CALCUTTA HIGH COURT

Bhulan Singh

Vs.

Ganendra Kumar Roy Chowdhury

A.F.O.D. Nos. 114, 115, 116 and 117 of 1949

(Harries, C.J. and Sinha, J.)

23.08.1949

JUDGMENT

Harries, C.J.

1. These are four appeals from decrees of Banerjee, J. sitting on the Original Side of this Court, made on 12th May 1949 in ejectment suits. The plaintiff-respondent in each of these appeals purchased certain premises known as No. 30 Kali Krishna Tagore Street in the year 1938. These premises were let to a number of tenants-including the four appellants. Notices to quit were served on each of the four appellants and on 14th January 1949 ejectment suits were filed by the plaintiff respondent against each of the four appellants. These suits were tried together by Banerjee, J. sitting on the Original Side, as the facts were common to each case. The learned Judge eventually came to conclusion that the plaintiff was entitled to possession as against each of the four defendants and accordingly made decrees for ejectment in each suit. It is from these four decrees of ejectment that the present appeals have been filed.

2. The short point involved in each of these appeals is whether having regard to the terms of Section 11(1)(f). West Bengal Premises Rent Control [Temporary Provisions] Act, 1948, the plaintiff landlord was entitled to possession as against these tenants.

3. As I have said earlier, the plaintiff who was a trustee under a trust deed, acquired these premises in 1938. It is to be observed that the plaintiff is also the chief beneficiary under this trust. According to the evidence, the premises were old and in the year 1939 before the War and long before these Rent Control Acts were thought of, the plaintiff applied to the Corporation of Calcutta for sanction to rebuild these premises and in the month of March 1939 the Corporation accorded a preliminary sanction to rebuild. In September 1939 the second World War broke out and it is not surprising to find that the plaintiff did not proceed with his intention to rebuild. However, he paid on 4th May 1942 an encroachment fee amounting to Rs. 5,500 which would

entitle him to build certain projections to the proposed building which he otherwise could not have done, and some time during the month of May the Corporation gave their final sanction to the rebuilding of these premises.

4. Nothing however was done presumably owing to the War. On 27th March 1948, the Corporation of Calcutta issued a notice on the plaintiff and the occupiers drawing attention to the dangerous condition of this building and demanding that certain repairs should be done immediately, otherwise they would be done by the Corporation and charged to the plaintiff or the occupants.

5. On 2nd April 1948, the plaintiff entered into an agreement with a firm of contractors know as Messrs. A.K. Sircar and Co., Ltd. to rebuild these premises in accordance with the plan auctioned by the Corporation. In the month of June 1948 an application was made for a permit for the necessary cement and in September 1948 an application was made for the necessary steel which should be required for the construction of this building.

6. It appears that permits could not be granted then and the plaintiff was told to make a further application in March of the following year. In consequence, rebuilding could not be commenced and on 8th November 1948, the plaintiff applied to the Rent Controller for sanction to bring ejectment proceedings against the tenants. The plaintiff alleged that he required possession as he *bona fide* required the premises for rebuilding. This permission however was refused by the Rent Controller.

7. On 1st December 1948, the new West Bengal Premises Rent Control [Temporary Provisions] Act, 1948 came into force and under that Act no previous permission of the Rent Controller to bring a suit was necessary. Accordingly on 8th December 1948, notices to quit were served on the tenants and on 14th January 1949 four suits were filed against the four appellants on the original side of this Court. On 12th May 1949, these suits were decided and decreed in the manner I have indicated.

8. Before Banerjee, J. a number of witnesses were called and amongst them was an Engineer, a Mr. Satish Chandra Bose. According to this witness, the premises in question were between 100 and 150 years old and were in a dilapidated condition. He gave details of the disrepair and in his view the premises would probably collapse if extensive repairs were not undertaken forth, with.

9. There was evidence given by the defendants-appellants that the premises were not so old. But even their evidence showed that these premises were in a state of serious disrepair. Further, notices had been served by the Calcutta Corporation calling upon the plaintiff or the occupiers to put these premises into repair.

10. Banerjee, J. who saw and heard the Engineer, Mr. Satish Chandra Bose, accepted his

evidence. According to the learned Judge he gave his evidence very fairly and if his evidence is accepted, it is clear that these premises were in a state of very serious disrepair and were probably dangerous to the occupants.

11. The defense of the tenants was that the plaintiff, respondent was not entitled to possession because it could not possibly be said that he required these premises for rebuilding. Reliance was placed upon Section 11, West Bengal Premises Rent Control (Temporary Provisions) Act, 1948. That section in so far as it is material is as follows :

> (1) Notwithstanding anything contained in the Transfer of Property Act, 1882, the Presidency Small Cause Courts Act, 1882, or the Indian Contract Act, 1872, no order or decree for the recovery of possession of any premises shall be made as long as the tenant pays to the full extent the rent allowable by this Act and performs the conditions of the tenancy : Provided that nothing in this sub-section shall apply
> * * * *
> (f) Where the premises are *bona fide* required by the landlord either for purposes of building of rebuilding, or for his own occupation or for the occupation of any person for whose benefit the premises are held.

12. The tenants claimed that they could not be ejected as long as they paid to the full extent the rent allowable by the Act. There was no allegation that the rent had not been so paid. The plaintiff landlord however contended that Section 11(1) afforded the tenants no protection against ejectment because the landlord *bona fide* required the premises for the purpose of rebuilding.

13. Quite clearly, if the landlord *bona fide* required these premises for rebuilding then the tenants had no defence whatsoever. On the other hand, if the landlord failed to show such *bona fide* requirement then the tenants could not be ejected.

14. It was suggested that this provision giving the landlord a right to possession, if he established that he required the premises *bona fide* for rebuilding, could have no application whatsoever unless the state of the premises was such that they required to be rebuilt. It is to be observed that proviso (f) to Section 11(1) of the Act does not mention premises requiring rebuilding. What it states is that sub-section (1) shall have no application if the landlord requires the premises *bona fide* for rebuilding. The state of the premises therefore is not an essential factor in the case. However, it cannot be overlooked that in this case the learned Judge has accepted the evidence of a witness which showed that these premises were very old, dilapidated, dangerous and likely to fall if extensive repairs were not done to them quickly.

15. It appears to me that the premises are *bona fide* required by the landlord for the purpose of rebuilding if the landlord honestly requires them for that purpose. The equivalent of the phrase *bona fide* is honestly. It refers to the state of the landlord's mind. The landlord therefore will be

entitled to possession as against the tenant if he established that he honestly requires the premises for rebuilding.

16. The facts in this case show to my mind clearly that the landlord did honestly require these premises for rebuilding. They were bought in 1938 and even then they were obviously old and somewhat dilapidated. The following year an application was made to the Corporation for sanction to rebuild the premises. That application was made when no Rent Control Acts were in force and when a tenant would have no defence whatsoever to a suit for ejectment if notice to quit had been given. A preliminary sanction was granted and Mr. Sanyal has suggested that this application could not have been serious or *bona fide* because nothing was done. In the first place, before a building can be commenced safely the final sanction of the Corporation was required and it must be remembered that in September 1939, the Great War broke out. Even so the landlord moved in the matter because in the month of May 1942 he paid an encroachment fee of Rs. 5,500 and then obtained final sanction to build. Is it likely that a landlord would pay this very substantial sum of Rs. 5,500 if he did not honestly require these premises for rebuilding ? The war dragged on its weary course and it is not surprising to find that the plaintiff respondent took no steps to demolish these premises and rebuild them. As is well known, labour was scarce, materials were scarce and building operations on any great scale were practically impossible during the later stages of the War and for some considerable time thereafter. On 27th March 1948, however, the plaintiff had a reminder that these premises were in a very bad state of repair because on that day the Corporation served ft demolition notice on him. The plaintiff immediately took steps with a view to rebuilding and entered into a contract with a firm of contractors in April of 1948 and in June and September began to busy himself with a view to obtaining permits for steel and cement. The Corporation in September served another demolition notice on the plaintiff.

17. The plaintiff failed to obtain permits for steel and cement and was told to wait a little time. He then took steps to eject his tenants.

18. Mr. Sanyal has urged that bringing these ejectment suits must be mala, fide because the plaintiff was not in a position to rebuild without permits for steel and cement. The evidence called on behalf of the plaintiff however is to the effect that cement and steel would be readily available if the plaintiff was in a position to use them immediately and he would use them if he was able to eject his tenants.

19. I do not think it can be inferred that the plaintiff's intention was not honest merely because he had not got permits for cement and steel before he brought these ejectment suits. If he honestly believed, as I think he did, that steel and cement would be available the moment he was in a position to use such materials, then he would be acting perfectly honestly in bringing these suits. He had been so advised by his Engineer and I think that the plaintiff honestly believed that he could rebuild immediately the tenants were ejected.

20. I can see nothing in the facts of this case to suggest that the plaintiff did not require these premises *bona fide* for rebuilding. He had, as I have said, bought them as old premises and immediately took steps to obtain sanction for building. What prevented the rebuilding was undoubtedly the War and now further difficulties are created by these Rent Acts. The plaintiff satisfied the learned Judge that he had the means to rebuild, that he had made the necessary contracts to rebuild and that he had every intention of demolishing the premises and erecting new premises thereon which would be very much more commodious and would produce five or six times the rent which he was then receiving from the premises. It appears to me upon those plain facts that the learned Judge was bound to hold that the landlord *bona fide* required these promises for rebuilding.

21. It seems to have been argued in the Court below that the landlord could not *bona fide* require the premises for rebuilding unless-rebuilding was absolutely necessary and that the disturbance of the tenants was absolutely necessary. It was pointed out that Courts have held that a landlord does not *bona fide* require premises for his own occupation unless he can show that the premises are necessary to him. I appears to me however, that there is a considerable difference between what a landlord has to establish when he sets out to prove that he reasonably requires premises for his own occupation and when he seta out to prove that he requires premises *bona fide* for rebuilding.

22. A landlord cannot possibly be said *bona fide* to require a twenty-roomed house for his occupation if three or four rooms would be ample for all his purposes. If in the circumstances he claimed that he *bona fide* required a twenty-roomed house for his occupation the Court would immediately hold that the requirement was not *bona fide* or honest, but was in fact dishonest. A man who could be satisfactorily accommodated in three or four rooms cannot possibly honestly require twenty rooms for his occupation. Whether the landlord really needs the accommodation is a test of his honesty.

23. If a landlord genuinely intends to rebuild old and somewhat dilapidated premises and has the means to do so then I think it can be said that he *bona fide* requires the premises for rebuilding because they cannot be rebuilt until he obtains possession and demolishes the existing structure.

24. There is a decision of this Court *Rekhabchand Doogar v. J.R. D'Cruz*[1], dealing with this phrase *bona fide* requires. But it was a case dealing with the *bona fide* requirement of certain premises for the landlord's own occupation. At page 502, Buckland, J., observed :

It seems to me that the plaintiff has here based his requirement of the premises in suit on the ground of his wife's health because he feels that the other grounds would not be sufficient to entitle him to say that he *bona fide* requires the house for his own occupation which it is necessary that I should find for him to obtain an order for possession. From this point of view I

am not at all satisfied as to the *bona fide*s of the plaintiff. Without asserting that he is deliberately untruthful, he has to my mind strained the circumstances in his own favour to the utmost limit. I do not think it is enough that a plaintiff in order to defeat a plea under the Calcutta Rent Act should merely say that be desires the premises *bona fide* for his own occupation. 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.

25. I think this view of the meaning of the phrase *bona fide* requires when it is applied to a landlord's *bona fide* requirement of premises for his own occupation, is the true one. But it in no way affects my view of what the landlord has to establish when he alleges that he *bona fide* requires premises for rebuilding. It seems to me that he establishes *bona fide* requirement for rebuilding when the Court is satisfied on the facts placed before it that the landlord honestly desires to rebuild, has the means to rebuild and will rebuild if the possession is given to him. In considering whether the landlord genuinely and honestly desires to rebuild the Court will consider all the surrounding circumstances. Here it is very easy to come to the conclusion that the landlord honestly desires to rebuild because, as I have said, the premises are old, dilapidated and could be made to yield not Rs. 600 per month as they yield at present, but Rs. 3,500 per month if the premises were rebuilt. From these facts the Court could very easily come to the conclusion that these was an honest desire to rebuild, particularly when it finds that the landlord had taken steps to rebuild long before these restrictions were placed on landlords by these Rent Acts. On the evidence also, it is quite clear that the landlord was in a position to give effect to his

[1]26 CWN 499 : (AIR 1923 Cal 223)

desire and had done everything short of beginning the work of demolition in carrying out his purpose. Mr. Sanyal could, as I have already pointed out, only stress the fact that the landlord up to the present had failed to obtain permits for steel and cement. I am satisfied that the learned Judge was right in coming to the conclusion that there would be no difficulty with regard to steel and cement once the landlord was in a position to enter the premises and begin demolition work. It seems to me, upon these facts, that the learned Judge was right and indeed was bound to hold that the landlord *bona fide* required these premises for rebuilding and that being so, the decrees which he made in each case cannot be assailed.

26. In the result therefore all the four appeals fail and I would dismiss them with costs. Certified for two counsel.

Sinha, J.

27. I agree.

Appeals dismissed.