Moti Ram

Vs

Suraj Bhan & Others

Civil Appeal No. 524 of

(P. B. Gajendragadkar, K. Subha Rao, K. C. Das Gupta JJ)

03.02.1960

JUDGMENT

GAJENDRAGADKAR, J. -

This appeal by special leave arises from ejectment proceedings taken by Suraj Bhan (respondent 1) against the appellant Moti Ram in respect of a shop situated in the urban area of Gurgaon which has been in the occupation to the appellant as a tenant for more than twenty years on a monthly rental of Rs. 20. Respondent 1 purchased the shop on June 15, 1956, and soon thereafter he applied to the Rent Controller for the eviction of the appellant under s. 13 of the East Punjab Urban Rent Restriction Act, 1949 (3 of 1949) (hereinafter called the Act). This application was based on four grounds. It was urged that the appellant was a habitual defaulter and was in arrears of rent, that the return of the money invested by respondent 1 in the purchase of the shop was not adequate, that respondent 1 apprehended that the godown and the shop of which he was in possession as a tenant would be sold off and he may be dispossessed therefrom, that is why he would require the shop in the present proceedings for his personal use and that respondent 1 wanted to reconstruct the shop for which necessary sanction had been obtained by him from the Municipal Committee of Gurgaon and the plan prepared in that behalf had been duly approved. This claim was resisted by the appellant who disputed the correctness and the validity of all the pleas taken by respondent 1. The Rent Controller upheld the contentions of the appellant and rejected all the pleas made by respondent 1. In regard to the plea that the respondent wanted to reconstruct the shop the Rent Controller found that the evidence adduced by respondent 1 in support of the said plea had been created as a camouflage and that the said plea was a false pretext to obtain the eviction of the appellant. On these findings the application made by respondent 1 for evicting the appellant was dismissed.

Respondent 1 then appealed to the District Court against the said decision. His appeal, however, failed since the appellate court confirmed all the findings made by the Rent Controller. In respect of the last plea raised by respondent 1 about the rebuilding of the shop the appellate court observed that respondent 1 had got the plan approved and had also got the sanction from the Municipal Committee to reconstruct the building so as to be able to make a ground for getting the appellant ejected from the shop.

This appellate decision was challenged by respondent 1 by his revisional application in the High Court of Punjab at Chandigarh. The High Court confirmed the findings of the courts below on the first three pleas raised by respondent 1. The last plea raised by respondent 1, however, was upheld by the High Court with the result that the revisional application preferred by respondent 1 was allowed and his claim for evicting the appellant was decreed. It is this decree a which is challenged before us by the appellant in the present appeal.

Before dealing with the contentions raised by Mr. Bindra on behalf of the appellant it is necessary to mention one material fact. The application for ejectment was made on August 28, 1956. Before the written statement was filed by the appellant on November 14, 1956, the Act was amended by amending Act 29 of 1956 on September 24, 1956. In the present appeal we are concerned with amendments made in ss. 13 and 15 of the Act. Section 13(1) provides inter alia that a tenant in possession of a building shall not be evicted therefrom except in accordance with the provisions of this section, or in pursuance of an order made under s. 13 of the Punjab Urban Rent Restriction Act, 1947 as subsequently amended. Section 13, sub-s. (2) provides for an application in to be made by a landlord who seeks to evict his tenant for a direction in that behalf. It then proceeds to prescribe conditions on the satisfaction of which a decree for ejectment can be passed in favour of the landlord. We are not concerned with these conditions in the present appeal. Section 13(3)(a)(iii) as it stood at the date of the application made by respondent 1 provided that a landlord may apply to the Controller for an order directing the tenant to put the landlord in possession in the case of any building if he requires it for the reconstruction of that building or for its replacement by another building or for the erection of other buildings. By the amending Act provision has been substantially modified. Section 13(3)(a)(iii) as amended reads thus : "In the case of any building or rented land, if he requires it to carry out any building work at the instance of the Government or Local Authority or any Improvement Trust under some improvement or development scheme or it has become unsafe or unfit for human habitation." One of the questions which we have to consider in this appeal is whether this amended provision applies to the present proceedings.

The other relevant section is s. 15, sub-s. (4). Under s. 15, sub-s. (4) as it stood on the date when the application was filed provided that the decision of the appellate authority, and subject only to such decision, an order of the Controller shall be final and shall not be liable to be called in question in any court of law whether in a suit or any other proceeding by way of appeal or revision. This has been subsequently amended by deleting the last clause in sub-s. (4) and substituting in its place the words "except as provided in sub-s. (5) of this section." Sub-s. (5) which has been added reads thus :

> The High Court may, at any time, on the application of any aggrieved party or on its own motion, call for and examine the records relating to any order passed or proceedings taken under this Act for the purpose of satisfying itself as to the legality or propriety of such order or proceedings and may pass such order in relation in relation thereto as it may deem fit."

On behalf of the appellant it is urged before us that this amended provision which permits a revisional application to be filed before the High Court is inapplicable to the present proceedings.

Let us first deal with the point about the competence of the revisional application. The appellant's case is that under s. 15, sub-s. (4) as it stood at the time when the present proceeding commenced, the decision to the appellate authority was final, and it could not be questioned in suit or other proceedings by way of appeal or revision. In other words, a revisional application against the appellate decision was expressly excluded. If at the time when the present proceedings commenced the decision of the appellate was final in the eyes of law the subsequent amendment by which a revisional application has been allowed cannot affect that position. It was the appellant's right as a party to the proceedings to claim the present proceeding are concerned. Put in a different form the contention is that the provision for a revisional application which has now been made by the amending Act cannot retrospectively affect the proceedings which were pending at the when the amending Act was passed.

Unfortunately for the appellant this point is concluded by the decision of this Court in the case of Indira Sohanlal v. Custodian of Evacuee Property, Delhi ([1955] 2 S.C.R. 1117). In that case the appellant who was a displaced person from Lahore was the owner of a house there and had arranged to have it exchanged with certain lands in a village in the State of Delhi belonging to an evacuee 'M'. On February 23, 1948, the said owner made an application to the Additional Custodian of Evacuee Property (Rural) Delhi for the confirmation of the transaction of exchange under s. 5-A of the East Punjab Evacuees' (Administration of Property) Act, 1947 as amended in 1948 and applied to the State of Delhi. Under s. 5 of the said Act an order if passed by the Custodian or Additional Custodian was not subject to appeal or revision and was to become final and conclusive. However, the application in question was not disposed of until March 20, 1952, on which date the Additional Custodian passed an order confirming the exchange. Meanwhile the relevant provisions of the law had been amended and ultimately Central Act XXXI of 1950 was passed which, among other things, conferred revisional powers on the Custodian-General by s. 27. In exercise of these revisional powers the Custodian General after hearing the parties set aside the order of confirmation and directed that the matter should be reconsidered by the Custodian. The appellant urged before this Court that the order of confirmation originally passed was not open to revision on the ground that at the date when she filed the application in 1948 she got a vested right to have it determined under s. 5-A with the attribute of finality and conclusiveness under s. 5-B attaching such determination. Her argument was that the subsequent repeal and re-enactment of the said provisions cannot affect such a right in view of s. 6 of the General Clauses Act and s. 58(3) of Act XXXI of 1950. This contention was rejected and the revisional order impugned by the appellant was confirmed. It is true that the decision of this court was founded on two grounds. The first of these related to the effect of provisions of s. 6 of the General Clauses Act read in the light of s. 58(3) of Act XXXI of 1950. The other ground, however, was one of general importance and it is clear that it is on this latter ground that this Court based its decision. According to this decision then the finality prescribed by s. 5-B came into operation after the order in question was made and not before. "Even if there be in law any such right at all", observed Jagannadhadas J., who delivered the unanimous opinion of the Court, "it can in no sense be a vested or accrued right. It does not accrue until the determination is in fact made when alone the right to finality becames an existing right as in Delhi Cloth and General Mills Co. Ltd. v. Income-tax Commissioner ((1927) I.L.R. 9 Lah 284). We are, therefore, of the opinion that the principle of Colonial Sugar Refining Co. Ltd. v. Irving ((1905) A.C. 369) cannot be invoked in support of the case of the kind we are dealing with". Having regard to this decision it is impossible to accede to Mr. Bindra's argument that the finality of the appellate decision could be invoked by the appellant before the said appellate decision was actually recorded. If no finality could be claimed at an earlier stage it is clear that at the time when the appellate authority decided the matter the amending section had come into force and when the appellate order was actually passed it could not claim the finality under the earlier provision. We may incidentally point out that the said principle laid down in the case of Indira Sohanlal ([1955] 2 S.C.R. 1117) has been cited by this Court in Garikapatti Veeraya v. N. Subbiah Choudhury ([1957] S.C.R. 488), and it has been observed that the question which was left open by the court on the earlier occasion fell to be considered in the case of Garikapatti Veeraya ([1957] S.C.R. 448) and was in fact considered and decided. Mr. Achru Ram, for the respondent, has suggested that the very passage in the case of Indira Sohanlal ([1955] S.C.R. 1117) which enunciated the principle appears to have been cited with approval. However that may be, we are bound by the decision of this Court in the case of Indira Sohanlal ([1955] S.C.R. 1117) and that decision is clearly against the contention of the appellant that the amended provision in respect of revisional jurisdiction of the High Court was inapplicable.

That takes us to the other contention that the amended provision of s. 13(3)(iii) applies. There is no

doubt that if this amended provision applied to the present case respondent 1 would not be entitled to obtain an order of ejectment. It is plain that by the amendment Legislature has imposed rigorous limitations on a landlord's right to recover possession in the case of any building or rented land. The question is whether this can be said to be retrospective in operation. It is clear that the amendment made is not in relation to any procedure and cannot be characterised as procedural. It is in regard to a matter of substantive law since it affects the substantive rights of the landlord. It may be conceded that the Act is intended to provide relief to the tenants and in that sense is a beneficial measure and as such its provision should be liberally construed; but this principle would not be material or even relevant in deciding the question as to whether the new provision is retrospective or not. It is well-settled that where an amendment affects vested rights the amendment would operate prospectively unless it expressly made retrospective or its retrospective operation follows as a matter of necessary implication. The amending Act obviously does not make the relevant provision retrospective in terms and we see no reason to accept the suggestion that the retrospective operation of the relevant provision can be spelt out as a matter of necessary implication. We ought to add that Mr. Bindra has not argued that the initial provision in s. 13(1) which is retrospective is attracted in interpreting the amended provision in s. 13(3)(a) (iii). Such a contention would of course be wholly untenable.

There is another consideration to which reference may be made. If the new provision is held to be retrospective in its operation what would be the consequence ? Inevitably all pending actions in which landlords may have applied for possession of their buildings let out to the tenants under the provisions of s. 13(3)(a) (iii) as it stood before the amendment would automatically fail because they would not satisfy the tests imposed by the amended provision. If such a drastic consequence was really intended by the Legislature it would certainly have made appropriate provisions in express terms in that behalf. Where the Legislature intends to make substantive provisions of law retrospective in operation it generally makes its intention clear by express, provisions in that behalf. We are, therefore, satisfied that s. 13(3)(a)(iii) as amended cannot apply to proceedings which were pending either before the Controller or before the appellate authority at the time when the amendment was made In this connection we ought to add that when the revisional application was argued before the High Court it was admitted by the appellant that it was the old law which was in force before the date of the amendment that applied to the case. Even so we have allowed Mr. Bindra to raise the point before us but we see no substance in it This point has been considered by Punjab High Court in Ram Parshad Halwai, Ludhiana v. Mukhtiar Chand (I.L.R. (1958) Punjab 1553) and it appears that the Punjab High Court has taken the same view about the effect of the amendment made in s. 13(3)(a)(iii).

There is one more point which remains to be considered. Mr. Bindra has argued that the High Court was in error in coming to its own conclusion as to whether the requirement of s. 13(3) (a)(iii) has been satisfied. As we have already pointed out the finding of the Rent Controller and the appellate authority was that the claim made by respondent 1 that he required the shop for the purpose of reconstruction was not bona fide. The High Court has reversed this conclusion and Mr. Bindra challenges the correctness or the propriety of the said conclusion. The revisional power conferred upon the High Court under s. 15(5) is wider than that conferred by s. 115 of the Code Civil Procedure. Under s. 15(5) the High Court has jurisdiction to examine the legality or propriety of the order under revision and that would clearly justify the examination of the propriety or the legality of the finding made by the authorities in the present case about the requirement of the landlord under s. 13(3)(a)(iii). The High Court no doubt has accepted the appellant's argument that the requirement in question must be bona fide but it has observed that there was no legal evidence on which it could be said that the landlord's requirement was not bona fide. Indeed it is obvious that the tests applied both by the Rent Controller and the appellate authority in dealing with the question were based on the

assumption that the amended provision of s. 13(3)(a)(iii) applied to the present proceedings. Otherwise it was irrelevant to enquire whether the property in question had become unsafe or unfit for human habitation as they have done. All the relevant evidence available on record on this point clearly sustains the view taken by the High Court that the case made by the landlord under s. 13(3)(a)(iii) was bona fide. Soon after he purchased the house he decided to reconstruct the building, moved the Municipality with his plan and obtained its sanction. It is difficult to understand how on these facts it would be permissible to hold that the landlord is acting mala fide. That is the view which the High Court took and we see no substance in the argument that in taking the said view the High Court has acted either irregularly or improperly.

In the result the appeal fails and is dismissed with costs.

Appeal dismissed.

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