

CALCUTTA HIGH COURT

Residence Ltd

Vs.

Surendra Mohan Banerjee

A.F.O.O. No. 53 and Matter No. 17 of 1951

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

20.04.1951

JUDGMENT

Harries, C.J.

1. This is an appeal from a judgment and order of Bose J. made on an appln. under Article 226 of the Constitution. The applt. applied to this Ct. for the issue of writs of certiorari or prohibition for quashing or prohibiting certain proceedings for the fixation of standard rent of premises initiated by a tenant and then pending before the Rent Controller of Calcutta. There was an alternative prayer for an order on the parties under section 45, Specific Relief Act. Bose J. came to the conclusion that there was no force whatsoever in the contentions of the applt. landlord and he accordingly dismissed the appln. in its entirety. From that order this present appeal has been preferred.

2. The applt. is the lessee of a large block of flats known as No. 209 Lower Circular Road, Calcutta. The applt. was the tenant of these flats under a trust estate and one of the 145 flats comprised in the building was sublet to the Respondent W. C. Read. The flat was let to Mr. Read at a rent of Rs. 190 per month and by the terms of the tenancy agreement the applt. was bound to provide the tenant with electricity for various purposes, namely, lights, fans, cooking stoves, refrigerators, irons, radios or radiograms and also with hot water, the services of a lift and free services of sweepers, plumbers, carpenters, electricians, durwans and watchmen. The flat was let furnished and it would appear that the landlord was bound to execute repairs and to renew the furniture and fittings when the latter became deteriorated.

3. On 18-12-1950, the tenant Respondent made an appln. in the Ct. of the Rent Controller, who has been made a party to these proceedings, for fixation of the standard rent under the provisions of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950. The applt. applied to the Ct. of the Rent Controller for dismissal of the tenant's appln. on the ground that the Rent

Controller had no jurisdiction to entertain the appln. or to determine the standard rent. On 17-1-1951, the Rent Controller rejected the appln. of the applt. and ultimately transferred the case to the Addl. Rent Controller, who has also been made a party in these proceedings, for disposal.

4. On 20-1-1951, the applt. appealed from the order of the Rent Controller to the Dist. J. of 24-Parganas. An appln. was made to the learned Dist. J. for a stay of all proceedings, but that appln. was refused. It is to be observed that the learned Dist. J. has not yet decided the appeal.

5. When a stay of proceedings was refused by the learned Dist. J. an appln. for prerogative writs was made in this Ct. which was ultimately disposed of by Bose J.

6. It had been contended before Bose J. and it has again been contended before us that the Rent Controller had no jurisdiction whatsoever to entertain this appln. for fixing the standard rent. In the alternative it is contended that if the Rent Controller has jurisdiction, he has only jurisdiction to fix the standard rent of the premises which would not include any payment for the services rendered by the landlord applt. It is suggested that if the Rent Controller has any jurisdiction he would have to consider what part of the sum of Rs. 190 constituted a payment for the furnished premises apart from the services and what part constituted a payment for the services. The suggestion is that only such part of the Rs. 190 as could be rightly attributed to the premises and furniture should be regarded as rent for the purposes of fixing the standard rent.

7. Bose J. rejected these contentions and held that Rs. 190 constituted the rent of the premises. The premises had been let by a written agreement and by the terms of the agreement the landlord had covenanted to perform certain acts or services for a payment of a lump sum as rent of the premises. That being so, Bose J. was of opinion that the rent at which these premises were let was Rs. 190 and that the Rent Controller had jurisdiction to ascertain and fix the standard rent.

8. "Premises" are defined in the Act by Section 2 (8) in these terms :

"Premises' means any building or part of a building or any but or part of a hut let separately and includes :

(a) the gardens, grounds and out houses (if any) appertaining to such building or part of a building or hut or part of a hut,

(b) any furniture supplied or any fittings affixed by the landlord for use of the tenant in such building or part of a building or hut or part of a hut,

but does not include a room or part of a room or other accommodation in a hotel or lodging house" "Hotel or lodging house" is defined in Section 2 (3) of the Act but it is not necessary to consider this definition because it is not contended in this case that the flat concerned is a room or rooms in a hotel or lodging house. "Standard rent" is defined in Section 2 (10) of the Act in these terms :

"Standard rent' in relation to any premises means :

- (a) the standard rent determined in accordance with the provisions of Schedule a,
- (b) where the rent has been fixed under section 9, the rent so fixed; or at which it would have been fixed if appln. were made under the said section."

S. 9 deals with the fixation of standard rent by the Rent Controller.

9. It is to be observed that the word "rent" is not defined in the Act and therefore it must be given its ordinary grammatical meaning. There is a provision, namely, Section 8 of the Act, dealing with the fixation of rent of furnished premises and the Controller may on appln. of a tenant made within six months of the beginning of the tenancy, reduce the portion of the rent which, according to the Controller, was added in respect of the use of furniture to a fair and reasonable amount, if he finds that such portion of the rent was unduly high. There is, however, no provision dealing with any special reduction where premises are let with services.

10. That premises can be let with services and still be premises within the meaning of the Act is, I think, clear from the provisions of a number of sections of the Act. Section 34 provides ;

"Whoever, in any case in which an order or decree for the recovery of possession of any premises is prohibited under section 12, without the previous written consent of the Controller, or save for the purpose of effecting repairs or complying with any municipal requisition, willfully disturbs any easement annexed to such premises, or removes, destroys, or renders unserviceable, anything provided for permanent use therewith, or discontinues any supply or service comprised in the tenancy of such premises, shall, on the complaint of the party aggrieved, be liable, on the first occasion, to a fine which may extend to five hundred rupees....."

From this section it is quite clear that the draftsman of the Act envisaged tenancies which carried with them as it were certain services just as a tenancy might carry it a right to use a way or a right to enjoy light and air and such like which are all easements.

11. Section 38 also makes it clear that an agreement of a tenancy may comprise certain services. Sub-section (1) provides :

"The Controller shall, on appln. made to him in this behalf by any tenant in possession of any premises, cause a notice to be served in the prescribed manner on the landlord thereof requiring him to make any repairs which such landlord is bound to make to the premises or to take any measures for the due maintenance of any essential supply or service, such as the maintenance of the supply of water or electricity' the maintenance of conservancy or sanitary service and the maintenance of any lift, which such landlord is bound to maintain is the premises under the conditions of the tenancy or according to local usage."

In this sub-section it is again recognized that premises within the meaning of the Act can be let with amenities. Lastly Section 41 also deals with the question of amenities. That section provides :

"(1) No landlord either himself or through any person purporting to act on his behalf shall without just or sufficient cause out off or withhold any essential supply or service enjoyed by the tenant in respect of the premises *****,

Expln. - In this section essential supply or service includes supply of water, electricity, lights in passages and on stair-cases, lifts and conservancy or sanitary service."

12. From these sections I think it is quite clear that the framers of the Act clearly contemplated that a tenancy similar to the one we are considering, namely, a tenancy which carries with it certain amenities, was within the purview of the Act.

13. What was let in this case was a furnished flat and in the tenancy agreement the landlord agreed to provide certain amenities such as electrical light, hot water and such like. He covenanted to provide these amenities just as he covenanted to keep the premises in repair.

14. Mr. Niren De contended that by reason of the obligations of the landlord to provide these amenities the flat could not be regarded as premises as defined in the Act. If Mr. Niren De is right then the fact that in the tenancy agreement the landlord undertook to execute repairs would place the flat entirely outside the purview of the Rent Control Act. Again, it is common knowledge that in blocks of flats durwans and night watchmen are invariably installed by the landlord and frequently the landlord might agree in the tenancy agreement to provide such protection. Would the mere providing of a durwan at the main entrance to a block of flats be sufficient to place each one of the flats in the block outside the purview of the Act? That would undoubtedly be the result if Mr. Niren De's argument is right because the so-called rent payable would not strictly be rent for the flat, but a payment partly for the flat and partly for services.

15. In my judgment when a flat is let, with the landlord agreeing to provide certain free services, what is let is the flat and what is paid is paid for the flat with the landlord providing certain amenities or performing certain obligations. What is paid is rent for the flat and no part of it can be truly regarded as payment for the services. Could it be possibly said that if in a tenancy agreement the landlord had undertaken to execute repairs and to paint the premises once every five years then what was paid monthly for the premises was not rent but that only a part of it was rent and the remainder would have to be apportioned to the cost of repairing and the cost of painting? In ordinary lettings where covenants of this kind appear it has never been contended even that what is paid is not strictly rent and it appears to me that it makes no difference that the landlord has undertaken obligations other than the customary ones for the benefit of the tenants. If he has undertaken obligations by the tenancy agreement the monthly payment or the yearly

payment as the case may be would be suitably adjusted. That, however, would not make the monthly or yearly payment any the less rent.

16. In the sections that I have quoted from the Act the draftsman treated these services or amenities like easements. A flat, for example, on an upper floor is let and if nothing is said about the right to use the common stair-case and the common passages, the very letting would give such a right. It could never be said that what was paid for the flat was not strictly rent because it included a payment for the use of the common stair-case and the common passages. The user of the common stair-case and passages is an obligation which the landlord would be bound to provide to the tenant who had taken the flat, and it appears to me that where the landlord has undertaken not to provide a common staircase but a lift the position would be very much the same. What the tenant would pay for the flat would be rent, but by the tenancy agreement the landlord would be bound to provide a lift for access to the flat. What is paid as rent under an agreement is paid for the premises together with the benefits of the landlord's covenants and that payment is at common law in England and under ordinary tenancy law in India the rent of the premises and must be regarded as the "rent" of the premises as that term is used in the Rent Control Acts.

17. I am aware of the danger of referring to English authorities on Acts such as the present. But two recent cases in England make it clear that the Cts. there regard rent as what is actually paid under the tenancy agreement for the premises and if under the agreement the landlord has to provide certain amenities, the sum paid is nevertheless rent in the true sense of the term.

18. The expression "standard rent" in the Calcutta Rent Control Acts means very much what it means in the English Act. In the Rent and Mtge. Interest Restrictions Act, 1939, the expression "standard rent" meant the rent at which the dwelling house was let on a certain date and that is very much the meaning of the term in India.

19. In the case of *Property Holding Company Limited v Clark*¹, the Ct. of Appeal had to consider what was the standard rent of certain premises. It appears that by an agreement of 2-6-1934 the premises had been let for the payment of £. 110 a year as rent and an additional payment of £. 30 a year in respect of the provision of certain lighting and cooking equipment, the furnishing and cleaning of the hall and staircase and other similar amenities. It was contended that such being the agreement the rent was £. 110 a year and did not include the £. 30 a year which was said to be paid for these amenities or services. The Ct. of Appeal however held that the additional payment of £. 30 a year under the agreement of 1934 was part of the rent within the meaning of Section 2, sub-section (3) of the Act which as I have said defines "standard rent."

20. In a somewhat later case, *Alliance Property Co. Ltd. v Shaffer*², (which was later affd. by the Ct. of Appeal, (1949) 1 K. B. 367) Slade J. went somewhat further. In that case the premises had been let on 31-5-1934 for £. 175 per annum. Later on the same day the tenants had executed a

second deed under which they covenanted to pay a further £. 100 per annum to the landlords of which £. 40 was in consideration of certain alterations which the landlords had made to the premises and £. 60 was payable towards the cost of management of the building. This second deed was described on the back thereof as a supplemental agreement and it was provided that it was to run concurrently with the lease. In those circumstances Slade J. following the decision of the Ct. of Appeal to which I have made reference (*Property Holding Co. Ltd. v. Clark*) held that the standard rent of the premises was not £. 175 as contended by the tenants, but £. 275 as contended by the landlords. In other words, the rent included not only what was described as rent in the tenancy agreement proper, but also those payments which were contemplated in the supplemental agreement which were really payments for amenities provided by the landlords under their agreement with the tenants.

¹(1948) 1. K.B. 630

²(1948) 2 K. B. 464

21. It appears to me that the decision of Bose J. that rent of these premises was Rs. 190 per month cannot possibly be assailed. That was the rent payable for the premises and it is not the less rent proper because the landlord in the tenancy agreement had undertaken to do certain acts.

22. That being so, the appln. before Bose J. was rightly dismissed and the appeal therefore fails and is dismissed with costs. Certified for two counsel. One set of costs will be paid to the tenant and another set of costs to the two Rent Controllers who have appeared through one counsel. The order of stay of proceedings before the Rent Controller is vacated. The Registrar will intimate to the Rent Controller, at the cost of the tenant Respondent W. C. Read that the stay order has been vacated and that he may proceed. The Rent Controller will act on the endorsement of Mr. A. K. Sen.

Banerjee, J.

23. I agree.

Appeal dismissed.