

M/S. Sri Raja Lakshmi Dyeing Works and Others

Vs

Rangaswamy Chettiar

Civil Appeal No. 663 of 1979

(O. Chinnappa Reddy, R. S. Pathak JJ)

26.03.1980

JUDGMENT

CHINNAPPA REDDY, J. –

1. The appellant is the sub-tenant of a part of the building of which the respondent is the tenant. The appellant carries on the business of dyeing while the respondent carries on business in handloom sarees. The respondent filed a petition under Section 10 of Tamil Nadu Buildings (Lease and Rent Control) Act, for the eviction of the appellant on the grounds of wilful default in payment of rent, commission of acts of nuisance, denial of title and requirement of the premises for the respondent's own use and occupation in connection with a dyeing factory which he proposed to set up and expansion of the existing business. All the grounds were negatived, concurrently, by the Rent Controller and the appellate authority. On a revision petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, the High Court allowed the application for eviction on the last of the grounds, setting aside the concurrent finding of the Rent Controller and the appellate authority on that question. The principal submission of Dr. Y. S. Chitale, learned counsel for the appellant, was that the High Court exceeded its jurisdiction in interfering, in the exercise of its revisional powers, with the concurrent finding of fact arrived at by the subordinate tribunal. The submission of Shri T. S. Krishna Moorthy Iyer, learned counsel for the respondent, was that jurisdiction under Section 25 of the Tamil Nadu Act was very wide and that a question regarding the bona fide requirement of a landlord was always a mixed question of fact and law and the High Court, therefore, had ample jurisdiction to interfere even with a concurrent finding of the subordinate tribunal.

2, 'Appeal' and 'revisional' are expressions of common usage in Indian statute and the distinction between 'appellate jurisdiction' and 'revisional jurisdiction' is well known though not well defined. Ordinarily, appellate jurisdiction involves a rehearing, as it were, on law as well as fact and is invoked by an aggrieved person. Such jurisdiction may, however, be limited in some way as, for instance has been done in the case of second appeal under the Code of Civil Procedure, and under some Rent Acts in some States. Ordinarily, again, revisional jurisdiction is analogous to a power of superintendence and may sometimes be exercised even without its being invoked by a party. The extent of revisional jurisdiction is defined by the statute conferring such jurisdiction. The conferment of revisional jurisdiction is generally for the purpose of keeping tribunals subordinate to the revising tribunal within the bounds of their authority to make them act according law, according to the procedure established by law and according to well defined principles of justice. Revisional jurisdiction as ordinarily understood with reference to our statutes is always included in appellate jurisdiction but not vice versa. These are general observations. The question of the extent of appellate or revisional jurisdiction has to be considered in each case with reference to the language

employed by the statute.

3. Section 23 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, enables any person aggrieved by an order passed by Controller to prefer an appeal to the appellate authority having jurisdiction. Section 25 provides that :

The High Court may on the application of any person aggrieved by an order of the appellate authority, call for and examine the record of appellate authority, to satisfy itself as to the regularity of such proceeding or the correctness, legality or propriety of any decision or order passed therein and if, in any case it appears to the High Court that any such decision or order should be modified, annulled, reversed or remitted for reconsideration it may pass orders accordingly.

The language of Section 25 is indeed very wide. But we must attach some significance to the circumstance that both the expressions 'appeal' and 'revision' are employed in the statute. Quite obviously, the expression 'revision' is meant to convey the idea of a much narrower jurisdiction than that conveyed by the expression 'appeal'. In fact it has to be noticed that under Section 25 the High Court calls for and examines the record of the appellate authority in order to satisfy itself. The dominant idea conveyed by the incorporation of the words 'to satisfy itself' under Section 25 appears to be that the power conferred on the High Court under Section 25 is essentially a power of superintendence. Therefore, despite the wide language employed in Section 25 the High Court quite obviously should not interfere with findings of fact merely because it does not agree with the finding of the subordinate authority. The power conferred on the High Court under Section 25 of the Tamil Nadu Buildings (Lease and Control) Act may not be as narrow as the revisional power of the High Court under Section 115 of the Code of Civil Procedure but in the words of Untwalia, J., in *Dattopant Gopalvarao Devakate v. Vithalrao Maruthirao Janagaval* ((1975) 2 SCC 246), "it is not wide enough to make the High Court a second court of first appeal".

4. Some argument was advanced whether a finding as to the bona fide requirement of a landlord is or not a mixed question of fact and law. Reference was made to *Madan Lal Puri v. Sain Das Berry* ((1971) 2 SCC 535) and *Kamla Soni v. Rup Lal Mehra* (AIR 1969 NSC 186 : (1969) 2 SCWR 679) on the one hand and *I. B. Sarvate v. Nemichand* (1966 MPLJ 26 : 1965 Jab LJ 973 (SC) and *Mattulal v. Radhe Lal* (AIR 1974 SC 1596 : (1974) 2 SCC 365) on the other hand. We do not think it is necessary for the purposes of this case to enter into a discussion of this question. Merely to hold that a question is a mixed question of fact and law is not sufficient to warrant the exercise of revisional power. It must, however, be shown that there was a taint of such unreasonableness resulting in a miscarriage of justice. A concurrent finding, based on evidence, that the landlord did not bona fide require the premises for his own use and occupation is not in our view a finding which can be touched by the High Court exercising jurisdiction under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. The appeal is, therefore, allowed with costs. The judgment of the High Court is set aside and that of the appellate Court is restored.

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