Waryam Singh and Another

Vs

Amarnath and Another

Civil Appeal No. 64 of 1953

(M.C. Mahajan, B.K. Mukherjea, S.R. Dass, Vivian Bose, Ghulam Hasan JJ)

19.01.1954

JUDGMENT

DAS J. -

This is an appeal by special leave against the order made on the 20th November, 1951, by the Judicial Commissioner of Himachal Pradesh in proceedings instituted by the respondents under articles 226 and 227 of the Constitution of India.

There is no substantial dispute as to the facts leading up to the present appeal. The appellants were tenants of a certain shop premises situated in Solan Bazar in the district of Mahasu in Himachal Pradesh. On the 11th October, 1947, they had executed a rent deed by which they agreed to pay an annual rent of Rs. 175 payable as to Rs. 50 on the 1st of Baisakh and as to the balance of Rs. 125 in the month of October, in default of which payments the respondents, as landlords, would be entitled to recover the whole of the said rent in one lump sum. The tenancy created by the rent deed was only for one year in the first instance but it provided that if the tenants desired to continue in occupation they must execute a further rent deed before the expiration of the said term. The appellants never executed any further rent deed but held over and continued in occupation of the demised premises.

The appellants fell into arrears with the payments of rents due for the years 1948 and 1949 and the respondents made applications to the Rent Controller for eviction of the appellants under section 13(2)(i) of the East Punjab Urban Rent Restriction Act, 1949, as extended to Himachal Pradesh. The appellants, however, paid up the arrears of rent into court and claimed the benefit of the proviso to section 13(2)(i). The claim was allowed and the said applications were dismissed accordingly on the 18th December, 1950.

The appellants again fell into arrears with the payment of rent due for the year 1950. On the 26th December, 1950, the respondents served on the appellants a notice calling upon the latter to pay whole of the said rent forthwith but the appellants failed to do so. The respondents thereupon, on the 2nd January, 1951, filed an application under section 13(2)(i) for the eviction of the appellants on the ground of nonpayment of rent.

Thereafter, on the 10th January, 1951, the appellants made an application to the Rent Controller for the fixation of a fair rent under section 4 of the said Act.

On the 25th January, 1951, the appellants filed their written statements in the proceedings under section 13(2)(i) admitting the non-payment of rent and the receipt of the notice but pleaded (i) that

the respondents' application was barred by reason of the rejection of the previous applications for eviction made by the respondents and (ii) that the present application could not be entertained in view of the pendency of their application for fixation of a fair rent under section 4 of the said Act.

On the 20th February, 1951, the Rent Controller framed the following issues :-

> (1) Whether the application in question was not entertainable in view of the judgment of the District Judge, dated the 18th December, 1950 ? Onus on defendants.
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> (2) If issue No. 1 is not proved, had the opposite party (tenants) not paid the rent and as such were they liable to be ejected ? Onus on plaintiffs.
>
> (3) Have the opposite party already filed an application in the said court for the fixation of rent and are they, therefore, not liable for ejectment pending the decision on the application and what is its effect on the said application ? Onus on defendants.

By his judgment, dated the 29th May, 1951, the Rent Controller held that as the previous applications related to non-payment of rents for the years 1948 and 1949 the present application which was founded on non-payment of rent for 1950 was not barred under section 14 of the said Act but, although the fact of rent being in arrears was admitted, the Rent Controller did not think fit to make an order directing the appellants to put the respondents in possession of the demised premises. The reasons given by him were as follows :-

> "Regarding the non-payment of the rent when the plea of the tenant is only that he is waiting for the fixation of fair rent by the Rent Controller there is not enough ground for ejectment. A civil suit for the recovery of the rent would have been a more appropriate method of obtaining that rent. I therefore dismiss the suit. The parties should bear their own costs."

The respondents preferred an appeal to the District Judge of Mahasu under section 15 of the said Act. The learned District Judge dismissed the appeal observing -

> "On behalf of the landlord it was urged that under section 13(2) of the Punjab Urban Rent Restriction Act, as applied to Himachal Pradesh, the Controller, if it came to the finding that rent had not been paid, had no option but to direct the tenant to put the landlord in possession. Undoubtedly, that is the correct legal position, but in the present case the non-payment of rent was due to a misapprehension of the legal position created by the tenant filing an application for fixing fair rent. I, therefore, think that this case can be distinguished and does not fall within section 13(2), Punjab Urban Rent Restriction Act."

The respondents moved the Judicial Commissioner, Himachal Pradesh, under articles 226 and 227 of the Constitution of India for setting aside the order of the District Judge. The learned Judicial Commissioner held that in view of the admitted failure to pay the rent as provided by the rent deed or at the first hearing of the court under the proviso to section 13(2)(i) the courts below had acted arbitrarily in refusing to make an order for ejectment against the tenants who had not done what was incumbent on them to do under the law and that such a situation called for interference by the court of the Judicial Commissioner in order to keep the subordinate courts within the bounds of their authority. He accordingly set aside the orders of the courts below and allowed the application for ejectment but gave the appellants three months' time for vacating the premises. The appellants have

now come up before this court on appeal by special leave obtained from this court.

Learned advocate appearing in support of this appeal urges that the learned Judicial Commissioner acted wholly without jurisdiction inasmuch as (1) the Rent Controller or the District Judge exercising powers under the Act was not amenable to the jurisdiction of the High Court and, therefore, article 227 confers no power on the court of the Judicial Commissioner over the Rent Controller or the District Judge, and (2) that article 227 read with article 241 confers no poor of judicial superintendence on the court of the Judicial Commissioner.

Re. 1. - The court of the Judicial Commissioner of Himachal Pradesh exercises jurisdiction in relation to the whole of the territories of Himachal Pradesh. The Rent Controller and the District Judge exercising jurisdiction under the Act are certainly tribunals, if not courts, and they function within the territories of Himachal Pradesh. Therefore, article 227(1) read with article 241 confers on the court of the Judicial Commissioner power of superintendence over such tribunals. The words "in relation to which" obviously qualify the word "territories" and not the words "courts and tribunals".

Re. 2. - The material part of article 227 substantially reproduces the provisions of section 107 of the Government of India Act, 1915, except that the power of superintendence has been extended by the article also to tribunals. That the Rent Controller and the District Judge exercising jurisdiction under the Act are tribunals cannot and has not been controverted. The only question raised is as to the nature of the power of superintendence conferred by the article. Reference is made to clause (2) of the article in support of the contention that this article only confers on the High Court administrative superintendence over the subordinate courts and tribunals. We are unable to accept this contention because clause (2) is expressed to be without prejudice to the generality of the provisions in clause (1). Further, the preponderance of judicial opinion in India was that section 107 which was similar in terms to section 15 of the High Courts Act, 1861, gave a power of judicial superintendence to the High Court apart from and independently of the provisions of other laws conferring revisional jurisdiction on the High Court. In this connection it has to be remembered that section 107 of the Government of India Act, 1915, was reproduced in the Government of India Act, 1935, as section 224. Section 224 of the 1935 Act, however, introduced sub-section (2), which was new, providing that nothing in the section should be construed as giving the High Court any jurisdiction to question any judgment of any inferior court which was not otherwise subject to appeal or revision. The idea presumably was to nullify the effect of the decisions of the different High Courts referred to above. Section 224 of the 1935 Act has been reproduced with certain modifications in article 227 of the Constitution. It is significant to note that sub-section (2) to section 224 of the 1935 Act has been omitted from article 227. This significant omission has been regarded by all High Courts in India before whom this question has arisen as having restored to the High Court the power of judicial superintendence it had under section 15 of the High Courts Act, 1861, and section 107 of the Government of India Act, 1915. See the cases referred to in Moti Lal v. The State through Shrimati Sagrawati (I.L.R. [1952] 1 All. 558 at p. 567.). Our attention has not been drawn to any case which has taken a different view and, as at present advised, we see no reason to take a different view.

This power of superintendence conferred by article 227 is, as pointed out by Harries C.J., in Dalmia Jain Airways Ltd. v. Sukumar Mukherjee (A.I.R. 1951 Cal. 193.), to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors. As rightly pointed out by the Judicial Commissioner in the case before us the lower courts in refusing to make an order for ejectment acted arbitrarily. The lower courts realised the legal position but in effect declined to do what was by section 13(2)(i) incumbent on them to do and thereby refused to exercise jurisdiction vested in them by law. It was, therefore, a case which called for an interference by the court of the Judicial Commissioner and it acted quite properly in doing so. In our opinion there is no ground on which in an appeal by special leave under article 136 we should interfere. The appeal, therefore, must stand dismissed with costs.

Appeal dismissed.

Agent for the appellants : M. M. Sinha.

Agent for the respondent :

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