

M/s. A. C. Estates

Vs

M/s. Serajuddin & Co. and Another

Civil Appeal No. 258 of 1963

(K. N. Wanchoo, J. C. Shah, J. R. Mudholkar JJ)

07.05.1965

JUDGMENT

WANCHOO, J. –

This is an appeal by special leave against the judgment of the High Court of Calcutta. The appellant is the owner of premises bearing No. P-16, Bentinck Street, Calcutta. It has let out a suite on the second floor of the premises on a monthly rental of Rs. 66 to Gee Tsing Po. The exact date when the suit was let to Po is not on the record but it was sometime before June 1954. In June 1954, Po sublet the entire suite to respondent No. 1, Messrs. Serajuddin and Company, which will hereafter be referred to as the respondent. In July 1954, the appellant gave notice to Po terminating his tenancy with the expiry of August 1954. In September 1954 the appellant filed a suit against Po praying for his ejection on certain grounds under the West Bengal Premises Rent Control (Temporary Provisions) Act, No. XVII of 1950, which was then in force. That suit was still pending when the West Bengal Premises Tenancy Act, No. XII of 1956 (hereinafter referred to as the Act) came into force from March 31, 1956. S

#"16(1). . . . .##

(2) Where before the commencement of this Act, the tenant, with or without the consent of the landlord, has sublet any premises either in whole or in part, the tenant and every sub-tenant to whom the premises have been sublet shall give notice to the landlord of such sub-letting in the prescribed manner within six months of the commencement of the Act and shall in the prescribed manner notify the termination of such sub-tenancy within one month of such termination.

(3) Where in any case mentioned in sub-section (2) there is no consent in writing of the landlord and and landlord denies that he gave oral consent, the Controller shall, on an application made to him in this behalf either by the landlord or the sub-tenant within two months of the date of the receipt of the notice of sub-letting by the landlord or the issue of the notice by the sub-tenant, as the case may be, by order declare that the tenant's interest in so much of the premises as has been sub-let shall cease and that the sub-tenant shall become a tenant directly under the landlord from the date of the order."The Controller shall also fix the rents payable by the tenant and such sub-tenant to the landlord from date of the order. Rents so fixed shall be deemed to be fair rent for purposes of this Act."

The respondent took action under s. 16(3) as apparently the sub-letting to him by Po was not with

the consent of the landlord, and made an application thereunder to the Controller on June 4, 1956 and prayed that the Controller should declare that the interest of the tenant had ceased and the respondent had become the tenant directly under the landlord in respect of the suite in question. It was also prayed that fair rent of the premises should be fixed at Rs. 66 per mensem.

The application was opposed on behalf of the appellant and two main points were urged in that connection, namely, -(i) The tenancy of Po had been lawfully terminated at the end of August 1954 and the suit for his ejectment was pending in the Small Cause Court and therefore the respondent could not take advantage of the Act in 1956, for it never became a sub-tenant in law before the Act was passed; and (ii) the respondent was not in fact the tenant of Po from before March 31, 1956.

The matter came up before the Controller on August 9, 1956. The Controller accepted the respondent's case that it had become the sub-tenant of Po in fact from June 9, 1954. The Controller further held that in view of this fact, the respondent became a sub-tenant under the appellant in law, for in any case, the tenancy of Po had not been determined till August 1954 even on the case put forward by the appellant. He therefore made the following order :-

"The applicant (i.e. Serajuddin & Co.) is therefore entitled to be declared to be a direct tenant under the O. P. No. 1. But this will not be sufficient to dispose of the present proceeding inasmuch as under section 16(3) of the Act of 1956 I am to fix the fair rent payable by the tenant and that of the sub-tenant."

He thereupon directed the Inspector to go to the locality and measure the accommodation of the disputed premises and other similar premises in the neighbourhood as might be shown by either or both parties. The Inspector was also directed to make note of advantages and amenities of all the premises measured by him and thereafter submit his report as to the fixation of fair rent. A date was fixed for the submission of the Inspector's report and thereafter the fair rent was to be fixed.

Before however the Inspector's report was received, the suit for ejectment of Po pending in the Court of Small Causes was decreed on August 22, 1956 and time was given to him to vacate the same by the end of October 1956. Therefore on September 11, 1956, the appellant filed what it called an additional written objection. In that the appellant informed the Controller that a decree for ejectment against Po had been passed. It was urged that in view of that decree, Po was no longer a tenant of the appellant and therefore the respondent could not be a sub-tenant. The appellant prayed that the application of the respondent was not maintainable in the circumstances and the Controller had no jurisdiction to entertain the application and so the application should be dismissed. The matter then came up before the Controller on January 29, 1957, on which date the appellant's additional objection as well as the Inspector's report was taken up for consideration. The Controller took some evidence on the question of fair rent under s. 16(3) of the Act. He consequently dismissed the application under s. 16(3), but passed no order as to costs.

The respondent then went in appeal to the Court of Small Causes, Calcutta, as provided in the Act. The Appeal Court held that the order of August 9, 1956 made by the Controller was final and further as the entire premises had been sublet there was no necessity for any further determination of rent as the sub-tenant would be liable to pay the rent payable by the tenant. The Appeal Court therefore set aside the order of the Controller dismissing the application of the respondent and declared the respondent as tenant at a rental of Rs. 66 per month.

The appellant then applied under Art. 227 of the Constitution to the High Court and two main points

were urged on its behalf before the High Court, namely-

(i) The order of August 9, 1956 was not a final order for the purpose of s. 16(3) and therefore it was open to the Controller to rescind that order when the further fact of the ejectment decree of August 22, 1956 was brought to his notice;

(ii) Section 16(3) applies only when the original tenancy also subsists up to the date of the final order which the Controller was proposing to make on January 29, 1957 and which he eventually refused to make because by that date the tenancy of Po had come to an end by the ejectment decree of August 22, 1956.

The High Court held that s. 16(3) was in two parts : first relating to the declaration of the sub-tenant as a tenant in place of the tenant of the first degree, and second relating to the fixation of fair rent for the part or whole of the premises in respect of which the declaration was made. It further held that the declaration of August 9, 1956 under the first part of s. 16(3) was final and the Controller had no jurisdiction after August 9, 1956 to rescind it. The High Court pointed out that as on August 9, 1956, when the order under the first part of s. 16(3) was passed, the tenancy of the tenant of the first degree was subsisting, action could be taken under s. 16(3) in favour of the respondent. In this view of the matter, the revision application of the appellant was dismissed except as to the fixation of rent. It is this order of the High Court which is being impugned before us by special leave.

We are of opinion that the appeal must fail. There is a clear finding of the Controller that the respondent was inducted as a sub-tenant by Po in June 1954. At that time, the appellant had not even given notice to Po determining his tenancy. It was only in July 1954 that notice was given to Po determining the tenancy as from the end of August 1954. Therefore, the respondent became a sub-tenant of the tenancy which Po held under the appellant.

The next question is whether the respondent was entitled to the benefit of the Act which came into force on March 31, 1956. On that date a suit was pending against Po based on the notice given to him in July 1954 determining his tenancy. The argument on behalf of the appellant is that as Po's tenancy had been determined by the end of August 1954 by virtue of the notice referred to above, the respondent was no longer sub-tenant on March 31, 1956 as the tenancy of the tenant of the first degree had itself come to an end. This in our opinion is not correct. The word "tenant" is defined in s. 2(h) of the Act to include any person continuing in possession after the termination of his tenancy but shall not include any person against whom any decree or order for eviction had been made by a court of competent jurisdiction. In view of this inclusive definition of the word "tenant" in the Act Po would continue to be a tenant under the Act though his tenancy had been determined by notice and he ceased to be a tenant ha

This takes us to the order of August 9, 1956. We have already set out s. 16(3) and there is no doubt that it consists of two parts. Under the first part, the Controller has to declare by order that the tenant's interest in so much of the premises as has been sublet has ceased and the sub-tenant has become a tenant directly under the landlord from the date of the order. The second part gives power to the Controller to fix rents payable by the tenant and such sub-tenant to the landlord from the date of the order. It may be that both orders under the two parts may be passed on the same date; but it appears what usually happens is that the Controller first declares that the tenant's interest has ceased and the sub-tenant has become a tenant directly under the landlord, and thereafter proceeds to fix rent under the second part after taking such further evidence as he considers necessary. Even so, the order under the first part declaring that the tenant's interest has ceased and the sub-tenant has

become a tenant

It is equally clear that when the Controller passed the order on February 11, 1957 dismissing the application under s. 16(3) that order was appealable under s. 29(1), for it was undoubtedly a final order within the meaning of s. 29(1) and the respondent would be entitled to appeal therefrom.

Finally there is nothing in the contention of the appellant that s. 16(3) would not apply because the tenant had been ejected on August 22, 1956 and thereafter the sub-tenant could not claim the benefit of s. 16(3). In the present case the benefit of s. 16(3) was given to the sub-tenant not after August 22, 1956 but before that date i.e. on August 9, 1956. That order so far as it went was final and was not open to review or cancellation by the Controller who had thereafter only to fix the rent under the second part of s. 16(3). While going on with the proceeding for fixation of rent, the Controller could not set aside the order already made under the first part s. 16(3) on August 9, 1956 and insofar as he did so, he acted without jurisdiction. The Appeal Court was therefore right in setting aside the order of the Controller and the High Court was equally right in setting aside the order of the Controller and the High Court was equally right in dismissing the application by the appellant except as to fixation of rent.

The appeal therefore fails and is hereby dismissed with costs.

Appeal dismissed.

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