Jai Singh Jairam Tyagi and Others

Vs

Mamanchand Ratilal Agarwal and Others

Civil Appeals Nos. 708-710 of 1978

(V. R. Krishna Iyer, O. Chinnappa Reddy JJ)

28.03.1980

JUDGMENT

CHINNAPPA REDDY, J. –

1. The respondents in Civil Appeal 708 of 1978, Mamanchand Ratilal, Agarwal and others who are the landlords of premises bearing door No. 16 in Nawa Bazar Area Kirkee Cantonment, filed Civil Suit 1730 of 1964 against the appellant-tenant for recovery of possession and arrears of rent under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The suit was decreed. There was an appeal by the tenant. It resulted in a compromise decree dated July 12, 1967 by which some time was given to the tenant to vacate the premises. As the tenant failed to vacate the premises within the time given to him, the landlords were compelled to take out execution.

2. On April 29, 1969, in the case of Indu Bhusan Bose v. Rama Sundari Devi ((1970) 1 SCR 443 : (1969) 2 SCC 289), this Court held that Parliament alone had and the State Legislature did not have the necessary competence to make a law in regard to the "regulation of house accommodation in Cantonment areas". The expression "regulation of house accommodation" was interpreted as not to be confined to allotment only but as extending to other incidents, such as termination of existing tenancies and eviction of persons in possession of house accommodation etc. To get over the situation created by Indu Bhusan Bose v. Rama Sundari Devi ((1970) 1 SCR 443 : (1969) 2 SCC 289), on December 29, 1969, the Central Government issued a notification under Section 3 of the Cantonments (Extension of Rent Control Laws) Act. 1957 extending the provisions of the Bombay Rents Hotel and Lodging House Rates Control Act, 1947 to the Kirkee and other Cantonment areas. On June 2, 1972, the Parliament also enacted Act 22 of 1972 amending the Cantonments (Extension of Rent Control Laws) Act, 1957, purporting to enable the Central Government to make the rent control laws in the several States applicable to cantonment areas from dates anterior to the dates of notification and further purporting to validate certain pre-existing decrees. In the meanwhile, taking advantage of the decision in the case of Indu Bhusan Bose v. Rama Sundari Devi ((1970) 1 SCR 443 : (1969) 2 SCC 289), the appellant-tenant filed Miscellaneous Application 597 of 1970 for a declaration that the decree obtained against him was a nullity incapable of being executed. This application was allowed by the court and on November 19, 1971. But, after the enactment of Act 22 of 1972, on January 11, 1978, the landlords filed Darkhast No. 104 of 1973 to execute the decree in their favour. The tenant raised various objections. One of the objections was that subsequent to the compromise decree there was a fresh agreement of lease between the landlords and himself. This was denied by the landlords. Another objection was that the provisions of the Amending Act 22 of 1972 were not extensive enough to save the decree dated July 12, 1967. The third objection was that in any case the decision in Miscellaneous Application 597 of 1970 holding the decree to be a nullity

operated as res judicata between the parties. The first of the objections was left open by all the courts for future adjudication. The second and third objections alone were considered, for the time beings. In the judgment under appeal the High Court overruled the second and third objections of the tenants and hence this appeal by special leave.

3. The first question for our consideration is whether the compromise decree dated July 12, 1967 is saved by Amending At 22 of 1972 ?

4. Before the decision of this Court in Indu Bhusan Bose v. Rama Sundari Devi ((1970) 1 SCR 443 : (1969) 2 SCC 289) there was a conflict of views on the question whether Entry 3 of List I of Schedule VII to the Constitution which enabled Parliament to legislate in regard to "the regulation of housing accommodation (including the control of rents)" in cantonments areas was wide enough to include the subject of relationship of landlord and tenant of buildings situated in cantonment areas. The High Courts of Bombay, Nagpur and Patna had taken view that regulation of the relationship of landlord and tenant did not fall within Entry 2 of List I of the Seventh Schedule to the Government of India Act, 1935 (which corresponded to Entry 3 of List I of Seventh Schedule to the Constitution) and that the Provincial legislature was competent to legislature even in regard to the regulation of the relationship between landlord and tenant in Cantonment areas by virtue of Entry 21 of List II of the Seventh Schedule to the Government of Indian Act, 1935 (which corresponded to Entry 18 of List II of the Seventh Schedule to the Constitution). On the other hand the High Courts of Calcutta and Rajasthan held that the power of the State legislature to legislate in respect of landlord and tenant of buildings was to be found not in Entry 18 of List II but in Entries 6, 7 and 13 of List III of the Seventh Schedule to the Constitution and that such power was circumscribed by the exclusive power of Parliament to legislate on the same subject under Entry 3 of List I. The view expressed by the Calcutta and Rajasthan High Courts was accepted as correct by this Court in Indu Bhusan Bose v. Rama Sundari Devi ((1970) 1 SCR 443 : (1969) 2 SCC 289). But even before this decision of the Court in Indu Bhusan Bose v. Sundari Devi ((1970) 1 SCR 443 : (1969) 2 SCC 289) Parliament appeared to take the view of the Calcutta and Rajasthan High Courts as the correct view and proceeded to enact the Cantonments (Extension of Rent Control Laws) Act, 1957, by Section 3 of which the Central Government was enabled, by notification in the official Gazette, to extend to any cantonment with such restrictions and modifications as it thought fit, any enactments relating to the control of rent and regulation of house accommodation which was in force on the date of the notification in the State in which the cantonment was situated. Though this Act came into force on December 18, 1957, no notification was issued extending the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, to Kirkee and other Cantonment areas within the State of Bombay until 1969. Apparently such a notification was thought unnecessary in view of the fact that the Bombay Act was supposed to operate within the said Cantonment areas because of the consistent view taken by the Bombay High Courts regarding the applicability of the Bombay Act to such areas. But the position was upset as a result of the decision of this Court in Indu Bhusan Bose v. Rama Sundari Devi ((1970) 1 SCR 443 : (1969) 2 SCC 289). Thereafter it became necessary that a notification under Section 3 of the Cantonment (Extension of Rent Control Laws) Act, 1957, should be issued. It was accordingly done on December 29, 1969. But it was soon realised that the entire problem was not thereby solved since all such notifications as the one issued on December 29, 1969 could only be prospective and could not save decrees which had already been passed. Amending Act 22 of 1972 was, therefore, enacted for the express purpose of saving decree which had already been passed. The Statement of Objects and Reasons of the Amending Act stated :

> But these notifications could be issued only prospectively and could not save the

decrees already passed. A number of representations had been received from an on behalf of tenants and tenants' associations, ventilating their grievances in this regard. It was accordingly proposed to amend Section 3 to empower the government to extend to any cantonment any enactment relating to the control of rent and regulation of house accommodation in force in the State in which the Cantonment was situated either from the commencement of such enactment or from January 26, 1950, the date when the Constitution came into force, whichever was later, and to save decrees already passed under the enactment deemed to have been in force in the Cantonment before such extension.

5. By Section 2 of the Amending Act of 1972 the Principal Act of 1957 was itself deemed to have come into force on January 26, 1950.

6. Original Section 3 was renumbered as sub-section (1) and the words "on the date of the notification" were omitted and were deemed always to have been omitted". New sub-sections (2), (3) and (4) were introduced and they are as follows :

(2) The extension of and enactment under sub-section (1) may be made from such earlier or future date as the Central Government may think fit :

Provided that no such extension shall be made from a date earlier than -

(a) the commencement of such enactment, or

(b) the establishment of the cantonment, or

(c) the commencement of this Act,

whichever is later.

(3) Where any enactment in force in any State relating to the control of rent and regulation of house accommodation is extended to a cantonment from a date earlier than the date on which such extension is made (hereafter referred to as the "earlier date") such enactment, as in force on such earlier date, shall apply to such cantonment, and where any such enactment has been amended at any time after the earlier date but before the commencement of the Cantonments (Extension of Rent Control Laws) Amendment Act, 1971, such enactment as amended, shall apply to the cantonment on and from the date on which the enactment by which such amendment was made, came into force.

(4) Where, before the extension to a cantonment of any enactment relating to the control of rent and regulation of house accommodation therein (hereafter referred to as the "Rent Control Act"), -

(i) any decree or order for the regulation of, or for eviction from, any house accommodation in that cantonment, or

(ii) any order in the proceedings for the execution of such decree or order, or

(iii) any order relating to the control of rent or other incident of such house

accommodation,

was made by any court, tribunal or other authority in accordance with any law for the control of rent and regulation of house accommodation for the time being in force in the State in which such cantonment is situated such decree or order shall, on and from the date on which the Rent Control Act is extended to that cantonment, be deemed to have been made under the corresponding provisions of the Rent Control Act, as extended to that cantonment, as if the said Rent Control Act, as so extended, were in force in that cantonment, on the date on which such decree order was made.

7. The effect of the provisions of the amending Act appears to us to be very clear. Under Section 3 of the unamended Act, a notification could be issued extending a State legislation to a cantonment area with effect from the date of the notification. As a result of the introduction of sub-section (2) of Section 3 the notification can be given effect from an anterior date or a future date, but it cannot be made effective from a date earlier than the commencement of the State legislation or the establishment of the cantonment or the commencement of the Cantonments (Extension of Rent Control Laws) Act, 1957. Sub-section (3) is merely consequential to sub-section (2) in that a State legislation when extended to a cantonment area from an anterior date, such legislation is to stand legislation is to stand extended with all the amendments to such State legislation made after such anterior date but before the commencement of the 1972 Amending Act, the amendments being applicable as and when they came into force. Sub-section (4) makes provision for the saving of decrees or orders for the regulation of or for eviction from any house accommodation in a cantonment made before the extension of the State legislation to the cantonment provided certain conditions are fulfilled. One condition is that the decree or order must have been made by any court, tribunal or other authority in accordance with a law for the control of rent and regulation of house accommodation for the time being in force in the State in which such cantonment is situated. In other words the decree or order must have been made by the wrong application of the State legislation to the cantonment area. If a decree or order has been made by such wrong application of the State legislation to the cantonment area, it shall be deemed with effect from the date of the notification to have been properly made under the relevant provisions of the State legislation.

8. Shri V. M. Tarkunde the learned counsel for the appellant urged that sub-section (4) had to be read in the context of sub-sections (2) and (3) and that it was to be applied only to cases where a notification issued under sub-section (1) was given retrospective effect under the provisions of sub-section (2). We see no justification for confining the applicability of sub-section (4) to cases where notifications are issued with retrospective effect under sub-section (2). Sub-section (4) in terms is not so confined. It applies to all cases of decrees or orders made before the extension of a State legislation to a cantonment area irrespective of the question whether such extension is retrospective or not. The essential condition to be fulfilled is that the decree or order must have been made as if the State legislation was already in force although, strictly speaking, it was not so in force. In our view sub-section (4) is wide enough to save all decrees and orders made by the wrong application of a State rent control and house accommodation legislation to a cantonment area, though such State legislation could not in law have been applied to cantonment areas at the time of the passing of the decrees or orders. We therefore, hold that the decree obtained by the respondents is saved by the provisions of Section 3, sub-section (4) of the Cantonments (Extension of Rent Control Laws) Act of 1957, as amended by Act 22 of 1972.

9. The second submission of the learned counsel for the appellant was that the decision of the executing Court in Miscellaneous Application 597 of 1970 declaring the decree to be a nullity operated as res judicata between the parties. The learned counsel relied upon the following

observations of this Court in Mathura Prasad Bajoo Jaiswal v. Dossibai N. B. Jeejeebhoy ((1970) 3 SCR 830, 836 : (1970) 1 SCC 613) : (SCC p. 619, para 11).

The matter in issue, if it is one purely of fact, decided in the earlier proceeding by a competent court must in a subsequent litigation between the same parties be regarded as finally decided and cannot be reopened. A mixed question of law and fact determined in the earlier proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties. But, where the decision is on a question of law, i.e., the interpretation of a statute, it will be res judicata in a subsequent proceeding between the same parties where the cause of action is the same, for the expression 'the matter in issue' in Section 11, Code of Civil Procedure means the right litigated between the parties i.e., the facts on which the right is claimed or denied and the law applicable to the determination of that issue. Where, however the question is one purely of law and it relates to the jurisdiction of the court or a decision of the court sanctioning something which is illegal, by resort to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of that order under the rule of res judicata for a rule of procedure cannot supersede the law of the land.

In the very observations relied upon by the learned counsel for the appellant the last sentence is clearly against the appellant. The matter becomes clear if certain observations made earlier in the very judgment are considered. They are : (SCC p. 619, para 10)

A question relating to the jurisdiction of a court cannot be deemed to have been finally determined by an erroneous decision of the court. If by an erroneous interpretation of the statute the court holds that it has no jurisdiction, the question would not, in our judgment, operate as res judicata. Similarly by an erroneous decision if the court assumes jurisdiction which it does not possess under the statute, the question cannot operate as res judicata between the same parties, whether the cause of action in the subsequent litigation is the same or otherwise.

In that case the appellant who had a lease of an open land for construction of buildings had applied for determination of a standard rent under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The application was rejected on the ground that the Act did not apply to open land let for construction. The view was confirmed by the High Court. Later in another case, the view taken by the High Court was overruled by the Supreme Court and it was held that the Act applied to open land let out for construction. The appellant once again filed an application for determination of standard rent. The lower courts and the High Court held that the previous decision operated as res judicata between the parties. The Supreme court reversed the view of the lower courts and the High Court. It was held that the earlier decision that the Civil Judge had no jurisdiction to entertain the application for determination of standard rent was wrong in view of the judgment of the Supreme Court. If the decision in the previous proceeding was to be regarded as res judicata it would assume the status of a special rule of law applicable to the parties relating to the jurisdiction of the court in derogation of the rule declared by the legislature. The situation in the present case is analogous. The executing Court had refused to exercise jurisdiction and to execute the decree on the ground that the decree was a nullity as the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, had no application to building in Cantonment area. That defect having been removed and all decrees obtained on the basis that the Bombay rent law applied to the Kirkee Cantonment area having been validated by Act 22 of 1972, it cannot be said that the earlier decision holding that the decree was a nullity operated as res judicata. As pointed out by this Court in Mathura Prasad Bajoo Jaiswal v. Dossibai N. B. Jeejeebhoy ((1970) 3 SCR 830, 836 : (1970) 1 SCC 613) if the earlier decision in the miscellaneous application is to be regarded as res judicata it

would assume the status of a special rule of jurisdiction applicable to the parties in derogation of the law declared by the legislature. We, therefore see no substance in the second submission. Civil Appeal 708 of 1978 is accordingly dismissed with costs.

10. In Civil Appeal 709 of 1978, the only question is about the validity of a decree obtained before the date of the notification issued under Section 3 of the Cantonments (Extension of Rent Control Laws) Act 1957. In vide of what we have said above, this question has to be decided against the appellant. This appeal is also dismissed with costs.

11. In Civil Appeal 710 to 1978, special leave was granted under a misapprehension that the appeal raised the same questions as were raised in Civil Appeal 708 and 1978. It is now stated that it is not so. This appeal is also dismissed with costs.

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