

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

**THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE PRASENJIT BISWAS**

**SAT 192 of 2022
CAN 2 of 2023**

**Smt. Asrukana Pal
Vs.
Smt. Sabita Ghosh Sarkar & Anr.**

Appearance:

For the Petitioner : **Mr. Gopal Ch. Ghosh, Adv.
Mr. Sayan Sengupta, Adv.**

For the Respondent No. 1 : **Mr. Ayan Banerjee, Adv.
Mr. Soumo Chaudhury, Adv.
Ms. Debjani Sengupta, Adv.**

Judgment On : **14.09.2023**

Harish Tandon, J.:

The only point raised in the instant appeal is that the appellant being a non-agricultural tenant governed by the West Bengal Non-Agricultural Tenancy Act, 1959 cannot be evicted upon introduction of Section 3A of the

West Bengal Land Reforms Act, 1955 as the land covered under the non-agricultural tenancy vested with the State of West Bengal and the non-agricultural tenant became a Raiyat (Right of Ownership) directly under the State. It is important to record that the aforesaid plea was not taken initially at the time when the written statement was filed by the appellant but brought by way of an amendment subsequently.

For the purpose of record the salient facts involved in the instant case are required to be succinctly narrated in order to understand the initial issues involved therein which is attempted to be diverted from taking the stand as narrated in the opening paragraph of this judgment.

Plaintiff-respondent filed this suit for eviction of a monthly tenant under the West Bengal Premises Tenancy Act, 1997 on the ground of default in payment of rent, reasonable requirement and sub-letting. The specific case pleaded in the plaint is that the predecessor in interest of the present appellant i.e., Madhusudan Pal was inducted as a tenant in respect of B Schedule Property being a Coal Depot at a monthly rental of Rs. 20 payable according to the English Calendar. It is further alleged that the said tenant defaulted in payment of rent since the month of April, 1998. The plaint further proceeds that the original tenant illegally and wrongfully sub-let the premises to one Tapan Pal, Rabin Pal & Swapan Pal and parted with the exclusive possession of the B Schedule Property without obtaining a prior written consent from the plaintiff-respondent. It is further averred that the plaintiff-respondent reasonably requires the B Schedule Property for construction of a drawing room, one study cum guest room and one Thakur

ghar as well as a garage as the accommodation available to them is not reasonable suitable for such purposes. It is further alleged that the 'B' Schedule Property is in the front portion and, therefore, it would be more suitable for such purposes and since the plaintiff-respondent is not in possession of the reasonable suitable accommodation available at their disposal, a notice to quit was issued upon original tenant who despite having received the same did not quit and vacate the 'B' Schedule Premises unto and in favour of the plaintiff-respondent.

Admittedly, the original tenant died and the suit for eviction was filed against the present appellants being the heirs and successors having succeeded to the estate of the deceased. In the written statement the appellant not only disputed the right, title and interest of the plaintiff-respondent but also denied all the grounds to have any semblance of truth in support of the alleged eviction sought against them. Interestingly, the appellant admitted the plaintiff-respondent as landlord having categorically stated in the written statement that they tendered the rent to them but alleged that even after receiving the same did not issue any rent receipt in their favour. It is further stated that after having sensed that rent receipt has not been issued, the rent was tendered through money order and upon refusal, the appellant started depositing the same in the office of the rent controller. Even after receiving the summon they started depositing the rent in the Court in terms of Section 7 (1) of the West Bengal Premises Tenancy Act, 1997 and also raised a dispute under Section 7 (2) of the said Act.

It is further stated in the written statement that the plaintiff-respondent after making addition and alteration or a new construction of a structure can accommodate themselves with the requirement as pleaded therein and therefore, the ground of reasonable requirement is mere fanciful. In relation to allegation concerning the subletting of the premises, it is categorically admitted in the written statement that the persons named in the plaint are the nephews of the plaintiff-respondent.

On the conspectus of the aforesaid pleadings, the parties adduced evidence and the Trial Court ultimately held that the plaintiff-respondent has proved all the grounds of eviction available under the said Act and decreed the suit. Before the Appellate Court the plea of non-agricultural tenancy was taken but the Appellate Court did not accept the aforesaid point and ultimately upheld the judgment of the Trial Court by dismissing the appeal.

For the purpose of clarity and record we hasten to observe that the appellant has not taken any plea over the reasonable requirement of the plaintiff-respondent, subletting of the premises, sufficiency of the notice and the default having committed in payment of rent but restricted the argument on the point that the tenancy was created in respect of a land which does not satisfy the definition of a premises given under the West Bengal Premises Tenancy Act, 1997 and, therefore, the suit is liable to fail under the aforesaid ground. The Appellate Court held that the operation of the West Bengal Premises Tenancy Act, 1997 has been extended to the municipal area which would be evident from Section 1 (2) of the said Act

and, therefore, the applicability of the West Bengal Non-Agricultural Tenancy Act does not apply.

The Counsel for the appellant submits that the moment the non-agricultural tenancy is created, it automatically takes away the applicability of the West Bengal Premises Tenancy Act, 1956 or 1997 as the case may be and in view of the insertion of Section 3A in the WBLRA, 1955, such tenancy is unevictable as a land comprising of the non-agricultural tenancy vested in the State and the status of the non-agricultural tenant has been alleviated as Raiyat. In support of the aforesaid contention, the reliance is placed upon a Single Bench judgment of this Court rendered in case of ***Gopal Chandra Paul v. Sm. Amala Mondal reported in (1989) 1 CLJ 226.***

Such being the only point agitated before us and no argument is advanced on any other points, the first and foremost duty cast upon us is whether it involves a substantial question of law for the purpose of Section 100 of the Cod of Civil Procedure. The West Bengal Non-Agricultural Tenancy Act, 1949 defines the non-agricultural land in Section 2 (4) thereof to mean land which is used for purposes not connected with the agriculture or horticulture and includes any land which is held on lease for purposes not connected with the agriculture or horticulture irrespective of whether it is used for any other purposes or not but does not include a homestead to which the West Bengal Land Reforms Act, 1955 applied. The non-agricultural tenant is also defined in Section 2 (5) to mean a person who holds non-agricultural land under another person and is or but for a Special Contract would be liable to pay rent to such person for that land but does

not include a person who holds any premises or a part of the premises situated on non-agricultural land and erected and owned by another person. The premises is defined in an explanation appended thereto to mean any building such as the house, manufacturing warehouse, stable, shop or hut whether constructed of masonry brick, concrete, wood, mud, metal or any other material whatsoever and includes any land appertaining to such building.

It is manifest from the conjoint reading of the aforesaid definition assigned to the non-agricultural land and the non-agricultural tenant that the aforesaid provisions are applicable in respect of letting out the land for the purposes other than the agriculture or horticulture and does not include the premises. The premises have been explained by giving a definition in the explanation appended thereto to mean any building erected or constructed on the non-agricultural land. The premises though defined in the West Bengal Non-Agricultural Tenancy Act, 1959, the reference can also be made to the definition assigned to the aforesaid word in West Bengal Premises Tenancy Act, 1997 in the following:

“Section 2 (e) – “premises” means any building or part of a building or any hut or part of a hut let separately, and includes –

- (i) the gardens, grounds and out-houses, if any, appertaining thereto. And***
- (ii) any furniture supplied by the landlord or any fittings or fixtures affixed, for the use of the tenant in such building or part of a building or hut or part of a hut,***

but does not include a room in a hotel or a lodging house;"

Both the definitions under the aforesaid Act have a common thread that it means any building or a part of the building or any hut or part of the hut or whether constructed of the masonry bricks, concrete, wood, mud, metal or any other material whatsoever. We find no ambiguity from the aforesaid provisions that both the Acts are complementary to each other and have its applicability in a given situation. Section 1 (2) of the West Bengal Non-Agricultural Tenancy Act extends the operation of the said Act to the whole of the West Bengal except the area to which the provision of the Calcutta Thika Tenancy Act applied but not extended the area to which such provisions may have ceased or may hereinafter cease to the apply by virtue of any law for the time being in force. Though there is no reference of the West Bengal Premises Tenancy Act, 1956 or 1997 but it is apparently clear from the aforesaid provision that the applicability of the said Act would cease if any other law is made applicable to the area which obviously would mean the the area which is governed by the West Bengal Premises Tenancy Act which also have the similar provision in Section 1 (2) that the applicability of the said Act is extended within the limits of the Calcutta Municipal Corporation, Howrah and to the municipal areas within the meaning of Section of the West Bengal Municipal Act, 1993. Admittedly the premises is situated within the North Barrackpore Municipality and therefore, the operation of the Act of 1956 or 1997 is extended to the said area which also appears to us an admitted position as no defence of this regard is taken by the defendant-appellant in the written statement.

We can safely presume and proceed on the basis that the premises being the subject matter of the suit is situated in the municipal area and by virtue of the provision contained in the aforesaid Acts, the applicability of the Act of 1979 cannot be ruled out. Since the premises has been defined in both the Acts the only question which arise in relation to the applicability of the West Bengal Non-Agricultural Tenancy Act, 1949 is whether it comes within the purview of the said definition. In both the definitions the word “building” is used which is not defined in the aforesaid Act. In the West Bengal Non-Agricultural Tenancy Act, 1949, the definition of the ‘premises’ is indicative of the fact that it connotes building irrespective of the material which is used for such construction. On the other hand, the ‘premises’ defined in the West Bengal Premises Tenancy Act, 1997 means a building or hut or a part of the hut without specifying the material used for construction thereof. Since the building has not been defined in both the Act it is an ardent duty to ascertain the grammatical meaning of the word in order to complement the define of the ‘premises’ given in such Acts.

In Webster New International Dictionary the building has been defined “that which is built, specific as now generally used, as a fabric or edifice framed or constructed design to stand more or less permanently covering a space of land for use as a dwelling, storehouse, factory, shelter for beasts or some other useful purposes.”

The Shrouds Judicial Dictionary (5th Edition) defines the ‘building’ as what is built must always be a question of degree and circumstances. However, the Black’s Law Dictionary (6th Edition) defines the ‘building’ as ‘a

structure or edifice enclosing a space within its wall and usually and but not essentially covered with the roof.

In order to constitute a building what is essential is anything which is framed or constructed with an intention to stand more or less permanently as a fabric or edifice enclosing the space which may not necessarily has a roof. The Apex Court in case of ***Ghansham Das vs. Devi Prasad reported in AIR 1966 SC 1988*** observed that it is not necessary that the building must have a roof as is commonly understood in relation to a building for residential purposes as there may be a case like an open air stadium or a swimming pool to be regarded as a building having no roof in the following:

“To ascertain the meaning of the building it is not necessary to understand in a subjective way but has to be interpreted objectively to understand the nature of the structure let out for a permanent use and cogently with the purpose of its letting out.”

In the instant case the suit property is let out for the purpose of coal depot and in the evidence it has come out that there is a structure having a temporary covering to protect the coal from being destroyed either by rain or the heat as the same is a combustible material. Even the Advocate Commissioner at the time of inspection found the existence of those structures to exist at the suit premises. Furthermore, the defendant has not made out any case that at the time of creation of a tenancy it was a bare land nor there appears to be any suggestion forthcoming in the evidence as well. The conduct of the defendant-appellant would suggest that the letting out of the ‘B’ Schedule Property was treated under the West Bengal Premises

Tenancy Act, 1997 because of the specific stand taken all through that the rent in respect of the premises was tendered to the plaintiff-respondent who having accepted did not issue any rent receipt. It is a specific stand of the defendant-appellant that the rent upon refusal was deposited in the office of the rent controller till the summon was served upon them in the instant suit. There is no concept of deposit of rent by non-agricultural tenant under the West Bengal Non-Agricultural Tenancy Act, 1949. The aforesaid provision finds birth in the West Bengal Premises Tenancy Act, 1997 and having taking recourse thereto, it is not open to the defendant-appellant to take a rebound and contend that what was let out is a land and not the premises. It further borne from the record that after receiving the summon compliance under Section 7 (1) of the Act of 1997 was made and a dispute was raised as to the relationship of landlord and tenant under Section 7 (2) of the said Act. The Trial Court held the relationship to exist which was assailed before the High Court in revisional jurisdiction and the said application was dismissed holding that there exists a relationship of landlord and tenant between the parties. Such facts emanate from the record leaves no ambiguity that what was let out to the predecessor of the present appellant was a premises and not a land. We, thus, do not find any substantial question of law involved in the instant appeal.

So far as the judgment rendered by the Single Bench in Gopal Chandra Pal is concerned, we do not find that the ratio laid down therein can extend any help to the present appellant. In the said case the area within which the property was situated was initially governed by the

provision of the Calcutta Thika Tenancy Act, 1959 even a West Bengal Non-agricultural Tenancy Act was not extended in view of Section 1 (2) of the said Act. After the said area was taken of from the purview of Calcutta Thika Tenancy Act, 1949 there was a complete vacuum on the applicability of the West Bengal Non-Agricultural Tenancy Act, obviously the premises situated within the said area was governed by the Transfer of Property Act and a suit for recovery of possession is filed under the aforesaid provision. Subsequently, the West Bengal Non-Agricultural Tenancy Act, 1949 was extended to operate within the said area more particularly, when the appeal was pending the aforesaid point was not taken before the Appellate Court including the High Court but for the first time was taken under Section 47 of the Code of Civil Procedure before the executing Court. The Court after taking into consideration that the operation of the West Bengal Non-Agricultural Tenancy Act was extended to the area during the pendency of the proceeding which obviously mean that the provision of the Transfer of Property Act does not apply the Court lacks jurisdiction to decree the suit under the latter Act of the eviction can only be ordered on the grounds enumerated under the West Bengal Non-Agricultural Tenancy Act. The Court further held that it is imperative on the part of the Court to take note of a subsequent events more particularly, the extension of the operation of an Act and, therefore, it impinges upon the executability of the decree which is *per se* a nullity as the Court is denuded of a power to pass an order of eviction.

As we have already held that the 'B' Schedule Property comes within the purview of premises defined under the West Bengal Premises Tenancy Act, 1997 and is not an non-agricultural tenancy. The ratio laid down in the above judgment has no applicability in the instant case.

The appeal is dismissed.

No order as to costs.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)