

(1955) 05 CAL CK 0022

Calcutta High Court**Case No:** Civil Revision Case No. 3413 of 1954

Dhirendra Lal Dutta, Landlord

APPELLANT

Vs

Fekudas and Others, Tenants

RESPONDENT

Date of Decision: May 10, 1955**Acts Referred:**

- Constitution of India, 1950 - Article 227

Citation: 59 CWN 690**Hon'ble Judges:** P.N. Mookerjee, J**Bench:** Single Bench**Advocate:** Soumendra Chandra Basu, for the Appellant; Nripendra Chandra Basu, for the Respondent

Judgement

P.N. Mookerjee, J.

This Rule arises out of a proceeding for ejectment before the Thika Controller. It appears that the landlord's application for ejectment was allowed by the Thika Controller by his Order No. 73, passed as far back as June 14, 1952, presumably on the ground of bona fide requirement and also default in the payment of rent. That order contained a provision that if the tenant deposited the arrears of rent within a period of 30 days, the order of ejectment would not be executable. There was no provision made in the order for payment of any compensation to the tenant.

2. The learned Controller, thereafter, when he found that the tenant had not made any deposit within 30 days, proceeded to direct, by a subsequent order, dated July 14, 1952, that ejectment would be allowed only on payment of compensation, and, by a later order, dated November 21, 1953, the compensation was assessed at Rs. 461-8-0 and the landlord was directed to pay the said compensation before taking possession of the disputed land. Thereafter followed further proceedings in the shape of some claim made by the landlord for set off of arrears of rent and mesne profits as against this assessed compensation and, this having been disallowed by the

learned Controller there was an appeal taken before the appellate authority. The order of the Controller refusing set off was however, affirmed and, eventually, on September 7, 1954, the present Rule was obtained by the landlord petitioner.

3. I have not been shown any provision of law which authorises or entitles the Thika Controller to allow, in the events which have happened in the present case, any set off or adjustment of the arrears of rent and/or mesne profits against the compensation money and the Controller and the Appellate Judge appear to have been fully justified in refusing the petitioner's prayer for set off.

4. I do not think, however, that this Rule should altogether fail. An examination of the records clearly reveals that the entire proceedings have been irregular from the very order of ejectment, passed on June 14, 1952. That order was passed ex parte and it does not appear to have taken into consideration all the relevant aspects of the matter. The subsequent orders, dated July 14 and November 21, 1954, were also extremely irregular as, in view of the order of the 14th June, 1952, the landlord was entitled to ejectment on account of rent in the absence of the mandatory deposit within thirty days and, on the tenant's failure to make the deposit, the landlord became absolutely entitled to possession of the disputed land and the Controller had no power to direct the landlord to pay any compensation before taking possession. If the tenant had made the requisite deposit in time with the result that ejectment on the ground of non-payment of arrears of rent become unenforceable, then and then only question of payment of compensation by the landlord would have arisen in connection with ejectment on the other ground of bona fide requirement, but such contingency did not arise in the present case to invest the Controller with jurisdiction to direct payment of compensation as condition precedent to ejectment. In these circumstances, it seems to me eminently proper that, in the interest of justice and for regulating the matter, I should set aside the entire proceedings, beginning with the Controller's Order No. 73, dated June 14, 1952, and direct a re-hearing and disposal of the petitioner's application for ejectment according to law subject to all just objections which the tenant opposite party might be entitled to take to the petitioner's said prayer under the law and I do so in the exercise of my powers under Art. 227 of the Constitution.

5. I accordingly set aside the entire proceedings, beginning with Order No. 73, dated June 14, 1952, and direct rehearing of the landlord's application for ejectment in accordance with law as stated above. The Rule succeeds to the above extent. There will be no order as to costs.