

**IN THE HIGH COURT AT CALCUTTA
(Civil Appellate Jurisdiction)
APPELLATE SIDE**

Present:

The Hon'ble Justice Supratim Bhattacharya

S.A. 172 of 2018

**Atanu Banerjee & Ors.
-Vs.
Lalta Prasad Jaiswal**

For the Appellants : Mr. Amal Krishna Saha
 Mr. Subrata Banerjee
 Ms. Sumana Sinha

For the Respondent : Mr. Sabyasachi Nayak
 Mr. Anirudhya Dutta

Heard On : 04.04.2024

Judgement Delivered On : 03.07.2024

Supratim Bhattacharya, J.:

1. The instant lis has arisen in the year 1993 as such, the instant case is governed by the West Bengal Premises Tenancy Act, 1956 (hereinafter to be referred to as the WBPT Act, 1956).

Being aggrieved by the judgment passed in the Title Appeal No. 2 of 2006 by the Ld. Civil Judge (Sr. Divn.) Small Causes Court, Sealdah, South-24-Parganas, the instant Second Appeal has been preferred.

2. Facts before the Trial Court

Initially in the year 1993 a notice of eviction dated 08.04.1993 was issued by the then Ld. Counsel of Dhananjoy Banerjee, the original landlord in the suit property, since deceased, the father of Bimal

Kumar Banerjee and Nirmal Kumar Banerjee and the grand-father of Atanu Banerjee who is one of the appellants at present.

The respondent/defendant namely Lalta Prasad Jaiswal, the tenant in respect of the suit property, neither surrendered the said property nor handed over the vacant possession of the said property to the then landlord, as a result the landlord was compelled to institute the instant lis.

The plaint was initially filed praying for eviction of the tenant on the ground of reasonable requirement and also on the ground for being used for commercial purpose in addition to residential purpose, for which the tenanted portion was originally given in lieu of rent.

The plaint was amended time and again.

The respondent/defendant/tenant has contested the suit by filing written statement and additional written statements.

The following issues were framed by the Ld. Trial Court:

- “1. Is the suit maintainable in it's present form and in law?*
- 2. Is the notice to quit valid, legal and sufficient?*
- 3. Is the defendant a defaulter in payment of rent?*
- 4. Has the defendant failed to comply with the tenancy agreement?*
- 5. Whether the plaintiffs reasonably require the suit property for their own use and occupation?*
- 6. Are the plaintiffs entitled to get decree as prayed for?*
- 7. To what other relief/reliefs are the plaintiffs entitled to get?”*

The Ld. Trial Judge has ultimately decreed the suit on contest in favour of the plaintiff/landlord and passed the following order:

That the suit be and the same is decreed on contest with cost against the defendant. The plaintiffs do get a decree for recovery of khas possession of the suit property by evicting the defendant therefrom. The defendant is to vacate and hand-over possession of the suit property to the plaintiffs within 60 days from the date of this order failing which the plaintiffs will be at liberty to put the decree into execution

3. Being aggrieved by and dissatisfied with the judgment passed by the Ld. Trial Court the tenant preferred an appeal. Initially the First Appeal was allowed and an order of remand was passed by the First Appellate Court. Against the said order of remand, appeal was preferred before the Hon'ble Court. The Hon'ble Court allowed the said appeal being SAT 103 of 2015 and by setting aside the judgment of the First Appellate Court thereby directed the First Appellate Court once again to decide the appeal on merit on two points:

“(1) The date of institution of the Ejectment suit either before 03-06-93 or after 3-6-93 and arising of cause of action.

(2) Secondly, to decide on the issue regarding sufficiency of the Ejectment notice in the light of the same and considering of the material available in the record including additional pleadings if any, regarding reasonable requirement of the plaintiff of the suit premises afresh.”

4. The First Appellate Court came to the finding that the instant suit was filed on 09.07.1993 that is after 03.06.1993.

The First Appellate Court framed two points for determination which are as follows:

- “1) Whether the notice of determination of tenancy is legal, valid and binding?
2) Whether the suit flat is reasonably required by the plaintiffs for their own use and occupation?”*

5. The First Appellate Court after dealing with the relevant facts and circumstances has come to the finding that the landlord has not been able to prove the conditions set forth under Section 13 (1)(f) and Section 13 (1)(ff) of the WBPT Act, 1956 and has set aside the order of eviction passed by the Ld. Trial Court and allowed the appeal.
6. During the continuation of the lis several incidents took place as regards to the members of the landlords family. The original landlord Dhananjoy Banerjee has expired, on his expiry his two sons namely Bimal Kumar Banerjee and Nirmal Kumar Banerjee were substituted. Thereafter the said Bimal Kumar Banerjee also expired and he has been substituted by his son and daughters.
7. The moot point to be considered in this instant appeal is as to whether the First Appellate Court has reached to the conclusion correctly or not.
8. Heard Mr. Amal Krishna Saha being assisted by Mr. Subrata Banerjee and Ms. Sumana Sinha on behalf of the appellants and Mr. Sabyasachi Nayak being assisted by Mr. Anirudhya Dutta.

9. The Ld. Counsel representing the appellant/landlord has submitted the following:

- i) That the landlords are in dire need of the tenanted portion as because the landlords are unable to accommodate themselves within the meagre portion of the suit holding which they are occupying.
- ii) The Ld. Counsel has further submitted that the entire ground floor of the building is being occupied by the respondent/tenant which comprises of 4 living rooms, 1 store room, 1 kitchen, one bath and 2 verandas situated at 30G, Ramkrishna Samadhi Road, P.S. Foolbagan, District-24-Parganas, South, while the landlords have two families consisting of several members who are compelled to reside within 6 rooms in the first floor and the second floor of the suit holding.
- iii) The Ld. Counsel has further submitted that the Ld. First Appellate Court did not take into account the Commissioner's report while reaching the conclusion.
- iv) The Ld. Counsel has further submitted that from the report of the commissioner it is crystal clear that in respect of both the houses, which are being said on behalf of the tenant to be alternative suitable accommodation, there is no flooring, plasters have come out and the iron rods are being seen in some of the portions. He further submitted that in addition to

the above there is no electrical connection and water supply, as such both the said houses are in dilapidated condition and are not at all suitable for habitation

- v) The Ld. Counsel has cited a judgment of the Hon'ble Apex Court passed in a case between Prativa Devi vs. T. V. Krishnan, reported in (1996) 5 SCC 353. Referring to the said authority the Ld. Counsel has highlighted the fact that the landlord is the best judge of his residential requirement.
 - vi) The Ld. Counsel has also relied upon another authority passed by the Hon'ble Apex Court in the case between Shivsarup Gupta Vs. Dr. Mahesh Chand Gupta, reported in (1999) 6 SCC 222. He has submitted that the judge should place himself in the armchair of the landlord and then ask the question to himself as to whether in the given facts substantiated by the landlord, whether the said premises can be said to be habitable or not.
 - vii) Banking upon the aforementioned facts the Ld. Counsel has prayed for allowing the instant appeal.
- 10.** The Ld. Counsel representing the respondent/tenant has submitted the following:
- i) That the landlord is in occupation of two entire floors while the tenant is in occupation of the ground floor partially.
 - ii) The Ld. Counsel has further submitted that the landlords have two other properties, one situated at 20/7, Shivkrishna Daw

Lane, Kolkata-54, while the other is situated at 14/7, Deshbandhu Nagar Baguiati, Kolkata -59. As there are two other properties belonging to the landlords, the landlords have alternative accommodation and the landlords have rooms and space to accommodate themselves.

- iii) The Ld. Counsel has further submitted that the report of the Commissioner reveals that the alternative accommodation consists of G+2 floors at 14/7, Deshbandhu Nagar and the ground floor is only occupied by the tenants.
- iv) He has further submitted that the first and the second floor is complete except electric connection, flooring and certain portions of the roof is not complete and bathrooms and water connection and fixture is not available.
- v) He has further submitted that the Commissioner considering such situation, on his own expressed that the same is not habitable, which is beyond the scope of the Commissioner as directed by the Ld. First Appellate Court.
- vi) The Ld. Counsel has further submitted that the plaintiff witnesses *could not prove that any reasonable suitable alternate accommodation was not available within the vicinity of the suit premises* and without the eviction of the tenant, the family of the landlord cannot be sufficiently accommodated in the suit property.

- vii) The Ld. Counsel has further submitted that the judgments cited on behalf of the appellants are distinguishable as both the judgments are governed under the Delhi Rent Control Act, 1958 and are not applicable in this instant case.

Banking upon the aforesaid facts and circumstances the Ld. Counsel has submitted that the landlords have not been able to prove their reasonable requirement so the instant appeal is to be dismissed.

- 11.** At the time of admission of the instant appeal the following substantial questions of law have been framed which are as follows:

“1. Whether or not the Court of Appeal below erred in holding that the plaintiffs avoided to bring the notice of the court about the two other alternative accommodations by appointing commissioner without considering it’s own record that the commissioner was appointed by the appellate court and commissioner’s report was accepted after examining him and the commissioner has stated that both the premises are not habitable and complete except the ground floor of premises of Shib Krishna Daw Lane which is tenanted.?”

2. Whether or not the Court of appeal below erred in holding that plaintiffs do not reasonably require the suit premises on the finding that the reasonableness of requirement shall be considered in conformity with common man’s idea of suitability with some stringency without any finding as to the extent of requirement of the plaintiffs and without reversing the finding of the trial court and without considering its own order rejecting the additional written statement on the amended plaint in view of the requirement pleaded in change circumstances.?”

- 12.** After perusal of the entire record and considering the submissions of the Ld. Counsels this Court finds that the Ld. Advocate Commissioner was appointed to hold inspection as regards to the two

holdings, one situated at 20/7, Shibkrishna Daw Lane, Kolkata-700054 and the other situated at 14/7, Deshbandhu Nagar Baguiati, Kolkata -700059.

In respect of 20/7, Shibkrishna Daw Lane, the Ld. Commissioner has reported that the flooring of the rooms were not done and there was no electrical wiring in the said rooms and except a reservoir in the ground floor there is no supply of water and the ground floor is tenanted.

In respect of the house situated at 14/7, Deshbandhu Nagar, Baguiati, the Commissioner has mentioned in his report that the ground floor is incomplete and the first floor is dilapidated in nature and was incomplete in respect of internal works like flooring, plastering, doors, windows, ceilings and electrical wiring.

Thus, from the report of the Ld. Advocate Commissioner it is apparent that the two houses which are claimed by the respondent/tenant to be alternative suitable accommodation of the appellants/landlords are not at all in good condition and those do not fall under the category of suitable accommodation. A house not having flooring, electrical connection and water supply at this present age of civilization cannot at all be taken into consideration as a habitable house, as such both the two houses situated at 20/7, Shibkrishna Daw Lane, Kolkata-700054 and the other situated at 14/7, Deshbandhu Nagar Baguiati, Kolkata -700059 cannot be said

to be alternative suitable accommodation for the landlords. In this regard a judgment of the Division Bench of the Hon'ble High Court at Himachal Pradesh reported in 2018 SCC OnLine HP 1495 is being relied upon. In the Paragraph No. 7 of the said judgment following has been stated:

“The question that falls for consideration is whether the petitioner, as an interim measure, be allowed the basic amenities of water and electricity. There is no gain in saying that potable water or electricity are integral part of Right to Life within the meaning of Article 21 of the Constitution of India. These are basic necessities for human being and can well be termed as essentials of human rights. ...”

- 13.** The tenant namely Lalta Prasad Jaiswal during his cross-examination dated 12.01.2004 as DW1 has deposed that he has inherited the house situated at 54, Kailash Basu Street from his father.

The Ld. First Appellate Court has neither considered the report of the Ld. Advocate Commissioner nor has considered the fact of admission by the tenant as regards to his inheritance of a property situated at 54, Kailash Basu Street.

- 14.** In the impugned judgment the Ld. First Appellate Court has stated that the plaintiffs have the duty to prove by appointment of commissioner or otherwise, that the houses situated at 20/7 Shibkrishna Daw Lane, Kolkata-54 and the other situated at 14/7,

Deshbandhu Nagar Baguiati are not habitable and the witnesses who have deposed on behalf of the plaintiffs have declined to prove the same. Therefore the Ld. Court has presumed that the plaintiffs are carefully avoiding to prove the truth before the court, regarding the reasonable requirement of the plaintiff and availability of alternative accommodation. In the said judgment the First Appellate Court has further stated that the defendant during the course of evidence has admitted that he has inherited a house but the plaintiff has never tried to prove that the tenant has alternative accommodation.

- 15.** When a fact is admitted by a party during his deposition in the lis, it is not required to be proved by other evidence by the other party. In this aspect Section 58 of the Indian Evidence Act, 1872 comes into effect. The aforementioned section is laid down which is as follows:

“Facts admitted need not be proved.—No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings: Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.”

In this regard an authority reported in (2019) 9 SCC 282 is being relied upon which has been delivered by the Hon'ble Apex Court.

Paragraph 11 of the said judgment is states as follows:

"11. It is no doubt true that as observed by the High Court the plan for construction and the financial capacity to construct has not been placed as evidence. However, as already indicated above, the nature of the requirement as stated by the landlord would be for running a garment shop which in any event could be run in the premises as it exists with minor alterations though the desire of the landlord is also to demolish and reconstruct. Therefore, in that circumstance, the mere non-production of the approved plan or the documents to indicate financial capacity at this juncture cannot be held fatal in the instant facts. That apart as indicated above, the need of the landlord while being examined has been weighed in the background of the fact that the tenant owns two other premises and no hardship will be caused. Though the High Court has in that regard also recorded that no documentary evidence is placed, the fact of possession of alternate premises has been admitted by the tenant in his cross-examination. There can be no better proof than admission."

As such in the impugned judgment neither the report of the Commissioner has been taken into consideration nor the admission of the tenant as regards to inheritance by him of another house.

- 16.** The family of the landlords have two mess, one being the family of Atanu Banerjee while the other being the family of Nirmal Kumar Banerjee.

The family of Atanu Banerjee consists of his wife, his major son and himself.

The family of Nirmal Kumar Banerjee consists of his wife, son, daughter-in-law and two daughters.

Altogether there are nine family members.

17. For a decent living one has to have one room for themselves, one room for their major son and a room each for the daughters. Each family requires a guest room for their married daughters. One drawing room, one dining room, one kitchen, one prayer room, one store room and at least one bath cum privy is required for a family.
18. In this instant case there are two families of the landlords having separate mess which is evident from the record.

It is fact that Atanu Banerjee and his wife requires a room, his major son requires one room, one drawing room, one dining room, one kitchen and one bath cum privy is required for them.

In respect of the family of Nirmal Kumar Banerjee one room is required for Mr. Banerjee and his wife, one room for his son and daughter in law, one room each for his two daughters apart from drawing room, kitchen, dining room and a bath-cum-privy is required by them.

Apart from the aforementioned rooms, one guest room, and one prayer room and a store room is also required by the landlords. Thus, the landlords altogether require thirteen rooms and two bath cum privy for themselves instead they are in possession of six bed rooms, two kitchen, one store room and two bath cum privy. As such the necessity of the landlords can be fulfilled only by evicting the tenants.

In this respect the Judgement passed by the Hon'ble Apex Court reported in (2001) 8 SCC 561 is relied upon. In Paragraph No. 9 of the said judgment the Hon'ble Judges have stated the following:

“9. Rent control legislation generally leans in favour of the tenant; it is only the provision for seeking eviction of the tenant on the ground of bona fide requirement of the landlord for his own occupation or use of the tenanted accommodation which treats the landlord with some sympathy. In Shiv Sarup Gupta v. Dr Mahesh Chand Gupta [(1999) 6 SCC 222] this Court has held that a bona fide requirement must be an outcome of a sincere, honest desire in contradistinction with a mere pretext for evicting the tenant on the part of the landlord claiming to occupy the premises for himself or for any member of the family which would entitle the landlord to seek ejectment of the tenant. The question to be asked by a judge of facts, by placing himself in the place of the landlord, is, whether in the given facts proved by the material on record the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive the need is bona fide. The concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life. An approach either too liberal or too conservative or pedantic must be guarded against. If the landlord wishes to live with comfort in a house of his own, the law does not command or compel him to squeeze himself and dwell in lesser premises so as to protect the tenant's continued occupation in tenancy premises. In Deena Nath v. Pooran Lal [(2001) 5 SCC 705] this Court has held that bona fide requirement has to be distinguished from a mere whim or fanciful desire. The bona fide requirement is in praesenti and must be manifested in actual need so as to convince the court that it is not a mere fanciful or whimsical desire.”

In this instant lis the landlords have six rooms in their possession while their requirement is much more than six rooms apart from kitchen and bath and privy.

19. As such the landlords require the rooms which are rented.
20. Thus, it is apparent that the judgment passed in Title Appeal No. 2 of 2006 requires **interference**.
21. For the forgoing reasons the appeal is allowed, the judgment of the Ld. First Appellate Court passed in Title Appeal no. 2 of 2006 is **set aside**.
22. The judgment of the Ld. Trial Court delivered in Title Suit No. 42 of 2001 is **restored**.
23. Taking into consideration all the aspects the tenant is granted time **till 31.10.2024 to vacate and hand over vacant possession** of the premises to the landlord without creating any third party right or damage to the property.
24. The instant appeal being **S.A. 172 of 2018 is** hereby **allowed**.
25. Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.
26. Urgent Xerox certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Supratim Bhattacharya, J.)