Saroj Kumar De and Others Vs Radharani Saha and Others

A. O. D. No. 491 of 1974

Court: Calcutta High Court

Date of Decision: Aug. 24, 1982

Acts Referred:
Transfer of Property Act, 1882 â€" Section 106#West Bengal Non-Agricultural Tenancy Act, 1949 â€" Section 9, 9(1)(b)(ii)#West Bengal Premises Tenancy Act, 1956 â€" Section 13, 13(1), 13(1)(a), 13(6), 16

Citation: 86 CWN 5

Hon'ble Judges: R.K. Sharma, J; Chittatosh Mookerjee, J

Bench: Division Bench

Advocate: T.K. Biswas, Sibaji Mitra and Narayandas Das, for the Appellant;Sudhis Dasgupta and Rupendra Nath Mitra, for the Respondent

Final Decision: Dismissed

Judgement

Chittatosh Mookerjee, J.
Since Falgoon, 1339 B.S. Chandichatan Saha (since deceased), the original defendant -respondent, had been a

monthly tenant of Premises No. 61, Akrur Dutta Lane. The respondents exhibited a letter dated 8th of May 1933 written by the then

Commissioner of Presidency Division granting sanction of the settlement of the said premises which then belonged to Janbazar Wards Estate No. 2

with said Chandicharan Saha at a monthly rent of Rs. 280. per month with effect from Falgoon, 1339 B.S. Rent of the said premises was later on

raised and the said tenant had been paying to the then lard lords, Sm. Umarani Das and others, at the rate of Rs. 3851- per month according to

Bengali Calendar and Rs. 352.14 P. quarterly on account of owner"s and occupier"s share of the municipal rates of the said premises. On 1st

September, 1971 corresponding to 15th of Bhadra, 1378 B.S. the plaintiff-appellants by a registered Deed of Conveyance had purchased the

Premises No. 61, Akrur Dutta Lane from the said Sm. Umarani Das and others. It has also transpired in evidence that on 10th December, 1971

the defendant. Chandicharau Sahn, had paid to the plaintiff appellants rents for the months of September, October and November. 1971. The

plaintiff appellants through, their Warned advocate by a letter dated January 25. 1972 had careered upon defendant to quit and vacate the suit

premises by the end of February, 1972. The plaintiff had also informed the defendants that in default thereof they would institute necessary

proceedings in court for his ejectment from the suit premises.

2. On 29th March, 1972 the plaintiff appellants instituted the ejectment suit in question in the City Civil Court at Calcutta for evicting the defendant,

Chandicharan Saha, and for recovery of mesne profits from March, 1, 1972. The plaintiffs'' case was that the defendant was a monthly tenant in

respect of the said premises according to English calendar by attornment in favour of the plaintiffs on the very date of their purchase of the

premises, i.e. September 1, 1971. The plaintiffs alleged that the defendant had sublet the said premises to one M/s. Hindusthan Musical Products

and Varieties Syndicate Ltd., without any notice or consent of the landlords in writing. Plaintiffs further averred that the defendant and or the said

company had further sublet to one M/s. Tropical Cooling & Enginerring Co. a portion of the said premises at a rent of Rs. 1151- per month and

paymeut of electric charges at Rs. 10|- pre month and another portion of the premises at a rent of Rs. 125/- per month with effect from March 1,

1970 without any notice to or consent of the landlords in writing. The plaintiffs further averred in paragraph (5) of their plaint that they had given a

notice to the defendant to vacate by the 2nd of February, 1972 which expired at by the end of the month of the said tenancy.

3. The defendant in his original written statement with reference to paragraph (2) of the plaint had asserted that he was still a monthly tenant under

the plaintiffs in respect of the suit premises and did not specifically deny that his tenancy was according to English calendar. The defendant had

further averred that since the year 1924 he had been occupying the premises with the right of subletting and or of carrying other allied business in

co-partnership with others. The plaintiffs with full knowledge of the facts had accepted rent from the defendant and the alleged act of sub-letting

was prior to 1956. therefore, no question of consent in writing was necessary and the defendant was not liable to ejectment as alleged in the plaint.

The defendant further asserted that the other business, M/s. Tropical Cooling & Engineering Co., had been also started in the suit, premises with

the knowledge of the plaintiff''s predecessor and the plaintiffs who had accepted rent were now precluded from challenging the defendants'' said

acts.

4. The trial court subsequently allowed the defendant leave to amend his said written statement. Original paragraphs (6), (7), (8) and (9) of the

same were deleted and the defendant in the said substituted paragraphs inserted in his written statement, pleaded that his tenancy was according to

Bengali calendar and that the said tenancy had not been determined in accordance with law. The defendant further averred that he was a Promoter

and also the Managing Director of M/s. Hindusthan Musical Products and Varieties Syndicate Ltd. The defendant had sublet the suit premises to

the said company in or about 1940-41. The subletting was accepted and recognised by the then lard-lord. Janbazar Ward Estate No. 2. The

company''s name had been also recorded as the occupier in the records of the Corporation of Calcutta. The defendant denied that he had sublet

the suit premises to M|s. Tropical Cooling and Engineering Co. inasmuch as in the year 1941, he had sublet the entire suit premises to M|s.

Hindusthan Musical Products & Varieties Syndicate I td. He also denied that there was any fresh tenancy according to English calendar created

with effect from 1st September, 1971, i.e., the date of purchase of the suit premises by the plaintiffs.

5. The learned Judge, 2nd Bench. City Civil Court at Calcutta has dismissed the ejectment suit brought by the plaintiff respondent, inter-alia. upon

the finding that the month of tenancy of the defendant appeared to be according to Bengali calendar month and the payment, of rent by the

defendant to the plaintiff according to English calendar could not change the paid month of the tenancy. Alternatively he found that, the rent was

first paid by the defendant to the plaintiffs on 10th December, 1971 and. therefore according the mode of payment the defendants tenancy

commenced on 10th December, 1971. In either view the notice of suit served upon the defendant was invalid The learned Judge held that the

defendant had inducted M/s. Hindustan Vesical Products & Varieties Syndicate Ltd. as a sub-tenant before the commencement of the West

Bengal Premises Tenancy Act and. therefore, the defendant was not liable to be ejected voder section 13(1)(a) of the West Bengal Premise

Tenancy Act. The previous landlords by their conduct also walled the said act of subletting by the defendant The learned Judge of the court below

further held that the suit was defective for not impleading M/s. Hindusthan Musical Products & Varieties Syndicate Ltd. as a party and the alleged

subletting by them to M|s. Tropical Cooling & Engineering Co. in 1970-71 could not be agitated.

6. Being aggrieved, by the aforesaid decision, the plaintiffs have presented this appeal. Mr. T.K. Biswas, learned advocate for the appellant, has

submitted that the tenancy held by the defendant being governed by the West Bengal Premises Tenancy Act, 1956, it was not necessary for the

plaintiff appellants to serve upon him any notice to quit u/s 106 of the Transfer of Property Act and according to Mr. Biswas, the notice dated 25th

January, 1972 issued by Mr. K.P. Mustafy, Advocate on behalf of the plaintiffs, was in due compliance with sub-section (6) of section 13 of the

West Bengal Premises Tenancy Act, 1956. The plaintiff''s lawyer by the said notice dated 25th Janaury, 1972 had, inter-alia, called upon the

defendant to quit, vacate and make over peaceful possession of the suit premises to his clients by the end of the month of February next. The

plaintiffs lawyer had also requested the defendant to treat the said notice dated 25th January, 1972 also as u/s 13(6) of the West Bengal Premises

Tenancy Act, 1956.

7. The Supreme Court in V. Dhanapal Chettiar Vs. Yesodai Ammal, has held that in order to get a decree or order for eviction against a tenant

under the different Rent Control Acts including the West Ben gal Premises Tenancy Act, 1956, it is not necessary to give notice u/s 106 of the

Transfer of Property Act. Determination of lease in accordance with the Transfer of Property Act has been held to be unnecessary and a mere

surplusage. Untwalia, J., who delivered the judgment of the court in V. Dhanapal Chettiar''s case (supra), held that on the question of requirement

of such a notice u/s 106 of the Transfer of Property Act, the difference in language of the various State Rent Control Acts does not bring about any

distinction The Supreme Court had differed from its several earlier decisions and had also over-ruled a number of decisions to the contrary of the

different High Courts including the Special Bench decision of this Court in Abdul Samad Bepari Vs. Manasha Charan Bakshi, .

8. We may respectfully point out the several provisions of the West Bengal Premises Tenancy Act which expressly mention about ""termination of

the tenaney or ""notice to quit"". According to clause (h) of section 2 of the West Bengal Premises Tenancy Act, ""tenant"" means a person by whom

on whose account or behalf. the rent of the premises is, be payable and includes any person continuing in possession after termination of his

tenancy or in the event of such person''s death. such of his heirs as were ordinarily residing with him at the time of his death but shall not include any

person against whom any decree or order for eviction has been made by a Court of comnetent authority.

9. ""Where the tenant has given notice to quit but has failed to deliver vacant possession of the premises to the landlord in accordance with such

notice"", the court may under clause (j) of sub-section (1) of section 13 of the West Bengal Premises Tenancy Act make an order or decree for

recovery of possession of the premises in favour of the landlord. Section 23 of the West Bengal Premises Tenancy Act provides for saving as to

the acceptance and withdrawal of rent deposited u/s 21 by inter-alia. enacting that such withdrawal shall not operate as an admission against the

person withdrawing it of the facts stated in the.tenant''s application for depositing the rent u/s 21 of the Act ""nor shall it operate as a waiver of any

notice to quit given by him to the tenant except a notice on the ground of default referred to in clause (i) of sub-section (1) of section 13"". Althuogh

the Supreme Court in V. Dhanapal Chettiar''s case (supra), did not expressly refer to these provisions of the West Bengal Premises Tenancy Act,

nonetheless the said decision is binding upon us, therefore we hold that the plaintiff appellants were not required to serve any notice u/s 106 of the

Transfer of Property Act terminating the defendant respondent''s tenancy in question. The any question is whether the said lawyer''s notice dated

25th January, 1972 fulfilled the requirements of section 13(6) of the West Bengal Premises Tenancy Act.

10. According to sub-section (6) of section 13 of the West Bengal Premises Tenancy Act, notwithstanding anything in any other law for the time

being in force, no suit or proceeding for the recovery of possession of any premises or any of the grounds mentioned in subsection (1) of section

13 of the West Bengal Premises Tenancy Act, except the grounds mentioned in clauses (j) and. (k) of that sub-section, shall be tiled by the

landlord ""unless he has given to the tenant one month''s, notice expiring with a month of the tenancy"".

11. Mr. Biswas, learned advocate for the appellant, has submitted that the court below ought to have held that after a defendant had attorned to

the plaintiff, by express agreement between them, the defendant''s month of tenancy became from the first to the last day of English calendar month

and. therefore, said notice dated 25th January. 1972 which expired with the end of the month of February was a valid one. Alternatively. Mr.

Biswas has submitted that a notice u/s 13(6) of the West Bengal Premises Tenancy Act need not expire on the day preceding the anniversary day

of a particular tenancy and the said sub-section (6) contemplates one month''s notice according to English calendar. Therefore irrespective of the

date of commencement and expiry of the defendants'' tenancy, it was perfectly legal for the plaintiff to give a notice of suit under the said sub-

section (6) of section 13 of the Act expiring with the end of the month of February. 1972.

12. It is no longer disputed before us that since the inception of the defendant''s tenancy under the then landlord. Janbazar Wards Estate, the

defendant''s tenancy was according to Bengali calendar. The plaintiff No. 1. P. W. 1, in his examination-in-chief had admitted that the original

tenancy of the defendant was according to Bengali calendar but had claimed that when the plaintiffs purchased on 1.9.71 the defendant had

suggested that the month of tenancy should be according to English calendar to which he had agreed. The plaintiff had caused notices to be served

upon the defendant asking him to attorn to them with effect from 1st September, 1971 corresponding to 15th of Bhadra, 1378 B.S. Therefore, the

plaintiffs cannot now raise any objection against the order of the trial court allowing the defendant''s prayer for amendment to ''his written statement

by which he had pleaded that his tenancy was according to Bengali calendar. We have already referred the letter to the Commissioner, Presdiency

Division, dated 8th May, 1933 (Ext. G) sanctioning settlement of the suit premises then appertaining to Janbazar Wards Estate No. 2 with the

defendant, Chandicharan Saha.

13. The plaintiffs did not avert any where in their plaint of the present ejectment suit that after their purchase, by mutual agreement between the

plaintiffs and. the defendants, the month of the defendant''s tenancy was altered from Bengali calendar to English Calen Therefore, at the trial the

plaintiffs were not entitled to make a new case that after their purchase on 1st September. 1971 it had been settled that the defendant''s tenancy

would be according to English calendar. Further, we are unable to place any reliance upon the evidence on this point given by Saroj Kumar De. P.

W. 1, because he has not been corroborated by either oral or documentary evidence. The plaintiffs did not allege that there was any written

agreement in this behalf. Further Asim Kumar Dey, P. W. 3, who was one of the plaintiffs in this suit, had admitted in his cross-examination that it

was not the proposal of Chandi Habu that the tenancy would henceforth be according to English calendar month and not according to Bengali

calendar month and that proposal was accepted by the plaintiffs. The defendant, Chandi Charan Saha, was ill and was unable to depose as a

witness. He subsequently died. Jogendra Chandra Choudhury, D. W. 1, was present when the P. W. 1, Saroj Kumar De, had come to meet

Chandi Charan Saha at his office and had talks regarding rent payable to the plaintiffs who had recently purchased the premises. Both according to

D. W. 1, Jogendra, and P. W. 3, Asim Kumar Dey, the arrangement was that henceforth rent for the suit premsies would be paid according to

new tenancy. Therefore, we accept the evidence of D. W. 1 that the defendant''s previous tenancy had continued to be according to Bengali

calendar after the plaintiffs had purchased the suit premises.

14. Where no day of commencement is named, the starting point, of the month of tenancy is the date of commencement of the particular tenancy

and it ends on the expiry of the day previous to the anniversary date of the next month. In other words, in the absence of an agreement to the

contrary, a monthly tenancy runs from the date it is created up to the end of the day previous to the anniversary date of the next month. The

monthly tenancy does not necessarily coincide with the calendar month although very often a tenancy commences on the first day of Bengai or

English calendar and accordingly coincides with the said particular calendar month. We are in respectful agreement with the observations of P.N.

Mookerjee, and Sarkar, JJ. in Baidyanath Bhattacharjee Vs. Nirmala Bala Devi, , that in determining the month of tenancy the manner or mode of

payment of rent may be an important element or factor to be considered on the point but it cannot be taken as a sure indication of the month of

tenancy in all cases. The ratio of the decision of Lahiii and P. K. Sarkar, JJ., in Carrara Marble and Terrazo Co. Ltd. Vs. Charu Chandra Guha, ,

also applies to the facts of the present case. It was, inter-alia, held that alteration of the month of tenancy may be proved either by direct evidence

or by proving a new arrangement by which the month of the original tenancy was expressly altered or by circumstantial evidence. But mode of

collection of rent was not conclusive. If the monthly tenancy had commenced on the first cay of a month, it can be properly and Vainly terminated

by service of a notice expiring on the last day of a subsequent month. The Special Bench of this Court in The Indian Iron and Steel Co. Ltd. Vs.

Baker Ali, had interpreted the expression ""a year of the tenancy"" in section 9(1)(b)(ii) of the West Bengal Non-agriculiural tenancy Act, as a

period of 12 months of the particular month according to its own calendar, its starting point being in the first instance, the date of commencement of

the said tenancy. The Special Bench had rejected the argument that the term ""year"" should mean the calendar year (vide page 644 of the reports).

The Supreme Court in Indian Iron and Steel Co. Ltd. Vs. Biswanath Sonar, , had approved the said view by, inter-alia, holding that where a

tenancy was from month to month, ""year"" in section 9 of the West Bengal Non-agricultural Tenancy Act means a period of 12 months and a tenant

may only be required to quit at the expiry of the whole year, i.e., to say on the anniversary of the commencement of the lease.

15. For the foregoing reasons, we reject the contention of Mr. Biswas, learned advocate for the appellants, that the month of the defendant-

respondent''s tenancy was according to English calendar merely because on 10th December, 1971, he had paid rents to the plaintiffs for the month

of September, October and November, 1971. When the plaintiffs have failed to prove any agreement altering the month of the defendant''s

tenancy, mere payment of rent for a few months, according to English calendar cannot lead to the conclusion that there was any such agreement for

altering of the month of tenancy The language used in sub-section (6) of section 13 of the West Bengal Premises Tenancy Act Is very clear, ""unless

he has given to the tenant one months'' notice expiring with a month of the tenancy"".

16. Therefore, there is no scope for an argument that the notice under.section 13(6) of the West Bengal Premises Tenancy Act is required to be

given not according to the month of the tenancy in question and that the said sub-section contemplates a notice expiring with the end of English

calendar month. In the instant case the notice u/s 13(6) was bad because it expired with the end of February, 1972 and not with the expiry of the

Bengali calendar according to which the defendant held his tenancy. The decision of the Supreme Court in V. Dhanapal Chettiar''s case (supra),

does not support the contention of the plaintiff appellants that month of a tenancy governed by the West Bengal Premises Tenancy Act, 1956 shall

be according to English calendar month irrespective of the date of commencement of the said particular tenancy. In view of the Supreme Court

decision in V. Dhanapal Chettiar''s case (supra), in case of a tenancy which is Governed by any Refit Control Act including the West Bengal

Premises Tenancy Act, it is no longer necessary to comply with section 106 of the Transfer of Property Act before the landlord institutes a suit for

eviction against such a tenant. But in the said case the Supreme Court has not laid down that the expression ""month of his tenancy"" in sub-section

(6) of section 13 of the West Bengal Premises Tenancy Act or In the corresponding provisions and other Rent Control Acts means only English

calendar month. Therefore, we fellow the view consistently taken by this court that the expression ""month of tenancy"" means the month of to

particular tenancy calculated according to the date of the commencement of the said particular tenancy.

17. We may accordingly conclude that the notice u/s 13(6) of the West Bengal Premises tenancy Act served on behalf of the plaintiffs upon the

defendant was invalid on the ground that it did not expire with the end of the defendant"s tenancy. The plaintiff suit for evicting the defendant was

bound to fail in limine. Strictly it is not necessary for us to deal at length with the question whether or not the defendant was liable to be ejected

under clause (a) of sub-section (1) of section 13 of the West Bengal Premises Tenancy Act. At the hearing of this appeal the learned advocate for

the plaintiff appellants did not dispute the finding of the trial court that before the commencement of the West Bengal Premises Tenancy Act, 1956,

the defendant had inducted M/s. Hindusthan Musical Products Ltd as a sub-tenant. It is settled law in this court that clause (a) of section 13(1) of

the West Bengal Premises Tenancy Act is directed only in case of post-Act subtenancies created without prior consent in writing by the landlord

(see Radharani Dasi and another v. Angur Bala Dasi 65 CWN 1119).

18. The plaintiffs in paragraph (4) of their plaint had pleaded ""The defendant and/or the said company has further sublet to one M/s. Tropical

Cooling and Engineering Co., a portion of the said premises with effect from March 1, 1970 without any notice to or consent of the landlords In

writing The defendant in paragraph (3) of his plaint had averred that M/s Hindusthan Musical Products Ltd. was inducted by him as a sub-tenant

prior to the year 1956 and that his previous land lords had granted him right to sublet. The defendant in paragraph (8) of his amended written

statement had, inter-alia denied that he himself had sublet a portion of the suit premises to M/s. Tropical Cooling & Engineering Co. At the trial the

plaintiffs had examined Ahindra Kumar Roy, P.W. 2 who was partner of the said M/s. Tropical Cooling & Engineering Co. He had stated that the

said company was a tenant of the Hindusthan Musical Products Ltd and held two tenancies. The first tenancy took place in 1970. D. W. 1 did not

also deny that in 1970 the defendant"s sub-tenant M/s Hindusthan Musical Products Co, had inducted the said M/s. Tropical Cooling &

Engineering Co in a portion of the suit premises. Therefore, it is clear that after the commencement of the West Bengal Premises Tenancy Act

without prior consent in writing of the then landlord Jahbazar Wards Estate No. 2, M/s. Hindusthan Musical Products Co, who were themselves

sub-tenant, had inducted the aforesaid partnership company as sub-tenants. The question is whether the defendant who was himself the tenant of

the first degree was liable to be ejected u/s 13(1) (a) of the West Bengal Premises Tenancy Act on the ground of the aforesaid post-Act subletting

or his sub-tenant and not by himself personally. Clause (a) of sub-section (1) of section 13 of the West Bengal Premises Tenancy Act is, inter-alia,

on the following terms:

Where the tenant or any person residing in the premises let to the tenant..... transfers, assigns or sublets.....

Therefore, any unauthorized post-Act sub letting either by the tenant himself or by ""any person residing in the premises let" may entitle the landlord

to obtain a decree for recovery of possession u/s 13(1) (a) of the West Bengal Premises Tenancy Act.

19. In view of the findings regarding the invalidity of the notice u/s 13(6) of the West Bengal Premises Tenancy Act, it is strictly not necessary to

finally decide this point. But the learned advocates had made their respective submissions and therefore, we may express our tentative views. The

expression ""residing in the premises"" has been used in section 13(1)(a) of the West Bengal Premises Tenancy Act in a wide sense. Section 13(1)

(a) of the Act applies to all premises let out for residential and other purposes subject to the exclusions mentioned in section 3 of the said Act. The

expressions ""tenant"" or ""sub.tenant"" include both, inter-alia, natural person and juristic persons Therefore, it would not be correct to construe the

expression ""residing"" in the narrow sense of the place where an individual eats, drinks and sleeps or where his family eat, drink and sleep The word

residing"" in the context denotes: (1) actual or physical habitation or occupation of the premises or any part thereof, and (2) the intention to remain

there permanently and not casually Therefore, in relation to a limited company it would mean the place where it carries on business.

20. One of the objects of the West Bengal Premises Tenancy Act is to put restriction on subletting by tenants after the commencement of the West

Bengal Premises Tenancy Act, 1956. Secondly, under clause (a) of section 13(1) of the Act when after the commencement of the West Bengal

Premises Tenancy Act a premises has been sublet without prior consent in writing of the landlord either by the tenant or by any person residing in

the premises, the tenant forfeits protection against eviction. Mr. Dasgupta himself has drawn our attention to the recent decision of Monoj Kumar

Mukherjee, J. in 1980(1) CLJ 232 (Lakshi Narayan Mist anna Pratisthan v. S.C. Das).

21. Our learned brother Monoj Kumar Mukherjee, J. had rejected a similar contention that because of the expression ""person residing"" used in

clause (b) of section 13(1) of the Act the said clause (b) was applicable only to residential premises. We are in agreement with the views

expressed by Monoj Kumar Mukherjee, J. with regard to the meaning of the word ""residing in the premises"".

22. We have already found that the plaintiffs did not give any valid notice of suit u/s 13(6) of the West Bengal Premises Tenancy Act. Therefore,

we agree with the trial court that the instant ejectment suit was bound to fail. At the same time we do not necessarily agree with the other

reasonings contained in the judgment of the trial court.

23. Before ending this judgment, it is necessary to briefly deal with two other questions arising in this appeal. The plaintiffs themselves instituted the

instant suit for eviction u/s 13(1)(a) of the West Bengal Premises Tenancy Act Therefore, at this appellate stage they were not entitled to urge for

the first time that u/s 12 of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 read with section 40 or the West Bengal

Premises Tenancy Act, 1956, the plaintiffs had vested right to recover possession of the suit premises according to the provisions of the 1950 Rent

Control Act. Not only such a case was never made by them but also there is no substance in their contention that they had any such vested right.

Further we may refer to the Case of Kanailal Das and Others Vs. Hari Sankar Dutta, . We had explained the scope of section 40 of the West

Bengal Premises Tenancy Act, 1956 vis-a vis the right to sub-tenants in a suit for eviction of the tenant of the first degree u/s 13(1)(a) of the said

Act of 1956.

24. The sub-section (2) of section 13 of the West Bengal Premises Tenancy Act, inter-alia. Provides that only those subtenants who have given

notice of their subtenancies to the landlords under the provisions of section 16 shall be made parties in any suit or proceeding for the recovery of

possession of the premises by the landlord. According to sub-section (3) of section 13 of the Act, save as provided in sub-section (2) and sub-

section (3), a decree or order for the delivery of possession of any premises shall be binding on every sub-tenant.

25. For the foregoing reasons, we hold that the plaintiffs having failed to comply with section 13(6) of the West Bengal Premises Tenancy Act their

suit was not maintainable. Therefore, we dismiss the appeal without any order as to costs.

R.K. Sharma, J.

I agree.