A

BISWABANI (P.) LTD.

v.

SANTOSH KUMAR DUTTA AND ORS.

September 14, 1979

B [R. S. SARKARIA AND D. A. DESAI, JJ.]

Landlord and Tenant—Rent Control Proceedings for fixation of standard rent—Consent decree—Company to be tenant for five years, indenture of lease to be drawn and registered—Such lease not registered, landlord accepting standard rent fixed by Rent Controller—Expiry of lease period of five years—Landlord entering portion of demised premises, locking it up—Suit by Company for declaration of status as tenant and for injunction—Company whether entitled to protect possession—Lease being void for want of registration—Whether has effect on company's status as tenant—Transfer of Property Act, s. 53A and West Bengal Premises Tenancy Act, 1956.

C

Constitution of India, 1950, Art. 133—Certificate merely stating case fit for appeal—Certificate defective—Dismissal of such appeal—Travesty of justice where a substantial question of law of general public importance raised.

D

The third respondent took on lease the demised premises from respondents 1 and 2 under a registered lease deed dated September 11, 1948, the lease being for five years at monthly rent of Rs. 2000/- with an option for renewal to be exercised by a notice two months before the expiry of the lease. Respondent 3 was the managing director of the appellant company. During the period of the aforesaid lease, the appellant company was accepted as tenant of the demised premises and the Company paid the rent reserved under the lease being Rs. 2000/- per mensem. The period reserved under the lease expired on August 31, 1953. But before the expiry of the period an application was made by the appellant for fixation of standard rent of the demised premises under the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950. In October 1953, respondent 1 and 2 as lessors commenced an ejectment action against the appellant and the third respondent on the ground that the lease had expired and the lessee had failed to exercise the option for renewal. During the pendency of the aforementioned actions, the parties compromised and the consent decree *inter alia* provided that the company would be the tenant on a monthly rent of Rs. 1000/- from 1st March, 1955 for a period of 5 years and that, after the period of five years there shall be no renewal of the lease, the lessee shall be treated as trespasser. An indenture of lease was also to be drawn up and executed by both the parties in terms of the consent decree. On the expiry of the aforesaid term of five years on 29th February, 1960, respondents 1 and 2, lessors having entered and locked up a portion of the demised premises, the company filed a suit on March 14, 1960 against respondents 1 and 2, lessors and the proforma respondent 3 for a declaration that the company was the tenant of the premises and for an injunction restraining respondents 1 and 2 from interfering with its tenancy rights.

E

F

G

H

The suit was contested on the contention that as the consent decree provided for a fresh lease of 5 years, it can only be brought about by a registered instrument and as the consent decree or the document incorporating the terms of the companies was not registered, the Company continued in possession under a void lease and therefore, on the expiry of the period of 5 years the Company was a trespasser and respondents 1 and 2 were entitled to take over possession from such a trespasser. A

The trial court held that as the consent decree provided for a lease for a period of 5 years in the absence of registration the lease for a period of 5 years did not come into existence, but if the tenant entered into possession under an invalid lease and the landlord accepted rent, a tenancy from month to month came into existence between the lessors and the lessee and that such a lessee cannot be evicted except after terminating the tenancy by a valid notice to quit and in the absence of such determination the lessee would be a lessee from month to month and can protect its possession and decreed the appellant—plaintiff's suit. B C

In appeal by Respondents 1 and 2, the District Judge held that the lease being void, yet the lessors would not be entitled to disturb the possession of the tenant for a period of 5 years in view of the provisions contained in s. 53A of the Transfer of Property Act, but after the expiry of the period of 5 years the appellant became a rank trespasser and respondents 1 and 2 were entitled to take possession of the property, and accordingly allowed the appeal and dismissed the company's suit. The appellant company's second appeal to the High Court was dismissed. D

In the further appeal to this Court on the questions as to : E

(a) The status and nature of possession of a person who was admittedly a tenant of premises covered by the local rent restriction Act till the date of commencement of a fresh lease which turns out to be void for want of registration, during and at the expiry of the period purporting to be reserved by such a void lease;

(b) Would such a person be a tenant who could only be removed by proper legal proceedings or a licensee without any interest in the premises and could be forcibly evicted by the landlord of the premises entering the premises and locking the same; F

(c) Could such a person defend its possession by a suit seeking declaration and mandatory injunction; and

(d) whether the appeal was liable to be dismissed on the sole ground that the certificate which the High Court granted was defective. G

HELD : 1. The High Court was in error in holding that if on the expiry of the agreed period of lease there was a covenant for not getting any renewal of the lease the tenant would be a trespasser, wholly over-looking the legal position that on the expiry of the contractual tenancy the tenant continues as a statutory tenant except where he surrenders possession or is evicted under the enabling provisions of the relevant Rent Restriction Act. [666 B] H

A 2. The appellant was a tenant and continued to be a tenant and was entitled to protect its possession by appropriate proceeding unless evicted in due course of law. [666 C]

3. The appellant as tenant would be entitled to protect its possession unless evicted in due course of law and in order to protect its possession it can legitimately sue, there being no bar in law, for a declaration of its B status as tenant and for an injunction either prohibitory or mandatory. [665 F]

4. The indenture of first lease granted an option to the lessee which would be none other than the appellant company, to claim renewal of lease. This option was not exercised. Notwithstanding the non-exercise of the option on the date of expiry of the lease the contractual tenancy having C come to an end, the tenant would be a tenant holding over if requirements of s. 116 of the Transfer of Property Act are satisfied. However, on the date of expiry of contractual tenancy, the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, was in force and was applicable to the premises and, therefore, on the determination of contractual tenancy by efflux of time right of re-entry would be subject to the over-riding provision of the Rent Act and the rights of such a person remaining in possesD sion are governed by the statute alone. He is loosely described as statutory tenant which is another name for status of irremovability. [658 C-D]

Anand Nivas P. Ltd. v. *Anandji Kalyanji Pedhi and Ors.*, [1964] 4 S.C.R. 892; referred to.

5. There is no bar in law to a statutory tenant entering into a fresh E contract of tenancy with the landlord. In the instant case this was attempted by the consent decree but the lease was void for want of requisition. However from this undisputed position an inference of tenancy can be reasonably made. [658 G]

6. If the lease is void for want of registration neither party to the indenture can take advantage of any of the terms of the lease. At best the F provision contained in s. 53A of the Transfer of Property Act which incorporated the English equitable doctrine of part performance can, if the terms thereof are satisfied, be relied upon to protect possession for the period reserved under such a void lease. But no other terms of such an indenture inadmissible for want of registration can be the basis for a relief. [659 B]

7. Section 53A of the Transfer of Property Act is not at all attracted in the facts of this case. The suit was filed by the appellant who sought G to protect its possession. The equitable doctrine of part performance can be used as a shield and not as a sword. It can be used to defend and protect one's possession. [659 G]

Probodh Kumar Das & Ors. v. *Dantmara Tea Co. Ltd. and Ors.*, 66 I.A. 293; referred to.

H In the instant case the appellant had come to the court for a declaration of its tenancy rights seeking to protect its possession not under the doctrine of part performance as incorporated in s. 53A, but with specific allegation

that the appellant is a tenant and it be so declared, and for an injunction restraining respondents 1 and 2 from interfering or disturbing the appellants possession of the premises as a tenant. [660 B-C] A

8. If the appellant was already in possession as a tenant of the premises, an unsuccessful attempt to create a fresh lease would not change the nature of his possession as from a tenant to one in part performance under a void lease. The appellant continues to be in possession as tenant and no cloud is created over its title to remain in possession as tenant merely because the appellant and respondents 1 and 2 attempted to enter into a fresh lease which did not become effective. [661 B-C] B

Ram Kumar Das v. *Jagdish Chandra Deb Dhabal Deb & Anr.*, [1952] S.C.R. 269 at 280; referred to. C

Technicians Studio P. Ltd. v. *Lila Ghosh & Anr.*, [1978] 1 SCR 516; explained and distinguished.

9. An incomplete and ineffective attempt at creating a fresh lease would have no impact on a tenant who was in possession as tenant at the commencement of such a void lease and he would continue to be the tenant because s. 53A would not be attracted as he is not put in possession in part performance of an agreement of lease not registered and it would be unwise to hold that the payment of the standard rent fixed by the Rent Controller having jurisdiction as payment under such an agreement of lease. [664 F-G] D

10. A person remaining in occupation of premises let to him after the determination of or expiry of the period of the tenancy is commonly, though in law not accurately, called a statutory tenant. He acquires the status of irremovability. Statutory tenant being a person who enjoys the status of irremovability, would enjoy the protection of the statute until he is evicted from the premises under the enabling provisions of the statute. A statutory tenancy would, therefore, come to an end on either the surrender of premises by such a tenant or if a decree of eviction is passed against him. [664 H— 665 B] E F

Hiralal Vallabhram v. *Kastorbhai Lalbhai & Ors.* [1967] 3 SCR 343 referred to.

11. A still born attempt not clothed with legal formality cannot destroy the existing status. The second lease never came into existence for want of registration and more particularly the appellant was not put in possession under the purported second lease which turns out to be void. The paradoxical approach manifested is that if a valid lease had come into existence on the expiry of it the appellant tenant would have continued in possession under the protection of the relevant Rent Restriction Act. However, if such an attempt at creating a fresh lease was ineffective or infructuous, how can such an incohate exercise destroy the existing rights. The High Court was therefore in error when it held the existing rights to have been destroyed ignoring the very existence of the West Bengal Premises Tenancy Act, 1956. [665 G—666 B] G H

A 12. A certificate that it is a fit case for appeal to the Supreme Court which the High Court grants must be supported by adequate reasons. It is obligatory upon the High Court to set out the questions of public or private importance which in its opinion falls to be determined in the proposed appeal. A certificate will be defective if it does not set out the substantial question of law which in the view of the High Court falls to be determined by the Supreme Court. An appeal is liable to be dismissed if the certificate B is defective. [666 G—667 B]

Sohanlal Naraindas v. *Laxmidas Raghunath Gadit*, [1971] 1 SCC 275, *Railway Board, Govt. of India* v. *M/s. Observer Publication (P) Ltd.*, [1972] 3 SCR 865; *Nund & Samont Co. P. Ltd.* v. *Commissioner of Income Tax, Bihar and Orissa*, [1970] 78 I.T.R. 268 *India Machinery Stores P. Ltd.* v. *Commissioner of Income Tax, Bihar and Orissa*, [1970] 78 I.T.R. 50; re- C ferred to.

In the instant case, the certificate granted by the High Court leaves much to be desired. It merely states that it is a fit case for appeal to the Supreme Court, without specifying whether the certificate was under Article 133 (a), (b) or (c) as it stood at the relevant time. As a very substantial question of law of general public importance is raised, it would be D a travesty of justice if the appeal is dismissed on the sole ground that the certificate is defective. It would have been open to grant special leave on the question raised. The preliminary objection that the certificate granted by the High Court being invalid, the appeal must fail on that account alone over-ruled. [666 E-F, 667 C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2450 of 1969.

E From the judgment and decree dated 14-8-63 of the Calcutta High Court in Appeal from Appellate Decree No. 632/63.

L. N. Sinha, A. N. Sinha and *Rathin Das* for the Appellant.

A.K. Sen, D. N. Mukherjee and *N. R. Chaudhary* for Respondents 1, 2-7 and 9.

F

D. Mookerjee and *P. K. Mukherjee* for Respondent No. 3.

The Judgment of the Court was delivered by

DESAI, J. Kalpana Theatre with its furnishings and fixtures situated at 61, Chintamoni Dey Road, Howrah, belonging to respondents G 1 and 2 is the subject matter of dispute between its landlords and tenant awaiting resolution for the last two decades. Under a registered lease deed dated 11th September 1948 respondent 3 Kanti Bhusan Bose, took this Theatre on lease for a period of 5 years with effect from 1st September 1948. Respondent 3 is the Managing Director of the appellant Biswabani Pvt. Ltd. ('company' for short). H It appears that during the period of lease respondents 1 and 2, the owners of the Theatre, accepted the appellant company as their tenant and in token of it accepted rent from the company at the rate of

Rs. 2,000/- p.m. On the expiry of the period of 5 years disputes arose between the lessors and the lessee whereupon respondents 1 and 2 lessors commenced an action in ejectment against the company on 5th October 1953 in the Court of the First Subordinate Judge, Howrah. In August 1953 appellant company as lessee filed an application before the Rent Controller under the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, for fixation of standard rent of the demised premises. Ultimately the parties arrived at a compromise and the consent terms were filed in T.S. No. 68 of 1953 instituted by the lessors respondents 1 and 2 for eviction of the company and the Court was invited to pass a decree in terms thereof. The consent decree, *inter alia* provided that the company would be the tenant of Kalpana Theatre ona monthly rent of Rs. 1,000/- from 1st March 1955 for a period of 5 years and that the third respondent Kanti Bhusan Bose had to offer security by deposit of G.P. Notes of the face value of Rs. 20,000/- with the lessors. The lease was to be for a period of 5 years commencing from 1st March 1955. An indenture of lease was to be drawn up and executed by both the parties in terms of the consent decree. The company was given permission to sublet the premises with prior approval of the lessors. There is a furious controversy about one of the terms of the consent decree which reads as under :

> "After the period of five years there shall be no renewal of the lease, the lessee shall be treated as trespasser".

On the expiry of the term of five years on 29th February 1960 it appears that respondents 1 and 2 lessors locked up a portion of the demised premises whereupon the company filed a suit on 14th March 1960 against respondents 1 and 2 lessors and the proforma respondent 3 for a declaration that the company was the tenant of the premises, and for a permanent injunction restraining respondents 1 and 2 from interfering with its tenancy rights. There was also a prayer for a mandatory injunction directing respondents 1 and 2 to remove the locks put by them on some portion of the demised premises and for reliefs incidental and ancillary thereto.

The suit was, *inter alia,* contested on a contention that as the consent decree provided for a fresh lease of five years such a lease can only be valid if it is registered and as the consent decree or the document incorporating the terms of compromise was not registered, the company continued in possession under a void lease and, therefore, on the expiry of the period of five years the company was a trespasser

A and respondents 1 and 2 were entitled to take over possession from such a trespasser. It was also contended that on the expiry of the period of five years on 29th February 1960 the company handed over peaceful and vacant possession to respondents 1 and 2 in terms of the consent decree.

B The trial court held that as the consent decree provided for a lease for a period of five years in the absence of registration the lease for a period of five years did not come into existence but if the tenant entered into possession under an invalid lease and the landlord accepted rent a tenancy from month to month came into existence between the lessors and the lessee and that such a lessee cannot be evicC ted except after terminating the tenancy by a valid notice to quit and in the absence of such determination the lessee would be a lessee from month to month and can protect its possession. In accordance with this finding the trial court decreed the appellant-plaintiff's suit. Respondents 1 and 2 appealed to the District Court at D Howrah. The learned Additional District Judge held that the lease being void, yet the lessors would not be entitled to disturb the possession of the tenant for a period of 5 years under the provisions of s. 53A of the Transfer of Property Act but after the expiry of the period of five years the appellant became a rank trespasser and the respondents 1 and 2 were entitled to take possession of the proE perty. Accordingly the appeal was allowed and the company's suit was dismissed. The appellant company preferred second appeal to the High Court. The High Court broadly agreed with the findings of the learned Addl. Distt. Judge and dismissed the appeal. The High Court granted a certificate unfortunately very vague without specifying whether the certificate was under Article 133(a), (b) or F (c) as it stood at the relevant time.

The undisputed facts are that Kanti Bhusan Bose, 3rd respondent took on lease the demised premises under a registered lease deed dated 11th September 1948, the period reserved under the lease being 5 years at a monthly rent of Rs. 2,000/- with an option for G renewal to be exercised by a notice two months before the expiry of the lease. It is equally undisputed that during this period of 5 years the appellant company was accepted as tenant of the demised premises and the company paid the rent reserved under the lease being Rs. 2,000/- p.m. The period reserved under the lease expired on 31st August 1953. But before the expiry of the period an applicaH tion was made by the appellant for fixation of standard rent of the demised premises under the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950. In October 1953 respondents

1 and 2 as lessors commenced an ejectment action against the appellant and third respondent on the ground that the period reserved under the lease has expired and the lessee has failed to exercise the option for renewal. During the pendency of the aforementioned actions the parties entered into a compromise and the consent terms were filed in the suit instituted by respondents 1 and 2 lessors inviting the Court to pass a decree in terms thereof, and a consent decree was passed which has been referred to in the evidence as '*solenama*'. It, *inter alia,* provides for a lease for a further period of 5 years commencing from 1st March 1955 on a monthly rent of Rs. 1,000/- p.m. made up of a rent of Rs. 500/- for the premises and a rent of Rs. 500/- for furniture and fixtures and the lessee would have no further option of renewal of the lease on the expiry of the period reserved under the lease. This consent decree incorporating the terms of a fresh lease to be effective as a valid lease required registration in view of the provisions contained in s. 107 of the Transfer of Property Act read with s. 17(1)(d) of the Registration Act, 1908, because the period reserved under the lease was exceeding one year. It is an admitted position that the instrument containing terms of lease, i.e. either the consent terms or the consent decree was not registered as required by law. However, it is equally an admitted position that the company continued in possession and paid rent which was accepted by the lessors from the company from month to month. It appears that on 29th February 1960, i.e. the last day on which would expire the lease for a period of 5 years, the lessors respondents 1 and 2 entered into the demised premises and locked a portion thereof.

The questions that emerge for consideration in this appeal are :—

1. What would be the status and nature of possession of a person who was admittedly a tenant of premises covered by the local rent restriction Act till the date of commencement of a fresh lease which turns out to be void for want of registration, during and at the expiry of the period purporting to be reserved by such a void lease ?
2. Would such a person be a tenant who could only be removed by proper legal proceeding or a licensee without any interest in the premises and could be forcibly evicted by the landlords of the premises entering the premises and locking the same ?
3. Could such a person defend his possession by a suit seeking a declaration and mandatory injunction ?

A Appellant was accepted as tenant by respondents 1 and 2 even though the indenture of lease dated 11th September 1948 (referred to as 'the first lease') was executed by the third respondent who was the Managing Director of the appellant company. Indisputably when the first lease expired on 31st August 1953 the appellant was B the tenant of the demised premises, a fact demonstrably established and expressly accepted by respondents 1 and 2 and evidenced by their conduct of accepting rent from the appellant company. The indenture of first lease granted an option to the lessee which would be none other than the appellant company, to claim renewal of lease. This option was not exercised. Notwithstanding the non-exercise of C the option on the date of expiry of the lease the contractual tenancy having come to an end, the tenant would be a tenant holding over if requirements of s. 116 of the Transfer of Property Act are satisfied. However, on the date of expiry of contractual tenancy the West Bengal Premises Rent Control Temporary Provisions) Act, 1950, was in force and was applicable to the premises and, therefore, on D the determination of contractual tenancy by efflux of time the terms and conditions of the lease are extinguished and the rights of such a person remaining in possession are governed by the statute alone. He is loosely described as statutory tenant which is another name for status of irremovability (see *Anand Nivas Private Ltd.* v. *Anandji Kalyanji Pedhi & Ors.*(1).

E

It must be recalled here that the first lease expired on 31st August 1953. Respondents 1 and 2 filed Title Suit No. 68 of 1953 in October 1953. This suit ended in a consent decree as aforementioned and the appellant and respondents 1 and 2 agreed to enter into a fresh lease for a period of 5 years commencing from 1st March F 1955 on a monthly rent of Rs. 1,000/-. It is not in dispute that from 1st September 1953 to 28th February 1955 rent was paid by the appellant and the same was accepted by respondents 1 and 2. There is no bar in law to a statutory tenant entering into a fresh contract of tenancy with the landlords which was attempted by the consent decree. From this undisputed position an inference of tenancy G can be reasonably made. Accordingly it must be held that when the parties agreed to enter into a fresh lease (referred to as 'the second lease') commencing from 1st March 1955, appellant company was a statutory tenant in possession of the demised premises.

H By the consent decree appellant and respondents 1 and 2 entered into a fresh lease for a period of 5 years. The High Court

(1) [1964] 4 S.C.R. 892.

has found this lease to be void for want of registration and this position was not disputed before us. The appellant continued in possession for a period of 5 years and paid rent as agreed to between the parties in the consent decree. Now, if the lease is void for want of registration neither party to the indenture can take advantage of any of the terms of the lease. At best the provision contained in s. 53A of the Transfer of Property Act which incorporated the English equitable doctrine of part performance can, if the terms thereof are satisfied, be relied upon to protect possession for the period reserved under such a void lease. But no other terms of such an indenture inadmissible for want of registration can be the basis for a relief. In this case respondents 1 and 2 rely upon a provision in the consent decree that there was not to be any further renewal of the lease and the High Court was so much impressed with this provision when it observed : "Here is a party who has solemnly entered into an agreement, has enjoyed the benefit of it, has committed a flagrant breach of it, and now wishes the law to come to his aid and protect him from the evil consequence.... If the appellant succeeds it will be most unhappy state of affairs". This observation appears to be provoked by the High Court looking into that part of the consent decree which provides for no further renewal of the lease, which being a term in an indenture inadmissible for want of registration, could not have been looked into. And this feeling of righteous indignation completely ignores the overriding provisions of the relevant Rent Restriction Act which came to the aid of every tenant in its area of operation on the determination of contractual tenancy. At its commencement every lease world have its origin in a bilateral contract which except for lease for indefinite period or permanent lease would be for some specified duration. On the expiry of the period the solemn implied promise or assurance is to return possession. If such a promise is to be enforced overlooking or ignoring Rent Restriction Act it would make a mockery of protection extended by Rent Restriction Act.

It must further be made clear that s. 53A of the Transfer of Property Act is not at all attracted in the facts of this case. The suit was field by the appellant who sought to protect its possession. The equitable doctrine of part performance can be used as a shield and not as a sword. It can be used to defend and protect one's possession, (see *Probodh Kumar Das & Ors.* v. *Dantmara Tea Co. Ltd. & Ors.*).(1) In fact, any discussion of s. 53A in the facts of this case

(2) 66 I.A. 93.

would be entirely beside the point. It was so made clear by the learned counsel appearing for the present appellant before the High Court but somehow or the other the High Court has practically put into forefront the application of s. 53A. We must accordingly steer clear of this position that neither the appellant relies on s. 53A to protect its possession nor would it be of any use or assistance because it can be a sheath and not a sword as the appellant has come to the Court for a declaration of its tenancy rights, seeking to protect its possession not under the doctrine of part performance as incorporated in s. 53A but with specific allegation that the appellant is a tenant and it be so declared, and for an injunction restraining respondents 1 and 2 landlords from interfering or disturbing the appellant's possession of the premises as tenant.

If, as it clearly transpires from the facts of this case, the appellant was a tenant on the date on which the second lease, which is found to be void, was to commence what would be the nature of possession of the appellant during the period of 5 years, the period sought to be reserved under the second lease and on the expiration of such period? If the appellant was put into possession for the first time under a void lease the appellant could have protected its possession under s. 53A. But it must be made distinctly clear that the appellant was in possession on the date on which the second lease now found void was to commence. Would this attempt inchoate or still born of entering into a fresh contractual tenancy make any difference in the position of the appellant and the nature of his possession? If the second lease is void or inchoate or ineffective or still born it is not all effective. If it is not effective it does not impinge upon the nature of the appellant's possession which was that of a tenant. In other words, the appellant continued to remain in possession of the demised premises as tenant because there was no impact of the lease which is found to be void. It must be made distinctly clear that the appellant was not put in possession under the lease which turns out to be void. In such a situation even during the period of 5 years for which the second lease was to be created the appellant continued to be in possession as tenant and this is evidenced by the further fact that rent was accepted from the appellant by respondents 1 and 2. There is nothing to show that the rent was accepted from month to month by respondents 1 and 2 under the second lease and not what was determined by the Court in rent fixation case No. 114/53 wherein the parties had filed a consent precipe by which the parties invited the Rent Controller to fix the standard rent of the premises at Rs. 500/- p.m. and Rs. 500/- for use of the machinery, furniture and

fixtures, in all Rs. 1,000/- p.m. In this connection, attention was drawn to Receipt Ext. 10 issued by respondents 1 and 2 on 1st January 1960 in which it is stated that the amount is accepted as per terms of consent decree (solenama), but it could not be overlooked that this amount was determined by consent of parties in the case initiated by the appellant before the Rent Controller for fixation of standard rent. If thus the appellant was already in possession as a tenant of the premises an unsuccessful attempt to create a fresh lease would not change the nature of his possession as from a tenant to one in part performance under a void lease. The appellant continues to be in possession as tenant and no cloud is created over its title to remain in possession as tenant merely because the appellant and respondents 1 and 2 attempted to enter into a fresh lease which did not become effective.

Even if it is assumed that the appellant was put in possession for the first time under a lease which turns out to be void, the appellant came into possession of the premises with the consent of the landlords and paid rent from month to month. As the lease was to be for a period of 5 years, for want of registration no operative lease came into existence. In almost identical circumstances in *Ram Kumar Das* v. *Jagdish Chandra Deb Dhabal Deb & Anr.*,(1) an inference of tenancy was made and the duration of the tenancy in such circumstances was held to be from month to month.

Woodfall on 'Landlord and Tenant', Volume 1, 27th Edn., p. 187 para 446, in this context states as under :

> "Moreover, if the tenant enters into possession under a void lease, he thereupon becomes tenant from year to year upon the terms of the writing, so far as they are applicable to and not inconsistent with a yearly tenancy. Such tenancy may be determined by the usual notice to quit at the end of the first or any subsequent year, and it will determine, without any notice to quit, at the end of the term mentioned in the writing. But if the lessee does not enter he will not be liable to an action for not taking possession; nor will an action lie against the lessor for not giving possession at the time appointed for the commencement of the term but before the lease is executed".

In the context of fiction enacted in s. 106 of the Transfer of Property Act depending upon the nature of lease, namely, one of a

(1) [1952] S. C. R. 269 at 280.

Theatre, the person so put in possession would be a tenant from month to month.

The Privy Council in *Arif* v. *Jadunath,*(1) in terms held that if an indenture of lease is compulsorily registrable under s. 107 of the Transfer of Property Act such a lease can only be made by a registered instrument and if not so made, is void altogether. However, if from such a person in possession under a void lease the landlord accepts rent as held in *Ram Kumar Das's case,* (supra) an inference of tenancy would follow. Mulla in 'Transfer of Property Act', 6th Edn., at p. 680 has observed that an oral agreement accompanied by delivery of possession, if for more than one year is valid, by delivery of possession, for the first year, and thereafter the lessee continuing in possession with the assent of the lessor becomes a tenant by holding over under s. 116 of the Transfer of Property Act. Such a lease being created by operation of law is binding even though the provisions of s. 107 have not been complied with. It is also noted at p. 681 that though an unregistered lease is void as a permanent lease, it can be deemed to be a monthly lease terminable by 15 days' notice.

Mr. Sen, however, strenuously urged that the ratio in *Ram Kumar Das's* case (supra) would have to be understood in the light of the recent decision of this Court in *Technicians Studio Pvt. Ltd.* v. *Lila Ghosh & Anr.*(2) As this case was heavily relied upon to assert that it concludes the point raised in the present appeal, it warrants an indepth analysis. Much before the premises came to be owned by the respondent Lila Ghosh, her predecessors-in-title had brought a suit for ejectment of the lessees of the property impleading the appellant Technicians Studio Pvt. Ltd., a private limited company who were the sub-lessees also as a defendant. This suit ended in a decree some time in 1954. The appellant applied for a review of the judgment which did not meet with success. Against this decision rejecting the review application the sub-lessee appellant moved the High Court in revision. This revision was disposed of in terms of a consent precipe. By the consent terms the appellant was to become the direct tenant under the first respondent's husband and his brother who had by then become the owners of the property at a monthly rent of Rs. 1000/-. The lease was to be for a period of 16 years from May 1954 with an option to the appellant to terminate the lease on giving 60 days' notice to the lessors. The indenture of lease, however, was not executed nor the consent decree was registered. On the expiry of the

(1) (1931) 58 I. A. 91.

(2) [1978] 1 S. C. R. 516.

period of 16 years the first respondent commenced an ejectment action alleging that the appellant was a trespasser. The appellant resisted the suit contending that it was a monthly tenant. Negativing this contention this Court, agreeing with the High Court, held that the payments made by the appellant in that case can be explained as evidence of appellant's willingness to perform its part of the contract and that a person who is led into possession on the strength of a void lease does not acquire any interest in the property but gets under s. 53A a right to defend his possession. The decision in *Ram Kumar Das's* case (supra) was distinguished observing that in *Ram Kumar Das's case* (supra) it was admitted that in the beginning there was a relationship of landlord and tenant between the parties and the only question that arose for decision was whether the defendant was in-fact a monthly tenant under the plaintiff on the date when the notice to quit was served upon him. In the case before us, as pointed out earlier, the appellant was admittedly a tenant of respondents 1 and 2 between 1948 and 1953. Again, the appellant was a tenant from 1st September 1953 to 1st March 1955 when the second lease was to commence. In the case under discussion appellant was a sub-lessee and he was to acquire a status of direct lessee or tenant under the lease which was found to be void. To be precise, the appellant Technicians Studio Pvt. Ltd. was not the tenant at the commencement of the lease which turned out to be void. That is the distinguishing feature. In the present case the appellant was the tenant from 1948 to 1953 and till February 1955, a feature similar to *Ram Kumar Das's* (supra) and which was considered decisive. Therefore, the case falls squarely in terms of the ratio in *Ram Kumar Das's* case wherein the position was admitted that in the beginning there was a relationship of landlord and tenant between the parties. This Court in *Technicians Studio's* case (supra) did not once and for ever conclude the point that a person coming in possession under a void lease can never claim to be a tenant. On the contrary, it was in terms held that each case will have to be decided on its own facts. This becomes abundantly clear from a pertinent observation extracted herein :

> "This does not mean however that there cannot be a relationship of landlord and tenant in any case where the transferee has taken possession of the property under a void lease or in part performance of a contract and is entitled to protection under section 53A of the Transfer of Property Act Such a view would be incorrect and encourage attempts to circumvent the protection of the Rent Acts given to the tenants. Whether the relationship of land-

A lord and tenant exists between the parties depends on whether the parties intended to create a tenancy, and the intention has to be gathered from the facts and circumstances of the case. It is possible to find on the facts of a given case that payments made by a transferee in possession were really not in terms of the contract but independent of it B and this might justify an inference of tenancy in his favour. The question is ultimately one of fact".

In this case it is unquestionably established that at the commencement of the lease which turns out to be void, i.e. on 1st March 1955 appellant was a tenant of the premises and that on its application C standard rent in respect of the demised premises was determined and the same was accepted as the rent to be paid under the second lease. Payment has in fact been made and it would be twisting the language to hold that the payment was not made as rent but under the terms of the second lease. In view of the statutory enactment of the equitable D principle of part performance as found in s. 53A, the equity recognised in *Walsh* v. *Lonsdale*,(1) may not be attracted. However, it would not be correct to hold that a tenant who was in possession of the demised premises as tenant and who negotiated a fresh agreement of lease with the landlord for a period exceeding one year which, in order to be legal, must be by a registered instrument and which E turns out to be void for want of registration, would alter his position from one as tenant at the commencement of such void lease and would render him a licensee continuing in possession under the terms of a lease being void and, therefore, ineffective and that he ceases to be a tenant and could be forcibly removed at the end of the period which was reserved under the void lease. Such an incomplete and F ineffective attempt at creating a fresh lease would have no impact on a tenant who was in possession as tenant at the commencement of such a void lease and he would continue to be the tenant because s. 53A would not be attracted as he is not put in possession in part performance of an agreement of lease not registered and that it would be unwise to hold that the payment of the standard rent fixed by the G Rent Controller having jurisdiction could be by any process of construction treated as payment under such an agreement of lease. Therefore, it would appear that the appellant company was a tenant during the period 1948-53 and on the expiry of the contractual tenancy on 31st August 1953 it became a statutory tenant. A person remaining in occupation of premises let to him after the determina- H tion of or expiry of the period of the tenancy is commonly, though in

(1) [1882] 21 Ch. D. 9.

law not accurately, called a statutory tenant. In other words, he acquires the status of irremovability [see *Anand Nivas (Private) Ltd. case*].(1) Statutory tenant being a person who enjoys the status of irremovability, would enjoy the protection of the statute until he is evicted from the premises under the enabling provisions of the statute. A statutory tenancy would, therefore, come to an end on either the surrender of premises by such a tenant or if a decree of eviction is passed against him (See *Hiralal Vallabhram* v. *Kastorbhai Lalbhai & Ors.*) (2) As the period reserved under the first lease expired on 31st August 1953 and thereafter the tenant continued in possession, it became a statutory tenant under the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950. If thereafter an ineffective attempt was made to enter into a fresh contract of tenancy the status of the appellant as tenant did not undergo any change and it continued to be the tenant of the premises and the statutory tenancy would come to an end if it surrenders possession or is evicted by due process of law.

If the appellant thus continued to be a tenant it could not be forcibly evicted. If the premises enjoyed the protection of the West Bengal Premises Tenancy Act, 1956, which was in force on 29th February 1960 when according to respondents 1 and 2 the period reserved under the void lease expired, respondents 1 and 2 cannot, ignoring the provisions of the relevant Rent Restriction law and merely treating the appellant as licensee or trespasser, ignoring its status of irremovability, take over forcible possession. In such circumstances the appellant as tenant would be entitled to protect its possession unless evicted in due course of law and in order to protect its possession it can legitimately sue, there being no bar in law, for a declaration of its status as tenant and for an injunction either prohibitory or mandatory, as the case may be. The High Court really missed the core problem and with respect misled itself into invoking the provisions of s. 53A which the learned counsel appearing for the present appellant declined to invoke in its favour and came to an unsustainable conclusion that under the consent decree the parties agreed that the old tenancy would be wiped out and a new tenancy would be created for a period of 5 years expiring in February 1960. A still born attempt not clothed with legal formality cannot destroy the existing status. The second lease never came into existence for want of registration and more particularly the appellant was not put in possession under the purported second lease which turns out to be void. The paradoxical approach manifested in the approach is that if a valid lease had come into existence on the expiry of it the

(1) [1964] 4 S. C. R. 892.
(2) [1967] 3 S.C.R. 343.

A appellant tenant would have continued in possession under the protection of the relevant Rent Restriction Act. However, if such an attempt at creating a fresh lease was ineffective or infructuous, how can such an inchoate exercise destroy the existing rights which the High Court held to have been destroyed ignoring the very existence of West Bengal Premises Tenancy Act, 1956? The High Court was further in error B in holding that if on the expiry of the agreed period of lease there was a covenant for not getting any renewal of the lease the tenant would be a trespasser, wholly overlooking the legal position as affirmatively established that on the expiry of the contractual tenancy the tenant continues as a statutory tenant except where he surrenders possession or is evicted under the enabling provisions of the relevant Rent Restric- C tion Act.

It thus clearly transpires that the appellant was a tenant and continued to be a tenant and was entitled to protect its possession by appropriate proceeding unless evicted in due course of law.

Before we conclude it is necessary to dispose of a contention in D the form of a preliminary objection raised by Mr. Sen for the respondents that the certificate granted by the High Court being invalid, the appeal must fail on that account alone. Certificate granted by the High Court leaves much to be desired. It is merely stated that it is a case fit for appeal to the Supreme Court. It may be pointed out that the appellant had prayed for a certificate under Article 133(1)(a), (b) E and (c) as it stood at the relevant time in 1969. In the application for the certificate it was stated that the subject-matter of the suit and appeal to the Supreme Court will exceed Rs. 20,000/- and that judgment is one of affirmance. It was also stated that the appeal involves a question of general public importance and, therefore, a certificate may be granted under Article 133(1)(a), (b) and (c). In the affidavit in F opposition on behalf of respondents 1 and 2 it was stated that the value of the subject-matter of dispute was less than Rs. 20,000/- and the appeal does not involve any question of law of general public importance which had to be determined by the Supreme Court. With these two affidavits before it, the High Court granted certificate that it is a G fit case for appeal to the Supreme Court. A certificate which the High Court grants must be supported by adequate reasons. It is obligatory upon the High Court to set out the question of public or private importance which in their opinion falls to be determined in the proposed appeal (see *Sohanlal Naraindas* v. *Laxmidas Raghunath Gadit*,(1) and *Railway Board, Govt. of India* v. *M/s. Observer Publications (P)* H *Ltd.*(2)

(1) [1971] 1 S. C. C. 276.
(2) [1972] 3 S. C. R. 865.

In both these cases the appeals were disposed of on merits and the preliminary objection was merely noticed. However, in *Nund & Samont Co. Pvt. Ltd.* v. *Commissioner of Income-tax, Bihar & Orissa,*(1) this Court held that a certificate of fitness for appeal to the Supreme Court issued by the High Court under s. 66A of the Income-tax Act, 1922, will be defective if it does not set out the substantial question of law which, in the view of the High Court, falls to be determined by the Supreme Court, and following the decision in *India Machinery Stores P. Ltd.* v. *Commissioner of Income-Tax, Bihar and Orissa,*(2) the appeal was liable to be dismissed in view of the defective certificate. However, in both the cases after observing that the certificate was defective the appeals were disposed of on merits. In this case a very substantial question of law of general public importance is raised and it would be a travesty of justice if we now dismiss the appeal on the sole ground that the certificate is defective. It would have been open to us to grant special leave on the question raised before us. Therefore, the preliminary objection must be overruled.

This appeal accordingly succeeds and is allowed and the judgment and decree of the High Court as well as of the first appellate Court are set aside and the judgment and decree of the trial court are restored with costs throughout.

N.V.K. *Appeal allowed.*

(1) [1970] 78 I. T. R. 268
(2) [1970] 78 I T. R. 50.