

**(1954) 08 CAL CK 0041**

**Calcutta High Court**

**Case No:** Second Appeal No. 39 of 1954

Dwijendra Lall Bysack

APPELLANT

Vs

Anil Kumar Haldar

RESPONDENT

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**Date of Decision:** Aug. 24, 1954

**Citation:** (1956) 2 ILR (Cal) 592

**Hon'ble Judges:** Chunder, J

**Bench:** Single Bench

**Advocate:** Subodh Chandra Basak, for the Appellant; Lala Hemanta Kumar and Sudhir Kumar Datta, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Chunder, J.

This is an appeal against an appellate decree of the Subordinate Judge, first court, Howrah, reversing that of the munsif, local second court. The tenant Defendant is the Appellant.

The Plaintiff sued in ejectment and as far as we are concerned in this appeal he wanted to remove the bar u/s 12 by showing that he reasonably required the premises for building and re-building. I have already pointed out in my decision in the case of [T.D. Nandi and Others Vs. Manot and Co. Ltd.](#), that it is the public advantage and disadvantage as regards accommodation which have got to be considered in this connection.

2. It appears that the proper effect and meaning of that decision have perhaps been misunderstood by the Bar, as I find from the arguments in this case. I pointed out that the primary consideration is not the consideration of pecuniary gain to the landlord, but the primary consideration for the decision of the court must be the gain to public accommodation, that is, whether it will increase public accommodation or not i.e., extend it to such reasonable extent as will justify throwing out a tenant in a congested accommodation market. This has been taken

to mean that the question of economic gain must not be considered at all. As has been pointed out in a reported decision of P.B. Mukharji, J., in the case of *Basant Lal Saha v. P.C. Chakravarty* (1949) 84 C.L.J. 108. "reasonable" includes bona fides and in determining bona fides of a landlord's requirement, the questions whether it will cause economic gain and whether the landlord has got the means to build and whether he has or is taking proper steps to build are questions which the court may consider. I agree with it. In addition to this the further consideration for the court will be whether even if the landlord satisfies the test of bona fides, it will lead to greater public advantage of increased accommodation.

3. The second misunderstanding of the judgment appears to be that the personal disadvantage of a particular tenant must also be weighed. The tenant as an individual person, in a case of building and re-building, is not the subject-matter of consideration by the statute in connection with reasonable requirement; but the tenant in the premises is also a member of the public. Therefore, if by building or re-building, the advantage of increased public accommodation is so slight that it is not at all commensurate with the disadvantage to another member of the public by throwing him on a congested market, then it cannot be said to be reasonable requirement as laid down in the statute. It was not meant by that decision that if there was going to be increased accommodation to the public, the court should prevent such extension of accommodation on the ground of disadvantage to a private individual tenant. The disadvantage to the tenant on being ejected must be considered not on his individual personal ground but as a member of the public and in comparison with expected public advantage.

4. In the present case, the learned Judge has rightly pointed out that the breaking down of a kutchra structure in which the tenant-Defendant has a shop cannot offset the public advantage of much more extensive accommodation in the pucca building to be erected in place of it. Mr. Basak has argued that it would be difficult for the individual tenant to find alternative accommodation in that locality at Howrah for his shop which has long been there. As this is not a case of reasonable requirement for personal use and occupation, the personal disadvantage of the tenant is not the subject of consideration. As a member of the public, according to the learned Judge, his suffering by being ejected is offset by the greater advantage to the public of increased accommodation at a time when there is building shortage. It is only in connection with the tenant's position also as a member of the public that any disadvantage which comes into consideration. His personal factor is not material.

5. A third point with regard to that decision should also be made clear. In that case several premises as defined in the Act were being jointly considered as they were all in the same big building. The public advantage and disadvantage must be with regard to the premises as defined in the Rent Control Act. Even if the tenant can be kept on a part of the premises as defined, say, the already built up portion and the landlord wants to build on the remaining portion of the land of the premises so that

there will be additional public accommodation, he will be entitled to ejectment, because the premises in the particular case will yield greater public accommodation than it now does in the occupation of the tenant. It is to be noted that in connection with building and re-building there is no provision for apportionment or partition of the premises between the tenant and the landlord, as in the case of reasonable requirement for personal use and occupation. In connection with personal use and occupation, if the court finds that substantial justice can be done by keeping the tenant in a part of the premises and making over another part to the landlord, the court is entitled to do so; but in case of building-he will be entitled to ejectment, because the premises in the and re-building if the court finds that in the premises in suit and as defined in the Act itself, will in that particular case, yield when further built upon extension of accommodation, on the portion of the premises which is vacant and he may be kept on in the other portion already occupied by him and not going to be built up on to save personal disadvantage to him. In the case of T.D. Nandi v. Manot and Company Limited (1), what was pointed out was that in case of some of the premises as defined in the Act there was not sufficient evidence to show that there would be any greater advantage as far as the public was concerned although as far as the entire "building in which the different premises were located might when built upon yield much more extended accommodation. The premises were individual shop rooms, offices, etc., in a big building and not the whole building itself. This fact should be kept in view in reading that judgment. It should also be kept in view that unlike the case of personal use and occupation no partial eviction or apportionment is sanctioned by law in case of building and rebuilding. In case of building and re-building the actual advantage to the public by way of increased accommodation must be with reference to the particular premises in question itself. In that case it was contended that there would be no increased accommodation with regard to the particular premises by re-building and further that a re-building of the entire house in which these separate premises were located could be undertaken keeping at least some of these particular premises intact; "that is. for securing increase of accommodation even in the whole building it was not reasonably required that at least some of the particular premises in that building had to be interfered with As on these points of facts had not been sufficiently elucidated in. evidence by the trial court, a remand became necessary. If this background is remembered, I am confident there will be no misconception of the decision in that case.

6. In view of the findings of fact of the learned Judge, and as he is the last court of fact, the appeal must fail and be dismissed. There will be no order as to costs as the trouble in the present case has arisen because of the misunderstanding of a decision of this Court.

7. The Appellant, who is present in Court, gives an undertaking through his learned advocate, to vacate the premises and to deliver up peaceful possession without any recourse to execution and to continue to pay the rent as before till he vacates and

delivers up possession. The Appellant is allowed four months" time from date to vacate on such undertaking.