

Nathia Agarwalla & Another

Vs

Musst. Jahanara Begum & Others

Civil Appeal No. 893 of 1963

(CJI P. B. Gajendragadkar, K.N. Wanchoo, M. Hidayatullah, J. C. Shah, S. M. Sikri JJ)

15.03.1966

JUDGMENT

HIDAYATULLAH J. –

This is an appeal by special leave against an order of the High Court of Assam dated August 14, 1959 rejecting summarily an appeal in an execution case. The appellants against whom the decree for ejection is being executed are the widow and son of one Maliram Agarwala whose father Arjun Das had taken on lease the suit land from one Mohd. Soleman, predecessor-in-interest of the respondents. The decree was passed as far back as November 28, 1950 in a title suit filed against the appellants and was later confirmed by the High Court.

The present execution began on August 16, 1954 and was pending in the court of the Subordinate Judge, L.A.D., Gauhati when the Assam Non-Agricultural Urban Areas Tenancy Act, 1955 (Assam Act 12 of 1955) came into force from June 26, 1955. The appellants thereupon claimed the benefit of s. 5 of the Act which grants protection from eviction to tenants, under certain circumstances. The execution Court heard arguments and on November 12, 1957 held that the protection of s. 5 was available not only in pending suits and appeals but also in pending execution cases. In reaching this conclusion the learned Judge followed a decision of the Assam High Court reported in Harsukh Saraqgi & Anr. v. Mashulal Khemani & Anr (A.I.R. 1957 Assam 22) and of the Calcutta High Court in Habiba Bibi and others v. Ram Ranjan Mullick and others (A.I.R. 1937 Cal. 207). He accordingly fixed the case for evidence to find out if there existed facts necessary for the application of s. 5 of the Act. Subsequently, the Presiding Judge having changed, the point was reopened on June 6, 1959 by the successor Judge. That learned Judge following a later decision of the Assam High Court (since reported in Suresh Chandra Datta v. Ashutosh Dutta and others) (A.I.R. 1960 Assam 24) held that s. 5(1)(a) was not applicable to execution proceedings and the pending execution must proceed according to law. The only question in this case is whether the provisions of s. 5(1)(a) of the Tenancy Act apply to pending execution proceedings.

The Act was passed "to regulate in certain respect the relationship between landlord and tenant in respect of non-agricultural land in urban areas of the State of Assam". It consists of 14 sections. Section 5, with which we are primarily concerned, may be read in full. It reads :

"5. Protection from eviction -

(1) Notwithstanding anything in any contract or in any law for the time being in force -

(a) where under the terms of a contract entered into between a landlord and his tenant whether before or after the commencement of this Act, a tenant is entitled to build, and has in pursuance of such terms actually built within the period of five years from the date of such contract, a permanent structure on the land of the tenancy for residential or business purposes, or where a tenant not being so entitled to build, has actually built any such structure on the land of the tenancy for any of the purposes aforesaid with the knowledge and acquiescence of the landlord, the tenant shall not be ejected by the landlord from the tenancy except on the ground of non-payment of rent;

(b) where a tenant has effected improvements on the land of the tenancy under the terms whereof he is not entitled to effect such improvements, the tenant shall not be ejected by the landlord from the land of the tenancy unless compensation for reasonable improvements has been paid to the tenant.

(2) No tenant shall be ejected by his landlord from the land of the tenancy except in execution of a decree for ejection passed by a competent civil court.

(3) No decree for ejection passed on the ground of non-payment of rent shall be executed within a period of thirty days from the date of the decree and if the tenant pays into the Court whose duty it is to execute the decree the entire amount payable under the decree within the aforesaid period, the court shall record the decree as satisfied."

The remaining sections may be shortly noticed before we proceed to construe s. 5. The first three sections contain respectively the short title, the extent of application and the definitions of terms in the Act. Section 4 puts an obligation upon a tenant to pay rent for his holding at fair and equitable rates. Section 6 lays down how compensation for improvements in a suit for ejection against a tenant is to be calculated and includes within improvements structures, which the tenant entitled to build has actually built after the expiry of the period of five years referred to in cl. (a) of sub-s. (1) of s. 5. Sections 7, 8 and 9 deal with the question of enhancement of rent from different points of view. Section 10 prohibits the realisation of any "salami". Section 11 provides that no suit for ejection, except for arrears of rent, shall be instituted until after the expiration of one month from the date of the receipt of by the tenant of a notice in writing by the landlord requiring the tenant to surrender possession of the land in favour of the landlord. Section 12 shows how the notices have to be served and s. 13 gives the power to make rules. By s. 14, the Sylhet Non-Agricultural Urban Areas Tenancy Act, 1917, (Assam Act 10 of 1947) was repealed.

The only question in this appeal is whether s. 5(1)(a) of the Act, which we have reproduced above, applies to execution cases in respect of decrees for ejection granted before the coming into force of the Tenancy Act. The answer to this question will determine which of the two orders passed by the respective presiding Judges was right.

Two methods of approach were adopted by counsel in this appeal. One was to construe the words of the fifth section taken by themselves or in comparison with those employed in other Acts of Assam Legislature. The second was to compare and contrast s. 5 of the Assam Act with enactments in rent control Acts of other States. The second method, although sometimes instructive, is not to be commended because similarity or variation in the laws of different States is not necessarily indicative of a kindred or a change intention. Enactments drafted by different hands, at different

times and to satisfy different requirements of a local character, seldom afford tangible or sure aid in construction. We would, therefore, put aside the Rent Control Acts of Madras, Bihar, Delhi and other states, because in these States the problem of accommodation in relation to the availability of lands and houses and the prior legislative history and experience, cannot be same as in Assam. We shall however, refer to other Rent Control Acts of the Assam Legislature because they do not suffer from this weakness and may throw some light on how the legislature was accustomed to view such matters. But before we do so we shall consider s. 5 taken by itself.

The section consists of three sub-sections and it is helpful to view the provisions backwards, that is, from the last sub-section to the first. The third sub-section deals with decree of ejectment passed on the ground of non-payment of rent. It affords a last chance to the tenant to retain the land of his tenancy by making such a decree unexecutable for a period of 30 days from its date so that the tenant may, if he cares, deposit the amount of the decree in the court which will execute that decree. On the tenant so paying, the decree is recorded as satisfied. This sub-section must apply to all executions which come within its terms because of the clear language "no decree for ejectment... shall be executed" and "the Court shall record the decree as satisfied". These are peremptory words and they do not admit of any exception. All decrees for ejectment in which thirty days' time had not passed were affected but, it is clear, that decrees which did not come within the terms of the sub-section remained executable.

We may now examine the second sub-section which also takes away some rights of landlords but leaves them free to execute decrees other than those on which the section places an embargo. That sub-section provides that no tenant shall be ejected by his landlord from the land of his tenancy except in execution of a decree for ejectment passed by a competent civil court. Although this sub-section takes away the right of ejectment in other ways, if any, it recognises that ejectment is possible provided there is a decree of a competent civil court.

We may now consider the first sub-section. Certain matters appear on its face. The sub-section does not speak of an ejectment decree, but of the right of the landlord or eject his tenant. It begins by stating "notwithstanding anything in any contract or in any law for the time being in force" but it does not include decrees for ejectment already obtained, in the non-obstante clause. Such decrees could have easily been named, to include them within the protective provisions, but they were not. The operative parts of the sub-section protect tenants under two circumstances which are mentioned as (a) and (b). Taking (b) first : if the tenant effects improvements on the land which he is not entitled to effect, the landlord may not eject him unless he pays reasonable compensation. Who will assess the compensation is laid down in s. 6 but that section specifically mentions a suit for ejectment and not execution proceeding. All this seems to suggest that s. 5 (i)(b) is intended to operate on rights of the landlord which are being enforced by a suit but not on rights already enforced and determined. By speaking of the curtailment of the landlord's right and by omitting to provide for decrees into which the rights merge and by mentioning the provisions of s. 6 are to be invoked in a suit for ejectment, it appears that the decrees as such are not put under the same embargo.

So far there is nothing in s. 5 which would suggest that its provision cover decrees in which the rights had passed before the coming into force of the Act. It remains to see whether s. 5(1)(a) strikes a different note. Part (a) of s. 5(1) is constructed on very similar lines and does not admit a different approach. It protects tenants of land from ejectment by the landlord in those cases in which the tenant entitled to build on the land under his contract has actually built a permanent structure within five years from the date of his contract, or has without such right built with the knowledge and

acquiescence of the landlord. Such tenant may not be ejected except from non-payment of rent. Clause (a) applies alike to contracts made before or after the commencement of the Act. This creates some doubts but as it intends to operate on the rights of the landlord seeking to enforce them against a contemplate a suit and not execution proceeding. There is nothing to distinguish cl. (a) from cl. (b) in so far as execution of decrees already granted is concerned.

The decision of the Assam High Court in Suresh Chandra v. Ashutosh Dutta expressed the same conclusion but on a slightly different reasoning. The conclusion is further strengthened when one reads the cognate sections of the earlier Assam Acts passed by the same Legislature. Section 14 of the Sylhet Non-Agricultural Urban Areas Tenancy Act, 1947 (Assam Act 10 of 1947) now repealed by the Act we are considering, provided in clear terms that proceedings in execution were included. It reads as follows :

"14. Pending suits.

The provision of this Act shall have effect in respect of all suits or proceedings in execution, for ejection of a person, who would under the provisions of this Act be an occupancy tenant, which are pending at the date of commencement of this Act".

Similarly, s. 6(1) of the Assam Urban Areas Rent Control Act 1949 (Assam Act 13 of 1949) and s. 6(1) of the Assam Urban Areas Rent Control Acts, 1946 (Assam Act 3 of 1946) provided specially for execution proceedings. These two sections read the same and only one of them may be read. Section 6 (1) of Act 13 of 1949 read :

"6. Bar against passing and execution of decree and orders.

(a) No order or decree for the recovery of possession of any house shall be made or executed by any Court so long as the tenant pays rent to the full extent allowable under this Act and perform the conditions of the tenancy :

Provided that nothing in this sub-section shall apply in a suit or proceedings for eviction of the tenant from the house -

(a) where the tenant has done any act contrary to the provisions of clause (m), clause (o) or clause (p) of section 108 of the Transfer of Property Act 1882 or to the spirit of the aforesaid clauses in areas where the Act does not apply, or

(b) where the tenant has been guilty of conduct which is a nuisance or an annoyance to the occupiers of the adjoining or neighbouring houses, or

(c) where the house is bona fide required by the landlord either for purposes of repairs or re-building, or for his own occupation or for the occupation of any person for whose benefit the house is held, or where the landlord can show any other cause which may be deemed satisfactory by the Court, or

(d) where the tenant sublets the house or any part thereof or otherwise transfer his interest in the house or any part thereof without permission in writing from the landlord.

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These enactments, which are quite explicit, show that where the Assam Legislature wished it, it included execution proceedings within the protection. Being aware that if execution proceeding are to be included they need to be mentioned and having at hand the former sections as models, the departure appears to be deliberate. The language chosen places the right under an embargo but does not say that decrees already won would become unexecutable thus stating clearly that they were not to be affected. The decision under appeal was, therefore, right.

The appeal has no force; it fails and will be dismissed with costs.

Appeal dismissed.

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