

Firm Sardarilal Vishwanath and Others

Vs

Pritam Singh

Civil Appeal No. 141 of 1969

(Jaswant Singh, D. A. Desai, A. P. Sen JJ)

14.08.1978

JUDGMENT

DESAI, J. -

1. The unsuccessful tenant in this appeal by special leave drawing his sustenance from an apparent but unreal conflict amongst certain decisions of this Court as noticed by the Kerala High Court in *Lalitha v. Ayisumma* ((1977) 2 SCC 690), made a furious attempt to re-open the controversy : whether a statutory tenant is entitled to notice as envisaged by Section 106 of the Transfer of Property Act before an action in ejectment is commenced against him under any of the enabling provisions of the relevant Rent Restriction Act.

2. Mr. V. C. Mahajan, learned Counsel for the appellant canvassed two contentions before us : (1) As the respondent landlord had not terminated the tenancy of the appellant by a notice to quit as contemplated by Section 106 of the Transfer of Property Act, an action in ejectment under Section 13 of the East Punjab Rent Restriction Act, 1949 (for short 'the Act') is not maintainable; (2) Though the landlord sought eviction on the ground that the building was likely to fall down as it was in a dilapidated condition and had become unsafe for human habitation, the very fact that for the last 15 years the building is standing and the tenant is occupying and using it, it would ipso facto negative the case of the landlord that the building has become unsafe and unfit for human habitation.

3. The back drop of facts is this : the tenant, a firm, under two separate rent notes from two separate landlords having specified shares in the demised premises, took on lease the premises and the tenancy commenced from January 1, 1960 and the demise was for a period of 11 months. On the expiry of period reserved by the lease, the tenant continued in possession. If the period reserved under the lease was of 11 months, obviously the lease determined by efflux of time limited thereby as provided in Section 111(a) of the Transfer of Property Act. Section 116 provides for effect of holding over. If a lessee of property remains in possession thereof after the determination of the lease and the lessor rent from the lessee or otherwise assents to his continuity in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose of which the property is leased, as specified in Section 106. Ordinarily, acceptance of rent from a lessee whose lease determined by efflux of time, would manifest the assent of the lessor to the lessee continuing in possession and in that event the lease would be renewed from year to year or month to month as the case may be, and the lessee would be a lessee holding over. This position which emerged under the provisions of the Transfer of Property Act underwent a basic change when the Rent Restriction Act was put on the statute book. The lessor, on the introduction of the Rent Restriction Act could not seek to evict the lessee on the only

ground that the lease determined by efflux of time. The lessee was clothed with the protection of Rent Restriction Act. In such a situation the lessor, unless he wanted to proceed under the provisions of the Rent Restriction Act, had no option but to accept the rent and, therefore, acceptance of rent from a lessee clothed with the protection of Rent Restriction Act would not manifest the intention of the lessor to renew the lease. Something more than mere payment and acceptance of rent would be necessary to assert that the lessor has assented to the lessee continuing in possession and the lessor intended the renewal of the lease. Except for the acceptance of rent after the lease determined by efflux of time, nothing was pointed out to us to show that the lessor had otherwise assented to the lessee continuing in possession so as to infer the renewal of lease. Therefore, the lessee in this case is indisputably a statutory tenant and cannot seek any assistance from the provisions contained in Section 116 of the Transfer of Property Act. Mr. Mahajan proceeded to make his submission on the footing that the appellants are statutory tenants.

4. If the tenant is thus a statutory tenant enjoying a status of irremovability, is he entitled to a notice as envisaged by Section 106 of the Transfer of Property Act before an action for ejection can be commenced against him under the Act? Is there any conflict in the decisions of this Court bearing on the subject? It would be advantageous to refer to the line of decisions unequivocally asserting that no notice as contemplated by Section 106 of the Transfer of Property Act is necessary before initiating an action in ejection against a statutory tenant under any of the enabling provisions of the relevant Rent Restriction Act and, thereafter we would examine the batch of decisions from which sustenance is sought to be drawn in support of the submission that such a notice is necessary.

5. In *Kai Khushroo Bezonjee Capadia v. Bai Jerbai Hirijibhoy Warden* (1949 FCR 262 at 272 : AIR 1949 FC 124) Mukherjea, J. speaking for the majority, after referring to *Davies v. Bristow* ((1920) 2 KB 428), and *Morrison v. Jacobs* ((1945) 1 KB 577), has succinctly expressed on this point as under :

..... it may be pointed out that in cases of tenancies relating to dwelling house to which the Rent Restriction Acts apply, the tenant may enjoy a statutory immunity from eviction even after the lease was expired. The landlord cannot eject him except on specified grounds mentioned in the Acts themselves. In such circumstances, acceptance of rent by the landlord from a statutory tenant, whose lease has already expired, could not be regarded as evidence of a new agreement of tenancy and it would not be open to such a tenant to urge, by way of defence, in a suit for ejection brought against him, under the provisions of Rent Restriction Act that by acceptance of rent a fresh tenancy was created which had to be determined by a fresh notice to quit.

It would be refreshing to point out that Patanjali Sastri, J., in his dissenting judgment has not departed from the aforementioned ratio of the judgment, the dissent being confined to interpretation of the facts of the case.

6. In *Ganga Dutt Murarka v. Kartik Chandra Das* ((1961) 3 SCR 813 : AIR 1961 SC 1067 : (1962) 2 SCJ 584), Shah, J., after affirming the aforementioned quotation, observed that occupation of premises by a tenant whose tenancy is determined is by virtue of protection granted by the successive statutes and not because of any right arising from the contract which is determined. The statute protects his possession so long as the conditions which justify a lessor in obtaining an order of eviction against him do not exist. Once the prohibition against the exercise of jurisdiction by the Court is removed, the right to obtain possession by the lessor under the ordinary law springs into

action and the exercise of the lessor's right to evict the tenant will not, unless the statute provides otherwise, be conditioned. Such occupation would not confer any rights upon the appellant and would not be required to be determined by a notice prescribed by Section 106, Transfer of Property Act.

7. In *Bhawanji Lakhamshi v. Himatlal Jamnadas Dani* ((1972) 2 SCR 890 : (1972) 1 SCC 388), the ratio in *K. B. Capadia* (supra) *Ganga Dutt Murarka* (supra) was re-affirmed.

8. A contrary view, according to Mr. Mahajan, is expressed in *Mangilal v. Suganchand Rathi* ((1964) 5 SCR 239 : AIR 1965 SC 101). The contention before the Constitution Bench in that case was that the provisions of the Madhya Pradesh Accommodation Control Act, 1955, do not supplant but supplement the provisions of the Transfer of Property Act and that, therefore, before a tenant can be evicted by the landlord, he must comply both with the provisions of Section 106 of the Transfer of Property Act and those of Section 4 of the Accommodation Act. The controversy was whether the M.P. Accommodation Act was a complete code providing for its own procedure and forum for taking action under it or its provisions have to be reconciled with the provisions of the Transfer of Property Act. An analytical examination of this judgment would show that it does not express a contrary view as canvassed on behalf of the appellant. The tenant in that case was in arrears for a period of 12 months and he was served with a notice requiring him to remit the amount in arrears within one month from the date of service of notice, further stating that on his failure to do so a suit for ejectment would be filed against him. The tenant replied to the notice and sent the rent in arrears as well as the rent due right up to June 30, 1959. The landlord accepted the cheque and encashed it on July 4, 1959, and gave a fresh notice on July 9, 1959, requiring the defendant to vacate the premises by the end of the month July. Nowhere it was contended before the Court that the tenant was a statutory tenant and the action in ejectment was commenced under one of the enabling provisions of the Accommodation Act, and, therefore, not entitled to notice under Section 106 of the Transfer of Property Act. On the contrary it was contended that by acceptance of the rent the notice is waived and negating this contention it was held that the defendant having been under liability to pay rent even after the giving of notice the acceptance of the rent by the plaintiffs would not be itself operate as waiver. The point raised herein was entirely and materially different from what is contended before us. The contractual tenancy was determined by a notice to quit and the rent was accepted under protest and immediately an action in ejectment was initiated. The landlord did not dispute that the tenant was not entitled to notice. It could not, therefore, be said that a contrary view was expressed in this decision.

9. In *Manujendra Dutt v. Purendu Prosad Roy Chowdhury* ((1967) 1 SCR 475 : AIR 1967 SC 1419 : (1967) 1 SCJ 503) the Court was concerned with a case under the Calcutta Thika Tenancy Act, 1949, and the contention was that before action in ejectment could be commenced against the defendant, a notice of six months' duration as contemplated by Section 106 of the Transfer of Property Act should have been served upon him. The factual matrix of the case as disclosed in clause (7) of the lease clearly reveals that the tenant was entitled to notice of six months' duration at the end of the term of 10 years, the period reserved under the lease, and it further provided that if the lessee was permitted to hold over the land after the expiry of the said term of 10 years, the lessee will be allowed a six months' notice to quit the said premises. In the background of these relevant facts it was held that a statutory tenancy comes into existence where a contractual tenant retains possession after the contract has been determined. The right to hold over, i.e. the right of irremovability thus is a right which comes into existence after the expiration of the lease and until the lease is terminated or expires by efflux of the time the tenant need not seek protection under the Rent Act. For, he is protected by his lease in breach of which he cannot be evicted. *Mangilal's* case

(supra) was referred to support the proposition that before a tenant could be evicted by a landlord he must comply both with the provisions of Section 106, Transfer of Property Act and those of Section 4 of the Madhya Pradesh Accommodation Control Act. The Court negated the contention that the Madhya Pradesh Accommodation Control Act or for that matter the Calcutta Thika Tenancy Act each by itself was a complete Code with its own scheme of procedure and, therefore, an action under one or other would not be governed by the Transfer of Property Act, and in the process overruled the decision in *R. Krishnamurthy v. S. Parthasarathy* (AIR 1949 Mad 780 : (1949) 1 Mad LJ 412), wherein it was held that Section 7 of the Madras Buildings (Lease and Rent Control) Act had its own procedure and scheme and, therefore, there was no question of an attempt to reconcile that Act with the Transfer of Property Act. It would be advantageous to note here that this observation has been adversely commented upon in a later decision of the Constitution Bench of this Court in *Raval & Co. v. K. C. Ramachandran* ((1974) 2 SCR 629 at 634 : (1974) 1 SCC 424 at 430), where Alagiriswami, J. speaking for the majority observed that the decision of the Madras High Court in *R. Krishnamurthy's* case should not have been summarily dismissed on the ground that it was contrary to the decision of this Court in *Abbasbhai's (Vora Abbasbhai Alimahomed v. Haji Gulamnabi Haji Safibhai)*, (1964) 5 SCR 155 at 157 : AIR 1964 SC 1341 case and *Mangilal's* case (supra) and, therefore, was not a correct law without examining the provisions of that Act. The controversy brought before the Court in this case was whether the provision of the relevant Rent Restriction Act was in addition to the provision of the Transfer of Property Act or was in derogation thereof. In other words, whether it would supplement or supplant the same. Such a contention is entirely and materially different from the contention raised before us that a notice terminating the tenancy is necessary to be served upon a statutory tenant before commencing an action against him under any of the provisions of the Rent Restriction Act. Undoubtedly, the Court held in *Manujendra Dutt's* case (supra) as under :

The Thika Tenancy Act like similar Rent Acts passed in different States is intended to prevent indiscriminate eviction of tenants and is intended to be a protective statute to safeguard security of possession of tenants and therefore should be construed in the light of its being a social legislation. What Section 3 therefore does is to provide that even where a landlord had terminated the contractual tenancy by a proper notice such landlord can succeed in evicting his tenant provided that he falls under one or more of the clauses of that section. The word "notwithstanding" in Section 3 on a true construction therefore means that even where the contractual tenancy is properly terminated, notwithstanding the landlord's right to possession under the Transfer Property Act of the contract of lease he cannot evict the tenant unless he satisfied any one of the grounds set out in Section 3. Rent Acts are not ordinarily intended to interfere with contractual leases and are Acts for the protection of tenants and are consequently restrictive and not enabling, conferring no new rights of action but restricting the existing rights either under the contract or under the general law.

10. It must be specifically pointed out that the emphasis in *Manujendra's* case is that contractual tenancy has to be terminated by a notice before all action for ejectment can be commenced under the Thika Tenancy Act and notwithstanding the non-obstante clause in Section 3 of the Act, the tenant cannot be deprived of his right to a notice before termination of his tenancy if he has such a right either under the lease or under the Transfer of Property Act. The decision ultimately turns upon the interpretation of clause (7) of the lease which made it obligatory upon the landlord to serve a notice of six months' duration either at the time of expiration of the lease or if the lessee was allowed to hold over, at any time before commencing the action for ejectment. We must frankly say that the ratio in this decision does not run counter to the ratio in *Capadia's* case (supra) and the decisions in which that ratio was affirmed.

11. In Raval & Co.'s case (supra), the question raised before the Court was whether under the provisions of the Tamil Nadu Building (Lease and Rent Control) Act, 1960, it was open to the landlord to move the Controller for fixation of fair rent during the subsistence of the contractual tenancy. This decision would hardly assist us in resolving the controversy raised before us. Though R. Krishnamurthy's case was expressly overruled in Manujendra Dutt's case (supra) and held not to be correct law by this Court, the majority view as expressed by Alagiriswami, J., in Raval & Co.'s case (supra) deprecated its summary dismissal without examining the provisions of the Act. That apart, the majority view is that even during the subsistence of contractual tenancy the landlord can apply to the Controller for fixation of fair rent on the footing that the Act has a scheme of its own and it is intended to provide a complete code in respect of both contractual tenancies and statutory tenancies. This would indicate that the Act was supposed to supplant and not to supplement the Transfer of Property Act. But that conclusion would not throw any light on the point under discussion here.

12. In Rattan Lal v. Vardesh Chander ((1976) 2 SCR 906 : (1976) 2 SCC 103), the tenant moved this Court challenging a decree for eviction under the Delhi Rent Control Act, 1958, inter alia, contending that a notice terminating his tenancy was not served upon him before commencing the action for his eviction and the landlord sought to break through the defence by urging that the lease and expired by efflux of time limited thereby under Section 111(a) and no notice terminating the tenancy under Section 106 is needed and further that forfeiture of the tenancy caused by the subletting contrary to the terms of the agreement can be availed of by the landlord even in the absence of a notice as contemplated by Section 111(g). This decision will have to be examined in greater detail because it was emphatically urged that this decision takes a contrary view. The most important factual aspect which must immediately engage our attention is that the Court in that case found that the lease merely stating that "it is for a period less than one year is ex facie for an indefinite period and as such cannot expire by efflux of time". Now, if the Court came to the conclusion that the lease had not expired by efflux of time and the lease was held to be for an indefinite period, the contractual tenancy never came to an end and in such a situation Section 106 of the Transfer of Property Act would be attracted unless there is a contract to the contrary and a notice to quit is must before an action for ejection can be started. Therefore, it becomes abundantly clear that in Rattan Lal's case no question was raised whether a statutory tenant is entitled to a notice under Section 106 of the Transfer of Property Act. In fact this decision supports the view that no such notice is necessary and this becomes abundantly clear from what we quote hereunder :

A lease merely stating that it is for a period less than one year is ex facie for an indefinite period and, as such, cannot expire by efflux of time. Nor are we convinced that, notwithstanding the acceptance of rent for the period of 11 years the landlord had not assented to the holding over of the tenancy and that what emerged was a statutory tenancy which did not require notice in law for valid determination. Possibly so; not necessarily. However, we need not explore this aspect further in view that we take of the other submission of the landlord that the lease had been determined by forfeiture, not in terms of Section 111(g) of the T.P. Act, but on the application of the principles of justice, equity and good conscience.

13. It is manifestly clear that the Court did not lay down a proposition that a notice to quit is necessary before commencing an action against a statutory tenant under any of the enabling provisions of the Rent Restriction Act. On the contrary, apparently the view that such a notice is not necessary is affirmed and simultaneously a doubt is reflected in saying that the aspect may not be explored any more. However, it cannot be said that Rattan Lal's case is an authority for the

proposition that a notice under Section 106, Transfer of Property Act must be served before initiating an action for ejection against a statutory tenant. We may point out that the Court having not been seized of such a point, has not referred to K. B. Capadia's case (supra) and Ganga Dutt Murarka's case (supra).

14. In *P. V. Rao v. C. V. Rammana* ((1976) 2 SCR 551 : (1976) 2 SCC 409), to which one of our esteemed brother, Jaswant Singh, J., was a party, it has been held that the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960, is a complete code with its own scheme of procedure. In reaching this conclusion, the Court distinguished Mangilal's case (supra).

15. Analysing the position it clearly emerges that the ratio in K. B. Capadia's case that where the lease determines by efflux of time and the tenant continues in possession under the protection of the Rent Restriction Act he acquires a status of irremovability unless there is something to show that he is a tenant holding over, mere payment of rent without necessary animus not being sufficient. Such a tenant for the sake of convenience is described as a statutory tenant. It would not be open to such a tenant to urge by way of defence, in a suit for ejection brought against him under the provisions of the Rent Restriction Act, that by acceptance of rent a fresh tenancy was created which had to be determined by a fresh notice to quit. This ratio is neither departed from non-controverted in any subsequent judgment of this Court.

16. A Full Bench of the Punjab and Haryana High Court in *Bhaiya Ram Hargo Lal v. Mahavir Parshad Murari Lal Mahajan* ((1968) 70 Punj LR 1011 : AIR 1969 Punj 110 : 1968 Cur LJ 947), after referring to the aforementioned decisions except the one in K. B. Capadia's case (supra) and a number of other decisions of various High Courts, answered in the affirmative the question referred to it, viz., whether an ejection application under Section 13 of the East Punjab Urban Rent Restriction Act can be filed against a statutory tenant without the prior issue of notice under Section 106 of the Transfer of Property Act, 1882. We are of the opinion that this decision represents the correct law on the subjects.

17. The Kerala High Court in *Lalitha's case* (supra) observed that it is difficult to resist the impression or conclusion that the decisions in *Manujendra Dutt's case* (supra), *Mangilal's case* (supra) and *Rattan Lal's case* (supra) do not conflict with each other. A closer reading of all the decisions as attempted by us would clearly show that these decisions are not irreconcilable and each has to be understood in the context of the points and questions raised in it and the background of factual matrix. Suffice it to say that on the question under discussion there is no conflict and, therefore, the decision in K. B. Capadia's case is binding and must be given effect. Consistent with its ratio, the contention of Mr. Mahajan that the action for ejection against the appellant tenant under Section 13 of the East Punjab Urban Rent Restriction Act must fail for want of notice under Section 106 of the Transfer of Property Act, must be negated.

18. Having examined the matter on authority and precedent it must be frankly confessed that no other conclusion is possible on the first principle. Lease of urban immoveable property represents a contract between the lessor and the lessee. If the contract is to be put to an end it has to be terminated by a notice to quit as envisaged under Section 106 of the Transfer of Property Act. But it is equally clear as provided by Section 111 of the Transfer of Property Act that the lease of immoveable property determines by various modes therein prescribed. Now, if the lease of immoveable property determines in any one of the modes prescribed under Section 111, the contract of lease comes to an end, and the landlord can exercise his right of re-entry. This right of re-entry is further restricted and fettered by the provisions of the Rent Restriction Act. Nonetheless, the

contract of lease has expired and the tenant lessee continues in possession under the protective wing of the Rent Restriction Act until the lessee loses protection. But there is no question of terminating the contract because the contract comes to an end once the lease determines in any of the modes prescribed under Section 111. There is, therefore, no question of giving a notice to quit to such a lessee who continued in possession after the determination of the lease, i.e. after the contract came to an end, under the protection of the Rent Restriction Act. If the contract once came to an end there was no question of terminating the contract over again by a fresh notice. Therefore, both on principle and authority the contention of Mr. Mahajan cannot be accepted.

19. The second contention requires re-examination of the findings of facts which this Court ordinarily in appeal by special leave would not undertake. After one remand by the first appellate authority, all the courts have concurrently found that the building is in a dilapidated condition and unfit for human habitation and requires to be reconstructed. Mr. Mahajan made a cryptic submission that even after the lapse of 15 years during which this protracted litigation has moved from court to court, the building stands erect and the tenant has used it for the purpose for which it was let out, and therefore, this Court would be shutting its eyes to the reality if it affirms the decree for eviction on the ground that the building is unfit for human habitation. It appears that the tenant has been carrying out some minor repairs to keep the building standing and that he seems to be doing in his own interest. The finding, however, is that the eastern wall of the building is altogether out of plumb and it cannot be repaired or replaced without the building being vacated by the tenant. The roof of the building is also uneven and that too cannot be set right without eviction. These are findings supported by evidence and once they are accepted, the decree for eviction deserves to be affirmed.

20. Accordingly this appeal fails and it is dismissed but in the circumstances of the case there will be no order as to costs.

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