

CALCUTTA HIGH COURT

Basant Lal Saha

Vs.

P.C. Chakarvarty

Suit No. 2278 of 1948

(P.B. Mukharji, J.)

10.08.1949

JUDGMENT

P.B. Mukharji, J.

This is a suit by the plaintiff for the recovery of possession of premises No. 26C Amherat Row, Calcutta and for decree for the sum of Rs. 705 alleged to be due in respect of arrears of rant from April 1947 to June 1948 and for mesne profits and costs.

2. The case of the plaintiff is that the defendant was a monthly tenant under the plaintiff in respect of premise No. 26C Amherst Bow at the rent of Rs. 47 per month. A notice to quit was given on 26th May 1948 calling upon the defendant to vacate the premises by the end of June 1948. The plaintiff also pleads that he requires this house for his own occupation. He obtained permission from the Rent Controller on 17th December 1947. The suit was instituted on 19th July 1948.

3. The defendant filed his written statement. The default in the payment of rents is denied. The defendant also denies the validity of the notice to quit. The defendant denies that there is any *bona fide* requirement by the plaintiff.

4. In the written statement the defendant has gone further to say that the plaintiff owns and possesses many other properties in Calcutta and does not require the premises in suit for his own occupation. The defendant has imputed a motive to the plaintiff for filing this suit by the plea in para. 7 of the written statement that the plaintiff wanted to increase the rent and because the defendant did not accept the proposal for increase of rent set out in that paragraph the plaintiff wants to turn out and evict the defendant.

5. Mr. Dilip Kumar Sen who appears for the defendant confined himself only to the issue to *bona fide* requirement. The only issue he raises is "Does the plaintiff *bona fide* require the house for his own occupation" ?

6. Mr. Sen does not raise any issue with regard to the notice to quit. Nor does Mr. S. Dutt who

appears for the plaintiff raise any with regard to the arrears of rent. The position with regard to the arrears of rent is this that the defendant has gone on depositing all the rents with the Rent Controller up to the date when an order was made on an application under Ch 13A in this suit; since that order the payments are being made to the plaintiff's solicitors, Mr. Dutt admits that payments up to date have been made in this way.

7. The plaintiff has given evidence in this suit. [After going through the evidence of the plaintiff, his Lordship continued.

8. In the circumstances, the point for decision is does the plaintiff bona, fide require the house for his own occupation, within the meaning of proviso (F) of Section 11(1), Rent Control Act, 1948 ? On the facts I have no hesitation in holding that the plaintiff bond fide requires premises No. 260, Amherst Row for his own occupation.

9. In my opinion a landlord under the West Bengal Premises (Temporary Provision) Rent Control Act, 1948 is to satisfy the Court on three points, (1) that he "requires" the premises, (2) that such requirement is for his "own "occupation" and (3) that his requirement is "*bona fide*."

10. The word "require" was construed by Buckland, J. in *Rekhab Chand v. D'Cruz*¹ while dealing with a similar provision in the Calcutta Rent Act, 1920, and the construction that the learned Judge put upon the word "require" is this :

"The word in the Act is not 'desire' but 'require.' This in my opinion involves something more than a mere wish and it involves an element of need to some extent at least."

I respectfully follow the same meaning and construction of the word "require" in construing that word in the West Bengal Premises Rent Control Act, 1948. Mere wish or convenience or whim or fancy of the landlord will not in my view be enough to show that the landlord "requires" the premises. The landlord must show certain circumstances or facts proving some need or some necessity for the landlord. At the same time the Statute does not say that it must be as absolute need or an absolute requirement in the sense that the landlord will not have any accommodation of any description and that he must actually be in the streets before he can demand his own house for his own occupation. This in my opinion will be taking the most unreasonable and impossible view of the Statute and I do not consider such was its intention.

11. Counsel for the defendant has argued that the plaintiff and his wife have already got an accommodation where they are living with their family. Therefore, he submits that the plaintiff cannot be said to "require" No. 26C, Amherst Row. In my judgment the landlord is not bound to continue his residence at rented premises with all the uncertainties of that tenure. Although he may have a rented and tenanted accommodation such accommodation in my view of the construction of the Statute, does not prevent the owner of a house from requiring his own house for his own occupation. The fact that the landlord owing to the refusal of the tenant to give up possession has to live in other premises temporarily or in a precarious condition of tenure at some place at the time of hearing is no reason in my view for holding that the landlord does not require the dwelling house for himself.

¹26 C. W. N. 499 : (AIR 1923 Cal 223)

12. Sir Norman Macleod, the learned Chief Justice of the Bombay High Court observed in

*Rustomji Dinshaw v. Dosibai Rustomji*², that the landlord was not bound to accept such precarious existence and the fact that he had such precarious accommodation does not mean that he cannot require his own house for his own occupation. Mr. San tried to distinguish the Bombay case by his argument that the words of the Bombay Act are both '*bona fide*' and 'reasonably'. The word 'reasonably' does not appear in proviso of Section 11(1), West Bengal Premises Rent Control Act, 1948. But I do not think that this argument helps Mr. Sen at all. On the contrary, it goes very much against his contention. With both the words '*bona fide*' and 'reasonably' in the Statute, the Chief Justice of the Bombay High Court came to the decision that the landlord was not bound to continue residing in the rented premises and his demand of his own house for his own occupation where he can live will be considered to be 'reasonable' within the meaning of the Statute. Even in such a case and under such a Statute the landlord's demand or requirement was not held to be unreasonable. The word 'reasonably' finds expression also in the English Statute although word '*bona fide*' is not there. Even under the English Statute, Peterson, J. in *Neville v. Hardy*³, holds that the temporary residence of a landlord because the tenant refused to deliver him possession of his own house is never a reason for holding that the landlord cannot require his own dwelling house for his own occupation.

13. It is not necessary for me to decide if there is any difference and if so what between our Act and the English and the Bombay Acts. It is also not necessary for me to decide whether the meaning of Section 11(1) proviso (F), Rent Control Act, 1948 would be different and, if so, to what extent, if the word 'reasonably' occurred in the Statute ? That will be dealing with a hypothetical statute and a hypothetical case. It is common learning that in construing a statute no extra word should ordinarily be imported. As I understand, the word 'require' I am content to accept the view and the construction of that word which Buckland, J. expressed on the point. This construction came up before the Court of Appeal in *Saleh Abraham v. Manekji Gowasji*⁴, for consideration but neither Sanderson, C.J. nor Richardson, J. decided the point. Although the word 'reasonably' does not appear in the Statute questions of reasonableness may come in for consideration in deciding the '*bona fides*' of the landlord. Gross unreasonableness of the landlord may in proper circumstances lead the Court to the conclusion that the landlord's requirement is not *bona fide*. How much unreasonableness will be regarded by the Court as evidence of mala fides on the part of the landlord will depend on the facts and circumstances of each case. Richardson, J. in the Court of Appeal in the decision to which I have just referred expressed at p. 505 of 50 Cal. 491 : (AIR 1924 Calcutta 57) the same view dealing with almost similar expression used in the Calcutta Rent Act, 1920 when he observes :

"I agree that a landlord is not acting *bona fide* under the Act unless he reasonably requires the house for his own occupation although there also the Statute did not use the word 'reasonably.' "

14. As to what is "*bona fide*" under the Statute, it is always in my opinion a question of fact. The Court in this contest and with a view to find out whether the requirement of the landlord is *bona fide*, is entitled to look to every relevant fact or circumstance affecting

²45 Bom. 1236 at p. 1240 : (AIR 1921 Bom 34)

⁴50 Cal. 491 : (AIR 1924 Cal 57)

³(1921) 1 Ch. 404 : (90 L. J. Ch 158)

the landlord and his position. The nature and character of the landlord's temporary accommodation at the time when he is asking for the decree for possession, the insecurity or otherwise of the tenure that he might be holding at the time, the fact that he himself is under a

notice to quit, the scope, size and character of his requirement are all relevant factors that the Court might consider in this contest.

15. Mr. Sen with considerable force had argued about the hardship of the tenant that may arise in this case. In considering the question as to whether the landlord *bona fide* requires the house for his own occupation, my view is that the hardship which might be caused to the tenant by granting the decree for possession is not a proper or relevant consideration under proviso (F) of Section 11(1), Rent Act, 1948, The tenant is always entitled to draw the attention of the Court to any factor bearing on the question of *bona fide* requirement or on the need of the landlord. But any possible hardship of the tenant that might be entailed by the passing of the decree for ejectment is not in my judgment a proper or a relevant consideration under proviso (F) of Section 11(1). Rent Act, 1948.

16. Mr. Sen has argued that the defendant is a lawyer Magistrate who has been in Government service and still is and whose family members reside in this house. The defendant is a Sub-divisional Relief and Rehabilitation Officer of the Government of What Bengal. At present he says he is at Siliguri and he will remain there until October this year. He has his wife and two children one is aged 9 years and the other is 13 years who live at 26C, Amherat Row, Calcutta and from where they attend Scottish Churches Collegiate School. In 1943 he was practicing in the Bank shall Police Court as a pleader and was residing at 260, Amheret Row. He joined Government service in 1945. In January 1945 he was posted at Barisal for 2 years and 8 months and be left his family to live in that house in Calcutta. Then from Barisal he was posted to Contain for 6 months Mr. Dutt has on these facts argued that the tenant really does not need the house. On the same facts Mr. Sen argues that it will be a very great hardship of the defendant if he is to leave the house. In my view both such arguments are misconceived. The test that 19 to be satisfied and considered under the statute is whether the landlord *bona fide* requires the house for his own occupation and not whether the tenant needs the house or that a decree for ejectment will cause hardship to the tenant Proviso (F) of Section 11(1) of the Act engrafts an exception where a decree for recovery of possession can still be made in favor of a landlord who *bona fide* require the premises for his own occasion. The Statute thereby recognizes a wholesome principle that a man should not be deprived of his own house if he *bona fide* requires it for his own occupation. Under the Common law or the Transfer of Property Act, the landlord has considerable rights to evict a tenant from his property. A good many of these rights have been taken away by the Act in order to meet the prevailing and acute shortage of housing accommodation for the citizens of this province. A statute like the West Bengal Premises Temporary Provisions Rent Control Act, 1948 is designed to meet the fugitive exigencies of the hour and in doing so the Legislature in its wisdom has still left the landlord with that remnant of his right, which is an incident of ownership to be able to evict a tenant, when he *bona fide* requires his property for his own occupation. This Court will be loath to confiscate that valuable right of the landlord without express statutory provision.

17. In this case in the written statement as I have said before the plaintiff challenged the plaintiff's case of *bona fide* requirement on two grounds. The first ground was that the plaintiff had many other properties and houses in Calcutta and the second ground was as pleaded in Para. 7 of the written statement, namely, that this was a mala fide suit and was instituted because the defendant did not agree to the plaintiff's demand for increment of rent. I find nothing from the evidence of the defendant in support of either of these allegations made in the written statement and nothing

in my opinion has been proved in support of any one of such allegations. Both the grounds, therefore, on which the defendant has challenged the *bona fide* requirement of the landlord plaintiff fail.

18. But nevertheless the plaintiff has to satisfy this Court that he *bona fide* requires the premises for his own occupation. On the facts as I have found above, I have no hesitation in holding that the plaintiff has satisfied the three tests required under proviso (F) of Section 11(1) of the Act, namely, (1) that he 'requires' the house, (2) that the requirement is for his 'own occupation, and (3) that such requirement is '*bona fide*'. I therefore, hold that the plaintiff requires No. 26C, Amherst Row, Calcutta, for his own occupation and accordingly answer the issue in this suit in the affirmative.

19. Therefore, there will be judgment for the plaintiff for possession of premises No. 260, Amherst Row and for costs. Mr. Sen asks for some time to vacate the premises. Time is granted till 3rd November 1949 to the defendant to vacate. The defendant will continue to pay to the plaintiff's solicitors *manse profit* at the rate of rent until the delivery of possession within 7th of each succeeding month for which the same will be due. As the counsel for the defendant says that the defendant has paid all arrears of rent, the plaintiff does not ask for a decree for such arrears of rent. The plaintiff, however, will have this direction that he has the liberty to withdraw the deposit of rents with the Rent Controller, if not withdrawn already. Suit decreed.