

CALCUTTA HIGH COURT

Krishna Prosad Bose

Vs

Sarajubala Dassi

(R Bachawat, C.J. D Sinha and P Mookerjee , JJ.)

15.09.1960

JUDGMENT

Bachawat, J.

1. This Reference arises out of a suit filed by a sub-tenant for a declaration of his right to become a direct tenant under the superior landlord under Section 13(2) of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 and for an injunction restraining the landlord from interfering with his possession of the premises in suit.

2. The landlord, Saraju Bala Dassi let to the tenant, Suniti Devi, the ground-floor of premises No. 1/28, Prince Golam Mohammed Road. The landlord terminated the tenancy by a notice to quit with effect from the 1st of May, 1953 and thereafter instituted a suit for ejectment against the tenant and obtained a decree for ejectment against her on August 24, 1954. The plaintiff, Krishna Prosad Bose was no party to that suit. The plaintiff instituted the present suit on November 11, 1954. He claims that he has been a sub-tenant of a portion of the ground-floor of the premises under Suniti Devi. The plaintiff (sic) disputes the existence of the subtenancy. If the plaintiff ever became a sub-tenant, the date on which he became a sub-tenant is also in dispute. The munsiff decreed the suit. On appeal the subordinate Judge set aside the decree and dismissed the suit. The second appeal by the plaintiff to this Court was dismissed but leave to appeal under Clause 15 of the Letters Patent was granted. The questions debated before the Division Bench were inter alia whether the tenant had sublet a part of the premises to the plaintiff after her contractual tenancy had been terminated by a notice to quit and if so whether a statutory tenant could sub-let the premises, and whether the sub-tenant could claim the benefit of Section 13(2) of the West Bengal Rent Control (Temporary Provisions) Act, 1950. I will call this Act the 1950 Act. The arguments raised important questions of law and accordingly the Division Bench acting under chapter II, Rule I, proviso (ii) of the Appellate Side Rules referred the following questions to a Special Division Bench :

(1) "Can a statutory tenant, that is to say a tenant whose tenancy has been determined by a notice

under Section 106 of the Transfer of Property Act, but who continues in occupation by virtue of Protection against eviction under the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, sub-let the premises let to him?"

(2) "Does such a sub-tenant become entitled to the benefit of direct tenancy under the landlord under the provisions of Section 13(2) of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950?"

3. Shortly put the matter stands thus. The definition of "tenant" in Section 2(11) of the 1950 Act on its true interpretation includes a statutory tenant protected by the Act. There is nothing repugnant to this meaning in the subject or context of Section 13 of the Act. On a proper interpretation of Section 13 read with Section 2(11), a sub-letting by a statutory tenant is a sub-letting within the meaning of Section 13, and the sub-tenant is entitled to protection in cases coming under Sub-section (2) of Section 13.

4. But I must examine the contentions advanced before us.

5. Mr. Janah said that he does not know who a statutory tenant is, for the 1950 Act does not speak of a statutory tenant. Now a "statutory tenant" is a convenient name for a person who after his contractual tenancy of the premises has expired retains possession of the premises by virtue of the provisions of the Rent Control and Tenancy Acts. Lord Reid in *Baker v. Turner*, 1950 AC 401 at p. 436, described him as a person who has been a tenant and to whom a right is given by the Acts to remain in possession after his contractual tenancy has gone. It is convenient to give a short name to a class of persons who have real rights instead of describing them by a long adjectival phrase. The statutory tenant therefore includes a person who retains possession of the premises by virtue of the protection given by the Rent Control and Tenancy Acts after his contractual tenancy has been determined by a notice to quit under Section 106 of the Transfer of Property Act.

6. Mr. Janah contended that the word "tenant" in Section 13 of the 1950 Act does not include an ex-tenant or a person continuing in possession after his contractual tenancy has terminated because the definition in Section 2(11) of the Act does not include such a person.

7. There is no substance in this contention. The Act gives protection to an ex-tenant from eviction and regulates his status. In the context of the Act the word "tenant" includes the ex-tenant and the word "rent" includes the periodical sum payable by the ex-tenant. In the Rent Control and Tenancy Acts these words are not used in a narrow technical sense, see *Remon v. City of London Real Property Co., Ltd.*, 1921-1 KB 49 and *Sm. Sukuraari Devi v. Rajdhari Pandey*. Sometimes the definition of "tenant" expressly includes an extenant as in the Calcutta Rent Order, 1943 after its amendment on May 19, 1944, the Calcutta Rent Ordinance, 1946, the

West Bengal Premises Rent Control (Temporary Provisions) Act, 1948 and the West Bengal Premises Tenancy Act, 1956. But the definition of "tenant" in the Calcutta Rent Act, 1920 and in the Calcutta Rent Control Order, 1943 before its amendment on May 19, 1944 did not expressly include the ex-tenant; yet the word "tenant" therein was construed as including the ex-tenant, See *Kamani Industrial Bank v. Satya Niranjan Shaw*¹, and *Bithaldas Chandak v. Lalbehari Dutt*², *Keshab Mitter v. Mrs. P. Ghosh*³, The definition of "tenant" in the 1950 Act must receive the same construction and must include the ex-tenant.

8. The cases of *Sm. Nandarani Dassi v. Satya Narain Harit*⁴, and *S.B. Trading Co. Ltd. v. Satyendra Chandra Sen*⁵, confirm this conclusion. The two cases decided that though the word "tenant" in the 1950 Act must receive the extended meaning, a tenant whose interest in the premises had been ipso facto determined under Section 12(3) of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1948 was not entitled to the protection of Sub-sections (1) and (5) of Section 18 of the 1950 Act. The decisions proceeded on the narrow and special ground that such a tenant was not a tenant against whom recovery of possession of the premises was claimed "on the ground of default in payment of arrears of rent" as contemplated by those subsections." Even here the legislature intervened and made suitable amendments in the 1950 Act by the West Bengal Premises Rent Control (Temporary Provisions) (Amendment) Act, LXII of 1950 so as to extend the protection of Section 18 to this class of tenants, The amending Act substituted Sub-clause (ii) in Sub-section (11) of Section 2 of the 1950 Act and provided that the sub-clause shall be deemed always to have been so substituted. The amended definition of "tenant" includes a person whose interest in the premises had been ipso facto determined under Section 11(3) of the 1948 Act, and is a legislative recognition of the interpretation that the tenant includes a person continuing in possession after his contractual, tenancy has terminated.

9. The same meaning must be given to the word "tenant" in Section 13 of the 1950 Act. There is nothing repugnant to this meaning in the subject or context of Section 13. There may be a statutory tenant of the first degree as also a statutory tenant of an inferior degree. Section 13 refers to a statutory tenant when it speaks of a tenant whose tenancy is determined by a decree in a suit obtained by a landlord by reason of a ground specified in Section 12(1)(h). The tenancy of the statutory tenant is determined by a decree of court, for he then loses the protection, from eviction; whereas the tenancy of a contractual tenant is determined not by a decree of court but by one of the modes specified in Section 111 of the Transfer of Property Act.

10. Mr. Janah said that the conception of statutory tenant and statutory tenancy is imaginary and unreal. I cannot agree with him. The conception of statutory tenancy is not known to the Transfer of Property Act. The statutory tenancy is a creation of the Rent Control and Tenancy Acts and we must look at the Act which creates the tenancy to find out what its incidents are. The Rent Control and Tenancy Acts create a special world of their own. They speak of life after death. The

statutory tenancy arises phoenix like out of the ashes of the contractual tenancy. The contractual tenant may die but the statutory tenant may live lone thereafter. The statutory tenant is an ex-tenant and yet he is a tenant. Mr. Janah described him as a phantom tenant. However described, the statutory tenant is a real person having real rights. He is neither a contractual tenant nor a trespasser. He is a person having special rights and bearing the special name of a statutory tenant. We cannot ignore him. We must grapple with him as a reality and look at the Act under which he claims protection to find out what his rights are.

11. Mr. Janah contended that the statutory tenant under the 1950 Act can have no right to sub-let the premises in the absence of any provision in that Act corresponding to Section 15(1) of the English Increase of Rent and Mortgage (Restrictions) Act, 1920 and Section 19(1) of the West Bengal Premises Tenancy Act, 1950. There is no substance in this contention. It was held in *Roe v. Russell*⁶, that the right to sub-let is an incident of the estate created by the contract of tenancy and not a term or condition of the contract and that consequently the statutory tenant could not derive the power to sub-let from Section 15(1) of the Increase of Rent Etc. Act, 1920 and that nonetheless Sections 4(1)(h) and 5 and other provisions of that Act showed that he could lawfully sub-let a part of the premises and that the landlord was not entitled to eject the tenant from the part of the premises sub-let to him even after obtaining an order for possession against the tenant. This case was followed in *Monoranjan Bhattacharjee v. Satya Charan Law*⁷, where it was held that the statutory tenant of the first degree enjoying the protection of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1948 could lawfully sub-let a part of the premises. It is however desirable to say that the right of the statutory tenant is to be found in the Act which gives him protection and not in the Transfer of Property Act.

12. Mr. Janah next contended that a statutory tenant is not a lessee of the property, and that being so, he can have no right to sub-let the property. Let us examine this contention. On the expiry of the lease, the right to enjoy the property transferred by the lease comes to an end. A tenant who takes the benefit of the 1950 Act after his lease has come to an end, is not a lessee within the meaning of the Transfer of Property Act and Section 108(j) of that Act no longer gives him the right to sub-let the premises. Nonetheless the tenant whose lease has expired and who takes the benefit of the 1950 Act is a tenant in the sense that he is entitled to hold the premises by virtue of the protection given by the Act. He has the right to retain exclusive possession of the premises as long as he complies with the provisions of the Act. He can actively enforce this right and even maintain an action of trespass against the landlord, see *Marcroft Wagons Ltd. v. Smith*, 1951-2 KB 496 at p. 501. The Act which gives him protection from eviction also confers upon him the power to sub-let the premises held by him. The statutory tenant can sub-let what he is entitled to hold and possess by virtue of the Act. The sub-letting confers upon the sub-tenant the right to hold exclusive possession of the premises as against the tenant. So long as the statutory tenancy

subsists, the landlord of the tenant also cannot eject the sub-tenant. But when the statutory tenancy comes to an end the landlord is entitled to eject the sub-tenant except where the sub-tenant is entitled to special protection under the Act. Such protection is given by Section 13(2) and the subproviso to proviso (c) to Section 12(1) of the 1950 Act. On the termination of the statutory tenancy in the circumstances mentioned in those provisions, the sub-tenant is entitled to become the direct tenant of the landlord except where the case falls within Section 13(1), that is to say, except where the sub-letting is by a statutory tenant of inferior degree and is made without the consent of the landlord. By Section 13(1) the sub-letting by a tenant of inferior degree is not binding on the non-consenting landlord.

13. By Clause (c) to the proviso to Sub-section (1) of Section 12 of the 1950 Act, the sub-letting of a minor part of the premises is not a ground of eviction of the tenant. Even applying the principle of the English cases and the reasoning in 1928-2 KB 117 it must follow that the sub-letting by the statutory tenant of a minor part of the premises does not automatically terminate the statutory tenancy. Consequently save as provided by Section 13(1) the statutory tenant is entitled to sub-let a minor portion of the premises, the sub-letting is binding on the landlord and the sub-tenant is entitled to the protection of Section 13(2) and the sub-proviso to the Clause (c) of the proviso to Section 12(1).

14. Again the sub-letting of the whole or a major portion of the premises for a period not being a period of more than seven consecutive months is not a ground of eviction of the statutory tenant.

Plainly such a sub-letting does not automatically terminate the statutory tenancy. Consequently save as provided by Section 13(1) such a sub-letting is rightly made and is binding on the landlord and the subtenant is entitled to the protection of Section 13(2).

15. The English decisions on the question must be applied to a case under the 1950 Act with some caution. The English Rent Acts apply only to a dwelling house. The key-note of those Acts is the protection of the home. They protect persons who are residents in dwelling houses. An ex-tenant loses the protection of those Acts if he ceases to occupy the premises as his residence in some substantial sense. The price of a statutory tenancy is continuous residence; See Megarry, Rent Acts, 7th edition, pages 41, 182-3, 192 and 219; *Skinner v. Genry*⁸. This fundamental principle is deduced mainly from the fact that the English Rent Acts apply only to a dwelling house. On this principle the tenant loses the protection of those Acts, if on the date of the expiry of a lease he having already sub-let a part of the premises is occupying the remainder for business purposes and not as his residence, *Haskins v. Lewis*, 1931-2 KB 1; it does not matter that on the date of the commencement of the proceedings for the recovery of possession of the premises by the landlord, the tenant has recovered possession of the part used as his dwelling house and has again taken up his residence there unless he shows that he continuously intended

to occupy some parts of the premises as his dwelling house; *John M. Brown Ltd. v. Bestwick*, (1950) 2 All ER 338. On this principle, if on the date of the expiry of the contractual tenancy the tenant has already sub-let the premises as a whole and has ceased to reside there, he loses the protection of the Acts, This conclusion follows independently of the introduction by the Act of 1923 of paragraph

(h) to Sub-section (1) of Section 5 of the Act of 1920 and independently of paragraph (d) of the first schedule to the Act of 1933, see 1931-2 KB 1 at p. 18; 1950-2, All ER 338 at p. 340. On the same principle the statutory tenant who sub-lets the whole premises and abandons his home there, loses his protection under the Act; but it is still an open question whether the sub-tenant to whom the whole premises is sub-let in such circumstances is entitled to the protection of Section 15 Sub-section (3) of the English Increase of Rent Etc. Act, 1920, see *Oak Property Co. Ltd. v. Chapman*⁹, *Lewis v. Reeves*¹⁰, The first mentioned case decided that paragraph (d) of schedule I to the English Act of 1933 cannot produce the result that a sub-letting by a statutory tenant of part of the premises, the remainder being already sub-let, is altogether a nullity and that the sub-letting is effectual to confer upon the sub-tenant the rights specified in Section 15 Sub-section (3) of the English Act of 1920, if the statutory tenant had at no time abandoned the premises as his home and if on the date when the landlord commences proceedings for recovery of possession of the premises the statutory tenant retained sufficient possession of the remainder of the premises so as to preserve his own right as a statutory tenant.

16. The provisions of the English Rent Acts must be contrasted with those of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950. Our 1950 Act applies to all premises whatever the purposes of its letting might be. The letting under that Act may be for residential as also for non-residential purposes. There is nothing in the 1950 Act which shows that the statutory tenant loses the protection of the Act when he ceases to occupy the premises as his residence. Continuous residence in the premises is not the condition of protection under the Act. The premises does not cease to be premises within the Act by non-user as residence. The statutory tenant who has sub-let the whole premises retains possession of it through the sub-tenant. The sub-letting does not automatically terminate the statutory tenancy. Consequently such a sub-letting is not a nullity and the sub-tenant is entitled to protection under the Act.

17. The question next arises as to what are the consequences of sub-letting by a statutory tenant of the whole or a major portion of the premises for a period of more than seven consecutive months? Such a sub-letting is of course a ground of eviction of the statutory tenant by proviso (c) to Sub-section (1) of Section 12. But the question is whether subject to the restrictions contained in Section 13(1) the sub-tenant is entitled to the protection of Section 13(2) of the Act. This Bench does not propose to answer this question in this reference. In favour of the view that this question should be answered in the affirmative the following arguments may be noted:

(1). The sub-letting of the whole or a major portion of the premises for more than seven consecutive months is a ground of eviction of the tenant under Clause (c) of the proviso to Section 12(1) but such a sub-letting is not of itself unlawful.

(2). The sub-tenant to whom the whole or a major portion of the premises is sub-let for more than seven consecutive months is a sub-lessee within the meaning of Section 13(2).

(3). Section 13(2) applies if the tenancy of the statutory tenant is lawfully determined by virtue of a decree obtained by the landlord by reason of the ground specified in Clause (c) of the proviso to Sub-section (1) of Section 12, that is to say, on the ground of subletting of the whole or a major portion of the premises for more than seven consecutive months. Consequently on the determination of the statutory tenancy on that ground the sub-tenant is entitled to the protection of Section 13(2).

(4). The question is not whether the statutory tenant loses his protection under the Act, but whether the sub-tenant is entitled to protection when the statutory tenant has lost the protection of the Act. On a plain interpretation of Section 13(2) the sub-tenant to whom the whole or a major portion of the premises has been sub-let for more than seven consecutive months is entitled to become the direct tenant of the landlord except where the case falls within Section 13(1).

(5). Beyond doubt the sub-tenant to whom a major portion of the premises has been sub-let is entitled to the protection of the sub-proviso to Clause (c) of the proviso to Section 12(1).

(6) Paragraph 4 of Schedule A shows that the sub-tenant of a whole or a major portion of the premises is recognised and protected by the Act and is entitled to fixation of standard rent.

18. Our decision in this case is confined to the case of the statutory tenant claiming protection under the 1950 Act. Whether or not the statutory tenant claiming protection under the West Bengal Premises Tenancy Act, 1956 or under any other Act has the right to sub-let the premises must be determined upon examination of the provisions of those Acts.

19. I propose that questions (1) and (2) be answered by saying that save as provided in Section 13(1) of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, the statutory tenant is entitled to sub-let the premises and that such a subletting is binding on the landlord and the sub-tenant is entitled to the protection under Section 13(2). This Bench does not adjudge on the consequences of sub-letting of the whole or a major portion of the premises by the statutory tenant for more than seven consecutive months.

20. There will be no order as to the costs of the reference.

Sinha, J.

21. In this Letters Patent Appeal No. 1 of 1959 two questions of law were referred for adjudication by a Special Division Bench, as have been set out in the judgment of Bachawat, J.

22. As will appear from the questions formulated, they postulate the facts upon which the answers are to be based. Consequently, it would not have been necessary to refer to the facts. A brief reference to the facts, however, is necessary because of an argument put forward by the learned advocate for the respondent. Sm. Sarajubala Dassi, the defendant No. 1 was the owner of premises No. 1/28, Prince Golum Mohammed Road, in Calcutta. Suniti Devi, the defendant No. 2 was a tenant of the groundfloor of the said premises. The owner served notice on the defendant No. 2 determining her tenancy, with effect from the last day of April, 1953 and instituted an ejectment suit in the year 1953, being T. S. No. 519 of 1953 which was decreed on the 24th August, 1954. On 23rd November, 1954 the plaintiff, Krishna Prosad Bose filed a suit in the First Court of Munsif at Alipore, being Title Suit No. 835 of 1954, stating that he was a sub-tenant under the defendant No. 2 in respect of a portion of the groundfloor, and that under the provisions of Section 13(2) of the West Bengal Premises Rent Control Act of 1950 (hereinafter called the "Act") he was entitled to be declared as a direct tenant under the owner, the defendant No. 1. On the 27th June, 1956 the suit was decreed. Against this, there was an appeal preferred before the Subordinate Judge, Second Additional Court, Alipore, being Title Appeal No. 751 of 1956. The learned Subordinate Judge held upon the evidence that the plaintiff was never in fact a sub-tenant under the defendant No. 2 and that he had not become a direct tenant under the defendant No. 1 by reason of the decree passed against the defendant No. 2 in T. S. No. 519 of 1953. Actually, he held that the plaintiff had been set up by the defendant No. 2 with the false name of a sub-tenant, only to prevent her own eviction. Against this decision, the plaintiff preferred a second appeal to this High Court. This second appeal was heard by Sen, J., who by his judgment dated 22nd July, 1958 held inter alia that the finding of the learned Subordinate Judge, to the effect that there was no existence of such a sub-tenancy in favour of the plaintiff, was a finding of fact based on sufficient materials, and could not be challenged in second appeal. He proceeded however also to hold that the defendant No. 2 being a statutory tenant, could not sublet, and subsequently the plaintiff could not succeed. The appeal was dismissed, although leave was granted to appeal under Clause 15 of the Letters Patent. The Letters Patent Appeal No. 1 of 1959 came up before a Bench presided over by Guha, J. The learned Judges were of the opinion that there was a conflict of opinion on the question as to whether a statutory sub-tenant could sublet. Hence, two questions were referred for adjudication by a special Bench. These two questions have been set out in the judgment of Bachawat, J.

23. The point taken by Mr. Janah appearing on behalf of the defendant No. 1 was firstly, that in view of the finding of fact by the learned Subordinate Judge, upheld by Sen, J., that the plaintiff was never in fact a sub-tenant, these questions do not arise. It is somewhat regrettable that this

basic question was not considered by the learned Judges before making the order of reference. If the plaintiff had failed to establish his status as a sub-tenant, in point of fact, I do not see how any further question arises. However, the questions asked are in a general form, and it would not be proper for us to refuse to answer them. The questions asked are undoubtedly of great importance, and will constantly arise in future. An authoritative decision would certainly be useful.

24. The concept of a "statutory tenant" has arisen from the Rent Restriction Acts, which have conferred upon tenants, rights which they did not possess, under the common law in England and under the Transfer of Property Act, in India. The law relating to leases of immovable properties in India is set out in Chapter V of the Transfer of Property Act (Act XX of 1929). By Section 105, a lease of immovable property has been defined to be a transfer of a right to enjoy Such property, made for a certain time, express or implied, or in perpetuity, for a consideration. Section 106 lays down that in the absence of a contract or local law or usages to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year terminable by six months' notice and a lease of immovable property for any other purpose is a lease from month to month terminable by 15 days' notice expiring with the end of a month of the tenancy. Section 108 lays down the rights and liabilities of the lessor, and the lessee, and it has been provided that the lessee may transfer by way of sublease, the whole or any part of his interest in the property, and any transferee of such interest or part thereof may again transfer it. The lessee shall not, however, by reason only of such transfer avoid his liabilities under the lease. The result is that under the T.P. Act, a monthly tenant could sublet the premises or part of the premises in his possession, and the subtenant could again sublet. The owner, however, was not bound to recognise the sub-tenant, and upon the termination of the tenancy of the head tenant, the sub-tenancy automatically came to an end. Owing to the hardship caused by a dearth of accommodation, Rent Acts have been passed from time to time, restricting the rights of landlords to evict their tenants. One of the main benefits granted by such statutes upon the tenants and sub-tenants is protection from eviction. So far as a contractual tenancy is concerned, it comes to an end upon the service of a valid notice to quit. Under the T.P. Act, the tenant can have no further defence from eviction. The concept of a statutory tenancy is derived from the English Rent Acts. According to Megarry, a statutory tenancy arises when a tenant under a lease or other contractual tenancy of premises, remains in possession without the landlord's assent, after the expiration of the contractual tenancy. Neither the English Acts nor the Indian Statutes mention the term "statutory tenancy", so that it has been left to the courts to work out the nature of a statutory tenancy, some characteristics of which we shall have to notice presently. The concept has not been kindly received, and has been described with some degree of vituperation. It has been described as something of a "jurisprudential curiosity", and the position of a statutory tenant has been described as "an anomalous legal entity". A number of cases have been cited before us and must be briefly reviewed. The earliest case cited is *Shuter v. Hersh*,

(1922) 1 KB 438. Speaking about a statutory tenant, Scrutton L.J. said as follows:

"This case represents another stage in the development and definition of that anomalous legal entity, the statutory tenant, the person who holds land of another contrary to the will of that other, who strongly desires to turn him out. Such a person would not ordinarily be described as a tenant

The tenancy does not depend on the will of the landlord at all; it depends upon the terms of the statute....."

25. The next case cited is *Keeves v. Dean*¹¹. This case is of some importance, because it has been referred to, in the order of reference. The facts in the case were as follows: In 1920, the owner let a dwelling house to P.B. In August 1922, he served notice to quit. P.B. did not quit and on the 5th January, 1923 intimated, to the owner that he had assigned his tenancy to D. Thereupon, the owner filed a suit. The question raised was as to whether P. B. a statutory tenant, could assign his tenancy. Bankes L. J. said as follows:

"I think it is a pity that the expression "statutory tenancy" was ever introduced. It is really a misnomer, for he is not a tenant at all, although he cannot be turned out of possession so long as he complies with the provisions of the statute; he has no estate or interest in the premises such as a tenant has. His right is a purely personal one."

26. Scrutton L.J., while agreeing that the statutory tenant could not make an assignment of the entire tenancy, held that he would reserve the question whether a statutory tenant could sublet the whole or a part of the premises. Thus, the decision is not directly on the point that we have been called upon to decide. Although the legal position of a statutory tenant has been determined and it has been laid down that such a tenant has no estate or interest in the premises, Such as a contractual tenant has, which he could assign, the question as to whether such a tenant could sublet a part of the premises in his occupation, was expressly kept open.

27. The next case cited is *Carter v. S.V. Carburetter Co., Ltd.*¹², Lord Greener M. R. said as follows :

"The phrase "Statutory tenancy" although convenient, must not be allowed to mislead. In truth and in fact, a tenant who takes the benefit of the Act after the lease has come to an end, is not a tenant at all, in the sense that he has an estate. He has as has been held, a merely personal right of occupation, and that being a merely personal right, the authorities to which we have referred have decided that no person can claim the benefit of that part of the Act unless he is personally in occupation."

In (1950) AC 401 at p. 436, Lord Reid said as follows:

"It has long been settled that the Rent Acts do not prevent an owner from terminating the tenancy of his tenant in the ordinary way: What they do is to give to a person who has been tenant, a right to remain in possession after the tenancy has gone. A person with such a right is commonly called a statutory tenant, but that name, though convenient is inaccurate".

In *Solomon v. Orwell*, (1954) 1 All Eng Rep, 874, the position of the subtenant of a statutory tenant came to be pointedly considered. Lord Denning said:

"When a statutory tenant sub-lets a part of the premises he does not thereby confer any estate or interest in the sub-tenant. A statutory tenant has no estate or interest in himself and he cannot carve something out of nothing. The sub-tenant, like the statutory tenant, has only a personal right or privilege. The question is: What is the position of the sub-tenant when the statutory tenancy comes to an end ?..... When the statutory tenancy comes to an end, the sub-tenants right automatically comes to an end unless there is some statutory protection afforded to him."Thus, we have an answer to the question which naturally arises when we find that the statutory tenant has no estate, If he has no estate, then how does he carve out a sub-tenancy? The answer is that the personal right of the statutory tenant is also something which, subject to the limitations of the statute creating it, is capable of being transmitted to a sub-tenant. Being a creature of the statute, however, the right of the statutory tenant or sub-tenant must be governed by the statute creating it, or regulating its incidents. These rights have sometimes been indicated in the statute concerned. But quite often, they are left unspecified, and the courts are left to spell them out as best as they can. As early as the 1920 Act, the English statute contained a clause that the lights and liabilities of a statutory tenant would be the same as that of a contractual tenant. It is, however, only in our 1956 Act, that such a clause has come to be introduced, (section 19). Finally we come to the case of (1928) 2 KB 117. The facts in that case were as follows: The plaintiff became owner of a house which was within the Rent Restriction Acts. J. was a tenant in respect thereof. The tenancy agreement contained no provision against sub-letting. In October or November 1921 the plaintiff served a notice to quit on J, who did not give up possession and thereby became a statutory tenant. On November 19, 1925 J sub-let to the defendant. On July 20, 1926 the plaintiff obtained an order for possession against J for default in payment of rent and on May 3, 1927 J quitted the house leaving the defendant in possession of the rooms which had been sub-let to him. He refused to give up possession, whereupon the plaintiff brought an action for possession. The County Court Judge gave judgment for the plaintiff on the ground that a statutory tenant had no right to sublet and, therefore, the defendant was a trespasser. He relied on the authority of 1924-1 KB 655. The Divisional Court affirmed the decision,

whereupon the defendant went up to the Court of Appeal. Scrutton L. J, distinguished the case of 1924-1 KB 685 (Supra) and stated as follows:

"This brings one, after a too lengthy preamble, the justification for which is the obscurity of the Acts, to the question in this case. Can the statutory tenant, while in possession, sublet part of the premises he holds under his tenancy, remaining in possession of the rest of the premises?.....In my view the continual references throughout the Acts to partial subletting and sub-tenancies must be treated as an indication that in the opinion of Parliament a statutory tenant remaining in possession must sublet part of his demised premises. The references are sometimes to sub-tenants, sometimes to tenants to whom the premises are lawfully let; I find it impossible to explain them by limiting them to subtenant created by a contractual and not by a statutory tenantI have come to the conclusion that the Rent Restrictions Acts contemplate that the statutory tenant remaining in possession might sublet part of his premises, subject to apportionment of the standard rent of the tenant's premises, so as to prevent the sub-tenant from paying an extortionate rent. He cannot, however, assign his tenancy of the whole of the premises, whether for value or not For these reasons I am of opinion that an order for ejectment should not have been made against the sub-tenant in this case, and his appeal, must therefore be allowed and judgment entered for him with costs here and below. I regret that I cannot order the costs to be paid by the draftsmen of the Kent Restrictions Acts, and the members of the Legislature who passed them, and are responsible for the obscurity of the Acts, and their failure clearly to provide for such obvious incidents of tenancy, as death with or without a will, bankruptcy, power to assign, and power to sub-let in whole or in part demised premises".

28. Thus, the Court of Appeal held that a statutory tenant could sublet part of the premises in his occupation. In *Maya Chanda v. Mandadhari*¹³, the learned Judges were considering the provisions of the West Bengal Non-Agricultural Tenancy Act (XX of 1949). Under this Act also,, the power of the landlord to evict a tenant after expiry of his tenancy was restricted. Lahiri J., (as he then was) noticed the fact that a statutory tenant has no estate or property as a tenant, but has a purely personal right to retain possession of the property. Reference was made to 1924-1 KB 685 (Supra) and *Brown v. Minister of Housing and Local. Government*¹⁴, The learned, Judge stated as follows:

"Upon these authorities it is clear that persons, who remain in occupation under a right conferred by the statute against the will of a lessor continue to occupy under the terms imposed by the statute and cannot have any right which is not conferred by the statute".

29. The next case to be considered is 85 Gal LJ 81. In that case, Mukherji J., had to consider the

provisions of the West Bengal Premises Rent Control (Temporary Provisions) Act (XXVIII of 1948). The point expressly arose as to whether a statutory tenant could sublet, The learned Judge relied on 1928-2 KB 117 (Supra) and held that a statutory tenant could sublet. The learned Judge said as follows:

"A tenant whose interest has been determined by the operation of a valid notice to quit cannot in my judgment under the Common Law or the Transfer of Property Act sublet after the expiry of the notice to quit. The reason is that after the expiry of the notice to quit his continued possession is wrongful and is only that of a trespasser and therefore he has no lawful interest in the immovable property out of which he can carve out any estate by subletting. While under the Common Law or the Transfer of Property Act that is the position it is not so under the Rent Control Act.....Under the Rent Act a notice to quit does not determine the tenancy because he cannot be evicted by decree for possession by reason of Section 11 of the Rent Act, provided even such a tenant complies with the requirements of that section.....That means the statute continues his tenancy, on of course certain conditions. Such a statutory continuance of the tenancy gives therefore to such a tenant an interest in the immovable property and once such interest is there, there is nothing in the Rent Act which takes away his right to sublet under the Common Law or the Transfer of Property Act".

30. The referring Court thought that there was a conflict of decision on the subject, and that there was an apparent conflict between the decision of Mukharji J., who relied on 1928-2 KB 117 (Supra) and that of the Division Bench presided over by Lahiri J (as he then was) which relied on 1924-1 KB 685 (Supra). In my opinion, there is in reality no such conflict. The position of a statutory tenant under the Indian law may be summarised as follows:

- 1) A statutory tenancy arises when a tenant, under a lease or other contractual tenancy of premises, remains in possession without the landlord's assent, after the expiration or termination of the contractual tenancy.
- 2) The expression "statutory tenant" has neither been used in the English Rent Restriction Acts nor in the Indian counterparts. The concept however, has been borrowed from the English Law. English Judges have constantly declared that the expression "statutory tenant is inaccurate and a jurisprudential curiosity. The Acts do not define the term, and it has been left to the courts to work out the incidents of such a tenancy.
- 3) It is clear, however, that the right is not derived from the Common Law in England or the Property Act in India. It is a right granted under the various Rent Restriction Acts, Control Orders and Ordinances.

4) A statutory tenant has no interest in the estate. His right is a personal right granted by statute, which prevents the landlord from evicting him, provided that he conforms to certain statutory provisions.

5) As the statutory tenant is a creature of statute, all his rights are derived therefrom. Such rights cannot be said to be based on Common Law or the Transfer of Property Act. The right would be derived from a particular Rent Act then in operation, either from its express terms or by necessary implication.

6) In the case of a contractual tenancy, which has not been determined, the right to sublet is granted either by contract or by statute, namely, the Transfer of Property Act. Since the tenant is interested in the estate, he can carve out a subtenancy, provided the conditions laid down in the Transfer of Property Act are complied with.

7) Although a statutory tenant has no estate, and although his right is a personal right, he can sublet, provided the right of subletting can be spelt out from the Rent Act in operation, either from its express terms or by necessary implication. The subtenant will get only such rights as are conferred by the statute.

31. These being the principles to be observed, I now come to the Act in question to discover whether a statutory tenant can sub-let, according to its terms. Firstly, we come to the definition of the word "tenant" in Sub-section (11) of Section 2 which inter alia defines the expression to mean any person by whom rent is, but for a special contract would be, payable for any premises, and includes any person who was liable to be sued by the landlord for rent. The question is whether this would include a statutory tenant, that is to say, a contractual tenant whose tenancy had been determined in accordance with law, but who continues in possession. Mr. Janah argued that such an ex-tenant is not included in the definition of the word "tenant". This argument cannot be accepted. The matter came to be considered in AIR 1928 PC 227. The Judicial Committee was considering the Calcutta Rent Act, 1920, Lord Atkin pointed out that in order to give any working effect to the Act, it was necessary that the words "landlord and tenant" must include as they often do in ordinary parlance, ex-landlord and ex-tenant. Since a statutory tenancy was provided, the word "tenant" must include a person, whose term under the contract of tenancy has come to an end. This was followed by a Division Bench of this Court presided over by P. N. Mookerjee, *J. Deoki Prosad Khaitan v. Dhuli Chand*, . It was held that the definition of the word "Tenant" in the West Bengal Premises Rent Control (Temporary Provisions) Act (XXVII of 1950), being the Act with which we are concerned in the present case, includes an ex-tenant in possession, whose tenancy has been determined by an ejectment decree. The next question therefore to be considered is as to whether in the body of this Act there are any provisions which enable a statutory tenant to sublet any part of the premises in his possession. The provisions are

to be found in Sections 12 and 13. Section 12 contains provisions for the protection of a tenant against eviction. It provides that notwithstanding anything contrary in any other Act or law, no order or decree for the recovery of possession of any premises shall be made by any court in favour of the landlord against a tenant, including a tenant whose lease has expired. This is the general protection which has been granted, It is, however, subject to, and conditional upon, various terms and conditions. The first point that has been raised before us is as to whether Section 12 refers to a statutory tenant. In my opinion, it must do so, because we must apply to that expression used in Section 12, the definition given in the Act, in Sub-section (11) of Section 2, to which I have just now referred, and to the decisions trial have held that the word "tenant" includes an extent whose tenancy has been determined but who continues to be in possession. In this general provision, there is no specific reference to the power of subletting. But the power of subletting can be deduced by necessary implication from the proviso, and the various headings thereunder. It has been laid down that the protection is not available if the tenant has transferred his tenancy right in whole or in part, with possession otherwise than by sub-lease or against a tenant who has sublet the whole or major portion of the premises for more than seven consecutive months. Thus, it is contemplated that a tenant could sublet, but he could not sublet except by a sub-lease and could not sub-let the whole or a major portion of the premises for more than seven consecutive months. When I say he could not sublet, what I mean is that if he did so, he would lose the protection granted under Section 12. I now come to Section 13(2), the relevant part whereof runs as follows:

"Where any premises or any part thereof have been or has been sublet by "a tenant of the first decree" if the tenancy of such a tenant is lawfully determined otherwise than by virtue of decree in a suit obtained by the landlord by reason of any of the grounds specified in Clause (h) of the proviso of Sub-section (1) of Section 12, the sub-lessee shall be deemed to be a tenant in respect of such premises or part, as the case may be, holding directly under the landlord of the tenant whose tenancy has been determined on terms and conditions of which the sub-lessee would have held under the tenant if the tenancy of the latter had not been so determined....."

32. In my opinion, the right of a statutory tenant to sublet has been clearly recognised, here. Under Sub-section (2) of Section 13, the right of such a subtenant to become a direct tenant under the owner under certain circumstances has been expressly provided for. It is this aspect of the matter that has been referred to by the learned Judges in 1928-2 KB 117 (Supra). Scrutton L.J. referred to the English Rent Act of 1923 and remarked that the continual references throughout the Act to partial sub-letting and sub-tenancy must be treated as an indication that in the opinion of Parliament a statutory tenant remaining in possession might sublet a part of the premises. In the Indian counterpart also, these words appear in both Sections 12 and 13. Since

these two sections provide for the protection of the statutory tenant, it would be senseless to use the expression "sublet" if the position in law was that a statutory tenant could never sublet. The referring court thought that there was some doubt thrown on the matter by the judgment of Bankes L. J. in 1924-1 KB 685 (Supra). Actually however, that is scarcely the position. In that case, the question of subletting a part of the premises by the statutory tenant was expressly kept open, and the consensus of the English decisions is that a statutory tenant can sublet a portion of the premises in his occupation, although he cannot assign the entirety. The particular position in English law naturally depends on the wordings of the statute concerned. It is not however correct to say that under the English law, it has been laid down that a statutory tenant cannot sublet. The position of a statutory tenant is certainly anomalous, and probably this is all the more so in the case of a statutory sub-tenant. They are however creatures of statute, and their existence must be tolerated although not necessarily welcomed.

33. The result is that both the questions that have been referred, should be answered in the affirmative and I agree with my Lord Bachawat, J. that they must be so answered.

P.N. Mookerjee, J.

34. I agree that this Reference should be answered as proposed by my learned brothers. The Reference raises two questions for our consideration, namely, (1) Can a statutory tenant, that is to say, a tenant whose tenancy has been determined by a notice under Section 106 of the Transfer of Property Act but who continues in occupation by virtue of protection against eviction under the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, sublet the premises let to him?

(2) Does such a sub-tenant become entitled to the benefit of direct tenancy under the landlord under the provisions of Section 13(2) of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950?

35. The points raised are of considerable importance and of some difficulty too and to answer them one must proceed cautiously and step by step. The ultimate conclusion may not accord strictly with our innate sense of logic and may, indeed shake up some of our basic legal ideas' and conceptions but it is well to remember, as said by Jenkins, C. J. quoting Holmes, Common Law, p. 1, in the Full Bench case of this Court, *Dayamoyi v. Ananda Mohan Roy*¹⁵, that "the life of the law is not logic but experience" and, in the life of the law, such changes and departures may well be necessary to meet problems" brought into prominence" by altered social and economic conditions, -- problems "that did not previously call for solution". Indeed, legislation has to move with the times and society has to adjust itself to changing environments and conditions and our ideas and conceptions also, -- both social and individual, -- have to adapt

themselves accordingly.

36. The Referring Bench, apparently, perceived a conflict between the two decisions of this Court, reported in 85 Cal LJ 81 and 64 Cal WN 448, and, though the conflict was not between Division Benches, so as to justify reference to a Full Bench, in view of the great practical importance of the points raised, which was obvious and undeniable, this reference to the Special Division Bench was made by the learned Judges to have an authoritative pronouncement on the true legal position. There can be no question that an authoritative decision would be of immense value, assistance and advantage to the courts in general in deciding cases, involving the aforesaid issues or the like, which, as the present trend shows, are bound to be quite frequent and numerous.

37. At the outset, I must say with respect that I do not find any real conflict between the two decisions of this Court, to which reference has been made by the learned referring Judges, nor do I find any real conflict between the ruling English authorities on the point. The matter will be at once clear, if we closely examine the aforesaid two decisions and the leading English cases of (1924) 1 KB 685; (1928) 2 KB 117; (1942) 2 KB 288; (1947) 1 KB 886; (1951) 2 KB 496; (1954) 1 All ER 874; *Dudley and District Benefit Building Society v. Emerson*¹⁶

38. I do not think, however, that the decision of this reference depends strictly upon the English Law, although, if I may say so with respect, that law, also, is, -- substantially at least, -- the same as its Indian counterpart. Under either system of law, the incontrovertible position is that a statutory tenant, as contemplated in this Order of Reference, is a creature of statute, that is, of the particular Rent Control or Rent Restriction Act, which governs the case, and his rights and obligations (including right of sub-letting) depend upon that particular statute. This is lucidly explained in (1928) 2 KB 117, *supra*, and the numerous cases, which have considered and/ or followed the same. (1924) 1 KB 685, *supra*, as no exception to the above rule; it lays down nothing to the contrary and is not inconsistent with 1928-2 KB 117 *supra*, as it expressly left open the question of sub-letting by the statutory tenant, presumably upon the above view, and, so far as this right of sub-letting is concerned, the statutory, tenant's position, -- and, with it, the position, too, of the sub-tenant concerned, -- has been very succinctly put by Lord Denning in (1954) 1 All ER 874 at pp: 876-7, in the following words:

"When a statutory tenant sub-lets a part of the premises, he does not thereby confer any estate or interest on the subtenant. A statutory tenant has no estate or interest himself, and he cannot carve something out of nothing. The sub-tenant, like the statutory tenant, has only a personal right or privilege.....When the statutory tenancy comes to an end, the sub-tenant's right automatically comes to an end unless there is some statutory protection afforded to him"and by Evershed M.R. in (1949) Ch. 707, at p. 717: (1949) 2 All ER 252 at p. 257, in the following passage:

"Furthermore, as I have already intimated, and as is, of course, well known, in certain circumstances (when, for example, an effective notice to quit has been given) the contractual tenancy between A and B may come to an end, and there then is created what is known as a statutory tenancy, B remaining in possession as a 'statutory tenant' of A. It has been said in these courts that a statutory tenancy, as the phrase is commonly used, is a somewhat inapposite expression, for it confers on the so-called statutory tenant no estate or interest in the land. He cannot part with it or dispose of it, and in certain circumstances the right to possession, which is its principal feature, may pass to persons who would be quite different from the persons who would get the benefit of a contractual tenancy when a tenant dies".

which was quoted by Barry, J., in (1953) 1 WLR 1370, supra, at pp. 1374-75.

39. That, indeed, admirably sums up the English view On the point and the Indian Statute, as we shall see presently, is wide enough to admit and accept this point of view.

40. As I have said, however, the Status and rights of the statutory tenant depend upon the terms of the particular statute. I have, therefore, to examine the terms of the relevant Act (The Rent Control Act of 1950) to answer the points, now before us. Of this Act, again, only three sections, namely, the definition Section 2(11) and Sections 12 and 13 are strictly relevant for our present purpose. As held, by Guha Roy, J. and myself in (where the point is fully discussed) 'tenant' under the Act (Vide the definition Section 2(11)) includes an ex-tenant, that is, a tenant whose contractual tenancy has come to an end but who is still in possession (occupation), -- actual or constructive, -- of the particular premises. The Act, on certain terms, protects this possession and, to the extent of that protection, he (the occupant ex-tenant) is a statutory tenant In current or popular language. The description 'statutory tenant' is, in the present context, no doubt, not very happy and it has rightly come in for some amount of criticism. The conception of a tenant without legal estate or interest (title) is not very easy, but, when the statute calls him a tenant (vide the definition, noticed above), it may not be very wrong to give him the name of a statutory tenant. His tenancy may not answer strictly to the usual or familiar conception of a tenancy in law; it may be a phantom tenancy, as jokingly or sarcastically put by Mr. Janah, taking its birth, in the words of my Lord (Bachawat, J.), aptly uttered during argument, out of the ashes of the contractual tenancy but the 'statutory tenant' is, nevertheless, a tenant under the statute by virtue of its definition section. He is, no doubt, a creature of the particular Act with rights, conferred by and solely referable to the same. But, though his very existence depends upon the statute and he can claim. no right beyond or de hors the same, to rights and protection under the Act, his claim cannot be denied. In the premises, it may not be very inappropriate to call him a statutory tenant and, as such statutory tenant, he can certainly claim inter alia, protection from eviction under Section 12 of the Act provided he fulfils or satisfies the necessary conditions under its provisos.

Of these provisos, Clause (c), read with Clause (a), definitely contemplates subletting by the tenant (which includes a statutory tenant, as aforesaid), though, possibly, within certain limits. It may be that, if he exceeds those limits, certain adverse consequences may follow but that is not a matter for our consideration in this Reference. All we are concerned with is whether the statutory tenant can sub-let and that is, obviously, answered in the affirmative by the above statutory proviso or provisos. That position is affirmed or re-affirmed by Section 13(2) of the Act, which speaks of sub-tenants under tenants of different degrees, and, as, in that section also, tenant must include statutory tenant (Vide the definition Section 2(11)), there being nothing necessarily to the contrary, the sub-letting contemplated must include sub-letting by statutory tenants too, and the sub-tenants, dealt with thereunder, must include also sub-tenants under statutory tenants, do not think that the use of the expressions 'sublease' and 'sub-lessee' in certain parts of Section 13(2) would militate against the above point of view or justify a different conclusion, as it seems to me that the said two expressions must be read in line with and in the light and context of the two earlier expressions 'sub-let' and 'tenant' in the same sub-section, as explained hereinbefore with reference to the definition section (Section 2(11)). Indeed, this Sub-section (Section 13(2)), particularly in the context of the proviso to Section 12(1)(c), is of much greater and deeper significance in the matter and it places the above point of view almost beyond controversy, the said proviso, obviously, including sub-tenants under 'statutory tenants' too. This, however, must, of necessity be read subject to the express terms of Section 13(1) which, in plain language, forbids or invalidates certain types of sub-tenancies, not only by statutory tenants but also by contractual tenants, and permits of no exception in that behalf.

41. I would, accordingly, hold that the decision in 85 Cal LJ 81, was right, although, it may not be complete and although all its reasons may not be quite sound or accurate. I would also hold that the other decision too, namely, 64 Cal WN 448, referred to by the learned referring Judges, is correct and states the law as to 'statutory tenant' in apposite terms, namely, that his occupation (possession) of the premises is under the terms of the statute and he cannot have any right, not conferred by or deducible from the same. That, indeed, is the keynote of the law on the point, and there is no conflict between this last-cited authority and the aforesaid earlier decision. I would, also, on the foregoing reasons, answer the two questions, referred to us, in the manner, suggested by my Lords, namely, that, save as provided in Section 13(1) of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, and subject to adverse consequences, if any, affecting the sub-tenant and/or his powers, under Section 12(1)(c) of the Act, in the case of sub-letting of the whole or a major portion of the premises for more than seven consecutive months, on which no opinion is expressed or need be expressed in this Reference, the statutory tenant is entitled to sublet (the premises) and that, subject as aforesaid, such sub-letting is binding on the landlord and the subtenant is entitled to the benefit and protection of Section 13(2).

42. In the premises, I concur in the Order, proposed by my Lords.

Cases Referred.

155 Ind App 344: (AIR 1928 PC 227)

225 Cal WN 967 at pp. 969-70 : (AIR 1922 Cal 391 at pp. 392-393)

349 Cal WN 728 : (AIR 1946 Cal 81)

454 Cal WN 735 : (AIR 1951 Cal 215)

554 Cal WN 756

61928-2 KB 117

785 Cal LJ 81

81931-2 KB 546

91947-1 KB 886

101951-2 All ER 855 at p. 858

11(1924) 1 KB 685

12(1942) 2 KB 288 at p. 291

1364 Cal WN 448

14(1953) 1 WLR 1370

15ILR 42 Cal 172, at p. 222: 20 Cal LJ 52 at p. 89: (AIR 1915 Cal 242 at p. 248)

16(1949) Ch 707: (1949) 2 All ER 252 and (1953) 1 WLR 1370