S.C. Mitter Vs Auto Service

Court: Calcutta High Court

Date of Decision: July 12, 1967

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 100(1), 103
Pepsu Urban Rent Restriction Ordinance, 2006 â€" Section 13(3)
Premises Tenancy Act, 1956 â€" Section 13(1)
Rent Control (Amendment) Act, 1950 â€" Section 12(1)
Rent Control Act, 1948 â€" Section 11, 11(1)
Transfer of Property Act, 1882 â€" Section 108

Citation: (1968) 1 ILR (Cal) 426

Hon'ble Judges: Bijayesh Mukherji, J

Bench: Single Bench

Advocate: Noni Coomer Chakravartti and Ram Chandra Chaudhury, for the Appellant;Paresh Nath Bhattacharjee, for the Respondent

Judgement

Bijayesh Mukherji, J.
This appeal by the landlord from an appellate judgment and decree of affirmance is put in two ways: (i) erection, by

the tenant, of a permanent structure on the demised premises 4/1, Bhowanipore Road, (for short, "4/1" hereinafter), without the landlord"s

consent, infracting thereby Clause (p), Section 108, of the Transfer of Property Act (4 of 1882), and (ii) reasonable requirement by him of "4/1"

for building and rebuilding. Each such point, if established, entitles him to get a decree for recovery of possession of "4/1"; for infraction of Clause

(p), Section 108, Transfer of Property Act, under Clause (b), Sub-section 1, Section 13, Premises Tenancy Act (12 of 1956), and for reasonable

requirement, under Clause (f) ibid.

2. The tenant, now the Respondent, is Messrs. Auto Service, a firm. Originally a sub-tenant under Messrs. Ganeshdas Ramgopal, it became a

tenant directly under the landlord with effect from February 3, 1959, by virtue of an order of the Rent Controller.

3. Erection by the Respondent of a permanent structure on "4/1" without the landlord"s consent before February 3, 1959, when it was a sub-

tenant, is now concluded by the concurrent finding come to by both the Courts of facts.

4. The Judge in the Court of first instance, as also the Judge on appeal hold that the landlord could have called in aid Section 13, Sub-section 1,

Clause (b) before the commencement of the Respondent''s direct tenancy on February 3, 1959, after which he cannot do so.

5. Mr. Chakravartti, appearing for the Appellant, contends that the learned Judges have overlooked the words--"any person residing in the

premises" in Clause (b) and have thereby fallen into an error of law. Mr. Bhattacharjee, appearing for the Respondent, contends for the view taken

by the learned Judges in the Courts below.

6. For all I know and for all I am told at the Bar, this appears to be a point of first impression. And I have, therefore, thought it fit to reserve my

judgment.

7. Section 13, Sub-section 1, Clause (b) in so far as it is material here, bears:

13. Protection of tenant against eviction. (1) Notwithstanding anything to the contrary in any other law, No. ..decree for the recovery of possession

of any premises shall be made by any Court in favour of the landlord against a tenant except on one or more of the following grounds, namely,

....

....

(b) where the tenant or any person residing in the premises let to the tenant has done any act contrary to the provisions of Clause (p) of Section

108 of the Transfer of Property Act, 1882 (IV of 1882).

8. Mr. Chakravartti places his accent on the words: "any person residing in the premises''. But the expression goes a little more: "any person

residing in the premises let to the tenant''. And these last four words--"let to the tenant''--going with the words "the premises"--immediately before,

as also the word "or'' dividing "the tenant'' from "any person'' furnish the key to the meaning of this provision. I proceed to state why.

9. In order to lift the Bar on getting a decree for recovery of possession of his premises (''4/1'') under Clause (b), in the context of facts here, the

points the landlord Appellant has to prove are:

(1) That, without his consent, the tenant Respondent has erected a permanent structure on ''4/1''.

(2) In the alternative, that any person residing at ''4/1'' let to the tenant, that is, to the Respondent, has done so.

Of Clause (b) this appears to be a clear and plain analysis with which, I believe, none can have any quarrel.

10. Translate such analysis to the facts here. Take point (1) first, Messrs. Auto Service, the Respondent, who became a tenant only on February

3, 1959, erected no permanent structure since the commencement of its tenancy. It did erect such structure but before February 3, 1959, when it

was no tenant. It was then the landlord Appellant''s tenant''s tenant. So, point (1) cannot catch the Respondent who qua tenant erected no

permanent structure in the premises, the subject-matter of letting to the Respondent on February 3, 1959: who qua sub-tenant did, but in the

premises then let to Messrs. Ganeshdas Ramgopal as tenant. The present suit, however, is for its eviction qua tenant.

11. Now, come to point (2). Messrs. Auto Service is a proprietary firm, the proprietor being Ladu Ram Ganeriwal"a who has subscribed himself

as such in the written statement and so verified it too. Such a one comes within the compendious expression: "any person" in Clause (b). It is,

therefore, hardly necessary to enter into such nuances as: (i) law has not given legal personality to a firm apart from the partners: Bhagwanji

Morarji Gokuldas v. Alembic Chemical Works Co. Ltd. (1948) 75 I.A. 147 : AIR 1958 P.C. 100, or (ii) law has extended a limited personality

to a firm, the consideration of commercial convenience bringing in Order 30 of the CPC (5 of 1908) which permits a firm to sue or be sued in the

firm name as if it were a corporate body: Dulichand Lakshminarayan Vs. The Commissioner of Income Tax, Nagpur, , and cases of that class.

More, such a one, the Respondent, a person resides at "4/1" too. But there the Appellant must stop. He can get no further. Clause (b) makes a

dichotomy of the persons concerned--(i) a tenant to evict whom the action in ejectment has been raised and (ii) any person other than the tenant

(whose eviction is sought), residing in the premises (here "4/1") let to the tenant. To which class the Respondent belongs? Obviously to the first

one, it being a tenant to evict whom the instant suit has been brought. But as tenant it has raised no permanent construction. Under the second

class, it cannot call. It is not a person other than the tenant to whom "4/1" has been let. It is the tenant itself. Sure enough, the Respondent cannot

be at the same time "4/1"s tenant (to evict whom the suit has been raised) and any person (residing at "4/1") other than such a tenant to whom

"4/1" has been let. Indeed the very concept beats me. The Respondent is then at the same time and of the same premises a tenant and a non-

tenant; the Respondent is then that which is an impossibility and which even the most acrobatic mind cannot comprehend. What no doubt the

Appellant regards as a cut is the Respondent, though one and the same person, Messrs. Auto Service, escaping the consequences of a clear

infraction of Clause (p) of Section 108. But the very premise appears to be wrong. The Respondent qua sub-tenant is one person. And the

Respondent qua tenant is quite another. One is not even the alter ego of the other. In the contemplation of law two distinct personalities are seen

with distinct rights and liabilities. Say, instead of the Respondent having been elevated to the status of a tenant another person would have been

inducted as a tenant in the place of Messrs. Ganeshdas Ramgopal. Would he have been made vicariously liable for the misdeed of the Respondent,

his predecessor''s sub-tenant? The answer is, of course, No. The truth of the matter is that the Appellant must bring himself within the language of

the law--Clause (b), Sub-section 1, Section 13. He has not brought himself so. Yet how easy it was for him to secure a hundred per cent

compliance with such language by raising a suit against Messrs. Ganeshdas Ramgopal for infraction by its sub-tenant Messrs. Auto Service, the

Respondent before me, of Clause (p) of Section 108 a suit which would have had no answer. But the present suit is not that. It is a suit for eviction

of the Respondent, the tenant from February 3, 1959, of ''4/1'' with the fruit of infraction, a permanent construction, as part of ''4/1'': with no other

person residing at ''4/1'' let to such a one, the Respondent, the tenant. In sum, in the context of the suit here, the Respondent qua tenant has not

offended against Clause (b); there is no person (other than the Respondent) residing at ''4/1'' let to the tenant, the Respondent, to offend against

Clause (b). Section 13, Sub-section 1, Clause (b) cannot, therefore, in terms apply. I hold so.

12. On the question of the landlord''s reasonable requirement another way in which the appeal has been put, the learned Judge in the Court of first

instance takes an unduly narrow and suspicious view of the matter, finds:

(i) there is no plan of the proposed building,

(ii) the Plaintiff does not prove his means, his oral testimony that he has many other house properties in Calcutta, and the rate bills of the

Corporation of Calcutta which record him as the owner of 19, Camac Street, Calcutta, proving nothing and strays into the height of irrelevance by

making a point of the Plaintiff having nowhere stated that ''he requires the suit premises for his own occupation''. [Why should he? He comes to

Court with a case of reasonable requirement for building and rebuilding.]

13. The learned Subordinate Judge, on appeal, sets all this right and finds:

(i) the Plaintiff has sufficient means to raise the proposed construction, and

(ii) the two plans, Exs. 8 and 8(a), are there to show what the proposed construction will be like.

All the same, he finds against the landlord, on the question of reasonable requirement, for two reasons. One, the plans, depicting the construction

to be made, cover more than two-thirds of the total area in ''4/1'' and are, therefore, illegal with no sanction of the Corporation of Calcutta yet.

Two, the plans were submitted after the institution of the suit evincing thereby ""the absence of immediate intention on the part of the Plaintiff

landlord to raise any construction in the disputed premises.

14. Mr. Chakravartti cites Bhulan Singh v. Ganendra Kumar Roy Choudhury (1949) 84 C.L.J. 157, a decision of the Court of Appeal presided

over by Harries, C.J. and S.B. Sinha, J., on Section 11, proviso (f) of the 1948 Rent Control Act, relaxing the taboo upon the landlord to get a

decree for recovery of possession of his premises when bona fide required by him for building or rebuilding. The learned Chief Justice observes at

p. 174:

It seems to me that he (the landlord) established bona fide requirement for rebuilding when the Court is satisfied on the facts placed before it that

the landlord honestly desires to rebuild, has the means to rebuild and will rebuild if the possession is given to him--

a passage upon which Mr. Chakravartti strongly relies.

15. It perhaps assists one''s convenience to notice, in the barest outline, the history of the Rent Restriction Acts, on this aspect of the law from the

1948 Act, a temporary Act, ''designed to meet the fugitive exigencies of the hour'' as P.B. Mukharji, J. puts it in Basant Lal Saha Vs. P.C.

Chakarvarty, . Indeed, the only test under the proviso (f), Sub-section 1, Section 11 of the 1948 Act was the bona fide requirement by the

landlord. If his was that, it mattered little that the tenant would be thrown on the pavement without a roof over his head. A consideration as this

presumably led the Legislature to provide by the explanation to proviso (h), Section 12, Sub-section 1 of the 1950 Act (another temporary Act

succeeding the 1948 Act), that

the Court in determining the reasonableness of requirement for purposes of building or rebuilding shall have regard to the comparative public

benefit or disadvantage by extending or diminishing accommodation.

proviso (h) itself laying down the test of reasonable requirement (in place of bona fide requirement of the 1948 Act) by the landlord for building or

rebuilding. In other words, the Court was called upon to make a statutory balance-sheet showing the comparative public benefit or disadvantage

by increasing or diminishing accommodation and to have regard to it, that is to say, to take it into its consideration: Sharma Electric Engineering

Works and Others Vs. Radha Devi and Another, . Then came the 1956 Act (which rules this litigation), a permanent Act designed to deal with the

lasting exigencies of a foreseeable future if not of all time to come. And the yardstick here is reasonable requirement by the landlord for building

and rebuilding. Does this yardstick avail the Appellant? That is the question which falls for decision.

16. That the Appellant has means to build and rebuild is concluded by the finding come to by the last Court of facts. Indeed, any other conclusion

upon the whole of the evidence would have been startling. So, this way the Appellant cannot have the slur of unreasonableness put upon him.

17. "4/1", by any standard, is situate in a covetable part of Calcutta. Within a stone''s throw, so to say, from the Race Course, Victoria Memorial

and the Maidan, a milieu the Court takes judicial notice of--the importance of such situation cannot be overemphasized. That then is the lie of "4/1"

for which the Appellant gets the paltry sum of Rs. 33, a months rent. And it needs no imagination to see that if a building be erected here, after

demolishing the existing one, at a cost of about Rs. 25,000, as the Appellant says in his evidence on the basis of what he was told by his engineer

and contractor or, at a cost, of Rs. 30,000 or Rs. 35,000, as the engineer and contractor (H.B. Sen) says in his evidence, it would yield at the

least ten or fifteen times the rent the Appellant has been receiving now. Call it unreasonable? Then, to possess house properties in Calcutta is

unreasonable. Then, to put one"s property to a more profitable use is unreasonable. But we have not come to that stage yet.

18. True, a profit instinct becomes manifest in such an approach. But to earn a profit in an honourable way, is not to come on the edge of the law.

At the same time is manifest too a boon to the public by increasing the living accommodation in a city packed up like sardines.

19. So, reasonableness is writ large upon the Appellant"s claim. The hurdle of "requirement", of "required" in "reasonably required", in Section 13,

Sub-section 1, Clause (f), is there to be overcome by the Appellant who has overcome it. The word is that: "require", not "desire". So, it is

something more than a mere wish and it involves an element of need to some extent at least"", to quote from the oft-quoted judgment of Buckland,

J. in Rekhab Chand Dugar v. D"Cruz (1922) 26 C.W.N. 499, a judgment which has been followed in a long line of cases and, for all I know, has

never been dissented from. Forensic authorities apart, as a matter of English, the meaning of the word is just so. "Requirement means properly a

need": Fowler in Modern English Usage, 1959, p. 498.

20. Now, what is it I see here? A mere wish? Or a need? The Appellant, the landlord, entertaining a mere wish, a mere intention, is not enough.

Were that not so, the landlord had only to say: "It is my house which I wish to rebuild", to get a decree in ejectment, thereby defeating the very

purpose of the Premises Tenancy Act, placed on the Statute Book, to curb such wish of the landlord and to prevent the laissez-faire doctrine from

creating a havoc amongst those who have no houses of their own. But what the Appellant says comes to much more than that: ""Now I get Rs. 33 a

month out of "4/1". If you give me possession, I shall rebuild, I have means to do so, and get much more: ten to fifteen times more."" This is not a

mere wish. This is a need, not "to some extent at least" but to a great extent. Indeed, the test to go by is so simple. Here is a landlord, the

Appellant, who gets a return of Rs. 33 a month from his house property. If he will only build and rebuild he gets Rs. 330 and more a month. Does

he not need this extra sum? He does. And who does not, barring the recluse, one whom litigation cannot touch?

21. While considering the material on record, I have endeavoured never to lose sight of the fact that the Appellant owns a house at Grey Street

yielding Rs. 500 a month and shares too valued at Rs. 1 1/2 lakhs, as is his sworn testimony. So what? He will sit by! And he shall not put his

other property to a more profitable use, doing good to him and to the general public as well. Law has as yet not started nationalising the house

properties and has put no ceiling either to the urban property one can hold. That apart, it is a fallacy to think that only a down-and-out needs

money. One of the Appellant''s status does need money as well. If such a one has certain privileges, because of his house properties and shares, he

has his manifest liabilities too to meet which he will need extra money ever. Then, this is not a case of reasonable requirement for the Appellant''s

own occupation. That would have completely changed the outlook. I would have then said to the Appellant: ""Your Camac Street residence is

good enough. What would you do with another? You do not reasonably require ''4/1'' for your occupation. So, your tenant will stay where he is.

This is, instead, a case of reasonable requirement for building and rebuilding. That makes all the difference, and it is impossible to say that the

Appellant does not reasonably require ""4/1'' for building and rebuilding.

22. The way I go is more or less the way indicated by the Supreme Court in Neta Ram v. Jiwan Lal AIR 1963 S.C. 409, the decision to be

remembered and followed in a case the like of which is before me. No doubt, this decision turns on Section 13, Sub-section 3, Clause (a), Sub-

clause (iii) and Clause (b) of the Patiala and East Punjab States Union Urban Rent Restriction Ordinance (No. VIII of 2006 BK) the language of

which is not just the language of Section 13, Sub-section 1, Clause (f) of our Act. But the purport does not appear to be much different either.

Under the Ordinance the Controller is to be satisfied about the bona fide of the landlord''s claim for reconstruction, not the bona fide of the

landlord. Under our Act, the 1956 Act, the Court here is to be satisfied of the reasonableness of the landlord''s requirement (not mere wish or

intention) for rebuilding. Be it one or the other, be it bona fide (which is but another name for honesty) or reasonableness,--and how far is a claim''s

honesty from its reasonableness? The only way to be satisfied about either is to look into all the surrounding circumstances, such as, (i) the

condition of the building, (ii) its situation, (iii) the possibility of its being put to a more profitable use, (iv) the means of the landlord etc. etc. That is

the law laid down by the Supreme Court, in construing the provision of the Ordinance, a sister statute. That is the law applicable here too in the

construction of Section 13, Sub-section 1, Clause (f). Indeed, a division of this Court (P.N. Mookerjee and A.C. Sen, JJ.) did apply this law in

Lakshmipati Hazra v. Rajendra Nath Pyne (1964) 69 C.W.N. 1063, a case governed by the 1956 Act. All the ingredients of such law, I have

found so far in the case in hand, except (i) above, the condition of the building about which also it is clear upon evidence that on a vacant land was

built years ago a p66r specimen of a shanty with a tiled roof. The Respondent"s service station for selling petrol started at "4/1" in or about

November 1945, as is evident from its agreement with Indo-Burma Petroleum Company Ltd.: Ex. D. The Judge in the Court of first insurance calls

such constructions "sheds" on the basis of the report, Ex. B of the Rent Controller"s inspector. The appellate Judge goes by the report, Ex. 4, of

the commissioner appointed by the trial Court for an inspection which is but a substitution of the eye for the ear. The description given there and

found by the appellate Judge does not make the constructions any the more respectable or stout. Such then is the condition of the building. Such is

its type too. Thus, all the tests laid down in Neta Ram"s case Supra are satisfied.

23. The learned Judges in the Courts below have failed to appreciate and determine the questions of fact I have gone by, as indeed I can go by u/s

103 of the Code of Civil Procedure, questions which vitally affect the fortunes of this litigation. Such failure is a failure of duty cast upon them by

law, and necessarily makes a big error of law: AIR 1943 208 (Privy Council) . "Contrary to law" in Section 100, Sub-section 1, Clause (a) does

not mean contrary to statute law only. It is not so limited as that: Ramgopal v. Shamskhatun (1892) ILR 20 Cal. 93, a Privy Council decision.

24. What is more, each of the two reasons, given by the learned appellate Judge, in finding against the Appellant, as summarised in para. 13 ante,

makes an error of law. The first reason is that the plans cover more than two-thirds of the total area in "4/1" with no sanction of the Corporation

yet. I accept this finding of fact as I must. But I question the soundness of the inference drawn from this fact. The inference the learned Judge

draws is that the Appellant does not reasonably require "4/1". The inference I draw is that he does, there being a far more competent authority

than a Court of law to set the plan right or to sanction a new plan, stripped of this irregularity, presumably due to the Appellant and his engineer

having been a trifle bit ambitious for a maximum covered space. Indeed it is an irrelevant consideration in adjudging the Appellant"s reasonable

requirement for rebuilding. If relevant, it recoils on the Respondent showing the Appellant all too eager for building as much as he can. The

Appellant has not engaged an engineer and expended money for nothing. Nor has the engineer toiled and drawn up plans as labour of love.

Therefore, the further inference is that the Appellant is in earnest about rebuilding the defective plans notwithstanding. A landlord, far less solvent

than the Appellant, but solvent enough to rebuild, may as well take the attitude: ""Pray, give no possession first, and then I spend money for an

engineer and a sanctioned plan."" Other things being there it cannot stand between him and his reasonable requirement for rebuilding. What I seek

to emphasize is that a sanctioned plan is only a piece of evidence in support of the conclusion that the landlord reasonably requires the premises for

rebuilding. Without such plan the same conclusion can be reached, other things being there (as here). Not that no such sanctioned plan, no

reasonable requirement.

25. Bigger still is the error of law in the learned Judge''s second reason which is that the plans were submitted after the institution of the suit. It has

been clear, consistent and settled law throughout that ""it is the duty of the Court which still retains control of the judgment to take such action as

will shorten litigation, preserve the rights of both parties and best subserve the ends of justice."" Out of a crowd of decisions to that end here are a

few that remain in my memory: Ram Ratan Sahu v. Mohant Sahu (1907) 6 C.L.J. 74, Ramyad Sahu v. Bindeswari Kumar Upadhyay (1907) 6

C.L.J. 102, Rai Charan Mondal v. Biswanath Mondal (1914) 20 C.L.J. 107 : AIR 1915 Cal. 103, Rajah Kamala Ranjan Roy v. Baijnath Bajoria

(1948) 53 C.W.N. 329 and Surinder Kumar v. Gian Chand (1958) S.C.A. 412. Thus, an error of law is patent. And to infer only from the post-

suit submission of plans, ''absence of immediate intention'' on the part of the Appellant to rebuild, without considering the most material of material

facts I have considered in the foregoing lines, makes a still greater error of law.

26. The conclusion I have, therefore, reached is that the Appellant does reasonably require ''4/1'' and that the errors of law set out above give me

jurisdiction to interfere with the appellate judgment and decree under appeal.

27. In the result, the appeal succeeds and is allowed with costs throughout, subject to what is stated below.

28. The Respondent has been carrying on business in the disputed premises since November 1945, a period of 21 years and more. Therefore, it is

but fair that the Respondent should have a reasonable time to shift elsewhere. The Appellant instituted his suit on October 7, 1961. We are now in

July 1967. I weigh that too, no less the house famine which has been upon us for years. I, therefore, direct as under:

(A) Should the Respondent file an undertaking to this Court within July 31, 1967, to quit and vacate the disputed premises in its possession and to

make over vacant and peaceful possession thereof to the Appellant by July 31, 1968, the Respondent shall have a grace period to stay in the

disputed premises till then, that is, upto July 31, 1968, undisturbed by the decree which shall follow this judgment.

(B) Should no such undertaking be filed, the aforesaid decree shall not be executed before October 31, 1967, the Respondent having a grace

period to that extent only.

(C) In either case, the Respondent (i) shall pay all arrears, if any, as also costs ordered, by August 31, 1967, and (ii) shall go on paying a sum

equivalent to the monthly rental, that is to say Rs. 33, month by month, according to the English calendar, by the 15th day of the next succeeding

month, according to the same calendar, all such payments being made by deposits in the Court of first instance to the credit of the Appellant.

Should the Respondent herein fail, the grace period, be it under (A) or (B) above, will automatically lapse and the aforesaid decree will be

executable all at once.

(D) Should any amount be deposited in terms of the directive that goes before, the Appellant shall be at liberty to withdraw the same.