

Mani Subrat Jain

Vs

Raja Ram Vohra

Civil Appeal No. 818 of 1978

(V.R. Krishna Iyer, R.S. Pathak JJ)

19.11.1979

JUDGMENT

KRISHNA IYER, J. -

1. The Holmesian homily that the life of the law is not logic but experience directs our humane attention, in this appeal against an order in execution for eviction of an advocate in Chandigarh, affirmed by court after court, to a reading of the textual definition of 'tenant' [Section 2(i)] in the context of the broad embargo on ejection of urban dwellings in Section 13 of the East Punjab Rent Restriction Act, 1949 (hereinafter referred to as the Act).

2. Chandigarh, a blossom in the desert, has served as the capital of two States; and, with explosive expansion, thanks to the marvellous human resources of Punjab and Haryana, become a crowded, though not yet chaotic, city with chronic accommodation scarcity. Consequently., laissez faire law, in the matter of landlord's right to evict his tenant, was subject to the Act with effect from November 4, 1972. From then on, no tenant could be dispossessed except on the grounds set out in Section 13. But if a landlord had already obtained a decree for eviction earlier to this dateline, was he to be restrained by Section 13 which forbade even execution of decrees against tenants, or was he free from the statutory fetters because the defendant had ceased to be a tenant on the passing of the decree, having forfeited his status by the destructive effect of a compromise, as in this case ?

3. An advocate, under this Act, belongs to a 'scheduled' class of tenants whose dwellings enjoy special protection. The appellant-advocate tenanted a building belonging to the respondent. The latter sued for possession and the former, with refreshing realism, entered into a compromise and agreed to vacate by a certain date on certain terms regarding rent which do not bear upon the dispute before us. A decree in terms thereof was passed on October 9, 1972. Then came the Act, which by extension of its operation applied to Chandigarh with effect from November 4, 1972. Had the decree been passed but a few days later, the Act would have admittedly interdicted the eviction because of Section 13. Had the decree been made and executed a day before the extension of the Act, the years of litigative procrastination of eviction might have been impossible. These mystic 'might-have-beens' are gambles of time which spill beyond our jurisdiction and statutory cognisance. The salvation of the appellant is certain if he be a 'tenant' within the meaning of the Act. His eviction is certain if the definition of 'tenant' does not ensconce him in its amplitude.

(4) Decisions of peripheral relevance, but of different kernel, have been cited on both sides, and the one which has tilted the scales in the Chandigarh jurisdiction in favour of decree-holder-landlord is Subudhi case (K. R. Subudhi v. Gopinath, (1963) 2 SCR 559 : AIR 1968 SC 919 : (1968) 2 SCJ 528). Precedents are law's device to hold the

Present prisoner of the Past and must bind only if squarely covered. Subudhi case, decided under the Orissa House Rent Control Act, 1958, is not one such. The key word is 'tenant' and if under the Act the appellant fills the bill, definitionally he is immune from eviction when read with Section 13. Subudhi turns on a significantly different definition which cuts down the wide connotation by a tail-end qualification. The semantic sweep of Section 2(i) in our Act, by clear contrast, takes in a wider group and we have no indication in that judgment whether a provision like Section 13 which makes the restriction applicable also to decrees was present in the Act there debated. Therefore, we side-step those rulings and go straight to the two provisions and their meaning in the statutory setting.

(5) It is too platitudinous to preach and too entrenched to shake, the proposition that rent control legislation in a country of terrible accommodation shortage is a beneficial measure whose construction must be liberal enough to fulfil the statutory purpose and not frustrate it. So construed, the benefit of interpretative doubt belongs to the potential evictee unless the language is plain and provides for eviction. That intendment must, by interpretation, be effectuated. This the essence of rent control jurisprudence.

(6) Section 2(i) reads :

'tenant' means any person by whom or on whose account rent is payable for a building or rented land and includes a tenant continuing in possession after the termination of the tenancy in his favour, but does not include a person placed in occupation of a building or rented land by its tenant, unless with the consent in writing of the landlord, or a person to whom the collection of rent or fees in a public market, cart-stand or slaughter house or of rents for shops has been farmed out or leased by a municipal, town or notified area committee;

In this context, we may also read Section 13(1) which is integral to and makes impact upon the meaning of Section 2(i) even if there be any marginal obscurity.

(13) Eviction of tenants - (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

The expression 'tenant' includes 'a tenant continuing in possession after the termination of the tenancy in his favour'. It thus includes, by express provision, a quondam tenant whose nexus with the property is continuance in possession. The fact that a decree or any other process extinguishes the tenancy under the general law of real property does not terminate the status of a tenant under the Act having regard to the carefully drawn inclusive clause. Even here, we may mention by way of contrast that Subudhi case (*K. R. Subudhi v. Gopinath*, (1963) 2 SCR 559 : AIR 1968 SC 919 : (1968) 2 SCJ 528) related to a statute where the definition in Section 2(5) of that Act expressly included "any person against whom a suit for ejection is pending in a court of competent jurisdiction" and more pertinent to the point specially excluded "a

person against whom a decree or order for eviction has been made by such a court". We feel no difficulty in holding that the text, reinforced by the context especially. Section 13, convincingly includes ex-tenants against whom decrees for eviction might have been passed, whether on compromise or otherwise. The effect of the compromise decree, in counsel's is that the tenancy has been terminated. Nobody has a case that the appellant is not continuously in possession. The conclusion is inevitable that he remains a tenant and enjoys immunity under Section 13(1). The execution proceedings must, therefore, fail because the statutory road-block cannot be removed, Indeed, an application under the Act was filed by the landlord-defendant which was dismissed because the ground required by the Act was not made out.

(7) We have been told by counsel, and supporting citations have been brought to our notice, that the High Court at Chandigarh has taken the contrary view for some time. It is better to be ultimately right rather than consistently wrong. The interpretation we have given in Section 2(i) is strengthened by our conviction that a beneficial statute intended to quieten a burning issue affecting the economics of the human condition in India should be so interpreted as to subserve the social justice purpose and not to subvert it. Even apart from this value-vision, the construction we have adopted is sustainable.

(8) We have laid down the law on the disputed questions raised before us, but we are not called upon to make any decree pursuant to our decision because, taking the clue from certain observation of the court in the course of the arguments, the parties have come together and reached a fair solution of the problem revolving round the house property. A conflict is best resolved by the parties persuading themselves to see the futility of continued dispute and, enlightened by the law, settling the controversy in a manner that promotes the interests of both. We find that sides in the present case have produced an enlightened settlement and put in the court an agreement to sell the property, covered by the appeal, by the landlord to the tenant. A copy of the agreement has been put in the record which is annexed as appendix to this judgment.

(9) In this view we dispose of the appeal by formally dismissing it because there is no longer any relief needed in this appeal.

ORDER

Krishna Iyer, J. -

The judgment having been delivered counsel for the respondent represented that the Agreement, which has been made and appendixed to the judgment, be treated as an undertaking mutually between the parties to the Court. Counsel on both sides have no objection to this course and so we record the Agreement incorporated in the judgment as an undertaking to the Court made by the parties in regard to their respective obligations.

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