

Supreme Court of India

Dipak Kumar Ghosh vs Mira Sen on 22 January, 1987

Equivalent citations: 1987 AIR 759, 1987 SCR (1)1108

Author: M Dutt

Bench: Dutt, M.M. (J)

PETITIONER:

DIPAK KUMAR GHOSH

Vs.

RESPONDENT:

MIRA SEN

DATE OF JUDGMENT 22/01/1987

BENCH:

DUTT, M.M. (J)

BENCH:

DUTT, M.M. (J)

MISRA RANGNATH

CITATION:

1987 AIR 759 1987 SCR (1)1108

1987 SCC (1) 562 JT 1987 (1) 241

1987 SCALE (1)131

ACT:

West Bengal Premises Tenancy Act, 1956: s. 13(i)(j)--Grounds of eviction--Tenant's notice to quit--Expression 'We shall vacate the premises within next 6/8 months' used--Notice whether vague and uncertain--Whether falls under s. 106 of the Transfer of Property Act--Tenant whether estopped from challenging it.

HEADNOTE:

Clause (.i) of s.13(1) of the West Bengal Premises Tenancy Act, 1956 empowers the court to order recovery of possession of any premises in favour of the landlord where the tenant has given notice to quit but has failed to deliver possession in accordance with such notice.

The appellant-tenant while remitting monthly rent by postal money order stated in the coupon that they shall vacate the premises within the next 6/8 months. This was taken note of by the respondent landlord in his subsequent letter. When the tenant failed to deliver vacant possession of the premises the respondent filed a suit for ejectment under s.13(1)(j), which was contested by the tenant contending that it was never intended by him to vacate the premises and that the said statement in the money order

coupon was not made by him but by his brother without any authority from him.

The trial court dismissed the suit holding that the statement in the money order was neither written by the appellant nor by his authorised agent and accordingly it did not amount to a notice to quit within the provision of s.13(1)(j) of the Act. The lower appellate court affirmed the finding of the trial court, but held that the said statement in the money order coupon was made by the brother of the appellant under his specific instruction.

Respondent's second appeal was allowed by the High Court, which took the view that the statement in the money order coupon constituted a valid notice to quit within the meaning of s. 13(I)(j).

In this appeal by special leave it was contended for the appellant that the notice to quit was vague and uncertain and as it did not comply

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with the provisions of s. 106 of the Transfer of Property Act it was defective and could not be treated as a notice to quit within the meaning of cl.(j) ors.13(1) of the Act.

Dismissing the appeal, the Court,

HELD: 1. The High Court was justified in decreeing the suit for eviction on the ground contained in clause (.i) of section 13(1) of the West Bengal Premises Tenancy Act, 1956. That clause reserves an option to the tenant to relinquish the protection under the Act by giving a notice to quit. On failure of the tenant to vacate the premises in accordance with the notice to quit, the landlord would be entitled to a decree for ejectment. [1114 ; 1112C-D]

2. The notice to quit must not be vague and uncertain. There must be a clear indication in it of the tenant's intention to vacate the premises. Such an intention will be apparent when it is stated in the notice to quit that the tenant will vacate on a particular date or after a certain period of time. When the tenant says that he will vacate by a certain date that will simply mean that he would vacate on or before that date. [1112D; 1113B-C]

In the instant case, the notice to quit could not be said to be vague and uncertain. Though it did not specifically mention the date when the appellant would vacate the premises, it was apparent from the statement "we shall vacate the premises within the next 6/8 months" that the appellant's stay in the premises would not be beyond eight months. It contains a clear intention to vacate the premises positively after the expiry of eight months from the date of the notice. [1113C]

Joseph v. Joseph, [1967] CH 78 and Matthewson v. Wrightman, 170 E.R. 622, referred to.

3. The respondent had by his letter dated April 9, 1969 enquired of the appellant as to the date on which the appellant would vacate the premises so as to enable the respondent to arrange his occupation of the premises accordingly.

If the respondent had not accepted the notice to quit, there was no necessity for him to enquire of the appellant as to the precise date of his vacating the premises. The notice having thus been accepted by the respondent, the appellant was precluded from challenging the validity thereof. [1114E-G]

4.1 A notice to quit even if it is defective can be accepted by the

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landlord, and after such acceptance the tenant will be estopped from challenging the validity of the notice given by him. [1114C]

4.2. Clause(j) of s.13(1) of the Act uses the expression "notice to quit" and does not lay down the particulars to be mentioned in such notice. It does not also refer to the provision of s. 106 of the Transfer of Property Act. Even assuming that it is a notice under s.106 of the Transfer of Property Act and, accordingly the instant notice to quit was bad, yet the respondent having accepted the notice to quit, it was not open to the appellant to contend that it was invalid and could not be relied upon by the respondent as a ground for eviction. [1113G; 1114A-C]

Calcutta Credit Corporation Ltd. & Anr. v. Happy Homes (P) Ltd., [1962] 2 SCR 20, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1160 of From the Judgment and Order dated 9.12. 1977 of the Calcutta High Court in Appeal from Appellate Decree No.782 of 1973 S.N. Kacker and Sukumar Ghosh for the Appellant. Shankar Ghosh and D.K. Sinha and K.R. Nambiar for the Respondent.

The Judgment of the Court was delivered by DUTT, J. The only question that is involved in this appeal by special leave is whether the High Court was justified in decreeing the suit for ejectment on the ground under clause (j) of section 13(1) of the West Bengal Premises Tenancy Act, 1956, hereinafter referred to as "the Act". One of the grounds for ejectment is that contained in clause (j) of section 13(1) of the act and reads as follows:

"S. 13(1). Notwithstanding anything to the contrary in any other 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 except on one or more of the following grounds, namely:-

.....
.....

(j) Where the tenant has given notice to quit but has failed to deliver vacant possession of the premises to the landlord in accordance with such notice."

It appears that while remitting by postal money order the rents for the months of November and December, 1968, the appellant stated in writing in the money order coupon "we shall vacate the premises within next 6/8 months." It is not disputed before us that the said statement was made in the money order coupon by the appellant's brother under his specific instruction. After the respondent had received the said money order coupon, he by his letter dated April 19, 1969 sent to the appellant by registered post, inter alia, wrote as follows:-

"I also take note of your notice to vacate the said premises within 6/8 months' time. I shall be obliged if you kindly let me know precisely the date on which you will vacate the said premises, so that I may arrange my occupation of the said premises accordingly."

The said letter of the respondent was not replied to by the appellant. Thereafter, on May 11, 1970 the respondent instituted a suit for ejectment on the ground that the appellant had failed to deliver vacant possession of the premises in accordance with the said statement in the money order coupon which was treated as the notice to quit. In other words, the suit was instituted by the respondent on the ground of clause (j) of section 13(1) of the Act. The appellant contested the suit. His plea was that it was never intended by him to vacate the premises in question, and that the said statement in the money order coupon was not made by him but by his brother without any authority from him in that behalf.

The trial court dismissed the suit holding that the said statement in the money order coupon was neither written by the appellant nor by his authorised agent and, accordingly, it did not amount to a notice to quit within the meaning of clause (j) of section 13(1) of the Act. On appeal by the respondent, the lower appellate court affirmed the finding of the trial court that the statement in the money order coupon did not constitute a notice to quit. It was, however, found by the lower appellate court that the said statement in the money order coupon was made by the brother of the appellant under his specific instruction. The appeal preferred by the respondent was, consequently, dismissed.

The respondent filed a second appeal in the High Court. The learned Single Judge of the High Court took the view that the said statement in the money order coupon constituted a valid notice to quit within the meaning of clause (j) of section 13(1) of the Act and as the appellant had failed to vacate the premises in accordance with the said notice to quit, the respondent's suit for eviction should be decreed. In that view of the matter, the learned Judge set aside the judgments and decrees of the Courts below dismissing the suit and decreed the respondent's suit for eviction. Hence this appeal by special leave.

The Act provides for the protection of tenants against eviction. Under section 13(1), no order or decree for recovery of possession of any premises shall be made by any Court in favour of the landlord against a tenant except on one or more of the grounds as mentioned thereunder. One of the

grounds of eviction is that contained in clause (j) of section 13(1) of the Act. The tenant may relinquish the protection under the Act by giving a notice to quit. On the failure of the tenant to vacate the premises in accordance with the notice to quit, the landlord would be entitled to a decree for ejectment. The notice to quit, however, must not be vague and uncertain. There must be a clear indication in the notice to quit of the tenant's intention to vacate the premises.

It is however, urged by Mr. Kacker, learned Counsel appearing on behalf of the appellant, that the notice to quit is vague and uncertain and the suit should have been dismissed on that ground. In support of his contention, he has placed reliance upon a statement in "A Concise Law Dictionary" by Osborn at page 224 that a notice to quit must specify the correct date or time for the termination of tenancy. The learned Counsel has also placed reliance upon a statement from Corpus Juris, Vol. 51-Landlord & Tenant- paragraph 142 at 745, "It must, however be definite and unequivocal and unconditional." Counsel submits that in the instant case, the notice to quit does not mention any specific date or time of vacating the premises by the appellant. Instead, it suffers from uncertainty and vagueness as it states that the appellant proposes to vacate within next 6/8 months, that is to say, either within 6 months or within 8 months. Our attention has been drawn by the learned Counsel to the letter written by the respondent enquiring of the appellant as to the date when he would vacate. It is submitted that the respondent himself was not sure as to when the appellant would vacate the premises.

It is true that the notice does not specifically mention the date when the appellant would vacate the premises, but it was certain that the appellant's stay in the premises would not be beyond eight months, that is to say, the appellant would vacate the premises positively after the expiry of eight months from the date of the notice. All that is necessary is a clear intention to vacate and such intention will be apparent when it is stated in the notice to quit that the tenant will vacate on a particular date or after a certain period of time. A tenant may say that he will vacate by a certain date and that will simply mean that he would vacate on or before that date. Indeed, in *Joseph v. Joseph*, [1967] CH 78, the tenants agreed to give up possession "by July 31". It was observed by Lord Denning M.R., "The commonsense meaning is that the tenants were to give up possession by July 31, 1960, but that, if they chose to give it up by an earlier date, the landlord would accept possession earlier, that is just the way in which this Court construed a notice to quit 'on or before' a fixed date. It was construed as meaning to quit on a fixed date, but gave the tenant the option of quitting earlier." In *Matthewson v. Wrightman*, 170 E.R. 622, the notice to quit by the landlord to the tenant asked the tenant to quit possession on the 25th day of March or the 8th day of April next ensuing. It was held to be a good notice.

In the instant case, the notice to quit reserved to the appellant an option of vacating the premises earlier than 8 months and that is apparent from the words "within next 6/8 months". At the same time, as noticed already, the statement contains a clear intention of the appellant to vacate in any event after eight months from the date of the statement. There is, therefore, no substance in the contention of the appellant that the notice to quit was vague and uncertain. It is next urged by Mr. Kacker that the notice to quit referred to in clause (j) should conform to the provisions of section 106 of the Transfer of Property Act. It is submitted that the expression "notice to quit" is a well known technical expression and whenever it is used in any statute relating to landlord and tenant, it

would mean a notice under section 106 of the Transfer of Property Act. COounsel submits that as the notice in this case does not comply with the requirement of the provision of section 106 of the Transfer of Property Act, it is defective and cannot be treated as a notice to quit within the meaning of clause (j) of section 13(1) of the Act read with section 106 of the Transfer of Property Act.

Clause (j) uses the expression "notice to quit" and does not lay down the particulars to be mentioned in such notice. It does not also refer to the provision of section 106 of the Transfer of Property Act. There can be no doubt that if the notice to quit as mentioned in clause (j). refers to a notice under section 106 of the Transfer of Property Act, the present notice to quit with which we are concerned must be held to be bad. We do not think that we are called upon to consider whether a notice to quit under clause (j) is really a notice as contemplated by section 106 of the Transfer of Property Act. Even assuming that it is a notice under section 106 of the Transfer of Property Act and, accordingly, the instant notice to quit is bad, yet the respondent having accepted the notice to quit, it will not be open to the appellant to contend that it is invalid and cannot be relied upon by the respondent as a ground for eviction. A notice to quit even if it is defective can be accepted by the landlord, and after such acceptance the tenant will be estopped from challenging the validity of the notice given by him. Indeed, the question came up for consideration before this Court in the Calcutta Credit Corporation Ltd. & Anr., v. Happy Homes (P) Ltd., [1968] 2 SCR 20. It has been held by this Court that a notice which does not comply with 'the requirements of section 106 of the Transfer of Property Act in that it does not expire with the end of the month of the tenancy, or the end of the year of the tenancy, as the case may be or of which the duration is shorter than the duration contemplated by section 106, may still be accepted by the party served with the notice and if that party accepts' and acts upon it, the party serving the notice will be estopped from denying its validity.

It is, however, urged on behalf of the appellant that the respondent had not accepted the notice to quit. This contention is also without any substance. It has been earlier noticed that the respondent by his letter dated April 9, 1969 enquired of the appellant as to the date on which the appellant would vacate the premises so as to enable the respondent to arrange his occupation of the premises accordingly. If the respondent had not accepted the notice to quit, there was no necessity for him to enquire of the appellant as to the precise date of his vacating the premises. Thus, the notice having been accepted by the respondent, the appellant is precluded from challenging the validity thereof. The High Court was, therefore, in our opinion, justified in decreeing the suit for eviction on the ground as contained in clause (j) of section 13(1) of the Act. In the result, the judgment and decree of the High Court is affirmed and the appeal is dismissed. There will, however, be no order as to costs.

The appellant is, however, granted time to vacate the premises till the end of April, 1987 which will stand extended up to August 31, 1987 provided the appellant files within four weeks from the date an undertaking in writing to the effect that he will vacate and deliver up vacant and peaceful possession of the premises to the respondent on or before August 31, 1987. The appellant shall also go on depositing in the trial court an amount calculated at the rate of rent, month by month, by fifteenth of the next month following that for which it is due. In default of such deposit for any two months, the respondent will be at liberty to execute the decree at once notwithstanding the time, be it the initial or the extended one, granted to the appellant. The respondent will be entitled to

withdraw any amount that may be deposited by the appellant in terms of this judgment without furnishing any security.

P.S.S.
dismissed.

Appeal