

Masihuddin and ors. Vs. Akbar Ali and ors.

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Court : Kolkata

Decided On : Aug-22-1933

Reported in : AIR1934Cal367

Appellant : Masihuddin and ors.

Respondent : Akbar Ali and ors.

Judgement :

Jack, J.

1. These two analogous appeals have arisen out of suits for ejectment of under raiyats after service of notice Under Section 49(b), Ben. Ten. Act, of 1885. In each case the notice expired on 13th April 1929 and under the provisions of the Act the tenant was on that date liable to ejectment. But meantime Act 4 of 1928 repealed Section 49 of Act 8 of 1885. The new Act came into operation on 21st February 1929. Admittedly if the new Act applies the tenants would not be liable to ejectment as they have homesteads on the land [Section 48(c), Clause (d) proviso 1(2)] and have been in possession for more than 12 years.

2. Under Clause 6(o), General Clauses Act, the repeal of an Act shall not affect any right acquired under the Act so repealed unless a different intention appears. There is nothing in the new Act showing that it was intended to be retrospective in its effect and therefore the repeal of the old Act will not affect the right which the landlord acquired to eject the tenants on 13th April 1929, a right which he acquired

under the old Section 49(b). But it is said Section 49(b) did not confer a new right, it merely placed a bar on the exercise of a pre-existing right of ejectment. In this connexion reference was made to the case of *Suresh Chandra Chatterjee v. Kanti Chandra Bhattacharjee* AIR 1926 Cal 436 where it was held that where a temporary Rent Act had run out it ceased to have any effect on subsequent proceedings for ejectment, the bar imposed by the Act having ceased to exist. But in that case any vested right acquired under the temporary Act ceased automatically on the expiry of the Act so that the circumstances there were entirely different. There is however considerable force in this argument and it is with some hesitation that I reject it, but it is clear that from another point of view the law, i.e., Section 49(b) of the Act, cancelled any previously existing right of ejectment and substituted a new right which may be said to have been acquired under the Act and the right which the landlord had was one under the provisions of the Act, and one therefore which was not taken away by the repealing Act. The case of *Quilter v. Mapleson* (1883) 9 QBD 672 has been referred to to show that the Amended Tenancy Act of 1928 must be taken to be retrospective in intendment of implication, but that case refers to the provisions of the conveyancing and Law of Property Act of 1881 in which Sub-section 9 of Section 14 expressly makes the section apply to old leases and the Act was held to be to some extent retrospective on this and other grounds. In the present case as Section 48(c) prescribes a new form of notice it seems therefore that the section was not intended to have retrospective effect.

3. The landlord is therefore entitled to eject the tenant in each of these cases Under Section 49(b), Tenancy Act of 1885. The suits are remanded to the trial Court for disposal of the remaining issues accordingly. In the circumstances the parties will pay their own costs up to this point. The future costs will be fixed by the trial Court.

Nag, J.

4. I agree.