

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Partha Sarathi Chatterjee

FA 64 of 2023
FAT 98 of 2017

+
IA No.: CAN 2 of 2018 (Old No.: CAN 7742 of 2018) [Disposed of]
+
IA No.: CAN 3 of 2020 [Disposed of]
+
IA No.: CAN 4 of 2020 [Disposed of]

Jawed Shakil & Another
versus
Sukumar Chakraborty (Substituted) & Others

For the Appellants : *Mr. Srijib Chakraborty (through V.C.),*
Mr. Jai Surana,
Mr. Tamoghna Saha,
Mr. Deeptangshu Kar.

For the Respondents : *Mr. Indrajit Dasgupta,*
Ms. Puspita Bhowmick,
Ms. Rima Biswas.

Hearing is concluded on : *21st April, 2023.*

Judgment On : **6th June, 2023.**

Tapabrata Chakraborty, J.

1. The present appeal has been preferred challenging the judgment and decree dated 23rd December, 2016 passed by the learned Judge, 6th Bench, City Civil Court at Calcutta in Ejectment Suit/Case no.08 of 2007.

2. The plaintiffs' case was that they are the trustees of the Kumar Pramatha Nath Roy Public Charitable Trust (hereinafter referred to as the said Trust). The premises no.4, Grant Street & 9, Lenin Sarani (hereinafter referred to as the suit premises) are subject properties of the said Trust and are being administered by the trustees. The object of the trust is to provide financial support to the poor and needy and for other charitable works. The then trustees of the said Trust by a registered lease deed executed on 29th day of January, 1989 granted lease of the said premises, which are situated within one compound, to the defendants, namely, Jawed Shakil and Fuad Ahmed for a period of five years commencing from the 1st day of February, 1989 and expiring on 31st day of January, 1994 at a monthly rent of Rs.3,000/-. The said lease expired on 31st January, 1994 but the defendants failed and/or neglected to vacate the suit premises and/or handover possession of the same to the plaintiffs on the expiry of the aforesaid period. The plaintiffs on various occasions requested the defendants to vacate and handover possession of the suit premises and the defendants promised to vacate the premises but repeatedly sought for time to handover the possession to the plaintiffs on the ground of personal inconvenience. The defendants went on paying rent month by month and the same was enhanced to Rs.5,000/- per month. Since the aforesaid lease

was for a period of five years and created prior to commencement of the West Bengal Premises Tenancy Act, 1997 (in short, the 1997 Act), the tenancy was governed by the West Bengal Premises Tenancy Act, 1956 (in short, the 1956 Act). However, on expiry of the aforesaid period of lease and since the plaintiffs also accepted the rent from the defendants, the defendants continued to be monthly tenants under the plaintiffs as per the 1956 Act and thereafter on promulgation of the 1997 Act, they became tenants under the said 1997 Act. After commencement of the 1997 Act, the defendants illegally sublet and/or parted with possession of the various portions of the suit premises to several sub-tenants without written consent of the plaintiffs and without written intimation to the plaintiffs.

3. In the plaint it was further averred that the defendants/appellants herein had neglected to pay proportionate share of Municipal Tax to the tune of Rs.2,19,210/- (in respect of premises no.4, Grant Street) outstanding since 19th April, 2006 and a sum of Rs.2,17,056/- (in respect of premises no.9, Lenin Sarani). Since several sub-tenants approached the plaintiffs/respondents herein for accepting them as direct tenants and since arrear Municipal Tax was lying outstanding and since the property was not properly being maintained by the appellants, the respondents initially acceded to such proposal. Subsequently, the respondents filed a suit being Title Suit No.285 of 2004 in the City Civil Court, Calcutta and obtained an order of injunction. The said suit is still pending.

4. The respondents further contended that the appellants failed and neglected to effect repairing of the suit premises. They constructed various

stalls in the passages of the premises obstructing free ingress and egress thereof and closed the entry to the suit premises and let out shops therein and even allowed storing of hazardous articles. Accordingly, the appellants' tenancy was determined by a notice to quit and vacate dated 21st August, 2006. The said notice was duly served upon the appellant no.1 and the notice addressed to the appellant no.2 returned with postal endorsement '*left*'. In spite of the service of the aforesaid notice the appellants failed and neglected to vacate the suit premises hence this suit under Section 6 of the West Bengal Premises Tenancy Act, 1997.

5. The appellants entered appearance and filed written statement stating *inter alia* that on the expiry of the lease dated 29th January, 1989, no fresh lease was executed but the appellants were allowed to hold over as ordinary monthly tenants on the same terms and conditions. During each successive renewals of lease the rate of rent was increased from time to time and all other terms and conditions remained the same. The present trustees of the said Trust are realising rent from the appellants at the rate of Rs.5,000/- per month inclusive of shares of Municipal Taxes and other outgoings and have done so upto the month of November, 2003. As the trustees did not accept the rent for the month of December, 2003, the appellants are depositing rent from January, 2004 with the Rent Controller after the usual tender by the appellants and refusal by the trust estate. The said tenancy of the appellants was previously governed by 1956 Act and now by the 1997 Act.

6. It was further averred in the written statement that the appellants, who were originally lessees under the trustees of the said Trust Estate with right to induct sub-tenants have been holding over the suit premises as monthly tenants from February, 1994 on the terms and conditions contained in the lease and the sub-tenants were inducted by them with the written consent of the trustees-in-office from time to time. The defendants are monthly tenants under the respondents on the terms and conditions contained in their last deed of lease which empowered them to induct sub-tenants.

7. The learned Court below framed the following issues :

- i. *Is the suit maintainable in its present form ?*
- ii. *Have the plaintiffs any cause of action against the defendants ?*
- iii. *Are the defendants defaulters in payment of rent ?*
- iv. *Have the defendants sublet parted with possession of the suit premises without the consent of the plaintiffs ?*
- v. *Are the defendants guilty of raising unauthorized construction in the suit premises ?*
- vi. *Are the defendants guilty of acts of negligence and of causing nuisance by storing hazardous articles in the suit premises without any authority from the plaintiff ?*
- vii. *Is the notice to quit legal, valid and sufficient ? Was the notice to quit duly served upon the defendants ?*

viii. *Are the plaintiffs entitled to get a decree of eviction and recovery of khas possession in respect of the suit premises ?*

ix. *To what other relief if any are the plaintiffs entitled ?*

8. On behalf of the plaintiffs, the plaintiff no.7, namely, Beni Madhab Roy deposed as PW1 and on behalf of the defendants, the defendant no.1, namely, Jawed Shakil deposed as DW1. Upon contested hearing, the learned Court below arrived at a categorical finding that the plaintiffs have been able to prove that the defendants have sub-let the suit premises to different persons at different times without previous consent of the plaintiffs and have also been able to establish the ground for eviction as provided under Section 6(1) (a) of the 1997 Act. Accordingly, the learned Court below decreed the suit.

9. Records reveal that the appellants filed an application for stay being CAN 1825 of 2017 in connection with the appeal and the same was heard on contest and disposed of on 5th January, 2018 directing *inter alia* that with effect from the date of decree, i.e., 23rd December, 2016, the appellants shall pay an amount of Rs.1 lakh per month to the respondents. The said order has, however, not been complied with by the appellants.

10. Drawing our attention to clause (f) of the lease deed, Mr. Chakraborty, learned advocate appearing for the appellants submits that the said clause entitled the appellants to sublet the suit premises or portions thereof as the appellants may think fit and proper and thus, no further consent from the respondents was necessary while subletting the suit premises. The appellants were holding over the right towards induction

of sub-tenants. The learned Court below glossed over and did not return a finding on the said issue and such infirmity on the face of the records warrants interference in appeal. In support of such argument reliance has been placed upon the judgment delivered in the case of *Kishore Lal Dey and Others versus The Administrator-General of Bengal, Executor to the Estate of the late Kumar Indra Chunder Singh*, reported in 1898 SCC OnLine Cal 21.

11. He contends that the learned Court below failed to appreciate that Section 5(5) of 1997 Act has no manner of application in the instant case and the alleged non-compliance of the requirement of Section 26 of the 1997 Act could not have been a ground for eviction since the appellants were empowered/entitled to induct sub-tenant in the suit property by virtue of Clause (f) of the lease deed dated January 29, 1989. In support of the argument advanced reliance has been placed upon the judgment delivered in the case of *Mahabir Prasad Verma -vs- Dr. Surinder Kaur*, reported in (1982) 2 SCC 258.

12. According to Mr. Chakraborty, the non-compliance of the provisions of Section 26 of the 1997 Act, at best, could have led to imposition of the penalty as prescribed under Section 29 of the 1997 Act and such alleged failure ought not to have been construed to be a ground for eviction.

13. Mr. Dasgupta, learned advocate appearing for the respondents denies and disputes the contention of the appellants and submits that no consent in writing was obtained from the respondents by the appellants and no steps were taken by the appellants in terms of Section 26 of the 1997

Act. Such fact had been admitted by the appellants as would be explicit from the cross-examination of the appellant no.1 wherein he has categorically stated that '*altogether there are 50 sub-tenants in the two premises*' and that '*it is a fact that only after institution of this suit I started intimating my landlord regarding change of sub-tenancy*'. Since there was no previous consent in writing of the landlord/plaintiffs regarding creation of sub-tenancy, the appellants were liable to be evicted for violation of Section 6(1)(a) of the 1997 Act.

14. Mr. Dasgupta argues that non-compliance with the provisions of Section 5(5) of the 1997 Act on the part of the appellants constitutes a ground for eviction in terms of Section 6(1)(a) of the 1997 Act and the rigors of the said provisions cannot be diluted upon application of the provisions of Section 29 of the 1997 Act. The non-discharge of the obligation under Section 5(5) constitutes a ground for eviction of the tenant under Section 6 of the 1997 Act. In support of such contention reliance has been placed upon the judgments delivered in the case of *Pulin Behari Lal versus Mahadeb Dutta and others*, reported in (1993) 1 SCC 629 and *Shantilal Rampuria and Others -vs- M/s. Vega Trading Corporation and Others*, reported in (1989) 3 SCC 552.

15. Mr. Dasgupta further argues that the respondents are trustees of a public charitable trust. The trust-in-question is *sui juris* and even in the absence of any of the trustees, the trust can maintain suit of its own and moreso when Section 1 of the Indian Trust Act, 1882 specifically excludes a public charitable trust from its purview. In support of such contention

reliance has been placed upon the judgment delivered in the case of *Dinabandhu Mondal and Others -vs- Jawed Shakti and Another*, reported in 2015 SCC OnLine Cal 10541.

16. A legal tussle has spiraled up to this Court seeking a quietus to the primary issue as to whether a previous consent in writing of the landlord with respect to each subletting separately is essential in view of clause (f) of the lease deed.

17. Indisputably, the respondents are trustees of a public charitable trust. The trustees by a registered deed executed on 29th January, 1989 granted lease of the suit premises to the appellants for a period of 5 years commencing from the 1st date of February, 1989 and expiring on 31st January, 1994 at a monthly rent of Rs.3,000/-. In the said lease deed there was a clause to the effect that *'the Lessee shall not during the said term assign the lease or part with the possession of the said demised premises to anybody else, but he will be entitled to sublet the demised premises or portions thereof as he may think fit and proper but such sub-letting will not absolve the lessee from the liabilities under there presents'*. The tenancy-in-question is governed by the 1997 Act and in the written statement the appellants had *inter alia* stated that they *'were originally Lessees under the Trustees of the said Trust Estate with right to induct sub-tenant have been holding over the suit premises as monthly tenants from February, 1994'* and that *'by the lease they have been empowered to sub-let the said premises or portion thereof to anybody else and as such no further permission is required as alleged'*. In course of cross-examination, the appellant no.1 has

categorically stated that '*altogether there are 50 sub-tenants in the two premises*' and that '*it is a fact that only after institution of this suit I started intimating my landlord regarding change of sub-tenancy*'. There is thus affirmative evidence on record that the appellants have sublet possession of various portion of the suit premises to several sub-tenants without written consent of the respondents.

18. Section 6(1)(a) of the 1997 Act provides *inter alia* that where the tenant had sublet any part of the premise without consent in writing of the landlord, such act would constitute a ground for eviction. Section 5(4) of the 1997 Act *inter alia* provides that '*no tenant shall sublet the premise without consent of the landlord in writing*'. Section 26(2) of the 1997 Act *inter alia* provides that where before commencement of the 1997 Act, the tenant has, without consent of the landlord sublet any premises, he/she shall give notice to the landlord of such sublet in the prescribed manner within two years from the commencement of the Act. Section 26(3) of the 1997 Act *inter alia* provides that the Controller on an application made by either the landlord or the sub-tenant declare that the interest of the tenant in so much of the premise as has been sublet shall cease and that the sub-tenant shall become a tenant particularly under the landlord. Section 29 of the 1997 Act *inter alia* provides that whoever contravenes the provisions for restriction on sub-letting would be liable to a fine.

19. The provisions of Sections 13 and 16 of the 1956 Act are *pari materia* with the provisions of Section 6 and Section 26 of the 1997 Act. A composite perusal would reveal that the said provisions would contemplate

that previous consent in writing of the landlord with respect to each subletting separately is essential and even a general authority to the tenant in this regard would not be sufficient. The tenancy of the appellants being governed under the 1997 Act, they are bound to discharge the obligations under the said Act and the appellants having not obtained any consent in writing from the respondents cannot be conferred protection from eviction.

20. It is well-known that a decision is an authority for what it decides and not can logically be deduced therefrom. Even in slight distinction on fact or an additional fact may make a lot of difference in decision making process. The judgment is a precedent for the issue of law that is raised and decided and not observations made in the facts of any particular case. There is no dispute as regards proposition of law upon which reliance has been placed by Mr. Chakraborty, however, the same are distinguishable on facts. In the case of *Kishore Lal Dey (supra)* the plaintiff sued the defendants for recovery of arrears of rent with interest and the suits were brought upon the basis of *kabuliyats* executed by the defendants' predecessor and in the said case there was no existing statutory obligation to be discharged by the parties. In the case of *Mahabir Prasad Verma (supra)* the tenant did not sublet any portion after commencement of the Act without the written consent of the landlady and as such it was held that mere continuance in possession of a sub-tenant lawfully inducted does not amount to any fresh or further subletting. However, in the instant case after commencement of the 1997 Act the appellants did sublet without the consent of the respondents.

21. There is a clear mandate in Section 6(1)(a) of the 1997 Act that protection against eviction to the tenant shall not be available in case the tenant sublets in whole or in part of the premises without the previous consent in writing of the landlord. The appellants have miserably failed to establish that any such consent was obtained from the landlord. Clause (f) of the lease deed does not in any manner protect the appellants since after the expiry of the said lease and also after commencement of the 1997 Act, the appellants inducted sub-tenants without the consent of the respondents.

22. Considering the arguments advanced and scrutinising the evidence on record, the learned Court below decreed the suit upon arriving at specific findings supported with reasons and we do not find any infirmity in the same and as such no interference is called for in the present appeal.

23. The appeal is, accordingly, dismissed. Parties shall bear their own costs.

24. Let a decree be drawn up, accordingly.

25. Let a copy of this judgment along with LCR be sent down to the learned Court below forthwith.

26. Urgent Photostat copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)