

# CALCUTTA HIGH COURT

Surajmull Ghanshyamdas

Vs

Samadarshan Sur

(P Mookerjee, C.J. A Dutt, J.)

09.05.1968

## JUDGMENT

### **P.N. Mookerjee, J.**

1. This Rule is directed against a concurrent order of the two Courts below, allowing the landlord opposite party's application for eviction of the petitioner on the allegations inter alia that the petitioner was a thika tenant under him, who had forfeited his tenancy right under an appropriate notice of ejection and had also no protection under the Calcutta Thika Tenancy Act, which governed the instant case.
2. The eviction, was sought for on various grounds namely, (1) on the ground of default in payment of rent; (2) on the ground of the landlord's reasonable requirement of the disputed holding for development purposes; and (3) on the ground that the tenant petitioner was guilty of unlawful subletting and failure to occupy the major portion of the same.
3. The landlord's case was that the petitioner's tenancy had been duly determined by an appropriate notice of ejection, which had been duly served upon the petitioner, and that, because of the above grounds, the petitioner had forfeited its claim of protection under the Calcutta Thika Tenancy Act.
4. The landlord's claim was opposed and objected to by the petitioner, who contended inter alia that its tenancy, if any, under the opposite party was not a Thika Tenancy but had to be governed by other Acts. There was an extreme contention that the petitioner was not the tenant under the opposite party. It was also alleged that the petitioner was not guilty of defaults, so as to be liable to ejection; that the landlord's case of reasonable requirement was untrue; and that the petitioner was not guilty, also, of any subletting and not certainly of subletting to the extent that it failed to occupy the major portion of the disputed holding.

5. All the above objections were overruled by the two tribunals below and the landlord opposite party's claim for ejectment was allowed. Against this concurrent order, the present Rule was obtained by the petitioner.

6. For our present purpose, it will not be necessary to go into the grounds under the Calcutta Thika Tenancy Act, as, in our view, the opposite party's claim for eviction, in the instant case, would fail on the ground of insufficiency and invalidity of the notice of ejectment and on the further ground that there has been no due or proper service of any notice of ejectment according to law. This, however, in the circumstances of this case, as we shall indicate presently, must be made on terms and we will specify the terms, on which we will be inclined to interfere in the instant case, even though the petitioner would otherwise be entitled to a reversal of the orders of the two tribunals below.

7. On the question of notice, it appears that the notice, given in the instant case, complied with the provision of one month's notice but did not comply with a six months' notice, as found by the learned Lower Appellate Tribunal. That tribunal, also, appears to be of the view that the tenancy in this case was for a manufacturing purpose. That view seems to be correct on the facts before us. But the lower appellate tribunal was of the opinion that, having regard to the provisions of Section 4 of the Calcutta Thika Tenancy Act, one month's notice would be enough even for a manufacturing tenancy, which was governed by the Calcutta Thika Tenancy Act; in other words, the learned lower appellate tribunal was of the opinion that the Calcutta Thika Tenancy Act, while providing, in Section 4, for a one month's notice, was overriding the corresponding provision under the Transfer of Property Act, which required, in the case of manufacturing leases, six months' notice; in other cases, fifteen days'. While, to that extent, the latter cases are concerned, the view may be substantially correct inasmuch as the notice for the lesser period, required under the Transfer of Property Act in these cases, would be sufficiently substituted by the notice for the longer period, as provided in Section 4 of the Calcutta Thika Tenancy Act; the same would not be true with regard to the former class of cases.

8. Indeed, the provision for notice under the Calcutta Thika Tenancy Act would be a requirement, which had to be complied with, but such compliance must be in the light of or in addition to the corresponding provision under the Transfer of Property Act. In the light of the decision of the Supreme Court reported in Manujendra Dutt v. Purnendu Prosad Roy Chowdhury., the Calcutta Thika Tenancy Act must be held to be really in the nature of a supplementary legislation, supplementing the Transfer of Property Act, imposing certain restrictions on the landlord's right to eject his tenant under the general law or under the contract of lease and not conferring any additional right on the landlord. The tenancy has to be determined, in any event, under the Transfer of Property Act or under the contract of lease with

this addition that the requirements under the Calcutta Thika Tenancy Act, also, would have to be complied with. The position, then, is that, where the Transfer of Property Act requires the notice for a lesser period, the longer period under the Calcutta Thika Tenancy Act would ultimately prevail or govern, and, where the Transfer of Property Act prescribes the longer period for the relevant notice, the lesser period under the Calcutta Thika Tenancy Act would be of no consequence; or, in other words, in the instant case, a six months' notice was necessary for terminating the petitioner's tenancy and, admittedly, such a notice has not been given.

9. Moreover, the notice of ejectment, on the opposite party's own case, was served by three processes: (i) by registered Post; (ii) under certificate of posting; and (iii) by personal service. So far as service by registered post is concerned, the postal peon's return is "left". The tribunals below, however, have accepted the same as good service on the authority of a decision of this Court, reported in *Sita Nath Mondal v. Soleman Molla*, 51 Cal W. N. 650.

10. In our view, this is erroneous as the said decision has already been explained and practically explained away or overruled by a Bench decision of this Court, reported in *Hare Krishna Das v. Hahnemann Publishing Co. Ltd.*, 70 Cal. WN 262. Indeed the word "left" itself shows that there was no tender, and, unless there was a tender to the addressee, on no conceivable principle, can service by registered post be accepted as good service. The service by registered post, in the instant case, must, therefore, be rejected.

11. As regards personal service, this has been sought to be proved by an employee of the solicitor's firm, which issued the notice in question. According to the said employee, he went to the disputed premises and, not having found anybody authorised to receive the petitioner's notice, the proprietors or partners of the petitioner firm or the persons in charge of the same not being there, he affixed the said notice to the entrance of the disputed premises. It is significant to note that the peon book entry, which has been exhibited for this purpose, discloses that the alleged report of the peon was written at the bottom of the page, while the entry of delivery to the said peon is to be found in the middle. This feature ought to have attracted the attention of the tribunals below but it does not appear to have been considered by them at all. It also appears that there was no attempt to find out the petitioner's representatives or agents before affixing the notice, as aforesaid. In such circumstances, the alleged personal service cannot be accepted as good service in law.

12. In the context of the postal peon's report, again, that the addressee was not to be found at the address, strengthened by the report of the peon, who was alleged to have effected the personal service, as aforesaid, to the same effect, the instant case is hardly a case, where the presumption, arising under certificate of posting, should be given effect. In this view we would hold that this service, also of the notice of ejectment has not been established, with the result that no valid

service of the notice of ejectment has been proved in the instant case.

13. On the above grounds, the petitioner's disputed tenancy must be held not to have been validly determined and, upon that view, the instant proceeding for ejectment would fail.

14. In the premises, if no other consideration had intervened, this Rule had to be made absolute unconditionally and the petitioner would have been entitled to an absolute order of dismissal of the opposite party's claim for eviction and the latter would have suffered serious prejudice on account of their defective handling of the ejectment notice.

15. As, however, the matter is before us in revision, we would not, having regard to the admitted circumstance that the petitioner is in default for a long time, be inclined to exercise our discretionary revisional power in favour of the petitioner except on this term, namely, that the petitioner will deposit, with the Controller concerned, to the credit of the opposite party, a sum of Rs. 85,000/- (Rs. eightyfive thousand), less amounts, if any, deposited by it with the said Controller on account of rents since Baisakh 135 B.S. (sic), within four months from this date. In default, this Rule will stand discharged. If the above deposit is made, as directed herein, this Rule will be made absolute and the opposite party's present proceeding for eviction will stand dismissed on the ground of defective notice of ejectment and/or defective service of such notice.

16. The above deposit, if made, will be withdrawable by the opposite party without furnishing any security therefor and without prejudice to the rights and contentions of the parties under the law. Such withdrawal, however, will be subject to adjustment according to law as against the legal claims of the opposite party against the petitioner on account of the disputed tenancy, at the instance of either party.

17. There will be no order for costs in this Rule.

A.K. Dutt, J.

18. I agree.

