**(1962) 02 CAL CK 0037**

**Calcutta High Court**

**Case No:** Appeal from Appellate Decree No. 417 of 1956

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| Indian Iron and Steel Co. Ltd. | | APPELLANT |
| | Vs | |
| Hanumandas Chiranjilal Ramrich Pal | | RESPONDENT |

**Date of Decision:** Feb. 28, 1962

**Acts Referred:**

- West Bengal Non-Agricultural Tenancy Act, 1949 - Section 6, 7, 7(2), 7(4)

**Citation:** 67 CWN 644

**Hon'ble Judges:** Bijayesh Mukherji, J

**Bench:** Single Bench

**Advocate:** Jitendra Nath Guha, Ajoy Kumar Basu and Dinesh Ch. Basu, for the Appellant;Charu Chandra Ganguly and Miss Usha Mukherjee, for the Respondent

**Final Decision:** Allowed

**Judgement**

Bijayesh Mukherji, J.
The decision of this second appeal by the plaintiff (who has lost in both the courts below) turns on a true construction of section 7 (2) of West Bengal Non-Agricultural Tenancy Act, 20 of 1949, (hereinafter referred to as simply "the Act" for brevity''s sake). This section, in so far as it is material here, reads:

7. Incidents of certain tenancies. Notwithstanding anything contained in any other law for the time being in force or in any contract --

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(2) if the non-agricultural land comprised in any tenancy which has been or is created after the commencement of the Transfer of Property Act, 1882, has been held for a term of not less than twelve years without any lease in writing,.....

** ** **

The point arises in the manner following:

The land listed in schedule Ka to the plaint was taken lease of by the defendants (now respondents before me) from the appellant in 1925. It was a parole lease for a year, followed by successive annual leases, all given by word of mouth, right up to 1933, 1933 going out, a written lease -- an unregistered one -- came to be made for 1934. The respondents continued to remain where they were: schedule Ka land: even after 1934''s end. Worse, from May 10, 1950 they started raising pucca structures on the land. Six days later, to wit, on May 16, 1950 the appellant instituted in the first court of the munsiff at Asansol the suit (out of which this appeal arises) praying for a permanent injunction restraining the respondents from constructing any sort of pucca structure on Ka schedule land.

Both the courts refuse the relief sought by way of a permanent injunction. They refuse, because the respondents having been in possession of non-agricultural land set out in schedule Ka to the plaint for more than twelve years at least from 1935 have the right to erect pucca structures by virtue of clause (a) of sub-section 2 of section 6 of the Act.

2. For the Appellant Mr. Guha contends that the respondents have not and that both the courts are wrong pro tanto. He submits that the respondents shall be entitled to do so only if they can press into service the provisions of section 7 of the Act. That indeed is beyond argument. Mr. Guha, Mr. Ganguli (appearing for the respondents) and 1 are all agreed that that is so.

3. We however enter into the arena of controversy when Mr. Guha further submits that the facts here bespeak of not one tenancy but ten-one each year from 1925 to 1934 -- and that the non-agricultural land (which is schedule Ka) though held for a term of not less than twelve years has been the subject of not one tenancy, but many. To take a different view is to render, according to him, the words ''comprised in any tenancy'' redundant.

4. With respect, I cannot agree for various reasons. One, ''any tenancy'' does not necessarily mean a particular tenancy. ''Any'' is compendious enough to include one indefinitely and indifferently; some: whichever, no matter which. When, for example, I say: the Standard Oil Company is credited with having the largest Eastern trade of any American enterprise, I mean not a particular American enterprise, but all American enterprises. I would have expressed myself crisper and therefore better if I had said "of all American enterprises instead of" "of any American enterprise": Fowler: Modern English Usage (1959): page 27. Thus, ''any tenancy'' is a big enough expression to include all the ten annual tenancies Mr. Guha submits about. Two, the accent is on the non-agricultural land having been held for a term of not less than twelve years, with the corollary -- no matter what tenancy comprises it. Any tenancy, I may say at the risk of repetition, may comprise it: one or many. Three, it follows from what goes before, it is the duration for twelve years which bulks large, not this

tenancy or that. In interpreting section 7 (4),Chunder, J., held as much in (1) Sibrat Missir Vs. Sasthi Rathi Karkari and Others, Mr. Ganguli cites and relies upon. What matters is the continuity of the period, not the continuity of the rent or other terms -- on which Mr. Guha stresses. If section 7 (2) of the Act which I am construing is not pari materia with section 7 (4) ibid, as Mr. Guha contends, though the Act and even the section are the same, what then is pari materia and with what? I leave it at that. Four, one lease goes out, another comes in. So leases come and go. But the respondents'' possession remains constant for more than twelve years. No doubt, a series of successive leases each for one year (as here) are quite different from a lease from year to year needing registration and terminable by six months'' notice, as held in (2) Hirendra Nath Dutt v. Hari Mohan Ghosh: 18 C.W.N. 860 Mr. Guha cites. But that is neither here nor there in the context of section 7 (2) of the Act postulating any tenancy which may mean one tenancy or far more than one. Five, true it is -- as Mr. Guha submits -- that the expression "comprised in any tenancy" is section 7 (2)''s monopoly. You will not find it in sub-sections (1), (3), (4) or (5) of section 7. But the central note is one and the same in all. A tenancy is a tenancy, by whatever name it may be called: tenancy, lease or the like.

5. Mr. Guha''s further submission is that holding over after 1934''s end is a renewed tenancy for each successive year. It deserves like treatment. What section 7 (2) of the Act prescribes is continuity of possession by one for twelve years, not continuity of the same tenancy.

6. Mr. Ganguli asks me to consider the absence of a comma after ''the non-agricultural land'' in section 7 (2) of the Act. A comma there would have, in my judgment, made no difference. That apart, ''In an Act of Parliament there are no such things as brackets any more than there are such things as stops".

7. Nor could I go by Mr. Ganguli''s contention that the interpretation of section 7 (2) in a manner contended for by Mr. Guha would render the Act dead, were it possible for me to adopt that sort of construction as sound. While it is my duty to make a beneficial construction of the Act without stretching, it is equally my duty to construe it strictly and literally, because it is an inroad on contractual rights and rights which go with ownership. Once I do my duty so, it is not for me to be lachrymose over the consequences of my decision -- no matter whether the Act survives or dies.

8. The conclusion I have therefore come to, in agreement with the learned judges of the first and the second courts, is that the provisions of section 7 of the Act apply to the tenancy of the respondents comprising schedule Ka land and that they are therefore entitled "to erect any structure including any pucca structure".

9. The controversy about land in schedules Kha and Ga to the plaint is set at rest by the concurrent findings of fact that the appellant had demised it to the respondents. Nothing can upset that; not even the affidavit here Mr. Guha faintly refers to.

10. In the result, the appeal fails and is dismissed with costs. Leave has been asked for to appeal under Cl. 15 of the letters Patent. It is refused.