

(1975) 12 CAL CK 0032**Calcutta High Court****Case No:** None

Sri Ram Sakhia @ Rani Shat and
Others

APPELLANT**Vs**

Subodh Kumar Banerjee and
Others

RESPONDENT**Date of Decision:** Dec. 17, 1975**Acts Referred:**

- Calcutta Thika Tenancy Act, 1949 - Section 28, 3, 9
- Civil Procedure Code, 1908 (CPC) - Section 115
- Constitution of India, 1950 - Article 19(1)(f), 19(1)(f)(g), 246

Citation: 80 CWN 354**Hon'ble Judges:** Nirmal Chandra Mukherjee, J; Bankim Chandra Ray, J**Bench:** Division Bench**Advocate:** Sudhir Kumar Dutta, for the Appellant; Pramath Nath Mitter, Nirode Behari Roy, Rabindra Nath Bhattacharjee and Sasthi Charan Ray, for the Respondent**Final Decision:** Dismissed**Judgement**

1. This appeal arises out of proceeding started under the Calcutta Thika Tenancy Act. The respondents filed a suit on 28th of November 1946, being Title Suit No. 310 of 1946, for ejectment of the appellants on the ground of default. On 3rd of December 1947 an ex parte decree for eviction was passed. Decretal amounts were deposited and after that on 28th of February 1949 the Calcutta Thika Tenancy Act, 1949 received the assent of the Governor General and came to effect from that date. On the 7th December 1950 the tenant filed an application u/s 28 of the Calcutta Thika Tenancy Act and on such application Miscellaneous Case, being 14 of 1951, was started. The landlords filed objection. The application was allowed by the learned Munsif. On 14th of March 1953 the Calcutta Thika Tenancy (Amendment) Act (Act VI of 1953) came into effect retrospectively. By this Act Sections 28 and 29 were omitted, and it was provided that it would be deemed that those Sections were

never in existence. Against the order allowing the application u/s 28 the landlords preferred an appeal. The appellate court held that the appeal was not competent and there was second appeal. This Court also held that the appeal was not competent but on the alternative application u/s 115 of the Code this Court granted an opportunity to the appellants to convert the appeal which was registered as a Miscellaneous Appeal into a Title Appeal. After remand the lower court heard the appeal on merits and held that because of the provisions of the Amendment Act of 1953 the tenant is entitled to no relief as envisaged u/s 28 of the Act, and in that view of his finding the application u/s 28 was dismissed. Being aggrieved the tenants have come up in this Court.

2. Mr. Sudhir Kumar Datta, learned Advocate appearing on behalf of the appellants, mainly urges that the Appellate Court was wrong to dismiss the application u/s 28 as the application u/s 28 was already disposed of by the learned Munsif at a time when the Amending Act was not introduced. It is true that it has been laid down that the Amending Act would have retrospective operation but even then Mr. Dutta submits that the Amending Act will have no effect on the present application u/s 28 which was filed and disposed of before the Amending Act. Sub-section (2) of the Amendment Act reads as follows:

It shall into force immediately on the Calcutta Thika Tenancy (Amendment) Ordinance, 1952, ceasing to operate. Provided that the provisions of the Calcutta Thika Tenancy Act, 1949, as amended by this Act, shall, subject to the provisions of Section 9 also apply and be deemed to have always applied to all suits, appeals and proceedings pending.

- (a) before any court, or
- (b) before the Controller, or
- (c) before a person deciding an appeal u/s 27 of the said Act, on the date of the commencement of the Calcutta Thika Tenancy (Amendment) Ordinance, 1952.

3. Mr. Dutta submits that there is no doubt that the provisions of the Amendment Act would apply to pending proceedings but the same cannot apply in the case of an application which has already been disposed of. In the present case the application u/s 28 was disposed of before the Amendment Act came into force and on that date the learned Munsif was sufficiently justified to pass an order for rescinding the decree. The order passed by the learned Munsif was correct at the time when it was passed and as such the learned appellate court cannot reverse the finding simply because during the pendency of the appeal the law has been changed. Mr. Dutta strongly relies upon a decision reported in (1) [Gopi Kanta Sen Vs. Abdul Gaffur and Others](#). In this case the appellant instituted a suit against the first respondent and others in June 1948 for their ejectment. On February 28, 1949 the Calcutta Thika Tenancy Act came into force. The first respondent was not a thika tenant within the definition thereof given in the Act. The suit was decreed by the Munsif in March

1949. In November 1949 the appeal filed by the first respondent was dismissed by the first appellate court. He then filed a second appeal in the High Court which was heard in 1954. Before that the Calcutta Thika Tenancy (Amendment) Act, 1953 was passed. It was held "that the High Court. was wrong in holding that suits for the eviction of thika tenants became infructuous before civil courts after the omission of ss. 28 and 29. There being no longer any provision for transfer of pending suits and appeals, the court hearing the appeal would have to pass a decree for ejectment even if the defendant was a thika tenant after taking into account Section 3.

4. Mr. Pramathanath Mitter, learned Advocate appearing on behalf of the respondents submits with all force that the principles laid down in this case cannot apply to the facts of the present case. In this case their Lordships were considering the effect of omission of Section 29. Provisions of Section 29 are complete different from those of Section 28. Section 29 deals with the jurisdiction of the Court and the Thika Controller while Section 28 lays down the provisions where a tenant can get relief by way of rescission of the decree for ejectment. In this connection Mr. Mitter strongly relies on the case reported in (2) Mahadeolal Kanodia Vs. The Administrator-general of West Bengal, . In this case it has been laid down "The principles that have to be applied for interpretation of statutory amendment taking away substantive rights are well established. The first of these is that statutory provisions creating substantive rights or taking away substantive rights are ordinarily prospective, they are retrospective only if by express words or by necessary implication the Legislature has made them retrospective and the retrospective operation will be limited only to the extent to which it has been so made by express words or necessary implication. The second rule is that the intention of the Legislature has always to be gathered from the words used by it, giving to the words their plain, normal, grammatical meaning". Though Their Lordships laid down two other rules, we need not enumerate them for our present purpose. In the present case there is no doubt that the Amendment Act had retrospective operation. It may be mentioned in this connection that in the case reported in Gopi Kanta Sen Vs. Abdul Gaffur and Others, Their Lordships held "The effect of omission of Section 28 has been considered by this Court in (2) Mahadeolal Kanodia Vs. The Administrator-general of West Bengal, where it was held that a thika tenant against whom proceedings for execution of the decree for eviction were pending and who had applied for relief u/s 28 lost the protection of that section as a result of the Amending Act of 1953. Though Their Lordships had occasion to refer to the above decision Their Lordships did not question the correctness of the said decision. It can therefore be held that Their Lordships approved of the said decision. This case therefore is of no help to the appellants.

5. Mr. Dutta also refers to a decision reported in (3) Rai Ramkrishna and Others Vs. The State of Bihar, . In this case Their Lordships had occasion to consider Art 19(1) (f) (g) and Art. 246. It was held "that though the Legislature can pass a law and make its provision retrospective, it would be relevant to consider the effect of the side

retrospective operation of the law both in respect of the Legislative competence of the Legislature and the reasonableness of the restrictions imposed by it. This case also is of no assistance to the appellants.

6. The next case referred to by Mr. Dutta has been reported in (4) [Gouri Rani Ghosh Vs. Morai Rai and Another](#). It has been held in this case that "Section 13 of the Calcutta Thika Tenancy (Second Amendment) Act, 1949 in so far as it has the effect of deleting with retrospective effect the grounds of ejectment specified in clause (v) of Section 3 of the Calcutta Thika Tenancy Act, 1949 is ultra vires as it imposes unreasonable restriction on the fundamental rights guaranteed under Article 19(1) (f) of the Constitution".

7. The next case referred to by Mr. Dutta has been reported in (5) [Narayan Chandra Saha Vs. Dev All \(P\) Ltd.,](#). This case also dealt with the Amendment Act of 1969. It was held "Section 13 of the said Amendment Act provides that all amendment made by that Act would apply in respect of all applications for ejectment and all appeals from orders made on such orders which were pending on the date of the commencement of the said Amendment Act". The principles laid down in the two cases referred to above do not apply to the facts of the present case.

8. As the provisions of the Amendment Act are clear to the effect that they have retrospective operation, it only remains to be seen whether on the facts of the present case it can be said that the application u/s 28 has already been disposed of or the same is pending. In this connection Mr. Mitter refers to a decision reported in (6) [Mohanlal Chunilal Kothari Vs. Tribhovan Haribhai Tamboli](#). It has been held that "where during the pendency of the suit at the appellate stage a second notification is issued u/s 88 (1) (d) of the Bombay Tenancy and Agricultural Lands Act, 1948, canceling the first, the Court is bound to apply the law as it finds on the date of its judgment. The effect of the cancellation of the first notification was that the tenants could claim the protection afforded by the law against eviction on the ground that the terms of the lease had expired. The view that though the appellate Court is entitled to take notice of the subsequent events, the suit has to be determined as on the state of facts in existence on the date of the suit, and not as they existed during the pendency of the appeal and, therefore, the tenants could not take advantage of the provisions of the Act and could not resist the suit for possession is a mistaken view of the legal position".

9. Mr. Mitter next refers to a decision reported in (7) 43 CWN (1939 FCR 68) (Shyamakant Lal, v. Rambhajan Singh). In this case it was held that "where the High Court. has held a certain piece of Provincial legislation to be void for repugnancy u/s 107 of the Constitution Act but since than a new Act on the same terms with retrospective effect has been passed with the assent of the Governor-General so that it is valid in spite of repugnancy, the federal Court may remit the case to the High Court with a direction that its decision shall be discharged and that the case shall be decided in accordance with the new law".

10. The next case referred to by Mr. Mitter has been reported in (8) 45 CWN (1941 FR) 66 (Lachameshwar Prasad Shukul v. Keshwar Lal Chaudhury and others). It has been held that "In deciding an appeal involving a question of money-lending in Bihar, the Federal Court is entitled to and should apply Section 7 of the Bihar Money-Lenders Act (VII of 1939) although the said Act may have been passed after the decision appealed from was given, because the Federal Court has to substitute a judgment from was given, because the Federal Court has to substitute a judgment which the High Court should have had to pass if it were then hearing the case and the High Court would be bound to apply Section 7".

11. Mr. Mitter also refers to a decision reported in (9) 40 CWN 263 (K. C. Mukherjee, Official Receiver v. Musammat Ramratan Kuer). It was held "Section 26(N) and 27(O) introduced into the Bengal Tenancy Act by the Bihar Tenancy, (Amendment) Act, 1934, applies to all transfers of occupancy holdings such a are particularized therein, including those which were in question in a pending suit at the date when the Amendment Act came into force. Where a statute provided that certain circumstances, affecting vested rights, shall be deemed to have existed in respect of transactions prior to a certain date, the provision applied to all transaction of the kind specified including those which were in question in a pending suit at the date the provision came into force".

12. Taking into consideration the fact that being aggrieved by the order passed on the application u/s 28, the landlords preferred an appeal and that appeal was pending and relying on the decisions referred to above and bearing in mind that the Amendment Act had retrospective effect, it must be held that the application u/s 28 was pending at the time when the learned lower Court heard the appeal and as such he was right in applying the provisions of the Amendment Act.

13. In the result, the appeal fails and is dismissed. The judgment and decree passed by the learned Subordinate Judge are hereby affirmed. There will be, however, no order as to costs in this appeal.

Ray J.

14. I agree.