A PURUSHOTTAM DAS BANGUR & ORS.

v.

DAYANAND GUPTA

(Civil Appeal No. 7710 of 2012)

OCTOBER 31, 2012

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[T.S. THAKUR AND GYAN SUDHA MISRA, JJ.]

West Bengal Premises Tenancy Act, 1956 - s. 13(1)(b) - Suit for eviction - On the ground of construction of permanent C *structure without the permission of the land-lord - Decreed by trial court - High Court set-aside the decree - On appeal, held: The alteration made by the tenant was a permanent structure and fell within the mischief of s. 108(p) of Transfer of property Act - Thus constituted a ground for eviction in terms of s.* D *13(1)(b) - Transfer of Property Act, 1882 - s. 108(p).*

Transfer of Property Act, 1882 - s. 108(p) - Permanent structure - Determination of - Held: A structure that lasts till the end of tenancy can be treated as permanent structure - Removability of the structure without causing damage to the E *building, durability of the structure and the material used for erection and the purpose for which the structure is intended, are the other considerations for deciding whether the structure is permanent.*

F *Words and Phrases - 'Permanent structure'- Meaning of in the context of West Bengal Premises Tenancy Act, 1956 and s. 108(p) of Transfer of Property Act, 1882.*

Appellants-landlords filed a suit for ejectment against G **the respondent-tenant on the ground that the tenant illegally and unauthorisedly, without permission of the land-lord, removed the tin sheet roof and replaced the same by a cement concrete slab and built a permanent brick and mortar passage to roof; and that the same was**

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violative of s. 108(p) of Transfer of Property Act, 1882 and also the conditions stipulated in the lease agreement executed between the parties and thus the tenant was liable to be evicted u/s. 13(1)(b) of West Bengal Premises Tenancy Act, 1956. Trial court decreed the suit. High Court setting aside the decree, allowed the appeal of the tenant. Hence the present appeal by the land-lord.

Allowing the appeal, the Court

HELD: 1. No hard and fast rule can be prescribed for determining what is permanent or what is not. The use of the word 'permanent' in Section 108 (p) of the Transfer of Property Act, 1882 is meant to distinguish the structure from what is temporary. The term 'permanent' does not mean that the structure must last forever. A structure that lasts till the end of the tenancy can be treated as a permanent structure. The intention of the party putting up the structure is important for determining whether it is permanent or temporary. The nature and extent of the structure is similarly an important circumstance for deciding whether the structure is permanent or temporary within the meaning of Section 108 (p) of the Transfer of Property Act. Removability of the structure without causing any damage to the building is yet another test that can be applied while deciding the nature of the structure. So also the durability of the structure and the material used for erection of the same will help in deciding whether the structure is permanent or temporary. Lastly the purpose for which the structure is intended is also an important factor that cannot be ignored. [Para 17] [957-C-F]

Venkatlal G. Pittie and Anr. v. Bright Bros. Pvt. Ltd. (1987) 3 SCC 558: 1987 (1) SCR 516 - relied on.

Suraya Properties Private Ltd. v. Bimalendu Nath Sarkar AIR1965 Cal 408; *Surya Properties Private Ltd. and Ors. v.*

A *Bimalendu Nath Sarkar and Ors.* **AIR 1964 Cal 1 - referred to.**

2. In the instant case, the structure was not a temporary structure by any means. The kitchen and the storage space forming part of the demised premises was meant to be used till the tenancy in favour of the respondent-occupant subsisted. Removal of the roof and replacement thereof by a concrete slab was also meant to continue till the tenancy subsisted. The intention of the tenant while replacing the tin roof with concrete slab, obviously was not to make a temporary arrangement but to provide a permanent solution for the alleged failure of the landlord to repair the roof. The construction of the passage was also a permanent provision made by the tenant which too was intended to last till the subsistence of the lease. The concrete slab was a permanent feature of the demised premises and could not be easily removed without doing extensive damage to the remaining structure. Such being the position, the alteration made by the tenant fell within the mischief of Section 108 (p) of the Transfer of Property Act and, therefore, constituted a ground for his eviction in terms of Section 13(1)(b) of the West Bengal Premises Tenancy Act, 1956. [Para 18] [957-G-H; 958-A-C]

Brijendra Nath Bhargava and Anr. v. Harsh Wardhan and Ors. **(1988) 1 SCC 454:1988 (2) SCR 124** ; *Om Prakash v. Amar Singhand Ors.* **(1987) 1 SCC 458: 1987 (1) SCR 968**; *Waryam Singh v. Baldev Singh* **(2003) 1 SCC 59**; *G. Reghunathan v. K.V. Varghese* **(2005) 7 SCC 317**; *Om Pal v. Anand Swarup (dead) by Lrs.* **(1988) 4 SCC 545 - distinguished.**

Ratanlal Bansilal and Ors. v. Kishorilal Goenka and Ors. **AIR1993 Cal 144**; *Ranju alias Gautam Ghosh v. Rekha Ghosh and Ors.* **(2007) 14 SCC 81: 2007 (13) SCR 763 - referred to.**

3. Respondent is, however, given one year's time to vacate the premises subject to the condition that the respondent shall either pay directly to the appellants or deposit in the trial court, compensation @ Rs.1500/- p.m. from 1st October, 2012 till the date of vacation. [Para 27] [961-E-G]

Case Law Reference:

1987 (1) SCR 516	**Relied on**	**Para 14**
AIR 1965 Cal 408	**Referred to**	**Para 14**
AIR 1964 Cal 1	**Referred to**	**Para 14**
2007 (13) SCR 763	**Referred to**	**Para 19**
1988 (2) SCR 124	**Distinguished**	**Para 20**
1987 (1) SCR 968	**Distinguished**	**Para 20**
(2003) 1 SCC 59	**Distinguished**	**Para 20**
(2005) 7 SCC 317	**Distinguished**	**Para 20**
(1988) 4 SCC 545	**Distinguished**	**Para 26**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7710 of 2012.

From the Judgment and Order dated 29.06.2007 of the High Court of Calcutta in FA No. 290 of 1986.

Rajendra Singhvi, Maitreya Singhvi, K.K.L. Gautam and Surya Kant for the Appellants.

Joydeep Gupta, Joydeep Mazumdar, Soumya Dutta, Samita Sheikh, Rohit Dutta and Chiraranjan Addey for the Respondent.

The Judgment of the Court was delivered by

T.S. THAKUR, J. 1. Leave granted.

A 2. This appeal arises out of a judgment and order passed by the High Court of Calcutta whereby Civil First Appeal No.290 of 1986 filed by the respondent-tenant has been allowed, the judgment and decree passed by the trial Court set aside and the suit for eviction filed by the plaintiff-appellant against the B defendant-respondent dismissed.

3. A residential premise comprising two rooms with a gallery situate at the first floor bearing no.95-A, Chittaranjan Avenue, Calcutta and owned by Gauri Devi Trust of which the appellants are trustees was let out to the respondent-tenant on C a monthly rental of Rs.225/-. One of the conditions that governed the jural relationship between the parties was that the tenant shall not make any additions or alterations in the premises in question without obtaining the prior permission of the landlord in writing. Certain differences appear to have arisen between D the parties with regard to the mode of payment of rent as also with regard to repairs, sanitary and hygiene conditions in the tenanted property which led the landlord- appellant to terminate the tenancy of respondent in terms of a notice served upon the latter under Section 106 of the Transfer of Property Act read E with Section 13 (6) of West Bengal Premises Tenancy Act, 1956. Since the respondent-tenant did not oblige, the plaintiff-appellant instituted Ejectment Suit No.391 of 1976 in the City Civil Court at Calcutta asking for eviction of the former inter alia on the ground that respondent- tenant had illegally and F unauthorisedly removed the corrugated tin-sheet roof of the kitchen and the store room without the consent of the appellant-landlord and replaced the same by a cement concrete slab apart from building a permanent brick and mortar passage which did not exist earlier. These additions and alterations were, G according to the plaintiff-appellant, without the consent and permission of the Trust and, hence, violative not only of the provisions of clauses (m), (o) and (p) of Section 108 of the Transfer of Property Act, 1882 but also the conditions stipulated in the lease agreement executed between the parties. Eviction H of the respondent was also sought on the ground that the

respondent and his family members were using the passage constructed by them for creating nuisance and peeping into the bedroom of Shri Bharat Kumar Jethi, another tenant living on the second floor of the premises.

4. The defendant-respondent contested the suit primarily on the ground that his tenancy had not been terminated in terms of the notice allegedly issued by the landlord and that there was no violation of the provisions of clauses (m), (o) and (p) of Section 108 of the Transfer of Property Act. A Court Commissioner deputed by the trial Court carried out a local inspection of the suit premises on 12th July, 1978 in presence of the parties. The Commissioner formulated five different points for local inspection and answered the same in the report submitted to the Court. One of the aspects on which the Commissioner made a report related to the existence of a passage leading to the concrete roof of the kitchen and the store space. The Commissioner appears to have found that the kitchen and store space had a concrete cemented plastered roof with a small window inside the kitchen.

5. Long after the Commissioner's report was submitted to the trial Court, the tenant filed an additional written statement in which he for the first time took the stand that although he was inducted into the premises, comprising two rooms and two small rooms with corrugated tin-sheet for a roof, the latter required replacement on account of the tin-sheet roof getting worn out. It was further submitted that it was only on repeated demands of the defendant-tenant that the landlord had replaced the said corrugated tin-sheet by putting a cement concrete slab over the kitchen and store room. He further alleged that he had not made any alterations or additions or committed any act contrary to clauses (m), (o) and (p) of Section 108 of the Transfer of Property Act.

6. On the pleadings of the parties, the trial Court raised as many as eight issues in the suit and allowed parties to adduce their evidence. In support of his case the plaintiff

A examined four witnesses while three witnesses were examined by the defendant-tenant. A careful appraisal of the evidence so adduced led the trial Court to the conclusion that the plaintiff had made out a case for the grant of a decree for ejectment of the respondent-tenant. The trial Court in the process held that
B the removal of the tin-sheet roof over the kitchen and store room and its replacement with a concrete slab was carried out by the respondent-tenant and not by the plaintiff-trust. In coming to that conclusion, one of the circumstances which the trial Court mentioned was the fact that the defendant had not made any
C whisper in the first written statement filed by him about the construction of the concrete roof having been undertaken by the landlord. The story that the landlord had replaced the tin roof by a concrete slab was propounded belatedly and for the first time in the supplementary written statement. The trial Court observed:

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> "Lastly, it must not be lost sight of that when the defendant first filed the written statement there was no whisper from the side of the defendant that the construction was made by the landlord for the convenience of the tenants. This
E story was first propounded by the convenience of the tenants. This story was first propounded by the defendant by filing an additional written statement in 1983 i.e. about seven years after the institution of the suit. This belated plea of the defendant should be taken with the grain of
F salt."

7. The trial Court accordingly held that it was the defendant-tenant who had made a permanent structural change in the premises in violation of the conditions stipulated in the lease agreement and in breach of the provisions of Section
G 108 of the Transfer of Property Act. The trial Court further held that the tenant had not, while doing so, obtained the written consent of the landlord. The trial Court also found that the legal notice for determining the tenancy of the respondent-tenant had been served upon him and accordingly decreed the suit.

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8. Aggrieved by the judgment and decree passed against him, the tenant-respondent herein appealed to the High Court of Calcutta which appeal has been allowed by the Division Bench of that Court in terms of the Order impugned before us. While the High Court has not disturbed the finding of fact recorded by the trial Court that the replacement of the tin-sheet by a concrete slab was undertaken by the respondent-tenant, it has reversed the view taken by the trial Court on the ground that any such replacement of the roof did not tantamount to violation of clauses (m), (o) and (p) of Section 108 of the Transfer of Property Act. The High Court held that since the replacement of the tin-sheet roof by cement concrete slab did not result in addition of the accommodation available to the tenant, the act of replacement was not tantamount to the construction of a permanent structure. The replacement instead constituted an improvement of the premises in question, observed the High Court. In support the High Court placed reliance upon the decisions of this Court in *Om Prakash v Amar Singh* AIR 1987 SC 617 and *Waryam Singh v. Baldev Singh* (2003) 1 SCC 59 .

9. The High Court also relied upon an earlier decision of that Court in *Ratanlal Bansilal & Ors. v. Kishorilal Goenka & Ors.* AIR 1993 Cal 144 and held that unless a case of waste or damage is proved, there can be no violation of clauses (m), (o), (p) of the Transfer of Property Act. The High Court held that proof of waste and damage because of the construction of a cement concrete roof over the kitchen and store space and the construction of a brick-built passage for reaching the roof of that area was completely absent in the instant case. The High Court, on that basis, set aside the judgment of the trial Court and dismissed the suit filed by the appellant.

10. Section 13 of the West Bengal Premises Tenancy Act 1956, starts with a non-obstante clause and forbids passing of an order or decree for possession of any premises by any Court in favour of the landlord and against the tenant except on one or more of the grounds stipulated therein.

A 11. Among other grounds stipulated in Section 13 of the Act is the ground that the landlord can sue for eviction of the tenant where the tenant or any person residing in the premises let to the tenant has done any act contrary to the provisions of clauses (m), (o) or (p) of Section 108 of the Transfer of Property
B Act, 1882. Section 13 (1) (b) reads thus:

"13. Protection of tenant against eviction.-(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
C landlord against a tenant except on one or more of the following grounds, namely:

(a) * * *

D (b) where the tenant or any person residing in the premises let to the tenant has done any act contrary to the provisions of clause (m), clause (o) or clause (p) of Section 108 of the Transfer of Property Act, 1882 (4 of 1882);"

12. Clauses (m), (o) and (p) of Section 108 of the Transfer
E of Property Act referred to in clause 1 (b) of Section 13 (supra) may also be extracted at this stage :

"108. Rights and liabilities of lessor and lessee.-In the absence of a contract or local usage to the contrary, the
F lessor and the lessee of immovable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased:

G * * *

(m) the lessee is bound to keep, and on the termination of the lease to restore, the property in as good condition as it was at the time when he was put in possession,
H subject only to the changes caused by reasonable wear

and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property and inspect the condition thereof and give or leave notice of any defect in such condition; and, when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left;

* * *

(o) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell or sell timber, pull down or damage buildings belonging to the lessor, or work mines or quarries not open when the lease was granted or commit any other act which is destructive or permanently injurious thereto;

(p) he must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes;"

13. The appellant has in the case at hand pressed into service clause (p) of Section 108 (supra) inasmuch as, according to the appellant, the respondent-tenant had without his consent erected on the demised property a permanent structure which rendered him liable to eviction under Section 13 (1) (b) extracted above. The question, however, is whether the alterations which the respondent-tenant is found by the Courts below to have made tantamount to erection of a "permanent structure" within the meaning of clause (p) of Section 108 of the Act (supra). The expression "permanent structure" has not been defined either under the West Bengal Premises Tenancy Act, 1956 or in the Transfer of Property Act, 1882. The expression has all the same fallen for interpretation

A by the Courts in the country on several occasions. We may briefly refer to some of those pronouncements at this stage.

14. In *Venkatlal G. Pittie & Anr. v. Bright Bros. Pvt. Ltd.* (1987) 3 SCC 558, the landlord alleged that the tenant had without his consent raised a permanent structure in the demised premises. The trial Court as also the first appellate Court had taken the view that the construction raised by the tenant was permanent in nature. The High Court, however, reversed the said finding aggrieved whereof the landlord came up to this Court in appeal. This Court referred to several decisions on the subject including a decision of the High Court of Calcutta in *Suraya Properties Private Ltd. v. Bimalendu Nath Sarkar* AIR 1965 Cal 408 to hold that one shall have to look at the nature of the structure, the purpose for which it was intended to be used and take a whole perspective as to how it affects the enjoyment and durability of the building etc. to come to a conclusion whether or not the same was a permanent structure. This Court approved the view taken in *Suraya Properties Private Ltd. v. Bimalendu Nath Sarkar* AIR 1965 Cal 408 and *Surya Properties Private Ltd. & Ors. v. Bimalendu Nath Sarkar & Ors.* AIR 1964 Cal 1, while referring to the following tests formulated by Malvankar J. in an unreported decision in Special Civil Application No.121 of 1968:

> "(1) intention of the party who put up the structure; (2) this intention was to be gathered from the mode and degree of annexation; (3) if the structure cannot be removed without doing irreparable damage to the demised premises then that would be certainly one of the circumstances to be considered while deciding the question of intention. Likewise, dimensions of the structure and (4) its removability had to be taken into consideration. But these were not the sole tests. (5) The purpose of erecting the structure is another relevant factor. (6) The nature of the materials used for the structure and (7) lastly the durability of the structure".

15. In *Surya Properties Private Ltd. & Ors. v. Bimalendu Nath Sarkar & Ors.* AIR 1964 Cal 1 a Special Bench of the High Court of Calcutta was examining the meaning of the expression "permanent structure" appearing in Clause (p) of Section 108 of the Transfer of Property Act, 1882. The Court held that whether a particular structure is a permanent structure or not is a question that depends on the facts of each case and on the nature and extent of the particular structure as also the intention and purpose for which the structure was erected. No hard and fast rule, declared the Court, could be laid down for determining what would be a permanent structure for the purposes of Section 108 (p) of the Transfer of Property Act. When the very same case came up for final adjudication on merits before a Division Bench of the High Court of Calcutta, the High Court in its order dated 20th March, 1964 reported in *Suraya Properties Private Ltd. v. Bimalendu Nath Sarkar* AIR 1965 Cal 408 held that the expression "permanent structure" did not mean 'everlasting'. The word "permanent" had been used to distinguish it from "temporary" and that while a lessee has the power to raise any type of temporary structure, he has no power to raise a permanent structure. The Court held that on a true construction of Section 108 (p) Transfer of Property Act the words "permanent structure" could only mean a structure that lasts till the end of the term of the lease and does not mean "everlasting" nor does it mean a structure which would last 100 years or 50 years. The Court observed:

> "In all these cases condition (p) will operate. The phrase "permanent structure" does not mean "ever lasting". But the word "permanent" has been used to distinguish it from "temporary". A lessee has the power to raise any type of temporary structure, but he has no power to raise a permanent structure. The word "permanent" is also a relative term, because the absolute meaning of the word "permanent" is "ever lasting". But we cannot accept the meaning if the word "permanent" is a relative term, the question is, - relative of what? The answer immediately is

A - for purposes of Section 108(p) relative to the term of the issue. Therefore, the word "permanent" means "which lasts till the end of the term of the lease" and does not mean "ever lasting" nor does it mean "which would last 100 years or 50 years". The term, as stated above, is a relative one
B and the relation here is to the period of the lease. There may be a lease from month to month or from year to year and we do not know when the lease is going to terminate. But the meaning of the words "permanent structure" would be that the lessee intended that he would enjoy the
C structure that he raises as long as he be continuing in possession. That period may be definite, that period may be indefinite. But that period is the period of the lease and the person, namely, the lessee, who constructs the structure, should have an intention to use it as long as he
D remains a lessee."

16. Applying the above to the case before it, the High Court held that the tenant in that case had constructed a kitchen which he intended to use till the time he remained in occupation. The Court found that the case before it was not one where the
E tenant had constructed the structure for a special purpose like a marriage in the family. Any structure which was used for any such limited period or definite event, function or occasion, even if made of bricks and mortar would not amount to building or erecting a permanent structure. The Court observed:

F "A person raises a struct (sic) for the purpose of a marriage in the family. There he intends to use it only during the occasion and has no intention to use it thereafter and intends to remove the structure thereafter. We cannot say
G that it would be a permanent structure even if it is made of brick and mortar. In the circumstances, of this case, the lessee has said that he wanted to use it as a kitchen. He never says that the kitchen was required for a particular purpose temporarily. Therefore, we get from the evidence of the tenant that the tenant intended to use the structure
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as a kitchen during the continuance of the lease, because the tenant requires a kitchen as long as the tenant uses the premises and as he wants, to use it as a kitchen, he sufficiently express his intention to use it as a kitchen during the term of his tenancy which in this case is not definite. Therefore, for purposes of Section108(p) of the Transfer of Property Act, we would hold that the kitchen raised must be considered to be for a permanent purpose."

17. To sum up, no hard and fast rule can be prescribed for determining what is permanent or what is not. The use of the word 'permanent' in Section 108 (p) of the Transfer of Property Act, 1882 is meant to distinguish the structure from what is temporary. The term 'permanent' does not mean that the structure must last forever. A structure that lasts till the end of the tenancy can be treated as a permanent structure. The intention of the party putting up the structure is important, for determining whether it is permanent or temporary. The nature and extent of the structure is similarly an important circumstance for deciding whether the structure is permanent or temporary within the meaning of Section 108 (p) of the Act. Removability of the structure without causing any damage to the building is yet another test that can be applied while deciding the nature of the structure. So also the durability of the structure and the material used for erection of the same will help in deciding whether the structure is permanent or temporary. Lastly the purpose for which the structure is intended is also an important factor that cannot be ignored.

18. Applying the above tests to the instant case the structure was not a temporary structure by any means. The kitchen and the storage space forming part of the demised premises was meant to be used till the tenancy in favour of the respondent-occupant subsisted. Removal of the roof and replacement thereof by a concrete slab was also meant to continue till the tenancy subsisted. The intention of the tenant

A while replacing the tin roof with concrete slab, obviously was not to make a temporary arrangement but to provide a permanent solution for the alleged failure of the landlord to repair the roof. The construction of the passage was also a permanent provision made by the tenant which too was B intended to last till the subsistence of the lease. The concrete slab was a permanent feature of the demised premises and could not be easily removed without doing extensive damage to the remaining structure. Such being the position, the alteration made by the tenant fell within the mischief of Section C 108 (p) of the Transfer of Property Act and, therefore, constituted a ground for his eviction in terms of Section 13(1)(b) of the West Bengal Premises Tenancy Act, 1956.

19. We may at this stage refer to the decision of this Court D in *Ranju alias Gautam Ghosh v. Rekha Ghosh and Ors.* (2007) 14 SCC 81 where this Court found that cutting of a collapsible gate by 5/6" and replacing the same without the consent and permission of the landlord was tantamount to violation of Section 108 (p) of the Transfer of Property Act read with Section 13 (1)(b) of West Bengal Premises Tenancy Act, E 1956. It is thus immaterial whether the structure has resulted in creating additional usable space for the tenant who carries out such alteration and additions. If addition of usable space was ever intended to be an essential requirement under Section 108 (p) of the Act, the Parliament could have easily provided so. F Nothing of this sort has been done even in Section 13 (1) (b) of the State Act which clearly shows that addition of space is not the test for determining whether the structure is permanent or temporary.

G 20. Reliance upon the decisions of this Court in *Brijendra Nath Bhargava and Anr. v. Harsh Wardhan and Ors.* (1988) 1 SCC 454, *Om Prakash v. Amar Singh and Ors.* (1987) 1 SCC 458, *Waryam Singh v. Baldev Singh* (2003) 1 SCC 59 and *G. Reghunathan v. K.V. Varghese* (2005) 7 SCC 317 do H not in our opinion advance the case of the respondent. In

Brijendra Nath Bhargava's case (supra) this Court was dealing with a case arising out of Rajasthan Premises (Control of Rent and Eviction) Act, 1950. Section 13 (1) (c) of the said Act required the landlord to prove that the tenant had, without his permission, made or permitted to be made any construction which had in the opinion of the Court, materially altered the premises or was likely to diminish the value thereof. Section 13 (1)(c) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 is to the following effect:

> "13(1) (c) that the tenant has without the permission of the landlord made or permitted to be made any such construction as, in the opinion of the court, has materially altered the premises or is likely to diminish the value thereof"

21. The above provision is materially different from the provision of Section 13(1)(b) of the West Bengal Premises Tenancy Act 1956 applicable in the present case which does not require the landlord to prove that there was any material alteration in the premises or that such alteration was likely to diminish the value thereof. The decision in *Brijendra Nath Bhargava's* case (supra), is therefore, distinguishable and would not have any application to the case at hand.

22. In *Om Prakash's* case (supra) this Court was dealing with a case under Section 14 (c) of the U.P. Cantonment Rent Control Act, 1952 which reads as under:

> "14. Restrictions on eviction.-No suit shall, without the permission of the District Magistrate, be filed in any civil court against a tenant for his eviction from any accommodation except on one or more of the following grounds, namely:
>
> (c) that the tenant has, without the permission of the landlord, made or permitted to be made any such construction as in the opinion of the court has materially

A altered the accommodation or is likely substantially to diminish its value."

23. A perusal of the above would show the language employed therein is materially different from the provision of Section 13(1)(b) of the West Bengal Premises Tenancy Act B 1956 with which we are concerned in the present case. In the case at hand the landlord is not required to prove that the construction have been materially altered or is likely to diminish its value as was the position in *Om Prakash's* case (supra).

C 24. In *Waryam Singh v. Baldev Singh* (2003) 1 SCC 59 this Court was dealing with a case under Section 13(2)(iii) of East Punjab Urban Rent Restriction Act, 1949 which was to the following effect:

"13. Eviction of tenants.-(1) * * *

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(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied-

E * * *

(iii) that the tenant has committed such acts as are likely to impair materially the value or utility of the building or rented land,

F * * *"

25. It is evident from the above that this provision was different from the language employed in Section 13(1)(b) of the West Bengal Premises Tenancy Act 1956. The ratio of that G case also, therefore, does not lend any support to the respondent. Same is true even in regard to the decision in G. Reghunathan's case (supra) where this Court was dealing with an eviction petition under Section 11(4)(ii) of the Kerala Buildings (Lease and Rent Control) Act, 1965 which was to the following effect:

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"11. (4) A landlord may apply to the Rent Control Court for an order directing the tenant to put the landlord in possession of the building-

(i) * * *

(ii) if the tenant uses the building in such a manner as to destroy or reduce its value or utility materially and permanently;"

26. The above provision is also materially different from the provisions with which we are concerned in the present case. The ratio of that case does not, therefore, have any application to the question whether the structure raised by the respondent was a permanent structure within the meaning of Section 108 (p) of the Transfer of Property Act. In *Om Pal v. Anand Swarup (dead) by Lrs.* (1988) 4 SCC 545 also this Court was dealing with a case under the East Punjab Urban Rent Restriction Act, 1949 which makes material impairment of the property an important consideration for purposes of determining whether the tenant has incurred the liability on the premises leased to him.

27. In the result, therefore, we allow this appeal, set aside the order passed by the High Court and restore that of the trial Court. Respondent is, however, given one year's time to vacate the premises in his occupation subject to his filing an undertaking on usual terms within four weeks from today. The grant of time to vacate the premises is further subject to the condition that the respondent shall either pay directly to the appellants or deposit in the trial Court compensation of the premises @ Rs.1500/- p.m. from 1st October, 2012 till the date of vacation. The deposit shall be made by the 15th of every succeeding calendar month failing which the decree shall become executable by the Court.

K.K.T. Appeal allowed.