(1960) 12 CAL CK 0020

Calcutta High Court

Case No: Civil Revision Cases No''s. 2840 and 2841 of 1959

Messrs Pannalal Baktwarmall		APPELLANT
	Vs	
Narayandas Deora		RESPONDENT

Date of Decision: Dec. 19, 1960

Acts Referred:

- West Bengal Premises Tenancy Act, 1956 - Section 10, 11, 11(2), 13(4), 13(5)

Citation: 65 CWN 207 : (1961) 2 ILR (Cal) 757

Hon'ble Judges: Banerjee, J

Bench: Single Bench

Advocate: P.N. Mitra and Samarendra Krishna Deb, for the Appellant;Provash Chandra Basu and Purnendu Sekhar Basu, for the Respondent

Judgement

Banerjee, J.

Narayandas Deora is admittedly the landlord of premises No. 46, Strand Road, Calcutta. Under him Pannalal Baktwarmall is a tenant in respect of the southern portion of a room and a verandah, to the west of the room, in the second floor of the said premises. Under the tenant Pannalal Baktwarmall again, Mahalchand Shreekishan firm is a sub-tenant in respect of a third portion of the room let to the tenant. Apart from the sub-tenancy, the sub-tenant alleged, he had the right of user of the western verandah, in common with the tenant.

2. The contractual rent payable by the tenant Pannalal Baktwarmall was, at the material time Rs. 73 per month. The rent payable by the sub-tenant abovenamed was Rs. 40 per month.

3. After the West Bengal Premises Tenancy Act, 1956 (hereinafter referred to as the Act), had come into operation, the sub-tenant made an application, u/s 16(5) of the Act, for a declaration that the tenant''s interest in so much of the premises sub-let shall cease and the sub-tenant shall become a tenant directly under the landlord and also for fixation of the rents respectively payable by the tenant and the

sub-tenant. In the application aforementioned both the tenant and the landlord were made parties.

4. The Controller made the declaration as prayed for, excepting that he did not make any declaration to the effect that the sub-tenant had right of user of the western verandah in common with the tenant, and thereafter, directed his Inspector to make the necessary inspection and submit a report on the rents to be fixed. On consideration of the report submitted by the Inspector as also the evidence adduced respectively by the tenant and the sub-tenant regarding rent of other comparable premises, the Controller fixed, the rent payable by the tenant to his landlord at Rs. 115 per month and the rent payable by the quondam sub-tenant, declared to be a direct tenant under the landlord (that is to say Narayandas Debra), at Rs. 40 per month.

5. Both the tenant and the sub-tenant appealed against the decision the tenant disputing the rent fixed, the sub-tenant disputing that portion of the order by which his prayer in respect of his right of user of the verandah was disallowed. The appellate authority dismissed the tenant''s appeal but allowed the appeal preferred by the sub-tenant.

6. The orders passed by the appellate authority, in the two appeals aforementioned, are being disputed before us in these two rules.

7. In Civil Revision Case No. 2841 of 1959, directed against the part of the judgment of the court below by which the rents payable by the tenant Pannalal Baktwarmall and the sub-tenant Mahalchand Sreekishan firm were fixed, Mr. Pramatha Nath Mitra, learned Advocate for the tenant Petitioner, contended that in fixing the rent payable by the tenant and the sub-tenant, u/s 16(3) of the Act, the Controller and the appellate authority had both proceeded arbitrarily. Elaborating his argument, Mr. Mitter raised two alternative contentions:

(i) He contended that in fixing the rents payable by the tenant and the sub-tenant to the landlord, the duty of the Controller, u/s 16(3) of the Act, was merely to make a proportionate subdivision of the rent, which the tenant was paying to the landlord, as between the tenant and the sub-tenant.

(ii) Alternatively, he contended that the duty of the Controller in fixing rent, u/s 16(3) of the Act,- was to reduce the rent payable by the tenant on principles which govern reduction of rent in respect of deficiency in area (as in Section 52 of the Bengal Tenancy Act) or apportionment or abatement of the contractual rent, in case of failure on the part of the landlord to deliver possession of part of the demised premises. So far as the sub-tenant was concerned, the Controller should fix a fair rent in respect of his direct tenancy under the landlord.

8. The argument advanced by Mr. Mitter is attractive but we are unable to accept the same for reasons hereinafter given.

9. The portion of Section 16(3) of the Act, which we need consider, is set out below:

***The Controller shall also fix the rents payable by the tenant and such sub-tenant to the landlord from the date of the order. Rents so fixed shall be deemed to be fair rent for the purposes of this Act.

10. It is to be noted that the language used in the Sub-section is "shall "also fix the rents payable by the tenant and such sub-tenant", the language is not that the Controller "shall proportionately divide the "rent payable by the tenant into rents payable by the tenant and such "sub-tenant". It is also to Be noted that "rents so fixed shall be "deemed to be fair rent for the purposes of this Act".

11. If, as Mr. Mitter argues, the duty of the Controller, in fixing rent u/s 16(3) of the Act, is merely to make a proportionate subdivision of the rent then payable by the tenant to the landlord, the landlord and the tenant both lose, subject to the provisions of Section 9 and 11 of the Act, the right to have the fair rent of the premises fixed, because the division of the original rent of the tenancy, made by the Controller, becomes automatically the "fair rent" for the purposes of the Act. An interpretation of the language, used in Section 16(3) of the Act, which deprives the landlord, the tenant and the sub-tenant of their statutory rights to have their fair rent fixed, should be avoided unless there are compelling reasons for so doing. No such reason was shown to us.

12. Then again, the words used in Section 16(3) are, "shall also fix the "rents". The word "fix" has been used in other parts of the Act, for example in Sub-section (4) and (5) of Section 13:

Sections 13(4)-Where the landlord requires the premises on any of the ground mentioned in Clause (f) of Sub-section (1), and the court is of opinion that such requirements may be substantially satisfied by ejecting the tenant or a sub-tenant from a part only of the premises and allowing the tenant or the subtnant to continue in occupation of the rest, then, if the tenant or (a sub-tenant agrees to such occupation, the court shall pass a decree accordingly and fix the proportionate rent for the portion remaining in occupation of the tenant or the sub-tenant. The rent so fixed shall be deemed to be the fair rent for the purposes of this Act.

* * * * * * * *

Section 13(5)-Where under Sub-section (2) a decree or order for ejectment is passed against a tenant, but not against a sub-tenant, the sub-tenant shall become, with effect from the date of the decree against the tenant, a tenant directly holding under the landlord in respect 6f the premises in his occupation and he shall pay suefa rent as may be fixed by the Court. The rent so fixed shall be deemed to be he fair rent for the purposes of this Act.

13. It is noteworthy that in Section 13(4) where the Court is required merely to apportion the rent, the Act uses express words, namely, "fix "the proportionate

rent". The words "fix the rent", in Section 16(3), have therefore, to be contrasted to the words "fix the proportionate rent", as in Section 13(4) and "such rent as may be fixed" as in Section 13(5) and thereafter the meaning scope and effect thereof shall have to be determined.

14. It appears from the scheme as in chap. II of the Act and particularly from Section 4 thereof that no rent in excess over fair rent shall be recoverable by the landlord. Fair rent is defined in Section 8 of the Act. The limits of increase over the fair rent are laid down m Section 9 of the Act. Section 11 of the Act provides for revision of fair rent, on account of increase or decrease in the market value of the premises, after the lapse of the period mentioned in the provisos to Section 11(2) of the Act.

15. From the aforementioned scheme of the Act, it is reasonable to hold that whenever a Controller is to fix a rent as contrasted to "fix "the proportionate rent", as in Section 13(4) of the Act] he shall bear in mind the principles of fixation of fair rent in the Act and apply the same as far as practicable within the framework of Section 16(3) or for the matter of that Section 13(5) of the Act. That only will sanctify the rent fixed by the Controller as fair rent such as it is deemed to be under the provisions of the Act.

16. The alternative argument, advanced by Mr. Mitter, that the Controller should, u/s 16(3) of the Act, reduce the rent payable by the tenant to the landlord regard being had to the principles contained in Section 52 of the Bengal Tenancy Act or principles governing apportionment or abatement of the contractual rent in case of landlord''s failure to deliver possession of part of the demised premises, does not appeal to us, because the introduction of such principles, in cases coming u/s 16(3) of the Act, may not adjust all the rights of the landlord, the tenant and the sub-tenant under the Act.

17. To be more precise, what a Controller is required to do u/s 16(3) is to determine, first of all, what the fair rent of the premises let to the tenant should be, regard being had to Sections 8, 9, 10 and 11 of the Act. He shall then divide that rent as between the tenant and the sub-tenants, regard being had to the area occupied by each of them, valued and devalued, having regard to the situation, condition and amenities of such areas.

18. At this stage we need refer to a decision, by a Division Bench of this Court, Jetmull Bhajraj v. Mohanlal Sukhani (1957) 62 C.W.N. 314 . That was a case where the sub-tenancy was co-extensive with the tenancy, not the type of case with which we are at present concerned. But in the judgment delivered by Lahir, J. (as the Chie Justice then was), sitting with Guha, J., there are certain observations which are of some relevancy in the present context.

19. In the aforementioned case, the tenant of the first degree had filed an application for fixing the standard rent of his sub-tenant under the provisions of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950. While the

proceeding for fixation of rent was pending, the West Bengal Premises Tenancy Act, 1956, came into operation and the sub-tenant filed an application, u/s 16(3) of the latter Act, for a declaration that he was a direct tenant, was entitled to the declaration claimed and, for the purpose of fixing the fair rent under the section directed certain inspections to be made and certain measurements to be taken by his Inspector. The sub-tenant objected to that part of the order which directed inspection and measurements and contended that the fair rent to be fixed in the proceeding started by his immediate landlord should be taken as the fair rent for the fixation of rent u/s 16(3). The sub-tenant, therefore, prayed for the modification of the order for inspection and measurement accordingly. This prayer being rejected, the sub-tenant moved this Court. It was contended before this Court that as a result of the aforesaid order for fixation of the standard rent of the subtenant''s premises, two parallel proceedings would be going on, which could not be contemplated u/s 8(7) (c) of the West Bengal Premises Tenancy Act, 1956. This Court negatived that contention with the observation that the earlier proceeding was a proceeding for fixation of the rent of a sub-tenancy, whereas the proceeding for fixation of rent u/s 16(3) of the Act of 1956 was one for fixation of fair rent of a tenancy, held directly under the owner. In order to attract the operation of Section 8(1)(c), the proceeding would have to be between the same persons or persons having the same class of interest. There was an additional reasons given, in that case, why the proceeding for fixation of rent between the sub-tenant and the tenant would not be of any avail, namely, that the sub-tenancy was co-extensive with the tenancy, and therefore, as soon as the "interest of the tenant ceased to exist there could be no question of determination of the rent of a non-existing tenancy. Lahiri, J., further observed as follows:

***that where the sub-tenancy is not co-extensive with the tenancy of the "first degree and the tenancy of the first decree is only partially extinguished, it "is only in such cases that the Controller is to determine the rent payable by "the tenant as well as by the sub-tenant. In a case like the present one, where "the tenancy of the first degree ceased to exist in it entirely there is no duty upon "the Controller to determine the rent of the tenant of the first decree.

20. In discharging the Rule there was a direction given to the Controller to fix the fair rent of the sub-tenancy, according to the provisions of the West Bengal Premises Tenancy Act of 1956.

21. The aforementioned case lends support to the conclusion that we have arrived at to the extent that it holds that in cases where the Controller is not required at all to sub-divide the rent between the tenant and the sub-tenant, even then he is required to fix a fair rent for the sub-tenancy, according to the provisions of the West Bengal Premises Tenancy Act, 1956. The decision, aforementioned is destructive of the contentions, in the alternative, advanced by Mr. Mitter, namely, that the duty of the Controller, in fixing rent u/s 16(3) of the Act, is merely to divide

the rent payable by the tenant proportionately between the tenant and the sub-tenant, alternatively to reduce the rent of tenant in accordance with principle analogous to the principles as in Section 52 of the Bengal Tenancy Act, or principle analogous to the principle of abatement and apportionment of rent in case of failure on the part of a landlord to deliver possession of a part of the demised premises. The conclusion is thus irresistible that the duty of the Controller, u/s 16(3) of the Act, is not merely to divide the existing rent, but to fix a fair rent for so much of the premises, as shall remain in the respective occupation of the tenant and the sub-tenant, under the provisions of the West Bengal Premises Tenancy Act, 1956, unless of course the sub-tenancy is co-extensive with the tenancy, in which case he shall fix the fair rent of the sub-tenancy only.

22. There is no dispute in the present case that if a fair rent has to be fixed, the provisions of Section 8(2)(e) alone of the Act will be attracted. Under the proviso to Section 8(1)(e) of the Act, there may be an increase only of 10 per cent, over the existing contractual rent payable by the tenant. The existing contractual rent payable by the sub-tenant to the tenant is not the existing rent so far as the landlord is concerned and it may be difficult for the landlord to ask for any fixation of rent on that basis. In the present case, where the sub tenancy is not co-extensive with the tenancy, the only course open to the Controller is to apply the provisions of Section 8(i)(e) of the Act on the existing contractual rent payable by the tenant to his landlord and to arrive at the figure of fair rent on that basis and thereafter to divide that amount of fair rent between the tenant and the sub-tenant, regard being had to the area that will remain in their ''respective occupation and further regard being had to the situation, condition and the amenities of each of the sub-divided premises. In this way only Section 16(3) of the Act, which is not very happily worded, can be fitted in the entire scheme of the Act and all the equities and rights adjusted. If the apportionment of such rent be properly made between the tenant and the sub-tenant, each of such apportioned rent may be deemed to be the fair rent, because the fair rent of the entire premises let to the tenant had first been arrived at.

23. In the view that we take, we set aside the order of the Controller fixing the rents of the tenant and the sub-tenant and also the appellate judgment affirming the same and remand the ease to the Controller so that the rent payable by the tenant and the sub-tenant may be fixed, regard being had to the observations contained in the judgment.

24. This rule is made absolute to the extent indicated above.

25. So far as the Civil Revision Case No. 2840 of 1959 is concerned, the matter may be shortly disposed of. The parties hereto are agreed that the sub-tenant shall be entitled to have user of so much of the western verandah, as is in occupation of the tenant, but in common with the latter, excepting that the room at the southern end of the aforesaid verandah shall remain in the exclusive occupation of the tenant. The

Controller shall properly demarcate or describe the said room in his judgment so as to avoid future trouble. With the modification as above, this rule is also discharged.

26. There will be no order as to costs in any of the two rules.

Niyogi, J.

27. I agree.