

(1964) 02 CAL CK 0015

Calcutta High Court

Case No: None

Shaikh Abbas Ali
Mondal

APPELLANT

Vs

Administrator General
of West BengalRESPONDENT

Date of Decision: Feb. 6, 1964**Acts Referred:**

- West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 - Section 12, 12(1)(c)

Citation: 68 CWN 473**Hon'ble Judges:** Laik, J**Bench:** Single Bench**Advocate:** Joygopal Ghose, for the Appellant; Amarendra Mohan Mitra and Arunendra Nath Basu, for the Respondent

Judgement

Laik, J.

This is a tenant defendant's appeal in a suit for ejectment from house premises. The West Bengal Premises Rent Control Act of 1950 (hereafter referred to as the act), applies. The plaintiff landlord pleaded that the tenant was not entitled to the protection of section 12 of the Act as the major portion of the tenancy was sublet for more than 7 consecutive months. The defence was that the subletting was with the knowledge and consent of the landlord and hence the suit was misconceived. Invalidity and insufficiency of the notice was also pleaded. Both the learned Munsiff and the learned Subordinate Judge decreed the suit finding all the points against the tenant defendant against which the present second appeal has been preferred. Mr. Joygopal Ghose, the learned Advocate appearing in support of the appeal, contended that there was no evidence about the subletting of the major portion of the tenancy. Mr. Ghose is not correct. Firstly there is no denial in the written statement about the subletting of the major portion as stated in paragraph 3 of the plaint. Secondly on going through the oral evidence I find that

it has been admitted by Mr. Ghose's client that he has sublet three rooms to three persons after raising partition walls in the big room, which was the original tenancy and the subject matter of the suit. The defence about the landlord's knowledge and consent of the subletting was not accepted by the courts below and the same being purely a finding of fact could not be assailed in this appeal. No argument was advanced, rightly, on the aspect of the notice.

2. Mr. Ghose seriously argued that under the proviso to section 12 (1) (c) of the Act his client was entitled to continue in possession as a tenant of the remaining portion of the premises, not sub-let; and it was the duty of the courts to pass the decree for ejectment only for the portion of the premises sub-let and fix proportionately fair rent for the portion kept in possession of the tenant. Explanation of sub-section (h) and proviso to the same of the Act had been referred to. The relevant provisions of the section run as follows:

Section 12(1): "Notwithstanding anything to the contrary in any other Act or law, no order or decree for the recovery of possession of any premises shall be made by any court in favour of the landlord against a tenant, including a tenant whose lease has expired:

Provided that nothing in the sub-section shall apply to any suit for decree for such recovery of possession,--

(a) ***

(b) ***

(c) against a tenant who has sub-let the whole or a major portion of the premises for more than seven consecutive months:

Provided that if a tenant who has sublet major portion of the premises agree to possess as a tenant the portion of the premises not sublet on payment of rent fixed by the court, the court shall pass a decree for ejectment from only a portion of the premises sub-let and fix proportionately fair rent for the portion kept in possession of such tenant, which portion shall thenceforth constitute premises under clause (8) of section 2 and the rent so fixed shall be deemed standard rent fixed u/s 9, and the rights and obligations of the subtenants of the portion from which the tenant is ejected shall be the same as of sub-tenants under the provisions of section 13;

(d) ***

(e) ***

(f) ***

(g) ***

(h) where the premises are reasonably required by the landlord either for purposes of building or re-building, or for his own occupation or for the occupation of any person for whose benefit the premises are held: provided that all sub-tenants in the premises are made parties to the suit, and allowed opportunity of contesting claim to decree for ejectment.

Explanation.--The court in determining the reasonableness of requirement for purposes of building or re-building shall have regard to the comparative public benefit or disadvantage by extending or diminishing accommodation, and in determining the reasonableness of requirement for occupation shall have regard to the comparative advantage or disadvantage of the landlord or the person for whose benefit the premises are held and of the tenant:

Provided that where the court thinks that the reasonable requirement of such occupation may be substantially satisfied by evicting the tenant from a part only of the premises and allowing the tenant to continue occupation of the rest and the tenant agrees to such occupation, the court shall pass a decree accordingly, and fix a proportionately fair rent for the portion in occupation of the tenant, which portion shall henceforth constitute the premises within clause (8) of section 2, and the rent fixed shall be deemed to be the standard rent fixed u/s 9; ***.

3. On the construction of the proviso, to sub-section (c) of section 12(1) of the Act it seems to me that no duty is cast on the court to pass a decree for ejectment only for the portion of the premises sublet and to fix proportionately the fair rent for the remaining portion, even if the tenant does not raise the issue and does not signify his agreement to the same. Admittedly the tenant did not express his consent in this case that he would be agreeable to continue as a tenant of the portion of the premises in his occupation before the courts below. There is no evidence either as to the area in occupation of the tenant on the basis of which the court can fix a fair rent.

4. In my view, no advantage can be taken of the principles laid down in the case of [Krishna Das Nandy Vs. Bidhan Chandra Roy](#), as to the duty of the court, because the languages employed in subsection (h), explanation and proviso thereto such as "the court.....shall have regard to" or "where the court thinks" in sub-section (h) enjoined on the court, in an imperative fashion, to do certain things; which languages are absent in the proviso to sub-section (c) of section 12 (1) of the Act which begins with the agreement of the tenant. The principles laid down in the case of [Sharma Electric Engineering Works Vs. Sm. Radha Debi](#), or that in the same case in [Sharma Electric Engineering Works and Others Vs. Radha Devi and Another](#), , or the principles reported in the case of [Deb Kumar Mukherjee and Others Vs. Abhoypada Banerjee](#), do not apply to the instant case and they are not contrary to the view I have taken above. The appeal, therefore, being without any merit is dismissed with costs, hearing fee being assessed at three gold mohurs. Mr. Ghose prays that in the circumstances of this case his client might be given some time to vacate which I have considered and the following further order is passed:--

The decree for possession would not be executable for three months from today, only on condition that the defendant deposits in the trial court the sum of Rs. 6/- to the credit of the plaintiff respondent, each and every month, within the 15th of the next succeeding month, the first of such deposit would begin from the 15th of this month and the last of such deposit would have to be made by the 30th April, 1964. In default of any one of such deposit the decree for possession would be at once executable.