

Biswambar Roy

Vs

Girindra Kumar Paul

Civil Appeal No. 891 of 1963

(K.N. Wanchoo, J. C. Shah, S. M. Sikri JJ)

30.03.1966

JUDGMENT

SHAH, J.-

Biswambar Roy - predecessor-interest of the appellants - was granted on February 20, 1928, a lease for ten years 1335 B.S. to 1344 B.S. at an annual rental of Rs. 75/- in respect of a plot of land, part of Dag No. 3615 in the town of Silchar, District Cachar in the State of Assam. Biswambar Roy constructed on the land, buildings, some for residential use, and others as warehouses. On the expiry of the period of the original lease, Biswambar Roy obtained a fresh lease in respect of a part of the land for ten years - Baisakh 1345 B.S. to Chaitra 1354 B.S. - at an annual rental of Rs. 70/- under an instrument dated February 22, 1938.

The respondents purchased the interest of the landlords in the land and instituted on August 3, 1951 an action in the Court of the Sadar Munsiff, Silchar against Biswambar Roy for a decree for vacant possession of the land. The suit was decreed by the Munsiff. Biswambar Roy appealed to the Subordinate Judge, Silchar. During the pendency of the appeal, the Non-agricultural Urban Areas Tenancy Act 12 of 1955 enacted by the Assam Legislature was brought into force. Biswambar Roy claimed protection from eviction under s. 3 of Act 12 of 1955. The Subordinate Judge held that Biswambar Roy had acquired under s. 5(1)(a) of the Act the rights of a permanent tenant, since he had constructed within the period prescribed permanent structures for residential or business purposes. He accordingly reversed the decree passed by the Trial Court and dismissed the suit. Against that decree, an appeal was preferred to the High Court of Assam. Deka, J., held that Biswambar Roy could not claim the protection of s. 5(1)(a) of the Act, since he had let out to tenants the buildings constructed on the land. In the view of the learned Judge, by the use of the expression "for residential or business purposes" in s. 5(1)(a) it is intended that buildings constructed by the tenant should be utilized by the tenant himself for his own residence or for carrying on business and that it is not the intention of the Legislature that third persons should be protected by s. 5 from eviction from those structures. An appeal under the Letters Patent from that judgment was heard by C. P. Sinha, C.J., and Mehrotra, J. The learned Judges differed. Sinha, C.J., was of the view that permanent structures constructed by Biswambar Roy conformed to the description "residential or business purposes" and Biswambar Roy became under Act 12 of 1955 a permanent tenant thereof and was not liable to be evicted except for non-payment of rent. With that view Mehrotra, J., did not agree. He held that a tenant who obtains land on lease for erecting a structure thereon not for his own residential or business purposes but for letting out to others does not build "a permanent structure on the land of the tenancy for residential or business purposes", and may not claim protection under s. 5(1)(a). Since there was no majority concurring in the judgment agreeing or reversing the decree appeal from, under s. 98(2) of the Code of Civil Procedure the

appeal was ordered to be dismissed. Against the decree passed by the High Court, with special leave, this appeal is preferred.

This Court had held that s. 5 of Assam Act 12 of 1955 has retrospective operation : *Refiquenessa v. Lal Bahadur Chetri & Others*, [[1964] 6 S.C.R. 876] and the only question to be determined in this appeal is whether a tenant qualifies for protection under s. 5 of the Act only after building permanent structures on the land of the tenancy if he occupies them for his own residential or business purposes. The material part of the section reads :

"(1) Notwithstanding anything in any contract or in any law for the time being in force -

(a) Where under the terms of a contract entered into between a landlord and his tenant whether before or after the commencement of this Act, a tenant is entitled to build, and has in pursuance of such terms actually built within the period of five years from the date of such contract, a permanent structure on the land of the tenancy for residential or business purposes, or where a tenant not being so entitled to build, has actually built any such structure on the land of the tenancy for any of the purposes aforesaid with the knowledge and acquiescence of the landlord, the tenant shall not be ejected by the landlord from the tenancy except on the ground of non-payment of rent;"

Protection under the first part of s. 5(1)(a) may be claimed by a tenant if three conditions co-exist : (i) under the terms of the contract of tenancy the tenant is entitled to build on the land of the tenancy; (ii) that pursuant to such liberty, he had actually built within the period of five years from the date of the contract a permanent structure on the land of the tenancy; and (iii) that the permanent structure is for residential or business purposes. The first two conditions are fulfilled in this case. But the learned Judges of the High Court disagreed on the fulfilment of the third condition : they differed as to the true meaning of the expression "a permanent structure..... for residential or business purposes". In the view of Sinha, C.J., under the Act the character of the structure is determinative and not personal use by the tenant. Mehrotra, J., held that the permanent structure must be for residential or business purposes of the tenant. We are unable to agree with the view taken by Mehrotra, J., because the Legislature has not, in conferring rights or permanent tenancy, either expressly or by implication enacted any such qualification as is suggested by the learned Judge. The section merely requires that the permanent structure must be one adapted for residential or business purposes. If the structure is not adapted to such purposes, the protection of s. 5(1)(a) will not be available. To read the expression "permanent structure on the land of the tenancy for residential or business purposes" as meaning permanent structure on the land of the tenancy constructed by the tenant for his own residential or business purposes is to add words which are not found in the section.

It was urged on behalf of the landlords that it could not have been the intention of the Legislature to confer by s. 5(1)(a) protection upon sub-tenants. It was said that a sub-tenant is not a tenant within the meaning of s. 3(g) of the Act, and he cannot claim protection from eviction under s. 5(1)(a). In our judgment, the argument is wholly misconceived. Protection is conferred in terms by s. 5 upon the tenant of the land and not upon the tenant of the buildings constructed upon the land. It is not necessary in this case to consider whether by virtue of the definition of "tenant" in s. 3(g) of the Act which includes a person who derives his title from a tenant, a sub-tenant of the land is entitled to protection of s. 5(1)(a). In the present case, the tenant of the land has claimed protection. By merely

letting the premises constructed on the land obtained by him on lease, the tenant does not cease to be in possession of the land. The relation between the landlord and the tenant of the land continues to subsist until it is lawfully determined. Possession of the land obtained by the tenant remains his even after he has let out the building constructed by him, and a building constructed by the tenant for use as residential or business purposes does not cease to be one for residential or business purposes, when it is let out.

We therefore agree with the view taken by Sinha, C.J., that the protection of s. 5(1)(a) extends to a tenant who has constructed on the land obtained on lease permanent structures which are adapted for use for residential or business purposes and by letting out the structures the tenant does not forfeit the protection conferred by the statute.

The appeal is herefore allowed and the decree passed by the High Court vacated and the plaintiff's suit dismissed. The appellants who are the representatives of the tenant will be entitled to their costs in this Court. There will be no order as to costs in the High Court.

Appeal allowed.

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