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STATE OF WEST BENGAL & ANR.

v.

SARAL KUMAR SEN GUPTA & ANR.

APRIL 15, 1986

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[E.S. VENKATARAMIAH AND M.P. THAKKAR, JJ.]

West Bengal Government Premises (Tenancy Regulation) Act, 1976 - S.3(2) - Agreement of tenancy - Stipulation - 'Premises to be used exclusively by the tenant and members of his family' - Tenant ceasing to occupy premises himself - Whether liable to eviction.

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Respondent No.1 - an employee of the State Government was allotted on lease a two-roomed flat. Clause (7) of the agreement of tenancy provided that the premises shall be used exclusively for the purpose of the residence of Respondent No.1 and the members of his family. At that time the family of the Respondent No.1 consisted of himself, his elder brother and three unmarried sisters. In the year 1959, Respondent No.1 got married and alongwith his wife shifted to another flat taken on lease. His elder brother and two unmarried sisters continued to be in occupation of the flat.

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The Prescribed Authority under the West Bengal Government Premises (Tenancy Regulation) Act, 1976 issued a notice to Respondent No.1 calling upon him to quit and deliver possession of the flat on the ground that the tenancy had automatically terminated as provided in s.3(2) of the Act because he had ceased to occupy it and that cl. (7) of the agreement of the tenancy had been violated.

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Respondent No. 1 filed a Writ Petition under Article 226 alleging that since Respondent No.2 was his elder brother he was a member of his family and he was entitled to live in the flat even though Respondent No.1 himself was not living therein. The petition was dismissed by a Single Judge.

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In appeal, the Division Bench held that cl. (7) of the agreement of tenancy was not violated even if the tenant had himself ceased to occupy and a member of his family continued to reside in the flat, and allowed the appeal.

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A Allowing the appeal by the State to this Court,

 HELD: 1. Respondent No. 1 violated cl.(7) of the agreement of tenancy when he ceased to occupy the premises himself. The judgment of the Division Bench is set aside and that of the Single Judge is restored. [521 A-B]

B 2. What cl.(7) of the agreement of tenancy stipulates is that the premises can be used by respondent No. 1 and the members of his family, that is to say, respondent No.1 could stay himself along with his family members and not by respondent No.1 or the members of his family. As long as respondent No. 1 is residing in the premises he could accommodate along with him any other member of his family in the premises. But when he ceases to reside in the premises and occupies other premises for residence as a separate unit other members constituting a separate unit cannot in their own right as a separate unit continue to get the same without violating C cl.(7) of the agreement of tenancy. It is the condition of the lease that the tenant in whose favour the premises are leased D should reside in the premises let to him and not in some other premises during the currency of the lease. [519 E-G]

 Baldev Sahai Bangia v. R.C. Bhasin, [1982] 3 S.C.R. 670, E distinguished.

 3. To meet the growing demand for Government premises F the State Legislature had to amend the Act by the West Bengal Act XLVI of 1980, by introducing cl. (1a) in sub-s. (2) of s.3 of the Act which provided that a tenancy in respect of a Government Premises would stand automatically terminated G without any notice to quit where the tenant had subsequently built a house or acquired (by purchase, gift, inheritance, lease, exchange or otherwise) a house or an apartment, either in his own name or in the name of any member of his family, within a reasonable distance from such Government premises. [520 F-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9963 of 1983.

H From the Judgment and Order dated 3rd August 1983 of the Clacutta High Court in First Misc. Appeal (Mandamus) Tender No. 168 of 1983.

N.N. Gooptu, D.P. Mukherjee and G.S. Chatterjee for the Appellants. A

Shankar Ghose and Rathin Das for the Respondents.

The Judgment of the Court was delivered by B

VENKATARAMIAH, J. The State of West Bengal, the Deputy Secretary and the Assistant Secretary, Housing Department to the Government of West Bengal are the appellants in this appeal. The above appeal is filed by special leave against the judgment dated August 3, 1983 of the High Court of Calcutta in Appeal from Original Order T. No. 168 of 1983 allowing the appeal against the judgment dated January 18, 1983 of the learned Single Judge of the Calcutta High Court in C.R. No. 12684 (W) of 1976. Respondent No. 1, Saral Kumar Sen Gupta was an Upper Division Assistant in the Directorate of Food and Supplies, Government of West Bengal. In the year 1958 he was allotted on lease a two-roomed flat bearing No.5 in Block 'F' of the Government Housing Estate, Karaya Road, Calcutta. The allotment was made under an agreement of tenancy which contained the terms and conditions under which the flat had been allotted in his favour. Clause (7) of the agreement read as follows : C D

"(7) You should use the premises exclusively for the purpose of residence of **yourself and the members of your family** and for no other purpose whatsoever." E

(emphasis added) F

It is stated that in the year 1958 the members of the family of Respondent No.1, Saral Kumar Sen Gupta consisted of himself, his elder brother Santosh Kumar Sen Gupta, Respondent No.2, and three unmarried sisters. The 1st respondent was married in the year 1959. After some time Respondent No.1 along with his wife shifted to another flat which he had taken on lease. His elder brother and his two unmarried sisters were in occupation of the flat in question. On coming to know that Respondent No.1 had ceased to occupy the flat and that only his elder brother and his two unmarried sisters were residing there, the Deputy Secretary, Housing Department of the G H

A Government of West Bengal, the Prescribed Authority under
the West Bengal Government Premises (Tenancy Regulation) Act,
1976 (hereinafter referred to as 'the Act') issued a notice to
Respondent No.1 calling upon him to quit and deliver posses-
sion of the flat on the ground that the tenancy had automati-
cally terminated as provided in section 3(2) of the Act as he
had ceased to occupy it and that clause (7) of the agreement
of tenancy had been violated. Aggrieved by the said notice
Respondent No.1 filed a writ petition in the High Court of
Calcutta contending that since Respondent No.2 was his brother
and as such a member of his family, Respondent No.2 was
entitled to live in the said flat even though Respondent No.1,
the tenant was not living therein. The writ petition came up
for hearing before the learned Single Judge of the High Court
who after hearing the parties dismissed it. Against the
judgment of the learned Single Judge Respondent No. 1 filed an
appeal before the Division Bench of the High Court. The Divi-
sion Bench allowed the appeal and made the rule absolute hold-
ing that since Respondent No.2, the elder brother of
Respondent No.1 was a member of the family of Respondent No.1,
clause (7) of the agreement of tenancy had not been violated.
In other words the Division Bench was of the view that clause
(7) of the agreement of tenancy was not violated even if the
tenant had himself ceased to occupy a member of his family
continued to reside in the flat. This appeal by special leave
is filed against the judgment of the Division Bench of the
High Court of Calcutta.

It may be mentioned here that after the judgment of the
learned Single Judge, the State Government took possession of
the flat in question on January 27, 1983 and it has continued
to be in the possession of the State Government
notwithstanding the appeal of Respondent No.1 being allowed by
the Division Bench of High Court by virtue of an interim order
passed by this Court. Even now the flat is in the possession
of the Government of West Bengal.

The building in question belongs to the State Government
and the incidents of its lease are governed by the Act.
Section 3(2) of the Act provides that a tenancy in respect of
a Government premises shall stand automatically terminated
without any notice to quit, where the tenant has violated the
terms of the lease or made default in payment of rent for

three consecutive months. The provisos to section 3(2) of the Act are not relevant for the purposes of this case. The Prescribed Authority appointed under the Act is entitled to recover possession of any Government premises from a tenant under section 3(2) of the Act on the violation of the terms of the lease. The short question which arises for consideration in this case is whether Respondent No.1 who was the tenant of the Government premises in question had violated the terms of the lease. We have already set out above clause (7) of the agreement of tenancy. It provides that the premises can be used exclusively for the purpose of the residence of Respondent No.1 along with the members of his family and for no other purpose whatsoever. Admittedly, Respondent No.1 has not been residing in the premises from a date prior to the date on which the notice was issued to him calling upon him to quit and deliver possession of the premises. The Division Bench of the High Court was of the view that since Santosh Kumar Sen Gupta, the elder brother of Respondent No.1 had been residing in the premises, the condition contained in clause (7) of the agreement of tenancy had not been violated. It was of the view that even though Respondent No.1 had himself along with his wife shifted to some other flat or premises the building could be used by his brother who could be said to be a member of the family of Respondent No.1. With great respect we cannot agree with the view taken by the Division Bench of the High Court. What clause (7) of the agreement of tenancy stipulates is that the premises could be used by Respondent No.1 and the members of his family, that is to say Respondent No.1 could stay himself along with his family members and not by Respondent No.1 or the members of his family. As long as Respondent No.1 is residing in the premises he could accommodate along with him any other member of his family in the premises. But when he ceases to reside in the premises and occupies other premises for residence as a separate unit other members constituting a separate unit cannot in their own right as a separate unit continue to occupy the same without violating clause (7) of the agreement of tenancy. It is the condition of the lease that the tenant in whose favour the premises are leased should reside in the premises let to him and not in some other premises during the currency of the lease.

The learned counsel for the 1st Respondent drew our attention to the decision of this Court in **Baldev Sahai Bangia**

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v. **R.C. Bhasin**, [1982] 3 S.C.R. 670 and contended that this Court had recognised the right of the members of the family of a tenant to reside in a building taken on lease even after the tenant had left the premises. We have gone through that decision. In that case this Court was concerned with clause (d) of section 14(1) of the Delhi Rent Control Act, 1958 which provided that where the premises were let for use as a residence and neither the tenant nor any member of his family had been residing for a period of six month immediately before the date of the filing of the application, the landlord could apply for eviction of the tenant. This decision is of no assistance to the 1st Respondent since the language of section 14(1)(d) of the Delhi Rent Control Act, 1958 is different from the language in clause (7) of the agreement of tenancy in the case before us. The expression 'neither the tenant nor any member of his family' in the Delhi Rent Control Act, 1958 was capable of the construction that if either the tenant or a member of his family was residing in the premises section 14(1)(d) of that Act was not attracted. But in the present case the term contained in clause (7) of the agreement of tenancy required that the premises could be used for the residence of the tenant and (along with him) the members of the family and not tenant or the members of his family in the sense that the tenant stays somewhere else and his other family members stay in the leased premises. The decision relied on is, therefore, clearly distinguishable.

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It has to be borne in mind that the buildings owned by the Government are limited in number and there is a great demand for allotment of Government premises. The Government cannot afford to allow one family to have the privilege of occupying two buildings. It is in order to meet the growing demand for the Government premises the State Legislature had to amend the Act by the West Bengal Act XLVI of 1980 introducing clause (ia) in sub-section (2) of section 3 of the Act which provided that a tenancy in respect of a Government premises would stand automatically terminated without any notice to quit where the tenant had subsequently built a house or acquired (by purchase, gift, inheritance, lease, exchange or otherwise) a house or an apartment, either in his own name or in the name of any member of his family, within a reasonable distance from such Government premises. We have referred to the above clause only to show the magnitude of the

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shortage of housing accommodation. In any view of the matter it has to be held that Respondent No. 1 violated clause (7) of the agreement of tenancy when he ceased to occupy the premises himself. The judgment of the Division Bench of the High Court is, therefore, liable to be set aside. It is accordingly set aside. The judgment of the learned Single Judge is restored.

The appeal is accordingly allowed. No costs.

A.P.J.

Appeal allowed.

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