

Jnan Ranjan Sen Gupta and Others

Vs

Arun Kumar Bose

Civil Appeal No. 185 of 1973

(A. Alagiriswami, P. K. Goswami, J. L. Untwalia JJ)

24.07.1975

JUDGMENT

GOSWAMI J.

1. In this appeal by special leave directed against the judgment of the Calcutta High Court the only question that arises for consideration is whether the respondent is a Thika tenant under Section 2(5) of the Calcutta Thika Tenancy Act, 1949.
2. On June 1, 1956, the predecessor-in-interest of the appellants (the latter, hereinafter to be described as the landlord) gave the land with which we are concerned in this appeal to the respondent (herein-after to be described as the tenant) for occupation as a tenant on a monthly rent of Rs. 75 for one year. One of the conditions of the tenancy was that "the premises shall not be used for any purpose other than keeping of the lorries as garage". Another condition of the tenancy was that "the lessee will on the expiration of one year peacefully surrender and yield up vacant possession to the lessor". On July 29, 1958, the landlord's advocate sent a notice of eviction to the tenant to vacate and deliver possession of the land on the expiry of August, 1958. The tenant through his advocate by a letter of August 29, 1958, denied liability for eviction asserting that there was no violation of any terms and conditions of the tenancy and since there was refusal to accept the rent by the landlord the tenant had been depositing the rent every month from March, 1958 under the provisions of the Calcutta Thika Tenancy Act, 1949 (briefly the Act) by which the tenancy was claimed to be governed. Thereafter a suit was filed by the landlord in the Court of the Fourth Munsif at Alipore on January 15, 1959.
3. It is not necessary to trace the history of the litigation covering this long period. It is sufficient to state that the High Court by its judgment on April 25, 1972, allowed the tenant's second appeal holding that he is a Thika tenant within the meaning of Section 2(5) of the Act. According to the High Court the tenant does not require any consent of the landlord to erect a structure on the land. The result was that the Court of Munsif had no jurisdiction to entertain the suit, the matter being within the cognizance of the Controller appointed under the Act.
4. Mr. Sachin Chowdhary appearing on behalf of the appellants fairly and, if we may say so, rightly confined his argument to the principal question of law set out above -

Is the tenant a Thika tenant under the Act? If the answer is yes, the landlord is out of court.

Before we proceed further we may briefly note that the tenant constructed certain structure on the

land prior to the institution of the suit in 1959. Mr. Chowdhary, however, drew our attention to an observation in the judgment of the High Court to the effect that "admittedly the defendant (respondent herein) at his own cost constructed in 1962 structures upon the bare land which he took for the purpose of his business". Since the year of construction had not been particularly agitated in the courts below and there is evidence to show that the construction had commenced from 1957, we are not prepared to give undue importance to this observation about the year of construction mentioned in the judgment. This is particularly so in view of the fact that the tenant through his lawyer in reply to the notice of eviction asserted in August, 1958, that my client has constructed the structures and has done such other things as are needful for the purpose of the keeping lorries and other vehicles in the garages and making of necessary repairs of the same as well as upkeep and maintenance of the same for carrying on his business in transport service.

Further, even so, although there is a reference to this reply of the advocate of August 29, 1958, in para 8 of the plaint, there is no denial of the construction of the structures as asserted in the said reply. Being faced with this factual position Mr. Chowdhary strenuously contended that under Section 2(5) of the Act erection of structures by the tenant must be with the permission of the landlord. In other words, says Mr. Chowdhary, the erection should be lawfully done and if the tenant does not establish permission or consent of the landlord in the matter there is no erection in the eye of law within the meaning of Section 2(5).

5. We will, therefore, read that section.

2(5) : 'thika tenant' means any person who holds, whether under a written lease or otherwise, land under another person, and is or but for a special contract would be liable to pay rent, at a monthly or at any other periodical rate, for that land to that another person and has erected or acquired by purchase or gift any structure on such land for a residential, manufacturing or business purpose and includes the successors in interest of such person, but does not include a person

6. As the definition shows -

- (1) a Thika tenant must be a person who holds land under another person;
- (2) it may be under a written lease or otherwise;
- (3) there is a liability to pay rent to the landlord but for a special contract to the contrary; and
- (4) he has erected or acquired by purchase or gift any structure on such land for a residential, manufacturing or business purpose.

The tenant here fulfils the requisite ingredients of the above definition clause.

7. There is no reference to landlord's permission or consent for erection of structure by the tenant in the definition clause. Mr. Chowdhary submits that it is implicit in the definition that in order to be a lawful erection of structure the tenant must take prior permission from the landlord. Counsel further submits that whatever is silent in the Act should be supplemented by reference to the Transfer of Property Act (briefly the T. P. Act). In this context Mr. Chowdhary draws our attention to Section 108(o) of the T.P. Act which may be set out :

The lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell or sell timber, pull down or damage buildings belonging to the lessor or work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto.

According to Mr. Chowdhary the purpose of the tenancy being that the premises shall not be use for any purpose other than keeping of lorries as garage, construction of structures for the purpose of running a workshop, which is the admitted factual position, would attract Section 108(o) of the T.P. Act. He, therefore, submits that the case is squarely governed by the provisions of the Transfer of Property Act and the Court of Munsif had jurisdiction to entertain and decree the suit. We may, however, note in passing that one of the grounds on which a Thika tenant may be ejected under unamended Section 3(ii) is that the tenant has used the land in a manner which renders it unfit for any of to purposes mentioned in clause (5) of Section 2 or that he has broken a condition consistent with this Act on breach of which he is under the terms of the contract liable to be ejected.

8. We are unable to agree that the particular condition of the tenancy referred to by Mr. Chowdhary militates against the construction of structures and the use of the land for the purpose of workshop for maintenance of the lorries by the tenant. Without being too hyper-technical, ordinarily keeping of lorries as garage would connote the concept of construction of some structures for garaging the lorries. The Chambers Dictionary gives the meaning of garage as "the building where motor-vehicles are house or tended". The Shorter Oxford English Dictionary gives the meaning of garage as "a building for the storage or refitting of motor vehicles". We are, therefore, unable to accept the submission that even on the terms of the tenancy, as pointed out, the tenant has used the land for a purpose other than that for which it was leased to attract the inhibition of Section 108(o) of the T.P. Act.

9. We are also unable to accede to the contention that Section 2(5) of the Act requires a Thika tenant under the law to secure prior permission of the landlord for erection of structures on the land. As the preamble shows the Act is for making better provision relating to the law of landlord and tenant in respect of Thika tenancies in Calcutta. It is a piece of beneficial legislation conferring certain rights upon the tenants. In dealing with such a provision of law we cannot read into the definition something which is not already there and the introduction of which will lead to imposing a restriction upon the rights of this class of tenants by judicial interpretation. This is not permissible in absence of express words to that effect or necessary manifest intendment. Besides, we do not find any vagueness or uncertainty in the definition clause. The submission is, therefore, of no avail.

10. We are not required to deal with the question whether the structures which stand on the land are permanent or not as this point had not been agitated in the courts below. But we may in passing notice that in view of Section 108(p) of the T.P. Act since the lessee must not, without the lessor's consent, erect on the property any permanent structure; except for agricultural purposes, the State Legislature has by amending the Act by Act No. 29 of 1969 inserted Section 10A conferring a right upon a thika tenant to erect a pucca structure for a residential purpose with the previous permission of the Controller. We are, however, not required to consider such a question in this appeal.

11. Mr. Chowdhary also relied upon a contemporaneous letter written by the landlord to the tenant on June 1, 1956, which was found by the courts below to contain interpolation by the tenant with regard to the according of permission to construct structures on the land. We, however, do not think

this would have any bearing on our interpretation of Section 2(5).

12. In the result the appeal fails and is dismissed with costs.

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