Kapur Chand Jain

Vs

B. S. Grewal & Others

Civil Appeal No. 833 of 1962

(CJI P. B. Gajendragadkar, K. N. Wanchoo, M. Hidayatullah JJ)

06.11.1964

JUDGMENT

HIDAYATULLAH, J. –

The appellant obtained on lease from the 4th respondent (Raja Charanjit Singh) 208 canals of agricultural land for five years commencing from Rabi 1951 to Kharif 1955 on an annual rent of Rs. 7,500. The lease deed was registered and was executed on November 20, 1950. The appellant paid a sum of Rs. 7,500 as advance rent for one year. There was a tube well on the land and one of the terms of the lease was that the Raja would put the tube well into working order and the lease was to commence on the day this was done. The tube well was repaired on July 11, 1951 and the lease is said to have commenced on that day. According to the appellant the tube well did not deliver the right quantity of water and that led to certain disputes.

The appellant did not pay rent for the subsequent years. On August 15, 1952 the Raja filed a suit for recovery of Rs. 7,500 as rent for Rabi and Kharif, 1951. He claimed that Rs. 7,500 paid to him was to be retained as deposit to be adjusted towards the final payment. The appellant resisted this demand mainly on the ground that the tube well was not functioning as required by the lease deed. This suit was decreed on March 23, 1957 and an amount of Rs. 859-4-0 was found due. This was because on April 15, 1953 the Punjab Security of Land Tenures Act, 1953 came into force and under section 12 of that Act the maximum rent payable by a tenant for any land held by him was not to exceed 1/3rd of the crop of such land or of the value of the crop determined in the manner to be prescribed by Rules. For this period an amount of Rs. 4,313 was held to be the value of the produce and after making deduction for sundry payments to the Raja the decree was for the amount stated. The appellant paid that amount forthwith. The appellant did not pay the rent for the years 1952, 1953 and 1954 and on January 5, 1955 the Raja brought another suit for the recovery of Rs. 22,500 as arrears of rent for these three years and on October 8, 1956 filed a revised application under section 14-A(ii) added from 1955 to the Act. During the pendency of this suit the appellant was asked to deposit a sum of Rs. 7,000 which he did on January 22, 1957. Later the amount payable under section 12 of the Act was found to be Rs. 13,378-2-0 and on June 21, 1957 the appellant deposited the balance. The appellant did not pay rent for the year 1955 and though his lease expired with Kharif, 1955 he continued holding over and did not pay rent for Rabi 1956. The Raja made an application on October 10, 1956 under section 14-A(i) for the eviction of the appellant on the ground inter alia that he had failed to pay rent regularly without sufficient cause. Under section 14-A(i) the application for eviction lay before an Assistant Collector, First Grade, while under section 14-A(ii) the application for recovery of arrears of rent (to which category belonged the revised application dated October 8, 1956, which we have mentioned before) lay before an Assistant Collector Second Grade. As a result the question of the eviction of the tenant on the ground that he

was irregular in payment of rent was tried in one court and the recovery proceedings were tried in another court. The proceedings under section 14-A(i) terminated in favour of the appellant on December 24, 1958, the Assistant Collector, First Grade, Jullundur holding that the tenant had sufficient cause not to pay rent fixed by the lease deed and the Raja could not claim ejectment on that ground. The Raja appealed. The Collector, Jullundur District, on May 20, 1959, reversed the order and directed that the appellant be evicted. An appeal by the appellant before the Commissioner, Jullundur Division failed as also an application for revision before the Financial Commissioner, Punjab. The appellant then moved the High Court of Punjab at Chandigarh under Articles 226 and 227 of the Constitution. His petition was summarily dismissed by a Division Bench on March 9, 1961. The appellant has filed this appeal by special leave.

Section 14-A of the Punjab Security of Land Tenures Act, 1953 reads as follows :-

> "14-A. Notwithstanding anything to the contrary contained in any other law for the time being in force, and subject to the provisions of section 9-A, -
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> (i) a land-owner desiring to eject a tenant under this Act shall apply in writing to the Assistant Collector, First Grade, having jurisdiction, who shall thereafter proceed as provided for in sub-section (2) of section 10 of this Act, and the provisions of sub-section (3) of the said section shall also apply in relation to such application, provided that the tenants' rights to compensation, and acquisition of occupancy rights, if any, under the Punjab Tenancy Act, 1887 (XVI of 1887), shall not be affected;
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> (ii) a land-owner desiring to recover arrears of rent from a tenant shall apply in writing to the Assistant Collector, Second Grade, having jurisdiction, who shall thereupon send a notice, in the form prescribed, to the tenant either to deposit the rent or value thereof, if payable in kind, or give proof of having paid it or of the fact that he is not liable to pay the whole or part of the rent, or of the fact of the landlord's refusal to receive the same or to give a receipt, within the period specified in the notice. Where, after summary determination, as provided for in sub-section (2) of section 10 of this Act, the Assistant Collector finds that the tenant has not paid or deposited the rent, he shall eject the tenant summarily and put the land-owner in possession of the land concerned;
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> (iii) (a) if a land-lord refuses to accept rent from his tenant or demands rent in excess of what he is entitled to under this Act, or refuses to give a receipt, the tenant may in writing inform the Assistant Collector, Second Grade, having jurisdiction of the fact;
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> (b) on receiving such application the Assistant Collector shall by a written notice require the landlord to accept the rent payable in accordance with this Act, or to give a receipt, as the case may be, or both, within 60 days of the receipt of the notice."

In this connection we may quote the relevant provisions of section 9 :

> "9(1) Notwithstanding anything contained in any other law for the time being in force, no land-owner shall be competent to eject a tenant except when such tenant-
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> (i) is a tenant on the area reserved under this Act or is a tenant of a small land-owner; or

(ii) fails to pay rent regularly without sufficient cause; or

(iii) is in arrears of rent at the commencement of this Act; or

#(iv) . . . . .(v) . . . . .(vi) . . . . .(vii) . . . . .##

Explanation. - For the purposes of clause (iii), a tenant shall be deemed to be in arrears of rent at the commencement of this Act, only if the payment of arrears is not made by the tenant within a period of two months from the date of notice of the execution of decree or order, directing him to pay such arrears of rent."

Section 10 provides the procedure which has to be followed when the landlord makes an application. That section, however, need not be quoted because no question about the right procedure arises here.

It will be noticed that the first clause of section 14-A is general. It enables a land-owner to apply for the eviction of his tenant on any of the grounds stated in the Act in section 9. The second clause is designed primarily to enable the land-owner to recover arrears of rent from a tenant but the tenant may be ordered to be evicted if after the determination of the rent he does not pay it within the time fixed by the Collector. Clause (iii) enables a tenant to inform the Collector of the landlord's refusal to accept rent from him or of a demand of rent in excess of what it should be under the Act.

The Rules for the determination of the value of the produce under section 12 did not come into existence till May 19, 1953. The appellant has taken advantage of this circumstance to plead before us that his failure to pay the rent was solely due to his inability to determine the exact rent in the manner contemplated in section 12 and the Rules. This belies his statement that he took the amount to the landlord but the landlord refused to receive it. His statement was rightly not believed because if the landlord had refused to receive payment, the appellant would have informed the Assistant Collector under section 14-A(iii) and asked for protection. He did nothing of the kind. It is quite clear that he took advantage of the new Act to avoid payment of rent. For the first year he did so on the ground that the tube well was not functioning according to the agreement. For the subsequent years he avoided payment on the ground that he was only required to pay 1\3rd of the produce or its value. For every year a suit had to be filed and recoveries were only made through the court. This establishes very kind of conduct which is contemplated by section 9(1)(ii) and which furnishes a ground for eviction of the tenant under section 14-A(i).

Mr. Iyengar argues that section 9(1)(ii) applies prospectively and the conduct of the tenant prior to the enactment of section 14-A cannot be taken into account. In our opinion, the conduct of the tenant prior to the coming into force of the new section can be taken into account. No doubt a statute must be applied prospectively. But a statute is not applied retrospectively because a part of the requisites for its action is drawn from a moment of time prior to its passing. The clause in question makes a particular conduct the ground for an application for eviction. The necessary condition for the application of section 9(1)(ii) may commence even before the Act came into force and past conduct which is as relevant for the clause as conduct after the coming into force of the Act, cannot be overlooked. The Tribunals were therefore right in considering conduct of the appellant prior to the coming into force of section 14-A while determining whether the appellant

was irregular in paying the rent.

Mr. Iyengar next contends that as under cl. (ii) of section 14-A the appellant was asked to pay the arrears of rent and he paid them within the time fixed, no eviction can be ordered. Clause (ii) deals with eviction as punishment for non-compliance with the orders of the court. Clause (i) deals with evictions for any of the reasons given in section 9(1). One such reason is that the tenant has failed to pay rent regularly without sufficient cause. Eviction under the second clause is for failure to carry out the orders to deposit arrears of rent within the time fixed for payment and eviction under the first clause is a penalty for not paying the rent regularly without sufficient cause. The clauses are on different footing and as the scheme of the Act itself shows different Tribunals determine the two issues. The appellant tried to have the various proceedings consolidated in the same court, but curiously enough he asked that the proceedings for the recovery of arrears of rent should be stayed. His motive is quite apparent. He wanted to defend himself against liability arising under section 9(1)(i) on the ground that he could not pay the rent till 1/3rd of the produce or its value was determined under the Rules. We have said above that his statement was that he wanted to pay the exact amount but the landlord did not receive it. It is quite obvious that he avoided payment over the years under one pretext or the other and the Tribunals were right in holding that he had failed to make out sufficient cause for non-payment. Indeed such a finding given concurrently by the High Court and the three Tribunals below would be sufficient for the disposal of the case. We have only allowed the argument to be raised because Mr. Iyengar claimed that conditions on which persons can be evicted under the two clauses of section 14-A, were inconsistent. On examination it is apparent that the reasons for eviction under the two clauses are entirely different. The appellant could not be evicted under the second clause of section 14-A but it is obvious that his case is covered by the first clause. The irregularity in payment is patent and there was no sufficient cause.

The appeal fails and it is dismissed with costs.

Appeal dismissed.

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