course of the hearing more than once we had enquired from Mr. Mitra whether or not his clients propose to comply with the purported order of demolition and to reconstruct and/or rebuilt the suit premises and therefore restore the defendant tenants to possession in terms of the ejectment decree obtained by them. Mr. Mitra has submitted that he has been instructed to submit that his clients do not propose to adopt the said course.

13. In our view, in the facts of this case the learned Additional Rent Controller has enough powers u/s 18(1) of the West Bengal Premises Tenancy Act to order restoration of possession to the defendant tenants. It is not correct to contend that section 18(1) of the Act applies only in case the landlord intentionally and deliberately fails to commence repairs works within the stipulated time. The language used in section 18(1) of the Act does not warrant such a narrow interpretation of the said provision. The said section 18(1) is applicable in all cases where after obtaining delivery of possession the landlord does not commence the repair or rebuilding works within the prescribed period. The Rent

Controller under the said Act has been given discretion either to pass an order for restoration or to award compensation. Accordingly, the facts of the particular case and the conduct of the parties may be taken into consideration before deciding whether restoration would be ordered or compensation awarded in favour of the dispossessed tenant. Therefore, in a case where for circumstances beyond the control of the landlord, he is unable to commence the repair works, the Rent Controller may merely award compensation to the tenant. On the other hand, when after obtaining delivery of possession the landlord deliberately and without any valid reason does not commence the repair or rebuilding works, the Rent Controller u/s 18(1) of the West Bengal Premises Tenancy Act may justifiably order for restoring the tenant to possession.

14. In the present case, we are satisfied that the plaintiff landlords had no bonafide or sufficient reasons for not carrying out the additions and alterations or repair works in the suit premises. The defendant tenant had delivered possession to the landlords on 29th June, 1982, i.e. long before the Corporation had purported to serve upon the landlords a demolition order dated 22nd February, 1984. The landlords had sufficient time at their disposal to carry out the repair works in question. But they had wilfully and deliberately did not commence the said works in time. The plaintiff landlords themselves had purported to make an application u/s 18(A) of the Act before the trial court for extension of time to effect the repairs. They had also represented to the Learned Rent Controller that they still intended to carry out the repair works in terms of the ejectment decree obtained by them. The trial court''s decree having been affirmed in appeal by this court, such application for extension of time u/s 18A(1) of the Act was to be made not before the trial court but before the Court. The plaintiff, however, did not ever make before this court any such prayer u/s 18A(1) of the Act. They also themselves did not seek appropriate directions from this court even after 22nd February, 1984 when a purported notice u/s 411 of the Calcutta Municipal Act was issued against them. The plaintiff landlords had opposed the defendant tenants'' restoration application before the learned Additional Rent Controller only on the ground that the same was premature because the repair works had not yet been completed. In their lengthy objection petition filed before the learned Additional Rent Controller, they did not at all aver that repairs works as directed by the ejectment decree could no longer be carried out and that the suit premises was liable to be demolished. Before the learned Additional Rent Controller they did not deny their liability to effect repair works and thereafter put the defendant tenants back in possession of the suit premises.

15. After getting the defendant tenants'' restoration application dismissed as premature, the plaintiff landlords did not carry out the repairs and they allowed their application for extension of time u/s 18A(1) to be dismissed by the City Civil Court, Calcutta on 17th February , 1984. Long before the said demolition order dated 22nd February, 1984 was purported to be issued, as early as 20th July, 1983, the defendant tenants had moved a contempt application before this court and this court had issued notice upon the plaintiff landlords to show cause why the judgement and decree passed in F.A. No. 327 of 1978

should not be rescinded. Having regard to the sequence of events, we are inclined to hold that the plaintiff landlords, in order to frustrate the right of the defendant tenants to get the restoration of possession after completion of the repairs works, had acquiesced in the passing of the said demolition order dated 22nd February, 1984. They have have unfairly and malafide declined to effect either the repair works mentioned in the ejectment decree in their favour or to demolish and rebuilt the suit premises in order to deprive the defendant tenants from obtaining back possession of the suit premises. In our view, the plaintiff landlords by their such wrongful conduct cannot be permitted to nullify the directions in the ejectment decree and to commit with impuity breaches of the terms of the said decree. In such circumstances, the West Bengal Premises Tenancy Act itself contains adequate provisions for restoration of possession to the defendant tenants.

16. Therefore, we have decided to set aside the learned Additional Rent Controller''s order rejecting the defendant tenants'' restoration application and to remit the matter back for fresh disposal in accordance with law. During the pendency of the defendant tenants'' application before this court they could not obviously make any fresh application u/s 18(1) of the West Bengal Premises Tenancy Act before the learned Rent Controller. In fact, they had applied before this court both for punishing the plaintiff landlords for contempt and also for restoring them to possession on the principle of restitution. When we find the leaned Additional Rent Controller himself has jurisdiction u/s 18(1) of the said Act to restore the defendant tenants to possession and had failed to exercise his jurisdiction vested in him by law by rejecting the defendant tenants'' application for restoration of possession as premature under Article 227 of the Constitution, we ought to correct the said order of jurisdiction committed by the learned Additional Rent Controller.

17. In our view, the learned Additional Rent Controller ought to have exercised his powers u/s 18(1) of the West Bengal Premises Tenancy Act, and ordered for putting the tenants back in possession. The mere fact that in the cause title of the application filed in the said Misc. Case only section 18A(2) of the said Act was mentioned could not have prevented the Additional Rent Controller from exercising his powers u/s 18(1) of the said Act. The said application contained also a residuary prayer for passing such other order or orders as it may seem fit and proper. The learned Additional Rent Controller in the exercise of his jurisdiction ought to have considered the said residuary prayer and granted necessary relief to the tenants. The restoration application had been filed within nine months from the date of delivery of possession by the tenants. Admittedly the landlords did not commence the repairs. They did not apply before the High Court which had ultimately passed the decree u/s 13(1) (f) of the West Bengal Premises Tenancy Act. Obviously, after the first appeal was dismissed and the decree of the trial court was affirmed, the trial court''s decree had merged in the High Court decree and the trial court had no further jurisdiction u/s 18A(1) of the said Act. Nonetheless, without effecting repairs the landlords had applied before the trial court under the said provisions of law. Although they pleaded that the Corporation of Calcutta had pointed out that sanction would be necessary for effecting the repairs, they did not take any further steps for obtaining such sanction. They

did not also carry out the repairs in question. For all these reasons, we hold that the landlords had intentionally and deliberately flouted the directions of this Court for effecting repairs within three months from the date on which the tenants who delivered vacant possession. In view of the facts of the present case and the conduct of the plaintiff landlords, the appropriate order in the aforesaid Case No. 402 of 1982 (Misc.) would be to direct restoration of possession and not awarding of compensation.

18. In order to shorten the course of litigation and to do complete justice between the parties, the defendant tenant ought to be permitted to amend his application filed in Case No. 402 of 1982 (Misc.) by amending his cause title and the prayer portion in terms of section 18(1) of the Wet Bengal Premises Tenancy Act. Such amendment is necessary for completely and effectually determining the real questions in controversy between the two sets of parties. The landlord had sufficient notice of the defendant tenants'' claim for restoration of possession and, therefore, they would not suffer any prejudice in the event the aforesaid amendment be allowed.

19. The Corporation of Calcutta is not a party to the proceeding before us and therefore we do not propose to finally decide the legalities and bonafides of the aforesaid demolition order. The defendant tenant petitioner was never served with a copy of the said demolition order and as yet he had no opportunity to challenge the said demolition order. We therefore make it clear that it would be open to the both parties to take recourse of appropriate proceeding according to law in respect of the said demolition order.

20. For the foregoing reasons, in exercise of the power under Article 227 of the Constitution of India we set aside the order of the learned Additional Rent Controller dated 7th April, 1983 passed in Case No. 402 of 1982 (Misc.). We remit the said case back to the Office of the Rent Controller with the discretion that in case within one month from the date on which the notice of arrival of records is served upon the tenants petitioner''s lawyer, the petitioner applies for amendment of his application by incorporated in the cause title and in the prayer u/s 18(1) of the West Bengal Premises Tenancy Act, 1956, then after giving an opportunity to the landlords to file an additional objection within a fortnight thereof, the learned Rent Controller or the Additional Rent Controller will proceed again to dispose of the said case by passing an order for restoration of possession in favour of the tenant petitioner. In case such amendment is made by the petitioner within the aforesaid time, the learned Rent Controller will again dismiss the said case. In view of the order passed under Article 227 of the Constitution of India no order is necessary on the other applications filled by the defendant tenant in this Court and the said applications are treated as disposed of by this Court. There will be no order as to costs.

Let the operation of this order remain stayed till four weeks after the Long Vacation.

Mukul Gopal Mukherjee

21. I agree.