Supreme Court of India
Kanai Lal Sur vs Paramnidhi Sadhukhan on 10 September, 1957
Equivalent citations: 1957 AIR 907, 1958 SCR 360
Author: P Gajendragadkar
Bench: Gajendragadkar, P.B.

PETITIONER:
KANAI LAL SUR

Vs.

RESPONDENT:
PARAMNIDHI SADHUKHAN

DATE OF JUDGMENT:
10/09/1957

BENCH:
GAJENDRAGADKAR, P.B.
BENCH:
GAJENDRAGADKAR, P.B.
BHAGWATI, NATWARLAL H.
DAS, S.K.

CITATION:
1957 AIR 907 1958 SCR 360

ACT:
Thika tenant-Decree for ejectment-Execution application-If lies in civil Court-Welfaye legislation-Interpretation-Calcutta Thika Tenancy Act, 1949 (W.B. 11 Of 1949), s. 5(1).

HEADNOTE:
Respondent obtained a decree for ejectment against the appellant, a thika tenant, and filed an application for execution of the decree before the civil Court. Appellant resisted the application on the ground that in view Of s. 5(1) Of the Calcutta Thika Tenancy Act, 1949, the civil Court had no jurisdiction to entertain the application. Section 5(1) provides that a landlord wishing to eject a thika tenant on the grounds specified in s. 3 shall apply to the Controller in that behalf.
Held that S. 5(1) did not apply to a case where the landlord had already obtained a decree for ejectment against his thika tenant and consequently the civil Court had jurisdiction to entertain the execution application.
The operative provisions of welfare legislation should receive a beneficent construction from the Courts. But the words used in a statute must be interpreted in their plain grammatical meaning and it is only when such words are

capable of two constructions that the question of adopting the construction which is more consistent with the policy of the Act arises.
Heydon's Case, (1584) 3 Co. Rep. 8, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 291 of 1955.

Appeal by special leave from the judgment and order dated March 29, 1955, of the Calcutta High Court in appeal from Appellate Order No. 134 of 1954, affirming the appeal against the judgment and order dated July 29, 1954, of the Court of the District Judge of 24-Parganas in Misc. Appeal No. 87 of 1954, arising out of the order of the 1st Additional Court of the Munsif at Sealdah dated February 2, 1954, in Misc. Judicial Case No. 96 of 1953.

N. C. Chatterjee and S. N. Mukherjee, for the appellant. A. V. Viswanatha Sastri and D. N. Mukherjee, for the respondent.

1957 September 10. The following Judgment of the Court was delivered by GAJENDRAGADKAR J.-This is an appeal by special leave in execution proceedings and the short point which the appellant has raised before us is that, under s. 5 (1) of the Calcutta Thika Tenancy Act, 1949 (West Bengal II of 1949) as amended by the Calcutta Thika Tenancy (Amendment) Act, 1953 (West Bengal VI of 1953), execution proceedings taken out by the decrees against him could be entertained only by the controller and not by the civil courts. This point arises in this way. The appellant is a thika tenant in respect of a portion of the premises No. 28, R. G. Kar Road in Calcutta. In Suit No. 46 of 1948 a decree for ejectment was passed against him and in favour of the respondent on March 16, 1949. This decree was challenged by the appellant by preferring an appeal before the District Court and a second appeal before the High Court at Calcutta; but both those appeals failed and the decree for ejectment passed by the trial court was confirmed. Then followed several proceedings between the parties and the course of litigation between them turned out to be protracted and tortuous. Ultimately on May 22, 1953, the respondent filed an execution case before the First Additional Court, Sealdah (Title Execution Case No. 34 of 1953). By this application the respondent claimed that the possession of the property covered by the decree should be delivered to him. Thereupon the appellant filed a Miscellaneous Judicial Case under s. 47 of the Code of Civil Procedure in the court raising several objections to the decree holder's claim for execution (Miscellaneous Judicial Case No. 96 of 1953). This case was dismissed by the executing court on February 2, 1954. A miscellaneous appeal preferred by the appellant before the learned District Judge, 24-Parganas, as well as the second miscellaneous appeal preferred by him before the High Court at Calcutta were likewise dismissed. The appellant then applied for leave to prefer an appeal under the Letters Patent. This application was rejected by Mr. Justice Renupada Mukherjee who had heard the second appeal. On May 10, 1955, the appellant filed a petition for special leave to appeal to this Court and special leave was granted to him on May 18, 1955. The courts below have held that the decree-holder's application for execution of the decree passed in his favour can and ought to be entertained by the civil courts and an order has been passed against the appellant that he should vacate the premises in question

before the end of Jaistha 1362 B.S. (1 5th June, 1955), failing which execution will proceed according to law. The appellant's contention is that the view taken by the courts below about the competence of the civil courts to entertain the decree-holder's execution application proceeds on a misconstruction of s. 5 (1) of the Calcutta Thika Tenancy Act. That is how the only question which arises for our decision is about the construction of the said relevant section.

Before dealing with this point, it would be useful to consider briefly the history of legislation passed by the West Bengal Legislature with the object of affording protection to the thika tenants. Until 1948 the rights and liabilities of the landlords and their thika tenants were governed by the provisions of the Transfer of Property Act. On October 26, 1948, the Calcutta Thika Tenancy Ordinance XI of 1948, was promulgated because it was thought expedient, pending the enactment of appropriate legislation to provide for the temporary stay of the execution of certain decrees and orders of ejectment of thika tenants in Calcutta. Section 2 of the Ordinance defined the thika tenant. Section 3 provided that no decree or order for the ejectment of a thika tenant shall be executed during the continuance in operation of the Ordinance, From the operation of this section were excluded decrees or orders for ejectment passed against, thika tenants on the ground of non-payment of rent unless the tenants deposited in court the amount of the decree or order as required by the proviso. The object of the Ordinance clearly appears to be to give protection to the thika tenants in Calcutta and to afford them interim' relief by staying execution of certain decrees and orders as mentioned in s. 3 until an appropriate Act was passed by the Legislature in that behalf. Then followed Act II of 1949 on February 28, 1949. Section 2, sub-s. (5) of this Act defines a thika tenant. Section 3 lays down the grounds on which a thika tenant may be ejected. The effect of this section is that it is only where one or more of the six grounds recognized by s. 3 is proved against a thika tenant that a decree for ejectment against him can be passed. In other words, grounds other than those mentioned in s. 3 on which a landlord would have been entitled to eject his thika tenant under the provisions of the Transfer of Property Act became inapplicable to the case of the thika tenants by virtue of s. 3. Section 5, sub- s. (1) reads thus:

"S. 5. (1) Notwithstanding anything contained in any other law for the time being in force, a landlord wishing to eject a thika tenant on one or more of the grounds specified in section 3 shall apply in the prescribed manner to the Controller for an order in that behalf and, on receipt of such application, the Controller shall, after giving the thika tenant a notice to show cause within thirty days from the date of service of the notice why the application shall not be allowed and after making an inquiry in the prescribed manner either allow the application or reject it after recording the reasons for making such order, and, if he allows the application, shall make an order directing the thika tenant to vacate the holding and, subject to the provisions of section 10, to put the landlord in possession thereof."

This section requires the landlord wishing to eject his thika tenant on one or more of the grounds specified in s. 3 to apply in the prescribed manner to the Controller for an order in that behalf. This section further provides for the procedure to be followed by the Controller in dealing with such an application. Two other sections of this Act need to be considered. Section 28 deals with cases where decrees or orders for the recovery of possession of any holding from a thika tenant have been passed before the date of the commencement of the Act and it lays down that if

-possession has not been obtained by the decree-holder in execution of such decrees or orders the court may consider whether the decree or order in question is or is not in conformity with any of the provisions of the Act other than subs. (1) of s. 5 or s. 27. On considering this matter jurisdiction is given to the court to rescind or vary the decree or the order for the purpose of giving effect to the relevant provisions of this Act. A decree or order so varied has then to be sent to the Controller for execution as if it were an order made under and in accordance with the provisions of the Act. Having thus dealt with decrees and orders for ejectment passed against thika tenants prior to the commencement of this Act, s. 29 proceeds to deal with pending, proceedings for ejectment between the landlords and the thika tenants. This section lays down that all pending proceedings of this character shall be transferred to the Controller who shall thereupon deal with them in accordance with the provisions of this Act as if this Act had been in operation on the date of the institution of the suit or proceeding. The proviso to this section exempts the application of s. 4 of this Act to such proceedings for obvious reasons.

It appears that the definition of the expression thika tenant " contained in the Act gave rise to some difficulties and it was discovered that some of the tenants in Calcutta who were in substance thika tenants failed to obtain the protection of the Act owing to some words used in the said definition. In order to afford protection to the whole class of thika tenants in Calcutta, West Bengal Ordinance No. XV of 1952 was promulgated on October 21, 1952. Accordingly, s. 2 of this Ordinance amended s. 2, sub-s. (5) of the Calcutta Thika Tenancy Act II of 1949. This is one important change introduced by this Ordinance. The other important change introduced by this Ordinance is to be found in s. 5 of the Ordinance. Section 5, sub-s. (1) lays down that all cases pending before a court or Controller on the date of the commencement of this Ordinance shall be governed by the provisions of Act II of 1949, as amended by this Ordinance. Sub-section (2) of s. 5 then deals with cases where decrees or orders have been passed for the recovery of possession at any time between the commencement of the said Act and this Ordinance. In the present appeal, we are dealing with a decree falling under s. 5, sub-s. (2) of this Ordinance. In respect of such decrees this sub-section lays down that the judgment-debtor could apply within three months of the commencement of the Ordinance to the court or the Controller as the case may be and invite his decision on the question of his status as thika tenant; according to the provisions of this subsection, the status of the judgment-debtor as a thika tenant would then have to be determined under the amended definition of the expression "thika tenant". If the finding on the question of status is in favour of the judgment-debtor then the decree or order would have to be set aside and execution proceedings annulled, and the matter sent back to the court or Controller for disposal in accordance with law. Subsection (3) of s. 5 enables the court or the Controller to stay proceedings, if any, in execution pending the disposal of an application made under sub-s. (2). In other words, the effect of sub-s. (2) of s. 5 clearly appears to be that, in regard to decrees passed during the period mentioned by this subsection, a judgment-debt-or was given a right to challenge the validity of the said decree or order on the ground that he was a thika tenant under the amended definition of the said expression and this right could be exercised by making an appropriate application within the prescribed period of three months. If no such application is made by the judgment-debtor within the prescribed period, then the decree or order for ejectment passed against him would be executed under the ordinary law.

This Ordinance was followed by the Calcutta Thika Tenancy (Amendment) Act, 1953 (West Bengal VI of 1953). This Act came into force immediately on the Calcutta Thika Tenancy (Amendment) Ordinance, 1952 (West Bengal Ordinance No. XV of 1952), ceasing to operate. Under the proviso to s. 1, sub- s. (2) of this Act, the provisions of the Calcutta Thika Tenancy Act II of 1949, as amended by this Act, shall also apply and be deemed to always apply to all suits, appeals and proceedings pending before any court or before the Controller or before a person deciding an appeal under s. 27 of this Act on the date of the commencement of the said Ordinance of 1952. It must, however, be added that this proviso was subject to the provisions of s. 9 of this Act. We will presently refer to s. 9. Section 2 of this Act adopted the amendment of the definition of the expression, " thika tenancy" introduced by the amending Ordinance of 1952. Section 4 of this amending Act has amended a. 5, sub-s. (1) of the original Act by deleting the words "but subject to the provisions of s. 28" which occurred in the said section. By s.8 of this Act, ss. 28 and 29 in the original Act II of 1949 have been omitted and by a. 9 it is laid down that any proceedings commenced under sub-s. (2) of s. 5 of the amending Ordinance of 1952 shall, on the said Ordinance ceasing to operate be continued as if sub-ss. (2), (3) and (4) of that section and the explanations to that section were in force. It would thus appear that though the Ordinance ceased to be operative the remedy provided by s. 5, sub-s. (2) of the Ordinance to judgment-debtors continued to be available to them and the applications made by them to seek. the protection of the said provision bad to be dealt with as if the material provisions of the Ordinance were in operation. It is true that s. 9 of the amending Act has not been incorporated in the original Act II of 1949 but it is conceded that the omission to include this section in the original Act does not make any difference. Mr. N. C. Chatterjee, for the appellant, has contended that the object in enacting the relevant Thika Tenancy Acts and Ordinances is absolutely clear. It is a piece of welfare legislation and as such its operative provisions should receive a beneficient construction from the courts. If the scheme of the Act and the object underlying it is to afford full protection to the thika tenants, says Mr. Chatterjee, courts should be slow to reach the conclusion that any class of thika tenants are excluded from the benefit of the said Act. In support of his argument Mr. Chatterjee hasnaturally relied on the observations made by Barons of the Exchequer in Heydon's case (1).Indeed these observations have been so frequently cited with approval by courts administering provisions of welfare enactments that they have now attained the status of a classic on the subject and their validity cannot be challenged. However, in applying these observations to the provisions of any statute, it must always be borne in mind that the first and primary rule of construction is that the intention of the Legislature must be found in the words used by the Legislature itself. If the words used are capable of one construction only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act. The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise. When the material words are capable of two constructions, one of which is likely to defeat or impair the policy of the Act whilst the other construction is likely to assist the achievement of the said policy, then the courts would prefer to adopt the latter construction. It is only in such cases that it becomes relevant to consider the mischief and defect which the, Act purports to remedy and correct. Indeed Mr. Chatterjee himself fairly conceded that be would not be justified in asking the court to put an undue strain on the words used in the section in order (1) (1584) 3 Co. Rep. 8.

that a construction favourable to the thika tenants should be deduced. It is in the light of this legal position that we must now consider s. 5, sub-s. (1) of West Bengal Act II of 1949, amended by West Bengal Act VI of 1953. Under the provisions of ss. 5 and 28 of the original West Bengal Act II of 1949, the position was clear. If a landlord wished to eject his tenant he could have obtained an order for ejectment only if his claim was justified on one or more of the grounds recognized by s. 3 of the Act. If, after the commencement of the Act, the landlord wanted to enforce his claim for ejectment, he had to apply for the said relief before the Controller under s. 5 in the prescribed manner. The application of s. 5, sub-s. (1) was, however, subject to the provisions of s. 28. As we have already pointed out, s. 28 dealt with decrees or orders already passed whereas s. 29 dealt with suits and proceedings pending at the commencement of the Act. The appellant's contention is that the effect of ss. 5, 28 and 29 was to submit the claims of landlords for ejectment of the thika tenants to a scrutiny in the light of the provisions of s. 3 and other relevant sections of the Act. Whether the claim had merged in a decree or was pending in a proceeding at the time when the Act came into force or it was made after the commencement of the Act, in every case the test laid down by s. 3 had to be applied; and the argument is that/ this position is not altered by the amendments made by Act VI of 1953. In our opinion, this argument cannot be accepted. Section 3 clearly refers to the claim for ejectment made by the landlord in a proceeding instituted by him. It is difficult to understand how s. 3 could be invoked against a landlord who has obtained a decree for ejectment of his thika tenant. It is quite plain that when a decree-holder seeks to obtain possession of his property in execution of a decree he cannot be said to obtain such possession on any of the grounds mentioned in s.

3. All that he does is to rely upon the decree passed by a court of competent jurisdiction and to insist upon its execution. Similarly the proceedings contemplated by s. 5, sub-s. (1), cannot in our opinion, be said to include execution proceedings of this type. Section 5, sub-s. (1) deals with cases where the landlord initiates original proceedings for ejecting his thika tenant. This sub-section refers to a landlord wishing to eject a thika tenant on one or more of the grounds specified in s. 3. Now this description is wholly inapplicable to a landlord who holds' a decree for ejectment in his favour. That is why we feel no hesitation in coming to the conclusion that landlords who have obtained decrees of ejectment against their thika tenants cannot be required to apply under the provisions of s. 5, sub-s. (1) of the Act. That is one aspect of the matter. The other provisions of the said sub-section also point to the same conclusion. When an application for ejectment is made under s. 5, sub-s. (1), notice is ordered to be issued to the thika tenant and enquiry follows in the light of the pro- visions of s. 3. It is only if the Controller is satisfied that one or more of the grounds recognized by s. 3 is proved by the landlord that an order for ejectment would be passed by him and this order would be followed by a direction in consequence of which the landlord would be put in possession of the premises. Section 5, sub-s. (1) thus provides for a self contained procedure for dealing with applications for ejectment made by a landlord against his thika tenant before the Controller.

Mr. Chatterjee, however, suggests that the deletion of the words " subject to the provisions of s. 28 " which originally occurred in s. 5 indicates that the Controller has been given jurisdiction not only to entertain original applications for ejectment made by the landlords but also to deal with decrees already passed in their favour. Whether or not the use of the deleted words in the original s. 5 (1) served any useful purpose and what exactly was their denotation are matters on which it is unnecessary to pronounce a judgment in the present case. It is clear that since s. 28 along with s. 29

has been deleted from the Act by the subsequent amending Act VI of 1953, any reference to s. 28 in s. 5 (1) would have been entirely out of place.But the deletion of the material words does not enlarge the jurisdiction of the Controller to reopen disputes between the landlords and their thika tenants when in respect of such disputes decrees have already been passed by courts of competent jurisdiction in favour of landlords. All the relevant provisions of s. 5, sub-s. (1) are absolutely inapplicable to cases of such decrees and so we are unable to accept the argument that even where a decree has been passed in favour of the landlord a claim for the execution of the decree would have to be entertained and considered by the Controller under s. 5, sub-s. (1).

Then it is urged that it would be unreasonable to hold that a certain class of thika tenants was precluded from obtaining the benefit of the Act merely because decrees for ejectment were passed before the Act came into force; and it is emphasised that the scheme of the original Act as evidenced by ss. 5, 28 and 29 clearly was to afford protection to all thika tenants even where decrees for ejectment had been passed against them. It must be conceded that under the original Act, s. 28 purported to give protection to judgmentdebtors' and required that the decrees passed against thika tenants should be examined by the courts that passed the decrees in the light of the provisions of the Thika Tenancy Act. But, later on, it appears to have been thought prudent to limit the protection to such judgment-debtors in the manner contemplated by s. 5, sub-s. (2) of the amending Ordinance of 1952. Such judgment-debtors were allowed liberty to apply for setting aside the decrees passed against them within three months after the commencement of the said Ordinance and such applications were required to be dealt with according to law even after the Ordinance ceased to be operative. As we have already pointed out, the decree with which we are concerned in the present appeal falls within the purview of the provision of s. 5, sub-s. (2) of the Ordinance. If the judgment. debtor did not avail himself of the right conferred on him by this provision, he cannot now seek to rectify the omission by relying on the provisions of s. 5, sub-s. (1) as amended. It may be unfortunate that owing to the steps that he was taking in several proceedings adopted by him in the present litigation he was probably not advised to make a proper application under s. 5, sub-s. (2) of the Ordinance; but that is the only protection that he and judgment-debtors of his class were entitled to after the amending Ordinance of 1952 came into force. It would, therefore, not be reasonable to complain that no protection whatever has been given to this class of thika tenants. It may be that the extent of the protection now afforded to this class may not be as wide as it originally was under s. 28 of Act II of 1949 but the deletion of s. 28 clearly indicates that the Legislature wanted to revise its policy in this matter. The position, therefore, is that the conclusion which follows from a reasonable construction of s. 5, sub-s. (1) is corroborated by the deletion of s. 28 from the Act and by the provision of s. 5, sub-s. (2) of the amending Ordinance of 1952 and s. 9 of the amending Act VI of 1953. We must,accordingly, hold that the Calcutta High Court was right in rejecting the appellant's argument that civil courts had no jurisdiction to entertain the execution petition filed by the respondent against the appellant. In the result, the appeal fails and must be dismissed with costs.

Appeal dismissed.