Supreme Court of India
Indian Iron & Steel Co. Ltd vs Biswanath Sonar on 22 March, 1966
Equivalent citations: 1967 AIR 77, 1966 SCR (1) 15
Author: Hidayatullah
Bench: Hidayatullah, M.

PETITIONER:
INDIAN IRON & STEEL CO. LTD.

Vs.

RESPONDENT:
BISWANATH SONAR

DATE OF JUDGMENT:
22/03/1966

BENCH:
HIDAYATULLAH, M.
BENCH:
HIDAYATULLAH, M.
WANCHOO, K.N.
SHAH, J.C.

CITATION:
1967 AIR 77 1966 SCR (1) 15

ACT:
Bengal Non-Agricultural Tenancy Act, s. 9(1)(iii)-Benefit under section whether available in case of monthly tenancy-Term' in section whether means agreed term or period of occupation.

HEADNOTE:
The appellant company gave on lease a piece of land to the respondent in 1938. On June 28, 1950 the company gave notice to the respondent terminating the tenancy. The period mentioned in the notice, which was received by the respondent on June 29, 1950 was six months ending with the expiry of December 1950. Later the company filed a suit for the eviction of the respondent. The latter claimed benefit of s. 9(1) (iii) of the Bengal Non-Agricultural Tenancy Act. The trial court decreed the suit and the first appellate Court upheld the decree, but the High Court set it aside and dismissed the suit. By special leave, the company appealed to this Court contending that since the respondent's tenancy was from month to month s. 9 (1) (iii) did not apply. It was urged: (i) the phrase "for a term of more than one year but less than twelve years" in the first part of the section contemplated tenancies in which the agreed duration under a

contract was more than one year but less than 12 years; (ii) the phrase "six months' notice expiring with the end of a year of the tenancy" in the latter part of the section meant that the notice in writing must expire with the end of the year of the tenancy when the tenancy was from year to year and with the end of the term when it was more than one year's duration.

HELD:(i) The Act uses the word "term" both in the sense of a period of occupation and of a period agreed, upon in a contract. The context must determine the sense in which it is to be understood. In the opening words of s. 9(1) (iii) it means that the land must be held, that is, occupied, for more than one year. It does not signify that there should be an agreed term of more than one year. [18 C-D; 19C; 20E]

(ii) The words "end of a year of tenancy" in the latter part of s. 9(1) (iii) are no doubt indicative of a tenancy from year to year but they are not such as to be inapplicable to a tenancy from month to month. What the section contemplates is occupation for more than one year and it says that a tenant who has held the, land for more than a year, albeit, on a tenancy from month to month. shall only be evicted on the anniversary of the day on which his tenancy commences. [20 F-H].

(iii) The tenancy having commenced as held by the High Court on December 1, 1938 the notice given by the company in the present case fell short of the statutory six months and was therefore in valid. [21 E-G].

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1090 of 1963. Appeal by special leave from the judgment and decree dated June 2, 1961 of the Calcutta High Court in Appeal from Appellate Decree No. 786 of 1956.

M. C. Setalvad and D. N. Mukherjee, for the appellant. A. K. Sen and P. K. Chatterjee, for the respondent.

The Judgment of the Court was delivered by Hidyatulla, J. This appeal by special leave against the judgment and order of the High Court of Calcutta, December 5, 1961, arises from a suit between landlord and tenant. The Indian Iron & Steel Co. Ltd. (appellant) is the landlord and Biswanath Sonar (respondent) is the tenant, and the tenancy is in respect of a piece of land with a rent of Rs. 4/- per month. According to the Company the tenancy commenced in December 1938 and according to the tenant in the beginning of 1935. The two courts of fact have found in favour of the Company on this point and the High Court has very properly accepted this concurrent finding but has held that tenancy began on the 1st of December, 1938, but more of that later. The suit was commenced in the Court of the Munsif at Asansol by the Company after serving a notice dated June 28, 1950 terminating the alleged monthly tenancy of the respondent with the expiry of December, 1950. The

notice was served on June 29, 1950. The Company asked for the relief of khas possession by evicting the tenant and reserved the relief of compensation for wrongful occupation after January 1, 1951, for a separate suit. The Company offered to pay such reasonable compensation for structures on the land as the court might determine. The respondent claimed benefit of s. 9(1)(iii) of the Bengal Non-AgricuItural Tenancy Act under which, he submitted, his tenancy could not be determined except by service of six months' notice in writing expiring with the year of tenancy. He contended that the notice served on the 29th of June terminating the tenancy at the end of December, 1950, was not in accordance with the provisions of the Act as the tenancy commenced in the beginning of 1935, and, therefore, the suit was not maintainable. The learned Munsif held the notice to be proper and dec. reed the suit. On appeal the Additional District Judge, Asansol confirmed the decree passed by the Munsif. On second appeal a learned single Judge in the High Court reversed the decision of the two courts below and ordered the dismissal of the suit. He followed a decision of a special Bench of his Court reported in the Indian Iron and Steel Co. Ltd. v. Baker Ali(1) which had approved of two unreported decisions of the same Court reported in Sudhindra Nath Roy v. Haran Chandra Mistry (S.A. No. 879 of 1950 dated 25-1-1955) and Narayan Chandra Sen v. Sripati Charan Kumar (S.A. No. 425 of 1952 dated 9-8-1955). The learned single Judge refused leave to file an appeal under the Letters Patent but the appellant was granted special leave by this Court to appeal against the judgment of the learned single Judge.

In this appeal two questions arise, namely, (i) whether the provisions of s. 9(1)(iii) of the Non-Agricultural Tenancy Act apply to the present tenancy, and (ii) whether the notice served upon the respondent compiled with the terms of the Act. In so far as the A.I.B. 1961 Cal. 515.

first question is concerned no further facts are necessary. This question should have given no difficulty but for the fact that the language of the enactment is far from clear. Section 9(1)(iii) reads as follows:

> "9. Incidents of non-agricultural tenancies held for less than twelve years.
>
> (1) Notwithstanding anything contained in any other law for the time being in force or in any contract, if any non-agricultural land has been held for a term of more than one year but less than twelve years-

(a) under a lease in writing for a term of more than one year but less than twelve years to which the provisions of clause (5) of section 7 do not apply, or

(b) without a lease in writing, or

(c) under a lease in writing but no term is specified in such lease, then the tenant holding such non-agricultural land shall be liable to ejectment on one or more of the following grounds and not otherwise, namely:

> (i)

(ii)

(iii) on the ground that the tenancy has been terminated by the landlord by six months" notice in writing expiring with the end of a year of the tenancy served on the tenant in the prescribed manner in clause (b): Provided that a tenant shall not be liable to ejectment on the ground specified in clause

(iii) except on payment of such reasonable compensation as may be agreed upon between the landlord and the tenant or if they do not agree, as may be determined by the Court on the application of the laodlord or such tenant.

. . . . .
. . . . .

Difficulties arise in connection with two expressions in this section. Firstly what is meant by the phrase "for a term of more than one year but less than twelve years" in the opening part, and, secondly, what is meant by the phrase "six months' notice in writing expiring with the end of the year of the tenancy" The appellant contends that the first phrase contemplates tenancies in which the agreed duration under a contract is more than one year but less than 12 years and the second phrase means that the notice in writing must expire with the end of the year of the tenancy when the tenancy is from year to year and with the end of the term when, it is more than one year's duration. The respondent contends that the two phrases respectively describe the duration for which non-agricultural land must actually be held and that the notice of six months must end on the anniversary of the commencement of the tenancy. The appellant's contention, shortly stated, is that a monthly tenancy cannot get the benefit of s. 9(1)(iii) however long the occupation of the land. Both sides agree that this is non-agricultural land and that the tenancy is from month to month. It has also been found that it is a monthly tenancy. If the provisions of s. 9(1)(iii) apply also to a monthly tenant who has been in possession of land for more than a year, then the respondent will be protected from eviction, otherwise not.

This depends on what is meant by the two phrases we have referred to earlier.

The construction of the first phrase is rendered difficult because the Act does not use the words strictly in the same sense throughout. Sometimes the word "term" is used to indicate a period of time without any reference to a contract determining it and sometimes to a period settled, agreed or determined by a contract. In s. 9(1)(iii) the word "term" is used and the question arises whether it indicates a period of occupation or a period agreed upon in a: contract. To determine the right meaning we shall first analyse the provisions of the Act generally and then consider what is the true meaning of the two expressions in s. 9 on which there has been a difference of opinion between the High Court and the two courts below.

The Act was passed to make comprehensive provisions relating to the law of landlord and tenant in respect of non- agricultural tenancies in West Bengal and is a part of protection given in modern

times by law to tenancies of various kinds of which the Rent Control Acts and Acts relating to agricultural tenancies represent some other aspects. After defining the terms such as 'land', 'non-agricultural land' and 'non-agricultural tenants' (to which definition pointed reference here is unnecessary), the Act classifies non-agricultural tenants into tenants and under- tenants, and then it makes separate provisions for their protection. The Third Chapter (ss. 6 to 15) provides for tenants and the Fourth Chapter for under-tenants. The remaining Chapters providing for the manner of transfer of non-agricultural tenancies', preparation of records of rights, settlement, rents, etc. do not presently concern us. We shall, therefore, confine our attention to the chapter on tenants. Section 6 lays down the manner of use of non- agricultural lands. It states generally that the tenant may use land in any manner not inconsistent with the purpose of the tenancy but so as not to impair its value. The section goes on to state that the tenants to whom ss, 7 and 8 apply may erect any structure including a pucca structure, dig any tank, plant and enjoy the flowers and fruits and fell and utilise or dispose of timber of any tree on such land, but the tenants to whom s. 9 applies may only erect structures other than pucca structures and may not dig tank, or fell, utilise or dispose of, trees not planted by :them. Sections 7, 8 and 9 lay down the incidents of two different kinds of tenancies:

(a) those held for a term of not less than 12 ,years and (b) those held for a term of less than 12 years but more than one year and the question which we have stated earlier is whether by the word "term" is meant the duration of the least agreed upon or merely the period of occupation of the non-agricultural land.

A close study of the Act shows that the word "term" is used in both senses and the context must determine in which sense it is to be understood. We need not reproduce here all the sections or clauses in which the word "term" is used in one sense or the other because sub-sections (3) and (4) of s. 7 between them illustrate adequately this two-fold meaning. We may reproduce them here:

> "7. Incidents of certain tenancies. Notwithstanding anything contained in any other law for the time being in force or in any contract (1) . . . .
>
> (2) . . . .
>
> (3) If any non-agricultural land has been held for a term of not less than twelve years under a lease in writing but no term is specified in such lease, or (4) if any non-agricultural land held under a lease in writing for a period specified therein continues to be held with the express or implied consent of the landlord after the expiration of the time limited by such lease and the total period for which such land is so held is not less than twelve years, or (5) . . . .
>
> then-
>
> (i) the tenant holding the non-agricultural comprised in such tenancy shall not be eject. ed by his landlord from such land except on the ground that he has used such land, in a manner which renders it unfit for use for the purposes of tenancy,

(ii) the interest of the tenant in the non- agricultural land comprised in such tenancy shall, in the case where such tenant dies intestate in respect of such interest. be transmitted by inheritance in the same manner as his other immovable property:

. . . . ."

A bare 'perusal of these enactments is sufficient to show that the word "term" used for the first time in (3) indicates that the period of occupation must not be less than 12 years. It cannot mean an agreed period because the latter part says that this applies where "no term" is specified in the lease and in this part the word "term" must obviously mean an agreed period. (4) shows that if land is held beyond the period specified in the lease in writing and if the total period then becomes not less than 12 years, the protection is again obtained. The word "term" thus may indicate a period specified in a lease or a period of occupation according as the context requires. This diversity of meaning is also illustrated by ss. 7(2), 8(1) and 8(3).

We now come to S. 9 which we have already quoted. It begins by excluding any other law or contract of lease from consideration and speaks in the opening part of land held for a term of more than one year but not less than twelve years thereby distinguishing between tenancies on the basis of the length of occupation. As the marginal note says, the section deals with tenancies held for less than twelve years. Clauses (a), (b) and (c) also establish the above meaning because (a) applies to leases in writing for a term of more than one year but less than twelve years, (b) refers to cases in which the occupation Is without a lease in writing and (c) refers to cases in which there Is a lease in writing but no term is specified. In those cases in which there is no written lease or in which no term is specified in the lease in writing, the opening portion must obviously mean that the land must be held, that is, occupied for more than one year. The difference between ss. 7 and 8 on the one hand and S. 9 on the other lies in the kind of protec- tion afforded. A tenant who has held the land under lease for more than 12 years cannot be ejected at all unless he has used such land in a manner which renders it unfit for use for the purpose of the tenancy, and his interest becomes heritable, transferable and devisable like any other immovable property. A tenant who has held land in occupation for less than 12 years but more than one year can,only be ejected by a notice of six months expiring with the end of a year of the tenan It is argued that the words "end of a year of tenancy" are inappropriate where the tenancy is from month to month because there is no year of tenancy. Those words no doubt are indicative of, a tenancy from year to year but they are not such as to be altogether inapplicable to a tenancy from month to month. What the section contemplates is occupation for more than one year and it says that a tenant who has held the land for more than a year, albeit, on a tenancy from month to month, shall only be evicted on the anniversary of the day on which his tenancy commences. Where the tenancy is from month to month " year" means a period of twelve months and the tenant may only be required to quit at the expiry of the whole year, that is to say, on the anniversary of the commencement of the lease.

it is argued that this would have the effect of converting the, tenancy from month to month into a tenancy from year to year. This is perhaps true. In the matter of certain rights of the tenants, particularly in the matter of termination of their tenancy by notice, it appears that this legislation intends to bring even a monthly tenant, who has occupied land for more than a year, within the

protection of six months' notice before he is evicted. A different protection is given to a tenant who occupies land for 12 years and in that case he cannot be evicted even by notice unless he uses the land in a manner which renders it unfit for the purposes of the tenancy or his other property goes to Government and his interest in the land is extinguished. Section 9(1)(iii) was interpreted in much the same way in the three decisions of the High Court of Calcutta above referred to and in our judgment those cases took the right view of the matter. The Company itself served a notice in June expiring with the end of the year alleging that the tenancy had commenced in December 1938 indicating quite plainly that it also. considered that a notice of 15 days expiring with the end of the month of the tenancy would not be sufficient. In its view also, the notice to be a valid notice had to be of six months expiring with the end of the year of tenancy. Therefore, the notice was despatched on the 28th of June, 1950 and was served on the following day. It asked the tenant to quit at the end of December, 1950. The High Court held that the tenancy must be deemed to have commenced on December 1, 1938 and the notice fell short of six months. In fact, the notice would fall short of the necessary period unless the tenancy had commenced on a date between the 29th and 31st December, 1938. There is no proof when the tenancy really commenced and the Company has not cared to give evidence on this part of the case. Even if we reject the finding of the High Court that the tenancy commenced on the 1st of December, we are not in a position to say that it commenced on any particular date. We are, however, relieved of the trouble to make the effort because the account books of the Company show that the tenant was on the land even in November and had paid rent. In view of this and in view of the construction we have placed on s. 9(1)(iii) it is quite plain that the notice must fall short of the statutory six months. It was, therefore, quite ineffective and the High Court was right in holding that it was invalid although our reasons are different. The appeal has thus no force. If fails and will be dismissed with costs.

Appeal dismissed.