

A SMT. PUSPA SEN GUPTA

v.

SMT. SUSMA GHOSE

APRIL 20, 1990

B [LALIT MOHAN SHARMA AND V. RAMASWAMY, JJ.]

*West Bengal Premises Tenancy Act, 1956: Section 8(3), 34 & 35—Non-payment of Rent—Eviction—Rent deposited—failure to deposit additional electricity charges—Held default committed in payment of Rent—‘Rent’ includes amenities charges.*

C The respondent-landlord instituted a suit for eviction of the appellant-tenant on the ground of non-payment of rent. The appellant-tenant deposited the rent but contested the suit contending that failure to deposit electricity charges was not a default of payment of rent. The Trial Court dismissed the suit holding that failure to deposit electricity charges did not amount to default under the West Bengal Premises Tenancy Act, 1956. But on appeal the Additional District Judge reversed the decision and passed a decree for eviction, and the High Court confirmed this decision of the Additional District Judge in second appeal.

E In appeal to this Court on the question: Whether the appellant was a defaulter in the matter of payment of rent.

Dismissing the appeal and confirming the decision of the High Court, this Court,

F HELD: 1. Although the expression ‘rent’ has not been defined, there are indications in the West Bengal Premises Tenancy Act, 1956 to suggest that the word ‘rent’ includes not only what is strictly understood as rent, but also payment in respect of amenities or services provided by the landlord under the terms of tenancy. [566A-B]

G 2. The provisions contained in sections 8(3), 34 and 35 of the Act give a clear indication that the Act contemplates that a tenancy which carries with it certain amenities to be provided or services to be maintained by the landlord is within the purview of the Act. If the Act is not so interpreted, an astute landlord may successfully circumvent the provisions of the Act by imposing on the tenant onerous conditions with reference to supply of amenities as binding terms of the tenancy. [566C-D]

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*Radha Kishan Sao v. Gopal Modi and Ors.*, [1977] 2 S.C.C. 656; distinguished. A

*Residence Ltd. v. Surendra Mohan Banerjee & Ors.*, A.I.R. 1951 Cal. 126, approved in part.

*Karnani Properties Ltd. v. Augustin*, [1957] S.C.R. 20, followed. B

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3106 of 1989.

From the Judgment & Order dated 21.3.89 of the Calcutta High Court in Appellate Decree No. 939 of 1976. C

R.K. Garg and Gopal Singh for the Appellant.

Dr. Shanker Ghosh, H.K. Puri and A. Deb for the Respondent.

The Judgment of the Court was delivered by D

SHARMA, J. This appeal by a tenant of a certain premises in Calcutta is directed against the order of his eviction on the ground of non-payment of rent. The appellant had agreed to pay a sum of Rs.32 per month as rent and an additional sum of Rs.8 per month for electricity. According to the defence of the appellant the rent had been duly deposited with the Rent Controller in accordance with the West Bengal Premises Tenancy Act, 1956, and he was, therefore, not liable to be evicted. Deposit was made at the rate of Rs.32 and the remaining amount at the rate of Rs.8 was admittedly not deposited. The question which has been debated in the courts below is whether the aforesaid amount of Rs.8 was a part of rent which ought to have been deposited so as to escape the consequences of default. The trial court agreed with the tenant and dismissed the suit. On appeal, the Additional District Judge, Alipore, reversed the decision and passed a decree for eviction holding that the tenant was a defaulter within the meaning of the term in the Act. The High Court confirmed the decree in second appeal by the impugned judgment. E F G

2. Mr. Garg, the learned counsel appearing in support of the appeal has strenuously contended that the rent was only Rs.32 and did not include the additional amount of Rs.8 payable in lieu of electricity, and consequently the appellant can not be treated a defaulter in the matter of payment of rent. Reliance has been placed on the decision of H

A this Court in *Radha Kishan Sao v. Gopal Modi and Others*, [1977] 2 SCC 656.

3. Although the expression 'rent' has not been defined, there are indications in the present Act to suggest that the word 'rent' includes not only what is strictly understood as rent, but also payment in respect of amenities or services provided by the landlord under the terms of the tenancy. The Act deals with the fixation and revision of fair rent and sub-section (3) of section 8, takes into account furniture if supplied or fittings affixed in the tenement for the use of the tenant, indicating that an agreement between the landlord and the tenant in respect of the additional amenities comes within the scope of the Act. Similarly the provisions of section 34 refer to the maintainance of any essential supply or service (including supply of electricity) and section 35 deals with emergency measures to be taken in respect of matters including additional services. These provisions give a clear indication that the Act contemplates that a tenancy which carries with it certain amenities to be provided or services to be maintained by the landlord is within the purview of the Act. If the Act is not so interpreted, an astute landlord may successfully circumvent the provisions of the Act by imposing on the tenant onerous conditions with reference to supply of amenities as binding terms of the tenancy. A same view was taken by the Calcutta High Court in *Residence Ltd. v. Surendra Mohan Banerjee & Ors.*, A.I.R. 1951 Calcutta 126; while interpreting 'rent' under the earlier Rent Act of 1950. So far this aspect is concerned, the relevant provisions of the present Act are not very different. A similar question under the 1950 Act later arose before this Court also in *Karnani Properties Ltd. v. Augustin*, [1957] SCR 20; and the Calcutta High Court's view was affirmed. It may, however, be mentioned at this stage that the view of the Calcutta Bench on another question which does not arise in the present appeal was not approved, but that is wholly irrelevant for the purpose of case before us. So far the decision in *Radha Kishan Sao's* case relied upon by Mr. Garg is concerned, it is clearly distinguishable inasmuch as the agreement therein relating to the payment for furniture was according to the finding "a quite independent contract unconnected with the original tenancy" (see para 14 of the judgment). Besides, the case was governed by the rent law as applicable in Bihar and not by the present Act. We, therefore, confirm the decision of the High Court and dismiss the appeal with costs.

T.N.A.

Appeal dismissed.