

Firm Amar Nath Basheshar Dass

Vs

Tek Chand.

Civil Appeal No. 1052 (N) of 1971

(K. S. Hegde, P. Jagmohan Reddy, G. K. Mitter JJ)

21.03.1972

JUDGMENT

JAGANMOHAN REDDY, J. -

1. The respondent who was constructing a building, had leased it out on a monthly tenancy to the appellant on November 1, 1959. The building was ultimately completed in March 1960. On January 14, 1963, he filed a suit and got a decree for ejection on August 14, 1969. On August 29, 1969, he filed an execution petition but the executing court dismissed it on April 16, 1970, on the ground that the conditions prescribed in the notification of the Government of Punjab under Section 3 of the Punjab Urban Rent Restriction Act, 1949 (hereinafter called 'the Act'), dated July 30, 1965, exempting such decrees from Section 13 of the said Act were not complied with. An appeal against this judgment was unsuccessful. On a second appeal the High Court held that the decree was executable inasmuch as that decree was exempted under the notification. This appeal is by special leave against that judgment.

2. Before we notice the conditions prescribed for the exemption of decrees of eviction against tenants from the provisions of the Act, it is necessary to refer to Section 13 of the Act in so far as it is relevant and the notification exempting decrees obtained by certain categories of landlords from those provisions. It is well known that due to the non-availability of housing accommodation in urban areas and the consequent hardship to tenants who were already occupying buildings on lease, almost all the States enacted legislation by and under which the landlords' rights to evict tenants as well as the right to recover higher exorbitant rents were considerably cut down. The main scheme of these Acts generally was to make it obligatory on landlords intending to evict tenants to make applications before the authority prescribed under the Act only on the grounds specified in the particular legislation. The Rent Control Authority alone could make an enquiry and order eviction. The jurisdiction of the civil courts was taken away. In some of the States, such as in Uttar Pradesh, civil courts were allowed to entertain eviction suits but subject prior leave being obtained from the District Magistrate. In other words, in that State two rounds of litigation were provided for. Similarly, applications for fixation of fair rent where the rent charged was considered to be exorbitant could also be made before these authorities. These restrictions could not, however, serve as a panacea for solving the accommodation problem in urban cities consequent on the phenomenal migration of population into those areas which was further aggravated by large scale exodus due to the partition of India. It, therefore, became necessary for each of the State Governments not only to undertake building schemes itself but also to encourage persons who had the means to build by exempting newly constructed buildings which were let out to tenants from rent control restrictions for a particular period. One of such legislations is the Act with which we are now concerned. Unlike other Rent Control legislations, this Act adopts rather a novel method, in that while it permits suits

being filed and decrees obtained, it places restrictions against their execution except on specified grounds. In this case, however, we are not concerned with the novelty of the legislation or the hardship, expense and delay which is caused to the landlord or the tenant by the innovation adopted by it. We may now read the relevant provisions of Section 13 which are as under :

"13. (1) A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this section, or in pursuance of an order made under Section 13 of the Punjab Urban Rent Restriction Act, 1947, as subsequently amended.

(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied -

(here the ground upon which he should be satisfied have been set out)

the Controller may make an order directing the tenant to put the landlord in possession of the building or rented land and if the Controller is not so satisfied he shall make an order rejecting the application :

Provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building or rented land and may extend such time so as not to exceed three months in the aggregate.

(3)(a) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession -

(The ground on which he can apply have been set out)

(b) The Controller shall, if he is satisfied that the claim of the landlord is bona fide make an order directing the tenant to put the landlord in possession of the building or rented land on such date as may be specified by the Controller and if the Controller is not so satisfied, he shall make an order rejecting the application :

(c) x x x x##

Provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building or rented land and may extend such time so as not to exceed three months in the aggregate.

(4) x x x x (5) x x x x.###

3. The Government under Section 3 has been empowered to direct that all or any of the provisions of the Act shall not apply to any particular building or rented land or any class of buildings or rented lands. Pursuant to this power, the State Government was notifying exemptions from time to time during a period of 20 years, the first notification it appears having been issued on March 8, 1951, which exempted buildings constructed in 1951 and 1952 from the provisions of the Act for a period of 5 years with effect from the date of completion of any such building. Thereafter followed several

notifications which exempted buildings constructed in each of the years after 1952. The notification with which we are now concerned was issued on July 30, 1965, and is in the following terms :

"..... In exercise of the powers conferred by Section 3 of the Punjab Urban Rent Restriction Act, 1949, and all other powers enabling him in this behalf, the governor of Punjab is pleased to direct that the provisions of Section 13 of the said Act shall not apply in respect of the decrees for ejection of tenants in possession of building which satisfy the following conditions, namely -

(a) Buildings constructed during the years 1959, 1960, 1961, 1962 and 1963 are exempted from all the provisions of the said Act for a period of five years to be calculated from the dates of their completion, and

(b) During the aforesaid period of exemption suits for ejection of tenants in possession of those buildings were or are instituted in civil courts by the landlords against the tenants and decrees of ejection were or are passed."

Under the above notification, the provisions of Section 13 are made inapplicable to decrees in respect of buildings constructed during the years specified in (a) for a period of five years to be calculated from the dates of their completion provided during the said period suits had been instituted by the landlords against the tenants. There is no doubt, from the facts set out above, the building in respect of which exemption from the application of Section 13 is being claimed, was completed in March 1960 and a suit had also been filed on January 14, 1963, before the expiry of the period of five years from that date. It is contended by the learned advocate for the appellant that the decree in that suit having been passed on August 14, 1969, after the period of five years from the date of construction, the exemption from the restrictions placed by Section 13 will not be available, because according to him not only the suit should be filed but the decree for eviction should be obtained within the said period of five years. This contention on the very face of it would lead to incongruity or would, if accepted, have the effect of nullifying the very purpose for which the exemption was being given. We were reminded with a somewhat emphatic assertion what appears to us to be unexceptional that the Courts are not concerned with the policy of the Legislature or with the result, whether injurious or otherwise, by giving effect to the language used nor is it the function of the Court where the meaning is clear not to give effect to it merely because it would lead to hardship. It cannot, however, be gainsaid that one of the duties imposed on the Courts in interpreting a particular provision of law, rule or notification is to ascertain the meaning and intendment of the Legislature or of the delegate, which in exercise of the powers conferred on it, has made the rule or notification in question. In doing so, we must always presume that the impugned provision was designed to effectuate a particular object or to meet a particular requirement and not that it was intended to negative that which it sought to achieve. It is clear that the Government intended to grant certain inducements to persons who had the means to construct buildings by exempting any such building so constructed for a period of five years. The period of five years could commence from the date of construction or from some other date. Initially, as the earlier notifications would show, that exemption of five years was given from the date when the building was constructed but by the impugned notification it was intended to confer the benefit by giving exemption of five years from a subsequent date, namely, the date of the institution of a suit, provided it was instituted within a period of five years from the date of the construction of the building. A closer reading of the notification would show that it was intended to clarify and provide a workable solution in respect of buildings constructed in 1959, 1960, 1961, 1962 and 1963. These buildings had already been exempted from the provisions of Section 13 by two earlier notifications,

the first one in 1960 giving exemption up to December 31, 1963, and the second in 1963 for five years from the date of completion of the building. It is clear from the language of the notification that what is exempted is the decree for ejectment of a tenant from the application of Section 13. The very purpose of exemption of buildings from the operation of Section 13 was to give landlords the rights which as owners of buildings they had under the ordinary law, namely, to give them on lease at rents which they thought were remunerative and to evict tenants during that period without any fetters imposed by the Act. If no provision was made for exempting such decrees in respect of the exempted buildings, the exemption granted will be illusory. Clause (b), therefore, provided for the time during which that suit in which the decree has been passed should be filed. The decrees passed in such suits will be executable free from the fetters imposed by section 13 of the Act. It is obvious that the filing of a suit by itself does not confer any exemption because what is exempted from the provisions of Section 13 is the decree. A suit filed, therefore, must end in a decree though that decree may be passed subsequent to the expiry of the five years' period during which exemption from the application of Section 13 has been granted.

4. The learned advocate for the respondent has suggested a construction which is consistent with our reading of the notification and that is that the words 'were' or 'are' used in clause (b) both in respect of the filing of the suits and the passing of the decrees would indicate that these suits should have been filed or are hereafter to be filed and likewise decrees of ejectment had been passed or are hereafter to be passed. In other words, the suits must have been already filed during the period of exemption or are to be instituted during such period. This language had to be used because the five years' exemption in respect of the buildings constructed in 1959 would end in 1964 while the notification was issued in 1965. There is no question of suits being filed in respect of these buildings hereafter, as such decrees in suits filed before 1964 would be exempted. In respect of the buildings constructed in 1960, there would be some buildings in respect of which the five years' exemption period would have expired before the notification and, therefore, the suits in respect of such buildings during the relevant period in 1960 should have been filed before that period expired and where the exemption expires after the notification, suits could be filed thereafter but before the exemption expires. In respect of 1961, 1962 and 1963 there is of course no difficulty because there is sufficient period for filing suits if they had not been filed by the time the notification was issued. Taking the typical case of a building constructed in 1961, the period of five years' exemption would expire in 1966 and under the first part of clause (b) it would be open to the landlord to file a suit for ejectment even on the last day of the expiry of the five years' exemption. If so, it would be absurd to postulate that a decree would be given immediately thereafter, as that would be the result, if the contention that both the suit and the decree should be passed within the period of exemption, is accepted. This could not have been the intention of the Government in publishing the notification under Section 3.

5. It is clear to our minds, as it was to the High Court that under clause (b) the filing of the suit within the period of exemption is the only condition that is necessary to satisfy one of the requirements of the exemption, the other requirement being the passing of the decree in respect of which no time has been prescribed. If the decree, as contended by the learned advocate for the appellant, has to be obtained within the period of 5 years, there was no need to specify that the suit had to be filed within that period because the exemption from the requirements of Section 13 is only in respect of the decree and not the suit. There was, therefore, no need to mention about the time of the filing of the suit.

6. In the view we have taken, the construction placed by the High Court is the only construction that is possible on the language of the notification. This appeal is accordingly dismissed with costs.

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