

11.03.2025
Item No.11
Ct. No. 30
Aloke

C.O. 3964 of 2024

Narayan Chandra Ghosh
Vs
Luna Sil & Ors.

Mr. Raghunath Chakraborty
Mr. Rajdeep Bhattacharya
... for the petitioner
Mr. Satyan Mukherjee
Ms. Sayanti Ahmed
Mr. Purnendu Shekhar Ghosh
Mr. Saibal Rakshit
... for the opposite party
nos. 1a, 2, 3, 4, 5, and 6

1. The present civil revision has been preferred against an order dated 04.07.2024 passed by the learned Civil Judge (Junior Division), 1st Court, Barasat, District 24 Parganas North in Title Suit No. 204 of 2016.
2. Vide the said order the learned Civil Judge (Jr. Division), 1st Court, Barasat, North 24 Parganas held as follows :

“The section 2(g) of the said act defines the scope of tenancy and rights thereof that may cease after five years from the death of original tenant. Here in this case the plaintiff filed the instant suit praying for eviction of tenant, permanent injunction and mesne profit. The defendants’ father who was the original tenant of the suit premises died on 26.04.1996. The defendants promised to vacate the suit premises within of period of five years. During this period the plaintiff repeatedly requested the defendants to vacate the tenanted premises and also issued

legal notice to quit on 21.08.2015. It is clear from the averments of the plaintiffs in the plaint that after death of the original tenant on 26.04,1996 the defendants were retained as tenants for a period exceeding five years and that signifies and establishes the landlord-tenant relationship between the parties as the plaintiff accepted rent from the present defendants up to 15.04.2013.

Hence, the preliminary issue as to whether there is a landlord-tenant relationship exists between the parties U/S 2(g) of WBPT Act is thus decided in favour of the defendants as there exists a landlord-tenant relationship between the parties.

To 24.09.2024 for hearing of petition U/S. 7(1) and 7(2) of WBPT Act.”

3. Admittedly, application under section 7(1) and 7(2) of the WBPT Act has already been disposed of by the Court. Admittedly, the plaintiff/petitioner has also invoked Section 7(3) of the Act. As such, the learned trial Judge has wrongly posted the matter for hearing of the said application.

4. It is the case of the petitioner that the eviction has been prayed for by invoking Section 2(g) of the West Bengal Premises Tenancy Act as the period of five years has expired.

5. On the other hand, it is the case of the defendant/tenant that he has not invoked his right in the premises under 2(g) of the Act but is the original tenant in respect of the suit property. His contention is that previous tenant expired on 26.04.1996 and

since then he has been in occupation as a tenant and Legal notice to quit has been issued on 21.08.2015 after 19 years of the death of the previous tenant.

6. It is further submitted that the notice is under Section 6(4) of the Act and as such he has not been treated as a trespasser but as a tenant under the Act.

7. The plaintiffs in the suit also show that the **suit is for eviction of a tenant.**

8. Learned counsel for the opposite party has relied upon the judgment of a Coordinate Bench passed in **C.O. 3022 of 2019** (Samir Kuamr Kundu v. Dipali Roy) reported in **2019 SCC OnLine Cal 8172.**

9. Considering all these facts and the materials on record, this Court finds that the order under challenge is prima facie in accordance with law and requires no interference regarding the findings of the trial Court in respect of the applicability of Section 2(g) of ht Act in respect of the parties to the case.

10. The order under challenge dated 04.07.2024 is accordingly modified to the following extent :

11. The last line of the order under challenge be deleted.

12. The trial Court is directed to proceed with the trial of the suit expeditiously in accordance with law.

13. The civil revision stands disposed of.

14. There will be no order as to costs.

15. All connected applications, if any, stand disposed of.
16. Interim order, if any, stands vacated.
17. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Shampa Dutt (Paul), J.)