

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

Present:

THE HON'BLE JUSTICE HARISH TANDON

And

THE HON'BLE JUSTICE PRASENJIT BISWAS

SAT 27 OF 2024

CAN 1 OF 2024

KASHINATH MONDAL & ORS.

Vs.

SWAPAN PAL & ORS.

FOR THE APPELALNT : **MR. SUPRATIM DHAR, ADVOCATE
MR. DHANANJAY NAYAK, ADVOCATE
MS. MEGHA SARKAR, ADVOCATE**

HEARD ON : NOVEMBER 7, 8, 2024

JUDGMENT ON : NOVEMBER 12, 2024

THE COURT:

1. The report of the Stamp Reporter may be ignored since we invited the learned Counsel for the appellants to argue the matter on merit in order to ascertain whether it involves substantial questions of law under Section 100 of the Code of Civil Procedure.
2. The instant appeal is filed against the judgment and decree passed by the First Appellate Court on 16.12.2023 in Title Appeal No. 19 of 2016 whereby and where-under the judgment and decree dated 30.06.2015 passed by the Civil Judge (Junior Division), Second Court, Hooghly in Title Suit No. 229 of 2008 was affirmed.
3. A suit for eviction on the ground of default and reasonable requirement was instituted against the present appellants before the Trial Court. The suit was contested by the appellants/defendants taking a defence that the grounds so mentioned in the plaint is concocted and taken up for the purpose of seeking

eviction though there is a complete lack of genuinity in the requirement.

4. However, an interesting plea was taken before both the Court that in view of the repeal of West Bengal Premises Tenancy Act, 1956 (hereinafter referred as 'the Act of 1956'), by subsequent promulgation of West Bengal Premises Tenancy Act, 1997 (hereinafter referred as 'the Act of 1997'), the Notification issued under the repealed Act remain saved as the area in which the suit premises is situated is kept outside the purview of the Act of 1997. The shelter is taken under Section 24 of the General Clauses Act. The aforesaid contention of the appellants was negated by both the Trial Courts and the said point is again taken by the Counsel for the appellants as substantial question of law.
5. It is not in dispute that the area in which the suit premises is situated was covered by the provisions of the West Bengal Premises Tenancy Act, 1956. After the repeal of the said earlier Act by the Act of 1997, the Government did not issue any notification nor included the said area within the schedule appended to the newly enacted Act and, therefore, the Act of 1997 has not been extended to the premises situated in an excluded area.
6. According to the learned Counsel for the appellants, the effect of repeal of the earlier Act in its entirety saved the notification issued under the said Act and in absence of any notification issued under the newly enacted Act inconsistent with the said notification; the suit under the new Act is not maintainable.
7. For the purpose of record, we must make it clear that taking stock of the aforesaid submissions, both the Courts concurrently held that in the event, neither the repealed nor the newly enacted Act protected the tenancy of the appellants, the suit can be treated to have been filed under the General Act i.e. the Transfer of Property Act and since the notice to quit was issued and served upon the appellants, it would be construed to have been issued

under Section 106 of the Transfer of Property Act and there is no protection extended to the appellants against the eviction upon expiration of the period reserved therein.

8. Admittedly, the appellants have not taken any plea that the notice to quit is bad and/or infirm having not issued in conformity with the provisions contained under Section 106 of the Transfer of Property Act but an argument is sought to be advanced that since the plaintiffs/respondents failed to prove the notice as they could not disclose the name of the learned Advocate who issued the notice, the Court ought not to have proceeded on the basis of such notice. The aforesaid contention of the learned Advocate for the appellants does not hold water for the simple reason that the notice to quit as well as the Acknowledgement Due Card containing the signature appended thereat were marked exhibits without any objection.
9. It is trite law that the party must raise an objection at the time when the document is tendered for being received in evidence and having not done so, cannot take such plea that the said documents are improperly exhibited. The Court must bear in mind the distinction between a document inherently inadmissible in evidence and a document which is otherwise admissible in evidence provided the same is proved in accordance with law of evidence. In the later case, once the document is marked exhibit without any objection, it is not open to the parties to challenge the marking of the said document as exhibit at a later stage of the suit nor before the Appellate Court. Admittedly, there is no objection raised at the time of marking the notice and the A.D. Card as exhibits and, therefore, mere non-disclosure of the name of the Advocate neither invalidates the notice nor effaces its evidentiary value.
10. Reverting to the core issue whether the notification issued under the Act of 1956 saved the tenancy or in other words, protected the tenancy under the repealed Act despite the fact that the Act of

1956 was entirely and completely repealed on promulgation of the Act of 1997.

11. The reference can be succinctly made to the statement of law by Craies on statute law on the effect of repeal of an Act on promulgation of the subsequent Act in the following:-

“When an Act of Parliament is repealed,” said Lord Tenterden in Surtees Vs. Ellison, (1829) 9 B and C. 750 at p. 752 “it must be considered (except as to transactions past and closed) as if it had never existed, That is the general rule.”

“Tindal C.J. states the exception more widely. He says (in Kay Vs. Goodwin, (1830) 6 Bing. 576; “the effect of repealing a statute is to obliterate it as completely from the records of the Parliament as if it had never been passed; and it must be considered as a law that never existed except for the purpose of those actions which were commenced, prosecuted and concluded whilst it was an existing law.”

12. The Crawford commented in the book authored by it in the name of ‘Statutory Construction’ in the following:-

“A repeal will generally, therefore, divest all inchoate rights which have arisen under the repealed statute, and destroy all accrued causes of action based thereon. As a result, such a repeal, without a saving clause, will destroy any proceeding, whether not yet begun, or whether pending at the time of the enactment of the repealing Act, and not already prosecuted to a final judgment so as to create a vested right”

13. In an identical situation the Three-Bench of the Supreme Court in ***Qudrat Ullah Vs. Municipal Board, Bareilly*** reported in (1974) **SCC 202** was considering a case where an argument was advanced that by virtue of a repealed Act once the right becomes a vested right, it cannot be taken away on the eve of the repealed Act by a newly inserted Act. The Apex Court held that the contention that a vested right is created by virtue of an Act which cannot be taken away by a subsequent enactment, does not appear to hold water. The Apex Court was of the view that is not open to the tenant to claim a protected right under the repealed Act and Section 6 of the General Clauses Act which contains an

exhaustive provision relating to repeal and saving of the rights and privileges under the repealed Act has to be understood in such perspective but, in the event, it is kept outside the purview of the repealing Act such right cannot be termed as a vested right.

14. In a later judgment of the Apex Court rendered in ***State of Rajasthan Vs. Mangilal Pindwal reported in (1996) 5 SCC 60***, the Apex Court succinctly pointed that the effect of the repeal of a statute in absence of any saving clause, is to destroy the effectiveness of the repealed Act in future and to divest the right to operate under the repealing Act in the following:-

9. As pointed by this Court, the process of a substitution of statutory provision consists of two steps; first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place (See: Koteswar Vittal Kmath V. K. Rangappa Baliga & Co., SCR at p.48). In other words, the substitution of a provision results in repeal of the earlier provision and its replacement by the new provision. As regards repeal of a statute the law is thus stated in Sutherland on Statutory Construction:

“The effect of the repeal of a statute where neither a saving clause nor a general saving statute exists to prescribe the governing rule for the effect of the repeal, is to destroy the effectiveness of the repealed act in futuro and to divest the right to proceed under the statute, which, except as to proceedings past and closed, is considered as if it had never existed.

10. Similarly in Crawford’s Interpretation of Laws it has been said:

“Effect of Repeal, Generally. – In the first place, an outright repeal will destroy the effectiveness of the repealed act in future and operate to destroy inchoate rights dependent on it, as a general rule. In many cases, however, where statutes are repealed, they continue to be the law of the period during which they were in force with reference to numerous matters.”

15. Section 24 of the General Clauses Act postulates that when any Act is repealed and/or re-enacted with or without modification of an Act or a Regulation then in absence of any express indication any appointment, notification, order or Scheme issued under the repealed Act or Regulation, shall, so far as it is not inconsistent

with the provisions re-enacted, shall continue in force and may deemed to have been made under the provisions so re-enacted, unless superseded by a subsequent notification. It would be profitable to quote Section 24 which runs thus:-

24. Continuation of orders, etc., issued under enactments repealed and re-enacted – *Where any (Central Act) or Regulation is, after the commencement of this act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided, any (appointment, notification,) order, scheme, rule, form or bye-law, (made or) issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been (made or) issued under the provisions so re-enacted, unless and until it is superseded by any (appointment, notification,) order, scheme, rule, form or bye-law (made or) issued under the provisions so re-enacted [and when any (Central Act) or Regulations, which, by a notification under Section 5 or 5-A of the Scheduled Districts Act, 1874 (14 of 1874), or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from and re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section].*

16. The aforesaid Section has to be construed taken into account Section 6 of the General Clauses Act relating to the effect of the repeal and insertion of the saving clause in the repealing Act while construing the effect of the repeal and the notification issued under the repealed Act.
17. The Court must bear in mind the object and purpose of a repealing Act and the subject which it covers. It would be misnomer to suggest that the notification issued under the repealed Act would in all conceivable situations remain alive and unaffected by the repealing Act unless the same is found to be inconsistent. A prelude to the Rent Restrictions Act, are required to be recapitulated in order to decipher the applicability of the Section 24 of the General Clauses Act.

18. During the second World War, there has been a mass exodus and the unscrupulous landlords were taking advantage of the provisions contained under the Transfer of Property Act by evicting the tenants from the premises. To protect the tenants from the clutches of such unscrupulous landlords, it was thought that protection must be given to the tenants against a fanciful eviction at the behest of such landlords and also to provide the right to the landlord to get eviction under certain grounds. The temporary Act of 1948 Act was promulgated protecting the cause of the tenants which was substituted by a full-fledged enactment in the form of the West Bengal Premises Tenancy Act, 1956. The object of the Act manifest the legislative intent not only to protect the tenants but also to give succor to the landlords to get the eviction of the tenant provided the grounds enumerated therein are proved before the competent Court.
19. Section 1 sub-Section (3) of the repealed Act conveys an express intention of the legislators in relation to its operation in the areas duly notified by the State Government. By virtue of such powers having reserved, the Government extended the operation of the repealed Act in several areas including the areas where the suit premises is situated. However, at the time of enacting a new Act in the year 1997, Section 45 of the repealing Act is exposit that Act of 1956 is completely repealed with the saving clause that any Suit or other proceedings pending at the commencement of the repealing Act before any Court or any other authority shall be continued and disposed of in accordance with the provision of the repealed Act as if the said Act has not been repealed. Apart from the same, there is no other indication given in a repealed Act which would otherwise make the repealed Act alive.
20. As indicated above, the West Bengal Premises Tenancy Act, 1956 was enacted with an avowed object of regulating and protecting the tenancies and restricting the rights of the landlords to get an eviction only on the grounds incorporated therein. The

notifications by the Government extending the operation of the Act in the area cannot be construed to have created a vested right into the tenant to have the protection for all time to come. The moment the repealing Act came into force and the notifications are issued by the Government under Section 1(3) of the Act extending the operation of the said Act to the area, it would not be proper to suggest that the repealed Act would remain in the statute book so far as the area where the operation of the repealing Act has not been extended.

21. As indicated above, the moment the Act is repealed in toto, it is completely effaced from the statute book and would be construed as if the Act never existed nor would occupy the space in the legislative field except for a limited purpose that may be indicted at the time of its repeal. The moment the Act of 1956 is repealed completely and the subsequent legislation covering the same field excluded the area from the purview of the re-enacted Act, it impliedly excludes the area not covered therein and, therefore, such omission/exclusion would be deemed to have been withdrawn and, therefore, obliterate the effect of the notification issued under the repealed Act.
22. The State is within its competence to enact the Rent Legislation and may extend the operation of such legislative to the area as felt necessary on the basis of competing circumstances and the necessity in this regard. The issuance of the subsequent notifications invoking such powers emanating from Section 1(3) of the repealing Act impliedly take away the notifications issued under the repealed Act.
23. The contention of the appellants, if accepted, it would mean that such notification is inconsistent with the subsequent notification and the area which the legislators consciously excluded from the purview of the repealing Act would still be regarded to be governed by the provisions of the repealed Act. The position

would have been different had the Government not issued any notification under the repealing Act.

24. We do not find that Section 24 can come in aid of the appellants to protect the tenancy. The repeal and saving clause reserved in the repealing Act does not protect the tenancy or the operation of the repealed Act in a situation involved in the instant case and, therefore, we do not find that the findings of both the Trial Courts are infirm and/or illegal.
25. As indicted hereinabove, Section 106 of the Transfer of Property Act does not contain any express provision relating to the content of notice nor contain any prescribed form. The moment the intention of the landlord is conveyed that he intended to quit and terminate the tenancy, Section 111 of the Act gives right to the landlord to get the decree for recovery of possession on the expiration of the period provided in the notice.
26. Since the notice and the Acknowledgement Due Card evincing the receipt of such notice is received in evidence without any objection having raised at the time when it is so tendered, it is too late in a day for the appellants to contend that the said notice was not proved in accordance with law of evidence.
27. We thus do not find any substantial question of law involved in the said appeal.
28. Thus, the appeal being **SAT 27 of 2024** and the connected application being **CAN 1 of 2024** are **dismissed**. No order as to costs.
29. Urgent Photostat Certified copy of this order, if applied for, be given to the parties within three days of such application.

(HARISH TANDON, J.)

(PRASENJIT BISWAS, J)

